
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (date of earliest event reported): February 17, 2010

Commission file number 1-10948

OFFICE DEPOT, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

**6600 North Military Trail
Boca Raton, FL**
(Address of principal executive offices)

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

33496
(Zip Code)

(561) 438-4800
(Registrant's telephone number, including area code)

Former name or former address, if changed since last report:
None

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On February 19, 2010, Office Depot, Inc. (the “Company”) entered into an amended and restated employment agreement (the “Amended Employment Agreement”) with Steve Odland, the Company’s Chairman and Chief Executive Officer, which amends certain provisions related to severance and change of control arrangements and eliminates tax gross-up benefits contained in the employment agreement originally dated March 11, 2005, as amended February 28, 2008, between the Company and Mr. Odland (the “Previous Employment Agreement”). The Amended Employment Agreement also provides for the payment of a cash retention award to Mr. Odland subject to certain conditions. The Amended Employment Agreement became effective on February 19, 2010 for a term ending on March 11, 2011, and shall automatically renew for an additional one year period on each successive March 11 unless the Company or Mr. Odland provides 90 days prior written notice that the term of employment shall not be extended.

Pursuant to the terms of the Previous Employment Agreement, Mr. Odland would have been entitled to enhanced severance benefits upon a termination of employment by the Company without “cause” or by his resignation with “good reason” (as defined in the Previous Employment Agreement) after the approval by the Company’s shareholders on October 14, 2009 of the convertibility to common shares of the Company’s convertible preferred stock held by BC Partners (the “Equity Purchase”). Under the terms of the Previous Employment Agreement, “good reason” included Mr. Odland’s ability to terminate his employment for any reason during the 30-day period immediately preceding the first anniversary of the effective date of the Equity Purchase. The Amended Employment Agreement, among other things, eliminates that ability to terminate his employment for any reason to receive these benefits as a result of the Equity Purchase.

The Amended Employment Agreement also provides that in the event of a termination by the Company without cause or a termination for good reason, regardless of the timing of a “change of control,” Mr. Odland shall receive (i) a cash severance payment equal to the greater of (x) two times the sum of his base salary and target bonus or (y) \$5.2 million, paid in a lump sum; (ii) a lump sum payment of 24 times the Company’s monthly COBRA and other welfare benefit plan premiums for the type of coverage in effect for him on the date of termination, provided, however, in the event of a termination within three years of a future change of control, the payment shall be for 36 times the Company’s monthly COBRA and other welfare benefit plan premiums for the type of coverage in effect for him on the date of termination; (iii) a pro rata portion of his annual bonus, based on the Company’s actual performance for such fiscal year; and (iv) immediate, full vesting of all outstanding restricted stock vesting on a time-basis, stock options and all other long-term equity or other long-term incentive awards vesting on a time-basis held by him. All outstanding stock options held by Mr. Odland shall remain exercisable until the earlier of 24 months following the effective date of such termination and the expiration of the option term.

In addition, the Amended Employment Agreement provides for the payment of a retention award of \$5 million, subject to vesting in three equal installments over the period beginning on the effective date of the Amended Employment Agreement and ending September 14, 2012 subject to Mr. Odland’s continued employment through the vesting dates. The retention award will be paid to Mr. Odland in cash, to the extent vested, upon his termination of employment, subject to applicable tax regulations regarding deferred compensation. In addition, the retention award shall be subject to accelerated vesting upon Mr. Odland’s termination by the Company without cause, voluntary termination for good reason or termination due to death or disability, as these terms are defined in the Amended Employment Agreement.

The Amended Employment Agreement also amends the definition of “change of control” generally to conform to the Company’s 2007 Long-Term Incentive Plan and includes, among other triggers, the acquisition by any person or group other than an exempt person as defined in the Amended Employment Agreement of (i) 20% or more of the combined voting power of the Company’s then outstanding securities without the prior approval of the Company’s Board of Directors, or (ii) more than 50% of the combined voting power of the Company’s then outstanding securities, whether or not the Company’s Board of Directors has first given its approval. However, in order for Mr. Odland to terminate his employment for any reason, constituting “good reason,” during the 30-day period immediately preceding the first anniversary of the effective date of a change of control, the acquisition outlined in subpart (i) above must be of 30% or more of the combined voting power of the Company’s then outstanding securities. Any sale by BC Partners of its equity interest in the Company, other than a sale with other stockholders, will be disregarded for purposes of the change of control definition.

In addition, in lieu of a tax gross-up (as was provided under the Previous Employment Agreement), in the event that part or all of the consideration, compensation and benefits to be paid to Mr. Odland pursuant to the Amended Employment Agreement together with the aggregate present value of payments, consideration, compensation and benefits under all other plans, arrangements and agreements applicable to Mr. Odland would constitute "excess parachute payments" under Section 280G(b) of the Internal Revenue Code of 1986, as amended (the "Code") and are subject to an excise tax under Section 4999 of the Code (collectively, the "Parachute Amount"), then the amount of excess parachute payments payable under the Amended Employment Agreement will be reduced if the reduction would result in a greater after-tax amount for Mr. Odland than would occur in such circumstances had he paid the excise tax. If such Parachute Amount is reduced, the reduction in payments shall first be applied to reduce any cash severance payments and then to reduce other payments and benefits without subjecting Mr. Odland to additional taxation under Section 409A of the Code. The Amended Employment Agreement also eliminates Mr. Odland's right to a gross-up for additional taxes that could become payable pursuant to Section 409A of the Code that was included in the Previous Employment Agreement.

In connection with the negotiations related to the Amended Employment Agreement, the Company has agreed to reimburse Mr. Odland up to \$30,000 of legal fees incurred in 2010. Mr. Odland's annual reimbursement by the Company for future amendments to the Amended Employment Agreement will continue to be limited to \$20,000 per calendar year. However, such reimbursement for legal fees will no longer include a tax gross up to the extent that these payments are reported as taxable income pursuant to the terms of the Amended Employment Agreement.

The foregoing description contained herein is qualified in its entirety by the text of the Amended Employment Agreement, a copy of which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On and effective February 17, 2010, the Board of Directors of the Company, acting upon the recommendation of its Corporate Governance and Nominating Committee, amended and restated the Company's bylaws to permit stockholders of record of at least twenty-five percent (25%) of the outstanding common stock of the Company entitled to vote on matters brought before a stockholder meeting to call a special meeting of stockholders upon written request to the Secretary. The Company's bylaws previously did not allow stockholders to call a special meeting.

The foregoing description contained herein is qualified in its entirety by the text of the amended and restated bylaws, a copy of which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
3.1	Amended and Restated Bylaws of Office Depot, Inc., effective February 17, 2010
10.1	Amended and Restated Employment Agreement dated February 19, 2010, between Office Depot, Inc. and Steve Odland

SIGNATURE

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.

Date: February 22, 2010

By: /s/ Elisa D. Garcia C.
Elisa D. Garcia C.
Executive Vice President, General Counsel & Corporate Secretary

Exhibit Index

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**AMENDED AND RESTATED BYLAWS
OF
OFFICE DEPOT, INC.
A DELAWARE CORPORATION**

**ARTICLE I
OFFICES**

Section 1. Registered Office. The registered office of the corporation shall be located at the corporation's principal place of business in the State of Delaware or at the office of the person or entity then acting as the corporation's registered agent in Delaware. The registered office and/or registered agent of the corporation may be changed from time to time by resolution of the Board of Directors.

Section 2. Other Offices. The corporation may also have offices at such other places as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE II
STOCKHOLDERS**

Section 1. Annual Meeting. The annual meeting of stockholders for the election of directors and the conduct of such other business as may properly come before the meeting in accordance with these Bylaws shall be held at such place and time on such day, other than a legal holiday, as the Chief Executive Officer of the corporation in each such year determines; provided, that if the Chief Executive Officer does not act, the Board of Directors shall determine the place, time and date of such meeting.

Section 2. Special Meetings. Special meetings of stockholders may be called for any purpose and may be held at such time and place as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting.

(a) A special meeting of stockholders may be called at any time by the Chief Executive Officer or, if directed by resolution of the Board of Directors, the Secretary.

(b) A special meeting of stockholders shall be called by the Secretary at the written request (a "Special Meeting Request") of holders of record of at least 25% of the outstanding common stock of the corporation entitled to vote on the matter or matters to be brought before the proposed special meeting (the "Requisite Percentage"). A Special Meeting Request to the Secretary shall be signed by each stockholder requesting the special meeting (each, a "Requesting Stockholder") and shall be accompanied by a notice setting forth the information required by Section 14(a)(2)(A)-(D), as if such Section were applicable to Special Meeting Requests. Requesting Stockholders who collectively hold at least the Requisite Percentage on the date the Special Meeting Request is submitted to the Secretary must (i) continue to hold at least the number of shares of common stock set forth in the Special Meeting Request with respect to each such Requesting Stockholder through the date of the special meeting and (ii) submit a written certification (an "Ownership Certification") confirming the continuation of such holdings on the business day immediately preceding the special meeting, which Ownership Certification shall include the information required by Section 14(a)(2)(A) as of the date of such special meeting with respect to each such Requesting Stockholder.

