



**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

**FORM 10-Q**

(Mark One)

Quarterly Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934

For the quarterly period ended March 29, 2008

or

Transition Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934

For the transition period from \_\_\_\_ to \_\_\_\_

Commission file number 1-10948

**Office Depot, Inc.**

(Exact name of registrant as specified in its charter)

**Office DEPOT**

**Delaware**

(State or other jurisdiction of incorporation or organization)

**2200 Old Germantown Road; Delray Beach, Florida**  
(Address of principal executive offices)

**59-2663954**  
(I.R.S. Employer Identification No.)

**33445**  
(Zip Code)

**(561) 438-4800**

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares outstanding of the registrant's common stock, as of the latest practicable date: At March 29, 2008 there were 273,103,764 outstanding shares of Office Depot, Inc. Common Stock, \$0.01 par value.

## **TABLE OF CONTENTS**

### PART I. FINANCIAL INFORMATION

#### Item 1. Financial Statements

CONDENSED CONSOLIDATED BALANCE SHEETS

CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Item 4. Controls and Procedures

### PART II. OTHER INFORMATION

Item 1. Legal Proceedings

Item 1A. Risk Factors.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Item 4. Submission of Matters to a Vote of Security Holders

Item 6. Exhibits

### SIGNATURES

EX-10.1 Amendment to Executive Employment Agreement

EX-10.2 Amendment to Change of Control Agreement

EX-10.3 Amendment to Change of Control Agreement

EX-10.4 Change of Control Agreement

EX-10.5 Separation Agreement

EX-31.1 Section 302 Certification of CEO

EX-31.2 Section 302 Certification of CFO

EX-32 Section 906 Certification of CEO and CFO

---

**PART I. FINANCIAL INFORMATION****Item 1. Financial Statements**

**OFFICE DEPOT, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(In thousands, except share and per share amounts)  
(Unaudited)

	As of March 29, 2008	As of December 29, 2007	As of March 31, 2007
<b>Assets</b>			
Current assets:			
Cash and cash equivalents	\$ 181,524	\$ 222,954	\$ 194,178
Receivables, net	1,573,663	1,511,681	1,506,592
Inventories	1,644,090	1,717,662	1,558,760
Deferred income taxes	110,903	120,162	118,831
Prepaid expenses and other current assets	155,942	143,255	144,295
Total current assets	<u>3,666,122</u>	<u>3,715,714</u>	<u>3,522,656</u>
Property and equipment, net	1,669,078	1,588,958	1,449,037
Goodwill	1,329,554	1,282,457	1,216,525
Other intangible assets	110,395	107,987	111,210
Other assets	577,903	561,424	421,328
Total assets	<u>\$ 7,353,052</u>	<u>\$ 7,256,540</u>	<u>\$ 6,720,756</u>
<b>Liabilities and stockholders' equity</b>			
Current liabilities:			
Trade accounts payable	\$ 1,540,042	\$ 1,591,154	\$ 1,682,696
Accrued expenses and other current liabilities	1,213,248	1,170,775	1,153,561
Income taxes payable	10,283	3,491	47,899
Short-term borrowings and current maturities of long-term debt	125,597	207,996	42,121
Total current liabilities	<u>2,889,170</u>	<u>2,973,416</u>	<u>2,926,277</u>
Deferred income taxes and other long-term liabilities	572,577	576,254	503,986
Long-term debt, net of current maturities	623,246	607,462	568,079
Minority interest	16,278	15,564	16,102
Commitments and contingencies			
Stockholders' equity:			
Common stock — authorized 800,000,000 shares of \$.01 par value; issued and outstanding shares - 428,993,252 in 2008, 428,777,625 in December 2007 and 427,494,407 in March 2007	4,290	4,288	4,275
Additional paid-in capital	1,795,905	1,784,184	1,723,959
Accumulated other comprehensive income	584,225	495,916	309,769
Retained earnings	3,852,578	3,783,805	3,541,961
Treasury stock, at cost — 155,889,488 shares in 2008, 155,819,358 shares in December 2007 and 152,697,854 shares in March 2007	<u>(2,985,217)</u>	<u>(2,984,349)</u>	<u>(2,873,652)</u>
Total stockholders' equity	<u>3,251,781</u>	<u>3,083,844</u>	<u>2,706,312</u>
Total liabilities and stockholders' equity	<u>\$ 7,353,052</u>	<u>\$ 7,256,540</u>	<u>\$ 6,720,756</u>

*This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements ("Notes") herein and the Notes to Consolidated Financial Statements in the Office Depot, Inc. Form 10-K filed February 26, 2008 (the "2007 Form 10-K").*

**OFFICE DEPOT, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS**  
**(In thousands, except per share amounts)**  
**(Unaudited)**

	13 Weeks Ended	
	March 29, 2008	March 31, 2007
Sales	\$3,962,017	\$4,093,600
Cost of goods sold and occupancy costs	<u>2,793,337</u>	<u>2,824,492</u>
Gross profit	1,168,680	1,269,108
Store and warehouse operating and selling expenses	866,806	885,692
General and administrative expenses	198,550	161,530
Amortization of deferred gain on building sale	<u>(1,873)</u>	<u>(1,873)</u>
Operating profit	105,197	223,759
Other income (expense):		
Interest income	905	860
Interest expense	(14,820)	(12,640)
Miscellaneous income, net	<u>8,441</u>	<u>9,821</u>
Earnings before income taxes	99,723	221,800
Income taxes	<u>30,950</u>	<u>68,029</u>
Net earnings	<u>\$ 68,773</u>	<u>\$ 153,771</u>
Earnings per common share:		
Basic	\$ 0.25	\$ 0.56
Diluted	0.25	0.55
Weighted average number of common shares outstanding:		
Basic	272,394	275,501
Diluted	272,840	280,130

*This report should be read in conjunction with the Notes herein and the Notes to Consolidated Financial Statements in the 2007 Form 10-K.*

OFFICE DEPOT, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(In thousands)  
(Unaudited)

	13 Weeks Ended	
	March 29, 2008	March 31, 2007
<b>Cash flow from operating activities:</b>		
Net earnings	\$ 68,773	\$ 153,771
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	63,567	71,710
Charges for losses on inventories and receivables	27,569	24,651
Changes in working capital and other	(32,780)	(19,100)
Net cash provided by operating activities	<u>127,129</u>	<u>231,032</u>
<b>Cash flows from investing activities:</b>		
Capital expenditures	(105,853)	(104,078)
Acquisition related payments	(270)	(22,050)
Release of restricted cash	18,100	—
Purchase of assets subsequently sold	(25,668)	—
Proceeds from assets sold and other	33,756	12,969
Net cash used in investing activities	<u>(79,935)</u>	<u>(113,159)</u>
<b>Cash flows from financing activities:</b>		
Proceeds from exercise of stock options and sale of stock under employee stock purchase plans	54	9,333
Tax benefits from employee share-based payments	—	5,728
Acquisition of treasury stock under approved repurchase plans	—	(90,275)
Treasury stock additions from employee related plans	(880)	(9,801)
Net payments on long- and short-term borrowings	(90,764)	(10,130)
Net cash used in financing activities	<u>(91,590)</u>	<u>(95,145)</u>
<b>Effect of exchange rate changes on cash and cash equivalents</b>	<u>2,966</u>	<u>(2,102)</u>
Net (decrease) increase in cash and cash equivalents	(41,430)	20,626
Cash and cash equivalents at beginning of period	222,954	173,552
Cash and cash equivalents at end of period	<u>\$ 181,524</u>	<u>\$ 194,178</u>

*This report should be read in conjunction with the Notes herein and the Notes to Consolidated Financial Statements in the 2007 Form 10-K.*

**OFFICE DEPOT, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**Note A — Basis of Presentation**

Office Depot, Inc., including consolidated subsidiaries, is a global supplier of office products and services. Fiscal years are based on a 52- or 53-week period ending on the last Saturday in December. The Condensed Consolidated Balance Sheet at December 29, 2007 has been derived from audited financial statements at that date. The condensed interim financial statements as of March 29, 2008 and March 31, 2007, and for the 13-week periods ended March 29, 2008 (also referred to as “the first quarter of 2008”) and March 31, 2007 (also referred to as “the first quarter of 2007”) are unaudited. However, in our opinion, these financial statements reflect adjustments (consisting only of normal, recurring items) necessary to provide a fair presentation of our financial position, results of operations and cash flows for the periods presented. In addition to the normal, recurring items recorded for interim financial statement presentation, we recognized expenses associated with exit and other activities because the related accounting criteria were met during the period. We have included the balance sheet from March 31, 2007 to assist in analyzing our company.

These interim results are not necessarily indicative of the results that should be expected for the full year. For a better understanding of Office Depot, Inc. and its financial statements, we recommend reading these condensed interim financial statements in conjunction with the audited financial statements for the year ended December 29, 2007, which are included in our 2007 Annual Report on Form 10-K (the “2007 Form 10-K”), filed with the U. S. Securities and Exchange Commission (“SEC”).

*Cash Management:* Our cash management process generally utilizes zero balance accounts which provide for the reimbursement of the related disbursement accounts on a daily basis. Accounts payable as of March 29, 2008, December 29, 2007 and March 31, 2007 included \$122 million, \$127 million and \$179 million, respectively, of disbursements not yet presented for payment drawn in excess of our book deposit balances where offset provisions exist. We borrow on a cost effective basis during the quarter, which may result in higher levels of borrowings and invested cash within the period. At the end of the quarter, cash may be used to minimize borrowings outstanding at the balance sheet date.

**New Accounting Pronouncements**

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* (“FAS 157”). This Standard defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. FAS 157 is effective for fiscal years beginning after November 15, 2007 for financial assets and liabilities, as well as for any other assets and liabilities that are carried at fair value on a recurring basis in financial statements. Certain aspects of this Standard were effective at the beginning of the first quarter of 2008. In November 2007, the FASB provided a one year deferral for the implementation of FAS 157 for other nonfinancial assets and liabilities. We do not anticipate that the adoption of the deferred portion of FAS 157 will have a material impact on our financial condition, results of operations or cash flows.

The FASB also issued in September 2006 Statement of Financial Accounting Standards No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans — an amendment of FASB Statement No. 87, 88, 106 and 132(R)* (“FAS 158”). This Standard prescribes two phases of implementation. In the first phase, which we adopted in 2006, deferred pension gains and losses are reflected in accumulated other comprehensive income. The second phase of FAS 158 requires that the valuation date of plan accounts be as of the end of the fiscal year, with that change required to be implemented by fiscal years ending after December 15, 2008. We will change the valuation date relating to our foreign plan and do not anticipate that this change will have a material impact on our financial condition, results of operations or cash flows.

## [Table of Contents](#)

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141 (R), *Business Combinations* ("FAS 141R"). This Standard retains the fundamental acquisition method of accounting established in Statement 141; however, among other things, FAS 141R requires recognition of assets and liabilities of noncontrolling interests acquired, fair value measurement of consideration and contingent consideration, expense recognition for transaction costs and certain integration costs, recognition of the fair value of contingencies, and adjustments to income tax expense for changes in an acquirer's existing valuation allowances or uncertain tax positions that result from the business combination. The Standard is effective for annual reporting periods beginning after December 15, 2008 and shall be applied prospectively. We have not yet completed our assessment of the impact FAS 141R will have on our financial condition, results of operations or cash flows.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, *Noncontrolling Interests in Consolidated Financial Statements*. This Standard changes the way consolidated net income is presented, requiring consolidated net income to report amounts attributable to both the parent and the noncontrolling interest but earnings per share will be based on amounts attributable to the parent. It also establishes protocol for recognizing certain ownership changes as equity transactions or gain or loss and requires presentation of noncontrolling ownership interest as a component of consolidated equity. The Standard is effective for annual reporting periods beginning after December 15, 2008 and shall be applied prospectively. We have not yet completed our assessment of the impact FAS 160 will have on our financial condition, results of operations or cash flows.

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161, *Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133* ("FAS 161"). This Standard requires enhanced disclosures regarding derivatives and hedging activities, including: (a) the manner in which an entity uses derivative instruments; (b) the manner in which derivative instruments and related hedged items are accounted for under Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*; and (c) the effect of derivative instruments and related hedged items on an entity's financial position, financial performance, and cash flows. The Standard is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. As FAS 161 relates specifically to disclosures, the Standard will have no impact on our financial condition, results of operations or cash flows.

### **Note B — Comprehensive Income**

Comprehensive income represents all non-owner changes in stockholders' equity and consists of the following:

(In thousands)	First Quarter	
	2008	2007
Net earnings	\$ 68,773	\$153,771
Other comprehensive income (loss):		
Foreign currency translation adjustments, net	88,724	13,886
Amortization of gain on cash flow hedge	(415)	(415)
Unrealized gain on cash flow hedge	—	1,045
Total comprehensive income	<u>\$157,082</u>	<u>\$168,287</u>



[Table of Contents](#)**Note C — Earnings Per Share (“EPS”)**

The information related to our basic and diluted EPS is as follows:

<i>(In thousands, except per share amounts)</i>	First Quarter	
	2008	2007
Numerator:		
Net earnings	\$ 68,773	\$ 153,771
Denominator:		
Weighted average shares outstanding:		
Basic	272,394	275,501
Effect of dilutive stock options and restricted stock	446	4,629
Diluted	<u>272,840</u>	<u>280,130</u>
EPS:		
Basic	\$ 0.25	\$ 0.56
Diluted	0.25	0.55

Awards of options and nonvested shares representing an additional 13 million shares of common stock were outstanding for the quarter ended March 29, 2008 but were not included in the computation of diluted earnings per share because their effect would have been antidilutive.

**Note D — Division Information**

Office Depot operates in three reportable segments: North American Retail Division, North American Business Solutions Division, and International Division. The following is a summary of our significant accounts and balances by reportable segment (or “Division”), reconciled to consolidated totals.

<i>(In thousands)</i>	Sales	
	2008	2007
North American Retail Division	\$1,713,456	\$1,848,600
North American Business Solutions Division	1,104,020	1,162,350
International Division	1,144,541	1,082,650
Total	<u>\$3,962,017</u>	<u>\$4,093,600</u>

<i>(In thousands)</i>	Division Operating Profit	
	2008	2007
North American Retail Division	\$ 82,469	\$ 152,348
North American Business Solutions Division	59,568	72,216
International Division	60,181	82,063
Total reportable segments	202,218	306,627
Eliminations	—	(73)
Total	<u>\$202,218</u>	<u>\$306,554</u>

## [Table of Contents](#)

A reconciliation of the measure of Division operating profit to consolidated earnings before income taxes is as follows:

<i>(In thousands)</i>	First Quarter	
	2008	2007
Total Division operating profit	\$202,218	\$306,554
Charges, as defined below	(10,744)	(12,064)
Corporate general and administrative expenses (excluding Charges)	(88,150)	(72,604)
Amortization of deferred gain	1,873	1,873
Interest income	905	860
Interest expense	(14,820)	(12,640)
Miscellaneous income, net	8,441	9,821
Earnings before income taxes	<u>\$ 99,723</u>	<u>\$221,800</u>

Goodwill by Division is as follows:

<i>(In thousands)</i>	Goodwill		
	March 29, 2008	December 29, 2007	March 31, 2007
North American Retail Division	\$ 2,224	\$ 2,315	\$ 1,964
North American Business Solutions Division	369,106	368,628	359,520
International Division	958,224	911,514	855,041
Total	<u>\$1,329,554</u>	<u>\$ 1,282,457</u>	<u>\$1,216,525</u>

The change in goodwill for 2008 results primarily from changes in foreign currency exchange rates on goodwill balances recorded in local functional currencies. The changes in goodwill balances from the first quarter of last year reflect a 2007 acquisition, the completion of fair value estimates on certain acquisitions made in 2006, foreign currency impacts and a change in a tax valuation allowance related to an earlier acquisition.

### Note E — Asset Impairments, Exit Costs and Other Charges

During the third quarter of 2005, we announced a number of material charges relating to asset impairments, exit costs and other operating decisions (the "Charges"). This announcement followed a wide-ranging assessment of assets and commitments which began in the second quarter of 2005. Through the end of the first quarter of 2008, we had recorded \$396 million of Charges. Expenses associated with future activities will be recognized as the individual plans are implemented and the related accounting recognition criteria are met. As with any estimate, the amounts may change when expenses are incurred. We manage these costs and programs at the corporate level and, accordingly, these amounts are not included in determining Division operation profit.

During the first quarter of 2008, we recognized approximately \$11 million of Charges associated with these projects as the previously-identified plans were implemented and the related accounting recognition criteria were met. Approximately \$8 million is included in store and warehouse operating and selling expenses and approximately \$3 million is included in general and administrative expenses on our Condensed Consolidated Statement of Earnings. Implementation of projects during the quarter resulted in charges primarily for severance-related expenses.

Charges for the first quarter of 2007 totaled approximately \$12 million. Approximately \$9 million was included in store and warehouse operating and selling expenses and approximately \$3 million was included in general and administrative expenses. The first quarter 2007 Charges primarily related to severance expenses and accelerated depreciation.

## [Table of Contents](#)

The following table summarizes the Charges recognized in the first quarter of 2008 by type of activity as well as changes in the related accrual balances.

