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**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: January 24, 2006**

**Date of Earliest Event Reported: January 23, 2006**

**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)

**59-2663954**

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

**2200 Old Germantown Road, Delray Beach, Florida**

**33445**

(Address of principal executive offices)

(Zip Code)

**(561) 438-4800**

(Registrant's telephone number, including area code)

**Former name or former address, if changed since last report: N/A**

Check the appropriate box below if the Form 8-K 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 1.01 — Amendment of a Material Definitive Agreement**

On January 23, 2006, Office Depot, Inc. (the “Company”) entered into an amendment (“Amendment Number Two”) to an Executive Employment Agreement with Carl (Chuck) Rubin, in connection with Mr. Rubin’s promotion to President, North American Retail, from his former position as Executive Vice President, Marketing and Merchandising. Mr. Rubin is a Named Executive Officer of the Company.

Certain key terms of Amendment Number Two are described herein. The description contained herein is qualified in its entirety by the actual language of Amendment Number Two, a copy of which is attached as Exhibit 99.1.1 to this Current Report on Form 8-K (this “Report”). In the event of any conflict between the language of the description contained in this Report and the Amendment, the terms of the Amendment shall govern in all respects. Exhibit as amended by Amendment Number Two, the terms of Mr. Rubin’s Executive Employment remain essentially unchanged, as set forth in prior agreements previously filed with the SEC by the Company.

Title	President, North American Retail
Base Salary	Increased to \$575,000 per annum

### **Item 5.02(b) and (c) — Appointment of Principal Officer; Departure of Principal Officer**

Effective January 23, 2006, Carl (Chuck) Rubin has been appointed as President, North American Retail. Mr. Rubin formerly served as Executive Vice President, Marketing and Merchandising, for the Company. In his new capacity, Mr. Rubin will continue to report to Office Depot’s CEO, Steve Odland. Reporting to Rubin will be the Senior Vice Presidents of Merchandising, Marketing, Retail Store Operations, Real Estate and Construction and the Vice President of Copy, Print & Ship.

Mr. Rubin joined Office Depot, Inc. on March 1, 2004. Before joining the Company, Mr. Rubin spent six years with Accenture Ltd., most recently as Partner consulting with the retail industry. Prior to joining Accenture, Mr. Rubin spent six years in specialty retailing and 11 years in department store retailing, where he served as General Merchandise Manager and a member of the Executive Committees for two publicly held companies.

Concurrent with this announcement, the Company also announced that Rick Lepley, its Executive Vice President, North American Retail, and a Named Executive Officer of the Company, has announced his intention to retire from the Company. In connection with Mr. Lepley’s retirement, the Company and Mr. Lepley entered into a letter agreement and a release agreement, copies of which are attached to this Report as Exhibits 99.2.1 and 99.2.2.

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A news release, announcing Mr. Rubin's appointment as President, North American Retail, Mr. Lepley's planned retirement and certain other matters, was issued on January 23, 2006. A copy of such news release is attached to this Report as Exhibit 99.1.3 and incorporated by this reference.

### **Item 9.01 — Exhibits**

Exhibit 99.1.1	Amendment Number Two to Executive Employment Agreement between Office Depot, Inc. and Carl (Chuck) Rubin
Exhibit 99.1.2.1	Letter Agreement between Office Depot, Inc. and Rick Lepley
Exhibit 99.1.2.2	Release Agreement between Office Depot, Inc. and Rick Lepley
Exhibit 99.1.3	News Release Issued by Office Depot, Inc. on January 23, 2006.

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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: January 24, 2006

By: /s/ DAVID C. FANNIN

David C. Fannin  
Executive Vice President and  
General Counsel

**Index of Exhibits**

<u>Exhibit No.</u>	<u>Description</u>
Exhibit 99.1.1	Amendment Number Two to Executive Employment Agreement between Office Depot, Inc. and Carl (Chuck) Rubin
Exhibit 99.1.2.1	Letter Agreement between Office Depot, Inc. and Rick Lepley
Exhibit 99.1.2.2	Release Agreement between Office Depot, Inc. and Rick Lepley
Exhibit 99.1.3	News Release Issued by Office Depot, Inc. on January 23, 2006.

SECOND AMENDMENT TO  
EXECUTIVE EMPLOYMENT AGREEMENT

(For Executive Officers Who Also Have a Change of Control Employment Agreement)

THIS SECOND AMENDMENT TO EXECUTIVE EMPLOYMENT AGREEMENT (herein "Amendment Number Two") is actually made and entered into on the last date reflected below, but is effective as of January 23, 2006, between Office Depot, Inc., a Delaware corporation (the "Company"), and Carl ("Chuck") Rubin ("Executive").

Company and Executive are parties to an existing Employment Agreement dated as of March 1, 2004", (as previously amended by Amendment Number Two, dated as of July 15, 2004, the "Existing Agreement), and they desire herein to amend certain provisions of the Existing Agreement (as previously amended), to reflect his promotion to a new position with expanded duties and responsibilities as set forth in this Amendment Number Two.

This Amendment Number Two supersedes and replaces any and all prior agreements between the parties with respect to Executive's employment by the Company, including any letter agreements, written or oral understandings, with the understanding that the entirety of the agreement between the parties with respect to Executive's employment by the Company is set forth herein, with the sole exception of the Change of Control Employment Agreement described below.