(c) A special meeting called pursuant to Section 2(a) or Section 2(b) shall be held at such date, time and place as may be fixed by the Board of Directors in accordance with these Bylaws; provided, however, that the date of any special meeting called pursuant to Section 2(b) shall not be more than 90 days after a Special Meeting Request that satisfies the requirements of this Section 2 is received by the Secretary. The day, place and hour of such special meeting shall be set forth in the notice of special meeting. If a valid Special Meeting Request is received by the Secretary subsequent to a valid Special Meeting Request and before the date of the corresponding special meeting of shareholders, all items of business contained in such Special Meeting Requests may be presented at one special meeting.

(d) Notwithstanding the foregoing provisions of this Section 2, a special meeting requested by stockholders pursuant to Section 2(b) shall not be held if (i) the Special Meeting Request does not comply with this Section 2; (ii) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law; (iii) the Special Meeting Request is received by the Corporation during the period commencing 90 days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (iv) an annual or special meeting of stockholders that included a substantially similar item of business (“Similar Business”) (as determined in good faith by the Board of Directors) was held not more than 120 days before the Special Meeting Request was received by the Secretary; (v) the Board of Directors has called or calls for an annual or special meeting of stockholders to be held within 90 days after the Special Meeting Request is received by the Secretary and the Board of Directors determines in good faith that the business to be conducted at such meeting includes the Similar Business; (vi) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934, as amended, or other applicable law; or (vii) two or more special meetings of stockholders called pursuant to the request of stockholders have been held within the 12-month period before the Special Meeting Request was received by the Secretary. For purposes of this Section 2(d), the nomination, election or removal of directors shall be deemed to be Similar Business with respect to all items of business involving the nomination, election or removal of directors, changing the size of the Board of Directors and filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors.

(e) Any Requesting Stockholder may revoke such stockholder’s participation in a Special Meeting Request at any time by written revocation delivered to the Secretary and if, following any such revocation, there are outstanding un-revoked requests from stockholders holding less than the Requisite Percentage in accordance with this Section 2, the Board of Directors may, in its discretion, cancel the special meeting. If none of the Requesting Stockholders appears or sends a duly authorized agent to present the business to be presented for consideration that was specified in the Special Meeting Request, or if the Ownership Certification does not satisfy the requirements set forth in Section 2(b), the Corporation need not present such business for a vote at such special meeting.

(f) Business conducted at a special meeting requested by stockholders pursuant to Section 2(b) shall be limited to the matters described in the applicable Special Meeting Request; provided that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any such special meeting requested by stockholders.

Section 3. Place of Meetings. Annual and special meetings may be held at such place as the Board of Directors may determine. If no designation is made, the place of meeting shall be the principal executive office of the corporation.

Section 4. Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting. All such notices shall be delivered, either (a) personally or by mail, by or at the direction of the Chief Executive Officer or the Secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation or (b) by a form of electronic transmission, including electronic mail, in the manner provided in and to the extent permitted by the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”). Nothing in the Bylaws shall preclude the stockholders from waiving notice as provided in Article IV hereof. Any previously scheduled annual meeting of the stockholders may be postponed, and any previously scheduled special meeting of the stockholders may be postponed or cancelled, by resolution of the Board of Directors upon public notice given prior to the time previously scheduled for such meeting of stockholders.

Section 5. Fixing a Record Date for Stockholder Meetings. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of any such meeting. Only stockholders as of the record date are entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment or postponement of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned or postponement meeting.

Section 6. Quorum. The holders of a majority of the issued and outstanding shares of common stock of the corporation entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders. If a quorum is not present, the Chairman of the meeting or the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote at the meeting may adjourn the meeting to another time and/or place from time to time. When a quorum is once present to commence a meeting of stockholders, it shall not be broken by the subsequent withdrawal of the stockholders or their proxies.

Section 7. Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At any such adjourned meeting at which a quorum shall be present or represented, the corporation may transact any business which might have been transacted at the original meeting. Notwithstanding the foregoing, if the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given as provided in Section 4 of Article II hereof, but such notice may be waived as provided in Article IV hereof.

Section 8. Voting by Stockholders on Matters Other Than the Election of Directors. With respect to any matters as to which no other voting requirement is specified by the Delaware General Corporation Law, the certificate of incorporation of the corporation (the "Certificate of Incorporation") or these Bylaws, the affirmative vote required for stockholder action shall be that of a majority of the shares present in person or represented by proxy (as counted for purposes of determining the existence of a quorum) and entitled to vote at a meeting of stockholders at which a quorum is present. In the case of a matter submitted for a vote of the stockholders as to which a stockholder approval requirement is applicable under the stockholder approval policy of the New York Stock Exchange, the requirements of Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or any provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Code Section 162(m), in each case for which no higher voting requirement is specified by the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws, the vote required for approval shall be the requisite vote specified in such stockholder approval policy, Rule 16b-3 or such Code provision, as the case may be (or the highest such requirement if more than one is applicable). For the approval of the appointment of independent public accountants (if submitted for a vote of the stockholders), the vote required for approval shall be a majority of the votes cast on the matter.

Section 9. Voting by Stockholders in the Election of Directors. Each director to be elected by the stockholders shall be elected by a majority of the votes cast at any meeting held for the purpose of the election of directors at which a quorum is present, subject to the following provisions:

(a) Resignation of Incumbent Director Who Fails to Receive a Majority Vote: In any non-contested election of directors, any director nominee who is an incumbent director who receives a greater number of votes “withheld” from his or her election (or “against” or “no” votes) than votes “for” such election shall immediately tender his or her resignation to the Board of Directors, which resignation shall be irrevocable. Thereafter, the Board of Directors shall decide, through a process managed by the Corporate Governance and Nominating Committee (and excluding the nominee in question from all Board of Directors and Committee deliberations), whether to accept such resignation within 90 days of the date of such resignation. Absent a compelling reason for the director to remain on the Board of Directors (as determined by the Board of Directors), the Board of Directors shall accept the resignation from the director. To the extent that the Board of Directors determines that there is a compelling reason for the director to remain on the Board of Directors and does not accept the resignation, the Board of Directors’ explanation of its decision shall be disclosed promptly in a Current Report on Form 8-K filed with the United States Securities and Exchange Commission or in a press release that is widely disseminated.

(b) Definition of “Compelling Reason”: For purposes of this policy, a “compelling reason” shall be determined by the Board of Directors (excluding the nominee in question from all Board of Directors and Committee deliberations) and could include, by way of example and without limitation, situations in which a director nominee was the target of a “vote no” or “withhold” campaign on what the Board of Directors believes to be an illegitimate or inappropriate basis or if the resignation would cause the corporation to be in violation of its constituent documents or regulatory requirements.

(c) Consequences of the Board of Directors’ Acceptance or Non-Acceptance of a Director’s Resignation: If such incumbent director’s resignation is accepted by the Board of Directors, then such director shall immediately cease to be a member of the Board of Directors upon the date of action taken by the Board of Directors to accept such resignation. If such incumbent director’s resignation is not accepted by the Board of Directors, such director will continue to serve until the next annual meeting, or until his or her subsequent resignation or removal.

(d) Failure of a Non-Incumbent Director to Win Election: If any nominee for director who is not an incumbent fails in a non-contested election to receive a majority vote for his or her election at any meeting for the purpose of the election of directors at which a quorum is present, such candidate shall not be elected and shall not take office.

(e) Filling Vacancies: If an incumbent director’s resignation is accepted by the Board of Directors pursuant to this Bylaw, or if a non-incumbent nominee for director is not elected, the Board of Directors, may fill any resulting vacancy pursuant to the provisions of Article III, Section 4 of these Bylaws, or may decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 2 of these Bylaws.

(f) Nominees to Agree in Writing to Abide by this Bylaw: To be eligible for election as a director of the corporation, each nominee (including incumbent directors and nominees proposed by stockholders in accordance with Article II, Section 14 of these Bylaws) must agree in writing in advance to comply with the requirements of this Section 9 of Article II of these Bylaws.

(g) Majority Vote Defined: For purposes of this Bylaw, a majority of votes cast shall mean that the number of shares voted “for” a director’s election exceeds 50% of the total number of votes cast with respect to that director’s election. Votes “cast” shall include votes to withhold authority and votes “against” and “no” votes but shall exclude abstentions with respect to a director’s election or with respect to the election of directors in general.