<i>(In millions)</i>	<u>Balance at December 29, 2007</u>	<u>Charges incurred</u>	<u>Cash payments</u>	<u>Non-cash settlements</u>	<u>Currency and other adjustments</u>	<u>Balance at March 29, 2008</u>
One-time termination benefits	\$ 13	\$ 9	\$ (5)	\$ (1)	\$ 1	\$ 17
Lease and contract obligations	17	—	(1)	—	(1)	15
Accelerated depreciation	—	1	—	(1)	—	—
Other associated costs	—	1	(1)	—	—	—
Total	<u>\$ 30</u>	<u>\$ 11</u>	<u>\$ (7)</u>	<u>\$ (2)</u>	<u>\$ —</u>	<u>\$ 32</u>

### **Note F — Pension Disclosures**

The components of net periodic pension cost for our foreign defined benefit plans are as follows:

<i>(In millions)</i>	<u>First Quarter</u>	
	<u>2008</u>	<u>2007</u>
Service cost	\$ 0.9	\$ 1.8
Interest cost	3.1	2.9
Expected return on plan assets	(2.8)	(2.2)
Net periodic pension cost	<u>\$ 1.2</u>	<u>\$ 2.5</u>

For the quarter ended March 29, 2008, we have contributed approximately \$0.7 million to our foreign pension plan and purchased approximately \$0.6 million of annuity contracts. We currently anticipate making contributions of approximately \$11 million during 2008, inclusive of amounts to reduce the unfunded status of the plan.

The employee notification period related to the pension plan curtailment was completed in April 2008 and the remaining benefit modifications are anticipated to be complete during the second quarter. The impact is being calculated and will be included in our second quarter results.

### **Note G — Modification to Credit Agreement**

In March 2008, the company and the lenders that are party to Revolving Credit Facility (the "Agreement") entered into Amendment No.1 (the "Amendment"). The Amendment amends the Agreement by, among other things, (i) revising the minimum Fixed Charge Coverage Ratio (as defined in the Agreement) required to be maintained by the company, (ii) deleting the ability of the company and its subsidiaries to incur liens related to an accounts receivable securitization program and the ability to sell assets in connection with any such securitization program, (iii) limiting the company's liens securing other debt, (iv) imposing restrictions on the company's ability to make investments and acquisitions, subject to certain baskets set forth in the Amendment, (v) imposing restrictions on the company's ability to repurchase or redeem shares of its stock, subject to certain baskets set forth in the Amendment, and (vi) permitting certain liens, investments and debt which were in existence as of February 25, 2008 and as set forth on the revised schedules to the Agreement.

Such amendments (other than the amendments described in sub-clause (vi) above) shall be rescinded and of no further force and effect on the date that the Fixed Charge Coverage Ratio is not less than 1.70 to 1.00, measured as of the last day of each of the two fiscal quarters ended immediately prior to such date (the "Rescission Date"). Upon the occurrence of the Rescission Date, the terms of the Agreement which were amended by the Amendment (to the extent so rescinded as described above) revert to their respective terms as in effect prior to the effectiveness of the Amendment and the new provisions set forth in the Amendment, to the extent so rescinded, shall be of no further force and effect. In connection with the execution of the Amendment, the company paid the lenders an approximate aggregate fee of \$1.25 million.

**Note H — Asset Purchase and Sale**

During the first quarter of 2008, we sold certain non-operating assets, realizing a gain of approximately \$5 million. The gain is presented in miscellaneous income, net on the Condensed Consolidated Statement of Earnings, and the related cash flows are shown in investing activities on the Condensed Consolidated Statement of Cash Flows.

**Note I — Subsequent Events**

In April 2008, the company and Reliance Retail Ltd, a subsidiary of Reliance Industries Ltd., through a joint venture acquired 100% of eOfficePlanet India pvt., India's leading provider of office products and services to corporate customers. The company will invest approximately \$20 million in the joint venture and will have a controlling 51% interest. The joint venture is not expected to have a significant impact on our results but will expand our business in the region. The company will consolidate the results of the joint venture beginning in the second quarter.

Also in April 2008, the company acquired under previously existing put options all remaining minority interest shares of Office Depot, Israel and Asia EC for approximately \$62 million.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

### GENERAL

Office Depot, Inc., together with our subsidiaries, is a global supplier of office products and services. We sell to consumers and businesses of all sizes through our three reportable segments (or "Divisions"): North American Retail Division, North American Business Solutions Division, and International Division.

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to provide information to assist in better understanding and evaluating our financial condition and results of operations. We recommend that you read this MD&A in conjunction with our condensed consolidated financial statements and the notes to those statements included in Item 1 of this Quarterly Report on Form 10-Q, as well as our 2007 Annual Report on Form 10-K (the "2007 Form 10-K"), filed with the U.S. Securities and Exchange Commission (the "SEC").

This MD&A contains significant amounts of forward-looking information. Without limitation, when we use the words "believe," "estimate," "plan," "expect," "intend," "anticipate," "continue," "may," "project," "probably," "should," "could," "will" and similar expressions in this Quarterly Report on Form 10-Q, we are identifying forward-looking statements (as such term is defined in the Private Securities Litigation Reform Act of 1995). Our discussion of Risk Factors, found in Item 1A of this Form 10-Q and our 2007 Form 10-K, and Forward-Looking Statements, found immediately following the MD&A in our 2007 Form 10-K, apply to these forward-looking statements.

### RESULTS OF OPERATIONS

#### OVERVIEW

A summary of factors important to understanding the results for the first quarter of 2008 is provided below and further discussed in the narrative that follows this overview.

- First quarter sales decreased 3% to \$4.0 billion when compared to the first quarter of 2007. Sales in North America were down 6%, while International sales increased 6% in U.S. dollars and decreased 4% in local currencies. North American Retail Division comparable store sales decreased 9% for the quarter.
- Gross profit as a percentage of sales for the first quarter of 2008 was 29.5%, compared to 31.0% for the same period in 2007. The comparison reflects lower margins from increased promotional activities, product cost increases and a shift in mix in our North American Business Solutions and International Divisions, partially offset by higher private brand penetration.
- As part of our previously announced streamlining activities, we recorded \$11 million of charges in the first quarter of 2008 and \$12 million of charges in the first quarter of 2007 (the "Charges").
- Total operating expenses as a percent of sales for the first quarter of 2008 were 26.8% compared to 25.5% for the same quarter of the prior year. This increase primarily reflects increased professional and legal fees, higher pre-opening expenses and the de-leveraging of fixed costs, partially offset by the impact of controlling advertising expenses.
- Net earnings for the quarter were \$69 million compared to \$154 million in the same quarter of the prior year, and diluted earnings per share were \$0.25 in the first quarter of 2008 versus \$0.55 in the same period a year ago. After-tax Charges negatively impacted EPS by \$0.04 in the first quarter of both 2008 and 2007.

**Charges and Division Results**Charges

During the third quarter of 2005, we announced a number of material charges relating to asset impairments, exit costs and other operating decisions. This announcement followed a wide-ranging assessment of assets and commitments which began in the second quarter of 2005. We indicated that these actions would continue to impact our results for several years, and expenses associated with future activities would be recognized as the individual plans are implemented and the applicable accounting recognition criteria are met. Charges incurred since this program began in the third quarter of 2005 total \$396 million. We currently estimate recognizing \$54 million of Charges during the remainder of 2008, for a 2008 total of \$65 million. Additionally, we anticipate recognizing \$23 million of Charges in 2009. As with any estimate, the timing and amounts may change when projects are implemented and such changes may be material. Also, changes in foreign currency exchange rates may have an impact on amounts reported in U.S. dollars related to foreign operations.

Our measurement of Division operating profit excludes the Charges because they are evaluated internally at the corporate level. The Charges recognized during the first quarter of 2008 and 2007 are included in the following lines in our Condensed Consolidated Statements of Earnings.

<i>(In millions)</i>	<u>First Quarter</u>	
	<u>2008</u>	<u>2007</u>
Store and warehouse operating and selling expenses	\$ 8	\$ 9
General and administrative expenses	3	3
Total Charges	<u>\$ 11</u>	<u>\$ 12</u>

Other

The portion of General and Administrative ("G&A") expenses considered directly or closely related to unit activity is included in the measurement of Division operating profit. Other companies may charge more or less G&A expenses to their divisions, and our results therefore may not be comparable to similarly titled measures used by some other entities. Our measure of Division operating profit should not be considered as an alternative to operating income or net earnings determined in accordance with accounting principles generally accepted in the United States of America.

North American Retail Division

<i>(Dollars in millions)</i>	<u>First Quarter</u>	
	<u>2008</u>	<u>2007</u>
Sales	1,713.5	\$1,848.6
% change	(7)%	3%
Division operating profit	\$ 82.5	\$ 152.3
% of sales	4.8%	8.2%

First quarter sales in the North American Retail Division decreased 7% compared to the same period last year. Comparable store sales in the 1,169 stores in the U.S. and Canada that have been open for more than one year decreased 9% in the first quarter. Comparable store sales were lower across our product categories, particularly technology and supplies. The sales decline in the first quarter continued to reflect the adverse impacts of the macroeconomic environment as softness in the U.S. housing market resulted in weaker small business and consumer spending as compared to the first quarter of 2007. Significant impacts have been experienced in Florida and California as our small business customers in these two markets continue to be disproportionately impacted by difficult housing-related economic conditions. Combined, these two states represented approximately 26% of our total store sales and 35% of our comparable store sales decline in the first quarter. In markets outside of Florida and California, we have seen deterioration over the last couple of quarters, as this economic weakness has spread. Another factor that negatively impacted sales was a shift of the Easter holiday, which occurred in the first quarter of 2008 and in the second quarter of 2007. Private brand penetration for the North American Retail Division increased to the high-20's as a percentage of sales. While increased private brand penetration improved product margins and contributed to overall profitability in the first quarter, the lower selling prices negatively impacted comparable store sales.

## Table of Contents

Operating profit in the North American Retail Division decreased to \$83 million, compared to \$152 million in the same period of the prior year. Operating profit as a percentage of sales declined to 4.8%, down 340 basis points from 8.2% in the prior year period. Approximately 200 basis points of the decrease in operating margin relates to product margin and inventory-related items. We faced a challenging promotional sales environment and we increased inventory clearance activities to lower our overall risk. However, this increase in sales of lower margin clearance items had a negative impact on product margins compared to the first quarter of the prior year. Increased private brand penetration improved product margins in the first quarter of 2008, partially offsetting these negative factors. The decline in 2008 sales resulted in an increase to fixed property costs expressed as a percentage of sales, further reducing operating margin by approximately 110 basis points. Operating expenses as a percentage of sales increased by approximately 30 basis points from the first quarter of 2007 to the first quarter of 2008. This increase was driven by higher pre-opening expenses, from opening three times as many stores in the first quarter of 2008 as compared to the first quarter of 2007, partially offset by the impact of controlling payroll and advertising expenses.

Inventory per store was \$864 thousand as of the end of the first quarter of 2008, down approximately 9% from the end of the first quarter of 2007 and down 10% from the end of 2007 as a result of inventory management and the mitigation of inventory risk through clearance activities. Additionally, inventory levels at the end of the first quarter of 2007 reflected initial stocking of hardware and software related to the launch of the Microsoft® Windows Vista™ operating system.

Comparable average sales per square foot decreased to \$233 in the first quarter of 2008, and average order value remained relatively constant compared to the first quarter of 2007, reflecting reduced traffic in response to the economic slowdown.

At the end of the first quarter of 2008, Office Depot operated a total of 1,267 office products stores throughout the U.S. and Canada as we opened 45 stores in the quarter. Our current plans are to open a total of approximately 70 to 75 stores this year. In the first quarter of 2008, we remodeled one store. We currently anticipate remodeling approximately 100 stores this year with a goal of remodeling all remaining stores in the next few years. These remodeling activities affect the performance of the North American Retail Division from both acceleration of depreciation of store assets, as well as from the costs associated with the specific remodel efforts, some of which are not capitalizable. We exclude the brief remodel period from our comparable store sales calculation to partially account for the disruption.

### North American Business Solutions Division

<i>(Dollars in millions)</i>	First Quarter	
	2008	2007
Sales	\$1,104.0	\$1,162.4
% change	(5)%	3%
Division operating profit	\$ 59.6	\$ 72.2
% of sales	5.4%	6.2%

## Table of Contents

First quarter sales in the North American Business Solutions Division decreased 5% compared to the same period last year, reflecting lower sales levels in both our Contract and Direct businesses. Sales to small- to mid-sized customers were down 12%, partially offset by 3% sales growth with large, national account customers and 4% growth in sales to the public sector. Division sales were also negatively impacted by a disproportionate level of sales exposed to markets that have experienced a downturn in the housing market, more specifically Florida and California. Approximately 30% of the Division's first quarter 2008 sales were in these two states, and we are seeing significant softness in these markets across our small- to medium-sized customers. Sales in these two states were down 10% from the first quarter of 2007, representing nearly two-thirds of the Division's total sales decline. As with the North American Retail Division, a shift of the Easter holiday into the first quarter also had a negative impact on sales in the 2008 period.

Operating profit in the North American Business Solutions Division decreased to \$60 million, compared to \$72 million in the same period of the prior year. Operating profit as a percentage of sales declined to 5.4%, down 80 basis points from 6.2% in the prior year period. Approximately 70 basis points of the decrease in operating margin reflects a combination of higher incentives offered to customers, some cost increases that could not be fully passed along to our customers and a shift in the sales mix to lower margin customers and products. Operating expenses as a percentage of sales increased approximately 10 basis points from the first quarter of 2007 to the first quarter of 2008, reflecting de-leveraging of Division fixed costs, partially offset by a reduction in selling costs, which resulted from the redesign of our sales force in response to the anticipated slowdown in the economy, as well as lower advertising expenses.

### International Division

<i>(Dollars in millions)</i>	First Quarter	
	2008	2007
Sales	\$1,144.5	\$1,082.7
% change	6%	21%
% change in local currency sales	(4)%	11%
Division operating profit	\$ 60.2	\$ 82.1
% of sales	5.3%	7.6%

First quarter sales in the International Division increased 6% in U.S. dollars and decreased 4% in local currencies compared to the same period last year. In local currencies, Contract sales decreased by 2% and Direct sales decreased by 5% compared to the first quarter of 2007. These declines were driven mostly by lower sales in the U.K. and France. Customer service levels have shown steady improvement in the U.K., but the economic slowdown continues to impact our operations in that country. The sales comparison to last year also was negatively impacted by the timing of Easter, reducing the number of selling days in 2008.

Division operating profit decreased to \$60 million, compared to \$82 million in the same period of the prior year. Changes in foreign exchange rates positively impacted the Division's operating profit by approximately \$5 million. Operating profit as a percentage of sales declined to 5.3%, down 230 basis points from 7.6% in the prior year period. The decrease in operating margin reflects the negative impact of our business in the U.K., which reduced operating margin by approximately 160 basis points. Also, investments made to support our growth initiatives resulted in approximately 60 basis points of the drop in operating margin. These activities are expected to provide operating margin expansion over the longer term and include the establishment of our regional offices in Asia and Latin America, the centralization of certain support functions in Europe, our expansion into Poland and the consolidation of certain warehouse facilities. Other negative factors, including a greater percentage of contract sales in our sales mix outside of the U.K., reduced operating margin by approximately 10 basis points.



## [Table of Contents](#)

### *Corporate and Other*

*General and Administrative Expenses:* Total G&A increased from \$162 million in the first quarter of 2007 to \$199 million in the first quarter of 2008. As noted above, the portion of G&A expenses considered directly or closely related to unit activity is included in the measurement of Division operating profit above. The remainder of the total G&A expenses are considered corporate expenses. A breakdown of G&A is provided in the following table:

<i>(In millions)</i>	First Quarter	
	2008	2007
Division G&A	\$ 107.1	\$ 85.9
Corporate G&A	91.5	75.6
Total G&A	<u>\$ 198.6</u>	<u>\$ 161.5</u>

The increase in Division G&A was primarily driven by investments made to support our International growth initiatives as discussed above and the impact of changes in foreign exchange rates. Corporate G&A includes Charges of \$3 million in the first quarter of both 2008 and 2007. After considering the impact of Charges recognized in the period, corporate G&A expenses as a percentage of sales increased approximately 40 basis points during the first quarter of 2008 compared to the same period of 2007 primarily reflecting higher corporate charges for professional and legal fees.

During 2006, we sold our current corporate campus and leased the facility back as construction of a new facility is being completed. Amortization of the deferred gain on the sale largely offsets the rent during the leaseback period.

*Other income (expense):* Net interest costs increased in the first quarter reflecting increased interest expense, which resulted primarily from a higher level of short-term borrowings. Our debt, including short- and long-term borrowings, net of cash and investments, at March 29, 2008 was \$567 million, compared to \$416 million at March 31, 2007. Average net debt outstanding during the first quarter of 2008 was approximately \$581 million compared to \$414 million during the first quarter of 2007, and this average may fluctuate in future periods as our working capital needs change.

The decrease in net miscellaneous income in the first quarter resulted primarily from foreign currency losses recognized in the period. These losses were partially offset by the recognition of a gain of approximately \$5 million related to the sale of certain non-operating assets. The majority of miscellaneous income is attributable to equity in earnings from our joint venture in Mexico, Office Depot de Mexico, which increased slightly from the first quarter of 2007.

*Other — Income Taxes:* Our effective tax rate was 31.0% and 30.7% for the first quarters of 2008 and 2007, respectively. The effective tax rate may change due to shifts in domestic and international income and other factors. We anticipate our full year base operating rate to be approximately 31% to 32%. However, the effective tax rate in future periods can be affected by variability in our mix of income, the tax rates in various jurisdictions, changes in the rules related to accounting for income taxes, outcomes from tax audits that regularly are in process and our assessment of the need for accruals for uncertain tax positions.

### **LIQUIDITY AND CAPITAL RESOURCES**

At March 29, 2008, we had approximately \$182 million of cash and cash equivalents, as well as \$749 million of available credit under our revolving credit facility. The credit availability reflects outstanding borrowings, as well as coverage of \$79 million of outstanding letters of credit. We had an additional \$82 million of letters of credit outstanding under separate agreements.

## [Table of Contents](#)

Our primary needs for cash include working capital for operations, capital expenditures for new stores, store remodels, information technology projects and supply chain costs, and funds to service our debt obligations and make acquisitions. We currently anticipate that we will fund these activities through cash on hand, funds generated from operations, property and equipment leases and funds available under our existing credit facilities.