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

1. Employment.

(a) The Company shall continue to employ Executive, and Executive hereby accepts continued employment with the Company, upon the terms and conditions set forth in the Existing Agreement, as amended by this Amendment Number Two (said Existing Agreement, as amended by this Amendment Number Two being hereinafter referred to as the "Employment Agreement" or as "this Agreement") for the period beginning on the effective date hereof and ending as provided in paragraph 4 hereof (the "Employment Term").

(b) The parties also have previously entered into an Employment Agreement dated as of March 1, 2004, by and between the Company and the Executive (the "Change of Control Employment Agreement") which, by its terms, takes effect during the "Employment Period" as defined in such agreement. During any such Employment Period under the Change of Control Employment Agreement, the terms and provisions of the Change of Control Employment Agreement shall control to the extent such terms and provisions are in conflict with

the terms and provisions of this Agreement. In addition, during such Employment Period, the Employment Term hereunder shall be tolled and upon expiration of the Employment Period under the Change of Control Employment Agreement the Employment Term hereunder shall recommence.

## 2. Position and Duties.

(a) During the Employment Term, Executive shall serve as President, North American Retail and shall have the normal duties, responsibilities and authority attendant to such positions, subject to the power of the Company's Chairman and Chief Executive Officer ("CEO") the Board of Directors (the "Board") to expand or limit such duties, responsibilities and authority.

(b) Executive shall report to the CEO (or to such other person as the CEO or the Board may designate in the future, such as a Global President or a Chief Operating Officer, in the event such position(s) is/are created in the future). Executive shall devote Executive's best efforts and Executive's full business time and attention (except for permitted vacation periods and reasonable periods of illness or other incapacity) to the business and affairs of the Company and its Subsidiaries; provided that Executive shall, with the prior written approval of the CEO, be allowed to serve as (i) a director or officer of any non-profit organization including trade, civic, educational or charitable organizations, or (ii) a director of any corporation which is not competing with the Company or any of its Subsidiaries in the office product and office supply industry so long as such duties do not materially interfere with the performance of Executive's duties or responsibilities under this Agreement. Executive shall perform Executive's duties and responsibilities under this Agreement to the best of Executive's abilities in a diligent, trustworthy, businesslike and efficient manner.

(c) Executive shall be based at or in the vicinity of the Company's headquarters but may be required to travel as necessary to perform Executive's duties and responsibilities under this Agreement.

(d) For purposes of this Agreement, "Subsidiaries" shall mean any corporation of which the securities having a majority of the voting power in electing directors are, at the time of determination, owned by the Company, directly or through one of more Subsidiaries.



### 3. Base Salary and Benefits.

(a) In his newly expanded position, Executive's base salary shall be \$575,000 per annum (the "Base Salary"), which salary shall be payable in regular installments in accordance with the Company's general payroll practices and shall be subject to customary withholding. Executive's Base Salary shall be reviewed at least annually by the Compensation Committee of the Board and shall be subject to adjustment, but not reduction, as they shall determine based on among other things, market practice and performance. In addition, during the Employment Term, Executive shall be entitled to participate in the Company's Long Term Incentive Plan.

(b) In addition to the Base Salary, Executive shall be entitled to participate in the Company's Management Incentive Plan (the "Bonus Plan") as administered by the Compensation Committee of the Board of Directors. If the Board or the Compensation Committee modifies such Bonus Plan during the Employment Term, Executive shall continue to participate at a level no lower than the highest level established for any officer of the Company then at Executive's level. At the discretion of the Board or the Compensation Committee, Executive may be offered from time to time the opportunity to participate in other bonus plans of the Company in lieu of the Bonus Plan and, if Executive chooses to participate in such plan or plans, the provisions of this paragraph 3(b) shall be tolled during the period of such participation.

(c) Executive shall be entitled to paid vacation in accordance with the Company's general payroll practices for officers of the Company then at Executive's level.

(d) The Company shall reimburse Executive for all reasonable expenses incurred by Executive in the course of performing Executive's duties under this Agreement which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses.

(e) Executive will be entitled to all benefits as are, from time to time, maintained for officers of the Company then at Executive's level, including without limitation: medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans (collectively, "Insurance Benefits"), profit sharing and retirement benefits.

#### 4. Term.

(a) The Employment Term shall end on the eighteen (18) month anniversary of the date of this Agreement; provided that (i) the Employment Term shall be extended for successive periods of one (1) year each (each of which is referred to as an “extension term” of the Employment Term) in the event that written notice of termination hereof is not given by one party hereof to the other at least six months prior to the end of the Employment Term or the then applicable extension term, as the case may be; provided further that (ii) the Employment Term shall terminate prior to such date (A) upon Executive’s death or permanent disability or incapacity (as determined by the Board in its good faith judgment), (B) upon the mutual agreement of the Company and Executive, (C) by the Company’s termination of this Agreement for Cause (as defined below) or without Cause or (D) by Executive’s termination of this Agreement for Good Reason (as defined below) or without Good Reason.

