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: June 23, 2009

Commission file number 1-10948

OFFICE DEPOT, INC.

(Exact name of registrant as specified in its charter)

Delaware	**59-2663954**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

Office Depot, Inc.
6600 Military Trail Mail, Boca Raton FL 33496
(Address of principal executive offices) (Zip Code)

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

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

Check the appropriate box below if the Form 8-K 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)

x 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))

Item 1.01 Entry into a Material Definitive Agreement.

Securities Purchase Agreement

On June 23, 2009, Office Depot, Inc., a Delaware corporation ("Office Depot" or the "Company") entered into a Securities Purchase Agreement (the "Purchase Agreement"), by and among the Company and funds advised by BC Partners, Inc. named in the Purchase Agreement (collectively, the "Investors"), pursuant to which the Company agreed to sell to the Investors, in private placements under the Securities Act of 1933, as amended (the "Securities Act"), 274,596 shares of the Company's 10% Series A Redeemable Convertible Participating Perpetual Preferred Stock, par value $0.01 per share, (the "Series A Preferred Stock"), and 75,404 shares of the Company's 10% Series B Redeemable Conditional Convertible Participating Perpetual Preferred Stock, par value $0.01 per share (the "Series B Preferred Stock" and, together with the Series A Preferred Stock, the "Preferred Stock"), for an aggregate purchase price of $350 million (the "Purchase Price"). The Series A Preferred Stock issued to the Investors pursuant to the Purchase Agreement is immediately convertible into shares of the Company's common stock, par value $0.01 per share (the "Common Stock"). Upon the approval of the holders of the Common Stock required by the New York Stock Exchange (the "NYSE"), the Series B Preferred Stock will be convertible on the same terms as the Series A Preferred Shares. In the Purchase Agreement, the Company agreed to use its reasonable best efforts to hold as promptly as reasonably practical following the closing date a meeting of stockholders to vote upon the approval of the issuance and delivery of Common Stock upon conversion of the Series A Preferred Stock to the extent required in the future, and the issuance and delivery of additional shares of Common Stock upon conversion of the Series B Preferred Stock, to the extent required by the rules of the NYSE. In connection with entry into the Purchase Agreement, the Company has agreed to pay a funding fee of $3.5 million and to reimburse the Investors up to a maximum of $2 million to cover reasonable out-of-pocket expenses. On June 23, 2009, following execution of the Purchase Agreement, the Company and the Investors completed the purchase and sale of the Preferred Stock (the "Closing .").

The Purchase Agreement is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference, and the foregoing summary of the Purchase Agreement is qualified in its entirety by reference to Exhibit 10.1.

Series A Preferred Stock

The terms, rights, obligations and preferences of the Series A Preferred Stock are set forth in the Certificate of Designations of the 10.00% Series A Redeemable Convertible Participating Perpetual Preferred Stock (the "Series A CoD"), an executed copy of which was filed with the Secretary of State of the State of Delaware on June 23, 2009. Dividends on the Series A Preferred Stock are due on January 1, April 1, July 1 and October 1 of each year (each, a "Series A Dividend Payment Date"), beginning with and including October 1, 2009. The Series A Preferred Stock will also participate in dividends declared and paid on the Common Stock, however, if the closing price of the Common Stock on the record date for a dividend payment is less than $45.00 per share, then the Company may not declare or pay a cash dividend on the Common Stock per share for any fiscal quarter in excess of

certain amounts. Dividends are payable at the per annum dividend rate of 10.00% of the liquidation preference, which is initially $1,000 per share. Cash dividends will be paid only to the extent that the Company has funds legally available for such payment and the Company's board of directors (the "Board") declares a cash dividend payable. There are restrictions in the Company's credit facility and certain other debt documents that limit the Company's ability to make such payments in cash. In the event the Company does not declare and pay a dividend in cash on any Series A Dividend Payment Date, an amount equal to the cash dividend due on such Series A Dividend Payment Date will be added to the liquidation preference. If, at any time after June 23, 2012, the closing pric e of the Common Stock is greater than or equal to $6.62 per share for a period of 20 consecutive trading days, the dividend rate will decrease to 7.87% . In addition, if at any time after June 23, 2012, the closing price of the Common Stock is greater than or equal to $8.50 per share for a period of 20 consecutive trading days, the dividend rate will decrease to 5.75% .

Each share of Series A Preferred Stock is immediately convertible, at the option of the holder, into the number of shares of Common Stock equal to the quotient of (i) the sum of the liquidation preference plus any accrued but unpaid dividends not previously added to the liquidation preference and (ii) 1,000, multiplied by the then applicable "Conversion Rate" (as that term is defined in the Series A CoD), except to the extent any such conversion would violate any applicable NYSE stockholder approval requirements. Each share of Series A Preferred Stock is initially convertible into 200 shares of Common Stock, representing an initial "conversion price" of $5.00. The Conversion Rate is subject to custo mary anti-dilution adjustments.

The Series A Preferred Stock is redeemable, in whole or in part, at the option of the Company at any time after June 23, 2012, subject to the right of the holder to first convert the shares of Series A Preferred Stock the Company proposes to redeem. At any time after June 23, 2011, if the closing price of the Common Stock is greater than or equal to $9.75 per share for a period of 20 consecutive trading days, then the Series A Preferred Stock is redeemable, in whole or in part, at the option of the Company, subject to the right of the holder to first convert the shares of Series A Preferred Stock the Company proposes to redeem. The Series A Preferred Stock is redeemable at the option of the holder in the event of a "Change of Control" (as that term is defined in the Series A CoD) of the Company, or if the Company commences a voluntary bankruptcy, consents to the entry of an order against it in an involuntary bankruptcy, consents to the appointment of a custodian for all or substantially all of its property, makes a general assignment for the benefit of creditors or changes its primary business, or if the Common Stock ceases to be listed for trading on any of the Nasdaq Global Select Market, the Nasdaq Global Market or the NYSE without the simultaneous listing on another of such exchanges.

The holders of the Series A Preferred Stock are entitled to vote with the holders of the Common Stock on an as-converted basis, subject to any limitations imposed by any NYSE stockholder approval requirements. For so long as the Investors or their affiliates collectively own any shares of the Series A Preferred Stock and the Investors' "Ownership Percentage" (as that term is defined in the Investor Rights Agreement discussed below) is greater than or equal to 10%, then the affirmative vote of at least a majority of the shares of Series A Preferred Stock then outstanding and entitled to vote is required for (i) the declaration or payment of any

dividend or distribution on the Common Stock or any other stock that ranks junior to or equally with the Series A Preferred Stock, other than, if dividends on the Series A Preferred Stock have not been paid in full in cash, a dividend payable solely in junior stock or dividends or distributions paid exclusively in cash to the extent the Series A Preferred Stock participates on an as-converted basis with the Common Stock; (ii) the purchase, redemption or other acquisition by the Company of any Common Stock or other stock ranking junior to or equal with the Series A Preferred Stock except, if dividends on the Series A Preferred Stock have not been paid in full in cash, then as necessary to effect a reclassification of junior stock into other junior stock, a reclassification of parity stock into other parity stock, a reclassification of parity stock into junior stock, the exchange or conversion of junior stock into other junior stock or of parity stock into other parity stock or of parity stock into junior stock; (iii) any amendment of the Company's Certificate of Incorporation or the Series A CoD so as to adversely affect the relative rights, preferences, privileges or voting powers of the Series A Preferred Stock; or (iv) the authorization or issuance of, or reclassification into, any capital stock that would rank senior to or equal with the Series A Preferred Stock (including additional shares of Series A Preferred Stock).

The Series A CoD is filed as Exhibit 3.2 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference, and the foregoing summary of the Series A CoD is qualified in its entirety by reference to Exhibit 3.2.

Series B Preferred Stock

The terms, rights, obligations and preferences of the Series B Preferred Stock are set forth in the Certificate of Designations of the 10.00% Series B Redeemable Conditional Convertible Participating Perpetual Preferred Stock (the "Series B CoD"), an executed copy of which was filed with the Secretary of State of the State of Delaware on June 23, 2009. Dividends on the Series B Preferred Stock are due on January 1, April 1, July 1 and October 1 of each year (each, a "Series B Dividend Payment Date"), beginning with and including October 1, 2009. The Series B Preferred Stoc k will also participate in dividends declared and paid on the Common Stock, however, if the closing price of the Common Stock on the record date for a dividend payment is less than $45.00 per share, then the Company may not declare or pay a cash dividend on the Common Stock per share for any fiscal quarter in excess of certain amounts. Dividends are payable at the per annum dividend rate of 10.00% of the liquidation preference, which is initially $1,000 per share. Cash dividends will be paid only to the extent that the Company has funds legally available for such payment and the Board declares a cash dividend payable. There are restrictions in the Company's credit facility and certain other debt documents that limit the Company's ability to make such payments in cash. In the event the Company does not declare and pay a dividend in cash on any Series B Dividend Payment Date, an amount equal to the cash dividend due on such Series B Dividend Payment Date will be added to the liquidation preference. If the holders of the Common Stock do not approve the conversion of the Series B Preferred Stock within 180 days after the Closing, then the dividend rate on the Series B Preferred Stock will increase to 15.00% . If the holders of the Common Stock do not approve the conversion of the Series B Preferred Stock within 270 days after the Closing, then the dividend rate on the Series B Preferred Stock will increase to 17.125% . If the holders of the Common Stock do not approve the conversion of the Series B Preferred Stock within 360 days after the Closing, then the

dividend rate on the Series B Preferred Stock will increase to 19.00% . If, at any time after June 23, 2012, and after the receipt of approval by the holders of the Common Stock of the conversion of the Series B Preferred Stock, the closing price of the Common Stock is greater than or equal to $6.62 per share for a period of 20 consecutive trading days, the dividend rate will decrease to 7.87% . In addition, if at any time after June 23, 2012, the closing price of the Common Stock is greater than or equal to $8.50 per share for a period of 20 consecutive trading days, the dividend rate will decrease to 5.75% .

Upon the approval of the holders of the Common Stock of the conversion of the Series B Preferred Stock, each share of the Series B Preferred Stock will be convertible, at the option of the holder, into the number of shares of Common Stock equal to the quotient of (i) the sum of the liquidation preference plus any accrued but unpaid dividends not previously added to the liquidation preference and (ii) 1,000, multiplied by the then applicable "Conversion Rate" (as that term is defined in the Series B CoD). The Conversion Rate is subject to customary anti-dilution adjustments.

The Series B Preferred Stock is redeemable, in whole or in part, at the option of the Company at any time after June 23, 2012, subject to the right of the holder to first convert the shares of Series B Preferred Stock the Company proposes to redeem. At any time after the later of (i) the approval of the holders of the Common Stock of the conversion of the Series B Preferred Stock and (ii) June 23, 2011, if the closing price of the Common Stock is greater than or equal to $9.75 per share for a period of 20 consecutive trading days, the Series B Preferred Stock is redeemable, in whole or in part, at the option of the Company, subject to the right of the holder to first convert the shares of Series B Preferred Stock the Company proposes to redeem. The Series B Preferred Stock is redeemable at the option of the holder in the event of a "Change of Control" (as that term is defined in the Series B CoD) of the Company, or if the Company commences a voluntary bankruptcy, consents to the entry of an order against it in an involuntary bankruptcy, consents to the appointment of a custodian for all or substantially all of its property, makes a general assignment for the benefit of creditors or changes its primary business, or if the Common Stock ceases to be listed for trading on any of the Nasdaq Global Select Market, the Nasdaq Global Market or the NYSE without the simultaneous listing on another of such exchanges.

If holders of the Common Stock have not approved the conversion of the Series B Preferred Stock by June 23, 2014, then upon the approval of the holders of a majority of the outstanding Series B Preferred Stock, any holder of the Series B Preferred Stock will be able to require the Company to repurchase all or any part of such holder's shares of Series B Preferred Stock, subject to contractual limitations in the Company's debt documents. If the Company fails to repurchase such Series B Preferred Stock due to contractual limitations in the Company's debt documents, then for so long as the Company fails to satisfy its repurchase obligation the size of the Board will be automatically increased by two directors and the holders of a majority of the outstanding Series B Preferred Stock are entitled to elect two people to the Board, voting as a separate seri es to the exclusion of both the holders of the Series A Preferred Stock and the holders of the Common Stock.

Prior to the approval of the conversion of the Series B Preferred Stock by the holders of the Common Stock, the Series B Preferred Stock is not entitled to vote. At any time after the approval of the conversion of the Series B Preferred Stock by the holders of the Common Stock, the holders of the Series B Preferred Stock are entitled to vote with the holders of the Common Stock on an as-converted basis. For so long as the Investors or their affiliates collectively own any shares of the Series B Preferred Stock and the Investors' "Ownership Percentage" (as that term is defined in the Investor Rights Agreement discussed below) is greater than or equal to 10%, then the affirmative vote of at least a majority of the s hares of Series B Preferred Stock then outstanding and entitled to vote is required for (i) the declaration or payment of any dividend or distribution on the Common Stock or any other stock that is junior to or equally with the Series B Preferred Stock, other than, if dividends on the Series B Preferred Stock have not been paid in full in cash, a dividend payable solely in junior stock or dividends or distributions paid exclusively in cash to the extent the Series B Preferred Stock participates on an as-converted basis with the Common Stock; (ii) the purchase, redemption or other acquisition by the Company of any Common Stock or other stock ranking junior to or equal with the Series B Preferred Stock except, if dividends on the Series B Preferred Stock have not been paid in full in cash, then as necessary to effect a reclassification of junior stock into other junior stock, a reclassification of parity stock into other parity stock, a reclassification of parity stock into junior stock, the exchange or conver sion of junior stock into other junior stock or of parity stock into other parity stock or of parity stock into junior stock; (iii) any amendment of the Company's Certificate of Incorporation or the Series B CoD so as to adversely affect the relative rights, preferences, privileges or voting powers of the Series B Preferred Stock; or (iv) the authorization or issuance of, or reclassification into, any capital stock that would rank senior to or equal with the Series B Preferred Stock (including additional shares of Series B Preferred Stock).

The Series B CoD is filed as Exhibit 3.3 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference, and the foregoing summary of the Series B CoD is qualified in its entirety by reference to Exhibit 3.3.

Investor Rights Agreement

Concurrently with the execution of the Purchase Agreement, on June 23, 2009, the Company, BC Partners, Inc. and the Investors entered into an Investor Rights Agreement (the "Investor Rights Agreement"). Under the terms of the Investor Rights Agreement, for so long as the Investors' "Ownership Percentage" (as that term is defined in the Investor Rights Agreement) is equal to or greater than 15% of the outstanding Common Stock (assuming full conversion of the Preferred Stock), the Investors are entitled to nominate three directors to the Board. For so long as the Invest ors' Ownership Percentage is less than 15% but more than 10% of the outstanding Common Stock, the Investors are entitled to nominate two directors to the Board. For so long as the Investors' Ownership Percentage is less than 10% but more than 5% of the outstanding Common Stock, the Investors are entitled to nominate one director to the Board. The Company has agreed to use all reasonable efforts to cause the person(s) nominated by the Investors pursuant to the terms of the Investor Rights Agreement to be elected to the Board. Additionally, for so long as the Investors' Ownership Percentage is equal to or greater than 10% (assuming full conversion of the Preferred Stock): (i) one of the Board members nominated by the Investors will be appointed to sit on each regular committee of the Board (other than the

Board's Audit Committee), (ii) one of the Board members nominated by the Investors will be permitted to attend meetings of the Board's Audit Committee as an observer, (iii) the Board's Finance Committee will be comprised of five directors, two of whom must be Board members nominated by the Investors, and (iv) the chief executive officer and chief financial officer of the Company must meet once annually with the members of the Board who were nominated by the Investors to review the annual business plan and operating budget produced prior to submission to the Board.

Pursuant to the terms of the Investor Rights Agreement, effective as of the Closing, the size of the Board was increased by three directors and Raymond Svider, James Rubin and Justin Bateman were appointed to fill the vacancies thereby created. Pursuant to the terms of the Investor Rights Agreement, subject to satisfaction of requirements for service and confirmation by the Corporate Governance and Nominating Committee of their appointment, Raymond Svider was appointed to the Compensation Committee, James Rubin was appointed to the Corporate Governance and Nominating Committee and Raymond Svider and James Rubin were appointed to the Finance Committee.

Additionally, for so long as the Investors' Ownership Percentage is equal to or greater than 10% (assuming full conversion of the Preferred Stock), the following actions require the approval of at least 66-2/3% of the Board (excluding any such transaction between the Company and is wholly owned subsidiaries or among the Company's wholly owned subsidiaries): (i) the incurrence of any "Indebtedness" (as that term is defined in the Investor Rights Agreement) in excess of $200 million in the aggregate during any fiscal year, excluding any refinancings and replacements of indebtedness existing at the Closing and any borrowings under the "Cre dit Facilities" (as that term is defined in the Investor Rights Agreement); (ii) the sale, transfer or other disposition of assets or businesses of the Company or its subsidiaries with a value in excess of $50 million in the aggregate during any fiscal year, excluding sales of inventory or supplies in the ordinary course of business, sales of obsolete assets other than real estate, sale-leaseback transactions and accounts receivable factoring transactions; (iii) the acquisition of any assets or properties in one or more related transactions for cash or otherwise for an amount in excess of $50 million in the aggregate during any fiscal year, excluding acquisitions of inventory and equipment in the ordinary course of business; (iv) capital expenditures in excess of $30 million individually (or in the aggregate if related to an integrated program of activities) or in excess of $275 million in the aggregate during any fiscal year; and (v) making, or permitting any subsidiary to make, loans to, investments in, or purchasing, or permitting any subsidiary to purchase, any stock or other securities in another corporation, joint venture, partnership or other entity in excess of $50 million in the aggregate during any fiscal year.

For so long as the Investors' Ownership Percentage is equal to or greater than 10% (assuming full conversion of the Preferred Stock), the approval of at least one of the members of the Board who were nominated for election to the Board by the Investors is required to increase the size of the Board beyond 14 directors or to incur Indebtedness for borrowed money in excess of $200 million in the aggregate during any fiscal year (excluding any borrowings under the Credit Facilities and, after June 23, 2011, any refinancings and replacements of Indebtedness outstanding as of the Closing that do not increase the aggregate principal amount of, or the amount that may be borrowed by the Company or its subsidiaries under, such Indebtedness as in

effect at the Closing) if the ratio of the "Consolidated Net Debt" (as that term is defined in the Investor Rights Agreement) to the trailing four quarter "Adjusted EBITDA" (as that term is defined in the Investor Rights Agreement) of the Company and its subsidiaries, on a consolidated basis, is more than 4x.

Additionally, for so long as the Investors or their affiliates (including commonly controlled or managed investment funds) or any direct or indirect owner of the Investors or their affiliates own any shares of the Preferred Stock issued to the Investors at the Closing (each such owner an "Investor Group Member"), issuing (i) convertible debt that is by its terms convertible into capital stock of the Company, (ii) preferred stock or (iii) options or warrants to acquire preferred stock, will require the approval of BC Partners, Inc. unless (A) the Company establishes (or has previously established) a "Withholding Tax Escrow" (as defined in the Investor Rights Agreement) or (B) the Company reasonably expects that the Company will not collect "Withholding Tax" (as defined in the Investor Rights Agreement) from any Investor Group Member as a result of the issuance of such stock or securities or the payment or accrual of interest or dividends on such stock or securities, provided that if the Company subsequently determines to collect Withholding Tax as a result of the issuance of such stock or securities or the payment or accrual of interest or dividends on such stock or securities, then, unless the Company has previously established a Withholding Tax Escrow, the Company must, at the time it determines to begin collecting Withholding Tax, establish a Withholding Tax Escrow. The Company is obligated to establish a Withholding Tax Escrow only if it reasonably expects that such issuance of stock or securities will result in the Company having an obligation to collect Withholding Tax.

Under the terms of the Investor Rights Agreement, the Investors must cause all of their Common Stock and Preferred Stock entitled to vote at any meeting of the Company's shareholders to be present at such meeting and to vote all such shares in favor of any nominee or director nominated by the Company's Corporate Governance and Nominating Committee, against the removal of any director nominated by the Company's Corporate Governance and Nominating Committee and, with respect to any other business or proposal, in accordance with the recommendation of the Board (other than with respect to the approval of any proposed business combination agreement between the Company and another entity). The Investors are also subject to customary standstill provisions, which are applicable to purchases of debt as well as equity securities and include prohibitions o n hedging activities, until the later of (i) three years after the Closing and (ii) such time as the Investors own less than 3% of the outstanding Common Stock (assuming full conversion of the Preferred Stock).

The Investor Rights Agreement also requires that, for so long as the Investors' Ownership Percentage is equal to or greater than 10% of the outstanding Common Stock, if the Company proposes to offer any equity or equity linked security to any person, then the Company must first offer the Investors the right to purchase a portion of such securities equal to the Investors' Ownership Percentage. If the Investors do not exercise this purchase right within 20 days of receiving notice of the proposed offering, then the Company has 120 days to complete the offering on terms no more favorable than those offered to the Investors.

The Investor Rights Agreement is filed as Exhibit 4.1 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference, and the foregoing summary of the Investor Rights Agreement is qualified in its entirety by reference to Exhibit 4.1.

Registration Rights Agreement

Concurrently with the execution of the Purchase Agreement, on June 23, 2009, the Company, BC Partners, Inc. and the Investors entered into a Registration Rights Agreement (the "Registration Rights Agreement"), pursuant to which the Investors are entitled to certain registration rights. Under the terms of the Registration Rights Agreement, the Investors are entitled to (i) six demand registrations, limited to two demand registrations in any single calendar year and provided that such demand must include at least 5,500,000 of Common Stock and (ii) unlimited piggyback registration rights for a period of five years with respect to primary issuances and for an unlimited period of time with respect to all othe r issuances.

The Registration Rights Agreement is filed as Exhibit 4.2 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference, and the foregoing summary of the Registration Rights Agreement is qualified in its entirety by reference to Exhibit 4.2.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated into this Item 3.02 by reference.

The issuance and sale of the Preferred Stock is exempt from the registration requirements of the Securities Act pursuant to Section 4(2) of the Securities Act and/or Regulation D promulgated under the Securities Act ("Regulation D"). Each of the Investors has represented to the Company that it is an "accredited investor" as defined in Regulation D and that the Preferred Stock is being acquired for investment purposes. The Company has not engaged in general solicitation or advertising with regard to the issuance and sale of the Preferred Stock and has not offered securities to the public in connection with this issuance and sale.

Item 3.03 Material Modification of Rights of Security Holders.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated into this Item 3.03 by reference.

On June 23, 2009, the Company filed a Certificate of Elimination of the Junior Participating Preferred Stock, Series A with the Secretary of State of the State of Delaware for the purpose of amending its Amended and Restated Certificate of Incorporation to eliminate the terms, rights, obligations and preferences of the Company's Junior Participating Preferred Stock, Series A. The Certificate of Elimination of the Junior Participating Preferred Stock, Series A became effective upon the filing with the Delaware Secretary of State. The Certificate of Elimination of the Junior Participating Preferred Stock, Series A is filed as Exhibit 3.1 to this Current Report on Form 8-K, and the foregoing summary of the Certificate of Elimination of the

Junior Participating Preferred Stock, Series A is qualified in its entirety by reference to Exhibit 3.1.

On June 23, 2009, the Company filed the Series A CoD and the Series B CoD with the Secretary of State of the State of Delaware for the purpose of amending its Amended and Restated Certificate of Incorporation to establish the terms, rights, obligations and preferences of the Series A Preferred Stock and the Series B Preferred Stock, respectively. The Series A CoD and the Series B CoD became effective upon the filing with the Delaware Secretary of State. The Series A CoD and the Series B CoD are filed as Exhibit 3.2 and Exhibit 3.3, respectively, to this Current Report on Form 8-K and the foregoing summary of the Series A CoD and the Series B CoD is qualified in its entirety by reference to Exhibit 3.2 and Exhibit 3.3.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated into this item 5.02 by reference.

Effective June 23, 2009, pursuant to the terms of the Investor Rights Agreement, the Board increased the size of the Board by three persons to 14 persons and elected Raymond Svider, James Rubin and Justin Bateman to fill the vacancies created by such action. Pursuant to the terms of the Investor Rights Agreement, subject to satisfaction of requirements for service and confirmation by the Corporate Governance and Nominating Committee of their appointment, Raymond Svider was appointed to the Compensation Committee, James Rubin was appointed to the Corporate Governance and Nominating Committee and Raymond Svider and James Rubin were appointed to the Finance Committee. Each of the new members of the Board will receive an annual retainer and committee fees equal to the annual retainer and committee fees the other members of the Board receive, which are described in the Company's proxy statement filed March 11, 2009. Except as described in this Current Report on Form 8-K, there are no related party transactions between the Company and each of the new members of the Board reportable under Item 404(a) of Regulation S-K. Please see the discussion under "Investor Rights Agreement" and "Securities Purchase Agreement" in Item 1.01 of this Current Report on Form 8-K for more information regarding the increase in the size of the Board and the election of additional directors pursuant to the Investor Rights Agreement.

Mr. Bateman is a Partner of BC Partners based in its New York office, the investment arm of which he co-established in early 2008. He initially joined BC Partners' London office in 2000 from PricewaterhouseCoopers, where he spent three years in Transaction Services working on due diligence projects for both financial investors and corporate clients. In 2002/2003 he left BC Partners to complete his MBA at INSEAD before rejoining its London office. Over the years he has participated in or been a Board Member of General Healthcare Group, Baxi and Regency Entertainment. He is currently a Director of Intelsat, Ltd, the leading international provider of fixed satellite services. He has a degree in economics from the University of Cambridge in the UK.

Mr. Rubin is a Senior Partner of BC Partners, which he joined in May 2008 from One Equity Partners, where he was a founding partner since its inception in 2001. Mr. Rubin originated and executed transactions in a variety of industries with a particular focus on healthcare and business services and was also responsible for building One Equity's practice in India. Prior to forming One Equity, Mr. Rubin was a Vice President with Allen & Company Incorporated, a New York merchant bank specializing in media and entertainment transactions and advisory work. From 1996 to 1998, he held a number of senior policy positions with the Federal Communications Commission. He received his A.B. from Harvard College and a J.D. from Yale Law School. Mr. Rubin is currently a Board Member of Intelsat Ltd, the leading international provider of fixed satellite services, and of two New York City non-profits: Common Ground Communities and Echoing Green, and serves on the Board of The Dalton School.

Mr. Svider has been a Managing Partner of BC Partners, since 2003. He joined BC Partners in 1992 in Paris before moving to London in 2000 to lead its investments in the technology and telecoms industries. Over the years, Mr. Svider has participated in or led a variety of investments including Tubesca, Nutreco, UTL, Neopost, Polyconcept, Neuf Telecom and Unity Media/ Tele Columbus. He is currently on the board of Neopost and Unity Media, as well as the Chairman of the Board of Intelsat Ltd. Prior to joining BC Partners, Mr. Svider worked in investment banking at Wasserstein Perella in New York and Paris, and at the Boston Consulting Group in Chicago. Mr. Svider holds a Master of Business Administration from the University of Chicago and a Master of Science in Engineering from both Ecole Polytechnique and Ecole Nationale Superieure des Telecommunications in France.

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

The information set forth in Item 1.01 and Item 3.03 of this Current Report on Form 8-K is incorporated into this Item 5.03 by reference.

Item 8.01 Other Events.

On June 23, 2009, the Company issued a press release announcing that it had entered into the Purchase Agreement with the Investors. The press release is attached as Exhibit 99.1 to this Current Report on Form 8-K.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit	Description
3.1	Certificate of Elimination of the Junior Participating Preferred Stock, Series A.
3.2	Certificate of Designations of the 10.00% Series A Redeemable Convertible Participating Perpetual Preferred Stock.

3.3	Certificate of Designations of the 10.00% Series B Redeemable Conditional Convertible Participating Perpetual Preferred Stock.
4.1	Investor Rights Agreement, dated as of June 23, 2009, by and among Office Depot, Inc., BC Partners, Inc. and the investors named in the Investor Rights Agreement.
4.2	Registration Rights Agreement, dated as of June 23, 2009, by and among Office Depot, Inc., BC Partners, Inc. and the investors named in the Registration Rights Agreement.
10.1	Securities Purchase Agreement, dated as of June 23, 2009, by and among Office Depot, Inc. and the investors named in the Securities Purchase Agreement.
99.1	Press Release of Office Depot, Inc., dated June 23, 2009.

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 hereto duly authorized

OFFICE DEPOT

Date: June 23, 2009

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

EXHIBIT INDEX

Exhibit Number	Description
3.1	Certificate of Elimination of the Junior Participating Preferred Stock, Series A.
3.2	Certificate of Designations of the 10.00% Series A Redeemable Convertible Participating Perpetual Preferred Stock.
3.3	Certificate of Designations of the 10.00% Series B Redeemable Conditional Convertible Participating Perpetual Preferred Stock.
4.1	Investor Rights Agreement, dated as of June 23, 2009, by and among Office Depot, Inc., BC Partners, Inc. and the investors named in the Investor Rights Agreement.
4.2	Registration Rights Agreement, dated as of June 23, 2009, by and among Office Depot, Inc., BC Partners, Inc. and the investors named in the Registration Rights Agreement.
10.1	Securities Purchase Agreement, dated as of June 23, 2009, by and among Office Depot, Inc. and the investors named in the Securities Purchase Agreement.
99.1	Press Release of Office Depot, Inc., dated June 23, 2009.

EXHIBIT 3.1

CERTIFICATE OF ELIMINATION OF THE JUNIOR PARTICIPATING PREFERRED STOCK, SERIES A OF OFFICE DEPOT, INC.

Pursuant to Section 151(g)
of the General Corporation Law
of the State of Delaware

Office Depot, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Company"), in accordance with the provisions of Section 151(g) of the General Corporation Law of the State of Delaware, hereby certifies as follows:

1. That, pursuant to Section 151 of the General Corporation Law of the State of Delaware and authority granted in the Certificate of Incorporation of the Company, as theretofore amended, the Board of Directors of the Company, by resolution duly adopted, authorized the issuance of a series of five hundred thousand (500,000) shares of Junior Participating Preferred Stock, Series A, par value $0.01 per share (the "Preferred Stock"), and established the voting powers, designations, preferences and relative, participating and other rights, and the qualifications, limitations or restrictions thereof, and, on September 9, 1996, filed a Certificate of Designation with respect to such Preferred Stock in the office of the Secretary of State of the State of Delaware.

2. That no shares of said Preferred Stock are outstanding and no shares thereof will be issued subject to said Certificate of Designation.

3. That the Board of Directors of the Company has adopted the following resolutions:

RESOLVED, that all matters set forth in the Certificate of Designations filed by the Company with the office of the Secretary of State of the State of Delaware on September 9, 1996 (the "Old Certificate"), designating a series of 500,000 shares of Junior Participating Preferred Stock, Series A, par value $0.01 per share, of the Company (the "Old Stock"), are hereby eliminated from the Company's Restated Certificate of Incorporation;

RESOLVED, that the officers of the Company be, and hereby are, authorized and directed to file a certificate with the office of the Secretary of State of the State of Delaware setting forth a copy of these resolutions whereupon all matters set forth in the Old Certificate with respect to the Old Stock shall be eliminated from the Company's Restated Certificate of Incorporation;

4. That, accordingly, all matters set forth in the Certificate of Designation with respect to the Preferred Stock be, and hereby are, eliminated from the Certificate of Incorporation, as heretofore amended, of the Company.