We hold cash throughout our service areas, but we principally manage our cash through regional headquarters in North America and Europe. Historically, we moved cash between those regions from time to time through short-term transactions and used these cash transfers at the end of fiscal quarterly periods to pay down borrowings outstanding under our credit facilities. Although such transfers and debt repayments took place at the end of the first quarter of 2007, we completed a non-taxable distribution to the U.S. in the amount of \$220 million during the fourth quarter of 2007, thereby permanently repatriating this cash. Additional distributions, including distributions of foreign earnings or changes in long-term arrangements could result in significant additional U.S. tax payments and income tax expense. Currently, there are no plans to change our expectation of foreign earnings reinvestment or the long-term nature of our intercompany arrangements.

During the first quarter of 2008, cash provided by operating activities totaled \$127 million compared to \$231 million during the same period last year. This decrease primarily reflects a reduction in business performance of approximately \$85 million. Depreciation and amortization decreased by \$8 million quarter over quarter as we recognized less accelerated depreciation in Charges in the first quarter of 2008. Changes in net working capital and other components resulted in a \$33 million use of cash in the first quarter of 2008, compared to a \$19 million use in the first quarter of 2007. The use in the 2008 period primarily reflected the timing of cash payments, offset partially by reduced inventory levels during the period. The timing of payments is subject to variability quarter to quarter depending on a variety of factors, including the flow of goods, credit terms, timing of promotions, vendor production planning, new product introductions and working capital management. Vendor payment deferrals totaled approximately \$100 million at the end of the first quarter of 2007, but we made no such deferrals at the end of the first quarter of 2008. The effect of such vendor payment deferrals at period-end on our financial statements is to report a higher accounts payable balance and lower balance of outstanding borrowings under our revolving credit facility than would otherwise appear if the vendor payments had not been deferred. For our accounting policy on cash management, see Note A of the Notes to Condensed Consolidated Financial Statements.

Cash used in investing activities was \$80 million in the first quarter of 2008, compared to \$113 million in the same period last year. The use of cash for the 2008 period reflects \$106 million of capital expenditures for our new store openings in North America, as well as distribution network infrastructure costs and investments in information technology. During the first quarter of 2008, we sold certain non-operating assets, realizing a gain of approximately \$5 million. Additionally, \$18 million of cash that had been held in a restricted account at the end of 2007 was released during the quarter. Investing activities in 2007 included capital expenditures from our store expansion and remodel efforts in North America as well as previously accrued acquisition-related payments to former owners of entities acquired in 2006. We anticipate capital spending for the full year 2008 to be approximately \$375 million.

Cash used in financing activities was \$92 million in the first quarter of 2008, compared to \$95 million during the same period in 2007. During the first quarter of 2008, we made debt repayments totaling approximately \$91 million, of which \$75 million was repaid on our revolving credit facility. The use of cash for the first quarter of 2007 resulted primarily from repurchases of our common stock as we purchased 2.6 million shares for approximately \$90 million in the first quarter of 2007.

## **Modification to Credit Agreement**

In March 2008, the Company and the lenders that are party to Revolving Credit Facility (the "Agreement") entered into Amendment No.1 (the "Amendment"). The Amendment amends the Agreement by, among other things, (i) revising the minimum Fixed Charge Coverage Ratio (as defined in the Agreement) required to be maintained by the Company, (ii) deleting the ability of the Company and its subsidiaries to incur liens related to an accounts receivable securitization program and the ability to sell assets in connection with any such securitization program, (iii) limiting the Company's liens securing other debt, (iv) imposing restrictions on the Company's ability to make investments and acquisitions, subject to certain baskets set forth in the Amendment, (v) imposing restrictions on the Company's ability to repurchase or redeem shares of its stock, subject to certain baskets set forth in the Amendment, and (vi) permitting certain liens, investments and debt which were in existence as of February 25, 2008 and as set forth on the revised schedules to the Agreement.

Such amendments (other than the amendments described in sub-clause (vi) above) shall be rescinded and of no further force and effect on the date that the Fixed Charge Coverage Ratio is not less than 1.70 to 1.00, measured as of the last day of each of the two fiscal quarters ended immediately prior to such date (the "Rescission Date"). Upon the occurrence of the Rescission Date, the terms of the Agreement which were amended by the Amendment (to the extent so rescinded as described above) revert to their respective terms as in effect prior to the effectiveness of the Amendment and the new provisions set forth in the Amendment, to the extent so rescinded, shall be of no further force and effect. In connection with the execution of the Amendment, the Company paid the lenders an approximate aggregate fee of \$1.25 million.

## **CRITICAL ACCOUNTING POLICIES**

Our condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. Preparation of these statements requires management to make judgments and estimates. Some accounting policies have a significant impact on amounts reported in these financial statements. A summary of significant accounting policies and a description of accounting policies that are considered critical may be found in our 2007 Form 10-K, filed on February 26, 2008, in the Notes to the Consolidated Financial Statements, Note A, and the Critical Accounting Policies section.

## **New Accounting Pronouncements**

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* ("FAS 157"). This Standard defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. FAS 157 is effective for fiscal years beginning after November 15, 2007 for financial assets and liabilities, as well as for any other assets and liabilities that are carried at fair value on a recurring basis in financial statements. Certain aspects of this Standard were effective at the beginning of the first quarter of 2008. In November 2007, the FASB provided a one year deferral for the implementation of FAS 157 for other nonfinancial assets and liabilities. We do not anticipate that the adoption of the deferred portion of FAS 157 will have a material impact on our financial condition, results of operations or cash flows.

The FASB also issued in September 2006 Statement of Financial Accounting Standards No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans — an amendment of FASB Statement No. 87, 88, 106 and 132(R)* ("FAS 158"). This Standard prescribes two phases of implementation. In the first phase, which we adopted in 2006, deferred pension gains and losses are reflected in accumulated other comprehensive income. The second phase of FAS 158 requires that the valuation date of plan accounts be as of the end of the fiscal year, with that change required to be implemented by fiscal years ending after December 15, 2008. We will change the valuation date relating to our foreign plan and do not anticipate that this change will have a material impact on our financial condition, results of operations or cash flows.

## [Table of Contents](#)

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141 (R), *Business Combinations* ("FAS 141R"). This Standard retains the fundamental acquisition method of accounting established in Statement 141; however, among other things, FAS 141R requires recognition of assets and liabilities of noncontrolling interests acquired, fair value measurement of consideration and contingent consideration, expense recognition for transaction costs and certain integration costs, recognition of the fair value of contingencies, and adjustments to income tax expense for changes in an acquirer's existing valuation allowances or uncertain tax positions that result from the business combination. The Standard is effective for annual reporting periods beginning after December 15, 2008 and shall be applied prospectively. We have not yet completed our assessment of the impact FAS 141R will have on our financial condition, results of operations or cash flows.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, *Noncontrolling Interests in Consolidated Financial Statements* ("FAS 160"). This Standard changes the way consolidated net income is presented, requiring consolidated net income to report amounts attributable to both the parent and the noncontrolling interest but earnings per share will be based on amounts attributable to the parent. It also establishes protocol for recognizing certain ownership changes as equity transactions or gain or loss and requires presentation of noncontrolling ownership interest as a component of consolidated equity. The Standard is effective for annual reporting periods beginning after December 15, 2008 and shall be applied prospectively. We have not yet completed our assessment of the impact FAS 160 will have on our financial condition, results of operations or cash flows.

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161, *Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133* ("FAS 161"). This Standard requires enhanced disclosures regarding derivatives and hedging activities, including: (a) the manner in which an entity uses derivative instruments; (b) the manner in which derivative instruments and related hedged items are accounted for under Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*; and (c) the effect of derivative instruments and related hedged items on an entity's financial position, financial performance, and cash flows. The Standard is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. As FAS 161 relates specifically to disclosures, the Standard will have no impact on our financial condition, results of operations or cash flows.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

#### **Interest Rate Risks**

At March 29, 2008, there had not been a material change in the interest rate risk information disclosed in the "Market Sensitive Risks and Positions" subsection of the Management's Discussion and Analysis of Financial Condition and Results of Operations set forth in Item 7 of our 2007 Form 10-K.

## **Foreign Exchange Rate Risks**

At March 29, 2008, there had not been a material change in any of the foreign exchange risk information disclosed in the “Market Sensitive Risks and Positions” subsection of the Management’s Discussion and Analysis of Financial Condition and Results of Operations set forth in Item 7 of our 2007 Form 10-K.

## **Item 4. Controls and Procedures**

We maintain controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be in this report is accumulated and communicated to its management, including its principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the possible controls and procedures.

Our management has evaluated, with the participation of its principal executive officer and principal financial officer, the effectiveness of its disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based upon that evaluation, our principal executive officer and principal financial officer have concluded that, as of the end of the period covered by this report, the company’s disclosure controls and procedures were effective.

### *Changes in Internal Control over Financial Reporting*

The Company is continuously seeking to improve the efficiency and effectiveness of its operations and of its internal controls. This results in refinements to processes throughout the Company. However, there has been no change in the Company’s internal control over financial reporting that occurred during the Company’s most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting.

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings

We are involved in litigation arising in the normal course of our business. While, from time to time, claims are asserted that make demands for a large sum of money (including, from time to time, actions which are asserted to be maintainable as class action suits), we do not believe that any of these matters, either individually or in the aggregate, will materially affect our financial position or the results of our operations.

As previously disclosed, the Company continues to cooperate with the SEC in their formal order of investigation issued in January 2008 covering the matters previously subject to the informal review commenced July 2007. A formal order of investigation allows the SEC to subpoena witnesses, books, records, and other relevant documents. The matters subject to the investigation include contacts and communications with financial analysts, inventory receipt, certain intercompany loans, any payments to foreign officials, timing of vendor payments, and timing of recognition of vendor program funds.

In early November 2007, two putative class action lawsuits were filed against the Company and certain of its executive officers alleging violations of the Securities Exchange Act of 1934. In addition, two putative shareholder derivative actions were filed against the Company and its directors alleging various state law claims including breach of fiduciary duty. The allegations in all four lawsuits primarily relate to the accounting for vendor program funds. Each of the above-referenced lawsuits were filed in the Southern District of Florida, and are captioned as follows: (1) Nichols v. Office Depot, Inc., Steve Odland and Patricia McKay filed on November 6, 2007; (2) Sheet Metal Worker Local 28 Pension Fund v. Office Depot, Inc., Steve Odland and Patricia McKay filed on November 5, 2007; (3) Marin, derivatively, on behalf of Office Depot, Inc. v. Office Depot, Inc., Steve Odland, Neil R. Austrian, David W. Bernauer, Abelardo E. Bru, Marsha J. Evans, David I. Fuente, Brenda J. Gaines, Myra M. Hart, Kathleen Mason, Michael J. Myers, and Office Depot, Inc. filed on November 8, 2007; and (4) Mason, derivatively, on behalf of Office Depot, Inc. v. Steve Odland, Neil R. Austrian, David W. Bernauer, Abelardo E. Bru, Marsha J. Evans, David I. Fuente, Brenda J. Gaines, Myra M. Hart, Kathleen Mason, Michael J. Myers, and Office Depot, Inc. filed on November 8, 2007.

On March 21, 2008, the court in the Southern District of Florida entered an Order consolidating the class action lawsuits and an Order consolidating the derivative actions. These lawsuits are in their early stages and we do not currently believe that they will have a material adverse impact on the Company or its results of operations. We intend to vigorously defend against these claims.

### Item 1A. Risk Factors.

With the exception of a material change to the following previously disclosed risk factor, there have been no other material changes in our risk factors from those disclosed in Part 1, Item 1A of our 2007 Form 10-K.

**Regulatory Risks:** We are subject to a formal order of investigation from the SEC, in connection with our contacts and communications with financial analysts during 2007, as well as certain other matters, including inventory receipt, timing of vendor payments, certain intercompany loans, the timing of recognition of vendor program funds and payments to foreign officials. We are cooperating with the SEC on all matters. A negative outcome from this investigation could require us to restate prior financial results and could result in fines, penalties, or other remedies being imposed on us, which under certain circumstances could have a material adverse effect on our business.

## [Table of Contents](#)

### Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

The following table provides information with respect to company purchases made of Office Depot, Inc. common stock during the first quarter of the 2008 fiscal year:

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid per Share	(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs <sup>(1)</sup>	(d) Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plans or Programs
December 30, 2007 – January 26, 2008	—	\$ —	—	\$ 500,000,000
January 27, 2008 – February 23, 2008	22,038 <sup>(2)</sup>	\$ 14.27	—	\$ 500,000,000
February 24, 2008 – March 29, 2008	49,125 <sup>(2)</sup>	\$ 11.51	—	\$ 500,000,000
Total	71,163	\$ 12.36	—	\$ 500,000,000

- (1) On April 25, 2007, the board of directors authorized a common stock repurchase program whereby we were authorized to repurchase \$500 million of our common stock. As of March 29, 2008, there had been no repurchases made under this authorization. As disclosed above, the amendment to the Company's Revolving Credit Facility imposes restrictions on the Company's ability to repurchase or redeem shares of its stock, subject to certain baskets set forth in the Amendment.
- (2) Represents shares of common stock delivered or restricted shares of common stock withheld to pay income tax or other tax liabilities with respect to the vesting of restricted stock, exercise of stock options, or the settlement of performance share awards.

### Item 4. Submission of Matters to a Vote of Security Holders

On March 13, 2008, the company filed a Proxy Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 in advance of our Annual Meeting of Shareholders, which was held on April 23, 2008.

### Item 6. Exhibits

#### Exhibits

- 10.1 Amendment to Executive Employment Agreement dated as of February 25, 2008, by and between Office Depot, Inc. and Steve Odland\*
- 10.2 Amendment to Change of Control Agreement dated as of February 25, 2008, by and between Office Depot, Inc. and Charles E. Brown\*
- 10.3 Amendment to Change of Control Agreement dated as of February 25, 2008, by and between Office Depot, Inc. and Carl (Chuck) Rubin\*
- 10.4 Change of Control Agreement dated as of February 25, 2008, by and between Office Depot, Inc. and Daisy Vanderlinde\*
- 10.5 Separation Agreement dated as of February 20, 2008, by and between Office Depot, Inc. and Patricia A. McKay\*
- 10.6 Amendment No. 1 to the Credit Agreement, effective as of February 25, 2008, between Office Depot, Inc., the Lenders referred to therein and Wachovia Bank, National Association, as agent for the Lenders (Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on March 10, 2008.
- 31.1 Rule 13a-14(a)/15d-14(a) Certification of CEO
- 31.2 Rule 13a-14(a)/15d-14(a) Certification of CFO
- 32 Section 1350 Certification

\* Management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

OFFICE DEPOT, INC.  
(Registrant)

Date: April 29, 2008

By: /s/ Steve Odland  
Steve Odland  
Chief Executive Officer and  
Chairman, Board of Directors  
(Principal Executive Officer)

Date: April 29, 2008

By: /s/ Charles E. Brown  
Charles E. Brown  
President, International and Acting Chief Financial  
Officer  
(Principal Financial Officer)

Date: April 29, 2008

By: /s/ Jennifer Moline  
Jennifer Moline  
Senior Vice President and Controller  
(Principal Accounting Officer)



AMENDMENT TO  
EMPLOYMENT AGREEMENT

THIS AMENDMENT TO EMPLOYMENT AGREEMENT (herein "Amendment") is made and entered into this 25th day of February, 2008 and effective as of February 25, 2008, between Office Depot, Inc., a Delaware corporation (the "Company"), and Steve Odland ("Executive");

The Company and Executive entered into an employment agreement dated March 11, 2005 (the "Existing Agreement"). The Company and Executive desire to amend the Existing Agreement in order to evidence formal compliance with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and the guidance thereunder (collectively "Section 409A") and to otherwise update and clarify the Existing Agreement.

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Section 4(b) of the Existing Agreement is hereby amended by deleting the section in its entirety and inserting in lieu thereof the following:

"b. Annual Bonus. With respect to each full calendar year during the Employment Term, Executive shall be eligible to earn an annual bonus award (an 'Annual Bonus' pursuant to the terms of the Company's annual bonus program for executives, the 'Bonus Program'). Executive shall receive an Annual Bonus of 160% of Executive's Base Salary (the 'Target Bonus') if annual performance targets set by the Compensation Committee of the Board (the 'Performance Targets') are achieved; provided, that Executive shall be eligible for an Annual Bonus of 70% of Executive's Base Salary upon attainment of minimum annual performance targets and not less than 200% of Executive's Base Salary upon achieving the maximum Performance Targets. Performance Targets are established annually by the Compensation Committee of the Board. Each Annual Bonus shall be paid at the time specified in the Bonus Program. In the event that there are any inconsistencies between the Bonus Program and the terms hereof, the terms hereof shall govern."

2. Section 6 of the Existing Agreement is hereby amended by inserting at the end thereof the following:

"In particular, and not by way of limitation, Executive's vacation benefits shall be pursuant to the Company's vacation policy as in effect from time to time (the 'Vacation Policy'). Upon a termination of the Employment Term and Executive's employment (other than a termination for Cause), Executive and his covered dependents shall be entitled to continue to participate in the Company's health, dental and vision plans for a period of thirty-six (36) months following such termination of employment, at the type of coverage in effect under such plans for Executive immediately prior to such termination of employment (e.g., family coverage), at the same premium cost to Executive as applies

to former employees under such plans during such period pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”); provided, (a) Executive’s entitlement to participate in such plans shall cease if he becomes eligible for comparable medical, dental and vision coverage, respectively, with a subsequent employer during such continuation period and (b) the Company may amend or terminate one or more of such plans, as applicable to employees of the Company generally, from time to time in the Company’s discretion. In addition, upon a termination of the Employment Term and Executive’s employment (other than a termination for Cause), Executive and his covered dependents shall be entitled to continue to participate in all of the Company’s other welfare benefit plans (e.g., disability, group and supplemental life insurance, AD&D), other than self insured short term disability benefits, at the level and scope of coverage in effect under such plans for Executive immediately prior to such termination, to the extent permitted by law and, for fully-insured plans, to the extent permitted by the insurer (for which purpose, the Company shall use commercially reasonable efforts to obtain a rider or other contractual undertaking from the insurer to permit such continuation of coverage if not otherwise provided thereunder upon such termination), for a period of thirty-six (36) months following such termination of employment, for which Executive shall be obligated to pay to the Company the full (not Company-subsidized) premium (or analogous charge for self funded coverage) applicable for such benefit. Executive’s entitlement to participate in such welfare benefit plans shall cease if he becomes eligible for comparable coverage, as determined on a benefit-by-benefit and coverage-by-coverage basis, with a subsequent employer during such continuation period and the Company may amend or terminate one or more such welfare benefit plans, as applicable to employees of the Company generally, from time to time in the Company’s discretion. To the extent that any contract under any such fully insured welfare benefit can be assigned to Executive as his individual contract, the Company shall, at Executive’s election, cause such assignment to Executive in accordance with the terms of the applicable contract.”