(b) If the Employment Term is terminated by the Company without Cause or is terminated by the Executive for Good Reason, Executive (and Executive’s family with respect to clause (iii) below) shall be entitled to receive (i) Executive’s Base Salary through the eighteenth month anniversary of such termination and Executive’s Pro Rata Bonus (as defined in paragraph (h) below), if and only if Executive has not breached the provisions of paragraphs 5, 6 and 7 hereof (as determined by a court of competent jurisdiction or by an arbitrator pursuant to paragraph 19 hereof), (ii) vested and earned (in accordance with the Company’s applicable plan or program) but unpaid amounts under incentive plans, deferred compensation plans, and other employer programs of the Company in which Executive is then participating (other than the Pro Rata Bonus), (iii) Insurance Benefits through the eighteenth month anniversary of such termination pursuant to the Company’s insurance programs, as in effect from time to time, to the extent Executive participated immediately prior to the date of such termination; provided that any such continuation of health insurance benefits will run concurrently with and satisfy the continuation coverage requirements of the Consolidated Omnibus Reconciliation Act of 1985 (“COBRA”), and provided further that any health insurance benefits which Executive becomes entitled to receive as a result of any subsequent employment shall serve as primary coverage for Executive and Executive’s family, and (iv) the amount to which the Executive would have been entitled under the Bonus Plan (calculated as if the “target” amount under such plan had been reached, regardless of company performance) had the Executive remained employed through the eighteenth month anniversary of such termination. The amounts payable pursuant to paragraph 4(b)(i) (ii) and (iv) shall be payable, at the Company’s discretion, in one lump sum payment within 30 days following termination of the Employment Term or in any other reasonable manner consistent with the Company’s normal payment policies. No payment of any sum nor the receipt of any benefit shall be due to Executive under this subsection (b) unless and until Executive shall have executed and delivered to the Company a release of any and all claims against the Company and its Subsidiaries (and their respective present and former officers, directors, employees and agents – collectively the “Released Parties”) and a covenant not to sue the Released Parties, all in form and substance as provided by counsel to the Company (the “Release”), which Release shall be reasonable and shall be provided to Executive promptly following termination of the Employment Term, and any waiting period or revocation period provided

by law for the effectiveness of such Release shall have expired without Executive's having revoked such Release. The parties agree that the form of Release attached hereto is reasonable as of the date of execution of this Agreement, but may be required to be modified to conform to changes in legal requirements. Otherwise, the parties agree that this is the form of Release to be used, as referred to herein. In the event Executive shall decline or fail, except in connection with a good faith dispute about the reasonableness of the form and substance of the Release, to execute and deliver such Release, then Executive shall be entitled to receive only those amounts provided pursuant to subsection 4(c) below provided for an Executive whose employment is terminated by the Company for Cause or by Executive without Good Reason.

(c) If the Employment Term is terminated by the Company for Cause or by the Executive without Good Reason, Executive shall be entitled to receive (i) Executive's Base Salary through the date of such termination and (ii) vested and earned (in accordance with the Company's applicable plan or program) but unpaid amounts under incentive plans, health and welfare plans, deferred compensation plans, and other employer programs of the Company which Executive participates; provided, however, that Executive shall not be entitled to payment of a Pro Rata Bonus.

(d) If the Employment Term is terminated upon Executive's death or permanent disability or incapacity (as determined by the Board in its good faith judgment), Executive, or Executive's estate if applicable, shall be entitled to receive the sum of (i) Executive's Base Salary through the date of such termination and Executive's Pro Rata Bonus (as defined in paragraph (h) below) and (ii) vested and earned (in accordance with the Company's applicable plan or program) but unpaid amounts under incentive plans, health and welfare plans, deferred compensation plans, and other employer programs of the Company which Executive participates. The amounts payable pursuant to this paragraph 4(d) shall be payable, at the Company's discretion, in one lump sum payment within 30 days following termination of the Employment Term or in any other manner consistent with the Company's normal payment policies.

(e) Except as otherwise provided herein, fringe benefits and bonuses (if any) which accrue or become payable after the termination of the Employment Term shall cease upon such termination.

(f) For purposes of this Agreement, "Cause" shall mean the willful engaging by the Executive in illegal conduct or gross misconduct, but only to the extent such conduct or misconduct is materially and demonstrably injurious to the Company in violation of the Company's Code of Ethical Behavior.

Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the CEO or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in

good faith and in the best interests of the Company. The cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the Company's Board of Directors, finding that, in the good faith opinion of the Board, and after reasonable notice is given to the Executive and the Executive is given an opportunity, together with counsel, to be heard before the Board, the Executive is guilty of the conduct described in paragraph (f) above, and specifying the particulars thereof in detail.

(g) For purposes of this Agreement, "Good Reason" shall mean:

(i) the assignment to the Executive of any duties inconsistent with the Executive's positions (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by paragraph 2 of this Agreement, or any other action by the Company which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive; provided, however, that for purposes of this section, Executive's being asked to report to a Global President or a Chief Operating Officer, or such other comparable officer as the CEO or the Board may designate, shall not constitute Good Reason;

(ii) any failure by the Company to comply with any of the material provisions of this Agreement, including without limitation paragraph 3, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any location other than as provided in paragraph 2(c) hereof; or

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

(v) any determination by a court of competent jurisdiction or an arbitrator that Executive is barred, for any reason, from working with the Company.

