

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

PANTRY INC

CIK:[915862](#) | IRS No.: [561574463](#) | State of Incorporation: **DE** | Fiscal Year End: **0924**
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SIC: **5500** Auto dealers & gasoline stations

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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): January 9, 2013

THE PANTRY, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

000-25813
(Commission
File Number)

56-1574463
(IRS Employer
Identification No.)

305 Gregson Drive
Cary, North Carolina
(Address of principal executive offices)

27511
(Zip Code)

Registrant's telephone number, including area code: **(919) 774-6700**

N/A
(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.

On January 9, 2013, the Board of Directors of The Pantry, Inc. (the “Company”) appointed B. Clyde Preslar as the Company’s Senior Vice President and Chief Financial Officer, effective February 7, 2013.

Mr. Preslar joins the Company from RailAmerica, Inc., where he served since 2008 as Senior Vice President and Chief Financial Officer for the short line and regional freight railroad operator. Prior to RailAmerica, Inc., Mr. Preslar served as Executive Vice President and Chief Financial Officer at Cott Corporation, a manufacturer of non-alcoholic beverage products, and as Vice President and Chief Financial Officer and Secretary at snack food manufacturer Lance, Inc. Earlier in his career, he was Director of Financial Services for worldwide power tools at Black & Decker, and served as Director of Investor Relations at RJR Nabisco.

Mr. Preslar holds a bachelor’s degree in Business Administration and Economics from Elon College and a master’s degree in Business Administration from Wake Forest University. He serves on the Board of Directors of Alliance One International, Inc. and is a past Director of Forward Air Corporation.

In connection with his employment, Mr. Preslar entered into an employment agreement with the Company effective February 7, 2013 (the “Agreement”), a copy of which is attached hereto as Exhibit 10.1 and the terms and conditions of which are incorporated herein by reference. The initial term of the Agreement is two years, subject to automatic renewal for successive one-year terms unless either party gives the other notice of non-renewal or the Agreement is otherwise terminated.

Under the Agreement, Mr. Preslar will receive an initial annual salary of \$400,000, subject to periodic increases in the discretion of the Company. Mr. Preslar will also be eligible to participate in all medical, dental, disability, insurance, 401(k), pension, vacation and other employee benefit and incentive plans made available to Company employees at Mr. Preslar’s level. In addition, Mr. Preslar will receive benefits provided for in the Company’s executive and senior officer relocation policy.

If Mr. Preslar’s employment is terminated by the Company for Cause (as defined in the Agreement) or by Mr. Preslar without cause or by notice of non-renewal, the Company’s obligation to compensate Mr. Preslar ceases on the date of termination except for amounts due at that time. If Mr. Preslar is terminated by the Company by notice of non-renewal or without Cause, then in addition to amounts due Mr. Preslar on the effective date of termination, Mr. Preslar will be entitled to receive, subject to the execution of a release, (i) if the Agreement is terminated during the first two years of employment, salary continuation for the greater of the number of months in the original term of the Agreement or twelve months, subject to reduction by the amount of compensation paid to him in connection with any employment, consultancy or self-employment (other than director’s fees) during such period, (ii) if the Agreement is terminated after the first two years of employment, salary continuation for twelve months, subject to reduction by the amount of compensation paid to him in connection with any employment, consultancy or self-employment (other than director’s fees) during such period; (iii) a prorated bonus for the fiscal year in which termination occurs to the extent that the performance requirements are satisfied; (iii) health insurance continuation until the earlier of the date that is twelve months following the date of termination or until Mr. Preslar becomes eligible for comparable group health insurance coverage under the health plan of another employer.

If Mr. Preslar’s employment is terminated within eighteen months following a Change in Control (as defined in the Agreement) by the Company by notice of non-renewal, without Cause or with Cause (solely in the case of Cause related to substantial failure to perform duties) or by Mr. Preslar for Good Reason (as defined in the Agreement), then he will be entitled to receive in addition to amounts due on the effective date of termination (i) a lump sum severance payment equal to his monthly salary for twenty-four (24) months plus two times his target bonus for the year in which termination occurs (subject to compliance with Section 409A of the Code), and (ii) health insurance for a period of twenty-four months from the termination date or until he becomes eligible for comparable coverage under health, life and disability plans of another employer.

The Agreement contains other terms and provisions that are customary for employment agreements of this nature, including a covenant prohibiting Mr. Preslar from, during his employment and for twelve months following the termination of his employment, participating in the convenience store business in North Carolina, South Carolina, Florida or any other state in which the Company owns or operates ten or more convenience stores on the date of termination of employment or soliciting the Company's employees for employment.

The description of the Agreement, including the exhibits thereto, is qualified in its entirety by reference to the Agreement, a copy of which is filed herewith as Exhibit 10.1 and is incorporated herein by reference.

Item 9.01 Financial Statement and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	Employment Agreement effective as of February 7, 2013 by and between B. Clyde Preslar and the Company
99.1	Press release dated January 10, 2013

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.