IN WITNESS WHEREOF, Office Depot, Inc. has caused this Certificate to be executed by its duly authorized officer this 23 day of June, 2009.

OFFICE DEPOT, INC.

By: /s/ Michael Newman
Name: Michael Newman
Office: Executive Vice President & Chief Financial Officer

EXHIBIT 3.2

CERTIFICATE OF DESIGNATIONS OF
10.00% SERIES A REDEEMABLE CONVERTIBLE
PARTICIPATING PERPETUAL PREFERRED STOCK,
PAR VALUE $0.01 PER SHARE, OF
OFFICE DEPOT, INC.

Pursuant to Sections 151 and 103 of the
General Corporation Law of the State of Delaware

OFFICE DEPOT, INC., a corporation organized and existing under the laws of the State of Delaware (the "Company"), certifies that pursuant to the authority contained in its Restated Certificate of Incorporation, as amended from time to time (the "Certificate of Incorporation"), and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Company has duly approved and adopted the following resolution on June 22, 2009, and the resolution was adopted by a ll necessary action on the part of the Company:

RESOLVED, that pursuant to the authority vested in the Board of Directors by the Certificate of Incorporation and Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors does hereby designate, create, authorize and provide for the issue of a series of 280,000 shares of Preferred Stock, par value $0.01 per share, having the voting powers and such designations, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions that are set forth in this resolution of the Board of Directors pursuant to authority expressly vested in it by the provisions of the Certificate of Incorporation and hereby constituting an amendment to the Certificate of Incorporation as follows:

Section 1. Designation. The designation of the series of preferred stock of the Company is "10.00% Series A Redeemable Convertible Participating Perpetual Preferred Stock", par value $0.01 per share (the "Series A Preferred Stock"). Each share of the Series A Preferred Stock shall be identical in all respects to every other share of the Series A Preferred Stock. The Series A Preferred Stock shall be perpetual, subject to the provisions of Section 6.

Section 2. Number of Shares. The authorized number of shares of Series A Preferred Stock is 280,000. Shares of Series A Preferred Stock that are redeemed, purchased or otherwise acquired by the Company, or converted into another series of Preferred Stock, shall revert to authorized but unissued shares of Preferred Stock (provided that any such cancelled shares of Series A Preferred Stock may be reissued only as shares of any series other than Series A Preferred Stock).

Section 3. Defined Terms and Rules of Construction.

(a) Definitions. As used herein with respect to the Series A Preferred Stock:

"Affiliate" of any Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For purposes of this definition, "control" when used with respect to any Person has the meaning specified in Rule 12b-2 under the Exchange Act; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Beneficially Own" shall mean "beneficially own" as defined in Rule 13d-3 under the Exchange Act.

"Board of Directors" shall mean the board of directors of the Company.

"Business Day" shall mean a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York, New York or Miami, Florida generally are authorized or obligated by law, regulation or executive order to close.

"Bylaws" shall mean the Amended and Restated Bylaws of the Company in effect on the date hereof, as they may be amended from time to time.

"Capital Stock" shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (in each case however designated) stock issued by the Company.

"Certificate of Incorporation" shall mean the Restated Certificate of Incorporation of the Company, as amended from time to time, including by this Certificate of Designations.

"Certificate of Designations" shall mean this Certificate of Designations relating to the Series A Preferred Stock, as it may be amended from time to time.

"Change of Control" shall mean the occurrence of any of the following:

(1) any Person shall Beneficially Own, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, shares of the Company's Capital Stock entitling such Person to exercise more than 50% of the total voting power of all classes of Voting Stock of the Company, other than an acquisition by the Company, any of the Company's Subsidiaries or any of the Company's employee benefit plans (for purposes of this clause (1), "Person" shall include any syndicate or group that would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act);

(2) the Company (i) merges or consolidates with or into any other Person, another Person merges with or into the Company, or the Company conveys, sells, transfers or leases all or substantially all of the Company's assets to another Person or (ii) engages in any recapitalization, reclassification or other transaction in which all or substantially all of the Common Stock is exchanged for or converted into cash, securities or other property, in each case other than a merger or consolidation:

(A) that does not result in a reclassification, conversion, exchange or cancellation of the Company's outstanding Common Stock;

(B) which is effected solely to change the Company's jurisdiction of incorporation and results in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity; or

(C) where the Voting Stock outstanding immediately prior to such transaction is converted into or exchanged for Voting Stock of the surviving or transferee Person constituting a majority of the outstanding shares of such Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance);

provided, that a Change of Control shall not result from transfers by a Permitted Holder to any Person.

"Close of Business" shall mean 5:00 p.m., eastern time, on any Business Day.

"Closing Price" shall mean, with respect to a share of Capital Stock of a Person, the price per share of the final trade of the Capital Stock on the applicable Trading Day on the principal national securities exchange on which the Capital Stock is listed or admitted to trading; provided, however, that, if the Capital Stock is not so listed or traded, the Closing Price shall be equal to the fa ir market value of such share, as determined in good faith by the Board of Directors.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Commission" shall mean the U.S. Securities and Exchange Commission, including the staff thereof.

"Common Participation Amount" shall have the meaning ascribed to it in Section 4(a).

"Common Stock" shall mean the common stock, par value $0.01 per share, of the Company.

"Company" shall mean Office Depot, Inc., a corporation organized and existing under the laws of the State of Delaware, and any successor thereof.

"Conversion Cap" shall have the meaning ascribed to it in Section 7(a).

"Conversion Rate" shall mean 200, subject to adjustment as set forth in Section 8.

"Current Market Price" shall mean the average Closing Price for the ten (10) consecutive Business Days immediately preceding, but not including, the date as of which the Current Market Price is to be determined.

"Debt Documents" shall mean (i) each agreement of the Company for borrowed money in an aggregate principal amount in excess of $300 million (with "principal amount" for purposes of this definition to include undrawn committed or available amounts) that is entered into by the Company from time to time and (ii) the Credit Agreement, dated as of September 26, 2008, among the Company and the other borrowers, agents and lenders party thereto from time

to time, in each case, as may be amended, supplemented, restated, renewed, replaced, refinanced or otherwise modified from time to time. For the avoidance of doubt, (x) obligations under multiple agreements may not be aggregated for purposes of satisfying the definition of Debt Document, (y) mortgages, real estate leases, capital lease obligations, purchase money agreements, sale-leaseback transactions, equipment financing, inventory financing, letters of credit and receivables financing shall be eligible to constitute Debt Documents and (z) interest rate swaps, currency or commodity hedges and other derivative instruments shall be eligible to constitute Debt Documents measured on the basis of liability to the Company determined as of the date of the most recent quarterly or annual balance sheet of the Company, and not based on notional amount.

"Distributed Property" shall have the meaning ascribed to it in Section 8(c).

"Dividend Payment Date" shall mean January 1, April 1, July 1 and October 1 of each year, commencing on and including October 1, 2009; provided that if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be (and any dividend payable on Series A Preferred Stock on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day.

"Dividend Period" shall mean the period commencing on and including a Dividend Payment Date and shall end on and include the day immediately preceding the next Dividend Payment Date; provided that the initial Dividend Period shall commence on and include the Original Issue Date and shall end on and include the day immediately preceding the first Dividend Payment Date.

"Dividend Rate" shall mean 10.00% per annum, subject to adjustment as set forth in Sections 4(d) and 6(b).

"Dividend Record Date" shall have the meaning ascribed to it in Section 4(a). "Equity-Linked Security" shall have the meaning ascribed to it in Section 8(e). "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended. "Exchange Property " shall have the meaning ascribed to it in Section 10(a).

"Excluded Issuance" shall mean, any issuances of (1) Capital Stock to any employee, officer or director of the Company pursuant to a stock option, incentive compensation stock purchase or similar plan outstanding as of the Original Issue Date or, subsequent to the Original Issue Date, approved by the Board of Directors or a duly authorized committee of the Board of Directors, (2) securities pursuant to any merger, joint venture, partnership, consolidation, dissolution, liquidation, tender offer, recapitalization, reorganization, share exchange, business combination or similar transaction or any other direct or indirect acquisition by the Company, whereby the Company's s ecurities comprise, in whole or in part, the consideration paid by the Company in such transaction, (3) Capital Stock pursuant to options, warrants, notes or other rights to acquire securities of the Company outstanding on the Original Issue Date or issued pursuant to an Excluded Issuance under clauses (1) and (2) above, (4) Common Stock upon

conversion of the Series A Preferred Stock and Series B Preferred Stock and (5) securities in connection with any dividend, distribution, split or combination referred to in Section 8(a).

"Expiration Date" shall have the meaning ascribed to it in Section 8(d).

"Fundamental Change" shall mean the occurrence of any of the following: (1) a Change of Control, (2) the Company, within the meaning of Title 11 of the U.S. Code or any similar federal or state law for the relief of debtors, (a) commences a voluntary case, (b) consents to the entry of an order for relief against it in an involuntary case, (c) consents to the appointment of a custodian of it for all or substantially all of its property or (d) makes a general assignment for the benefit of its creditors, (3) the Common Stock ceases to be listed on any of the Nasdaq Global Select Market, the Nasdaq Global Market or the New York Stock Exchange without the simultaneous listing on another of such exchanges or (4) the primary business of the Company and its Subsidiaries ceases being the business of the sale of office products, whether in retail stores or via direct sales, catalogs or the internet.

"Internal Reorganization Event" shall have the meaning ascribed to it in Section 10(d).

"Investor Rights Agreement" shall mean the investor rights agreement, dated June 23, 2009, as amended from time to time, by and among the Company, BC Partners, Inc., BC European Capital VIII-1 to 12 (inclusive), BC European Capital VIII-14 to 34 (inclusive) and BC European Capital VIII–35 SC - VIII-39 SC (inclusive).

"Junior Stock" shall mean the Common Stock and any other class or series of Capital Stock that ranks junior to the Series A Preferred Stock (1) as to the payment of dividends or (2) as to the distribution of assets on any liquidation, dissolution or winding up of the Company, or both.

"Liquidating Distribution" shall have the meaning ascribed to it in Section 8(c).

"Liquidation Preference" shall initially mean $1,000 per share of Series A Preferred Stock; provided, however, that to the extent that the Company does not declare and pay a dividend in cash on a Dividend Payment Date pursuant to Section 4(b), an amount equal to the Net Preferred Dividend shall be added to the Liquidation Preference of such share on the applicable Dividend Payment Date; provided further, that if the holder of any shares of Series A Preferred has made an election pursuant to Section 4(f) to defer the addition of such amount or to forfeit any amount so deferred, the addition of the amount specified above to the Liquidation Preference with respect to the shares of Series A Preferred Stock registered in the name of such electing holder for the applicable period of deferral shall, in the case of deferral, be made on the date specified in such holder's notice to the Company or, in the case of forfeit, not be made at any time.

"Net Preferred Dividend" has the meaning ascribed to it in Section 4(b).

"Original Issue Date" shall mean June 23, 2009.

"Ownership Percentage" shall have the meaning given in the Investor Rights Agreement.

"Parity Stock" shall mean any class or series of Capital Stock (other than the Series A Preferred Stock) that ranks equally with the Series A Preferred Stock both (1) in the priority of payment of dividends and (2) in the distribution of assets upon any liquidation, dissolution or winding up of the Company (in each case, without regard to whether dividends accrue cumulatively or non-cumulatively). For the avoidance of doubt, the Series B Preferred Stock shall constitute Parity Stock.

"Per Share Amount" shall have the meaning ascribed to it in Section 7(a).

"Permitted Holders" shall mean, collectively, BC European Capital VIII-1 to 12 (inclusive), BC European Capital VIII-14 to 34 (inclusive) and BC European Capital VIII–35 SC - VIII-39 SC (inclusive) and their respective Affiliates (including commonly controlled or commonly managed investment funds).

"Person" shall mean any individual, company, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, government or agency or political subdivision thereof or any other entity.

"Preferred Director" has the meaning ascribed to it in Section 9(b).

"Preferred Dividend" has the meaning ascribed to it in Section 4(b).

"Preferred Stock" shall mean any and all series of preferred stock of the Company, including the Series A Preferred Stock and the Series B Preferred Stock.

"Record Date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of shareholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract, this Certificate of Designations or otherwise).

"Reorganization Event" shall have the meaning ascribed to it in Section 10(a).

"Reorganization Event Date" shall have the meaning ascribed to it in Section 10(a).

"Series A Preferred Stock" shall have the meaning ascribed to it in Section 1.

"Series B Preferred Stock" shall mean the 10.00% Series B Conditional Convertible Redeemable Participating Perpetual Preferred Stock, par value $0.01 per share, of the Company.

"Shareholder Approval" shall mean all approvals of the shareholders of the Company necessary to approve, for purposes of Section 312.03 of the NYSE Listed Company Manual (i) the conversion of the Series B Preferred Stock into shares of Common Stock, (ii) the voting rights of the Series B Preferred Stock, (iii) the addition to the Liquidation Preference of the Series A Preferred Stock of the amounts prescribed by Section 4(b) and (iv) the addition to the

liquidation preference of the Series B Preferred Stock of the amounts prescribed by Section 4(b) of the certificate of designations relating to the Series B Preferred Stock.

"Spin-Off" shall have the meaning ascribed to it in Section 8(c).

"Subsidiary" shall mean any company, partnership, limited liability company, joint venture, joint stock company, trust, unincorporated organization or other entity for which the Company owns at least 50% of the Voting Stock of such entity.

"Trading Day" shall mean any Business Day on which the Common Stock is traded, or able to be traded, on the principal national securities exchange on which the Common Stock is listed or admitted to trading.

"Trigger Event" shall have the meaning ascribed to it in Section 8(c).

"Voting Stock" shall mean Capital Stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances (determined without regard to any classification of directors) to elect one or more members of the Board of Directors (without regard to whether or not, at the relevant time, Capital Stock of any other class or classes (other than Common Stock) shall have or might have voting power by reason of the happening of any contingency).

(b) Rules of Construction. Unless the context otherwise requires: (i) a term has the meaning assigned to it herein; (ii) an accounting term not otherwise defined herein has the meaning accorded to it in accordance with generally accepted accounting principals in effect from time to time in the United States, applied on a consistent basis; (iii) words in the singular include the plural, and in the plural include the singular; (iv) "or" is not exclusive; (v) "will" shall be interpreted to express a command; (vi) "including" means including without limitation; (vii) provisions apply to successive events and transactions; (viii) references to any Section or clause refer to the corresponding Section or cla use, respectively, of this Certificate of Designations; (ix) any reference to a day or number of days, unless expressly referred to as a Business Day or Trading Day, shall mean the respective calendar day or number of calendar days; (x) references to sections of or rules under the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules, and any term defined by reference to a section of or rule under the Exchange Act shall include Commission and judicial interpretations of such section or rule; (xi) references to sections of the Code shall be deemed to include any substitute, replacement or successor sections as well as the Treasury Regulations promulgated thereunder from time to time; and (xii) headings are for convenience only.

Section 4. Dividends.

(a) Participation with Dividends on Common Stock. No cash dividend may be declared or paid on the Common Stock during a Dividend Period unless a cash dividend is also declared and paid on the Series A Preferred Stock for such Dividend Period in an amount (the "Common Participation Amount") equal to (A) the Per Share Amount (calculated for this purpose without regard to the Conversion Cap) as of the Record Date for such dividend (the "Dividend Record Date") *multiplied* by (B) the amount per share distributed or to be distributed in respect of the Common Stock in connection with such cash dividend; provided, however, if

the Closing Price of the Common Stock (measured as of the applicable Dividend Record Date) is less than $45.00 per share (subject to appropriate adjustment in the event of a stock split, stock dividend, combination or other similar recapitalization), then the Company shall not declare or pay a cash dividend on the Common Stock per share for any fiscal quarter in excess of (x) the Preferred Dividend for the most recent Dividend Period *divided* by (y) the Per Share Amount (calculated for this purpose without regard to the Conversion Cap).

(b) Dividend Rate on Series A Preferred Stock. In addition to participation in cash dividends on Common Stock as set forth in Section 4(a), holders of the Series A Preferred Stock shall be entitled to receive, on each share of Series A Preferred Stock and with respect to each Dividend Period, an amount (such amount, the "Net Preferred Dividend") equal to the Dividend Rate *multiplied* by the Liquidation Preference per share of Series A Preferr ed Stock (or, in the event of adjustment to the Dividend Rate during such Dividend Period in accordance with Section 4(d) or Section 6(b), an amount equal to the sum, for each day during such Dividend Period, of the product of the per annum Dividend Rate in effect on such day *multiplied* by the Liquidation Preference per share of Series A Preferred Stock on such day) (the "Preferred Dividend") reduced, but not below zero, by the Common Participation Amount (if any) for such Dividend Period. If and to the extent that the Company does not pay the entire Net Preferred Dividend for a particular Dividend Period in cash on the applicable Dividend Payment Date for such period, subject to Section 4(f), the amount of such Net Pr eferred Dividend not paid in cash shall be added to the Liquidation Preference in accordance with the definition thereof. Amounts payable at the Dividend Rate shall begin to accrue and be cumulative from the Original Issue Date, whether or not the Company has funds legally available for such dividends or such dividends are declared, shall compound on each Dividend Payment Date (i.e., no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable in arrears on the first Dividend Payment Date after such Dividend Period. Dividends that are payable on the Series A Preferred Stock on any Dividend Payment Date shall be payable to holders of record of the Series A Preferred Stock as they appear on the stock register of the Company on the Record Date for such dividend, which shall be the date 15 days prior to the applicable Dividend Payment Date.

Dividends payable at the Dividend Rate on the Series A Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable at the Dividend Rate on the Series A Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

(c) Payment of Dividends. Notwithstanding anything to the contrary in this Certificate of Designations, cash dividends shall be paid only to the extent (i) the Company has funds legally available for such payment, (ii) there are no provisions in any of the Debt Documents prohibiting the payment of cash dividends on the Series A Preferred Stock in such amount on the applicable Dividend Payment Date and (iii) the Board of Directors, or an authorized committee thereof, declares such dividend payable. To the extent the Board of Directors desires to declare any cash dividend or other distribution in cash on the Common Stock during any Dividend Period that requires a corresponding cash dividend on the Series A

Preferred Stock in accordance with Section 4(a), it may do so only to the extent that (i) the Company has funds legally available for the payment of such dividend or distribution in cash on all of the shares of Common Stock and Series A Preferred Stock then outstanding and (ii) such cash dividend or distribution on the Common Stock and the Series A Preferred Stock shall be payable only on the applicable Dividend Payment Date for such Dividend Period.

(d) Adjustment to Dividend Rate. If, at any time after June 23, 2012, the Closing Price of the Common Stock equals or exceeds $6.62 per share (subject to appropriate adjustment in the event of a stock split, stock dividend, combination or other similar recapitalization) for each Trading Day during any 20 consecutive Trading Day period, the Dividend Rate shall become 7.87% commencing on the day immediately following the last Trading Day of such 20 consecutive Trading Day period and for the remainder of the Dividend Period in which such day occurs and for all subsequent Dividend Periods. In addition, if, at any time after June 23, 2012, the Closing Price of the Common Stock equals or exceeds $8.50 per share (subject to appropriate a djustment in the event of a stock split, stock dividend, combination or other similar recapitalization) for each Trading Day during any 20 consecutive Trading Day period, the Dividend Rate shall become 5.75% commencing on the day immediately following the last Trading Day of such 20 consecutive Trading Day period and for the remainder of the Dividend Period in which such day occurs and for all subsequent Dividend Periods.

Within 30 days of any change to the Dividend Rate, the Company shall send notice by first class mail, postage prepaid, addressed to the holders of record of the Series A Preferred Stock stating the new Dividend Rate. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series A Preferred Stock shall not affect the validity of the revised Dividend Rate.

(e) Priority of Dividends. Subject to Sections 4(a), (b) and (c), Section 8 and Section 9, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or an authorized committee thereof may be declared and paid on any Capital Stock, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment.

(f) Elections to Defer or Forfeit an Addition to the Liquidation Preference.
Notwithstanding anything to the contrary in this Section 4, each holder of Series A Preferred Stock shall have the right to elect, in its sole discretion at any time and from time to time, to defer the addition of accrued and unpaid dividends to the Liquidation Preference as provided in Section 4(b) with respect to the shares of Series A Preferred Stock registered in the name of such holder. Any election to defer the addition of accrued and unpaid dividends to the Liquidation Preference pursuant to this Section 4(f): (1) shall be made by the electing holder by delivery to the Company of a written notice specifying the effective date of such notice and the date until which the addition of accrued and unpaid dividends to the Liquidation Preference is deferred (provided, that any such notice may not be effective between a Record Date and a Dividend Payment Date with respect to any Dividend Period), (2) shall apply to all accrued and unpaid di vidends since the most recent Dividend Payment Date through the deferral date specified in such notice, regardless of when such notice is delivered or effective, (3) may be made only with

respect to all shares of Series A Preferred Stock of such electing holder, and (4) shall not affect the payment of cash dividends pursuant to Section 4(a) or the addition of accrued and unpaid dividends to the Liquidation Preference with respect to shares of Series A Preferred Stock of any other holder pursuant to 4(b). In addition, any holder who has made an election to defer the addition of accrued and unpaid dividends to the Liquidation Preference pursuant to this Section 4(f) shall have the further right to elect, in its sole discretion at any time and from time to time, to forfeit the aggregate accrued and unpaid dividend with respect to such electing holder's shares of Series A Preferred Stock that has been deferred by delivery to the Company of a written notice specifying the effective date of such forfeiture. Any notice of an election to defer or forfeit accrued and unpaid dividends may be withdrawn by the electing holder, in it s sole discretion, at any time prior to the effective date specified therein, but not thereafter.

Section 5. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, holders of the Series A Preferred Stock shall be entitled to receive for each share of Series A Preferred Stock, out of the assets of the Company or proceeds thereof (whether capital or surplus) available for distribution to shareholders of the Company, and after satisfaction of all liabilities and obligations to creditors of the Company, on par with each share of Parity Stock but before any distribution of such assets or proceeds is made to or set aside for the holders of Junior Stock, an amount equal to the greater of (1) the sum of (a) the Liquidation Preference pe r share of the Series A Preferred Stock *plus* (b) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference from and including the immediately preceding Dividend Payment Date to but excluding the date fixed for such liquidation, dissolution or winding up of the Company and (2) the per share amount of all cash, securities and other property (such securities or other property having a value equal to its fair market value as reasonably determined by the Board of Directors) to be distributed in respect of the Common Stock such holder would have been entitled to receive had it converted such Series A Preferred Stock (without regard to the Conversion Cap) immediately prior to the date fixed for such liquidation, dissolution or winding up of the Company. To the extent such amount is paid in full to all holders of Series A Preferred Stock and all the holders of Parity Stock, the holders of Junior Stock of the Company shall be entitled to receive all remaining assets of the Company (or proceeds thereof) according to their respective rights and preferences.

(b) Partial Payment. If in connection with any distribution described in Section 5(a) above the assets of the Company or proceeds thereof are not sufficient to pay the Liquidation Preferences in full to all holders of Series A Preferred Stock and all holders of Parity Stock, the amounts paid to the holders of Series A Preferred Stock and to the holders of all such other Parity Stock shall be paid *pro rata* in accordance with the respective aggregate Liquidation Preferences of the holders of Series A Preferred Stock and the holders of all such other Parity Stock.

(c) Merger, Consolidation and Sale of Assets Not Liquidation.

(1) For purposes of this Section 5, the merger or consolidation of the Company with any other corporation or other entity, including a merger or consolidation in

which the holders of Series A Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Company, shall not be deemed to constitute a liquidation, dissolution or winding up of the Company, but instead shall be subject to the provisions of Section 10.

Section 6. Redemption.

(a) Optional Redemption.

(1) The Series A Preferred Stock may be redeemed, in whole or in part, at any time after June 23, 2012, at the option of the Company out of funds lawfully available therefor, but subject to the right of the holder to first convert the shares of Series A Preferred Stock that the Company proposes to redeem into shares of Common Stock, upon giving notice of redemption pursuant to Section 6(c), at a redemption price per share equal to the applicable percentage set forth in the table below *multiplied* by the sum of (a) the Liquidation Preference per share of the Series A Preferred Stock *plus* (b) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference on such share of Series A Preferred Stock from and including the immediately preceding Dividend Payment Date to but excluding the date of redemption. The following redemption prices are for shares of Series A Preferred Stock redeemed during the 12-month period commencing on June 23 of the years set forth below:

Year	**Applicable Percentage**
2012.....	107.00%
2013.....	106.00%
2014.....	105.00%
2015.....	104.00%
2016.....	103.00%
2017.....	102.00%
2018.....	101.00%
2019 and thereafter.....	100.00%

(2) The Series A Preferred Stock may be redeemed at any time after June 23, 2011, at the option of the Company but subject to the right of the holder to first convert the shares of Series A Preferred Stock that the Company proposes to redeem into shares of Common Stock, in whole or in part, at a redemption price per share equal to the sum of (a) the Liquidation Preference per share *plus* (b) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference on such share of Series A Preferred Stock from and including the immediately preceding Dividend Payment Date to but excluding the date of redemption, upon a minimum of 30 days' prior written notice of redemption delivered pursuant to Section 6(c), if, and only if, the Closing Price of the Common Stock equals or exceeds $9.75 per share (subject to appropriate adjustment in the event of a stock split, stock dividend,

combination or other similar recapitalization) for each Trading Day during any 20 consecutive Trading Day period ending three Business Days before sending the notice of redemption.

(3) Notwithstanding anything in this Section 6(a) to the contrary, (i) prior to the receipt of the Shareholder Approval, the Company may not effect a partial redemption pursuant to this Section 6(a) if such partial redemption would result in any shares of Series B Preferred Stock remaining outstanding unless the Company substantially simultaneously redeems all of the Series B Preferred Stock that remains outstanding and (ii) the Company may not effect a partial redemption pursuant to this Section 6(a) if such partial redemption would cause (x) if the Permitted Holders' Ownership Percentage is greater than 10.00%, the Permitted Holders' Ownership Percentage to be less than 10.00% and (y) if the Permitted Holders' Ownership Percentage is less than 10.00% but greater than 5.00%, the Permitted H olders' Ownership Percentage to be less than 5.00%, in each case unless the Company first obtains the prior written consent of a majority of the holders of the Series A Preferred Stock. Shares of Series A Preferred Stock not redeemable as a result of the foregoing shall remain outstanding and shall become redeemable pursuant to this paragraph to the extent the foregoing limitations no longer applies.

(b) Redemption at the Option of the Holder.

(1) Upon the occurrence of a Fundamental Change, each holder of the Series A Preferred Stock shall have the right to require the Company to repurchase all or any part of such holder's Series A Preferred Stock for cash at a purchase price per share equal to 101% of the sum of (a) the Liquidation Preference per share of the Series A Preferred Stock *plus* (b) an amount equal to accrued but unpaid dividends not previously added to the Liquidation Preference per share on such share of Series A Preferred Stock from and including the immediately preceding Dividend Payment Date to but excluding the date of redemption; provided, however, that (i) the Company shall not be required to repurchase any Series A Preferred Stock pursuant to this Section 6(b) to the extent such repurchase would be prohibited by any provision of any Debt Document and (ii) if the Company does not repurchase any outstanding shares of Series A Preferred Stock due to clause (i) of this proviso then, for so long as the Company fails to satisfy its repurchase obligation under this Section 6(b) with respect to such shares, the Dividend Rate for such outstanding shares of Series A Preferred Stock will increase to 15%, effective as of the date of the Fundamental Change, and will remain at 15% until the date on which the Company satisfies its repurchase obligation with respect to such shares.

(2) Within 30 days after the occurrence of a Fundamental Change, the Company shall send notice by first class mail, postage prepaid, addressed to the holders of record of the shares of Series A Preferred Stock at their respective last addresses appearing on the books of the Company stating (1) that a Fundamental Change has occurred, (2) that all shares of Series A Preferred Stock tendered prior to a Business Day no earlier than 30 days nor later than 60 days from the date such notice is mailed shall be accepted for redemption and (3) the procedures that holders of the Series A Preferred Stock must follow in order to redeem their shares of Series A Preferred Stock, including the place or places where certificates for such shares are to be surrendered for payment of the redemption price; provided, however, that if the Company is not permitted to repurchase the Series A Preferred Stock due to clause (i) of the proviso of

Section6(b)(1), then the notice shall, in lieu of the information in (2) and (3) of this paragraph, include a statement identifying the relevant provision(s) in the Debt Documents and stating the new Dividend Rate applicable to the Series A Preferred Stock pursuant to this Section 6(b). Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series A Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series A Preferred Stock.

(c) Notice of Redemption at the Option of the Company. Notice of every redemption of shares of Series A Preferred Stock pursuant to Section 6(a) shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Company. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(c) shall be conclusively presumed to have been duly given, whether or no t the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series A Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series A Preferred Stock. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of the Series A Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(d) Partial Redemption. In case of any redemption of part of the shares of Series A Preferred Stock at the time outstanding, the shares to be redeemed shall be selected *pro rata*. Subject to the provisions hereof, the Company shall have full power and authority to prescribe the terms and conditions upon which shares of Series A Preferred Stock shall be redeemed from time to time. If fewer than all the shares re presented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Company, in trust for the *pro rata* benefit of the holders of the shares of Series A Preferred Stock called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City o f New York, and having a capital and surplus of at least $500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted

by law, be released to the Company, after which time the holders of the shares so called for redemption shall look only to the Company for payment of the redemption price of such shares.

Section 7. Conversion.

(a) Mechanics. Each share of Series A Preferred Stock may be converted on any date, from time to time, at the option of the holder thereof, into the number of shares of Common Stock (the "Per Share Amount") equal to the quotient of (i) the sum of (A) the Liquidation Preference *plus* (B) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference on such share of Series A Preferred Stock from and including the immediately preceding Dividend Payment Date to but excluding the conversion date and (ii) 1,000, *multiplied* by the Conversion Rate in effect at such time; provided, however, that prior to the receipt of Shareholder Approval shares of Series A Preferred Stock shall not be convertible pursuant to this Section 7 in the aggregate into more than 19.99% of the shares of Common Stock ou tstanding on the Original Issue Date (subject to appropriate adjustment in the event of a stock split, stock dividend, combination or other similar recapitalization) (such limitation, the "Conversion Cap"). Shares of Series A Preferred Stock shall immediately and permanently cease to be subject to the Conversion Cap upon the receipt of Shareholder Approval. For the avoidance of doubt and notwithstanding anything in the Certificate of Designations to the contrary, the Conversion Cap shall not in any way limit the amounts that may be added to the Liquidation Preference.

The right of conversion attaching to any shares of Series A Preferred Stock may be exercised by the holders thereof by delivering the shares to be converted to the office of the Company, accompanied by a duly signed and completed notice of conversion in form reasonably satisfactory to the Company. The conversion date shall be the date on which the shares of Series A Preferred Stock and the duly signed and completed notice of conversion are received by the Company. The Person entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock as of such conversion date, and such Person or Persons shall cease to be a record holder of the Series A Preferred Stock on that date. As promptly as practicable on or after the conversion date (and in any event no later than three Trading Days thereafter), the Company shall issue the number of whole shares of Common Stock issuable upon conversion, with any fractional shares (after aggregating all Series A Preferred Stock being converted on such date) rounded to the nearest whole share. Such delivery shall be made, at the option of the applicable holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate holder on a book-entry basis or by mailing certificates evidencing the shares to the holders at their respective addresses as set forth in the conversion notice.