3. Section 7(a) of the Existing Agreement is hereby amended by inserting at the end thereof the following:

“To the extent that any such reimbursement does not qualify for exclusion from Federal income taxation, the Company will make the reimbursement only if Executive incurs the corresponding expense during the term of this Agreement or the period of two years thereafter and submits the request for reimbursement no later than two months prior to the last day of the calendar year following the calendar year in which the expense was incurred so that the Company can make the reimbursement on or before the last day of the calendar year following the calendar year in which the expense was incurred; the amount of expenses eligible for such reimbursement during a calendar year will not affect the amount of expenses eligible for such reimbursement in another calendar year, and the right to such reimbursement is not subject to liquidation or exchange for another benefit from the Company.”

4. Section 7(b)(ii) of the Existing Agreement is hereby amended by inserting at the end thereof the following:

“The allowance will be paid in substantially equal installments in accordance with the Company’s usual payment practices for base salary for senior executives.”

5. Section 7(b)(iii) of the Existing Agreement is hereby amended by inserting at the end thereof the following:

“For purposes of this Section 7(b)(iii), ‘annually’ shall mean each calendar year during the Employment Term. Executive’s use of the Company’s private aircraft pursuant to this provision during a calendar year will not affect the amount of such use to which Executive is eligible in any other calendar year, and Executive’s right to such use of the Company’s private aircraft is not subject to liquidation or exchange for another benefit from the Company.”

6. Section 7(b)(iv) is deleted in its entirety.

7. Section 8(a) of the Existing Agreement is hereby amended by inserting the following new subsection (ii) immediately following subsection (i) thereof and renumbering existing subsections (ii) and (iii) thereof as subsections (iii) and (iv), respectively:

“(ii) For purposes of this Agreement, any amount payable to Executive solely as a result of a termination of Executive’s employment that constitutes a ‘deferral of compensation’ under Section 409A of the Code, shall not be payable before the occurrence of Executive’s ‘separation from service’ under Section 409(a)(2)(A)(i) of the Code or such earlier payment event permitted under Section 409A(a)(2)(A) (and subject to Section 409A(a)(2)(B)) of the Code.”

8. Section 8(a)(iii) of the Existing Agreement (as renumbered pursuant to Item 7 above) is hereby amended by deleting the reference to “Section 8(a)(ii)” in the last sentence thereof and inserting in lieu thereof a reference to “Section 8(a)(iii).”

9. Section 8(a)(iv) of the Existing Agreement (as renumbered pursuant to Item 7 above) is hereby amended by deleting the section in its entirety and inserting in lieu thereof the following:

“(iv) If Executive’s employment is terminated by the Company for Cause, or if Executive resigns without Good Reason, Executive shall be entitled to receive:

(A) the Base Salary earned through the date of termination, which Base Salary shall be paid at the time specified in Section 3 above;

(B) to the extent Executive was employed on the last day of a fiscal year for which an Annual Bonus has not yet been paid to Executive pursuant to the terms of the Bonus Program, Executive will receive the Annual Bonus to which he would otherwise have been entitled for such fiscal year but for the fact that he is not employed on the applicable payment date for such Annual Bonus under Section 4 above, which Annual Bonus shall be paid at the time specified in Section 4 above;

(C) Reimbursement for any unreimbursed business expenses properly incurred by Executive prior to the date of Executive's termination in accordance with Company policy, which reimbursement shall be made as provided in Section 7(a) above;

(D) payment for accrued vacation unused as of the date of termination pursuant to the terms of the Vacation Policy; and

(E) such Employee Benefits, if any, as to which Executive may be entitled under the employee benefit plans of the Company in accordance with the terms of such plans (the amounts described in clauses (A) through (D) hereof being referred to as the 'Accrued Rights').

Following such termination of Executive's employment by the Company for Cause or resignation by Executive without Good Reason, except as set forth in this Section 8(a)(iv), Executive shall have no further rights to any compensation or any other benefits under this Agreement."

10. Section 8(b) of the Existing Agreement is hereby amended by deleting the section in its entirety and inserting in lieu thereof the following:

"b. Termination Due to Death.

(i) The Employment Term and Executive's employment hereunder shall terminate upon Executive's death.

(ii) Upon termination of Executive's employment hereunder on account of Executive's death, Executive's estate shall be entitled to receive:

(A) the Accrued Rights;

(B) an amount equal to the Target Bonus for the year of Executive's death multiplied by a fraction, the numerator of which shall equal the number of days Executive was employed by the Company in the Company fiscal year in which Executive's termination of employment occurs and the denominator of which shall equal 365, paid in a lump sum within 30 days after the date of Executive's death;

(C) an amount equal to the product of (w) the Company's monthly COBRA premium in effect on the date of Executive's termination of employment under the Company's group health plans for the type of coverage in effect under such plans (e.g., family coverage) for Executive on the date of Executive's termination of employment, and (x) 24 (the 'COBRA Premium'), plus, to the extent Executive is entitled to continuation coverage (or assignment of the contract for any

insured benefit) under the Company's other welfare benefit plans pursuant to Section 6, an amount equal to the product of (y) the full monthly premium (or analogous charge for self funded coverage) chargeable to Executive as in effect on the date of Executive's termination of employment under such welfare benefit plans for the level and scope of coverage in effect under such plans for Executive immediately prior to such termination, and (z) 24 (the 'Insurance Premium'), paid in a lump sum within 30 days after the date of Executive's termination of employment;

(D) immediate, full vesting of all outstanding restricted stock vesting on a time-basis, but not on a performance-basis, stock options and all other long-term equity or other long-term incentive awards vesting on a time-basis then held by Executive;

(E) all outstanding stock options then held by Executive shall remain exercisable until the earlier of (x) 24 months following the effective date of such termination and (y) the expiration of the option term.

Following Executive's termination of employment on account of Executive's death, except as set forth in this Section 8(b)(ii), neither Executive nor his estate shall have any further rights to any compensation or any other benefits under this Agreement."

11. Section 8 of the Existing Agreement is hereby amended by inserting the following new subsection (c) immediately following subsection (b) thereof and renumbering existing subsections (c) — (f) as subsections (d) — (g), respectively:

"c. Termination Due to Disability.

(i) The Employment Term and Executive's employment hereunder shall terminate upon Executive's disability (as defined under the Company's broad-based group long-term disability plan; such incapacity is hereinafter referred to as 'Disability'). Any question as to the existence of the Disability of Executive as to which Executive and the Company cannot agree shall be determined in writing by a qualified independent physician mutually acceptable to Executive and the Company. If Executive and the Company cannot agree as to a qualified independent physician, each shall appoint such a physician and those two physicians shall select a third who shall make such determination in writing. The determination of Disability made in writing to the Company and Executive shall be final and conclusive for all purposes of the Agreement.

(ii) Upon Executive's termination of employment hereunder on account of Executive's Disability, Executive shall be entitled to receive:

(A) the Accrued Rights;

(B) an amount equal to the Target Bonus for the year of Executive's termination of employment multiplied by a fraction, the numerator of which shall equal the number of days Executive was employed by the Company in the

Company fiscal year in which Executive's termination of employment occurs and the denominator of which shall equal 365, paid in a lump sum at the same time as the Annual Bonus for the year of Executive's termination of employment would have been paid to Executive had he not terminated employment;

(C) the COBRA Premium and Insurance Premium (provided, for the avoidance of doubt, the Insurance Premium shall be determined on the basis of Executive's termination of employment other than due to his death), paid in a lump sum within 30 days after the date of Executive's termination of employment;

(D) immediate, full vesting of all outstanding restricted stock vesting on a time-basis, but not on a performance-basis, stock options and all other long-term equity or other long-term incentive awards vesting on a time-basis then held by Executive;

(E) all outstanding stock options then held by Executive shall remain exercisable until the earlier of (x) 24 months following the effective date of such termination and (y) the expiration of the option term.

Following Executive's termination of employment due to Executive's Disability, except as set forth in this Section 8(c)(ii), Executive shall have no further rights to any compensation or any other benefits under this Agreement."

12. Section 8(d)(iii) of the Existing Agreement (as renumbered pursuant to Item 11 above) is hereby amended by deleting the section in its entirety and inserting in lieu thereof the following:

"(iii) Upon Executive's termination of employment initiated by the Company without Cause (other than by reason of death or Disability) or by Executive for Good Reason, in either case prior to a Change of Control, Executive shall be entitled to receive:

(A) the Accrued Rights;

(B) the COBRA Premium and Insurance Premium (provided, for the avoidance of doubt, the Insurance Premium shall be determined on the basis of Executive's termination of employment other than due to his death of Disability), paid in a lump sum within 30 days after the date of Executive's termination of employment;

(C) an amount equal to a pro rata portion of the Annual Bonus, if any, that Executive would have been entitled to receive pursuant to Section 4 hereof in respect of the fiscal year in which Executive's termination of employment occurs, where such pro-rata portion shall be determined by multiplying the full amount of the Annual Bonus for such year by a fraction, the numerator of which shall equal the number of days Executive was employed by the Company in the Company fiscal year in

which Executive's termination of employment occurs and the denominator of which shall equal 365, paid in a lump sum at the same time as the Annual Bonus for the year of Executive's termination of employment would have been paid to Executive had he not terminated employment;

(D) a cash payment equal to 2 times the sum of (x) the Base Salary in effect on the date of Executive's termination of employment, and (y) the Target Bonus in effect on the date of Executive's termination of employment, paid in a lump sum within 30 days following the date of Executive's termination of employment;

(E) immediate, full vesting of all outstanding restricted stock vesting on a time-basis, but not on a performance-basis, stock options and all other long-term equity or other long-term incentive awards vesting on a time-basis then held by Executive; and

(F) all outstanding stock options then held by Executive shall remain exercisable until the earlier of (x) 24 months following the effective date of such termination and (y) the expiration of the option term.

Following Executive's termination of employment by the Company without Cause (other than by reason of Executive's death or Disability) or by Executive's resignation for Good Reason, in either case prior to a Change of Control, except as set forth in this Section 8(d)(iii), Executive shall have no further rights to any compensation or any other benefits under this Agreement."

13. Section 8(e)(ii)(A) of the Existing Agreement (as renumbered pursuant to Item 11 above) is hereby amended by deleting the section in its entirety and inserting in lieu thereof the following:

"(A) the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the 'Exchange Act') (a 'Person') of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (x) the then-outstanding shares of common stock of the Company (the 'Outstanding Company Common Stock') or (y) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the 'Outstanding Company Voting Securities') (such 20% ownership shall be referred to as the 'Threshold Amount'); provided, however, that for purposes of this subsection (A), if the Threshold Amount is reached by reason of the following events, a Change of Control will not be triggered: (1) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company of the Company's outstanding common stock, or (2) any acquisition by any person pursuant to a transaction which complies with each and all of clauses (1), (2) and (3) of subsection (C) of this Section 8(e)(ii). For the sake of clarity, if the Threshold Amount is reached by reason of the Company repurchasing its own outstanding common stock, a Change of Control will be triggered; or"

14. Section 8(e)(ii)(C) of the Existing Agreement (as renumbered pursuant to Item 11 above) is hereby amended by replacing the phrase “60%” with the phrase “80%.”

15. Section 8(e)(iii) of the Existing Agreement (as renumbered pursuant to Item 11 above) is hereby amended by deleting the section in its entirety and inserting in lieu thereof the following:

“(iii) Upon Executive’s termination of employment initiated by the Company without Cause (other than by reason of death or Disability) or by Executive for Good Reason, in either case upon or within the three-year period immediately following a Change of Control, Executive shall be entitled to receive:

(A) the Accrued Rights;

(B) an amount equal to the product of (w) the Company’s monthly COBRA premium in effect on the date of Executive’s termination of employment under the Company’s group health plans for the type of coverage in effect under such plans (e.g., family coverage) for Executive on the date of Executive’s termination of employment, and (x) 36, plus, to the extent Executive is entitled to continuation coverage (or assignment of the contract for any insured benefit) under the Company’s other welfare benefit plans pursuant to Section 6, an amount equal to the product of (y) the full monthly premium (or analogous charge for self funded coverage) chargeable to Executive as in effect on the date of Executive’s termination of employment under such welfare benefit plans for the level and scope of coverage in effect under such plans for Executive immediately prior to such termination, and (z) 36, paid in a lump sum within 30 days after the date of Executive’s termination of employment;

(C) a pro rata portion of the greater of (x) the Target Bonus for the year of Executive’s termination of employment, and (y) the highest Annual Bonus earned by Executive in respect of any of the last three completed fiscal years prior to the Change of Control (the ‘Highest Annual Bonus’), where such pro-rata portion shall be determined by multiplying the full amount of the Target Bonus or Highest Annual Bonus, as applicable, by a fraction, the numerator of which shall equal the number of days Executive was employed by the Company in the Company fiscal year in which Executive’s termination of employment occurs and the denominator of which shall equal 365, paid in a lump sum at the same time as the Annual Bonus for the year of Executive’s termination of employment would have been paid to Executive had Executive not terminated employment;

(D) a lump-sum cash payment equal to 2.99 times the sum of (x) the Base Salary in effect on the date of Executive’s termination of employment, and (y) the greater of (1) the Target Bonus in effect on the date of Executive’s termination of employment, and (2) the Highest Annual Bonus, payable within 30 days following the date of Executive’s termination of employment; and



(E) all outstanding stock options then held by Executive shall remain exercisable until the earlier of (x) 24 months following the effective date of such termination and (y) the expiration of the option term.

Following Executive's termination of employment by the Company without Cause (other than by reason of Executive's death or Disability) or by Executive's resignation for Good Reason, in either case upon or within the three-year period immediately following a Change of Control, except as set forth in this Section 8(e)(iii), Executive shall have no further rights to any compensation or any other benefits under this Agreement."

16. Section 8 of the Existing Agreement is hereby amended by inserting the following new subsection (f) immediately following subsection (e) (as renumbered pursuant to Item 11 above) and renumbering subsections (f) and (g) thereof (as initially renumbered pursuant to Item 11 above) as subsections (g) and (h), respectively:

"f. Six Month Delay. Notwithstanding the payment timing specified above, in the event Executive is a 'specified employee' on the date of Executive's termination of employment with the Company, as determined by the Company in accordance with rules established by the Company in writing in advance of the 'specified employee identification date' that relates to the date of Executive's 'separation from service,' any payment to be made under Sections 8(c)(ii)(B), 8(c)(ii)(C), 8(d)(iii)(B), 8(d)(iii)(C), 8(d)(iii)(D), 8(e)(iii)(B), 8(e)(iii)(C), and 8(e)(iii)(D) above shall be paid to Executive within five business days after expiration of the date that is six months after the date of such 'separation from service' (if Executive dies after the date of Executive's termination of employment with the Company but before payment of the lump sum, such payments will be paid to Executive's estate as a lump sum and without regard to any six-month delay that otherwise applies to specified employees). For purposes of this Agreement, 'specified employee' shall be defined as provided in Section 409A(a)(2)(B)(i) of the Code, 'specified employee identification date' shall be defined as provided in Treasury Regulation §1.409A-1(i), and 'separation from service' shall be defined as provided in Section 409A(a)(2)(A)(i) of the Code."

17. Section 12 of the Existing Agreement is hereby amended by inserting the following new subsection (e) at the end thereof:

"e. Notwithstanding the foregoing, (i) each Gross-Up Payment required to be made by the Company to Executive hereunder and each repayment of a Gross-Up Payment required to be made by Executive to the Company hereunder shall be paid no later than the end of the calendar year next following the calendar year in which Executive remits the corresponding taxes to the Internal Revenue Service or other applicable taxing authority, (ii) each reimbursement of expenses related to a tax contest addressing the existence or amount of a tax liability required to be made by the Company to Executive hereunder and each repayment of such a reimbursement required to be made by Executive to the Company hereunder shall be paid no later than the end of the

calendar year next following the calendar year in which Executive remits to the Internal Revenue Service or other applicable taxing authority the taxes that are the subject of the contest or, where as a result of the contest no taxes are due or are remitted but other reimbursable costs and/or expenses have been incurred, the end of the calendar year following the calendar year in which the contest is completed or there is a final and nonappealable settlement or other resolution of the contest; and (iii) in the event Executive is a 'specified employee' on Executive's date of termination (as determined by the Company in accordance with rules established by the Company in writing in advance of the 'specified employee identification date' that relates to the date of Executive's 'separation from service'), and to the extent that any portion of such Gross-Up Payments relates to compensation that was triggered by Executive's 'separation from service' and/or any portion of such reimbursements relates to expenses that were triggered by Executive's 'separation from service,' such portion of the Gross-Up Payments and/or such portion of the reimbursements, as applicable, shall be paid to Executive within five business days after expiration of the date that is six months after the date of such 'separation from service' (if Executive dies after Executive's date of termination but before any such payments are made, the payments will be paid to Executive's estate without regard to any six-month delay that otherwise applies to specified employees)."