THE PANTRY, INC.

By: /s/ Berry L. Epley
Berry L. Epley
Vice President, Assistant Corporate Secretary
& Controller

Date: January 11, 2013

EXHIBIT INDEX

Exhibit No.	Description
10.1	Employment Agreement effective as of February 7, 2013 by and between B. Clyde Preslar and the Company
99.1	Press release dated January 10, 2013

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into by THE PANTRY, INC., a Delaware corporation (the "Corporation") and B. Clyde Preslar (the "Employee") and shall be effective as of February 7, 2013 (the "Effective Date").

The Corporation desires to employ Employee and Employee desires to accept such employment on the terms set forth below.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Corporation and Employee agree as follows:

1. EMPLOYMENT. The Corporation employs Employee and Employee accepts employment on the terms and conditions set forth in this Agreement. Employee shall serve as Senior Vice President and Chief Financial Officer, and have such responsibilities and authority as the Corporation may assign from time to time. Employee, at the Corporation's discretion, may be reassigned or transferred to different units or locations; provided, however, that Employee shall not be required to be based more than fifty (50) miles from his assigned Corporate office on his initial date of employment.

1.1 Employee shall perform all duties and exercise all authority in accordance with, and otherwise comply with, all Corporation policies, procedures, practices and directions.

1.2 Employee shall devote all working time and best efforts to successfully perform his duties and advance the Corporation's interests. During his employment, Employee shall not engage in any other business activities of any nature whatsoever (including board memberships) for which he receives compensation without the Corporation's prior consent; provided, however, this provision does not prohibit him from personally owning and trading in stocks, bonds, securities, real estate, commodities or other investment properties for his own benefit which do not create actual or potential conflicts of interest with the Corporation. Notwithstanding the foregoing: (i) nothing herein shall preclude Employee from participating or serving on the Board of Directors or similar governing body of one public company insofar as it does not present a conflict of interest and is not otherwise contrary to the best interest of the Company as reasonably determined by the Governance Committee; and (ii) the Corporation hereby consents to Employee's service on the board of the company identified in Schedule A.

2. COMPENSATION.

2.1 Base Salary. Employee's annual salary for all services rendered shall be Four Hundred Thousand Dollars and Zero Cents (\$400,000.00), less any applicable taxes and withholdings, payable in accordance with the Corporation's policies, procedures and practices as they may exist from

time to time. Employee's salary periodically may be subject to annual increases in the Corporation's discretion in accordance with its policies, procedures and practices as they may exist from time to time.

2.2 Bonus Programs. Employee may participate in any incentive program which may be made available from time to time to Corporation's employees at Employee's level; provided, however, that Employee's participation is subject to the applicable terms, conditions and eligibility requirements of the program, as they may exist from time to time.

2.3 Benefits. Employee may participate in all medical, dental, disability, insurance, 401(k), pension, vacation and other employee benefit plans and programs which may be made available from time to time to Corporation employees at Employee's level; provided, however, that Employee's participation is subject to the applicable terms, conditions and eligibility requirements of these plans and programs, some of which are within the plan administrator's discretion, as they may exist from time to time. Notwithstanding the foregoing, Employee shall be entitled to a minimum of four (4) weeks of annual vacation. Subject to applicable state law, accrued, unused vacation may not be carried over from year to year.

2.4 Relocation Expenses. The Corporation will assist Employee in relocating to North Carolina by providing relocation assistance under the Corporation's regular relocation practices and policies at a type and level currently offered to employees with a similar position and title. Provided, however, no such relocation expenses shall be paid later than March 15 of the year following the year in which the expense was incurred.

2.5 Benefit Plans Subject to Amendment. Nothing in this Agreement shall require the Corporation to create, continue or refrain from amending, modifying, revising or revoking any of the plans, programs or benefits set forth in Sections 2.2, 2.3 and 2.4. Employee acknowledges that the Corporation, in its sole discretion, may amend, modify, revise or revoke any such plans, programs or benefits. Any amendments, modifications, revisions and revocations of these plans, programs and benefits shall apply to Employee. Nothing in this Agreement shall afford Employee any greater rights or benefits with regard to these plans, programs and benefits than are afforded to him under their applicable terms, conditions and eligibility requirements, some of which are within the plan administrator's discretion, as they may exist from time to time.

2.6 Offset for Disability Payments. If at any time during which Employee is receiving salary or post-termination payments from the Corporation, he receives payments on account of mental or physical disability from any Corporation-provided plan, then the Corporation, in its discretion, may reduce his salary or post-termination payments by the amount of such disability payments.



