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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of Earliest Event Reported):

December 11, 2008

Landec Corporation

(Exact name of registrant as specified in its charter)

California

(State or other jurisdiction  
of incorporation)

0-27446

(Commission  
File Number)

94-3025618

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

3603 Haven Ave. Suite E, Menlo Park, California

(Address of principal executive offices)

94025

(Zip Code)

Registrant's telephone number, including area code:

650-306-1650

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

(d) On December 11, 2008, the Board of Directors (the "Board") of Landec Corporation (the "Company") elected Steven Goldby to serve as a new member of the Board as a Class I Director and as a member of the Audit Committee. Mr. Goldby has not had any direct or indirect material interest in any transaction since the beginning of the Company's last fiscal year, or in any currently proposed transaction, in which the Company was or is to be a participant and the amount involved exceeds \$120,000.

In connection with his election, the Company granted Mr. Goldby an option to purchase 10,000 shares of the Company's Common Stock, vesting in equal monthly installments over three years, as well as 3,333 Restricted Stock Units, which vest fully on the third anniversary of the grant.

(e) On December 11, 2008, the Company entered into a new executive employment agreement (the "Employment Agreement") with Mr. Gary T. Steele, President, Chief Executive Officer and Chairman of the Board of the Company, effective as of January 1, 2009, setting forth the terms of his employment. The Employment Agreement expires on December 31, 2011 unless renewed or extended by both parties, and provides that Mr. Steele shall be paid an annual base salary of \$375,000 (which is Mr. Steele's current annual base salary) through December 31, 2009 and an annual base salary of \$450,000 from January 1, 2010 until December 31, 2011, plus an annual cash incentive award based upon the attainment of pre-determined, mutually established goals. Mr. Steele will be eligible for grants of equity interests under the Company's 2005 Stock Incentive Plan at such times and in such amounts as determined by the Compensation Committee of the Board.

The Employment Agreement further provides that upon Mr. Steele's death or disability, the Company shall pay Mr. Steele or his estate his unpaid base salary and the pro rata portion of his annual incentive award through the date of termination. If Mr. Steele is terminated without cause or if he terminates his employment for good reason (generally, any relocation of Mr. Steele's place of employment, reduction in salary, material reduction in his maximum bonus payment or material reduction of his duties or authority), Mr. Steele will receive a severance payment equal to 100% of his annual base salary and a one-year acceleration of his unvested stock options and other equity awards, and the Company will pay the monthly premiums for health insurance coverage for Mr. Steele (and his spouse) until Mr. Steele attains age 65 or at such earlier time as Mr. Steele receives substantially equivalent health insurance coverage in connection with new employment. In addition, the Employment Agreement provides that if Mr. Steele is terminated without cause or terminates his employment for good reason within two (2) years following a "change of control," Mr. Steele will receive a severance payment equal to 150% of his annual base salary and the Company will pay the monthly premiums for health insurance coverage for Mr. Steele (and his spouse) until Mr. Steele attains age 65 or at such earlier time as Mr. Steele receives substantially equivalent health insurance coverage in connection with new employment. In the event of a "change of control," all of Mr. Steele's unvested stock options and other equity awards shall immediately vest and become exercisable.

The foregoing description of the Employment Agreement is only a summary and is qualified in its entirety by reference to the Employment Agreement, which is filed as an exhibit hereto.

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

Effective as of December 11, 2008, the Board approved an amendment and restatement of its Bylaws to increase the number of directors from eight (8) to nine (9). Attached as Exhibit 3.1 to this filing is a copy of the Amended and Restated Bylaws.

**Item 8.01 Other Events.**

On December 16, 2008, Landec issued a press release announcing Mr. Golby's election as a director. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

Exhibit 3.1 - Amended and Restated Bylaws of the Company.

Exhibit 10.26 - Employment Agreement with Gary T. Steele effective January 1, 2009.

Exhibit 99.1 - Press Release Dated December 16, 2008.

**SIGNATURES**

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

Landec Corporation

December 16, 2008

By: */s/Gregory S. Skinner*

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*Name: Gregory S. Skinner*

*Title: Vice President of Finance and Chief Financial Officer*

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Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated Bylaws of the Company
10.26	Employment Agreement with Gary T. Steele effective January 1, 2009
99.1	Press Release Dated December 16, 2008

**AMENDED AND RESTATED  
BYLAWS  
OF  
LANDEC CORPORATION**

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BYLAWS  
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LANDEC CORPORATION**

**ARTICLE 1.**

**CORPORATE OFFICES**

*1.1. Registered Office.*

The registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware. The name of the registered agent at such location is Corporation Service Company.

*1.2. Other Offices.*

The Board of Directors may at any time establish other offices at any place or places where the Corporation is qualified to do business.

**ARTICLE 2.**

**MEETINGS OF STOCKHOLDERS**

*2.1 Place of Meetings.*

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board of Directors. In the absence of any such designation, stockholders' meetings shall be held at the registered office of the Corporation.

*2.2 Annual Meeting.*

(a) The annual meeting of stockholders shall be held each year on a date and at a time designated by resolution of the Board of Directors. At the meeting, directors shall be elected and any other proper business may be transacted.

(b) Nominations of persons for election to the Board of Directors and the proposal of business to be transacted by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice with respect to such meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of the notice provided for in this Section 2.2, who is entitled to vote at the meeting and who has complied with the notice procedures set forth in this Section 2.2.

(c) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (b) of this Section 2.2, the stockholder must have given timely notice thereof in writing to the secretary of the Corporation, as provided in Section 2.5, and such business must be a proper matter for stockholder action under the General Corporation Law of Delaware.

(d) Only such business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these Bylaws. The chairman of the meeting shall determine whether a nomination or any business proposed to be transacted by the stockholders has been properly brought before the meeting and, if any proposed nomination or business has not been properly brought before the meeting, the chairman shall declare that such proposed business or nomination shall not be presented for stockholder action at the meeting.

(e) Nothing in this Section 2.2 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

*2.3. Special Meeting.*

(a) A special meeting of the stockholders may be called at any time by the Board of Directors, the chairman of the board, the president or by one or more stockholders holding shares in the aggregate entitled to cast not less than 10% of the votes at that meeting.

(b) Only such business shall be conducted at a special meeting of the stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting.

(c) Notwithstanding the foregoing provisions of this Section 2.3, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to matters set forth in this Section 2.3.

