



**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**FORM 10-K**

(Mark One)

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

For the fiscal year ended December 27, 2008

or

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

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

Commission file number 1-10948

**Office Depot, Inc.**

(Exact name of registrant as specified in its charter)



**Delaware**

(State or other jurisdiction of incorporation or organization)

**59-2663954**

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

**6600 North Military Trail, Boca Raton, Florida**

(Address of principal executive offices)

**33496**

(Zip Code)

**(561) 438-4800**

(Registrant's telephone number, including area code)  
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days: Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

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

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

The aggregate market value of voting stock held by non-affiliates of the registrant as of June 28, 2008 (based on the closing market price on the Composite Tape on June 27, 2008) was approximately \$3,010,635,490 (determined by subtracting from the number of shares outstanding on that date the number of shares held by affiliates of Office Depot, Inc.).

The number of shares outstanding of the registrant's common stock, as of the latest practicable date: At January 24, 2009, there were 274,832,415 outstanding shares of Office Depot, Inc. Common Stock, \$0.01 par value.

Documents Incorporated by Reference:

Certain information required for Part III of this Annual Report on Form 10-K is incorporated by reference to the Office Depot, Inc. definitive Proxy Statement for its 2009 Annual Meeting of Shareholders, which shall be filed with the Securities and Exchange Commission pursuant to Regulation 14A of the Securities Act of 1934, as amended, within 120 days of Office Depot, Inc.'s fiscal year end.



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**PART I****Item 1. Business.**

Office Depot, Inc. is a global supplier of office products and services. The company was incorporated in 1986 with the opening of our first retail store in Fort Lauderdale, Florida. In fiscal year 2008, we sold \$14.5 billion of products and services to consumers and businesses of all sizes through our three business segments: North American Retail Division, North American Business Solutions Division and International Division. Sales are processed through multiple channels, consisting of office supply stores, a contract sales force, an outbound telephone account management sales force, internet sites, direct marketing catalogs and call centers, all supported by our network of crossdock facilities, warehouses and delivery operations.

Additional information regarding our business segments is presented below and in Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") and Note L – Segment Information of Notes to Consolidated Financial Statements located elsewhere in this Annual Report on Form 10-K.

**North American Retail Division**

Our North American Retail Division sells a broad assortment of merchandise through our chain of office supply stores in the U.S. and Canada. We currently offer general office supplies, computer supplies, business machines and related supplies, and office furniture from national brands as well as our own private brands, which include Office Depot®, Foray®, Ativa®, Break Escapes™, Worklife™ and Christopher Lowell™. Most stores also contain a design, print and ship center offering graphic design, printing, reproduction, mailing, shipping, and other services. Also, during 2008, we announced the nationwide availability of a PC support and network installation service that provides our customers with in-home, in-office and in-store support for their technology needs.

Our retail stores are designed to provide a positive shopping experience for the customer. We strive to optimize visual presentation, product placement, shelf capacity, in-stock positions, and inventory turnover. Our goal is to maintain sufficient inventory in the stores to satisfy current and near-term customer needs, while controlling the overall working capital invested in inventory. Currently, most store replenishment is handled through our crossdock flow-through distribution system. Bulk merchandise is sorted for distribution and generally shipped the same day to stores needing to replenish their inventory. We operated 12 crossdock facilities at the end of 2008, one of which will be closed during 2009. As we work to optimize our supply chain, we may operate combination facilities to satisfy both the needs of retail stores and delivery customers.

In recent years, we have developed a new store format that we call "M2." This design is intended to provide improved lines of sight, effective product adjacencies and updated signage and lighting, while lowering overall operating costs. This format is being used for all new store openings and remodels. While we believe the current M2 format is a desirable design and an improvement over prior designs, we may continue to modify it in the future.

At the end of 2008, our North American Retail Division operated 1,267 office supply stores throughout the U.S. and Canada. The largest concentration of our retail stores is in California, Texas and Florida, but we have broad representation across North America. The count of open stores may include locations temporarily closed for remodels or other factors. Store opening and closing activity for the last three years has been as follows:

	Open at Beginning of Period	Opened	Closed	Open at End of Period	Relocated
2006	1,047	115	4	1,158	7
2007	1,158	71	7	1,222	3
<b>2008</b>	<b>1,222</b>	<b>59</b>	<b>14</b>	<b>1,267</b>	<b>7</b>

Due to changes in the economic climate, we have reduced our store opening and remodel plans. We currently plan to add approximately 15 new retail stores in North America in 2009. Also, we will be closing 108 additional retail stores in North America in the first quarter of 2009 and another 10 stores throughout the year as their leases expire or other lease arrangements are finalized. See Charges discussed in MD&A for additional information.

## **North American Business Solutions Division**

Our North American Business Solutions Division sells nationally branded and private brand office supplies, technology products, furniture and services by means of a dedicated sales force, through catalogs and electronically through our internet sites. We strive to ensure that our customers' needs are satisfied through various channel offerings, and we continue to develop the people, systems and processes to enable us to meet those needs. Our direct business is tailored to serve small- to medium-sized customers. Our direct customers can order products from our catalogs, by phone or through our public web sites ([www.officedepot.com](http://www.officedepot.com)), including our public web site devoted to technology products ([www.techdepot.com](http://www.techdepot.com)).

Our contract business employs a dedicated sales force that services the office supply needs of predominantly medium-sized to Fortune 100 customers. We believe sales representatives impact revenues by building relationships with customers and providing information, business tools and problem-solving services to them. We offer contract customers the convenience of shopping on dedicated web sites and in our retail locations, while charging their contract pricing in lieu of retail pricing. During 2008, we implemented a contact strategy that allows us to continue to aggressively pursue customers using the tools and processes of this initiative. We also use telephone account management for outbound sales contacts with our customers. Sales made at retail locations to our contract customers are included in the results of our North American Retail Division.

We also entered into government contracts through a multi-state contract available to local and state government agencies, school districts (K-12), higher education and non-profits nationwide. We were awarded this contract on January 2, 2006, and the contract expires on January 1, 2010. Multi-state contracts enable individual states or municipalities to utilize the buying power of multiple states, which results in lower costs based on volume purchasing. These contracts include an administrative fee payable to a third party administrator. As part of a normal process of doing business with local and state governmental agencies, we are subject to audits and reviews of these government contracts. See "Part I – Item 3 – Legal Proceedings" for additional discussion.

Contract and direct customers' orders are filled primarily through deliveries from our distribution centers ("DCs") located across the United States and Canada. Some DCs and some retail locations also house sales offices and administrative offices. We have outsourced our inbound call center activities; however, in-house staff manages what we consider to be the most critical points of customer interaction.

Inventory is held in our DCs at levels we believe sufficient to meet current and anticipated customer needs. We utilize processes to evaluate the appropriate timing and quantity of reordering with the objective of controlling our investment in inventory, while at the same time ensuring customer satisfaction. Certain purchases may be sent directly from the manufacturer to our customers.

Over the past several years, we have implemented technologies to assist with reordering, stocking, the pick-and-pack process and delivery operations. We have also increased our use of third party delivery services and reduced our own fleet of vehicles where cost reductions could be achieved without compromising customer service levels. We operated 20 DCs at the end of 2008. During 2009, we will consolidate certain of our supply chain facilities, which will result in the closure of four of these distribution centers as well as one distribution center that had ceased operations as of the end of 2008. Additionally, we are likely to modify our supply chain operations to include combination facilities that will service both our North American Retail and North American Business Solutions Divisions.

Because sales and marketing efforts and catalog production have similarities between the North American Business Solutions Division and the International Division, those topics are addressed separately after the three segment discussions, though they are integral to understanding the processes and management of these Divisions.

## **International Division**

As of December 27, 2008, we sold to customers in 48 countries throughout North America, Europe, Asia and Central America either through wholly-owned entities, majority-owned entities or other ventures covering 38 countries, and through alliances in an additional ten countries. Our International Division sells office products and services through direct mail catalogs, contract sales forces, internet sites and retail stores, using a mix of company-owned operations, joint ventures, licensing and franchise agreements, alliances and other arrangements. International operations are managed on a geographic basis through three regional offices rather than by sales channel; however, for consistency of discussion, sales channels will be used to describe the activities of the International Division.

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The international direct channel was launched in 1990 with the start-up of operations in the United Kingdom (“UK”). We offer products under the Viking name that is co-branded with Office Depot, and we may migrate to the Office Depot brand in Europe over a multi-year period. We now have catalog offerings in 14 countries outside of North America, and we operate approximately 35 separate web sites in the International Division.

In 2000, we launched the Office Depot contract channel in the UK and subsequently expanded the channel to four additional countries. We further expanded our contract start-up business in 2003 with the acquisition of Guilbert, S.A. Guilbert operations and customers have been fully integrated into the Office Depot operations since the end of 2006.

In an effort to expand our geographic footprint around the globe, we have made certain acquisitions over the past few years. During 2006, we completed acquisitions in South Korea (majority ownership interest in Best Office), China (majority ownership interest in AsiaEC) and Eastern Europe (100% ownership interest in Papirius s.r.o.). Also in 2006, we increased our ownership interest to a majority stake in Office Depot Israel. During 2008, we became a 51% owner of a joint venture, which acquired eOfficePlanet India pvt. Also in 2008, we completed an acquisition in Sweden (majority ownership interest in AGE Kontor & Data AB) and purchased the remaining shares of Asia EC and Office Depot Israel.

To appropriately support our geographic expansion, our International Division operates separate regional headquarters for Europe/Middle East (The Netherlands), Asia (Hong Kong) and Latin America (South Florida). During 2007, we began to transition our back-office accounting functions in Europe to a shared-services facility in Eastern Europe and at the end of 2008, that transition was essentially complete.

At the end of 2008, the International Division operated, through wholly-owned or majority-owned entities, 162 retail stores in France, Hungary, Israel, Japan, South Korea and Sweden. In addition, we participate under licensing and merchandise arrangements in 98 stores in South Korea and Thailand. Following a strategic review of the business in late 2008, we have decided to close our retail store operations in Japan during 2009.

Since 1994, we have participated in a joint venture in Mexico. In recent years, this venture, Office Depot de Mexico, has grown in size and scope and now includes 186 retail locations in Mexico, Costa Rica, El Salvador, Guatemala, Honduras, and Panama, as well as call centers and distribution centers to support the delivery business in certain areas. We provide services to the venture through management consultation, product selection, product sourcing and information technology services. Because we participate equally in this business with a partner, we account for the activity under the equity method and venture sales of approximately \$953 million in 2008 are not directly reflected in our revenues nor in our consolidated retail comparable store statistics.

Including company-owned operations, joint ventures, licensing and franchise agreements we sell office products through 446 retail stores outside North America.

International Division store and distribution center operations are summarized below (includes only wholly-owned and majority-owned entities):

	Office Supply Stores			
	Open at Beginning of Period	Opened/Acquired	Closed	Open at End of Period
2006	70	55 <sup>(1)</sup>	—	125
2007	125	26	3	148
<b>2008</b>	<b>148</b>	<b>15<sup>(2)</sup></b>	<b>1</b>	<b>162</b>

	Distribution Centers			
	Open at Beginning of Period	Opened/Acquired	Closed	Open at End of Period
2006	25	10 <sup>(3)</sup>	3	32
2007	32	2	1	33
<b>2008</b>	<b>33</b>	<b>19<sup>(4)</sup></b>	<b>9</b>	<b>43</b>

(1) Includes 33 retail stores obtained in the acquisition of the business in Israel and nine retail stores obtained in the acquisition of the business in South Korea.

(2) Includes 13 retail stores obtained in the acquisition of the business in Sweden.

(3) Includes one DC obtained in the acquisition of the business in Israel, five DCs obtained in the acquisition of the business in China, one DC obtained in the acquisition of the business in South Korea and two DCs obtained in the acquisition of Papirius that are located in the Czech Republic and Lithuania (Lithuania was disposed during 2008).

(4) Includes 12 DCs obtained in the acquisition of the business in India and four DCs obtained in the acquisition of the business in Sweden.

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### Merchandising

Our merchandising strategy is to meet our customers' needs by offering a broad selection of nationally branded office products, as well as an increasing array of private brand products and services. Our selection of private brand products has increased in breadth and level of sophistication over time. We currently offer general office supplies, computer supplies, business machines and related supplies, and office furniture under various labels, including Office Depot®, Viking Office Products®, Foray®, Ativa®, Break Escapes™, Niceday™, Worklife™ and Christopher Lowell™.

Total sales by product group were as follows:

	2008	2007*	2006*
Supplies	61.5%	59.3%	60.1%
Technology	24.7%	26.7%	26.7%
Furniture and other	13.8%	14.0%	13.2%
	100.0%	100.0%	100.0%

\* Conformed to current year product classification.

We buy substantially all of our merchandise directly from manufacturers and other primary suppliers, including direct sourcing of products from domestic and offshore sources. We also enter into arrangements with vendors that can lower our unit product costs if certain volume thresholds or other criteria are met. For additional discussion regarding these arrangements, see the Critical Accounting Policies section of MD&A. In most cases, our suppliers deliver merchandise directly to our DCs or crossdock facilities. The latter are flow-through facilities that re-supply our retail stores in North America.

We operate separate merchandising functions in North America, Europe and Asia as well as in our joint ventures. Each group is responsible for selecting, purchasing and pricing merchandise as well as managing the product life cycle of our inventory. In recent years, we have increasingly used global tenders across all regions to further reduce our product cost while maintaining product quality.

We operate a global sourcing office in Shenzhen, China, which allows us to take more direct control of our product sourcing, logistics and quality assurance. This office consolidates our purchasing power with Asian factories and, in turn, helps us to increase the scope of our private brand offerings.

### Sales and Marketing

Our marketing programs are designed to attract new customers and to drive frequency of customer visits to our stores and web sites and increase the "share of wallet" of our existing customers by capturing more of what they spend in total on the products we sell. We regularly advertise in major newspapers in most of our North American markets. These advertisements are combined with local and national radio, network and cable television advertising campaigns, and direct marketing efforts.

We offer customer loyalty programs that provide customers with rewards that can be applied against future Office Depot purchases or other incentives. These programs have provided us with valuable information enabling us to market more effectively to our customers and drive incremental sales. These programs may change in popularity in the future, and we may make alterations to them from time to time.

We perform periodic competitive pricing analyses to monitor each market, and prices are adjusted as necessary to adhere to our pricing philosophy and further our competitive positioning. We generally expect our everyday prices to be highly competitive with other resellers of office products.



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We acquire new customers by selectively mailing specially designed catalogs and by making on-premises sales calls to prospective customers. We also make outbound sales calls using dedicated agents through our telephone account management program. We obtain the names of prospective customers in new and existing markets through the purchase of selected lists from outside marketing information services and other sources as well as through the use of a proprietary mailing list system. We also acquire customers through e-mail marketing campaigns and online affiliates. We are a primary sponsor of NASCAR® and are currently designated NASCAR®'s official office products partner. No single customer in any of our segments accounts for more than 5% of our total sales.

We consider our business to be only somewhat seasonal, with sales generally trending lower in the second quarter, following the “back-to-business” sales cycle in the first quarter and preceding the “back-to-school” sales cycle in the third quarter and the holiday sales cycle in the fourth quarter. Certain working capital components may build and recede during the year reflecting established selling cycles. Business cycles can and have impacted our operations and financial position when compared to other periods. See “Item 1A — Risk Factors” for additional discussion.

### **Catalogs**

We use catalogs to market directly to both existing and prospective customers throughout our operations globally. We have developed a distinctive style for our catalogs, most of which are produced in-house by our designers, writers and production artists. We also produce a Green Book® catalog, which features products that are recyclable, energy efficient, or otherwise have a reduced impact on the environment. We continually evaluate our catalog offerings for efficiency and effectiveness at generating incremental revenues.

Our catalog offerings typically include a complete buyers’ guide containing all of our products at their regular discount prices. This buyers’ guide, which is distributed to our active customers, varies in size among countries. Prospecting catalogs with special offers designed to attract new customers are mailed at certain intervals. In addition, specialty and promotional catalogs may be delivered more frequently to selected customers.

### **Design, Print and Ship**

Most of our North American retail stores contain a Design, Print & Ship Depot™ offering graphic design, printing, reproduction, mailing, shipping, and other services. We have launched the exclusive “Xerox Certified Print Specialist” program, which certifies associates as experts in the area of digital imaging and printing. In addition to the in-store locations, we operate ten regional print facilities, which support copy and print orders taken in our North American Retail and North American Business Solutions Divisions.

### **Industry and Competition**

We operate in a highly competitive environment in all three of our segments. We believe that we compete favorably on the basis of price, service, relationships and selection. We compete with office supply stores, wholesale clubs, discount stores, mass merchandisers, food and drug stores, computer and electronics superstores, internet-based companies and direct marketing companies. These companies, in varying degrees, compete with us in substantially all of our current markets.

Other office supply retail companies market similarly to us in terms of store format, pricing strategy and product selection and availability in the markets where we operate, primarily those in the United States and Canada. We anticipate that in the future we will face increased competition from these chains as each of us expands our operations locally and globally.

Internationally, we compete on a similar basis to how we compete in North America. Outside of the U.S. and Canada, we sell through contract and catalog channels in 20 countries and operate retail stores in six countries through wholly-owned or majority-owned entities, though we have recently announced our intent to close our retail operations in Japan. Additionally, our International Division provides office products and services in 26 countries through joint ventures, licensing and franchise agreements, cross-border transactions, alliances and other arrangements.

### **Employees**

As of January 24, 2009, we had approximately 43,000 employees worldwide. Our workforce is largely non-union and our labor relations are generally good. In certain international locations, changes in staffing or work arrangements may need approval of local works councils or other bodies.

## **Environmental Activities**

As both a significant user and seller of paper products, we have developed environmental practices that are values-based and market-driven. Our environmental initiatives center on three guiding principles: (1) recycling and pollution reduction; (2) sustainable forest management; and (3) issue awareness and market development for environmentally preferable products. We offer thousands of different products containing recycled content, including from 35% to 100% post-consumer waste content paper and technology recycling services in our retail stores.

In 2008, Office Depot continued to implement environmental programs in line with our stated environmental vision to “increasingly buy green, be green and sell green” — including environmental sensitivity in our packaging, operations and sales offerings. Also, in January 2009, our “Green” retail store prototype received a Leadership in Energy and Environmental Design (LEED) Gold Certification from the U.S. Green Building Council. Additional information on our green product offerings can be found at [www.officedepot.com/buygreen](http://www.officedepot.com/buygreen).

## **Available Information**

We maintain a web site at [www.officedepot.com](http://www.officedepot.com). We make available, free of charge, on the “Investor Relations” section of our web site, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, as soon as reasonably practicable after we electronically file or furnish such materials to the U.S. Securities and Exchange Commission (“SEC”).

Additionally, our corporate governance materials, including governance guidelines; the charters of the Audit, Compensation, Finance, and Governance and Nominating Committees; and the code of ethical behavior may also be found under the “Investor Relations” section of our web site at [www.officedepot.com](http://www.officedepot.com). Office Depot makes no provisions for waivers of the code of ethical behavior. A copy of the foregoing corporate governance materials is available upon written request to the company.

We submitted our 2008 annual Section 12(a) CEO certification with the New York Stock Exchange (“NYSE”). The certification was not qualified in any respect. Additionally, we filed with this Form 10-K, the CEO and CFO certifications required under Sections 302 and 906 of the Sarbanes-Oxley Act of 2002.

## **Executive Officers of the Registrant**

### ***Steve Odland — Age: 50***

Mr. Odland has been Chairman, Chief Executive Officer and a Director since early 2005. Prior to joining Office Depot, Inc., he was Chairman, Chief Executive Officer and President of AutoZone, Inc., from 2001 until 2005. Previously he was an executive with Ahold USA from 1998 to 2000, President of the Foodservice Division of Sara Lee Bakery from 1997 to 1998 and was employed by The Quaker Oats Company from 1981 to 1996 in various executive positions. Mr. Odland is also a director of General Mills, Inc.

### ***Charles Brown — Age: 55***

Mr. Brown has been President, International since 2005. In 2007, oversight of business development was added to his role. He was the company’s Executive Vice President and Chief Financial Officer from 2001 to 2005. Prior to that, Mr. Brown was Senior Vice President, Finance and Controller since he joined our company in 1998. Before joining Office Depot, he was Senior Vice President and Chief Financial Officer of Denny’s, Inc. from 1996 until 1998; from 1994 until 1995, he was Vice President and Chief Financial Officer of ARAMARK International; and from 1989 until 1994, he was Vice President and Controller of Pizza Hut International, a Division of PepsiCo, Inc. Mr. Brown assumed the role of acting Chief Financial Officer of the Company effective March 1, 2008 and served in that role until August 2008, when Michael Newman began his role as the Company’s permanent Chief Financial Officer.

### ***Elisa Garcia — Age: 51***

Ms. Garcia was appointed Executive Vice President, General Counsel and Corporate Secretary in July 2007 with overall responsibility for global compliance matters and governmental relations. Prior to joining Office Depot, Ms. Garcia served as General Counsel and Corporate Secretary of Domino’s Pizza, Inc. from April 2000. Prior to joining Domino’s Pizza, Ms. Garcia served as Latin American Regional Counsel for Philip Morris International, and Corporate Counsel for GAF Corporation.

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### **Monica Luechtefeld — Age: 60**

Ms. Luechtefeld has been our Executive Vice President, Information Technology since early 2005. She was also responsible for business development from early 2005 to 2007. She assumed responsibility for supply chain from 2007 through 2008. Previously, she was Executive Vice President of E-Commerce from 2000. Prior to this role, she held several officer positions including Vice President, Marketing and Sales Administration and Vice President of Contract Marketing & Business Development. Ms. Luechtefeld joined Office Depot in 1993, serving as General Manager of the Southern California Region of Office Depot until 1996.

### **Michael Newman — Age: 52**

Mr. Newman was appointed Executive Vice President, Chief Financial Officer in August 2008. Prior to joining Office Depot, Mr. Newman served as Chief Financial Officer of Platinum Research Organization, Inc. from April 2007 through February 2008. Prior to joining Platinum Research Organization, Mr. Newman was employed as an independent consultant since 2005. Mr. Newman also served as Chief Financial Officer of Blackstone Crystal Holdings Capital Partners from 2004 to 2005 and Chief Financial Officer of Radio Shack Corp. from 2001 to 2004. Mr. Newman also held Chief Financial Officer roles at Intimate Brands and Hussmann International (which was acquired by Ingersoll-Rand in 2000). He also spent 17 years at General Electric in a variety of management roles both in the United States and Europe.

### **Kevin Peters — Age: 51**

Mr. Peters was appointed Executive Vice President, Supply Chain in October 2007. Prior to joining Office Depot, Mr. Peters spent five years in management roles at W. W. Grainger, Inc., most recently as Senior Vice President, Supply Chain. Prior to W. W. Grainger, Mr. Peters spent 11 years at The Home Depot, serving as the company's Vice President and General Manager, Strategic Initiatives, Toronto/San Diego. He also has held positions in physical distribution operations, purchasing and inventory management at McMaster-Carr Supply Company.

### **Carl (Chuck) Rubin — Age: 49**

Mr. Rubin was appointed President, North American Retail in early 2006. Prior to assuming that position, Mr. Rubin held the position of Executive Vice President, Chief Merchandising Officer and Chief Marketing Officer since 2004. Before joining the company, Mr. Rubin spent six years with Accenture Ltd., most recently as Partner, where he worked for clients, including Office Depot, across retail formats in the department, specialty and e-commerce channels, as well as new business startups. 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.

### **Steven Schmidt — Age: 54**

Mr. Schmidt was appointed President, North American Business Solutions in July 2007. Prior to joining Office Depot, Mr. Schmidt spent 11 years with the ACNielsen Corporation, most recently serving as President and Chief Executive Officer. Prior to joining ACNielsen, Mr. Schmidt spent eight years at the Pillsbury Food Company, serving as President of its Canadian and Southeast Asian operations. He has also held management positions at PepsiCo and Procter & Gamble.

### **Daisy Vanderlinde — Age: 57**

Ms. Vanderlinde was appointed Executive Vice President, Human Resources in late 2005. Prior to joining Office Depot, Ms. Vanderlinde was Senior Vice President, Human Resources and Loss Prevention, for AutoZone Inc. from 2001 to 2005, and was a member of the Executive Committee. Ms. Vanderlinde has also served as a senior HR officer for other retailers, including Tractor Supply Company, Marshalls, Inc., and The Broadway Stores.

### **Mark Hutchens — Age: 43**

Mr. Hutchens was appointed Senior Vice President and Controller in September 2008. Prior to assuming that position, Mr. Hutchens held the position of Senior Vice President of Finance, International Division since late 2006. Prior to joining the company, Mr. Hutchens served as Assistant Treasurer at Yum! Brands, Inc., from February 2005 to November 2006 and as General Auditor from November 2003 to February 2005. In addition, Mr. Hutchens served in a variety of senior management positions at Yum! from May 1996 to November 2003. Prior to joining Yum! Mr. Hutchens served in various management positions at Ford Motor Company, where he was employed until May 1996.

Information with respect to our directors is incorporated herein by reference to information included in the Proxy Statement for our 2009 Annual Meeting of Shareholders.

**Item 1A. Risk Factors.**

In addition to risks and uncertainties in the ordinary course of business that are common to all businesses, important factors that are specific to our industry and our company could materially impact our future performance and results. We have provided below a list of these risk factors that should be reviewed when considering our securities. These are not all the risks we face, and other factors currently considered immaterial or unknown to us may impact our future operations.

**Economic Conditions May Cause a Decline in Business and Consumer Spending Which Could Adversely Affect Our Business and Financial Performance:**

Our operating results and performance depend significantly on worldwide economic conditions and their impact on business and consumer spending. The decline in business and consumer spending resulting from the global recession and the deterioration of global credit markets has caused our comparable store sales to decline from prior periods and we have experienced similar declines in our other domestic and international businesses. Our business and financial performance may continue to be adversely affected by current and future economic conditions and the level of consumer debt and interest rates, which may cause a continued or further decline in business and consumer spending.

**Supplier Credit and Order Fulfillment Risk:** We purchase products for resale under credit arrangements with our vendors. In recent years, we have worked to set payment terms to our vendors under these credit arrangements to occur at a time approximately equal to the anticipated time it takes to sell the vendor's products. In weak global markets, vendors may seek credit insurance to protect against non-payment of amounts due to them. If we continue to experience declining operating performance, and if we experience severe liquidity challenges, vendors may demand that we accelerate our payment for their products. Also, credit insurers may curtail or eliminate coverage to the vendors. If vendors begin to demand accelerated payment of amounts due to them or if they begin to require advance payments or letters of credit before goods are shipped to us, these demands could have a significant adverse impact on our operating cash flow and result in a severe drain on our liquidity. Borrowings under our existing credit facility could reach maximum levels under such circumstances and we would seek alternative liquidity measures but may not be able to meet our obligations as they become due. In addition if our suppliers are unable to access liquidity or become insolvent, they could be unable to supply us with product. Also, some of our suppliers may serve other industries. Any adverse impacts to those industries, as a result of the economic slowdown or credit crisis, could have a ripple effect on these suppliers which could adversely impact their ability to supply us as necessary. Any such disruptions could negatively impact our ability to deliver products and services to our customers, which in turn could have an adverse impact on our business, operating results, financial condition or cash flow.

**Liquidity:** Historically, we have generated positive cash flow from operating activities and have had access to broad financial markets that provide the liquidity we need to operate our business. Together, these sources have been used to fund operating and working capital needs, as well as invest in business expansion through new store openings, capital improvements and acquisitions. However, due to the downturn in the global economy our operating results and liquidity have diminished. In September 2008, we entered into a \$1.25 billion asset based credit facility intended to provide liquidity. The recent distress in the financial markets has resulted in extreme volatility in the capital markets and diminished liquidity and credit availability. There can be no assurance that our liquidity will not be adversely affected by changes in the financial markets and the global economy. In addition, deterioration in our financial results could negatively impact our credit ratings. The tightening of the credit markets or a downgrade in our credit ratings could increase our borrowing costs and make it more difficult for us to access funds, to refinance our existing indebtedness, to enter into agreements for new indebtedness or to obtain funding through the issuance of securities. If such conditions were to persist, we would seek alternative sources of liquidity but may not be able to meet our obligations as they become due.

**Financial Covenants in Existing Credit Facility:** Our asset based credit facility contains a fixed charge coverage ratio covenant that is operative only when borrowing availability is below \$187.5 million or prior to a restricted transaction, such as incurring additional indebtedness, acquisitions, dispositions, dividends, or share repurchases. The agreement also contains representations, warranties, fees, affirmative and negative covenants, and default provisions. A breach of any of these covenants could result in a default under our credit agreement. Upon the occurrence of an event of default under our credit agreement, the lenders could elect to declare all amounts outstanding to be immediately due and payable and terminate all commitments to extend further credit. If the lenders accelerate the repayment of borrowings, we may not have sufficient assets to repay our revolving credit agreement and our other indebtedness. Also, should there be an event of default, or need to obtain waivers following an event of default, we may be subject to higher borrowing costs and/or more restrictive covenants in future periods. Acceleration of any obligation under any of our material debt instruments will permit the holders of our other material debt to accelerate their obligations. See "Liquidity and Capital Resources".

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**New York Stock Exchange (“NYSE”) Compliance Risk:** Our common stock is currently listed on the NYSE. Subject to NYSE rules, we are required to maintain compliance with the minimum share price rule which requires that the average closing price of our common stock be at least \$1.00. If we were unable to maintain a minimum share price of at least \$1.00 for a period of 30 consecutive trading days our common stock could be subject to delisting. A delisting of our common stock could negatively impact us by reducing the liquidity and market price of our common stock, reducing the number of investors willing to hold or acquire our common stock, which could negatively impact our ability to raise equity financing.

**Litigation / Regulatory Risks:** We are involved in various legal proceedings, which may involve class action lawsuits, state and federal governmental inquiries and investigations, employment, tort, consumer litigation and intellectual property litigation. Certain of these legal proceedings are described in detail in our Legal Proceedings Section. These legal proceedings could expose us to significant defense costs, fines, penalties, suspensions, debarments and liability to private parties for monetary recoveries and attorneys’ fees, any of which could have a material adverse effect on our business and results of operations.

Litigation and governmental investigations could result in substantial additional costs. The SEC is investigating our compliance with Federal securities laws and certain states and federal agencies are investigating our pricing under certain contracts. Although we are cooperating with the governmental agencies in these matters, they may determine that we have violated some laws or regulations. If these agencies determine that we have violated some laws or regulations, we may face sanctions, including, but not limited to, significant monetary penalties, injunctive relief and loss of business.

In addition, we have been named a defendant in a number of class-action and related lawsuits. The findings and outcome of the SEC investigation may affect the class-action and derivative lawsuits that are pending. We are generally obliged, to the extent permitted by law, to indemnify our directors and our former directors and officers who are named defendants in some of these lawsuits. We are unable to estimate what our liability in these matters may be, and we may be required to pay judgments or settlements and incur expenses in aggregate amounts that could have a material adverse effect on our financial condition or results of operations. See “Part I — Item 3 — Legal Proceedings” for a description of pending litigation and governmental proceedings and investigations.

**Competition:** We compete with a variety of retailers, dealers, distributors, contract stationers, direct marketers and internet operators throughout our worldwide operations. This is a highly competitive marketplace that includes such retail competitors as office supply stores, warehouse clubs, computer and electronics stores, mass merchant retailers, local merchants, grocery and drug-store chains as well as other competitors including direct mail and internet merchants, contract stationers, and direct manufacturers. Our competitors may be local, regional, national or international. Further, competition may come from highly-specialized low-cost merchants, including ink refill stores and kiosks, original equipment manufacturers, concentrated direct marketing channels including well-funded and broad-based enterprises. There is a possibility that any or all of these competitors could become more aggressive in the future, thereby increasing the number and breadth of our competitors. In recent years, new and well-funded competitors have begun competing in certain aspects of our business. For example, two major common carriers of goods have retail outlets that allow them to compete directly for copy, printing, packaging and shipping business, and offer products and services similar to those we offer. While they do not yet have the breadth of products that we offer, they are extremely competitive in the areas of package shipping and copy and print centers. Recently, the so-called warehouse clubs have expanded upon their “in-store” offerings by adding catalog and internet sales channels, offering a broad assortment of office products for sale on a direct delivery basis. In order to achieve and maintain expected profitability levels in our three operating divisions, we must continue to grow by adding new customers and taking market share from competitors and using pricing necessary to retain existing customers. If we fail to adequately address and respond to these pressures in both North America and internationally, it could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**Government Contracts:** One of our largest U.S. clients currently consists of various state and local governments, a relationship, which is subject to uncertain future funding levels and federal and state procurement laws and requires restrictive contract terms; any of these factors could curtail current or future business. Contracting with state and local governments is highly competitive and can be expensive and time-consuming, often requiring that we incur significant upfront time and expense without any assurance that we will win a contract. Our ability to compete successfully for and retain business with the federal and various state and local governments is highly dependent on cost-effective performance. Our government business is also sensitive to changes in national and international priorities and U.S., state and local government budgets.

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**Execution of Expansion Plans:** We plan to open approximately 15 stores in the North American Retail Division during 2009. Circumstances outside of our control could negatively impact these anticipated store openings. We cannot determine with certainty whether our new store openings, including some newly sized or formatted stores or retail concepts, will be successful. The failure to expand by successfully opening new stores as planned, or the failure of a significant number of these stores to perform as planned, could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**Costs of Remodeling and Re-merchandising Stores:** Remodeling and re-merchandising our stores is a necessary aspect of maintaining a fresh and appealing image to our customers. The expenses associated with such activities could have a significant negative impact on our future earnings. Business lost during remodeling periods, because of customer inconvenience, may not be recovered or successfully redirected to other stores in the area. Our growth, through both store openings and possible acquisitions, may continue to require the expansion and upgrading of our information, operational and financial systems, as well as necessitate the hiring of new store associates at all levels. If we are unsuccessful in achieving an acceptable return on this design, unsuccessful at hiring the right associates, or unsuccessful at implementing appropriate systems, such failure could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**International Activity:** We may enter additional international markets as attractive opportunities arise. Such entries could take the form of start-up ventures, acquisitions of stock or assets or joint ventures or licensing arrangements. Internationally, we face such risks as foreign currency fluctuations, unstable political and economic conditions, and, because some of our foreign operations are not wholly owned, the potential for compromised operating control in certain countries. In addition, the business cultures in certain areas of the world are different than those that prevail in the United States, and we may be at a competitive disadvantage against other companies that do not have to comply with standards of financial controls, Foreign Corrupt Practices Act requirements, or business integrity that we are committed to maintaining as a U.S. publicly traded company. Our results may continue to be affected by all of these factors. All of these risks could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**Product Availability; Potential Cost Increases:** In addition to selling our private brand merchandise, we are a reseller of other manufacturers' branded items and are thereby dependent on the availability and pricing of key products, including ink, toner, paper and technology products, to name a few. As a reseller, we cannot control the supply, design, function or cost of many of the products we offer for sale. Disruptions in the availability of raw materials used in production of these products may adversely affect our sales and result in customer dissatisfaction. Further, we cannot control the cost of manufacturers' products and cost increases must either be passed along to our customers or result in an erosion of our earnings. Failure to identify desirable products and make them available to our customers when desired and at attractive prices could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**Global Sourcing of Products/Private Brand:** In recent years, we have substantially increased the number and types of products that we sell under our private brands. We currently offer general office supplies, computer supplies, business machines and related supplies, and office furniture under various labels, including Office Depot®, Viking Office Products®, Niceday™, Foray®, Ativa®, Break Escapes™, Worklife™ and Christopher Lowell™. Sources of supply may prove to be unreliable, or the quality of the globally sourced products may vary from our expectations. We have recently opened our own product sourcing office in China and are reducing our reliance on the use of third-party trading companies. While this may improve our cost structure, it also makes our company more accountable for relationships with the Asian factories and other sources of private branded product and increases our risks associated with doing business in that region of the world. Economic and civil unrest in areas of the world where we source such products, as well as shipping and dockage issues could adversely impact the availability or cost of such products, or both. Moreover, as we seek indemnities from the manufacturers of these products, the uncertainty of realization of any such indemnity and the lack of understanding of U.S. product liability laws in certain parts of Asia make it more likely that we may have to respond to claims or complaints from our customers as if we were the manufacturer of the products. Most of our imported goods to the United States arrive from Asia, and the ports through which these goods are imported are located primarily on the West Coast. Therefore, we are subject to potential disruption of our supplies of goods for resale due to labor unrest, security issues or natural disasters affecting any or all of these ports. Finally, as a significant importer of manufactured goods from foreign countries, we are vulnerable to security concerns, labor unrest and other factors that may affect the availability and reliability of ports of entry for the products that we source. Any of these circumstances could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**Possible Business Disruption Because of Weather:** Weather conditions may affect any business, especially retail businesses, including snow storms, high winds and heavy rain. Because of our heavy concentration in the southern United States (including Florida and the Gulf Coast), our company may be more susceptible than some others to the effects of tropical weather disturbances. For example, during 2004 and 2005, we sustained disruption to our businesses in the United States due to the number and severity

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of weather events in the Southeastern United States, including record numbers of hurricanes. While we have been able to recover quickly from these events in the past, the long-range weather forecast calls for higher than normal tropical storm activity, especially in the Southeastern United States, for a number of years into the future. It is impossible to know whether these storms will occur as forecasted, or the location or severity of such storms. Winter storm conditions in the Midwest and Southwest, areas that also have a large concentration of our business activities, could result in supply chain constraints or other business disruptions. We believe that we have taken reasonable precautions to prepare for any such weather-related events, but our precautions may not be adequate to deal with such events in the future. If these events occur in the future (as they almost certainly will), and if they should impact areas in which we have concentrations of retail stores or distribution facilities, such events could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**New Systems and Technology:** We frequently modify our information systems and technology to increase productivity and efficiency. We are undertaking certain system enhancements and conversions that, if not done properly, could divert the attention of our workforce during development and implementation and constrain for some time our ability to provide the level of service our customers demand as well as our ability to complete requisite filings with the SEC. Also, when implemented, the new systems and technology may not provide the benefits anticipated and could add costs and complications to our ongoing operations. A failure to effectively convert to these systems or to realize the intended efficiencies could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**Labor:** We are heavily dependent upon our labor force to identify new customers and provide desired products and services to existing customers. We attempt to attract and retain an appropriate level of personnel in both field operations and corporate functions. Our compensation packages are designed to provide benefits commensurate with our level of expected service. However, within our retail operations, we face the challenge of filling many positions at wage scales that are appropriate to the industry and competitive factors. We operate in a number of jurisdictions. It can be cumbersome to comply with labor laws and regulations, many of which vary from jurisdiction to jurisdiction. This has added to our labor costs in some locales as we have had to add personnel to monitor and track compliance with sometimes arcane rules and regulations that impact retailers in particular. As a result of these and other factors, we face many external risks and internal factors in meeting our labor needs, including competition for qualified personnel, overall unemployment levels, works councils (in our international locations), prevailing wage rates, as well as rising employee benefit costs, including insurance costs and compensation programs. We also engage third parties in some of our processes such as delivery and transaction processing and these providers may face similar issues. Changes in any of these factors, including especially a shortage of available workforce in the areas in which we operate, could interfere with our ability to adequately provide services to customers and result in increasing our labor costs. Any failure to meet increasing demands on securing our workforce could have a material adverse effect on our business, financial condition, results of operations and cash flows. In addition, changes in the process for our employees to join a union could disrupt our business and add costs.

**Unionization:** While our management believes that our employee relations are good, we cannot be assured that we will not experience pressure from labor unions or become the target of campaigns similar to those faced by our competitors. The potential for unionization could increase if the United States Congress passes federal "card check" legislation. We have always respected our employees' right to unionize or not to unionize. However, the unionization of a significant portion of our workforce could increase our overall costs at the affected locations and adversely affect our flexibility to run our business in the most efficient manner to remain competitive or acquire new business. In addition, significant union representation would require us to negotiate wages, salaries, benefits and other terms with many of our employees collectively and could adversely affect our results of operations by increasing our labor costs or otherwise restricting our ability to maximize the efficiency of our operations.

**Operating Costs:** We operate a large network of stores and delivery centers around the globe. As such, we purchase significant amounts of fuel needed to transport products to our stores and customers. We also incur significant shipping costs to bring products from overseas producers to our distribution systems. While we may hedge our anticipated fuel purchases, the underlying commodity costs associated with this transport activity have been volatile in recent periods and disruptions in availability of fuel could cause our operating costs to rise significantly to the extent not covered by our hedges. Additionally, we rely on predictable and available energy costs to light our stores and operate our equipment. Increases in any of the components of energy costs could have an adverse impact on our earnings, as well as our ability to satisfy our customers in a cost effective manner. Any of these factors that could impact the availability or cost of our energy resources could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**Possible Changes to Our Global Tax Rate:** As a result of our operations in many foreign countries, in addition to the United States, our global tax rate is derived from a combination of applicable tax rates in the various jurisdictions in which we operate. Depending upon the sources of our income, any agreements we may have with taxing authorities in various jurisdictions, and the tax filing positions we take in various jurisdictions, our overall tax rate may be lower or higher than that of other companies or higher or lower than our tax rates have been in the past. At any given point in time, we base our estimate of an annual effective tax rate upon a

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calculated mix of the tax rates applicable to our company and to estimates of the amount of income likely to be generated in any given geography. The loss of one or more agreements with taxing jurisdictions, a change in the mix of our business from year to year and from country to country, changes in rules related to accounting for income taxes, changes in tax laws in any of the multiple jurisdictions in which we operate or adverse outcomes from the tax audits that regularly are in process in any of the jurisdictions in which we operate could result in an unfavorable change in our overall tax rate, which change could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**Regulatory Environment:** While businesses are subject to regulatory matters relating to the conduct of their businesses, including consumer protection laws, advertising regulations, wage and hour regulations and the like, certain jurisdictions have taken a particularly aggressive stance with respect to such matters and have stepped up enforcement, including fines and other sanctions. We transact substantial amounts of business in certain such jurisdictions, and to the extent that our business locations are exposed to what might be termed an overly aggressive enforcement environment or legal or regulatory systems that authorize or encourage private parties to pursue relief under so-called private attorney general laws and similar authorizations for private parties to pursue enforcement of governmental laws and regulations, the resulting fines and exposure to third party liability (such as monetary recoveries and recoveries of attorneys fees) could have a material adverse effect on our business and results of operations, including the added cost of increased preventative measures that we may determine to be necessary to conduct business in such locales.

**Compromises of our Information Security:** Through our sales and marketing activities, we collect and store certain personal information that our customers provide to purchase products or services, enroll in promotional programs, register on our web site, or otherwise communicate and interact with us. We also gather and retain information about our associates in the normal course of business. We may share information about such persons with vendors that assist with certain aspects of our business. Despite instituted safeguards for the protection of such information, we cannot be certain that all of our systems are entirely free from vulnerability to attack. A breach of our security system resulting in customer or employee personal information being obtained by unauthorized persons could adversely affect our reputation, disrupt our operations and expose us to claims from customers, financial institutions, payment card associations and other persons, which could have a material adverse effect on our business, financial condition and results of operations. In addition, our online operations at [www.officedepot.com](http://www.officedepot.com) depend upon the secure transmission of confidential information over public networks, including information permitting cashless payments.

**Pursuit or Execution of New Business Ventures:** Our growth strategy includes expansion via new business ventures, strategic alliances and acquisitions both in the U.S. and abroad. While we employ several different valuation methodologies to assess a potential opportunity, we can give no assurance that new business ventures and strategic alliances will positively affect our financial performance. Acquisitions may result in the diversion of our capital and our management's attention from other business issues and opportunities. We may not be able to assimilate or integrate successfully companies that we acquire, including their personnel, financial systems, distribution, operations and general operating procedures. If we fail to assimilate or integrate acquired companies successfully, our business could suffer materially. We may also encounter challenges in achieving appropriate internal control over financial reporting in connection with the integration of an acquired company. In addition, the integration of any acquired company, and its financial results, into ours may have a material adverse effect on our financial condition, results of operations and cash flows.

### **Disclaimer of Obligation to Update**

We assume no obligation (and specifically disclaim any such obligation) to update these Risk Factors or any other forward-looking statements contained in this Annual Report to reflect actual results, changes in assumptions or other factors affecting such forward-looking statements.

### **Item 1B. Unresolved Staff Comments.**

None.



[Table of Contents](#)**Item 2. Properties.**

As of January 24, 2009, we operated 1,238 office supply stores in 49 U.S. states, the District of Columbia and Puerto Rico, 29 office supply stores in five Canadian provinces and 162 office supply stores (excluding our participation in arrangements through non-consolidated entities) in six countries outside of the United States and Canada. The following table sets forth the locations of these facilities. As of January 24, 2009, we also had 19 DCs in 15 U.S. states and one Canadian province and 43 DCs in 16 countries outside of the United States and Canada.

**STORES**

<u>State/Country</u>	<u>#</u>	<u>State/Country</u>	<u>#</u>
<b>UNITED STATES:</b>			
Alabama	21	North Dakota	2
Alaska	2	Ohio	17
Arizona	7	Oklahoma	17
Arkansas	12	Oregon	22
California	153	Pennsylvania	25
Colorado	41	Puerto Rico	5
Connecticut	6	Rhode Island	2
Delaware	4	South Carolina	21
District of Columbia	1	South Dakota	1
Florida	147	Tennessee	27
Georgia	50	Texas	148
Hawaii	4	Utah	11
Idaho	6	Virginia	27
Illinois	64	Washington	39
Indiana	24	West Virginia	3
Iowa	5	Wisconsin	14
Kansas	9	Wyoming	3
Kentucky	21	TOTAL UNITED STATES	1,238
Louisiana	36		
Maine	2	<b>CANADA:</b>	
Maryland	32	Alberta	7
Massachusetts	7	British Columbia	9
Michigan	27	Manitoba	2
Minnesota	12	Ontario	9
Mississippi	16	Saskatchewan	2
Missouri	29	TOTAL CANADA	29
Montana	4		
Nebraska	6	FRANCE	48
Nevada	21	HUNGARY	17
New Hampshire	1	ISRAEL	44
New Jersey	23	JAPAN	27
New Mexico	7	SOUTH KOREA	13
New York	16	SWEDEN	13
North Carolina	38	TOTAL OUTSIDE NORTH AMERICA	162

We did not open or close any retail stores during January 2009. We plan to close 118 stores in North America, of which 116 are part of the strategic review launched in the fourth quarter of 2008. We also plan to exit our retail operations in Japan during 2009. See Charges discussed in MD&A for additional information.

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DCs

State/Country	#	State/Country	#
<b>UNITED STATES:</b>			
Arizona	1	BELGIUM	1
California	2	CHINA	7
Colorado	1	CZECH REPUBLIC	1
Florida	2	FRANCE	5
Georgia	1	GERMANY	2
Illinois	1	INDIA	11
Maryland	1	IRELAND	1
Massachusetts	1	ISRAEL	1
Michigan	1	ITALY	1
Minnesota	1	JAPAN	1
New Jersey	1	SOUTH KOREA	1
North Carolina	1	SPAIN	1
Ohio	1	SWEDEN	4
Texas	2	SWITZERLAND	1
Washington	1	THE NETHERLANDS	1
		UNITED KINGDOM	4
<b>CANADA:</b>			
Ontario	<u>1</u>		
TOTAL UNITED STATES & CANADA	19	TOTAL OUTSIDE NORTH AMERICA	<u>43</u>

Although our distribution centers in Utah and Louisiana were not closed as of January 24, 2009, we were no longer receiving goods from suppliers or shipping goods to customers at these locations on that date. As discussed in MD&A, we plan to close these two distribution centers, along with three others in North America, during 2009. We also plan to close one distribution center in Europe during 2009.

In addition to the properties identified in the tables above, we operate 12 crossdock facilities in the United States. Generally, these facilities serve as centralized same-day distribution facilities where bulk shipments are brought in, broken into smaller quantities and shipped to retail stores needing supply. As discussed in MD&A, we plan to close one crossdock facility in North America during 2009.

Our corporate offices in Boca Raton, Florida consist of approximately 600,000 square feet of office space in three interconnected buildings. This facility is being leased over 15 years with certain renewal options. This lease is accounted for as a capital lease. We also own a corporate office in Venlo, the Netherlands which is approximately 226,000 square feet in size, and a systems data center in Charlotte, North Carolina which is approximately 53,000 square feet in size.

Although we own a small number of our retail store locations and several of our European distribution centers, most of our facilities are leased or subleased, with initial lease terms expiring in various years through 2032.

**Item 3. Legal Proceedings.**

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

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

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

On March 21, 2008, the court in the Southern District of Florida entered an Order consolidating the class action lawsuits and an Order consolidating the derivative actions. Lead plaintiff in the consolidated class actions, the New Mexico Educational Retirement Board, filed its Consolidated Amended Complaint on July 2, 2008. On September 2, 2008, Office Depot filed a motion to dismiss the Consolidated Amended Complaint on the basis that it fails to state a claim, which remains pending. We are still awaiting an amended complaint in the derivative action. We plan to vigorously defend both the consolidated class action and the consolidated derivative action, which are in their early stages.

As part of a normal process of doing business with federal, local and state governmental agencies, we are subject to audits and reviews of our governmental contracts. Many of these audits and reviews are resolved without incident, however we have had several highly publicized inquiries by certain state agencies into contract pricing, and additional state inquiries may follow. We currently do not anticipate that this will have a material effect on our business. We are currently cooperating with the Florida and Missouri Attorneys General with respect to civil investigations regarding our pricing practices that relate primarily to government customers. We first became aware of the Florida matter in the second quarter of 2008 and the Missouri matter in the first quarter of 2009. We are also cooperating with the U.S. Department of Defense (“DOD”), the Department of Education, and the General Services Administration (“GSA”) with respect to their joint investigations that are being conducted in coordination with the Department of Justice regarding our pricing practices that relate to sales to certain federal agencies. We first became aware of the GSA matter on December 29, 2008, the DOD matter on January 20, 2009 and the Department of Education matter on February 19, 2009. No claim for relief has been made in any of these matters and management cannot predict their ultimate outcome.

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

None.

**PART II**

**Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**

Our common stock is listed on the New York Stock Exchange (“NYSE”) under the symbol “ODP.” As of the close of business on January 24, 2009, there were 7,597 holders of record of our common stock. The last reported sale price of the common stock on the NYSE on January 24, 2009 was \$2.43.

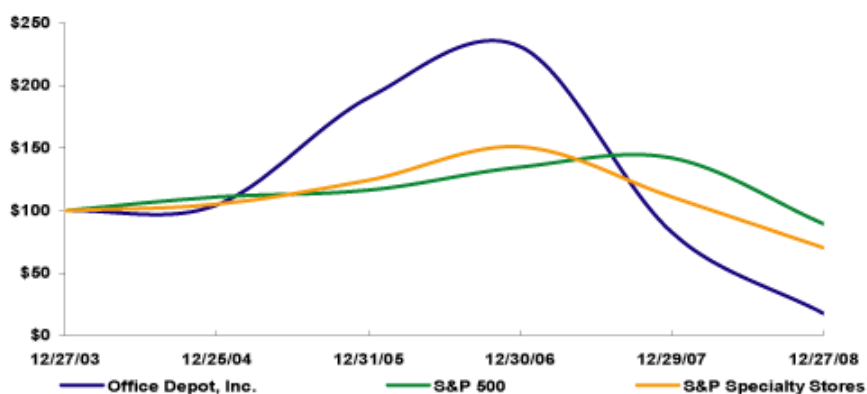
The following table sets forth, for the periods indicated, the high and low sale prices of our common stock, as quoted on the NYSE Composite Tape. These prices do not include retail mark-ups, markdowns or commission.

	High	Low
<b>2008</b>		
First Quarter	\$ 15.540	\$ 10.600
Second Quarter	14.390	10.690
Third Quarter	11.430	5.510
Fourth Quarter	5.940	1.450
<b>2007</b>		
First Quarter	\$ 39.660	\$ 32.230
Second Quarter	37.050	30.100
Third Quarter	31.070	17.790
Fourth Quarter	22.790	13.080

We have never declared or paid cash dividends on our common stock. Our asset based credit facility includes limitations in certain circumstances on the payment of dividends. These dividend restrictions are based on the then-current and proforma fixed charge coverage ratio and borrowing availability at the point of consideration. While we regularly assess our dividend policy, we have no current plans to declare a dividend. Earnings and other cash resources will continue to be used in the maintenance and expansion of our business.

**COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\***

Among Office Depot, Inc., The S&P 500 Index  
And The S&P Specialty Stores Index



\*\$100 invested on 12/27/03 in stock & 12/31/03 in index-including reinvestment of dividends. Indexes calculated on month-end basis.

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The foregoing graph shall not be deemed to be filed as part of this Form 10-K and does not constitute soliciting material and should not be deemed filed or incorporated by reference into any other filing of the company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent the company specifically incorporates the graph by reference.

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

<u>Period</u>	<u>(a) Total Number of Shares Purchased</u>	<u>(b) Average Price Paid per Share</u>	<u>(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)</u>	<u>(d) Maximum Number of Shares (or Approximate Dollar Value) that May Yet Be Purchased Under the Plans or Programs</u>
September 28, 2008 — October 25, 2008	—	\$ —	—	\$ 500,000,000
October 26 2008 — November 22, 2008	—	—	—	500,000,000
November 23, 2008 — December 27, 2008	—	—	—	500,000,000
Total/Balance as of December 27, 2008	—	\$ —	—	\$ 500,000,000

[Table of Contents](#)**Item 6. Selected Financial Data.**

The following table sets forth selected consolidated financial data at and for each of the five fiscal years in the period ended December 27, 2008. It should be read in conjunction with the Consolidated Financial Statements and Notes thereto, included in Item 8 of this report, and Management's Discussion and Analysis of Financial Condition and Results of Operations, included in Item 7 of this report.

(In thousands, except per share amounts and statistical data)

	2008	2007	2006(2)	2005(3)	2004
<b>Statements of Operations Data:</b>					
Sales	\$ 14,495,544	\$ 15,527,537	\$ 15,010,781	\$ 14,278,944	\$ 13,564,699
Net earnings (loss) (1)	\$ (1,478,938)	\$ 395,615	\$ 503,471	\$ 273,792	\$ 335,504
Net earnings (loss) per share:					
Basic	\$ (5.42)	\$ 1.45	\$ 1.79	\$ 0.88	\$ 1.08
Diluted	(5.42)	1.43	1.75	0.87	1.06
<b>Statistical Data:</b>					
Facilities open at end of period:					
United States and Canada:					
Office supply stores	1,267	1,222	1,158	1,047	969
Distribution centers	20	21	20	20	22
Call centers	—	—	—	3	13
International(4):					
Office supply stores	162	148	125	70	78
Distribution centers	43	33	32	25	25
Call centers	27	31	30	31	31
Total square footage — North American Retail Division	30,672,862	29,790,082	28,520,269	26,261,318	24,791,255
Percentage of sales by segment:					
North American Retail Division	42.2%	43.9%	45.2%	45.6%	43.8%
North American Business Solutions Division	28.6%	29.1%	30.5%	30.1%	29.8%
International Division	29.2%	27.0%	24.3%	24.3%	26.4%
<b>Balance Sheet Data:</b>					
Total assets	\$ 5,268,226	\$ 7,256,540	\$ 6,557,438	\$ 6,098,525	\$ 6,794,338
Long-term debt, excluding current maturities	688,788	607,462	570,752	569,098	583,680

- (1) Fiscal year 2008 net loss includes impairment charges for goodwill and trade names of \$1.27 billion and other asset impairment charges of \$222 million. See Management's Discussion and Analysis of Financial Condition and Results of Operations for additional information.
- (2) Statements of Operations Data for fiscal year 2006 and Balance Sheet Data for 2006, have been restated to reflect adjustments for vendor program accounting, which were filed on Form 10-K/A on November 20, 2007.
- (3) Includes 53 weeks in accordance with our 52 – 53 week reporting convention.
- (4) Facilities of owned or majority-owned entities operated by our International Division.

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

### RESULTS OF OPERATIONS

#### GENERAL

Our business is comprised of three reportable segments. The North American Retail Division includes our retail office supply stores in the U.S. and Canada, which offer office supplies, computers and business machines and related supplies, and office furniture. Most stores also offer a design, print and ship center offering graphic design, printing, reproduction, mailing and shipping. The North American Business Solutions Division sells office supply products and services in the U.S. and Canada directly to businesses through catalogs, internet web sites and a dedicated sales force. Our International Division sells office products and services through catalogs, internet web sites, a dedicated sales force and retail stores.

Our fiscal year results are based on a 52- or 53-week retail calendar ending on the last Saturday in December. Each of the three years addressed in this Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is based on 52 weeks. Our comparable store sales relate to stores that have been open for at least one year.

#### OVERVIEW

##### *Economic factors and company performance*

Fiscal year 2008 was a very difficult period for the company. The housing crisis that began in California and Florida in 2007 deepened in 2008 and spilled over to other sectors of the U.S. economy and then the global economy. A wide range of underlying asset values decreased and in turn, contributed to a banking and credit crisis, as well as extreme volatility in the stock market. We entered a recessionary period combined with a systemic lack of liquidity and deep cuts in corporate spending. All of these factors contributed to a difficult retail environment. While we worked hard to anticipate and satisfy our customers' needs, we clearly did not meet our goals. As a result, the company has reported a decline in sales and gross margins, as well as significant asset impairments and other charges, resulting in a significant loss for the year. We cannot predict the future, but most economists anticipate another difficult year in 2009. This outlook of continued recessionary factors has contributed to the severity of some of the impairment charges recognized in 2008. We will continue to focus on the needs of our small- to medium-sized customers, controlling cash flows, expanding our private brands and providing solutions to all customers.

##### *Summary of charges*

At the time we reported our third quarter 2008 results, we also announced the launch of an internal review of assets and processes with the goal of positioning the company to deal with the deepening economic crisis and to benefit from its eventual improvement. The results of that internal review led to decisions to close stores, exit certain businesses and write off certain assets that were not seen as providing future benefit. These decisions resulted in material charges, some of which were recognized during the fourth quarter of 2008, and others which will be recognized during 2009 as the related accounting criteria are met. Additional information about these activities is provided below. We will manage these activities at a corporate level and the impacts will be disclosed as corporate charges and will not be reflected in the Division operating results.

In addition to the charges that relate to these changes in business, we recognized other material charges because of the downturn in our business. Those charges include material asset impairments relating to stores we will continue to operate, charges to impair amortizing customer relationship intangible assets, as well as an increase in our allowance for bad debts related to our private label credit card portfolio and certain other accounts receivable balances to reflect the current economic downturn. These charges are considered reflective of operating an ongoing business in difficult times and are included in Division operating results.

We also recognized material goodwill and trade name impairment charges during 2008. The factors and amounts associated with these and other charges reported internally at the corporate level (collectively, the "Charges") are discussed below.

##### *Goodwill and trade name impairment charges*

As a result of our annual fourth quarter review of goodwill and other non-amortizing intangible assets, we recorded non-cash charges of \$1.2 billion to write down goodwill and \$57 million related to the impairment of trade names. Our recoverability assessment of these non-amortizing intangible assets considers company-specific projections, assumptions about market participant views and the company's overall market capitalization around the testing period. All of those factors worsened during 2008 compared to amounts used for the 2007 evaluations.

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Beginning in 2007, we discussed in our periodic reports the adverse impacts on our business from several broad economic drivers. We continually adjusted our activities during 2008 in an effort to address the impact these factors were having on our customers and lessen the adverse impact on our results. Through the third quarter of 2008, we assessed our 2008 full year forecast compared to the base year used in our prior year goodwill test and looked to a recent acquisition in the office supply sector as an indicator of then-current market participant information. At that time, our stock price had begun to decline, but it had not sustained a low valuation for an extended period of time. We had announced the beginning of a business review to be conducted by each of the Divisions, but the potential impacts were uncertain at that time. Considering these factors, we concluded that the accounting criteria requiring an acceleration of our goodwill testing had not been met at the end of the third quarter.