2.7 Clawback Provision. It is the Corporation's Policy that, consistent with Section 954 of the Dodd-Frank Act, in the event that the Corporation is required to prepare an accounting restatement due to the material noncompliance of the Corporation with any financial reporting requirement under the securities laws, the Corporation will seek to recover from any current or former executive officer of the Corporation who received incentive-based compensation (including stock options and performance shares awarded as compensation) during the 3-year period preceding the date on which the Corporation is required to prepare the accounting restatement, the amount, based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement. The Corporation will implement this Policy in accordance with the rules of the Securities Exchange Commission, as they are promulgated. Pursuant to this agreement, Employee agrees to promptly return to the Corporation any and all amounts received pursuant to this Agreement to the extent the Corporation is entitled or required to recover such amounts by the terms of (i) the Corporation's Executive Compensation Recoupment Policy or other clawback or recoupment policy, as adopted, amended, implemented, and interpreted by the Corporation from time to time, and/or (ii) Section 954 of the Dodd-Frank Act (as may be amended) and any applicable rules or regulations promulgated by the Securities Exchange Commission.

3. TERM OF EMPLOYMENT AND TERMINATION. The original term of employment under this Agreement shall be two (2) years after the Effective Date listed above and subject to the following provisions:

3.1 Automatic Renewal. Upon the expiration of the original term or any renewal term of employment, Employee's employment shall be automatically renewed for a one (1) year period unless, at least sixty (60) days prior to the renewal date, either party gives the other party written notice of its intent not to continue the employment relationship. During any renewal term of employment, the terms, conditions and provisions set forth in this Agreement shall remain in effect unless modified in accordance with Section 8.

3.2 Without Cause. During the original or any renewal term, this Agreement and the employment relationship hereunder shall be terminated without cause thirty (30) days after either the Corporation or Employee gives notice of such termination to the other party.

3.3 With Cause. The Corporation may terminate this Agreement and Employee's employment hereunder immediately without notice at any time for the following reasons which shall constitute "Cause": (i) gross negligence or willful misconduct in the performance of the Employee's duties; (ii) Employee's insubordination in responding to any specific, reasonable instructions from either the Corporation's Chief Executive Officer or Board of Directors; (iii) conduct by Employee which is demonstrably and materially injurious to the Corporation, monetarily or otherwise; or (iv) the conviction of Employee of, or the entry of a plea of guilty or nolo contendere by Employee to, any crime involving moral turpitude or any felony. Prior to a termination pursuant to Section 3.3(i), Employee shall be given written notice of the manner in which he has failed to perform and a thirty (30) day opportunity to cure such failure.

3.4 Death or Disability. The Corporation may terminate Employee's employment without notice in the event of Employee's death or

“Disability” which shall mean Employee’s physical or mental inability to perform the essential functions of his duties with or without reasonable accommodation for a period of 180 consecutive days or 180 days in total within a 365-day period as determined by the Corporation in its reasonable discretion and in accordance with applicable law.

3.5 Survival. Section 4 (Compensation Upon Termination), Section 5 (Competitive Business Activities, Trade Secrets, Confidential Information and Corporation Property), and Section 6 (Change in Control) shall survive the expiration or termination of this Agreement, regardless of the reasons for such expiration or termination, until the obligations set forth therein have been satisfied.

4. COMPENSATION UPON TERMINATION.

4.1 By Corporation For Cause or By Employee Without Cause or By Notice of Non-Renewal. If Employee's employment is terminated by the Corporation for Cause or by Employee without cause or by notice of non-renewal, the Corporation's obligation to compensate Employee ceases on the effective termination date except as to amounts due at that time.

4.2 By Corporation by Non-Renewal or Without Cause. If the Corporation terminates Employee's employment by notice of non-renewal or without Cause, then Employee shall be entitled to receive:

(A) amounts due on the effective termination date;

(B) a prorated bonus for the fiscal year in which the effective termination date occurs. The amount of the pro-rata bonus paid will be determined based on actual results of the Employee and Corporation and days worked by Employee during the year. The bonus will be paid at the same time as bonuses are paid to other employees with a similar position and title;

(C) if the termination is by the Corporation without Cause in the first two years of employment under this Agreement, an amount equal to the greater of Employee's then current monthly salary for the then remaining months in the original term of this Agreement or for twelve (12) months, less any applicable taxes and withholdings and payable, subject to section 4.2(D) below, in substantially equal installments on the last business day of each applicable month and, if the termination is after the first two years of employment hereunder, an amount (less any applicable taxes and withholdings) equal to Employee's then current monthly salary for twelve (12) months, payable in substantially equal installments on the last business day of each applicable month ("Severance Payments"). Such Severance Payments shall commence in the month immediately following the month in which the release of claims required by Section 4.4 becomes effective. During the period in which Employee is receiving the Severance Payments, if Employee accepts employment or a consultancy with another entity or becomes self-employed, other than serving as a member of the board of directors of public companies, then he must notify the Corporation before such employment or consultancy begins and the payments made pursuant to Section 4.2(C) shall be reduced by the amount of compensation to be paid to him in connection with such employment, consultancy or self-employment, other than board of director fees. If Employee does not notify the Corporation in accordance with this provision, then its obligation to make payments or further payments pursuant to Section 4.2(C) shall cease;