(h) For purposes of this Agreement, "Pro Rata Bonus" shall mean the sum of (i) the pro rata portion (calculated as if the "target" amount under such plan has been reached) under any current annual incentive plan from the beginning of the year of termination through the date of termination and (ii) if and to the extent Executive is vested, the pro rata portion (calculated as if the "target" amount under such plan has been reached) under any long-term incentive plan or performance plan from the beginning of the period of determination through the date of termination.

5. Confidential Information. 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 other Subsidiary (“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 CEO, unless and to the extent that 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 the Employment Term, or at any other time the Company may request, all memoranda, notes, plans, records, reports, computer tapes, printouts and software and other documents and data (and copies thereof) in any form or medium relating to the Confidential Information, Work Product (as defined below) or the business of the Company or any Subsidiary that Executive may then possess or have under Executive’s control.

6. Inventions and Patents. Executive acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable) that 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 that are conceived, developed or made by Executive while employed by the Company and its Subsidiaries (“Work Product”) belong to the Company or such Subsidiary. Executive shall promptly disclose such Work Product to the CEO and perform all actions reasonably requested by the CEO (whether during or after the Employment Term) to establish and confirm such ownership (including, without limitation, assignments, consents, powers of attorney and other instruments).

7. Non-Compete, Non-Solicitation.

(a) In further consideration of the compensation to be paid to Executive hereunder, 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 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, Executive agrees that, during the Employment Term and for a period of eighteen (18) months thereafter (the “Noncompete Period”), Executive shall not directly or indirectly own any interest in, manage, control, participate in, consult with, render services for, or in any manner engage in any business competing with the businesses of the Company or its Subsidiaries, as such businesses exist or are in process on the date of the termination of Executive’s employment, within any geographical area in which the Company or its Subsidiaries engage or plan to engage in such businesses. 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 which is publicly traded, so long as Executive has no active participation in the business of such corporation. The Company presently does not enforce this paragraph 7(a) in California. However, Executive is still required to sign this Agreement since Executive may already work, or may work in the future, in a state

where this paragraph 7(a) is fully enforceable. Moreover, the Company reserves its right to enforce this paragraph 7(a) in all other states in which it is enforceable, and in California in the future, to reflect any legislative or legal developments which will permit its enforcement to the fullest extent permitted by California law.

(b) During the Noncompete Period, Executive shall not directly or indirectly through another entity (i) 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, (ii) hire any person who was an employee of the Company or any Subsidiary at any time during the Employment Term or (iii) 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, licensor, franchisee, or business relation and the Company or any Subsidiary (including, without limitation, making any negative statements or communications about the Company or its Subsidiaries).

(c) The provisions of this paragraph 7 will be enforced to the fullest extent permitted by the law in the state in which Executive resides or is employed at the time of the enforcement of the provision. If, at the time of enforcement of this paragraph 7, a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area and that the court shall be allowed to revise the restrictions contained herein to cover the maximum period, scope and area permitted by law. Executive agrees that the restrictions contained in this paragraph 7 are reasonable.

(d) In the event of the breach or a threatened breach by Executive of any of the provisions of this paragraph 7, the Company, in addition and supplementary to 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 or prevent any violations of the provisions hereof (without posting a bond or other security). In addition, in the event of a breach or violation by Executive of this paragraph 7 (as determined by a court of competent jurisdiction or an arbitrator pursuant to paragraph 19 hereof), the Noncompete Period shall be tolled until such breach or violation has been duly cured.

8. Executive's Representations. 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, except as previously disclosed to the Company, (ii) Executive is not a party to or bound by any employment agreement, noncompete agreement or confidentiality agreement with any other person or entity, except as previously disclosed to the Company, 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.

9. Survival. Paragraphs 5, 6 and 7 and paragraphs 9 through 19 shall survive and continue in full force in accordance with their terms notwithstanding any termination of the Employment Term.

10. Notices. Any notice provided for in this Agreement shall be in writing and shall be either personally delivered, or mailed by first class mail, return receipt requested, to the recipient at the address below indicated:

Notices to Executive:

Carl Rubin  
6925 NW 62<sup>nd</sup> Terrace  
Parkland, FL 33067

Or to such other residential address as may be reflected in the employment records of the Company

Notices to the Company:

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

and

Office Depot, Inc.  
2200 Old Germantown Road  
Delray Beach, Florida 33445  
Attention: Executive Vice President — Human Resources

or such other address or to the attention of such other person as the recipient party shall have specified by prior written notice to the sending party. Any notice under this Agreement shall be deemed to have been given when so delivered or mailed.

11. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

12. Complete Agreement. This Agreement and those documents expressly referred to herein and other documents of even date herewith embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way (provided, however that during the "Employment Period," as defined in the Change of Control Employment Agreement, the terms and provision of the Change of Control Employment Agreement shall be effective and shall control to the extent there is any conflict between such agreement and this Agreement).

13. No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

14. Counterparts. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

15. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive, the Company and their respective heirs, successors and assigns, except that Executive may not assign Executive's rights or delegate Executive's obligations hereunder without the prior written consent of the Company.

16. Choice of Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the State of Florida, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Florida.



17. Amendment and Waiver. The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and Executive, and no course of conduct or failure or delay in enforcing the provisions of this Agreement shall affect the validity, binding effect or enforceability of this Agreement.