The changes in business conditions since that time are considered significant. Initial decisions from our fourth quarter business review included the closing of stores in North America and internationally, the exiting of certain unproductive businesses and the curtailing of capital expenditures throughout the company. Because of the current real estate markets, some of these decisions will require the use of cash for several years as the opportunities for subleasing vacant locations appears limited. These changes, combined with the extreme volatility and related deepening economic crisis experienced during the fourth quarter, lower-than-expected full year 2008 operating results, continued recessionary projections for 2009 and significant uncertainty about when the global economy will recover, have contributed to reduced projected cash flows and higher risk-adjusted discount rates used in our current analysis compared to those used in our goodwill test for 2007 and carried forward through our third quarter considerations. For our 2008 test, we assessed our valuations with discount rates of approximately 19% to 22% without changing the impairment conclusion. Our 2007 test included a 13% discount rate. This increase reflects the significantly higher risk in the overall market and particularly with specialty retailers, as well as a reduction in our credit rating during 2008. Our projections include anticipated benefits from a re-leveraging of sales when conditions improved. We anticipate a continued challenging environment for 2009 followed by some recovery beginning in 2010 in North America and beginning in 2011 for our international operations. In each of the reporting units, we have estimated a terminal value based on a normal growth model. Given current market uncertainties, we believe this captures the periodic cycles inherent in any forward forecast of operations and is a better indicator than the multiple of ending year cash flow used in prior analyses.

To assess the reasonableness of our calculations, the resulting estimated fair values of all reporting units were aggregated and compared to an average market capitalization (equity and debt) during late 2008, including a control premium of approximately 20% to 50%, depending on the discount rate used to assess the projected cash flows (22% — 19%; the higher the discount rate, the lower the resulting control premium). The market capitalization around the 2007 goodwill test was in excess of then-current book value and corroborated the conclusion of no impairment at that time. For the 2008 test, the estimated fair values indicated that the second step of goodwill impairment analysis was required in four of our five reporting units, and that analysis showed that the current value of goodwill could not be sustained in those four reporting units. Accordingly, we recorded a goodwill impairment charge of \$1.2 billion, relating to the following reporting units: North American Retail, \$2 million; North American Contract, \$348 million; Europe, \$794 million; and Asia, \$69 million. Included in these impairment charges is goodwill resulting from 1990 and later acquisitions. All of these entities are considered integrated into their respective reporting units and their cash flows were aggregated with all other cash flows of the respective reporting unit in the determination of estimated fair value. Additionally, in light of the significant adverse economic conditions which developed later in the year, we looked for current market transactions that could provide perspective to our analysis, but no relevant purchase transactions could be found.

Approximately \$19 million of goodwill associated with the North American Direct reporting unit was not impaired. This reporting unit has a relatively low net investment and projected cash flows were sufficient to recover its net assets. Based on the fair value estimate in excess of the carrying value, the company currently does not anticipate a risk of goodwill impairment for this reporting unit.

The impairment of trade names totaled approximately \$57 million and primarily relates to the Niceday™ brand name which was part of a business acquisition in 2003. We have decided to shift the emphasis in the related markets away from this brand name to products with the Office Depot® and other private brand names. Accordingly, we lowered the expected contribution from this trade name and, combined with the factors above, a non-cash impairment charge was recorded to reduce the asset to its estimated fair value. Because the brand is expected to be retained but with lower prominence, it remains a non-amortizing intangible asset.

### *Exit Costs*

During 2005, we announced a number of material charges relating to asset impairments, exit costs and other operating decisions that resulted from a wide-ranging assessment of assets and commitments. It was disclosed that additional charges would be recognized when the identified plans were implemented and the related accounting criteria were met. Associated pre-tax Charges in 2006 and 2007 totaled \$63 million and \$40 million, respectively. The few remaining exit activities from the 2005 planned business changes



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have been incorporated into the activities related to our internal review that began in the fourth quarter of 2008. As mentioned above, we manage the costs and programs associated with these activities (the “Charges”) at a corporate level, and accordingly, these amounts are not included in determining Division operating profit. Additional information about the costs and programs associated with the Charges is provided below.

A summary of the Charges and the line item presentation of these amounts in our accompanying Consolidated Statements of Operations is as follows.

<i>(Dollars in millions, except per share amounts)</i>	2008 Amounts	2007 Amounts	2006 Amounts
Cost of goods sold and occupancy costs	\$ 16	\$ —	\$ 1
Store and warehouse operating and selling expenses	52	25	37
Goodwill and trade name impairments	1,270	—	—
Other asset impairments	114	—	7
General and administrative expenses	17	15	18
Total pre-tax Charges	1,469	40	63
Income tax effect	(103)	(11)	(21)
After-tax impact	\$ 1,366	\$ 29	\$ 42
Per share impact	\$ 5.01	\$ 0.11	\$ 0.15

The primary components of Charges associated with exit activities include:

- *Store closures (North America)* - During the fourth quarter of 2008, we identified 112 stores in North America to be closed by the end of the first quarter of 2009, with an additional 14 stores identified to be closed during 2009 as their leases expire or other lease arrangements are finalized. As of December 27, 2008, six of the 112 stores had been closed, and the number of additional stores to be closed had been reduced to ten, net of relocated stores. The stores being closed are underperforming stores or stores that are no longer a strategic fit for the company. In making the decision on which stores to close, we considered sales, operating profit, cash flow, condition of the shopping center, location of other stores in the proximity and customer demographics, among other factors. The stores to be closed are located in various geographic regions, including 45 in the Central U.S., 40 in the Northeast and Canada, 19 in the West and eight in the South. Many of these customers may shop in alternative locations or through the company’s other distribution channels. We have not accounted for these closures as discontinued operations. The total charges for these closures are estimated to be \$180 million, with approximately \$89 million recorded in the fourth quarter of 2008 and the balance to be recognized during 2009 as the stores are closed. The 2008 amounts include approximately \$15 million of inventory write downs because the company executed an agreement with a third party liquidator in North America establishing the recoverable amount for inventory in those specific stores. These inventory write downs are presented in cost of goods sold and occupancy costs in our Consolidated Statements of Operations. Additionally, approximately \$66 million is for asset impairment, \$1 million is associated with severance and one-time termination benefit accruals, and \$1 million represents other facility closure costs. As mentioned above, six of the stores were closed by year end 2008 and approximately \$6 million was recognized for the estimated period of economic loss under the associated operating lease contracts. Additional severance of approximately \$3 million will be recognized as services are performed over the closure period and applicable lease accruals will be recognized when the facilities are closed during 2009. We currently estimate approximately \$88 million of lease charges to be recognized in 2009, but the amount may change as sublease assumptions are refined and then-current risk-adjusted discount rates applied. We are currently using discount rates ranging from 13.5% to 15.0% to discount these multi-year obligations.
- *Reduction in store openings (North America)* - We have reduced the number of new store openings for 2009 to approximately 15, from the previous estimate of 40 stores. This reduction resulted in the recognition in 2008 of approximately \$9 million for the estimated period of economic loss under the operating lease contracts associated with the stores that will not be opened. We expect to record approximately \$3 million in lease costs for these activities during 2009.
- *Store closures (International)* - We have decided to exit the retail sales channel in Japan during 2009 because most of our stores in that country are unprofitable. The total charges for these closures is estimated to be \$13 million, with approximately \$6 million recorded in the fourth quarter of 2008 and the balance to be recognized during 2009 as the stores are closed. The 2008 charges are primarily associated with asset impairments, and the 2009 charges include severance related expenses, lease costs and other facility closure costs of \$4 million, \$2 million and \$1 million, respectively. Additionally, we expect to incur charges associated with residual inventory values from these closed facilities, however, these values cannot be reasonably estimated.

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- *Supply chain consolidation (North America)* - During 2009, our current plan is to close five distribution centers and one crossdock facility to streamline our supply chain. These facilities are near the end of their initial lease terms and projected closure costs total approximately \$8 million, with \$2 million recognized during 2008 for severance related costs. The remainder of the charges relate to one-time termination benefits of \$1 million, lease costs of \$2 million and other exit costs including deconstruction expenses of \$3 million. Additionally, we expect to incur charges associated with residual inventory values from these closed facilities, however, these values cannot be reasonably estimated.
- *Supply chain consolidation (International)* - We have substantially completed the consolidation of our distribution centers in Europe with one closure planned for 2009. During 2008, we recorded approximately \$20 million in exit costs associated with this activity. These costs consisted primarily of accelerated depreciation, severance related expenses and future lease obligations, which totaled \$8 million, \$4 million and \$4 million, respectively. We also recorded \$4 million in charges related to other facility closure costs in 2008. We expect to record approximately \$23 million in charges for these activities during 2009. The 2009 charges include lease costs, severance related expenses, accelerated depreciation and other facility closure costs of \$11 million, \$4 million, \$4 million and \$4 million, respectively.
- *Call center and back office restructuring (International)* - During 2007, we began the consolidation of our call centers and back office operations in Europe. We recorded approximately \$13 million of charges related to these activities in 2008, of which \$12 million was associated with severance and other one-time termination benefits. The remaining \$1 million of charges incurred in 2008 related to other exit activities. We expect to record approximately \$10 million in severance related charges and \$1 million in lease costs for these activities during 2009.
- *Additional employee reductions* - Each of the Divisions, as well as Corporate, have identified positions that have been or will be eliminated in an effort to be more responsive to either customer needs or to centralize activities and eliminate geographic redundancies. Total severance and one-time benefit costs associated with these actions are estimated to be approximately \$33 million, with \$13 million recognized during 2008.
- *Asset write downs* - As a result of the fourth quarter 2008 business review, the company determined that it would no longer use the functionality in certain software applications and accordingly, recognized a charge of approximately \$31 million to write down previously capitalized software costs that will not be providing future economic benefit. Additionally, during late 2008, the company substantially lowered its expectations for new store openings and store remodels and determined that certain other projects would not be completed. The company also concluded that possible acquisitions would not be completed before the end of the year, if at all. Previously deferred costs for these activities, which totaled approximately \$11 million, were expensed during the fourth quarter of 2008.
- *Other restructuring activities* - During 2008, we recorded approximately \$5 million of charges associated with other restructuring activities related to enhancing efficiencies throughout the company. Of these charges, approximately \$1 million related to the harmonization of our product offerings in Europe, which resulted in a write down of inventory in the fourth quarter of 2008. Of the remaining charges, approximately \$2 million related to the acceleration of depreciation on certain assets and \$2 million was for lease costs. We expect to recognize additional charges of approximately \$25 million in 2009 related to restructuring activities not identified above.

A summary of past and estimated future Charges is presented below:

<i>(Dollars in millions)</i>	2006 Actual	2007 Actual	2008 Actual	2009 Projected
Goodwill and trade name impairments	\$ —	\$ —	\$ 1,270	\$ —
Other asset impairments and accelerated depreciation	28	20	124	8
Cost of goods sold	1	—	16	—
Lease obligations/Contract terminations	9	2	21	111
One-time termination benefits	22	19	32	46
Other associated costs	3	(1)	6	21
<b>Total pre-tax Charges</b>	<b>\$ 63</b>	<b>\$ 40</b>	<b>\$ 1,469</b>	<b>\$ 186</b>

As with any estimate, the timing and amounts may change when projects are implemented. Additionally, changes in foreign currency exchange rates may impact amounts reported in U.S. dollars related to our foreign activities.

Of the total 2008 and projected 2009 Charges, approximately \$237 million either have or are expected to require cash settlement, including longer-term lease obligations that will require cash over multi-year lease terms; approximately \$1,418 million of Charges are non-cash items.

## SUMMARY OF OPERATING RESULTS

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

- Total company sales were \$14.5 billion in 2008, down 7% compared to 2007. Sales in North America decreased 10% for the year and comparable store sales in North American Retail decreased 13%. International Division sales increased 1% in U.S. dollars and decreased 2% in local currencies.
- Gross margin for 2008 declined 140 basis points from 2007, following a 200 basis point decline in the prior year. The 2008 decline reflects deleveraging of fixed property costs resulting from the reduced sales, as well as increased promotional activity, partially offset by shifts in product and customer mix.
- Non-cash charges for impairment of goodwill and trade names totaled \$1.3 billion.
- Other non-cash asset impairment charges in 2008 totaled \$222 million, pretax, and relate primarily to the impairment of store assets in the North American Retail Division, certain software applications no longer used and impairment of customer list intangible assets in the International Division. Of this total, \$114 million is included as a component of the 2008 Charges.
- Additional pre-tax Charges of approximately \$85 million, \$40 million and \$63 million were recognized in 2008, 2007 and 2006, respectively.
- Our effective tax rate for 2008 was 6%, reflecting the largely non-deductible nature of the goodwill impairment charge, as well as the impact of deferred tax asset valuation allowances and other adjustments.
- Diluted (loss) earnings per share for 2008, 2007, and 2006 were \$(5.42), \$1.43, and \$1.75, respectively. The Charges had a per share impact of \$5.01, \$0.11 and \$0.15 in 2008, 2007 and 2006, respectively.
- Cash flow from operating activities was \$468 million in 2008, compared to \$411 million in 2007, primarily reflecting improvement in working capital that was significantly offset by the reduction in business performance.

## TOTAL COMPANY

Our overall sales decreased 7% in 2008, and increased 3% in 2007, and 5% in 2006. Adverse economic conditions throughout our sales territories contributed to the 2008 decline. The 2007 sales increase was driven by higher U.S. dollar sales in the International Division and essentially flat sales in North America.

The decrease in gross profit as a percentage of sales reflects significant deleveraging of fixed property costs in 2008, as well as the impact of a highly promotional environment in both 2008 and 2007. In 2008, gross margin benefited from a shift to core supplies. Gross margins in 2007 were adversely impacted by a shift in category mix to lower margin products, a shift in customer mix, inventory clearance activities, and cost increases. An increase in private brand sales benefited gross margin in both periods.

Total operating expenses as a percentage of sales was 38.3% in 2008, 25.9% in 2007 and 26.2% in 2006. The 2008 amount includes goodwill and trade name impairment charges of 8.8% of sales and other asset impairments of 1.5% of sales. Expressed as a percentage of sales, the remaining 2008 operating expenses were approximately 210 basis points higher than in 2007. This change reflects the impact of relatively fixed levels of labor costs on a declining sales base, as well as increases in legal and professional fees and the impact of no bonus expense in 2007. The 2007 decrease in total operating expenses as a percentage of sales resulted primarily from lower performance-based pay across all of our Divisions in response to lower operating results. Lower advertising costs and pre-opening expenses also contributed to the decrease in operating and selling expenses as a percentage of sales. These positive impacts were partially offset by higher selling expenses and supply chain costs, as well as investments made to support growth initiatives in our International Division.

Discussion of other income and expense items, including changes in interest and taxes follows our review of the operating segments.

**NORTH AMERICAN RETAIL DIVISION**

<i>(Dollars in millions)</i>	2008	2007	2006
Sales	<b>\$6,112.3</b>	\$6,813.6	\$6,789.4
% change	<b>(10)%</b>	—%	4%
Division operating profit (loss)	<b>\$ (29.2)</b>	\$ 354.5	\$ 454.3
% of sales	<b>(0.5)%</b>	5.2%	6.7%

Total sales in the North American Retail Division were \$6.1 billion in 2008, a decrease of 10% from 2007. Sales in 2007 were up slightly compared to 2006. Comparable store sales in 2008 from the 1,207 stores that were open for more than one year decreased 13% for the full year and showed successive declines throughout each quarter of the year. The 2008 comparable sales declines were across all three primary categories of supplies, technology and furniture and other with more discretionary items such as desks and filing showing the greatest declines. Some of our core supplies areas showed the lowest declines. Comparable store sales in 2007 from the 1,158 stores that were open for more than one year decreased 5%. The comparable store sales declines in both 2008 and 2007 were significantly influenced by the macroeconomic environment, which grew increasingly challenging in 2008 as the year progressed. In 2007, softness in the U.S. housing market resulted in weaker small business and consumer spending, particularly in Florida and California, which combined, represented approximately 27% of Division sales that year. However, in 2008, the difficult economic conditions expanded beyond the housing market to the banking and liquidity crisis which has prompted broad governmental intervention in an attempt to stimulate the U.S. economy. Consumer spending declined as a result of economic factors such as the higher cost of such basic consumer staples as gas and food, rising levels of unemployment and personal debt, and reduced access to consumer credit. Management expects the Company to continue to face a very difficult economic environment throughout fiscal 2009. As the global financial crisis has broadened and intensified, other sectors of the global economy have been adversely impacted and a severe global recession of uncertain length now appears likely. As a company that is dependent upon consumer discretionary spending, we expect to face an extremely challenging 2009 because of these economic conditions.

Division operating performance in 2008 resulted in a \$29 million loss, compared to \$355 million operating profit in 2007. This measure of operating performance is consistent with the internal reporting of results used to manage the business but does not include charges associated with the strategic decision to close 126 stores and one crossdock facility as well as certain other items. Please see Charges discussion in the MD&A Overview section above.

Operating profit as a percentage of sales decreased by 570 basis points in 2008 and 150 basis points in 2007 as compared to the prior year. Product margins in 2008 were essentially flat with increased promotional and clearance activity largely offsetting an increase from a shift in product mix away from lower margin technology products. In 2007, product margins decreased approximately 120 basis points from increased promotional activities and a shift in category mix to lower margin items. Although flat for the full year of 2007, we experienced a significant decrease in vendor program funds in the second half of 2007 from reduced purchasing levels and as vendors experienced slowdown in their own businesses. Operating margin was negatively impacted in 2008 by approximately 160 basis points from a de-leveraging of fixed property costs and 90 basis points from higher inventory shrink and valuation charges and higher supply chain costs as a percentage of sales. In 2007, de-leveraging of fixed costs, higher supply chain costs and higher levels of inventory shrink reduced operating margins by 120 basis points. During 2008, consistent with the downturn in the economy and our performance, we recognized approximately \$98 million of asset impairment charges, or 160 basis points expressed as a percentage of sales. Partially offsetting these factors, we expanded our selection of private brands which had a positive impact on operating margins in 2008 and 2007. While payroll, advertising and other expenses were lower in 2008, because of the reduced sales base, they contributed approximately 160 basis points to the decline in operating margin. The 2007 operating expenses improved operating margin approximately 90 basis points reflecting a reduction in advertising costs as well as lower bonus accruals commensurate with lower Division performance and lower pre-opening expenses related to a reduction in new store openings.

As we look into 2009, we believe the uncertain economic outlook will continue to challenge our sales and operating profit margin.

We opened 59 new stores during 2008 and 71 stores during 2007, all using our M2 store design. At the end of 2008, we operated 1,267 retail stores in the U.S. and Canada. We anticipate opening approximately 15 stores in 2009. During 2009, we plan to close 118 stores in North America, of which 116 are part of the strategic review launched in the fourth quarter of 2008. For additional information on this strategic review, see the Overview to MD&A above. During 2008 and 2007, we remodeled 16 stores and 177 stores, respectively. We exclude the brief remodel period from our comparable store sales calculation to partially account for the disruption.

**NORTH AMERICAN BUSINESS SOLUTIONS DIVISION**

<i>(Dollars in millions)</i>	2008	2007	2006
Sales	\$4,142.1	\$4,518.4	\$4,576.8
% change	(8)%	(1)%	6%
Division operating profit	\$ 119.8	\$ 220.1	\$ 367.0
% of sales	2.9%	4.9%	8.0%

Sales in our North American Business Solutions Division decreased 8% in 2008 and 1% in 2007. The sales decrease in 2008 reflects the impact of worsening economic conditions and the resulting decline in sales to our small- to medium-size customer base. Sales to our larger account customers, including the public sector, also declined, especially following the fourth quarter banking crisis, as customers confined more of their purchases to core supplies. Both our contract and direct channels experienced sales declines, with contract down 8% and direct down 9%. The 2007 decrease reflects an 11% reduction in sales from the direct channel, partially offset by sales increases in large and national account customers in the contract channel.

Division operating profit totaled \$120 million in 2008, compared to \$220 million in 2007. This measure of operating performance is consistent with the internal reporting of results used to manage the business but does not include charges associated with the strategic decision to close five distribution centers and eliminate certain positions nor a goodwill impairment charge of \$348 million recognized at the corporate level. Please see Charges discussion in the MD&A Overview section above.

Operating profit as a percentage of sales decreased 200 basis points in 2008, following a 310 basis point decline in 2007. Product margins decreased approximately 60 basis points in 2008 from higher promotional activity and customer incentives, partially offset by increased vendor program funds. Operating margin in 2007 was negatively impacted by 280 basis points from a combination of higher incentives offered to large and national account customers, a shift in the sales mix to lower margin customers and products, net cost increases that were not fully passed along to our customers, lower vendor program funds, and to a lesser degree, higher inventory clearance charges. Operating expenses as a percentage of sales negatively impacted operating profit in 2008 by approximately 140 basis points. These expenses include an increased accrual for bad debts consistent with the economic downturn, higher advertising expenses in an attempt to stimulate sales and higher professional fees related to operational enhancements, as well as the impact of the declining sales base. In 2007, operating expenses reduced operating margin by approximately 30 basis points, reflecting de-leveraging of Division fixed costs, somewhat higher selling costs, and costs associated with certain unprofitable contracts partially offset by lower advertising expenses and lower performance-based variable pay resulting from lower Division performance.

During 2009, we anticipate continued negative margin impacts.

**INTERNATIONAL DIVISION**

<i>(Dollars in millions)</i>	2008	2007	2006
Sales	\$4,241.1	\$4,195.6	\$3,644.6
% change	1%	15%	5%
Division operating profit	\$ 157.2	\$ 231.1	\$ 249.2
% of sales	3.7%	5.5%	6.8%

Sales in our International Division in U.S. dollars increased 1% in 2008, and 15% in 2007. Local currency sales decreased 2% in 2008 and increased 6% in 2007. The contract channel increased approximately 1% in local currencies during 2008 and direct decreased approximately 5%. We continue to see adverse impacts of worsening economic conditions in the European countries where we have the greatest amount of sales. We anticipate that these conditions could persist for some time and provide additional challenges to our operations. In 2007, the contract channel increased sales in local currencies by 12% while sales in the direct channel were slightly negative, reflecting a 5% decline in our business in the UK. The retail channel, while a smaller part of our offering in this Division, increased sales in local currencies in both 2008 and 2007. The 2008 increase resulted, in part, from the impact of acquisitions. While revenues from our operations in Asian markets increased in 2008, the overall contribution from that business continues to be negative. Accordingly, we have committed to closing stores in Japan and will pursue other opportunities to modify our business in that region with the intent of growing profitable sales or curtailing operations.

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Division operating profit totaled \$157 million in 2008, compared to \$231 million in 2007. This measure of operating performance is consistent with the internal reporting of results used to manage the business but does not include charges associated with the strategic decision to close stores in Japan and restructure certain operations nor a goodwill impairment charge of \$863 million recognized at the corporate level. Please see Charges discussion in the MD&A Overview section above.

Operating profit as a percentage of sales decreased 180 basis points in 2008, following a 130 basis point decline in 2007. Despite improvements in our UK business in 2008, the de-leveraging of fixed costs against lower sales levels resulted in approximately 150 basis points of operating margin decline. A shift to lower margin customers and the impact of acquisitions resulted in a decrease in operating margin of approximately 30 basis points. Also during 2008, we recorded a non-cash gain of approximately \$13 million related to the curtailment of a defined benefit pension plan in the UK and non-cash impairment charges of approximately \$11 million related to our customer list intangible assets. The 2007 decrease reflects lower performance of approximately 80 basis points, primarily from the UK, and to a lesser extent, a greater percentage of contract sales in our sales mix. During 2007, the Division established regional offices in Asia and Latin America, centralized certain support functions in Europe, expanded into Poland and consolidated certain warehouse facilities. These investments lowered 2007 operating margin by approximately 80 basis points. Partially offsetting the decrease in operating margin in 2007 were positive impacts totaling approximately 30 basis points, which resulted primarily from lower performance-based variable pay as a result of lower Division performance.

We believe the uncertain economic outlook will continue to challenge our sales and operating profit margin in 2009.

For U.S. reporting, the International Division's sales are translated into U.S. dollars at average exchange rates experienced during the year. The Division's reported sales were positively impacted by approximately \$127 million in 2008 and \$322 million in 2007 from changes in foreign currency exchange rates. Division operating profit was also positively impacted from changes in foreign exchange rates by \$2 million in 2008 and \$20 million in 2007. Internally, we analyze our international operations in terms of local currency performance to allow focus on operating trends and results.

## CORPORATE AND OTHER

### General and Administrative Expenses

Total general and administrative expenses ("G&A") increased from \$646 million in 2007 to \$743 million in 2008. The portion of G&A expenses considered directly or closely related to division activity is included in the measurement of Division operating profit. Other companies may charge more or less G&A expenses and other costs to their segments, and our results therefore may not be comparable to similarly titled measures used by other companies. The remainder of the total G&A expenses are considered corporate expenses. A breakdown of G&A is provided in the following table:

<i>(Dollars in millions)</i>	2008	2007	2006
Division G&A	\$ 394.6	\$ 341.8	\$ 319.0
Corporate G&A	348.6	303.9	332.7
Total G&A	\$ 743.2	\$ 645.7	\$ 651.7
% of sales	5.1%	4.2%	4.3%

Increases in Division G&A in 2008 were primarily driven by higher levels of performance-based variable pay and the impact of changes in foreign exchange rates.

Corporate G&A includes Charges of approximately \$17 million, \$15 million and \$18 million in 2008, 2007 and 2006, respectively. Additionally in 2006, we recognized a charge of approximately \$16 million to resolve a wage and hour litigation in California. After considering these charges, corporate G&A expenses as a percentage of sales increased approximately 40 basis points from 2007 to 2008 and decreased by approximately 10 basis points from 2006 to 2007. The 2008 increase primarily reflects higher performance-based variable pay as well as costs for professional and legal fees associated with the company's proxy challenge and legal matters described in Part I - Item 3. "Legal Proceedings." Also, during 2008, the company initiated a voluntary exit incentive program for certain employees that resulted in charges for severance expenses of approximately \$7 million during the year. The 2007 decrease reflects lower performance-based pay, partially offset by higher professional fees and outside labor costs.

**Gain on Sale of Building**

In December 2006, in connection with a decision to move to a new, leased, headquarters facility, we sold our corporate campus and entered into a leaseback agreement pending completion of the new facility. The sale resulted in a gain of approximately \$21 million recognized in 2006 and \$15 million deferred over the leaseback period. We recognized approximately \$7 million in amortization of the deferred gain on the sale during both 2008 and 2007. This amortization largely offset the rent expense during the leaseback period. During 2007, we entered into a longer-term lease on our new corporate campus, and we moved into this new facility during the fourth quarter of 2008.

**Other Income and Expense**

<i>(Dollars in millions)</i>	2008	2007	2006
Interest income	\$ 10.0	\$ 9.4	\$ 9.8
Interest expense	(68.3)	(63.1)	(40.8)
Loss on extinguishment of debt	—	—	(5.7)
Miscellaneous income, net	25.7	28.7	30.6

Interest expense increased for 2008 compared to 2007, reflecting the impact of additional capital leases as well as a higher level of short-term borrowings throughout the year. The increase in interest expense in 2007 also reflected higher levels of short-term borrowings compared to 2006. Additionally, 2007 interest expense includes approximately \$3.5 million of incremental expense recorded in connection with reconciliations of amounts due under certain borrowings that are not expected to recur.

The loss on extinguishment of debt in 2006 represents the \$5.7 million make whole payment related to settlement of the mortgage on our corporate campus that was sold during that year.

Our net miscellaneous income consists of our earnings of joint venture investments, royalty income, gains and losses related to foreign exchange transactions, and realized gains and impairments of other investments. The majority of miscellaneous income is attributable to equity in earnings from our joint venture in Mexico, Office Depot de Mexico. The change in 2008 and 2007 reflects higher joint venture earnings offset by foreign currency losses.

**Income Taxes**

<i>(Dollars in millions)</i>	2008	2007	2006
Income tax expense (benefit)	\$ (98.6)	\$ 63.0	\$ 203.6
Effective income tax rate*	6%	14%	29%

\* Income Taxes as a percentage of earnings before income taxes.

The decrease in the effective income tax rate during 2008 reflects the largely non-deductible nature of the goodwill impairment charge and non-deductible foreign interest, as well as the impact of a \$47 million increase in deferred tax asset valuation allowances resulting from the change to loss positions in certain jurisdictions. The decrease in 2007 reflects the impact from 2007 discrete benefits and current year valuation allowance changes, as well as the impact from a shift in the mix of pretax income, reflecting a higher proportion of international earnings taxed at lower rates. Our operational tax rates before these significant period impacts were approximately 38% in 2008, 25% in 2007 and 30% in 2006. The 2007 discrete items include a benefit of approximately \$10 million from the reversal of an accrual for uncertain tax position following a previously-disclosed restructuring initiative and a local jurisdiction ruling that secured certain prior year filing positions. Additionally in 2007, because of a jurisdictional restructuring, changes in foreign country tax law and certain book to tax return adjustments, we recognized tax benefits totaling \$48 million, primarily related to eliminations of valuation allowances on deferred tax assets.

In general, the effective tax rate can be affected by variability in our mix of income, the tax rates in various jurisdictions, changes in the rules related to accounting for income taxes, outcomes from tax audits that regularly are in process and our assessment of the need for accruals for uncertain tax positions, and therefore may be higher or lower than it has been over the past three years. However, in 2009, in light of the continued downturn in the economy and our performance, we may be required to record additional valuation allowances against existing deferred tax assets. While we currently cannot predict the likelihood of such an outcome, our effective tax rate may be volatile throughout the year. Any valuation allowances would not impact our cash tax position for the year.

## LIQUIDITY AND CAPITAL RESOURCES

### Liquidity

At December 27, 2008, we had approximately \$156 million in cash and equivalents and another \$712 million available under our asset based revolving credit facility. The current and anticipated future difficult economic conditions impact our assessment of short-term liquidity, but we consider our resources adequate to satisfy our 2009 cash needs. While much of the loss recorded in 2008 resulted from non-cash charges for asset impairments, we clearly had lower operating performance as well. We anticipate the global economy will continue to struggle through 2009, and in response, we have heightened our focus on maximizing operating cash flow and have significantly reduced our anticipated capital expenditures, including limiting the number of new stores and remodels. Also, we do not plan to make additional acquisitions or execute any share repurchases in the near term. We are working to lower our working capital needs and have reduced inventory levels and focused on cash collections of our accounts receivable balances. During 2008, we completed several sale-leaseback transactions and expect to complete others in 2009. We are also considering sales of some of our accounts receivable portfolio. These possible sales, together with projected cash benefits from actions taken in our fourth quarter business review and other items, could add approximately \$400 million of liquidity during 2009. As discussed below, we have executed an asset based credit facility that is intended to provide us flexibility needed in these challenging times. Based on our current assessment of 2009 and the cash flow options available to us, we believe we have sufficient liquidity to withstand the anticipated continuation of difficult economic conditions.

We hold cash throughout our service areas, but we principally manage our cash through regional headquarters in North America and Europe. We may move cash between those regions from time to time through short-term transactions and have used these cash transfers at the end of fiscal quarterly periods to pay down borrowings outstanding under our credit facilities. Although such transfers and debt repayments took place at the end of 2006 and each of the first three quarters of 2007, we completed a non-taxable distribution to the U.S. in the amount of \$220 million during the fourth quarter of 2007, thereby permanently repatriating this cash. Additional distributions, including distributions of foreign earnings or changes in long-term arrangements could result in significant additional U.S. tax payments and income tax expense. Currently, there are no plans to change our expectation of foreign earnings reinvestment or the long-term nature of our intercompany arrangements, though accounting impacts of any change in these classifications would be recognized in the period of the change.

On September 26, 2008, the company entered into a Credit Agreement (the "Agreement") with a group of lenders, which provides for an asset based, multi-currency revolving credit facility (the "Facility") of up to \$1.25 billion. The amount that can be drawn on the Facility at any given time is determined based on percentages of certain accounts receivable, inventory and credit card receivables (the "Borrowing Base"). At December 27, 2008, the company was eligible to borrow approximately \$1.0 billion of the Facility. In February 2009, that borrowing base was lowered by \$75 million by the Administrative Agent, pending completion of asset base appraisals. The Facility includes a sub-facility of up to \$250 million which is available to certain of the company's European subsidiaries (the "European Borrowers"). Certain of the company's domestic subsidiaries (the "Domestic Guarantors") guaranty the obligations under the Facility. The Agreement also provides for a letter of credit sub-facility of up to \$400 million. All loans borrowed under the Agreement may be borrowed, repaid and reborrowed from time to time until September 26, 2013 (or, in the event that the company's existing 6.25% Senior Notes are not repaid, then February 15, 2013), on which date the Facility matures.

All amounts borrowed under the Facility, as well as the obligations of the Domestic Guarantors, are secured by a lien on the company's and such Domestic Guarantors' accounts receivables, inventory, cash and deposit accounts. All amounts borrowed by the European Borrowers under the Facility are secured by a lien on such European Borrowers' accounts receivable, inventory, cash and deposit accounts, as well as certain other assets. At the company's option, borrowings made pursuant to the Agreement bear interest at either, (i) the alternate base rate (defined as the higher of the Prime Rate (as announced by the Agent) and the Federal Funds Rate plus 1/2 of 1%) or (ii) the Adjusted LIBOR Rate (defined as the LIBOR Rate as adjusted for statutory revenues) plus, in either case, a certain margin based on the aggregate average availability under the Facility. The Agreement also contains representations, warranties, fees, affirmative and negative covenants, and default provisions. The Facility includes limitations in certain circumstances on acquisitions, dispositions, share repurchases and the payment of dividends. The dividend restrictions are based on the then-current and proforma fixed charge coverage ratio and borrowing availability at the point of consideration. The company has never declared or paid cash dividends on its common stock. The Facility also includes provisions whereby if the global availability is less than \$218.8 million, or the European availability is below \$37.5 million, the company's cash collections go first to the Agent to satisfy outstanding borrowings. Further, if total availability falls below \$187.5 million, a fixed charge coverage ratio test is required which, based on current forecasts, could effectively eliminate additional borrowing under the Facility.



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At December 27, 2008, the company's borrowings under the Facility totaled approximately \$139 million at an effective interest rate of approximately 5.41%. There were also letters of credit outstanding under the Facility totaling approximately \$178 million. An additional \$1.5 million of letters of credit were outstanding under separate agreements. Average borrowings under the Facility from September 26, 2008 to December 27, 2008 were approximately \$254 million.

The Agreement replaced the company's Revolving Credit Facility Agreement, which provided for multiple-currency borrowings of up to \$1 billion and had a sub-limit of up to \$350 million for standby and trade letter of credit issuances. The facility had a maturity date of May 25, 2012.

In December 2008, the company's credit rating was downgraded which provided the counterparty to the company's private label credit card program the right to terminate the agreement and require the company to repurchase the outstanding balance of approximately \$184 million. Both parties entered into a standstill agreement whereby the company permanently waived its early termination right and the counterparty agreed not to terminate the agreement and require repurchase of the outstanding balance until at least March 31, 2009 while a permanent solution was developed. This standstill agreement precluded the occurrence of cross defaults in certain of the company's agreements. In February 2009, the company and the counterparty amended the agreement to permanently waive the repurchase clause and the company agreed to amend an existing \$25 million letter of credit which may be increased, after December 29, 2009, to as much as \$45 million based on an assessment of risk in the portfolio at that time.

In addition to our borrowings under the Facility, we had short-term borrowings \$37.5 million. These borrowings primarily represent outstanding balances under various local currency credit facilities for our international subsidiaries that had an effective interest rate at the end of the year of approximately 3.03%.

Cash provided by (used in) our operating, investing and financing activities is summarized as follows:

<i>(Dollars in millions)</i>	2008	2007	2006
Operating activities	\$ 468.3	\$ 411.4	\$ 827.1
Investing activities	(338.7)	(372.5)	(485.2)
Financing activities	(186.3)	7.9	(889.1)

### **Operating Activities**

The increase in net cash provided by operating activities in 2008 primarily reflects improvement in working capital that was significantly offset by a reduction in business performance. During 2008, working capital was a source of cash of approximately \$187 million compared to a use of approximately \$335 million in 2007. As mentioned above, we are working to lower our working capital needs and accordingly, during 2008, we reduced inventory levels and focused on cash collections of our accounts receivable balances. Working capital is influenced by a number of factors, including the aging of inventory and timing of vendor payments. The timing of payments is subject to variability during the year depending on a variety of factors, including the flow of goods, credit terms, timing of promotions, vendor production planning, new product introductions and working capital management. Vendor payment deferrals totaled approximately \$50 million at year end 2006, but we made no such deferrals at the end of 2007 or 2008. The effect of such vendor payment deferrals at period-end on our financial statements was to report a higher accounts payable balance and lower balance of outstanding short-term borrowings than would otherwise have appeared if the vendor payments had not been deferred. For our accounting policy on cash management, see Note A of the Notes to Consolidated Financial Statements. The change in cash flows from operating activities during 2007 reflects a decrease in business performance as well as an increase in working capital used during the year.

### **Investing Activities**

We invested \$330 million, \$461 million and \$343 million in capital expenditures during 2008, 2007 and 2006, respectively. This activity includes investments in information technology, the opening, relocating and remodeling of retail stores in North America and distribution network infrastructure costs. Additionally, a portion of our 2008 capital expenditures relates to our new corporate headquarters facility. As mentioned above, we have significantly reduced our anticipated capital expenditures in response to the current economic conditions. Accordingly, we expect capital expenditures to total approximately \$150 million in 2009 as we are limiting store openings and remodel activities in the near term. Included in the future capital expenditure projections is continued investment in our enterprise-wide information technology project that includes capitalized software development costs and related hardware.

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Proceeds from the disposition of assets in 2008 and 2007 include proceeds from sale-leaseback transactions of \$67 million and \$64 million, respectively. The 2008 transactions related to retail store locations and the 2007 transaction related to a European warehouse facility. The realized gains on the sale-leaseback transactions are being amortized over the lease terms. During 2008, we also purchased certain non-operating assets for approximately \$39 million. We sold certain of these non-operating assets during the year. We placed restricted cash on deposit in the amount of \$6 million and \$18 million, respectively, for transactions that were pending at the end of 2008 and 2007. During 2007, we also received \$25 million as dividends from an equity method investment.

During 2008, we acquired a majority ownership position in businesses in India and Sweden. The company has the right to acquire or may be required to purchase some or all of the minority interest shares of these businesses at various points over the next few years. Also during 2008, we acquired under previously existing put options all remaining minority interest shares of our joint ventures in Israel and China. During 2007, we acquired Axidata Inc., a Canada-based office products delivery company. Additionally in both 2008 and 2007, we funded previously accrued acquisition-related payments for former owners of entities acquired in 2006. We do not expect to make significant purchases of additional interests from minority shareholders in 2009.

### **Financing Activities**

Cash used in financing activities in 2008 primarily resulted from net repayments of short-term borrowings under our previously existing revolving credit facility. At the end of 2007, borrowings under that facility totaled approximately \$235 million, all of which was repaid during 2008. As mentioned above, this facility was replaced with an asset based credit facility during the third quarter of 2008, which had an outstanding balance of approximately \$139 million at the end of 2008. In conjunction with our asset based credit facility, we incurred debt issuance costs of approximately \$41 million in 2008. In addition to repayments on the revolving credit facility, we also repaid certain other borrowings related to our international subsidiaries and made payments on capital leases.

Proceeds from the issuance of long- and short-term debt totaled \$177 million and \$8 million in 2007 and 2006, respectively. The increase in 2007 was primarily driven by the decline in our operating cash flow, as we experienced higher levels of short-term borrowings to support our working capital needs. Also, in connection with the sale of our corporate campus in 2006, a portion of the proceeds was used to liquidate an existing mortgage on one of the facilities.

The Board of Directors has authorized open market purchases of our common stock under repurchase plans that were in effect during the three years presented. We made no share repurchases under the approved plans in 2008. We purchased 5.7 million shares in 2007 at a cost of \$200 million and 26.4 million shares in 2006 at a cost of \$971 million. At the end of 2008, \$500 million remained available for additional repurchases under the most recent board approved plan. Our asset based credit facility has restrictions on share repurchases, and we do not expect to repurchase shares in the near term. Proceeds from issuance of common stock under our employee related plans were minimal during 2008 as a result of the drop in our stock price. In 2007 and 2006, these proceeds were \$29 million and \$101 million, respectively. Additionally, upon the issuance of certain restricted stock awards, employees surrendered shares to the company equal to approximately \$11 million in 2007 and \$13 million in 2006 in exchange for our settlement of their taxes due on these shares.

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### Contractual Obligations

The following table summarizes our contractual cash obligations at December 27, 2008, and the effect such obligations are expected to have on liquidity and cash flow in future periods:

<i>(Dollars in millions)</i>	Total	Less than 1 year	1 - 3 years	4 - 5 years	After 5 years
<b>Contractual Obligations</b>					
Long-term debt obligations (1)	\$ 526.7	\$ 25.5	\$ 51.1	\$ 450.1	\$ —
Short-term borrowings and other (2)	176.6	176.6	—	—	—
Capital lease obligations (3)	489.9	35.2	66.9	80.7	307.1
Operating lease obligations (4)	3,019.5	530.7	847.8	627.9	1,013.1
Purchase obligations (5)	213.6	130.5	82.8	0.3	—
Other liabilities (6)	11.0	—	11.0	—	—
<b>Total contractual cash obligations</b>	<b>\$ 4,437.3</b>	<b>\$ 898.5</b>	<b>\$ 1,059.6</b>	<b>\$ 1,159.0</b>	<b>\$ 1,320.2</b>

- (1) Long-term debt obligations consist primarily of our \$400 million senior notes and the associated contractual interest payments. Also included in this amount are the expected payments (principal and interest) on certain long-term debt obligations related to our international subsidiaries.
- (2) Short-term borrowings consist primarily of amounts outstanding under our asset based revolving credit facility and subsidiary lines of credit.
- (3) The present value of these obligations are included on our Consolidated Balance Sheets. See Note E of the Notes to Consolidated Financial Statements for additional information about our capital lease obligations.
- (4) The operating lease obligations presented reflect future minimum lease payments due under the non-cancelable portions of our leases as of December 27, 2008. Our operating lease obligations are described in Note G of the Notes to Consolidated Financial Statements. In the table above, sublease income is distributed by period.
- (5) Purchase obligations include all commitments to purchase goods or services of either a fixed or minimum quantity that are enforceable and legally binding on us that meet any of the following criteria: (1) they are non-cancelable, (2) we would incur a penalty if the agreement was cancelled, or (3) we must make specified minimum payments even if we do not take delivery of the contracted products or services. If the obligation is non-cancelable, the entire value of the contract is included in the table. If the obligation is cancelable, but we would incur a penalty if cancelled, the dollar amount of the penalty is included as a purchase obligation. If we can unilaterally terminate the agreement simply by providing a certain number of days notice or by paying a termination fee, we have included the amount of the termination fee or the amount that would be paid over the "notice period." As of December 27, 2008, purchase obligations include television, radio and newspaper advertising, sports sponsorship commitments, telephone services, certain fixed assets and software licenses and service and maintenance contracts for information technology. Contracts that can be unilaterally terminated without a penalty have not been included.
- (6) Our Consolidated Balance Sheet as of December 27, 2008 includes \$586 million classified as "Deferred income taxes and other long-term liabilities." This caption primarily consists of our net long-term deferred income taxes, the unfunded portion of our pension plan, deferred lease credits, and liabilities under our deferred compensation plans. These liabilities have been excluded from the above table as the timing and/or the amount of any cash payment is uncertain. See Note F of the Notes to Consolidated Financial Statements for additional information regarding our deferred tax positions and accruals for uncertain tax positions and Note H for a discussion of our employee benefit plans, including the pension plan and the deferred compensation plan. The table above includes scheduled, acquisition-related payments.

In addition to the above, we have letters of credit totaling \$179 million outstanding at the end of the year, and we have recourse for private label credit card receivables transferred to a third party. We record an estimate for losses on these receivables in our financial statements. The total outstanding amount transferred to a third party at the end of the year was approximately \$184 million.

We have no other off-balance sheet arrangements other than those related to our operating lease agreements as described above.

### CRITICAL ACCOUNTING POLICIES

Our consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. Preparation of these statements requires management to make judgments and estimates. Some accounting policies have a significant impact on amounts reported in these financial statements. A summary of significant accounting policies can be found in Note A in the Notes to Consolidated Financial Statements. We have also identified certain accounting policies that we consider critical to understanding our business and our results of operations and we have provided below additional information on those policies.

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*Vendor arrangements* — Our inventory purchases from vendors are generally under evergreen arrangements with periodic updates or annual negotiated agreements. Many of these arrangements require the vendors to make payments to us or provide credits to be used against future purchases if and when certain conditions are met. We generally refer to these arrangements as “vendor programs,” and they typically fall into two broad categories, with some underlying sub-categories. The largest category is volume-based rebates. Generally, our product costs per unit decline as higher volumes of purchases are reached. Many of our vendor agreements provide that we pay higher per unit costs prior to reaching a predetermined tier, at which time the vendor rebates the per unit differential on past purchases, and also applies the lower cost to future purchases until the next milestone is reached. Current accounting rules provide that companies with a sound basis for estimating their full year purchases, and therefore the ultimate rebate level, can use that estimate to value inventory and cost of goods sold throughout the year. We believe our history of purchases with many vendors provides us with a sound basis for our estimates. If the anticipated volume of purchases is not reached, however, or if we form the belief at any given point in the year that it is not likely to be reached, cost of goods sold and the remaining inventory balances are adjusted to reflect that change in our outlook. We review sales projections and related purchases against vendor program estimates at least quarterly and adjust these balances accordingly. During the fourth quarter of 2007, it became apparent that we were not going to reach the anticipated full year purchase levels and we reduced vendor program income recognized in that period by approximately \$30 million. No similar adjustments were required in any quarter in 2008.

The second broad category of arrangements with our vendors is event-based programs. These arrangements can take many forms, including advertising support, special pricing offered by certain of our vendors for a limited time, payments for special placement or promotion of a product, reimbursement of costs incurred to launch a vendor’s product, and various other special programs. These payments are classified as a reduction of costs of goods sold or inventory, as appropriate for the program. Some arrangements may meet the specific, incremental, identifiable cost criteria that allow for direct operating expense offset, but such arrangements are not significant. Additionally, we receive payments from vendors for certain of our activities that lower the vendors’ cost to ship their product to our facilities.

Vendor rebates are recognized throughout the year based on judgment and estimates and amounts due from vendors are generally collected throughout the year based on purchase volumes. The final amounts due from vendors are generally known soon after year-end. Substantially all vendor program receivables outstanding at the end of the year are collected within the three months immediately following year-end. We believe that our historic collection rates of these receivables provide a sound basis for our estimates of anticipated vendor payments throughout the year.

*Inventory valuation* — Inventories are valued at the lower of cost or market value. We monitor active inventory for excessive quantities and slow-moving items and record adjustments as necessary to lower the value if the anticipated realizable amount is below cost. We also identify merchandise that we plan to discontinue or have begun to phase out and assess the estimated recoverability of the carrying value. This includes consideration of the quantity of the merchandise, the rate of sale, and our assessment of current and projected market conditions. If necessary, we record a charge to reduce the carrying value of this merchandise to our estimate of the lower of cost or realizable amount. Additional promotional activities may be initiated and markdowns may be taken as considered appropriate until the product is sold or otherwise disposed. Estimates and judgments are required in determining what items to stock and at what level, and what items to discontinue and how to value them prior to sale.

We also recognize an expense in cost of sales for our estimate of physical inventory loss from theft, short shipment and other factors — referred to as inventory shrink. During the year, we adjust the estimate of our shrink rate accrual following on-hand adjustments and our physical inventory results. These changes in estimates may result in volatility within the year or impact comparisons to other periods.

During 2008, we have lowered our inventory levels to lessen working capital requirements and reduce obsolescence risk. Also, following a strategic review of our business in December 2008, we decided to close 112 stores in North America. To facilitate these closures, we contracted with a liquidation firm that guaranteed the amount to be realized for the inventory in those stores. During the fourth quarter, we recognized a \$15 million charge to adjust that inventory to the net contracted value. That adjustment had no impact on the remaining inventory in other stores or in our supply chain.

*Intangible asset testing* — Absent any circumstances that warrant testing at another time, we test for goodwill and non-amortizing intangible asset impairment as part of our year-end closing process. We considered whether the test should be accelerated during the third quarter of 2008, but concluded based on available information that the fourth quarter remained the appropriate period to perform the test.

Our goodwill testing in 2008, as in prior years, consists of comparing the estimated fair values of each of our reporting units to their carrying amounts, including recorded goodwill. We have five reporting units, North American Retail, North American Contract, North American Direct, Europe and Asia, each with some level of goodwill at the time of the 2008 test. We estimate the fair values of each of our reporting units by discounting their projected future cash flows and compare the results to other indicators of value. Because of the extreme economic conditions that existed at and around the time of our 2008 test, we were unable to identify meaningful external indicators of value beyond other companies' goodwill impairments being recognized and we relied on our discounted cash flow analysis for estimating fair value. Developing these future cash flow projections requires us to make significant assumptions and estimates regarding the sales, gross margin and operating expenses of our reporting units, as well as future economic conditions and the impact of planned business or operational strategies. As discussed above, we recognized \$1.2 billion of goodwill impairment charges in 2008. Approximately \$19 million of goodwill remains in the North American Direct reporting unit. We also recorded an impairment charge of approximately \$57 million on non-amortizing trade name intangible assets. At December 27, 2008, the non-amortizing trade name value in Europe was valued at \$6 million. While the value of goodwill and non-amortizing intangible assets are substantially reduced, should future results or economic events cause a change in our projected cash flows, or should our operating plans or business model change, future determinations of fair value may not support the carrying amount of these assets.

*Closed store accruals and asset impairments* — We regularly assess the performance of each retail store against historic patterns and projections of future profitability. These assessments are based on management's estimates for sales growth, gross margin attainments, and cash flow generation. If, as a result of these evaluations, management determines that a store will not achieve certain operating performance targets, we may decide to close the store. When a store is no longer used for operating purposes, we recognize a liability for the remaining costs related to the property, reduced by an estimate of any sublease income. The calculation of this liability requires us to make assumptions and to apply judgment regarding the remaining term of the lease (including vacancy period), anticipated sublease income, and costs associated with vacating the premises. With assistance from independent third parties to assess market conditions, we periodically review these judgments and estimates and adjust the liability accordingly. We plan to close 112 stores through a liquidation process and an additional ten stores, net of relocations, at the end of their lease term in North America. We also intend to close our retail operations in Japan during 2009. The lease-related costs associated with these closures will be recorded as the facilities close and will be calculated based on our assumption of vacancy period resulting from the slow economic conditions and the sublease rates available in the future. These commitments with no economic benefit to the company are discounted at the then-current credit-adjusted discount rate. Future fluctuations in the economy and the market demand for commercial properties could result in material changes in this liability. Costs associated with facility closures are included in store and warehouse operating and selling expenses in our Consolidated Statements of Earnings.

In addition to the decision about whether or not to close a store, store assets are regularly reviewed for recoverability of their carrying amounts. The recoverability assessment requires judgment and estimates of a store's future cash flows. Historically, it has been our view that new stores require two years to develop a customer base necessary to achieve expected cash flows and we typically do not test for impairment during this early stage. However, because of the unprecedented economic conditions experienced in 2008, we included recently opened stores in our impairment analysis. When we return to typical business conditions, we would expect new store operations to follow past patterns and we may return to testing for impairment only after the initial two years of performance. Our impairment analysis builds a cash flow model at the individual store level, beginning with recent store performance and trending the anticipated future results based on chain-wide and individual store initiatives. If the anticipated cash flows of a store cannot support the carrying amount of the store's assets, an impairment charge is recorded to operations as a component of store and warehouse operating and selling expenses. To the extent that management's estimates of future performance are not realized, future assessments could result in material impairment charges. Our analysis during the third quarter of 2008 resulted in an impairment charge of approximately \$20 million, or approximately \$17 million more than the charge recorded in 2007. Because of the significant economic downturn experienced during the fourth quarter of 2008, we updated the analysis and recognized an additional \$78 million asset impairment charge. Also, because of decisions to close stores in both North America and Japan, assets associated with those early closures were written down by approximately \$72 million. These 2008 analyses anticipate continued difficult economic conditions throughout 2009 and modest recovery beginning in 2010. Should economic conditions result that are worse than anticipated, additional impairment charges could result. However, we believe our current assessment includes a reasonable estimation of future conditions.

*Income taxes* — Income tax accounting requires management to make estimates and apply judgments to events that will be recognized in one period under rules that apply to financial reporting and in a different period in our tax returns. In particular, judgment is required when estimating the value of future tax deductions, tax credits, and the realizability of net operating loss carryforwards (NOLs), as represented by deferred tax assets. When we believe the realization of all or a portion of a deferred tax asset is not likely, we establish a valuation allowance. Changes in judgments that increase or decrease these valuation allowances impact current earnings.

In addition to judgments associated with valuation accounts, our current tax provision can be affected by our mix of income and identification or resolution of uncertain tax positions. Because income from domestic and international sources may be taxed at different rates, the shift in mix during a year or over years can cause the effective tax rate to change. We base our rate during the year on our best estimate of an annual effective rate, and update those estimates quarterly, with the cumulative effect of a change in the anticipated annual rate reflected in the tax provision of that period. Such changes can result in significant interim reporting volatility.

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We file our tax returns based on our best understanding of the appropriate tax rules and regulations. However, complexities in the rules and our operations, as well as positions taken publicly by the taxing authorities may lead us to conclude that accruals for uncertain tax positions are required. We generally maintain accruals for uncertain tax positions until examination of the tax year is completed by the taxing authority, available review periods expire, or additional facts and circumstances cause us to change our assessment of the appropriate accrual amount.

During 2008, we recognized a significant tax charge to reestablish a valuation allowances because of the significant downturn in our operating results. Additional valuation allowances may be required in 2009 based on actual operating performance. Our effective tax rate in future periods may be positively or negatively impacted by changes in related judgments or pre-tax operations.

### **SIGNIFICANT TRENDS, DEVELOPMENTS AND UNCERTAINTIES**

*Competitive Factors* — Over the years, we have seen continued development and growth of competitors in all segments of our business. In particular, mass merchandisers and warehouse clubs, as well as grocery and drugstore chains, have increased their assortment of home office merchandise, attracting additional back-to-school customers and year-round casual shoppers. Warehouse clubs have expanded beyond their in-store assortment by adding catalogs and web sites from which a much broader assortment of products may be ordered. We also face competition from other office supply stores that compete directly with us in numerous markets. This competition is likely to result in increased competitive pressures on pricing, product selection and services provided. Many of these retail competitors, including discounters, warehouse clubs, and drug stores and grocery chains, carry basic office supply products. Some of them also feature technology products. Many of them may price certain of these offerings lower than we do, but they have not shown an indication of greatly expanding their somewhat limited product offerings at this time. This trend towards a proliferation of retailers offering a limited assortment of office products is a potentially serious trend in our industry.

We have also seen growth in competitors that offer office products over the internet, featuring special purchase incentives and one-time deals (such as close-outs). Through our own successful internet and business-to-business web sites, we believe that we have positioned ourselves competitively in the e-commerce arena.

Another trend in our industry has been consolidation, as competitors in office supply stores and the copy/print channel have been acquired and consolidated into larger, well-capitalized corporations. This trend towards consolidation, coupled with acquisitions by financially strong organizations, is potentially a significant trend in our industry.

We regularly consider these and other competitive factors when we establish both offensive and defensive aspects of our overall business strategy and operating plans.

*Economic Factors* — Our customers in the North American Retail Division and many of our customers in the North American Business Solutions Division are predominantly small and home office businesses. Accordingly, these customers may continue to curtail their spending in reaction to macroeconomic conditions, such as changes in the housing market and commodity costs, higher credit costs, credit availability, possible recession and other factors. The downturn in the global economy experienced throughout 2008 negatively impacted our sales and profits.

*Liquidity Factors* — Historically, we have generated positive cash flow from operating activities and have had access to broad financial markets that provide the liquidity we need to operate our business. Together, these sources have been used to fund operating and working capital needs, as well as invest in business expansion through new store openings, capital improvements and acquisitions. However, due to the downturn in the global economy our operating results have diminished. In September 2008, we entered into a \$1.25 billion asset based credit facility intended to provide liquidity. The recent distress in the financial markets has resulted in extreme volatility in the capital markets and diminished liquidity and credit availability. There can be no assurance that our liquidity will not be adversely affected by changes in the financial markets and the global economy. In addition, deterioration in our financial results could negatively impact our credit ratings. The tightening of the credit markets or a downgrade in our credit ratings could increase our borrowing costs and make it more difficult for us to access funds, to refinance our existing indebtedness, to enter into agreements for new indebtedness or to obtain funding through the issuance of securities. If such conditions were to persist, we would seek alternative sources of liquidity but may not be able to meet our obligations as they become due.

**MARKET SENSITIVE RISKS AND POSITIONS**

We have market risk exposure related to interest rates and foreign currency exchange rates. Market risk is measured as the potential negative impact on earnings, cash flows or fair values resulting from a hypothetical change in interest rates or foreign currency exchange rates over the next year. Interest rate changes on obligations may result from external market factors, as well as changes in our credit rating. We manage our exposure to market risks at the corporate level. The portfolio of interest-sensitive assets and liabilities is monitored and adjusted to provide liquidity necessary to satisfy anticipated short-term needs. Our risk management policies allow the use of specified financial instruments for hedging purposes only; speculation on interest rates or foreign currency rates is not permitted.

*Interest Rate Risk*

We are exposed to the impact of interest rate changes on cash equivalents and debt obligations. The impact on cash and short-term investments held at the end of 2008 from a hypothetical 10% decrease in interest rates would be a decrease in interest income of less than \$1 million.

Market risk associated with our debt portfolio is summarized below:

<i>(Dollars in thousands)</i>	2008			2007		
	Carrying Value	Fair Value	Risk Sensitivity	Carrying Value	Fair Value	Risk Sensitivity
\$400 million senior notes	\$ 400,278	\$ 206,000	\$ 8,380	\$ 400,384	\$ 415,840	\$ 9,960
Revolving credit arrangement	\$ 139,098	\$ 139,098	\$ 696	\$ 235,420	\$ 235,420	\$ 1,177

The risk sensitivity of fixed rate debt reflects the estimated increase in fair value from a 50 basis point decrease in interest rates, calculated on a discounted cash flow basis. The sensitivity of variable rate debt reflects the possible increase in interest expense during the next period from a 50 basis point change in interest rates prevailing at year-end.

*Foreign Exchange Rate Risk*

We conduct business in various countries outside the United States where the functional currency of the country is not the U.S. dollar. While we sell directly or indirectly through alliances to customers in 48 countries, the principal operations of our International Division are in countries with Euro and British pound functional currencies. We continue to assess our exposure to foreign currency fluctuation against the U.S. dollar. As of December 27, 2008, a 10% change in the applicable foreign exchange rates would result in an increase or decrease in our operating profit of approximately \$16 million.

Although operations generally are conducted in the relevant local currency, we also are subject to foreign exchange transaction exposure when our subsidiaries transact business in a currency other than their own functional currency. This exposure arises primarily from inventory purchases in a foreign currency. The notional amount of foreign exchange forward contracts to hedge certain inventory exposures was \$83 million at its highest point during 2008. Also, from time-to-time we enter into foreign exchange forward transactions to protect against possible changes in exchange rates related to scheduled or anticipated cash movements among our operating entities.

Generally, we evaluate the performance of our international businesses by focusing on the “local currency” results of the business, and not with regard to the translation into U.S. dollars, as the latter is impacted by external factors.