(D) In order to ensure compliance with Section 409A and notwithstanding Sections B and C above, all severance

payments will be paid to the Employee prior to March 15 of the year following the calendar year of termination. If the payments would otherwise extend beyond such date, prior to the applicable March 15, the remaining balance of the severance amounts will be paid to the Employee in a lump sum; and

(E) unless Employee obtains comparable group health insurance coverage from a subsequent employer, then, for the twelve (12) months following the termination of Employee's employment, Employee may elect to continue participation in the Corporation's group health insurance plan in which Employee participated upon termination of employment by electing continuation coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). For the twelve (12) month continuation period, the Corporation shall reimburse Employee for that portion of the COBRA premiums in excess of the amount Employee paid for group health plan coverage immediately prior to termination from employment. In the event Employee prefers to obtain coverage under an individual health insurance policy that is less expensive than COBRA coverage rather than electing COBRA continuation coverage, the Corporation shall, for twelve (12) months, reimburse Employee for that portion of the premium payments that are in excess of the amount Employee paid for group health plan coverage immediately prior to termination of employment. All such reimbursements required pursuant to this Section 4.2(E) shall be paid as soon as reasonably practicable following employee's submission of proof of timely premium payments to the Corporation, subject to the following: (i) all such claims for reimbursement shall be submitted by Employee and paid by the Corporation no later than fifteen (15) months following Employee's termination of employment, (ii) any claims for reimbursements shall be paid no later than the end of the calendar year after the calendar year in which the reimbursable expense is incurred, (iii) reimbursements in one calendar year shall not affect those payable in any later calendar year, and (iv) no benefit provided under this Section 4.2(E) may be cashed out or exchanged for other benefits.

4.3 Death or Disability. If Employee's employment is terminated because of Employee's death either before or after a Change in Control (as hereinafter defined), then the Corporation shall pay to the estate of Employee an amount (less any applicable taxes and withholdings) equal to Employee's then current monthly salary for six (6) months. If Employee's employment is terminated because of Disability either before or after a Change in Control, then the Corporation shall pay Employee his then current monthly salary (less any applicable taxes and withholdings) for a period equal to the shorter of: (i) six (6) months from the date of termination; or, (ii) the time period from the date of termination through the date on which Employee begins receiving long term disability insurance benefits in accordance with the Corporation's long term disability plan. Any payments paid to Employee or his estate pursuant to this Section shall be paid in periodic, substantially equal installments; provided, however, that all such amounts payable shall be paid no later than two and one-half (2½) months following the end of the calendar year in which Employee's employment terminated.



4.4 Severance Pursuant to Agreement.

The Corporation's obligation to provide the payments under Sections 4.2, 4.3 (except in the event of termination because of Employee's death) and Section 6.3 is conditioned upon Employee's execution of an enforceable release of all claims and his compliance with Section 5 hereof (specifically including the return of all Corporation property, including but not limited to documents and electronic information). The required release shall contain a non-disparagement clause, confidentiality agreement and agreement to cooperate and shall be provided to Employee within seven (7) days following the date of his separation from service. Employee must execute the release within the time period specified in the release (which shall not be longer than forty-five (45) days from the date of Employee's receipt of the release). Such release shall not be effective until any applicable revocation period, which shall be no more than seven (7) days, has expired. If Employee chooses not to execute such a release or fails to comply with Section 5 of this Agreement, then the Corporation's obligation to compensate him ceases on the effective termination date except as to amounts due at that time.

Employee is not entitled to receive any compensation or benefits upon his termination except as: (i) set forth in this Agreement; (ii) otherwise required by law; or (iii) otherwise required by any employee benefit plan in which he participates; provided, however, that the terms and conditions afforded Employee under this Agreement are in lieu of any severance benefits to which he otherwise might be entitled pursuant to a severance plan, policy or practice. Nothing in this Agreement, however, is intended to waive or supplant any death, disability, retirement, 401(k) or pension benefits to which Employee may be entitled under employee benefit plans in which Employee participates.

5. COMPETITIVE BUSINESS ACTIVITIES, TRADE SECRETS, CONFIDENTIAL INFORMATION AND CORPORATION PROPERTY.

Employee acknowledges that by virtue of Employee's employment and position with the Corporation, Employee (i) has or will have access to trade secrets and Confidential Information (as defined in Section 5.2(B)) of the Corporation including valuable information about its business operations and entities with whom it does business in various locations, and (ii) has developed or will develop relationships with parties with whom it does business in various locations. Employee also acknowledges that the trade secrets, Confidential Information and Competitive Business Activities provisions set forth in this Agreement are reasonably necessary to protect the Corporation's legitimate business interests, are reasonable as to the time, territory and scope of activities which are restricted, do not interfere with public policy or public interest and are described with sufficient accuracy and definiteness to enable him to understand the scope of the restrictions imposed on him.