18. Section 13(f) of the Existing Agreement is hereby amended by deleting the phrase " , except with respect to the Health Benefits," from the first sentence thereof.

19. Section 13 of the Existing Agreement is hereby amended by deleting subsections (i), (j), (p) and (q) thereof in their entirety and inserting in lieu thereof the following, respectively:

"i. Costs of Proceedings. The Company shall pay or reimburse Executive for all reasonable fees of professionals and experts and other costs and fees incurred by Executive in connection with any arbitration relating to the interpretation or enforcement of any provision of this Agreement if Executive prevails on any substantive issue in such proceeding. However, to the extent that any such payment or reimbursement does not qualify for exclusion from Federal income taxation, the Company will make the payment or reimbursement only if Executive incurs the corresponding expense during the term of this Agreement or at any time following a separation from service of Executive and Executive submits the request for reimbursement no later than two months prior to the last day of the calendar year following the calendar year in which the expense was incurred so that the Company can make the payment or reimbursement on or before the last day of the calendar year following the calendar year in which the expense was incurred; the amount of expenses eligible for such payment or reimbursement during a calendar year will not affect the amount of expenses eligible for such payment or reimbursement in another calendar year, and the right to such payment or reimbursement is not subject to liquidation or exchange for another benefit from the Company. Notwithstanding the foregoing, in the event Executive is a 'specified employee' on Executive's date of termination (as determined by the Company in accordance with rules established by the Company in writing in advance of the 'specified employee identification date' that relates to the date of Executive's

'separation from service'), and to the extent that any portion of such payments and/or reimbursements both (x) do not qualify for exclusion from Federal income taxation and (y) relate to expenses that were triggered by Executive's 'separation from service,' such payments and/or reimbursements shall be made no earlier than the date that is six months after the date of such 'separation from service' (if Executive dies after Executive's date of termination but before such payments and/or reimbursements have been made, such payments will be made and/or such reimbursements will be paid to Executive's estate, as applicable, without regard to any six-month delay that otherwise applies to specified employees)."

"j. Legal Fees. The Company shall pay all reasonable attorneys fees incurred by Executive in connection with the negotiation and finalization of this Agreement and any amendment thereto, not to exceed \$20,000 per calendar year in each such instance (or such greater amount as the circumstances warrant, as determined by the Compensation Committee of the Board or the full Board, in its sole discretion) grossed up to the extent the payments are reported as taxable income by the Company for taxes at the highest marginal Federal (and as may be applicable, state and local) income tax rate in effect for the calendar year in which the relevant expense is incurred. The Company will pay such an expense as soon as administratively practicable after the date on which Executive substantiates to the Company in writing the amount of such expense but in no event later than the last day of the calendar year following the calendar year in which the expense was incurred. Executive must provide such written substantiation in time for the Company to make such payment by the last day of the applicable calendar year. The amount of expenses eligible for payment under this subsection (j) during a calendar year will not affect the amount of expenses eligible for payment under this subsection (j) in another calendar year, and the right to such payment is not subject to liquidation or exchange for another benefit from the Company."

"p. Withholding Taxes and Section 409A. The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation. It is intended, and this Agreement will be so construed, that any amounts payable under this Agreement and the Company's and Executive's exercise of authority or discretion hereunder shall either be exempt from or comply with the provisions of Section 409A so as not to subject Executive to the payment of interest and/or any tax penalty that may be imposed under Section 409A. Executive acknowledges and agrees that the Company has made no representation to Executive as to the tax treatment of the compensation and benefits provided pursuant to this Agreement and that Executive is solely responsible for all taxes due with respect to such compensation and benefits; provided, the Company shall reimburse Executive (on a fully tax grossed-up basis) for all interest and penalty taxes that become payable by Executive pursuant to Section 409A of the Code as a result of any negligent act or omission, proximately related to Executive's liability therefor, of an employee of the Company responsible for administration of this Agreement or any plan of deferred compensation in which Executive is a participant."

"q. Survival. Any provision of this Agreement that, by its terms, including but not limited to Sections 8, 9, 10, 11, 12 and 13, survives the termination of Executive's employment or the Employment Term hereunder shall remain in full force and effect pursuant to such terms following any such termination."

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the day and year first above written.

OFFICE DEPOT, INC.

By: /s/ Elisa Garcia  
Elisa Garcia

By: /s/ Lee A. Ault III  
Lee A. Ault III  
Chair, Office Depot, Inc. Compensation Committee

STEVE ODLAND

/s/ Steve Odland  
Executive

## CHANGE IN CONTROL AGREEMENT

As Amended and Restated Effective February 25, 2008

THIS CHANGE IN CONTROL AGREEMENT is made as of February 25, 2008 (the "Effective Date"), by and between Office Depot, Inc., a Delaware corporation (the "Company"), and Charles E. Brown (the "Executive").

The Board of Directors of the Company (the "Board") has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined below) of the Company. The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control which ensure that the compensation and benefits expectations of the Executive will be satisfied and which are competitive with those of other corporations.

As a result, the Company and the Executive entered into a change in control agreement (the "Original Agreement") dated May 28, 1998. The Company and the Executive hereby amend and restate the Original Agreement in its entirety in the form of this Agreement in order to evidence formal compliance with Section 409A of the Internal Revenue Code of 1986, as amended, and the guidance thereunder (collectively "Section 409A") and to otherwise update and clarify the Original Agreement.

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Therefore, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. CERTAIN DEFINITIONS. (a) The "Effective Date" shall mean the first date during the Change of Control Period (as defined in Section 1(b)) on which a Change of Control (as defined in Section 2) occurs. Anything in this Agreement to the contrary notwithstanding, if a Change of Control occurs and if the Executive's employment with the Company is terminated prior to the date on which the Change of Control occurs, and if it is reasonably demonstrated by the Executive that such termination of employment (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change of Control or (ii) otherwise arose in connection with or anticipation of a Change of Control, then for all purposes of this Agreement the "Effective Date" shall mean the date immediately prior to the date of such termination of employment.

(b) The “Change of Control Period” shall mean the period commencing on the date hereof and ending on May 27, 2008; provided that on May 27, 2008, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the “Renewal Date”), unless previously terminated, the Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. CHANGE OF CONTROL. For the purpose of this Agreement, a “Change of Control” shall mean:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) (a “Person”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then-outstanding shares of common stock of the Company (the “Outstanding Company Common Stock”) or (ii) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”) (such 20% ownership shall be referred to as the “Threshold Amount”); provided, however, that for purposes of this subsection (a), if the Threshold Amount is reached by reason of the following events, a Change in Control will not be triggered: (i) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company of the Company’s outstanding common stock, or (ii) any acquisition by any person pursuant to a transaction which complies with each and all of clauses (i), (ii) and (iii) of subsection (c) of this Section 2. For the sake of clarity, if the Threshold Amount is reached by reason of the Company repurchasing its own outstanding common stock, a Change in Control will be triggered; or

(b) Individuals who, as of the date hereof, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a “Business Combination”), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 80% of, respectively, the then-outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then-outstanding shares of common stock of the corporation resulting from such Business Combination, or the combined voting power of the then-outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(d) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

3. EMPLOYMENT PERIOD. The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the first anniversary of such date (the “Employment Period”). Such period may be extended in writing by the mutual agreement of the Company and the Executive at any time prior to such first anniversary.

4. TERMS OF EMPLOYMENT. (a) POSITION AND DUTIES. (i) During the Employment Period, (A) the Executive’s position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 120-day period immediately preceding the Effective Date and (B) the Executive’s services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office or location less than 35 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions, and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(b) COMPENSATION. (i) BASE SALARY. During the Employment Period, the Executive shall receive an annual base salary, including any applicable car allowance ("Annual Base Salary"), which shall be paid in installments in accordance with the Company's standard payroll practices for salary, at least equal to twelve times the highest monthly base salary and car allowance paid or payable, including any base salary which has been earned but deferred, to the Executive by the Company and its affiliated companies in respect of the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed no more than 12 months after the last salary increase awarded to the Executive prior to the Effective Date and thereafter at least annually. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "affiliated companies" shall include any company controlled by, controlling or under common control with the Company.

(ii) ANNUAL BONUS. In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the "Annual Bonus") in cash at least equal to the Executive's highest bonus under the Company's annual bonus plans, or any comparable bonus under any predecessor or successor plan or plans, for the last three full fiscal years prior to the Effective Date (annualized in the event that the Executive was not employed by the Company for the whole of such fiscal year) (the "Recent Annual Bonus"). Notwithstanding the previous sentence, the Executive shall be awarded the Annual Bonus only if the Executive is employed by the Company at the end of the applicable fiscal year ending during the Employment Period. Each such Annual Bonus shall be paid in the fiscal year next following the fiscal year for which the Annual Bonus is awarded, no later than the fifteenth day of the third month of such fiscal year, unless the Executive shall elect to defer the receipt of such Annual Bonus pursuant to the terms of any deferred compensation arrangement maintained by the Company that permits such deferral.



(iii) INCENTIVE, SAVINGS AND RETIREMENT PLANS. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer Executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(iv) WELFARE BENEFIT PLANS. During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits which are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) EXPENSES. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies. To the extent that any such reimbursement does not qualify for exclusion from Federal income taxation, the Company will make the reimbursement only if the Executive incurs the corresponding expense during the Employment Period and submits the request for reimbursement no later than two months prior to the last day of the calendar year following the calendar year in which the expense was incurred so that the Company can make the reimbursement on or before the last day of the calendar year following the calendar year in which the expense was incurred; the amount of expenses eligible for such reimbursement during a calendar year will not affect the amount of expenses eligible for such reimbursement in another calendar year, and the right to such reimbursement is not subject to liquidation or exchange for another benefit from the Company.

(vi) FRINGE BENEFITS. During the Employment Period, the Executive shall be entitled to fringe benefits, including, without limitation, tax and financial planning services, and, if applicable, use of an automobile and payment of related expenses, in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) OFFICE AND SUPPORT STAFF. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company and its affiliated companies at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) VACATION. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

5. TERMINATION OF EMPLOYMENT. (a) DEATH OR DISABILITY. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 12(b) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30<sup>th</sup> day after receipt of such notice by the Executive (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "Disability" shall mean the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

(b) CAUSE. The Company may terminate the Executive's employment during the Employment Period for Cause. For purposes of this Agreement, "Cause" shall mean:

(i) the willful and continued failure of the Executive to perform substantially the Executive's duties with the Company or one of its affiliates (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to the Executive by the Board or the Chief Executive Officer of the Company which specifically identifies the manner in which the Board or Chief Executive Officer believes that the Executive has not substantially performed the Executive's duties, or

(ii) the willful engaging by the Executive in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company.

For purposes of this provision, no act or failure to act, on the part of the Executive, shall be considered "willful" unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the Chief Executive Officer or a senior officer of the Company or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company. The cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the affirmative vote of not less than three quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to the Executive and the Executive is given an opportunity, together with counsel, to be heard before the Board), finding that, in the good faith opinion of the Board, the Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(c) GOOD REASON. The Executive's employment may be terminated by the Executive for Good Reason. For purposes of this Agreement, "Good Reason" shall mean:

(i) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 4(a) of this Agreement, or any other action by the Company which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) any failure by the Company to comply with any of the provisions of Section 4(b) of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any office or location other than as provided in Section 4(a)(i)(B) hereof or the Company's requiring the Executive to travel on Company business to a substantially greater extent than required immediately prior to the Effective Date;

(iv) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement; or

(v) any failure by the Company to comply with and satisfy Section 12(c) of this Agreement.

For purposes of this Section 5(c), any good faith determination of "Good Reason" made by the Executive shall be conclusive. Anything in this Agreement to the contrary notwithstanding, a termination by the Executive for any reason during the 30-day period immediately preceding the first anniversary of the Effective Date shall be deemed to be a termination for Good Reason for all purposes of this Agreement.

(d) **TERMINATION OF EMPLOYMENT.** For purposes of this Agreement, "Termination of Employment" shall have the same meaning as "separation from service" under Section 409A(a)(2)(A)(i) of the Code.

(e) **NOTICE OF TERMINATION.** Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 12(b) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than thirty days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(f) **DATE OF TERMINATION.** "Date of Termination" means (i) if the Executive's employment is terminated by the Company for Cause, or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be, (ii) if the Executive's employment is terminated by the Company other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Executive of such termination and (iii) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date, as the case may be.

6. OBLIGATIONS OF THE COMPANY UPON TERMINATION. (a) GOOD REASON; BY COMPANY OTHER THAN FOR CAUSE, DEATH OR DISABILITY. If, during the Employment Period, the Executive shall incur a Termination of Employment initiated by the Company other than for Cause, death or Disability or by the Executive for Good Reason:

(i) the Company shall pay to the Executive the following amounts:

A. the sum of (1) the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid which shall be paid in accordance with the Company's standard payroll practices for salary, (2) in lieu of any bonus that might otherwise have been payable to the Executive under the Company's annual bonus plan(s) for the corresponding bonus period(s) that contain the Date of Termination, the product of (x) the higher of (I) the Recent Annual Bonus and (II) the Annual Bonus paid or payable, including any bonus or portion thereof which has been earned but deferred (and annualized for any fiscal year consisting of less than twelve full months or during which the Executive was employed for less than twelve full months), for the most recently completed fiscal year during the Employment Period, if any (such higher amount being referred to as the "Highest Annual Bonus") and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 which shall be paid in a lump sum in cash within 30 days following the date of the Executive's Termination of Employment and (3) any accrued vacation pay due under the terms of the Company's vacation policy to the extent not theretofore paid which shall be paid at the time specified in the Company's vacation policy (the sum of the amounts described in clauses (1), (2), and (3) shall be hereinafter referred to as the "Accrued Obligations"); and

B. the amount equal to the product of (1) two and (2) the sum of (x) the Executive's Annual Base Salary and (y) the Highest Annual Bonus which shall be paid in a lump sum in cash within 30 days following the date of the Executive's Termination of Employment;

(ii) the Company shall pay to the Executive a lump sum in cash within 30 days following the date of the Executive's Termination of Employment equal to the product of (I) the Company's monthly COBRA premium in effect on the Date of Termination under the Company's group health plan for the type of coverage in effect under such plan (e.g., family coverage) for the Executive on the Date of Termination, and (II) 24;

(iii) within 30 days following the date of the Executive's Termination of Employment, the Company shall purchase a 24 month executive outplacement services package for the Executive from the provider generally used by the Company for such purposes on the Date of Termination; and

(iv) to the extent not theretofore paid or provided, the Company shall pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive under any plan, program, policy, practice, contract or agreement of the Company and its affiliated companies in accordance with the terms of the applicable plan, program, policy, practice, contract or agreement, except as expressly provided otherwise by this Agreement (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits").

(b) DEATH. If the Executive's employment is terminated by reason of the Executive's death during the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for payment of the amounts set forth in Section 6(a)(i) and the provision of Other Benefits.

(c) DISABILITY. If the Executive shall incur a Termination of Employment by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for the payment of the amounts set forth in Section 6(a)(i) and the provision of Other Benefits.

(d) CAUSE; OTHER THAN FOR GOOD REASON. If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the payment of the amounts set forth in Section 6(a)(i)(A)(1) and (3) and the provision of Other Benefits. If the Executive voluntarily terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for the payment of the amounts set forth in Section 6(a)(i)(A)(1) and (3) and the provision of Other Benefits.

(e) SIX MONTH DELAY. Notwithstanding the payment timing specified above, in the event the Executive is a "specified employee" on the date of the Executive's Termination of Employment, as determined by the Company in accordance with rules established by the Company in writing in advance of the "specified employee identification date" that relates to the date of the Executive's Termination of Employment, the following payments shall be paid no earlier than the date that is six months after the date of such Termination of Employment (if the Executive dies after the Executive's Termination of Employment but before any such payment is made, such payment will be paid to the Executive's estate without regard to any six-month delay that otherwise applies to specified employees):

(i) the payments described in Section 6(a)(i)(A)(2), Section 6(a)(i)(B) and Section 6(a)(ii) to be made to the Executive on account of his Termination of Employment initiated by the Company other than for Cause, death or Disability or by the Executive for Good Reason; and

(ii) the payment described in Section 6(a)(i)(A)(2) to be made to the Executive on account of his Termination of Employment initiated by the Company by reason of the Executive's Disability.

For purposes of this Agreement, "specified employee" shall be defined as provided in Section 409A(a)(2)(B)(i) of the Code and "specified employee identification date" shall be defined as provided in Treasury Regulation §1.409A-1(i).

7. **NONEXCLUSIVITY OF RIGHTS.** Nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor, subject to Section 13(f), shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

8. **FULL SETTLEMENT.** The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Executive obtains other employment. The Company agrees to pay as incurred, to the fullest extent permitted by law, all legal fees and expenses which the Executive may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2) (A) of the Internal Revenue Code of 1986, as amended (the "Code"). To the extent that any such reimbursement does not qualify for exclusion from Federal income taxation, the Company will make the reimbursement only if the Executive incurs the corresponding expense during the term of this Agreement or the period of two years thereafter and submits the request for reimbursement no later than two months prior to the last day of the calendar year following the calendar year in which the expense was incurred so that the Company can make the reimbursement on or before

the last day of the calendar year following the calendar year in which the expense was incurred; the amount of expenses eligible for such reimbursement during a calendar year will not affect the amount of expenses eligible for such reimbursement in another calendar year, and the right to such reimbursement is not subject to liquidation or exchange for another benefit from the Company. However, in the event the Executive is a "specified employee" on the Executive's Date of Termination (as determined by the Company in accordance with rules established by the Company in writing in advance of the "specified employee identification date" that relates to the date of the Executive's "separation from service"), and to the extent that any portion of such reimbursements relate to expenses that were triggered by the Executive's "separation from service," such reimbursements shall be paid no earlier than the date that is six months after the date of such "separation from service" (if the Executive dies after the Executive's Date of Termination but before such reimbursements have been made, such reimbursements will be paid to the Executive's estate in a lump sum without regard to any six-month delay that otherwise applies to specified employees).