(h) Vote Standard in Contested Elections: Notwithstanding anything to the contrary contained in this Article II, Section 9 of the Bylaws, in the event of a contested election, directors shall be elected by the vote of a plurality of the votes cast at any meeting for the election of directors at which a quorum is present. For purposes of this Bylaw, a contested election shall mean any election of directors in which the number of candidates for election as directors exceeds the number of directors to be elected, with the determination thereof being made by the Secretary (i) as of the close of the applicable notice of nomination period set forth in Article II, Section 14 of the Bylaws based on whether one or more notice(s) of nomination were timely filed in accordance with said Bylaws or (ii) if later, reasonably promptly following the determination by any court or other tribunal of competent jurisdiction that one or more notice(s) of nomination were timely filed in accordance with said Bylaws; provided that the determination that an election is a contested election by the Secretary pursuant to clause (i) or (ii) shall be determinative only as to the timeliness of a notice of nomination and not otherwise as to its validity. If, prior to the time the corporation mails its initial proxy statement in connection with such election of directors, one or more notices of nomination are withdrawn (or declared invalid or untimely by any court or other tribunal of competent jurisdiction) such that the number of candidates for election as director no longer exceeds the number of directors to be elected, the election shall not be considered a contested election, but in all other cases, once an election is determined to be a contested election, directors shall be elected by the vote of a plurality of the votes cast.

Section 10. Voting Rights. Except as otherwise provided by the Delaware General Corporation Law or by the Certificate of Incorporation and subject to Article VII, Section 3 of the Bylaws, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of common stock held by such stockholder.

Section 11. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy specifically provides for a longer period. Each proxy shall be in writing executed by the stockholder giving the proxy or by his duly authorized attorney. Unless and until voted, every proxy shall be revocable at the pleasure of the person who executed it, or his legal representatives or assigns except in those cases where an irrevocable proxy permitted by statute has been given. Any proxy is suspended when the person executing the proxy is present at a meeting of stockholders and elects to vote, except that when such proxy is coupled with an interest sufficient in law to support an irrevocable power and the fact of the interest appears on the face of the proxy, the agent named in the proxy shall have all voting and other rights referred to in the proxy, notwithstanding the presence of the person executing the proxy. At each meeting of the stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the Secretary or a person designated by the Secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

Section 12. Action by Written Consent.

(a) General. Any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the State of Delaware, or the corporation's principal place of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested, provided, however, that no consent or consents delivered by certified or registered mail shall be deemed delivered until received at the registered office. All consents properly delivered in accordance with this Section shall be deemed to be recorded when so delivered. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting of stockholders.

(b) Inspectors of Written Consent. In the event of the delivery, in the manner provided by Section 12(a) of this Bylaw, to the corporation of the requisite written consent or consents to take corporate action and/or any related revocation or revocations, the corporation shall engage nationally recognized independent inspectors of elections for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspectors certify to the corporation that the consents delivered to the corporation in accordance with Section 12(a) of this Bylaw represent at least the minimum number of votes that would be necessary to take the corporate action. Nothing contained in this paragraph shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(c) Effectiveness of Action by Written Consent. No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered to the corporation as required by this section, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded.

(d) Notice of Action by Written Consent. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were recorded.

(e) Fixing a Record Date for Action by Written Consent. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Only stockholders as of the record date are entitled to consent to corporate action in writing without a meeting. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Bylaw). If no record date has been fixed by the Board of Directors, pursuant to this Bylaw or otherwise within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 13. Stock Records. The Secretary or agent having charge of the stock transfer books shall make, at least 10 days before each meeting or any adjournment thereof, arranged in alphabetical order and showing the address of and the number and class and series, if any, of shares held by each. For a period of 10 days prior to such meeting, such list shall be kept at the principal place of business of the corporation or at the office of the transfer agent or registrar of the corporation and such other places, if any, as required by statute and shall be subject to inspection by any stockholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder at any time during the meeting.

Section 14. Notice of Stockholder Nominations and Other Business.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the corporation's stockholders may be made at an annual meeting of stockholders (A) by or at the direction of the Board of Directors, including pursuant to the corporation's notice of meeting, or (B) by any stockholder of the corporation who (i) was a stockholder of record at the time of giving of notice provided for in this Bylaw and at the time of the annual meeting (including any adjournment or postponement thereof), (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures set forth in this Bylaw as to such business or nomination; this clause (B) shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the corporation's notice of meeting) before an annual meeting of stockholders.

(2) Without qualification, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 14(a)(1)(B) of this Bylaw, the stockholder must have given timely notice in writing to the Secretary and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the tenth day following the day on which public announcement of the date of such meeting is first made by the corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

To be in proper form, a stockholder's notice (whether given pursuant to this Section 14(a)(2) or Section (14)(b)) to the Secretary must:

(A) set forth, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, if any, (ii) (1) the class or series and number of shares of the corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (2) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the corporation or with a value derived in whole or in part from the value of any class or series of shares of the corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the corporation, (3) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the corporation, (4) any short interest in any security of the corporation (for purposes of this Bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (5) any rights to dividends on the shares of the corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the corporation, (6) any proportionate interest in shares of the corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (7) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date), and (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

(B) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the annual meeting, set forth (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, in such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(C) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(D) with respect to each nominee for election or reelection to the Board of Directors, include a completed and signed questionnaire, representation and agreement required by Article II, Section 15 of this Bylaws. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(3) Notwithstanding anything in the second sentence of Section 14(a)(2) of this Bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement by the corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (1) by or at the direction of the Board of Directors, including pursuant to the corporation's notice of meeting, (2) pursuant to Section 2, or (3) by any stockholder of the corporation who (i) is a stockholder of record at the time of giving of notice provided for in this Bylaw and at the time of the special meeting, (ii) is entitled to vote at the meeting (including any adjournment or postponement thereof), and (iii) complies with the notice procedures set forth in this Bylaw as to such nomination. In the event a special meeting of stockholders is called for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by Section 14(a)(2) of this Bylaw with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Section 14 of this Bylaw) shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the 120th day prior to the date of such special meeting and not later than the close of business on the later of the 90th day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Bylaw shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Bylaw. Except as otherwise provided by law, the Certificate of Incorporation or this Bylaw, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Bylaw and, if any proposed nomination or business is not in compliance with this Bylaw, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Bylaw, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw; provided, however, that any references in this Bylaw to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 14(a)(1)(B) or Section 14(b) of this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Certificate of Incorporation or this Bylaw.

Section 15. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the corporation, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under Article II, Section 14 of these Bylaws) to the Secretary at the principal executive offices of the corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be in the form provided by the corporation, and shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (a) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the corporation or (2) any Voting Commitment that could limit or interfere with such person’s ability to comply, if elected as a director of the corporation, with such person’s fiduciary duties under applicable law, (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein and (c) in such person’s individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the corporation.

Section 16. Fixing a Record Date for Other Purposes. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, the Board of Directors may fix a record date, which record date, shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. Only stockholders as of the record date are entitled to receive such payments, distributions or other allotments or exercise such rights or take such other lawful action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

ARTICLE III DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors.

Section 2. Number, Election and Term of Office. The number of directors which shall constitute the Board of Directors shall be established from time to time by a vote of a majority of the entire Board of Directors; provided, however, that the number of Directors shall not be reduced so as to shorten the term of any Director at the time in office except with respect to directors elected by the holders of one or more outstanding series of preferred stock of the corporation upon the expiration of a default period in the payment of dividends to preferred stockholders. The Board of Directors shall be elected at the annual meeting of the stockholders and each director elected shall hold office until the next annual meeting of stockholders or until a successor is duly elected and qualified or until his or her earlier resignation or removal as hereinafter provided.

Section 3. Removal and Resignation. Any director or the entire Board of Directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as otherwise provided by law. Any director may resign at any time upon written notice to the corporation. Such written resignation shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Chairman of the Board, Chief Executive Officer or the Secretary. Except as provided in Article II, Section 9(a) of the Bylaws, the acceptance of a resignation shall not be necessary to make it effective.

Section 4. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may only be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until the next annual meeting of stockholders or until a successor is duly elected and qualified or until his or her earlier resignation or removal as herein provided. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Each director chosen by any class or classes of stock or series thereof shall hold office until the next election of the class for which such directors have been chosen and until their successors shall be elected and qualified.

Section 5. Annual Meetings of Board of Directors. The annual meeting of each newly elected Board of Directors shall be held without other notice than this Bylaw as soon as practicable after the annual meeting of stockholders at such location as is convenient and established by the Chief Executive Officer.

Section 6. Other Meetings and Notice. Regular meetings, other than the annual meeting, of the Board of Directors may be held at such location as is convenient and without notice at such time and at such place as shall from time to time be determined by resolution of the Board of Directors. Special meetings of the Board of Directors may be called (i) by the Chairman of the Board or the Chief Executive Officer on at least 24 hours prior notice to each director, either personally, by telephone, by mail, by telegraph, by teletype or by e-mail or (ii) upon the request of at least three directors, by the Secretary on at least 72 hours' prior notice. If notice of less than three days is given, it shall be oral, whether by telephone or in person, or sent by special delivery mail, facsimile, telegraph or e-mail. If mailed, the notice shall be given when deposited in the United States mail, postage pre-paid. Nothing herein contained shall preclude the directors from waiving notice as provided in Article IV hereof.