5.1 Competitive Business Activities. Without the Corporation's prior written approval, during Employee's employment and for twelve (12) months following termination of employment regardless of the reason for such termination:

(A) Employee shall not, either individually or on behalf of another, directly or indirectly, as employer, employee, owner, partner, stockholder, independent contractor, agent, or otherwise enter into or in any manner participate in the convenience store business in North Carolina, South Carolina, Florida, or any other state in which the Corporation owns or operates ten (10)

or more convenience stores upon the date of termination of employment. Notwithstanding the foregoing, Employee's ownership, directly or indirectly, of not more than one percent of the issued and outstanding stock of a corporation the shares of which are regularly traded on a national securities exchange or in the over-the-counter market shall not violate Section 5.1(A).

(B) Employee will not directly or indirectly, request or induce any other employee of the Corporation to: (i) terminate employment with the Corporation, or (ii) accept employment with another business entity, or (iii) become engaged in the convenience store business in competition with the Corporation.

5.2 Trade Secrets; Confidential Information.

(A) Employee hereby covenants and agrees not to use or disclose any Confidential Information (as hereinafter defined) or trade secrets except to authorized representatives of the Corporation or except as required by any governmental or judicial authority; provided, however, that the foregoing restrictions shall not apply to items that, through no fault of Employee's, have entered the public domain.

(B) Confidential Information. For purposes of this Agreement, "Confidential Information" means any data or information with respect to the business conducted by the Corporation, other than trade secrets, that is material to the Corporation and not generally known by the public. To the extent consistent with the foregoing definition, Confidential Information includes without limitation: (i) reports, pricing, sales manuals and training manuals, selling and pricing procedures, and financing methods of the Corporation, together with any techniques utilized by the Corporation in designing, developing, manufacturing, testing or marketing its products or in performing services for clients, customers and accounts of the Corporation; and (ii) the business plans, financial statements, reports and projections of the Corporation, and the Corporation's prospective strategic or expansion plans.

(C) Corporation Property. Employee acknowledges that all trade secrets and Confidential Information are and shall remain the sole, exclusive and valuable property of the Corporation and that Employee has and shall acquire no right, title or interest therein. Any and all printed, typed, written and other material which Employee may have or obtain with respect to trade secrets or Confidential Information (including without limitation all copyrights therein) shall be and remain the exclusive property of the Corporation, and any and all such material (including any copies) and all other Corporation property shall, upon request of the Corporation, be promptly delivered by Employee to the Corporation.

5.3 Other Agreements. Nothing in this Agreement shall terminate, revoke or diminish Employee's obligations or the Corporation's rights and remedies under law or any agreements relating to trade secrets, confidential information, or non-competition which Employee has executed in the past or may execute in the future or contemporaneously with this Agreement.



6. CHANGE IN CONTROL.

6.1 Definition of Change in Control. For purposes of this Agreement, a “Change in Control” shall mean:

(A) any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), other than: (i) the Corporation; (ii) a trustee or other fiduciary holding securities under an employee benefit plan of the Corporation; (iii) a corporation owned, directly or indirectly, by the stockholders of the Corporation in substantially the same proportions as their ownership of stock of the Corporation; or (iv) the existing holders of capital stock of the Corporation as of the date hereof, is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing more than fifty percent (50%) of the combined voting power of the Corporation’s then outstanding securities; or

(B) the consummation of a merger, share exchange, consolidation or reorganization involving the Corporation and any other corporation or other entity as a result of which less than fifty percent (50%) of the combined voting power of the Corporation or of the surviving or resulting corporation or entity after such transaction is held in the aggregate by the holders of the combined voting power of the outstanding securities of the Corporation immediately prior to such transaction (“Business Combination”), unless, following such Business Combination, (i) the individuals and entities who were the beneficial owners of the Corporation prior to the Business Combination beneficially own, directly or indirectly, more than 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Corporation or substantially all of the Corporation’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination, (ii) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) is the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) , directly or indirectly, of 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the Board of Directors of the Corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the board, providing for such Business Combination; or

(C) the stockholders of the Corporation approve a plan of complete liquidation of the Corporation or an agreement for the sale or disposition by the Corporation of all or substantially all of the Corporation’s assets; or



(D) during any period of twelve (12) consecutive months, the individuals who constitute the Board of Directors of the Corporation at the beginning of such period (the "Incumbent Directors") cease for any reason to constitute a majority of the Board of Directors; provided, however, that a director who is not a director at the beginning of such period shall be deemed to be an Incumbent Director if such director is elected or recommended for election by a majority of the directors who are then Incumbent Directors, but excluding, for this purpose, any such individual whose initial assumption of the office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board.