*2.4. Notice of Stockholders Meetings; Affidavit of Notice.*

(a) All notices of meetings of stockholders shall be in writing and shall be sent or otherwise given in accordance with this Section 2.4 of these Bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting (or such longer or shorter time as is required by Section 2.5 of these Bylaws, if applicable). The notice shall specify the place (if any), date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic mail or other electronic transmission, in the manner provided in Section 232 of the General Corporation Law of Delaware. An affidavit of the secretary or an assistant secretary or of the transfer agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(b) If a special meeting is called by stockholders representing the percentage of the total votes outstanding designated in Section 2.3(a), the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally, or sent by registered mail or by facsimile transmission to the chairman of the board, the president, any vice president, or the secretary of the Corporation. No business may be transacted at such special meeting otherwise than specified in such request. The officer receiving the request shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with the provisions of this Section 2.4, that a meeting will be held at the time requested by the person or persons calling the meeting, not less than 35 nor more than 60 days after the receipt of the request. If the notice is not given within 20 days after the receipt of the request, the person or persons requesting the meeting may give the notice. Nothing contained in this Section 2.4(b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

#### 2.5. *Advance Notice of Stockholder Nominees and Other Stockholder Proposals.*

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (C) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than one hundred twenty (120) calendar days before the one year anniversary of the date on which the Corporation first mailed its proxy statement to stockholders in connection with the previous year's annual meeting of stockholders; *provided, however*, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date of the prior year's meeting, notice by the stockholder to be timely must be so received not later than the close of business on the later of one hundred twenty (120) calendar days in advance of such annual meeting and ten (10) calendar days following the date on which public announcement of the date of the meeting is first made. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (iii) the class and number of shares of the Corporation that are beneficially owned by the stockholder, (iv) any material interest of the stockholder in such business, and (v) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended, in his capacity as a proponent to a stockholder proposal. Notwithstanding the foregoing, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders meeting, stockholders must provide notice as required by the regulations promulgated under the Securities Exchange Act of 1934, as amended. Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this paragraph (a). The chairman of the annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this paragraph (a), and, if he should so determine, he shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

(b) Only persons who are nominated in accordance with the procedures set forth in this paragraph (b) shall be eligible for election as directors. Nominations of persons for election to the Board of Directors may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the Corporation entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in this paragraph (b). Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the secretary of the Corporation in accordance with the provisions of paragraph (a) of this Section 2.5. Such stockholder's notice shall set forth (a) as to each person, if any, whom the stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) the class and number of shares of the Corporation that are beneficially owned by such person, (D) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, and (E) any other information relating to such person that is required to be disclosed in solicitations of proxies for elections of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and (b) as to such stockholder giving notice, the information required to be provided pursuant to paragraph (a) of this Section 2.5. At the request of the Board of Directors, any person nominated by a stockholder for election as a director shall furnish to the secretary of the Corporation that information required to be set forth in the stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this paragraph (b). The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws, and if he should so determine, he shall so declare at the meeting, and the defective nomination shall be disregarded.

Notwithstanding anything in these Bylaws to the contrary, no business brought before a meeting by a stockholder shall be conducted at an annual meeting except in accordance with procedures set forth in this Section 2.5.

#### 2.6. *Quorum.*

The holders of a majority of the shares of stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (a) the chairman of the meeting or (b) holders of a majority of the shares of stock entitled to vote who are present, in person or by proxy, shall have power to adjourn the meeting to another place (if any), date or time.

#### 2.7. *Adjourned Meeting; Notice.*

When a meeting is adjourned to another place (if any), date or time, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place (if any), thereof and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present and vote at such adjourned meeting, are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the place (if any), date and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

#### 2.8. *Organization; Conduct of Business.*

(a) Such person as the Board of Directors may have designated or, in the absence of such a person, the President of the Corporation or, in his or her absence, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as Chairman of the meeting. In the absence of the Secretary of the Corporation, the Secretary of the meeting shall be such person as the Chairman of the meeting appoints.

(b) The Chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including the manner of voting and the conduct of business. The date and time of opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

#### 2.9. *Voting.*

(a) The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these Bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

(b) Except as may be otherwise provided in the Certificate of Incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

(c) The Corporation may, and to the extent required by law, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Every vote taken by ballots shall be counted by an inspector or inspectors appointed by the chairman of the meeting.

(d) All elections shall be determined by a plurality of the votes cast, and except as otherwise required by law, all other matters shall be determined by a majority of the votes cast affirmatively or negatively.

#### 2.10. *Waiver of Notice.*

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or waiver by electronic mail or other electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice, or any waiver of notice by electronic transmission, unless so required by the Certificate of Incorporation or these Bylaws.

#### 2.11. *Stockholder Action By Written Consent Without A Meeting.*

The stockholders shall not be entitled to act by written consent; all actions of stockholders are required to be taken at an annual or special meeting.

#### 2.12. *Record Date for Stockholder Notice; Voting; Giving Consents.*

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action. If the Board of Directors does not so fix a record date:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent (including consent by electronic mail or other electronic transmission as permitted by law) is delivered to the Corporation.

(c) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, if such adjournment is for thirty (30) days or less; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

#### 2.13. *Proxies.*

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by an instrument in writing or by an electronic transmission permitted by law filed with the secretary of the Corporation, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, electronic or telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

#### 2.14. *Inspectors of Election.*

Before any meeting of stockholders, the Board of Directors may appoint one or more inspectors of election to act at the meeting or any adjournment of the meeting. If no inspector of election is so appointed, then the chairman of the meeting may appoint one or more inspectors of election to act at the meeting. If any person appointed as inspector fails to appear or fails or refuses to act, then the chairman of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy.

Each inspector, before discharging the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability.

Such inspectors shall:

- (a) ascertain the number of shares outstanding and the voting power of each;
- (b) determine the number of shares represented at the meeting and the validity of proxies and ballots;
- (c) count all votes and ballots;
- (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors;
- (e) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots; and
- (f) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

### **ARTICLE 3.**

#### **DIRECTORS**

##### *3.1. Powers.*

Subject to the provisions of the General Corporation Law of Delaware and any limitations in the Certificate of Incorporation or these Bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors.

##### *3.2. Number of Directors.*

The authorized number of directors shall be no fewer than five (5) and no more than nine (9). Within this range, the authorized number of directors shall initially be nine (9), such number to be changed within such range from time to time by resolution of the Board. Any amendment to these Bylaws changing the authorized number of directors (except to fix the authorized number of directors within the range) may only be adopted by the affirmative vote of at least a majority of the voting power of all of the then-outstanding shares of the voting stock of the Corporation entitled to vote.

##### *3.3. Election, Qualification and Term of Office of Directors.*

(a) Except as provided in Section 3.4 of these Bylaws, and unless otherwise provided in the Certificate of Incorporation, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal.

(b) Except as provided in Section 3.4 of these Bylaws, and unless otherwise provided in the Certificate of Incorporation, each director shall be elected by the vote of the majority of the votes cast with respect to the director at any meeting for the election of directors at which a quorum is present; provided that if as of a date that is fourteen (14) days in advance of the date the Corporation files its definitive proxy statement (regardless of whether or not thereafter revised or supplemented) with the Securities and Exchange Commission the number of nominees exceeds the number of directors to be elected, (a "**Contested Election**"), the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. For purposes of this Section, a majority of the votes cast means that the number of shares voted "for" a director must exceed the number of votes cast against that director. If a nominee for director who is an incumbent director is not elected at any meeting for the election of directors at which a quorum is present and at which there was no Contested Election, the director shall promptly tender his or her resignation to the Board after certification of the election results of the stockholder vote, which resignation shall be contingent upon the Board's acceptance of such resignation. The Nominating and Corporate Governance Committee will make a recommendation to the Board on whether to accept or reject the resignation, or whether other action should be taken. The Board will act on the Committee's recommendation and publicly disclose its decision and the rationale behind it within ninety (90) days from the date of the certification of the election results.