Section 7. Chairman of the Board; Lead Director. The Chairman of the Board shall be appointed by resolution of the Board of Directors and shall preside at all meetings of the Board of Directors and stockholders. If the offices of the Chief Executive Officer and Chairman are not separate or if the Chairman is not considered by the Board to be an independent director, the independent directors will elect one of their number to serve as Lead Director. The Lead Director will chair meetings of independent directors, will facilitate communications between other members of the Board and the Chief Executive Officer and Chairman, and will assume other duties which the independent directors as a whole may designate from time to time.

Section 8. Quorum, Required Vote and Adjournment. A majority of the total number of directors shall constitute a quorum for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation or these Bylaws. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless otherwise provided by an applicable provision of law, by these Bylaws, by the Certificate of Incorporation or by a resolution of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. Emergency Management Committee. If as a result of a catastrophe or other emergency condition a quorum of any committee of the Board of Directors having power to act in the premises cannot readily be convened and a quorum of the Board of Directors cannot readily be convened, then all the powers and duties of the Board of Directors shall automatically vest and continue, until a quorum of the Board of Directors can be convened, in the Emergency Management Committee, which shall consist of all readily available members of the Board of Directors and two of whose members shall constitute a quorum. The Emergency Management Committee shall call a meeting of the Board of Directors as soon as circumstances permit for the purpose of filling any vacancies on the Board of Directors and its committees and taking such other action as may be appropriate.

Section 10. Other Committees of the Board. The corporation shall have an Audit Committee, consisting of at least three independent directors of the corporation, a Compensation Committee, consisting of at least two independent directors of the corporation who have never been employees or officers of the corporation, and a Corporate Governance and Nominating Committee, consisting of at least three independent directors. The Board of Directors may, by resolution passed by a majority of the whole Board, designate other committees, each committee to consist of two or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of a committee. Such committee or committees (including the members thereof) shall serve at the pleasure of the Board of Directors and have such name or names and have as many members as may be determined from time to time by resolution adopted by the Board of Directors. Any member of the Board of Directors may participate in the meetings of any such committee, subject to the approval of the chairman of such committee. The Board of Directors shall adopt a charter for each committee it designates (other than special committees), and each committee shall assess the adequacy of such charter annually and recommend any changes to the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 11. Limitations on Committee Powers. No committee of the Board, acting without concurrence of the full Board, shall have power or authority to:

- A. amend the Certificate of Incorporation or recommend the same to the stockholders;
- B. adopt an agreement of merger or consolidation or recommend the same to the stockholders;
- C. recommend to the stockholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets;
- D. recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution;
- E. amend or repeal these Bylaws;
- F. unless expressly so provided by resolution of the Board, (i) declare a dividend; or (ii) authorize the issuance of shares of the corporation of any class; and
- G. amend, alter, or repeal any resolution of the Board of Directors which, by its terms, provides that it shall not be amended, altered or repealed by any committee or, as applicable, a certain committee.

Section 12. Committee Rules. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. In the event that a member and that member's alternate, if alternates are designated by the Board of Directors as provided in Section 10 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

Section 13. Use of Communications Equipment in Conducting Meetings. Members of the Board of Directors or any committee thereof may participate in and act at any meeting of the Board of Directors or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute attendance and presence in person at the meeting of the person or persons so participating.

Section 14. Action Without a Meeting by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 15. Compensation. The Board of Directors shall have the authority to fix the compensation of directors by written resolution. Nothing herein shall be construed to preclude any director from serving the corporation in any other capacity as an officer, employee, agent or otherwise, and receiving compensation therefor.

Section 16. Books and Records. The Board of Directors shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the corporation.

ARTICLE IV WAIVER OF NOTICE

Whenever a notice is required to be given by any provision of law, by these Bylaws, or by the Certificate of Incorporation, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to such notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the sole and express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE V OFFICERS

Section 1. Number and Authority. The Board of Directors of the corporation shall from time to time elect from its membership a Chairman of the Board. The Chairman of the Board may also be the Chief Executive Officer or any other officer of the corporation. The officers of the corporation shall consist of at least the following: (1) a Chief Executive Officer, (2) a Chief Financial Officer, (3) a Secretary and (4) a Treasurer.

The Board of Directors may appoint such other officers and agents, including but not limited to, a President, a Chief Operating Officer, one or more Presidents of Divisions or Business Groups, one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers, as it shall at any time or from time to time deem necessary or advisable. Pursuant to Section 10 of this Article V, the Board of Directors hereby delegates to the Chief Executive Officer the right to appoint such Executive Vice Presidents (other than Executive Vice Presidents serving on the Executive Management Committee of the corporation) Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers and agents, as he or she shall deem appropriate and necessary from time to time. The Board shall elect all other officers.

Any number of offices may be held by the same person, except that neither the Chief Executive Officer nor any President shall also hold the office of either Treasurer or Secretary. All officers, as between themselves and the corporation, shall have such authority and perform such duties in the management of the business and affairs of the corporation as may be provided in these Bylaws, or, to the extent not so provided, as may be prescribed by the Board of Directors or by the Chief Executive Officer.

Section 2. Election and Term of Office. The officers of the corporation (other than those appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw) shall be elected at least once annually by the Board of Directors, and each such officer shall hold office until the next annual meeting of the Board of Directors or until a successor is duly elected and qualified or until his or her earlier resignation or removal as herein provided. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors (or by the Chief Executive Officer pursuant to Section 10 of this Bylaw).

Section 3. Removal. All officers and agents shall hold office at the pleasure of the Board of Directors, and any officer or agent elected or appointed by the Board of Directors (or appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw) may be removed at any time by the Board of Directors for cause or without cause at any regular or special meeting, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Officers and agents appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw may be removed at any time by the Chief Executive Officer for cause or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by resolution of the Board of Directors.

Section 5. Compensation. Compensation of all officers and agents (other than the Chief Executive Officer) shall be fixed by or in the manner prescribed by the Compensation Committee, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation. The compensation of the Chief Executive Officer shall be fixed by or in the manner prescribed by the Compensation Committee, but such compensation shall be subject to the approval of a majority of the independent directors of the Board of Directors.

Section 6. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the directors, or he or she may delegate such duties to the Lead Director or, if the offices of the Chief Executive Officer and Chairman are separate, the Chief Executive Officer. The Chairman shall perform such other duties as are required of him by the Board of Directors and shall have no other duties except such as are delegated to him by the Board.

Section 7. Chief Executive Officer. The Chief Executive Officer of the corporation shall have the general charge of the business and affairs of the corporation and shall oversee the management of the business of the corporation. In the absence of the Chairman, or if designated to do so by the Board of Directors, he or she shall preside at all meetings of the stockholders and of the directors and shall exercise the other powers and perform the other duties of the Chairman or designate the executive officers of the corporation by whom such other powers shall be exercised and other duties performed. He or she shall see to it that all resolutions and orders of the Board of Directors are carried into effect, and he or she shall have full power of delegation in so doing. He or she shall have such other powers and perform such other duties as the Board of Directors or these Bylaws may, from time to time, prescribe. The Chief Executive Officer shall have the power to execute any and all instruments and documents on behalf of the corporation and to delegate to any other officer of the corporation the power to execute any and all such instruments and documents.

Section 8. Secretary. The Secretary shall attend all meetings of the Board of Directors and its committees and all meetings of the stockholders and shall record all the proceedings of the meetings in a book or books to be kept for that purpose; he or she shall see that all notices required to be given by these Bylaws or by law are duly given in accordance with the provisions of these Bylaws or as required by law; he or she shall be the custodian of the records and of the corporate seal or seals of the corporation; he or she shall have authority to affix the corporate seal or seals to all documents, the execution of which, on behalf of the corporation, under its seal, is duly authorized, and when so affixed it may be attested by his signature; and in general, he or she shall perform all duties incident to the office of the Secretary of a corporation, and such other duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 9. Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the corporation and shall deposit, or cause to be deposited, all moneys and other valuable effects in the name and to the credit of the corporation in such banks, trust companies, or other depositories as shall from time to time be selected by the Board of Directors. He or she shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation; he or she shall render to the Chairman of the Board and to each member of the Board of Directors, whenever requested, an account of the Treasurer's actions and of the financial condition of the corporation. The Treasurer shall perform all of the duties incident to the office of the Treasurer of a corporation, and have such other powers and perform such other duties as the Board of Directors may, from time to time, prescribe. In the event the corporation shall fail to have a Treasurer at any time, then the duties of the Treasurer may be assumed and performed by the Chief Financial Officer and delegated by him to one or more assistant Treasurers.