6.2 Termination Following a Change in Control. After the occurrence of a Change in Control, Employee shall be entitled to receive payments and benefits pursuant to this Agreement if Employee's employment is terminated within eighteen (18) months following the Change in Control either by the Corporation by notice of non-renewal, without Cause or by Employee for Good Reason. For purposes of this Agreement, "Good Reason" shall exist for Employee to terminate his employment if Employee resigns within six (6) months of any of the following conditions having arisen without his consent after having given the Corporation written notice of the existence of such condition within sixty (60) days of the initial existence of the condition and providing the Corporation with thirty (30) days to remedy the condition:

(A) a substantial adverse alteration in the nature or status of his position or responsibilities or the conditions of his employment from those in effect immediately prior to the Change in Control;

(B) a material diminution by the Corporation of Employee's annual base salary and target bonus, as such target bonus is described in the Corporation's Annual Incentive Plan ("Target Bonus");

(C) the Corporation's requiring Employee to be based more than fifty (50) miles from the Corporation's offices at which he was principally employed immediately prior to the date of the Change in Control;

(D) the Corporation's material failure to pay Employee any compensation due under this Agreement;

(E) the failure of the Corporation to obtain a satisfactory agreement from any successor to assume and agree to perform this Agreement;

(F) any other action or inaction that constitutes a material breach by the Corporation of this Agreement.

6.3 Severance Pay and Benefits. If Employee's employment with the Corporation terminates under circumstances as described in Section 6.2 above, Employee shall be entitled to receive all of the following:

(A) all accrued compensation through the termination date;



(B) a severance payment equal to Employee's then current monthly salary for twenty-four (24) months plus an amount equal to two (2) times the value of Employee's Target Bonus for the year in which the termination occurs (less any applicable taxes and withholdings), payable in a lump sum within thirty (30) calendar days after the date on which the release of claims required by Section 4.4 becomes effective; and

(C) unless Employee obtains comparable medical insurance coverage from a subsequent employer, then, for twenty-four (24) months following the termination of Employee's employment, the Corporation shall continue to pay for Employee's health insurance coverage as described in this Section 6.3(C). Employee may elect to continue coverage under the Corporation's group health insurance plan in which he participated on the effective date of the termination of employment by election of continuation coverage under COBRA, subject to the terms of the group health plan and applicable law. The Corporation shall pay Employee's premiums directly to the COBRA administrator for the same health insurance coverage for the same group health insurance plan in which Employee participated on the effective date of the termination of employment. At the end of the maximum COBRA continuation period, the Corporation shall reimburse Employee for that portion of health insurance premiums under a fully-insured, individual health insurance policy that are in excess of the amount Employee paid for coverage under the Corporation's group health plan immediately prior to termination of employment. Such individual health insurance policy reimbursements shall continue for no longer than the remainder, if any, of the twenty-four (24) month health insurance continuation period following expiration of the maximum COBRA continuation period. Notwithstanding the foregoing, in the event Employee prefers to initially obtain health insurance coverage under a fully-insured, individual health insurance policy that is less expensive than COBRA coverage, the Corporation shall reimburse Employee for premiums that are in excess of the amount Employee paid for health insurance under the Corporation's group health plan immediately prior to termination through the earlier to occur of: (i) twenty-four (24) months following termination of employment, or (ii) the date Employee obtains comparable group health insurance coverage from a subsequent employer. All such reimbursements required pursuant to this Section 6.3(C) shall be paid as soon as reasonably practicable following employee's submission of proof of timely premium payments to the Corporation, subject to the following: (i) all such claims for reimbursement shall be submitted by Employee and paid by the Corporation no later than twenty-seven (27) months following Employee's termination of employment, (ii) any claims for reimbursements shall be paid no later than the end of the calendar year after the calendar year in which the reimbursable expense is incurred, (iii) reimbursements in one calendar year shall not affect those payable in any later calendar year, and (iv) no benefit provided under this Section 6.3(C) may be cashed out or exchanged for other benefits.

6.4 Parachute Payments. Payments shall be reduced to the extent, if any, determined in accordance with the following provisions:

(A) For purposes of this Section 6.4: (i) a "Payment" shall mean any payment or distribution in the nature of compensation to or for the benefit of the Executive, whether paid or payable pursuant to this Agreement or otherwise, that is treated as a parachute payment under the provisions of Code Section 280G(b)(2) ; (ii) "Agreement Payment" shall mean a Payment paid or payable pursuant to this Agreement (disregarding this Section); (iii) "Reduced Amount" shall mean the amount of Payments that has a Present Value that is equal to 2.99 times the Executive's "base amount," as that term is defined under Code Section 280G(b)(3); (iv) "Present Value" shall mean such value determined in accordance with Sections 280G(b)(2)(A)(ii) and 280G(d)(4) of Code; and (v) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(B) Anything in the Agreement to the contrary notwithstanding, in the event Deloitte & Touche LLP or such other accounting firm as shall be designated by the Company (the "Accounting Firm") shall determine that receipt of all Payments would subject the Executive to tax under Section 4999 of the Code, the Accounting Firm shall determine whether the Net After-Tax Reduced Amount exceeds that of the Net After-Tax Payments. For these purposes, the Net After-Tax Reduced Amount and the Net After-Tax Payments refer to the Reduced Amount and Payments, respectively, received by the Executive net of all taxes imposed on the Executive with respect thereto under Sections 1 and 4999 of the Code and under applicable state and local laws, determined by applying the highest marginal rate under Section 1 of the Code and under state and local laws which applied to the Executive's taxable income for the immediately preceding taxable year, or such other rate(s) as the Executive shall certify, in the Executive's sole discretion, as likely to apply to the Executive in the relevant tax year(s). If the Accounting Firm determines that the Net After-Tax Reduced Amount exceeds that of the Net After-Tax Payments, then the aggregate Agreement Payments shall be reduced to the Reduced Amount.

(C) If the Accounting Firm determines that aggregate Agreement Payments should be reduced to the Reduced Amount, the Company shall promptly give the Executive notice to that effect and a copy of the detailed calculation thereof. For purposes of reducing the aggregate Agreement Payments to the Reduced Amount, only amounts payable under this Agreement (and no other Payments) shall be reduced. The reduction of the aggregate Agreement Payments to the Reduced Amount, if applicable, shall be made by reducing the amounts payable to the Executive pursuant to Section 6.3 (as modified by Section 6.4) of this Agreement. All determinations made by the Accounting Firm under this Section shall be binding upon the Company and the Executive and shall be made within 60 days of a termination of employment of the Executive. As promptly as practicable following such determination, the Company shall pay to or distribute for the benefit of the Executive such Agreement Payments as are then due to the Executive under this Agreement and shall promptly pay to or distribute for the benefit of the Executive in the future such Agreement Payments as become due to the Executive under this Agreement.

(D) As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that amounts will have been paid

or distributed by the Company to or for the benefit of the Executive pursuant to this Agreement which should not have been so paid or distributed ("Overpayment") or that additional amounts which will have not been paid or distributed by the Company to or for the benefit of the Executive pursuant to this Agreement could have been so

paid or distributed ("Underpayment"), in each case, consistent with the calculation of the Reduced Amount hereunder. In the event that the Accounting Firm, based upon the assertion of a deficiency by the Internal Revenue Service against either the Company or the Executive which the Accounting Firm believes has a high probability of success determines that an Overpayment has been made, any such Overpayment paid or distributed by the Company to or for the benefit of the Executive shall be repaid to the Company together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code; provided, however, that no such amount shall be payable by the Executive to the Company if and to the extent such payment would not either reduce the amount on which the Executive is subject to tax under Section 1 and Section 4999 of the Code or generate a refund of such taxes. In the event that the Accounting Firm, based upon controlling precedent or substantial authority, determines that an Underpayment has occurred, any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code.

(E) All fees and expenses of the Accounting Firm in implementing the provisions of this Section 6.4 shall be borne by the Company.

7. **WAIVER OF BREACH.** The Corporation's waiver of any breach of a provision of this Agreement shall not waive any subsequent breach by the Corporation.

8. **ENTIRE AGREEMENT.** Except as expressly provided in this Agreement, this Agreement: (i) supersedes all other understandings and agreements, oral or written, between the parties with respect to the subject matter of this Agreement; and (ii) constitutes the sole agreement between the parties with respect to this subject matter. Each party acknowledges that: (i) no representations, inducements, promises or agreements, oral or written, have been made by any party or by anyone acting on behalf of any party, which are not embodied in this Agreement; and (ii) no agreement, statement or promise not contained in this Agreement shall be valid. No change or modification of this Agreement shall be valid or binding upon the parties unless such change or modification is in writing and is signed by the parties.

9. **SEVERABILITY.** If a court of competent jurisdiction holds that any provision or sub-part thereof contained in this Agreement is invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect any other provision in this Agreement. Additionally, if any of the provisions, clauses or phrases in the Competitive Business Activities, Trade Secrets, Confidential Information and Corporation Property provisions set forth in this Agreement are held unenforceable by a court of competent jurisdiction, then the parties' desire is that they be "blue-penciled" or rewritten by the court to the extent necessary to render them enforceable.

10. **PARTIES BOUND.** The terms, provisions, covenants and agreements contained in this Agreement shall apply to, be binding upon and inure to the benefit of the Corporation's successors and assigns. The Corporation, at its discretion, may assign this Agreement. Employee may not assign this Agreement without the Corporation's prior written consent.

11. **REMEDIES.** Employee acknowledges that his breach of this Agreement would cause the Corporation irreparable harm for which damages would be difficult, if not impossible, to ascertain and legal remedies would be inadequate. Therefore, in addition to any legal or other relief to which the Corporation may be entitled by virtue of Employee's breach or threatened breach of this Agreement, the Corporation may seek equitable relief, including but not limited to preliminary and injunctive relief, and such other available remedies.