(b) Common Stock Reserved for Issuance. The Company shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of the Series A Preferred Stock, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series A Preferred Stock then outstanding. Any shares of Common Stock issued upon conversion of Series A Preferred Stock shall be (i) duly authorized, validly issued and fully paid and nonassessable, (ii) shall rank pari passu with the other shares of Common Stock outstanding from time to time and (iii) shall

be approved for listing on the principal national securities exchange on which the Common Stock is listed or admitted to trading.

(c) Taxes. The Company shall pay any and all transfer taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Series A Preferred Stock. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the Series A Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Co mpany the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid.

Section 8. Dilution Adjustments. The Conversion Rate shall be adjusted from time to time (successively and for each event described) by the Company as follows:

(a) If the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, issue shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination in respect of the Common Stock, then the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution, or the Close of Business on the effective date of such share split or combination, as applicable;

CR' = the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable; and

OS' = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable.

The Company shall not pay any dividend or make any distribution on shares of Common Stock held in treasury by the Company.

(b) Except as otherwise provided for by Section 8(c), if the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, distribute to all or substantially all holders of its outstanding shares of Common Stock any options, rights or warrants entitling them for a period of not more than 45 days from the Record Date of such distribution to subscribe for or purchase shares of Common Stock at a price per share less than the Closing Price of the Common Stock on the Trading Day immediately preceding the Record Dat e of such distribution, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;

CR' = the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such distribution;

X = the total number of shares of Common Stock issuable pursuant to such options, rights or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such options, rights or warrants divided by the average Closing Price of the Common Stock over the 10 consecutive Trading Day period ending on the Record Date.

To the extent that shares of Common Stock are not delivered pursuant to any such options, rights or warrants that are non-transferable upon the expiration or termination of such options, rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect had the adjustments made upon the distribution of such options, rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered.

In determining the aggregate price payable to exercise such options, rights or warrants, there shall be taken into account any amount payable on exercise thereof, with the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors.

(c) If the Company, at any time or from time to time while any of the Series A Preferred Stock is outstanding, shall, by dividend or otherwise, distribute to all or substantially all holders of its Common Stock shares of any class of Capital Stock of the Company, cash, evidences of its indebtedness, assets, property or rights or warrants to acquire Capital Stock or other securities, but excluding (i) dividends or distributions as to which an adjustment under Section 8(a) or Section 8(b) shall apply, (ii) dividends or distributions paid exclusively in ca sh to the extent that the Series A Preferred Stock participates on an as-converted basis with the Common Stock in a cash dividend or distribution in accordance with Section 4(a), and (iii) SpinOffs to which the provision set forth below in this Section 8(c) shall apply (any of such shares of Capital Stock, cash, indebtedness, assets, property or rights or warrants to acquire Common Stock or other securities, hereinafter in this Section 8(c) called the "Distributed Property"), then, in each such case the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

Where

CR_0	=	the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;
CR'	=	the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such distribution;
SP_0	=	the average Closing Price of the Common Stock over the 10 consecutive Trading Day period ending on the Record Date for such distribution; and
FMV	=	(i) for cash dividends or distributions, the amount of cash distributed and (ii) for other Distributed Property, the fair market value (as determined in good faith by the Board of Directors) of the portion of Distributed Property, in each case, with respect to each outstanding share of Common Stock on the Record Date for such distribution.

Notwithstanding the foregoing, if the then fair market value (as so determined) of the portion of the Distributed Property so distributed applicable to one share of Common Stock is equal to or greater than SP_0 as set forth above (a "Liquidating Distribution"), then in lieu of the foregoing adjustment, the Company shall distribute to each holder of Series A Preferred Stock on the date such Distributed Property is distributed to holders of Common Stock, but without requiring such holder to convert its shares of Series A Preferred Stock, the amount of Distributed Property such holder would have received had such holder owne d a number of shares of Common Stock equal to the Per Share Amount (determined without regard to the Conversion Cap) on the Record Date fixed for determination for shareholders entitled to receive such Liquidating Distribution; provided, however, that the Company shall not distribute Distributed Property to either the holders of the Common Stock or the Preferred Stock to the extent such

distribution would be prohibited by any provision of any Debt Document. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 8(c) by reference to the actual or when issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Stock for purposes of calculating SP_0 in the formula in this Section 8(c).

With respect to an adjustment pursuant to this Section 8(c) where there has been a payment of a dividend or other distribution on the Common Stock consisting of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company (a "Spin-Off"), the Conversion Rate in effect immediately before the Close of Business on the 10th Trading Day immediately following, and including, the effective date of the Spin-Off shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the 10th Trading Day immediately following, and including, the effective date of the Spin-Off;

CR' = the new Conversion Rate in effect from and after the Close of Business on the 10th Trading Day immediately following, and including, the effective date of the Spin-Off;

FMV = the average of the Closing Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the 10 consecutive Trading Day period immediately following, and including, the effective date of the Spin-Off; and

MP_0 = the average Closing Price of the Common Stock over the 10 consecutive Trading Day period calculated immediately following, and including, the effective date of the Spin-Off.

Such adjustment shall occur on the 10th Trading Day immediately following, and including, the effective date of the Spin-Off.

For purposes of this Section 8(c), Section 8(a) and Section 8(b) hereof, any dividend or distribution to which this Section 8(c) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 8(a) or 8(b) hereof applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants to which Section 8(a) or 8(b) hereof applies (and any Conversion Rate adjustment required by this Section 8(c) with respect to such dividend or

distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such options, rights or warrants to which Section 8(a) or 8(b) hereof applies (and any further Conversion Rate adjustment required by Section 8(a) and 8(b) hereof with respect to such dividend or distribution shall then be made), except (A) the Close of Business on the Record Date of such dividend or distribution shall be substituted for "the Close of Business on the Record Date," "the Close of Business on the Record Date or the Close of Business on the effective date," "after the Close of Business on the Record Date for such dividend or distribution or the Close of Business on the effective date of such share split or share combination" and "the Close of Business on the Record Date for such distribution" within the meaning of Section 8(a) and Section 8(b) hereof and (B) any sh ares of Common Stock included in such dividend or distribution shall not be deemed "outstanding immediately prior to the Close of Business on the Record Date or the Close of Business on the effective date" within the meaning of Section 8(a) hereof.

If the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, distribute options, rights or warrants to all or substantially all holders of Common Stock entitling the holders thereof to subscribe for, purchase or convert into shares of Capital Stock (either initially or under certain circumstances), which options, rights or warrants, until the occurrence of a specified event or events ("Trigger Event"): (x) are deemed to be transferred with such shares of C ommon Stock; (y) are not exercisable; and (z) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 8(c), (and no adjustment to the Conversion Rate under this Section 8(c) shall be required) until the occurrence of the earliest Trigger Event and a distribution or deemed distribution under the terms of such options, rights or warrants at which time an appropriate adjustment (if any is required) to the Conversion Rate shall be made in the same manner as provided for under this Section 8(c). If any such options, rights or warrants are subject to events, upon the occurrence of which such options, rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new options, rights or warrants for purposes of this Section 8(c) (and a termination o r expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of options, rights or warrants (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 8(c) was made, (1) in the case of any such options, rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a distribution under this Section 8(c), equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such options, rights or warrants (assuming such holder had retained such options, rights or warrants), made to all holders of Co mmon Stock as of the date of such redemption or repurchase, and (2) in the case of such options, rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such options, rights or warrants had not been issued.

(d) If the Company, during the eighteen month period following the Original Issue Date, shall issue shares of Common Stock or any other security convertible into, exercisable or exchangeable for Common Stock (such Common Stock or other security, "Equity-Linked Securities"), for a consideration per share of Common Stock (or conversion price per share of Common Stock) less than the Current Market Pr ice of Common Stock on the date the Company fixes the offering price (or conversion price) of Equity-Linked Securities, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0 + (AC / SP')}$$

Where:

CR_0	=	the Conversion Rate in effect immediately prior to the issuance of such Equity-Linked Securities;
CR'	=	the new Conversion Rate in effect immediately after the issuance of such Equity-Linked Securities;
AC	=	the aggregate consideration paid or payable for such Equity Linked Securities;
OS_0	=	the number of shares of Common Stock outstanding immediately prior to the issuance of such Equity-Linked Securities;
OS'	=	the number of shares of Common Stock outstanding immediately after the issuance of such Equity-Linked Securities or issuable pursuant to such Equity-Linked Securities; and
SP'	=	the Closing Price of the Common Stock on the date of issuance of such Equity-Linked Securities.

The adjustment shall become effective immediately after such issuance.

This Section 8(d) shall not apply to Excluded Issuances.

(e) Prior to the receipt of Shareholder Approval, conversion of the Series A Preferred Stock is subject to the Conversion Cap pursuant to Section 7(a). Notwithstanding the foregoing, the Conversion Cap shall have no affect on any adjustment to the Conversion Rate pursuant to this Section 8.

(f) The Corporation may make increases in the Conversion Rate, in addition to any other increases required by this Section 8, if the Board of Directors (by action of a majority of

the directors that are neither "Investor Designees" (as defined in the Investor Rights Agreement) nor Preferred Directors ("Independent Majority") deems it advisable and necessary to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of shares of Common Stock (or issuance of options, rights or warrants for Common Stock) or from any event treated as such for income tax purposes or for any other reason provided, however, that if there are any Investor Designees or Preferred Directors on the Board of Directors at such time, the Corporation may not take such action without the approval of the Investor Designees and Preferred Directors, which approval may only be withheld if the Investor Designees and Preferred Director s reasonably determine that such action is likely to result in a material increase in U.S. federal income tax or withholding tax to holders of Series A Preferred Stock. If the Corporation takes any action affecting the Common Stock, other than an action described in Section 8(a) though 8(d), which upon a determination by the Board of Directors by action of an Independent Majority, such determination intended to be a "fact" for purposes of Section 151(a) of the General Corporation Law of the State of Delaware, would materially adversely affect the conversion rights of the holders of the Series A Preferred Stock, the Conversion Rate shall be increased, to the extent permitted by law, in such manner, if any, and at such time, as the Board of Directors by action of an Independent Majority determines in good faith to be equitable in the circumstances.

Section 9. Voting Rights.

(a) General. The holders of shares of Series A Preferred Stock shall be entitled to vote with the holders of shares of Common Stock and, following the receipt of Shareholder Approval, the Series B Preferred Stock on all matters submitted to a vote of shareholders of the Company, except as otherwise provided herein or by applicable law. Each holder of shares of Series A Preferred Stock shall be entitled to the number of votes equal to the largest number of whole shares of Common Stock into which all shares of Series A Preferred Stock held of record by su ch holder could then be converted pursuant to Section 7 (subject to the Conversion Cap, if applicable) at the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is first executed. To the extent the voting rights of holders of the Series A Preferred Stock are limited by the Conversion Cap, the vote of all holders of Series A Preferred Stock shall be reduced on a *pro rata* basis. For the avoidance of doubt, if the Shareholder Approval is obtained, then the Conversion Cap shall cease to apply. The holders of shares of Series A Preferred Stock shall be entitled to notice of any meeting of shareholders of the Company in accordance with the Bylaws.

(b) Election of Directors.

(1) **Election.** If (i) the Investor Representative is entitled to designate one or more directors to the Board of Directors pursuant to the terms and conditions of the Section 2.1 of the Investor Rights Agreement and (ii) the shareholders of the Company fail to elect any of the directors so designated by the Investor Representative, in each case at any annual or special meeting called for, among other items, the election of directors, then the holders of a majority of the outstanding Series A Preferred Stock, voting as a separate series with, if the Shareholder Approvals are obtained, the holders of the Series B Preferred Stock, and to the exclusion of the holders of Common Stock and holders of all other Preferred Stock, shall be entitled to elect such

persons to the Board of Directors that were designated by the Investor Representative and not subsequently elected to the Board of Directors by the shareholders of the Company (each such director, a "Preferred Director").

(2) **Term.** Each Preferred Director shall serve until the next annual meeting of the shareholders of the Company and until his or her successor is elected and qualifies in accordance with this Section 9(b) and the Bylaws, unless such Preferred Director is earlier removed in accordance with the Bylaws, resigns or is otherwise unable to serve. In the e vent any Preferred Director is removed, resigns or is unable to serve as a member of the Board of Directors, the holders of a majority of the outstanding Series A Preferred Stock, voting as a separate series to the exclusion of the holders of Common Stock and holders of all other Preferred Stock, but, following the receipt of Shareholder Approval, voting together with the holders of Series B Preferred Stock shall have the right to fill such vacancy. Each Preferred Director may only be elected to the Board of Directors by the holders of the Series A Preferred Stock in accordance with this Section 9(b), and each such director's seat shall otherwise remain vacant.

(3) **Non-Limitation of Voting Rights.** For the avoidance of doubt, the right of the Series A Preferred Stock to vote for the election of the Preferred Directors shall be in addition to the right of the Series A Preferred Stock to vote together with the holders of Common Stock and, following the receipt of Shareholder Approval, the Series B Preferred Stock for the election of the other members of the Board of Directors.

(c) Class Voting Rights as to Particular Matters. For so long as (x) the Permitted Holders collectively Beneficially Own any shares of Series A Preferred Stock and (y) the Permitted Holders' Ownership Percentage is equal to or greater than 10 %, in addition to any other vote or consent of shareholders required by law or by the Certificate of Incorporation, the affirmative vote or consent of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding and entitled to vote thereon, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting any of the actions described in clauses (1) through (3) below:

(1) **Dividends, Repurchase and Redemption**.

(A) The declaration or payment of any dividend or distribution on Common Stock, other Junior Stock or Parity Stock (other than (i) a dividend payable solely in Junior Stock and (ii) dividends or distributions paid exclusively in cash to the extent that the Series A Preferred Stock participates on an as-converted basis with the Common Stock in a cash dividend or distribution in accordance with Section 4(a)) if, at the time of such declaration, payment or distribution, dividends on the Series A Preferred Stock have not been paid in full in cash; or

(B) the purchase, redemption or other acquisition for consideration by the Company, directly or indirectly, of any Common Stock, other Junior Stock or Parity Stock (except as necessary to effect (1) a reclassification of Junior Stock for or into other Junior Stock, (2) a reclassification of Parity Stock for or into other Parity Stock with the same or lesser aggregate liquidation preference, (3) a reclassification of Parity Stock into Junior Stock, (4) the

exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, (5) the exchange or conversion of one share of Parity Stock for or into another share of Parity Stock with the same or lesser per share liquidation amount or (6) the exchange or conversion of one share of Parity Stock into Junior Stock), in each case if, at the time of such purchase, redemption or other acquisition, dividends on the Series A Preferred Stock have not been paid in full in cash;

(2) **Amendment of Series A Preferred Stock**. Any amendment, alteration or repeal of any provision of the Certificate of Incorporation or Certificate of Designations so as to adversely affect the relative rights, preferences, privileges or voting powers of the Series A Preferred Stock; or

(3) **Authorizations, Issuances and Reclassifications**. The authorization of, issuance of, or reclassification into, Parity Stock (including additional shares of the Series A Preferred Stock) or Capital Stock that would rank senior to the Series A Preferred Stock.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Series A Preferred Stock shall be required pursuant to Section 9(c) if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of Series A Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in eac h case pursuant to Section 6 above.

Section 10. Reorganization Events.

(a) In the event of:

(i) any consolidation or merger of the Company with or into another Person or of another Person with or into the Company;

(ii) any sale, transfer, lease or conveyance to another Person of the property of the Company as an entirety or substantially as an entirety; or

(iii) any statutory share exchange of the Company with another Person (other than in connection with a merger or acquisition),

in each case in which holders of Common Stock would be entitled to receive cash, securities or other property for their shares of Common Stock (any such event specified in this Section 10(a), a "Reorganization Event"), each share of Series A Preferred Stock outstanding immediately prior to such Reorganization Event shall (subject to prior redemption (other than pursuant to Section 6(b)) or conversion), without the consent of the holder thereof, be exchanged for whichever of the following has the greatest value (as determined by the Board of Directors in its reasonable discretion): (A) an amount in cash equal to the sum of (1) the Liquidation Preference per share of the Series A Preferred Stock *plus* (2) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference from and including the immediately preceding Dividend Payment Date to but excluding the date on which such Reorganization Event occurs (the "Reorganization Event Date"), (B) an amount equal to the *product* of (I) the Per Share Amount (calculated for this purpose without regard to the Conversion Cap) as of the Reorganization Event Date *multiplied* by (II) the amount of cash, securities or other property

(such securities or other property having a value equal to its fair market value as reasonably determined by the Board of Directors) distributed or to be distributed in respect of the Common Stock in connection with such Reorganization Event to a holder of Common Stock that was not the counterparty to the Reorganization Event or an Affiliate of such counterparty (such cash, securities and other property, the "Exchange Property") and (C) to the extent the Reorganization Event constitutes or would constitute a Fundamental Change, an amount in cash equal to the product of (x) 101% *multiplied* by (y) sum of (1) the Liquidation Preference per share of t he Series A Preferred Stock *plus* (2) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference from and including the immediately preceding Dividend Payment Date to but excluding the Reorganization Event Date; provided, however, that the Company shall not distribute cash, securities or other property as provided in this Section 10(a) to either the holders of the Common Stock or the Preferred Stock to the extent such distribution would be prohibited by any provision of any Debt Document.

(b) In the event that (i) the Board of Directors determines pursuant to Section 10(a) that the Series A shall be exchanged for Exchange Property and (ii) the holders of the shares of the Common Stock have the opportunity to elect the form of consideration to be received in such transaction, the "Exchange Property" that holders of the Series A Preferred Stock shall be entitled to receive sha ll be determined by the holders of a majority of the outstanding shares of Series A Preferred Stock.

(c) The above provisions of this Section 10 shall similarly apply to successive Reorganization Events.

(d) Notwithstanding anything to the contrary, Section 10(a) shall not apply in the case of, and a Reorganization Event shall not be deemed to be, a merger, consolidation, reorganization or statutory share exchange (x) among the Company and its direct and indirect Subsidiaries or (y) between the Company and any Person for the primary purpose of changing the domicile of the Company (a "< FONT face="'TimesNewRomanPSMT,Times New Roman,Times,serif">Internal Reorganization Event"). Without limiting the rights or the holders of the Series A Preferred Stock set forth in Section 9(c)(2), the Company shall not effectuate an Internal Reorganization Event unless the Series A Preferred Stock shall be outstanding as a class of preferred stock of the surviving company having the same rights, terms, preferences, liquidation preference and accrued and unpaid dividends as the Series A Preferred Stock in effect immediately prior to such Internal Reorganization Event, as adjusted for such Internal Reorganization Event pursuant to this Certificate of Designations after giving effect to any such Internal Reorganization Event. The Company (or any successor) shall, within 20 days of the occurrence of any Internal Reorganization Event, provide written notice to the holders of the Series A Preferred Stock of the occurrence of such event. Fail ure to deliver such notice shall not affect the operation of this Section 10(d) or the validity of any Internal Reorganization Event.

Section 11. Record Holders. To the fullest extent permitted by applicable law, the Company may deem and treat the record holder of any share of the Series A Preferred Stock as the true and lawful owner thereof for all purposes, and the Company shall not be affected by any notice to the contrary.

Section 12. Notices.

(a) General. All notices or communications in respect of the Series A Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law or regulation. Notwithstanding the foregoing, i f the Series A Preferred Stock is issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of the Series A Preferred Stock in any manner permitted by such facility.

(b) Notice of Certain Events. The Company shall, to the extent not included in the Exchange Act reports of the Company, provide reasonable written notice to each holder of the Series A Preferred Stock of any event that has resulted in (i) a Fundamental Change and (ii) an event the occurrence of which would result in an adjustment to the Conversion Rate, including the then applicable Conversion Rate.< /FONT>

Section 13. Replacement Certificates. The Company shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Company. The Company shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Company of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, toget her with any indemnity that may be required by the Company.

Section 14. Other Rights. The shares of Series A Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law and regulation.

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be duly executed and acknowledged by its undersigned duly authorized officer this 23rd day of June, 2009.

OFFICE DEPOT, INC.

By: /s/ Michael Newman
Michael Newman
Executive Vice President &
Chief Financial Officer

EXHIBIT 3.3

CERTIFICATE OF DESIGNATIONS OF
10.00% SERIES B REDEEMABLE CONDITIONAL CONVERTIBLE
PARTICIPATING PERPETUAL PREFERRED STOCK,
PAR VALUE $0.01 PER SHARE,
OF
OFFICE DEPOT, INC.

Pursuant to Sections 151 and 103 of the
General Corporation Law of the State of Delaware

OFFICE DEPOT, INC., a corporation organized and existing under the laws of the State of Delaware (the "Company"), certifies that pursuant to the authority contained in its Restated Certificate of Incorporation, as amended from time to time (the "Certificate of Incorporation"), and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Company has duly approved and adopted the following resolution on June 22, 2009, and the re solution was adopted by all necessary action on the part of the Company:

RESOLVED, that pursuant to the authority vested in the Board of Directors by the Certificate of Incorporation and Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors does hereby designate, create, authorize and provide for the issue of a series of 80,000 shares of Preferred Stock, par value $0.01 per share, having the voting powers and such designations, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions that are set forth in this resolution of the Board of Directors pursuant to authority expressly vested in it by the provisions of the Certificate of Incorporation and hereby constituting an amendment to the Certificate of Incorporation as follows:

Section 1. Designation. The designation of the series of preferred stock of the Company is "10.00% Series B Redeemable Conditional Convertible Participating Perpetual Preferred Stock", par value $0.01 per share (the "Series B Preferred Stock"). Each share of the Series B Preferred Stock shall be identical in all respects to every other share of the Series B Preferred Stock. The Series B Preferred Stock shall be perpetual, subject to the provisions of Section 6.

Section 2. Number of Shares. The authorized number of shares of Series B Preferred Stock is 80,000. Shares of Series B Preferred Stock that are redeemed, purchased or otherwise acquired by the Company, or converted into another series of Preferred Stock, shall revert to authorized but unissued shares of Preferred Stock (provided that any such cancelled shares of Series B Preferred Stock may be reissued only as shares of any series other than Series B Preferred Stock).

Section 3. Defined Terms and Rules of Construction.

(a) Definitions. As used herein with respect to the Series B Preferred Stock:

"Affiliate" of any Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For purposes of this definition, "control" when used with respect to any Person has the meaning specified in Rule 12b-2 under the Exchange Act; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Beneficially Own" shall mean "beneficially own" as defined in Rule 13d-3 under the Exchange Act.

"Board of Directors" shall mean the board of directors of the Company.

"Business Day" shall mean a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York, New York or Miami, Florida generally are authorized or obligated by law, regulation or executive order to close.

"Bylaws" shall mean the Amended and Restated Bylaws of the Company in effect on the date hereof, as they may be amended from time to time.

"Capital Stock" shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (in each case however designated) stock issued by the Company.

"Certificate of Incorporation" shall mean the Restated Certificate of Incorporation of the Company, as amended from time to time, including by this Certificate of Designations.

"Certificate of Designations" shall mean this Certificate of Designations relating to the Series B Preferred Stock, as it may be amended from time to time.

"Change of Control" shall mean the occurrence of any of the following:

(1) any Person shall Beneficially Own, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, shares of the Company's Capital Stock entitling such Person to exercise more than 50% of the total voting power of all classes of Voting Stock of the Company, other than an acquisition by the Company, any of the Company's Subsidiaries or any of the Company's employee benefit plans (for purposes of this clause (1), "Person" shall include any syndicate or group that would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act);

(2) the Company (i) merges or consolidates with or into any other Person, another Person merges with or into the Company, or the Company conveys, sells, transfers or leases all or substantially all of the Company's assets to another Person or (ii) engages in any recapitalization, reclassification or other transaction in which all or substantially all of the Common Stock is exchanged for or converted into cash, securities or other property, in each case other than a merger or consolidation:

(A) that does not result in a reclassification, conversion, exchange or cancellation of the Company's outstanding Common Stock;

(B) which is effected solely to change the Company's jurisdiction of incorporation and results in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity; or

(C) where the Voting Stock outstanding immediately prior to such transaction is converted into or exchanged for Voting Stock of the surviving or transferee Person constituting a majority of the outstanding shares of such Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance);

provided, that a Change of Control shall not result from transfers by a Permitted Holder to any Person.

"Close of Business" shall mean 5:00 p.m., eastern time, on any Business Day.

"Closing Price" shall mean, with respect to a share of Capital Stock of a Person, the price per share of the final trade of the Capital Stock on the applicable Trading Day on the principal national securities exchange on which the Capital Stock is listed or admitted to trading; provided, however, that, if the Capital Stock is not so listed or traded, the Closing Price shall be equal to the fair market value of such share, as determined in good faith by the Board of Directors.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Commission" shall mean the U.S. Securities and Exchange Commission, including the staff thereof.

"Common Participation Amount" shall have the meaning ascribed to it in Section 4(a).

"Common Stock" shall mean the common stock, par value $0.01 per share, of the Company.

"Company" shall mean Office Depot, Inc. a corporation organized and existing under the laws of the State of Delaware, and any successor thereof.

"Conversion Rate" shall mean 200, subject to adjustment as set forth in Section 8.

"Current Market Price" shall mean the average Closing Price for the ten (10) consecutive Business Days immediately preceding, but not including, the date as of which the Current Market Price is to be determined.

"Debt Documents" shall mean (i) each agreement of the Company for borrowed money in an aggregate principal amount in excess of $300 million (with "principal amount" for purposes of this definition to include undrawn committed or available amounts) that is entered into by the Company from time to time and (ii) the Credit Agreement, dated as of September 26, 2008, among the Company and the other borrowers, agents and lenders party thereto from time to time, in each case, as may be amended, supplemented, restated, renewed, replaced, refinanced or otherwise modified from time to time. For the avoidance of doubt, (x) obligations under multiple agreements may not be aggregated for purposes of satisfying the definition of D ebt

Document, (y) mortgages, real estate leases, capital lease obligations, purchase money agreements, sale-leaseback transactions, equipment financing, inventory financing, letters of credit and receivables financing shall be eligible to constitute Debt Documents and (z) interest rate swaps, currency or commodity hedges and other derivative instruments shall be eligible to constitute Debt Documents measured on the basis of liability to the Company determined as of the date of the most recent quarterly or annual balance sheet of the Company, and not based on notional amount.

"Distributed Property" shall have the meaning ascribed to it in Section 8(c).

"Dividend Payment Date" shall mean January 1, April 1, July 1 and October 1 of each year, commencing on and including October 1, 2009; provided that if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be (and any dividend payable on Series B Preferred Stock on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day.

"Dividend Period" shall mean the period commencing on and including a Dividend Payment Date and shall end on and include the day immediately preceding the next Dividend Payment Date; provided that the initial Dividend Period shall commence on and include the Original Issue Date and shall end on and include the day immediately preceding the first Dividend Payment Date.

"Dividend Rate" shall mean 10.00% per annum, subject to adjustment as set forth in Sections 4(d) and 6(b).

"Dividend Record Date" shall have the meaning ascribed to it in Section 4(a). "Equity-Linked Security" shall have the meaning ascribed to it in Section 8(e). "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended. "Exchange Property" shall have the meaning ascribed to it in Secti on 10(a).

"Excluded Issuance" shall mean, any issuances of (1) Capital Stock to any employee, officer or director of the Company pursuant to a stock option, incentive compensation stock purchase or similar plan outstanding as of the Original Issue Date or, subsequent to the Original Issue Date, approved by the Board of Directors or a duly authorized committee of the Board of Directors, (2) securities pursuant to any merger, joint venture, partnership, consolidation, dissolution, liquidation, tender offer, recapitalization, reorganization, share exchange, business combination or similar transaction or any other direct or indirect acquisition by the Company, whereby the Company's securities comprise, in whole or in part, the consider ation paid by the Company in such transaction, (3) Capital Stock pursuant to options, warrants, notes or other rights to acquire securities of the Company outstanding on the Original Issue Date or issued pursuant to an Excluded Issuance under clauses (1) and (2) above, (4) Common Stock upon conversion of the Series A Preferred Stock and Series B Preferred Stock and (5) securities in connection with any dividend, distribution, split or combination referred to in Section 8(a).

"Expiration Date" shall have the meaning ascribed to it in Section 8(d).

"Fundamental Change" shall mean the occurrence of any of the following: (1) a Change of Control, (2) the Company, within the meaning of Title 11 of the U.S. Code or any similar federal or state law for the relief of debtors, (a) commences a voluntary case, (b) consents to the entry of an order for relief against it in an involuntary case, (c) consents to the appointment of a custodian of it for all or substantially all of its property or (d) makes a general assignment for the benefit of its creditors, (3) the Common Stock ceases to be listed on any of the Nasdaq Global Select Market, the Nasdaq Global Market or the New York Stock Exchange without the simultaneous listing on another of such exchanges or (4) the primary business of the Company and its Subsidiaries ceases being the business of the sale of office products, whether in retail stores or via direct sales, catalogs or the internet.

"Internal Reorganization Event" shall have the meaning ascribed to it in Section 10(d).

"Investor Rights Agreement" shall mean the investor rights agreement, dated June 23, 2009, as amended from time to time, by and among the Company, BC Partners, Inc., BC European Capital VIII-1 to 12 (inclusive), BC European Capital VIII-14 to 34 (inclusive) and BC European Capital VIII–35 SC - VIII-39 SC (inclusive).

"Junior Stock" shall mean the Common Stock and any other class or series of Capital Stock that ranks junior to the Series B Preferred Stock (1) as to the payment of dividends or (2) as to the distribution of assets on any liquidation, dissolution or winding up of the Company, or both.

"Liquidating Distribution" shall have the meaning ascribed to it in Section 8(c).

"Liquidation Preference" shall initially mean $1,000 per share of Series B Preferred Stock; provided, however, that to the extent that the Company does not declare and pay a dividend in cash on a Dividend Payment Date pursuant to Section 4(b), an amount equal to the Net Preferred Dividend shall be added to the Liquidation Preference of such share on the applicable Dividend Payment Date; provided further, that if the holder of any shares of Series B Preferred has made an election pursuant to Section 4(f) to defer the addition of such amount or to forfeit any amount so deferred, the addition of the amount specified above to the Liquidation Preference with respect to the shares of Series B Preferred Stock registered in the name of such electing holder for the applicable period of deferral shall, in the case of deferral, be made on the date specified in such holder's notice to the Company or, in the case of forfeit, not be made at any time.

"Net Preferred Dividend" has the meaning ascribed to it in Section 4(b).

"Original Issue Date" shall mean June 23, 2009.

"Ownership Percentage" shall have the meaning given in the Investor Rights Agreement.

"Parity Stock" shall mean any class or series of Capital Stock (other than the Series B Preferred Stock) that ranks equally with the Series B Preferred Stock both (1) in the priority of payment of dividends and (2) in the distribution of assets upon any liquidation, dissolution or winding up of the Company (in each case, without regard to whether dividends accrue

cumulatively or non-cumulatively). For the avoidance of doubt, the Series A Preferred Stock shall constitute Parity Stock.

"Per Share Amount" shall have the meaning ascribed to it in Section 7(a).

"Permitted Holders" shall mean, collectively, BC European Capital VIII-1 to 12 (inclusive), BC European Capital VIII-14 to 34 (inclusive) and BC European Capital VIII–35 SC - VIII-39 SC (inclusive) and their respective Affiliates (including commonly controlled or commonly managed investment funds).

"Person" shall mean any individual, company, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, government or agency or political subdivision thereof or any other entity.

"Preferred Director" has the meaning ascribed to it in Section 9(b).

"Preferred Dividend" has the meaning ascribed to it in Section 4(b).

"Preferred Stock" shall mean any and all series of preferred stock of the Company, including the Series A Preferred Stock and the Series B Preferred Stock.