(c) Directors need not be stockholders unless so required by the Certificate of Incorporation or these Bylaws, wherein other qualifications for directors may be prescribed. The Certificate of Incorporation or these Bylaws may prescribe other qualifications for directors.

Unless otherwise specified in the Certificate of Incorporation, elections of directors need not be by written ballot.

##### *3.4. Resignation and Vacancies.*

Any director may resign at any time upon written notice to the attention of the secretary of the Corporation. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies. Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock that may then be outstanding, a vacancy created by the removal of a director by the vote of the stockholders or by court order may be filled by a majority of the directors then in office, not including those who have been so removed. Each director so chosen shall hold office until the next annual meeting of the stockholders and until a successor has been elected and qualified.

Unless otherwise provided in the Certificate of Incorporation or these Bylaws:

(a) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(b) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the Certificate of Incorporation or these Bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board of Directors (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders



holding at least 10% of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

### 3.5. *Place of Meetings; Meetings by Telephone.*

The Board of Directors may hold meetings, both regular and special, either within or outside the State of Delaware. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

### 3.6. *Regular Meetings.*

Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors.

### 3.7. *Special Meetings; Notice.*

Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail, facsimile, electronic transmission or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the Corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally, or by facsimile, electronic transmission or telegram, it shall be delivered at least 24 hours before the time of the holding of the meeting, or on such shorter notice as the person or persons calling such meeting may deem necessary and appropriate in the circumstances. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose of the meeting. The notice need not specify the place of the meeting, if the meeting is to be held at the principal executive office of the Corporation.

### 3.8. *Quorum.*

At all meetings of the Board of Directors, a majority of the total number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum is not present at any meeting of the Board of Directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

### 3.9. *Waiver of Notice.*

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or waiver by electronic mail or other electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.

### 3.10. *Board Action by Written Consent Without a Meeting.*

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee. Written consents representing actions taken by the board or committee may be executed by telex, telecopy or other facsimile transmission, or by electronic mail or other electronic transmission, and such facsimile or electronic transmission shall be valid and binding to the same extent as if it were an original. If the minutes of the board or committee are maintained in paper form, consents obtained by electronic transmission shall be reduced to written form and filed with such minutes.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

### 3.11. *Fees and Compensation of Directors.*

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. No such compensation shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

### 3.12. *Removal of Directors.*

Any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, however, that (i) unless the Certificate of Incorporation otherwise provides, if the Board of Directors is classified as provided under Section 141(d) of the General Corporation Law of Delaware, stockholders may effect such removal only for cause and (ii) if the stockholders of the Corporation are entitled to cumulative voting, if less than the entire Board of Directors is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire Board of Directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

## ARTICLE 4.

### COMMITTEES

#### 4.1. *Committees of Directors.*

The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate 1 or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, or in these Bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the General Corporate Law of Delaware to be submitted to stockholders for approval or (ii) adopting, amending or repealing any Bylaw of the Corporation.

#### 4.2. *Committee Minutes.*

Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

#### 4.3. *Meetings and Action of Committees.*

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Section 3.5 (place of meetings and meetings by telephone), Section 3.6 (regular meetings), Section 3.7 (special meetings and notice), Section 3.8 (quorum), Section 3.9 (waiver of notice), and Section 3.10 (action without a meeting) of these Bylaws, with such changes in the context of such provisions as are necessary to substitute the committee and its members for the Board of Directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the Board of Directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

## ARTICLE 5.

### OFFICERS

#### 5.1. *Officers.*

The officers of the Corporation shall be a chairman, a chief executive officer, a president, a secretary, and a chief financial officer. The Corporation may also have, at the discretion of the Board of Directors, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and any such other officers as may be appointed in accordance with the provisions of Section 5.3 of these Bylaws. Any number of offices may be held by the same person.

#### 5.2. *Appointment of Officers.*

The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 or 5.5 of these Bylaws, shall be appointed by the Board of Directors, subject to the rights, if any, of an officer under any contract of employment.

#### 5.3. *Subordinate Officers.*

The Board of Directors may appoint, or empower the chief executive officer or the president to appoint, such other officers and agents as the business of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

#### 5.4. *Removal and Resignation of Officers.*

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board of Directors at any regular or special meeting of the Board of Directors or, except in the case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the attention of the secretary of the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

#### 5.5. *Vacancies in Offices.*

Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors or by the chief executive officer or the president in accordance with the provisions of Section 5.3 of these Bylaws.

#### 5.6. *Chairman of the Board.*

The Chairman of the Board of Directors, if there be one, shall have the power to preside at all meetings of the Board of Directors and shall have such other powers and shall be subject to such other duties as the Board of Directors may from time to time prescribe.

#### 5.7. *Chief Executive Officer.*

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board, if any, the chief executive officer of the Corporation shall, subject to the control of the Board of

Directors, have general supervision, direction, and control of the business and the officers of the Corporation. He or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the Board of Directors and shall have the general powers and

duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

#### 5.8. *President.*

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board (if any) or the chief executive officer, the president shall have general supervision, direction, and control of the business and other officers of the Corporation. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

#### 5.9. *Vice Presidents.*

In the absence or disability of the chief executive officer and president, the vice presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a vice president designated by the Board of Directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors, these Bylaws, the president or the chairman of the board.

#### 5.10. *Secretary.*

The secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the Board of Directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required to be given by law or by these Bylaws. He or she shall keep the seal of the Corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws.

#### 5.11. *Chief Financial Officer.*

The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Corporation as may be ordered by the Board of Directors, shall render to the president, the chief executive officer, or the directors, upon request, an account of all his or her transactions as chief financial officer and of the financial condition of the Corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

#### 5.12. *Representation of Shares of Other Corporations.*

The chairman of the board, the chief executive officer, the president, any vice president, the chief financial officer, the secretary or assistant secretary of this Corporation, or any other person authorized by the Board of Directors or the chief executive officer or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

#### 5.13. *Authority and Duties of Officers.*

In addition to the foregoing authority and duties, all officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board of Directors or the stockholders.

### ARTICLE 6.

#### INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES,

#### AND OTHER AGENTS

##### 6.1. *Indemnification of Directors and Officers.*

The Corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and officers against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.1, a "director" or "officer" of the Corporation includes any person (a) who is or was a director or officer of the Corporation, (b) who is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was a director or officer of a Corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

##### 6.2. *Indemnification of Others.*

The Corporation shall have the power, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its employees and agents (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.2, an "employee" or "agent" of the Corporation (other than a director or officer) includes any person (a) who is or was an employee or agent of the Corporation, (b) who is or was serving at the request of the Corporation as an employee or agent of another corporation,

partnership, joint venture, trust or other enterprise, or (c) who was an employee or agent of a corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

### 6.3. *Payment of Expenses in Advance.*

Expenses incurred in defending any action or proceeding for which indemnification is required pursuant to Section 6.1 or for which indemnification is permitted pursuant to Section 6.2 following authorization thereof by the Board of Directors shall be paid by the Corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined, by final judicial decision from which there is no further right to appeal, that the indemnified party is not entitled to be indemnified as authorized in this Article VI.