18. Confidentiality of this Agreement. The parties agree that the terms of this Agreement are confidential. Executive shall not divulge or publicize the terms hereof except as may be necessary to enforce the promises, covenants and/or understandings contained herein or as either party may be required to do so by law, court order, subpoena or other judicial action or government taxing authorities. Executive may disclose the contents of this Agreement to his immediate family, attorneys and accountants, provided however, that any further disclosure of the terms of this Agreement by any of these persons to anyone not included within the terms of this paragraph may be deemed a breach of the Agreement by Executive.

19. Arbitration Provisions. Except as to the right of the Company or the Executive to resort to any court of competent jurisdiction to obtain injunctive relief or specific enforcement of the parties' obligations under this Employment Agreement (or otherwise), any dispute or controversy between the Company and Executive arising out of or relating to Executive's employment or termination of employment, this Agreement or the breach of this Agreement, including but not limited to disputes involving discrimination arising under common law, and/or federal, state and local laws, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its National Rules for the Resolution of Employment Disputes then in effect, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any arbitration shall be held before a single arbitrator who shall be selected by the mutual agreement of the Company and Executive, unless the parties are unable to agree to an arbitrator, in which case the arbitrator will be selected under the procedures of the AAA. The arbitrator shall have the authority to award any remedy or relief that a court of competent jurisdiction could order or grant, including, without limitation, the issuance of an injunction. Executive agrees to abide by and accept the final decision of the arbitrator as to the ultimate resolution of any and all covered disputes and understands that arbitration replaces any right to trial by a judge or jury. However, either party may, without inconsistency with this arbitration provision, apply to any court otherwise having jurisdiction over such dispute or controversy and seek interim provisional, injunctive or other equitable relief until the arbitration award is rendered or the controversy is otherwise resolved. Except as necessary in court proceedings to enforce this arbitration provision or an award rendered hereunder, or to obtain interim relief, or as may otherwise be required by law, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of the Company and Executive. The Company and Executive acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding any choice of law provision included in this Agreement, the United States Federal Arbitration Act shall govern the interpretation and enforcement of this arbitration provision. The arbitration proceeding shall be conducted in Palm Beach County, Florida unless the parties mutually agree to another location. The Company shall pay the costs of any arbitrator appointed hereunder.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

OFFICE DEPOT, INC.

By: /s/ Steve Odland

Name: Steve Odland

Its: Chairman and Chief Executive Officer

Date: January 23, 2006

EXECUTIVE

/s/ Carl Rubin

Name: Carl Rubin

Date: January 23, 2006

# Office DEPOT

January 13, 2006

Mr. Rick Lepley  
EVP, North American Retail  
Office Depot, Inc.

Hand Delivery

Dear Rick:

The purpose of this letter is to outline those terms to which Office Depot, Inc. (the "Company") is prepared to agree with respect to your plans to retire from the Company. The following terms are more specifically set forth in the attached Release Agreement, your execution of which is a condition to receiving the benefits offered in this letter.

1. Unless otherwise agreed in writing, your Employment Agreement dated March 22, 2004, will be terminated not later than May 1, 2006 (the "Retirement Date").
  2. In lieu of the salary continuation, prorata bonus, continuation of benefits and other compensation set forth in your Employment Agreement, including a lump sum of \$35,000 to pay for health insurance under COBRA, the Company will pay to you the lump sum amount of \$1,035,000 million (the "Lump Sum"). Such Lump Sum payment shall be made in full on November 3, 2006. This six-month delay in payment following the Retirement Date is necessary to comply with provisions of Section 409A of the Internal Revenue Code. Payment is subject to all necessary withholding for taxes, etc.
  3. You will receive your regular pay and benefits until the Retirement Date of May 1, 2006, and you remain bonus eligible for 2005 performance, based upon the Company's executive bonus plan. During the period from now until your retirement, you agree to perform such duties as are requested of you and to report to the President, North American Retail.
  4. All stock options scheduled to vest through and including May 1, 2006 shall continue to vest.
  5. You will have until November 5, 2007 in which to exercise any and all stock options that are vested on the Retirement Date.
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6. You will receive the second and third distributions of restricted stock under the 2005 Officer Retention Plan on November 3, 2006, at the same time as the Lump Sum is paid to you.
7. In the event of your death or disability prior to payment of any sum specified to be paid to you hereunder, such sums shall be disbursed to your estate in accordance with your last will and testament in the event of your death, or to your personal representative in the event of disability.
8. The following provisions of the Employment Agreement shall survive the Retirement Date: Sections 5, 6, 8, and 9 through 19 for an unlimited time, and Section 7 for eighteen (18) months after the Retirement Date.
9. As provided above, the terms offered in this letter agreement are subject to your execution and delivery of the attached Release Agreement, and your not revoking such Release Agreement within the time period specified therein.

In addition, all of your benefits will cease as of the Retirement Date. Of course, you are permitted to purchase COBRA health insurance and, to this end, you will receive a packet of materials from our benefits department following your retirement.

Rick, this Release Agreement is intended to set forth the entire agreement and understanding between the Company and you with respect to your retirement from the Company. If you are in agreement with the terms hereof, please sign and return a copy of the Release Agreement to David Fannin, our EVP and General Counsel. Should you have any questions with respect to the Release Agreement, please contact or have your attorney contact David Fannin (561-438-8171) or Steve Calkins (561-438-7512), a member of David's legal team. This letter agreement and the terms set out herein have been approved by the Compensation Committee of our Board of Directors and ratified by the full Board. This letter is being signed on January 13, 2006, but will become effective on January 23, 2006, provided that Mr. Lepley does not exercise his revocation rights under the Release Agreement being executed contemporaneously herewith, which expire seven (7) days after this date. We wish you well in your retirement.