"Record Date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of shareholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract, this Certificate of Designations or otherwise).

"Reorganization Event" shall have the meaning ascribed to it in Section 10(a).

"Reorganization Event Date" shall have the meaning ascribed to it in Section 10(a).

"Series A Preferred Stock" shall mean the 10.00% Series A Redeemable Convertible Participating Perpetual Preferred Stock, par value $0.01 per share, of the Company.

"Series B Director" has the meaning ascribed to it in Section 9(b)(1)(A).

"Series B Preferred Stock" shall have the meaning ascribed to it in Section 1.

"Shareholder Approval" shall mean all approvals of the shareholders of the Company necessary to approve, for purposes of Section 312.03 of the NYSE Listed Company Manual (i) the conversion of the Series B Preferred Stock into shares of Common Stock, (ii) the voting rights of the Series B Preferred Stock, (iii) the addition to the Liquidation Preference of the Series B Preferred Stock of the amounts prescribed by Section 4(b) and (iv) the addition to the liquidation preference of the Series A Preferred Stock of the amounts prescribed by section 4(b) of the certificate of designations relating to the Series A Preferred Stock.

"Spin-Off" shall have the meaning ascribed to it in Section 8(c).

"Subsidiary" shall mean any company, partnership, limited liability company, joint venture, joint stock company, trust, unincorporated organization or other entity for which the Company owns at least 50% of the Voting Stock of such entity.

"Trading Day" shall mean any Business Day on which the Common Stock is traded, or able to be traded, on the principal national securities exchange on which the Common Stock is listed or admitted to trading.

"Trigger Event" shall have the meaning ascribed to it in Section 8(c).

"Voting Stock" shall mean Capital Stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances (determined without regard to any classification of directors) to elect one or more members of the Board of Directors (without regard to whether or not, at the relevant time, Capital Stock of any other class or classes (other than Common Stock) shall have or might have voting power by reason of the happening of any contingency).

(b) Rules of Construction. Unless the context otherwise requires: (i) a term has the meaning assigned to it herein; (ii) an accounting term not otherwise defined herein has the meaning accorded to it in accordance with generally accepted accounting principals in effect from time to time in the United States, applied on a consistent basis; (iii) words in the singular include the plural, and in the plural include the singular; (iv) "or" is not exclusive; (v) "will" shall be interpreted to express a command; (vi) "including" means including without limitation; (vii) provisions apply to successive events and transactions; (viii) references to any Section or clause refer to the corresponding Section or clause, respectively, of t his Certificate of Designations; (ix) any reference to a day or number of days, unless expressly referred to as a Business Day or Trading Day, shall mean the respective calendar day or number of calendar days; (x) references to sections of or rules under the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules, and any term defined by reference to a section of or rule under the Exchange Act shall include Commission and judicial interpretations of such section or rule; (xi) references to sections of the Code shall be deemed to include any substitute, replacement or successor sections as well as the Treasury Regulations promulgated thereunder from time to time; and (xii) headings are for convenience only.

Section 4. Dividends.

(a) Participation with Dividends on Common Stock. No cash dividend may be declared or paid on the Common Stock during a Dividend Period unless a cash dividend is also declared and paid on the Series B Preferred Stock for such Dividend Period in an amount (the "Common Participation Amount") equal to (A) the Per Share Amount (determined without regard to receipt of the Shareholder Approval) as of the Record Date for such dividend (the "Dividend Record Date&# 148;) *multiplied* by (B) the amount per share distributed or to be distributed in respect of the Common Stock in connection with such cash dividend; provided, however, if the Closing Price of the Common Stock (measured as of the applicable Dividend Record Date) is less than $45.00 per share (subject to appropriate adjustment in the event of a stock split, stock

dividend, combination or other similar recapitalization), then the Company shall not declare or pay a cash dividend on the Common Stock per share for any fiscal quarter in excess of (x) the Preferred Dividend for the most recent Dividend Period *divided* by (y) the Per Share Amount (determined without regard to receipt of the Shareholder Approval).

(b) Dividend Rate on Series B Preferred Stock. In addition to participation in cash dividends on Common Stock as set forth in Section 4(a), holders of the Series B Preferred Stock shall be entitled to receive, on each share of Series B Preferred Stock and with respect to each Dividend Period, an amount (such amount, the "Net Preferred Dividend") equal to the Dividend Rate *multiplied* by the Liquidation Preference per share of Series B Preferred Stock (or, in the ev ent of adjustment to the Dividend Rate during such Dividend Period in accordance with Section 4(d) or Section 6(b), an amount equal to the sum, for each day during such Dividend Period, of the product of the per annum Dividend Rate in effect on such day *multiplied* by the Liquidation Preference per share of Series B Preferred Stock on such day) (the "Preferred Dividend") reduced, but not below zero, by the Common Participation Amount (if any) for such Dividend Period. If and to the extent that the Company does not pay the entire Net Preferred Dividend for a particular Dividend Period in cash on the applicable Dividend Payment Date for such period, subject to Section 4(f), the amount of such Net Preferred Dividend not pa id in cash shall be added to the Liquidation Preference in accordance with the definition thereof . Amounts payable at the Dividend Rate shall begin to accrue and be cumulative from the Original Issue Date, whether or not the Company has funds legally available for such dividends or such dividends are declared, shall compound on each Dividend Payment Date (i.e., no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable in arrears on the first Dividend Payment Date after such Dividend Period. Dividends that are payable on the Series B Preferred Stock on any Dividend Payment Date shall be payable to holders of record of the Series B Preferred Stock as they appear on the stock register of the Company on the Record Date for such dividend, which shall be the date 15 days prior to the applicable Dividend Payment Date.

Dividends payable at the Dividend Rate on the Series B Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable at the Dividend Rate on the Series B Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

(c) Payment of Dividends. Notwithstanding anything to the contrary in this Certificate of Designations, cash dividends shall be paid only to the extent (i) the Company has funds legally available for such payment, (ii) there are no provisions in any of the Debt Documents prohibiting the payment of cash dividends on the Series B Preferred Stock in such amount on the applicable Dividend Payment Date and (iii) the Board of Directors, or an authorized committee thereof, declares such dividend payable. To the extent the Board of Directors desires to declare any cash dividend or other distribution in cash on the Common Stock during any Dividend Period that requires a corresponding cash dividend on the Series B Preferred Stock in accordance with Section 4(a), it may do so only to the extent that (i) the Company has funds legally available for the payment of such dividend or distribution in cash on

all of the shares of Common Stock and Series B Preferred Stock then outstanding and (ii) such cash dividend or distribution on the Common Stock and the Series B Preferred Stock shall be payable only on the applicable Dividend Payment Date for such Dividend Period.

(d) Adjustment to Dividend Rate.

(1) If the Company does not obtain Shareholder Approval within 180 days following the Original Issue Date, then the Dividend Rate shall become 15.00% commencing on the 181st day following the Original Issue Date and for the remainder of the Dividend Period in which such day occurs and for all subsequent Dividend Periods until the Shareholder Approval has occurred. If the Company does not obtain Shareholder Approval within 270 days following the Original Issue Date, then the Dividend Rate shall become 17.125% commencing on the 271st day following the Original Issue Date and for the remainder of the Dividend Period in which such day occurs and for all subsequent Dividend Periods until the Shareholder Approval has occurred. If the Company does not obtain Shareholder Approval within 360 days following the Original Issue Date, then the Dividend Rate shall become 19.00% commencing on the 361st day following the Original Issue Date and for the remainder of the Dividend Period in which such day occurs and for all subsequent Dividend Periods until the Shareholder Approval has occurred.

(2) If, at any time after (x) June 23, 2012 and (y) receipt of Shareholder Approval, the Closing Price of the Common Stock equals or exceeds $6.62 per share (subject to appropriate adjustment in the event of a stock split, stock dividend, combination or other similar recapitalization) for each Trading Day during any 20 consecutive Trading Day period, the Dividend Rate shall become 7.87% commencing on the day immediately following the last Trading Day of such 20 consecutive Trading Day period and for the remainder of the Dividend Period in which such day occurs and for all subsequent Dividend Periods. In addition, if, at any time after June 23, 2012, the Closing Price of the Common Stock equals or exceeds $8.50 per share (subject to appropriate adj ustment in the event of a stock split, stock dividend, combination or other similar recapitalization) for each Trading Day during any 20 consecutive Trading Day period, the Dividend Rate shall become 5.75% commencing on the day immediately following the last Trading Day of such 20 consecutive Trading Day period and for the remainder of the Dividend Period in which such day occurs and for all subsequent Dividend Periods.

(3) Within 30 days of any change to the Dividend Rate, the Company shall send notice by first class mail, postage prepaid, addressed to the holders of record of the Series B Preferred Stock stating the new Dividend Rate. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series B Preferred Stock shall not affect the validity of the revised Dividend Rate.

(e) Priority of Dividends. Subject to Sections 4(a), (b) and(c), Section 8 and Section 9, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or an authorized committee thereof may be declared and paid on any Capital Stock, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment.

(f) Elections to Defer or Forfeit an Addition to the Liquidation Preference. Notwithstanding anything to the contrary in this Section 4, each holder of Series B Preferred Stock shall have the right to elect, in its sole discretion at any time and from time to time, to defer the addition of accrued and unpaid dividends to the Liquidation Preference as provided in Section 4(b) with respect to the shares of Series B Preferred Stock registered in the name of such holder. Any election to defer the addition of accrued and unpaid dividends to the Liquidation Preference pursuant to this Section 4(f): (1) shall be made by the electing holder by delivery to the Company of a written notice specifying the effective date of such notice and the date until which the addition of accrued and unpaid dividends to the Liquidation Preference is deferred (provided, that any such notice may not be effective between a Record Date and a Dividend Payment Date with respect to any Dividend Period), (2) shall apply to all accrued and unpaid dividends since the most recent Dividend Payment Date through the deferral date specified in such notice, regardless of when such notice is delivered or effective, (3) may be made only with respect to all shares of Series B Preferred Stock of such electing holder, and (4) shall not affect the payment of cash dividends pursuant to Section 4(a) or the addition of accrued and unpaid dividends to the Liquidation Preference with respect to shares of Series B Preferred Stock of any other holder pursuant to 4(b). In addition, any holder who has made an election to defer the addition of accrued and unpaid dividends to the Liquidation Preference pursuant to this Section 4(f) shall have the further right to elect, in its sole discretion at any time and from time to time, to forfeit the aggregate accrued and unpaid dividend with respect to such electing holder's shares of Series B Preferred Stock that has been deferred by delivery to the Company of a written notice specifying the effective date of such forfeiture. Any notice of an election to defer or forfeit accrued and unpaid dividends may be withdrawn by the electing holder, in its sole discretion, at any time prior to the effective date specified therein, but not thereafter.

Section 5. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, holders of the Series B Preferred Stock shall be entitled to receive for each share of Series B Preferred Stock, out of the assets of the Company or proceeds thereof (whether capital or surplus) available for distribution to shareholders of the Company, and after satisfaction of all liabilities and obligations to creditors of the Company, on par with each share of Parity Stock but before any distribution of such assets or proceeds is made to or set aside for the holders of Junior Stock, an amount equal to the greater of (1) the sum of (a) the Liquidation Preference per share of the Series B Preferred Stock *plus* (b) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference from and including the immediately preceding Dividend Payment Date to but excluding the date fixed for such liquidation, dissolution or winding up of the Company and (2) the per share amount of all cash, securities and other property (such securities or other property having a value equal to its fair market value as reasonably determined by the Board of Directors) to be distributed in respect of the Common Stock such holder would have been entitled to receive had it converted such Series B Preferred Stock (without regard to receipt of the Shareholder Approval) immediately prior to the date fixed for such liquidation, dissolution or winding up of the Company. To the extent such amount is paid in full to all holders of Series B Prefer red Stock and all the holders of Parity Stock, the holders of Junior Stock of the Company shall be entitled to receive all remaining assets of the Company (or proceeds thereof) according to their respective rights and preferences.

(b) Partial Payment. If in connection with any distribution described in Section 5(a) above the assets of the Company or proceeds thereof are not sufficient to pay the Liquidation Preferences in full to all holders of Series B Preferred Stock and all holders of Parity Stock, the amounts paid to the holders of Series B Preferred Stock and to the holders of all such other Parity Stock shall be paid *pro rata* in accordance with the respective aggregate Liquidation Preferences of the holders of Series B Preferred Stock and the holders of all such other Parity Stock.

(c) Merger, Consolidation and Sale of Assets Not Liquidation.

(1) For purposes of this Section 5, the merger or consolidation of the Company with any other corporation or other entity, including a merger or consolidation in which the holders of Series B Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Company, shall not be deemed to constitute a liquidation, dissolution or winding up of the Company, but instead shall be subject to the provisions of Section 10.

Section 6. Redemption.

(a) Optional Redemption.

(1) The Series B Preferred Stock may be redeemed, in whole or in part, at any time after June 23, 2012, at the option of the Company out of funds lawfully available therefor but subject to the right of the holder to first convert the shares of Series B Preferred Stock that the Company proposes to redeem into shares of Common Stock, upon giving notice of redemption pursuant to Section 6(c), at a redemption price per share equal to the applicable percentage set forth in the table below *multiplied* by the sum of (a) the Liquidation Preference per share of the Series B Preferred Stock *plus* (b) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference on such share of Series B Preferred Stock from and including the immediately preceding Dividend Payment Date to but excluding the date of redemption. The following redemption prices are for shares of Series B Preferred Stock redeemed during the 12-month period commencing on June 23 of the years set forth below:

Year	**Applicable Percentage**
2012	107.00%
2013	106.00%
2014	105.00%
2015	104.00%
2016	103.00%
2017	102.00%
2018	101.00%
2019 and thereafter	100.00%

(2) At any time after the later of (x) the receipt of Shareholder Approval and (y) June 23, 2011, the Series B Preferred Stock may be redeemed, at the option of the Company but subject to the right of the holder to first convert the shares of Series B Preferred Stock that the Company proposes to redeem into shares of Common Stock, in whole or in part, at a redemption price per share equal to the sum of (a) the Liquidation Preference per share *plus* (b) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference on such share of Series B Preferred Stock from and including the immediately preceding Dividend Payment Date to but excluding the date of redemption, upon a minimum of 30 days' prior written notice of redemption delivered pursuant to Section 6(c), if, and only if, the Closing Price of the Common Stock equals or exceeds $9.75 per share (subject to appropriate adjustment in the event of a stock split, stock dividend, combination or other similar recapitalization) for each Trading Day during any 20 consecutive Trading Day period ending three Business Days before sending the notice of redemption.

(3) Notwithstanding anything in this Section 6(a) to the contrary, the Company may not redeem shares of Series B Preferred Stock held by any holder thereof pursuant to this Section 6(a) if such partial redemption would cause (x) if the Permitted Holders' Ownership Percentage is greater than 10.00%, the Permitted Holders' Ownership Percentage to be less than 10.00% and (y) if the Permitted Holders' Ownership Percentage is less than 10.00% but greater than 5.00%, the Permitted Holders' Ownership Percentage to be less than 5.00%, in each case unless the Company first obtains the prior written consent of a majority of the holders of the Series B Preferred Stock. Shares of Series B Preferred Stock not redeemable as a result of the foregoing shall remain outstanding and shall become redeemable pursuant to this paragraph to the extent the foregoing limitations no longer applies.

(b) Redemption at the Option of the Holder.

(1) Upon the occurrence of a Fundamental Change, each holder of the Series B Preferred Stock shall have the right to require the Company to repurchase all or any part of such holder's Series B Preferred Stock for cash at a purchase price per share equal to 101% of the sum of (a) the Liquidation Preference per share of the Series B Preferred Stock *plus* (b) an amount equal to accrued but unpaid dividends not previously added to the Liquidation Preference per share on such share of Series B Preferred Stock from and including the immediately preceding Dividend Payment Date to but excluding the date of redemption; provided, however, that (i) the Company shall not be required to repurchase any Series B Preferred Stock pursuant to this Section 6(b) to the extent such repurchase would be prohibited by any provision of any Debt Document and (ii) if the Company does not repurchase any outstanding shares of Series B Preferred Stock due to clause (i) of this proviso then, for so long as the Company fails to satisfy its repurchase obligation under this Section 6(b) with respect to such shares, the Dividend Rate for such outstanding shares of Series B Preferred Stock will increase to 15%, effective as of the date of the Fundamental Change, and wil l remain at 15% until the date on which the Company satisfies its repurchase obligation with respect to such shares.

(2) Within 30 days after the occurrence of a Fundamental Change, the Company shall send notice by first class mail, postage prepaid, addressed to the holders of record of the shares of Series B Preferred Stock at their respective last addresses appearing on the books

of the Company stating (1) that a Fundamental Change has occurred, (2) that all shares of Series B Preferred Stock tendered prior to a Business Day no earlier than 30 days nor later than 60 days from the date such notice is mailed shall be accepted for redemption and (3) the procedures that holders of the Series B Preferred Stock must follow in order to redeem their shares of Series B Preferred Stock, including the place or places where certificates for such shares are to be surrendered for payment of the redemption price; provided, however, that if the Company is not permitted to repurchase the Series B Preferred Stock due to clause (i) of the proviso of Section 6(b)(1), then the notice shall, in lieu of the information in (2) and (3) of this paragraph, include a statement identifying the relevant provision(s) in the Debt Documents and stating the new Dividend Rate applicable to the Series B Preferred Stock pursuant to this Section 6(b). Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series B Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series B Preferred Stock.

(3) If Shareholder Approval has not been obtained by June 23, 2014, then upon the affirmative approval or consent of the holders of a majority of the outstanding shares of Series B Preferred Stock but subject to any provision in the Debt Documents, the holders of the Series B Preferred Stock shall have the right, from time to time, by providing written notice to the Company, to require the Company to repurchase all or any part of such holder ’s Series B Preferred Stock at a purchase price equal to the sum of (a) the Liquidation Preference per share of the Series B Preferred Stock *plus* (b) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference on such share of Series B Preferred Stock from and including the immediately preceding Dividend Payment Date to but excluding the date of redemption; provided, however, that if the Company fails to repurchase such Series B Preferred Stock due to any provision in the Debt Documents then, for so long as the Company fails to satisfy its repurchase obligation, size of the Board of Directors shall automatically be increased by two directors and the holders of a majority of the outstanding Series B Preferred Stock, voting as a separate series to the exclusion of the holders of Common Stock or Series A Preferred Stock, shall be entitled to elect, by vote or written consent, two people to the Board of Directors.

(c) Notice of Redemption at the Option of the Company. Notice of every redemption of shares of Series B Preferred Stock pursuant to Section 6(a) shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Company. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice m ailed as provided in this Section 6(c) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series B Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series B Preferred Stock. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of the Series B Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or

places where certificates for such shares are to be surrendered for payment of the redemption price.

(d) Partial Redemption. In case of any redemption of part of the shares of Series B Preferred Stock at the time outstanding, the shares to be redeemed shall be selected *pro rata*. Subject to the provisions hereof, the Company shall have full power and authority to prescribe the terms and conditions upon which shares of Series B Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Company, in trust for the *pro rata* benefit of the holders of the shares of Series B Preferred Stock called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least $500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Company, after which time the holders of the shares so called for redemption shall look only to the Company for payment of the redemption price of such shares.

Section 7. Conversion.

(a) Mechanics. At any time after the receipt of Shareholder Approval, each share of Series B Preferred Stock may be converted on any date, from time to time, at the option of the holder thereof, into the number of shares of Common Stock (the "Per Share Amount") equal to the quotient of (i) the sum of (A) the Liquidation Preference *plus* (B) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference on such share of Series B Preferred Stock from and including the immediately preceding Dividend Payment Date to but excluding the conversion date and (ii) 1,000, *multiplied* by the Conversion Rate in effect at such time.

The right of conversion attaching to any shares of Series B Preferred Stock may be exercised by the holders thereof by delivering the shares to be converted to the office of the Company, accompanied by a duly signed and completed notice of conversion in form reasonably satisfactory to the Company. The conversion date shall be the date on which the shares of Series B Preferred Stock and the duly signed and completed notice of conversion are received by the Company. The Person entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock as of such conversion date, and such Person or Persons shall cease to be a record holder of the Series B Preferred Stock on that date. As promptly as practicable on or after the conve rsion date (and in

any event no later than three Trading Days thereafter), the Company shall issue the number of whole shares of Common Stock issuable upon conversion, with any fractional shares (after aggregating all Series B Preferred Stock being converted on such date) rounded to the nearest whole share. Such delivery shall be made, at the option of the applicable holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate holder on a book-entry basis or by mailing certificates evidencing the shares to the holders at their respective addresses as set forth in the conversion notice.

(b) Common Stock Reserved for Issuance. The Company shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of the Series B Preferred Stock, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series B Preferred Stock then outstanding. Any shares of Common Stock issued upon conversion of Series B Preferred Stock shall be (i) duly authorized, validly issued and fully paid and nonassessable, (ii) shall rank pari passu with the other shares of Common Stock outs tanding from time to time and (iii) shall be approved for listing on the principal national securities exchange on which the Common Stock is listed or admitted to trading.

(c) Taxes. The Company shall pay any and all transfer taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Series B Preferred Stock. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the Series B Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax, or has establi shed to the satisfaction of the Company that such tax has been paid.

Section 8. Dilution Adjustments. The Conversion Rate shall be adjusted from time to time (successively and for each event described) by the Company as follows:

(a) If the Company shall, at any time or from time to time while any of the Series B Preferred Stock is outstanding, issue shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination in respect of the Common Stock, then the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business o n the Record Date for such dividend or distribution, or the Close of Business on the effective date of such share split or combination, as applicable;

CR' = the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable; and

OS' = the number of shares of Common Stock outstanding immediately after s uch dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable.

The Company shall not pay any dividend or make any distribution on shares of Common Stock held in treasury by the Company.

(b) Except as otherwise provided for by Section 8(c), if the Company shall, at any time or from time to time while any of the Series B Preferred Stock is outstanding, distribute to all or substantially all holders of its outstanding shares of Common Stock any options, rights or warrants entitling them for a period of not more than 45 days from the Record Date of such distribution to subscribe for or purchase shares of Common Stock at a price per share less than the Closing Price of the Common Stock on the Trading Day immediately preceding the Record Date of such distribution, the Conversion Rate shal l be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business o n the Record Date for such distribution;

CR' = the new Conversion Rate in effect immediately after the Close o f Business on the Record Date for such distribution;

OS_0 = **< /B>the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such distribution;**

X = **the total number of shares of Common Stock issuable pursuant to such options, rights or warrants; and**

Y = **the number of shares of Common Stock equal to the**

aggregate price payable to exercise such options, rights or warrants divided by the average Closing Price of the Common Stock over the 10 consecutive Trading Day period ending on the Record Date.

To the extent that shares of Common Stock are not delivered pursuant to any such options, rights or warrants that are non-transferable upon the expiration or termination of such options, rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect had the adjustments made upon the distribution of such options, rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered.

In determining the aggregate price payable to exercise such options, rights or warrants, there shall be taken into account any amount payable on exercise thereof, with the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors.

(c) If the Company, at any time or from time to time while any of the Series B Preferred Stock is outstanding, shall, by dividend or otherwise, distribute to all or substantially all holders of its Common Stock shares of any class of Capital Stock of the Company, cash, evidences of its indebtedness, assets, property or rights or warrants to acquire Capital Stock or other securities, but excluding (i) dividends or distributions as to which an adjustment under Section 8(a) or Section 8(b) shall apply, (ii) dividends or distributions paid exclusively in cash to the extent that the Series B Preferred Stock participates on an as-converted basis with the Common Stock in a cash dividend or distribution in accordance with Section 4(a), a nd (iii) SpinOffs to which the provision set forth below in this Section 8(c) shall apply (any of such shares of Capital Stock, cash, indebtedness, assets, property or rights or warrants to acquire Common Stock or other securities, hereinafter in this Section 8(c) called the "Distributed Property"), then, in each such case the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

Where

CR_0 = the Conversion Rate in effect immediately prior to the Close of Busi ness on the Record Date for such distribution;

CR' = the new Conversion Rate in effect immediately after the Close of Bu siness on the Record Date for such distribution;

SP_0 = the average Closing Price of the Common Stock over the 10 consecutiv e Trading Day period ending on the Record Date for such distribution; and

FMV = (i) for cash dividends or distributions, the amount of cash distributed and (ii) for other Distributed Property, the fair

market value (as determined in good faith by the Board of Directors) of the portion of Distributed Property, in each case, with respect to each outstanding share of Common Stock on the Record Date for such distribution.

Notwithstanding the foregoing, if the then fair market value (as so determined) of the portion of the Distributed Property so distributed applicable to one share of Common Stock is equal to or greater than SP_0 as set forth above (a "Liquidating Distribution"), then in lieu of the foregoing adjustment, the Company shall distribute to each holder of Series B Preferred Stock on the date such Distributed Property is distributed to holders of Common Stock, but without requiring such holder to convert its shares of Series B P referred Stock, the amount of Distributed Property such holder would have received had such holder owned a number of shares of Common Stock equal to the Per Share Amount (determined without regard to receipt of the Shareholder Approval) on the Record Date fixed for determination for shareholders entitled to receive such Liquidating Distribution; provided, however, that the Company shall not distribute Distributed Property to either the holders of the Common Stock or the Preferred Stock to the extent such distribution would be prohibited by any provision of any Debt Document. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 8(c) by reference to the actual or when issue d trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Stock for purposes of calculating SP_0 in the formula in this Section 8(c).

With respect to an adjustment pursuant to this Section 8(c) where there has been a payment of a dividend or other distribution on the Common Stock consisting of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company (a "Spin-Off"), the Conversion Rate in effect immediately before the Close of Business on the 10th Trading Day immediately following, and including, the effective date of the Spin-Off shall be increased based on the fol lowing formula:

$$CR' = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the 10th Trading Day immediately following, and including, the effective date of the Spin-Off;

CR' = the new Conversion Rate in effect from and after the Close of Business on the 10th Trading Day immediately following, and including, the effective date of the Spin-Off;

FMV = the average of the Closing Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the 10

consecutive Trading Day period immediately following, and including, the effective date of the Spin-Off; and

MP_0	**=**	**the average Closing Price of the Common Stock over the 10 consecutive Trad ing Day period calculated immediately following, and including, the effective date of the Spin-Off.**

Such adjustment shall occur on the 10th Trading Day immediately following, and including, the effective date of the Spin-Off.

For purposes of this Section 8(c), Section 8(a) and Section 8(b) hereof, any dividend or distribution to which this Section 8(c) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 8(a) or 8(b) hereof applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants to which Section 8(a) or 8(b) hereof applies (and any Conversion Rate adjustment required by this Section 8(c) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such options, rights or warrants to which Sec tion 8(a) or 8(b) hereof applies (and any further Conversion Rate adjustment required by Section 8(a) and 8(b) hereof with respect to such dividend or distribution shall then be made), except (A) the Close of Business on the Record Date of such dividend or distribution shall be substituted for "the Close of Business on the Record Date," "the Close of Business on the Record Date or the Close of Business on the effective date," "after the Close of Business on the Record Date for such dividend or distribution or the Close of Business on the effective date of such share split or share combination" and "the Close of Business on the Record Date for such distribution" within the meaning of Section 8(a) and Section 8(b) hereof and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding immediately prior to the Close of Business on the Record Date or the Close of Business on the effective date" within the meaning of Se ction 8(a) hereof.

If the Company shall, at any time or from time to time while any of the Series B Preferred Stock is outstanding, distribute options, rights or warrants to all or substantially all holders of Common Stock entitling the holders thereof to subscribe for, purchase or convert into shares of Capital Stock (either initially or under certain circumstances), which options, rights or warrants, until the occurrence of a specified event or events ("Trigger Event"): (x) are deemed to be transferred with such shares of Common Stock; (y) are not exercisable; and (z) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed f or purposes of this Section 8(c), (and no adjustment to the Conversion Rate under this Section 8(c) shall be required) until the occurrence of the earliest Trigger Event and a distribution or deemed distribution under the terms of such options, rights or warrants at which time an appropriate adjustment (if any is required) to the Conversion Rate shall be made in the same manner as provided for under this Section 8(c). If any such options, rights or warrants are subject to events, upon the occurrence of which such options, rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new options, rights or warrants for purposes of this Section 8(c)

(and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of options, rights or warrants (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 8(c) was made, (1) in the case of any such options, rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a distribution under this Section 8(c), equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such options, rights or warrants (a ssuming such holder had retained such options, rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such options, rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such options, rights or warrants had not been issued.

(d) If the Company, during the eighteen month period following the Original Issue Date, shall issue shares of Common Stock or any other security convertible into, exercisable or exchangeable for Common Stock (such Common Stock or other security, "Equity-Linked Securities"), for a consideration per share of Common Stock (or conversion price per share of Common Stock) l ess than the Current Market Price of Common Stock on the date the Company fixes the offering price (or conversion price) of Equity-Linked Securities, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0 + (AC / SP')}$$

Where:

CR_0 = the Conversion Rate in effect immediately prior to the issuance of such Eq uity-Linked Securities;

CR' = the new Conversion Rate in effect immediately after the issuance of such Equity-Linked Securities;

AC = the aggregate consideration paid or payable for such Equity Linked Securities;< /P>

OS_0 = the number of shares of Common Stock outstanding immediately prior to the i ssuance of such Equity-Linked Securities;

OS' = the number of shares of Common Stock outstanding immediately after the iss uance of such Equity-Linked Securities or issuable pursuant to such Equity-Linked

Securities; and

SP' = the Closing Price of the Common Stock on the date of issuance of such Equity-Linked Securities.

The adjustment shall become effective immediately after such issuance.

This Section 8(d) shall not apply to Excluded Issuances.

(e) The Corporation may make increases in the Conversion Rate, in addition to any other increases required by this Section 8, if the Board of Directors (by action of a majority of the directors that are neither "Investor Designees" (as defined in the Investor Rights Agreement) nor Preferred Directors ("Independent Majority") deems it advisable and necessary to avoid or diminish any income tax to holders of the Common Stock resulting from any di vidend or distribution of shares of Common Stock (or issuance of options, rights or warrants for Common Stock) or from any event treated as such for income tax purposes or for any other reason provided, however, that if there are any Investor Designees or Preferred Directors on the Board of Directors at such time, the Corporation may not take such action without the approval of the Investor Designees and Preferred Directors, which approval may only be withheld if the Investor Designees and Preferred Directors reasonably determine that such action is likely to result in a material increase in U.S. federal income tax or withholding tax to holders of Series B Preferred Stock. If the Corporation takes any action affecting the Common Stock, other than an action described in Section 8(a) though 8(d), which upon a determination by the Board of Directors by action of an Independent Majority, such determination intended to be a "fact" for purposes of Section 151(a) of the General Corporation Law of the Stat e of Delaware, would materially adversely affect the conversion rights of the holders of the Series B Preferred Stock, the Conversion Rate shall be increased, to the extent permitted by law, in such manner, if any, and at such time, as the Board of Directors by action of an Independent Majority determines in good faith to be equitable in the circumstances.

Section 9. Voting Rights.

(a) General.

(1) Prior to receipt of Shareholder Approval, the holders of shares of Series B Preferred Stock shall not be entitled to vote, except as otherwise provided herein or required by applicable law. The holders of shares of Series B Preferred Stock shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws.

(2) At any time after receipt of Shareholder Approval, the holders of shares of Series B Preferred Stock shall be entitled to vote with the holders of the Common Stock and the Series A Preferred Stock on all matters submitted to a vote of shareholders of the Company, except as otherwise provided herein or by applicable law. Each holder of shares of Series B Preferred Stock shall be entitled to the number of votes equal to the largest number of whole shares of Common Stock into which all shares of Series B Preferred St ock held of record by such holder could then be converted pursuant to Section 7 at the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is first executed.