### 6.4. *Indemnity Not Exclusive.*

The indemnification provided by this Article 6 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the Certificate of Incorporation.

### 6.5. *Insurance.*

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

### 6.6. *Conflicts.*

No indemnification or advance shall be made under this Article 6, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the Certificate of Incorporation, these Bylaws, a resolution of the stockholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

## ARTICLE 7.

### **RECORDS AND REPORTS**

#### 7.1. *Maintenance and Inspection of Records.*

The Corporation shall, either at its principal executive offices or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in Delaware or at its principal place of business.

A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in each such stockholder's name, shall be open to the examination of any such stockholder for a period of at least ten (10) days prior to the meeting in the manner provided by law. The stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

#### 7.2. *Inspection by Directors.*

Any director shall have the right to examine the Corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the Corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

## ARTICLE 8.

### **GENERAL MATTERS**

#### 8.1. *Checks.*

From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the Corporation, and only the persons so authorized shall sign or endorse those instruments.

#### 8.2. *Execution of Corporate Contracts and Instruments.*

The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so

authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

### *8.3. Stock Certificates; Partly Paid Shares.*

The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the Corporation by the chairman or vice-chairman of the Board of Directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

### *8.4. Special Designation on Certificates.*

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special

rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

### *8.5. Lost Certificates.*

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and canceled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or the owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

### *8.6. Construction; Definitions.*

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the General Corporation Law of Delaware shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

### *8.7. Dividends.*

The directors of the Corporation, subject to any restrictions contained in (a) the General Corporation Law of Delaware or (b) the Certificate of Incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock.

The directors of the Corporation may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

### *8.8. Fiscal Year.*

The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors and may be changed by the Board of Directors.

### *8.9. Seal.*

The Corporation may adopt a corporate seal, which may be altered at pleasure, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

### *8.10. Transfer of Stock.*

Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

### *8.11. Stock Transfer Agreements.*

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware.

### *8.12. Registered Stockholders.*

The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

8.13. *Facsimile Signatures.*

In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

**ARTICLE 9.**

**AMENDMENTS**

The Bylaws of the Corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the Corporation may, in its Certificate of Incorporation, confer the power to adopt, amend or repeal Bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal Bylaws.

## EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (this "Agreement") is effective as of January 1, 2009, by and between Landec Corporation (the "Company") and Gary T. Steele (the "Executive").

**WHEREAS**, as of January 1, 2006, Executive and the Company entered into an employment agreement (the "Second Employment Agreement"); and

**WHEREAS**, Executive and the Company wish to replace the Second Employment Agreement (which expires on December 31, 2008) with this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the parties hereto as follows:

### **1. POSITION AND DUTIES**

#### **(a) Position**

Executive will continue in his present positions of President, Chief Executive Officer ("CEO") and Chairman of the Board ("COB") of the Company during the Term (as defined below) of his employment under this Agreement. The prior sentence notwithstanding, the Board of Directors (the "Board") may designate another Director as the COB, at the Board's sole discretion, without violating this Agreement. As President, CEO and COB, Executive reports to the Board and will assist the Board in developing and implementing the Company's ongoing business strategy and objectives. Executive shall have such duties, authority and responsibilities that are commensurate with his being the Company's most senior executive officer, including, but not limited to, being responsible for the general management and operation of the Company, and such additional powers and duties as are prescribed from time to time by the Board.

#### **(b) Obligations**

During the term of his employment, Executive will devote Executive's full business efforts and time to the Company. For the duration of his employment, Executive agrees not to actively engage in any other employment, occupation or consulting activity for any direct or indirect remuneration without the prior approval of the Board, except Executive may, without approval of the Board, serve in any capacity with any civil, educational or charitable organization ("Outside Activity"), provided such services do not interfere with Executive's obligations to the Company. In the event that the Board believes Executive's Outside Activity interferes with Executive's obligations to the Company, the Board shall inform Executive of such interference, and Executive shall have thirty (30) days to cease such Outside Activity.

### **2. TERM OF EMPLOYMENT**

This Agreement covers the Executive's employment with the Company from January 1, 2009 through December 31, 2011 (the "Term"), at which point it will expire unless renewed or extended by the written consent of both parties.

### **3. LOCATION**

Executive will be based at the Company's executive offices in Menlo Park, California or elsewhere as may be designated from time to time by the Company. The Executive will be expected to travel to the Company's offices at other locations as needed for the performance of his duties and responsibilities.

### **4. COMPENSATION, BENEFITS AND PERQUISITES**

#### **(a) Salary**

In consideration of services to be rendered by Executive to the Company, Executive shall be paid an annual base salary as follows:

(i) For the period commencing January 1, 2009, through December 31, 2009 (the "2009 Employment Year") Executive shall be paid \$375,000.00; and

(ii) For the period commencing January 1, 2010, through the end of the Term of this Agreement, Executive shall be paid \$450,000.00 per year.

The annual base salary that is then in effect (the "Base Salary") will be earned and paid in equal semi-monthly installments, less any deductions required by law, pursuant to procedures regularly established by the Company. Executive's Base Salary will be subject to review by the Compensation Committee of the Board (the "Committee") not less than annually, and adjustments can be made at the discretion of the Committee.

#### **(b) Annual Incentive Compensation**

Executive will continue to participate in the Company's annual cash bonus plan as it may be modified from time to time (the "Incentive Plan"). Under the terms of the current Incentive Plan for fiscal year 2009, Executive's annual bonus (which may not exceed 100% of Executive's Base Salary at the beginning of the fiscal year) is based upon attainment of pre-determined goals

mutually established by the Company and Executive. Actual bonus(es) payable will be determined and paid pursuant to the terms of the Incentive Plan. The Company reserves the right to modify, amend or discontinue the Incentive Plan at any time, subject to the provisions of Section 5(e)(iv) below.

(c) Long Term Incentive Compensation

Executive shall be eligible for grants of equity interests in the Company (“Compensatory Equity”) at such times and in such amounts as determined by the Committee. All future grants of Compensatory Equity (and the issuance of any underlying shares) to Executive shall be: (i) issued pursuant to the 2005 Stock Incentive Plan (or any applicable stockholder-approved successor plan) (the “Plan”) and (ii) issued pursuant to an effective registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended. Executive may elect to establish a trading plan in accordance with Rule 10b5-1 of the Securities Exchange Act of 1934 for any of his shares of common stock of the Company, provided, however, that such trading plan must comply with all of the requirements for the safe harbor under Rule 10b5-1 and must be approved in accordance with any Rule 10b5-1 Trading Plan Policy of the Company then in effect.