Warm regards,

/s/ Steve Odland

Steve Odland  
Chairman and CEO

These Terms are Agreed to:

/s/ Rick Lepley

Rick Lepley  
January 13, 2005

**Release Agreement and Covenant Not to Sue**

This Release Agreement and Covenant Not to Sue is made and given as of the 13th of January 2006, by Rick Lepley (“Executive”), in favor of and for the benefit of Office Depot, Inc. (the “Company”) (collectively the “Parties”) (the “Release Agreement”).

**Recitals**

- A. Executive and the Company are parties to an Employment Agreement originally dated March 22, 2004 (the “Employment Agreement”), which Employment Agreement is being terminated by mutual agreement between the Parties as of May 1, 2006 (the “Retirement Date”). The following provisions of the Employment Agreement, however, shall survive the Retirement Date and are specifically incorporated in this Release Agreement: Sections 5, 6, 8, and 9 through 19 for an unlimited time, and Section 7 for eighteen (18) months after the Retirement Date. To the extent that there is any conflict between the Terms of the Employment Agreement and this Release Agreement, the terms of the Release Agreement shall control; and
- B. As a condition of receipt of the benefits provided under the Employment Agreement and the payments and benefits being provided to Executive, including without limitation the severance benefits and other consideration provided by the Company to Executive and by Executive to the Company, the receipt and sufficiency of which are acknowledged by the Parties, the Parties have agreed to enter into this Release Agreement.

**Now therefore**, in consideration of the foregoing recitals and other good and valuable consideration, the parties hereby agree as follows:

**1. Benefits and Consideration.** Notwithstanding any term contrary in the Employment Agreement or otherwise, Executive and the Company agree to the following payment of monies, benefits and other terms.

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a. The Company will pay to Executive the lump sum amount of \$1,035,000 million, less applicable taxes and other deductions required by law (the "Lump Sum"). Such Lump Sum payment shall be made in full on November 3, 2006. In the event of Executive's death or disability prior to payment of the Lump Sum, said payment shall be disbursed to Executive's estate in accordance with Executive's Last Will And Testament or applicable law in the event of death, or to Executive's personal representative in the event of disability.

b. Executive shall have until November 5, 2007, in which to exercise any and all stock options that are vested as of the Retirement Date.

c. The remaining installments of Executive's Retention Restricted Stock award will be delivered, less applicable taxes and other deductions required by law, on November 3, 2006.

d. All stock options scheduled to vest through and including May 1, 2006 shall continue to vest.

e. Executive will receive his regularly scheduled pay through the Retirement Date and will remain bonus eligible for 2005 performance, based upon the Company's executive bonus plan.

**2. Section 409A Amendment.** At all times from and after January 1, 2005, this Release Agreement and the Employment Agreement between you and the Company shall be operated in accordance with the requirements of Section 409A of Internal Revenue Code. Any action that may be taken (and, to the extent possible, any action actually taken) by you and the Company shall not be taken (or shall be void and without effect), if such action violates the requirements of Section 409A of the Internal Revenue Code. If the failure to take an action with respect to this Release Agreement and/or the Employment Agreement would violate Section 409A of the Internal Revenue Code, then to the extent it is possible thereby to avoid a violation of Section 409A of the Internal Revenue Code, the rights and effects under this Release Agreement and/or the Employment Agreement, as applicable, shall be altered to avoid such violation. Any provision in this Release Agreement or the

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Employment Agreement that is determined to violate the requirements of Section 409A of the Internal Revenue Code shall be void and without effect. In addition, any provision that is required to appear in this Release Agreement or the Employment Agreement to satisfy the requirements of Section 409A of the Internal Revenue Code, but that is not expressly set forth, shall be deemed to be set forth therein, and this Release Agreement and/or the Employment Agreement, as applicable, shall be administered in all respects as if such provision were expressly set forth. In all cases, the provisions of this paragraph shall apply notwithstanding any contrary provision of this Release Agreement and/or the Employment Agreement that is not contained in this paragraph. The Employment Agreement is hereby amended to include this paragraph.

**3. Releases.** In consideration of the payments and other benefits being provided to Executive by the Company, which are hereby acknowledged and agreed as being over and above any existing obligations of the Company to Executive as of the date hereof and as constituting sufficient consideration for his agreements set forth herein, Executive hereby RELEASES and FOREVER DISCHARGES the Company and all of its subsidiaries, affiliated companies, and their respective predecessor entities, their present and former officers, directors, shareholders, agents, employees, legal representatives, successors, trustees, fiduciaries and assigns (individually a "Released Party" and collectively the "Released Parties") of and from (and does hereby WAIVE) any and all rights, claims, grievances or causes of action (or rights to mediation or arbitration) which Executive has or could assert, or which could be asserted on his behalf (collectively "Claims"), against the Released Parties from the beginning of time through the date of the signing of this Release Agreement, including but not limited to those relating in any manner to his hiring, employment with the Company or any Released Party, or his separation from such employment, whether by reason of contract or of any state, federal, or local law, ordinance, or rule, except of course, any rights provided to Executive by this Release Agreement. However, nothing contained in this Release Agreement shall be construed to release Executive's vested rights under the terms of any employee benefit plan (including without limitation any defined contribution retirement plans) of the Company in effect during his employment with the Company.