(b) Election of Directors.

(1) Election.

(A) Prior to Shareholder Approval, if the holders of the Series B Preferred Stock are entitled to elect directors to the Board of Directors pursuant to Section 6(b)(3), then the holders of a majority of the outstanding Series B Preferred Stock, voting as a separate serie s to the exclusion of the holders of Common Stock and any other Preferred Stock, shall be entitled to elect two persons of their choosing to the Board of Directors that (each such director, a "Series B Director").

(B) At any time after receipt of Shareholder Approval, if (i) the Investor Representative is entitled to designate one or more directors to the Board of Directors pursuant to the terms and conditions of the Section 2.1 of the Investor Rights Agreement and (ii) the shareh olders of the Company fail to elect any of the directors so designated by the Investor Representative, in each case at any annual or special meeting called for, among other items, the election of directors, then the holders of a majority of the outstanding Series B Preferred Stock, voting as a separate series with, if the Shareholder Approvals are obtained, the holders of the Series A Preferred Stock, and to the exclusion of the holders of Common Stock and holders of all other Preferred Stock, shall be entitled to elect such persons to the Board of Directors that were designated by the Investor Representative and not subsequently elected to the Board of Directors by the shareholders of the Company (each such director, a "Preferred Director").

(2) Term. Each Series B Director and Preferred Director shall serve until the next annual meeting of the shareholders of the Company and until his or her successor is elected and qualifies in accordance with this Section 9(b) and the Bylaws, unless such Series B Director or Preferred Director is earlier removed in accordance with the Bylaws, resigns or is otherwise unable to s erve. In the event any Series B Director is removed, resigns or is unable to serve as a member of the Board of Directors, the holders of a majority of the outstanding Series B Preferred Stock, voting as a separate series to the exclusion of the holders of Common Stock and all other series of Preferred Stock, shall have the right to fill such vacancy. In the event any Preferred Director is removed, resigns or is unable to serve as a member of the Board of Directors, the holders of a majority of the outstanding Series B Preferred Stock, voting together with the Series A Preferred Stock but to the exclusion of the holders of Common Stock and holders of all other Preferred Stock, shall have the right to fill such vacancy. Each Series B Director and Preferred Director may only be elected to the Board of Directors by the holders of the Preferred Stock in accordance with this Section 9(b), and each such director's seat shall otherwise remain vacant.

(3) Non-Limitation of Voting Rights. For the avoidance of doubt, the right of the Series B Preferred Stock to vote for the election of the Preferred Directors at any time after receipt of Shareholder Approval shall be in addition to the right of the Series B Preferred Stock to vote together with the holders of Common Stock and the Series A Preferred Stock for the election of the other members of the Board of Directors.

(c) Class Voting Rights as to Particular Matters. For so long as (x) the Permitted Holders collectively Beneficially Own any shares of Series B Preferred Stock and (y) the Permitted Holders' Ownership Percentage is equal to or greater than 10%, in addition to any

other vote or consent of shareholders required by law or by the Certificate of Incorporation, the affirmative vote or consent of the holders of at least a majority of the shares of Series B Preferred Stock then outstanding and entitled to vote thereon, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting any of the actions described in clauses (1) through (3) below:

(1) Dividends, Repurchase and Redemption.

(A) The declaration or payment of any dividend or distribution on Common Stock, other Junior Stock or Parity Stock (other than (i) a dividend payable solely in Junior Stock and (ii) dividends o r distributions paid exclusively in cash to the extent that the Series B Preferred Stock participates on an as-converted basis with the Common Stock in a cash dividend or distribution in accordance with Section 4(a)) if, at the time of such declaration, payment or distribution, dividends on the Series B Preferred Stock have not been paid in full in cash; or

(B) the purchase, redemption or other acquisition for consideration by the Company, directly or indirectly, of any Common Stock, other Junior Stock or Parity Stock (except as necessary to effect (1) a reclassification of Junior Stock for or into other Junior Stock, (2) a reclassification of Parity Stock for or into other Parity Stock with the same or lesser aggregate liquidation preference, (3) a reclassification of Parity Stock into Junior Stock, (4) the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, (5) the exchange or conversion of one share of Parity Stock for or into another share of Parity Stock with the same or lesser per share liquidation amount or (6) the exchange or conversion of one share of Parity Stock into Junior Stock), in each case if, at the time of such purchase, redemption or other acquisition, dividends on the Series B Preferred Stock have not been paid in full in cash;

(2) Amendment of Series B Preferred Stock. Any amendment, alteration or repeal of any provision of the Certificate of Incorporation or Certificate of Designations so as to adversely affect the relative rights, preferences, privileges or voting powers of the Series B Preferred Stock; or

(3) Authorizations, Issuances and Reclassifications. The authorization of, issuance of, or reclassification into, Parity Stock (including additional shares of the Series B Preferred Stock) or Capital Stock that would rank senior to the Series B Preferred Stock.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Series B Preferred Stock shall be required pursuant to Section 9(c) if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of Series B Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 6 above.

Section 10. Reorganization Events.

(a) In the event of:

(i) any consolidation or merger of the Company with or into another Person or of another Person with or into the Company;

(ii) any sale, transfer, lease or conveyance to another Person of the property of the Company as an entirety or substantially as an entirety; or

(iii) any statutory share exchange of the Company with another Person (other than in connection with a merger or acquisition),

in each case in which holders of Common Stock would be entitled to receive cash, securities or other property for their shares of Common Stock (any such event specified in this Section 10(a), a "Reorganization Event"), each share of Series B Preferred Stock outstanding immediately prior to such Reorganization Event shall (subject to prior redemption (other than pursuant to Section 6(b)) or conversion), without the consent of the holder thereof, be exchanged for whichever of the following has the greatest value (as determined by the Board of Directors in its reasonable discretion): (A) an amount in cash equal to the sum of (1) the Liquidation Preference per share of the Series B Preferred Stock *plus* (2) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference from and including the immediately preceding Dividend Payment Date to but excluding the date on which such Reorganization Event occurs (the "Reorganization Event Date"), (B) an amount equal to the *product* of (I) the Per Share Amount (determined without regard to receipt of the Shareholder Approval) as of the Reorganization Event Date *multiplied* by (II) the amount of cash, securities or other property (s uch securities or other property having a value equal to its fair market value as reasonably determined by the Board of Directors) distributed or to be distributed in respect of the Common Stock in connection with such Reorganization Event to a holder of Common Stock that was not the counterparty to the Reorganization Event or an Affiliate of such counterparty (such cash, securities and other property, the "Exchange Property") and (C) to the extent the Reorganization Event constitutes or would constitute a Fundamental Change, an amount in cash equal to the product of (x) 101% *multiplied* by (y) sum of (1) the Liquidation Preference per share of the Series B Preferred Stock *plus* (2) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference from and including the immediately preceding Dividend Payment Date to but excluding the Reorganization Event Date; provided, however, that the Company shall not distribute cash, securities or other property as provided in this Section 10(a) to either the holders of the Common Stock or the Preferred Stock to the extent such distribution would be prohibited by any provision of any Debt Document.

(b) In the event that (i) the Board of Directors determines pursuant to Section 10(a) that the Series B shall be exchanged for Exchange Property and (ii) the holders of the shares of the Common Stock have the opportunity to elect the form of consideration to be received in such transaction, the "Exchange Property" that holders of the Series B Preferred Stock shall be entitled to receive shall be determined by the holders of a majority of the outstanding shares of Series B Preferred Stock.

(c) The above provisions of this Section 10 shall similarly apply to successive Reorganization Events.

(d) Notwithstanding anything to the contrary, Section 10(a) shall not apply in the case of, and a Reorganization Event shall not be deemed to be, a merger, consolidation, reorganization or statutory share exchange (x) among the Company and its direct and indirect Subsidiaries or (y) between the Company and any Person for the primary purpose of changing the domicile of the Company (a "Internal Reorganization Event"). Without limiting the rights or the hol ders of the Series A Preferred Stock set forth in Section 9(c)(2), the Company shall not effectuate an Internal Reorganization Event unless the Series A Preferred Stock shall be outstanding as a class of preferred stock of the surviving company having the same rights, terms, preferences, liquidation preference and accrued and unpaid dividends as the Series A Preferred Stock in effect immediately prior to such Internal Reorganization Event, as adjusted for such Internal Reorganization Event pursuant to this Certificate of Designations after giving effect to any such Internal Reorganization Event. The Company (or any successor) shall, within 20 days of the occurrence of any Internal Reorganization Event, provide written notice to the holders of the Series A Preferred Stock of the occurrence of such event. Failure to deliver such notice shall not affect the operation of this Section 10(d) or the validity of any Internal Reorganization Event.

Section 11. Record Holders. To the fullest extent permitted by applicable law, the Company may deem and treat the record holder of any share of the Series B Preferred Stock as the true and lawful owner thereof for all purposes, and the Company shall not be affected by any notice to the contrary.

Section 12. Notices.

(a) General. All notices or communications in respect of the Series B Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law or regulation. Notwithstanding the foregoing, if the Series B Preferred Stock is issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of the Series B Preferred Stock in any ma nner permitted by such facility.

(b) Notice of Certain Events. The Company shall, to the extent not included in the Exchange Act reports of the Company, provide reasonable written notice to each holder of the Series B Preferred Stock of any event that has resulted in (i) a Fundamental Change and (ii) an event the occurrence of which would result in an adjustment to the Conversion Rate, including the then applicable Conversion Rate.

Section 13. Replacement Certificates. The Company shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Company. The Company shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Company of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be required by the Company.

Section 14. Other Rights. The shares of Series B Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law and regulation.

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be duly executed and acknowledged by its undersigned duly authorized officer this 23rd day of June, 2009.

OFFICE DEPOT, INC.

By: /s/ Michael Newman
Michael Newman
Executive Vice President &
Chief Financial Officer

EXHIBIT 4.1

EXECUTION COPY

INVESTOR RIGHTS AGREEMENT

Investor Rights Agreement, dated as of June 23, 2009, by and among Office Depot, Inc., a Delaware corporation (the "Company"), BC Partners, Inc., as the Investor Representative, and the several investors listed on Schedule 1 (collectively, the "Investors").

WHEREAS, on the date of this Agreement, the Company and the Investors entered into a Securities Purchase Agreement (the "Purchase Agreement") pursuant to which the Company agreed to sell to the Investors, and the Investors agreed to purchase from the Company, the Preferred Shares on the terms and subject to the conditions set forth in the Purchase Agreement; and

WHEREAS, it is a condition to the closing of the transactions contemplated by the Purchase Agreement that the Company and the Investors enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the agreements contained in this Agreement, and intending to be legally bound by this Agreement, the Company and the Investors agree as follows:

1. Definitions. Capitalized terms used and not otherwise defined in this Agreement that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the respective meanings set forth in this Section 1:

"Adjusted EBITDA" means, for any period, Consolidated Net Income for such period, plus, to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of, without duplication, (i) taxes, (ii) interest, (iii) amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness, (iv) depreciation and amortization, (v) amortization or impairment of intangibles (including but not limited to goodwill) and organization co sts, (vi) any extraordinary expenses or losses, (vii) any unusual or non-recurring charges, expenses or losses approved by the finance committee of the Board to the extent (x) consistent with past practices of the Company and (y) disclosed by the Company in its public filings with the SEC and (viii) any other non-cash charges (excluding any non-cash charge that will result in a cash expenditure in a future period), and minus, to the extent reflected as a credit in determining Consolidated Net Income for such period, (A) any extraordinary, unusual or non-recurring credits, income or gains (including, whether or not otherwise includable as a separate item in the statement of Consolidated Net Income for such period, gains on dispositions outside of the ordinary course of business) and (B) any other non-cash items of income for such period (excluding any non-cash items of income in respect of which cash will be received in a future period).

"Consolidated Debt" means at any point in time, the indebtedness of the Company and its Subsidiaries for such reporting period, presented on a consolidated basis in accordance with Generally Accepted Accounting Principles.

"Consolidated Net Income" means for any period, the net income of the Company and its Subsidiaries for such period, determined on a consolidated basis in accordance with Generally Accepted Accounting Principles.

"Credit Facilities" means (i) the Credit Agreement and (ii) each of the Company's foreign credit facilities in place as of the date of this Agreement, in each case as amended, supplemented, restated, renewed, replaced, refinanced or otherwise modified from time to time as permitted by the terms of Sections 2.5(a)(i) and 2.5(b).

"Indebtedness" means (i) indebtedness for borrowed money whether or not evidenced by bonds, notes, debentures or other similar instruments, including purchase money obligations or other obligations relating to the deferred purchase price of property, (ii) obligations as lessee under leases which have been recorded as capital leases and (iii) obligations under guaranties in respect of indebtedness or obligations of others of the kind referred to in clauses (i) through (ii) above, as reported in accordance with Generally Accepted Accounting Principles, provided that Indebtedness shall not include (A) trade payables and accrued expenses arising in the ordinary course of business and (B) indebtedn ess, obligations under guaranties and other liabilities owed by the Company to its Subsidiaries or among the Company's Subsidiaries.

"Mexico JV" means Office Depot de Mexico, S.A. de C.V.

"New Securities" means any shares of capital stock of the Company, including Common Stock and Preferred Stock, whether authorized or not by the Board or any committee of the Board, and rights, options, or warrants to purchase said shares of capital stock, and securities of any type whatsoever that are, or may become, convertible into capital stock; provided, however, that the term "New Securities" shall not include: (i) securities issued to employees, consultants, officers and directors of the Company, pursuant to any arrangement approved by the Board or the Board's Compensation Committee; (ii) securities issued pursuant to the acquisition of another business entity by the Company by merger, purchase of substantially all of the assets or shares, or other reorganization whereby the Company will own equity securities of the surviving or successor corporation; (iii) securities issued in a registered public offering underwritten, provided that the Company shall have complied with Section 5 with respect to the initial sale or grant by the Company of such securities; (iv) securities issued pursuant to any rights or agreements, including, without limitation, convertible securities, options and warrants, provided that either (x) the Company shall have complied with Section 5 with respect to the initial sale or grant by the Company of such rights or agreements or (y) such rights or agreements existed prior to the Closing Date (it being understood that any modification or amendment to any such pre-existing right or agreement subsequent to the Closing Date with the effect of increasing the percentage of the Company's fully-diluted securities underlying such rights agreement shall not be included in this clause (iv)); (v) securities issued in connection with any stock split, stock dividend or recapitalization by the Company; (vi) Preferred Shares issued pursuant to the Purchase Agreement and Common Stock issued upon conversion of such Preferred Shares; and (vii) any right, option, or warrant to acquire any security convertible into the securities excluded from the definition of New Securities pursuant to clauses (i) through (vi) above.

"Ownership Percentage" means, as of any date, the percentage equal to (i) the difference of (x) the aggregate number of shares of Common Stock issued to the Investors pursuant to the Purchase Agreement (calculated assuming (A) the Shareholder Approvals have been obtained and (B) full exercise and conversion of the Preferred Shares issued to each of the Investors pursuant to the Purchase Agreement), minus (y) the aggregate number of any shares of Common Stock and any Preferred Shares (calculated for such purposes as Common Stock, assuming (A) the Share holder Approvals have been obtained and (B) the full exercise and conversion of such Preferred Shares) transferred by any Investor to any Person (including to the Company in connection with a redemption by the Company pursuant to the terms of the applicable Certificate of Designations or pursuant to a merger or consolidation recommended by the Board in which the Company will not be the surviving entity, but excluding any transfers to such Investor's Affiliates (including commonly controlled or managed investment funds) who, if required by Section 4.1, execute a written joinder agreement in a form approved by the Company pursuant to Section 4.1) or with respect to which any Investor has entered into any swap or any other agreement, transaction or series of transactions that hedges or transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of such Common Stock or Preferred Shares, whether any such transaction, swap or series of transactions is to be settled by deliver y of securities, in cash or otherwise (irrespective of whether such transfer or swap or other agreement is in compliance with the restrictions set forth in this Agreement or the Certificates of Designations) divided by (ii) the total number of shares of Common Stock then outstanding (calculated assuming (A) the Shareholder

Approvals have been obtained and (B) full exercise and conversion of the Preferred Shares issued to each of the Investors pursuant to the Purchase Agreement).

2. Governance Matters.

2.1 Board Composition.

(a) Effective as of the Closing, the Company shall increase the size of the Board by three directors and cause Raymond Svider, James Rubin and Justin Bateman to be appointed to the Board. For so long as the Investors' Ownership Percentage is equal to or greater than the percentage indicated in the left hand column of the table below, the Investor Representative on behalf of the Investors shall have the right to nominate for election to the Board that number of directors indicated in the right hand column of the table below (each an "Investor Designee"), and the Company shall, at any annual or special meeting of shareholders of the Company at which directors are to be elected, subject to the fulfillment of the requirements set forth in Section 2.1(b), nominate the Investor Designees for election to the Board and use all reasonable efforts to cause the Investor Designees to be elected as directors of the Board.

Ownership Percentage	Investor Designees
15%	3
10%	2
5%	1

(b) Any Investor Designee shall (i) be an employee of BC Partners Limited, BC Partners Holdings Limited, BC Partners Inc., BC Partners s.à r.l., BC Partners Gmbh, BC Partners s.à r.l., BC Partners Suisse s.r.l. or CIE Management II Limited, (ii) shall be reasonably acceptable to the Board's Corporate Governance and Nominating Committee (the "Governance Committee") and (iii) shall comply in all respects with the Company's corporate governance guidelines as in effect from time to time. The Investor Represe ntative shall notify the Company of any proposed Investor Designee in writing no later than the latest date on which shareholders of the Company may make nominations to the Board in accordance with the Bylaws, together with all information concerning such nominee required to be delivered to the Company by the Bylaws and such other information reasonably requested by the Company; provided that in each such case, all such information is generally required to be delivered to the Company by the other outside directors of the Company (the "Nominee Disclosure Information"); provided, further that in the event the Investor Representative fails to provide any such notice, the Investor Designees shall be the person then serving as the Investor Designee as long as the Investor Representative provides the Nominee Disclosure Information to the Company promptly upon request by the Company.

(c) In the event of the death, disability, resignation or removal of an Investor Designee, the Board will promptly elect to the Board a replacement director designated by the Investor Representative, subject to the fulfillment of the requirements set forth in Section 2.1(b), to fill the resulting vacancy, and such individual shall then be deemed an Investor Designee for all purposes under this Agreement.

2.2 Committee Membership. For so long as the Investors' Ownership Percentage is equal to or greater than 10%, (i) one Investor Designee will be appointed by the Board to sit on each regular committee of the Board (other than the Board's Audit Committee (the "Audit Committee")), subject to such Investor Designee satisfying applicable qualifications under applicable law, regulation or stock exchange rules and regulations, (ii) one Investor Designee will be permitted to attend meetings of the Audit Committee as an observer and (iii) the Board's Finance Committee (the "Finance Committee") will be comprised of five directors, two of whom will be Investor Designees, and the Finance Committee's charter will specify that the

Finance Committee's responsibilities include the review of the Company's annual business plan and operating budget. In the event that the holders of Series A Preferred are entitled to appoint more than one director, the Investor will have the right to designate which director serves on which committee or committees (subject to chosen director satisfying applicable qualifications under law or stock exchange rule), provided that such selection is reasonably acceptable to the Governance Committee. If an Investor Designee fails to satisfy the applicable qualifications under law or stock exchange rule to sit on any committee of the Board, then the Board shall permit such Investor Designee to attend (but not vote) at the meetings of such committee as an observer.

2.3 Compensation and Benefits. Each of the Investor Designees will be entitled to receive similar compensation, benefits, reimbursement, indemnification and insurance coverage for their service as directors as the other outside directors of the Company. For so long as the Company maintains directors and officers liability insurance, the Company shall include each Investor Designee as an "insured" for all purposes under such insurance policy for so long as such Investor Designee is a director of the Company and for the same period as for other for mer directors of the Company when such Investor Designee ceases to be a director of the Company.

2.4 Budget Review. For so long as the Investors' Ownership Percentage is equal to or greater than 10%, the Investor Designees plus the chief executive officer and the chief financial officer of the Company shall meet once annually and review the annual business plan and operating budget produced prior to its submission to the Board.

2.5 Special Approval Matters.

(a) For so long as the Investors' Ownership Percentage is equal to or greater than 10%, the following matters will require the approval of at least 66-2/3% of the directors on the Board to authorize the Company to proceed with such a transaction (excluding any such transaction between the Company and its wholly owned Subsidiaries or among the Company's wholly owned Subsidiaries):

(i) the incurrence of any Indebtedness in excess of $200 million in the aggregate during any fiscal year (excluding any (A) refinancings and replacements of Indebtedness outstanding as of the date of this Agreement and (B) borrowings under the Credit Facilities);

(ii) the sale, transfer or other disposition of assets or businesses of the Company or its Subsidiaries (other than the Mexico JV) with a value in excess of $50 million in the aggregate during any fiscal year (other than sales of inventory or supplies in the ordinary course of business, sales of obsolete assets (excluding real estate), sale-leaseback transactions and accounts receivable factoring transactions);

(iii) the acquisition of any assets or properties (in one or more related transactions) for cash or otherwise for an amount in excess of $50 million in the aggregate during any fiscal year (other than acquisitions of inventory and equipment in the ordinary course of business);

(iv) capital expenditures in excess of $30 million individually (or in the aggregate if related to an integrated program of activities) or in excess of $275 million in the aggregate during any fiscal year; and

(v) making, or permitting any Subsidiary (other than the Mexico JV) to make, loans to, investments in, or purchasing, or permitting any Subsidiary (other than the

Mexico JV) to purchase, any stock or other securities in another corporation, joint venture, partnership or other entity (including the Mexico JV) in excess of $50 million in the aggregate during any fiscal year.

(b) For so long as the Investors' Ownership Percentage is equal to or greater than 10%, the following will require the approval of at least one of the Investor Designees: (i) increasing the size of the Board beyond 14 directors and (ii) the incurrence of any Indebtedness for borrowed money in excess of $200 million in the aggregate during any fiscal year (excluding (A) any borrowings under the Credit Facilities and (B) after June 23, 2011, any refinancings and replacements of Indebtedness outstanding as of the date of this Agreement that do not increase the aggregate principal amount of, or the amount that may be borrowed by the Company or its Subsidiaries under, as a pplicable, such Indebtedness as in effect on the date of this Agreement) if the ratio of Consolidated Net Debt to the trailing four quarter Adjusted EBITDA of the Company and its Subsidiaries, on a consolidated basis, is more than 4x.

(c) For so long as the Investors or their respective Affiliates (including commonly controlled or managed investment funds) or any direct or indirect owner of the foregoing own any shares of Series A Preferred or Series B Preferred issued to the Investors on the Closing Date (each such owner of such a share, an "Investor Group Member"), issuing (i) convertible debt that is by its terms convertible into capital stock of the Company, (ii) preferred stock or (iii) options or warrants to acquire preferred stock, will require the appro val of the Investor Representative; provided, however, that the approval set forth in this Section 2.5(c) will not be required if (A) the Company establishes (or has previously established) a Withholding Tax Escrow (as defined in Annex A) or (B) if the Company reasonably expects that the Company will not collect Withholding Tax (as defined in Annex A) from any Investor Group Member as a result of the issuance of such stock or securities or the payment or accrual of interest or dividends on such stock or securities (provided in the case of this clause (B) that if the Company subsequently determines to collect Wi thholding Tax as a result of the issuance of such stock or securities or the payment or accrual of interest or dividends on such stock or securities, then, unless the Company has previously established a Withholding Tax Escrow, the Company will, at the time it so determines to begin collecting Withholding Tax, establish a Withholding Tax Escrow). The Company shall establish a Withholding Tax Escrow only if it reasonably expects that such issuance of stock or securities will result in the Company having an obligation to collect Withholding Tax.

3. Voting Agreement.

3.1 Voting Agreement as to Certain Matters. In connection with any proposal submitted for Company shareholder approval (at any annual or special meeting called, or in connection with any other action (including the execution of written consents)) related to the election or removal of directors of the Board or any business or proposal involving the Company, each of the Investors will (a) cause all of their respective shares of Company capital stock that are entitled to vote, whether now owned or hereafter acquired (collectively, the "Voting Securities"), to be present in person or represented by proxy at all meetings of shareholders of the Company, so that all such shares shall be counted as present for determining the presence of a quorum at such meetings and (b) vote all of their Voting Securities: (i) in favor of any nominee or director nominated by the Governance Committee (provided that the Governance Committee is consistent with the terms of Section 2.1), (ii) against the removal of any director nominated by the Governance Committee, (iii) with respect to any other business or proposal, in accordance with the recommendation of the Board, other than with respect to the a pproval of any proposed business combination (including, without limitation, any reorganization, merger, tender offer, consolidation, sale of assets or otherwise) agreement between the Company and any other Person and (iv) in favor of the Shareholder Approvals. Notwithstanding anything to the contrary, there shall be no restriction on the ability

of any Investor (or any successor in interest to any of the Voting Securities) to exercise its voting rights pursuant to Section 9(b) and 9(c) of each of the Certificates of Designations.

3.2 No Successors in Interest. The provisions of this Section 3 shall not be binding upon the successors in interest to any of the Voting Securities other than Affiliates of the Investors (including commonly controlled or managed investment funds).

3.3 Termination of Voting Agreement. The provisions of this Section 3 shall terminate upon the earliest to occur of any one of the following events: (i) as to any Investor, the date on which such Investor ceases to own any Preferred Shares and any shares of Common Stock issued upon conversion of the Preferred Shares (for the avoidance of doubt, whether by reason of redemption, transfer or conversion), (ii) the liquidation, dissolution or indefinite cessation of the business operations of the Company, (iii) the execution by the Company of a general assignment for the benefit of creditors or the appointment of a receiver or trustee to take possession of the property and assets of the Company or (iv) the acquisition of the Company by any other Person by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger, consolidation, sale of assets or otherwise).

4. Restrictions on Transfer.

4.1 No Transfer of Shares Prior to Second Anniversary. Prior to June 23, 2011, each of the Investors agree that they will not directly or indirectly sell, transfer, pledge, encumber, assign or otherwise dispose of any portion of any Preferred Shares or shares of Common Stock issued upon a conversion of the Preferred Shares to any Person without the prior written consent of the Company (which consent may be given or withheld, or made subject to such conditions as are determined by the Company, in its sole discretion) other than (i) to its Affiliates (including commonly controlled or m anaged investment funds) who execute a written joinder agreement in a form approved by the Company pursuant to which such Affiliate agrees to be bound by the terms of Sections 3, 4 and 6, (ii) pursuant to a tender or exchange offer recommended by the Board, (iii) pursuant to a merger or consolidation recommended by the Board in which the Company will not be the surviving entity or (iv) in connection with a redemption by the Company pursuant to the terms of the applicable Certificate of Designations. Any purported Transfer which is not in accordance with the terms and conditions of this Section 4.1 shall be, to the fullest extent permitted by law, null and void *ab initio* and, in addition to other rights and remedies at law and in equity, the Company shall be entitled to injunctive relief enjoining the prohibited action.

4.2 No Transfer to Competitors. Each Investor agrees that they will not at any time directly or knowingly indirectly (without any duty of investigation) transfer any Preferred Shares or any shares of Common Stock issuable upon conversion of the Preferred Shares to any Competitor of the Company without the prior written consent of the Company (which consent may be given or withheld, or made subject to such conditions as are determined by the Company, in its sole discretion). For purposes of this Section 4.2, "Competitor" shall mean (i) any Person that (x) sells office products or services, whether in retail stores or via direct sales, catalogs or the internet and (y) such sales represent greater than 15% of the total annual sales, for the most recent completed fiscal year, of such Person and its direct and indirect subsidiaries taken as a whole and (ii) any Person that has direct or indirect majority voting control of any Person identified in the preceding clause (i).

4.3 No Block Transfers to Individual Persons. Each Investor agrees that it will not, individually or acting together with any other Investor, at any time knowingly (after reasonable inquiry), directly or indirectly, transfer any Preferred Shares or any shares of Common Stock issuable upon conversion of the Preferred Shares (a) to any individual Person or "group" (within the meaning of Section 13(d)(3) of the Exchange Act) in an amount constituting 7.0% or more of the voting capital stock of the Company then outstanding or (b) to any individual Person or " ;group" (within the meaning of Section 13(d)(3) of the Exchange Act) that, immediately following such transfer, would beneficially own in the aggregate more than

9.5% of the voting capital stock of the Company then outstanding (other than, in each case of clauses (a) or (b), to (i) any Investor, (ii) any of its Affiliates (including commonly controlled or managed investment funds) who execute a written joinder agreement in a form approved by the Company pursuant to which such Affiliate agrees to be bound by the terms of Sections 3, 4 and 6 or (iii) an underwriter in connection with a *bona fide* public offering or distribution).

5. Right of First Offer.

5.1 Subject to the terms and conditions set forth in this Section 5, the Investors have the right to purchase from the Company an amount of any New Securities that the Company may, from time to time, propose to issue and sell equal to such Investor's Ownership Percentage (calculated as of the date of delivery of such Notice of Issuance) to the extent such New Securities are actually issued.

5.2 In the event the Company proposes to undertake an issuance of New Securities, it shall give the Investor Representative written notice of its intention, describing the type of New Securities and the price and terms upon which the Company proposes to issue such New Securities (a "Notice of Issuance"). Each Investor shall have 30 days from the date of delivery of a Notice of Issuance to the Investor Representative to agree to purchase a portion of the New Securities equal to such Investor's Ownership Percentage (calculated as of the date of delivery of such Notice of Issuan ce), for the price and upon the terms specified in the Notice of Issuance. On or prior to the expiration of such 30 day period, the Investors Representative shall deliver a written notice to the Company on the Investors' behalf stating the quantity of New Securities to be purchased by each Investor (the "Investor Response"), which written notice shall be binding on the Company and such Investor subject only to the completion of the issuance of New Securities described in the applicable Notice of Issuance.

5.3 The Company shall have 120 days following the earlier of (i) the expiration of the 30-day period described in Section 5.2 and (ii) the delivery of the Investor Response to sell or enter into an agreement to sell the New Securities with respect to which the Investors' right to purchase was not exercised, at a price and upon terms no more favorable than those specified in the Notice of Issuance. If the Company does not sell such New Securities or enter into an agreement to sell such New Securities within such 120-day period, then the Company shall not thereafter issue or sell any New Securities without first offering such New Securities to the Investors in the manner provided in Section 5.2.

5.4 If, at the close of any Business Day following the Closing Date, the Investors' Ownership Percentage is less than 10%, then all obligations of the Company pursuant to this Section 5 shall immediately terminate.