9. CERTAIN ADDITIONAL PAYMENTS BY THE COMPANY. (a) Anything in this Agreement to the contrary notwithstanding and except as set forth below, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Section 9) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Executive shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments. Notwithstanding the foregoing provisions of this Section 9(a), if it shall be determined that the Executive is entitled to a Gross-Up Payment, but that the Executive, after taking into account the Payments and the Gross-Up Payment, would not receive a net after-tax benefit of at least \$50,000 (taking into account both income taxes and any Excise Tax) as compared to the net after-tax proceeds to the Executive resulting from an elimination of the Gross-Up Payment and a reduction of the Payments, in the aggregate, to an amount (the "Reduced Amount") such that the receipt of Payments would not give rise to any Excise Tax, then no Gross-Up Payment shall be made to the Executive and the Payments, in the aggregate, shall be reduced to the Reduced Amount.

(b) Subject to the provisions of Section 9(c), all determinations required to be made under this Section 9, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by Deloitte & Touche or such other certified public accounting firm as may be designated by the Executive (the



“Accounting Firm”) which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. In the event that the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Executive shall appoint another nationally recognized accounting firm to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 9, shall be paid by the Company to the Executive within five days of the receipt of the Accounting Firm’s determination. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made (“Underpayment”), consistent with the calculations required to be made hereunder. In the event that the Company exhausts its remedies pursuant to Section 9(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which it gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:

- (i) give the Company any information reasonably requested by the Company relating to such claim;
- (ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company;
- (iii) cooperate with the Company in good faith in order effectively to contest such claim; and
- (iv) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 9(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or to contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Executive, on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 9(c)) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

(e) Notwithstanding the foregoing, (i) each Gross-Up Payment required to be made by the Company to the Executive hereunder and each repayment of a Gross-Up Payment required to be made by the Executive to the Company hereunder shall be paid no later than the end of the calendar year next following the calendar year in which the Executive remits the corresponding taxes to the Internal Revenue Service, (ii) each reimbursement of expenses related to a tax contest addressing the existence or amount of a tax liability required to be made by the Company to the Executive hereunder

and each repayment of such a reimbursement required to be made by the Executive to the Company hereunder shall be paid no later than the end of the calendar year next following the calendar year in which the Executive remits to the Internal Revenue Service the taxes that are the subject of the contest or, where as a result of the contest no taxes are due or are remitted but other reimbursable costs and/or expenses have been incurred, the end of the calendar year following the calendar year in which the contest is completed or there is a final and nonappealable settlement or other resolution of the contest; and (iii) in the event the Executive is a "specified employee" on the Executive's Date of Termination (as determined by the Company in accordance with rules established by the Company in writing in advance of the "specified employee identification date" that relates to the date of the Executive's "separation from service"), and to the extent that any portion of such Gross-Up Payments relates to compensation that was triggered by the Executive's "separation from service" and/or any portion of such reimbursements related to expenses that were triggered by the Executive's "separation from service," such portion of the Gross-Up Payments and/or such portion of the reimbursements, as applicable, shall be paid no earlier than the date that is six months after the date of such "separation from service" (if the Executive dies after the Executive's Date of Termination but before any such payments are made, the payments will be paid to the Executive's estate without regard to any six-month delay that otherwise applies to specified employees).

10. CODE SECTION 409A. It is intended, and this Agreement will be so construed, that any amounts payable under this Agreement and the Company's and the Executive's exercise of authority or discretion hereunder shall either be exempt from or comply with the provisions of Section 409A of the Code and the treasury regulations relating thereto so as not to subject the Executive to the payment of interest and/or any tax penalty that may be imposed under Section 409A of the Code. The Executive acknowledges and agrees that the Company has made no representation to the Executive as to the tax treatment of the compensation and benefits provided pursuant to this Agreement and that the Executive is solely responsible for all taxes due with respect to such compensation and benefits.

11. CONFIDENTIAL INFORMATION. The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 11 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

12. SUCCESSORS. (a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

13. MISCELLANEOUS. (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

IF TO THE EXECUTIVE:

Charles E. Brown  
c/o Office Depot, Inc.  
2200 Old Germantown Road  
Delray Beach, Florida 33445

IF TO THE COMPANY:

Office Depot, Inc.  
2200 Old Germantown Road  
Delray Beach, Florida 33445  
Attention: Chief Executive Officer

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitations the right of the Executive to terminate employment for Good Reason pursuant to Section 5(c)(i)-(v) of this Agreement, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company is "at will" and, subject to Section 1(a) hereof, prior to the Effective Date, the Executive's employment and/or this Agreement may be terminated by either the Executive or the Company at any time prior to the Effective Date, in which case the Executive shall have no further rights under this Agreement. From and after the Effective Date this Agreement shall supersede any other agreement between the parties with respect to the subject matter hereof.

\*\*\*\*

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Board of Directors, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ Charles E. Brown  
Executive, Charles E. Brown

Date: February 25, 2008

OFFICE DEPOT, INC.

By: /s/ Steve Odland  
Its: Chief Executive Officer

## CHANGE IN CONTROL AGREEMENT

As Amended and Restated Effective February 25, 2008

THIS CHANGE IN CONTROL AGREEMENT is made as of February 25, 2008 (the "Effective Date"), by and between Office Depot, Inc., a Delaware corporation (the "Company"), and Carl Rubin (the "Executive").

The Board of Directors of the Company (the "Board") has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined below) of the Company. The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control which ensure that the compensation and benefits expectations of the Executive will be satisfied and which are competitive with those of other corporations.

As a result, the Company and the Executive entered into a change in control agreement (the "Original Agreement") dated March 1, 2004. The Company and the Executive hereby amend and restate the Original Agreement in its entirety in the form of this Agreement in order to evidence formal compliance with Section 409A of the Internal Revenue Code of 1986, as amended, and the guidance thereunder (collectively "Section 409A") and to otherwise update and clarify the Original Agreement.

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Therefore, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. CERTAIN DEFINITIONS. (a) The "Effective Date" shall mean the first date during the Change of Control Period (as defined in Section 1(b)) on which a Change of Control (as defined in Section 2) occurs. Anything in this Agreement to the contrary notwithstanding, if a Change of Control occurs and if the Executive's employment with the Company is terminated prior to the date on which the Change of Control occurs, and if it is reasonably demonstrated by the Executive that such termination of employment (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change of Control or (ii) otherwise arose in connection with or anticipation of a Change of Control, then for all purposes of this Agreement the "Effective Date" shall mean the date immediately prior to the date of such termination of employment.

(b) The “Change of Control Period” shall mean the period commencing on the date hereof and ending on February 29, 2008; provided that on February 29, 2008, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the “Renewal Date”), unless previously terminated, the Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. CHANGE OF CONTROL. For the purpose of this Agreement, a “Change of Control” shall mean:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) (a “Person”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then-outstanding shares of common stock of the Company (the “Outstanding Company Common Stock”) or (ii) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”) (such 20% ownership shall be referred to as the “Threshold Amount”); provided, however, that for purposes of this subsection (a), if the Threshold Amount is reached by reason of the following events, a Change in Control will not be triggered: (i) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company of the Company’s outstanding common stock, or (ii) any acquisition by any person pursuant to a transaction which complies with each and all of clauses (i), (ii) and (iii) of subsection (c) of this Section 2. For the sake of clarity, if the Threshold Amount is reached by reason of the Company repurchasing its own outstanding common stock, a Change in Control will be triggered; or

(b) Individuals who, as of the date hereof, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a “Business Combination”), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 80% of, respectively, the then-outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination

(including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then-outstanding shares of common stock of the corporation resulting from such Business Combination, or the combined voting power of the then-outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(d) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

3. EMPLOYMENT PERIOD. The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the first anniversary of such date (the "Employment Period"). Such period may be extended in writing by the mutual agreement of the Company and the Executive at any time prior to such first anniversary.

4. TERMS OF EMPLOYMENT. (a) POSITION AND DUTIES. (i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 120-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office or location less than 35 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions, and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.



(b) COMPENSATION. (i) BASE SALARY. During the Employment Period, the Executive shall receive an annual base salary, including any applicable car allowance (“Annual Base Salary”), which shall be paid in installments in accordance with the Company’s standard payroll practices for salary, at least equal to twelve times the highest monthly base salary and car allowance paid or payable, including any base salary which has been earned but deferred, to the Executive by the Company and its affiliated companies in respect of the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed no more than 12 months after the last salary increase awarded to the Executive prior to the Effective Date and thereafter at least annually. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term “affiliated companies” shall include any company controlled by, controlling or under common control with the Company.

(ii) ANNUAL BONUS. In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the “Annual Bonus”) in cash at least equal to the Executive’s highest bonus under the Company’s annual bonus plans, or any comparable bonus under any predecessor or successor plan or plans, for the last three full fiscal years prior to the Effective Date (annualized in the event that the Executive was not employed by the Company for the whole of such fiscal year) (the “Recent Annual Bonus”). Notwithstanding the previous sentence, the Executive shall be awarded the Annual Bonus only if the Executive is employed by the Company at the end of the applicable fiscal year ending during the Employment Period. Each such Annual Bonus shall be paid in the fiscal year next following the fiscal year for which the Annual Bonus is awarded, no later than the fifteenth day of the third month of such fiscal year, unless the Executive shall elect to defer the receipt of such Annual Bonus pursuant to the terms of any deferred compensation arrangement maintained by the Company that permits such deferral.

(iii) INCENTIVE, SAVINGS AND RETIREMENT PLANS. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer Executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(iv) WELFARE BENEFIT PLANS. During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits which are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) EXPENSES. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies. To the extent that any such reimbursement does not qualify for exclusion from Federal income taxation, the Company will make the reimbursement only if the Executive incurs the corresponding expense during the Employment Period and submits the request for reimbursement no later than two months prior to the last day of the calendar year following the calendar year in which the expense was incurred so that the Company can make the reimbursement on or before the last day of the calendar year following the calendar year in which the expense was incurred; the amount of expenses eligible for such reimbursement during a calendar year will not affect the amount of expenses eligible for such reimbursement in another calendar year, and the right to such reimbursement is not subject to liquidation or exchange for another benefit from the Company.

(vi) FRINGE BENEFITS. During the Employment Period, the Executive shall be entitled to fringe benefits, including, without limitation, tax and financial planning services, and, if applicable, use of an automobile and payment of related expenses, in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) OFFICE AND SUPPORT STAFF. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company and its affiliated companies at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) VACATION. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

5. TERMINATION OF EMPLOYMENT. (a) DEATH OR DISABILITY. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 12(b) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30<sup>th</sup> day after receipt of such notice by the Executive (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "Disability" shall mean the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

(b) CAUSE. The Company may terminate the Executive's employment during the Employment Period for Cause. For purposes of this Agreement, "Cause" shall mean:

(i) the willful and continued failure of the Executive to perform substantially the Executive's duties with the Company or one of its affiliates (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to the Executive by the Board or the Chief Executive Officer of the Company which specifically identifies the manner in which the Board or Chief Executive Officer believes that the Executive has not substantially performed the Executive's duties, or

(ii) the willful engaging by the Executive in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company.

For purposes of this provision, no act or failure to act, on the part of the Executive, shall be considered "willful" unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the Chief Executive Officer or a senior officer of the Company or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company. The cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the affirmative vote of not less than three quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to the Executive and the Executive is given an opportunity, together with counsel, to be heard before the Board), finding that, in the good faith opinion of the Board, the Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(c) GOOD REASON. The Executive's employment may be terminated by the Executive for Good Reason. For purposes of this Agreement, "Good Reason" shall mean:

(i) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 4(a) of this Agreement, or any other action by the Company which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) any failure by the Company to comply with any of the provisions of Section 4(b) of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any office or location other than as provided in Section 4(a)(i)(B) hereof or the Company's requiring the Executive to travel on Company business to a substantially greater extent than required immediately prior to the Effective Date;

(iv) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement; or

(v) any failure by the Company to comply with and satisfy Section 12(c) of this Agreement.

For purposes of this Section 5(c), any good faith determination of "Good Reason" made by the Executive shall be conclusive. Anything in this Agreement to the contrary notwithstanding, a termination by the Executive for any reason during the 30-day period immediately preceding the first anniversary of the Effective Date shall be deemed to be a termination for Good Reason for all purposes of this Agreement.

(d) TERMINATION OF EMPLOYMENT. For purposes of this Agreement, "Termination of Employment" shall have the same meaning as "separation from service" under Section 409A(a)(2)(A)(i) of the Code.

(e) **NOTICE OF TERMINATION.** Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 12(b) of this Agreement. For purposes of this Agreement, a “Notice of Termination” means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive’s employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than thirty days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive’s or the Company’s rights hereunder.

(f) **DATE OF TERMINATION.** “Date of Termination” means (i) if the Executive’s employment is terminated by the Company for Cause, or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be, (ii) if the Executive’s employment is terminated by the Company other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Executive of such termination and (iii) if the Executive’s employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date, as the case may be.

**6. OBLIGATIONS OF THE COMPANY UPON TERMINATION.** (a) **GOOD REASON; BY COMPANY OTHER THAN FOR CAUSE, DEATH OR DISABILITY.** If, during the Employment Period, the Executive shall incur a Termination of Employment initiated by the Company other than for Cause, death or Disability or by the Executive for Good Reason:

(i) the Company shall pay to the Executive the following amounts:

A. the sum of (1) the Executive’s Annual Base Salary through the Date of Termination to the extent not theretofore paid which shall be paid in accordance with the Company’s standard payroll practices for salary, (2) in lieu of any bonus that might otherwise have been payable to the Executive under the Company’s annual bonus plan(s) for the corresponding bonus period(s) that contain the Date of Termination, the product of (x) the higher of (I) the Recent Annual Bonus and (II) the Annual Bonus paid or payable, including any bonus or portion thereof which has been earned but deferred (and annualized for any fiscal year consisting of less than twelve full months or during which the Executive was employed for less than twelve full months), for the most recently completed fiscal year during the Employment Period, if any (such higher amount being referred to as the “Highest Annual Bonus”) and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 which shall be paid in a lump sum in cash within 30 days following the date of the Executive’s Termination of Employment and (3) any accrued vacation pay due under the terms of the Company’s vacation policy to the extent not theretofore paid which shall be paid at the time specified in the Company’s vacation policy (the sum of the amounts described in clauses (1), (2), and (3) shall be hereinafter referred to as the “Accrued Obligations”); and

B. the amount equal to the product of (1) two and (2) the sum of (x) the Executive's Annual Base Salary and (y) the Highest Annual Bonus which shall be paid in a lump sum in cash within 30 days following the date of the Executive's Termination of Employment;

(ii) the Company shall pay to the Executive a lump sum in cash within 30 days following the date of the Executive's Termination of Employment equal to the product of (I) the Company's monthly COBRA premium in effect on the Date of Termination under the Company's group health plan for the type of coverage in effect under such plan (e.g., family coverage) for the Executive on the Date of Termination, and (II) 24;

(iii) within 30 days following the date of the Executive's Termination of Employment, the Company shall purchase a 24 month executive outplacement services package for the Executive from the provider generally used by the Company for such purposes on the Date of Termination; and

(iv) to the extent not theretofore paid or provided, the Company shall pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive under any plan, program, policy, practice, contract or agreement of the Company and its affiliated companies in accordance with the terms of the applicable plan, program, policy, practice, contract or agreement, except as expressly provided otherwise by this Agreement (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits").

(b) DEATH. If the Executive's employment is terminated by reason of the Executive's death during the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for payment of the amounts set forth in Section 6(a)(i) and the provision of Other Benefits.

(c) DISABILITY. If the Executive shall incur a Termination of Employment by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for the payment of the amounts set forth in Section 6(a)(i) and the provision of Other Benefits.

(d) CAUSE; OTHER THAN FOR GOOD REASON. If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the payment of the amounts set forth in Section 6(a)(i)(A)(1) and (3) and the provision of Other Benefits. If the Executive voluntarily terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for the payment of the amounts set forth in Section 6(a)(i)(A)(1) and (3) and the provision of Other Benefits.

(e) SIX MONTH DELAY. Notwithstanding the payment timing specified above, in the event the Executive is a “specified employee” on the date of the Executive’s Termination of Employment, as determined by the Company in accordance with rules established by the Company in writing in advance of the “specified employee identification date” that relates to the date of the Executive’s Termination of Employment, the following payments shall be paid no earlier than the date that is six months after the date of such Termination of Employment (if the Executive dies after the Executive’s Termination of Employment but before any such payment is made, such payment will be paid to the Executive’s estate without regard to any six-month delay that otherwise applies to specified employees):

(i) the payments described in Section 6(a)(i)(A)(2), Section 6(a)(i)(B) and Section 6(a)(ii) to be made to the Executive on account of his Termination of Employment initiated by the Company other than for Cause, death or Disability or by the Executive for Good Reason; and

(ii) the payment described in Section 6(a)(i)(A)(2) to be made to the Executive on account of his Termination of Employment initiated by the Company by reason of the Executive’s Disability.

For purposes of this Agreement, “specified employee” shall be defined as provided in Section 409A(a)(2)(B)(i) of the Code and “specified employee identification date” shall be defined as provided in Treasury Regulation §1.409A-1(i).