**INFLATION AND SEASONALITY**

Although we cannot determine the precise effects of inflation on our business, we do not believe inflation has had a material impact on our sales or the results of our operations. We consider our business to be only somewhat seasonal, with sales lower during the second quarter. Certain working capital components may build and recede during the year reflecting established selling cycles. Additionally, business cycles can and have impacted our operations and financial position when compared to other periods.

**NEW ACCOUNTING STANDARDS**

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

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In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141 (R), *Business Combinations* (“FAS 141R”). This Standard retains the fundamental acquisition method of accounting established in Statement 141; however, among other things, FAS 141R requires recognition of assets and liabilities of noncontrolling interests acquired, fair value measurement of consideration and contingent consideration, expense recognition for transaction costs and certain integration costs, recognition of the fair value of contingencies, and adjustments to income tax expense for changes in an acquirer’s existing valuation allowances or uncertain tax positions that result from the business combination. The Standard is effective for annual reporting periods beginning after December 15, 2008 and shall be applied prospectively. However, the Standard did not address transition provisions for items such as in progress transactions costs that were capitalized under FAS 141 but are considered period costs under FAS 141R. During the fourth quarter of 2008, we expensed previously deferred costs because they no longer were considered assets that would provide future economic benefit. The impact was not material to our results of operations.

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

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

## **FORWARD-LOOKING STATEMENTS**

The Private Securities Litigation Reform Act of 1995 (the “Act”) provides protection from liability in private lawsuits for “forward-looking” statements made by public companies under certain circumstances, provided that the public company discloses with specificity the risk factors that may impact its future results. We want to take advantage of the “safe harbor” provisions of the Act. This Annual Report contains both historical information and other information that you can use to infer future performance. Examples of historical information include our annual financial statements and the commentary on past performance contained in our MD&A. While we have specifically identified certain information as being forward-looking in the context of its presentation, we caution you that, with the exception of information that is historical, all the information contained in this Annual Report should be considered to be “forward-looking statements” as referred to in the Act. Without limiting the generality of the preceding sentence, any time we use the words “estimate,” “project,” “intend,” “expect,” “believe,” “anticipate,” “continue” and similar expressions, we intend to clearly express that the information deals with possible future events and is forward-looking in nature. Certain information in our MD&A is clearly forward-looking in nature, and without limiting the generality of the preceding cautionary statements, we specifically advise you to consider all of our MD&A in the light of the cautionary statements set forth herein.

Forward-looking information involves future risks and uncertainties. Much of the information in this report that looks towards future performance of our company is based on various factors and important assumptions about future events that may or may not actually come true. As a result, our operations and financial results in the future could differ materially and substantially from those we have discussed in the forward-looking statements in this Report. Significant factors that could impact our future results are provided in Item 1A. Risk Factors included in our 2008 Annual Report on Form 10-K. Other risk factors are incorporated into the text of our MD&A, which should itself be considered a statement of future risks and uncertainties, as well as management’s view of our businesses.

### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

See the information in the “Market Sensitive Risks and Positions” subsection of Management’s Discussion and Analysis of Financial Condition and Results of Operation set forth in Item 7 hereof.

### **Item 8. Financial Statements and Supplementary Data.**

See Item 15(a) in Part IV.



**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

None.

**Item 9A. Controls and Procedures.**

*Disclosure Controls and Procedures*

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

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

*Internal Control Over Financial Reporting*

(a) Management's Report on Internal Control Over Financial Reporting

See Item 15(a)1 in Part IV.

(b) Report of the Independent Registered Public Accounting Firm

See Item 15(a)1 in Part IV.

(c) Changes in Internal Controls

There have been no changes in the company's internal control over financial reporting that occurred during the company's most recent fiscal year that have materially affected, or are reasonably likely to materially affect, the company's internal control over financial reporting.

**Item 9B. Other Information.**

None.

**PART III**

**Item 10. Directors, Executive Officers and Corporate Governance.**

Information concerning our executive officers is set forth in Item 1 of this Form 10-K under the caption “Executive Officers of the Registrant.”

Information with respect to our directors and the nomination process is incorporated herein by reference to information included in the Proxy Statement for our 2009 Annual Meeting of Shareholders.

Information regarding our audit committee and our audit committee financial experts is incorporated herein by reference to information included in the Proxy Statement for our 2009 Annual Meeting of Shareholders.

Information required by Item 405 of Regulation S-K is incorporated herein by reference to information included in the Proxy Statement for our 2009 Annual Meeting of Shareholders.

We have adopted a Code of Ethical Behavior in compliance with applicable rules of the SEC that applies to our principal executive officer, our principal financial officer, and our principal accounting officer or controller, or persons performing similar functions. A copy of the Code of Ethical Behavior is available free of charge on the “Investor Relations” section of our web site at [www.officedepot.com](http://www.officedepot.com). We intend to satisfy any disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of this Code of Ethical Behavior by posting such information on our web site at the address and location specified above.

**Item 11. Executive Compensation.**

Information with respect to executive compensation is incorporated herein by reference to information included in the Proxy Statement for our 2009 Annual Meeting of Shareholders.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

Information with respect to security ownership of certain beneficial owners and management is incorporated herein by reference to information included in the Proxy Statement for our 2009 Annual Meeting of Shareholders.

**Securities Authorized for Issuance Under Equity Compensation Plans**

The following table provides information regarding compensation plans under which Office Depot equity securities are authorized for issuance as of December 27, 2008:

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants, and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (c)
<b>Equity compensation plans approved by security holders:</b>			
2007 Long-Term Incentive Plan	14,479,141	\$22.78	18,862,951
Employee Stock Purchase Plan (ESPP) (1)	Not Applicable	Not Applicable	Not Applicable
Retirement Savings Plans	Not Applicable	Not Applicable	Not Applicable
<b>Equity compensation plans not approved by security holders:</b>			
None	—	Not Applicable	—
<b>Total</b>	<b>14,479,141</b>	<b>\$22.78</b>	<b>18,862,951</b>

(1) This program has been terminated, effective December 31, 2008.

For a description of the equity compensation plans above, see Note H – Employee Benefit Plans included under the heading “Notes to Consolidated Financial Statements.”

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**Item 13. Certain Relationships and Related Transactions, and Director Independence.**

Information with respect to such contractual relationships is incorporated herein by reference to the information in the Proxy Statement for our 2009 Annual Meeting of Shareholders.

**Item 14. Principal Accountant Fees and Services.**

Information with respect to principal accounting fees and services and pre-approval policies are incorporated herein by reference to information included in the Proxy Statement for our 2009 Annual Meeting of Shareholders.

**PART IV**

**Item 15. Exhibits and Financial Statement Schedules.**

(a) The following documents are filed as a part of this report:

1. The financial statements listed in “Index to Financial Statements.”
2. The financial statement schedules listed in “Index to Financial Statement Schedule.”
3. The exhibits listed in the “Index to Exhibits.”

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) 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 on this 24<sup>th</sup> day of February 2009.

OFFICE DEPOT, INC.

By /s/ STEVE ODLAND  
Steve Odland  
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant in the capacities indicated on February 24, 2009.

<u>Signature</u>	<u>Capacity</u>
/s/ STEVE ODLAND Steve Odland	Chief Executive Officer (Principal Executive Officer) and Chairman, Board of Directors
/s/ MICHAEL D. NEWMAN Michael D. Newman	Executive Vice President and Chief Financial Officer (Principal Financial Officer)
/s/ MARK E. HUTCHENS Mark E. Hutchens	Senior Vice President and Controller (Principal Accounting Officer)
/s/ LEE A. AULT, III Lee A. Ault, III	Director
/s/ NEIL R. AUSTRIAN Neil R. Austrian	Director
/s/ DAVID W. BERNAUER David W. Bernauer	Director
/s/ MARSHA JOHNSON EVANS Marsha Johnson Evans	Director
/s/ DAVID I. FUENTE David I. Fuente	Director
/s/ BRENDA J. GAINES Brenda J. Gaines	Director
/s/ MYRA M. HART Myra M. Hart	Director
/s/ W. SCOTT HEDRICK W. Scott Hedrick	Director
/s/ KATHLEEN MASON Kathleen Mason	Director
/s/ MICHAEL J. MYERS Michael J. Myers	Director

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## MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management of Office Depot is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers and effected by the company's board of directors, management and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the company;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

Because of inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of the company's internal control over financial reporting as of December 27, 2008. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control—Integrated Framework*.

Based on our assessment, management believes that, as of December 27, 2008, the company's internal control over financial reporting is effective.

The company's independent registered public accounting firm, Deloitte & Touche LLP, has issued a report on the effectiveness of the company's internal control over financial reporting. This report appears on the following page.

/s/ STEVE ODLAND

Steve Odland  
Chairman, Board of Directors and  
Chief Executive Officer

/s/ MICHAEL D. NEWMAN

Michael D. Newman  
Executive Vice President and  
Chief Financial Officer

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of Office Depot, Inc.:

We have audited the internal control over financial reporting of Office Depot, Inc. and subsidiaries (the “Company”) as of December 27, 2008 based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company’s internal control over financial reporting is a process designed by, or under the supervision of, the company’s principal executive and principal financial officers, or persons performing similar functions, and effected by the company’s board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 29, 2007, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements as of and for the year ended December 27, 2008 of the Company and our report dated February 23, 2009 expressed an unqualified opinion on those financial statements.

/s/ DELOITTE & TOUCHE LLP  
Certified Public Accountants

Boca Raton, Florida  
February 23, 2009

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of Office Depot, Inc.:

We have audited the accompanying consolidated balance sheets of Office Depot, Inc. and subsidiaries (the “Company”) as of December 27, 2008 and December 29, 2007 and the related consolidated statements of operations, stockholders’ equity, and cash flows for each of the three years in the period ended December 27, 2008. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Office Depot, Inc. and subsidiaries at December 27, 2008 and December 29, 2007, and the results of their operations and their cash flows for each of the three years in the period ended December 27, 2008, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company’s internal control over financial reporting as of December 27, 2008, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 23, 2009 expressed an unqualified opinion in the Company’s internal control over financial reporting.

/s/ DELOITTE & TOUCHE LLP  
Certified Public Accountants

Boca Raton, Florida  
February 23, 2009



[Table of Contents](#)**OFFICE DEPOT, INC.****CONSOLIDATED BALANCE SHEETS***(In thousands, except share and per share amounts)*

	December 27, 2008	December 29, 2007
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 155,745	\$ 222,954
Receivables, net of allowances of \$45,990 in 2008 and \$46,316 in 2007	1,255,735	1,511,681
Inventories	1,331,593	1,717,662
Deferred income taxes	196,192	120,162
Prepaid expenses and other current assets	183,122	143,255
Total current assets	3,122,387	3,715,714
Property and equipment, net	1,557,301	1,588,958
Goodwill	19,431	1,282,457
Other intangible assets	28,311	107,987
Other assets	540,796	561,424
Total assets	<u>\$ 5,268,226</u>	<u>\$ 7,256,540</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Trade accounts payable	\$ 1,251,808	\$ 1,591,154
Accrued expenses and other current liabilities	1,173,201	1,170,775
Income taxes payable	8,803	3,491
Short-term borrowings and current maturities of long-term debt	191,932	207,996
Total current liabilities	2,625,744	2,973,416
Deferred income taxes and other long-term liabilities	585,861	576,254
Long-term debt, net of current maturities	688,788	607,462
Minority interest	4,883	15,564
Commitments and contingencies		
Stockholders' equity:		
Common stock — authorized 800,000,000 shares of \$.01 par value; issued and outstanding shares — 280,800,135 in 2008 and 428,777,625 in 2007	2,808	4,288
Additional paid-in capital	1,194,622	1,784,184
Accumulated other comprehensive income	217,197	495,916
Retained earnings	6,270	3,783,805
Treasury stock, at cost — 5,938,059 shares in 2008 and 155,819,358 shares in 2007	(57,947)	(2,984,349)
Total stockholders' equity	1,362,950	3,083,844
Total liabilities and stockholders' equity	<u>\$ 5,268,226</u>	<u>\$ 7,256,540</u>

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

[Table of Contents](#)**OFFICE DEPOT, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
*(In thousands, except per share amounts)*

	2008	2007	2006
Sales	\$ 14,495,544	\$ 15,527,537	\$ 15,010,781
Cost of goods sold and occupancy costs	10,489,785	11,024,639	10,363,437
Gross profit	4,005,759	4,502,898	4,647,344
Store and warehouse operating and selling expenses	3,322,662	3,381,129	3,296,443
Goodwill and trade name impairments	1,269,893	—	—
Other asset impairments	222,379	—	7,450
General and administrative expenses	743,174	645,661	651,696
Gain and amortization of deferred gain on sale of building	(7,308)	(7,493)	(21,432)
Operating profit (loss)	(1,545,041)	483,601	713,187
Other income (expense):			
Interest income	10,013	9,440	9,828
Interest expense	(68,286)	(63,080)	(40,830)
Loss on extinguishment of debt	—	—	(5,715)
Miscellaneous income, net	25,731	28,672	30,565
Earnings (loss) before income taxes	(1,577,583)	458,633	707,035
Income tax expense (benefit)	(98,645)	63,018	203,564
Net earnings (loss)	\$ (1,478,938)	\$ 395,615	\$ 503,471
Net earnings (loss) per share:			
Basic	\$ (5.42)	\$ 1.45	\$ 1.79
Diluted	(5.42)	1.43	1.75

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

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**OFFICE DEPOT, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**

(In thousands, except share amounts)

	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Comprehensive Income (Loss)	Retained Earnings	Treasury Stock
Balance at December 31, 2005	419,812,671	\$ 4,198	\$ 1,517,373	\$ 140,745		\$ 2,867,067	\$ (1,790,162)
Comprehensive income:							
Net earnings					\$ 503,471	503,471	
Foreign currency translation adjustment				162,222	162,222		
Amortization of gain on hedge				(1,659)	(1,659)		
Comprehensive income					<u>\$ 664,034</u>		
Deferred pension loss —adoption of FAS 158				(6,055)			
Acquisition of treasury stock							(983,436)
Grant of long-term incentive stock	287,930	3	(3)				
Forfeiture of restricted stock			2				(2)
Exercise of stock options (including income tax benefits and withholding)	5,973,420	60	141,892				
Issuance of stock under employee stock purchase plans	103,598	1	2,064				
Direct stock purchase plans			51				18
Amortization of long-term incentive stock grant			39,597				
Balance at December 30, 2006	426,177,619	4,262	1,700,976	295,253		3,370,538	(2,773,582)
Comprehensive income:							
Net earnings					395,615	395,615	
Foreign currency translation adjustment				179,130	179,130		
Deferred pension gain				23,192	23,192		
Amortization of gain on hedge				(1,659)	(1,659)		
Comprehensive income					<u>\$ 596,278</u>		
Adoption of FIN 48						17,652	
Acquisition of treasury stock							(210,793)
Grant of long-term incentive stock	765,754	8	(8)				
Forfeiture of restricted stock	(87,861)	(1)	1				
Exercise of stock options (including income tax benefits and withholding)	1,849,657	18	43,909				
Issuance of stock under employee stock purchase plans	72,456	1	1,515				
Direct stock purchase plans			46				26
Amortization of long-term incentive stock grant			37,745				
Balance at December 29, 2007	428,777,625	4,288	1,784,184	495,916		3,783,805	(2,984,349)
Comprehensive income:							
Net loss					(1,478,938)	(1,478,938)	
Foreign currency translation adjustment				(248,275)	(248,275)		
Deferred pension loss				(24,128)	(24,128)		
Amortization of gain on hedge				(1,659)	(1,659)		
Unrealized loss on cash flow hedge				(4,657)	(4,657)		
Comprehensive loss					<u>\$ (1,757,657)</u>		
Acquisition of treasury stock							(944)
Retirement of treasury stock	(149,940,718)	(1,499)	(626,889)			(2,298,597)	2,926,985
Grant of long-term incentive stock	2,307,993	23	(23)				
Forfeiture of restricted stock	(465,175)	(5)	1				
Exercise of stock options (including income tax benefits and withholding)	109,744	1	(1,222)				
Issuance of stock under employee stock purchase plans	10,666	—	(785)				
Direct stock purchase plans			(228)				361
Amortization of long-term incentive stock grant			39,584				
<b>Balance at December 27, 2008</b>	<b>280,800,135</b>	<b>\$ 2,808</b>	<b>\$ 1,194,622</b>	<b>\$ 217,197</b>		<b>\$ 6,270</b>	<b>\$ (57,947)</b>

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

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

	2008	2007	2006
<b>Cash flows from operating activities:</b>			
Net earnings (loss)	\$ (1,478,938)	\$ 395,615	\$ 503,471
Adjustments to reconcile net earnings to net cash provided by operating activities:			
Depreciation and amortization	254,099	281,383	279,005
Charges for losses on inventories and receivables	140,058	109,798	85,610
Net earnings from equity method investments	(37,113)	(34,825)	(27,125)
Goodwill and trade name impairments	1,269,893	—	—
Other asset impairments	222,379	—	7,450
Compensation expense for share-based payments	39,561	37,738	39,889
Deferred income tax provision	(108,099)	(1,022)	(15,847)
Gain (loss) on disposition of assets	(13,443)	(25,190)	(23,948)
Other operating activities	(7,612)	2,927	(1,704)
Changes in assets and liabilities:			
Decrease (increase) in receivables	133,162	25,909	(128,558)
Decrease (increase) in inventories	249,849	(191,685)	(155,955)
Net increase in prepaid expenses and other assets	(16,986)	(12,342)	(23,212)
Net (decrease) increase in accounts payable, accrued expenses and other long-term liabilities	(178,554)	(176,921)	287,999
Total adjustments	1,947,194	15,770	323,604
Net cash provided by operating activities	468,256	411,385	827,075
<b>Cash flows from investing activities:</b>			
Purchases of short-term investments	—	—	(961,450)
Sales of short-term investments	—	—	961,650
Acquisitions, net of cash acquired, and related payments	(102,752)	(48,036)	(248,319)
Capital expenditures	(330,075)	(460,571)	(343,415)
Purchase of assets held for sale and sold	(38,537)	—	—
Proceeds from disposition of assets and other	120,632	129,182	106,381
Dividends received	—	25,000	—
Restricted cash for pending transaction	(6,037)	(18,100)	—
Release of restricted cash	18,100	—	—
Net cash used in investing activities	(338,669)	(372,525)	(485,153)
<b>Cash flows from financing activities:</b>			
Net proceeds from exercise of stock options and sale of stock under employee stock purchase plans	503	29,332	101,034
Tax benefit from employee share-based exercises	89	18,266	43,355
Acquisition of treasury stock under approved repurchase plans	—	(199,592)	(970,640)
Treasury stock additions from employee related plans	(944)	(11,201)	(12,796)
Debt issuance costs	(40,793)	—	—
Proceeds from issuance of borrowings	139,098	177,413	8,494
Payments on long- and short-term borrowings	(284,204)	(6,292)	(58,545)
Net cash provided by (used in) financing activities	(186,251)	7,926	(889,098)
<b>Effect of exchange rate changes on cash and cash equivalents</b>	<b>(10,545)</b>	<b>2,616</b>	<b>17,531</b>
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>(67,209)</b>	<b>49,402</b>	<b>(529,645)</b>
Cash and cash equivalents at beginning of period	222,954	173,552	703,197
Cash and cash equivalents at end of period	\$ 155,745	\$ 222,954	\$ 173,552

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### NOTE A — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Nature of Business:** Office Depot, Inc. (“Office Depot”) is a global supplier of office products and services under the Office Depot® brand and other proprietary brand names. As of December 27, 2008, we sold to customers in 48 countries throughout North America, Europe, Asia and Latin America either through wholly-owned entities, majority-owned entities or other ventures covering 38 countries, and through alliances in an additional ten countries.

**Basis of Presentation:** The consolidated financial statements of Office Depot and its subsidiaries have been prepared in accordance with accounting principles generally accepted in the United States of America. All intercompany transactions have been eliminated in consolidation. We have a majority, but not total, ownership interest in entities in India and Sweden. Those entities have been consolidated since the date of acquisition with minority interest presented for the portion we do not own. We also participate in a joint venture selling office products and services in Mexico and Central America that is accounted for using the equity method with its results presented in miscellaneous income, net in the Consolidated Statements of Operations. See Note N for information on our investment in Mexico.

**Fiscal Year:** Fiscal years are based on a 52- or 53-week period ending on the last Saturday in December. All years presented are based on 52 weeks.

**Estimates and Assumptions:** Preparation of these financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect amounts reported in the financial statements and related notes. Actual results may differ from those estimates.

**Foreign Currency:** Assets and liabilities of international operations are translated into U.S. dollars using the exchange rate at the balance sheet date. Revenues, expenses and cash flows are translated at average monthly exchange rates. Translation adjustments resulting from this process are recorded in stockholders’ equity as a component of accumulated other comprehensive income.

Monetary assets and liabilities denominated in a currency other than a consolidated entity’s functional currency result in transaction gains or losses from the remeasurement at spot rates at the end of the period. Foreign currency gains and losses are recorded in miscellaneous income, net in the Consolidated Statements of Operations.

**Cash Equivalents:** All short-term highly liquid securities with maturities of three months or less from the date of acquisition are classified as cash equivalents. Approximately \$15 million and \$18 million of restricted cash held on deposit was included in other current assets at December 27, 2008 and December 29, 2007, respectively.

**Cash Management:** Our cash management process generally utilizes zero balance accounts which provide for the settlement of the related disbursement accounts on a daily basis. Accounts payable as of December 27, 2008 and December 29, 2007 included \$71 million and \$127 million, respectively, of amounts not yet presented for payment drawn in excess of disbursement account book balances, after considering existing offset provisions. We borrow on a cost effective basis during the quarter, which may result in higher levels of borrowings and invested cash within the period. At the end of the quarter, cash may be used to minimize borrowings outstanding at the balance sheet date.

**Short-term Investments:** We held no short-term investments at December 27, 2008 or December 29, 2007. When held, investments typically are available-for-sale debt securities and reported at fair market value, based on quoted market prices using the specific identification method.

**Receivables:** Trade receivables, net, totaled \$849.6 million and \$1,039.9 million at December 27, 2008 and December 29, 2007, respectively. An allowance for doubtful accounts has been recorded to reduce receivables to an amount expected to be collectible from customers. The allowance recorded at December 27, 2008 and December 29, 2007 was \$46.0 million and \$46.3 million, respectively. Receivables generated through a private label credit card program are transferred to a financial services company, a portion of which have recourse to Office Depot. The estimated fair value liability associated with risk of loss is included in accrued expenses.

Our exposure to credit risk associated with trade receivables is limited by having a large customer base that extends across many different industries and geographic regions. However, receivables may be adversely affected by an economic slowdown in the U.S. or internationally. No single customer accounted for more than 5% of our total sales in 2008, 2007 or 2006.

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Other receivables are \$406.1 million and \$471.8 million as of December 27, 2008 and December 29, 2007, respectively, of which \$288.2 million and \$378.2 million are amounts due from vendors under purchase rebate, cooperative advertising and various other marketing programs. These vendor receivables are net of collection allowances of \$27.7 million and \$22.1 million at December 27, 2008 and December 29, 2007, respectively.

**Inventories:** Inventories are stated at the lower of cost or market value. In-bound freight is included as a cost of inventories. Also, certain vendor allowances that are related to inventory purchases are considered to reduce the product cost. The weighted average method is used to determine the cost of a majority of our inventory and the first-in-first-out method is used for inventory held within our international operations.

**Income Taxes:** Income tax expense is recognized at applicable U.S. or international tax rates. Certain revenue and expense items may be recognized in one period for financial statement purposes and in a different period's income tax return. The tax effects of such differences are reported as deferred income taxes.

U.S. income taxes have not been provided on the undistributed earnings of foreign subsidiaries, which were approximately \$795.5 million as of December 27, 2008. We have reinvested such earnings overseas in foreign operations indefinitely and expect that future earnings will also be reinvested overseas indefinitely.

**Property and Equipment:** Property and equipment additions are recorded at cost. Depreciation and amortization is recognized over their estimated useful lives using the straight-line method. The useful lives of depreciable assets are estimated to be 15-30 years for buildings and 3-10 years for furniture, fixtures and equipment. Computer software is amortized over three years for common office applications, five years for larger business applications and seven years for certain enterprise-wide systems. Leasehold improvements are amortized over the shorter of the estimated economic lives of the improvements or the terms of the underlying leases, including renewal options considered reasonably assured at inception of the leases.

**Goodwill and Other Intangible Assets:** Goodwill represents the excess of the purchase price and related costs over the value assigned to net tangible and identifiable intangible assets of businesses acquired and accounted for under the purchase method. Accounting rules require that we test at least annually for possible goodwill impairment. Unless conditions warrant earlier action, we perform our test in the fourth quarter of each year using a discounted cash flow analysis that requires that certain assumptions and estimates be made regarding industry economic factors and future profitability. During 2008, we recognized an impairment charge of \$1,213.3 million related to goodwill, which is reflected in goodwill and trade name impairments in the Consolidated Statements of Operations.

Unless conditions warrant earlier action, intangible assets with indefinite lives are tested annually for impairment during the fourth quarter and written down to fair value as required. During 2008, a charge of approximately \$56.6 million was recorded to impair non-amortizing trade name intangibles. This impairment charge is included in goodwill and trade name impairments in the Consolidated Statements of Operations.

We amortize the cost of other intangible assets over their estimated useful lives. Amortizable intangible assets are reviewed at least annually to determine whether events and circumstances warrant a revision to the remaining period of amortization. During 2008, we concluded that the value of certain amortizing intangible assets was impaired, and we recognized a charge of \$10.9 million to fully impair the customer list intangible assets in our International Division. This impairment charge is included in other asset impairments in the Consolidated Statements of Operations.

See Note B for information related to goodwill and other intangible asset impairment charges recognized in 2008.

**Impairment of Long-Lived Assets:** Long-lived assets with identifiable cash flows are reviewed for possible impairment annually or whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Impairment is assessed at the location level, considering the estimated undiscounted cash flows over the asset's remaining life. If estimated cash flows are insufficient to recover the investment, an impairment loss is recognized equal to the estimated fair value of the asset less its carrying value and any costs of disposition. Impairment losses of \$97.7 million, \$3.3 million and \$2.3 million were recognized in 2008, 2007 and 2006, respectively, relating to certain under-performing retail stores. For additional discussion of material asset impairment charges recognized in 2008, see Note B.

**Facility Closure Costs:** We regularly review store performance against expectations and close stores not meeting our performance requirements. Costs associated with store or other facility closures, principally lease cancellation costs, are recognized when the facility is no longer used in an operating capacity or when a liability has been incurred. Store assets are also reviewed for possible impairment, or reduction of estimated useful lives.

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Accruals for facility closure costs are based on the future commitments under contracts, adjusted for anticipated sublease and termination benefits and discounted at the company's risk-adjusted rate at the time of closing. During 2008, we recorded a charge of \$6 million relating to leases on retail stores closed as part of a company-wide business review and an additional charge of \$9 million to terminate certain existing commitments and to adjust the remaining commitments to current market values. During 2009, we plan to close additional retail stores in North America and Japan as well as distribution facilities in North America and Europe. We currently anticipate recording a lease-related charge of approximately \$106 million when these facilities close. See Note B for related information. During 2006, we recognized a \$4 million charge based on our planned transfer to an unrelated third party of risks associated with disposition activities for additional properties. The accrued balance relating to our future commitments under operating leases for our closed facilities was \$54.1 million and \$36.3 million at December 27, 2008 and December 29, 2007, respectively.

**Fair Value of Financial Instruments:** The estimated fair values of financial instruments recognized in the Consolidated Balance Sheets or disclosed within these Notes to Consolidated Financial Statements have been determined using available market information, information from unrelated third party financial institutions and appropriate valuation methodologies, primarily discounted projected cash flows. However, considerable judgment is required when interpreting market information and other data to develop estimates of fair value.

**Short-term Assets and Liabilities:** The fair values of cash and cash equivalents, short-term investments, receivables, accounts payable and accrued expenses and other current liabilities approximate their carrying values because of their short-term nature.

**Notes Payable:** The fair value of the senior notes was determined based on quoted market prices. The following table reflects the difference between the carrying value and fair value of the senior notes as of December 27, 2008 and December 29, 2007:

	2008		2007	
	Carrying Value	Fair Value	Carrying Value	Fair Value
(Dollars in thousands)				
\$400 million senior notes	\$400,278	\$206,000	\$400,384	\$415,840

**Interest Rate Swaps, Foreign Currency and Fuel Contracts:** The fair values of our interest rate swaps, foreign currency contracts and fuel contracts are the amounts receivable or payable to terminate the agreements at the reporting date, taking into account current interest and exchange rates. The values are based on market-based inputs or observable inputs that are corroborated by market data. There were no interest rate swap agreements in place at the end of 2008 and the amounts receivable or payable under foreign currency and fuel contracts were not significant at the end of 2008.

There were no significant differences between the carrying values and fair values of our financial instruments as of December 27, 2008 and December 29, 2007, except as disclosed above.

**Accounting for Stock-Based Compensation:** We account for stock compensation awards under Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment*, ("FAS 123R"). We use the Black-Scholes valuation model and recognize compensation expense on a straight-line basis over the requisite service period of the grant. We consider alternative models if grants have characteristics that cannot be reasonably estimated using this model.

**Accrued Expenses:** Included in accrued expenses and other current liabilities in our Consolidated Balance Sheets are accrued payroll-related amounts of approximately \$205 million and \$187 million at December 27, 2008 and December 29, 2007, respectively.

**Revenue Recognition:** Revenue is recognized at the point of sale for retail transactions and at the time of successful delivery for contract, catalog and internet sales. Sales taxes collected are not included in reported sales. We use judgment in estimating sales returns, considering numerous factors such as current overall and industry-specific economic conditions and historical sales return rates. Although we consider our sales return accruals to be adequate and proper, changes from historical customer patterns could require adjustments to the provision for returns. We also record reductions to our revenues for customer programs and incentive offerings including special pricing agreements, certain promotions and other volume-based incentives. Revenue from sales of extended warranty service plans is either recognized at the point of sale or over the warranty period, depending on the determination of legal obligor status. All performance obligations and risk of loss associated with such contracts are transferred to an unrelated third-party administrator at the time the contracts are sold. Costs associated with these contracts are recognized in the same period as the related revenue.

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We recognize a liability for future performance when gift cards are sold and recognize the related revenue when gift cards are redeemed as payment for our products. We recognize as revenue the unused portion of the gift card liability when historical data indicates that additional redemption is unlikely.

**Shipping and Handling Fees and Costs:** Income generated from shipping and handling fees is classified as revenues for all periods presented. Freight costs incurred to bring merchandise to stores and warehouses are included as a component of inventory and costs of goods sold. Freight costs incurred to ship merchandise to customers are recorded as a component of store and warehouse operating and selling expenses. Shipping costs, combined with warehouse handling costs, totaled \$911.2 million in 2008, \$963.7 million in 2007 and \$920.9 million in 2006.

**Advertising:** Advertising costs are charged either to expense when incurred or, in the case of direct marketing advertising, capitalized and amortized in proportion to the related revenues over the estimated life of the material, which range from several months to up to one year.

Advertising expense recognized was \$525.7 million in 2008, \$564.9 million in 2007 and \$575.3 million in 2006. Prepaid advertising costs were \$38.1 million as of December 27, 2008 and \$27.9 million as of December 29, 2007.

**Pre-opening Expenses:** Pre-opening expenses related to opening new stores and warehouses or relocating existing stores and warehouses are expensed as incurred and included in store and warehouse operating and selling expenses.

**Self-Insurance:** Office Depot is primarily self-insured for workers' compensation, auto and general liability and employee medical insurance programs. Self-insurance liabilities are based on claims filed and estimates of claims incurred but not reported. These liabilities are not discounted.

**Comprehensive Income (Loss):** Comprehensive income (loss) represents the change in stockholders' equity from transactions and other events and circumstances arising from non-stockholder sources. Comprehensive income consists of net earnings (loss), foreign currency translation adjustments, realized or unrealized gains (losses) on investment securities that are available-for-sale, deferred pension gains (losses) and elements of qualifying cash flow hedges, net of applicable income taxes. As of December 27, 2008, our Consolidated Balance Sheet reflected accumulated other comprehensive income in the amount of \$217.2 million, which consisted of \$221.1 million in foreign currency translation adjustments, \$7.7 million in unamortized gain on hedge, \$4.6 million in unrealized losses on cash flow hedges and \$7.0 million in deferred pension loss.

**Derivative Financial Instruments:** Certain derivative financial instruments may be used to hedge the exposure to foreign currency exchange rate, fuel price change and interest rate risks, subject to an established risk management policy. Financial instruments authorized under this policy include swaps, options, caps, forwards and futures. Use of derivative financial instruments for trading or speculative purposes is prohibited by company policies.

**Vendor Arrangements:** We enter into arrangements with substantially all of our significant vendors that provide for some form of consideration to be received from the vendors. Arrangements vary, but generally specify volume rebate thresholds, advertising support levels, as well as terms for payment and other administrative matters. The volume-based rebates, supported by a vendor agreement, are estimated throughout the year and reduce the cost of inventory and cost of goods sold during the year. This estimate is regularly monitored and adjusted for current or anticipated changes in purchase levels and for sales activity. Other promotional consideration received is event-based or represents general support and is recognized as a reduction of cost of goods sold or inventory, as appropriate based on the type of promotion and the agreement with the vendor. Some arrangements may meet the specific, incremental, identifiable criteria that allow for direct operating expense offset, but such arrangements are not significant.

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



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In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141 (R), *Business Combinations* (“FAS 141R”). This Standard retains the fundamental acquisition method of accounting established in Statement 141; however, among other things, FAS 141R requires recognition of assets and liabilities of noncontrolling interests acquired, fair value measurement of consideration and contingent consideration, expense recognition for transaction costs and certain integration costs, recognition of the fair value of contingencies, and adjustments to income tax expense for changes in an acquirer’s existing valuation allowances or uncertain tax positions that result from the business combination. The Standard is effective for annual reporting periods beginning after December 15, 2008 and shall be applied prospectively. However, the Standard did not address transition provisions for items such as in progress transactions costs that were capitalized under FAS 141 but are considered period costs under FAS 141R. During the fourth quarter of 2008, we expensed previously deferred costs because they no longer were considered assets that would provide future economic benefit. The impact was not material to our results of operations.

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

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

### **NOTE B — ASSET IMPAIRMENTS, EXIT COSTS AND OTHER CHARGES**

During 2005, we announced a number of material charges relating to asset impairments, exit costs and other operating decisions that resulted from a wide-ranging assessment of assets and commitments. Although the majority of these charges were recognized in 2005, we also incurred expenses related to these exit activities in 2006, 2007 and 2008. During the fourth quarter of 2008, we performed an internal review of assets and processes with the goal of positioning the company to deal with the degradation in the global economy and to benefit from its eventual improvement. The results of that internal review led to decisions to close stores, exit certain businesses and write off certain assets that were not seen as providing future benefit. These decisions resulted in material charges, some of which were recognized during the fourth quarter of 2008, and others which will be recognized during 2009 as the related accounting criteria are met. We also recognized material goodwill and trade name impairment charges during the fourth quarter of 2008. The few remaining activities from the 2005 planned business changes have been incorporated into the current activities. We manage the related costs and programs associated with these activities (collectively, the “Charges”) at a corporate level, and accordingly, these amounts are not included in determining Division operating profit. Additional information about the costs and programs associated with the Charges is provided below.

A summary of the Charges and the line item presentation of these amounts in our accompanying Consolidated Statements of Operations is as follows.

<i>(Dollars in million)</i>	2008	2007	2006
Cost of goods sold and occupancy costs	\$ 16	\$ —	\$ 1
Store and warehouse operating and selling expenses	52	25	37
Goodwill and trade name impairments	1,270	—	—
Other asset impairments	114	—	7
General and administrative expenses	17	15	18
Total pre-tax Charges	\$ 1,469	\$ 40	\$ 63

*Exit costs*

As mentioned above, in 2005, we announced a series of activities to restructure operations and recognized charges associated with exit costs, as well as other asset impairments. Approximately \$282 million of pre-tax Charges were recognized in 2005 and it was disclosed that additional charges would be recognized when the identified plans were implemented and the related accounting criteria were met. Associated pre-tax Charges in 2006 and 2007 totaled \$63 million and \$40 million, respectively, and related primarily to the consolidation of warehouses and distribution centers in North America and Europe as well as management restructuring and call center consolidation in Europe. The few remaining incomplete exit activities from the 2005 planned business changes have been incorporated into the current activities.

The primary components of Charges associated with exit activities include:

- *Store closures (North America)* – During the fourth quarter of 2008, we identified 112 stores in North America to be closed by the end of the first quarter of 2009, with an additional 14 stores identified to be closed during 2009 as their leases expire or other lease arrangements are finalized. As of December 27, 2008, six of the 112 stores had been closed, and the number of additional stores to be closed had been reduced to ten, net of relocated stores. The stores being closed are underperforming stores or stores that are no longer a strategic fit for the company. In making the decision on which stores to close, we considered sales, operating profit, cash flow, condition of the shopping center, location of other stores in the proximity and customer demographics, among other factors. The stores to be closed are located in various geographic regions, including 45 in the Central U.S., 40 in the Northeast and Canada, 19 in the West and eight in the South. The total charges for these closures are estimated to be \$180 million, with approximately \$89 million recorded in the fourth quarter of 2008 and the balance to be recognized during 2009 as the stores are closed. The 2008 amounts include approximately \$15 million of inventory write downs because the company executed an agreement with a third party liquidator in North America establishing the recoverable amount for inventory in those specific stores. These inventory write downs are presented in cost of goods sold and occupancy costs in our Consolidated Statements of Operations. Additionally, approximately \$66 million is for asset impairment, \$1 million is associated with severance and one-time termination benefit accruals, and \$1 million represents other facility closure costs. As mentioned above six of the stores were closed by year end 2008 and approximately \$6 million was recognized for the estimated period of economic loss under the associated operating lease contracts. Additional severance of approximately \$3 million will be recognized as services are performed over the closure period and applicable lease accruals will be recognized when the facilities are closed during 2009. We currently estimate approximately \$88 million of lease charges to be recognized in 2009, but the amount may change as sublease assumptions are refined and the then-current risk-adjusted discount rates applied. We are currently using discount rates ranging from 13.5% to 15.0% to discount these multi-year obligations.
- *Reduction in store openings (North America)* – We have reduced the number of new store openings for 2009 to approximately 15, from the previous estimate of 40 stores. This reduction resulted in the recognition in 2008 of approximately \$9 million for the estimated period of economic loss under the operating lease contracts associated with the stores that will not be opened. We expect to record approximately \$3 million in lease costs for these activities during 2009.
- *Store closures (International)* – We have decided to exit the retail sales channel in Japan during 2009 because most of our stores in that country are unprofitable. The total charges for these closures is estimated to be \$13 million, with approximately \$6 million recorded in the fourth quarter of 2008 and the balance to be recognized during 2009 as the stores are closed. The 2008 charges are primarily associated with asset impairments, and the 2009 charges include severance related expenses, lease costs and other facility closure costs of \$4 million, \$2 million and \$1 million, respectively. Additionally, we expect to incur charges associated with residual inventory values from these closed facilities, however, these values cannot be reasonably estimated.
- *Supply chain consolidation (North America)* – During 2009, our current plan is to close five distribution centers and one crossdock facility to streamline our supply chain. These facilities are near the end of their initial lease terms and projected closure costs total approximately \$8 million, with \$2 million recognized during 2008 for severance related costs. The remainder of the charges relate to one-time termination benefits of \$1 million, lease costs of \$2 million and other exit costs including deconstruction expenses of \$3 million. Additionally, we expect to incur charges associated with residual inventory values from these closed facilities, however, these values cannot be reasonably estimated.
- *Supply chain consolidation (International)* – We have substantially completed the consolidation of our distribution centers in Europe with one closure planned for 2009. During 2008, we recorded approximately \$20 million in exit costs associated with this activity. These costs consisted primarily of accelerated depreciation, severance related expenses and future lease obligations, which totaled \$8 million, \$4 million and \$4 million, respectively. We also recorded \$4 million in charges related to other facility closure costs in 2008. We expect to record approximately \$23 million in charges for these activities during 2009. The 2009 charges include lease costs, severance related expenses, accelerated depreciation and other facility closure costs of \$11 million, \$4 million, \$4 million and \$4 million, respectively.

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- *Call center and back office restructuring (International)* – During 2007, we began the consolidation of our call centers and back office operations in Europe. We recorded approximately \$13 million of charges related to these activities in 2008, of which \$12 million was associated with severance and other one-time termination benefits. The remaining \$1 million of charges incurred in 2008 related to other exit activities. We expect to record approximately \$10 million in severance related charges and \$1 million in lease costs for these activities during 2009.
- *Additional employee reductions* – Each of the Divisions, as well as Corporate, have identified positions that have been or will be eliminated in an effort to be more responsive to either customer needs or to centralize activities and eliminate geographic redundancies. Total severance and one-time benefit costs associated with these actions are estimated to be approximately \$33 million, with \$13 million recognized during 2008.
- *Asset write downs* – As a result of the fourth quarter 2008 business review, the company determined that it would no longer use the functionality in certain software applications and accordingly, recognized a charge of approximately \$31 million to write down previously capitalized software costs that will not be providing future economic benefit. Additionally, during late 2008, the company substantially lowered its expectations for new store openings and store remodels and determined that certain other projects would not be completed. The company also concluded that possible acquisitions would not be completed before the end of the year, if at all. Previously deferred costs for these activities, which totaled approximately \$11 million, were expensed during the fourth quarter of 2008.
- *Other restructuring activities* – During 2008, we recorded approximately \$5 million of charges associated with other restructuring activities related to enhancing efficiencies throughout the company. Of these charges, approximately \$1 million related to the harmonization of our product offerings in Europe, which resulted in a write down of inventory in the fourth quarter of 2008. Of the remaining charges, approximately \$2 million related to the acceleration of depreciation on certain assets and \$2 million was for lease costs. We expect to recognize additional charges of approximately \$25 million in 2009 related to restructuring activities not identified above.

Exit cost accruals related to the activities described above are as follows:

<i>(Dollars in millions)</i>	Beginning Balance	Charges Incurred	Cash Payments	Non-cash settlements	Adjustments	Ending Balance
<b>2008</b>						
Cost of goods sold	\$ —	\$ 16	\$ —	\$ (16)	\$ —	\$ —
One-time termination benefits	13	32	(28)	(3)	—	14
Asset impairments and accelerated depreciation	—	124	—	(124)	—	—
Lease and contract obligations	17	21	(6)	—	1	33
Other associated costs	—	6	(4)	(2)	—	—
<b>Total</b>	<b>\$ 30</b>	<b>\$ 199</b>	<b>\$ (38)</b>	<b>\$ (145)</b>	<b>\$ 1</b>	<b>\$ 47</b>
<b>2007</b>						
One-time termination benefits	\$ 7	\$ 19	\$ (12)	\$ (1)	\$ —	13
Asset impairments and accelerated depreciation	—	20	—	(20)	—	—
Lease and contract obligations	22	2	(7)	(1)	1	17
Other associated costs	2	(1)	5	(6)	—	—
<b>Total</b>	<b>\$ 31</b>	<b>\$ 40</b>	<b>\$ (14)</b>	<b>\$ (28)</b>	<b>\$ 1</b>	<b>\$ 30</b>

### *Goodwill and trade name impairments*

As a result of our annual fourth quarter review of goodwill and other non-amortizing intangible assets, we recorded non-cash charges of \$1,213 million to write down goodwill and \$57 million related to the impairment of trade names. Our recoverability assessment of these non-amortizing intangible assets considers company-specific projections, assumptions about market participant views and the company's overall market capitalization around the testing period. All of those factors worsened during 2008 compared to amounts used for the 2007 evaluations.

For the 2008 test, the estimated fair values indicated that the second step of goodwill impairment analysis was required in four of our five reporting units, and that analysis showed that the current value of goodwill could not be sustained in those four reporting units. Accordingly, we recorded a goodwill impairment charge of \$1,213 million, relating to the following reporting units: North American Retail, \$2 million; North American Contract, \$348 million; Europe, \$794 million; and Asia, \$69 million. Included in these impairment charges is goodwill resulting from 1990 and later acquisitions. All of these entities are considered integrated into their respective reporting units and their cash flows were aggregated with all other cash flows of the respective reporting unit in the determination of estimated fair value.

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Approximately \$19 million of goodwill associated with the North American Direct reporting unit was not impaired. This reporting unit has a relatively low net investment and projected cash flows were sufficient to recover its net assets. Based on the fair value estimate in excess of the carrying value, the company currently does not anticipate a risk of goodwill impairment for this reporting unit.

The impairment of trade names totaled approximately \$57 million and primarily relates to the Niceday™ brand name which was part of a business acquisition in 2003. We have decided to shift the emphasis in the related markets away from this brand name to products with the Office Depot® and other private brand names. Accordingly, we lowered the expected contribution from this trade name and, combined with the factors above, a non-cash impairment charge was recorded to reduce the asset to its estimated fair value. Because the brand is expected to be retained but with lower prominence, it remains a non-amortizing intangible asset.

### *Other asset impairments*

At least annually, we review our stores for possible impairment. Impairment is assessed at the location level, considering the estimated undiscounted cash flows over the asset's remaining life. Our impairment analysis is based on a cash flow model at the individual store level, beginning with recent store performance and forecasting the anticipated future results based on chain-wide and individual store initiatives. If the anticipated cash flows of a store cannot support the carrying amount of the store's assets, an impairment charge is recorded to operations as a component of store and warehouse operating and selling expenses. Our annual analysis, which is performed during the third quarter, resulted in an impairment charge of approximately \$20 million in the 2008 period. Because of the significant economic downturn experienced during the fourth quarter of 2008, we updated the analysis and recognized an additional \$78 million, bringing the total asset impairment charge for stores to \$98 million for 2008. During 2007 the total asset impairment charge for stores was approximately \$3 million.

We review our amortizing intangible assets at least annually to determine whether events and circumstances warrant a revision to the remaining period of amortization. In developing forecasts for our assessment of goodwill, we concluded that the value of certain amortizing intangible assets was impaired. Accordingly, during 2008, we incurred a charge of approximately \$11 million to fully impair the customer list intangible assets in our International Division.

## **NOTE C — PROPERTY AND EQUIPMENT**

Property and equipment consisted of:

<i>(Dollars in thousands)</i>	December 27, 2008	December 29, 2007
Land	\$ 80,783	\$ 97,300
Buildings	472,110	308,860
Leasehold improvements	1,067,456	1,212,749
Furniture, fixtures and equipment	1,642,485	1,671,812
	3,262,834	3,290,721
Less accumulated depreciation	(1,705,533)	(1,701,763)
Total	\$ 1,557,301	\$ 1,588,958

Depreciation expense was \$245.1 million, \$266.7 million, and \$265.6 million in 2008, 2007 and 2006, respectively. These amounts include accelerated depreciation related to the Charges discussed in Note B.

The above table of property and equipment includes assets held under capital leases as follows:

<i>(Dollars in thousands)</i>	December 27, 2008	December 29, 2007
Buildings	\$ 273,502	\$ 126,994
Furniture, fixtures and equipment	70,952	31,430
	344,454	158,424
Less accumulated depreciation	(59,737)	(47,605)
Total	\$ 284,717	\$ 110,819

**NOTE D — GOODWILL AND OTHER INTANGIBLE ASSETS**

**Goodwill**

The components of goodwill by segment are listed below:

<i>(Dollars in thousands)</i>	North American Retail Division	North American Business Solutions Division	International Division	Total
Balance as of December 29, 2007	\$ 2,315	\$ 368,628	\$ 911,514	\$ 1,282,457
2008 additions	—	—	73,734	73,734
Purchase price adjustments on 2007 acquisitions	—	734	—	734
Foreign currency translation	(473)	(1,572)	(122,114)	(124,159)
Impairment	(1,842)	(348,359)	(863,134)	(1,213,335)
<b>Balance as of December 27, 2008</b>	<b>\$ —</b>	<b>\$ 19,431</b>	<b>\$ —</b>	<b>\$ 19,431</b>

The 2008 additions to goodwill relate primarily to the company's acquisition under previously existing put options of all remaining minority interest shares of its joint ventures in Israel and China. Also included in the 2008 additions is the goodwill recorded on the company's acquisition of a controlling interest in joint ventures in India and Sweden, which are described in Note M.

During the fourth quarter of 2008, we performed our annual goodwill impairment testing, which indicated that the goodwill in four of our five reporting units was fully impaired. This resulted in impairment charges totaling \$1,213.3 million, most of which was related to acquisitions made in our International and North American Business Solutions Divisions. For additional information on our goodwill impairment testing and the resulting impairment charges, see Note B.

**Other Intangible Assets**

Indefinite-lived intangible assets related to acquired trade names were \$6.1 million and \$68.8 million, at December 27, 2008 and December 29, 2007, respectively, and are included in other intangible assets in the Consolidated Balance Sheets. The change in this balance during 2008 resulted primarily from impairment charges totaling approximately \$56.6 million. The majority of these impairment charges related to the Niceday™ trade name which was acquired as part of a 2003 business combination. The remaining portion of the decrease resulted from changes in foreign currency rates.

Amortizing intangible assets, which are included in other intangible assets in the Consolidated Balance Sheets, include the following:

<i>(Dollars in thousands)</i>	December 27, 2008		December 29, 2007	
	Gross Carrying Value	Accumulated Amortization	Gross Carrying Value	Accumulated Amortization
Customer lists	\$ 28,000	\$ (6,683)	\$ 112,238	\$ (74,563)
Other	2,600	(1,706)	2,608	(1,056)
<b>Total</b>	<b>\$ 30,600</b>	<b>\$ (8,389)</b>	<b>\$ 114,846</b>	<b>\$ (75,619)</b>

We review our amortizing intangible assets at least annually to determine whether events and circumstances warrant a revision to the remaining period of amortization. In developing forecasts for our assessment of goodwill, we concluded that the value of certain amortizing intangible assets was impaired. Accordingly, during 2008, we incurred a charge of \$10.9 million to fully impair the customer list intangible assets in our International Division.

Amortization of intangible assets was \$9.0 million in 2008, \$15.3 million in 2007 and \$13.6 million in 2006 (at average foreign currency exchange rates).

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The weighted average amortization period for the remaining finite-lived intangible assets is 8.1 years. Estimated future amortization expense for the next five years at December 27, 2008 is as follows:

<i>(Dollars in thousands)</i>	
2009	\$3,195
2010	2,789
2011	2,545
2012	2,545
2013	2,545

### NOTE E —DEBT

Debt consists of the following:

<i>(Dollars in thousands)</i>	December 27, 2008	December 29, 2007
<b>Short-term borrowings and current maturities of long-term debt:</b>		
Short-term borrowings	\$ 176,644	\$ 200,290
Capital lease obligations	14,773	7,706
Current maturities of long-term debt	515	—
	<b>\$ 191,932</b>	<b>\$ 207,996</b>
<b>Long-term debt, net of current maturities:</b>		
Revolving credit facility	\$ —	\$ 90,420
\$400 million senior notes	400,278	400,384
Capital lease obligations	287,349	116,658
Other	1,161	—
	<b>\$ 688,788</b>	<b>\$ 607,462</b>

On September 26, 2008, the company entered into a Credit Agreement (the “Agreement”) with a group of lenders, which provides for an asset based, multi-currency revolving credit facility (the “Facility”) of up to \$1.25 billion. The amount that can be drawn on the Facility at any given time is determined based on percentages of certain accounts receivable, inventory and credit card receivables (the “Borrowing Base”). At December 27, 2008, the company was eligible to borrow approximately \$1.0 billion of the Facility. In February 2009, that borrowing base was lowered by \$75 million by the Administrative Agent, pending completion of asset base appraisals. The Facility includes a sub-facility of up to \$250 million which is available to certain of the company’s European subsidiaries (the “European Borrowers”). Certain of the company’s domestic subsidiaries (the “Domestic Guarantors”) guaranty the obligations under the Facility. The Agreement also provides for a letter of credit sub-facility of up to \$400 million. All loans borrowed under the Agreement may be borrowed, repaid and reborrowed from time to time until September 26, 2013 (or, in the event that the company’s existing 6.25% Senior Notes are not repaid, then February 15, 2013), on which date the Facility matures.

All amounts borrowed under the Facility, as well as the obligations of the Domestic Guarantors, are secured by a lien on the company’s and such Domestic Guarantors’ accounts receivables, inventory, cash and deposit accounts. All amounts borrowed by the European Borrowers under the Facility are secured by a lien on such European Borrowers’ accounts receivable, inventory, cash and deposit accounts, as well as certain other assets. At the company’s option, borrowings made pursuant to the Agreement bear interest at either, (i) the alternate base rate (defined as the higher of the Prime Rate (as announced by the Agent) and the Federal Funds Rate plus 1/2 of 1%) or (ii) the Adjusted LIBOR Rate (defined as the LIBOR Rate as adjusted for statutory revenues) plus, in either case, a certain margin based on the aggregate average availability under the Facility. The Agreement also contains representations, warranties, fees, affirmative and negative covenants, and default provisions. The Facility includes limitations in certain circumstances on acquisitions, dispositions, share repurchases and the payment of dividends. The dividend restrictions are based on the then-current and proforma fixed charge coverage ratio and borrowing availability at the point of consideration. The company has never declared or paid cash dividends on its common stock. The Facility also includes provisions whereby if the global availability is less than \$218.8 million, or the European availability is below \$37.5 million, the company’s cash collections go first to the Agent to satisfy outstanding borrowings. Further, if total availability falls below \$187.5 million, a fixed charge coverage ratio test is required which, based on current forecasts, could effectively eliminate additional borrowing under the Facility.

At December 27, 2008, the company had approximately \$712.1 million of available credit under the Facility. Borrowings under the Facility totaled \$139.1 million at an effective interest rate of approximately 5.41%. There were also letters of credit outstanding under the Facility totaling approximately \$177.8 million. An additional \$1.5 million of letters of credit were outstanding under separate agreements. Average borrowings under the Facility from September 26, 2008 to December 27, 2008 were approximately \$254 million.

In addition to our borrowings under the Facility, we had short-term borrowings of \$37.5 million. These borrowings primarily represent outstanding balances under various local currency credit facilities for our international subsidiaries that had an effective interest rate at the end of the year of approximately 3.03%.

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The Agreement replaced the company's Revolving Credit Facility Agreement, which provided for multiple-currency borrowings of up to \$1 billion and had a sub-limit of up to \$350 million for standby and trade letter of credit issuances.

In December 2008, the company's credit rating was downgraded which provided the counterparty to the company's private label credit card program the right to terminate the agreement and require the company to repurchase the outstanding balance of approximately \$184 million. Both parties entered into a standstill agreement whereby the company permanently waived its early termination right and the counterparty agreed not to terminate the agreement and require repurchase of the outstanding balance until at least March 31, 2009 while a permanent solution was developed. This standstill agreement precluded the occurrence of cross defaults in certain of the company's agreements. In February 2009, the company and the counterparty amended the agreement to permanently waive the repurchase clause and the company agreed to amend an existing \$25 million letter of credit which may be increased, after December 29, 2009, to as much as \$45 million based on an assessment of risk in the portfolio at that time.

In August 2003, we issued \$400 million senior notes due August 2013. These notes are not callable and bear interest at the rate of 6.25% per year, to be paid on February 15 and August 15 of each year. The notes contain provisions that, in certain circumstances, place financial restrictions or limitations on us. Simultaneous with completing the offering, we liquidated a treasury rate lock. The proceeds are being amortized over the term of the issue, reducing the effective interest rate to 5.87%. During 2004, we entered into a series of fixed-to-variable interest rate swap agreements as fair value hedges on the \$400 million of notes. The swap agreements were terminated during 2005.

Capital lease obligations primarily relate to buildings and equipment as indicated in Note C.

In December 2006, we sold our former corporate campus and entered into a short-term leaseback. Coincident with the sale, we paid \$22.2 million to settle the mortgage securing one of the buildings. The total payment of approximately \$28 million included the principal, accrued interest to the termination date and the contractual prepayment consideration. Approximately \$5.7 million is presented as loss on extinguishment of debt on the Consolidated Statements of Operations. That mortgage had been assumed in 2005 under conversion of a previously capitalized lease agreement.

Aggregate annual maturities of long-term debt and capital lease obligations are as follows:

<i>(Dollars in thousands)</i>	
2009	\$ 35,692
2010	34,760
2011	32,943
2012	31,923
2013	449,357
Thereafter	307,112
<b>Total</b>	<b>891,787</b>
Less amount representing interest on capital leases	(187,711)
<b>Total</b>	<b>704,076</b>
Less current portion	(15,288)
<b>Total long-term debt</b>	<b>\$ 688,788</b>

## **NOTE F — INCOME TAXES**

The income tax expense (benefit) related to earnings (loss) from operations consisted of the following:

<i>(Dollars in thousands)</i>	2008	2007	2006
<b>Current:</b>			
Federal	\$ (16,430)	\$ 50,602	\$179,779
State	6,622	728	21,531
Foreign	19,262	12,710	18,103
<b>Deferred :</b>			
Federal	(125,945)	72,017	(4,261)
State	18,606	(38,183)	3,220
Foreign	(760)	(34,856)	(14,808)
<b>Total income tax expense (benefit)</b>	<b>\$ (98,645)</b>	<b>\$ 63,018</b>	<b>\$203,564</b>

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The components of earnings (loss) before income taxes consisted of the following:

<i>(Dollars in thousands)</i>	2008	2007	2006
North America	\$ (733,342)	\$276,040	\$537,944
International	(844,241)	182,593	169,091
<b>Total</b>	<b>\$(1,577,583)</b>	<b>\$458,633</b>	<b>\$707,035</b>

The tax-effected components of deferred income tax assets and liabilities consisted of the following:

<i>(Dollars in thousands)</i>	December 27, 2008	December 29, 2007
Self-insurance accruals	\$ 17,144	\$ 21,188
Inventory	32,713	18,791
Vacation pay and other accrued compensation	69,706	28,898
Allowance for bad debts	6,637	8,223
Accruals for facility closings	12,009	12,729
Accrued rebates	7,840	17,415
Deferred rent credit	102,903	74,663
Foreign and state net operating loss carryforwards	332,844	393,609
Basis difference in fixed assets	66,130	—
State credit carryforwards, net of Federal benefit	8,028	6,067
Deferred revenue	17,198	—
Other items, net	61,465	20,901
Gross deferred tax assets	734,617	602,484
Valuation allowance	(242,481)	(265,465)
Deferred tax assets	492,136	337,019
Basis difference in fixed assets	—	9,000
Intangibles	—	32,417
Internal software	93,376	—
Other items, net	4,669	22,824
Deferred tax liabilities	98,045	64,241
<b>Net deferred tax assets</b>	<b>\$ 394,091</b>	<b>\$ 272,778</b>

As of December 27, 2008, we had approximately \$1.1 billion of foreign and \$770.0 million of state net operating loss carryforwards. Of the foreign carryforwards, \$801.5 million can be carried forward indefinitely, \$18.2 million will expire in 2009, and the balance will expire between 2010 and 2028. Of the state carryforwards, \$1.9 million will expire in 2009, and the balance will expire between 2010 and 2028. The valuation allowance has been developed to reduce our deferred asset to an amount that is more likely than not to be realized and is based upon the uncertainty of the realization of certain foreign and state deferred assets related to net operating loss carryforwards and other tax attributes.