Section 10. Other Officers, Assistant Officers and Agents. The Board of Directors may also elect or may delegate to the Chief Executive Officer the power to appoint such other officers, assistant officers and agents, as it may at any time or from time to time deem advisable, and any officers, assistant officers and agents so elected or appointed shall have such authority and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 11. Reservation of Authority. All other powers not expressly delegated or provided for herein, or in the Delaware General Corporation Law to any officer, are expressly reserved to the Board of Directors and may be delegated by it to any officer by resolution adopted from time to time by the Board of Directors.

ARTICLE VI INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

Section 1. Coverage. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative ("proceeding"), by reason of the fact that he or she is or was a director, officer of the corporation (which term shall include any predecessor corporation of the corporation) or is or was serving at the request of the corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust or other enterprise of any type or kind, domestic or foreign, including service with respect to employee benefit plans ("indemnitee"), whether the basis of such proceeding is an alleged action in an official capacity as a director, officer, employee, fiduciary or agent or in any other capacity while serving as a director, officer, employee, fiduciary or agent, shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement or other disposition) incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators. The right to indemnification conferred in this Bylaw shall be a contract right that vests at the time of such person's service to or at the request of the corporation and includes the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition, such advances to be paid by the corporation within 20 days after the receipt by the corporation of a statement or statements from the claimant requesting such advance or advances from time to time; provided, however, that if the Delaware General Corporation Law requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Bylaw or otherwise.

Section 2. Claims. To obtain indemnification under this Bylaw, a claimant shall submit to the corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon such written request by a claimant for indemnification, a determination, if required by applicable law, with respect to the claimant's entitlement thereto shall be made as follows: (a) if requested by the claimant, by Independent Counsel (as defined below), or (b) if no request is made by the claimant for a determination by Independent Counsel, (i) by the Board of Directors by a majority vote of a quorum consisting of Disinterested Directors (as defined below), or (ii) if a quorum of the Board of Directors consisting of Disinterested Directors is not obtainable or, even if obtainable, such quorum of Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (iii) if a quorum of Disinterested Directors so directs, by the stockholders of the corporation. In the event the determination of entitlement to indemnification is to be made by Independent Counsel at the request of the claimant, the Independent Counsel shall be selected by the Board of Directors unless there shall have occurred within two years prior to the date of the commencement of the action, suit or proceeding for which indemnification is claimed a "Change of Control" as defined in the 2008 Office Depot, Inc. Bonus Plan for Executive Management Employees, in which case the Independent Counsel shall be selected by the claimant unless the claimant shall request that such selection be made by the Board of Directors. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within 10 days after such determination.

For purposes of this Bylaw:

"Disinterested Director" means a director of the corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

"Independent Counsel" means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and shall include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the corporation or the claimant in an action to determine the claimant's rights under this Bylaw.

Section 3. Enforcement of Claims. If a claim under Section 1 of this Bylaw is not paid in full by the corporation within 60 days after a written claim pursuant to Section 2 of this Bylaw has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the corporation) that the claimant has not met the standard of conduct which makes it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, Independent Counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. If a determination shall have been made pursuant to this Section 2 that the claimant is entitled to indemnification, the corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 3. The corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 3 that the procedures and presumptions of this Bylaw are not valid, binding and enforceable and shall stipulate in such proceeding that the corporation is bound by all the provisions of this Bylaw.

Section 4. Enforceability. If any provision or provisions of this Bylaw shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Bylaw (including, without limitation, each portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Bylaw (including, without limitation, each such portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 5. Rights Not Exclusive. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Bylaw (i) shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise and (ii) cannot be terminated by the corporation, the Board of Directors or the stockholders of the corporation with respect to a person's service prior to the date of such termination. No repeal or modification of this Bylaw shall in any way diminish or adversely affect the rights of any current or former director, officer, employee or agent of the corporation hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

Section 6. Employees and Agents. Persons who are not covered by the foregoing provisions of this Article VI and who are or were employees or agents of the corporation may be indemnified and may have their expenses paid to the extent and subject to such terms and conditions as may be authorized at any time or from time to time by the Board of Directors or the Chief Executive Officer.

Section 7. Insurance. The corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary or agent of the corporation or who is serving or has served at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify such person against such liability under this Article VI.

Section 8. Merger or Consolidation. For purposes of this Article VI, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article VI with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 9. Notices. Any notice, request or other communication required or permitted to be given to the corporation under this Article VI shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary and shall be effective only upon receipt by the Secretary.

ARTICLE VII CERTIFICATES OF STOCK

Section 1. Form. The shares of capital stock of the corporation shall be represented by certificates, provided that the Board of Directors of the corporation may provide by a resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of capital stock in the corporation represented by certificates shall be entitled to have a certificate for shares of capital stock of the corporation signed by or in the name of the corporation by the Chairman of the Board, the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the corporation, certifying the number of shares owned by such holder in the corporation and registered in certificated form. Any or all such signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed, or whose facsimile signature has been placed upon, any such certificate or certificates shall cease to be such officer, transfer agent or registrar of the corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer, transfer agent or registrar of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom certificated or uncertificated shares are issued, together with the number of shares and date of issue, shall be entered on the books of the corporation. Shares of stock of the corporation shall only be transferred on the books of the corporation by the holder of record thereof or by such holder's attorney duly authorized in writing and, (i) if such shares are certificated, upon surrender to the corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization and other matters as the corporation may reasonably require, and accompanied by all necessary stock transfer stamps, or (ii) upon proper instructions from the holder of uncertificated shares. In the event of such transfer of certificated shares, it shall be the duty of the corporation to issue a new certificate or evidence of the issuance of uncertificated shares to the person entitled thereto, cancel the old certificate or certificates and record the transaction on its books. Upon receipt of proper transfer instructions from the holder of uncertificated shares, the corporation shall cancel such uncertificated shares and issue new equivalent uncertificated shares or certificated shares to the person entitled thereto and record such transaction upon its books. Except as otherwise provided by law, the Board of Directors may make or adopt such additional rules and regulations, not inconsistent with these Bylaws, as it may deem expedient, concerning the issue, transfer and registration of securities of the corporation. The Board of Directors may appoint or authorize any officer or officers to appoint, one or more transfer agents or registrars or both in connection with the transfer of any class or series of securities of the corporation.

Section 2. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to indemnify the corporation or to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against the corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. Registered Stockholders. Prior to the surrender to the corporation of the certificate or certificates for a share or shares of stock with a request to record the transfer of such share or shares, the corporation may treat the registered owner as the person entitled to receive dividends or other distributions, to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner, and as the person to hold liable for calls and assessments. The corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE VIII GENERAL PROVISIONS

Section 1. Dividends and Distributions. The Board shall have full power and discretion pursuant to law, at any regular or special meeting, subject to the provisions of the Certificate of Incorporation or the terms of any other corporate document or instrument, to determine what, if any, dividends or distributions shall be declared and paid or made upon or with respect to outstanding shares of the capital stock of the corporation. Dividends may be paid in cash, bonds, property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 2. Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation and all notes and other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers or agent, or agents of the corporation, and in such manner, as shall be determined by resolution of the Board of Directors or a duly authorized committee thereof.

Section 3. Contracts. The Board of Directors may authorize any officer or officers or any agent or agents of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 4. Loans. Subject to applicable laws limiting or prohibiting the corporation's ability to make such loans, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

Section 5. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

Section 6. Corporate Seal. The Board of Directors may provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7. Voting Securities Owned By Corporation. Voting securities in any other Company held by the corporation shall be voted by the Chairman of the Board or the Chief Executive Officer, unless the Board of Directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with or without general power of substitution.

Section 8. General and Special Bank Accounts. The Board of Directors may authorize from time to time the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may designate or as may be designated by any officer or officers of the corporation to whom such power of designation may be delegated by the Board from time to time. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

Section 9. Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10. Election Out of Section 203. The corporation expressly elects not to be governed by Section 203 of the General Corporation Law of Delaware. The Bylaw amendment adopting this provision shall not be further amended by the Board of Directors of the corporation.

ARTICLE IX AMENDMENTS

These Bylaws may be amended, altered, or repealed and new Bylaws adopted at any meeting of the Board of Directors by a majority vote; provided that these Bylaws and any other Bylaws amended or adopted by the Board of Directors may be amended, may be reinstated, and new Bylaws may be adopted, by the stockholders of the corporation entitled to vote at the time for the election of directors provided that notice of the proposed change was given in the corporation's notice of meeting.

EMPLOYMENT AGREEMENT
AS AMENDED AND RESTATED EFFECTIVE FEBRUARY 19, 2010

Office Depot, Inc., a Delaware corporation (the "Company"), and Steve Odland ("Executive") entered into an employment agreement dated March 11, 2005, as amended on February 25, 2008 (that employment agreement and amendment being the "Original Agreement"). The Company and Executive hereby further amend and restate the Original Agreement in its entirety (as so amended and restated, the "Agreement"), effective as of February 19, 2010.