7. NONEXCLUSIVITY OF RIGHTS. Nothing in this Agreement shall prevent or limit the Executive’s continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor, subject to Section 13(f), shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

8. FULL SETTLEMENT. The Company’s obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Executive obtains other employment. The Company agrees to pay as incurred, to the fullest extent permitted by law, all legal fees and expenses which the Executive may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of

any contest by the Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended (the "Code"). To the extent that any such reimbursement does not qualify for exclusion from Federal income taxation, the Company will make the reimbursement only if the Executive incurs the corresponding expense during the term of this Agreement or the period of two years thereafter and submits the request for reimbursement no later than two months prior to the last day of the calendar year following the calendar year in which the expense was incurred so that the Company can make the reimbursement on or before the last day of the calendar year following the calendar year in which the expense was incurred; the amount of expenses eligible for such reimbursement during a calendar year will not affect the amount of expenses eligible for such reimbursement in another calendar year, and the right to such reimbursement is not subject to liquidation or exchange for another benefit from the Company. However, in the event the Executive is a "specified employee" on the Executive's Date of Termination (as determined by the Company in accordance with rules established by the Company in writing in advance of the "specified employee identification date" that relates to the date of the Executive's "separation from service"), and to the extent that any portion of such reimbursements relate to expenses that were triggered by the Executive's "separation from service," such reimbursements shall be paid no earlier than the date that is six months after the date of such "separation from service" (if the Executive dies after the Executive's Date of Termination but before such reimbursements have been made, such reimbursements will be paid to the Executive's estate in a lump sum without regard to any six-month delay that otherwise applies to specified employees).

9. **CERTAIN ADDITIONAL PAYMENTS BY THE COMPANY.** (a) Anything in this Agreement to the contrary notwithstanding and except as set forth below, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Section 9) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Executive shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments. Notwithstanding the foregoing provisions of this Section 9(a), if it shall be determined that the Executive is entitled to a Gross-Up Payment, but that the Executive, after taking into account the Payments and the Gross-Up Payment, would not receive a net after-tax benefit of at least \$50,000 (taking into account both income taxes and any Excise Tax) as compared to the net after-tax proceeds to the Executive resulting from an elimination of the Gross-Up Payment and a reduction of the Payments, in the aggregate, to an amount (the "Reduced Amount") such that the receipt of Payments would not give rise to any Excise Tax, then no Gross-Up Payment shall be made to the Executive and the Payments, in the aggregate, shall be reduced to the Reduced Amount.



(b) Subject to the provisions of Section 9(c), all determinations required to be made under this Section 9, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by Deloitte & Touche or such other certified public accounting firm as may be designated by the Executive (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. In the event that the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Executive shall appoint another nationally recognized accounting firm to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 9, shall be paid by the Company to the Executive within five days of the receipt of the Accounting Firm's determination. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Company exhausts its remedies pursuant to Section 9(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which it gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:

- (i) give the Company any information reasonably requested by the Company relating to such claim;
- (ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company;
- (iii) cooperate with the Company in good faith in order effectively to contest such claim; and

(iv) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 9(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or to contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Executive, on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 9(c)) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

(e) Notwithstanding the foregoing, (i) each Gross-Up Payment required to be made by the Company to the Executive hereunder and each repayment of a Gross-Up Payment required to be made by the Executive to the Company hereunder shall be paid no later than the end of the calendar year next following the calendar year in which the Executive remits the corresponding taxes to the Internal Revenue Service, (ii) each reimbursement of expenses related to a tax contest addressing the existence or amount of a tax liability required to be made by the

Company to the Executive hereunder and each repayment of such a reimbursement required to be made by the Executive to the Company hereunder shall be paid no later than the end of the calendar year next following the calendar year in which the Executive remits to the Internal Revenue Service the taxes that are the subject of the contest or, where as a result of the contest no taxes are due or are remitted but other reimbursable costs and/or expenses have been incurred, the end of the calendar year following the calendar year in which the contest is completed or there is a final and nonappealable settlement or other resolution of the contest; and (iii) in the event the Executive is a "specified employee" on the Executive's Date of Termination (as determined by the Company in accordance with rules established by the Company in writing in advance of the "specified employee identification date" that relates to the date of the Executive's "separation from service"), and to the extent that any portion of such Gross-Up Payments relates to compensation that was triggered by the Executive's "separation from service" and/or any portion of such reimbursements related to expenses that were triggered by the Executive's "separation from service," such portion of the Gross-Up Payments and/or such portion of the reimbursements, as applicable, shall be paid no earlier than the date that is six months after the date of such "separation from service" (if the Executive dies after the Executive's Date of Termination but before any such payments are made, the payments will be paid to the Executive's estate without regard to any six-month delay that otherwise applies to specified employees).

10. CODE SECTION 409A. It is intended, and this Agreement will be so construed, that any amounts payable under this Agreement and the Company's and the Executive's exercise of authority or discretion hereunder shall either be exempt from or comply with the provisions of Section 409A of the Code and the treasury regulations relating thereto so as not to subject the Executive to the payment of interest and/or any tax penalty that may be imposed under Section 409A of the Code. The Executive acknowledges and agrees that the Company has made no representation to the Executive as to the tax treatment of the compensation and benefits provided pursuant to this Agreement and that the Executive is solely responsible for all taxes due with respect to such compensation and benefits.

11. CONFIDENTIAL INFORMATION. The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 11 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

12. SUCCESSORS. (a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

13. MISCELLANEOUS. (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

IF TO THE EXECUTIVE:

Carl Rubin

IF TO THE COMPANY:

Office Depot, Inc.  
2200 Old Germantown Road  
Delray Beach, Florida 33445  
Attention: Chief Executive Officer

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitations the right of the Executive to terminate employment for Good Reason pursuant to Section 5(c)(i)-(v) of this Agreement, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company is "at will" and, subject to Section 1(a) hereof, prior to the Effective Date, the Executive's employment and/or this Agreement may be terminated by either the Executive or the Company at any time prior to the Effective Date, in which case the Executive shall have no further rights under this Agreement. From and after the Effective Date this Agreement shall supersede any other agreement between the parties with respect to the subject matter hereof.

\*\*\*\*

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Board of Directors, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ Carl Rubin  
Executive, Carl Rubin  
Date: February 25, 2008

OFFICE DEPOT, INC.

By: /s/ Steve Odland  
Its: Chief Executive Officer

### Change in Control Agreement

THIS CHANGE IN CONTROL AGREEMENT is made as of February 25, 2008 by and between Office Depot, Inc., a Delaware corporation (the "Company"), and Daisy Vanderlinde (the "Executive").

The Board of Directors of the Company (the "Board") has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined below) of the Company. The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control which ensure that the compensation and benefits expectations of the Executive will be satisfied and which are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Certain Definitions. (a) The "Effective Date" shall mean the first date during the Change of Control Period (as defined in Section 1(b)) on which a Change of Control (as defined in Section 2) occurs. Anything in this Agreement to the contrary notwithstanding, if a Change of Control occurs and if the Executive's employment with the Company is terminated prior to the date on which the Change of Control occurs, and if it is reasonably demonstrated by the Executive that such termination of employment (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change of Control or (ii) otherwise arose in connection with or anticipation of a Change of Control, then for all purposes of this Agreement the "Effective Date" shall mean the date immediately prior to the date of such termination of employment.

(b) The "Change of Control Period" shall mean the period commencing on the date hereof and ending on the third anniversary of the date hereof; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the "Renewal Date"), unless previously terminated, the Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. Change of Control. For the purpose of this Agreement, a “Change of Control” shall mean:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) (a “Person”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then-outstanding shares of common stock of the Company (the “Outstanding Company Common Stock”) or (ii) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”) (such 20% ownership shall be referred to as the “Threshold Amount”); provided, however, that for purposes of this subsection (a), if the Threshold Amount is reached by reason of the following events, a Change in Control will not be triggered: (i) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company of the Company’s outstanding common stock, or (ii) any acquisition by any person pursuant to a transaction which complies with each and all of clauses (i), (ii) and (iii) of subsection (c) of this Section 2. For the sake of clarity, if the Threshold Amount is reached by reason of the Company repurchasing its own outstanding common stock, a Change in Control will be triggered; or

(b) Individuals who, as of the date hereof, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a “Business Combination”), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 80% of, respectively, the then-outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company

Voting Securities, as the case may be, (ii) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then-outstanding shares of common stock of the corporation resulting from such Business Combination, or the combined voting power of the then-outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(d) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

3. Employment Period. The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the first anniversary of such date (the "Employment Period"). Such period may be extended in writing by the mutual agreement of the Company and Executive at any time prior to such first anniversary.

4. Terms of Employment. (a) Position and Duties. (i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 120-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office or location less than 35 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions, and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.



(b) Compensation. (i) Base Salary. During the Employment Period, the Executive shall receive an annual base salary, including any applicable car allowance (“Annual Base Salary”), which shall be paid in installments in accordance with the Company’s standard payroll practices for salary, at least equal to twelve times the highest monthly base salary and car allowance paid or payable, including any base salary which has been earned but deferred, to the Executive by the Company and its affiliated companies in respect of the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed no more than 12 months after the last salary increase awarded to the Executive prior to the Effective Date and thereafter at least annually. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term “affiliated companies” shall include any company controlled by, controlling or under common control with the Company.

(ii) Annual Bonus. In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the “Annual Bonus”) in cash at least equal to the Executive’s highest bonus under the Company’s annual bonus plans, or any comparable bonus under any predecessor or successor plan or plans, for the last three full fiscal years prior to the Effective Date (annualized in the event that the Executive was not employed by the Company for the whole of such fiscal year) (the “Recent Annual Bonus”). Notwithstanding the previous sentence, the Executive shall be awarded the Annual Bonus only if the Executive is employed by the Company at the end of the applicable fiscal year ending during the Employment Period. Each such Annual Bonus shall be paid in the fiscal year next following the fiscal year for which the Annual Bonus is awarded, no later than the fifteenth day of the third month of such fiscal year, unless the Executive shall elect to defer the receipt of such Annual Bonus pursuant to the terms of any deferred compensation arrangement maintained by the Company that permits such deferral.

(iii) Incentive, Savings and Retirement Plans. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer Executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(iv) Welfare Benefit Plans. During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits which are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies. To the extent that any such reimbursement does not qualify for exclusion from Federal income taxation, the Company will make the reimbursement only if the Executive incurs the corresponding expense during the Employment Period and submits the request for reimbursement no later than two months prior to the last day of the calendar year following the calendar year in which the expense was incurred so that the Company can make the reimbursement on or before the last day of the calendar year following the calendar year in which the expense was incurred; the amount of expenses eligible for such reimbursement during a calendar year will not affect the amount of expenses eligible for such reimbursement in another calendar year, and the right to such reimbursement is not subject to liquidation or exchange for another benefit from the Company.

(vi) Fringe Benefits. During the Employment Period, the Executive shall be entitled to fringe benefits, including, without limitation, tax and financial planning services, and, if applicable, use of an automobile and payment of related expenses, in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) Office and Support Staff. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company and its affiliated companies at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

5. Termination of Employment. (a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death or Disability during the Employment Period. For purposes of this Agreement, "Disability" shall mean the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

(b) Cause. The Company may terminate the Executive's employment during the Employment Period for Cause. For purposes of this Agreement, "Cause" shall mean:

(i) the continued failure of the Executive to perform substantially the Executive's duties with the Company or one of its affiliates (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to the Executive by the Board or the Chief Executive Officer of the Company which specifically identifies the manner in which the Board or Chief Executive Officer believes that the Executive has not substantially performed the Executive's duties, or

(ii) the engaging by the Executive in illegal conduct or gross misconduct in violation of the Company's Code of Ethical Behavior.

Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the Chief Executive Officer or a senior officer of the Company or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company. The cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the Company's Board of Directors, finding that, in the good faith opinion of the Board, the Executive is guilty of the conduct described in subsection (i) or (ii) above, and specifying the particulars thereof in detail.

(c) Good Reason. The Executive's employment may be terminated by the Executive for Good Reason within the 1 year period following the date of the initial existence of the event or circumstances constituting Good Reason. For purposes of this Agreement, "Good Reason" shall mean:

- (i) a material diminution in the Executive's authority, duties or responsibilities with the Company;
- (ii) a material failure by the Company to comply with any of the provisions of Section 4(b) of this Agreement;
- (iii) a material change in the office or location at which the Company requires the Executive to based during the Employment Period or the Company's requiring the Executive to travel on Company business to a substantially greater extent than required immediately prior to the Effective Date;
- (iv) any purported termination by the Company of the Executive's employment other than as expressly permitted by this Agreement; or
- (v) any material failure by the Company to comply with and satisfy Section 12(c) of this Agreement;

provided, however, that the Executive will have Good Reason to terminate employment only if (i) the Executive provides notice to the Chief Executive Officer of the Company of the existence of the event or circumstances constituting Good Reason specified in any of the preceding clauses within 90 days of the initial existence of such event or circumstances, and (ii) the Company does not remedy such event or circumstances within 30 days following receipt of such notice.

(d) Notice of Termination. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 13(b) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than thirty days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(e) Date of Termination. "Date of Termination" means (i) if the Executive's employment is terminated by the Company for Cause or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be, (ii) if the Executive's employment is terminated by the Company other than for Cause, the Date of Termination shall be the date on which the Company notifies the Executive of such termination and (iii) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the date on which the definition of "Disability" is first satisfied with respect to the Executive.

6. Obligations of the Company upon Termination. (a) Good Reason; By Company Other Than for Cause, Death or Disability. If, during the Employment Period, the Company shall terminate the Executive's employment other than for Cause, death or Disability or the Executive shall terminate employment for Good Reason within the 1 year period following the date of the initial existence of the event or circumstances constituting Good Reason:

(i) the Company shall pay to the Executive the following amounts:

A. the sum of (1) the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid which shall be paid in accordance with the Company's standard payroll practices for salary, (2) in lieu of any bonus that might otherwise have been payable to the Executive under the Company's annual bonus plan(s) for the corresponding bonus period(s) that contain the Date of Termination, the product of (x) the higher of (I) the Recent Annual Bonus and (II) the Annual Bonus paid or payable, including any bonus or portion thereof which has been earned but deferred (and annualized for any fiscal year consisting of less than twelve full months or during which the Executive was employed for less than twelve full months), for the most recently completed fiscal year during the Employment Period, if any (such higher amount being referred to as the "Highest Annual Bonus") and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 which shall be paid in a lump sum in cash within 30 days following the Date of Termination and (3) any accrued vacation pay due under the terms of the Company's vacation policy to the extent not theretofore paid which shall be paid at the time specified in the Company's vacation policy (the sum of the amounts described in clauses (1), (2), and (3) shall be hereinafter referred to as the "Accrued Obligations"); and

B. the amount equal to the product of (1) two and (2) the sum of (x) the Executive's Annual Base Salary and (y) the Highest Annual Bonus which shall be paid in a lump sum in cash within 30 days following the Date of Termination;

(ii) the Company shall pay to the Executive a lump sum in cash within 30 days following the Date of Termination equal to the product of (I) the Company's monthly COBRA premium in effect on the Date of Termination under the Company's group health plan for the type of coverage in effect under such plan (e.g., family coverage) for the Executive on the Date of Termination, and (II) 18;

(iii) within 30 days following the Date of Termination, the Company shall purchase a 24 month executive outplacement services package for the Executive from the provider generally used by the Company for such purposes on the Date of Termination; and

(iv) to the extent not theretofore paid or provided, the Company shall pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive under any plan, program, policy, practice, contract or agreement of the Company and its affiliated companies in accordance with the terms of the applicable plan, program, policy, practice, contract or agreement, except as expressly provided otherwise by this Agreement (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits").

(b) Death. If the Executive's employment is terminated by reason of the Executive's death during the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for payment of the amounts set forth in Section 6(a)(i) and the provision of Other Benefits.

(c) Disability. If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for the payment of the amounts set forth in Section 6(a)(i) and the provision of Other Benefits.

(d) Cause; Other than for Good Reason. If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the payment of the amounts set forth in Section 6(a)(i)(A)(1) and (3) and the provision of Other Benefits. If the Executive voluntarily terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for the payment of the amounts set forth in Section 6(a)(i)(A)(1) and (3) and the provision of Other Benefits.

7. Nonexclusivity of Rights. Nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor, subject to Section 13(f), shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as expressly provided otherwise by this Agreement.

8. **Full Settlement.** The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Executive obtains other employment. The Company agrees to pay as incurred, to the fullest extent permitted by law, all legal fees and expenses which the Executive may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended (the "Code"). To the extent that any such reimbursement does not qualify for exclusion from Federal income taxation, the Company will make the reimbursement only if the Executive incurs the corresponding expense during the term of this Agreement or the period of two years thereafter and submits the request for reimbursement no later than two months prior to the last day of the calendar year following the calendar year in which the expense was incurred so that the Company can make the reimbursement on or before the last day of the calendar year following the calendar year in which the expense was incurred; the amount of expenses eligible for such reimbursement during a calendar year will not affect the amount of expenses eligible for such reimbursement in another calendar year, and the right to such reimbursement is not subject to liquidation or exchange for another benefit from the Company. However, in the event the Executive is a "specified employee" on the Executive's Date of Termination (as determined by the Company in accordance with rules established by the Company in writing in advance of the "specified employee identification date" that relates to the date of the Executive's "separation from service"), and to the extent that any portion of such reimbursements relate to expenses that were triggered by the Executive's "separation from service," such reimbursements shall be paid no earlier than the date that is six months after the date of such "separation from service" (if the Executive dies after the Executive's Termination Date but before such reimbursements have been made, such reimbursements will be paid to the Executive's estate in a lump sum without regard to any six-month delay that otherwise applies to specified employees). For purposes of this Agreement, "specified employee" shall be defined as provided in Section 409A(a)(2)(B)(i) of the Code, "specified employee identification date" shall be defined as provided in Treasury Regulation §1.409A-1(i), and "separation from service" shall be defined as provided in Section 409A(a)(2)(A)(i) of the Code.