The following is a reconciliation of income taxes at the Federal statutory rate to the provision (benefit) for income taxes:

<i>(Dollars in thousands)</i>	2008	2007	2006
Federal tax computed at the statutory rate	\$(552,154)	\$160,522	\$247,462
State taxes, net of Federal benefit	(3,838)	8,217	14,166
Foreign income taxed at rates other than Federal	(29,684)	(62,393)	(53,762)
Non-deductible goodwill and other impairments	356,138	—	—
Increase (reduction) in valuation allowance	47,151	(34,514)	2,010
Settlement of tax audits	—	(941)	(3,875)
Non-deductible foreign interest	40,166	2,392	783
Change in accrual estimates relating to uncertain tax positions	3,661	(9,097)	(923)
Other items, net	39,915	(1,168)	(2,297)
<b>Income tax expense (benefit)</b>	<b>\$ (98,645)</b>	<b>\$ 63,018</b>	<b>\$203,564</b>



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The following table summarizes the activity related to our unrecognized tax benefits during 2008 and 2007:

<i>(Dollars in thousands)</i>	2008	2007
Beginning Balance	\$110,407	\$ 89,762
Additions based on tax positions related to the current year	10,767	15,463
Additions for tax positions of prior years	17,720	19,651
Reductions for tax positions of prior years	(19,035)	(11,279)
Statute expirations	(233)	(2,497)
Settlements	—	(693)
Ending Balance	\$119,626	\$110,407

Included in the balance of \$119.6 million at December 27, 2008, are \$104.7 million of net unrecognized tax benefits that, if recognized, would affect the effective tax rate. The difference of \$14.9 million primarily results from federal tax impacts on state tax issues and positions which if sustained would be fully offset by a valuation allowance.

We file a U.S. federal income tax return and other income tax returns in various states and foreign jurisdictions. With few exceptions, we are no longer subject to U.S. federal, state and local, or non-U.S. income tax examinations for years before 2000. Our U.S. federal filings for the years 2000 and 2002 through 2007 are under routine examination, and it is not anticipated that these audits will be closed prior to the end of 2009. Additionally, the U.S. federal tax return for 2008 is under concurrent year review. Significant international tax jurisdictions include the UK, the Netherlands, France and Germany. Generally, we are subject to routine examination for years 2001 and forward in these jurisdictions. It is reasonably possible that certain of these audits will close within the next 12 months, which could result in a decrease of as much as \$22 million or an increase of as much as \$19 million to our accrued uncertain tax positions. Additionally, we anticipate that it is reasonably possible that new issues will be raised or resolved by tax authorities that may require changes to the balance of unrecognized tax benefits, however, an estimate of such changes cannot reasonably be made.

We recognize interest related to unrecognized tax benefits in interest expense and penalties in the provision for income taxes. We recognized interest and penalties of approximately \$11.5 million and \$8 million in 2008 and 2007, respectively. We had approximately \$47.4 million accrued for the payment of interest and penalties as of December 27, 2008.

In connection with the adoption of FAS 123R, we have elected to calculate our pool of excess tax benefits under the alternative, or “short-cut” method. At adoption, this pool of benefits was approximately \$55.3 million and was approximately \$103.3 million as of December 27, 2008. This pool may increase in future periods if tax benefits realized are in excess of those based on grant date fair values or may decrease if used to absorb future tax deficiencies determined for financial reporting purposes under provisions of FAS 123R.

### NOTE G — COMMITMENTS AND CONTINGENCIES

**Operating Leases:** We lease retail stores and other facilities and equipment under operating lease agreements that expire in various years through 2032. In addition to minimum rentals, there are certain executory costs such as real estate taxes, insurance and common area maintenance on most of our facility leases. Many lease agreements contain tenant improvement allowances, rent holidays, and/or rent escalation clauses. For purposes of recognizing incentives and minimum rental expenses on a straight-line basis over the terms of the leases, we use the date of initial possession to begin amortization.

We recognize a deferred rent liability for tenant improvement allowances and rent holidays and amortize these amounts over the terms of the related leases as a reduction of rent expense. For scheduled rent escalation clauses during the lease terms or for rental payments commencing at a date other than the date of initial occupancy, we record minimum rental expenses on a straight-line basis over the terms of the leases.

Certain leases contain provisions for additional rent to be paid if sales exceed a specified amount, though such payments have been immaterial during the years presented.

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The table below shows future minimum lease payments due under the non-cancelable portions of our leases as of December 27, 2008. These minimum lease payments include facility leases that were accrued as store closure costs. Additional information including optional lease renewals follows this table.

<i>(Dollars in thousands)</i>	
2009	\$ 541,469
2010	471,086
2011	394,917
2012	341,462
2013	301,345
Thereafter	1,025,039
	3,075,318
Less sublease income	55,776
<b>Total</b>	<b>\$3,019,542</b>

We determine the lease term at inception to be the non-cancellable rental period plus any renewal options that are considered reasonably assured. Leasehold improvements are depreciated over the shorter of their estimated useable lives or the identified lease term. Lease payments for the next five years and thereafter that include both the non-cancellable amounts from above, plus the renewal options included in our projected lease term are, \$551 million for 2009; \$499 million for 2010; \$445 million for 2011; \$409 million for 2012; \$385 million for 2013 and \$2,296 million thereafter, for a total of \$4,585 million, \$4,529 million net of sublease income.

Rent expense, including equipment rental, was \$525.8 million, \$519.1 million and \$477.8 million in 2008, 2007, and 2006, respectively. Rent expense was reduced by sublease income of \$3.1 million in 2008, \$2.8 million in 2007 and \$3.2 million in 2006.

**Indemnification of Private Label Credit Card Receivables:** Office Depot has a private label credit card program that is managed by a third-party financial services company. We transfer the credit card receivable balance each business day, with the difference between the transferred amount and the amount received recognized in store and warehouse operating and selling expense. At December 27, 2008, the outstanding balance of credit card receivables sold was approximately \$183.6 million. The company's estimated liability associated with risk of loss was increased during 2008 to approximately \$23 million to recognize the potential impact of adverse economic conditions on the portfolio. This accrual is included in accrued expenses on the Consolidated Balance Sheet. Following the company's credit rating downgrade in December 2008, the underlying agreement was amended to permanently eliminate a provision that allowed both parties to terminate the agreement early in the event either party suffered a material adverse change, and put in place a letter of credit arrangement supporting the company's potential exposure on indemnification of the transferred receivable balance. See Note E for additional discussion.

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

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

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

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On March 21, 2008, the court in the Southern District of Florida entered an Order consolidating the class action lawsuits and an Order consolidating the derivative actions. Lead plaintiff in the consolidated class actions, the New Mexico Educational Retirement Board, filed its Consolidated Amended Complaint on July 2, 2008. On September 2, 2008, Office Depot filed a motion to dismiss the Consolidated Amended Complaint on the basis that it fails to state a claim, which remains pending. We are still awaiting an amended complaint in the derivative action. We plan to vigorously defend both the consolidated class action and the consolidated derivative action, which are in their early stages.

As part of a normal process of doing business with federal, local and state governmental agencies, we are subject to audits and reviews of our governmental contracts. Many of these audits and reviews are resolved without incident, however we have had several highly publicized inquiries by certain state agencies into contract pricing, and additional state inquiries may follow. We currently do not anticipate that this will have a material effect on our business. We are currently cooperating with the Florida and Missouri Attorneys General with respect to civil investigations regarding our pricing practices that relate primarily to government customers. We first became aware of the Florida matter in the second quarter of 2008 and the Missouri matter in the first quarter of 2009. We are also cooperating with the U.S. Department of Defense (“DOD”), the Department of Education and the General Services Administration (“GSA”) with respect to their joint investigations that are being conducted in coordination with the Department of Justice regarding our pricing practices that relate to sales to certain federal agencies. We first became aware of the GSA matter on December 29, 2008, the DOD matter on January 20, 2009 and the Department of Education matter on February 19, 2009. No claim for relief has been made in any of these matters and management cannot predict their ultimate outcome.

## NOTE H — EMPLOYEE BENEFIT PLANS

### Long-Term Incentive Plan

During 2007, the company’s board of directors adopted a new equity incentive plan which obtained shareholder approval on April 25, 2007. This plan is known as the Office Depot, Inc. 2007 Long-Term Incentive Plan (the “Plan”) and replaces the Long-Term Equity Incentive Plan which expired in October 2007. We believe the Plan aligns the interests of its officers, directors and key employees with the interests of its shareholders. The Plan permits the issuance of stock options, stock appreciation rights, restricted stock, restricted stock units, performance-based, and other equity-based incentive awards. Stock options must be issued at the market price on the date of the grant unless an employee owns 10% or more of Office Depot’s outstanding common stock, in which case the option price must be at least 110% of the market price on the date of grant. Options granted under the Plan become exercisable from one to five years after the date of grant, provided that the individual is continuously employed with the company. All options granted expire no more than ten years following the date of grant.

### Long-Term Incentive Stock Plan

A summary of the activity in our stock option plans for the last three years is presented below.

	2008		2007		2006	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Outstanding at beginning of year	13,594,302	\$ 23.86	12,384,083	\$ 20.14	16,806,110	\$ 17.20
Granted	3,185,511	10.56	3,522,720	32.52	1,970,274	33.73
Canceled	(2,190,928)	21.48	(434,863)	25.12	(540,238)	18.94
Exercised	(109,744)	10.36	(1,877,638)	16.11	(5,852,063)	16.45
Outstanding at end of year	14,479,141	\$ 22.78	13,594,302	\$ 23.86	12,384,083	\$ 20.14

The weighted-average grant date fair values of options granted during 2008, 2007, and 2006 were \$4.64, \$10.05, and \$11.49, respectively, using the following weighted average assumptions for grants:

- Risk-free interest rates of 2.7% for 2008, 4.5% for 2007, and 4.6% for 2006
- Expected lives of 4.4 years for 2008, 4.7 years for 2007, and 5.0 years for 2006
- A dividend yield of zero for all three years
- Expected volatility ranging from 43% to 65% for 2008, 25% to 43% for 2007, 27% to 31% for 2006

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The following table summarizes information about options outstanding at December 27, 2008.

Range of Exercise Prices	Options Outstanding			Options Exercisable		
	Number Outstanding	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price	Number Exercisable	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price
\$4.43- \$6.64	52,686	5.75	\$ 6.70	8,568	1.52	\$ 6.19
6.65- 9.97	870,272	4.45	9.04	414,312	2.01	8.64
9.98- 14.96	3,406,478	4.94	12.41	1,224,130	2.69	11.39
14.97- 22.45	4,007,264	3.43	20.20	3,899,181	3.36	17.87
22.46- 45.00	6,142,441	4.81	32.30	3,380,672	4.64	29.60
\$4.43- \$45.00	14,479,141	4.44	\$22.78	8,926,863	3.69	\$20.99

The intrinsic value of options exercised in 2008, 2007 and 2006, was \$0.3 million, \$33.7 million, and \$132.8 million, respectively.

As of December 27, 2008, there was approximately \$27 million of total stock-based compensation expense that has not yet been recognized relating to non-vested awards granted under our option plans. This expense, net of forfeitures, is expected to be recognized over a weighted-average period of approximately 2.0 years. Of the 5.5 million unvested shares, we estimate that 5.2 million, or 95%, will vest. The stock price at the end of 2008 is below the option price for all shares. The number of exercisable shares was 8.9 million shares of common stock at December 27, 2008, 7.9 million shares of common stock at December 29, 2007, and 7.1 million shares of common stock at December 30, 2006.

### Restricted Stock and Performance-Based Grants

Our employee share-based awards are generally issued in the first quarter of the year. In 2008, we granted approximately 2.7 million shares of time-based restricted stock to our employees. These grants typically vest annually over a three-year service period. The weighted average fair value of \$11.24 for these awards was based on the grant date market price. As of December 27, 2008, none of the shares granted in 2008 had vested. In 2007, we granted to employees approximately 0.7 million shares of time-based restricted stock with annual vesting over a three-year service period valued at the grant date market price of \$32.46 per share. A summary of the status of the company's nonvested shares as of December 27, 2008, and changes during the year ended December 27, 2008 is presented below.

	2008		2007		2006	
	Shares	Weighted Average Grant-Date Price	Shares	Weighted Average Grant-Date Price	Shares	Weighted Average Grant-Date Price
Nonvested at beginning of year	850,115	\$30.67	1,675,130	\$19.82	2,996,611	\$19.01
Granted	2,651,737	11.24	670,013	32.46	324,117	33.13
Vested	(543,068)	24.22	(1,367,070)	18.31	(1,443,874)	18.29
Forfeited	(295,568)	17.81	(127,958)	30.06	(201,724)	20.22
Nonvested at end of year	2,663,216	\$14.06	850,115	\$30.67	1,675,130	\$19.82

As of December 27, 2008, there was approximately \$23 million of total unrecognized compensation cost related to nonvested restricted stock. That cost, net of forfeitures, is expected to be recognized over a weighted-average period of 1.9 years. We estimate that 5% of these shares will be forfeited. The total grant date fair value of shares vested during 2008 was approximately \$13 million.

### Employee Stock Purchase Plan

Prior to the end of 2008, the company maintained an Employee Stock Purchase Plan, which was approved by Office Depot's stockholders. The Plan permitted eligible employees to purchase our common stock at 85% of its fair market value. For the years presented, compensation expense has been recognized for the difference between employee cost and fair value. Share needs associated with this plan were satisfied through open market purchases. This plan was terminated, effective December 31, 2008.

**Retirement Savings Plans**

Eligible company employees may participate in the Office Depot, Inc. Retirement Savings Plan (401(k) Plan), which was approved by the board of directors. This plan allows those employees to contribute a percentage of their salary, commissions and bonuses, up to the higher of \$15,500 in 2008 or 50% of their eligible compensation, in accordance with the provisions of Section 401(k) of the Internal Revenue Code. Prior to the end of 2008, employer matching contributions were equivalent to 50% of the first 6% of an employee's contributions, subject to the limits of the plan. Those contributions were invested in the same manner as the participants' pre-tax contributions. The plan also allows for a discretionary matching contribution in addition to the normal match if approved by the board of directors. The compensation and benefits committee of the board of directors amended the plan to eliminate the predetermined matching contributions effective with the first payroll period of 2009, no further predetermined matching contributions will be made to the plan.

Office Depot also sponsors the Office Depot, Inc. Non-Qualified Deferred Compensation Plan that permits eligible highly compensated employees, who are limited in the amount they can contribute to the 401(k) Plan, to alternatively defer a portion of their salary, commissions and bonuses up to maximums and under restrictive conditions specified in this plan and to participate in company matching provisions. The matching contributions to the deferred compensation plan were allocated to hypothetical investment alternatives selected by the participants. The compensation and benefits committee of the board of directors amended the plan to eliminate the predetermined matching contributions effective with the first payroll period beginning in 2009. Prior to the end of 2008, all deferred compensation plan participants were given the opportunity to take advantage of the transition election rules provided under the final 409A regulations of the Internal Revenue Code to modify distribution elections previously elected for plans years 2005 through 2008.

During 2008, 2007, and 2006, \$12.6 million, \$12.0 million, \$14.1 million, respectively, was recorded as compensation expense for company contributions to these programs and certain international retirement savings plans.

**Pension Plan**

The company has a defined benefit pension plan covering a limited number of employees in Europe. During 2008, curtailment of that plan of was approved by the trustees and future service benefits ceased for the remaining employees, resulting an a curtailment gain of \$11.4 million. Also during 2008, in accordance with Statement of Financial Accounting Standards No. 158, *Employers' Accounting for Defined Pension and Other Postretirement Plans*, the company modified the valuation date of plan obligations and assets from the end of October to the end of December. The impact of this change was an immaterial increase in expense and the company recognized that charge in operations rather than adjust retained earnings, as provided for in the Standard. The following table provides a reconciliation of changes in the projected benefit obligation, the fair value of plan assets and the funded status of the plan to amounts recognized on our balance sheets:

<i>(Dollars in thousands)</i>	December 27, 2008	December 29, 2007
<b>Changes in projected benefit obligation:</b>		
Obligation at beginning of period	\$ 230,408	\$ 231,180
Service cost	1,708	4,477
Interest cost	13,434	11,650
Member contributions	435	1,636
Benefits paid	(6,998)	(7,048)
Actuarial gain	(14,732)	(21,390)
Curtailment gain	(11,437)	—
Currency translation	(57,978)	9,903
Obligation at valuation date	154,840	230,408
<b>Changes in plan assets:</b>		
Fair value at beginning of period	162,032	140,250
Actual return on plan assets	(38,595)	18,083
Company contributions	7,214	3,133
Member contributions	435	1,636
Benefits paid	(6,998)	(7,048)
Currency translation	(35,634)	5,978
Plan assets at valuation date	88,454	162,032
Benefit obligation in excess of plan assets	(66,386)	(68,376)
Post-valuation contributions	—	525
Currency translation	—	(13)
Net amount recognized at end of period	\$ (66,386)	\$ (67,864)

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The net unfunded amount is classified as a non-current liability in the caption deferred taxes and other long-term liabilities on the Consolidated Balance Sheets. At December 27, 2008, the deferred loss included in accumulated other comprehensive income was \$11.9 million before tax and \$7.0 million on an after-tax basis (measured at year end exchange rates). The \$11.9 million deferral is not expected to be amortized into income during 2009. At December 29, 2007, the deferred gain included in accumulated other comprehensive income was \$22.4 million before tax and \$17.1 million on an after-tax basis. The 2008 change in deferred amounts reflects asset returns below the expected amount, partially offset by an actuarial gain and net of changes in foreign exchange and tax impacts. The pre-tax and after-tax deferred gains at December 30, 2006 were \$8.4 million and \$6.1 million, respectively. The plan's accumulated benefit obligations were approximately \$154.8 million and \$216.4 million at the 2008 and 2007 valuation dates, respectively.

The components of net periodic expense are presented below:

<i>(Dollars in thousands)</i>	2008	2007	2006
Service cost	\$ 1,708	\$ 4,477	\$ 5,963
Interest cost	13,434	11,650	10,644
Expected return on plan assets	(11,629)	(8,953)	(7,297)
Amortized loss	—	—	325
Curtailement and settlement	(11,437)	—	(4,993)
Net periodic pension (credit) cost	\$ (7,924)	\$ 7,174	\$ 4,642

Assumptions used in calculating the funded status included:

	2008	2007	2006
Long-term rate of return on plan assets	6.62%	6.87%	6.06%
Discount rate	5.50%	5.40%	4.85%
Salary increases	—	4.40%	4.00%
Inflation	3.10%	3.40%	3.00%

The plan's investment policies and strategies are to ensure assets are available to meet the obligations to the beneficiaries and to adjust plan contributions accordingly. To achieve the objectives, an investment benchmark and target returns have been established with the goal of consistently outperforming the target index by 1%. Close attention is paid to the risks which could arise through a mismatch between the plan's assets and its liabilities and the risks which arise from lack of diversification of investments.

The long-term rate of return on assets assumption has been derived based on long-term UK government fixed income yields, having regard to the proportion of assets in each asset class. The funds invested in equities have been assumed to return 4.0% above the return on UK government securities of appropriate duration. Allowance is made for expenses of 0.5% of assets. At December 27, 2008, the long-term UK government securities yield was 3.82%.

The allocation of assets is as follows:

	Percentage of Plan Assets		Target Allocation
	2008	2007	
Equity securities	76%	87%	60% - 95%
Debt securities	16%	7%	0% - 20%
Real estate	1%	1%	0% - 20%
Other	7%	5%	0% - 10%
Total	100%	100%	

Anticipated benefit payments, at December 27, 2008 exchange rates, are as follows:

<i>(Dollars in thousands)</i>	
2009	\$ 2,340
2010	3,215
2011	3,501
2012	3,985
2013	4,478
Next five years	22,391

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Employer contributions for 2009 are expected to be approximately \$5 million (at current exchange rates) and include amounts agreed upon with the local regulator to lower the unfunded position. The company will review the funding status with the regulator during 2010 and the incremental funding provisions may change in future periods.

The pension plan was part of an entity acquired in 2003. The purchase and sale agreement included a provision whereby the seller is required to pay to the company an amount of unfunded benefit obligation as measured based on certain 2008 data. The company is in the process of developing that data and resolving this uncertainty with the seller. We currently cannot predict the outcome of this matter. The after-tax effect of the payment from the seller, if any, will be recognized as a credit to income when all associated uncertainties are resolved.

In addition to the net periodic pension cost above, one foreign entity purchased approximately \$3 million of nonparticipating annuity contracts and anticipates purchasing approximately \$3 million in 2009.

### NOTE I — CAPITAL STOCK

#### Preferred Stock

As of December 27, 2008, there were 1,000,000 shares of \$0.01 par value preferred stock authorized of which none were issued or outstanding.

#### Treasury Stock

The Office Depot board of directors has authorized a series of common stock repurchase plans, the latest of which is a \$500 million authorization in 2007. Under these approved plans we purchased approximately 5.7 million shares at a cost of \$199.6 million in 2007 and 26.4 million shares at a cost of \$970.6 million in 2006. We did not purchase any shares of our common stock during 2008, and as of December 27, 2008 the entire \$500 million remains available for repurchase under the current authorization.

During the second quarter of 2008, we retired approximately 150 million shares of treasury stock. This was a non-cash transaction, and the reduction in the treasury stock account was offset by changes in other equity accounts. The par value of the retired shares was charged against common stock, and the excess of purchase price over par value was allocated between additional paid-in capital and retained earnings using a pro rata method. The impact of this transaction on the Consolidated Balance Sheet was to reduce common stock, additional paid-in capital, retained earnings and treasury stock by approximately \$1.5 million, \$626.9 million, \$2,298.6 million and \$2,927.0 million, respectively.

### NOTE J — EARNINGS PER SHARE

Basic earnings per share is based on the weighted average number of shares outstanding during each period. Diluted earnings per share reflects the impact of assumed exercise of dilutive stock options and vesting of restricted stock.

The following table represents the calculation of net earnings (loss) per common share — basic and diluted:

<i>(In thousands, except per share amounts)</i>	2008	2007	2006
<b>Numerator:</b>			
Net earnings (loss)	<b>\$(1,478,938)</b>	\$395,615	\$503,471
<b>Denominator:</b>			
<b>Weighted average shares outstanding:</b>			
Basic	<b>272,776</b>	272,899	281,618
Effect of dilutive stock options and restricted stock	<b>289</b>	3,041	6,104
<b>Diluted</b>	<b>273,065</b>	275,940	287,722
<b>Net earnings (loss) per share:</b>			
Basic	<b>\$ (5.42)</b>	\$ 1.45	\$ 1.79
Diluted	<b>(5.42)</b>	1.43	1.75

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Awards of options and nonvested shares representing an additional 15.4 million, 4.3 million and 0.1 million shares of common stock were outstanding for the years ended December 27, 2008, December 29, 2007 and December 30, 2006, respectively, but were not included in the computation of diluted earnings per share because their effect would have been antidilutive. The diluted share amount for 2008 is provided for informational purposes, as the net loss for the period causes basic earnings per share to be the most dilutive.

### NOTE K — SUPPLEMENTAL INFORMATION ON OPERATING, INVESTING AND FINANCING ACTIVITIES

Additional supplemental information related to the Consolidated Statements of Cash Flows is as follows:

<i>(Dollars in thousands)</i>	2008	2007	2006
Cash paid for:			
Interest	\$ 55,208	\$ 53,948	\$ 37,158
Taxes	18,848	126,182	208,606
Non-cash asset additions under capital leases	197,912	18,435	26,542
Non-cash capital expenditure accruals	—	13,679	25,157
Additional paid-in capital related to tax benefit on stock options exercised	89	18,266	43,355

### NOTE L — SEGMENT INFORMATION

Office Depot operates in three segments: North American Retail Division, North American Business Solutions Division, and International Division. Each of these segments is managed separately primarily because it serves a different customer group. The accounting policies for each segment are the same as those described in the summary of significant accounting policies (see Note A). Our measure of Division operating profit is based on the measure of performance reported internally to manage the business and for resource allocation. This measure allocates to the respective Divisions those general and administrative expense considered directly or closely related to their operations. Remaining G&A expenses and Charges that are managed at the corporate level are not allocated to the Divisions for measurement of Division operating profit. Other companies may charge more or less of these items to their segments and our results may not be comparable to similarly titled measures used by other entities. See Note B for discussion of Charges.

The following is a summary of our significant accounts and balances by segment, reconciled to our consolidated totals.

<i>(Dollars in thousands)</i>		North American Retail Division	North American Business Solutions Division	International Division	Eliminations and Other*	Consolidated Total
Sales	<b>2008</b>	\$ 6,112,335	\$ 4,142,146	\$ 4,241,063	\$ —	\$ 14,495,544
	2007	6,813,575	4,518,356	4,195,606	—	15,527,537
	2006	6,789,386	4,576,803	3,644,592	—	15,010,781
Division operating profit (loss)	<b>2008</b>	\$ (29,221)	\$ 119,766	\$ 157,232	\$ —	\$ 247,777
	2007	354,547	220,137	231,056	(73)	805,667
	2006	454,308	367,037	249,164	(512)	1,069,997
Capital expenditures	<b>2008</b>	\$ 103,973	\$ 9,215	\$ 77,859	\$ 139,028	\$ 330,075
	2007	197,284	18,494	129,928	114,865	460,571
	2006	187,232	15,353	39,363	101,467	343,415
Depreciation and amortization	<b>2008</b>	\$ 126,212	\$ 19,745	\$ 30,744	\$ 77,398	\$ 254,099
	2007	133,012	27,135	45,291	75,945	281,383
	2006	127,261	29,334	43,912	78,498	279,005
Charges for losses on receivables and inventories	<b>2008</b>	\$ 80,354	\$ 36,471	\$ 23,233	\$ —	\$ 140,058
	2007	66,036	33,375	10,387	—	109,798
	2006	46,399	27,703	11,508	—	85,610
Net earnings from equity method investments	<b>2008</b>	\$ —	\$ —	\$ 37,113	\$ —	\$ 37,113
	2007	—	—	34,825	—	34,825
	2006	—	—	27,125	—	27,125
Assets	<b>2008</b>	\$ 1,866,460	\$ 799,820	\$ 1,780,863	\$ 821,083	\$ 5,268,226
	2007	2,377,008	1,335,434	3,002,128	541,970	7,256,540

\* Amounts included in "Eliminations and Other" consist of inter-segment sales, which are generally recorded at the cost to the selling entity, and assets (including all cash and equivalents) and depreciation related to corporate activities.



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A reconciliation of the measure of Division operating profit to consolidated earnings from continuing operations before income taxes follows.

<i>(Dollars in thousands)</i>	2008	2007	2006
Division operating profit	\$ 247,777	\$805,667	\$1,069,997
(Add)/subtract:			
Charges (see Note B)	1,468,684	39,982	63,297
General and administrative expenses — corporate	324,134	282,084	293,513
Interest expense, net	58,273	53,640	31,002
Loss on extinguishment of debt	—	—	5,715
Miscellaneous income, net	(25,731)	(28,672)	(30,565)
Earnings (loss) before income taxes	<b>\$(1,577,583)</b>	\$458,633	\$ 707,035

As of December 27, 2008, we sold to customers in 48 countries throughout North America, Europe, Asia and Latin America either through wholly-owned entities, majority-owned entities or other ventures covering 38 countries, and through alliances in an additional ten countries. There is no single country outside of the United States in which we generate 10% or more of our total revenues. Geographic financial information relating to our business is as follows (in thousands).

	Sales			Property and Equipment	
	2008	2007	2006	2008	2007
United States	\$10,083,984	\$11,165,664	\$11,234,053	\$1,216,991	\$1,174,585
International	4,411,560	4,361,873	3,776,728	340,310	414,373
Total	<b>\$14,495,544</b>	\$15,527,537	\$15,010,781	<b>\$1,557,301</b>	\$1,588,958

### NOTE M — ACQUISITIONS

During 2008, we acquired a majority ownership position in businesses in India and Sweden, both of which are reflected in our International Division. The company has the right to acquire or may be required to purchase some or all of the minority interest shares of these businesses at various points over the next few years. Also during 2008, we acquired under previously existing put options all remaining minority interest shares of our joint ventures in Israel and China.

During 2007, we acquired Axidata, Inc., a Canada-based office products delivery company, which is included in our North American Business Solutions Division.

During 2006, we acquired all or a majority ownership position in four companies and increased our investment to majority ownership in another company. Certain arrangements from our 2006 acquisitions will require a minimum cash payment of approximately \$11 million in 2010; the related obligation is included in the Consolidated Balance Sheets.

The transactions for 2008, 2007 and 2006 have been included in our consolidated results since the dates of acquisition. The size of these acquisitions is not material to periods presented.

### NOTE N — INVESTMENT IN UNCONSOLIDATED JOINT VENTURE

Since 1994, we have participated in a joint venture in Mexico, Office Depot de Mexico. Because we participate equally in this business with a partner, we account for this investment using the equity method. Our proportionate share of Office Depot de Mexico's net income or loss is presented in miscellaneous income, net in the Consolidated Statements of Operations. Our investment balance at year end 2008 and 2007 of \$147.1 million and \$153.6 million, respectively, is included in other assets in the Consolidated Balance Sheets.

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The following tables provide summarized unaudited information from the balance sheet and statement of earnings for Office Depot de Mexico:

<i>(Dollars in thousands)</i>	2008	2007	2006
<b>Statement of earnings:</b>			
Sales	\$952,566	\$850,824	\$715,679
Gross profit	278,764	245,295	202,274
Net income	74,226	69,651	54,250

<i>(Dollars in thousands)</i>	December 31, 2008	December 31, 2007
<b>Balance Sheet:</b>		
Current assets	\$ 207,661	\$ 202,188
Non-current assets	241,726	250,561
Current liabilities	155,017	169,592
Non-current liabilities	—	—

### NOTE O — QUARTERLY FINANCIAL DATA (UNAUDITED)

<i>(In thousands, except per share amounts)</i>	First Quarter	Second Quarter	Third Quarter	Fourth Quarter <sup>(1)</sup>
<b>Fiscal Year Ended December 27, 2008</b>				
Net sales	\$ 3,962,017	\$ 3,605,073	\$ 3,657,857	\$ 3,270,597
Gross profit	1,168,680	983,516	1,024,441	829,122
Net earnings (loss)	68,773	(2,002)	(6,698)	(1,539,011)
<b>Net earnings (loss) per share*:</b>				
Basic	\$ 0.25	\$ (0.01)	\$ (0.02)	\$ (5.64)
Diluted	0.25	(0.01)	(0.02)	(5.64)

\* Due to rounding, the sum of the quarterly earnings per share amounts may not equal the reported earnings per share for the year.

(1) Net earnings for the quarter includes pretax Charges of approximately \$1,437.1 million (aggregate of \$1,468.9 million through the four quarters of 2008). For additional information on the Charges, see Note B.

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter <sup>(1)</sup>
<b>Fiscal Year Ended December 29, 2007</b>				
Net sales	\$ 4,093,600	\$ 3,631,599	\$ 3,935,411	\$ 3,866,927
Gross profit	1,269,108	1,096,119	1,115,135	1,022,536
Net earnings	153,771	105,582	117,488	18,774
<b>Net earnings per share*:</b>				
Basic	\$ 0.56	\$ 0.39	\$ 0.43	\$ 0.07
Diluted	0.55	0.38	0.43	0.07

\* Due to rounding, the sum of the quarterly earnings per share amounts may not equal the reported earnings per share for the year.

(1) Net earnings for the quarter includes pretax Charges of approximately \$15 million (aggregate of \$40 million through the four quarters of 2007). Additionally, in the fourth quarter, it became apparent that we were not going to reach the anticipated full year inventory purchase levels and we reduced our vendor program recognition accordingly. The impact of this change in estimate primarily attributable to modifications of previously-anticipated purchase volume tiers was to reduce fourth quarter pretax results by approximately \$30 million.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of Office Depot, Inc.:

We have audited the consolidated financial statements of Office Depot, Inc. and subsidiaries (the "Company") as of December 27, 2008 and December 29, 2007, and for each of the three years in the period ended December 27, 2008, and the Company's internal control over financial reporting as of December 27, 2008, and have issued our reports thereon dated February 23, 2009; such reports are included elsewhere in this Form 10-K. Our audits also included the consolidated financial statement schedule of the Company listed in Item 15(a)2. This consolidated financial statement schedule is the responsibility of the Company's management. Our responsibility is to express an opinion based on our audits. In our opinion, such consolidated financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

/s/ DELOITTE & TOUCHE LLP  
Certified Public Accountants

Boca Raton, Florida  
February 23, 2009

**INDEX TO FINANCIAL STATEMENT SCHEDULES**

Schedule II — Valuation and Qualifying Accounts and Reserves

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All other schedules have been omitted because they are not applicable, not required or the information is included elsewhere herein.

**OFFICE DEPOT, INC.**  
**VALUATION AND QUALIFYING ACCOUNTS**  
(In thousands)

<u>Column A</u>	<u>Column B</u>	<u>Column C</u>	<u>Column D</u>	<u>Column E</u>
Description	Balance at Beginning of Period	Additions— Charged to Expense	Deductions— Write-offs, Payments and Other Adjustments	Balance at End of Period
Allowance for doubtful accounts:				
<b>2008</b>	<b>\$ 46,316</b>	<b>33,736</b>	<b>34,062</b>	<b>45,990</b>
2007	\$ 32,581	32,163	18,428	46,316
2006	\$ 40,122	16,720	24,261	32,581

**INDEX TO EXHIBITS**

Exhibit Number	Exhibit	
3.1	Restated Certificate of Incorporation	(1)
3.2	Bylaws, as amended	(17)
4.1	Form of Certificate representing shares of Common Stock	(2)
4.2	Indenture, dated as of August 11, 2003, for the \$400 million 6.250% Senior Notes due August 15, 2013, between Office Depot, Inc. and SunTrust Bank	(3)
4.3	Supplemental Indenture No. 1, dated as of August 11, 2003, for the \$400 million 6.250% Senior Notes due August 15, 2013, between Office Depot, Inc. and SunTrust Bank	(4)
4.4	Supplemental Indenture No. 2, dated as of October 9, 2003, for the \$400 million 6.250% Senior Notes due August 15, 2013, between Office Depot, Inc. and SunTrust Bank	(4)
10.01	Lease Agreement dated November 10, 2006 between Office Depot, Inc. and Boca 54 North LLC.	
10.02	First Amendment to Lease dated July 3, 2007 between Office Depot, Inc. and Boca 54 North LLC.	
10.03	Offer Letter dated August 22, 2008, for the Employment of Michael Newman as the Chief Financial Officer of Office Depot, Inc.*	
10.04	Office Depot, Inc. 2007 Long-Term Incentive Plan*	(5)
10.05	Form of Indemnification Agreement, dated as of September 4, 1996, by and between Office Depot, Inc. and each of David I. Fuente, W. Scott Hedrick, Michael J. Myers	(6)
10.06	Severance Agreement, including Release and Non-Competition Agreement, dated September 19, 2000 by and between Office Depot, Inc. and David I. Fuente (schedules and exhibits omitted)*	(7)
10.07	Lifetime Consulting and Non-Competition Agreement dated as of March 1, 2002 by and between Office Depot, Inc. and Irwin Helford*	(8)
10.08	Equity Award Agreement dated as of March 2, 2007, by and between Office Depot, Inc. and Steve Odland*	(19)
10.09	Employment Agreement dated as of March 11, 2005, by and between Office Depot, Inc. and Steve Odland*	(15)
10.10	Employment Offer Letter dated August 25, 2005, by and between Office Depot, Inc. and Patricia A. McKay*	(16)
10.11	Amendment to Executive Employment Agreement dated as of July 26, 2005 by and between Office Depot, Inc. and Charles E. Brown*	(10)
10.12	Executive Employment Agreement dated as of October 8, 2001, by and between Office Depot, Inc. and Charles E. Brown*	(8)
10.13	Change of Control Agreement, dated as of May 28, 1998, by and between Office Depot, Inc. and Charles E. Brown*	(10)
10.14	Second Amendment to Executive Employment Agreement, dated January 23, 2006, by and between Office Depot, Inc. and Carl (Chuck) Rubin*	(14)
10.15	First Amendment to Executive Employment Agreement, dated March 7, 2005, by and between Office Depot, Inc. and Carl (Chuck) Rubin*	(11)
10.16	Executive Employment Agreement dated as of March 1, 2004, by and between Office Depot, Inc. and Carl (Chuck) Rubin*	(11)
10.17	Change of Control Agreement, dated as of March 1, 2004, by and between Office Depot, Inc. and Carl (Chuck) Rubin*	(11)
10.18	Letter Agreement dated as of March 1, 2004, by and between Office Depot, Inc. and Carl (Chuck) Rubin*	(11)
10.19	Separation Agreement dated as of February 20, 2008 between Office Depot, Inc. and Patricia A. McKay	(9)
10.20	Five Year Credit Agreement dated as of September 26, 2008 by and among Office Depot, Inc. and JPMorgan Chase Bank, N.A. as administrative agent, Bank of America, N.A. as syndication agent and Citibank, N.A. Wachovia Bank, N.A. and General Electric Capital Corporation.	(18)
10.21	Change of Control Agreement, dated as of September 17, 2008, by and between Office Depot, Inc. and Michael Newman*	(23)
10.22	Amendment to Executive Employment Agreement dated as of February 25, 2008, by and between Office Depot, Inc. and Steve Odland*	(9)
10.23	Amendment to Change of Control Agreement dated as of February 25, 2008, by and between Office Depot, Inc. and Charles E. Brown*	(9)
10.24	Amendment to Change of Control Agreement dated as of February 25, 2008, by and between Office Depot, Inc. and Carl (Chuck) Rubin*	(9)
10.25	Letter Agreement between Citibank, N.A. and Office Depot, Inc. dated December 28, 2008	(21)

## Table of Contents

<u>Exhibit Number</u>	<u>Exhibit</u>	
10.26	Agency Agreement between Gordon Brothers Retail Partners, LLC and Office Depot, Inc. dated December 9, 2008	(22)
10.27	Amended and Restated Merchant Services Agreement dated as of February 1, 2004 between Office Depot, Inc. and Citibank, N.A.	(21)
10.28	Sixth Amendment to Amended and Restated Merchant Services Agreement dated February 6, 2009 between Office Depot, Inc. and Citibank, N.A.	(25)
10.29	First Standstill Letter dated December 28, 2008 between Office Depot, Inc. and Citibank, N.A.	(21)
10.30	Second Standstill Letter dated December 30, 2008 between Office Depot, Inc. and Citibank, N.A.	(21)
10.31	Letter of Credit dated December 30, 2008 from JPMorgan Chase Bank, N.A. in favor of Citibank, N.A.	(21)
10.32	2008 Office Depot, Inc. Bonus Plan for Executive Management Employees*	(24)
17	Letter of Resignation regarding Mr. Abelardo E. Bru's resignation from as the Board of Directors	(20)
21	List of Office Depot, Inc.'s Significant Subsidiaries	
23	Consent of Independent Registered Public Accounting Firm	
31.1	Certification of CEO required by Securities and Exchange Commission Rule 13a-14(a) or 15d-14(a)	
31.2	Certification of CFO required by Securities and Exchange Commission Rule 13a-14(a) or 15d-14(a)	
32	Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	

\* Management contract or compensatory plan or arrangement.

- (1) Incorporated by reference from the respective annex to the Proxy Statement for Office Depot, Inc.'s 1995 Annual Meeting of Stockholders, filed with the SEC on May 18, 1995.
- (2) Incorporated by reference from the respective exhibit to Office Depot, Inc.'s Registration Statement No. 33-39473 on Form S-4 filed with the SEC on March 15, 1991.
- (3) Incorporated by reference from the respective exhibit to Office Depot, Inc.'s Registration Statement No. 333-108602 on Form S-4 filed with the SEC on September 8, 2003.
- (4) Incorporated by reference from Office Depot, Inc.'s Quarterly Report on Form 10-Q, filed with the SEC on October 27, 2003.
- (5) Incorporated by reference from the Proxy Statement for Office Depot, Inc.'s 2007 Annual Meeting of Shareholders filed with the SEC on April 25, 2007.
- (6) Incorporated by reference from the respective exhibit to Office Depot, Inc.'s Annual Report on Form 10-K for the year ended December 28, 1996.
- (7) Incorporated by reference from Office Depot, Inc.'s Quarterly Report on Form 10-Q, filed with the SEC on October 31, 2000.
- (8) Incorporated by reference from the respective exhibit to Office Depot, Inc.'s Annual Report on Form 10-K for the year ended December 29, 2001 filed with the SEC on March 19, 2002.
- (9) Incorporated by reference from Office Depot, Inc.'s Quarterly Report on Form 10-Q, filed with the SEC on April 29, 2008.
- (10) Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on August 1, 2005.
- (11) Incorporated by reference from the respective exhibit to Office Depot, Inc.'s Annual Report on Form 10-K for the year ended December 25, 2004 filed with the SEC on March 10, 2005.
- (12) Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on September 14, 2005.
- (13) Incorporated by reference from Office Depot, Inc.'s Quarterly Report on Form 10-Q, filed with the SEC on July 22, 2004.
- (14) Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on January 24, 2006.
- (15) Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on March 16, 2005.
- (16) Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on August 30, 2005.
- (17) Incorporated by reference from Office Depot, Inc.'s Annual Report on Form 10-K for the year ended December 30, 2006 filed with the SEC on February 14, 2007, and Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on December 21, 2007.
- (18) Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on September 26, 2008.
- (19) Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on March 5, 2007.
- (20) Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on December 31, 2008.
- (21) Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on December 30, 2008.
- (22) Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on December 10, 2008.
- (23) Incorporated by reference from Office Depot, Inc.'s Quarterly Report on Form 10-Q, filed with the SEC on October 29, 2008.
- (24) Incorporated by reference from the Proxy Statement for Office Depot, Inc.'s 2008 Annual Meeting of Shareholders filed with the SEC on March 14, 2008.

(25) Incorporated by reference from Office Depot, Inc.'s Current Report on Form 8-K filed with the SEC on February 11, 2009. Upon request, we will furnish a copy of any exhibit to this report upon the payment of reasonable copying and mailing expenses.



## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made as of the 10<sup>th</sup> day of November, 2006 (the "Effective Date"), by and between BOCA 54 NORTH LLC, a Delaware limited liability company (the "Landlord"), and OFFICE DEPOT, INC., a Delaware corporation (the "Tenant").

WITNESSETH:

1. GRANT; TERM.

1.1 PROPERTY AND PREMISES; LANDLORD'S TITLE. In consideration of the mutual undertakings of the parties set forth in this Lease and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to the terms and conditions of this Lease, for the term and at the rent hereinafter stated, the premises consisting of three (3), five (5) story office buildings containing approximately 208,000 Rentable Square Feet each (each, a "Building" and collectively, the "Buildings"), together with various special purpose facilities (such as an employee cafeteria and an auditorium but only if reflected in the final approved Base Building Plans, as hereinafter defined), together with the Base Building Systems (as hereinafter defined), grading, drainage, site work, parking and landscaped areas, restrooms, lobbies, equipment rooms, atriums, Building connectors, and related improvements to the foregoing, (collectively, the "Site Improvements"), which Buildings and Site Improvements consist of approximately 624,000 total Square Feet (which square footage of the Buildings is subject to adjustment as provided in the Construction Addendum (as hereinafter defined), and which is for information purposes only, and not to be used for calculation of Base Rent, all to be constructed by Landlord in accordance with the terms of the "Construction Addendum for Base Building," "Shell Improvements" and "Leasehold Improvements" attached hereto and made a part hereof as Exhibit "A" (the "Construction Addendum"), on the real property consisting of approximately 28.75 acres located at the southeast corner of Military Trail and Clint Moore Road, Boca Raton, Florida, and legally described on Exhibit "B," attached hereto and made a part hereof (the "Property"); together with the non-exclusive right to utilize the appurtenances, rights, privileges, and easements specifically pertaining thereto including without limitation those established pursuant to the Declaration, as hereinafter defined (collectively, the "Appurtenances") (the Buildings, the Site Improvements, the Appurtenances, and the Property shall be collectively referred to herein as the "Premises"). The Premises are located in a multiple building, business and/or office park known as Arvida Park of Commerce (the "Park").

The terms "Gross Building Area," "Rentable Square Feet" and "Rentable Square Foot," and "Useable Square Feet" and "Useable Square Foot," shall have the general and customary meaning given thereto in accordance with the "American National Standard" method of measuring floor area in single-tenant office buildings as promulgated by the Building Owners and Managers Association International (ANSI/BOMA Z65.1-1996), and, subject to the terms of the Construction Addendum, shall be determined by a certification signed by the Base Building

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Architect (as defined in the Construction Addendum) upon Substantial Completion (as defined in the Construction Addendum). The calculation of area of the Premises is for information purposes only, and not to be used for calculation of Base Rent.

Landlord represents and warrants that Landlord (i) has entered into a contract for the purchase of the Golf Course Parcel (as hereinafter defined), and (ii) is the fee owner of the remainder of the Premises, that it has good and marketable fee simple title thereto, and that same are free and clear of all leases, tenancies, agreements, encumbrances, liens or defects in title other than the title exceptions identified in Exhibit "F" hereto (the "Permitted Exceptions"). Landlord agrees that it will furnish to Tenant, without cost, a leasehold title insurance commitment issued by Chicago Title Insurance Company evidencing that Landlord's title is in accordance with the foregoing, together with a copy of each requirement and exception shown therein, and a copy of Landlord's existing survey (if Landlord updates its survey, Landlord will provide a copy of the update to Tenant, and Landlord will cause the updated survey to be certified to Tenant and a title insurance company and agent therefor as requested by Tenant). Tenant shall pay the premium and all other costs incurred in connection with the title insurance policy issued pursuant to such commitment, provided, however, that Tenant shall have the right to take advantage of any "simultaneous issue" rate which may be available in connection with the issuance of any title policies being issued to Landlord's construction lender and to Landlord (provided that Tenant acknowledges that a simultaneous issue policy for Tenant's leasehold cannot be issued for a de minimus amount). Landlord shall provide (x) an affidavit reasonably requested by the Tenant's title company covering (i) Landlord's possession of the Property, and (ii) the absence of unrecorded easements affecting the Property, and (iii) the absence of construction liens affecting the Property (other than relating to a Notice of Commencement recorded subsequent to Tenant's Memorandum of Lease and Landlord's construction financing, if any), and (y) documentation reasonably requested by the Tenant's title company regarding Landlord's formation and authority.

1.2 **NO COMMON AREAS.** There are no common areas being shared with other occupants on the Premises, it being acknowledged and agreed that, subject to Tenant's non-exclusive rights to the Appurtenances, Tenant has the exclusive right to use, occupy, and enjoy the Premises during the Term and any renewal or extension thereof. However, the square footage of such areas such as atriums and Building connectors are included in the determination of Rentable Square Feet for purposes of this Lease as specifically provided in this Lease.

1.3 **LEASE TERM.** The term of this Lease (the "Term") shall commence on the date that Landlord achieves Substantial Completion of the Base Building Work and Substantial Completion of the Leasehold Improvement Work (as such terms are defined in the Construction Addendum) (the "Term Commencement Date"), and shall continue for a period of one hundred eighty (180) calendar months following the Base Rent Commencement Date (as hereinafter defined), plus any partial days in the month in which the Base Rent Commencement Date falls (if not on the first of the month), so that the expiration date of the Term will be the last day of a month. Notwithstanding the foregoing, Tenant shall have no right to possession of the Premises until Tenant has provided Landlord with a certificate of insurance evidencing the insurance coverages that Tenant is obligated to maintain pursuant to this Lease. Landlord and Tenant shall execute a Memorandum of Lease Commencement substantially in form and substance as Exhibit "C," attached hereto and made a part hereof establishing the Term Commencement Date

and the Base Rent Commencement Date as soon as such dates have been determined in accordance with this Lease. The period of time from the first (1st) day of the first (1st) full month after the month in which the Term Commencement Date occurs (or the Term Commencement Date itself, if it occurs on the first day of the month) to the last day of the twelfth (12th) calendar month thereafter, and each successive twelve (12) month period thereafter, is referred to herein as a "Lease Year."

## 2. RENT AND OTHER CHARGES.

2.1 **BASE RENT.** For purposes of this Lease, the "Base Rent Commencement Date" shall mean the later of (a) forty-five (45) days following Substantial Completion of the Leasehold Improvement Work for the North Building (as defined in the Construction Addendum), and (b) November 1, 2008; provided that Substantial Completion of the Leasehold Improvement Work has been achieved. Commencing on the Base Rent Commencement Date, Tenant hereby covenants and agrees to pay "Base Rent" in accordance with the Base Rent schedule set forth in Exhibit "D," attached hereto and made a part hereof. Base Rent shall be paid without demand, set off or deduction, except as otherwise expressly set forth in this Lease, to Landlord at the address set forth in this Lease or such other address as Landlord directs in writing, and shall be paid in advance in equal monthly installments on the first day of each month in lawful United States currency, together with any and all rental, sales or use taxes levied by any governmental body having authority upon the use or occupancy of the Premises and any rent or other charges payable hereunder. If the Base Rent Commencement Date should be a date other than the first day of a calendar month, the monthly rental applicable to the first full calendar month will also apply to the initial partial calendar month and will be prorated to the end of the partial calendar month. As provided in, and subject to the terms of, the Construction Addendum, if any Tenant Delay delays Substantial Completion of the Leasehold Improvement Work, then Substantial Completion of the Leasehold Improvement Work shall be deemed to be the date that Substantial Completion of the Leasehold Improvement Work would have been achieved, but for such Tenant Delay, as reasonably determined by Landlord.

2.2 **LATE CHARGES.** If any Base Rent or other payment due under this Lease is not received by Landlord within ten (10) days after written notice to Tenant of its failure to make such payment (provided, however that Landlord shall not be obligated to provide such written notice to Tenant more than two (2) times in any twelve (12) month period), Tenant shall pay, in addition to such payment a late charge equal to five (5%) percent of the payment which is past due. If any payment due from Tenant shall remain overdue for more than thirty (30) days after written notice to Tenant of its failure to make such payment (provided, however that Landlord shall not be obligated to provide such written notice to Tenant more than two (2) times in any twelve (12) month period), interest shall accrue daily on the past due amount from the date such amount was due until paid or judgment is entered at a rate equivalent to the lesser of (a) the then "prime rate" as published in The Wall Street Journal plus five (5%) percent per annum or (b) the highest rate permitted by law (not to exceed 18% per annum) (such rate being herein called the "Default Interest Rate"). Interest on the past due amount shall be in addition to and not in lieu of the late charge or any other remedy available to Landlord. The foregoing shall not be deemed to be a waiver of any statutory notice requirements imposed upon Landlord in order to commence any eviction proceedings under Florida Statutes.

2.3 ADDITIONAL RENT. All charges payable by Tenant to Landlord under the terms of this Lease other than Base Rent shall be deemed to be "Additional Rent" hereunder. Unless this Lease provides otherwise, all Additional Rent shall be paid with the next monthly installment of Base Rent together with all applicable sales or use taxes. The term "Rent" shall mean Base Rent and Additional Rent.

2.4 TAXES.

2.4.1 Personal Property Taxes. Commencing upon the Base Rent Commencement Date, Tenant shall pay, as and when due, all taxes attributable to the personal property, trade fixtures, business, occupancy, or sales of Tenant or any other occupant of the Premises and to the use thereof by Tenant or such other occupant.

2.4.2 Real Estate Taxes. Commencing upon the Base Rent Commencement Date, Tenant shall pay, as and when due, all real estate taxes, personal property taxes and other ad valorem and non ad valorem taxes, and any other levies, charges, local improvement rates, impositions and assessments whatsoever assessed or charged against the Premises, the equipment and improvements therein contained, and including any amounts assessed or charged in substitution for or in lieu of any such taxes (collectively, "Real Estate Taxes"), levied or assessed against the Premises by any lawful authority for each calendar year or portion thereof during the period between the Base Rent Commencement Date and the expiration of the Term. Landlord shall request the tax assessor to send all bill(s) and any trim notice (i.e., notice of the assessed value of the Property of which the Premises is a part) for Real Estate Taxes directly to Tenant and Tenant agrees to be responsible to pay the Real Estate Taxes directly to the taxing authorities prior to any delinquency. If any Real Estate Taxes may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Real Estate Taxes), Tenant shall be required to pay only such installments as shall become due during the Term of this Lease. In the event that the tax bill(s) and/or trim notice are not sent by the taxing authorities directly to Tenant, Landlord shall provide Tenant with all such tax bill(s) and/or trim notice promptly upon Landlord's receipt thereof. Any rebates, refunds, or abatements of Real Estate Taxes received by Landlord subsequent to payment of Real Estate Taxes by Tenant shall be refunded to Tenant within thirty (30) days of receipt thereof by Landlord (less, if Landlord contested such Real Estate Taxes at Tenant's request, Landlord's reasonable costs and expenses of procuring such rebate, refund, or abatement). Tenant shall provide Landlord with paid tax receipts or, if not available, other proof of payment reasonably acceptable to Landlord, on or before ten (10) business days before the date that the Real Estate Taxes would be deemed to be delinquent (i.e., the date that penalties would start to accrue). If Tenant does not pay Real Estate Taxes and provide proof of payment by the aforesaid date, Landlord, upon two (2) business days' written notice, shall have the right to pay the Real Estate Taxes and Tenant shall reimburse Landlord within thirty (30) days of receipt of demand for payment by Landlord, with interest at the Default Interest Rate. Said Real Estate Taxes are to be prorated for any partial Lease Year occurring at the beginning or end of the Term during the period in which the taxing authority assesses Real Estate Taxes.

2.4.3 Contesting Taxes. If Tenant desires, as determined by Tenant in its reasonable business judgment, to contest the validity or amount of any tax, assessment, levy, or other governmental charge agreed to in this Lease to be paid by Tenant, Tenant shall be permitted to

do so, upon posting of adequate security or the payment of amounts, all as may be required by Applicable Laws (as defined in Section 3.2 hereof), to prevent loss of title to the Premises or the imposition of penalties on Landlord or the Premises and after giving Landlord prior written notice of Tenant's intent to contest the taxes for the applicable year. So long as Tenant complies with the foregoing, Landlord shall cooperate with Tenant (at no expense to Landlord) and execute any document which may be reasonably necessary for any such contest proceeding. Nothing herein shall be deemed to limit Landlord's right (at Landlord's sole cost and expense) to contest any tax, assessment, levy or government charge imposed against the Premises, which right, with respect to ad valorem real property taxes, shall be exercised by Landlord in its reasonable business judgment after giving Tenant prior written notice of Landlord's intent to contest the taxes and, further provided, that any contest by Landlord does not unreasonably interfere with any contest by Tenant. The foregoing restriction on Tenant's ability to contest the validity or amount of any tax, assessment, levy, or other governmental charge agreed to in this Lease to be paid by Tenant shall only be deemed to apply to Real Estate Taxes and shall not be deemed to apply to any personal property taxes, which are payable by Tenant on its personalty in the Premises. Tenant shall be entitled to any refund of any Real Estate Taxes or other charges or penalties or interest thereon which have been paid by Tenant (less, if Landlord contested such taxes at Tenant's request, Landlord's reasonable costs and expenses of procuring such refund).

2.4.4 Receipts. Upon written request of Landlord, during the Term of this Lease, Tenant shall obtain and deliver to Landlord paid receipts for all taxes, assessments, and other items required under this Lease to be paid by Tenant.

2.4.5 Exclusions. Real Estate Taxes shall not include any franchise, estate, and income taxes imposed upon Landlord.

2.4.6 Separate Parcel. If the Premises are not currently taxed by the applicable governmental authorities as one or more parcels separate from the other parcel(s) included in Landlord's tax bills, then Landlord, at its sole cost and expense, shall apply for and diligently follow such procedures as are necessary to have the Premises taxed by the applicable governmental authorities as one or more parcels separate from the other parcel(s) included in Landlord's tax bills, so that Tenant will be in a position to pay and/or contest Real Estate Taxes on its own, subject to the terms of this Section. When the Premises are taxed or assessed as one or more separate parcels, Landlord shall direct the tax authority to send the tax bills (and any trim notices) for the Premises directly to Tenant's address during the Term hereof. If the Premises is taxed or assessed together with other land owned by Landlord, then, for any parcel which includes the Premises and other land owned by Landlord: (a) Tenant's share of Real Estate Taxes shall be determined by multiplying such taxes or assessments in the entire tax bill by a fraction, the numerator of which is the total value of the portion of the Premises included in the tax bill and the denominator of which is the total value of all property included in the tax bill, and Landlord shall provide such determination to Tenant in writing, together with a copy of the applicable tax bill, no later than thirty (30) days prior to the due date of such Real Estate Taxes for the applicable year; and (b) Landlord agrees to give Tenant a copy of any trim notice (i.e., notice of the assessed value of the real property of which the Premises is a part) within ten (10) business days after Landlord's receipt thereof.

2.5 ELECTRICITY. Commencing upon Substantial Completion of the Base Building Work (as defined in the Construction Addendum), Tenant shall pay for all costs and fees incurred in connection with the provision and use of electricity at the Premises, including, without limitation, the parking areas therefor, as separately metered in Tenant's name.

## 2.6 OPERATING EXPENSES.

2.6.1 Tenant's Responsibility. Subject to the terms of Section 7, commencing upon the Term Commencement Date, Tenant shall be solely responsible, at Tenant's sole cost and expense, for the maintenance, operation, repair, replacement (regardless of whether such replacement is required under any Applicable Law that was not in effect or not applicable to the Premises on the Term Commencement Date), and administration of the Premises, including, without limitation: (i) maintenance of HVAC, electrical, mechanical, plumbing, fire, life safety and elevator systems serving the Buildings (collectively, the "Building Systems"); (ii) water, sewer, gas, and other utility charges (including electricity charges, as provided above) for the Premises, all of which shall be separately metered in Tenant's name; (iii) landscaping, tree trimming, and pest control for the Premises, and (iv) window washing, janitorial services (to be provided in the manner that such services are customarily furnished in comparable office buildings in the area), rest room supplies and other maintenance expenses in connection with the Premises (collectively, the "Tenant Operating Expenses").

2.6.2 Landlord Operating Expenses. In addition, commencing on the Base Rent Commencement Date, Tenant shall be responsible to reimburse and/or pay Landlord for the following expenses: (i) insurance that Landlord is obligated or permitted to obtain under this Lease and any deductible amount applicable to any claim made by Landlord under such insurance ("Insurance Expenses"), and (ii) the dues and assessments due under the Declaration (as hereinafter defined) with respect to the Premises ("Assessment Expenses") (collectively, the "Landlord Operating Expenses").

2.6.3 Payment of Landlord Operating Expenses. In addition to the payment of Base Rent, commencing on the Base Rent Commencement Date, Tenant shall pay one hundred percent (100%) of the Landlord Operating Expenses to Landlord. On or before March 31 of each calendar year, Landlord shall provide a good faith estimate of Landlord Operating Expenses for that calendar year (the "Estimate Statement"). Tenant shall remit monthly one-twelfth (1/12th) of the amount set forth in the Estimate Statement (the "Estimated Payment") as Additional Rent together with its payments of Base Rent; provided that Landlord may invoice Tenant retroactively for the months of January through the month of issuance of the Estimate Statement. On or before March 31st of each calendar year, Landlord shall send a statement to Tenant detailing all actual Landlord Operating Expenses for the prior calendar year (the "Landlord Operating Expense Statement"). If the Landlord Operating Expense Statement indicates that the total Estimated Payments made by Tenant during the preceding year exceeded the actual Landlord Operating Expenses for such year, then, at Landlord's option (except upon the expiration of the Term, whereupon a refund shall automatically be given, if applicable), Tenant shall be given either: (i) a credit against its next due Estimated Payment, or (ii) a refund, in the amount of the difference between the Estimated Payments made in the preceding year and the actual Landlord Operating Expenses for such year (which shall be paid to Tenant within thirty (30) days of issuance of the applicable Landlord Operating Expense Statement or the end

of the Term, whichever occurs sooner). If the Landlord Operating Expense Statement indicates that the actual Landlord Operating Expenses exceeded the Estimated Payments, then Tenant shall remit the difference to Landlord as Additional Rent within thirty (30) days after Tenant's receipt of the applicable Landlord Operating Expense Statement. Landlord's failure to provide a statement shall not prejudice Landlord's right to collect a shortfall or Tenant's right to receive a credit or refund for over payments. However, if Landlord fails to provide a Landlord Operating Expense Statement (or corrected Landlord Operating Expense Statement if the initial statement was incorrect) within twenty-four (24) months after the end of the year for which Estimated Payments were made, Landlord shall be deemed to have waived its right to collect a shortfall for that year. Any obligation of Landlord or Tenant to remit any overpayment or underpayment pursuant to this Section shall survive the expiration of the Term or earlier termination of this Lease. Each payment of Landlord Operating Expenses shall include applicable sales and use taxes.