WHEREAS, the Company desires to continue to employ Executive and to enter into an agreement embodying the terms of such continued employment; and

WHEREAS, Executive desires to accept such continued employment and enter into such an agreement;

In consideration of the premises and mutual covenants herein and for other good and valuable consideration, the parties agree as follows:

1. Term of Employment. Subject to the provisions of Section 8 of this Agreement, Executive shall continue to be employed by the Company for a period commencing on the date hereof and ending on March 11, 2011 on the terms and subject to the conditions set forth in this Agreement; provided, however, that commencing on March 11, 2011 and on each subsequent anniversary, (each an "Extension Date"), Executive's period of employment hereunder shall be automatically extended for an additional one-year period, unless the Company or Executive provides the other party hereto 90 days prior written notice before the next Extension Date (the "Notice Period") that such employment period shall not be so extended (the employment period under this Section 1 being the (the "Employment Term").

2. Position.

a. During the Employment Term, Executive shall serve as the Chief Executive Officer of the Company and the Chairman of the Board of Directors of the Company (the "Board"). In such positions, Executive shall report directly to the Board and shall have such duties and authority as shall be customary for persons occupying such positions for companies of like size and type. Executive shall initially be appointed as a member of the Board, and shall be nominated to serve as a member of the Board during the Employment Term.

b. During the Employment Term, Executive shall devote Executive's full business time and best efforts to the performance of Executive's duties hereunder and will not engage in any other business, profession or occupation for compensation or otherwise which would conflict or interfere with the rendition of such services either directly or indirectly, without the prior written consent of the Board; provided that, subject to the prior approval of the Board, Executive may accept appointment to or continue to serve on any board of directors or trustees of any business corporation or any charitable organization and Executive may manage his personal investments, provided in each case, and in the aggregate, that such activities do not conflict or interfere with the performance of Executive's duties hereunder or conflict with Section 9.

3. Base Salary. During the Employment Term, the Company shall pay Executive a base salary at the annual rate of \$1,000,000, payable in regular installments in accordance with the Company's usual payment practices for senior executives. Executive shall be entitled to such increases (but no decreases) in Executive's base salary, if any, as may be determined annually by the Compensation Committee of the Board in its sole discretion. Executive's annual base salary, as in effect from time to time, is hereinafter referred to as the "Base Salary."

4. Bonuses.

a. 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. 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.

b. Special Retention Bonus. Upon Executive's termination of employment with the Company (subject to Section 8(f)), Executive shall be entitled to receive a special cash retention bonus (the "Retention Bonus") of up to \$5,000,000 determined as follows:

(i) If Executive terminates employment on or after September 14, 2012 for any reason, or if Executive's employment with the Company is terminated at any time due to a termination by the Company without Cause, a voluntary termination for Good Reason, or a termination due to death or Disability (as such terms are defined below) (any such termination, a "Qualifying Termination"), the Retention Bonus shall equal \$5,000,000.

(ii) If Executive terminates employment on or after September 14, 2011 and prior to September 14, 2012, other than due to a Qualifying Termination, the Retention Bonus shall equal \$3,333,333.

(iii) If Executive terminates employment on or after September 14, 2010 and prior to September 14, 2011, other than due to a Qualifying Termination, the Retention Bonus shall equal \$1,666,667.

(iv) If Executive terminates employment prior to September 14, 2010, other than due to a Qualifying Termination, the Retention Bonus shall equal zero (i.e., no Retention Bonus shall be paid).

The Company shall pay the amount of Retention Bonus due under subparagraph 4(b)(i) through (iv), as applies, within thirty days after the date of Executive's termination of employment, subject to Section 8(f).

5. Equity Arrangements.

a. Generally. Executive shall be eligible to participate in all Company long-term equity incentive plans and programs that cover senior executives of the Company. Any equity incentive awards granted to Executive prior to the date of this Agreement (including awards granted pursuant to the Original Agreement) shall remain subject to the terms set forth in the Original Agreement and applicable award agreements.

b. Change of Control. Upon the occurrence of a Change of Control (as defined below) following the date of this Agreement, all options, restricted stock and other long-term equity or other long-term incentive awards then held by Executive, shall fully vest as of the effective date of the Change of Control. The parties hereto acknowledge and agree that a "Change of Control" within the meaning of the Original Agreement occurred on October 14, 2009 as a result of the investment by BC Partners Ltd. ("BC Partners") in the Company (the "BC Partners Investment") and, accordingly, the equity awards held by Executive on such date became fully vested.

6. Employee Benefits. During the Employment Term, Executive shall be entitled to participate in the Company's pension and welfare benefit plans, programs and arrangements (other than severance plans) generally made available to other senior executives of the Company as in effect from time to time (collectively "Employee Benefits"), except to the extent otherwise provided herein. Executive shall be entitled to six weeks' vacation per year. 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 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 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.

7. Business Expenses and Perquisites.

a. Business Expenses. During the Employment Term, reasonable business expenses incurred by Executive in the performance of Executive's duties hereunder shall be promptly reimbursed by the Company in accordance with Company policies. 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.

b. Perquisites.

(i) Executive shall be entitled to participate in the Company's perquisite plans, programs and arrangements generally in effect from time to time for senior executives of the Company, except to the extent otherwise provided herein.

(ii) Executive shall be entitled to a \$25,000 annual allowance for all costs associated with Executive's ownership (or lease) and maintenance of an automobile. The allowance will be paid in substantially equal installments in accordance with the Company's usual payment practices for base salary for senior executives.

(iii) Executive shall be entitled to personal use of the Company's private aircraft for up to a maximum of 100 hours annually. Executive shall recognize imputed income for such use based upon applicable Treasury Regulations in effect from time to time. Executive acknowledges that use of Company aircraft for business purposes shall take priority over personal usage, and he will work together with the Company's Chief Financial Officer (who has oversight responsibility for Company aircraft) to ensure that Executive's personal usage is reasonably coordinated with business needs. For the 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.

8. Termination. The Employment Term and Executive's employment hereunder may be terminated by the Company or Executive at any time and for any reason. Notwithstanding any other provision of this Agreement, the provisions of this Section 8 shall exclusively govern Executive's rights upon termination of employment with the Company and its affiliates.

a. Termination by the Company for Cause or Executive's Resignation without Good Reason.

(i) The Employment Term and Executive's employment hereunder may be terminated by the Company for Cause and shall terminate automatically upon Executive's resignation without Good Reason.

(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 Internal Revenue Code of 1986, as amended ("Code"), shall not be payable before the occurrence of Executive's "separation from service" under Section 409A(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.

(iii) For purposes of this Agreement, "Cause" shall mean (A) the willful and continued failure of Executive to perform substantially 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 Executive by the Board which specifically identifies the manner in which the Board believes that Executive has not substantially performed Executive's duties, (B) the willful engaging by Executive in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company, or (C) a willful and material violation of a material provision of the Company's written policies, including, without limitation, the Company's Code of Ethical Behavior; provided that no act, or failure to act, on the part of Executive, shall be considered "willful" unless it is done, or omitted to be done, by Executive in bad faith and without reasonable belief that Executive's action or omission was in the best interest of the Company; provided, further, that any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or based upon the advice of counsel for the Company, shall be conclusively presumed to be done, or omitted to be done, by Executive in good faith and in the best interest of the Company; provided, further, that any act or failure to act on the part of the Executive of which the Board has knowledge prior to the date of this Agreement shall not be considered "willful." The termination of employment of Executive shall not be deemed to be for Cause unless and until there shall have been delivered to 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 Executive and Executive is given an opportunity, together with counsel, to be heard before the Board), finding that, in the good faith opinion of the Board, Executive is guilty of the conduct described in clauses (A), (B) or (C) of this Section 8(a)(iii), and specifying the particulars thereof in detail.

(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;

(E) the portion of the Retention Bonus, if any, that has become vested and nonforfeitable pursuant to Section 4(b); and

(F) 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 (F) 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.

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 plan for the type of coverage in effect under such plan (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 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.

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.

d. Termination by the Company Without Cause or Resignation by Executive for Good Reason.

(i) The Employment Term and Executive's employment hereunder may be terminated by the Company without Cause or by Executive's resignation for Good Reason.

(ii) For purposes of this Agreement, "Good Reason" shall mean, in the absence of Executive's written consent:

(A) assignment to Executive of any duties materially inconsistent with Executive's position(s) (including titles and reporting requirements), authority, duties, responsibilities, or any other action by the Company which results in a diminution in such position(s), 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 Executive;

(B) failure to maintain Executive in the positions set forth in Section 2 hereof (including, without limitation, a failure to elect and re-elect Executive as a member of the Board);

(C) a material breach by the Company of a material provision of this Agreement, in any case which has not been cured by the Company within thirty (30) days after written notice of such action, breach or noncompliance has been given by Executive to the Company;

(D) requiring Executive to be based at any office or location more than 35 miles from the Company's principal offices as currently located in Palm Beach County, Florida;

(E) after a Change of Control occurring following the date of this Agreement, a termination by Executive for any reason during the 30-day period immediately preceding the first anniversary of the effective date of such Change of Control (a "Window Period Termination"); or

(F) expiration of the Employment Term due to the Company's provision of notice to Executive during the Notice Period that the Employment Term shall not be extended pursuant to Section 1.