6. Standstill Restrictions.

6.1 Until the later of (x) the time that the Investors' Ownership Percentage is less than 3% and (y) June 23, 2012, each of the Investors and their respective Affiliates (including commonly controlled or managed investment funds) shall not (i) directly or indirectly acquire, agree to acquire, or offer to acquire, beneficial ownership of any equity or debt securities of the Company, any warrant or option to purchase such securities, any security convertible into any such securities, or any other right to acquire such securities, other the Preferred Shares, Common Stock acquired upon conversion of such Preferred Shares and any Preferred Shares or Common Stock paid as dividends or as an increase of the accrued liquidatio n payment amount or distributions thereon, (ii) directly or indirectly enter into or agree to enter into any merger, business combination, recapitalization, restructuring, change of control transaction or other extraordinary transaction involving the Company or any of its Subsidiaries, (iii) make, or in any way participate or engage in, directly or indirectly, any solicitation of proxies to vote, or seek to advise or influence any person with respect to the voting of, any voting securities of the Company or any of Subsidiary of the Company, (iv) bring any action or otherwise act to contest the validity of the restrictions set forth in this

Section 6, or seek a release of such restrictions, (v) form, join or in any way participate in a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) with respect to any voting securities of the Company or any Subsidiary of the Company except for any group constituting solely of the Investors and their respective Affiliates, (vi) seek the removal of any directors from the Board or a change in the size or composition of the Board (including, without limitation, voting for any directors not nominated by the Board), except as otherwise provided in Section 2.5(b) and the Series A Certificate of Designations and the Series B Certificate of Designations, (vii) propose or enter into any discussions, negotiations, arrangements, understandings or agreements (whether written or oral) with any other person regarding any possible purchase or sale of any securities or assets of the Company or any Subsidiary of the Company (ot her than securities owned by the Investors), (viii) call, request the calling of, or otherwise seek or assist in the calling of a special meeting of the shareholders of the Company, (ix) deposit any Preferred Shares or Common Stock in a voting trust or similar arrangement or subject any Preferred Shares or Common Stock to any voting agreement, pooling arrangement or similar arrangement, or grant any proxy with respect to any Preferred Shares or Common Stock to any person not affiliated with the Investor or Company management; (x) enter into any swap or any other agreement, transaction or series of transactions that hedges or transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Preferred Shares or the Common Stock, whether any such transaction, swap or series of transactions is to be settled by delivery of securities, in cash or otherwise; (xi) disclose any intention, plan or arrangement prohibited by, or inconsistent with, the foregoing or (xii) make, or take, any action that would reasonably be expected to cause the Company to make a public announcement regarding any intention of any Investor to take an action that would be prohibited by the foregoing; provided, however, that the foregoing shall not restrict the ability of the Investor Designees or other directors appointed or elected to the Board pursuant to the terms of the Series A Certificate of Designations and the Series B Certificate of Designations from exercising their fiduciary duties.

6.2 Notwithstanding the foregoing, if the Board decides to engage in a process that could give rise to a change of control of the Company, the Company shall invite the Investors acting through the Investor Representative to participate in such process on the terms and conditions generally made available to the other participants in such process; provided, however, that each Investor Designee shall resign from the Board during the period in which the Inv estors Representative on behalf of any Investor is participating in such process; provided, further, however, that, following the termination of the Investors participation in any process, the Investors' right to nominate the Investor Designees shall be reinstated and the Company shall appoint the Investor Designees that resigned to the Board as soon as reasonably possible. In addition, if requested by the Board, the Investor Representative on behalf of the Investors may submit a confidential private acquisition proposal to the Board and respond to any related inquiries from the Board, provided that any such proposal shall be conditioned on approval of the Board.

7. Termination. Other than the termination provisions applicable to particular Sections of this Agreement that are specifically provided elsewhere in this Agreement, this Agreement shall terminate (except for Section 8) (a) upon the mutual written agreement of the Company and the Investor Representative or (b) at such time as the Investors no longer beneficially own any shares of Common Stock or any Preferred Shares.

8. Confidentiality.

8.1 The Investor Representative and each Investor hereby agree to keep confidential, to cause their respective employees, officers, directors and Affiliates to keep confidential and to instruct their respective representatives to keep confidential, any and all confidential information of the Company, including non-public information relating to the Company's finances and results, trade secrets, know-how, customers, business plans, marketing activities, financial data and other business affairs that was disclosed by the Company on or prior to the date of this Agreement pursuant to the terms of the confidentiality agreement dated January 6, 2009 between the Company and BC Partners, Inc. (the "Confidentiality

Agreement”) or that is disclosed on or after the date of this Agreement by the Company or any Investor Designee to the Investor Representative, any Investor or their respective Affiliates or representatives (each a “Receiving Party”), (collectively, the “Company Proprietary Information”), and to utilize the Company Proprietary Information only for purposes related to the purpose for which such information was disclosed (the “Utilization Restriction”); provided, however, that the Utilization Restriction shall not restrict the sale of the Preferred Shares or the Common Stock issued upon conversion of the Preferred Shares so long as such Investor complies with the confidentiality restrictions of this section, the Company’s insider trading policy and applicable securities laws; provided, further, however , that Company Proprietary Information shall not include any information that (i) is or subsequently becomes publicly available without breach of this Section 8 or (ii) is or subsequently becomes known or available to a Receiving Party from a source other than the Company that, to such Receiving Party’s knowledge, is not prohibited from disclosing such Company Proprietary Information to the Receiving Party by a contractual, legal or fiduciary obligation owed by such other third party to the Company. For the avoidance of doubt, subject to the terms of this Section 8, any Investor may disclose Company Proprietary Information to its employees, officers, directors, advisors and representatives (including the Investor Representative). Each Investor shall be responsible for any failure of its employees, officers, directors, advisors and representatives to keep confidential the Company Proprietary Information.

8.2 In the event that any Receiving Party is required by applicable law, regulation or legal process to disclose any Company Proprietary Information, then (to the extent reasonably practicable, before substantively responding to any such request or requirement) such Receiving Party will provide the Company with prompt written notice of any such request or requirement so that the Company may (at its sole cost and expense) seek a protective order or other appropriate remedy, or both, or waive compliance with the provisions of this Section 8 or other appropriate remedy, or if the Company so directs, such Receiving Party will exercise its own reasonable best efforts to assist the Company in obtaining a protective order o r other appropriate remedy at the Company’s sole cost and expense. If, failing the entry of a protective order or other appropriate remedy or the receipt of a waiver hereunder, disclosure of any Company Proprietary Information is required by law, regulation or legal process then such Receiving Party may furnish only that portion of the Company Proprietary Information that is required to be so furnished pursuant to law, regulation or legal process. In any event, such Receiving Party will cooperate fully with any action by the Company (at its sole cost and expense) to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Company Proprietary Information.

8.3 This Agreement shall supersede the Confidentiality Agreement and, as of the date of this Agreement, the Confidentiality Agreement is terminated.

9. Tax Matters.

9.1 Each Investor shall deliver to the Company within 90 days after the Closing Date two original copies of whichever of the following is applicable: (i) duly completed and executed copies of Internal Revenue Service Form W-8BEN (or any subsequent versions thereof or successors thereto), claiming eligibility (if any) for benefits of an income tax treaty to which the United States of America is a party, (ii) duly completed and executed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto), (iii) duly completed and executed copies of Internal Revenue Service Form W-8EXP (or any subsequent versions thereof or successors thereto) (iv) duly completed and executed copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto), (v) duly completed and executed copies of Internal Revenue Service Form W-8IMY (or any subsequent versions thereof or successors thereto), together with forms and certificates described in clauses (i) through (iv) above (and additional Form W-8IMYs (or any subsequent versions thereof or successors thereto)) as may be required or (vi) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Company to determine the withholding

or deduction required to be made. In addition, in each of the foregoing circumstances, each Investor shall deliver such forms upon the obsolescence, expiration or invalidity of any form previously delivered by such Investor. Each Investor shall, as promptly as reasonably practicable notify the Company at any time it determines that it is no longer in a position to provide any previously delivered form or certificate to the Company (or any other form of certification adopted by the United States of America or other taxing authorities for such purpose).

9.2 The Investor Representative shall deliver to the Company within 90 days after the Closing Date a schedule setting out the Investors' calculations in reasonable detail as to how much withholding would be required on payments to each Investor Group Member in the event of a taxable distribution and shall as promptly as reasonably practicable deliver an updated schedule whenever such information changes (including upon any transfer to Investor Group Members not party to this Agreement).

9.3 Upon a transfer of shares of Series A Preferred or Series B Preferred to an Investor Group Member not party to this Agreement, within 90 days after such transfer or such earlier date as may be reasonably necessary in light of any upcoming taxable distribution, the Investor Representative shall cause the Investor Group Member receiving such transferred shares to provide the information required by the first sentence of Section 9.1 to be delivered to the Company and shall cause the Investor Group Member to comply with the second and third sentences of Section 9.1 (replacing for this purpose the term "Investor" with "Investor Group Member").

9.4 The Investor Representative represents that it is a domestic corporation for federal income tax purposes and shall deliver to the Company an Internal Revenue Service Form W-9 to such effect.

10. Miscellaneous.

10.1 Governing Law. This Agreement shall be governed in all respects by the laws of the State of State of Delaware without regard to any choice of laws or conflict of laws provisions that would require the application of the laws of any other jurisdiction.

10.2 Jurisdiction; Enforcement. The parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each of the parties shall be entitled (in addition to any other remedy that may be available to it, including monetary damages) to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Delaware Court of Chancery and any state appellate c ourt therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). In addition, each of the parties irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party or its successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). The parties further agree that no party to this Agreement shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condit ion to obtaining any remedy referred to in this Section and each party waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. Each of the parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any

action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section, (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each party hereby consents to service being made through the notice procedures set forth in Section 10.6 and ag rees that service of any process, summons, notice or document by registered mail (return receipt requested and first-class postage prepaid) to the respective addresses set forth in Section 10.6 shall be effective service of process for any suit or proceeding in connection with this Agreement or the transactions contemplated by this Agreement. EACH OF THE PARTIES KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WITH AND UPON THE ADVICE OF COMPETENT COUNSEL IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10.3 Successors and Assigns. Except as otherwise provided in this Agreement, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties; provided, however, the rights of the Investors under this Agreement shal l not be assignable to any Person without the consent of the Company.

10.4 No Third-Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the parties any rights, remedies, obligations or liabilities under or by reason of this Agreement, and no Person that is not a party to this Agreement (including any partner, member, shareholder, director, officer, employee or other beneficial owner of any party, in its own capacity as such or in bringing a derivative action on behalf of a party) shall have any standing as third-party ben eficiary with respect to this Agreement or the transactions contemplated by this Agreement.

10.5 Entire Agreement. This Agreement, the Purchase Agreement and the other documents delivered pursuant to the Purchase Agreement, including the Registration Rights Agreement, constitute the full and entire understanding and agreement among the parties with regard to the subjects of this Agreement and such other agreements and documents.

10.6 Notices. Except as otherwise provided in this Agreement, all notices, requests, claims, demands, waivers and other communications required or permitted under this Agreement shall be in writing and shall be mailed by reliable overnight delivery service or delivered by hand, facsimile or messenger as follows:

if to the Company:	Office Depot, Inc. 6600 North Military Trail Boca Raton FL 33496 Attention: Steve Odland Facsimile: (561) 438-4400
with a copy to:	Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, New York 10019 Attention: David A. Katz Facsimile: (212) 403-2000

if to any Investor
or the Investor Representative: BC Partners, Inc.
667 Madison Avenue
New York, New York 10065
Attention: James Rubin and Justin Bateman
Facsimile: (212) 891-2899

with a copy to: Latham & Watkins LLP
885 Third Avenue
New York, NY 10022
Attention: Raymond Lin and John Giouroukakis
Facsimile: (212) 751-4864

or in any such case to such other address, facsimile number or telephone as either party may, from time to time, designate in a written notice given in a like manner. Notices shall be deemed given when actually delivered by overnight delivery service, hand or messenger, or when received by facsimile if promptly confirmed.

10.7 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement shall impair any such right, power, or remedy of such party, nor shall it be construed to be a waiver of or acquiescence to any breach or default, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default. All remedies, either under this Agreement or by law or otherwise afforded to any holder, shall be cumulative and not alternative.

10.8 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only if such amendment or waiver is in writing and signed, in the case of an amendment, by the Company and the Investor Representative or, in the case of a waiver, by the party against whom the waiver is to be effective. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities are convertible), each future holder of all such securities, and the Company.

10.9 Counterparts. This Agreement may be executed in any number of counterparts and signatures may be delivered by facsimile or in electronic format, each of which may be executed by less than all the parties, each of which shall be enforceable against the parties actually executing such counterparts and all of which together shall constitute one instrument.

10.10 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement and the balance of this Agreement shall be enforceable in accordance with its terms.

10.11 Titles and Subtitles; Interpretation. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. When a reference is made in this Agreement to a Section, Schedule or Annex, such reference shall be to a Section, Schedule or Annex of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well a s to the feminine and neuter genders of such term.

Any agreement, instrument or statute defined or referred to in this Agreement means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

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

OFFICE DEPOT, INC.

By: /s/ Michael Newman
Name: Michael Newman
Title: Executive Vice President &
Chief Financial Officer

BC PARTNERS, INC., as the Investor Representative

By: /s/ Justin Bateman
Name: Justin Bateman
Title: Director

For and on behalf of the Limited Partnerships BC For and on behalf of the Limited Partnerships BC European Capital VIII – 1 to 12 and 14 to 34

/s/ Matthew Elston
Name: Matthew Elston
Director, CIE Management II Limited acting as General Partner of the Limited Partnerships BC European Capital VIII - 1 to 12 and 14 to 34

/s/ Mark Rodliffe
Name: Mark Rodliffe
Director, CIE Management II Limited acting as General Partner of the Limited Partnerships BC European Capital VIII - 1 to 12 and 14 to 34

For and on behalf of BC European Capital 35 SC to 39 SC:

/s/ Matthew Elston
Name: Matthew Elston
Director, LMBO Europe SAS
As Gérant to BC European Capital 35 SC to 39 SC

/s/ Mike Twinning
Name: Mike Twinning
Director, LMBO Europe SAS
As Gérant to BC European Capital 35 SC to 39 SC

Investors

Investor

BC European Capital VIII-1
BC European Capital VIII-2
BC European Capital VIII-3
BC European Capital VIII-4
BC European Capital VIII-5
BC European Capital VIII-6
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BC European Capital VIII-37 SC
BC European Capital VIII-38 SC
BC European Capital VIII-39 SC

ANNEX A

Withholding Tax Escrow

Pursuant to the terms of Section 2.5(c) and this Annex A, the Company may establish an escrow account for the benefit of the Investor Group Members funded with a total of $6 million of the aggregate proceeds of the issuance of stock, options or convertible securities with respect to which such escrow account is established ("Withholding Tax Escrow"). If the Company so elects to establish the Withholding Tax Escrow:

(1) Subject to the limitations contained below and subject to the satisfaction of the delivery requirements set forth below, each Investor Group Member shall be reimbursed from the Withholding Tax Escrow for Withholding Tax imposed with respect to such Investor Group Member as promptly as reasonably practicable upon delivery by the Investor Group Member of documentation establishing to the reasonable satisfaction of the Company the amount of reimbursement to which the Investor Group Member is entitled under this Annex A. Notwithstanding any other provision, in no event shall the aggregate reimbursement exceed $6 million (less the amount, if any, held in the escrow on the date it is terminated pursuant to Paragraph 4 below), and all reimbursements shall be satisfied solely from the Withholding Tax Escrow. In the event that requests for reimbursements satisfying the terms and conditions of this Annex A are or may be in excess of such amount, the Investor Representative will determine how such reimbursements will be allocated among the Investor Group Members, and the Company shall be entitled fully to rely on such determination.

(2) Such reimbursement shall not be made for any Withholding Tax to the extent an Investor Group Member (or any direct or indirect owner thereof) is legally entitled to a reduction or exemption from such Withholding Tax, whether by reason of a treaty or otherwise. The Investor Group Members shall comply with Section 9 and promptly deliver to the Company such properly completed and executed documentation prescribed by applicable law as may reduce or eliminate any Withholding Tax (including, for the absence of doubt, documentation properly completed and executed by direct or indirect owners of the Investors). No reimbursements shall be made for any Withholding Tax that would not have been imposed if the Investor Group Members had delivered such forms which they (or their direct or indirect owners) were legally entitled to deliver.

(3) If an Investor Group Member (or any direct or indirect owner thereof) is legally entitled to a refund of any Withholding Tax which has previously been reimbursed (refunds being treated for this purpose as first being refunds of Withholding Tax) pursuant to Paragraph 1 of this Annex A, it shall pay over such refund to which it (or its direct or indirect owner) is legally entitled to the Company. The Investor Representative shall promptly deliver to the Company statements setting forth the type and amount of any such refund and any other pertinent information relating thereto.

(4) Prior to the termination of the Withholding Tax Escrow, the Company shall not remove or distribute any of the Withholding Tax Escrow, other than with the approval of the Investor Representative to pay any amounts the Company believes in good faith to be owing to an Investor Group Member pursuant to this Annex A (it being understood that making such payments in accordance with such approvals shall relieve the Company of any and all liability under this Annex A or Section 2.5(c) with respect to the Investor Group Members), except that any earnings on the funds held in the Withholding Tax Escrow shall be for the account of the Company, and the Company shall be entitled to withdraw such earnings at any time. The Withholding Tax Escrow shall terminate on the date three years after it is established (or such earlier date as the balance held in the Withholding Tax Escrow is zero), any remaining funds in the Withholding Tax Escrow shall be returned to the Company at that time and no further reimbursements for Withholding Tax shall be made.

(5) Any disputes regarding claims against the Withholding Tax Escrow shall be resolved in a manner consistent with the terms and conditions of this Agreement by an independent nationally recognized accountant mutually satisfactory to the Company and the Investor Representative.

(6) "Withholding Tax" shall mean withholding tax required to be collected by the Company by Section 1441 or 1442 of the Code (i) on distributions (or deemed distributions) of stock with respect to the Series A Preferred or, if the Shareholder Approvals have been obtained, the Series B Preferred held by the Investor Group Members and (ii) deemed cash distributions in the form of reimbursements pursuant to this Annex A. For the avoidance of doubt, Withholding Tax shall not include withholding tax imposed on any cash distributions other than deemed cash distributions in the form of reimbursements pursuant to this Annex A.

(7) The Withholding Tax Escrow shall be deposited by the Company, in trust for the benefit of the Investor Group Members, with a bank, financial institution or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least $500 million and selected by the Board, and reasonably acceptable to the Investor Representative, and shall only be invested in Eligible Investments. "Eligible Investments" shall mean (i) obligations issued or guaranteed by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof); (ii) obligations (including certificate s of deposit and banker's acceptances) of any domestic commercial bank having capital and surplus in excess of $500 million; (iii) repurchase obligations for underlying securities of the type described in clause (i); and (iv) any other investments agreed to in writing by both the Investor Representative and the Company. If otherwise qualified, obligations of the escrow agent or any of its affiliates shall qualify as Eligible Investments.

(8) Any Investor Group Member not a party to this Agreement shall not be entitled to reimbursement from the Withholding Tax Escrow unless such Investor Group Member executes and delivers an undertaking in a form reasonably acceptable to the Company pursuant to which the Investor Group Member agrees to comply with Section 9 and this Annex A and acknowledges the limitations contained in this Annex A.

EXHIBIT 4.2

EXECUTION COPY

REGISTRATION RIGHTS AGREEMENT

$350 Million Aggregate Principal Amount
10% Series A Redeemable Convertible Participating Perpetual Preferred Stock
10% Series B Redeemable Conditional Convertible Participating Perpetual Preferred Stock

Registration Rights Agreement, dated as of June 23, 2009, by and among Office Depot, Inc., a Delaware corporation (the "Company"), BC Partners, Inc., as the Investor Representative, and the several investors listed on Schedule 1 (together with their Permitted Transferees, collectively, the "Investors").

WHEREAS, on the date of this Agreement, the Company and the Investors entered into a Securities Purchase Agreement dated the date of this Agreement (the "Purchase Agreement") pursuant to which the Company agreed to sell to the Investors, and the Investors agreed to purchase from the Company, $350.0 million of Preferred Shares on the terms and subject to the conditions set forth in the Purchase Agreement; and

WHEREAS, it is as an inducement to the Investors to enter into the Purchase Agreement and a condition to the closing of the transactions contemplated by the Purchase Agreement that the Company and the Investors enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the agreements contained in this Agreement, and intending to be legally bound by this Agreement, the Company and the Investors agree as follows:

1. Definitions. Capitalized terms used and not otherwise defined in this Agreement that are defined in the Purchase Agreement shall have the respective meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the respective meanings set forth in this Section 1:

"Automatic Shelf Registration Statement" means an "automatic shelf registration statement" as defined in Rule 405 under the Securities Act.

"Company" shall have the meaning set forth in the preamble of this Agreement.

"Effectiveness Deadline" means with respect to any registration statement required to be filed to cover the resale by the Investors of the Registrable Securities pursuant to Section 2, (i) the date such registration statement is filed, if the Company is a WKSI as of such date and such registration statement is an Automatic Shelf Registration Statement eligible to become immediately effective upon filing pursuant to Rule 462, or (ii) if the Company is not a WKSI as of the date such registration statement is filed, the 5th Business Day following the date on which the Company is notified by the SEC that such registration statement will not be reviewed or is not subject to further review and comments and will be declared effective upon request by the Company.

"Electing Investors" means, with respect to a registration, each of the Investors that has elected to register Registrable Securities directly owned by such Investor in accordance with Section 2 or 3, as the case may be, as communicated in writing to the Company by the Investor Representative in accordance with Section 2(a) or 3(a), as applicable.

"Filing Deadline" means with respect to any registration statement required to be filed to cover the resale by the Investors of the Registrable Securities pursuant to Section 2, (i) 15 Business Days following the written notice of demand therefor by the Investor Representative, if the Company is a WKSI as of the date of such demand, or (ii) if the Company is not a WKSI as of the date of such demand, (x) 20 Business Days

following the written notice of demand therefor if the Company is then eligible to register for resale the Registrable Securities on Form S-3 or (y) if the Company is not then eligible to use Form S-3, 45 Business Days following the written notice of demand therefor, provided that, to the extent that the Company has not been provided the information regarding the Electing Investors and their Registrable Securities in accordance with Section 9(b) at least two Business Days prior to the applicable Filing Deadline, then the such Filing Deadline shall be extended to the second Business Day following the date on which such information is provided to the Company.

"Freely Tradable" shall mean, with respect to any security, a security that (a) is eligible to be sold by the holder thereof without any volume or manner of sale restrictions under the Securities Act pursuant to Rule 144 thereunder, (b) bears no legends restricting the transfer thereof and (c) bears an unrestricted CUSIP number (to the extent such security is issued in global form).

"Indemnified Party" shall have the meaning set forth in Section 8(c). "Indemnifying Party" shall have the meaning set forth in Section 8(c). "Investor Indemnitee" shall have the meaning set forth in Section 8(a).

"Investors" shall have the meaning set forth in the preamble of this Agreement.

"Other Securities" shall have the meaning set forth in Section 3(a).

"Permitted Transferees" shall have the meaning set forth in Section 11(d).

"Piggyback Notice" shall have the meaning set forth in Section 3(a).

"Piggyback Registration" shall have the meaning set forth in Section 3(a).

"prospectus" means the prospectus included in a registration statement (including a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a registration statement, and all other amendments and supplements to the prospectus, including post-effective amendments.

"Purchase Agreement" shall have the meaning set forth in the recitals of this Agreement.

"Register," "registered," and "registration" shall refer to a registration effected by preparing and filing a registration statement with the SEC in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such registration statement by the SEC.

"Registrable Securities" means (a) shares of Common Stock issued by the Company upon conversion of any shares of Series A Preferred Stock or Series B Preferred Stock, (b) if the Shareholder Approvals are not obtained on or prior to June 23, 2011, shares of Series B Preferred Stock and (c) any securities issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend, stock split, recapitalization or other distribution with respect to, or in exchange for, or in replacement of, the securities referenced in clause (a) above, clause (b) above or this clause (c); provided < /FONT>that the term "Registrable Securities" shall exclude in all cases any securities (i) that shall have ceased to be outstanding, (ii) that are sold pursuant to an effective registration statement under the Securities Act or publicly resold in compliance with Rule 144 or (iii) that are Freely Tradable (it being understood that, for

purposes of determining eligibility for resale under clause (iii) of this proviso, no securities held by any Investor shall be considered Freely Tradable to the extent such Investor reasonably determines that it is an "affiliate" (as defined under Rule 144 under the Securities Act) of the Company). Solely for purposes of determining at any time whether any Registrable Securities are then outstanding, transferred or Freely Tradable, the Series A Preferred Stock and, to the extent convertible as of the date of such determination, the Series B Preferred Stock shall be treated, on an as-converted basis, as Registrable Securities.

"Registration Expenses" shall mean, with respect to any registration, (a) all expenses incurred by the Company in effecting any registration pursuant to this Agreement, including all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, (b) one-half of all reasonable fees and expenses related to any registration of Registrable Securities by the Electing Investors (including the fees and disbursements of one legal counsel (and only one legal counsel) to the Electing Investors) and (c) all expenses of the Company's independent accountants in connection with any regular or special reviews or audits incident to or requir ed by any such registration; provided that Registration Expenses shall not include any Selling Expenses.

"registration statement" means any registration statement that is required to register the resale of the Registrable Securities under this Agreement, and including the related prospectus and any pre- and post-effective amendments and supplements to each such registration statement or prospectus.

"Scheduled Black-out Period" means the period from and including the 5th Business Day preceding the last day of a fiscal quarter of the Company to and including the 2nd Business Day after the day on which the Company publicly releases its earnings for such fiscal quarter.

"Selling Expenses" shall mean all underwriting discounts, selling commissions and stock transfer taxes, if any, applicable to the sale of Registrable Securities and all fees and expenses related of the Electing Investors (other than such fees and expenses included in Registration Expenses).

"Suspension Period" shall have the meaning set forth in Section 2(d).

"WKSI" shall mean a "well known seasoned issuer" as defined in Rule 405 under the Securities Act.

2. Demand Registration.

(a) Subject to the terms and conditions of this Agreement, including Section 2(c), if at any time following June 23, 2011, the Company receives a written request from the Investor Representative on behalf of any Electing Investors that the Company register under the Securities Act Registrable Securities representing (i) at least 5,500,000 shares of Common Stock or (ii) any amount of shares of Series B Preferred then outstanding if the Shareholder Approvals have not been obtained at such time, then the Company shall file, as promptly as reasonably practicable but no later than the applicable Filing Deadline, a registration statement under the Securities Act covering all Registrable Securities that the Investor Representative, on behalf of the Electing Investors, requests to be registered. The registration statement shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form for such purpose) and, if the Company is a WKSI as of the Filing Deadline, shall be an Automatic Shelf Registration Statement. The Company shall use its commercially reasonable efforts to cause the registration statement to be declared effective or otherwise to become effective under the Securities Act as soon as reasonably practicable but, in any event, no later than the Effectiveness Deadline, and shall use its commercially reasonable efforts to keep the registration statement continuously effective under the Securities Act until the earlier of (1) the date on which the Investor Representative notifies the Company in writing that the Registrable Securities included in such registration statement have been sold or the offering therefor has been terminated or (2) (x) 15 Business Days following the date on which such registration statement was declar ed effective by the SEC, if the Company is

a WKSI and filed an Automatic Shelf Registration Statement in satisfaction of such demand, (y) 30 Business Days following the date on which such registration statement was declared effective by the SEC, if the Company is not a WKSI and registered for resale the Registrable Securities on Form S-3 in satisfaction of such demand, or (z) 50 Business Days following the date on which such registration statement was declared effective by the SEC, if the Company is neither a WKSI nor then eligible to use Form S-3 and registered for resale the Registrable Securities on Form S-1 or other applicable form in satisfaction of such demand; provided that each period specified in clause (2) of this sentence shall be extended automatically by one Business Day for each Business Day that the use of such registration statement or prospectus is suspended by the Company pursuant to any Scheduled Black-out Period, pursuant to Section 2(d) or pursuant to Section 5(i). Neither the Company nor any other Person (other than any Electing Investor) shall be entitled to include Other Securities in any registration initiated by the Investor Representative on behalf of the Electing Investors pursuant to this Section 2 without the prior written consent of the Investor Representative (in the case of Other Securities of the Company, such consent not to be unreasonably withheld, conditioned or delayed), and upon such consent the Registrable Securities shall have priority for inclusion in any firm commitment underwritten offering, ahead of all Other Securities, in any Underwriter Cutback.

(b) If the Electing Investors intend to distribute the Registrable Securities covered by the Investor Representative's request by means of an underwriting, (i) the Investor Representative shall so advise the Company as a part of its request made pursuant to Section 2(a) and (ii) the Investor Representative shall have the right to appoint the book-running, managing and other underwriter(s) in consultation with the Company.

(c) The Company shall not be required to effect a registration pursuant to this Section

2: (i) after the Company has effected six registrations pursuant to this Section 2, and each of such registrations has been declared or ordered effective and kept effective by the Company as required by Section 5(a); or (ii) more than twice during any single calendar year.

(d) Notwithstanding anything to the contrary in this Agreement, (1) upon notice to the Investor Representative, the Company may delay the Filing Deadline and/or the Effectiveness Deadline with respect to, or suspend the effectiveness or availability of, any registration statement for up to 90 days in the aggregate in any 12-month period (a "Suspension Period") if the Board of Directors of the Company determines that there is a valid business purpose for delay of filing or effectiveness of, or suspension of, the registration statement; provided that (i) any suspension of a registration statement pursua nt to Section 6(b) shall be treated as a Suspension Period for purposes of calculating the maximum number of days of any Suspension Period under this Section 2(d) and (ii) no Suspension Period may overlap with any redemption pursuant to Section 6 of the Series A Certificate of Designations or Section 6 of the Series B Certificate of Designations through the date that is 30 Business Days following any such redemption; and (2) upon notice to the Investor Representative, the Company may delay the Filing Deadline and/or the Effectiveness Deadline with respect to any registration statement for a period not to exceed 30 days prior to the Company's good faith estimate of the launch date of, and 90 days after the closing date of, a Company initiated registered offering of equity securities (including equity securities convertible into or exchangeable for Common Stock and any offering of equity securities that triggers rights under Section 5.3 of the Investor Rights Agreement); provided that (i) the Company is actively employing in good faith all commercially reasonable efforts to launch such registered offering throughout such period, (ii) the Investors are afforded the opportunity to include Registrable Shares in such registered offering in accordance with Section 3) and (iii) the right to delay or suspend the effectiveness or available of such registration statement pursuant to this clause (2) shall not be exercised by the Company more than twice in any twelve-month period and not more than 90 days in the aggregate in any twelve-month period. If the Company shall delay any Filing Deadline pursuant to this clause (d) for more than 10 Business Days, the Investor Representative may, on behalf of the Electing Investors, withdraw the demand therefor at any time after such 10 Business Days so long as such delay is then continuing by providing written notice to the Company to such effec t, and any demand so withdrawn shall not count as a demand for registration for any purpose under this Section 2, including Section 2(c).