2.6.4 Audit. During the Term or any extension thereof, but not more than one (1) time per year, Tenant shall have the right to cause Landlord's books and records with respect to Landlord Operating Expenses to be audited by a reputable independent certified public accountant or a reputable lease auditing firm of Tenant's choosing; provided that: (i) Tenant shall notify Landlord, in writing, that it has elected to perform such audit within one hundred eighty (180) days after Tenant's receipt of the applicable Landlord Operating Expense Statement for the year to be audited (the "Election Notice"); (ii) such audit shall commence within ninety (90) days after Tenant sends the Election Notice; (iii) such audit shall be completed within sixty (60) days after the same is commenced; and (iv) Tenant shall have a reasonable period of time to object to a Landlord Operating Expense Statement based upon the results of such audit (which shall in no event exceed sixty (60) days after the completion of such audit). Tenant hereby agrees to keep the results of any such audit(s) confidential (except for disclosures required by law) and any agreement that Tenant enters into with an outside accounting firm shall provide that such firm shall also keep such results confidential (except for disclosures required by law). Landlord shall cause such books and records to be made available for such inspection during normal business hours at Landlord's option at a location selected by Landlord in Palm Beach County, Florida, upon no less than ten (10) business days' prior written notification by Tenant to Landlord. Such audit shall be done in accordance with generally accepted auditing principles, consistently applied and Tenant shall provide Landlord a complete copy of such audit results at the conclusion thereof. If, at the conclusion of such audit, Tenant's audit of such expenses for the preceding year indicates that Tenant made an overpayment to Landlord for such preceding year, Landlord shall remit the amount of such overpayment to Tenant within thirty (30) days after receipt of notice from Tenant of the amount of such overpayment; if such audit indicates that Tenant made an underpayment for such preceding year, Tenant shall remit the difference to Landlord as Additional Rent within thirty (30) days of the conclusion of such audit. Should Landlord disagree with the results of Tenant's audit, Landlord and Tenant shall refer the matter to a mutually acceptable independent certified public accountant, who shall be hired on a non-contingent fee basis and shall work in good faith with Landlord and Tenant to resolve the discrepancy. The fees and costs of such independent accountant to which such dispute is referred shall be borne by the unsuccessful party and shall be shared pro rata to the extent each party is unsuccessful as determined by such independent certified public account, whose decision shall be final and binding. Landlord shall pay the cost of Tenant's audit if the total amount of Landlord Operating Expenses used for the calculation of pass-throughs for the

year in question exceeded five (5%) percent of the total amount of Landlord Operating Expenses that should properly have been used.

### 3. USE OF PROPERTY.

3.1 PERMITTED USE. Tenant may use the Premises only for the following Permitted Use: general office and business use, which includes, but is not limited to, corporate headquarter facilities and uses ancillary and related thereto, the supporting use of conference and computer facilities, employee kitchen and related non-commercial facilities which provide incidental services to employees only (e.g., day care facilities, gym facilities, convenience store, banking facilities, and dry cleaning service (drop-off and pick-up only, with no on-site dry cleaning), all for employees only) (the "Permitted Use"). Tenant shall not allow smoking of any kind inside the Buildings; it being understood and agreed that each of the Buildings shall be designated as a "non-smoking facility." In addition, Tenant shall not permit any activity which would exceed the floor and/or elevator load capacity or which would otherwise damage the Building Systems or structural components of a Building. Landlord represents and warrants to Tenant that on the Term Commencement Date of this Lease, the Premises (including, without limitation, the "Golf Course Parcel", as described in Exhibit "B") and the Permitted Use thereof by Tenant will not be prohibited by the Certificate of Occupancy issued for the Buildings, and that Landlord will take no action so as to cause Tenant's Permitted Use of the Premises to violate in any material respect any restrictions imposed upon the Premises by deed, the Declaration (as defined below), or otherwise. These representations and warranties of Landlord shall survive Tenant's acceptance of the Premises.

3.2 COMPLIANCE WITH LAWS. During the Term, subject to Tenant's compliance at all times with the provisions of Section 4.2 hereof, Tenant shall be solely responsible for making any structural modifications to the Premises or alterations to the Building Systems as may be required pursuant to any federal, state or local laws, ordinances, building codes, and rules and regulations of governmental entities or quasi-governmental entities having jurisdiction over the Premises, including but not limited to the Board of Fire Underwriters, the South Florida Water Management District, and the Americans with Disabilities Act (the "ADA") and all regulations and orders promulgated pursuant to the ADA as currently enacted or modified from time to time or enacted after the Effective Date (collectively, "Applicable Laws"); provided, however, that Landlord warrants that it shall be solely responsible, at Landlord's sole cost and expense, for promptly making any modifications to the Premises or alterations to the Building Systems or other repairs required as a result of Landlord's failure to comply with Applicable Laws in connection with Landlord's obligations under the Construction Addendum as of the date of the Term Commencement Date. In addition, Tenant shall comply with all Applicable Laws relating to its use and occupancy of the Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances in, upon, or connected with the Premises, all at Tenant's sole expense. Except as specifically provided in this Lease, Tenant will procure at its own expense all permits and licenses required for the transaction of its business in the Premises. Nothing contained in this Section is deemed to amend or modify Landlord's warranty of construction as set forth in the Construction Addendum.

If Tenant fails to perform its obligations under this Section within thirty (30) days after receipt of written notice thereof from Landlord, then in addition to any other rights and



remedies Landlord may have under Section 8.2 hereof, Landlord shall have the right, but not the obligation, to perform the same, whereupon any and all of Landlord's costs and expenses incurred in connection therewith shall be promptly reimbursed by Tenant within thirty (30) days after written demand by Landlord, together with reasonable written supporting documentation therefor. Notwithstanding the foregoing, if the performance of such obligation by Tenant would reasonably require more than thirty (30) days to complete, Tenant shall have a reasonable time to perform in order to cure such default (subject to extension for Force Majeure) provided Tenant commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

### 3.3 HAZARDOUS MATERIALS.

(a) Throughout the Term, Landlord and Tenant will prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as herein defined) on, under, in, above, to, or from the Premises by such party or its respective agents, employees, or contractors except that Hazardous Materials may be used in the Premises as necessary for the customary maintenance or customary use of the Premises (and in Tenant's case, except as are normally used in connection with the Permitted Use) provided that same are used, stored, and disposed of in compliance with any Applicable Laws pertaining to protection of the environment, public health and safety, air emissions, water discharges, hazardous or toxic substances, solid or hazardous wastes or occupational health and safety, and common law pertaining to the foregoing (collectively, the "Environmental Laws"). For purposes of this provision, the term "Hazardous Materials" will mean and refer to any unlawful levels of wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste or substances, or which require special handling or treatment, under any Environmental Laws.

(b) If Tenant's activities at the Premises or Tenant's use of the Premises (i) results in a release of Hazardous Materials by Tenant or its agents, employees, or contractors that is not in compliance with Environmental Laws or permits issued thereunder; (ii) gives rise to any claim or requires a response under Environmental Laws or permits issued thereunder; or (iii) causes the presence at the Premises of Hazardous Materials in levels that violate Environmental Laws or permits issued thereunder, then Tenant shall, at its sole cost and expense: (x) immediately provide verbal notice thereof to Landlord as well as notice to Landlord in the manner required by this Lease, which notice shall identify the Hazardous Materials involved and the emergency procedures taken or to be taken; and (y) promptly take all action in response to such situation required by Applicable Laws, provided that Tenant shall first obtain Landlord's approval of the non-emergency remediation plan to be undertaken (which approval shall not be unreasonably withheld, conditioned, or delayed).

(c) Tenant shall at all times indemnify and hold harmless Landlord against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges and expenses (including reasonable attorneys' fees) of any nature whatsoever suffered or incurred by Landlord to the extent they were caused by the following activities of Tenant on the Premises during the Term of this Lease and arise from events or conditions which came into existence after the Term Commencement Date: (i) any release, threatened release, or disposal of any Hazardous Materials at the Premises by Tenant or its employees, officers, agents, licensees,

invitees, assignees, subtenants, contractors, or subcontractors, or (ii) the violation of any Environmental Laws at the Premises by Tenant or its employees, officers, agents, licensees, invitees, assignees, subtenants, contractors, or subcontractors.

(d) Tenant acknowledges that it has received and reviewed that certain Phase I and Limited Phase II Environmental Site Assessment of 10 Vacant Arvida Park of Commerce Parcels, dated November 2, 2004 (Revised) and prepared by Camp Dresser & McKee Inc. (the "Environmental Report"). Landlord warrants and represents that, as of the Effective Date, to the actual knowledge of Harry St. Clair and Jose Hevia, and except as otherwise specified in the Environmental Report, no use, storage, treatment, transportation, release, leak, discharge, spill, disposal or emission of Hazardous Materials has occurred in, on or about the Premises (excepting the Golf Course Parcel), and that the Premises (excepting the Golf Course Parcel) are free of Hazardous Materials and in compliance with all Environmental Laws as of the Effective Date, except as otherwise specified in the Environmental Report.

(e) Tenant acknowledges that it has received and reviewed that certain Phase I Environmental Site Assessment and Phase II ESA of the Golf Course Maintenance Area, dated April 2006 and prepared by Camp Dresser & McKee Inc. in connection with the Golf Course Parcel, together with that certain Proposal for Site Assessment Report, dated June 14, 2006 and prepared by Camp Dresser & McKee Inc. in connection with the Golf Course Parcel (collectively, the "Golf Course Parcel Environmental Report"). Landlord warrants and represents that, as of the Effective Date, except as otherwise specified in the Golf Course Parcel Environmental Report, Harry St. Clair and Jose Hevia have no actual knowledge of (i) any use, storage, treatment, transportation, release, leak, discharge, spill, disposal or emission of Hazardous Materials in, on or about or from the Golf Course Parcel; (ii) the presence of any Hazardous Materials in, on or about or from the Golf Course Parcel, or (iii) the violation of any Environmental Laws in, on or about or from the Golf Course Parcel.

(f) As necessary to comply with Applicable Laws in connection with Landlord's obligations under the Construction Addendum as of the date of the Term Commencement Date, Landlord will be responsible, at its expense, to comply with all reporting obligations applicable to the environmental condition of the Premises (including the Golf Course Parcel), and to perform any environmental investigation, remediation or monitoring required to be performed in connection with the Premises (including the Golf Course Parcel). Any investigation, remediation or monitoring required to be undertaken by the Landlord shall be undertaken within the time period required by Environmental Laws and in a manner so as not to unreasonably interfere with Tenant's use and occupancy of the Premises. Landlord shall indemnify and hold harmless Tenant against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, fines, penalties and expenses (including reasonable attorneys' fees) of any nature whatsoever suffered or incurred by Tenant to the extent resulting from the failure of Landlord to complete any investigation, remediation or monitoring required to bring the Premises into compliance with all applicable Environmental Laws or any permits issued under the Environmental Laws, except, in each case, for any loss or damage actually caused by the negligence or willful misconduct of Tenant or its agents, employees, or contractors.

(g) Landlord shall at all times indemnify and hold harmless Tenant against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges,

finances, penalties and expenses (including reasonable attorneys' fees) of any nature whatsoever suffered or incurred by Tenant to the extent they were caused by the following activities of Landlord: (i) any release, threatened release, or disposal of any Hazardous Materials by Landlord or its agents, employees, licensees, assignees, contractors or subcontractors or (ii) the violation of any Environmental Laws or any permits issued under the Environmental Laws by Landlord or its agents, employees, licensees, assignees, contractors or subcontractors, except, in each case, for any loss or damage actually caused by the negligence or willful misconduct of Tenant or its agents, employees, or contractors.

(h) The indemnification provisions of this Section shall survive the expiration of the Term or earlier termination of this Lease.

3.4 SIGNS. Tenant shall have the exclusive right to place signage on or in any interior or exterior portion of each Building or the Property (which shall include, without limitation, the right to install monument signs on the Property at the entrance(s) of the Premises as may be permitted by Applicable Laws and with the requirements of the Declaration); provided that: (a) Tenant shall comply with all Applicable Laws and with the requirements of the Declaration; and (b) with respect to any exterior signage or any signage within the interior of the Building which is visible from the exterior of the Building, Tenant shall obtain the prior written consent of Landlord, which shall not be unreasonably withheld, delayed, or conditioned; provided, further, however, that so long as Tenant's signage complies with subparagraph (a), Landlord's consent is not required for any signage that reflects solely Tenant's name and/or logo. Any and all such approved signs shall be installed and shall be maintained by Tenant, in good order, condition, and repair, at Tenant's sole cost and expense, and shall be at all times consistent with Applicable Laws and any sign criteria established pursuant to the Declaration. Tenant shall be responsible to Landlord for the installation, use, or maintenance of said signs and any damage caused thereby. Tenant agrees to remove all of its signs prior to the expiration date or earlier termination of this Lease, and upon such removal to repair all damage incident to such removal, reasonable wear and tear and damage by casualty and condemnation excepted. In connection with Landlord's approval of signage to the extent required above, Landlord shall respond to a request by Tenant within ten (10) business days after receipt of Tenant's written request for consent. If Landlord fails to respond to Tenant's initial written request, then Tenant shall provide Landlord a written reminder notice with respect thereto. If Landlord fails to respond within two (2) business days after receipt of such reminder notice, then Landlord's consent shall be deemed to be granted.

3.5 LANDLORD'S ACCESS. Landlord shall be entitled at all reasonable times, after prior reasonable notice to Tenant and subject to Tenant's reasonable security procedures, to enter the Premises to examine them and to make such repairs, alterations, or improvements thereto as are expressly required under this Lease. Landlord shall exercise its rights under this Section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises. In addition, Landlord and its agents have the right to enter the Premises at all reasonable times and upon prior written notice to show the Premises to prospective purchasers, lenders, or anyone having a prospective interest in the Premises, and, during the last twelve (12) months of the Term or any renewal thereof, to show them to prospective tenants. Within ten (10) days after Landlord's written request, Tenant shall provide the name of Tenant's contact person for Landlord to provide notice to and to coordinate the

showings permitted herein. Landlord will have the right at all times to enter the Premises without advance notice in the event of an emergency affecting the Premises. Tenant shall have the right to have a representative of Tenant accompany Landlord with respect to any entry onto the Premises, and in any event during any entry onto the Premises Landlord shall: (i) comply with Tenant's reasonable security procedures, including, without limitation, that there may be safes, vaults, and/or certain secured areas within the Premises that may not be accessed by Landlord except in the event of an emergency posing an imminent danger to persons or property, and (ii) minimize any interference with the conduct of Tenant's business, prevent breaches in security and avoid damages to the Premises or the equipment, fixtures, or personal property of Tenant.

3.6 QUIET POSSESSION. As long as Tenant is not in default of the terms and conditions of this Lease beyond any applicable cure or grace period, Tenant shall be entitled to peaceful and quiet enjoyment of the Premises for the full Term without interruption or interference by Landlord or any person claiming through or under Landlord.

3.7 COVENANTS AND RESTRICTIONS. Tenant hereby acknowledges and agrees that the Premises, and Tenant's occupancy thereof, is subject to that certain Declaration of Covenants and Restrictions recorded in Official Records Book 2873, Page 745 of the Public Records of Palm Beach County, Florida (the "Declaration"), as the same has been and may be amended from time to time, provided, however, that Landlord shall not agree to amend the Declaration or record any other restrictions, agreements, or instruments in a manner which would materially and adversely affect Tenant's use and occupancy of the Premises under this Lease. In connection with Landlord's construction pursuant to the Construction Addendum, Landlord, at its expense, is responsible to obtain any approvals as may be required pursuant to the Declaration.

3.8 PARKING. During the Term, Tenant shall have an exclusive right to use all of the parking spaces associated with the Premises. All motor vehicles (including all contents thereof) shall be parked in such spaces at the sole risk of Tenant, its employees, agents, invitees, and licensees, it being expressly agreed and understood that Landlord has no duty to insure any of said motor vehicles (including the contents thereof), and that Landlord is not responsible for the protection and security of such vehicles, or the contents thereof (without limiting the generality of the foregoing, it being understood that this shall not be deemed to relieve Landlord of any liability for any damage actually caused by the negligence or willful misconduct of Landlord or its agents, employees, or contractors, except if covered by Tenant's insurance).

#### 4. LEASEHOLD IMPROVEMENTS AND TENANT ALTERATIONS.

4.1 LEASEHOLD IMPROVEMENTS. The Leasehold Improvements (as defined in the Construction Addendum) are to be constructed by Landlord pursuant to the terms and provisions of the Construction Addendum. The Leasehold Improvements shall be owned by Tenant and shall become the property of Landlord at the end of the Term (as may be extended) to the extent such Leasehold Improvements then exist.

#### 4.2 TENANT ALTERATIONS.

(a) Except for the Leasehold Improvements constructed in accordance with the Construction Addendum, Tenant will not make or allow to be made any: (i) structural alterations in or to the Premises without Tenant first obtaining the written consent of Landlord, which consent may be granted or withheld in the Landlord's sole and absolute discretion (provided that if Landlord withholds its consent to any alterations required by Applicable Laws, Tenant shall not be deemed to be in breach of its obligations under Section 3.2 hereof); or (ii) any other alterations to the Premises (i.e., other than those listed in clause (i) above), including, without limitation, alterations to the Building Systems, without Tenant first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed (provided, however, that Landlord's consent shall not be required for interior, nonstructural alterations which do not affect the Building Systems and which cost less than \$250,000.00 per Building to perform each alteration project, but Tenant shall notify Landlord of any such interior, nonstructural alterations). For alterations that require Landlord's consent, Landlord shall have ten (10) business days within which to review any submission by Tenant to Landlord of the plans and specifications therefor. If Landlord fails to respond within such period, then Tenant shall notify Landlord in writing of its failure, and if Landlord fails to respond to Tenant within two (2) business days after Landlord's receipt of such notice, then Landlord's consent will be deemed to be granted. All Tenant alterations (structural, and/or Building Systems and/or exterior and/or interior, nonstructural alterations) will be accomplished in a good and workmanlike manner, at Tenant's sole expense, lien-free, in conformity with all Applicable Laws, and by licensed contractor(s) carrying the insurance required by this Lease (with certificates of insurance delivered to Landlord upon written request during the course of the work; and if request is made for insurance certificates following the end of the work, then such insurance certificates will be delivered to the extent in Tenant's possession). In addition to the foregoing, with respect to any alterations to be performed by Tenant requiring Landlord's consent: (x) all such Tenant alterations will be made in accordance with plans and specifications approved in advance by Landlord, such approval of plans and specifications to be granted or deemed granted as aforesaid in this Section; and (y) by a general contractor approved by Landlord in accordance with subsection (b), below; and (z) upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts directly between Tenant and such contractor(s), and proof of payment for all labor and materials. Any Tenant alterations to the Premises made by or installed by either party hereto will remain upon and be surrendered with the Premises and become the property of Landlord upon the expiration or earlier termination of this Lease without credit to Tenant; provided, however, Landlord, at its option, may require Tenant to remove any additions and/or alterations in order to restore the Premises to the condition existing at the time Landlord completed the Leasehold Improvements (reasonable wear and tear and tear and damage by casualty and condemnation excepted), with all costs of removal, repair, restoration, or alterations to be borne by Tenant, except for Leasehold Improvements (which Tenant shall have no obligation to remove) or if at the time of granting Landlord's consent to such alterations, Landlord specifically acknowledged in writing that Tenant would not be responsible for removing such alterations. This clause will not apply to moveable equipment, furniture, or moveable trade fixtures owned by Tenant, which shall be removed by Tenant at the end of the Term.

(b) Without limiting the general requirements as to Tenant's contractors as set forth in subsection (a), above, with respect to Tenant alterations requiring Landlord's consent, Landlord shall have the right to approve Tenant's general contractor, and subcontractors relating to alterations affecting the structure and/or Building Systems, which approval shall not be unreasonably withheld, conditioned, or delayed; provided however that Landlord may disapprove Tenant's general contractor or applicable subcontractors only if Landlord has reason to believe that such general contractor is not qualified to do the applicable scope of work for the proposed alteration.

(c) If any alterations are to be performed by a subtenant that is not an Affiliate of Tenant, Landlord reserves the right to require additional reasonable requirements in connection therewith, such as additional information necessary to evaluate proposed contractors.

4.3 CONSTRUCTION LIENS. Tenant will have no authority or power, express or implied, to create or cause any construction lien or claim of any kind against the Premises or any portion thereof. Tenant will promptly cause any such liens or claims to be released by payment, bonding or otherwise within thirty (30) days after request by Landlord, and will indemnify Landlord against losses arising out of any such claim including, without limitation, legal fees and court costs. NOTICE IS HEREBY GIVEN THAT LANDLORD WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, OR MATERIAL FURNISHED OR TO BE FURNISHED TO TENANT, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER TENANT, AND THAT NO CONSTRUCTION OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES, OR MATERIALS WILL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE PREMISES. TENANT WILL DISCLOSE THE FOREGOING PROVISIONS TO ANY CONTRACTOR ENGAGED BY TENANT PROVIDING LABOR, SERVICES, OR MATERIAL TO THE PREMISES.

## 5. INSURANCE AND INDEMNITY.

5.1 TENANT'S INSURANCE. Tenant will throughout the Term (and any other period when Tenant is in possession of the Premises) carry and maintain, at its sole cost and expense, the following types of insurance, which shall provide coverage on an occurrence basis, with respect to the Premises, in the amounts specified and with such reasonable deductibles as would be carried by a prudent tenant of a similar building, having regard to size, age, and location and in the form hereinafter provided for:

5.1.1 Commercial General Liability Insurance. Commercial general liability insurance covering claims arising from bodily injury and property damage with a minimum limits of \$2,000,000.00 per occurrence and \$5,000,000.00 general aggregate and insuring against legal liability of the insured with respect to the Premises or arising out of the maintenance, use, or occupancy thereof. The commercial general liability insurance policy shall include coverage of contractual liabilities arising under this Lease pursuant to customary contractual liability endorsements.

5.1.2 Property Insurance. Special form property insurance on the Leasehold Improvements, all for full replacement cost thereof, adjusted annually.

5.1.3 Automobile Liability Insurance. If Tenant owns or leases vehicles for use in connection with the Premises, comprehensive automobile liability insurance with limits of not less than \$1,000,000.00 per occurrence for bodily injury, \$500,000.00 per person and \$100,000.00 property damage or a combined single limit of \$1,000,000.00 covering vehicles owned or leased by Tenant.

5.1.4 Excess Liability Insurance. Umbrella liability insurance with a limit of not less than \$20,000,000.00 per occurrence.

5.1.5 Business Interruption Insurance. Business interruption/extra expense coverage in sufficient amounts to cover twelve (12) months of Base Rent.

5.1.6 Workers' Compensation and Employees' Liability Insurance. Workers' Compensation Insurance covering all employees of Tenant, as required by the laws of the State of Florida and Employers' Liability coverage subject to a limit of no less than \$100,000.00 each employee, \$100,000.00 each accident, and \$1,000,000.00 policy limit.

If (a) Tenant fails to take out or to keep in force any insurance referred to in this Section, and (b) Tenant does not commence and continue to diligently cure such default within ten (10) business days after written notice by Landlord to Tenant specifying the nature of such default, then Landlord has the right, without assuming any obligation in connection therewith, to procure such insurance at the sole cost of Tenant, and all outlays by Landlord shall be paid by Tenant to Landlord without prejudice to any other rights or remedies of Landlord under this Lease. Tenant shall not keep or use in the Premises any article which may be customarily prohibited by any fire or casualty insurance policy in force from time to time covering the Premises.

With respect to the insurance coverages required of Tenant under this Lease, Tenant shall have the right to utilize a "blanket" or "umbrella" policy of insurance, provided that Tenant provides Landlord with satisfactory evidence that (i) Landlord and its managing agent are an additional insured under such blanket or umbrella policy, (ii) such blanket or umbrella policy expressly references the Premises, and (iii) such blanket or umbrella policy contains a guaranteed amount of insurance for the Premises, which guaranteed amount shall equal the amounts of coverage required under this Lease.

Tenant shall have the right to self insure any or all of its liabilities with respect to the Premises so long as Tenant's net worth exceeds \$150,000,000.00. As used in this Lease, "self insurance" shall mean that Tenant is itself acting as if though it were the insurance company providing the insurance required under the provisions of this Lease, and Tenant shall pay any amounts due in lieu of insurance proceeds which would have been payable if the insurance policies had been carried, which amounts shall be treated as insurance proceeds for all purposes under this Lease.

5.2 LANDLORD'S INSURANCE. During the Term, Landlord will, at Tenant's sole cost and expense, carry and maintain the following types of insurance with respect to the Premises in such amount or percentage of replacement value as required below or if not specified then as Landlord or its insurance advisor deems reasonable in relation to the age, location, type of construction and physical conditions of the Building and the availability of such insurance at

reasonable rates: (i) special form property insurance on the Base Building, for full replacement cost thereof, adjusted annually (excluding the Leasehold Improvements and any personal property of Tenant); and (ii) commercial general public liability and property damage insurance with respect to Landlord's operations in or on the Premises, in at least the same limits and coverages as required of Tenant above. Such insurance shall be in such reasonable amounts and with such reasonable deductibles as would be carried by a prudent owner of a similar building, having regard to size, age, and location (which deductibles shall be approved by Tenant, which approval shall not be unreasonably withheld). Tenant shall be named as an additional insured under Landlord's liability policies. Landlord shall have the right to self insure any or all of its liabilities with respect to the Premises so long as Landlord's net worth exceeds \$150,000,000.00.

With respect to the insurance coverages required of Landlord under this Lease, Landlord shall have the right to utilize a "blanket" or "umbrella" policy of insurance, provided that Landlord provides Tenant with satisfactory evidence that (i) Tenant is an additional insured under such blanket or umbrella policy, (ii) such blanket or umbrella policy expressly references the Premises, and (iii) such blanket or umbrella policy contains a guaranteed amount of insurance for the Premises, which guaranteed amount shall equal the amounts of coverage required under this Lease.

5.3 **TENANT'S CONTRACTORS' INSURANCE.** Tenant will cause all contractors performing alterations to carry and maintain the following types of insurance, which shall provide coverage on an occurrence basis, with respect to the Premises, in the amounts specified and with commercially reasonable deductibles and in the form hereinafter provided for:

5.3.1 **Commercial General Liability Insurance.** Commercial general liability insurance covering claims arising from bodily injury and property damage with a minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

5.3.2 **Automobile Liability Insurance.** Comprehensive automobile liability insurance with limits of not less than \$1,000,000.00 per occurrence for bodily injury, \$500,000.00 per person and \$100,000.00 property damage or a combined single limit of \$1,000,000.00 covering vehicles owned or leased by the contractor.

5.3.3 **Excess Liability Insurance.** Solely as to Tenant's general contractor in connection with alterations affecting the structure and/or the Building Systems, umbrella liability insurance with a limit of not less than \$5,000,000.00 per occurrence.

5.3.4 **Workers' Compensation and Employees' Liability Insurance.** Workers' Compensation Insurance covering all employees of the contractor, as required by the laws of the State of Florida and Employers' Liability coverage subject to a limit of no less than \$100,000.00 each employee, \$100,000.00 each accident, and \$1,000,000.00 policy limit.

5.4 **POLICY FORM.** All policies referred to in this Section 5, above shall: (i) be taken out with insurers licensed to do business in Florida having an A.M. Best's rating of A-, Class 8, or otherwise approved in advance by Landlord (in the case of insurance required to be carried by Tenant or its contractors) or by Tenant (in the case of insurance required to be carried by Landlord), which shall not be unreasonably withheld, delayed, or conditioned; (ii) name



Landlord and Landlord's property manager (if any) (in the case of insurance required to be carried by Tenant or its contractors) or Tenant (in the case of insurance required to be carried by Landlord) as additional insureds in connection with the general and excess liability policy only plus the property insurance policy as to the Leasehold Improvements; and (iii) be non-contributing. Insurance carried by Tenant and its contractors shall apply only as primary and not as excess to any other insurance available to Landlord or any mortgagee of Landlord, and shall contain an obligation of the insurers to notify the additional insureds by certified mail not less than thirty (30) days prior to any material change, cancellation, or termination of any such policy. Certificates of insurance on Acord Form 25-S (or equivalent form) on or before the Term Commencement Date and thereafter at times of renewal or changes in coverage or insurer shall be delivered to Landlord promptly upon request.

5.5 RELEASE AND WAIVER OF SUBROGATION RIGHTS. The parties hereto, for themselves and anyone claiming through or under them, hereby release and waive any and all rights of recovery, claim, action, or cause of action, against each other, their respective agents, directors, officers, and employees, for any property loss or property damage that may occur to the Premises or the Buildings, and to all property, whether real, personal or mixed, located in the Premises or the Buildings, by reason of any cause against which the releasing party is actually insured or, regardless of the releasing party's actual insurance coverage, against which the releasing party is required to be insured pursuant to the provisions of Sections 5.1 or 5.2. This mutual release and waiver shall apply regardless of the cause or origin of the property loss or damage, including negligence of the parties hereto, their respective agents and employees. Each party agrees to provide the other with reasonable evidence of its insurance carrier's consent to such waiver of subrogation upon request. This Section 5.5 supersedes any provision to the contrary which may be contained in this Lease, including, without limitation, Section 5.6.

5.6 INDEMNIFICATION OF THE PARTIES.

(a) Tenant hereby agrees to indemnify, defend, and hold harmless Landlord from and against any and all liability for any loss, injury or damage (excluding consequential damage), which shall include, without limitation, all costs, expenses, court costs, and reasonable attorneys' fees imposed on Landlord by any person whomsoever that occurs in or at or about the Premises, except to the extent any such loss, injury, or damage is (i) caused by or results from the negligence or willful misconduct of Landlord, its employees, agents, or contractors, or (ii) expressly Landlord's responsibility pursuant to Section 3.3, above, or (iii) a loss, injury or damage that is included in or covered by Tenant's indemnification obligations as set forth in Section 3.3(c), above. The commercial liability insurance that Tenant is required to carry pursuant to Section 5.1 of this Lease shall include coverage of the foregoing contractual indemnity, pursuant to customary contractual liability endorsements.

(b) Landlord hereby agrees to indemnify, defend, and hold harmless Tenant from and against any and all liability for any loss, injury or damage (excluding consequential damage), which shall include, without limitation, all costs, expenses, court costs, and reasonable attorneys' fees imposed on Tenant by any person whomsoever that occurs in or at or about the Premises, to the extent caused by or resulting from the negligence or willful misconduct of Landlord, its employees, agents, or contractors. The commercial liability insurance that Landlord is required

to carry pursuant to Section 5.2 of this Lease shall include coverage of the foregoing contractual indemnity, pursuant to customary contractual liability endorsements.

(c) The provisions of this Section shall survive the expiration of the Term or earlier termination of this Lease.

## 6. DAMAGE AND DESTRUCTION; CONDEMNATION.

### 6.1 DESTRUCTION OR DAMAGE TO PREMISES.

6.1.1 If the Premises are at any time damaged or destroyed in whole or in part by fire, casualty, or other causes and if this Lease is not terminated pursuant to Section 6.1.2, Landlord shall have thirty (30) days (the "Notice Period") from such damage or destruction to cause the Base Building Architect to determine and inform Tenant of the estimated time for repair and restoration and notify Tenant whether Landlord will restore the Base Building to substantially the condition which existed immediately prior to the occurrence of the casualty to the extent of Landlord's obligations under the Construction Addendum with respect to the Base Building. If the time estimated to restore does not exceed one (1) year from the end of the Notice Period, Landlord shall complete such repairs to the extent of insurance proceeds (but recognizing that Landlord is obligated to maintain full replacement cost coverage as to the Base Building) within one (1) year from the end of the Notice Period, subject to Excusable Delay (the "Repair Period"). If such repairs have not been completed within the Repair Period to the extent of Landlord's obligations under the Construction Addendum with respect to the Base Building, and Tenant desires to terminate this Lease as a result thereof, then Tenant must notify Landlord prior to Landlord's completion of the repairs of Tenant's intention to terminate this Lease. Landlord shall then have thirty (30) days after Landlord's receipt of written notice of Tenant's election to terminate to complete such repairs (as evidenced by a certificate of completion and Landlord otherwise achieving Substantial Completion of the Base Building). If Landlord does complete such repairs prior to the expiration of such thirty (30) day cure period, Tenant shall have no such right to terminate this Lease; provided, however this Lease shall be deemed terminated upon Landlord's failure to complete such repairs prior to expiration of the thirty (30) day period, whereupon the parties shall have no further obligations under this Lease (except that Tenant shall, within sixty (60) days from the date of termination, remove its personal property). In the event this Lease is not terminated, Tenant shall, upon Substantial Completion of the Base Building by Landlord, promptly and diligently, and at its sole cost and expense, repair and restore the Leasehold Improvements, and any improvements to the Premises made by Tenant, to the condition which existed immediately prior to the occurrence of the casualty to the extent of insurance proceeds (but recognizing that Tenant is obligated to maintain full replacement cost coverage as to the Leasehold Improvements). If, in the reasonable estimation of Base Building Architect as provided above, the Base Building cannot be restored within one (1) year of such damage or destruction and if this Lease is not terminated pursuant to Section 6.1.2, then either Landlord or Tenant may terminate this Lease as of a date specified in such notice, which date shall not be less than thirty (30) nor more than ninety (90) days after the date such notice is given. Until the restoration of the Base Building is complete, there shall be an abatement or reduction of Base Rent in the same proportion that the square footage of the Premises so damaged or destroyed and not reasonably capable of being used and occupied for the Permitted Use, bears to the total square footage of the Premises, unless the damaging event was caused by

the negligence (to the extent sufficient insurance proceeds are not received by Landlord in connection therewith) or willful misconduct of Tenant, its employees, officers, agents, licensees, invitees, assignees, subtenants, contractors or subcontractors, in which event there shall be no such abatement and Tenant shall restore such damage at Tenant's sole cost and expense.

6.1.2 If the Premises are destroyed or damaged during the last two (2) years of the Term, then in addition to the determination to be made by the Base Building Architect pursuant to Section 6.1.1, Landlord shall also cause the Base Building Architect to determine and inform Tenant within the Notice Period of the estimated cost of repair. If the estimated cost of repair of the Base Building exceeds ten (10%) percent of the annual Base Rent then remaining to be paid by Tenant for the balance of the Term, Landlord or Tenant may at its option terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after receipt of the Base Building Architect's determination, whereupon the parties shall have no further obligations under this Lease (except that Tenant shall, within sixty (60) days from the date of termination, remove its personal property). If neither party shall so elect to terminate this Lease, the repair of such damage shall be governed by other provisions of this Section. However, if Landlord shall exercise its right of termination pursuant to this Section 6.1.2 and at that time Tenant shall have a remaining Renewal Option pursuant to Rider Number 1 hereto, then Tenant may render Landlord's notice of termination null, void, and of no further force or effect, provided that Tenant, within twenty (20) days of receipt of the notice, shall exercise such Renewal Option.

## 6.2 CONDEMNATION.

6.2.1 Total or Partial Taking. If (i) the whole of the Premises or such portion thereof which would materially and adversely affect the continued operations of Tenant at the Premises; or (ii) any material portion of the parking area (including, without limitation, any material portion of a parking structure or facility) on the Property (provided Landlord does not make reasonable alternate parking arrangements for Tenant in lieu thereof), in Landlord's and/or Tenant's reasonable business judgment, shall be taken by any public authority under the power of eminent domain or sold to public authority under threat or in lieu of such taking, then either party may terminate this Lease and the Term shall cease as of the day possession or title shall be taken by such public authority, whichever is earlier ("Taking Date"), whereupon the Rent shall be paid up to the Taking Date with a refund by Landlord of any Rent paid for any period subsequent to the Taking Date. If less than the whole of the Premises, or less than such portion thereof as will make the Premises unusable as of the Taking Date (as set forth in subsections (i) and (ii) above), is taken, Base Rent and other charges payable to Landlord shall be reduced (x) in proportion to the amount of the Premises taken, if square footage of a Building is taken, or (y) in the proportion that the fair market value of the Premises taken bears to the total fair market value of the Premises prior to the Taking, as equitably determined by Landlord. If this Lease is not terminated, Landlord shall repair any damage to the Premises caused by the taking to the extent necessary to make the Premises reasonably tenantable within the limitations of the available compensation awarded for the taking (exclusive of any amount awarded for land) to the extent of Landlord's obligations under the Construction Addendum.

6.2.2 Award. All compensation awarded or paid upon a total or partial taking of the Premises or Buildings including the value of the leasehold estate created hereby shall belong to

and be the property of Landlord without any participation by Tenant; Tenant shall have no claim to any such award based on Tenant's leasehold interest. However, nothing contained herein shall be construed to preclude Tenant, at its cost, from independently prosecuting any claim directly against the condemning authority in such condemnation proceeding for damage to, or cost of removal of, stock, trade fixtures, furniture, and other personal property belonging to Tenant, Tenant's moving expenses and other relocation damages, and the unamortized cost of any improvements paid for by Tenant, including the Leasehold Improvements; provided, however, that no such claim shall diminish or otherwise adversely affect Landlord's award or the award of any mortgagee.

#### 7. MAINTENANCE AND REPAIRS; SERVICES.

7.1 LANDLORD'S OBLIGATIONS. Landlord at its sole expense shall keep the foundation, roof, floor slabs, exterior walls and ceiling slabs and other structural portions of the Buildings in good order, condition, and repair and the cost of such maintenance and repairs shall not be charged to Tenant as Additional Rent (except for (a) the cost of maintenance and repair of any structural alterations which were requested by Tenant in accordance with Section 4.2 (excluding any "Leasehold Improvements" (as defined in the Construction Addendum) made by or on behalf of Tenant, the maintenance and repair of which shall be performed and paid by Tenant), and (b) general maintenance and repairs to the roof (as opposed to replacement), which may be passed-through to Tenant as Additional Rent). Landlord shall not be obligated to make any repairs under this Section 7.1 until a reasonable time after receipt of a written notice (or, in the event of an emergency, telephonic or other reasonable notice) from Tenant specifying the need for such repairs although Landlord will use all diligent efforts to complete any such repairs within ten (10) business days after such notice. In addition, but subject nevertheless to any applicable waiver of subrogation and except to the extent paid for by insurance, Landlord shall, at Tenant's expense, repair any damage to the roof, foundation, or structural portions or walls of the Premises and Buildings caused by the negligence or willful misconduct of Tenant or its employees, officers, agents, licensees, invitees, assignees, subtenants, contractors, or subcontractors. Tenant shall pay Landlord a fee equal to five (5%) percent of the cost of such work to compensate Landlord for coordination and supervision of the integration of such work.

7.2 TENANT'S OBLIGATIONS. Subject to Tenant's obligation to comply with Section 4.2 hereof and subject to Landlord's warranty and other obligations set forth in the Construction Addendum, Tenant at its sole cost and expense shall keep the Building Systems, interior walls and ceilings, electric light fixtures, bulbs, tubes and tube casings, doors, finished floors and floor coverings, windows, floor and wall coverings, dock doors, loading ramps, levelers, plumbing fixtures, entrances, sidewalks, corridors, landscaping, parking areas and other facilities from time to time comprising the Premises (as well as Tenant's furniture, fixtures, equipment, and other personal property in or at the Premises), in good order, condition, and repair as befitting a comparable office building in Boca Raton. With respect to Building Systems other than plumbing and other de minimus services provided directly by Tenant and/or its facility manager, Tenant, at its expense, shall maintain in effect industry-standard maintenance agreements with licensed and insured companies. Landlord shall extend and assign (after the expiration of the Warranty Period (as defined in the Construction Addendum)) to Tenant the benefit from warranties on such items, if any, that have been made by Landlord's contractors or the manufacturer of such items. To the extent such warranties are not assignable, Landlord shall

upon request of Tenant use reasonable efforts to enforce same for the benefit of Tenant. Landlord shall obtain and assign to Tenant on the Term Commencement Date a manufacturer's warranty covering the HVAC equipment for at least one (1) year with respect to parts and labor and for at least five (5) years with respect to the compressor units. Tenant acknowledges and agrees that Landlord shall have no obligation to perform any maintenance, repair, replacement, or other structural or non-structural alterations in or to the Buildings or the Premises except as expressly set forth in Section 7.1 and in Sections 3.2, 6, and 11.5. Notwithstanding the foregoing, Landlord shall be responsible for the cost of any damage to the Premises caused by the negligence or willful misconduct of Landlord, its employees, agents, or contractors, but subject nevertheless to any applicable waiver of subrogation and except to the extent paid for by insurance.

Notwithstanding anything to the contrary contained herein, if Tenant fails to comply with its obligations under this Section 7.2 and such failure continues for a period of thirty (30) days after Tenant's receipt of written notice from Landlord, then in addition to Landlord's rights and remedies under Section 8.2 hereof, Landlord shall have the right, but not the obligation, to perform such maintenance, repair, and/or replacement, as may be necessary or required, as determined by Landlord in its sole but reasonable discretion, and Tenant shall reimburse to Landlord the costs and expenses incurred by Landlord in connection therewith within thirty (30) days after written demand by Landlord, together with reasonable supporting documentation therefor. Notwithstanding the foregoing, if the performance of such obligation by Tenant would reasonably require more than thirty (30) days to complete, Tenant shall have a reasonable time to perform in order to cure such default provided Tenant commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

7.3 CONDITION UPON TERMINATION. Upon the termination of this Lease, Tenant shall surrender the Premises to Landlord, broom clean and in the same condition as received except for reasonable wear and tear, casualty damage which Tenant is not required to repair, condemnation, Leasehold Improvements and alterations not required to be removed as specifically permitted hereunder, and conditions caused by Landlord's failure to repair as expressly required hereunder. Tenant shall repair, at Tenant's expense, any damage to the Premises or Buildings caused by Tenant's removal of any of Tenant's personal property, including but not limited to furniture, machinery, equipment and signage. In no event, however, shall Tenant remove any of the following materials or equipment without Landlord's prior written consent: any power wiring or power panels; lighting or lighting fixtures; millwork and cabinetry; wall coverings; drapes, blinds, or other window coverings; carpets or other floor coverings; base building heaters, air conditioners, or any other heating or air conditioning equipment (not to include supplemental hvac units installed by or for Tenant); fencing or security gates; plumbing fixtures, water fountains; or other similar building operating equipment.

## 8. DEFAULT AND REMEDIES.

8.1 DEFAULT BY TENANT. Each of the following will be an "Event of Default" by Tenant under this Lease:

(a) Failure to pay when due any installment of Rent or any other payment required pursuant to this Lease. Notwithstanding the foregoing, prior to such failure being deemed an

Event of Default, Landlord will provide Tenant with ten (10) days' written notice and opportunity to cure such failure; provided, however, that in no event shall Landlord be obligated to provide such written notice more than two (2) times in any twelve (12) month period (the foregoing shall not be deemed to be a waiver of any statutory notice requirements imposed upon Landlord in order to commence any eviction proceedings under Florida Statutes);

(b) The filing by or against Tenant of a petition for bankruptcy or insolvency under any applicable federal or state bankruptcy or insolvency law (unless, in the case of a petition filed against Tenant, such petition is not dismissed within seventy-five (75) days from the filing thereof); an adjudication of bankruptcy or insolvency or an admission that it cannot meet its financial obligations as they become due; or the appointment of a receiver or trustee for all or substantially all of the assets of Tenant;

(c) A transfer by Tenant in fraud of creditors or an assignment for the benefit of creditors;

(d) Any act which results in a lien being filed against the Premises and is not discharged as provided in Section 4.3;

(e) The liquidation, termination, or dissolution of Tenant, or if Tenant is a natural person, the death of Tenant; and;

(f) Failure to cure a breach of any non-monetary provision of this Lease within thirty (30) days after written notice thereof to Tenant; provided, however, that if such default reasonably requires more than thirty (30) days to cure, Tenant shall have a reasonable time to cure the default provided Tenant commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

8.2 REMEDIES. Upon the occurrence of any Event of Default by Tenant, Landlord shall be entitled to the following remedies to the extent permitted by Applicable Laws:

(a) Landlord may terminate this Lease and dispossess Tenant;

(b) Landlord may, without terminating or canceling this Lease, declare all Rent to be paid pursuant to this Lease for the remainder of the Term to be immediately due and payable, provided, however, that Landlord shall only have the right to accelerate the Rent due under this Lease if Tenant has failed to make at least two (2) month's consecutive Base Rent payments and Tenant fails to bring its account payment status current on or before the due date of its next Base Rent payment, and Landlord may only collect from Tenant an amount of accelerated Rent equal to the amount of Rent due for the lesser of: (i) the remainder of the Term; or (ii) a period of four (4) years following the date which Landlord makes its claim for accelerated Rent (it being understood that, if, following such four (4) year period (provided the Term has not so expired), Landlord shall have the continuing right to so accelerate for the foregoing time period(s) until the Term has so expired). Any claim by Landlord for accelerated Rent shall be in addition to, not in substitution for, any other claim for Rent which has accrued as of the date Landlord makes the claim for accelerated Rent and shall be discounted to present value as of the time of such acceleration on the basis of a four (4%) percent per annum discount from the respective dates that such amount should have been paid hereunder. Upon Landlord's acceleration of the Rent as

provided herein, and if Landlord shall have repossessed the Premises for the account of Tenant, Landlord shall thereafter use reasonable efforts to mitigate Landlord's damages hereunder with respect to the Premises. Notwithstanding anything contained herein to the contrary, in the event that Landlord re-lets the Premises for the remainder of the Term, then Landlord's damages shall be deemed to be the difference between the rent payable under the new lease for the remainder of the Term (after the deduction of all reletting expenses, including, without limitation, brokerage fees, free rental periods, attorneys' and paralegals' fees, build-out allowances, and all other reasonable costs of reletting) and the entire accelerated Rent due for the remainder of the Term, discounted to present value as provided above, which amount shall be immediately due and payable by Tenant as and for liquidated damages hereunder, whereupon, after the payment by Tenant to Landlord of such amount and all other amounts due under this Lease, then Tenant shall thereafter be released of all liability hereunder;

(c) Landlord may elect to repossess the Premises and to relet the Premises for Tenant's account, holding Tenant liable in damages for all expenses incurred in any such reletting and for any difference between the amount of Rent received from such reletting and the amount due and payable under the terms of this Lease; and

(d) Landlord may enter the Premises and take any actions required of Tenant under the terms of this Lease, and Tenant shall reimburse Landlord on demand for any reasonable expenses that Landlord may incur in effecting compliance with Tenant's obligations under this Lease, and Landlord shall not be liable for any damages resulting to Tenant from such action, so long as Landlord acts reasonably.

The above remedies shall be cumulative and shall not preclude Landlord from pursuing any other remedies permitted by law or in equity. Landlord's election not to enforce one or more of the remedies upon an Event of Default shall not constitute a waiver.

### 8.3 COSTS.

(a) Tenant shall pay to Landlord on demand all reasonable costs incurred by Landlord, including reasonable attorneys' fees and costs (whether or not suit is actually brought or whether incurred in preparation for or at trial, on appeal, or in bankruptcy), incurred by Landlord in enforcing any of the obligations of Tenant under this Lease. In addition, upon any Event of Default by Tenant, Tenant shall also be liable to Landlord for the expenses to which Landlord may be put in re-entering the Premises, reletting the Premises, and putting the Premises into the condition necessary for such reletting (including reasonable attorneys' fees and disbursements, marshall's fees, and brokerage fees, in so doing), and any other expenses reasonably incurred by Landlord.

(b) Landlord shall pay to Tenant on demand all reasonable costs incurred by Tenant, including reasonable attorneys' fees and costs (whether or not suit is actually brought or whether incurred in preparation for or at trial, on appeal, or in bankruptcy), incurred by Tenant in enforcing any of the obligations of Landlord under this Lease.

(c) Notwithstanding the foregoing or anything to the contrary contained in this Lease, in the event of any litigation between Landlord and Tenant arising out of this Lease or Tenant's

use and occupancy of the Premises, the prevailing party shall be entitled to recover its costs and expenses incurred in such litigation, including reasonable attorneys' fees (whether or not suit is actually brought or whether incurred in preparation for or at trial, on appeal, or in bankruptcy).

8.4 **WAIVER.** No delay or omission by Landlord or Tenant in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default.

8.5 **DEFAULT BY LANDLORD.** In the event of any default by Landlord, Tenant shall have all remedies available at law or in equity, but prior to any exercise of any remedy, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall have a period of thirty (30) days following the date of such notice in which to cure such default; provided, however, that if such default reasonably requires more than thirty (30) days to cure, Landlord shall have a reasonable time to cure the default provided Landlord commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Unless and until Landlord fails to cure such default in accordance with the foregoing sentence, Tenant shall not have any remedy or cause of action by reason thereof. Notwithstanding anything contained herein to the contrary, Tenant's remedies hereunder shall not include termination unless Landlord's default (after the expiration of the foregoing notice and cure period) results in a construction eviction pursuant to and in accordance with the requirements of Florida law.

In addition, if there is an interruption in an essential Building service (such as elevators, electricity, or HVAC), and such interruption (i) is caused by the negligence or willful misconduct of Landlord, its agents, employees, or contractors, and (ii) renders all or any portion of the Premises untenantable, and (iii) continues for a period of seven (7) consecutive days after Landlord's receipt of written notice from Tenant, then so long as the correction of the problem is within Landlord's reasonable control, Tenant shall be entitled to an abatement of Base Rent for each day that the Premises are untenantable with respect to the portion of the Premises that is untenantable (provided, however that so long as one (1) passenger or freight elevator servicing each Building is in working condition, then the Premises shall not be deemed to be untenantable as regarding access in connection herewith).

8.6 **NO PERSONAL LIABILITY OF LANDLORD.** Notwithstanding any provision of this Lease, Landlord shall not at any time have any personal liability under this Lease. In the event of any breach or default by Landlord of any term or provision of this Lease, Tenant agrees to look solely to the equity or interest then-owned by Landlord in the Premises, and in no event shall any deficiency judgment be sought or obtained against Landlord. Notwithstanding the foregoing, if Tenant has received a final, non-appealable judgment for damages against Landlord as a result of an uncured default by Landlord under this Lease, and, despite Tenant's use of all reasonable efforts to levy against Landlord's interest in the Premises, such judgment has nonetheless not been satisfied within sixty (60) days after the date that the judgment became final and non-appealable, then Tenant shall have the right to deduct the unpaid amount of such judgment against the Base Rent to become due under this Lease (plus interest as set forth in the judgment), until fully credited.

8.7 **TENANT'S RIGHT TO CURE.** Notwithstanding anything to the contrary contained in this Section, if Landlord is in default of the terms and conditions of this Lease



(including a breach of a representation) beyond any applicable cure or grace period (except that, in the event of a bona fide emergency, Tenant is only required to give Landlord reasonable notice under the circumstances), Tenant may cure such default and thereafter Landlord shall reimburse Tenant for all reasonable costs and expenses incurred by Tenant which shall be payable as a cash payment within thirty (30) days after written demand by Tenant. If Landlord fails to pay such costs and expenses within such thirty (30) day period, Tenant may send a reminder notice to Landlord, and if Landlord fails to pay within five (5) business days after receipt of the reminder notice, then Tenant may deduct such costs and expenses from the installment(s) of Base Rent next coming due (plus interest at the Default Interest Rate), until fully credited.

8.8 CONSEQUENTIAL DAMAGES. Under no circumstances will either party to this Lease be entitled to seek or recover special, indirect, consequential, or punitive damages, or lost profits, on account of default or breach hereunder.

#### 9. PROTECTION OF LENDERS.

9.1 SUBORDINATION AND ATTORNMENT. Provided that the holder of any mortgage encumbering the Premises or any ground or underlying lease delivers to Tenant a Subordination, Non-Disturbance, and Attornment Agreement (“SNDA”) as described below, this Lease shall be subject and subordinate at all times to the terms of such ground or underlying lease which now exists or may hereafter be executed affecting the Premises under which Landlord shall claim, and to the liens of such mortgage in any amount or amounts whatsoever now or hereafter existing encumbering the Premises, and to all modifications, renewals, and replacements thereto. If Landlord’s interest in the Premises is acquired by any ground lessor, mortgagee, or purchaser at a foreclosure sale or transfer in lieu thereof, Tenant shall attorn to the transferee of or successor to Landlord’s interest in the Premises and recognize such transferee or successor as Landlord under this Lease in accordance with the applicable SNDA. Notwithstanding the foregoing, any mortgagee under any mortgage shall have the right at any time to subordinate any such mortgage to this Lease on such terms and subject to such conditions as the mortgagee in its discretion may consider appropriate.

Landlord represents and warrants to Tenant that, as of the Effective Date of this Lease, no mortgages or ground leases encumber Landlord’s title to the Property.

Any subordination of this Lease to a mortgage or any ground lease shall be conditioned on Tenant obtaining a SNDA from each and every mortgagee and ground lessor, such SNDA to be in form and content reasonably acceptable to Tenant and the applicable mortgagee and ground lessor. Tenant agrees that an acceptable form of SNDA is attached hereto and made a part hereof as Exhibit “G.” Such form is not intended to be the only form that would be acceptable to Tenant and/or deemed to be reasonable. Any such SNDA will include a provision to the effect that casualty and condemnation proceeds will be utilized to the extent required in this Lease and not to pay down the applicable loan to Landlord or for any other purpose, provided that (i) at the time that Landlord delivers the applicable SNDA to Tenant: (x) Tenant’s net worth exceeds \$150,000,000.00; and (y) no Event of Default is then-continuing, and (ii) at the time of the casualty or condemnation, no Event of Default is then-continuing.

9.2 ESTOPPEL CERTIFICATES. Within fifteen (15) days of receipt of a written request from Landlord, any lender or prospective lender of the Premises, Tenant shall deliver an estoppel certificate, attaching a true and complete copy of this Lease, including all amendments relative thereto, and certifying with particularity, among other things, (i) a description of any renewal or expansion options, if any; (ii) the amount of Rent currently and actually paid by Tenant under this Lease; (iii) that this Lease is in full force and effect as modified; (iv) whether Tenant is in possession of the Premises; (v) stating whether Tenant or, to the best of Tenant's actual knowledge as of the date of execution of the estoppel certificate, Landlord, is in default under this Lease and, if so, summarizing such default(s); and (vi) stating whether Tenant or, to the best of Tenant's actual knowledge as of the date of execution of the estoppel certificate, Tenant has any offsets or claims against Landlord and, if so, specifying with particularity the nature and amount of such offset or claim. Landlord shall deliver a similar estoppel certificate within fifteen (15) days of receipt of a written request from Tenant, any lender or prospective lender of Tenant or any permitted assignee or permitted subtenant of Tenant.

### 9.3 TENANT'S FINANCIAL CONDITION.

(a) Within sixty (60) days after the end of each fiscal year, Tenant shall deliver to Landlord a copy of Tenant's audited financial statements for Tenant's most recently completed fiscal year, prepared by independent certified public accountants in accordance with generally accepted accounting principles. The foregoing financial statements may also be required by Landlord from any proposed assignee of Tenant, or from any proposed subtenant which will occupy more than 25,000 square feet of the Premises. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement in all material respects as of the date of such statement and the same shall be similarly certified by the proposed assignee or subtenant, as applicable. All financial statements shall be confidential and shall be used only for the purposes set forth herein. Tenant or a proposed assignee of Tenant, or subtenant which will occupy more than 25,000 square feet of the Premises shall not have any obligation to furnish the financial statements set forth above in the event that the applicable party that would otherwise be required to furnish such financial statements is a publicly traded company on a stock exchange which is subject to regulation by the Securities and Exchange Commission and is current in all required filings. If the financial statements to be provided herein are from a subsidiary, having a parent as a publicly traded entity, then the financial statements that are delivered hereunder may be prepared on a consolidated basis with the parent entity, so long as financial statements from the subsidiary are not otherwise available and are prepared on a consolidating basis.

(b) If at any time during the Term Tenant does not have a long-term credit rating of both (i) Baa3 or higher by Moody's Investors Service ("Moody's") (or its equivalent, if Moody's revises its credit ratings), and (ii) BBB- or higher by Standard & Poor's Rating Group ("Standard & Poor's") (or its equivalent, if Standard & Poor's revises its credit ratings), then Tenant shall deliver, or cause to be delivered to Landlord, a security deposit in the amount of four (4) months of Base Rent at the monthly Base Rent payable for the first year of the Term. The security deposit shall, at Tenant's sole option, either be (i) a cash deposit to be held in escrow by a third party escrow agent pursuant to an escrow agreement reasonably acceptable to the parties, or (ii) in the form of a Letter of Credit, which Letter of Credit shall be in a form reasonably acceptable to Landlord.

## 10. TELECOMMUNICATIONS.

(a) Tenant acknowledges and agrees that all telephone and telecommunications services desired by Tenant shall be ordered and utilized at the sole expense and discretion of Tenant. Tenant's telecommunications equipment, wires, conduit, and cabling (collectively, "Tenant's Telecommunications Equipment") shall be installed and operated in accordance with Applicable Laws (including, without limitation, those of the Federal Communications Commission ("FCC"), the Occupational Safety and Health Administration ("OSHA"), and the Federal Aviation Administration ("FAA")), and Tenant, at its expense, shall obtain all permits, licenses, variances, authorizations, and approvals that may be required in order to install and operate Tenant's Telecommunications Equipment. Landlord shall have no responsibility for the maintenance of Tenant's Telecommunications Equipment or for any infrastructure to which Tenant's Telecommunications Equipment may be connected. Tenant agrees that, to the extent any such service is interrupted, curtailed, or discontinued from any cause whatsoever, except to the extent caused by the negligence or willful misconduct of Landlord or its agents, employees, or contractors, Landlord shall have no obligation or liability with respect thereto and it shall be the sole obligation of Tenant at its expense to obtain substitute service.

(b) Any and all Tenant's Telecommunications Equipment installed in the Buildings by or on behalf of Tenant shall be removed prior to the expiration or earlier termination of the Term, by Tenant at its sole cost. Landlord and Tenant shall have the right to agree, however, prior to the expiration or earlier termination of the Term, for Tenant to abandon and leave in place, without additional payment to Tenant or credit against Base Rent or Additional Rent, any and all Tenant's Telecommunications Equipment and related infrastructure, or selected components thereof.

(c) Notwithstanding anything contained in this Lease to the contrary, Tenant shall have the exclusive right to install, maintain, and remove on the roofs of the Buildings satellite dishes or other similar devices, such as antennae, for the purpose of receiving and sending radio, television, computer, telephone, or other communication signals (and including the installation of all necessary cables, wires, and transformers), together with the right to the use of the conduits, pipes, risers, and shafts within the Buildings for the installation of cables, wiring, and other equipment therein in connection with the operation of all such devices (the foregoing facilities that are installed by or on behalf of Tenant are hereby called the "Tenant's Rooftop Communications Equipment," which shall be deemed to include such similar equipment to be installed by any sublessee, provided, however, that, in no event may Landlord or Tenant allow any third parties (e.g., subtenants and licensees) to utilize the roof of the Buildings for the installation, maintenance, and operation of Tenant's Rooftop Communication Equipment or other similar equipment, other than bona fide subtenants not primarily engaged in the business of telecommunications and occupying all or a portion of the interior of the Premises pursuant to a permitted sublease or a sublease which has been approved by Landlord (and which sublease shall expressly include the right to install Tenant's Rooftop Communication Equipment or similar equipment), subject to Tenant's obligation to comply with all Applicable Laws and the Declaration with respect to the installation, maintenance, and operation of Tenant's Rooftop Communication Equipment or such other similar equipment. Tenant shall advise Landlord at least ten (10) business days in advance of the planned installation of Tenant's Rooftop

Communications Equipment, and if required by Landlord, such installation shall be done by the roofing company which provides the roof warranty for the Buildings and in such a manner so as to not invalidate such warranty. Except to the extent caused by (i) the roofing company installing Tenant's Rooftop Communications Equipment if required by Landlord, and/or (ii) Landlord, its agents, or employees, Tenant shall be responsible for any damage to the Buildings caused by installing or maintaining Tenant's Rooftop Communications Equipment. At the expiration or earlier termination of this Lease, Tenant, at its expense, shall remove Tenant's Rooftop Communications Equipment; provided, however, Landlord and Tenant shall have the right to agree, prior to the expiration or earlier termination of the Term, for Tenant to abandon and leave in place, without additional payment to Tenant or credit against Base Rent or Additional Rent, any and all Tenant's Rooftop Communications Equipment and related components thereof. Any work required to restore the roof or any other part of the Buildings or Property from any damage occasioned by the installation, maintenance, or removal of Tenant's Rooftop Communications Equipment shall be borne by Tenant. The installation, maintenance, and removal of Tenant's Communications Equipment shall be subject to the obligations imposed upon Tenant in this Lease with respect to Tenant's use and occupancy of the Premises; provided, however, that there shall be no additional consideration due from Tenant with respect to the rights granted to Tenant pursuant to this Section.