(d) Benefits

Executive will participate in the Company’s standard medical, life, accident, disability and retirement plans provided to its eligible employees on no less favorable terms than for other Company executives, subject in each case to the generally applicable terms and conditions of the plan or arrangement in question and to the determinations of any person or committee administering such plan or arrangement. In addition, so long as Executive is an employee of the Company, the Company will pay the annual premium on the additional disability plan in which Executive currently participates.

(e) Vacation

Executive shall accrue Company paid vacation in accordance with the Company’s policies and procedures, as may be amended from time to time and which currently provides for five weeks of vacation per year.

(f) Expenses

The Company will reimburse Executive for travel, lodging, entertainment and other reasonable business expenses incurred by him in the performance of his duties in accordance with the Company’s general policies, as may be amended from time to time.

## 5. TERMINATION OF EMPLOYMENT

(a) By Death or Disability

Executive’s employment will terminate automatically upon the death of Executive or when Executive begins to receive benefits under the Company’s Long Term Disability Plan. In such cases, the Company shall pay Executive (in the case of long term disability) or his estate or a person who acquired the right to receive such payments by bequest or inheritance (in the case of death):

(i) any earned, but unpaid, Base Salary to which Executive is entitled through the date of termination;

(ii) a prorated lump sum payment based upon the following formula: Y times \$68.50, where “Y” equals the number of days that have passed from January 1, 2009 until the date of termination, which shall be paid within ten (10) business days following the date of termination, provided that Executive’s death or disability occurs during the 2009 Employment Year<sup>1</sup>; and

(iii) Executive’s annual incentive award, if any, to which he is entitled under the Incentive Plan (disregarding any requirement that he be employed through the end of the determination period or on the date the payment is made), pro rated through the date of termination.

Upon payment of such amounts, the Company’s obligations under this Agreement will then cease.

(b) By Company for Cause

The Company may terminate, without liability, Executive’s employment for Cause (as defined below) at any time and without notice. The Company will pay Executive any earned, but unpaid Base Salary to which he is entitled through the date of termination and thereafter the Company’s obligations under this Agreement will then cease. Executive will not be entitled to any annual incentive award under the Incentive Plan for the year in which termination occurs, unless permitted under the then current Incentive Plan.

Termination shall be for “Cause” if Executive:

(i) willfully breaches significant and material duties he is required to perform;

(ii) commits a material act of fraud, dishonesty, misrepresentation or other act of moral turpitude;

(iii) is convicted of a felony or another crime which is materially injurious to the reputation of the Company;

(iv) exhibits gross negligence in the course of his employment;



(v) is ordered removed by a regulatory or other governmental agency pursuant to applicable law; or

(vi) fails to obey a lawful direction from the Board.

(c) By Company Without Cause

The Company may terminate Executive's employment and this Agreement, at any time, for any reason, without Cause.

If Executive's employment is terminated by the Company without Cause and not in connection with a "Change of Control" as described in Section 6(a) below, the Company shall:

(1) pay Executive (in a single lump-sum payment) any earned, but unpaid, Base Salary to which he is entitled through the date of termination;

(2) pay Executive an amount equal to 100% of the Base Salary over the 12-month period immediately following the date of termination (such amount to be paid in equal installments on the Company's regularly scheduled payroll dates);

(3) pay Executive a prorated lump sum payment based upon the following formula: Y times \$68.50, where "Y" equals the number of days that have passed from January 1, 2009 until the date of termination, which shall be paid within ten (10) business days following the date of termination, provided that Executive's termination occurs during the 2009 Employment Year;

(4) if Executive elects to continue his health coverage either pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") or through an individual policy with any insurance carrier (not including health coverage obtained in connection with any new employment) following the termination of his employment (it being understood that, if Executive elects health coverage under COBRA such coverage may only continue for the maximum period permitted under COBRA or any applicable state law and thereafter health coverage must be received through an individual policy with an insurance carrier), pay Executive's monthly premium for such coverage directly to the applicable insurance carrier (including any premium for coverage of Executive's spouse) until the earliest of the date Executive attains age 65, or the date when Executive commences receiving substantially equivalent health insurance coverage in connection with new employment;

(5) continue to provide secretarial support to Executive free of charge for the six-month period beginning on the date of termination;

(6) cause such number of shares subject to any unvested stock options and such number of shares of restricted stock, restricted stock units or other awards made under the Plan as would have vested over the one-year period beginning on the date of termination to vest as of the date of Executive's termination ; and

(7) pay Executive his annual incentive award, if any, to which he is entitled under the Incentive Plan (disregarding any requirement that he be employed through the end of the determination period or on the date the payment is made), pro-rated through the date of termination.

After payment of the termination benefits described in this Section 5(c), the Company's obligations under this Agreement will cease.

(d) Voluntary Termination

Executive may terminate his employment at any time by giving the Company three (3) months' advanced written notice of such termination. In this event, the Company will pay any earned, but unpaid, Base Salary to which Executive is entitled through the date of termination, and the Company's obligations under this Agreement will then cease. The Executive will not be entitled to any annual incentive award under the Incentive Plan for the year in which he terminates his employment.

(e) Termination for "Good Reason"

Executive may also terminate his employment for "Good Reason" upon the occurrence of any one of the following events, provided that the Good Reason Payout Trigger (as defined below) is met:

(i) any assignment to the Executive of duties other than those contemplated by this Agreement or typically assumed by a President and CEO, or which represent a material reduction in the scope and authority of Executive's position, except that the designation of another Director as Chairman of the Board shall not constitute "Good Reason";

(ii) a Company required relocation of Executive's principal place of work which is not agreed to by Executive and which requires an increase in Executive's normal commute of more than 35 miles, unless such relocation results from the relocation of the Company's executive offices;

(iii) any reduction in Base Salary which is not agreed to by Executive; or

(iv) at such time as the Incentive Plan is approved with respect to any fiscal year, the maximum bonus payable to Executive under such Incentive Plan shall be determined to be an amount which is less than 50% of the Base Salary of Executive.

For the Executive to receive the benefits under this Section 5(e) or Section 6(b) as a result of a termination for Good Reason, all of the following requirements must be satisfied (the satisfaction of such conditions, the “Good Reason Payout Trigger”): (1) Executive must provide notice to the Company of his intent to assert Good Reason for termination within 30 days of the initial existence of one or more of the conditions set forth in clauses (i) through (iv) above; (2) the Company must fail within 30 days (the “Cure Period”) from the date of such notice to remedy such conditions; and (3) if such conditions are not remedied, Executive must resign within 20 days after the end of the Cure Period. If the Company remedies such conditions within the Cure Period, the Executive may withdraw his proposed termination or may resign with no benefits under the voluntary separation provision of Section 5(d) above.