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Executive agrees that this Release Agreement and the release contained herein further includes but is not limited to any and all claims arising under the Florida Civil Rights Act of 1992, the Florida Whistle Blower Act, the Florida Wage Discrimination Law, the Florida Equal Pay Act, the Florida AIDS Act, the Florida Discrimination on the Basis of Sickle Cell Trait Law, the Florida OSHA Law, the Florida Wage Payments Laws, Florida's statutory provisions regarding retaliation/discrimination for filing a workers' compensation claim, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, Sections 1981 through 1988 of Title 42 of the United States Code, as amended, the Worker Adjustment and Retraining Notification Act, the Sarbanes-Oxley Act of 2002, section 409A of the Internal Revenue Code of 1986, as amended, or the Employee Retirement Income Security Act (ERISA), as amended, or claims growing out of any legal restrictions on the Company's right to terminate its employees, or any other statute, rule, regulation, state or local law, or ordinance, and any and all common law claims of any nature whatsoever.

Executive understands, among other matters, that he is waiving and releasing the Released Parties from and against any and all Claims, including without limitation, claims for pain and suffering, emotional distress, compensatory and punitive damages and for employment discrimination based upon age (including claims under the federal Age Discrimination in Employment Act of 1967, as amended the "ADEA") or any comparable state laws. He also understands that he is waiving and releasing any Claims based upon gender, national origin, race or color, mental or physical handicap or disability or religious belief.

**4. Waiver.** Executive also WAIVES ANY AND ALL RIGHTS under the laws of any jurisdiction in the United States that would or might limit the foregoing release.

**5. Covenant Not to Sue.** Executive also COVENANTS NOT TO SUE the Released Parties, or any Released Party, for any Claims released hereby.

**6. Exclusions from Release.** Executive is not releasing and hereby expressly retains any and all rights to which he is entitled under the terms of this Release Agreement. Executive also excludes from this Release Agreement and retains any claim for indemnification to which he may be entitled as a former officer and director of the Company, whether by contract or under applicable law or the Bylaws of the Company, and the Company hereby affirmatively agrees to honor such indemnification obligations.

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**7. Confidentiality, Cooperation.** Executive acknowledges and agree that the terms and provisions of this Release Agreement, as well as any and all incidents leading to or resulting from this Release Agreement, are confidential and that Executive shall not discuss them with any individual without the prior written consent of the Company's Executive Vice President – Human Resources or General Counsel, except this Release Agreement shall not prohibit Executive from making required confidential disclosures to Executive's attorney, accountant, or legally required disclosures to any governmental authority, or discussing the matter with Employee's respective immediate family on a need to know basis or as otherwise required by law. Executive further agrees that all documents, records, techniques, business secrets and other information that have come into his possession from time to time during his affiliation with the Company shall be deemed to be confidential and proprietary to the Company and shall be its sole and exclusive property. Executive agrees to keep confidential and not use or divulge to any other individual or harm or destroy any of the Company's confidential information and business secrets, except as required by law, and that Executive will promptly return to the Company any and all confidential and proprietary information, and all property, equipment and materials of the Company that are in his possession or under his control. He will cooperate with the Company, in any litigation or administrative proceeding involving any matters with which he was involved during his employment with the Company. The Company shall reimburse Executive for travel and expenses approved in advance in writing by the Company, which Executive incurred in providing such assistance.

**8. No Disparagement.** Except as otherwise required by law, Executive agrees that he will not make any remarks disparaging the conduct or character of the Company or any of its officers, directors, employees or agents dealing in any manner with his tenure as an executive with the Company.

**9. Executive's Rights Under Laws Intended for his Benefit in Signing this Release Agreement.** The Company hereby advises Executive that he should consult with an attorney before signing this Release Agreement. Executive will have twenty-one (21) calendar days from

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the day he receives this Release Agreement to execute it. Executive agrees that any modifications, material or otherwise, made to this Release Agreement do not restart or affect in any manner the original twenty-one (21) day consideration period. If Executive has not executed this Release Agreement by the twenty-first day, it will be null and void and revoked. Executive understands and acknowledges that he has seven (7) calendar days following his execution of this Release Agreement to revoke his acceptance of this Release Agreement (the "Revocation Period") and that this Release Agreement shall not become effective or enforceable until the Revocation Period has expired. If Executive revokes this Release Agreement within the seven (7) calendar days, this Release Agreement will be null and void. If Executive does not revoke his execution of this Release Agreement within the seven (7) calendar days, it will become effective as of the date hereof. Revocation of this Release Agreement must be made by delivering a written notice of revocation to the Company's General Counsel. For this revocation to be effective, written notice must be received by the General Counsel no later than the close of business on the seventh day after Executive signs this Release Agreement. In addition, Executive understands and acknowledges that no monies or other benefits will be paid to Executive pursuant to the terms of the Release Agreement, until the end of the Revocation Period, except for any amounts otherwise required by law. Should Executive revoke this Release Agreement or refuse to execute this Release Agreement within the time frame provided herein, Executive will not be entitled to any monies or other benefits, as prescribed in this Release Agreement. In such case, Executive shall only be entitled to those severance benefits allowed under Section 4(c) of the Employment Agreement.