(d) Notwithstanding anything herein to the contrary, Landlord shall have no right to install, maintain, and operate telecommunications equipment in the Buildings (including the rooftops thereof), without Tenant's prior written consent, which consent may be withheld in Tenant's sole and absolute discretion.

#### 11. MISCELLANEOUS PROVISIONS.

11.1 LANDLORD'S LIABILITY; CERTAIN DUTIES. As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Premises or the leasehold estate under a ground lease of the Premises at the time in question. Each landlord is obligated to perform the obligations of Landlord under this Lease only during the time such landlord owns such interest or title. Any landlord who transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer, provided that the transferee expressly assumes, in writing, all obligations of Landlord arising from and after the date of transfer. However, each landlord shall deliver to its transferee all funds previously paid by Tenant, if such funds have not yet been applied under the terms of this Lease.

11.2 INTERPRETATION. The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine, and neuter genders shall each include the other. This Lease will not be construed more or less favorably with respect to either party as a consequence of this Lease or various provisions hereof having been drafted by one of the parties hereto.

11.3 INCORPORATION OF PRIOR AGREEMENTS; MODIFICATIONS. This Lease is the only agreement between the parties pertaining to the lease of the Premises and no

other agreements either oral or otherwise (including, without limitation, all prior agreements, proposals, letters of intent and understandings), are effective and all are merged into the terms and provisions of this Lease, unless otherwise expressly set forth herein. Without limiting the generality of the foregoing, that certain Development Agreement dated October 30, 2006 between Tenant and Boca 11 B LLC, Boca 11 C & D, and Boca 11 E & F LLC (affiliates of Landlord) is terminated and of no further force or effect. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

11.4 NOTICES. Any payment, notice, or document required or permitted to be delivered by the terms of this Lease shall be delivered by overnight delivery service or sent by certified mail, return receipt requested, addressed as follows:

Landlord's address  
for notices:

Boca 54 North LLC  
c/o Codina Development Corporation  
355 Alhambra Circle, Suite 900  
Coral Gables, Florida 33134  
Attention: Jose Hevia, President

with copies to:

Codina Group, Inc.  
355 Alhambra Circle, Suite 900  
Coral Gables, Florida 33134  
Attention: Kolleen O.P. Cobb, General Counsel

and  
Boca 54 North LLC  
c/o Teachers Insurance and Annuity  
Association of America  
730 Third Avenue  
New York, NY 10017  
Attention: Harry St. Clair, Director

and  
Boca 54 North LLC  
c/o Teachers Insurance and Annuity  
Association of America  
8500 Andrew Carnegie Boulevard  
Charlotte, North Carolina 28262  
Mail Stop: C3-08  
Attention: Suman Gera

and  
Akerman Senterfitt  
One Southeast Third Avenue, 28th Floor  
Miami, Florida 33131  
Attention: Ronald A. Kriss, Esq.

Landlord's address  
for Rent payments:

c/o Codina Development Corporation  
355 Alhambra Circle, Suite 900  
Coral Gables, Florida 33134  
Attention: Accounting (Boca 54/Office Depot)

Tenant's address  
for notices prior  
to occupancy:

Office Depot, Inc.  
2200 Old Germantown Road  
Delray Beach, Florida 33445  
Attention: David C. Fannin, Executive Vice  
President and General Counsel

with copies to:

Office Depot, Inc.  
2200 Old Germantown Road  
Delray Beach, Florida 33445  
Attention: Stephen R. Calkins, Senior Managing Counsel

and

Proskauer Rose LLP  
2255 Glades Road, Suite 340 West  
Boca Raton, Florida 33431  
Attention: Christopher C. Wheeler, Esq.

Notices to Tenant shall be delivered to the address above until Tenant occupies the Premises for the conduct of business operations, after which the address of the Premises shall be Tenant's address for notice purposes. All notices shall be effective upon delivery or refusal of delivery. Either party may change its notice address upon written notice to the other party, given in accordance herewith by an authorized officer, partner, or principal.

11.5 STATUTORY RADON GAS NOTICE; INDOOR AIR QUALITY.

11.5.1 Radon Gas Notice. Section 404.056, Florida Statutes, requires the following notice to be provided with respect to the contract for sale and purchase of any building, or a rental agreement for any building: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

11.5.2 Indoor Air Quality.

(a) Except for conditions resulting from Landlord's defective construction (which for purposes of this Section is deemed to include Landlord's failure to construct the Base Building in accordance with the Base Building Plans or the Leasehold Improvements in accordance with the Leasehold Improvement Plans (as such terms are defined in the Construction Addendum),

including performance criteria for Building Systems as expressly set forth in the Base Building Plans), Tenant shall be solely responsible to ensure that the air quality of the interior of the Buildings will be suitable for the safe and healthy occupancy of Tenant, its employees, agents, contractors, invitees, and visitors. Tenant shall have the right to perform its own air quality testing in the interior of each Building.

(b) Except for conditions resulting from Landlord's defective construction, Tenant, at its sole cost and expense, shall: (i) maintain, operate, and repair the heating, ventilating, and air conditioning system(s) serving each Building in accordance with the manufacturer's specifications and recognized industry standards for such equipment; and (ii) maintain the humidity level and the air exchange rate within the interior of the Buildings at a level recommended by Applicable Laws and recognized industry standards.

(c) If all or any part of the Premises requires repairs or replacements as a result of Tenant's failure to maintain indoor air quality as provided in subsection (b) above, then the work required to remedy the situation will be performed by Tenant, at its sole cost and expense (except if resulting from Landlord's defective construction). Landlord shall have no liability to Tenant or any of its employees, officers, agents, licensees, invitees, assignees, subtenants, contractors, or subcontractors or any other occupant of any of the Buildings with respect to any air quality issues and/or related claims (except if resulting from Landlord's defective construction).

(d) Notwithstanding anything to the contrary contained herein, if Tenant fails to comply with its obligations under this Section 11.5 and such failure continues for a period of thirty (30) days after Tenant's receipt of written notice from Landlord, then in addition to Landlord's rights and remedies under Section 8.2 hereof, Landlord shall have the right, but not the obligation, to perform such remedial actions as may be necessary or required, as determined by Landlord in its sole but reasonable discretion, and Tenant shall reimburse to Landlord the costs and expenses incurred by Landlord in connection therewith within thirty (30) days after written demand by Landlord, together with reasonable supporting documentation therefor. Notwithstanding the foregoing, if the performance of such obligation by Tenant would reasonably require more than thirty (30) days to complete, Tenant shall have a reasonable time to perform in order to cure such default provided Tenant commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

11.6 WAIVERS. All waivers must be in writing and signed by the waiving party. Landlord's or Tenant's failure to enforce any provision of this Lease, or Landlord's acceptance of Rent, shall not be a waiver and shall not prevent Landlord or Tenant, as applicable, from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord unless otherwise agreed to in writing by Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement unless otherwise agreed to in writing by Landlord.

11.7 NO RECORDATION. Neither party shall record this Lease. However, simultaneously with the execution of this Lease, the parties shall execute in recordable form a Memorandum of Lease in the form attached hereto and made a part hereof as Exhibit "E" and Landlord shall, at its expense, record such Memorandum in the Public Records of Palm Beach

County, Florida. The Memorandum of Lease will not include a legal description of the Golf Course Parcel. Upon Landlord's acquisition of the Golf Course Parcel, the parties shall execute an amendment to the Memorandum of Lease in recordable form and Landlord shall, at its expense, record such amendment in the Public Records of Palm Beach County, Florida. If Contingency Plan No. 2 (as such term is defined in Section 11.33) is implemented, then as part of the amendment to this Lease in connection therewith as described in Section 11.33, the parties shall execute a termination of the recorded Memorandum of Lease and execute a new Memorandum of Lease, and Landlord shall, at its expense, promptly record such termination and new Memorandum in the Public Records of Palm Beach County, Florida. Because Tenant has the right to terminate this Lease pursuant to Section 11.33, simultaneously with the execution of this Lease, the parties shall execute in recordable form a Termination of Memorandum of Lease and deliver the original thereof in escrow to Akerman Senterfitt (Landlord's attorneys). If Tenant elects to terminate this Lease pursuant to Section 11.33, then upon Landlord's receipt of Tenant's termination notice, Landlord is authorized (without further agreement or instrument or instruction) to cause the escrow agent to record such Termination of Memorandum of Lease in the Public Records of Palm Beach County, Florida. Upon the recordation of the amendment to the Memorandum of Lease following Landlord's acquisition of the Golf Course Parcel, or upon the recordation of a termination of the recorded Memorandum of Lease and recording of a new Memorandum of Lease in connection with Contingency Plan No. 2, then unless otherwise instructed in writing jointly by the parties, escrow agent shall destroy the Termination of Memorandum of Lease being held in escrow. The escrow agent's duties are purely ministerial, and escrow agent shall not be liable to the parties hereto for any matter or thing arising out of the performance by escrow agent of its obligations hereunder, except for gross negligence or willful misfeasance. Escrow agent has served as counsel to Landlord in connection with the Lease, and in the event of any dispute between the parties, escrow agent may continue to act as counsel to Landlord.

11.8 PARTIAL INVALIDITY. If any provision of this Lease is held or rendered illegal or unenforceable, it shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in force and bind the parties as though the illegal or unenforceable provision had never been included in this Lease.

11.9 FORCE MAJEURE. The performance by either party to this Lease of its obligations (except the payment of Rent or other sums of money) shall be excused by delays attributable to events beyond that party's reasonable control for a period of time that is sufficient for the party to perform its obligations after the cessation of the Force Majeure event acting in a diligent, commercially reasonable manner. Events beyond a party's control include, but are not limited to, acts of the other party, acts of nature, war, terrorism, government regulation or restriction in the nature of a moratorium, act of the public enemy, industry-wide inability to secure materials through ordinary sources by reason of unforeseeable shortages or governmental order, earthquake, tropical storm, hurricane, tornado, civil commotion, labor disputes, strikes, fire, flood or other casualty, failure of power, shortages of labor or material, government regulation or restriction (including extraordinary delay in the issuance of any permit), and inclement weather conditions (such events shall individually and collectively be referred to herein as "Force Majeure"). Events beyond a party's control shall not include changes in economic or market conditions, or financial or internal problems of the non-performing party, or ordinary weather conditions. For purposes of this Section, "inclement weather conditions" shall



mean and refer to inclement weather that exceeds the normally expected inclement weather in the area of the Premises based on a 15-year moving average of climate data maintained by the National Atmospheric and Oceanic Administration. A day shall only be considered lost due to inclement weather if (a) precipitation exceeds 1/10th inch in any 24-hour period, or (b) the high temperature for the day is less than 30 degrees F, or (c) the high temperature for the day exceeds 100 degrees F, or (c) the area in which the Premises is located is under a tropical storm or hurricane warning or has been affected by a tropical storm or hurricane warning (regardless of the actual amount of rainfall). Should a party encounter more lost days in a month due to inclement weather than predicted by the monthly moving average, the party shall promptly prepare and submit to the other party a notice of extension of the time to complete its obligations under this Lease after the cessation of the inclement weather conditions. Such party's notice shall include reasonable documentation (i) supporting such party's position that it encountered greater than average inclement weather for the month, and (ii) that the inclement weather affected such party's ability to complete its obligations to perform in accordance with the terms of this Lease. This Section 11.9 shall not apply to the Construction Addendum.

11.10 EFFECTIVENESS. Submission or preparation of this Lease by Landlord shall not constitute an offer by Landlord or option for the Premises, and this Lease shall constitute an offer, acceptance, or contract only as expressly specified by the terms of this Section. If Tenant executes this Lease first, such action shall constitute an offer to Landlord, which may be accepted by Landlord by executing this Lease within ten (10) business days after Landlord's receipt, and once this Lease is so executed by Landlord and an original is received by Tenant, such offer may not be revoked by Tenant and this Lease is then a binding contract. If Landlord executes this Lease first, such action shall constitute an offer to Tenant, which may be accepted by Tenant only by delivery to Landlord of a fully executed original of this Lease within ten (10) business days after receipt thereof, provided that if any party makes any material or minor alteration of any nature whatsoever to any of said documents, then such action shall merely constitute a counteroffer, which the other party may, at its election, accept or reject. Notwithstanding that the Term Commencement Date may occur and the Term and Rent payments may commence after the date of execution of this Lease, upon delivery and acceptance of this Lease in accordance with the terms of this Lease, this Lease shall be fully effective, and in full force and effect and valid and binding against the parties in accordance with, but on and subject to, the terms and conditions of this Lease. Terms used throughout this Lease referring to the date that this Lease has been executed or computing a date after or otherwise referring to the execution of this Lease, shall be deemed to mean a date that this Lease becomes effective pursuant to the provisions of this Section.

11.11 AUTHORITY.

(a) As a material inducement to Landlord to enter into this Lease, Tenant (and, individually each party executing this Lease on behalf of Tenant), intending that Landlord rely thereon, represents and warrants to Landlord that:

(i) Tenant and the party or parties executing on behalf of Tenant are fully and properly authorized to execute and enter into this Lease on behalf of Tenant and to deliver this Lease to Landlord;

(ii) This Lease constitutes a valid and binding obligation of Tenant, enforceable against Tenant in accordance with the terms of this Lease;

(iii) Tenant is duly organized, validly existing and in good standing under the laws of the state of Tenant's organization and has full power and authority to enter into this Lease, to perform Tenant's obligations under this Lease in accordance with the terms of this Lease, and to transact business in the state in which the Premises are located; and

(iv) The execution of this Lease by the individual or individuals executing this Lease on behalf of Tenant, and the performance by Tenant of Tenant's obligation under this Lease, have been duly authorized and approved by all necessary corporate action, and the execution, delivery, and performance of this Lease by Tenant is not in conflict with Tenant's bylaws or articles of incorporation, and other charters, agreements, rules or regulations governing Tenant's business as any of the foregoing may have been supplemented or amended in any manner.

In connection with the foregoing, simultaneously upon execution of this Lease, Tenant shall deliver to Landlord a Certificate executed by the secretary or assistant secretary of Tenant which certifies that Tenant has received all necessary corporate approvals to enter into and perform this Lease and to perform Tenant's obligations hereunder and contains an incumbency certificate for the person authorized to sign on behalf of Tenant.

(b) As a material inducement to Tenant to enter into this Lease, Landlord (and, individually each party executing this Lease on behalf of Landlord), intending that Tenant rely thereon, represents and warrants to Tenant that:

(i) Landlord and the party or parties executing on behalf of Landlord are fully and properly authorized to execute and enter into this Lease on behalf of Landlord and to deliver this Lease to Tenant;

(ii) This Lease constitutes a valid and binding obligation of Landlord, enforceable against Landlord in accordance with the terms of this Lease;

(iii) Landlord is duly organized, validly existing and in good standing under the laws of the state of Landlord's organization and has full power and authority to enter into this Lease, to perform Landlord's obligations under this Lease in accordance with the terms of this Lease, and to transact business in the state in which the Premises are located; and

(iv) The execution of this Lease by the individual or individuals executing this Lease on behalf of Landlord, and the performance by Landlord of Landlord's obligation under this Lease, have been duly authorized and approved by all necessary company action, and the execution, delivery, and performance of this Lease by Landlord is not in conflict with Landlord's bylaws or articles of organization, and other charters, agreements, rules or regulations governing Landlord's business as any of the foregoing may have been supplemented or amended in any manner.

In connection with the foregoing, simultaneously upon execution of this Lease, Landlord shall deliver to Tenant a Certificate executed by the secretary or assistant secretary of Landlord

which certifies that Landlord has received all necessary company approvals to enter into and perform this Lease and to perform Landlord's obligations hereunder and contains an incumbency certificate for the person authorized to sign on behalf of Landlord.

**11.12 FLORIDA LAW; DISPUTES.**

(a) This Lease shall be governed by the laws of the State of Florida, without regard to conflict of laws principles. In the event the parties are unable to resolve any dispute or claim to a satisfactory resolution as provided in subparagraph (b), below, the parties agree that the exclusive jurisdiction to hear and determine any claims or disputes between the parties arising out of or related to this Lease shall be in a state or federal court located in Palm Beach County, Florida. The parties expressly submit and consent in advance to such jurisdiction in any action or suit commenced in such courts, and each party hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens. In any such proceedings, trial by jury is waived as provided in Section 11.32, below.

(b) Each party commits that in the event a dispute should arise under this Lease or relating in any manner hereto (including, without limitation, a dispute under the Construction Addendum), the parties shall first endeavor to resolve their dispute by good faith negotiations between or among the parties. If the parties are unable to resolve their dispute within ten (10) business days (the "Dispute Negotiation Period"), then the matter shall be reviewed by a senior level executive of each party (in the case of Tenant, by a Vice President or higher). If these senior officers are unable to resolve the matter within ten (10) business days after the Dispute Negotiation Period (the "Senior Level Review Period"), then, prior to any litigation being filed, the parties agree to attempt to mediate their dispute for a period of thirty (30) days following the end of the Senior Level Review Period (the "Mediation Period"), using a third party mediator who is neutral and independent of the parties to this Lease (the "Mediator"), such Mediator to be jointly selected by Landlord and Tenant within seven (7) business days after the end of the Senior Level Review Period. If the parties cannot agree on the Mediator within such time period, then within five (5) days thereafter, each party shall select an independent mediator, and those two mediators shall (within five (5) days) select the Mediator. Such mediation shall be conducted in Palm Beach County, Florida. All mediation proceedings shall be confidential, and no information exchanged in such mediation shall be discoverable or admissible in any litigation involving the parties.

(c) If a party determines that a dispute presents such party with an extraordinary situation that requires it to seek emergency equitable relief prior to the end of the Mediation Period, it may seek emergency relief through formal legal proceedings.

**11.13 COUNTERPARTS.** This Lease may be executed in multiple counterparts, each counterpart of which shall be deemed an original and all of which together shall constitute one and the same instrument. If requested, the parties agree to follow-up counterpart execution with signature pages signed by both parties.

**11.14 HOLDING OVER.** If Tenant remains in possession after the end of the Term without Landlord's consent and without having executed and delivered a new lease or an agreement extending the Term, there shall be no tacit renewal of this Lease or the Term, and

Tenant shall be deemed to be occupying the Premises from month to month at a monthly Rent payable in advance on the first day of each month equal to 150% (for the first sixty (60) days) and 200% (for each month thereafter) of the monthly amount of Rent payable during the last month of the Term, and otherwise upon the same terms as set forth in this Lease, so far as they are applicable to a monthly tenancy. The provisions of this Section shall survive the expiration of the Term or earlier termination of this Lease.

11.15 TIME IS OF THE ESSENCE. Time is of the essence of this Lease and all provisions contained herein.

11.16 APPROVAL OF PLANS AND SPECIFICATIONS. Except as otherwise expressly set forth in this Lease or in the Construction Addendum, neither review nor approval by or on behalf of Landlord of any Tenant's plans for Leasehold Improvements nor any plans and specifications for any Tenant alterations or any other work shall constitute a representation or warranty by Landlord, any of Landlord's members, the managing agent of the Premises, or any of their respective agents, partners, or employees that such plans and specifications either (i) are complete or suitable for their intended purpose, or (ii) comply with Applicable Laws, it being expressly agreed by Tenant that neither Landlord, nor any of Landlord's members, nor the managing agent of the Premises, nor any of their respective agents, partners, or employees assume any responsibility or liability whatsoever to Tenant or to any other person or entity for such completeness, suitability, or compliance.

11.17 RELATIONSHIP. Landlord and Tenant disclaim any intention to create a joint venture, partnership, or agency relationship.

11.18 BROKER'S FEE. Each of Landlord and Tenant covenants, represents, and warrants that each had no dealings or negotiations with any broker or agent other than Codina Realty Services, Inc. •ONCOR ("Landlord's Broker"). Landlord shall pay any commission due to Landlord's Broker pursuant to a separate agreement between Landlord and Landlord's Broker. Landlord agrees to indemnify and hold harmless Tenant against any loss, liability, or expense (including reasonable attorneys' fees and costs) arising out of claims for fees or commissions from anyone claiming through or under Landlord in connection with the lease of the Premises, including, without limitation, Landlord's Broker. Tenant agrees to indemnify Landlord against any loss, liability, or expense (including reasonable attorneys' fees and costs) arising out of claims for fees or commissions from anyone claiming through or under Tenant in connection with the lease of the Premises (and without limiting the generality of the foregoing, Tenant is responsible to pay (and to indemnify and hold harmless Landlord as set forth herein from and against) any fees or commissions payable to Cushman & Wakefield of Florida, Inc. or its affiliates).

11.19 RIDERS AND EXHIBITS. All Riders, Addenda, and Exhibits attached hereto and referenced herein shall be deemed to be a part hereof and are hereby incorporated.

11.20 TENANT ASSIGNMENT.

(a) Tenant will not assign this Lease, in whole or in part, or sublease the Premises, in whole or in part, without the prior written consent of Landlord, which consent will not be unreasonably withheld, delayed, or conditioned, and in no event will Tenant be released from

any obligation or liability under this Lease following any such assignment or sublease. No sublessee of the Premises or any portion thereof, may further assign or sublease its interest in the Premises or any portion thereof, without Landlord's consent as provided above (if required). All reasonable legal fees and expenses incurred by Landlord in connection with the review by Landlord of Tenant's requested assignment or sublease pursuant to this Section (including, without limitation, the preparation and/or review of any documentation) will be paid by Tenant within thirty (30) days of invoice for payment thereof, as Additional Rent. Landlord shall either approve or disapprove of a proposed assignment or sublease requiring Landlord's consent within ten (10) business days after receipt of Tenant's written request for consent, together with sufficient written evidence of the financial condition and creditworthiness of such proposed assignee or sublessee. If Landlord fails to respond to Tenant's initial written request, then Tenant shall provide Landlord a written reminder notice with respect thereto. If Landlord fails to respond within two (2) business days after receipt of such reminder notice (and provided that Tenant has provided to Landlord all information reasonably requested by Landlord in connection therewith), then Landlord's consent shall be deemed to be granted.

(b) Landlord shall be entitled to receive fifty (50%) percent of the net profits arising out of an assignment or sublease (other than an Exempt Transfer), such net profits to be determined by subtracting all Base Rent and Additional Rent due from Tenant with respect to the time period and square footage applicable to the assignment or sublease, plus the reasonable and customary brokerage fees, reasonable attorneys' fees, reasonable and customary costs of alterations, and all other reasonable costs and expenses incurred by Tenant pursuant to such assignment or sublease, from the total consideration to be paid by the transferee. Bona fide consideration relating to non-rental items such as goodwill will not be considered part of the consideration paid by the transferee in determining whether there are net profits.

(c) Notwithstanding anything to the contrary contained in this Lease, Tenant may assign this Lease or sublet all or any portion of the Premises from time to time, without Landlord's consent (an "Exempt Transfer"), to any Affiliate of Tenant or successor of Tenant resulting from a merger or consolidation of Tenant, or as a result of a sale by Tenant of all or substantially all of its assets or stock, provided that no such transfer shall relieve Tenant from any liability under this Lease, whether accrued to the date of such transfer or thereafter accruing. In addition, any change in the controlling interest in the stock of Tenant as a result of any transfer of the capital stock of Tenant by persons or parties through the "over-the-counter market" or through any recognized stock exchange or through a tender offer, shall not be deemed to be a transfer requiring Landlord's consent. Landlord shall not be entitled to receive any portion of the excess rent as described above arising out of an assignment or sublease not requiring Landlord's consent.

(d) Except with regard to Exempt Transfers, Landlord shall have the right to recapture any space proposed by Tenant to be assigned or sublet once Tenant has transferred an aggregate total of 180,000 Rentable Square Feet of the Premises (excluding square footage that that has been transferred pursuant to (x) an Exempt Transfer and (y) a sublease with a term of three (3) years or less including renewal options) (the "Recapture Threshold"). Once Tenant has entered into assignment and/or sublease transactions for square footage meeting the Recapture Threshold, then for any such transaction thereafter (other than (i) an Exempt Transfer or (ii) a sublease with a term of three (3) years or less including renewal options), Tenant shall give

Landlord thirty (30) days' prior written notice of the proposed transaction, and within such thirty (30) day period, Landlord shall have the right to recapture the space that is the subject of the proposed transaction by giving Tenant written notice thereof; provided, however, if Landlord notifies Tenant that Landlord elects to exercise this recapture right, Tenant may, within ten (10) business days of its receipt of Landlord's recapture notice, notify Landlord that Tenant is rescinding the proposed assignment or sublease, in which case Landlord's recapture notice shall be void. If Landlord recaptures any portion of the Premises, then Tenant acknowledges and agrees that any tenants which lease any such recaptured space from Landlord shall have the right: to utilize the parking areas; to access their leased premises through the other portions of the applicable Building such as lobbies and elevators (subject to Tenant's security procedures and protocols); for tenants leasing more than 90,000 Rentable Square Feet, to maintain exterior signage; for tenants leasing more than 10,000 Rentable Square Feet, to utilize a portion of the roof of the Buildings in which their space is located for communications equipment so long as such use does not interfere with Tenant's use of Tenant's Rooftop Communications Equipment; and to have such other rights as are customarily granted to major tenants renting comparably sized premises. Such use and access shall not constitute an actual or constructive eviction of Tenant, in whole or in part, nor shall it entitle Tenant to any abatement or diminution of Rent or relieve Tenant from any obligation under this Lease. If Landlord recaptures any portion of the Premises, the Lease will terminate solely with respect to the portion of the Premises so recaptured, and there shall be a proportionate refund from Landlord of any Base Rent and Additional Rent paid for the recaptured portion for a period subsequent to the effective date of the recapture.

11.21 LANDLORD ASSIGNMENT. Landlord will have the right to sell, transfer, or assign, in whole or in part, its rights and obligations under this Lease and in the Premises. Any such sale, transfer, or assignment will operate to release the transferor Landlord from any and all liability under this Lease arising after the date of such sale, assignment or transfer, so long as the transferee expressly assumes, in writing, all obligations of Landlord arising from and after the date of transfer.

Notwithstanding the foregoing or anything to the contrary contained in this Lease, prior to the Base Rent Commencement Date, Landlord may not transfer this Lease or sell the Premises or cause a change of control, without the prior written consent of Tenant, which shall not be unreasonably withheld, delayed, or conditioned; provided, however, so long as Codina Development Corporation remains as the developer for Landlord's development of the Premises, Tenant's consent is not required for any assignment of Landlord's interest in this Lease and the Premises or a change of control to (i) an Affiliate, or (ii) a lender (or its nominee, or a purchaser at a foreclosure sale) as a result the enforcement of remedies in a financing by Landlord for which Tenant is getting an SNDA, or (iii) a Qualified Transferee, as defined in Exhibit "H," attached hereto and made a part hereof.

11.22 AFFILIATE. For purposes of this Lease, "Affiliate" means a person or entity which controls, is in common control with, or is controlled by, another person or entity. For the purposes of this definition, the term "control" means (a) legal or beneficial ownership of fifty-one (51%) percent or more of the voting interests of an entity, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

11.23 ACCESS. Access to the Premises shall be available to Tenant 24 hours per day, 7 days per week, 365 days per year, subject to Force Majeure.

11.24 REASONABLENESS. Wherever in this Lease the consent or approval of either Landlord or Tenant is required, such consent or approval shall not be unreasonably withheld, delayed, or conditioned, unless this Lease expressly provides that such consent shall be in such party's sole discretion. Whenever the provisions of this Lease allow Landlord or Tenant to perform or not perform some act at their option or in their judgment, the decision of Landlord and Tenant to perform or not perform such act must be reasonable.

11.25 SUCCESSORS. The terms, provisions, covenants, and conditions contained in this Lease shall apply to, inure to the benefit of and be binding upon the parties hereto, and their respective permitted successors and assigns.

11.26 REPRESENTATIONS OF LANDLORD.

Landlord represents and warrants to Tenant, as of the Effective Date, as follows:

(a) Subject to completion of the acquisition of the Golf Course Parcel, Landlord possesses full power and authority to deal with the Property in all respects and no other party has any right or option thereto or in connection therewith.

(b) There are no pending or, to the actual knowledge of Landlord, threatened condemnation or annexation proceedings or actions affecting the Property.

(c) There are no pending or, to the actual knowledge of Landlord, threatened actions or legal proceedings affecting the Property or Landlord's interest therein which would have a material adverse effect on Landlord's ability to perform its obligations hereunder.

(d) Landlord has not received written notice of any unpaid special assessments for sidewalk, water, paving, electrical or power improvements or other capital expenditures or improvements, matured or unmatured, with respect to the Property.

(e) Landlord has not received any written notice of any violations of Applicable Laws or the Declaration with respect to the Property which remains uncured and which would have a material adverse effect on Landlord's ability to perform its obligations hereunder.

(f) Except as may be set forth in the Permitted Exceptions, to the Landlord's actual knowledge there is not any survey or title matter which prohibits or restricts the Permitted Use.

(g) The zoning of the Property (except for the Golf Course Parcel) is LIRP under the City of Boca Raton zoning code; and the zoning of the Golf Course Parcel is LIRP under the City of Boca Raton zoning code.

11.27 OFAC/PATRIOT ACT. Tenant represents and warrants that (a) neither Tenant nor any person or entity that directly owns a 10% or greater equity interest in it nor any of its officers, directors, or managing members is a person or entity (each, a "Prohibited Person") with whom U.S. persons or entities are restricted from doing business under regulations of the Office

of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the “Executive Order”) signed on September 24, 2001 and entitled “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”), or other governmental action, (b) Tenant’s activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the “Money Laundering Act”) (i.e., Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the “Patriot Act”), and (c) throughout the Term of this Lease, Tenant shall comply with the Executive Order, the Money Laundering Act, and the Patriot Act.

In addition, unless readily available from a public source, upon Landlord’s request from time to time, Tenant will provide Landlord with the names and addresses of all (i) shareholders holding a 10% interest or greater interest in Tenant, and (ii) officers, directors, and managing members.

11.28 WAIVER OF LIENS. Landlord hereby waives any statutory and common law liens for rent (other than judgment liens) and/or with respect to Tenant’s property located at the Premises from time to time. Although such waiver is hereby deemed to be automatic and self-executing, Landlord agrees to execute such instruments as may be reasonably required from time to time in order to confirm such waiver, including, without limitation, such instruments required to subordinate its statutory and common law lien to the lien of any institutional equipment lender or lessor of Tenant.

11.29 RIGHT OF FIRST OFFER TO PURCHASE THE PREMISES.

(a) Landlord hereby grants to Tenant a right of first offer to purchase the entire Premises in accordance with the terms set forth herein (the “Right of First Offer”), exercisable by Tenant as follows: Landlord shall notify Tenant in writing if Landlord intends to place the Premises on the market for sale to an unaffiliated third party (whether by sale of assets and/or sale of the equity interests in the entity constituting Landlord) (“Landlord’s Right of First Offer Activation Notice”). Landlord’s Right of First Offer Activation Notice will include the proposed purchase price (provided that, if Landlord intends to place the Premises on the market for sale without a specified asking price, then Landlord is not required to provide a proposed purchase price). In any event, by written notice delivered to Landlord within twenty (20) days after receipt of Landlord’s Right of First Offer Activation Notice (“Tenant’s Right of First Offer Exercise Deadline”), Tenant may elect to pursue negotiations for the purchase of the Premises (“Tenant’s Right of First Offer Exercise Notice”).

(b) If Tenant fails to deliver Tenant’s Right of First Offer Exercise Notice by the expiration of Tenant’s Right of First Offer Exercise Deadline, then Landlord shall provide Tenant a written reminder notice with respect thereto. If Tenant fails to respond within two (2) business days after receipt of such reminder notice, then the Right of First Offer shall be deemed to be waived by Tenant and of no further force or effect, except as otherwise expressly set forth below.



(c) If Tenant timely delivers the Tenant's Right of First Offer Exercise Notice, then Landlord and Tenant shall, within five (5) business days, enter into good faith negotiations for the purchase of the Premises by Tenant, on terms and conditions satisfactory to the parties in their sole good faith discretion (provided, however, that (i) Tenant shall not be entitled to any inspection period or other so-called "free-look"; instead, Tenant shall conduct any desired due diligence within the Negotiation Period (as hereinafter defined), Tenant shall be responsible to repair any damage caused by any inspection of the Premises, and the indemnification provisions of this Lease shall apply to any such due diligence inspections, and (ii) the closing shall take place within forty-five (45) days after the date of the purchase agreement, and (iii) the purchase and sale agreement will contain then-customary provisions for title and survey review, casualty and condemnation, and seller representations, but taking into account that the Premises would be sold to the occupant of the entire Premises).

(d) If, despite such good faith negotiations, the parties are unable to execute an agreement for the sale and purchase of the Premises within thirty-five (35) days after the date of Tenant's Right of First Offer Exercise Notice (the "Negotiation Period"), for any reason whatsoever, except as set forth in subsection (e)(ii), then Landlord shall have the right to sell the Premises to any entity at any price. In addition, Tenant shall execute, within ten (10) days after the expiration of the Negotiation Period, an instrument in recordable form in order to evidence that Landlord and Tenant were unable to reach an agreement. During the Negotiation Period, Landlord will not solicit any offers or proposals, or enter into negotiations, letters of intent, or sales contracts with any third party with respect to the sale of the Premises. In addition, if the parties do not reach an agreement and Landlord then places the Premises on the market for sale, nothing shall be deemed to prohibit Tenant from submitting an offer in accordance with the procedures as may be applicable to Landlord's offering, which Landlord will evaluate together with any other offers that Landlord may receive for the purchase of the Premises.

(e) The Right of First Offer shall not commence until the Base Rent Commencement Date (the "ROFO Commencement Date"). To avoid ambiguity, if Landlord enters into a sale agreement in accordance with Section 11.21, above prior to the ROFO Commencement Date, but the closing thereunder does not take place until after the ROFO Commencement Date, such closing may proceed and Landlord is not required to activate the Right of First Offer for such transaction. Following the ROFO Commencement Date, the Right of First Offer shall continue to apply to Landlord and its successors until the fifth (5<sup>th</sup>) anniversary of the ROFO Commencement Date. After the fifth (5<sup>th</sup>) anniversary of the ROFO Commencement Date, Landlord shall have the absolute and unfettered right to sell the Premises free of the Right of First Offer, subject to the notice provisions provided herein.

(f) Notwithstanding anything contained herein to the contrary, Tenant shall not be permitted to exercise the Right of First Offer while in default of this Lease beyond any applicable cure or grace period.

(g) Notwithstanding anything contained herein to the contrary, the Right of First Offer shall not be applicable to any direct or indirect transfers (i) by Landlord to a mortgagee or its nominee in connection with a transfer of Landlord's interest pursuant to a foreclosure or transfer in lieu thereof or a purchaser at a foreclosure sale, and/or (ii) to or among any legal entity that is an affiliate, subsidiary, or parent of Landlord or Landlord's partners, members, or

shareholders, or a legal entity controlled by Landlord into or with which Landlord may be merged or consolidated (except if the primary purpose of the merger or consolidation is to circumvent Tenant's right of first offer and transfer the Premises to an unaffiliated third party), and/or (iii) to any entity controlled by (A) TIAA-CREF, its successors or assigns or (B) any other pension fund or investment fund managed or advised by TIAA-CREF (or any successor thereto by merger or acquisition).

(h) From and after such time as Tenant's Right of First Offer is of no further force or effect (through waiver or otherwise), then Landlord hereby agrees to use reasonable efforts to notify Tenant if Landlord elects to market the Premises for sale to an unrelated third party, and Tenant may elect to submit an offer in accordance with the procedures as may be applicable to Landlord's offering, which Landlord will evaluate together with any other offers that Landlord may receive for the purchase of the Premises. The provisions of this subparagraph are solely for notification purposes only and shall not be deemed to impose any obligation upon Landlord to negotiate with or otherwise sell the Premises to Tenant nor shall this subparagraph impose upon Landlord any obligation to wait any period of time after giving such notice to Tenant before entering into negotiations with another party for the sale of the Premises or the actual conveyance thereof. The notice obligation set forth herein shall not be applicable to any transfers contemplated in subparagraph (g), above. Landlord shall have no liability as a result of Landlord's failure to provide the notification to Tenant that is contemplated herein.

(i) The Right of First Offer is personal to the original Tenant executing this Lease (i.e., Office Depot, Inc.) (the "Original Tenant"), and not to any successors or assigns of the Original Tenant; provided, however, any the Right of First Offer shall be applicable to any assignee of Tenant pursuant to an Exempt Transfer.

11.30 PRESS RELEASES. Any media publication regarding this Lease or the transactions contemplated hereby shall be subject to the joint approval of Landlord and Tenant. Except as required by Applicable Laws and as specifically provided for in this Lease, Landlord and Tenant agree that neither Landlord nor Tenant shall disclose the Rent amounts of this Lease to any person other than their respective Affiliates, employees, members, partners, agents, attorneys, brokers, or other consultants, or any current or prospective holder of any mortgage or voluntary lien on any portion of the Premises or current or prospective ground lessor, or to a prospective purchaser, and to the respective Affiliates, employees, partners, agents, attorneys, brokers, or other consultants or the foregoing. Notwithstanding anything to the contrary contained in this Lease, any breach by Landlord or Tenant of the provisions of this Section 11.30 shall not be a default under the terms of this Lease but the non-defaulting party's sole remedy shall be to commence actions at law or in equity for an injunction or to recover damages suffered by such party on account of the breach. The foregoing does not restrict Landlord and Tenant from making such disclosures as may be required under securities laws.

11.31 RENTS FROM REAL PROPERTY. Landlord and Tenant agree that all Rent payable by Tenant to Landlord shall qualify as rents from real property within the meaning of both Sections 512(b)(3) and 856(d) of the Internal Revenue Code of 1986, as amended (the "Code") and the U.S. Department of Treasury Regulations promulgated thereunder (the "Regulations"). If Landlord determines that there is any risk that all or part of any Rent shall not qualify as rents from real property for the purposes of the Code and the Regulations, Tenant

agrees to cooperate with Landlord (at Landlord's expense) by entering into such amendment or amendments as Landlord deems necessary to qualify all Rent as rents from real property, in form and content reasonably acceptable to Tenant; provided, however, that any adjustments required pursuant to this paragraph shall be made so as to produce the equivalent Rent (in economic terms) payable prior to such adjustment.

**11.32 WAIVER OF TRIAL BY JURY. LANDLORD AND TENANT EACH HEREBY KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE.**

11.33 Golf Course Parcel. Notwithstanding anything to the contrary contained in this Lease, the parties acknowledge and agree that as of the Effective Date the Golf Course Parcel, being a portion of the Property consisting of approximately 1.5 acres (adjacent to Lot B described in Exhibit "B" hereto), is not owned by Landlord, but is instead owned by an unrelated third party as part of a golf course. To facilitate construction of the Premises, Landlord and Tenant agree that Landlord must seek to acquire the Golf Course Parcel. From and after the Effective Date, Landlord will continue to pursue the acquisition of the Golf Course Parcel from the title holder thereof, and, upon request, shall provide Tenant with written progress reports with respect thereto. Landlord makes no guaranty that the Golf Course Parcel can or will be acquired. Notwithstanding the foregoing, if Landlord fails to acquire title to the Golf Course Parcel (together with (x) the release of that certain use restriction set forth in paragraph 1 of Exhibit A-1 contained in that certain Special Warranty Deed recorded in Official Records Book 5161, Page 168 of the Public Records of Palm Beach County, Florida (the "Arvida Deed") and (y) either (A) the release of the architectural approval requirements set forth in paragraph 2 of Exhibit A-1 to the Arvida Deed or (B) the architectural approval in accordance with such paragraph 2 of the plans for the garage to be constructed by Landlord on the Golf Course Parcel as depicted in the Issued for Permit Plans (provided, however, that provisions (x) and (y), above, shall only be operative so long as Landlord has first made its best commercially reasonable efforts in good faith to obtain a release and termination of all covenants and restrictions in the Arvida Deed)) on or before December 15, 2006 (the "Acquisition Deadline"), then Tenant shall, in Tenant's sole and absolute discretion, have the right to elect any of the following options upon written notice to Landlord delivered within five (5) business days after the expiration of the Acquisition Deadline (the "Contingency Plan No. 1 Deadline"): (i) to terminate this Lease, whereupon Tenant shall pay Landlord fifty (50%) percent of all costs incurred by Landlord in connection with the Lease and the transaction contemplated hereby, including without limitation, design and development costs, but not to exceed a total payment from Tenant in the sum of \$2.5 million, as liquidated damages and not as a penalty (it being agreed that Landlord's actual damages for such termination are difficult and impractical to ascertain, and the not-to-exceed \$2.5 million sum is intended to be a reasonable estimate for the amounts of damages that Landlord will suffer by reason of Tenant's termination of this Lease) and the parties shall be relieved of all further obligations hereunder (except as specifically provided herein to survive the termination of this Lease); or (ii) to agree to an alternate site plan ("Contingency Plan No. 1"), whereupon this Lease shall be based upon Landlord constructing the Premises in accordance with the Contingency Plan No. 1, all of which is to be set forth in an amendment to this Lease.

Landlord and Tenant agree that they shall act in good faith from the Effective Date until the Acquisition Deadline to develop a mutually acceptable alternate site plan which shall serve as Contingency Plan No. 1, together with Base Building Plans and a Base Rent based on Contingency Plan No. 1. In the event Landlord and Tenant have not agreed on an acceptable alternative site plan by the Contingency Plan No. 1 Deadline, then, within ten (10) business days after the Contingency Plan No. 1 Deadline (the "Contingency Plan No. 2 Deadline"), Tenant shall, in Tenant's sole and absolute discretion, have the right to relocate the Premises ("Contingency Plan No. 2") to the property located directly south of the Property and identified on Exhibit "I" attached hereto and made a part hereof (the "Relocation Property"), whereupon this Lease shall be based upon the owners of the Relocation Property (collectively, the "Relocation Property Landlords") constructing the Premises on the Relocation Property. In such event, the Construction Schedule, this Lease and the Base Rent shall be modified to reflect appropriate delays in development of the Premises attributable to the re-submission of the site plan and other applicable matters due to the relocation of the Premises to the Relocation Property, all of which is to be set forth in an amendment to this Lease. In connection with Contingency Plan No. 2, Landlord agrees to grant Tenant an access easement over the south portion of the Property for ingress and egress between Military Trail and the Relocation Property, in a location and upon terms to be mutually agreed upon (all of which is to be set forth in the amendment to this Lease as executed by the Contingency Plan No. 2 Deadline). In addition, the Relocation Property Landlords join in this Lease to agree and confirm to Contingency Plan No. 2 (if exercised by Tenant as set forth above), and any provisions in this Lease which may apply in order for this Lease to apply to the Relocation Property Landlords, the Relocation Property and Contingency Plan No. 2, as well as to agree that from and after the Effective Date of this Lease they will not solicit any offers or proposals, or enter into negotiations, letters of intent, or leases or sales contracts with any third party with respect to the leasing or sale of the Relocation Property (unless the transaction in question would relate to a ground lease or sale as part of a headquarters lease for Tenant as contemplated by this Lease). Notwithstanding the foregoing, this Section 11.33 shall terminate, and be null and void and of no further force or effect, in the event that (a) Landlord acquires fee simple title to the Golf Course Parcel (subject only to the Permitted Exceptions, as modified by paragraph 12 therein) and provides evidence of such acquisition to Tenant, prior to the Acquisition Deadline or termination of this Lease by Tenant as provided above, or (b) the parties enter into an amendment to this Lease as provided above for either Contingency Plan No. 1 or Contingency Plan No. 2 (and upon such termination of this Section 11.33, the parties shall enter into amendment to this Lease reflecting the termination of this Section 11.33).

[signatures on next page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first above written.

WITNESSES:

LANDLORD:

BOCA 54 NORTH LLC, a Delaware limited liability company

By: Boca 54 Land Associates LLC, a Delaware limited liability company, its Sole Member

By: Flagler Boca 54, LLC, a Florida limited liability company, its Managing Member

By: /s/ Jose Hevia

\_\_\_\_\_  
Jose Hevia, Vice President

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

[signatures continued on next page]

TENANT:

OFFICE DEPOT, INC., a Delaware corporation

By: /s/ David C. Fannin

David C. Fannin,  
Executive Vice President and General Counsel

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

EXHIBITS:

- "A" Construction Addendum
- "B" Legal Description of Property
- "C" Memorandum of Lease Commencement
- "D" Base Rent
- "E" Memorandum of Lease
- "F" Permitted Exceptions
- "G" Subordination, Non-Disturbance and Attornment Agreement
- "H" Qualified Transferees
- "I" Legal Description of Relocation Property

RIDER:

Rider Number 1 — Renewal Options

JOINDER OF OWNERS OF RELOCATION PROPERTY

Agreed as to Section 11.33 of the Agreement:

BOCA 10 A & B LLC, a Delaware limited liability company  
BOCA 10 C & D, a Delaware limited liability company  
BOCA 11 A LLC, a Delaware limited liability company

By: BOCA 54 LAND ASSOCIATES LLC, a  
Delaware limited liability company, Sole  
Member

By: Flagler Boca 54, LLC, a Florida  
limited liability company, Managing  
Member

By: /s/ Jose Hevia \_\_\_\_\_  
Jose Hevia, Vice President

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EXHIBIT "A"

CONSTRUCTION ADDENDUM

CONSTRUCTION ADDENDUM FOR BASE BUILDING SHELL IMPROVEMENTS  
AND LEASEHOLD IMPROVEMENTS  
ATTACHED TO AND MADE A PART OF THE  
LEASE BETWEEN BOCA 54 NORTH LLC,  
AS LANDLORD, AND OFFICE DEPOT, INC., AS TENANT

ARTICLE I

CERTAIN DEFINITIONS

For the purposes of this Construction Addendum (the "Addendum"), unless the context otherwise requires, the following terms will have the respective meanings assigned to them in this Article I or the section or article referred to below:

1.1 "**Base Building**" or "**Base Buildings**" means a total of three (3) office buildings and various special purpose facilities comprising a total square footage of approximately 624,000 square feet (such square footage to be finalized as part of the Base Building Plans processes described below, and will be determined in accordance with the Standard Method for Measuring Floor Area in Buildings published by the Building Owners and Managers Association (ANSI/BOMA Z65.1-1996), together with the Base Building Systems, grading, drainage, site work, parking structure, parking and landscaped areas, restrooms, lobbies, equipment rooms, atriums, Building connectors, and related improvements to the foregoing to be built on the Property in accordance with the Base Building Plans, all Legal Requirements, and the provisions of this Addendum, and together with off-site improvements required for the Base Building by Governmental Authority during the site plan approval process described in the Construction Schedule (as hereinafter defined).

1.2 "**Base Building Architect**" means RLC Architects P.A., or such other firm (and their consultants) which may hereafter be designated by Landlord and approved in writing by Tenant, which approval shall not be unreasonably withheld, delayed, or conditioned, that are providing design or consulting services required incident to the design and construction of the Base Building by the Landlord. Landlord will provide a copy of the contract or other written agreement between Landlord and the Base Building Architect promptly upon written request of Tenant.

1.3 "**Base Building Plans**" means the final, detailed working plans, specifications, drawings, and construction documents (including, without limitation, mutually agreed-on performance criteria) for the Base Building to be prepared and sealed by the Base Building Architect in accordance with applicable Legal Requirements, and to be approved in writing by Landlord and Tenant pursuant to this Addendum (and subject to approval by appropriate Governmental Authority to the extent necessary to obtain all requisite building and other permits), and as such Base Building Plans may be modified in accordance with this Addendum. Except as otherwise provided in this Addendum, the Base Building Plans shall be based on the

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Issued for Permit Plans, and the only permissible changes shall be those necessary to reflect the three letters referred to in the definition of "Issued for Permit Plans" set forth below and any changes requested by Governmental Authorities.

1.4 "Base Building Systems" means with respect to the Base Building: (a) the stairs and elevators; (b) the HVAC, plumbing, and mechanical system; (c) the electrical, telephone, telecommunication conduit, water, storm sewer and sanitary sewer utility systems and connections; (d) the sprinkler and fire protection systems, life safety systems and lightning protection system; and (e) the paving and other improvements for pedestrian and vehicular access and vehicular parking (including, without limitation, structured parking if shown on Schedule 1), together with all equipment, machinery, shafts, risers, flues, piping, wiring, ducts, ductwork, panels and instrumentation, and other appurtenances relating to any or all of the foregoing, all as more specifically set forth in the Base Building Plans.

1.5 "Base Building Work" means all construction work, services performed, or materials provided to the Premises in connection with the construction of the Base Building pursuant to the Base Building Plans.

1.6 "City." means the City of Boca Raton, Florida.

1.7 "Construction Contract" means any construction contract and/or construction management agreement to be entered into by Landlord, as owner, for the construction and/or management of construction of all or any part of the Base Building and any other improvements expressly called for in the Base Building Plans. Landlord promptly shall provide Tenant complete copies of all Construction Contracts upon written request of Tenant.

1.8 "Construction Schedule" means the design and construction schedule attached to and made a part of this Addendum as Schedule 2, as may be updated by Landlord from time to time upon written notice to Tenant, and the schedule of milestone dates attached to and made a part of this Addendum as Schedule 2-A, as may be updated by Landlord from time to time upon written approval by Tenant, which approval shall not be unreasonably withheld, conditioned or delayed. Any delay in the deliveries required from the Leasehold Improvement Architect may be the basis for a Tenant Delay.

1.9 "Issued for Permit Plans" means the plans and specifications listed in Schedule 1, attached to and made a part of this Addendum, together with Tenant's comments, requirements and conditions relative to such plans as set forth in those certain letters dated August, 1, 2006, October 4, 2006 and October 30, 2006, copies of the letters are also attached as part of Schedule 1, and as such Issued for Permit Plans may be modified in accordance with this Addendum. In the event of any conflict between the Base Building Plans and the Issued for Permit Plans, the terms of the Base Building Plans shall control.

1.10 "Excusable Delay" means any actual delay in Substantial Completion of the Work due to strikes, lockouts, or other labor or industrial disturbance (other than on the part of employees of Landlord), terrorism, government regulation or restriction in the nature of a moratorium, act of the public enemy, war, industry-wide inability to secure materials through ordinary sources by reason of unforeseeable shortages or governmental order, earthquake, fire,

tropical storm, hurricane, tornado, flood, or unusually inclement weather; provided, however, that for purposes of this definition increased costs in building materials and/or Landlord's or any other person's lack of funds will not be deemed to be an Excusable Delay. Landlord shall use commercially reasonable efforts to mitigate circumstances that could lead to Excusable Delay. For purposes of this Section, "unusually inclement weather" shall mean and refer to inclement weather that exceeds the normally expected inclement weather in the area of the Premises based on a 15-year moving average of climate data maintained by the National Atmospheric and Oceanic Administration. A day shall only be considered lost due to unusually inclement weather if the area in which the Premises is located is under a tropical storm or hurricane warning or has been affected by a tropical storm or hurricane warning (regardless of the actual amount of rainfall). Should Landlord encounter more lost days in a month due to unusually inclement weather than predicted by the monthly moving average, Landlord shall promptly give notice to Tenant of extension of the time to complete its obligations under this Addendum after the cessation of the unusually inclement weather. Landlord's notice shall include reasonable documentation (i) supporting Landlord's position that it encountered unusually inclement weather for the month, and (ii) that the unusually inclement weather affected Landlord's ability to complete its obligations to perform in accordance with the terms of this Addendum.

Should Landlord encounter what it considers an Excusable Delay, it shall be included in the Construction Meeting Report as required in Section 4.3 hereof.

1.11 "Final Completion of the Base Building" means the completion of all Base Building Work. "Final Completion of the Base Building Work" will be deemed to have occurred when all of the following conditions have been satisfied (or waived in writing by Tenant): (a) completion of all Punchlist Items for the Base Building Work (as hereinafter defined), (b) receipt by Tenant of as-built plans for the Base Building pursuant to Article XI, (c) receipt by Tenant of all available operations and maintenance manuals for the Base Building Work, (d) receipt by Tenant of all available warranty documentation for the Base Building Work compiled in a commercially reasonable manner, (e) completion of all Tenant training on the operation and maintenance of Base Building Systems (and Tenant shall make its personnel available for such training at mutually convenient times), and (f) receipt by Tenant of a copy of all final releases of lien from the General Contractor. Landlord shall use commercially reasonable efforts to achieve Final Completion of the Base Building Work not later than 90 calendar days following Substantial Completion of the Base Building Work.

1.12 "Final Completion of the Leasehold Improvement Work" means the completion of all Leasehold Improvement Work. "Final Completion of the Leasehold Improvement Work" will be deemed to have occurred when all of the following conditions have been satisfied (or waived in writing by Tenant): (a) completion of all Punchlist Items for the Leasehold Improvement Work (as hereinafter defined), (b) receipt by Tenant of all available operations and maintenance manuals for the Leasehold Improvements, (d) receipt by Tenant of all available warranty documentation for the Leasehold Improvement Work compiled in a commercially reasonable manner, (e) completion of all Tenant training on the operation and maintenance of the Leasehold Improvements (and Tenant shall make its personnel available for such training at mutually convenient times), and (f) receipt by Tenant of a copy of all final releases of lien from the Leasehold Improvement Contractor. Landlord shall use commercially reasonable efforts to

achieve Final Completion of the Leasehold Improvement Work not later than ninety (90) calendar days following Substantial Completion of the Leasehold Improvement Work.

1.13 “General Contractor” means Centex Construction, LLC, or another general contractor or construction manager selected by Landlord for the construction of the Base Building and approved in writing by Tenant, which approval shall not be unreasonably withheld, delayed, or conditioned.

1.14 “Governmental Authority” means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or hereafter in existence, which have jurisdiction over the Base Building, the Premises and the Leasehold Improvements.

1.15 “Late Date” will have the meaning set forth in Section 6.1.

1.16 “Late Period” will have the meaning set forth in Section 6.1.

1.17 “Lease” means the Lease Agreement to which this Addendum is attached.

1.18 “Leasehold Improvement Costs” means the actual cost for permitting, constructing and installing the Leasehold Improvements.

1.19 “Leasehold Improvement Contractor” means Centex Construction, LLC, or another general contractor or construction manager selected by Landlord for the construction of the Leasehold Improvements and approved in writing by Tenant, which shall not be unreasonably withheld, delayed, or conditioned.

1.20 “Leasehold Improvement Architect” means Hellmuth Obata + Kassabaum, Inc., or such other firm which may hereafter be designated by Tenant and approved in writing by Landlord, which approval shall not be unreasonably withheld, delayed, or conditioned. During the progress of the Work until Substantial Completion of the Base Building Work, Landlord agrees, at no cost to Tenant, to provide the Leasehold Improvement Architect suitable temporary office space on site to enable the Leasehold Improvement Architect to monitor the installation of the Leasehold Improvements, which space shall be comparable to the space provided to the Base Building Architect. Thereafter, space will be available, but as part of the Leasehold Improvement Costs.

1.21 “Leasehold Improvement Construction Contract” means any construction contract and/or construction management agreement to be entered into by Landlord, as owner, for the construction and/or management of construction of all or any part of the Leasehold Improvements and any other improvements expressly called for in the Leasehold Improvement Plans. Landlord will provide a copy of the Leasehold Improvement Construction Contract promptly upon written request of Tenant. So long as Tenant has approved the Leasehold Improvement Construction Contract (which approval shall not be unreasonably withheld, delayed, or conditioned), the Leasehold Improvement Construction Contract shall provide that the Leasehold Improvement Contractor shall look only to Tenant for payment of all amounts due thereunder, except to the extent such amounts have been paid to Landlord.

1.22 "Leasehold Improvement Plans" means the final, detailed working plans, specifications, drawings, and construction documents for the Leasehold Improvements to be prepared and sealed by the Leasehold Improvement Architect and approved, pursuant to the terms of this Addendum, in writing by Landlord, Tenant and (only to the extent necessary to obtain all requisite building and other permits) the appropriate Governmental Authority, as such Leasehold Improvement Plans may be modified in accordance with this Addendum.

1.23 "Leasehold Improvements" means all leasehold improvements to be constructed and/or installed in the Premises by Landlord as expressly set forth in the Leasehold Improvement Plans.

1.24 "Leasehold Improvement Work" means all construction work, services performed, or materials provided to the Premises in connection with the construction of the Leasehold Improvements.

1.25 "Legal Requirements" means any and all judicial decisions, orders, injunctions, writs, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Landlord, Tenant, and/or the Premises, including, but not limited to, any of the aforesaid dealing with the design, construction, ownership, use, leasing, maintenance, service, operation, sale, exchange, or condition of real property, or zoning or environmental or Americans with Disabilities Act matters in effect as of the date of final approval of the Base Building Plans and the Leasehold Improvement Plans by the appropriate Governmental Authority and continuing through Substantial Completion of the Work.

1.26 "Premises" will have the meaning set forth in the Lease.

1.27 "Prime Rate" the rate charged by banks in the United States as the "prime rate" as published in the Wall Street Journal on the first working day of the month that any such payment becomes due and unpaid.

1.28 "Projected Completion Date of the Base Building Work" means the projected date of Substantial Completion of the Base Building Work which is August 28, 2008, subject to extension for Excusable Delays, Tenant Delays, and agreed-on Tenant's Building Changes.

1.29 "Projected Completion Date of the Leasehold Improvement Work" means the projected date of Substantial Completion of the Leasehold Improvement Work which is October 20, 2008, subject to extension for Excusable Delays, Tenant Delays, and agreed-on Tenant's Leasehold Improvement Changes. Upon Substantial Completion of the Base Building Work, the parties contemplate Substantial Completion of the Leasehold Improvement Work to occur in three (3) phases on or before the following dates: (i) for the northern most building (the "North Building"), September 15, 2008, (ii) for the building (the "Center Building") located between the North Building and the South Building (as hereinafter defined), October 1, 2008, and (iii) for the southern most building (the "South Building"), October 20, 2008. Prior to Substantial Completion of the Leasehold Improvement Work as specifically pertaining to the Center Building and the South Building, as applicable, in contemplation of Tenant's phased move-in by building, (i) Tenant shall not unreasonably interfere with Landlord's work relative to achieving

said Substantial Completion of the Leasehold Improvement Work, and (ii) Landlord shall not unreasonably interfere with Tenant's use of the Premises other than the Center Building and the South Building, as applicable.

1.30 "Projected Completion Date" means the Projected Completion Date of either the Base Building Work and/or the Leasehold Improvement Work, as applicable.

1.31 "Punchlist Items" for the Base Building Work means those elements of the Base Building Work: (a) which are not complete at the time of Substantial Completion of the Base Building Work, along with a schedule for the completion of each item, and (b) for which it may be reasonably anticipated that the completion will occur within forty-five (45) days after Substantial Completion of the Base Building Work, subject to extension for Excusable Delay. The Base Building Architect will prepare a schedule of Punchlist Items for the Base Building Work upon Substantial Completion of the Base Building Work, which schedule shall be reviewed and approved in writing by Tenant and Landlord, which approval shall not be unreasonably withheld, delayed, or conditioned.