If Executive terminates his employment for “Good Reason” other than in connection with a “Change of Control” as described in Section 6(b) below and the Good Reason Payout Trigger has been met, Company shall:

(1) pay Executive (in a single lump-sum payment) any earned, but unpaid, Base Salary to which he is entitled through the date of termination;

(2) pay Executive an amount equal to 100% of the Base Salary over the 12-month period immediately following the date of termination (or, if higher, at the rate prior to a reduction referred to in clause (iii) above) (such amount to be paid in equal installments on the Company’s regularly scheduled payroll dates);

(3) pay Executive based upon the following formula: Y times \$68.50, where “Y” equals the number of days that have passed from January 1, 2009 until the date of termination, which shall be paid within ten (10) business days following the date of termination, provided that Executive’s termination occurs during the 2009 Employment Year;

(4) if Executive elects to continue his health coverage either pursuant to COBRA or through an individual policy with any insurance carrier (not including health coverage obtained in connection with any new employment) following the termination of his employment (it being understood that, if Executive elects coverage under COBRA such coverage may only continue for the maximum period permitted under COBRA or any applicable state law and thereafter health coverage must be received through an individual policy with an insurance carrier), pay Executive’s monthly premium for such coverage directly to the applicable insurance carrier (including any premium for coverage of Executive’s spouse) until the earliest of the date Executive attains age 65, or the date when Executive commences receiving substantially equivalent health insurance coverage in connection with new employment;

(5) continue to provide secretarial support to Executive free of charge for the six-month period beginning on the date of termination;

(6) cause such number of shares subject to any unvested stock options and such number of shares of restricted stock, restricted stock units or other awards made under the Plan as would have vested over the one-year period beginning on the date of termination to vest as of the date of Executive’s termination; and

(7) pay Executive his annual incentive award, if any, to which he is entitled under the Incentive Plan (disregarding any requirement that he be employed through the end of the determination period or on the date the payment is made), pro-rated through the date of termination.

After payment of the termination benefits described in this Section 5(e), the Company’s obligations under this Agreement shall cease.

#### (f) Termination Obligations

Executive acknowledges and agrees that all personal property and equipment furnished to or prepared by Executive in the course of or incident to his employment belong to the Company and shall be promptly returned to the Company upon termination of employment; provided that if Executive’s employment is terminated pursuant to Sections 5(c), 5(e) or 6, Executive will be allowed to retain his Company laptop computer after the Company removes any and all confidential and proprietary information belonging to the Company. Executive further acknowledges and agrees that all confidential materials and documents, whether written or contained in computer files, diskettes or any other media, remain the property of the Company and shall be promptly returned to the Company upon termination of employment, to the extent reasonably practicable for Executive to do so.

## 6. CHANGE OF CONTROL

A “Change of Control” is defined as the occurrence of one or more of the following events:

(i) a report on Schedule 13D is filed with the Securities and Exchange Commission pursuant to Section 13(d) of the Securities Exchange Act of 1934 disclosing that any person other than the Company, a subsidiary of the Company, or any employee benefits plan sponsored by the Company, is the beneficial owner of 50% or more of the combined voting power of the then-outstanding securities of the Company;

(ii) any person purchases securities pursuant to a tender or exchange offer, which, upon the consummation thereof, results in beneficial ownership of 50% or more of the voting power of the then-outstanding securities of the Company;

(iii) the stockholders of the Company approve a consolidation or merger of the Company in which the Company is not the surviving corporation, or the Company's shares are converted to cash, securities or other property, or all or substantially all of the assets of the Company are sold, leased, exchanged or transferred; or,

(iv) a majority of the members of the Company's Board of Directors change within a 24 month period unless the election or nomination for election of such Directors shall have been approved by a majority of the Directors still in office who were also Directors at the beginning of such 24 month period.

(a) By Company Without Cause Following a Change of Control

If, within a period of two (2) years subsequent to a Change of Control, Executive is terminated by the Company without Cause, the Company shall:

(1) pay Executive (in a single lump-sum payment) any earned, but unpaid, Base Salary to which he is entitled through the date of termination;

(2) pay Executive an amount equal to 150% of the Base Salary over the 18-month period immediately following the date of termination (such amount to be paid in equal installments on the Company's regularly scheduled payroll dates);

(3) pay Executive a prorated lump sum payment based upon the following formula: Y times \$68.50, where "Y" equal the number of days that have passed from January 1, 2009 until the date of termination, which shall be paid within ten (10) business days following the date of termination, provided that Executive's termination occurs during the 2009 Employment Year;

(4) if Executive elects to continue his health coverage either pursuant to COBRA or through an individual policy with any insurance carrier (not including health coverage obtained in connection with any new employment) following the termination of his employment (it being understood that, if Executive elects health coverage under COBRA such coverage may only continue for the maximum period permitted under COBRA or any applicable state law and thereafter health coverage must be received through an individual policy with an insurance carrier), pay Executive's monthly premium for such coverage directly to the applicable insurance carrier (including any premium for coverage of Executive's spouse) until the earliest of the date Executive attains age 65, or the date when Executive commences receiving substantially equivalent health insurance coverage in connection with new employment;

(5) continue to provide secretarial support to Executive free of charge for the six-month period beginning on the date of termination; and

(6) pay Executive his annual incentive award, if any, to which he is entitled under the Incentive Plan (disregarding any requirement that he be employed through the end of the determination period or on the date the payment is made), pro-rated through the date of termination.

After payment of the termination benefits described in this Section 6(a), the Company's obligations under this Agreement shall cease.

(b) Termination for "Good Reason" Following a Change of Control

If, within a period of two (2) years subsequent to a Change of Control, Executive terminates his employment for "Good Reason" (as defined in Section 5(e) above), the Company shall retain Executive as a consultant to be available to render consulting services for two (2) years following the date of termination (the "Consulting Period"), for up to ten (10) hours each month (and the Company shall pay Executive any out-of-pocket expenses necessary for Executive's consulting activities for the Company, and will reimburse Executive against receipts and vouchers therefor in accordance with the Company's policies in force from time to time);

If Executive terminates his employment for "Good Reason" within a period of two (2) years following a Change of Control, and the Good Reason Payout Trigger has been met, subject to Executive's making himself available to render consulting services during the Consulting Period and, regardless of whether or not Executive is actually called upon to render any services during such period, the Company shall:

(1) pay Executive (in a single lump-sum payment) any earned, but unpaid, Base Salary to which he is entitled through the date of termination;

(2) pay Executive an amount equal to 150% of the Base Salary over the 18-month period immediately following the date of termination (such amount to be paid in equal installments on the Company's regularly scheduled payroll dates);

(3) pay Executive a prorated lump sum payment based upon the following formula: Y times \$68.50, where "Y" equal the number of days that have passed from January 1, 2009 until the date of termination, which shall be paid within ten (10) business days following the date of termination, provided that Executive's termination occurs during the 2009 Employment Year;

(4) if Executive elects to continue his health coverage either pursuant to COBRA or through an individual policy with any insurance carrier (not including health coverage obtained in connection with any new employment)

following the termination of his employment (it being understood that, if Executive elects coverage under COBRA such coverage may only continue for the maximum period permitted under COBRA or any applicable state law and thereafter health coverage must be received through an individual policy with an insurance carrier), pay Executive's monthly premium for such coverage directly to the applicable insurance carrier (including any premium for coverage of Executive's spouse) until the earliest of the date Executive attains age 65, or the date when Executive commences receiving substantially equivalent health insurance coverage in connection with new employment;

(5) continue to provide secretarial support to Executive free of charge for the six-month period beginning on the date of termination;

(6) pay Executive his annual incentive award, if any, to which he is entitled under the Incentive Plan (disregarding any requirement that he be employed through the end of the determination period or on the date the payment is made), pro-rated through the date of termination.;

After payment of the termination benefits described in this Section 6(b), the Company's obligations under this Agreement shall cease.