3. Piggyback Registration.

(a) Subject to the terms and conditions of this Agreement, if at any time following June 23, 2011, the Company files a registration statement under the Securities Act with respect to an offering of Common Stock or other equity securities of the Company (such Common Stock and other equity securities collectively, "Other Securities"), whether or not for sale for its own account (other than a registration statement (i) on Form S-4, Form S-8 or any successor forms, (ii) filed solely in connection with any employee benefit or dividend reinvestment plan or (iii) pursuant to a demand registration in accordance with Section 2), then the Company shall use commercially reasonably efforts to give written notice o f such filing to the Investor Representative (for distribution to the Investors) at least 5 Business Days before the anticipated filing date (or such later date as it becomes commercially reasonable to provide such notice) (the "Piggyback Notice"). The Piggyback Notice and the contents thereof shall be kept confidential by the Investor Representative, the Investors and their respective Affiliates and representatives, and the Investor Representative and the Investors shall be responsible for breaches of confidentiality by their respective Affiliates and representatives. The Piggyback Notice shall offer the Investors the opportunity to include in such registration statement, subject to the terms and conditions of this Agreement, the number of Registrable Securities as they may reasonably request (a "Piggyback Registration"). Subject to the terms and conditions of this Agreement, the Company shall use its commercially reasonable efforts to include in each such Piggyback Registration all Registrable Securities with respect to which the Company has received from the Investor Representative written requests for inclusion therein within 10 Business Days following receipt of any Piggyback Notice by the Investor Representative, which request shall specify the maximum number of Registrable Securities intended to be disposed of by the Electing Investors and the intended method of distribution. For the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, the Company may not commence or permit the commencement of any sale of Other Securities in a public offering to which this Section 3 applies unless the Investor Representative shall have received the Piggyback Notice in respect to such pub lic offering not less than 10 Business Days prior to the commencement of such sale of Other Securities. The Electing Investors, acting through the Investor Representative, shall be permitted to withdraw all or part of the Registrable Securities from a Piggyback Registration at any time at least two Business Days prior to the effective date of the registration statement relating to such Piggyback Registration. No Piggyback Registration shall count towards the number of demand registrations that the Investors are entitled to make in any period or in total pursuant to Section 2. Notwithstanding anything to the contrary in this Agreement, the Company shall not be required to provide notice of, or include any Registrable Securities in, any proposed or filed registration statement with respect to an offering of Other Securities for sale exclusively for the Company's own account at any time following June 23, 2016.

(b) If any Other Securities are to be sold in an underwritten offering, (1) the Company or other Persons designated by the Company shall have the right to appoint the book-running, managing and other underwriter(s) for such offering in their discretion and (2) the Electing Investors shall be permitted to include all Registrable Securities requested to be included in such registration in such underwritten offering on the same terms and conditions as such Other Securities proposed by the Company or any third party to be included in such offering; provided, however, that if such offering involves an underwritten offering and the managing underwriter(s) of such underwritten offering advise the Company in writing that it is their good faith opinion that the total amount of Registrable Securities requested to be so included, together with all Other Securities that the Company and any other Persons having rights to participate in such registration intend to include in such offering (an "Underwriter Cutback"), exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included together with all Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securi ties that in the good faith opinion of such managing underwriter(s) can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows: (x) to the extent such public offering is the result of a registration initiated by the Company, (i) first, all Other Securities being sold by the Company; (ii) second, all Registrable Securities

requested to be included in such registration by the Electing Investors, pro rata, based on the number of Registrable Securities beneficially owned by such Electing Investors; and (iii) third, all Other Securities of any holders thereof (other than the Company and the Electing Investors) requesting inclusion in such registration, pro rata, based on the number of Other Securities beneficially owned by each such holder of Other Securities or (y) to the extent such public offering is the result of a registration by any Persons (other than the Company or the Investors) exercising a contractual right to demand registration, (i) first, all Other Securities owned by such Persons e xercising the contractual right, pro rata, based on the number of Other Securities beneficially owned by each such holder of Other Securities; (ii) second, all Registrable Securities requested to be included in such registration by the Electing Investors, pro rata, based on the number of Registrable Securities beneficially owned by such Electing Investors; and (iii) third, all Other Securities being sold by the Company; and (iv) fourth, all Other Securities requested to be included in such registration by other holders thereof (other than the Company and the Electing Investors), pro rata, based on the number of Other Securities beneficially owned by each such holder of Other Securities.

4. Expenses of Registration. Except as specifically provided for in this Agreement, all Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses incurred in connection with any registration hereunder, shall be borne by the Electing Investors in proportion to the number of Registrable Securities for which registration was requested. The Company shall not, however, be required to pay for expenses of any registration proceeding begun pursuant to Section 2, the request of which has been subsequently withdrawn by the Investor Representative unless (a) the withdrawal is based upon a Material Adverse Effect or material adverse information concerning t he Company that (i) the Company had not publicly disclosed in a report filed with or furnished to the SEC at least 48 hours prior to the request or (ii) the Company had not disclosed to any Investor Designee in person or by telephone at the last meeting of the Board of Directors or any committee of the Board of Directors, in each case, at which an Investor Designee is present or at any time since the date of such meeting of the Board of Directors and which effect or information would reasonably be expected to result in a Material Adverse Effect or constitute material adverse information concerning the Company, (b) the withdrawal is made in accordance with the last sentence of Section 2(d), or (c) the Investor Representative agrees on behalf of the Investors to forfeit their right to one requested registration pursuant to Section 2.

5. Obligations of the Company. Whenever required to effect the registration of any Registrable Securities pursuant to Section 2 or 3 of this Agreement, the Company shall, as promptly as reasonably practicable:

(a) Prepare and file with the SEC a registration statement (including all required exhibits to such registration statement) with respect to such Registrable Securities and use commercially reasonable efforts to cause such registration statement to become effective, or prepare and file with the SEC a prospectus supplement with respect to such Registrable Securities pursuant to an effective registration statement and keep such registration statement effective or such prospectus supplement current, in the case of a registration pursuant to Section 2, in accordance with Section 2.

(b) Prepare and file with the SEC such amendments and supplements to the applicable registration statement and the prospectus or prospectus supplement used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(c) To the extent reasonably practicable, not less than five Business Days prior to the filing of a registration statement or any related prospectus or any amendment or supplement thereto, the Company shall furnish to the Investor Representative on behalf of the Electing Investors copies of all such documents proposed to be filed and give reasonable consideration to the inclusion in such documents of any comments reasonably and timely made by the Investor Representative or its legal counsel, provided that the

Company shall include in such documents any such comments that are necessary to correct any material misstatement or omission regarding an Electing Investor.

(d) Furnish to the Investor Representative such number of copies of the applicable registration statement and each such amendment and supplement thereto (including in each case all exhibits but not documents incorporated by reference) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as the Investor Representative may reasonably request on behalf of the Electing Investors in order to facilitate the disposition of Registrable Securities owned by the Electing Investors. The Company hereby consents to the use of such prospectus and each amendment or supplement thereto by each of the Electing Investors in accordance with applicable laws and regulations in connection with the offering and sale of the Registrable Securities covered by such prospectus and any amendment or supple ment thereto.

(e) Use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under blue sky or such other state securities laws of such U.S. jurisdictions as shall be reasonably requested by the Investor Representative and to keep such registration or qualification in effect for so long as such registration statement remains in effect; provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(f) Enter customary agreements and take such other actions as are reasonably required in order to facilitate the disposition of such Registrable Securities, including, if the method of distribution of Registrable Securities is by means of an underwritten offering, using commercially reasonable efforts to, (i) participate in and make documents available for the reasonable and customary due diligence review of underwriters during normal business hours, on reasonable advance notice and without undue burden or hardship on the Company, provided that (A) any party receiving confidential materials shall execute a confidentiality agreement on customary terms if reasonably requested by the Company and (B) the Company may in its reasonabl e discretion restrict access to competitively sensitive or legally privileged documents or information, (ii) cause the chief executive officer and chief financial officer available at reasonable dates and times to participate in "road show" presentations and/or investor conference calls to market the Registrable Securities during normal business hours, on reasonable advance notice and without undue burden or hardship on the Company, provided that the aggregate number of days of "road show" presentations in connection with an underwritten offering of Registrable Securities for each registration pursuant to a demand made under Section 2 shall not exceed five Business Days and (iii) negotiate and execute an underwriting agreement in customary form with the managing underwriter(s) of such offering and such other documents reasonably required under th e terms of such underwriting arrangements, including using commercially reasonable efforts to procure a customary legal opinion and auditor "comfort" letters. The Electing Investors shall also enter into and perform their obligations under such underwriting agreement.

(g) Give notice to the Investor Representative as promptly as reasonably practicable:

(i) when any registration statement filed pursuant to Section 2 or in which Registrable Securities are included pursuant to Section 3 or any amendment to such registration statement has been filed with the SEC and when such registration statement or any post-effective amendment to such registration statement has become effective;

(ii) of any request by the SEC for amendments or supplements to any registration statement (or any information incorporated by reference in, or exhibits to, such registration statement) filed pursuant to Section 2 or in which Registrable Securities are included pursuant to Section 3 or the prospectus (including information incorporated by reference in such prospectus) included in such registration statement or for additional information;

(iii) of the issuance by the SEC of any stop order suspending the effectiveness of any registration statement filed pursuant to Section 2 or in which Registrable Securities are included pursuant to Section 3 or the initiation of any proceedings for that purpose;

(iv) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Common Stock for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(v) at any time when a prospectus relating to any such registration statement is required to be delivered under the Securities Act, of the happening of any event as a result of which such prospectus (including any material incorporated by reference or deemed to be incorporated by reference in such prospectus), as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, which event requires the Company to make changes in such effective registration statement and prospectus in order to make the statements therein or incorporated by reference therein not misleading (which notice shall be accompanied by an instruction to suspend the use of the prospectus until the requisite changes have been made).

(h) Use its commercially reasonable efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in Section 5(g)(iii) at the earliest practicable time.

(i) Upon the occurrence of any event contemplated by Section 5(g)(v), reasonably promptly prepare a post-effective amendment to such registration statement or a supplement to the related prospectus or file any other required document so that, as thereafter delivered to the Investor Representative, the prospectus will not contain (or incorporate by reference) an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Investor Representative in accordance with Section 5(g)(v) to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Electing Investors shall suspend use of such prospectus and use their commercially reasonable efforts to return to the Company all copies of such prosp ectus (at the Company's expense) other than permanent file copies then in the Electing Investors' possession, and the period of effectiveness of such registration statement provided for in Section 5(a) above shall be extended by the number of days from and including the date of the giving of such notice to the date the Investor Representative shall have received such amended or supplemented prospectus pursuant to this Section 5(i).

(j) Use commercially reasonable efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including with respect to the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by the Investor Representative or the managing underwriter(s). In connection therewith, if reasonably required by the Company's transfer agent, the Company shall promptly after the effectiveness of the registration statement cause an opinion of counsel as to the effectiveness of the registration statement to be delivered to and maintained with its transfer agent, together with any other authorizations, certificates and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without legend upon sale by the ho lder of such shares of Registrable Securities under the registration statement.

6. <u>Suspension of Sales</u>.

(a) Notwithstanding anything to the contrary in this Agreement, during any Scheduled Black-out Period the Electing Investors shall immediately suspend or discontinue disposition of Registrable

Securities until the termination of such Scheduled Black-out Period; provided that (i) a Scheduled Black-out Period shall not prevent the Investor Representative from making any demand under Section 2(a) or electing to participate in any Piggyback Registration under Section 3(a) or relieve the Company from its obligation to file (but not its obligation cause to be declared effective) a registration statement (other than an Automatic Shelf Registration Statement) pursuant to this Agreement and (ii) a Scheduled Black-out Period shall not apply to the Electing Investors in any Piggyback Registration to the extent the Company has waived the Scheduled Black-out Period with respect to any registered offering of Other Securities for its own account or for the account of any other Person, which offering gives rise to such Piggyback Registration.

(b) Upon receipt of written notice from the Company pursuant to Section 5(g)(v), the Electing Investors shall immediately discontinue disposition of Registrable Securities until the Investor Representative (i) has received copies of a supplemented or amended prospectus or prospectus supplement pursuant to Section 5(i) or (ii) is advised in writing by the Company that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by the Company, the Electing Investors shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in the Electing Investors' possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities current at the time of receipt of such notice.

7. Free Writing Prospectuses. The Electing Investors shall not use any free writing prospectus (as defined in Rule 405 under the Securities Act) in connection with the sale of Registrable Securities without the prior written consent of the Company given to the Investor Representative; provided that the Electing Investors may use any free writing prospectus prepared and distributed by the Company.

8. Indemnification.

(a) Notwithstanding any termination of this Agreement, the Company shall indemnify and hold harmless the Investor Representative, each of the Electing Investors and each of their respective officers, directors, employees, agents, partners, members, stockholders, representatives and Affiliates, and each person or entity, if any, that controls the Investor Representative or the Electing Investors within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and the officers, directors, employees, agents and employees of each such controlling Person (each, an "Investor Indemnitee"), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasona ble fees, expenses and disbursements of attorneys and other professionals), joint or several, arising out of or based upon any untrue or alleged untrue statement of material fact contained or incorporated by reference in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the Securities Act) prepared by the Company or authorized by it in writing for use by the Investors or any amendment or supplement thereto; or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided that the Company shall not be liable to such Inves tor Indemnitee in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (i) an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the Securities Act) prepared by the Company or authorized by it in writing for use by the Investors or any amendment or supplement thereto, in reliance upon and in conformity with information regarding such Investor Indemnitee or its plan of distribution or ownership interests which such Investor Indemnitee furnished in writing to the Company for use in connection with such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto, (ii) offers or sales effected by or on behalf such Investor Indemnitee "by means of" (as defined in Securities Act Rule 159A) a "free writing prospectus" (as defined in Securities Act Rule 405) that was not authorized in writing by the

Company, or (iii) the failure to deliver or make available to a purchaser of Registrable Securities a copy of any preliminary prospectus, pricing information or final prospectus contained in the applicable registration statement or any amendments or supplements thereto (to the extent the same is required by applicable law to be delivered or made available to such purchaser at the time of sale of contract); provided that the Company shall have delivered to the Investor Representative such preliminary prospectus or final prospectus contained in the applicable registration statement and any amendments or supplements thereto pursuant to 5(d) no later than the time of contract of sale in accordance with Rule 159 under the Securities Act.

(b) Each Electing Investor shall severally, and not jointly, indemnify and hold harmless the Company and its officers, directors, employees, agents, representatives and Affiliates against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals) arising out of or based upon any untrue or alleged untrue statement of material fact contained in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the Securities Act), or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, i n light of the circumstances under which they were made, not misleading, but only to the extent, that such untrue statements or omissions are based solely upon information regarding such Electing Investor furnished in writing to the Company by the Investor Representative on behalf of such Electing Investor expressly for use therein. In no event shall the liability of any Electing Investor hereunder be greater in amount than the dollar amount of the net proceeds received by such Electing Investor upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) If any proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall assume the defense in such proceeding, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with such defense; provided that any such notice or other communication pursuant to this Section 8 between the Company and an Indemnifying Party or an Indemnified Party, as the case may be, shall be delivered to or by, as the case may be, the Investor Representative; provided, further, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Section 8, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Inde mnifying Party. An Indemnified Party shall have the right to employ separate counsel in any such proceeding and to participate in the defense of such proceeding, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that representation of both such Indemnified Party and the Indemnifying Party by the same counsel would be inappropriate because of an actual conflict of interest between the Indemnifying Party and such Indemnified Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party); provided that the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys at any time for all Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any such proceeding effected without its written consent, which consent shall not be unreasonably withheld, conditioned or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending proceeding in respect of which any

Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such proceeding. All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, promptly upon receipt of written notice thereof to the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder, provided that the Indemnifying Party may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is fi nally judicially determined that such Indemnified Party is not entitled to indemnification under this Section 8).

(d) If the indemnification provided for in Section 8(a) or 8(b) is unavailable to an Indemnified Party with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to in Section 8(a) or 8(b), as the case may be, or is insufficient to hold the Indemnified Party harmless as contemplated therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages, actions, liabilities, costs or expenses in such proportion as is appropriate to reflect the relative fault of the Indemnified Party, on the one hand, and the Indemnifying Party, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, actions, liabilities, costs or expenses as well as any oth er relevant equitable considerations. The relative fault of the Indemnifying Party, on the one hand, and of the Indemnified Party, on the other hand, shall be determined by reference to, among other factors, whether the untrue or alleged untrue statement of a material fact or omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company, the Investor Representative and the Investors agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 8(d). Notwithstanding the foregoing, in no event shall the liability of any Electing Investor hereunder be greater in amount than the dollar amount of the net proceeds receiv ed by such Electing Investor upon the sale of the Registrable Securities giving rise to such contribution obligation. No Indemnified Party guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from an Indemnifying Party not guilty of such fraudulent misrepresentation.

9. "Market Stand-Off" Agreement; Agreement to Furnish Information.

(a) The Investors agree that they will not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any new hedging or similar transaction with the same economic effect as a sale with respect to, any Common Stock (or other securities of the Company) held by the Investors (other than those included in the registration) for a period specified by the representatives of the book-running managing underwriters of Common Stock (or other securities of the Company convertible into Common Stock) not to exceed 10 days prior and 90 days following any registered public sale of securities by the Company in which the Company gave the Investors an opportunity to participate in accordance with Section 3; provided that executive officers and directors of the Company enter into similar agreements and only as long as such Persons remain subject to such agreement (and are not fully released from such agreement) for such period. Each of the Investors agrees to execute and deliver such other agreements as may be reasonably requested by the representatives of the underwriters which are consistent with the foregoing or which are necessary to give further effect thereto.

(b) In addition, if requested by the Company or the book-running managing underwriters of Common Stock (or other securities of the Company convertible into Common Stock), the Investor Representative shall provide on behalf of each Electing Investor such information regarding each Electing Investor and its respective Registrable Securities as may be reasonably required by the Company or

such representative of the book-running managing underwriters in connection with the filing of a registration statement and the completion of any public offering of the Registrable Securities pursuant to this Agreement.

10. Rule 144 Reporting. With a view to making available to the Investors the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities that are Common Stock to the public without registration, the Company agrees to use its commercially reasonable efforts to: (i) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of this Agreement; (ii) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act; and (iii) so long as the Investors own any Registrable Securities, fu rnish to the Investor Representative forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of Rule 144 under the Securities Act, and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as the Investor Representative on behalf of the Investors may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such Common Stock without registration.

11. Miscellaneous.

(a) Termination of Registration Rights. The registration rights granted under this Agreement shall terminate on the date on which all Registrable Securities are Freely Tradable.

(b) Governing Law. This Agreement shall be governed in all respects by the laws of the State of State of New York without regard to any choice of laws or conflict of laws provisions that would require the application of the laws of any other jurisdiction.

(c) Jurisdiction; Enforcement. The parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each of the parties shall be entitled (in addition to any other remedy that may be available to it, including monetary damages) to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in any state or federal courts located in the City of New York and any appellate court therefrom within the State of New York. In addition, each of the parties irrevocably agrees that any legal action o r proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party or its successors or assigns, shall be brought and determined exclusively in any state or federal courts located in the City of New York and any appellate court therefrom within the State of New York. The parties further agree that no party to this Agreement shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section and each party waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. Each of the parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, t o the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section, (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or proceeding in such court is brought in an

inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each party hereby consents to service being made through the notice procedures set forth in Section 11(g) and agrees that service of any process, summons, notice or document by registered mail (return receipt requested and first-class postage prepaid) to the respective addresses set forth in Section 11(g) shall be effective service of process for any suit or proceeding in connection with this Agreement or the transactions contemplated by this Agreement. EACH OF THE PARTIES KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WITH AND UPON THE ADVICE OF COMPETENT COUNSEL IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(d) Successors and Assigns. Except as otherwise provided in this Agreement, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties; provided, however, that the rights of the Investor Representative under this Agreement shall not be assignable to any Person without the prior written consent of the Company; provided, further, however, that in the event that any Permitted Transferee acquires any Registrable Securities, such Permitted Transferee shall, without any further writing or action of any kind, be deemed a beneficiary hereof for all purposes and such Registrable Securities shall be held subject to all the terms of this Agreement, and by taking and holding such Registrable Securities such Permitted Transferee shall be treated as an "Investor" for all purposes under this Agreement and shall be entitled to receive the benefits of, and be conclusively deemed to have agreed to be bound by all of the applicable terms and provisions of, t his Agreement. A "Permitted Transferee" is any Person who acquires Registrable Securities in any manner, whether by gift, bequest, purchase, operation of law or otherwise (and for as long as such Person holds any Registrable Securities), from (1) from any Investor (including any subsequent Permitted Transferee) that is subject to Section 4 of the Investor Rights Agreement at the time of transfer of Registrable Securities if such transfer of Registrable Securities by such Investor is made in compliance with Section 4 of the Investor Rights Agreement or (2) any Investor (including any subsequent Permitted Transferee) that is not subject to Section 4 of the Investor Rights Agreement at the time of such transfer of Registrable Securities.

(e) No Third-Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer, and this Agreement shall not confer, on any Person other than the parties to this Agreement any rights, remedies, obligations or liabilities under or by reason of this Agreement, and no other Persons shall have any standing with respect to this Agreement or the transactions contemplated by this Agreement; provided, however that each Indemnified Party (but only, in the case of an Investor Indemnitee, if such Investor Indemnitee has complied with the requirements of Section 8(c), including the first proviso of Section 8(c)) shall be entitled to the rights, remedies and obligations provided to an Indemnified Party under Section 8, and each such Indemnified Party shall have standing as a third-party beneficiary under Section 8 to enforce such rights, remedies and obligations.

(f) Entire Agreement. This Agreement, the Purchase Agreement and the other documents delivered pursuant to the Purchase Agreement, including the Investor Rights Agreement, constitute the full and entire understanding and agreement among the parties hereto with regard to the subjects of this Agreement and such other agreements and documents.

(g) Notices. Except as otherwise provided in this Agreement, all notices, requests, claims, demands, waivers and other communications required or permitted under this Agreement shall be in writing and shall be mailed by reliable overnight delivery service or delivered by hand, facsimile or messenger as follows:

if to the Company: **Office Depot, Inc.**
6600 North Military Trail

	Boca Raton FL 33496 **Attention: Steve Odland** **Facsimile: (561) 438-4400**
with a copy to:	**Wachtell, Lipton, Rosen & Katz** **51 West 52nd Street New York, New York 10019** **Attention: David A. Katz** **Facsimile: (212) 403-2000**
if to any of the Investors or the Investor Representative:	**BC Partners, Inc.** **667 Madison Avenue New York, New York 10065** **Attention: James Rubin and Justin Bateman** **Facsimile: (212) 891-2899**
with a copy to:	**Latham & Watkins LLP** **885 Third Avenue New York, NY 10022** **Attention: Raymond Lin and John Giouroukakis** **Facsimile: (212) 751-4864**

or in any such case to such other address, facsimile number or telephone as any party hereto may, from time to time, designate in a written notice given in a like manner. Notices shall be deemed given when actually delivered by overnight delivery service, hand or messenger, or when received by facsimile if promptly confirmed.

(h) Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party to this Agreement shall impair any such right, power, or remedy of such party, nor shall it be construed to be a waiver of or acquiescence in any breach or default, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default. All remedies, either under this Agreement or by law or otherwise afforded to any Investor, shall be cumulative and not alternative.

(i) Expenses. The Company and the Investors shall bear their own expenses and legal fees incurred on their behalf with respect to this Agreement and the transactions contemplated hereby, except as otherwise provided in Section 4.

(j) Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only if such amendment or waiver is in writing and signed, in the case of an amendment, by the Company and the Investor Representative or, in the case of a waiver, by the party against whom the waiver is to be effective. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Registrable Securities at the time outstanding (including securities convertible into Registrable Securities), each future holder of all such Registrable Securities, and the Company.

(k) Counterparts. This Agreement may be executed in any number of counterparts and signatures may be delivered by facsimile or in electronic format, each of which may be executed by less than

all the parties, each of which shall be enforceable against the parties actually executing such counterparts and all of which together shall constitute one instrument.

(l) Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement and the balance of this Agreement shall be enforceable in accordance with its terms.

(m) Titles and Subtitles; Interpretation. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. When a reference is made in this Agreement to a Section or Schedule, such reference shall be to a Section or Schedule of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neute r genders of such term. Any agreement, instrument or statute, rule or regulation defined or referred to in this Agreement means such agreement, instrument or statute, rule or regulation as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes. Any reference to any section under the Securities Act or Exchange Act, or any rule promulgated thereunder, shall include any publicly available interpretive releases, policy statements, staff accounting bulletins, staff accounting manuals, staff legal bulletins, staff "no-action", interpretive and exemptive letters, and staff compliance and disclosure interpretations (including "telephone interpretations") of such section or rule by the SEC. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreem ent shall be construed as if it is drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

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

OFFICE DEPOT, INC.

By: /s/ Michael Newman
Name: Michael Newman
Title: Executive Vice President &
Chief Financial Officer

BC PARTNERS, INC., as the Investor Representative

By: /s/ Justin Bateman
Name: Justin Bateman
Title: Director

For and on behalf of the Limited Partnerships BC For and on behalf of the Limited Partnerships BC European Capital VIII – 1 to 12 and 14 to 34

/s/ Matthew Elston
Name: Matthew Elston
Director, CIE Management II Limited acting as General Partner of the Limited Partnerships BC European Capital VIII - 1 to 12 and 14 to 34

/s/ Mark Rodliffe
Name: Mark Rodliffe
Director, CIE Management II Limited acting as General Partner of the Limited Partnerships BC European Capital VIII - 1 to 12 and 14 to 34

For and on behalf of BC European Capital 35 SC to 39 SC:

/s/ Matthew Elston
Name: Matthew Elston
Director, LMBO Europe SAS
As Gérant to BC European Capital 35 SC to 39 SC

/s/ Mike Twinning
Name: Mike Twinning
Director, LMBO Europe SAS
As Gérant to BC European Capital 35 SC to 39 SC

Schedule 1

Investors

BC European Capital VIII-1
BC European Capital VIII-2
BC European Capital VIII-3
BC European Capital VIII-4
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BC European Capital VIII-39 SC

EXHIBIT 10.1

EXECUTION COPY

SECURITIES PURCHASE AGREEMENT

Securities Purchase Agreement, dated June 23, 2009, by and between Office Depot, Inc., a Delaware corporation (the "Company"), and the several Investors listed on Schedule 1 (collectively, the "Investors").

WHEREAS, on the terms and conditions set forth in this Agreement, the Company desires to sell, and the Investors desire to purchase, shares of the Company's 10% Series A Redeemable Convertible Participating Perpetual Preferred Stock, par value $0.01 per share (the "Series A Preferred"), and 10% Series B Redeemable Conditional Convertible Participating Perpetual Preferred Stock par value $0.01 per share (the "Series B Preferred");

WHEREAS, in connection with such purchase and sale, the Company and the Investors desire to make certain representations and warranties and enter into certain agreements; and

WHEREAS, in connection with such purchase and sale, the Company and the Investors will execute and deliver among other things; (i) a registration rights agreement in the form attached as Exhibit A (the "Registration Rights Agreement") and (ii) an investor rights agreement in the form attached as Exhibit B (the "Investor Rights Agreement").

NOW THEREFORE, in consideration of the foregoing and the representations, warranties and agreements set forth in this Agreement, and intending to be legally bound by this Agreement, the Company and the Investors agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the respective meanings set forth in this Section 1:

"Affiliate" of any Person shall mean any other Person directly or indirectly controlling or controlled by or under common control with such Person. For purposes of this definition, "control" when used with respect to any Person has the meaning specified in Rule 12b-2 under the Exchange Act (including SEC and judicial interpretations thereof); and the terms "controlling" and "controlled" shall have meanings correlative to the foregoing.

"Board" means the Board of Directors of the Company.

"Business Day" means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York, New York generally are authorized or obligated by law, regulation or executive order to close.

"Bylaws" shall have the meaning set forth in Section 4.1.

"Capital Lease Obligations" shall mean the obligations of the Company and its Subsidiaries on a consolidated basis to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal Property which obligations are required to be classified and accounted for as a capital lease on a consolidated balance sheet of the Company and its Subsidiaries under Generally Accepted Accounting Principles (including Statement of Financial Accounting Standards No. 13 of the Financial Accounting Standards Board, as amended) and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount of such obligations, determined in accordance with Generally Accepted Accounting Principles (including such S tatement No. 13).

"Certificate of Incorporation" shall have the meaning set forth in Section 4.1.

"Certificates of Designations" shall have the meaning set forth in Section 6.1.

"Closing" shall have the meaning set forth in Section 3.

"Closing Date" shall have the meaning set forth in Section 2.

"Code" shall mean the Internal Revenue Code of 1986, together with all regulations, rulings and interpretations thereof or thereunder by the Internal Revenue Service.

"Common Stock" shall mean the common stock of the Company, par value $0.01 per share.

"Company" shall have the meaning set forth in the preamble of this Agreement.

"Credit Agreement" means that certain Credit Agreement dated September 26, 2008, among the Company, JPMorgan Chase Bank, N.A., as administration agent, and various lenders.

"Environmental Claim" shall mean any third party (including any Governmental Authority) action, lawsuit, claim or proceeding (including claims or proceedings at common law) that seeks to impose or alleges liability for (i) preservation, protection, conservation, pollution, contamination of, or releases or threatened releases of Hazardous Substances into the air, surface water, ground water or land or the clean-up, abatement, removal, remediation or monitoring of such pollution, contamination or Hazardous Substances; (ii) generation, recycling, reclamation, handling, treatment, storage, disposal or transportation of Hazardous Substances or solid waste (as defined under the Resource Conservation and Recovery Act and its regulations); (iii) exposure to Hazardo us Substances; (iv) the safety or health of employees or other Persons in connection with any of the activities specified in any other subclause of this definition; or (v) the manufacture, processing, distribution in commerce, presence or use of Hazardous Substances. An "Environmental Claim" includes a common law action, as well as a proceeding to issue, modify or terminate an Environmental Permit, or to adopt or amend a regulation to the extent that the Company or its Subsidiaries are parties to such a proceeding and such a proceeding attempts to redress violations of the applicable permit, license, or regulation as alleged by any Governmental Authority.

"Environmental Permit" shall mean any permit, license, approval or other authorization under any applicable law, regulation and other requirement of the United States or of any state, municipality or other subdivision thereof relating to pollution or protection of health or the environment, including laws, regulations or other requirements relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or Hazardous Substances or toxic materials or wastes into ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, recycling, presence, use, treatment, storage, disposal, transport, or handling of, wastes, pollutants, contaminants or Hazardous Substances.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, and all rules, regulations, rulings and interpretations adopted by the Internal Revenue Service or the Department of Labor thereunder.

"Exchange Act" shall mean the U.S. Securities Exchange Act of 1934, and the rules and regulations promulgated by the SEC thereunder.

"Generally Accepted Accounting Principles" shall mean United States generally accepted accounting principles, as in effect from time to time, applied on a consistent basis.

"Governmental Authority" shall mean any foreign governmental authority, the United States of America, any state of the United States and any political subdivision of any of the foregoing, and any agency, instrumentality, department, commission, board, bureau, central bank, authority, court or other tribunal, in each case whether executive, legislative, judicial, regulatory or administrative.

"Hazardous Substance" shall mean any hazardous or toxic waste, substance or product or material defined or regulated by any applicable environmental law, rule, regulation or order described in the definition of "Requirements of Environmental Law," including solid waste (as defined under the Resource Conservation and Recover Act of 1976 or its regulations), petroleum and any radioactive materials and waste.

"Hedging Agreements" shall mean any transaction (including an agreement with respect to such transaction) now or hereafter existing that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination of the foregoing, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measure s.

"Incidental Liens" shall mean (i) Liens for taxes, assessments, levies or other governmental charges (but not Liens for clean up expenses arising pursuant to Requirements of Environmental Law) not yet due (subject to applicable grace periods) or that are being contested in good faith and by appropriate proceedings if, in each case, adequate reserves with respect to such Liens are maintained on the books of the Company in accordance with Generally Accepted Accounting Principles; (ii) carriers', warehousemen's, mechanics', landlords', vendors', materialmen's, repairmen's, sureties' or other like Liens arising in the ordinary course of business (or deposits to obtain the release of any such Lien) and securing amounts not yet due or that are being contested in good faith and by appropriate proceedings if, in the case of such contested Liens, adequate reserves with respect to such Liens are maintained on the books of the Company in accordance with Generally Accepted Accounting Principles; (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation; (iv) easements, rights-of-way, covenants, reservations, exceptions, encroachments, zoning and similar restrictions and other similar encumbrances or title defects incurred in the ordinary course of business that, in the aggregate, are not substantial in amount, and that do not in any case singly or in the aggregate materially detract from the value or usefulness of the property subject to such Liens or materially interfere with the ordinary conduct of the business of the Company and its Subsidiaries, taken as a whole; (v) bankers' liens arising by operation of law; (vi) Liens arising pursuant to any orde r of attachment, distraint or similar legal process arising in connection with any court proceeding the payment of which is covered in full (subject to customary deductibles) by insurance; (vii) inchoate Liens arising under ERISA to secure contingent liabilities of the Company; and (viii) rights of lessees and sublessees in assets leased by the Company or any Subsidiary not prohibited elsewhere in this Agreement.