(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, 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 or Disability), paid in a lump sum within 30 days after the date of Executive's termination of employment; and provided further that, in the event that such termination of employment occurs within three years following a Change of Control that occurs after the date of this Agreement, the COBRA Premium and the Insurance Premium shall be determined by substituting "36" for "24" in clauses (x) and (z) of Section 8(b)(ii)(C) hereof;

(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 (based on the Company's actual performance for such fiscal year), 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 the greater of (I) 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, and (II) \$5,200,000, 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, 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.

e. Change of Control Definition.

(i) For purposes of this Agreement, subject to Section 8(e)(ii) below, a "Change of Control" shall mean the occurrence of any of the following after the date of this Agreement:

(A) if any "person" or "group" as those terms are used in Sections 12(d) and 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), other than an Exempt Person (as defined below), is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 20% or more (the "CIC percentage") of the combined voting power of the Company's then outstanding securities (provided, however, that if such a person or group first obtains the approval of the Board to acquire the CIC percentage, then no Change of Control shall be deemed to have occurred unless and until such person or group obtains a CIC percentage ownership of the combined voting power of the Company's then outstanding securities without having first obtained the approval of the Board); and provided further that, solely for purposes of determining whether a Change of Control has occurred for purposes of a potential Window Period Termination under Section 8(d)(ii)(E) of this Agreement, the CIC percentage shall equal 30%; or

(B) if any “person” or “group” as those terms are used in Sections 12(d) and 13(d) of the Exchange Act, other than an Exempt Person, is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing greater than 50% of the combined voting power of the Company’s then outstanding securities, whether or not the Board shall have first given its approval to such acquisition; or

(C) 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

(D) the consummation of a merger or consolidation of the Company with any other corporation; provided, however, a Change of Control shall not be deemed to have occurred (i) if such merger or consolidation would result in all or a portion of the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) either directly or indirectly more than 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation, or (ii) if the corporate existence of the Company is not affected and following the merger or consolidation, the majority of the Company’s Executive Committee, or if no such body then exists, the Chief Executive Officer, Chief Financial Officer and Presidents (or other heads, regardless of title) of the principal operating units of the Company retain their positions with the Company and the Directors of the Company prior to such merger or consolidation constitute at least a majority of the Board of the Company or the entity that directly or indirectly controls the Company after such merger or consolidation; or

(E) the sale or disposition by the Company of all or substantially all the Company’s assets, other than a sale to an Exempt Person; or

(F) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company.

As used above, the term “Exempt Person” shall mean any employee benefit plan of the Company or a subsidiary or a trustee or other administrator or fiduciary holding securities under an employee benefit plan of the Company or a subsidiary.

(ii) For the avoidance of doubt, except for purposes of Section 5(b) hereof, the BC Partners Investment shall be deemed not to have constituted a Change of Control under this Agreement. Additionally, for purposes of determining whether any Change of Control occurs after the date of this Agreement, any sale or transfer by BC Partners or their affiliates of equity interests in the Company (other than a sale occurring together with one or more other shareholders of the Company acting as a group as part of a single transaction) shall be disregarded, and any acquisition or continued holding by BC Partners or their affiliates of equity interests in the Company shall be disregarded for purposes of Section 8(e)(i)(A).

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 4(b), 8(c)(ii)(B), 8(c)(ii)(C), 8(d)(iii)(B), 8(d)(iii)(C) and 8(d)(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.

g. Notice of Termination. Any purported termination of employment by the Company or by Executive (other than due to Executive’s death) shall be communicated by written Notice of Termination to the other party hereto in accordance with Section 13(l) hereof. For purposes of this Agreement, a “Notice of Termination” shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of employment under the provision so indicated.

h. Board/Committee Resignation. Upon termination of Executive’s employment hereunder for any reason, Executive agrees to resign, as of the date of such termination and to the extent applicable, from the Board (and any committees thereof), the boards of directors (and any committees thereof) of any of the Company’s affiliates and any other positions with the Company and its affiliates.

9. Non-Competition.

a. Executive acknowledges that in the course of Executive's employment with the Company, Executive shall become familiar with the Company's trade secrets and with other Confidential Information (as defined below) concerning the Company and its subsidiaries and that Executive's services shall be of special, unique and extraordinary value to the Company and its subsidiaries. Therefore, and in consideration of the payments made to Executive hereunder, Executive agrees as follows

(i) During the Employment Term and, except as provided below, for a period of two years following the date of termination of Executive's employment with the Company (the "Restricted Period"), Executive shall not directly, or indirectly through another entity, enter the employ of, or render any services to, or own or have any interest in, manage, control, participate in, consult with, or in any manner engage in any business for any Competitor, as such Competitor's business exists or is in process on the date of the termination of Executive's employment with the Company, within any geographical area in which the Company or any of its subsidiaries engage in such businesses on the date of termination of Executive's employment with the Company. A "Competitor" shall be defined as an office products retailer, and (except as set forth below) specifically excludes a retail business selling office products and supplies as a minor portion of its business and any business that otherwise would be a direct competitor if (A) average annual store or other organizational unit sales from the sale of office products and supplies is less than 10% of such sales of the Company and (B) the total annual sales of office products and supplies for any such business is less than 10% of such business' total gross sales; provided, a Competitor shall include Staples, OfficeMax, Corporate Express, Costco, BJ's, Wal-Mart or Sam's Club; provided, further, that with respect to Costco, BJ's, Wal-Mart or Sam's Club, the applicable Restricted Period shall be one year following the date of Executive's termination of employment with the Company; and provided, further, that upon Executive's termination of employment by the Company without Cause or by Executive's resignation for Good Reason at any time, or Executive's termination of employment for any reason after Executive has been employed by the Company continuously for a 3-year period, Costco, BJ's, Wal-Mart and Sam's Club shall not be deemed a Competitor unless at the time such determination is made, any of such companies otherwise meets the definition of Competitor as stated in this subsection (i);

(ii) During the Restricted Period, Executive will not directly or indirectly through another entity:

(A) induce or attempt to induce any employee of the Company or any subsidiary to leave the employ of the Company or such subsidiary, or in any way interfere with the relationship between the Company or any subsidiary and any employee thereof; or

(B) hire any person who was, at any time during the six-month period prior to the date of termination of Executive's employment, an employee of the Company or any subsidiary at any time during the Employment Term; or

(C) induce or attempt to induce any customer, supplier, licensee, licensor, franchisee or other business relation of the Company or any subsidiary to cease doing business with the Company or such subsidiary, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and the Company or any subsidiary (including, without limitation, making any negative statements or communications about the Company or its subsidiaries).

(iii) Nothing herein shall prohibit Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation that is publicly traded, so long as Executive has no active participation in the business of such corporation.

b. It is expressly understood and agreed that although Executive and the Company consider the restrictions contained in this Section 9 to be reasonable, if, at the time of enforcement of this Agreement, any court shall hold that the duration, scope or geographical restrictions stated herein are unreasonable under the circumstances then existing, the parties agree that it is their mutual desire and intent that the Company shall be afforded the maximum duration, scope or area reasonable under such circumstances, and each of them hereby requests such court to reform this Agreement so that the maximum duration, scope and geographical restrictions available under applicable law at the time of enforcement of this Agreement shall be substituted by such court for the stated duration, scope or geographical area stated herein and that the court shall be allowed to revise the restrictions contained in this Agreement to such provisions as are deemed reasonable by the court at the time such enforcement is requested.

Alternatively, if any court of competent jurisdiction finds that any restriction contained in this Agreement is unenforceable, and such restriction cannot be amended so as to make it enforceable, such finding shall not affect the enforceability of any of the other restrictions contained herein.

10. Confidentiality; Work Product.

a. Confidential Information.

(i) Executive acknowledges that the information, observations and data obtained by Executive while employed by the Company and its subsidiaries concerning the business or affairs of the Company or any subsidiary of the Company ("Confidential Information") are the property of the Company or such subsidiary. Therefore, Executive agrees that Executive shall not disclose to any unauthorized person or use for Executive's own purposes any Confidential Information without the prior written consent of the Company, unless and to the extent that (i) such disclosure is necessary (in Executive's reasonable judgment) for Executive to discharge Executive's duties set forth in Section 2 of this Agreement during the Employment Term or (ii) the aforementioned matters become generally known to and available for use by the public other than as a result of Executive's acts or omissions. Executive shall deliver to the Company at the termination of Executive's employment, or at any other time the Company may request, all memoranda, notes, plans, records, reports, computer tapes, disks, printouts and software and other documents and data (and copies thereof) relating to the Confidential Information, Work Product (as defined below) or the business of the Company or any subsidiary which Executive may then possess or have under Executive's control.

b. Work Product.