(c) Acceleration Upon a Change of Control

Upon the occurrence of a Change of Control, all of Executive's shares subject to any unvested stock options and all shares of restricted stock, restricted stock units or other awards made under the Plan to Executive shall immediately vest and become exercisable.

## 7. PARACHUTE PAYMENTS AND SECTION 409A

(a) Best After-Tax Result

If Executive becomes entitled to any payment or benefit from the Company or otherwise pursuant to a Change of Control (the "Payments") that would (a) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), and (b) but for this Section, be subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the aggregate value of such Payments shall be equal to the Reduced Amount. The "Reduced Amount" shall be either (x) the Payments reduced to the extent necessary to ensure that no portion of the Payments will be subject to the Excise Tax, or (y) the full amount of the Payments; whichever amount, after taking into account all applicable taxes, including, federal, state and local employment taxes, income taxes and the Excise Tax (all computed at the highest applicable marginal rate, after taking into account the deductibility of state income taxes against federal income taxes to the extent allowable), results in Executive's receipt, on an after-tax basis, of the greater amount.

(b) Order of Reduction of Parachute Payments

If a reduction in payments or benefits constituting "parachute payments" is necessary so that the aggregate value of the Payments equals the Reduced Amount, reduction shall occur in the following order: (a) reduction of cash payments; (b) cancellation of accelerated vesting under Section 6(c); and (c) reduction of other employee benefits provided herein. In the event that accelerated vesting under Section 6(c) is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of the equity awards (*i.e.*, acceleration of vesting for the earliest granted equity awards shall be cancelled last) unless Executive elects in writing a different order for cancellation.

(c) Calculations

Unless Executive and the Company agree otherwise in writing, the determination of the calculations required under this Section 7 will be made in writing by the independent auditors who are primarily used by the Company immediately prior to the Change of Control (the "Accountants"). For purposes of making the calculations required by this Section 7, the Accountants may make reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. Executive and the Company agree to furnish such information and documents as the Accountants may reasonable request in order to make a determination under this Section 7. The Company will bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 7.

(d) Compliance with Section 409A

The payments and entitlements provided for under this Agreement are intended to qualify for the short-term deferral exception to Section 409A of the Code as described in Treasury Regulation Section 1.409A-1(b)(4) to the maximum extent possible, and to the extent they do not so qualify, they are intended to qualify for the involuntary separation pay plan exception to Section 409A of the Code as described in Treasury Regulation Section 1.409A-1(b)(9)(iii) to the maximum extent possible. The amounts paid pursuant to this Agreement shall be paid, consistent with Treasury Regulation Section 1.409A-1(b)(9)(iii)(B), no later than the last day of the second taxable year of the Executive following the taxable year of the Executive in which the "separation from service" (as such term is defined in Section 409A of the Code) occurs. For these purposes each payment described herein shall be considered a separate payment.

Notwithstanding anything to the contrary in this Agreement, if any payment or entitlement provided for in this Agreement constitutes a "deferral of compensation" (as such term is defined in Section 409A of the Code) (e.g., because such payment would

be in excess of the payments described in the immediately preceding paragraph) within the meaning of Section 409A of the Code and cannot be paid or provided in the manner provided herein without subjecting Executive to additional tax, interest or penalties under Section 409A of the Code as a result of the operation of Section 409A(a)(2)(B)(i) of the Code or Treasury Regulation Section 1.409A-3(i)(2), then any such payment and/or entitlement which would, but for the operation of this Section 7(d), be payable during the first six months following Executive's "separation from service" shall be paid or provided to Executive instead in a lump sum on the first day of the seventh month following the date of the Executive's "separation from service."

## **8. RELEASE**

It shall be a condition to the payment by the Company of the severance benefits payable to Executive under Section 5(c), 5(e), 5(f) or 6 that Executive signs a general release of all claims in substantially the form set forth in Exhibit A hereto and allows the release to become effective. No severance benefits will be paid unless and until the release becomes effective.

## **9. SOLICITATION OF EMPLOYEES, CONSULTANTS AND OTHER PARTIES**

Executive agrees that during the term of this Agreement, and for a period of two (2) years thereafter, Executive shall not either directly or indirectly solicit, induce or recruit any of the Company's employees or consultants to terminate their relationship with the Company, or attempt to solicit, induce or recruit employees or consultants of the Company, either for Executive or for any other person or entity. Further, for a period of two (2) years following termination of this Agreement, Executive shall not solicit any licensor to or customer of the Company or licensee of the Company's products, in each case, that are known to Executive, with respect to any business, products or services that are directly competitive to the products or services offered by the Company or that are under development as of the date of such termination.

## **10. POST EMPLOYMENT ACTIVITIES**

If the Company retains Executive as a consultant pursuant to Section 6(b) above, then for so long as the Company retains Executive as a consultant, Executive will not, absent the Company's prior written approval, directly or indirectly engage in activities nor render services to any firm or business organization which directly competes with the Company in any line of business engaged in (or then imminently planned to be engaged in) by the Company, whether now existing or hereafter established, nor shall Executive engage in such activities nor render such services to any other person or entity engaged in or about to become engaged in such activities to, for or on behalf of any such firm or business organization.

## **11. CONFIDENTIAL INFORMATION**

Executive agrees at all times during the term of this Agreement and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm, corporation or other entity without written authorization of the Board, any Confidential Information of the Company and agrees to abide by the terms of his Confidential Information and Invention Assignment Agreement with the Company. Executive understands that "Confidential Information" means any Company proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, supplies, customer lists, prices and costs, markets, software, developments, inventions, laboratory notebooks, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets or other business information disclosed to Executive by the Company either directly or indirectly in writing, orally or by drawings or observation of parts or equipment or created by Executive during the term of this Agreement. Executive understands that "Confidential Information" includes, but is not limited to, information pertaining to any aspects of the Company's business which is either information not known by actual or potential competitors of the Company or is proprietary information of the Company or its customers or suppliers, whether of a technical nature or otherwise. Executive further understands that Confidential Information does not include any of the foregoing items which have become publicly and widely known and made generally available through no wrongful act of Executive or of others who were under confidentiality obligations as to the item or items involved.

## **12. ASSIGNMENT**

Executive's rights and obligations under this Agreement may not be assigned, and any attempted assignment shall be null and void. The Company may assign this Agreement, but only to a successor or affiliated organization.