9. Certain Additional Payments by the Company. (a) Anything in this Agreement to the contrary notwithstanding and except as set forth below, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Section 9) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Executive shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments. Notwithstanding the foregoing provisions of this Section 9(a), if it shall be determined that the Executive is entitled to a Gross-Up Payment, but that the Executive, after taking into account the Payments and the Gross-Up Payment, would not receive a net after-tax benefit of at least \$50,000 (taking into account both income taxes and any Excise Tax) as compared to the net after-tax proceeds to the Executive resulting from an elimination of the Gross-Up Payment and a reduction of the Payments, in the aggregate, to an amount (the "Reduced Amount") such that the receipt of Payments would not give rise to any Excise Tax, then no Gross-Up Payment shall be made to the Executive and the Payments, in the aggregate, shall be reduced to the Reduced Amount.

(b) Subject to the provisions of Section 9(c), all determinations required to be made under this Section 9, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by Deloitte & Touche or such other certified public accounting firm as may be designated by the Executive (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. In the event that the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Executive shall appoint another nationally recognized accounting firm to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 9, shall be paid by the Company to the Executive within five days of the receipt of the Accounting Firm's determination. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Company exhausts its remedies pursuant to Section 9(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.



(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which it gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:

(i) give the Company any information reasonably requested by the Company relating to such claim;

(ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company;

(iii) cooperate with the Company in good faith in order effectively to contest such claim; and

(iv) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 9(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or to contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Executive to pay such claim and sue for a refund, the Company shall

advance the amount of such payment to the Executive, on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 9(c)) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

(e) Notwithstanding the foregoing, (i) each Gross-Up Payment required to be made by the Company to the Executive hereunder and each repayment of a Gross-Up Payment required to be made by the Executive to the Company hereunder shall be paid no later than the end of the calendar year next following the calendar year in which Executive remits the corresponding taxes to the Internal Revenue Service, (ii) each reimbursement of expenses related to a tax contest addressing the existence or amount of a tax liability required to be made by the Company to the Executive hereunder and each repayment of such a reimbursement required to be made by the Executive to the Company hereunder shall be paid no later than the end of the calendar year next following the calendar year in which the Executive remits to the Internal Revenue Service the taxes that are the subject of the contest or, where as a result of the contest no taxes are due or are remitted but other reimbursable costs and/or expenses have been incurred, the end of the calendar year following the calendar year in which the contest is completed or there is a final and nonappealable settlement or other resolution of the contest; and (iii) in the event the Executive is a "specified employee" on the Executive's Date of Termination (as determined by the Company in accordance with rules established by the Company in writing in advance of the "specified employee identification date" that relates to the date of the Executive's "separation from service"), and to the extent that any portion of such Gross-Up Payments relates to compensation that was triggered by the Executive's "separation from service" and/or any portion of such reimbursements related to expenses that were triggered by the Executive's "separation from service," such portion of the Gross-Up Payments and/or such portion of the reimbursements, as applicable, shall be paid no earlier than the date that is six months after the date of such "separation from service" (if the Executive dies after the Executive's Date of Termination but before any such payments are made, the payments will be paid to the Executive's estate without regard to any six-month delay that otherwise applies to specified employees).

10. Code Section 409A. It is intended, and this Agreement will be so construed, that any amounts payable under this Agreement and the Company's and the Executive's exercise of authority or discretion hereunder shall either be exempt from or comply with the provisions of Section 409A of the Code and the treasury regulations relating thereto so as not to subject the Executive to the payment of interest and/or any tax penalty that may be imposed under Section 409A of the Code. Executive acknowledges and agrees that the Company has made no representation to Executive as to the tax treatment of the compensation and benefits provided pursuant to this Agreement and that Executive is solely responsible for all taxes due with respect to such compensation and benefits.

11. Confidential Information. The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 11 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

12. Successors. (a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

13. Miscellaneous. (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

Daisy Vanderlinde

If to the Company:

Office Depot, Inc.  
2200 Old Germantown Road  
Delray Beach, Florida 33445  
Attention: Chief Executive Officer

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitations the right of the Executive to terminate employment for Good Reason pursuant to Section 5(c)(i)-(v) of this Agreement, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company is “at will” and, subject to Section 1(a) hereof, prior to the Effective Date, the Executive’s employment and/or this Agreement may be terminated by either the Executive or the Company at any time prior to the Effective Date, in which case the Executive shall have no further rights under this Agreement. From and after the Effective Date this Agreement shall supersede any other agreement between the parties with respect to the subject matter hereof.

\* \* \* \* \*

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Board of Directors, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ Daisy Vanderlinde

Executive: Daisy Vanderlinde

Date: February 25, 2008

OFFICE DEPOT, INC.

By: /s/ Steve Odland

Its: Chief Executive Officer

**SEPARATION AGREEMENT, RELEASE OF ALL CLAIMS  
AND COVENANT NOT TO SUE**

This Separation Agreement, Release Of All Claims and Covenant Not To Sue (the "Agreement") between Patricia A. McKay (hereinafter referred to as "Executive," a term which includes the successors, assigns, beneficiaries, personal representatives, and heirs of Patricia A. McKay) and Office Depot, Inc. (hereinafter referred to as "Office Depot" or "Company," terms which include each and every officer, director, employee, agent, parent corporation or subsidiary, affiliate or division, its successors, assigns, beneficiaries, servants, legal representatives, insures and heirs) was presented to Executive on February 20, 2008.

WHEREAS Executive's last day of employment is March 1, 2008 (the "End Date");

WHEREAS Executive is entitled to any unpaid wages that she has earned through her last day of employment and payment for any accrued unused vacation time;

WHEREAS Executive is entitled to any vested benefits in her 401(k) account and deferred compensation plan, regardless of whether she signs this Agreement;

WHEREAS Executive may apply for COBRA coverage provided by law, at her expense, regardless of whether she signs this Agreement;

FOR AND IN CONSIDERATION of the foregoing, and other good and valuable consideration as set forth below, the Parties agree as follows:

1. Severance Benefits. Office Depot agrees to pay Executive the following: (a) \$840,000, which equates to 18 months of Executive's annual base salary; (b) \$19,453.74, which equates to 18 months of the current monthly COBRA premium in excess of applicable active employee co-premiums for the type of coverage Executive had under the Company's group health plan as of the End Date; and (c) \$588,000, which equates 1.5 times Executive's annual bonus at target. In addition, Office Depot agrees to pay Executive \$482,484.60. The foregoing amounts shall be paid in equal installments during normal pay periods over a 24-month period, less applicable taxes and other deductions required by law. These payments shall commence during the first pay period following the thirty (30) day anniversary of the End Date, provided Executive has executed this Agreement and has not exercised her right of revocation as set forth herein. Executive acknowledges that the severance benefits set forth in this Section 1 are conditional upon her execution and non-revocation of this Agreement, and Executive's adherence to her post-employment obligations contained herein, including, without limitation, the obligations set forth in Sections 7 and 8.
2. Release of Claims and Covenant Not to Sue. Executive agrees to release and forever discharge Office Depot and its officers and directors from any and all claims, demands, actions, and causes of action, and all liability whatsoever, whether known or unknown, fixed or contingent, which Executive has or may have against Office Depot or its officers and directors as a result of her employment by and subsequent separation as an employee of Office Depot, up to the date of the execution of this Agreement and general release contained herein. This release includes but is not limited to claims at law or equity or

sounding in contract (express or implied), common law or tort arising under federal, state or local laws, including, but not limited to, those laws prohibiting age, sex, race, disability, veteran, national origin or any other forms of discrimination. This further includes but is not limited to any and all claims arising under the Florida Civil Rights Act of 1992, the Florida or Federal whistle blower statutes, the Florida Wage Discrimination Law, the Florida Equal Pay Act, the Florida AIDS Act, the Florida Discrimination on the Basis of Sickle Cell Trait Law, the Florida OSHA Law, the Florida Wage Payments Laws, Florida's statutory provisions regarding retaliation/discrimination for filing a workers' compensation claim, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, Sections 1981 through 1988 of Title 42 of the United States Code, as amended, the Worker Adjustment and Retraining Notification Act, the Sarbanes-Oxley Act of 2002, Section 409A of the Internal Revenue Code of 1986, as amended, or the Employee Retirement Income Security Act of 1974, as amended (ERISA), or claims growing out of any legal restrictions on Office Depot's right to terminate its employees.

Executive further covenants not to sue Office Depot for any claims released pursuant to this Agreement. Executive affirms that she has not filed, caused to be filed, or presently is a party to any claim, complaint, or action against Office Depot in any forum or form. Executive understands that nothing in this Agreement releases Office Depot from Worker's Compensation or disability benefits, if any, to which Executive may be entitled in connection with her employment with Office Depot.

3. Equity Awards.

- a. Stock options. In accordance with the terms of the applicable agreements and the respective plans, Executive acknowledges that all of her stock options that are exercisable as of her End Date shall remain exercisable for, and shall otherwise terminate at the end of 18 months following her End Date, but in no event later than the expiration date of the options. Further, Executive acknowledges that all of her stock options that are not exercisable on her End Date shall be forfeited as of such date. Executive understands and agrees that she will not receive any future stock option grants.
- b. Restricted Stock Awards. In accordance with the terms and conditions of the existing restricted stock award agreements between Office Depot and Executive, Executive acknowledges that any and all unvested restricted stock awards as of the End Date shall be automatically forfeited entirely as of that date, without any further action by Office Depot.

4. Corporate American Express Charges. Executive agrees to provide Office Depot with receipts for any and all expenses charged to her Corporate American Express Card that are pending or unpaid, within 5 (five) business days after her End Date. Executive further agrees to have Office Depot deduct any and all amounts owing on her Corporate American Express Card for personal expenses from her severance payment, under this Agreement.

5. No Admission of Liability. Executive and Office Depot acknowledge that this Agreement shall not in any way be construed as an admission by Executive or Office Depot of any unlawful or wrongful acts whatsoever against each other or any other person, and Executive and Office Depot specifically disclaims any liability to or wrongful acts against each other or any other person.



6. Waiver. Except as provided herein, Executive expressly waives and releases any right to reinstatement by Office Depot and agrees not to seek or accept employment with Office Depot in the future, unless such new employment is expressly and mutually agreed to by Office Depot and Executive, in writing.
7. Confidentiality, Non-Disparagement, Cooperation. Executive acknowledges and agrees that the terms and provisions of this Agreement, as well as any and all incidents of which Executive is aware leading to or resulting from this Agreement, are confidential and shall not be discussed with any individual without the prior written consent of Office Depot's EVP, Human Resources, except as this Agreement shall not prohibit Executive from required confidential disclosures to her attorney, accountant, or to any governmental taxing or regulatory authority, or discussing the matter with her immediate family on a need to know basis or as otherwise required by law.

Executive agrees that all documents, records, techniques, business secrets and other information that have come into her possession from time to time during her affiliation with Office Depot are deemed to be confidential and proprietary to Office Depot and shall be its sole and exclusive property. Executive agrees to keep confidential and not use or divulge to any other individual or harm or destroy any of Office Depot's confidential information and business secrets, except as required by law, and that she will promptly return to Office Depot any and all confidential and proprietary information, as well as any and all Office Depot property and equipment, that is in her possession or under her control.

Executive agrees not to disclose any information, communication, records or any other material that is considered to be Office Depot's attorney work-product, or are subject to Office Depot's attorney-client communication privilege, without prior approval from Office Depot's General Counsel or any designee of the General Counsel.

Executive further agrees not to make any remarks disparaging the conduct or character of Office Depot, dealing in any manner with her tenure as an executive with Office Depot. Should Executive violate this provision, she shall be subject to losing any and all benefits afforded to her under this Agreement.

Executive will provide her full and truthful testimony, cooperation and assistance in any litigation, investigations, or administrative proceeding involving any matters with which she was involved during her employment with Office Depot. Executive does not by this Agreement waive any right to claim attorney-client privilege or spousal privilege, nor is her assertion of such rights or her counsel's assertion of the attorney work-product doctrine a breach of this agreement. Executive is not authorized to waive any of Office Depot's rights or privileges. Nothing in this Agreement shall limit any disclosures or information provided by Executive to governmental authorities upon request or required by law. Requests by Office Depot for Executive's cooperation shall reasonably take into consideration Executive's schedule. Office Depot will reimburse Executive for reasonable travel expenses and other reasonable expenses and costs with the prior written approval of the Board of Directors, EVP, Human Resources or EVP, General Counsel of Office Depot, which are to be incurred in providing such assistance.

8. Post-Employment Obligations. Executive understands and agrees that, with the exception of Attachment A to Executive's employment offer letter dated August 25, 2005, entitled Employee Non-Competition, Confidentiality and Non-Solicitation Agreement (the "Non-Competition Agreement"), and except as provided herein, this Agreement supersedes all prior agreements and understandings between Executive and Office Depot. A copy of said Non-Competition Agreement, which Executive acknowledges was executed by her on August 25, 2005, is attached hereto as Exhibit A and incorporated herein by reference. Executive expressly acknowledges that the terms of the Non-Competition Agreement remain in full force and effect. To the extent that there is any conflict between the terms of the Non-Competition Agreement and this Agreement, the terms of the Agreement shall control. The terms set forth in this Section 8 are material terms of this Agreement and are essential to protect Office Depot's legitimate interests and relationships. Executive agrees that a breach of any of these terms would cause irreparable harm to Office Depot, and that Office Depot may seek immediate injunctive relief in a court of law to enforce the terms of this Agreement and the Non-Competition Agreement.
9. Indemnification. Nothing herein shall be construed to waive or disclaim any indemnification rights to which Executive may be entitled under Office Depot's By-Laws, nor is this Agreement intended to release, waive or disclaim any rights that either Office Depot or Executive may have under an applicable insurance policy.
10. Time to Consider, Right of Revocation. Executive understands and acknowledges that she has twenty-one (21) calendar days to review and consider the provisions of this Agreement, and agrees that any modifications, material or immaterial, made to this Agreement do not restart the running of the twenty-one (21) day period. Executive further understands that she has seven (7) calendar days following her execution of this Agreement to revoke her acceptance of this Agreement (the "Revocation Period") and that this Agreement shall not become effective or enforceable until the Revocation Period has expired. Revocation of this Agreement must be made by delivering a written notice of revocation to the EVP, Human Resources, or the EVP, General Counsel. For this revocation to be effective, written notice must be received by said person at Office Depot no later than the close of business on the seventh day after Executive signs this Agreement. Executive understands and acknowledges that no monies will be paid to her pursuant to Section 1 of this Agreement until the Revocation Period has expired, or as otherwise provided in this Agreement.
11. Attorneys' Fees. In the event that Executive or Office Depot commence an action for damages, injunctive relief, or to enforce the provisions of the Agreement, the prevailing party in any such action shall be entitled to an award of its reasonable attorneys' fees and costs, including appellate fees and costs, incurred in connection therewith as determined by the court in any such action.
12. Entire Agreement, Material Terms. Except as provided herein, Executive understands and agrees that this Agreement supersedes all prior agreements and understandings between Executive and Office Depot. Except as provided herein, Executive understands and agrees that this Agreement constitutes the entire agreement and understanding between Office Depot and Executive with respect to Executive's employment and separation of employment, that no other promises have been made to Executive, and that Executive has not relied upon any representation or statement, written or oral, not set forth in this Agreement. This Agreement may not be modified, amended or revoked except in writing signed by each party. Executive acknowledges that the obligations of Executive hereunder are material to the terms and conditions hereunder.

13. Miscellaneous. This Agreement shall be governed in all respects by the laws of the State of Florida. Venue in any action arising out of or relating to this Agreement shall be in Palm Beach County, Florida. This Agreement shall not be construed against either party by virtue of the drafting hereof by the Company. If any part of the Agreement should be declared invalid, illegal or unenforceable, the rest of the Agreement will still be valid and enforceable.

**I CERTIFY THAT I HAVE FULLY READ, HAVE RECEIVED AN EXPLANATION OF, AND COMPLETELY UNDERSTAND THE PROVISIONS OF THIS AGREEMENT, THAT OFFICE DEPOT HEREBY ADVISES ME TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS AGREEMENT, THAT I HAVE BEEN GIVEN AT LEAST TWENTY-ONE (21) CALENDAR DAYS TO REVIEW AND CONSIDER THE PROVISIONS OF THIS AGREEMENT, AND THAT I AM SIGNING THIS AGREEMENT FREELY AND VOLUNTARILY, WITHOUT DURESS, COERCION OR UNDUE INFLUENCE.**

Executive

Office Depot, Inc.

/s/ Patricia A. McKay

Patricia A. McKay

/s/ Elisa D. Garcia C.

Elisa D. Garcia C., EVP, General Counsel

Date: February 26, 2008

Date: February 26, 2008

**Rule 13a-14(a)/15d-14(a) Certification**

I, Steve Odland, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Office Depot, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's independent registered public accounting firm and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 29, 2008

/s/ Steve Odland

Steve Odland

Chief Executive Officer and Chairman, Board of Directors

**Rule 13a-14(a)/15d-14(a) Certification**

I, Charles E. Brown, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Office Depot, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's independent registered public accounting firm and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 29, 2008

/s/ Charles E. Brown

Charles E. Brown

President, International and Acting Chief Financial Officer

Office Depot, Inc.

**Certification of CEO and CFO Pursuant to  
18 U.S.C. Section 1350, as Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report on Form 10-Q of Office Depot, Inc. (the "Company") for the quarterly period ended March 29, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Steve Odland, as Chief Executive Officer of the Company, and Charles E. Brown, as Acting Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to each officer's knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Steve Odland

Name: Steve Odland  
Title: Chief Executive Officer  
Date: April 29, 2008

/s/ Charles E. Brown

Name: Charles E. Brown  
Title: Acting Chief Financial Officer  
Date: April 29, 2008

A signed original of this written statement required by Section 1350 of Title 18 of the United States Code has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished as an exhibit to the Report pursuant to Item 601(b)(32) of Regulation S-K and Section 1350 of Title 18 of the United States Code and, accordingly, is not being filed with the Securities and Exchange Commission as part of the Report and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Report, irrespective of any general incorporation language contained in such filing).