(i) Executive acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable) which relate to the Company's or any of its subsidiaries' actual or anticipated business, research and development or existing or future products or services and which are conceived, developed or made by Executive while employed by the Company and its subsidiaries ("Work Product") belong to the Company and/or such subsidiary. Executive shall promptly disclose such Work Product to the Company and perform all actions reasonably requested by the Company (whether during or after employment) to establish and confirm such ownership (including, without limitation, the execution of assignments, consents, powers of attorney and other instruments).

(ii) Notwithstanding the obligations set forth in Section 9 and this Section 10, after termination of Executive's employment with the Company, Executive shall be free to use Residuals of the Company's Confidential Information and Work Product for any purpose, subject only to its obligations with respect to disclosure set forth herein and any copyrights and patents of the Company. The term "Residuals" means information in non-tangible form that may be retained in the unaided memory of Executive derived from the Company's Confidential Information and Work Product to which Executive has had access during his or her employment with the Company. Executive may not retain or use the documents and other tangible materials containing the Company's Confidential Information or Work Product after the termination of his or her employment with the Company.

c. The provisions of this Section 10 shall survive the termination of Executive's employment for any reason.

11. Specific Performance. Executive acknowledges and agrees that the Company's remedies at law for a breach or threatened breach of any of the provisions of Section 9 or Section 10 would be inadequate and the Company would suffer irreparable damages as a result of such breach or threatened breach. In recognition of this fact, Executive agrees that, in the event of the breach or any threatened breach by Executive of any of the provisions of Section 9 and Section 10 of this Agreement, the Company, in addition and supplementary to any and all other rights and remedies existing in its favor, may apply to any court of law or equity of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce this Agreement or to prevent any violations or threatened violations of the provisions hereof and shall be entitled to cease making any payments or providing any benefit otherwise required by this Agreement (without being required to post any bond or other security to secure such relief). In addition, in the event of any breach or violation by Executive of the provisions of Section 9 and Section 10 of this Agreement, the Restricted Period shall be tolled until such breach or violation has been duly cured and thereafter the Restricted Period shall be extended for an additional period of time equivalent to the time during which Executive was in breach of this Agreement.

12. Section 280G.

a. In the event that part or all of the consideration, compensation or benefits to be paid to Executive under this Agreement together with the aggregate present value of payments, consideration, compensation and benefits under all other plans, arrangements and agreements applicable to Executive, constitute "excess parachute payments" under Section 280G(b) of the Code subject to an excise tax under Section 4999 of the Code (collectively, the "Parachute Amount") the amount of excess parachute payments which would otherwise be payable to Executive or for Executive's benefit under this Agreement shall be reduced to the extent necessary so that no amount of the Parachute Amount is subject to an excise tax under Section 4999 (the "Reduced Amount"); provided that such amounts shall not be so reduced if, without such reduction, Executive would be entitled to receive and retain, on a net after tax basis (including, without limitation, after any excise taxes payable under Section 4999), an amount of the Parachute Amount which is greater than the amount, on a net after tax basis, that Executive would be entitled to retain upon receipt of the Reduced Amount.

b. If the determination made pursuant to Section 12(a) results in a reduction of the payments that would otherwise be paid to Executive except for the application of Section 12(a), such reduction in payments due under this Agreement shall be first applied to reduce any cash severance payments that Executive would otherwise be entitled to receive hereunder and shall thereafter be applied to reduce other payments and benefits in a manner that would not result in subjecting Executive to additional taxation under Section 409A of the Code. Within ten days following such determination, but not later than thirty days following the date of the event under Section 280G(b)(2)(A)(i), the Company shall pay or distribute to Executive or for Executive's benefit such amounts as are then due to Executive under this Agreement and shall promptly pay or distribute to Executive or for his benefit in the future such amounts as become due to Executive under this Agreement.

13. Miscellaneous.

a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflicts of laws principles thereof.

b. Entire Agreement/Amendments. This Agreement contains the entire understanding of the parties with respect to the employment of Executive by the Company. There are no restrictions, agreements, promises, warranties, covenants or undertakings between the parties with respect to the subject matter herein other than those expressly set forth herein. This Agreement may not be altered, modified, or amended except by written instrument signed by the parties hereto.

c. No Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

d. Severability. In the event that any one or more of the provisions of this Agreement shall be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

e. Assignment. This Agreement, and all of Executive's rights and duties hereunder, shall not be assignable or delegable by Executive. Any purported assignment or delegation by Executive in violation of the foregoing shall be null and void ab initio and of no force and effect. This Agreement may be assigned by the Company to a person or entity which is an affiliate or a successor in interest to substantially all of the business operations of the Company. Upon such assignment, the rights and obligations of the Company hereunder shall become the rights and obligations of such affiliate or successor person or entity.

f. Mitigation. Executive shall not be required to mitigate damages or the amount of any payment provided for under this Agreement by seeking other employment or otherwise, and compensation earned from such employment or otherwise shall not reduce the amounts otherwise payable under this Agreement. No amounts payable under this Agreement shall be subject to reduction or offset in respect of any claims which the Company or any of its subsidiaries (or any other person or entity) may have against Executive.

g. Indemnification; Director's and Officer's Liability Insurance. Executive shall be entitled to indemnification at all times during and after the Employment Term to the maximum extent permitted under the Company's Certificate of Incorporation or By-Laws and applicable law. The Company shall maintain Director's and Officer's liability insurance on behalf of Executive at all times during and after the Employment Term for acts and omissions during the Employment Term to the same extent such coverage is maintained for directors and other senior executives of the Company.

h. Resolution of Disputes. All disputes and controversies arising under or in connection with this Agreement shall be settled by arbitration conducted before one arbitrator sitting in Palm Beach County, Florida, or such other location agreed by the parties hereto, in accordance with the rules for expedited resolution of employment disputes of the American Arbitration Association then in effect. The determination of the arbitrator shall be made within thirty days following the close of the hearing on any dispute or controversy and shall be final and binding on the parties. The parties shall be entitled to take discovery in such proceedings, in accordance with the Federal civil rules, including, without limitation, propounding interrogatories, requests for admission and taking depositions of parties and witnesses. Each party shall be entitled to present the testimony of one or more expert witnesses in such arbitration. Judgment may be entered on the award of the arbitrator in any court having proper jurisdiction.

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 or 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); provided, however, that the limit for the 2010 calendar year shall be \$30,000. The Company will pay such 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.

k. Successors; Binding Agreement. This Agreement shall inure to the benefit of and be binding upon personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

l. Notice. For the purpose of this Agreement, notices and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

If to the Company:

Office Depot, Inc.
2200 Old Germanton Road
Delray Beach, FL 33445
Attention: General Counsel

If to Executive:

To the most recent address of Executive set forth in the personnel records of the Company, with a copy to:

Vedder Price P.C.
222 North LaSalle Street
Suite 2600
Chicago, IL 60601
Attention: Robert J. Stucker

m. Executive Representation. Executive hereby represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive do not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which Executive is bound, (ii) Executive is not a party to or bound by any employment agreement, noncompete agreement or confidentiality agreement with any other person or entity (other than as specifically referenced in this Agreement) that has not been disclosed by Executive to the Company and that prohibits or restricts the acceptance of employment with the Company and the performance of Executive's duties hereunder and (iii) upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Executive, enforceable in accordance with its terms. Executive hereby acknowledges and represents that Executive has had an opportunity to consult with independent legal counsel regarding Executive's rights and obligations under this Agreement and that Executive fully understands the terms and conditions contained herein.

n. Prior Agreements. This Agreement supersedes all prior agreements and understandings (including verbal agreements) between Executive and the Company and/or its affiliates regarding the terms and conditions of Executive's employment with the Company and/or its affiliates, including, without limitation, the Original Agreement. In the event of any conflict between any provision of this Agreement and any provision of any other agreement, policy, plan or other document, the provision of this Agreement shall control.

o. Cooperation. Executive shall provide Executive's reasonable cooperation in connection with any action or proceeding (or any appeal from any action or proceeding) which relates to events occurring during Executive's employment hereunder. This provision shall survive any termination of this Agreement. If occurring after termination of Executive's employment, the Company shall advance to Executive all transportation, lodging, meal and other reasonable costs incurred by Executive therefor.

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.

q. Survival. Any provision of this Agreement that, by its terms, including but not limited to Sections 4(b), 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.

r. Counterparts. This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

* * * * *

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

OFFICE DEPOT, INC.

/s/ Elisa Garcia

By: Elisa Garcia

/s/ Neil R. Austrian

By: Neil R. Austrian

Lead Director

STEVE ODLAND

/s/ Steve Odland

Executive