## **13. NOTICES**

All notices referred to in this Agreement shall be in writing and delivered to the Company at its principal address, 3603 Haven Avenue, Menlo Park, CA 94025-1010, or to Executive at his home address.

## **14. ENTIRE AGREEMENT**

The terms of this Agreement are intended by the parties to be the final expression of their agreement with respect to the employment of Executive by the Company and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

## **15. AMENDMENTS AND WAIVERS**

This Agreement may not be modified, amended or terminated except in writing, signed by Executive and by a duly authorized representative of the Company other than Executive. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall operate as a waiver thereof.

## 16. SEVERABILITY AND ENFORCEMENT

If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement shall remain in full force and effect.

## 17. GOVERNING LAW

This Agreement shall be interpreted and construed in compliance with the laws of the state of California, unless a superseding Federal law is applicable.

## 18. ARBITRATION

The Company and Executive agree that any and all disputes arising out of the terms of this Agreement, Executive's employment or Executive's compensation and benefits, or their interpretation, will be subject to binding arbitration in San Francisco, California before the American Arbitration Association under its National Rules for the Resolution of Employment Disputes. The Company and Executive agree that the prevailing party in any arbitration will be entitled to enforce the arbitration award in a court of competent jurisdiction. The Company and Executive hereby agree to waive their right to have any dispute between them resolved in a court of law by a judge or jury. In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretations, its performance or the like, the prevailing party shall be awarded reasonable attorneys' fees and/or costs.

This Executive Employment Agreement was executed as of December 11, 2008.

COMPANY:

LANDEC CORPORATION

By: /s/Richard S. Schneider  
Richard S. Schneider  
Director and Chairman of the  
Compensation Committee

By: /s/Kenneth E. Jones  
Kenneth E. Jones  
Lead Independent Director

EXECUTIVE:

GARY T. STEELE

/s/Gary T. Steele

Date: December 11, 2008

<sup>1</sup> For avoidance of doubt and clarity of purpose, this payment, and similar payments in Sections 5(c)(3), 5(e)(3), 6(a)(3), and 6(b)(3) below, are included herein in an effort to make Executive whole for an offer of a higher salary commencing January 1, 2009, which was made to Executive by the Company, but which Executive agreed not to take during the 2009 Employment Year for the best interests of the Company.

### Exhibit A

#### **Form of Release**

I hereby confirm that at all times in the future I shall remain subject to the Company's confidential information and invention assignment agreement signed by me.

I acknowledge that I have read and understand Section 1542 of the California Civil Code which I am informed reads as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims I may have against the Company.

Except as otherwise set forth in this Release, I hereby release, acquit and forever discharge the Company, its parents and subsidiaries and all of their officers, directors, agents, servants, employees, shareholders, successors, assigns and affiliates, of and from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys fees and costs, damages, indemnities and obligations of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed (other than any claim for indemnification I may have as a result of any third party action against me based on my conduct or at any time up to and including the date I execute this Release, including, but not limited to: all such claims and demands directly or indirectly arising out of or in any way connected with my employment with the Company or the termination of that employment (except as stated below), including but not limited to, claims of intentional and negligent infliction of emotional distress, any and all tort claims for personal injury, claims or demands related to stock, stock options or any other ownership interests in the Company, fringe benefits, or severance pay; claims pursuant to any federal, state or local law or cause of action including, but not limited to, the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of

1967, as amended ("ADEA"); the Employee Retirement Income Security Act of 1974, as amended; the Americans with Disabilities Act of 1990, the California Fair Employment and Housing Act, as amended; tort law; contract law; wrongful discharge; discrimination; fraud; defamation; emotional distress; and breach of the implied covenant of good faith and fair dealing; *provided, however*, that nothing in this Release shall be construed in any way to release the Company from (a) its post employment obligations under the Executive Employment Agreement or (b) its obligation to indemnify me pursuant to the Company's indemnification obligation pursuant to agreement or applicable law.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under ADEA. I also acknowledge that the consideration given for the waiver and release in the preceding paragraph hereof is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing that: (A) my waiver and release do not apply to any rights or claims that may arise on or after the date I execute this Release; (B) I have the right to consult with an attorney prior to executing this Release; (C) I have twenty-one (21) days to consider this Release (although I may choose to voluntarily execute this Release earlier); (D) I have seven (7) days following my execution of this Release to revoke the Release; and (E) this Release shall not be effective until the date upon which the revocation period has expired, which shall be the eighth (8<sup>th</sup>) day after I execute this Release.

That if any provision of this Release is found to be unenforceable, it shall not affect the enforceability of the remaining provisions and the court/arbitrator shall enforce all remaining provisions to the extent permitted by law.

Gary T. Steele

/s/Gary T. Steele

Date: December 11, 2008

**Contact Information:**

**At the Company:**

Gregory S. Skinner  
Vice President Finance and CFO  
(650) 261-3667

**EAS & Associates:**

Liz Saghi  
(805) 967-0161

**LANDEC CORPORATION NAMES STEVE GOLDBY AS NEW MEMBER OF BOARD OF DIRECTORS**

MENLO PARK, CA – December 16, 2008 — Landec Corporation (Nasdaq: LNDC), a developer and marketer of patented polymer products for food, agriculture and licensed partner applications, today announced that Steve Goldby, a Partner with Venrock in Palo Alto and a patent attorney, has been named a director of Landec Corporation.

Steve Goldby joined Venrock in 2007 following nine years as CEO of Symyx Technologies, a materials science company backed by Venrock. Steve is currently Executive Chairman of Symyx which operates as a scientific research and development integration partner for various companies in life sciences, chemical, energy, consumer products, and electronics industries. Steve has also served as CEO of MDL Information Systems, a leading scientific information company, before its sale to Reed Elsevier. Prior to MDL, Steve held various management positions at Alza Corporation (acquired by Johnson and Johnson), including President of Alza Pharmaceuticals. Steve was also President of Dynapol, a specialty chemical company. Steve is and has been a member of the board of directors of a number of public and privately held companies. He is a graduate of the University of North Carolina in Chemistry and has a J.D. from Georgetown University Law Center.

“We value Steve’s breadth of experience in management, materials science and patent experience, including his considerable knowledge in end-use applications for new materials. We look forward to his contribution in building and expanding our business for our patented polymer products for food, agriculture and licensed partner applications,” said Gary T. Steele, Chairman and Chief Executive Officer of Landec.

“I look forward to working closely with the other members of the Board of Directors in supporting and expanding the exciting opportunities generated by Landec’s proprietary Intelimer® polymer technology at a time when Landec is growing its core businesses based on its unique and differentiable technology solutions,” said Steve Goldby.

Landec Corporation designs, develops, manufactures and sells temperature-activated and other specialty polymer products for a variety of food, agricultural and licensed partner applications. The Company’s temperature-activated polymer products are based on its proprietary Intelimer polymers which differ from other polymers in that they can be customized to abruptly change their physical characteristics when heated or cooled through a pre-set temperature switch. For more information about the Company visit Landec’s website at [www.landec.com](http://www.landec.com).

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