12. SECTION 409A OF THE INTERNAL REVENUE CODE.

12.1 Parties' Intent. The parties intend that the provisions of this Agreement comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder (collectively, "Section 409A") and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. The Company does not guarantee to the Employee or any other person that any benefit or payment under this Agreement is exempt from Section 409A, nor will the Corporation indemnify, defend or hold harmless the Employee or any other person with respect to the tax consequences of a failure of any benefit or payment under this Agreement to meet an exemption under Section 409A. If any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause Employee to incur any additional tax or interest under Section 409A, the Corporation shall, upon the specific request of Employee, use its reasonable business efforts to in good faith reform such provision to comply with Code Section 409A; provided, that to the maximum extent practicable, the original intent and economic benefit to Employee and the Corporation of the applicable provision shall be maintained, and the Corporation shall have no obligation to make any changes that could create any additional economic cost or loss of benefit to the Corporation.

12.2 Application of Section 409A. In the event any benefit or payment under this Agreement becomes subject to the provisions of Section 409A, the provisions of Section 409A of the Code and the regulations issued thereunder are incorporated herein by reference to the extent necessary for any benefit or payment that is subject Section 409A to comply therewith. In such event, the provisions of this Agreement shall be interpreted in a manner that satisfies the requirements of Section 409A and the related regulations, and this Agreement shall be operated accordingly.

Notwithstanding any other provision of this Agreement, in the event the Employee is treated as a "specified employee" under Section 409A and any payment or benefit under this Agreement is treated as a nonqualified deferred compensation payment under Section 409A, then payment of such amounts shall be delayed for six months and a day following the Employee's "separation from service," as such term is defined in Section 409A, at which time a lump sum payment shall be made to the Employee consisting of the sum of the delayed payments. This provision shall not apply in the event of a specified employee's termination of employment on account of death and, in the event of a specified employee's death during the aforementioned six-month and a day period, any such delayed nonqualified deferred compensation shall be paid within 30 days after such specified employee's death.

13. GOVERNING LAW. This Agreement and the employment relationship created by it shall be governed by North Carolina law without giving effect to North Carolina choice of law provisions

IN WITNESS WHEREOF, the parties have entered into this Agreement on the day and year written below.

EMPLOYEE

/s/ B. Clyde Preslar
Executive

1/9/2013
Date

THE PANTRY, INC.

/s/ Dennis G. Hatchell
Dennis Hatchell

1/9/2013
Date

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**SCHEDULE A – B. CLYDE PRESLAR BOARD MEMBERSHIPS AS OF
FEBRUARY 7, 2013**

Alliance One International, Inc.

B. Clyde Preslar Joins The Pantry as Chief Financial Officer

CARY, N.C., Jan. 10, 2013 – The Pantry, Inc. (Nasdaq: PTRY), the leading independently operated convenience store chain in the southeastern United States, today announced that B. Clyde Preslar is joining the executive leadership team as Senior Vice President and Chief Financial Officer.

Mr. Preslar joins The Pantry from RailAmerica, Inc., where he served since 2008 as Senior Vice President and Chief Financial Officer for the short line and regional freight railroad operator. “Clyde is a proven leader ideally suited for The Pantry with more than 15 years of financial leadership experience as a Chief Financial Officer,” said The Pantry’s President and Chief Executive Officer Dennis Hatchell. “Clyde has an extensive breadth of financial experience, including financial leadership in the consumer goods arena, and an exceptional track record of financial management, planning and corporate development. We look forward to having Clyde join the executive leadership team.”

Prior to RailAmerica, Inc., Mr. Preslar served as Executive Vice President and Chief Financial Officer at Cott Corporation, a manufacturer of non-alcoholic beverage products, and as Vice President and Chief Financial Officer and Secretary at snack food manufacturer Lance, Inc. Earlier in his career, he was Director of Financial Services for worldwide power tools at Black & Decker, and served as Director of Investor Relations at RJR Nabisco.

Mr. Preslar holds a bachelor’s degree in Business Administration and Economics from Elon College and a master’s degree in business administration from Wake Forest University. He serves on the Board of Directors of Alliance One International, Inc. and is a past Director of Forward Air Corporation.

Mr. Preslar will join The Pantry on Feb. 7, 2013.

About The Pantry and Kangaroo Express

Headquartered in Cary, North Carolina, The Pantry, Inc. is a leading independently operated convenience store chain in the southeastern United States and one of the largest independently operated convenience store chains in the country. As of January 3, 2013, the Company operated 1,572 stores in thirteen states under select banners, including Kangaroo Express®, its primary operating banner. The Pantry's stores offer a broad selection of merchandise, as well as fuel and other ancillary services designed to appeal to the convenience needs of its customers. For more information, visit www.thepantry.com.

Media Contacts

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