Executive acknowledges he has read and fully considered the foregoing Release Agreement and has had the opportunity to discuss the advisability of entering into this Release Agreement with his counsel. Executive acknowledges that he in fact has been given at least twenty-one (21) calendar days to review and consider the provisions of this Release Agreement and that he is voluntarily and knowingly signing this Release Agreement.

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**10. Miscellaneous.** This Release Agreement shall be governed in all respects by the laws of the State of Florida. This Release Agreement shall not be construed against either party by virtue of the drafting hereof by the Company. This Release Agreement constitutes the entire written understanding of the parties with respect to the subject matter hereof, and may not be modified, amended or revoked except in writing signed by each party. This Release Agreement shall inure to the benefit and be binding upon the respective successors, heirs, personal representatives permitted assignees of the parties. The provisions of this Release Agreement may not be assigned by the Executive without the prior written consent of the Company.

**11. Attorneys' Fees.** In any action or proceeding relating to and/or in connection with this Release Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the other party.

**12. Counterparts and Facsimile Signatures:** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Facsimile signatures will be considered original signatures.

**In testimony whereof, witness the signatures of the parties as of the date first written above.**

**Executive**

/s/ Rick Lepley

\_\_\_\_\_  
**Rick Lepley**

**Office Depot, Inc.**

/s/ David C. Fannin

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**Its: EVP, General Counsel  
David C. Fannin**

Date: January 13, 2006

Date: January 13, 2006

# Office DEPOT

**CONTACT:**  
**Brian Levine**  
**Public Relations**  
**561/438-2895**  
[blevine@officedepot.com](mailto:blevine@officedepot.com)

## **OFFICE DEPOT NAMES CHUCK RUBIN, PRESIDENT, NORTH AMERICAN RETAIL**

**Delray Beach, Fla., January 23, 2006** — Office Depot (NYSE: ODP), a leading global provider of office products and services, today named Chuck Rubin, President, North American Retail, a new position within the Company. Rubin was formerly Office Depot's Executive Vice President, Chief Merchandising Officer and Chief Marketing Officer.

In his new role, Rubin will be responsible for leading Office Depot's retail business in North America, including store operations, merchandising, marketing, real estate, and construction.

"Chuck's strong record in fiscal and operational management, retail savvy and leadership skills, make him the perfect choice to lead our integrated retail efforts," said Steve Odland, Chairman and CEO of Office Depot, to whom Rubin will continue to report. "With Chuck at the helm, we intend to continue to drive profitable growth in our stores, fortify our brand through new business opportunities, and differentiate our Company in the marketplace."

Since joining Office Depot in 2004, Rubin has successfully implemented several new marketing and merchandising concepts. He was an instrumental partner in the launch of the Company's award-winning M2 retail format, created a new national sponsorship platform featuring NASCAR and Roush Racing star Carl Edwards, and significantly expanded the selection of private brand products and exclusive offerings.

"Chuck has demonstrated an unwavering focus on return on investment — deftly balancing the creative aspects inherent in marketing with the bottom-line requirements of a multi-channel office products and services business," Odland noted. "His ability to rally the organization around sales-generating programs has contributed greatly to the excellent results achieved by both our Retail and Business Services divisions."

Office Depot also announced today that Rick Lepley, Executive Vice President, North American Retail since March 2004, is retiring and will be leaving the Company on May 1.

"Rick has done an outstanding job for Office Depot in various organizational functions around the globe," Odland said. "We are grateful for his many contributions to our retail growth here in the U.S. as well as his help in building our businesses in Japan and Eastern Europe."

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**About Chuck Rubin**

Before joining Office Depot, Rubin was a partner with Accenture. During his six years with the consulting firm, he led engagements across retail formats, including the department store, specialty store and e-commerce channels, as well as new business startups. His results-proven experience included helping companies improve sales, marketing, pricing, supply chain and store operations strategies and implementation tactics.

Prior to joining Accenture, Rubin spent six years in the sporting goods specialty retail business where he served as General Merchandise Manager and a member of the Executive Committees for two publicly held companies.

Rubin began his career with Federated Department Stores where he spent 11 years in merchandising and store management.

He holds a B.A. degree from Brandeis University.

**About Office Depot**

With annual sales of over \$14 billion, Office Depot provides more office products and services to more customers in more countries than any other company. Incorporated in 1986 and headquartered in Delray Beach, Florida, Office Depot conducts business in 23 countries and employs 47,000 people worldwide. The Company operates under the Office Depot®, Viking Office Products®, Viking Direct®, Guilbert®, and Tech Depot® brand names.

Office Depot is a leader in every distribution channel — from retail stores and contract delivery to catalogs and e-commerce. With over \$3.1 billion in online sales, the Company is the world's number three Internet retailer. As of September 24, 2005, Office Depot has 1,009 retail stores in North America. Internationally, the Company conducts wholly-owned operations in 14 countries, and operates retail stores under joint venture and license arrangements in another seven countries.

The company's common stock is listed on the New York Stock Exchange under the symbol ODP and is included in the S&P 500 Index. Additional press information can be found at: <http://mediarelations.officedepot.com>.