1.32 "Punchlist Items" for the Leasehold Improvement Work means those elements of the Leasehold Improvement Work: (a) which are not complete at the time of Substantial Completion of the Leasehold Improvement Work, along with a schedule for the completion of each item, (b) which individually or in the aggregate, do not materially interfere with Tenant's ability to take occupancy of the Premises and to operate its business at the Premises without unreasonable impediment or interference by reason of continuing of the Leasehold Improvement Work, and (c) for which it may be reasonably anticipated that the completion will occur within thirty (30) days after Substantial Completion of the Leasehold Improvement Work, subject to extension for Excusable Delay. The Leasehold Improvement Architect will prepare a schedule of Punchlist Items for the Leasehold Improvement Work upon Substantial Completion of the Leasehold Improvement Work, which schedule shall be reasonably approved by Tenant and Landlord, which approval shall not be unreasonably withheld, delayed, or conditioned.

1.33 "Substantial Completion of the Base Building Work" means the substantial completion by Landlord of the construction of the Base Building Work, all as more specifically set forth in the Base Building Plans, including, but not limited to, the construction and installation of the Base Building Systems, in accordance with the Base Building Plans, all applicable Legal Requirements, the Declaration, and this Addendum, in a good and workmanlike manner, and in accordance with good construction and engineering practices, free from known material defects (structural, mechanical, or otherwise), other than defects reflected in the schedule of Punchlist Items for the Base Building Work. Without limiting the foregoing, "Substantial Completion of the Base Building Work" will not be deemed to have occurred until all of the following conditions have been satisfied (or waived in writing by Tenant): (a) receipt of a Certificate of Substantial Completion of the Base Building Work by Base Building Architect, on AIA Form G704 (or a substantially similar form) relating to the construction of the Base Building in accordance with the Base Building Plans; and (b) the City or other Governmental Authority has conducted all inspections, and issued a certificate of completion evidencing Landlord's completion of the Base Building Work (or similar documentation evidencing the same).

1.34 “Substantial Completion of the Leasehold Improvement Work” means the substantial completion by Landlord of the construction of the Leasehold Improvement Work, all as more specifically set forth in the Leasehold Improvement Plans, including, but not limited to, the construction and installation of the Leasehold Improvements, in accordance with the Leasehold Improvement Plans, all applicable Legal Requirements and this Addendum, in a good and workmanlike manner, and in accordance with good construction and engineering practices, free from known material defects (structural, mechanical, or otherwise), other than defects reflected in the schedule of Punchlist Items for the Leasehold Improvements. Without limiting the foregoing, “Substantial Completion of the Leasehold Improvement Work” will not be deemed to have occurred until all of the following conditions have been satisfied (or waived in writing by Tenant): (a) receipt of a Certificate of Substantial Completion of the Leasehold Improvement Work by Leasehold Improvement Architect, on AIA Form G704 (or a substantially similar form) relating to the construction of the Leasehold Improvements in accordance with the Leasehold Improvement Plans; and (b) the City or other Governmental Authority has conducted all inspections, and issued a temporary or permanent certificate of occupancy evidencing Landlord’s completion of the Leasehold Improvement Work (or similar documentation evidencing the same) allowing Tenant or its employees, agents, contractors, or subcontractors to operate the Leasehold Improvements and the Premises without unreasonable impediment or interference by reason of continuing Leasehold Improvement Work; and (c) Landlord has achieved Substantial Completion of the Base Building Work.

1.35 “Substantial Completion of the Work” or “Substantially Complete the Work” means that Landlord has achieved Substantial Completion of the Base Building Work and Substantial Completion of the Leasehold Improvement Work.

1.36 “Tenant Delay” means:

1.36.1 any actual delay, not an Excusable Delay, in Substantial Completion of the Base Building Work, Substantial Completion of the Leasehold Improvement Work, the Final Completion of the Base Building Work and/or the Final Completion of the Leasehold Improvement Work which is due to any act or omission of Tenant, its employees, agents, contractors, subcontractors, or any other person or entity acting by, through, or under Tenant (including, but not limited to, Tenant’s Consultants, Tenant’s Leasehold Improvement Architects and any other architects and interior designers); any changes to the Base Building Plans, the Leasehold Improvement Plans or in the Work made by or at the request of Tenant pursuant to Section 3.2 and Section 3.4; any delay by Tenant in making payments to the Landlord as required pursuant to Section 2.5(i) hereof, except if such payments are disputed and deposited in escrow in accordance with Section 2.5(i); any failure by Tenant to maintain the milestone dates in the Construction Schedule, other than due to a non-Excusable Delay on the part of Landlord; and any delay by Tenant in the submission of plans as required by this Addendum. The foregoing shall be deemed to include the failure of Tenant, its employees, agents, contractors, subcontractors, or any other person or entity by, through, or under Tenant to comply with the Construction Schedule, as may be

updated by Landlord, from time to time, provided, however, that any such update shall not be deemed to be a waiver of Landlord's rights and remedies as a result of any Tenant Delays that may cause the Construction Schedule to be updated. No Tenant Delay will be deemed to have occurred under this Addendum unless Landlord has notified Tenant in writing within seven (7) business days after the occurrence of a Tenant Delay (but, in the event of a continuing Tenant Delay, it is waived only for the period of time preceding seven (7) business days before Tenant's receipt of Landlord's notice), provided, however, that if the Tenant Delay relates to the specific time frames set forth in this Addendum and/or the Construction Schedule for Tenant to perform its obligations hereunder, then no notice is required from Landlord for such delay to constitute a Tenant Delay. For instances of Tenant Delay for which Landlord is required to provide notice, Tenant shall have a period of two (2) business days within which to cure or dispute the event causing the Tenant Delay before being charged with Tenant Delay for purposes hereof. Tenant's failure to notify Landlord within two (2) business days after Landlord's notice of a Tenant Delay shall constitute a waiver by Tenant of the right to dispute the existence of the applicable Tenant Delay (but shall not limit Tenant's right to dispute the length of the applicable Tenant Delay). There will be excluded from the number of days of Tenant Delays any days of delay which are caused by any act or omission of Landlord, its employees, agents, contractors, subcontractors or any other person or entity by, through, or under Landlord (including, but not limited to, the Base Building Architect) and any Excusable Delays. Landlord will have no obligation to attempt to mitigate, through expediting the prosecution of any Work or changing the scope of the Work or otherwise, the actual or presumed effects of a Tenant Delay on Landlord's ability to achieve Substantial Completion of the Work; provided, however, that at Tenant's request and with a written agreement by Tenant to pay any additional costs incurred by Landlord resulting therefrom, Landlord will use all reasonable efforts to accelerate the performance of the Work to mitigate the effects of any Tenant Delay.

- 1.36.2 If any Tenant Delay delays the Substantial Completion of the Base Building Work, Substantial Completion of the Leasehold Improvement Work, Final Completion of the Base Building Work or Final Completion of the Leasehold Improvement Work, then Substantial Completion of the Base Building Work, Substantial Completion of the Leasehold Improvement Work, Final Completion of the Base Building Work or Final Completion of the Leasehold Improvement Work, as applicable, shall be deemed to be the date that Substantial Completion of the Base Building Work, Substantial Completion of the Leasehold Improvement Work, Final Completion of the Base Building Work or Final Completion of the Leasehold Improvement Work would have been achieved, as applicable, but for such Tenant Delay, as reasonably determined by Landlord.

- 1.36.3 Except as expressly provided herein, wherever in this Addendum the consent or approval of Tenant is required, such consent or approval shall not be unreasonably withheld, delayed, or conditioned and any delay on Tenant's part in granting such consent or approval (or declining such consent or approval, based on specific grounds from Tenant) beyond five (5) business days from Tenant's receipt of the item requiring approval and written notification that Tenant's failure to timely respond may be the basis for a Tenant Delay, may be the basis of a Tenant Delay.
- 1.36.4 Except as expressly provided herein, wherever in this Addendum the consent or approval of Tenant's Leasehold Improvement Architect is required, such consent or approval shall not be unreasonably withheld, delayed, or conditioned and any delay on Tenant's Leasehold Improvement Architect's part in granting such consent or approval (or declining such consent or approval, based on detailed grounds specified in writing by Tenant's Leasehold Improvement Architect) beyond five (5) business days from Tenant's Leasehold Improvement Architect's receipt of the item requiring approval and written notification that Tenant's Leasehold Improvement Architect's failure to timely respond may be the basis for a Tenant Delay (and provided that a copy of such notice has been delivered simultaneously to Tenant), may be the basis of a Tenant Delay. Notwithstanding the foregoing, Tenant's failure to use its best efforts to cause Tenant's Leasehold Improvement Architect to respond to Landlord's good faith written requests within (a) five (5) business days of receipt of submittals marked conspicuously with "**PRIORITY**" in bold, capitalized lettering, (b) fifteen (15) business days of receipt of submittals marked conspicuously with "**NON-PRIORITY**" in bold, capitalized lettering, (c) three (3) business days of receipt of requests for information marked conspicuously with "**PRIORITY**" in bold, capitalized lettering, and (d) ten (10) business days of receipt of requests for information marked conspicuously with "**NON-PRIORITY**" in bold, capitalized lettering, may be the basis of a Tenant Delay; provided that (i) a copy of Landlord's request has been delivered simultaneously to Tenant, (ii) any such request provides that Tenant's Leasehold Improvement Architect's response is required to be delivered within the applicable time period and written notification that Tenant's Leasehold Improvement Architect's failure to timely respond may be the basis for a Tenant Delay, and (iii) any such request pursuant to (a) or (b) above is made in accordance with the reasonable schedule for same prepared by Landlord and provided to Tenant and Tenant's Leasehold Improvement Architect prior to the commencement of the Leasehold Improvement Work, which schedule may be reasonably updated by Landlord during progress of the Work with written notice to Tenant.
- 1.36.5 Wherever in this Addendum a Certificate of Final or Substantial Completion from Tenant's Leasehold Improvement Architect is required, such Certificate shall not be unreasonably withheld, delayed, or



conditioned and any delay on Tenant's Leasehold Improvement Architect's part in issuing such Certificate (or declining such consent or approval, based on specific grounds from Tenant's Leasehold Improvement Architect) beyond five (5) business days from Tenant's Leasehold Improvement Architect's receipt of written request from Landlord (and provided that a copy of such notice has been delivered simultaneously to Tenant), may be the basis of a Tenant Delay. If Tenant's Leasehold Improvement Architect fails to respond within the applicable time period, then Landlord may provide Tenant's Leasehold Improvement Architect a written reminder notice (with a copy to Tenant simultaneously) with respect thereto. If Tenant's Leasehold Improvement Architect fails to respond within three (3) business days after receipt of such reminder notice, then Tenant's Leasehold Improvement Architect shall be deemed to have issued the applicable Certificate.

1.36.6 Tenant shall also be responsible for any increase in Base Building Costs and Leasehold Improvement Costs resulting from Tenant Delay.

1.37 "Tenant's Consultant" means such individual or firm (if any) as is so designated by Tenant from time to time. If more than one Tenant's Consultant is engaged for the various disciplines regarding the Work, then "Tenant's Consultant" shall mean the Tenant's Consultant appointed by Tenant by written notice to Landlord for the discipline in question. Initially, Tenant's Consultant is David Stoutamire of the Atlanta office of Cushman & Wakefield of Georgia, Inc.

1.38 "Tenant's Building Changes" will have the meaning set forth in Section 3.2.

1.39 "Tenant's Leasehold Improvement Changes" will have the meaning set forth in Section 3.4.

1.40 "Tenant's Delay Damages" will have the meaning set forth in Section 6.1.

1.41 "Work" means collectively the Base Building Work and the Leasehold Improvement Work.

Additional defined terms may appear in other provisions of this Addendum and, if so, will have the respective meanings assigned to them. Capitalized terms not specifically defined in this Addendum will have the same meanings as ascribed thereto in the Lease. The definition of a term or phrase in the singular will include and allow for a reference to such term or phrase in the plural or vice versa.

ARTICLE II

SQUARE FOOTAGE; APPROVAL OF PLANS; CONSTRUCTION CONTRACTS;  
LEASEHOLD IMPROVEMENT PLANS

2.1 Square Footage.

(a) At least ninety days prior to the Projected Completion Date of the Leasehold Improvement Work, and as a condition to Substantial Completion of the Leasehold Improvement Work, Landlord shall direct the Base Building Architect to determine the gross square footage of the Base Building as actually constructed and certify as to same to both Landlord and Tenant. If the gross square footage of the Premises as determined by the Base Building Architect is greater or less than the amount specified in the final approved Base Building Plans, then the gross square footage of the Base Building shall be adjusted to equal the amount as so determined (but the Base Rent shall not be adjusted). Landlord will not construct the Base Building with less gross square footage than the amount specified in the final approved Base Building Plans (other than a de minimus amount, meaning 5,000 gross square feet or less for the Base Buildings, in the aggregate, or otherwise upon the written consent of Tenant) unless required by (i) the City's Fire Department/fire marshal (including field changes necessitated by requirements thereof) and (ii) Tenant's Building Changes or Tenant's Leasehold Improvement Changes.

(b) Tenant shall have the right to verify and dispute the gross square footage of the Premises (based upon a written certification to Landlord and Tenant from Leasehold Improvement Architect). If the parties do not resolve any such dispute as to the square footage of the Premises within ninety (90) days after Tenant notifies Landlord of such dispute, then Landlord and Tenant shall jointly appoint an independent disinterested architect, and such architect shall determine the gross square footage of the Base Building based on the measurement standard described above within thirty (30) days thereafter, whose decision shall be final and binding. Landlord and Tenant shall each pay one-half (1/2) of the fees and costs of such third architect. At a minimum, the third architect shall be a disinterested architect, with substantial experience in the Palm Beach County commercial real estate office market and shall have experience in and shall be familiar with using BOMA Standards in the measurement of office buildings.

2.2 Effect of Approval of Issued for Permit and Base Building Plans. The parties acknowledge that Tenant's approval of the Issued for Permit Plans prior to the date hereof and subsequent approval of the Base Building Plans in accordance with this Addendum: (a) is deemed to mean non-technical approval of design, materials, and equipment, (b) is not deemed to mean approval of structural capacity of the Base Building or the Base Building Systems, size of ducts and piping, adequacy of electrical wiring, system/equipment capacities and, without limitation, other technical matters, (c) does not relieve Landlord of responsibility for proper and adequate design of the Base Building or construction of the Base Building in order to achieve Substantial Completion of the Base Building Work, Final Completion of the Base Building Work or a correction of any Base Building Work due to a Base Building Design Defect (as defined in Section 10.2) in accordance with this Addendum, and (d) is not deemed to mean approval by Tenant of any extension of the period in which Landlord is to achieve Substantial Completion of the Base Building as provided in this Addendum, except as otherwise expressly approved by

Tenant in writing or as otherwise requested by Tenant pursuant to a Tenant's Building Change. Provided however, Tenant will promptly notify Landlord of any defects or problems in the Issued for Permit and Base Building Plans and the construction of the Base Building to the extent that Tenant has actual knowledge thereof. In addition, where Tenant contemplates that the Leasehold Improvements will require structural, electrical, or mechanical capacity in excess of such capacity as shown in the Issued for Permit and Base Building Plans, Tenant will be obligated to advise Landlord of such requirements and request appropriate modification to the Issued for Permit and Base Building Plans, and any revisions to the Issued for Permit and Base Building Plans necessary to accommodate the same shall be a Tenant Delay. Landlord will ensure that the structure and detail of the utilities and the mechanical, electrical, and other Base Building Systems meet all applicable Legal Requirements and that all of the Work satisfies all Legal Requirements. Landlord will be solely responsible for the effects, impacts, compliance with Legal Requirements, and consequences of the design and construction of the Base Building, including any structural failure or failure of materials or damages to property or injury to persons relating to any defect or shortcoming in such design. To the extent that Tenant reviews any design for the Base Building, such review will in no manner or respect constitute a verification, confirmation, or validation of the propriety, compliance with Legal Requirements, safety or design or construction criteria, which will be the sole responsibility of Landlord.

### 2.3 Preparation of Building Plans.

(a) Landlord will cause the Base Building Architect to prepare (and, as appropriate, revise) the Base Building Plans in accordance with the relevant time frames set forth on the Construction Schedule and in accordance with applicable Legal Requirements.

(b) The Base Building Plans and any other construction documents will be consistent in all material respects with the scope, design, or general quality of the Base Building as reflected in the Issued for Permit Plans and agreed-on performance criteria. In accordance with the Construction Schedule, the proposed Base Building Plans (full size sheets and in PDF format) will be submitted to Tenant and Tenant's Consultant (if any), for Tenant to approve, which approval shall not be unreasonably withheld, delayed, or conditioned, provided that the same are consistent in all material respects with the scope, design, or general quality of the Base Building as reflected in the Issued for Permit Plans and Tenant may, by appropriate marking, provide specific indications of any non-compliance with the Issued for Permit Plans (in which event the Base Building Plans will be revised by the Base Building Architect and resubmitted to Tenant and Tenant's Consultant (if any), and the process repeated, until finally approved in full). In no event will Tenant's requested revisions require or result in a material change in the scope, design, or general quality of the Base Building as reflected in the Issued for Permit Plans, including, without limitation, any change in the square footage of the Base Building. Tenant will provide specific indications of any non-compliance of the Base Building Plans as compared to the Issued for Permit Plans no later than ten (10) business days after initial receipt thereof by Tenant and Tenant's Consultant (if any), and no later than five (5) business days upon any subsequent review thereafter, until the Base Building Plans are approved by Tenant. If Tenant fails to respond within the applicable time period, then Landlord may provide Tenant a written reminder notice with respect thereto. If Tenant fails to respond within three (3) business days after receipt of such reminder notice, then Tenant shall be deemed to have approved the applicable submission. Except as provided in Sections 2.3(c), (d) and (e) to the contrary, no

changes in the Base Building Plans may be made other than to correct non-compliance of the Base Building Plans as compared to the Issued for Permit Plans.

(c) If a change to the Issued for Permit Plans or proposed Base Building Plans is mandated by Governmental Authority during the approval process for the Base Building Plans, the parties shall work together in good faith to attempt to work out an alternative that would be acceptable to the Governmental Authority and to Landlord and Tenant. Landlord will be solely liable and obligated to pay all costs, expenses, and charges relating to or resulting from any such change to the Issued for Permit Plans or proposed Base Building Plans (but may be paid out of the Base Building Contingency, as defined below). No such change (whether or not approved by Tenant) will be the basis of any Tenant Delay.

(d) After approval of the Base Building Plans by Tenant, Landlord shall not make any material changes to the Base Building Plans without written approval by Tenant in accordance with Section 3.1, which approval shall not be unreasonably withheld, delayed, or conditioned; provided, however, that Landlord shall deliver or cause Tenant to receive copies of any and all requests for information and the Base Building Architect's supplemental instructions and the responses thereto, contemporaneously with the delivery of such documentation to or from the Base Building Architect.

(e) To the extent that any selections are to be made for the fit and finish of the Base Building or Leasehold Improvements, either during or after the approval process for the Base Building or Leasehold Improvement Plans, the parties will reasonably cooperate to finalize such selections, provided, however, that Tenant shall be required to respond, in writing, to any request by Landlord for a decision on such selection within five (5) business days after request therefor (unless such request is part of the initial submission of the Base Building or Leasehold Improvement Plans to Tenant for review, in which event the ten (10) business day period set forth above shall apply), otherwise, if Tenant does not timely respond to such selection request by Landlord, Tenant shall be deemed to have waived its right to make such selection(s) and Landlord shall then have the right to make the same.

(f) Nothing herein shall be deemed to limit Tenant's right to request changes to the Base Building Plans or the Leasehold Improvement Plans pursuant to the provisions of Sections 3.2 and 3.4 hereof.

2.4 Construction Contract for Base Building. Landlord shall enter into Construction Contract for the construction of the Base Building based on the Issued for Permit Plans. Prior to the date hereof, Landlord and Tenant have agreed upon a budget for the construction of the Base Building, which budget is attached hereto as Schedule 4 (the "Base Building Budget"). The Base Building Budget includes line items for contingency purposes related to the hard and soft costs of the Base Building Work (the "Base Building Contingency"). Notwithstanding anything to the contrary in the Lease or this Addendum, the parties acknowledge and agree that the Base Rent set forth in the Lease is based on the Issued for Permit Plans and not the Base Building Plans. Landlord acknowledges and agrees that the Issued for Permit Plans are adequate and sufficient to provide for the determination of the Base Rent and that the Base Building Budget includes contingencies sufficient to permit Landlord to obtain the building permit to construct the Base Building in accordance with the Issued for Permit Plans.

## 2.5 Leasehold Improvement Plans.

(a) Tenant, at Tenant's expense, will cause the Leasehold Improvement Architect to prepare and provide to Landlord and the Base Building Architect (and, as appropriate, revise) the Leasehold Improvement Plans (full size sheets and in PDF format) in accordance with the relevant time frames set forth in the Construction Schedule and in accordance with all Legal Requirements.

(b) In order to maintain the milestone dates in the Construction Schedule on a timely basis in accordance with this Addendum, in no event will the Leasehold Improvement Plans require or result in a change in the scope, design, or general quality of the Base Building as reflected in the Issued for Permit Plans. All such Leasehold Improvement Plans that are prepared by the Leasehold Improvement Architect will be submitted to Landlord and Landlord will, by appropriate marking, either approve the same or provide specific reasonable indications of rejections and requested revisions (in which event the relevant plans, drawings, specifications or other construction documents will be revised by the Leasehold Improvement Architect and resubmitted to Landlord, and the process repeated, until finally approved in full), and any approval of Landlord will not be unreasonably withheld, delayed, or conditioned. Notwithstanding the generality of the foregoing, in no event will Landlord have any right to reject or request any revision to any Leasehold Improvement Plans unless the same would (i) require or result in a change in the scope, design, or general quality of the Base Building as reflected in the Issued for Permit Plans, (ii) have an adverse impact on the Base Building Systems, or (iii) have an adverse impact on the exterior appearance of the Base Building. Landlord will approve or provide specific reasonable indications of rejections and requested revisions to any items submitted (or resubmitted) pursuant to this Section no later than ten (10) business days after initial receipt thereof by Landlord, and no later than five (5) business days upon any subsequent review thereafter, until the Leasehold Improvement Plans are approved by Landlord. If Landlord fails to respond within the applicable time period, then Tenant may provide Landlord a written reminder notice with respect thereto. If Landlord fails to respond within three (3) business days after receipt of such reminder notice, then Landlord shall be deemed to have approved the applicable submission. To the extent any delay in the completion of the Leasehold Improvement Plans is caused by any delay in the review of the Leasehold Improvement Plans by Landlord, such delay will not constitute a Tenant Delay.

(c) Nothing in this Section shall be deemed to limit Tenant's right to request changes to the Base Building Plans or the Leasehold Improvement Plans pursuant to the provisions of Sections 3.2 and 3.4 hereof.

(d) Upon completion of the 35% completed Leasehold Improvement Plans (herein known as the "Leasehold Design Development Plans"), Tenant shall submit such plans to Landlord. Landlord shall cause the Leasehold Improvement Contractor to prepare and present to the Tenant an estimate (herein known as the "Leasehold Design Development Estimate") of the costs to construct the work shown in the Leasehold Design Development Plans. Tenant reserves the right to engage separate cost estimating consultants to prepare an independent estimate of the cost of the work shown in the Leasehold Design Development Plans. Should the Tenant's estimate differ materially from the Leasehold Design Development Estimate, the Tenant and Landlord agree to meet in good faith to reconcile the differences. Landlord hereby agrees to

provide Tenant reasonable backup documentation to support the costs presented in the Leasehold Design Development Estimate.

(e) Upon completion of 90% completed Leasehold Improvement Plans (herein known as "Leasehold Issued for Permit Plans"), Landlord will solicit subcontractor bids through the Leasehold Improvement Contractor for the construction of the Leasehold Improvements, and any changes thereto. Except for the Major Leasehold Improvement Subcontractor Categories (as hereinafter defined), Landlord shall use commercially reasonable efforts to solicit such subcontractor bids from at least three (3) subcontractors for each subcontract having an aggregate value of \$100,000.00 or more. Landlord shall use commercially reasonable efforts to solicit no less than one (1) subcontractor for each of the following components of the Leasehold Improvements (the "Major Leasehold Improvement Subcontractor Categories"): HVAC; electrical; life safety; and plumbing/mechanical. (Although the parties may attempt to identify other potential bidders, the parties acknowledge that obtaining three (3) bids for the subcontracts having an aggregate value of \$100,000.00 or more and the Major Leasehold Improvement Subcontractor Categories may not be practical.) Within five (5) business days after Landlord's receipt of all of the bids for each of the Major Leasehold Improvement Subcontractor Categories or for the subcontracts having an aggregate value of \$100,000.00 or more, if more than one (1) bidder was used for any Major Leasehold Improvement Subcontractor Category or the subcontracts having an aggregate value of \$100,000.00 or more, the lowest qualified, responsive bid for each such Major Leasehold Improvement Subcontractor Category or for the subcontracts having an aggregate value of \$100,000.00 or more, will be utilized by Landlord to prepare and present to Tenant, in accordance with the Construction Schedule, a proposed budget for the Leasehold Improvement Costs (the "Proposed Leasehold Improvement Budget"). In any event, promptly after receipt of the bids, Landlord and Tenant will establish the Landlord's hard costs related to the Leasehold Improvement Costs, which will be equal to the sum of the following: (a) the lump sum price or guaranteed maximum price set forth in each bid actually selected for purposes hereof after adjustment through the value engineering process; (b) the costs to be incurred by the Leasehold Improvement Contractor in performing the Leasehold Improvement Work; (c) a fixed fee to the Leasehold Improvement Contractor of no more than five (5%) percent of the total cost of the Leasehold Improvement Work; (d) a contingency of not more that two (2%) of the total cost of the Leasehold Improvement Work (the "Hard-Costs Leasehold Improvement Contingency"); and (e) General Conditions including a fee to the Leasehold Improvement Contractor for pre-construction services. Landlord will give to Tenant, the Leasehold Improvement Architect and Tenant's Consultant five (5) calendar days' prior written notice of any pre-bid and post-bid conferences with the Leasehold Improvement Contractor and will permit Tenant, the Leasehold Improvement Architect and Tenant's Consultant to attend such meetings. The bidding process for the Major Leasehold Improvement Subcontractor Categories and the calculations and determinations for the Proposed Leasehold Improvement Budget shall be conducted on an "open book" basis, with Tenant having access to all pertinent materials in connection therewith and the ability to participate in the entire process. Landlord shall not unreasonably withhold or delay providing to Tenant's Consultant such line item information, including backup data, as may be requested by Tenant's Consultant. Tenant shall notify Landlord, in writing, of any delay by Landlord in providing to Tenant's Consultant such line item information.

(f) Upon Landlord presenting the Proposed Leasehold Improvement Budget to Tenant pursuant to subsection (e) above, Landlord and Tenant shall use good faith efforts to mutually agree upon a final, approved budget for the Leasehold Improvement Costs (the "Leasehold Improvement Budget"). The Leasehold Improvement Budget shall include line items for the Hard-Costs Leasehold Improvement Contingency and other contingencies for the permitting process approved by Tenant (collectively, the "Leasehold Improvement Contingency"). The Leasehold Improvement Budget together with the Base Building Budget are herein referred to as the "Project Budget".

(g) Should the costs presented in the Proposed Leasehold Improvement Budget differ materially from the Leasehold Design Development Estimate, Tenant and Landlord agree to meet in good faith to reconcile the differences. Landlord hereby agrees to provide Tenant reasonable backup documentation to support the costs presented in the Leasehold Improvement Costs.

(h) Even if the General Contractor and the Leasehold Improvement Contractor are the same, the Construction Contract and the Leasehold Improvement Contract shall be separate contracts.

(i) Tenant agrees to pay to Landlord all Leasehold Improvement Costs in accordance with the Leasehold Improvement Budget. During the progress of the Leasehold Improvement Work, Landlord shall submit an invoice, on a monthly basis, requesting payment for the Leasehold Improvement Work (a "Payment Request"). For a properly submitted and undisputed Payment Request, Tenant agrees to pay Landlord the sums set forth in such Payment Request within thirty (30) days of receipt thereof from Landlord of the Payment Request. Interest at the Prime Rate shall apply to any late payments, commencing upon the 31<sup>st</sup> day from the date Landlord submits an applicable Payment Request until the date of payment therefor. In the event of a bona fide dispute regarding payment, Landlord shall not stop or permit to be stopped the Work during the pendency of such dispute, provided that, within thirty seven (37) days after the Payment Request (the "Payment Dispute Deadline") (a) all undisputed amounts have been paid by Tenant to Landlord for payment to the Leasehold Improvement Contractor, and (b) all disputed amounts have been placed in escrow by Tenant, in an interest-bearing account, during the pendency of that dispute, all pursuant to terms acceptable to both parties. Immediately thereafter, the parties shall follow the dispute resolution procedure set forth in Article IX of this Addendum in good faith. If the Tenant fails to (i) pay the undisputed amounts set forth in a Payment Request, (ii) deposit disputed amounts set forth in a Payment Request in escrow, or (iii) commence and continue to follow the dispute-resolution procedures in good faith, by the Payment Dispute Deadline, then the Landlord may stop or permit to be stopped the Work until payment of the amount owing has been received and/or the disputed amount is placed in escrow pursuant to an escrow agreement acceptable to Tenant and Landlord, in which event the time from the 31<sup>st</sup> day from the date Landlord submits an applicable Payment Request until the date of payment shall be a Tenant Delay and the reasonable costs of shut-down, delay and start-up, plus interest as provided for herein, shall be the responsibility of Tenant ("Tenant's Payment Delay Cost").

Any Leasehold Improvement Costs that exceed the Leasehold Improvement Budget shall be borne solely by Landlord, without any liability on the part of Tenant, unless previously approved

in writing by Tenant or the Tenant's Designated Representative. Landlord shall be permitted to use any line item in the budget where there is a surplus to cover any deficit in another line item. Tenant shall have no obligation to pay to Landlord any Leasehold Improvement Costs pursuant to any Payment Request unless and until Landlord provides Tenant with a detailed statement of Leasehold Improvement Costs (which may be set forth in the Payment Request) together with copies of all invoices, back-up information, certifications from the Leasehold Improvement Contractor on AIA Form G702, lien waivers and releases for the previous payment request and other documentation reasonably requested by Tenant in support of the Payment Request submitted by Landlord. In addition, Tenant shall have the right to inspect the Work to verify the Work for which payment is requested has been properly completed. It is understood and agreed that a certification from the Leasehold Improvement Architect is not part of the Payment Request; provided however, Tenant may have the Leasehold Improvement Architect review Payment Requests as part of Tenant's review thereof.

(j) Tenant will be solely responsible for the effects, impacts, compliance with Legal Requirements, and consequences of the design of any Leasehold Improvements, including any structural failure or failure of materials or damages to property or injury to persons relating to any defect or shortcoming in such design. To the extent that Landlord reviews any design for the Leasehold Improvements will in no manner or respect constitute a verification, confirmation, or validation of the propriety, compliance with Legal Requirements, safety, or function of any such design, which will be the sole responsibility of Tenant. Provided, however, Landlord will promptly notify Tenant of any defects or problems in the Leasehold Improvement Plans and the construction of the Leasehold Improvements to the extent that Landlord has actual knowledge thereof.

2.6 Final Plans and Specifications. Upon final approval by the required party or parties of each part of the plans, drawings, specifications, and construction documents for the Premises, whether actual or deemed as set forth herein, two (2) sets thereof will be initialed by, and delivered to, Landlord and Tenant.

2.7 Construction Contract for Leasehold Improvements. Landlord shall be obligated to hire and engage the Leasehold Improvement Contractor and shall enter into the Leasehold Improvement Contract therewith. Any subcontractors retained by the Leasehold Contractor shall be: (i) licensed in the State of Florida, and (ii) required to carry the insurance set forth in the Lease; and (iii) in connection with the subcontractors for supplemental HVAC, electrical, life safety, and plumbing/mechanical work, unless they are the same subcontractors as are engaged under the Construction Contract, Tenant shall have the right to approve such subcontractors, which approval shall not be unreasonably withheld, conditioned, or delayed; provided however that Tenant may disapprove Landlord's subcontractor for such disciplines only if Tenant has reason to believe that the subcontractor is not qualified to do the applicable scope of work.



### ARTICLE III

#### CHANGES IN BASE BUILDING PLANS AND LEASEHOLD IMPROVEMENT PLANS AND COST OF CHANGES

3.1 Changes to the Base Building Plans by Landlord. Landlord will not make, or permit to be made, any material changes or any other changes which would materially and adversely affect Tenant's use or enjoyment of the Base Building without the prior written consent of Tenant. If such a change is being mandated by Governmental Authority, the parties shall work together in good faith to attempt to work out an alternative that would be acceptable to the Governmental Authority and to Tenant. From time to time, Landlord may request, by submitting an analysis of the additional cost or savings and change, if any, in the date of Substantial Completion of the Work, that Tenant approve any such material changes in the Base Building Plans, or to the portion of the Work already installed prior to Substantial Completion of the Work (herein referred to as "Landlord's Building Changes"). If Tenant should fail to approve in writing any Landlord's Building Changes requested by Landlord within five (5) business days following receipt thereof, Landlord may notify Tenant of such failure, and if Tenant fails to respond within two (2) business days following receipt thereof, the same will be deemed to be approved in all respects by Tenant, and Landlord is authorized to make such requested change. Landlord will be solely liable and obligated to pay all costs, expenses, and changes relating to or resulting from any Landlord Building Changes requested by Landlord (which may be paid out of the Base Building Contingency). No Landlord Building Changes (whether or not approved by Tenant) will be the basis of any Tenant Delay or otherwise affect the determination of the date of Substantial Completion of the Work.

3.2 Changes to the Base Building Plans by Tenant. From time to time after Tenant has reviewed and approved (or deemed to have approved) the Base Building Plans, but in no event subsequent to the date which is six (6) months prior to the Projected Completion Date of the Base Building Work, Tenant may request Landlord to make changes in the Base Building Plans or to the Work already installed prior to Substantial Completion of the Base Building. Any changes to the Base Building Plans so requested by Tenant (herein referred to as "Tenant's Building Changes") will be subject to Landlord's prior written approval, which will not be unreasonably withheld, delayed, or conditioned; provided, however, that such approval may be withheld in Landlord's sole discretion if such proposed change requires or results in a material change in the scope, design, or general quality of the Base Building or a delay in Substantial Completion of the Base Building. Landlord will, within ten (10) business days following receipt of Tenant's proposed changes, deliver to Tenant (a) a statement of the estimated change, if any, in the cost and fees of construction of the Base Building, including any financing charges (the "Base Building Change Cost") in connection with such Tenant's Building Changes as above provided, and (b) an estimate of the period of time, if any, that such Tenant's Building Changes will delay the Substantial Completion of the Base Building. In the case of Tenant's Building Changes requested prior to the awarding of a Construction Contract for the subject work, Landlord's statement of the Base Building Change Cost will be based on a good faith estimate of such costs by Landlord and, in the case of Tenant's Building Changes requested after the awarding of a Construction Contract for the subject work, the statement of the Base Building

Change Cost will be based on a guaranteed maximum price proposal via a proposed change order to the Construction Contract to be issued and approved by Landlord and Tenant for such Tenant's Building Changes. If Tenant fails to approve in writing Landlord's submission within ten (10) business days following receipt thereof and also fails to pay Landlord for one hundred (100%) percent of the cost of such change within such ten (10) business day period, the same will be deemed disapproved in all respects by Tenant, and Landlord will not be authorized to make the change. If Tenant approves in writing the statement of the Base Building Change Cost, if any, and the delay in Substantial Completion of the Base Building, if any, as submitted by Landlord, (i) Landlord will promptly cause the Base Building Plans to be modified to provide for such change and will submit such modified Base Building Plans to Tenant, and (ii) Tenant shall, in Tenant's sole and absolute discretion, to be exercised contemporaneously with the Tenant's approval of the Base Building Change Cost applicable to such Tenant's Building Changes, have the option to (x) pay the entire amount of the Base Building Change Cost in advance of the applicable Base Building Work, (y) pay the entire amount of the Base Building Change Cost as the Work progresses in the same manner as Tenant will pay for the Leasehold Improvements as set forth in Section 2.5(i), or (z) pay the Base Building Change Cost as part of the Additional Amount in connection with the Final Accounting as set forth in and subject to the terms and conditions of Section 4.4.

3.3 Changes to the Leasehold Improvement Plans by Landlord. Landlord will not make, or permit to be made, any changes to the Leasehold Improvements without the prior written consent of Tenant, which consent shall not be unreasonably withheld, delayed, or conditioned. If such a change is being mandated by Governmental Authority, the parties shall work together in good faith to attempt to work out an alternative that would be acceptable to the Governmental Authority and to Tenant. From time to time, Landlord may request, by submitting an analysis of the additional cost or savings and change, if any, in the Substantial Completion of the Leasehold Improvement Work date, that Tenant approve any such changes in the Leasehold Improvement Plans, or to the portion of the Work already installed prior to Substantial Completion of the Leasehold Improvement Work (herein referred to as "Landlord's Leasehold Improvement Changes"). If Tenant should fail to approve in writing any Landlord's Leasehold Improvement Changes requested by Landlord within five (5) business days following receipt thereof, Landlord may notify Tenant of such failure, and if Tenant fails to respond within two (2) business days following receipt thereof, the same will be deemed to be approved in all respects by Tenant, and Landlord is authorized to make such requested change. Landlord will be solely liable and obligated to pay all costs, expenses, and changes relating to or resulting from any Landlord Leasehold Improvement Changes requested by Landlord (which may be paid out of the Leasehold Improvement Contingency). No Landlord's Leasehold Improvement Changes (whether or not approved by Tenant) will be the basis of any Tenant Delay or otherwise affect the determination of the date of Substantial Completion of the Leasehold Improvement Work.

3.4 Changes to the Leasehold Improvement Work by Tenant. From time to time after Landlord has commenced construction of the Leasehold Improvement Work, Tenant may request Landlord to make changes in the Leasehold Improvement Work shown on the Leasehold Improvement Plans or already installed prior to Substantial Completion of the Leasehold Improvement Work (herein referred to as "Tenant's Leasehold Improvement Changes"). Landlord will, within ten (10) business days following receipt of Tenant's proposed changes, deliver to Tenant (a) a firm-fixed price proposal for the cost, if any, (the "Tenant's Leasehold

Improvement Changes Cost”) in connection with such Tenant’s Leasehold Improvement Changes as above provided, and (b) the period of time, if any, that such Tenant’s Leasehold Improvement Changes will delay Substantial Completion of the Base Building Work, Substantial Completion of the Leasehold Improvement Work, Final Completion of the Base Building Work and/or Final Completion of the Leasehold Improvement Work. All such change proposals shall conform to the requirements of Section 3.6. If Tenant fails to approve in writing Landlord’s proposal within five (5) business days or, if such period is impractical, within such other commercially reasonable period, following receipt thereof, the same will be deemed disapproved in all respects by Tenant, and Landlord will not be authorized to make the change. After Tenant approves in writing the proposed Tenant’s Leasehold Improvement Changes Cost, if any, and the delay in Substantial Completion of the Leasehold Improvement Work and Final Completion of the Leasehold Improvement Work, if any, as submitted by Landlord, (i) Landlord will promptly incorporate the Tenant’s Leasehold Improvement Changes into the Work and (ii) Tenant shall, in Tenant’s sole and absolute discretion, have the option to (x) pay the entire amount of the Tenant’s Leasehold Improvement Changes Cost in advance of the applicable Leasehold Improvement Work, or (y) pay the entire amount of the Tenant’s Leasehold Improvement Change Cost as the Work progresses in the same manner as Tenant will pay for the Leasehold Improvements as set forth in Section 2.5(i). Upon Landlord’s receipt of any of Tenant’s proposed changes for any portion of the Work within the critical path, Landlord shall continue to proceed with the Work unless and until Tenant approves in writing Landlord’s proposal or, if directed in writing by Tenant to stop the Work, until Tenant notifies Landlord in writing whether it approves Landlord’s proposal. The period of time for any stoppage of the Work upon such written direction by Tenant, commencing on the receipt of Tenant’s written direction and ending on the date Tenant notifies Landlord in writing whether it approves Landlord’s proposal or directs Landlord to continue the Work, shall constitute a Tenant Delay.

3.5 Monthly Accounting for Changes. During the performance of the Work, Landlord will cause to be submitted to Tenant and Tenant’s Consultant monthly progress reports, with respect to the Base Building Work, prepared by the General Contractor, and with respect to the Leasehold Improvement Work, prepared by the Leasehold Improvement Contractor, specifying any change in the estimated date of Substantial Completion of the Work, and showing the progress of the Work, together with as may be appropriate a summary of pending changes, the estimated values, and the originator of the change. Landlord will submit to Tenant, for Tenant’s audit and review, such accounts, records, invoices, and evidences of payment as Tenant may reasonably request to evidence the costs solely as to those items for which the cost is the responsibility of Tenant.

3.6 Except for changes to the Base Building Plans or Leasehold Improvement Plans deemed approved in accordance with this Article III, the only change orders (i.e. Landlord’s Building Changes, Tenant’s Building Changes, Landlord’s Leasehold Improvement Changes and Tenant’s Leasehold Improvement Changes) which will be effective shall be those executed on AIA Form G701 by Tenant’s Designated Representative or Tenant’s Alternative Representative. Except as provided in this Article III, no order, statement, or conduct of Tenant, Tenant’s Consultant, Tenant’s Designated Representative, or any other agent or employee of Tenant shall be treated as a change order. Should Landlord interpret an order, statement, or conduct of the Tenant, Tenant’s Consultant, Tenant’s Designated Representative, or any other agent or employee of Tenant as a change order, Landlord shall promptly give the Tenant written notice

stating the (a) date, (b) circumstances, (c) and source of the order, and request the Tenant confirm whether such order, statement, or conduct is a change order.

3.7 Landlord, in connection with any proposal made for any change order pursuant to this Article III, shall furnish a price breakdown, itemized as reasonably required by Tenant. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs (including design services) other than costs for design services for Leasehold Improvements. Tenant shall be responsible for all the costs of the Leasehold Improvement Architect separately.

#### ARTICLE IV

#### CONSTRUCTION

4.1 Performance by Landlord. Landlord will cause Substantial Completion of the Work and will be fully responsible for all matters that must be accomplished to complete the Work in accordance with the provisions of this Addendum including, without limitation, design of the Base Building in accordance with all Legal Requirements, filing plans and other required documentation with the proper Governmental Authority, securing all necessary permits, supervising all details of the Work, and promptly removing or otherwise handling to Tenant's reasonable satisfaction all construction (mechanics'), material suppliers', and like liens from the public record by payment or bond. Landlord will not be responsible for specific items to be installed by a separate contractor, pursuant to a separate contract with Tenant, and not otherwise required to be installed in accordance with the Base Building Plans and the Leasehold Improvement Plans. All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided. All Work under this Addendum shall be performed in a skillful and workmanlike manner. The Tenant may require, in writing, that the Landlord consider any request to replace any employee the Tenant deems incompetent, careless, or otherwise objectionable.

4.2 Non-Liability of Tenant. Subject to Sections 4.5 and 4.8, Tenant and Tenant's Consultant will not be liable for any injury, loss, or damage to any person (including, but not limited to, death) or property on or about the Premises during construction, unless caused by Tenant, its employees, agents, or contractors, and Landlord will indemnify and save Tenant and Tenant's Consultant harmless against and from any such liability, and any costs or charges (including, without limitation, reasonable attorneys' fees and court costs) which Tenant or Tenant's Consultant may incur on account of such injury, loss, or damage. Landlord's indemnification obligation pursuant to the provisions of this Section 4.2 will survive and continue in full force and effect after the Term Commencement Date and the expiration or termination of the Lease (regardless of how same may occur).

4.3 Information; Monthly Report. During the period prior to Substantial Completion of the Base Building Work, Landlord will provide all reasonable cooperation to keep Tenant informed as to material aspects pertaining to the design, construction (including progress reports), use, maintenance, operation, service, or insurance of the Base Building and the Leasehold Improvements, as applicable. Accordingly, in addition to the Construction Meeting Report (defined below), Landlord will furnish Tenant's Designated Representative (as defined

below) with copies of all progress reports, correspondence, or other information as may be material and pertinent to the Base Building and the Leasehold Improvements, as applicable, other than internal communications or confidential matters between Landlord and its attorneys or accountants. Tenant's Designated Representative and Tenant's Consultant (if any) will have the right to attend scheduled meetings material to the interest of Tenant as may be held with respect to the Base Building and the Leasehold Improvements between Landlord, the General Contractor, the Leasehold Improvement Contractor, the Base Building Architect, the Leasehold Improvement Architect and any other outside person or firm (other than Landlord's attorneys or accountants) furnishing materials, services, or labor to or with respect to the Base Building and the Leasehold Improvements. Landlord agrees to provide Tenant with reasonable prior notice of any scheduled meetings material to the interest of Tenant, but will not be obligated to attempt to schedule any such meetings to accommodate Tenant's availability or convenience. Furthermore, Tenant's failure to timely attend any such scheduled meetings will not constitute a basis for any claim by Tenant that Landlord has violated the foregoing provisions. Prior to Substantial Completion of the Work, Landlord and its construction team will meet no less frequently than once every month to discuss and analyze the progress of construction. Within five (5) business days following each meeting, Landlord will prepare and deliver to Tenant a written report (which may be in the form of the minutes of the meeting) (a "Construction Meeting Report") summarizing the material items discussed at such meeting and the effect of such items, if any, on the Construction Schedule. Each Construction Meeting Report will specifically identify any event or condition which would constitute an Excusable Delay or a Tenant Delay (and any incurred cost directly or indirectly resulting from a Tenant Delay) which has occurred since issuance of the immediately prior Construction Meeting Report.

#### 4.4 Final Accounting; Adjustment of Base Rent.

(a) During the course of the Work, Landlord shall maintain records and other documentation reasonably sufficient to record all allowable and allocable costs necessary to meet its obligations under this Addendum. Landlord shall provide copies to Tenant of such records and other documentation upon written Tenant request.

(b) Upon the Base Rent Commencement Date, Tenant shall commence to pay Base Rent as set forth in Exhibit "D" of the Lease. Within ninety (90) days of Substantial Completion of the Leasehold Improvement Work, the Landlord shall present a full and final accounting (the "Final Accounting") of all allowable and allocable costs and expenses necessary to meet its obligations under this Addendum through the Base Rent Commencement Date (the "Landlord's Total Cost of the Work"). Should the Landlord's Total Cost of the Work attributable to the Base Building Work and those items that constituted the Base Building Budget ("Landlord's Final Development Cost") be less than the total cost listed in the Base Building Budget (the difference herein being referred to as the "Credit Amount"), the Landlord shall, as determined by Tenant, refund to Tenant the Credit Amount in cash or shall adjust the Base Rent to amortize the Credit Amount remaining over the Term of the Lease (which amortization rate shall be consistent with the rate utilized to determine the annual Base Rent in Exhibit "D" of the Lease). Should the Landlord's Final Development Cost be greater than the Base Building Budget due to Tenant Delay, Tenant's Building Changes, Tenant's Leasehold Improvement Changes to the extent that such changes affect the cost of the Base Building Work or Tenant's Payment Delay Cost (the difference herein being referred to as the "Additional Amount"), the Base Rent shall increase to

amortize the Additional Amount over the Term of the Lease (which amortization rate shall be consistent with the rate utilized to determine the annual Base Rent in Exhibit "D" of the Lease), or at Tenant's discretion, Tenant shall pay the Additional Amount to Landlord such that the Base Rent shall remain unchanged. It is expressly contemplated by Landlord and Tenant that the Base Rent shall be reduced to recognize savings, cost reductions and credits for, among other things, payments made by Tenant requested and approved by Landlord, any unused Base Building Contingency, savings resulting from the parties' agreed upon changes to the drawings and specifications for the Base Building, or construction cost savings otherwise procured by Landlord during the course of the Base Building Work, whether or not due to Landlord's Building Changes, Landlord's Leasehold Improvement Changes, Tenant's Building Changes or Tenant's Leasehold Improvement Changes to the extent that such changes affect the cost of Base Building Work; provided, however, Tenant may make payments without Landlord's consent for those upgrades identified on Schedule 5 attached hereto and made a part hereof. Likewise, it is expressly contemplated by Landlord and Tenant that, except in the event that Tenant shall pay the Additional Amount to Landlord (which Tenant shall have the right to do in Tenant's sole and absolute discretion) the Base Rent shall be increased to recognize increases in Landlord's costs to perform the Base Building Work in connection with any Tenant Delay, Tenant's Building Changes or Tenant's Leasehold Improvement Changes to the extent that such changes affect the cost of Base Building Work. In connection with determining and/or verifying the Landlord's Total Cost of the Work, Tenant shall have the right to audit and review all records, documentation and other information of Landlord, the General Contractor, the Leasehold Improvement Contractor, any subcontractors of Landlord and other vendors of Landlord, and Landlord shall cooperate with any audit or review requested by Tenant. Landlord and Tenant agree to execute and deliver an amendment to the Lease to evidence any adjustment in the Base Rent pursuant to this Section 4.4(b).

(c) The Final Accounting shall include an analysis to determine the sum total of additional charges due to Landlord (after crediting, to the extent applicable, any credits for which Tenant is entitled to under this Addendum and any other amounts previously paid by Tenant to Landlord with respect to the Work, including, without limitation, any Tenant's Building Changes or Tenant's Leasehold Improvement Changes to the extent that such changes affect the cost of the Base Building Work) by reason of Tenant's Building Changes, Tenant's Leasehold Improvement Changes to the extent that such changes affect the cost of the Base Building Work or Tenant Delay. If any Additional Amount is due to Landlord, and after submission to and reasonable approval by Tenant of such accounts, records, invoices, and evidence of payments as Tenant may reasonably request, such amount (plus interest accrued thereon at the Prime Rate per annum commencing on a date that is thirty (30) days after the date Landlord's invoice therefor is delivered to Tenant) will be paid in cash by Tenant to Landlord within thirty (30) days after the analysis and determination have been completed, unless Tenant has elected to have such costs included in the Base Rent, in which case the Base Rent shall be increased to amortize the excess over the Term of the Lease as set forth in Section 4.4(b) above. The foregoing computation shall be deemed to include, and Tenant will be obligated to pay, the fees (including, but not limited to, the fees of the Base Building Architect and other professionals engaged and utilized by the Landlord), expenses, and charges of Landlord and all contractors, subcontractors, material suppliers, and laborers to the extent, but only to the extent, that such fees, expenses, and charges are incurred as a result of Tenant's Building Changes, Tenant's Leasehold Improvements

Changes to the extent that such changes affect the cost of the Base Building Work or Tenant Delay.

4.5 General Access for Inspection and Monitoring of Progress; Tenant's Construction.

(a) Landlord will afford Tenant, its employees, and its representatives regular access during normal business hours to the Base Buildings, all materials thereon and therein, and all work being performed thereon and therein solely for inspection and monitoring of progress purposes or other purposes expressly provided by this Addendum; provided, however, that in exercising such right of access, Tenant and its employees and representatives will comply with all Legal Requirements (including, but not limited to, OSHA safety regulations and standards) and will coordinate such access with the General Contractor and Leasehold Improvement Contractor. Tenant will be required to provide reasonable prior notice to the General Contractor and Leasehold Improvement Contractor for the purpose of coordinating Tenant's entry onto the Premises with Work then in progress. Tenant acknowledges that its ability to gain entry to the Premises occasionally may be limited or restricted due to the particular stage of Work then in progress. Landlord shall have the opportunity to have a representative of Landlord accompany Tenant regarding any such entry.

(b) Tenant reserves the right from time to time upon notice to and approval by Landlord, such approval not to be unreasonably withheld, to perform with its own personnel, or to cause to be performed by other contractors, other work at the Premises not included herein; provided, however, that Tenant shall use commercially reasonable efforts to assure that such personnel or separate contractors will not cause any conflict with the personnel of Landlord ("Tenant's Early Access"). Landlord shall afford Tenant and its separate contractors reasonable opportunity for the introduction, protection and storage of material and equipment at the Premises and the execution of work, and Tenant shall properly connect, schedule and coordinate the Landlord's work with the work of the Tenant's personnel or separate contractors. Tenant shall insure that such personnel or separate contractors comply with the rules and regulations of the Landlord, General Contractor or Leasehold Improvement Contractor regarding work at the Premises. Landlord shall not deny Tenant's Early Access provided that the following conditions are satisfied at the time of such request: (i) the construction of the Base Building and the Leasehold Improvements will be completed to a degree which will allow Tenant's Early Access without undue interference with Landlord's Substantial Completion of the Work; and (ii) Tenant's Early Access is permitted by Governmental Authority; and (iii) Tenant has provided to Landlord all applicable insurance certificates of Tenant, and any of its contractors or subcontractors. Tenant will be responsible for all costs of repair or damage to the Base Buildings and the Leasehold Improvements caused by Tenant, its employees, agents, or contractors, including, without limitation, the Leasehold Contractor and any subcontractors thereof, during the period between the date of Tenant's Early Access and the Term Commencement Date. Notwithstanding the foregoing, Tenant's Early Access shall be further subject to the provisions set forth in Schedule 3 to this Addendum.

(c) Tenant may inspect and conduct tests at any reasonable time to determine whether the Work is being performed consistent with the Base Building Plans and the Leasehold Improvement Plans, regardless of whether such inspections or tests are required by the Base Building Plans and the Leasehold Improvement Plans. Should the Tenant's inspections or tests

reveal that the Work is not installed in accordance with the Base Building Plans and the Leasehold Improvement Plans in all material respects, the cost of uncovering and replacement shall be at the Landlord's expense (which may be deducted from the applicable Contingency, but to the extent it relates to Base Building Work and there is no remaining Base Building Contingency, such cost shall not be included in the calculation of Landlord's Total Cost of the Work attributable to the Base Building Work pursuant to Section 4.4); provided, however, Landlord shall diligently pursue correction of such defective Work by the Base Building Architect and the General Contractor, as applicable. If the Tenant's inspections or tests require Work to be uncovered and such inspections or tests reveal that the Work has been installed in accordance with the Base Building Plans and the Leasehold Improvement Plans, the costs of uncovering and replacement shall be at the Tenant's expense and may be the basis of Tenant Delay. Neither Tenant's inspections, tests or approvals nor its failure to make any such inspections, tests or approvals shall relieve Landlord of its responsibility to construct the Work in accordance with the Base Building Plans and the Leasehold Improvement Plans.

Tenant shall endeavor to mitigate the cost of correction of any non-conforming Work by performing any inspections and tests in a timely manner so as not to disrupt the flow of the Work. Tenant's failure to notify Landlord within five (5) business days after Tenant has learned of any non-conforming Work shall constitute a waiver by Tenant of the right to later require the correction of such Work.

(d) Landlord will not be liable for any injury, loss, or damage to any person (including, but not limited to, death) or property on or about the Premises resulting from the access by the access by Tenant, its employees, agents, contractors and subcontractors to or being on the Premises or in the Base Buildings prior to the Term Commencement Date, including Tenant's Early Access and the performance of inspections and monitoring, except to the extent caused by the negligence or willful misconduct of Landlord, its agents, employees, or contractors. Tenant indemnifies and agrees to hold harmless Landlord, General Contractor and Leasehold Improvement Contractor from and against any and all liability, and any costs or charges (including, without limitation, reasonable attorneys' fees and court costs) which Landlord, the General Contractor, the Leasehold Improvement Contractor may incur on account of such injury, loss, or damage claims arising from, or claimed to arise from, any negligence or willful misconduct of Tenant, its employees, agents, contractors and subcontractors, while on the Premises, or in the Base Buildings prior to the Term Commencement Date, or for any other reason whatsoever arising out of the access by Tenant, its employees, agents, contractors and subcontractors to or being on the Premises or in the Base Buildings prior to the Term Commencement Date, including Tenant's Early Access and the performance of inspections and monitoring, except to the extent caused by the negligence or willful misconduct of Landlord, its agents, employees, or contractors. Tenant's indemnification obligation pursuant to the provisions of this Section 4.5 will survive and continue in full force and effect after the Term Commencement Date or the termination of the Lease (regardless of how same may occur).

4.6 Landlord shall cause the General Contractor or Leasehold Improvement Contractor to remove from the Premises all Work reasonably rejected by the Tenant as failing to conform to the Base Building Plans and the Leasehold Improvement Plans, whether incorporated in the Work or not, and the Landlord shall promptly replace and re-execute the Work in accordance with this Addendum.



4.7 Thirty (30) days following Substantial Completion of the Work, if the Landlord persistently fails or neglects to carry out the completion of any Punchlist Item for the Base Building Work or any Punchlist Item for the Leasehold Improvement Work in accordance with the requirements of this Addendum, Tenant, after ten (10) days' written notice to the Landlord and without prejudice to any other remedy the Tenant may have, may make good such deficiencies and may deduct the reasonable cost thereof, including Tenant's expenses and compensation for the Leasehold Improvement Architect's and Tenant's Consultant's services made necessary thereby, from the applicable Contingency.

4.8 No Assumption of Responsibility. Except as otherwise expressly provided in this Addendum, neither the exercise nor the failure to exercise by Tenant or its representatives of any right afforded Tenant under this Addendum (including specifically, but without limitation, the exercise or the failure to exercise of a right to review, comment upon, approve, or disapprove documents, plans, specifications, drawings, or other matters, or the performance by Landlord) or the failure by Tenant to insist upon the performance by Landlord of any obligation imposed upon Landlord under this Addendum, will (a) impose upon Tenant, or be deemed to be an assumption by Tenant, of any obligation or liability with respect to the construction, operation, or insurance of the Work or the design of the Base Building or (b) constitute or be deemed to constitute acquiescence by Tenant to any act or failure to act on the part of Landlord which is in conflict with any provision of this Addendum.

4.9 Designated Representatives. Landlord and Tenant each hereby appoint a representative (each a "Designated Representative"), and in the event that a Designated Representative is unavailable for any reason whatsoever, an alternative representative (each an "Alternative Representative"), to make timely binding decisions on design, development, and construction matters (including pricing and scheduling changes) relating to the Work. The Designated Representatives are:

Landlord	Jose Hevia
Tenant	David C. Fannin

The Alternative Representatives are:

Landlord	Kolleen O.P. Cobb
Tenant	Stephen R. Calkins

At any time and from time to time hereafter, Landlord and Tenant will each have the right to appoint a successor or substitute Designated Representative and/or Alternative Representative to act on behalf of such party, each such appointment to be effected by delivering five (5) days' prior written notice to the other party hereto in accordance with the notice provisions of the Lease. Any action which may be taken by a Designated Representative may also be taken by an Alternative Representative and any party may rely thereon as if such action had been taken by the Designated Representative and such party will have no duty to inquire why the Designated Representative was unavailable to act.

ARTICLE V

COST OBLIGATIONS

5.1 Landlord's Cost. Except as otherwise specifically provided in this Addendum, Landlord will be liable and obligated to pay for all costs of preparation of the Base Building Plans and all costs of developing and constructing the Base Building, including, but not limited to, all permit costs, impact fees, architectural and engineering fees, and costs for labor and materials.

5.2 Tenant's Cost. Tenant will be liable for and obligated to pay the cost, as and when due, of the Leasehold Improvement Plans, including, without limitation, labor, materials, all costs of certification of pay requests by the Leasehold Improvement Architect, all costs for development of punch lists for the Leasehold Improvements, and any other costs associated with the Leasehold Improvement Architect and/or its agents. Tenant will be liable for and obligated to pay the cost of any increase in Landlord's costs of developing and constructing the Building resulting from any Tenant Delay. Tenant also will be liable for and obligated to pay the cost of constructing and completing the Leasehold Improvements, including, without limitation, labor and materials in accordance with this Addendum.

ARTICLE VI

SCHEDULE FOR CONSTRUCTION

6.1 Time to Complete.

(a) Time is of the essence to this Addendum. Landlord will cause Substantial Completion of the Work in accordance with this Addendum on or before the applicable Projected Completion Date, as may only be extended by Excusable Delays and/or Tenant Delays and/or agreed-on Tenant's Building Changes and Tenant's Leasehold Improvement Changes, in which case the applicable Projected Completion Date, if adversely affected by Excusable Delay and/or Tenant Delay and/or agreed-on Tenant's Building Changes and Tenant's Leasehold Improvement Changes, as the case may be, will be extended by one day for each day of such Excusable Delay and/or Tenant Delay and/or agreed-on Tenant's Building Changes and Tenant's Leasehold Improvement Changes. If Substantial Completion of the Base Building Work or Leasehold Improvement Work is not achieved by Landlord on or before the date that is fifteen (15) days after the applicable Projected Completion Date, as extended by Tenant Delay and/or Excusable Delay and/or agreed-on Tenant's Building Changes and Tenant's Leasehold Improvement Changes (the "Late Date"), Landlord will then be liable to Tenant for damages ("Tenant's Delay Damages"), as liquidated damages as Tenant's sole and exclusive remedy for such delay (except as expressly provided below), and not as a penalty, for the number of days between the Late Date and the date that Substantial Completion of the Work is achieved (the "Late Period"), as provided below. Tenant's Delay Damages will be equal to: (i) Two Thousand Five Hundred and No/100 (\$2,500.00) Dollars per day for the first fifteen (15) days of the Late Period, and (ii) Nine Thousand Five Hundred and No/100 (\$9,500.00) Dollars per day for each day of the Late Period following the first fifteen (15) calendar days thereof. Tenant's actual damages for late Substantial Completion of the Base Building are difficult and impractical to ascertain, and the

Tenant's Delay Damages are intended to be reasonable estimates for the amounts of damages that Tenant will suffer by reason of Landlord's delay in completing the Base Building. Landlord will credit the amount of unpaid Tenant's Delay Damages, if any, against the Base Rent due to Landlord; provided, however, that if Landlord contests Tenant's claim for Tenant's Delay Damages, then Tenant's ability to claim such credit will be postponed until a final adjudication is reached with respect to such claim. The payment to Tenant by Landlord of Tenant's Delay Damages will constitute Tenant's sole remedy for Landlord's failure to timely Substantially Complete of the Work, and shall not be deemed to be a default under the Lease, except as expressly provided below.

(b) If Landlord has not achieved Substantial Completion of the Work on or before the first anniversary of the Projected Completion Date of the Leasehold Improvement Work (the "Outside Completion Date") (as such Outside Completion Date may be extended by Excusable Delays and/or Tenant Delays and/or agreed-on Tenant's Building Changes and Tenant's Leasehold Improvement Changes), then Tenant shall have the right to terminate the Lease subject to the provisions hereof. If Tenant desires to terminate the Lease, then Tenant shall send a written notice to Landlord stating Tenant's desire to so terminate within ten (10) business days after the Outside Completion Date ("Tenant's First Termination Notice"). If Landlord achieves Substantial Completion of the Work within thirty (30) days after delivery of Tenant's First Termination Notice, then Tenant's First Termination Notice shall be void and of no further force or effect, and the Lease shall continue in full force and effect. If Landlord does not achieve Substantial Completion of the Work within thirty (30) days after delivery of Tenant's First Termination Notice, and Tenant desires to terminate the Lease, then Tenant shall send a written notice to Landlord stating Tenant's desire to so terminate within ten (10) business days after the expiration of such thirty (30) day period ("Tenant's Second Termination Notice"). If Landlord achieves Substantial Completion of the Work within thirty (30) days after delivery of Tenant's Second Termination Notice, then Tenant's Second Termination Notice shall be void and of no further force or effect, and the Lease shall continue in full force and effect. If Landlord does not achieve Substantial Completion of the Work within thirty (30) days after delivery of Tenant's Second Termination Notice, then the Lease shall be deemed to be terminated and the parties shall be relieved of all further obligations under the Lease. Nothing in this subsection is intended to relieve Landlord of its obligations to otherwise meet the Construction Schedule in accordance with this Addendum.

6.2 Tenant Default. If a Tenant Delay occurs under this Addendum or Tenant otherwise fails to comply with the terms hereof and the same continues uncured for ten (10) business days after Landlord's delivery of notice thereof to Tenant, then Landlord shall have the following rights and/or remedies, at Landlord's option: (a) an Event of Default shall be deemed to have occurred under the Lease, giving Landlord all rights and remedies available to Landlord thereunder; provided, however, that Landlord will not seek to terminate the Lease unless (i) Landlord has afforded Tenant the applicable cure period set forth in the Lease, and (ii) the Tenant Delay in question is based on Tenant (A) having failed to (x) deliver the Leasehold Improvement Plans in accordance with the terms and conditions of this Addendum, or (y) provide the insurance required under this Addendum, or (B) having otherwise ceased all performance under this Addendum; and/or (b) Tenant shall be liable for all damages incurred by Landlord which are proximately caused by such Tenant Delay, including, without limitation, any increased construction costs of the Base Building or Leasehold Improvements (e.g., due to

re-pricing of the Construction Contract(s) or any subcontracts as a result of such Tenant Delay) regardless of whether Substantial Completion of the Work is deemed to have occurred; and/or (c) Landlord shall have any other rights and/or remedies expressly provided in this Addendum.

6.3 Early Completion Bonus. If Landlord achieves Substantial Completion of the Leasehold Improvement Work in accordance with this Addendum prior to the Projected Completion Date for the Leasehold Improvements (or if Substantial Completion of the Leasehold Improvement Work is not achieved solely due to Tenant Delay, then if Landlord would have achieved Substantial Completion of the Leasehold Improvement Work on or before the Projected Completion Date for the Leasehold Improvement Work but for such Tenant Delay), Landlord will be entitled to a bonus ("Landlord's Early Completion Bonus") for each day between the date of such Substantial Completion of the Leasehold Improvements (or the date that such Substantial Completion of the Leasehold Improvements would have occurred, but for Tenant Delay) and such Projected Completion Date for the Leasehold Improvements (the "Early Completion Period"). Landlord's Early Completion Bonus will be equal to Five Thousand and No/100 (\$5,000.00) Dollars per day for each day of the Early Completion Period. Landlord's Early Completion Bonus shall be paid to Landlord solely out of the unused portion, if any, of the Base Building Contingency. If the Base Building Contingency has been depleted, then Landlord is not entitled to Landlord's Early Completion Bonus regardless of whether it has been earned.

## ARTICLE VII

### LEASE

7.1 Term Commencement Date. The Term of the Lease will commence upon the Term Commencement Date (as defined in Section 1.3 of the Lease). Notwithstanding the foregoing, if any Tenant Delay causes a delay in Substantial Completion of the Leasehold Improvements Work, then the Term Commencement Date shall be deemed to be the date that Substantial Completion of the Leasehold Improvements Work would have been achieved, but for such Tenant Delay. On the Term Commencement Date, Landlord agrees that, at Landlord's expense: (a) Landlord will deliver possession of the Premises and the Leasehold Improvements, free of all leases, tenancies, occupants, construction lien claims not discharged or transferred to security within ten (10) business days of the filing thereof, and defects in material and workmanship, but subject to Punchlist Items for Base Building Work or Leasehold Improvements Work; (b) the Base Building and the Leasehold Improvements will be in compliance with all Legal Requirements other than as may be applied due solely to a special use by Tenant unless the special use is shown on the final approved Base Building Plans or Leasehold Improvement Plans or in an approved Tenant's Building Change or Tenant's Leasehold Improvement Changes; (c) Landlord will satisfy all those obligations imposed upon Landlord by the provisions of the Lease which are required to be complied with prior to the commencement of the Term of the Lease, and (d) Landlord shall remove from the Premises all temporary systems, tools, equipment, machinery, surplus materials, waste and rubbish, and replace broken glass, except to the extent that any such items need to remain in order to complete any mutually approved Punchlist Items. Notwithstanding the foregoing, to the extent that the Term Commencement Date occurs and, due to a Tenant Delay or a default by Tenant under the Lease or this Addendum, any of the foregoing requirements set forth in clauses (a) — (d) above have not been met or satisfied by Landlord then such requirements shall be deemed to be waived

by Tenant for purposes of determining the date of Substantial Completion of the Work, and the Term Commencement Date shall nevertheless be deemed to occur, but Landlord will complete such requirements when Substantial Completion of the Work actually occurs.

## ARTICLE VIII

### GENERAL COVENANTS OF LANDLORD

8.1 Insurance. Landlord will obtain and maintain or will require the General Contractor to obtain and maintain, from the date hereof until the date of Substantial Completion of the Work, at no cost to Tenant, builder's all-risk insurance (which shall be for the Base Building only), automobile liability insurance, and commercial general liability insurance against liability for bodily injury and death and property damage, in reasonable and customary amounts and forms (at least \$2,000,000 general aggregate, which commercial general liability insurance shall name Tenant and Tenant's Consultant as additional insureds thereunder). Upon approval by Tenant of the Leasehold Improvement Costs, and any Tenant's Building Change or Tenant's Leasehold Improvement Change, Landlord will require the General Contractor or the Leasehold Improvement Contractor (in the case of Leasehold Improvements) to increase the amount of builder's all-risk insurance for this work. The cost of the increased insurance will be included in the cost of the Leasehold Improvement Costs, Tenant's Building Change or Tenant's Leasehold Improvement Change. Landlord will also provide or cause to be provided and kept in force workers' compensation coverage with statutory benefits covering employees of the General Contractor and with such endorsements and employer's liability coverage as would be maintained by a prudent owner. Landlord will deliver to Tenant, promptly as same are issued, certificates of insurance as are required to be obtained and maintained by Landlord pursuant to the terms hereof. Any insurance required by the terms of this Section 8.1 to be carried by Landlord may be under a blanket policy (or policies) covering other properties of Landlord and/or its affiliates; provided, however that Landlord will procure and deliver to Tenant a statement from the insurer or general agent of the insurer setting forth the coverage maintained and the amounts thereof allocated to the risks intended to be insured hereunder. In addition, the General Contractor shall carry products and completed operations (for at least one (1) year after the date of Substantial Completion of the Base Building or Substantial Completion of the Leasehold Improvement Work, as applicable); and contractual liability specifically covering the indemnification provision in the Construction Contract. The commercial general liability insurance is to include broad form property damage and afford coverage for explosion, collapse and underground hazards, and "personal injury" liability insurance and an endorsement providing that the insurance afforded under the contractor's policy is primary insurance as respects Landlord and Tenant and that any other insurance maintained by Landlord or Tenant is excess and non-contributing with the insurance required hereunder, provided that such insurance may be written through primary or umbrella insurance policies with policy limits required herein).

8.2 Base Building Architect's Insurance. Landlord shall cause the Base Building Architect to carry professional liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

8.3 Leasehold Improvement Architect and Contractor Insurance. Tenant, at no cost to Landlord, shall cause all architects and engineers retained by Tenant in connection with the

Leasehold Improvements to carry liability (including professional liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate) insurance, as described in Section 8.1 above and naming Landlord as an additional insured thereunder.

8.4 Landlord's Use of Tenant's Name. Landlord shall not use Tenant's name or trademark(s) on any site signs without the prior written consent of Tenant, which consent may be withheld in Tenant's sole and absolute discretion.

#### ARTICLE IX

##### DISPUTE RESOLUTION

9.1 Mediation. Any dispute as to the Base Building Plans or the Work shall be subject to the provisions of Section 11.12 of the Lease; provided that for any mediation in connection with a dispute under this Addendum, the Mediator shall have had experience in large-scale commercial construction.

9.2 Excusable Delay. Any delays in Substantial Completion of the Work caused as a result of the lapse of time pending an outcome under the dispute resolution process set forth in Section 11.12 of the Lease or as a result of a court decision shall be deemed to be an Excusable Delay if, as to a court decision, the court judgment provides for same.

#### ARTICLE X

##### WARRANTY OF CONSTRUCTION/CORRECTION OF THE WORK

10.1 For the first (1st) year after the date of Substantial Completion of the Base Building Work (the "Base Building Warranty Period"), Landlord hereby warrants to Tenant that all Base Building Work performed under this Addendum conforms to the requirements of the Base Building Plans, and is free of any defect, and that Landlord agrees to repair or replace (if needed) any defect in the Base Building Work so long as the need for such repair or replacement is not caused by the negligence or willful misconduct of Tenant or its agents, employees, or contractors. The warranty contained herein is not intended to reduce Landlord's repair and maintenance obligations expressly set forth in the Lease.

10.2 For the first (1st) year after the date of Substantial Completion of the Leasehold Improvement Work (the "Leasehold Improvements Warranty Period;" and together with the Base Building Warranty Period, the "Warranty Period"), Landlord hereby warrants to Tenant that all Leasehold Improvement Work performed under this Addendum conforms to the requirements of the Leasehold Improvement Plans, and is free of any defect, and that Landlord agrees to repair or replace (if needed) any defect in the Leasehold Improvement Work so long as the need for such repair or replacement is not caused by the negligence or willful misconduct of Tenant or its agents, employees, or contractors. The warranty contained herein is not intended to reduce Landlord's repair and maintenance obligations expressly set forth in the Lease.

10.3 Subject to the provisions of Section 4.5(c) hereof, prior to Substantial and Final Completion of the Base Building and the Leasehold Improvement Work and during the applicable Warranty Period, if Tenant notifies Landlord that any of the Work required under the

Base Building Plans or the Leasehold Improvement Plans is found to be not in accordance with the requirements of the Base Building Plans or the Leasehold Improvement Plans, Landlord shall use commercially reasonable efforts to cause the General Contractor and the Leasehold Improvement Contractor to correct such work with reasonable promptness. Under no circumstances shall Landlord have any responsibilities with respect to the Work if Tenant has not given such notice to Landlord within such one-year period.

10.4 Costs of correcting non-conforming work, including additional testing and inspections and compensation for the Base Building Architect and Leasehold Improvement Architect's services and expenses made necessary thereby, shall be at the Landlord's expense, however, such expenses may be paid from any unused Base Building Contingency if related to the Base Building (but any such costs related to the Base Building Work in excess of the Base Building Contingency shall not be included in the calculation of Landlord's Total Cost of the Work attributable to the Base Building Work pursuant to Section 4.4) and may be paid from any unused Leasehold Improvement Contingency if related to the Leasehold Improvements. Notwithstanding the foregoing or any other provision of this Addendum to the contrary, (i) in the event that the correction of the Work is related to an error or omission in the Leasehold Improvement Plans by the Leasehold Improvement Architect (a "Leasehold Improvement Plan Design Defect"), then the Work necessary to correct the Leasehold Improvement Plan Design Defect shall be made at Tenant's expense, and (ii) in the event that the correction of the Work is related to an error or omission in the Base Building Plans by the Base Building Architect (a "Base Building Plan Design Defect"), then the Work necessary to correct the Base Building Plan Design Defect shall be made at Landlord's expense, but such costs may be paid from the Base Building Contingency (but any such costs related to the Base Building Plan Design Defect in excess of the Base Building Contingency shall not be included in the calculation of Landlord's Total Cost of the Work attributable to the Base Building Work pursuant to Section 4.4). Notwithstanding any provision in this Addendum to the contrary, Tenant's approval of the proposed or final Base Building Plans or Leasehold Improvement Plans shall not relieve Landlord of its obligations under this Article X.

10.5 For components of the Base Building and for the Leasehold Improvements that have manufacturer's warranties that are greater than one year, at Substantial Completion of the Base Building or Substantial Completion of the Leasehold Improvements, as applicable, the Landlord shall assign such warranties to the benefit of the Tenant. Such warranties shall be in a commercially reasonable form. The Landlord shall remain responsible for administering all warranties, including such extended warranties, for one year following the date of Substantial Completion of the Base Building or Substantial Completion of the Leasehold Improvements, as applicable.

10.6 Notwithstanding the foregoing, the warranty period for all plant material, vegetation and landscaping, including, without limitation, sod, shall be at least ninety (90) days from Substantial Completion of the Work.

10.7 Subject to Landlord's obligations above, upon the Term Commencement Date, Landlord shall assign its rights under the Leasehold Improvements Contract to the benefit of the Tenant, which shall have the right to pursue any rights it may have thereunder.

10.8 Following the end of the Base Building Warranty Period, Landlord shall assign its rights under the Base Building Construction Contract, other than foundation, roof, floor slabs, exterior walls and ceiling slabs and other structural portions of the Base Buildings which Landlord is responsible to maintain under the Lease, to the benefit of the Tenant, which shall have the right to pursue any rights it may have thereunder with respect to latent defects, gross mistakes, or fraud.

ARTICLE XI

AS-BUILT PLANS

11.1 Within ninety (90) days following Substantial Completion of the Work, Landlord, at its expense as part of the Base Building cost, shall deliver or cause to be delivered to Tenant one (1) complete copy of as-built drawings and specifications of the Base Building Work, in full size sheets, and in electronic format reasonably acceptable to Tenant. As-built drawings and specifications must show all changes incorporated into the Work. The cost of generating such as-built drawings and specifications for the Base Building shall be part of the Base Building cost.

11.2 Within ninety (90) days following Substantial Completion of the Leasehold Improvement Work, Landlord, as part of the Leasehold Improvement Costs to be paid by Tenant shall deliver or cause to be delivered one (1) complete set of marked up drawings and specifications to the Leasehold Improvement Architect showing all changes incorporated into the Work.



Schedule 1 to Construction Addendum  
ISSUED FOR PERMIT PLANS

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Schedule 2 to Construction Addendum

CONSTRUCTION SCHEDULE

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Schedule 2-A to Construction Addendum  
CONSTRUCTION SCHEDULE MILESTONE DATES

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Schedule 3 to Construction Addendum

PROVISIONS RELATING TO TENANT'S EARLY ACCESS  
FOR CONSTRUCTION OF LEASEHOLD IMPROVEMENTS

1. The parties agree to cooperate and use good faith efforts to meet the time frames set forth in the Construction Schedule.
  2. Tenant's Early Access shall not in any way delay or materially interfere with the Work, and Tenant agrees to meet with Landlord as often as requested by Landlord in order to continually coordinate Tenant's Early Access.
  3. Tenant's Early Access shall be at Tenant's sole risk, and if at any time Tenant's Early Access shall cause material delay, disharmony, impediment, or interference with the Work, then Tenant's Early Access may be withdrawn by Landlord upon two (2) business days' written notice to Tenant and failure of Tenant to cease its activities that are the cause of the delay, disharmony, impediment, or interference (which failure shall then be a Tenant Delay). Tenant's Early Access shall at all times be subject to the Landlord's reasonable rules and regulations regarding such access.
  4. Landlord makes no representation or warranty that the framework established by the parties for Tenant's Early Access will comply with Legal Requirements. If at any time a Governmental Authority alleges that Tenant's Early Access is not in compliance with or permitted by Legal Requirements, then Tenant shall cease all work as may be required by the Governmental Authority, until such time as Tenant, at its expense, has obtained the necessary approvals therefor.
  5. Tenant's Early Access shall not constitute acceptance of the Premises nor shall it in any way be deemed a waiver of any rights Tenant might have under this Addendum.
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Schedule 4 to Construction Addendum

BASE BUILDING BUDGET

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Schedule 5 to Construction Addendum

Description of Upgrades

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EXHIBIT "B"

LEGAL DESCRIPTION OF PROPERTY

Parcels "B", "C", "D", "E" and "F", ARVIDA PARK OF COMMERCE PLAT NO. 11, according to the Plat thereof, as recorded in Plat Book 50, Page 151, of the Public Records of Palm Beach County, Florida.

together with the Golf Course Parcel described as follows:

Being a parcel of land situated in Section 1, Township 47 South, Range 42 East, City of Boca Raton, Palm Beach County, Florida and more particularly described as follows:

Commencing at the Southwest corner of the Northwest one-quarter of said Section 1; thence South 89° 06' 49" East, along the South line of the said Northwest one-quarter, a distance of 70.01 feet; thence North 00° 00' 35" West, a distance of 40.00 feet; thence South 89° 06' 49" East, a distance of 105.99 feet to the POINT OF BEGINNING of this description; thence continue South 89° 06' 49" East a distance of 250.00 feet; thence North 00° 00' 35" West, a distance of 258.00 feet; thence North 89° 06' 49" West, a distance of 250.00 feet; thence South 00° 00' 35" East, a distance of 258.00 feet to the POINT OF BEGINNING.

Based on the final site plan and surveying, the legal description of the Property may be updated, and the parties will execute such documentation as may be reasonably requested by Landlord in order to confirm the legal description.

EXHIBIT "C"

This instrument prepared by:

Eric D. Rapkin, Esq.  
Akerman Senterfitt  
Las Olas Centre II  
350 East Las Olas Boulevard, Suite 1600  
Ft. Lauderdale, Florida 33301

MEMORANDUM OF LEASE COMMENCEMENT

THIS MEMORANDUM OF LEASE COMMENCEMENT is made and entered into as of \_\_\_\_\_, 200\_\_\_\_, by and between BOCA 54 NORTH LLC, a Delaware limited liability company (the "Landlord"), and OFFICE DEPOT, INC., a Delaware corporation (the "Tenant"), with respect to that certain Lease between Landlord and Tenant dated as of \_\_\_\_\_, 2006 (the "Lease").

Landlord and Tenant hereby confirm that the Term Commencement Date of the Lease is \_\_\_\_, 200\_\_\_\_, the Base Rent Commencement Date is \_\_\_\_, 200\_\_\_\_, and that the Term shall expire on \_\_\_\_, 20\_\_\_\_, unless the Term is renewed or the Lease is terminated pursuant to the terms of the Lease, and that these dates shall be conclusive for all purposes of the Lease.

[signatures begin on next page]



IN WITNESS WHEREOF, Landlord and Tenant have executed this document as of the first date set forth in the first paragraph above.

WITNESSES:

LANDLORD:

BOCA 54 NORTH LLC, a Delaware limited liability company

By: Boca 54 Land Associates LLC, a Delaware limited liability company, its Sole Member

By: Flagler Boca 54, LLC, a Florida limited liability company, its Managing Member

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

\_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of Flagler Boca 54, LLC, a Florida limited liability company, on behalf of the limited liability, which limited liability company is Managing Member of Boca 54 Land Associates LLC, a Delaware limited liability company, on behalf of the limited liability company, which limited liability company is Sole Member of BOCA 54 NORTH LLC, a Delaware limited liability company, on behalf of the limited liability company. He/She is personally known to me or produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

[signatures continue on next page]

TENANT:

OFFICE DEPOT, INC., a Delaware corporation

Name: \_\_\_\_\_

Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of OFFICE DEPOT, INC., a Delaware corporation, on behalf of the corporation. He/She is personally known to me or produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My commission expires:

EXHIBIT "D"

BASE RENT

Subject to adjustment as expressly set forth in this Exhibit, commencing on the Base Rent Commencement Date, Base Rent shall be as follows:

Year*	Annual Base Rent	Monthly Base Rent (Not Incl. Sales Tax)
1	\$14,354,612.01	\$1,196,217.67
2	\$14,713,477.31	\$1,226,123.11
3	\$15,081,314.24	\$1,256,776.19
4	\$15,458,347.10	\$1,288,195.59
5	\$15,844,805.77	\$1,320,400.48
6	\$16,240,925.92	\$1,353,410.49
7	\$16,646,949.07	\$1,387,245.76
8	\$17,063,122.79	\$1,421,926.90
9	\$17,489,700.86	\$1,457,475.07
10	\$17,926,943.38	\$1,493,911.95
11	\$18,375,116.97	\$1,531,259.75
12	\$18,834,494.89	\$1,569,541.24
13	\$19,305,357.26	\$1,608,779.77
14	\$19,787,991.20	\$1,648,999.27
15	\$20,282,690.98	\$1,690,224.25

\* (commencing on the Base Rent Commencement Date)

The annual Base Rent is based on the Base Building Budget, which amount (\$162,658,493) is subject to adjustment in accordance with Section 4.4(b) of the Construction Addendum. Any Credit Amount or Additional Amount amortized over the initial Term of the Lease in accordance with Section 4.4(b) of the Construction Addendum shall be at a rate of 8.825%. The annual Base Rent will be increased by two and one-half (2.5%) percent of the Base Rent for the immediately prior year, on each anniversary of the Base Rent Commencement Date. The Base Rent shall not be determined on the basis of the rentable square feet, gross square feet or other measure of the area of the Premises. The parties agree to execute and deliver an amendment to this Lease reflecting any adjustment in the Base Rent pursuant to Section 4.4 of the Construction Addendum.

EXHIBIT "E"

This instrument prepared by:

Eric D. Rapkin, Esq.  
Akerman Senterfitt  
Las Olas Centre II  
350 East Las Olas Boulevard, Suite 1600  
Ft. Lauderdale, Florida 33301

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is entered into and is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between BOCA 54 NORTH LLC, a Delaware limited liability company (the "Landlord"), and OFFICE DEPOT, INC., a Delaware corporation (the "Tenant").

1. Landlord and Tenant are parties to that certain Lease Agreement dated \_\_\_\_\_, 2006 (as the same may be amended from time to time, the "Lease"), pursuant to which Landlord has leased to Tenant the premises described therein and located on the real property legally described in Exhibit "A," attached hereto and made a part hereof (the "Premises").

2. The term of the Lease will commence on the Term Commencement Date (as defined in the Lease), and will continue for one hundred eighty (180) calendar months following the Base Rent Commencement Date (as defined in the Lease), unless earlier terminated in accordance with the terms of the Lease. The Lease also contains an option for Tenant to extend the term for two (2) terms of ten (10) years each, subject to the terms and conditions set forth in the Lease.

3. Tenant has also been granted a right of first offer to purchase the Premises.

4. The Lease contains substantially the following language:

"Tenant will have no authority or power, express or implied, to create or cause any construction lien or claim of any kind against the Premises or any portion thereof. Tenant will promptly cause any such liens or claims to be released by payment, bonding or otherwise within thirty (30) days after request by Landlord, and will indemnify Landlord against losses arising out of any such claim including, without limitation, legal fees and court costs. NOTICE IS HEREBY GIVEN THAT LANDLORD WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, OR MATERIAL FURNISHED OR TO BE FURNISHED TO TENANT, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER TENANT, AND THAT NO

CONSTRUCTION OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES, OR MATERIALS WILL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE PREMISES. TENANT WILL DISCLOSE THE FOREGOING PROVISIONS TO ANY CONTRACTOR ENGAGED BY TENANT PROVIDING LABOR, SERVICES, OR MATERIAL TO THE PREMISES.”

5. If the term of the Lease expires or is earlier terminated, Landlord shall prepare (in recordable form), and the parties shall promptly execute, a termination of this Memorandum, in form and content reasonably acceptable to both parties hereto. If Tenant fails to execute such termination within thirty (30) days after Landlord’s request, then Landlord may execute such termination on Tenant’s behalf, and Landlord is deemed to be appointed by Tenant as Tenant’s attorney-in-fact for the limited and sole purpose of executing the termination of this Memorandum.

6. This Memorandum does not set forth the entire Lease but is only intended to give notice thereof. Nothing contained herein shall be deemed to in any way to amend, modify or supersede the terms of the Lease, which terms remain in full force and effect. In the event of any conflict between the terms of the Lease and this Memorandum, the terms of the Lease shall prevail.

[signatures begin on next page]

WITNESSES:

LANDLORD:

BOCA 54 NORTH LLC, a Delaware limited liability company

By: Boca 54 Land Associates LLC, a Delaware limited liability company, its Sole Member

By: Flagler Boca 54, LLC, a Florida limited liability company, its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of Flagler Boca 54, LLC, a Florida limited liability company, on behalf of the limited liability, which limited liability company is Managing Member of Boca 54 Land Associates LLC, a Delaware limited liability company, on behalf of the limited liability company, which limited liability company is Sole Member of BOCA 54 NORTH LLC, a Delaware limited liability company, on behalf of the limited liability company. He/She is personally known to me or produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires:

[signatures continue on next page]

TENANT:

OFFICE DEPOT, INC., a Delaware corporation

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of OFFICE DEPOT, INC., a Delaware corporation, on behalf of the corporation. He/She is personally known to me or produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My commission expires:

EXHIBIT "A" TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION

Parcels "B", "C", "D", "E" and "F", ARVIDA PARK OF COMMERCE PLAT NO. 11, according to the Plat thereof, as recorded in Plat Book 50, Page 151, of the Public Records of Palm Beach County, Florida.



EXHIBIT "F"  
PERMITTED EXCEPTIONS

F-1

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EXHIBIT "G"

SNDA

G-1

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EXHIBIT "H"

QUALIFIED TRANSFEREES

For purposes of Section 11.21 of the Lease, a "Qualified Transferee" is a person or entity, or an entity that is controlled by a person or entity, that (i) is not a Disqualified Person or Entity (as defined below), and (ii):

(a) is an institutional or a private real estate investor or an Affiliate thereof, including without limitation, an insurance company, pension fund, investment or hedge fund, real estate investment trust, or real estate operating company, so long as such institutional or a private real estate investor's real estate equity portfolio aggregates at least \$500 million; or

(b) has a net worth of at least \$250 million; or

(c) has a long term credit rating of Baa3 or higher by Moody's Investors Service ("Moody's") (or its equivalent, if Moody's revises its credit ratings), or BBB- or higher by Standard & Poor's Rating Group ("Standard & Poor's") (or its equivalent, if Standard & Poor's revises its credit ratings), or BBB- or higher by Fitch (or its equivalent, if Fitch revises its credit ratings); or

(d) is a developer or manager of first-class office buildings and has a reputation in the industry comparable to that of Stiles Corporation.

A "Disqualified Person or Entity" is a person or entity, or an entity that is controlled by a person or entity, that (x) has been convicted of or has pleaded guilty in a criminal proceeding for any felony, or that is an on-going target of a grand jury investigation convened pursuant to Applicable Laws concerning organized crime, money laundering, or unlawful narcotics; or (y) is organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (A) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, *et seq.*, as amended; (B) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, *et seq.*, as amended; or (C) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended; or (z) is a national office products retailing company.

EXHIBIT "I"

LEGAL DESCRIPTION OF RELOCATION PROPERTY

Parcels "A", "B", "C" and "D", ARVIDA PARK OF COMMERCE PLAT NO. 10, according to the Plat thereof, as recorded in Plat Book 50, Page 149, of the Public Records of Palm Beach County, Florida, and Parcel "A", ARVIDA PARK OF COMMERCE PLAT NO. 11, according to the Plat thereof, as recorded in Plat Book 50, Page 151, of the Public Records of Palm Beach County, Florida.

RIDER NUMBER 1 TO LEASE  
dated \_\_\_\_\_, 2006  
between Boca 54 North LLC, as Landlord,  
and Office Depot, Inc., as Tenant

A. Landlord hereby grants Tenant two (2) consecutive options to renew (individually a "Renewal Option" and collectively, the "Renewal Options") the original Term, which Renewal Options shall be subject to the covenants and conditions hereinafter set forth in this Rider. The first Renewal Option shall be an option to extend the original Term for a period of ten (10) years (the "First Renewal Term"), commencing as of the date immediately following the expiration of the original Term. The second Renewal Option shall be an option to extend the First Renewal Term for one (1) additional period of ten (10) years ("Second Renewal Term") commencing as of the date immediately following the expiration of the First Renewal Term (the First Renewal Term and the Second Renewal Term, to the extent so exercised, are collectively referred to as the "Renewal Terms"). All terms not defined herein shall have the meaning ascribed to them in the Lease.

B. No earlier than eighteen (18) months and no later than fifteen (15) months prior to the expiration of the initial Term of this Lease or the First Renewal Term, as may be applicable, Tenant shall have the right to request, in writing, that Landlord provide the Market Rent Notice (as defined in subsection E(2) below) (the "Request Notice"). Landlord shall provide the Market Rent Notice within thirty (30) days after Tenant has given the Request Notice, provided, however, that regardless of whether Tenant has given a Request Notice, Landlord shall give Tenant the Market Rent Notice no earlier than fifteen (15) months and no later than thirteen (13) months prior to the expiration of the initial Term of this Lease or the First Renewal Term, as may be applicable. Tenant shall give Landlord written notice (the "Renewal Notice") of Tenant's election to exercise the applicable Renewal Option not later than twelve (12) months prior to the expiration of the initial Term of this Lease or the First Renewal Term, as may be applicable; provided that Tenant's failure to give an applicable Renewal Notice by said date, whether due to Tenant's oversight or failure to cure any existing defaults or otherwise, shall render the Renewal Options null and void. If Tenant fails to exercise a Renewal Option in accordance with the terms and conditions of this Rider on or before the applicable date, then all Renewal Options shall terminate and have no further force or effect, without further notice from Landlord.

C. Tenant shall not be permitted to exercise the Renewal Option if at the time Tenant delivers its Renewal Notice Tenant is in default under the Lease beyond any applicable notice and cure periods.

D. Tenant shall be deemed to have accepted the Premises in "as-is" condition as of the commencement of the Renewal Terms, it being understood and agreed that Landlord shall have no obligation to perform any tenant improvements or renovate the Premises or any portion of the Buildings as a result of Tenant's renewal of the Lease.

E. The covenants and conditions of the Lease in force during the original Term, as the same may be modified from time to time, shall continue to be in effect during the Renewal Terms, except as follows:

(1) The Base Rent for the Renewal Terms shall be an amount equal to the then Fair Market Rental Value (defined below) of the Premises. "Fair Market Rental Value" of the Premises shall be an amount, including Base Rent and annual escalations, determined on the basis of the then-prevailing market rental rates for tenants of comparable size and creditworthiness for comparable office buildings in Boca Raton, Florida.

(2) The Fair Market Rental Value shall be set forth in a written notice from Landlord to Tenant (the "Market Rent Notice"). The Market Rent Notice shall specify the Fair Market Rental Value for each of the ten (10) years contained in such Renewal Term. If Tenant shall disagree with the Fair Market Rental Value set forth in the Market Rent Notice established by Landlord for the Premises, Tenant shall, within twenty-one (21) days after receipt of the Market Rent Notice (the "Tenant's Notice Deadline"), furnish Landlord with a written notice of its disagreement (the "Tenant's Notice"), and Landlord and Tenant shall commence negotiations to agree upon the Fair Market Rental Value. If the Tenant's Notice is not received by Landlord by the Tenant's Notice Deadline, the Fair Market Rental Value shall be as set forth in the Market Rent Notice to Tenant. If Landlord and Tenant are unable to reach agreement within twenty-one (21) days after the Landlord's receipt of the Tenant's Notice (the "Renewal Rent Negotiation Period"), then the Fair Market Rental Value for such Renewal Term shall be determined as follows:

(a) No later than ten (10) business days following the expiration of the Renewal Rent Negotiation Period, Tenant and Landlord shall select an individual as an appraiser of its choice (the "Tenant's Appraiser") and give Landlord written notice of such appraiser's name, address, and telephone number.

(b) No later than ten (10) business days following the expiration of the Renewal Rent Negotiation Period, Landlord shall select an appraiser of its choice (the "Landlord's Appraiser") and give Tenant written notice of such appraiser's name, address, and telephone number.

(c) The two (2) appraisers so selected by Landlord and Tenant shall then select an individual as a third (3rd) appraiser (the "Third Appraiser") within fifteen (15) days after receipt by Tenant of Landlord's notification as to its selection of Landlord's Appraiser, and furnish Landlord and Tenant written notice of such Third Appraiser's name, address, and telephone number. If the appraisers selected by Landlord and Tenant fail to appoint the Third Appraiser within the time and in the manner herein, then Landlord and/or Tenant shall promptly apply to the local office of the local Appraisal Institute Office for the appointment of the Third Appraiser.

(d) All appraisers selected pursuant to this Section shall be M.A.I. appraisers, unless Landlord and Tenant otherwise agree in writing, each having at least ten (10) years' experience with commercial office property in Palm Beach County, Florida. Landlord's Appraiser and Tenant's Appraiser shall each

have thirty (30) days after the selection of the Third Appraiser to submit to the Third Appraiser their respective appraisals for Fair Market Rental Value. Each appraisal shall set forth the assumptions made therein by the appraiser with respect to brokerage fees and tenant allowance and all other concessions and relevant market factors in determining Fair Market Rental Value. The Third Appraiser shall have thirty (30) days thereafter to select one appraisal or the other and the selection by the Third Appraiser shall be final and binding upon the parties.

(e) If Tenant fails to select Tenant's Appraiser in the manner and within the time specified above for the applicable Renewal Term, then the Fair Market Rental Value for the applicable Renewal Term shall be the amount set forth in the Market Rent Notice. If Landlord fails to select Landlord's Appraiser in the manner and within the time specified above for the applicable Renewal Term, then Landlord shall not have the right to select an appraiser to determine Fair Market Rental Value, so long as Tenant shall have timely selected Tenant's Appraiser, and, in such event, Tenant's Appraiser shall determine Fair Market Rental Value in accordance with the provisions of subsection (d) above.

(f) Landlord and Tenant shall share equally all fees, costs, and expenses incurred in connection with retaining the Third Appraiser. Landlord and Tenant shall each bear their own attorneys' fees incurred with respect to the procedure set forth in this subsection E.

F. Following expiration of the Second Renewal Term as provided herein, Tenant shall have no further right to renew or extend the Lease.

G. The Renewal Option shall not be transferable by Tenant, except in conjunction with a permissible assignment (including, without limitation, an assignment in an Exempt Transfer) in accordance with the applicable provisions of the Lease.

**FIRST AMENDMENT TO LEASE**

THIS FIRST AMENDMENT TO LEASE (the "First Amendment") is made and entered into as of the 3<sup>rd</sup> day of July, 2007, by and between BOCA 54 NORTH LLC, a Delaware limited liability company (the "Landlord"), and OFFICE DEPOT, INC., a Delaware corporation (the "Tenant").

**RECITALS:**

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated November 10, 2006 (the "Lease"), including the Construction Addendum attached as Exhibit A thereto; and

WHEREAS, the parties have agreed to amend the Lease, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Landlord to Tenant, the receipt and sufficiency of which is hereby acknowledged by Tenant, the parties for themselves and their successors and assigns hereto hereby covenant and agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein as if set forth in full.
2. Capitalized Terms. All capitalized terms not defined in this First Amendment shall have the same meaning as set forth in the Lease.
3. Golf Course Parcel; Amendment to Memorandum of Lease. The parties acknowledge that Landlord has acquired fee simple title to the Golf Course Parcel as required by the Lease, and that, therefore, Section 11.33 of the Lease is terminated and is null and void and of no further force or effect. The Memorandum of Lease described in Section 11.7 of the Lease was recorded in Official Records Book 21086, Page 1233, of the Public Records of Palm Beach County, Florida. In accordance with Section 11.7 of the Lease, the parties executed an Amendment to Memorandum of Lease, which has been recorded in Official Records Book 21539, Page 1330, of the Public Records of Palm Beach County, Florida.
4. Base Rent. The first sentence of Section 2.1 of the Lease is hereby deleted in its entirety and replaced with the following language: "For purposes of this Lease, the "Base Rent Commencement Date" shall mean the later of (a) the date that Landlord achieves Substantial Completion of the Leasehold Improvement Work (as defined in the Construction Addendum), and (b) November 1, 2008."



5. Technical Revisions to Construction Addendum. The following revisions are hereby made to the Construction Addendum:

(a) Excusable Delay. In Section 1.10 of the Construction Addendum, on the first line, the following is hereby inserted after "Work": "(or, as to Punchlist Items, any actual delay in completion of the Punchlist Items)."

(b) General Contractor and Leasehold Improvement Contractor. In Sections 1.13 and 1.19 of the Construction Addendum, on the first line of each, the words "Centex Construction, LLC" are hereby deleted and replaced with the following: "Balfour Beatty Construction, LLC."

(c) Projected Completion Date of the Base Building Work. In Section 1.28 of the Construction Addendum:

(i) on the second line, "August 28, 2008" is hereby deleted and replaced with the following: "October 20, 2008."

(ii) the following is hereby inserted at the end: "Further provisions regarding the construction of aspects of the Base Building Work by August 28, 2008 are set forth in Section 1.33, below."

(d) Projected Completion Date of the Leasehold Improvement Work. Section 1.29 of the Construction Addendum is hereby deleted in its entirety and replaced with the following language: "'Projected Completion Date of the Leasehold Improvement Work' means the projected date of Substantial Completion of the Leasehold Improvement Work which is October 20, 2008, subject to extension for Excusable Delays, Tenant Delays, and agreed-on Tenant's Leasehold Improvement Changes. In addition, Landlord shall construct as much of the Leasehold Improvement Work as allowable pursuant to Legal Requirements on or before the following dates: (i) for the northern most building (the "North Building"), September 15, 2008, and (ii) for the building (the "Center Building") located between the North Building and the southern most building (the "South Building"), October 1, 2008. Prior to Substantial Completion of the Work, in contemplation of Tenant's phased installation of furniture, fixtures, and equipment as contemplated herein, (A) Tenant shall not unreasonably interfere with Landlord's work relative to achieving said Substantial Completion of the Work, and (B) Landlord shall not unreasonably interfere with Tenant's installation of its furniture, fixtures, and equipment as contemplated herein."

(e) Punchlist Items. In Section 1.32 of the Construction Addendum:

(i) on the ninth line, the following is hereby inserted after "Delay": "(but in no event will the Punchlist Items for the Leasehold Improvement Work be completed later than forty-five (45) days after Substantial Completion of the Leasehold Improvement Work, subject to extension for Excusable Delay)."

(ii) the following is hereby inserted at the end: "In addition, after such construction of the Leasehold Improvement Work prior to Substantial Completion thereof as contemplated in Section 1.29 of this Construction Addendum, Tenant shall cause the Leasehold Improvement Architect to prepare a schedule of Punchlist Items for the Leasehold Improvement"

Work on a per-Building basis or a per-floor basis within each Building, so that Punchlist Items for portions of the Leasehold Improvement Work that are so constructed can be established before the overall Substantial Completion of the Leasehold Improvement Work.”

(f) Substantial Completion of the Base Building Work. In Section 1.33 of the Construction Addendum, the following is hereby inserted at the end: “Although the Projected Completion Date of the Base Building Work is the date set forth in Section 1.28 hereof, Landlord estimates that, by August 28, 2008, although Landlord will not have obtained the items set forth in subsections 1.33(a) and 1.33(b), hereinabove, Landlord will be able to provide a letter from the Base Building Architect which confirms that Landlord has constructed the Base Building Work in accordance with the Base Building Plans, with the exception of the fire protection and life safety (and those portions of other mechanical, electrical, and plumbing Building Systems which relate to fire protection and life safety) and landscaping portions of the Base Building Work that cannot be completed by that date while the completion of Leasehold Improvement Work remains pending. In addition, and notwithstanding the foregoing, because the Projected Completion Date of the Base Building Work and the Projected Completion Date of the Leasehold Improvement Work are the same date, the City may issue a temporary or permanent certificate of occupancy evidencing Landlord’s completion of the Leasehold Improvement Work (or similar documentation evidencing the same) allowing Tenant or its employees, agents, contractors, or subcontractors to operate the Leasehold Improvements and the Premises without unreasonable impediment or interference by reason of continuing Leasehold Improvement Work (as described in Section 1.34(b)), without issuing a separate certificate of completion evidencing Landlord’s completion of the Base Building Work (or similar documentation evidencing the same). If such event occurs, the parties agree that Substantial Completion of the Base Building Work will be deemed to have occurred notwithstanding the absence of the certificate of completion (or similar documentation evidencing same) that is referenced in subsection 1.33(b).”

(g) Punchlist Work. In Section 4.7 of the Construction Addendum, on the first line, “thirty (30)” is hereby deleted and replaced with the following: “forty-five (45).”

(h) Time to Complete. In Section 6.1 of the Construction Addendum:

(i) on the ninth through eleventh lines, the phrase “If Substantial Completion of the Base Building Work or Leasehold Improvement Work is not achieved by Landlord on or before the date that is fifteen (15) days after the applicable Projected Completion Date” is hereby deleted and replaced with the following: “If Substantial Completion of the Leasehold Improvement Work is not achieved by Landlord on or before the Projected Completion Date of the Leasehold Improvement Work (i.e., October 20, 2008).”

(ii) on the sixteenth line, “Work” is hereby deleted and replaced with the following: “Leasehold Improvement Work.”

(iii) on the twenty-first and twenty-third lines, “Base Building” is hereby deleted in each and replaced with the following: “Work.”

(iv) on the penultimate line, “of” is hereby deleted.

(i) Early Completion Bonus. Section 6.3 of the Construction Addendum shall be deleted in its entirety and replaced with the following language: "If Landlord achieves Substantial Completion of the Leasehold Improvement Work in accordance with this Addendum prior to the Projected Completion Date of the Leasehold Improvement Work (or if Substantial Completion of the Leasehold Improvement Work is not achieved solely due to Tenant Delay, then if Landlord would have achieved Substantial Completion of the Leasehold Improvement Work on or before the Projected Completion Date of the Leasehold Improvement Work but for such Tenant Delay), Landlord will be entitled to a bonus of \$150,000 (the "Early Completion Bonus"), which Landlord shall pay in full directly to the Leasehold Improvement Contractor. The Early Completion Bonus shall be paid solely out of the unused portion, if any, of the Base Building Contingency (which will be part of Landlord's Total Cost of the Work, and which may include remaining funds from other line items which may be moved into Base Building Contingency); provided, however, if the Base Building Contingency has been depleted, such that there are insufficient funds to fully or partially pay the Early Completion Bonus, then Landlord and Tenant agree to split equally said deficiency. For example, if the Early Completion Bonus is earned, and if only \$100,000 remains in the Base Building Contingency at the time of payment of the Early Completion Bonus, then \$100,000 of the Early Completion Bonus shall be paid from the remaining balance of the Base Building Contingency and Tenant shall contribute \$25,000 towards payment of the Early Completion Bonus and Landlord shall contribute \$25,000 towards payment of the Early Completion Bonus. The Early Completion Bonus shall be payable within thirty (30) days of Final Completion of the Leasehold Improvement Work."

(j) Insurance. In Section 8.1 of the Construction Addendum:

(i) on the tenth line, "increase the amount of" is hereby deleted and replaced with the following: "carry."

(ii) on the tenth line, "the increased" is hereby deleted and replaced with the following: "this."

6. Tenant's Early Access. The revisions to the Construction Addendum as set forth above shall not be deemed to amend or modify in any respect the terms and conditions for Tenant's Early Access, including, without limitation, those requiring Tenant's Early Access in accordance with and subject to the requirements of Section 4.5(b) of the Construction Addendum.

7. Construction Schedule. In furtherance of the revised dates set forth herein for the Work, promptly following the date hereof, Landlord will be updating the Construction Schedule in accordance with and subject to the requirements of Section 1.8 of the Construction Addendum.

8. Addresses for Notices and Rent Payments. Until further notice, Landlord's addresses for notices and Rent payments pursuant to the Lease (as modified hereby) are as follows:

Landlord's address  
for notices: Boca 54 North LLC  
c/o Flagler Real Estate Development Corporation  
2855 S. LeJeune Road, 4th Floor  
Coral Gables, Florida 33134  
Attention: Jose Hevia, President

with copies to: Flagler Development Group, Inc.  
2855 S. LeJeune Road, 4th Floor  
Coral Gables, Florida 33134  
Attention: Kolleen O.P. Cobb, General Counsel

and

Boca 54 North LLC  
c/o Teachers Insurance and Annuity  
Association of America  
730 Third Avenue  
New York, NY 10017  
Attention: Harry St. Clair, Director

and

Boca 54 North LLC  
c/o Teachers Insurance and Annuity  
Association of America  
8500 Andrew Carnegie Boulevard  
Charlotte, North Carolina 28262  
Mail Stop: C3-08  
Attention: Suman Gera

and

Akerman Senterfitt  
One Southeast Third Avenue, 28th Floor  
Miami, Florida 33131  
Attention: Ronald A. Kriss, Esq.

Landlord's address  
for Rent payments: c/o Flagler Real Estate Development Corporation  
2855 S. LeJeune Road, 4th Floor  
Coral Gables, Florida 33134  
Attention: Accounting (Boca 54/Office Depot)

9. Counterparts; Facsimile or E-Mail. This First Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document. Signature pages exchanged by facsimile or e-mail shall be fully binding.

10. Lease Remains in Effect; Captions. Except as expressly modified herein, the Lease shall remain in full force and effect and, as modified herein, is expressly ratified and confirmed by the parties hereto. In the event of a conflict between the terms of the Lease and the terms of this First Amendment, the terms of this First Amendment shall control. Captions are included for convenient reference only.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties below have caused this First Amendment to be executed under seal as of the date and year first above written.

WITNESSES:

LANDLORD:

BOCA 54 NORTH LLC, a Delaware limited liability company

By: Boca 54 Land Associates LLC, a Delaware limited liability company, its Sole Member

By: Flagler Boca 54, LLC, a Florida limited liability company, its Managing Member

By: /s/ Jose Hevia  
Jose Hevia, Vice President

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Name: \_\_\_\_\_

TENANT:

OFFICE DEPOT, INC., a Delaware corporation

By: /s/ David C. Fannin  
David C. Fannin,  
Executive Vice President, General Counsel

By: /s/ Stephen R. Calkins  
Stephen R. Calkins,  
Vice President, Associate General Counsel

# Office DEPOT.

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**CONFIDENTIAL**

August 22, 2008

Mr. Michael D. Newman  
1308 Regency Court  
Southlake, Texas 76092

Dear Mike:

It is with great pleasure that I confirm our offer of employment with Office Depot. We are looking forward to having you as part of our team.

This letter confirms the details of the offer, which are set forth below. Please note that this offer is contingent upon the satisfactory outcome of both a drug screen and background investigation, including accurate representation of academic degrees and prior work experience. This conditional offer is also contingent upon the signing of a non-compete agreement, which is enclosed and verification of all data contained in your submitted resume. This offer will be considered rescinded if not accepted within ten (10) days hereof.

**Position:** Executive Vice President & Chief Financial Officer, reporting directly to the Chief Executive Officer.

**Salary:** Base salary of \$24,038.46 bi-weekly, which annualized equals \$625,000.

**Starting Bonus:** You will also receive a Starting Bonus of \$100,000.00 payable after the completion of your first ninety (90) days of continuous service. This amount will be subject to normal taxation. If within the first twelve (12) months of your Start Date, you are terminated for any reason other than due to no fault of your own or you voluntarily resign your employment, you will be required to reimburse Office Depot 100% of your Starting Bonus within thirty (30) days of your termination date.

**Location:** Corporate Headquarters, Delray Beach, Florida.

**Start Date:** TBD

**Next Performance Review:** Performance reviews for the previous calendar year are conducted annually in or around March. To be eligible for an annual performance review and a merit-performance-based salary increase, you must begin employment on or before September 30, 2008.

2200 Old Germantown Road | Delray Beach, FL 33445 | T + 561.438.4800

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**Bonus Eligibility:** Provided you begin employment on or before September 30, 2008, you will be eligible to participate in the 2008 Corporate Bonus Plan (the "Plan") for 2008. Any bonus payable under the Plan or outside of the Plan for 2008 will be paid in 2009, on a pro-rated basis. The Plan currently provides a bonus target payout of 70% of your base salary. Notwithstanding any projected bonus payout under the Plan for 2008, provided that you begin employment on or before September 30, 2008, you will receive a total bonus payment equivalent to 70% of your base salary, on a pro-rated basis.

**Car Allowance:** You are eligible to participate in Office Depot's Executive Car Allowance Program and will receive a bi-weekly car allowance of \$600.00.

**Vacation:** You are eligible for 4 weeks of vacation per year. Vacation is accrued as you work. You will accrue approximately one week of vacation during 2008, assuming you start prior to the beginning of October. You will have accrued approximately four weeks of vacation following the completion of one year of service and it may be taken as accrued.

**Relocation:** You are eligible to participate in the Corporate relocation program. Please refer to the enclosed brochure for information on the benefits available.

**Benefits:** You will be eligible to participate in the Executive Benefits Program. This information is enclosed.

**Equity Compensation:** You will receive a new hire sign-on stock award equal to a total market value of \$1,500,000 on the date of the award, subject to approval by the Compensation Committee of the Board of Directors. 50% of the total award value, or \$750,000 will be in the form of stock options. The remaining 50% may, at your election, be taken in the form of stock options and/or restricted stock, as described on the enclosed 2008 Equity Election Form for New-Hire Officers under the 2007 Office Depot, Inc. Long-Term Incentive Plan, provided you make a timely election. If you do not make a timely election, the remaining 50% of the award will be made in the form of restricted stock. If you want to make an election, please complete the enclosed election form and return it so that it is received prior to your Start Date. We expect the award will be approved on or about your first business date of employment. The value of all stock options will be determined using the Black-Scholes methodology on the day of grant. The value of all restricted stock will be the fair market value of the closing price of Office Depot's stock on the day of grant. The vesting and other terms of the award will be consistent with awards granted to our other officers at your level, with one-third of the total award vesting on each of the first three anniversary dates of the grant date.

**Long-Term Incentive Plan:** You will be eligible to participate in the Long-Term Incentive Plan ("LTI") at a level commensurate with your position at the time of the grant. While you are not eligible for the 2008 LTI grant, the amount of said grant for this position level in 2008 was \$800,000. The terms of future LTI will be determined by the Compensation Committee of the Board of Directors.



**Non-Compete Agreement:** For and in consideration of the above compensation terms, the sufficiency of which you acknowledge by your acceptance of employment, enclosed is an important document, which requires your execution — the Associate Non-Competition, Confidentiality and Non-Solicitation Agreement. Please return this document within ten (10) days hereof (a return envelope has been provided for your convenience). Your offer for employment is also conditioned upon your representation that you do not have any post-employment obligations (contractual or otherwise) that would limit in any respect your employment with Office Depot and your contemplated duties or otherwise subject Office Depot to liability for breach of any such obligations. Your acceptance of employment shall constitute your affirmation of the foregoing representation.

**Employment at Will/Severance:** All employment with Office Depot is at will, and nothing herein shall be construed to constitute an employment agreement or deemed a guarantee of continued employment. In the event that you are terminated due to no fault of your own, you will be entitled to receive (a) eighteen (18) months of your annual base salary determined at the time of separation, (b) eighteen (18) months of the monthly COBRA premium for the type of coverage you may have under the Office Depot group health plan (e.g., family coverage) at the time of termination, (c) a pro-rata bonus for the year in which the termination occurs calculated at the earned rate paid to you at the normal payment time for other participants in the Plan subject to IRS section 409A restrictions, and (d) a bonus calculated at “target” under the Plan for the calendar year prior to the year of termination to the extent unpaid at the date of termination (collectively, the “Severance Payment”). The Severance Payment, less applicable taxes and other deductions required by law, will be paid in equal installments during normal pay periods over an eighteen (18) month period unless otherwise provided herein or required by law; provided, however, that the Severance Payment is expressly conditioned upon your execution of a release in favor of Office Depot, Inc., its affiliates, successors and assigns, and your compliance with the covenants contained in said release. Unless otherwise agreed to in writing by Office Depot, the Severance Payment shall be in lieu of any severance payment or benefit under any Office Depot severance plan, policy, program or practice (whether written or unwritten) and, therefore, the Severance Payment shall be the exclusive source of any severance benefits. In addition, on or about your start date, you will be provided a Change In Control Agreement which provides for severance in the event that you are involuntarily terminated following a Change in Control, as defined therein.

Office Depot is required to verify your eligibility to work in the United States. Accordingly, on your first day of work at Office Depot, you must complete an Employment Eligibility Verification Form and provide original documentation establishing your identity and employment eligibility. The List of Acceptable Documents for this purpose is enclosed for your reference.

If you fail to provide the necessary documentation to establish your identity and eligibility to work in the United States by the close of business of your second day of work, you will not be permitted to work at Office Depot.

Enclosed is the Drug Test Chain of Custody form you must take to the lab. The lab will fill out the form for you. Be sure to take a photo ID with you.

Call ChoicePoint at 800-939-4782 and provide your zip code in order to ascertain the collection site that is most convenient for you. Please let ChoicePoint know that you have a Quest Diagnostics lab sheet, in order to be directed to the correct lab.

Mike, we are excited to have you join management as Executive Vice President & Chief Financial Officer. I look forward to your response as soon as practicable.

Sincerely,

/s/ Steve Odland

\_\_\_\_\_  
Steve Odland  
Chairman & Chief Executive Officer

Agreed to and Accepted by:

/s/ Michael D. Newman

\_\_\_\_\_  
Michael D. Newman

\_\_\_\_\_  
Date

## LIST OF OFFICE DEPOT INC.'S SIGNIFICANT SUBSIDIARIES

<u>Name</u>	<u>Jurisdiction of Incorporation</u>
Eastman Office Supplies, Inc.	Delaware
OCS Acquisition Corporation	Delaware
Office Depot Delaware Overseas Finance No. 1, LLC	Delaware
The Office Club, Inc.	California
Office Depot Overseas Limited (1)	Bermuda
Viking Direct B.V.	Netherlands
Office Depot Cooperatief W.A.	Netherlands
Office Depot Europe Holdings Limited	United Kingdom
Office Depot (Holdings) Limited	United Kingdom
Office Depot (Holdings) 2 Limited	United Kingdom
Office Depot UK Limited	United Kingdom
Reliable UK Limited	United Kingdom
Office Depot International (UK) Limited	United Kingdom
Office Depot Netherlands B.V.	Netherlands
Heteyo Holding B.V. (2)	Netherlands
Office Depot (Operations) Holdings BV	Netherlands
Office Depot International BV	Netherlands
Office Depot Cyprus Limited	Cyprus
Guilbert Luxembourg Sarl	Luxembourg
Office Depot Deutschland GmbH	Germany
Office Depot BS SAS	France
OD SAS	France
OD Network	China

(1) Includes 93 subsidiaries in the same line of business, including Office Depot International (UK) Limited, Office Depot International BV, Viking Direct B.V., Office Depot Cooperatief W.A., Office Depot Europe Holdings Limited, Office Depot (Holdings) Limited, Office Depot (Holdings) 2 Limited, Office Depot UK Limited, Reliable UK Limited, Office Depot Cyprus Limited, Office Depot Netherlands B.V., Guilbert Luxembourg Sarl, Office Depot Deutschland GmbH, Office Depot BS SAS, OD SAS, Office Depot (Operations) Holdings B.V., OD Network, Heteyo Holding B.V., and Office Depot Delaware Overseas Finance No. 1, LLC.

(2) Includes 6 subsidiaries in the same line of business

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement No. 333-62478 on Form S-3 and Registration Statements No. 333-45591, No. 333-59603, No. 333-63507, No. 333-68081, No. 333-69831, No. 333-41060, No. 333-80123, No. 333-90305 and No. 333-123527 on Forms S-8 of our reports dated February 23, 2009 relating to the consolidated financial statements of Office Depot, Inc. and the consolidated financial statement schedule of Office Depot, Inc. and the effectiveness of Office Depot's internal control over financial reporting appearing in this Annual Report on Form 10-K of Office Depot, Inc. for the year ended December 27, 2008.

/s/DELOITTE & TOUCHE LLP  
Certified Public Accountants

Boca Raton, Florida  
February 23, 2009

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

I, Steve Odland, certify that:

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

Date: February 24, 2009

/s/ STEVE ODLAND

Steve Odland

Chief Executive Officer

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

I, Michael D. Newman, certify that:

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

Date: February 24, 2009

/s/ MICHAEL D. NEWMAN

Michael D. Newman

Executive Vice President and Chief Financial Officer

## Office Depot, Inc.

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

In connection with the Annual Report on Form 10-K of Office Depot, Inc. (the "Company") for the fiscal year ended December 27, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Steve Odland, as Chief Executive Officer of the Company, and Michael D. Newman, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to each officer's knowledge:

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

/s/ STEVE ODLAND

Name: Steve Odland

Title: Chief Executive Officer

Date: February 24, 2009

/s/ MICHAEL D. NEWMAN

Name: Michael D. Newman

Title: Chief Financial Officer

Date: February 24, 2009

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

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