"Indebtedness" shall mean, as to any Person, without duplication: (i) all indebtedness (including principal, interest, fees and charges) of such Person for borrowed money or for the deferred purchase price of Property or services; (ii) any other indebtedness that is evidenced by a promissory note, bond, debenture or similar instrument; (iii) any obligation under or in respect of outstanding letters of credit, acceptances and similar obligations created for the account of such Person; (iv) all Capital Lease Obligations of such Person; (v) all indebtedness, liabilities, and obligations secured by any Lien on any Property owned by such Person even though such Person has not assumed or has not otherwise become liable for the payment of any such indebtedness, liabilities or obligations secured by such Lien; (vi) any obligation under or in respect of Hedging Agreements and (vii) any guarantees of the foregoing liabilities and synthetic liabilities of such Person.

"Investor Representative" means BC Partners, Inc.

"Investor Rights Agreement" shall have the meaning set forth in the recitals of this Agreement.

"Investors" shall have the meaning set forth in the preamble of this Agreement.

"Knowledge" of the Company shall mean the actual knowledge of any of the following individuals: Steve Odland, Elisa D. Garcia and Michael D. Newman.

"Laws" shall have the meaning set forth in Section 4.16.

"Lien" shall mean any mortgage, pledge, charge, encumbrance, security interest, collateral assignment or other lien or restriction of any kind, whether based on common law, constitutional provision, statute or contract, and shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions.

"Material Adverse Effect" means any change, development, occurrence or event (each, a "Company Effect") that is or would reasonably be expected to be materially adverse to the business, continuing results of operations or financial condition of the Company and its Subsidiaries, taken as a whole; provided that any such Company Effect resulting or arising from or relating to any of the following matters shall not be considered when determining whether a Material Adverse Effe ct has occurred or would reasonably be expected to occur: (i) any change, development, occurrence or event affecting the businesses or industries in which the Company and its Subsidiaries operate; (ii) any conditions in or changes affecting the United States general economy or the general economy in any geographic area in which the Company or its Subsidiaries operate or developments in the financial and securities markets and credit markets in the United States or elsewhere in the world; (iii) national or international political conditions and changes in political conditions, including acts of war (whether or not declared), armed hostilities and terrorism, or developments; (iv) any conditions resulting from natural disasters; (v) changes in any Laws or Generally Accepted Accounting Principles; (vi) changes in the market price or trading volume of Common Stock or any other equity, equity-related or debt securities of the Company or its Affiliates (it being understood that the underlying circumstances, events or reasons giving rise to any such change (to the extent provided for in this definition) can be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur); or (vii) any failure to meet any internal or public projections, forecasts, estimates or guidance for any period (it being understood that the underlying circumstances, events or reasons giving rise to any such failure (to the extent provided for in this definition) can be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur); provided, however, that Company Effects set forth in clauses (i), (ii), (iii) and (v) above may be taken into account in det ermining whether there has been or is a Material Adverse Effect if and only to the extent such Company Effects have a materially disproportionate impact on the Company and its Subsidiaries, taken as a whole, relative to the other participants in the industries in which the Company or its Subsidiaries operate.

"Person" shall mean any individual, association, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, Governmental Authority or any other form of entity.

"Plan" shall mean any employee pension benefit plan (as defined in Section 3(2)(A) of ERISA) subject to Title IV of ERISA and maintained for employees of the Company or of any member of a "controlled group", as such term is defined in Section 4001(a)(14) of ERISA, of which the Company or any of its Subsidiaries it may acquire from time to time is a part, or any such employee pension benefit plan to which the Company or any of its Subsidiaries it may acquire from time to time is required to contribute on behalf of its employees, and any other material employee benefit plan (as defined in Section 3(3) of ERISA), whether or not subject to ERISA, or any material compensation plan, policy, agreement or arrangement, including without limitation, any employment, c hange in control, bonus, equity-based compensation, retention or other similar agreement, that the Company or any of its Subsidiaries, maintains, sponsors, is a party to, or otherwise has any liability.

"Preferred Shares" shall have the meaning set forth in Section 2.

"Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, tangible or intangible.

"Purchase Price" shall have the meaning set forth in Section 2.

"Registration Rights Agreement" shall have the meaning set forth in the recitals of this Agreement.

"Requirements of Environmental Law" shall mean all requirements imposed by any environmental law (including The Resource Conservation and Recovery Act, The Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, the Clean Air Act, and any state analogues of any of the foregoing), rule, regulation, or order of any Governmental Authority which relate to: (i) pollution, protection or clean-up of the air, surface water, ground water or land; (ii) solid, gaseous or liquid waste or Hazardous Substance generation, recycling, reclamation, release, threatened release, treatment, storage, disposal or transportation; (iii) exposure of Persons or property to Hazardous Substances; (iv) the safety or health of employees or other Person s or (v) the manufacture, presence, processing, distribution in commerce, use, discharge, releases, threatened releases, emissions or storage of Hazardous Substances into the environment. Requirement of Environmental Law shall mean any one of them.

"SEC" shall mean the U.S. Securities and Exchange Commission or any other U.S. federal agency then administering the Securities Act or Exchange Act.

"SEC Reports" shall have the meaning set forth in Section 4.

"Securities" shall have the meaning set forth in Section 5.1.

"Securities Act" shall mean the U.S. Securities Act of 1933, and the rules and regulations of the SEC thereunder.

"Series A Certificate of Designations" shall have the meaning set forth in Section 6.1. "Series A Preferred" shall have the meaning set forth in the recitals of this Agreement. "Series B Certificate of Designations" shall have the meaning set forth in Section 6.1. "Series B Preferred" shall have the meaning set forth in the recitals of this Agreement. "Shareholder Approvals" shall have the meaning set forth in Section 4.3.

"Subsidiary" of any Person shall mean any corporation, partnership, joint venture, limited liability company, trust or other form of legal entity of which (or in which) more than 50% of (i) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (ii) the interest in the capital or profits of such partnership, joint venture or limited liability company or (iii) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

2. Purchase and Sale of the Preferred Shares; Additional Investment Amount. On the terms and conditions set forth in this Agreement, on the date of this Agreement (the "Closing Date"), the Investors will purchase from the Company, and the Company will issue, sell and deliver to the Investors as set forth on Schedule 1 (i) 274,596 shares of Series A Preferred and (ii) 75,404 shares of Series B Preferred, in each case at a purchase price of $1,000.00 per share, for an aggregate purchase price of $350,000,000 in cash (the

"Purchase Price") to be paid in full to the Company on the Closing Date. The shares of Series A Preferred and Series B Preferred to be issued and sold by the Company to the Investors pursuant to this Agreement are collectively referred to as the "Preferred Shares".

3. Closing. The consummation of the purchase and sale of the Preferred Shares and the other transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Wachtell, Lipton, Rosen & Katz, at 10:00 a.m. New York City time, on the Closing Date, subject to the satisfaction or waiver on the Closing Date of the conditions set forth in Sections 6 and 7, or at such other time and place as the Company and the Investor Representative shall mutually agree. At the Closing, the Company shall deliver to the Investors certificates representing that number of Prefe rred Shares set forth in Section 2 against payment of the Purchase Price by wire transfer of immediately available funds to an account designated by the Company in advance of the Closing Date.

4. Representations and Warranties of the Company. The Company represents and warrants to the Investors as of the date of this Agreement that, except (i) as otherwise disclosed or incorporated by reference in the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 2008 or its other reports and forms filed with or furnished to the SEC under Sections 12, 13, 14 or 15(d) of the Exchange Act after December 27, 2008 (other than any forward looking disclosures set forth in any risk factor section or forward looking statement disclaimer and any other disclosure that is similarly nonspecific and predictive or forward looking in nature) and before the date of this Agreement (all such reports covered by this clause (i) collectively, the "SEC Reports") and (ii) as set forth in the disclosure letter dated as of the date of this Agreement provided to the Investors separately, specifically identifying the relevant section of this Agreement (provided, that disclosure in any section of such disclosure letter shall apply to any section of this Agreement to the extent it is reasonably apparent on its face that such disclosure is relevant to such section):

4.1 Organization, Good Standing and Qualification. Each of the Company and its Subsidiaries is duly organized, validly existing and in good standing under the laws of the state of its formation; has all requisite power and authority to own its properties and conduct its business as presently conducted; and is duly qualified to do business and in good standing in each state in the United States of America where its business requires such qualification, except where failure to be so duly organized, valid ly existing and in good standing, to have such requisite power and authority or to be so duly qualified and in good standing would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. True and accurate copies of the Company's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") and the Company's Amended and Restated Bylaws (the "Bylaws"), each as in effect as of the date of this Agreement, have been made available to the Investors.

4.2 Financial Statements.

(a) The financial statements of the Company and its Subsidiaries on a consolidated basis for each of the periods included or incorporated by reference in the SEC Reports fairly present in all material respects, in accordance with Generally Accepted Accounting Principles, as in effect on the date of the applicable SEC Report, the financial condition and the results of operations of the Company and its Subsidiaries as of the dates and for the periods indicated in such SEC Reports (except as may be indicated in the notes to such financial statements and, in the case of unaudited statements, as permitted by Form 10-Q of the SEC).

(b) The Company and its Subsidiaries do not have any liabilities or obligations (accrued, absolute, contingent or otherwise) that would be required under Generally Accepted Accounting Principles, as in effect on the date of this Agreement, to be reflected on a consolidated balance sheet of the Company, other than liabilities or obligations (i) reflected on, reserved against, or disclosed in the notes to, the Company's consolidated balance sheet included in the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 28, 2009, (ii) that were incurred

in the ordinary course of business since March 28, 2009 or (iii) that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.3 Authorization; Enforceable Agreement.

(a) All corporate action on the part of the Company, its officers, directors, and shareholders necessary for the authorization, execution, and delivery of this Agreement, the Registration Rights Agreement and the Investor Rights Agreement, the performance of all obligations of the Company under this Agreement, the Registration Rights Agreement and the Investor Rights Agreement, and the authorization, issuance (or reservation for issuance), sale, and delivery of (i) the Preferred Shares being sold hereunder, (ii) the shares of Common Stock issuable in respect of increases of the liquidation preference of the Series A Preferred in accordance with the terms of the Series A Certificate of Designations, (iii) the shares of Series A Preferred issuable in respect of the exchange of Series B Preferred for Series A Preferred in accordance with the terms of the Series B Certificate of Designations and (iv) the Common Stock issuable upon conversion of the Series A Preferred in accordance with the terms of the Series A Certificate of Designations has been taken, and this Agreement and the Registration Rights Agreement, when executed and delivered, assuming due authorization, execution and delivery by the Investors, constitutes and will constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, subject to: (A) the filing of the Series A Certificate of Designations and the Series B Certificate of Designations with the Delaware Secretary of State pursuant to Section 6.1, and (B) obtaining the affirmative vote of a majority of the Common Stock present or represented and entitled to vote at a meeting of shareholders of the Company to approve the issuance of shares of Series A Preferred to the Investors in excess of the Conversion Cap (as defined in the Series A Certificate of Des ignations) and the exchange of Series B Preferred for Series A Preferred in accordance with the terms of the Series B Certificate of Designations (the "Shareholder Approvals").

(b) On or prior to the date of this Agreement, the Board has duly adopted resolutions (i) evidencing its determination that as of the date of this Agreement this Agreement and the transactions contemplated by this Agreement are fair to and in the best interests of the Company and its shareholders, (ii) approving this Agreement, the Registration Rights Agreement, the Investor Rights Agreement and the transactions contemplated by this Agreement, the Registration Rights Agreement and the Investor Rights Agreement, (iii) declaring this Agreement and the issuance and sale of the Preferred Shares advisable, (iv) adopting the Series A Certificate of Designations and the Series B Certificate of Designations and (v) recommending that the Company's shareholders approve the issuance of shares of Series A Preferred to the Inve stors in excess of the Conversion Cap (as defined in the Series A Certificate of Designations) and the exchange of Series B Preferred for Series A Preferred in accordance with the terms of the Series B Certificate of Designations.

4.4 Indebtedness. Neither the Company nor any of its Subsidiaries is, immediately prior to this Agreement, or will be, at the time of the Closing after giving effect to the Closing, in default in the payment of any material Indebtedness or in default under any material agreement relating to its material Indebtedness. Neither the Company nor any of its Subsidiaries has issued or incurred any debt security or other Indebtedness that by its terms is convertible into or exchangeable for, or accompanied by warrants for or options to purchase, any capital stock of the Company.

4.5 Litigation. There is no action, suit, proceeding or investigation pending or, to the Knowledge of the Company, overtly threatened against, nor any outstanding judgment, order or decree against, the Company or any of its Subsidiaries before or by any Governmental Authority or arbitral body which in the aggregate have, or if adversely determined, would reasonably be expected to have, a Material

Adverse Effect. Neither the Company nor any of its Subsidiaries is in default with respect to any judgment, order or decree of any Governmental Authority in a materially adverse manner. The Company is not a party or subject to, and none of its assets is bound by, the provisions of any material order, writ, injunction, judgment, or decree of any Governmental Authority.

4.6 Title. Each of the Company and its Subsidiaries has good and marketable title to its Property that is real property and good and valid title to all of its other Property (other than negligible assets not material to the operations of the Company or any of its Subsidiaries), free and clear of all Liens except for (i) Incidental Liens, (ii) Liens granted pursuant to the Credit Agreement and (iii) Liens that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.7 Taxes. Each of the Company and its Subsidiaries has filed all tax returns required to have been filed and paid all taxes shown on such tax returns to be due, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.8 Subsidiaries. As of the date of this Agreement, the Company has no Subsidiaries other than as listed in the SEC Reports.

4.9 Governmental Consents. No consent, approval, order, or authorization of, or registration, qualification, declaration, or filing with, any federal, state, or local governmental authority on the part of the Company is required in connection with the offer, sale, or issuance of the Preferred Shares (and the Common Stock issuable upon conversion of the Preferred Shares) or the consummation of any other transaction contemplated by this Agreement, except for the following: (i) the filing of the Series A Certificate of Designations and the Series B Certificate of Designations with the Del aware Secretary of State pursuant to Section 6.1; (ii) the compliance with other applicable state securities laws, which compliance will have occurred within the appropriate time periods; (iii) the notification of the issuance and sale of the Preferred Shares to NYSE; and (iv) the filing with the SEC of such reports under the Exchange Act as may be required in connection with this Agreement and the transactions contemplated by this Agreement. Assuming that the representations of the Investors set forth in Section 5 are true and correct, the offer, sale, and issuance of the Preferred Shares in conformity with the terms of this Agreement are exempt from the registration requirements of Section 5 of the Securities Act, and all applicable state securities laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemptions.

4.10 Permits and Licenses. The Company and each of its Subsidiaries possess all permits and licenses of Governmental Authorities that are required to conduct its business, except for such permits or licenses the absence of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.11 ERISA.

(a) Neither the Company, its Affiliates, nor any other entity which, together with the Company or its Affiliates, would be treated as a single employer under Section 4001 of ERISA or Section 414 of the Code, has at any time maintained, sponsored or contributed to, or has or had any liability with respect to, any employee benefit plan that is subject to Title IV of ERISA, including, without limitation, any "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA), as to which there remains any material unsatisfied liability on the part of the Company, any of its Affiliates or any other such entity. No Reportable Event (as defined in Section 4043(c) of ERISA but excluding those events as to which the 30-day notice period is waived by applicable regulations to ERISA), has occurred with respect to any Pla n. Each Plan complies in all material respects with its terms and all applicable Laws (including, without limitation ERISA and the Code), and the Company and each of its Affiliates have filed all reports, returns, notices, and other

documentation required by ERISA or the Code to be filed with any Governmental Authority with respect to each Plan, in each case except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. With respect to any Plan, (i) no actions, Liens, lawsuits, claims or complaints (other than routine claims for benefits) are pending or threatened, and (ii) no facts or circumstances exist that are reasonably likely to give rise to any such actions, Liens, lawsuits, claims or complaints, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No event has occurred with respect to a Plan which would reasonably be expected to result in a material liability of the Company or any of its Subsidiaries to any Governmental Authority, including, without limitation, the Pension Benefit Guaranty Corporation, other than for applicab le premiums. No event has occurred and no condition exists that might reasonably be expected to constitute grounds for a Plan to be terminated under circumstances which would cause any Lien, including, without limitation, the lien provided under Section 4068 of ERISA, to attach to any Property of the Company or any of its Subsidiaries. No event has occurred and no condition exists that might reasonably be expected to cause any Lien, including, without limitation, the lien provided under Section 303 of ERISA or Section 430 of the Code to attach to any Property of the Company or any of its Subsidiaries.

(b) None of the execution of, or the completion of the transactions contemplated by, this Agreement (whether alone or in connection with any other event(s)), could result in (i) severance pay or an increase in severance pay upon termination after Closing, (ii) any payment, compensation or benefit becoming due, or increase in the amount of any payment, compensation or benefit due, to any current or former employee of the Company or its Affiliates, (iii) acceleration of the time of payment or vesting or result in funding of compensation or benefits, (iv) any new material obligation under any Plan, (v) any limitation or restriction on the right of Company to merge, amend, or terminate any Plan, or (vi) any payments which would not be deductible under Section 280G of the Code.

4.12 Valid Issuance of Preferred and Common Stock. The Preferred Shares being purchased by the Investors hereunder, when issued, sold, and delivered in accordance with the terms of this Agreement for the consideration expressed in this Agreement, will be duly and validly issued, fully paid, and nonassessable, and will be free of any Liens or restrictions on transfer other than restrictions under this Agreement, the Investor Rights Agreement and the Certificates of Designations and under applicable state and federal securities laws. The Common Stock issuable upon conversion of the Series A Preferred purchased under this Agreement, or issued in exchange for the Series B Preferred purchased und er this Agreement, has been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Series A Certificate of Designations, will be duly and validly issued, fully paid, and nonassessable and will be free of any Liens or restrictions on transfer other than restrictions on transfer under this Agreement and the Investor Rights Agreement and under applicable state and federal securities laws. The sale of the Preferred Shares is not, and the subsequent conversion of the Preferred Shares into Common Stock will not be, subject to any preemptive rights, rights of first offer or any anti-dilution provisions contained in the Company's Certificate of Incorporation, bylaws or any other agreement.

4.13 Capitalization. The authorized capital stock of the Company consists of 800,000,000 shares of Common Stock of which 280,649,589 were issued and outstanding as of June 22, 2009, and 1,000,000 shares of preferred stock, par value $0.01, none of which are issued and outstanding (excluding the Preferred Shares to be issued to the Investors pursuant to this Agreement). All issued and outstanding shares have been duly authorized and validly issued and are fully paid and nonassessable. The Company will reserve that number of shares of Common Stock sufficient for issuance upon conversion of the Series A Preferred Stock being issued and sold pursuant to this Agreement and to be issued in exchange for the Series B Preferred issued and sold pursuant to this Agreement. Other than as provided in this Agreement, the Registration Rights Agreement and the Investor Rights Agreement, there are no other outstanding rights, options, warrants, preemptive rights, rights of first offer, or similar rights for the purchase or acquisition from

the Company of any securities of the Company, nor are there any commitments to issue or execute any such rights, options, warrants, preemptive rights or rights of first offer. Except as otherwise provided in the Series A Certificate of Designations or the Series B Certificate of Designations, there are no outstanding rights or obligations of the Company to repurchase or redeem any of its equity securities. The respective rights, preferences, privileges, and restrictions of the Preferred Shares and the Common Stock are as stated in the Certificate of Incorporation (including the Series A Certificate of Designations and the Series B Certificate of Designations). The Company does not have outstanding shareholder purchase rights or "poison pill" or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

4.14 Compliance with Other Instruments. The Company is not in violation or default of any provision of the Certificate of Incorporation or the Bylaws. The execution, delivery, and performance of and compliance with this Agreement, the Registration Rights Agreement and the Investor Rights Agreement and the issuance and sale of the Preferred Shares will not (i) result in any default or violation of the Certificate of Incorporation or the Bylaws, (ii) result in any default or violation of any agreement relating to its Indebtedness or under any mortgage, deed of trust, security agreement or lease to which it is a party or in any default or violation of any material judgment, order or decree of a ny Governmental Authority or (iii) be in conflict with or constitute, with or without the passage of time or giving of notice, a default under any such provision, require any consent or waiver under any such provision, or result in the creation of any mortgage, pledge, lien, encumbrance, or charge upon any of the properties or assets of the Company pursuant to any such provision, or the suspension, revocation, impairment or forfeiture of any permit, license, authorization, or approval applicable to the Company, its business or operations, or any of its assets or properties pursuant to any such provision, except in the case of clauses (ii) and (iii) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.15 Environmental Matters. No activity of the Company or any of its Subsidiaries requires any Environmental Permit which has not been obtained and which is not now in full force and effect, except to the extent failure to have any such Environmental Permit would not reasonably be expected to have a Material Adverse Effect. The Company and its Subsidiaries are and have been in compliance with all applicable Requirements of Environmental Law and Environmental Permits including applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Requirement of Environmental Law or Environmental Permit, except where failure to be in such compliance would not reasonably be expected to have a Material Adverse Effect. The Company and its Subsidiaries have not received individually or collectively any written notice of any violation or alleged violation of any Requirements of Environmental Law or Environmental Permit or any Environmental Claim in connection with their respective Property which would reasonably be expected to have a Material Adverse Effect.

4.16 Compliance with Laws. Neither the Company nor any of its Subsidiaries is in material violation of any applicable federal, state, local, foreign or other law, statute, regulation, rule, ordinance, code, convention, directive, order, judgment or other legal requirement (collectively, "Laws") of any Governmental Authority, except where such violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries is being investigated with respect to, or has been overtly threatened to be charged with or given notice of any violation of, any applicable Law, except for such of the foregoing as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.17 No Material Adverse Effect. Since March 28, 2009 no event or circumstance has occurred that, individually or in the aggregate, has had (and continues to have) or would reasonably be expected to have a Material Adverse Effect.

4.18 Registration Rights. Except as provided in the Registration Rights Agreement, the Company has not granted or agreed to grant, and is not under any obligation to provide, any rights to register under the Securities Act any of its presently outstanding securities or any of its securities that may be issued subsequently.

4.19 Reports.

(a) Since December 29, 2007, the Company has timely filed all documents required to be filed with the SEC pursuant to Sections 13(a) or 15(d) of the Exchange Act.

(b) The SEC Reports, when they became effective or were filed with the SEC, as the case may be, complied as to form in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the SEC thereunder, in each case as in effect at such time, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make such statements, in the light of the circumstances in which they were made, not misleading.

(c) The Company (i) has implemented and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) that are reasonably designed to ensure that material information relating to the Company, including its consolidated Subsidiaries, is made known to the individuals responsible for the preparation of the Company's filings with the SEC and (ii) has disclosed, based on its most recent evaluation prior to the date of this Agreement, to the Company's outside auditors and the Board's Audit Committee (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting. As of the date of this Agreement, to the Knowledge of the Company, there is no reason that its outside auditors and its chief executive officer and chief financial officer will not be able to give the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, without qualification, when next due.

4.20 Investment Company Act. Neither the Company nor any of its Subsidiaries is an investment company within the meaning of the Investment Company Act of 1940, or, directly or indirectly, controlled by or acting on behalf of any Person which is an investment company, within the meaning of said Act.

4.21 Brokers' Fees and Expenses. No broker, investment banker, or financial advisor or other Person, other than Peter J. Solomon Company and Morgan Stanley, the fees and expenses of which will be paid by the Company, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with transactions contemplated by this Agreement.

5. Representations and Warranties of the Investors. Each Investor represents and warrants to the Company as of the date of this Agreement that:

5.1 Private Placement.

(a) The Investor is (i) an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act; (ii) aware that the sale of the Preferred Shares and the Common Stock issuable upon conversion of the Series A Preferred Stock being

issued and sold pursuant to this Agreement and to be issued in exchange for the Series B Preferred issued and sold pursuant to this Agreement (collectively, the "Securities") to it is being made in reliance on a private placement exemption from registration under the Securities Act and (iii) acquiring the Securities for its own account.

(b) The Investor understands and agrees that the Securities are being offered in a transaction not involving any public offering within the meaning of the Securities Act, that such Securities have not been and, except as contemplated by the Registration Rights Agreement, will not be registered under the Securities Act and that such Securities may be offered, resold, pledged or otherwise transferred only (i) in a transaction not involving a public offering, (ii) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available), (iii) pursuant to an effective registration statement under the Securities Act or (iv) to the Company or one of its Subsidiaries, in each of cases (i) through (iv) in accordance with any applicable state and federal securities la ws, and that it will notify any subsequent purchaser of Securities from it of the resale restrictions referred to above, as applicable.

(c) The Investor understands that, unless sold pursuant to a registration statement that has been declared effective under the Securities Act or in compliance with Rule 144 thereunder, the Company may require that the Securities will bear a legend or other restriction substantially to the following effect (it being agreed that if the Securities are not certificated, other appropriate restrictions shall be implemented to give effect to the following):

"THIS SECURITY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN A TRANSACTION NOT INVOLVING A PUBLIC OFFERING, (II) PURSUANT TO ANY OTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, INCLUDING RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (III) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (IV) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, IN EACH OF CASES (I) THROUGH (IV) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STAT ES, AND (B) THE HOLDER WILL NOTIFY ANY SUBSEQUENT PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. THIS SECURITY MAY ONLY BE TRANSFERRED IN ACCORDANCE WITH THE TERMS OF THE INVESTOR RIGHTS AGREEMENT, DATED AS OF JUNE 23, 2009, AMONG OFFICE DEPOT, INC., BC PARTNERS, INC. AND THE INVESTORS NAMED THEREIN."

(d) The Investor: (i) is able to fend for itself in the transactions contemplated by this Agreement; (ii) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Securities; and (iii) has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment.

(e) The Investor acknowledges that (i) it has conducted its own investigation of the Company and the terms of the Securities, (ii) it has had access to the Company's public filings with the SEC and to such financial and other information as it deems necessary to make its

decision to purchase the Securities and (iii) has been offered the opportunity to conduct such review and analysis of the business, assets, condition, operations and prospects of the Company and its Subsidiaries and to ask questions of the Company and received answers thereto, each as it deemed necessary in connection with the decision to purchase the Securities. The Investor further acknowledges that it has had such opportunity to consult with its own counsel, financial and tax advisors and other professional advisers as it believes is sufficient for purposes of the purchase of the Securities. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 4 of this Agreement or the right of the Investor to rely on such representations and warranties.

(f) The Investor understands that the Company will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements.

(g) Except for the representations and warranties contained in Section 4 of this Agreement (including any references in such Section to the SEC Reports), the Investor acknowledges that neither the Company nor any Person on behalf of the Company makes, and the Investor has not relied upon, any other express or implied representation or warranty with respect to the Company or any of its Subsidiaries or with respect to any other information provided to the Investors in connection with the transactions contemplated by this Agreement.

5.2 Organization. Each Investor has been duly organized and is validly existing in the jurisdiction and as the form of business entity set forth on Schedule 1.

5.3 Governmental Consents. No consent, approval, order, or authorization of, or registration, qualification, declaration, or filing with, any federal, state, or local governmental authority on the part of the Investor is required in connection with the purchase of the Preferred Shares (and the Common Stock issuable upon conversion of the Preferred Shares) or the consummation of any other transaction contemplated by this Agreement, except for the following: (i) the compliance with applicable state securities laws, which compliance will have occurred within the appropriate time periods; and (ii) the filing with the SEC o f such reports under the Exchange Act as may be required in connection with this Agreement and the transactions contemplated by this Agreement.

5.4 Authorization; Enforceability. The Investor has full right, power, authority and capacity to enter into this Agreement, the Registration Rights Agreement and the Investor Rights Agreement and to consummate the transactions contemplated by this Agreement, the Registration Rights Agreement and the Investor Rights Agreement. The execution, delivery and performance of this Agreement, the Registration Rights Agreement and the Investor Rights Agreement have been duly authorized by all necessary action on the part of the Investor, and this Agreement, the Registration Rights Agreement and the Investor Rights Agre ement have been duly executed and delivered by the Investor and, assuming due authorization, execution and delivery of this Agreement, the Registration Rights Agreement and the Investor Rights Agreement by the Company, will constitute valid and binding obligation of the Investor, enforceable against it in accordance with its terms.

5.5 No Default or Violation. The execution, delivery, and performance of and compliance with this Agreement, the Registration Rights Agreement and the Investor Rights Agreement and the issuance and sale of the Preferred Shares will not (i) result in any default or violation of the certificate of incorporation, bylaws, limited partnership agreement, limited liability company operating agreement or other applicable organizational documents of the Investor, (ii) result in any default or violation of any agreement relating to its material Indebtedness or under any mortgage, deed of trust, security agreement or lease to which it is a party or in any default or violation of any material judgment, order or decree of any Governmental Authority or (iii) be in conflict with or constitute, with or without the passage of time or giving of notice, a default under any such provision, require any consent or waiver under any such provision, or

result in the creation of any mortgage, pledge, lien, encumbrance, or charge upon any of the properties or assets of the Investor pursuant to any such provision, or the suspension, revocation, impairment or forfeiture of any material permit, license, authorization, or approval applicable to the Investor, its business or operations, or any of its assets or properties pursuant to any such provision, except in the case of clauses (ii) and (iii) as would not, individually or in the aggregate, reasonably be expected to prevent or materially delay or materially impair the ability of the Investor to consummate the transactions contemplated by this Agreement.

5.6 Financial Capability. The Investor currently has the funds necessary to purchase the Preferred Shares at Closing on the terms and conditions contemplated by this Agreement.

6. Conditions to the Investors' Obligations at Closing. The obligation of the Investors to purchase the Preferred Shares at the Closing is subject to the fulfillment or waiver on or before the Closing of each of the following conditions:

6.1 The Company shall adopt and file with the Secretary of State of the State of Delaware (i) a Certificate of Designations of the Series A Preferred Stock in the form attached as Exhibit C (the "Series A Certificate of Designations") and (ii) a Certificate of Designations of the Series B Preferred in the form attached as Exhibit D (the "Series B Certificate of Designations" and, together with the Series A Certificate of Designations, the "Certificates of Designations").

6.2 The Company shall have executed and delivered the Registration Rights Agreement and the Investor Rights Agreement.

6.3 The Investors shall have received from Wachtell, Lipton, Rosen & Katz, special counsel for the Company, an opinion, dated as of the Closing Date, in the form attached as Exhibit E.

6.4 Simultaneous with the Closing, the Company shall have paid to the Investor Representative a funding fee equal to $3,500,000, representing 1% of the Purchase Price.

6.5 Simultaneous with the Closing, the Company shall have reimbursed the Investors for up to $2,000,000 of their reasonable documented out-of-pocket fees and expenses incurred on or before the Closing Date in connection with the execution of this Agreement and the Registration Rights Agreement and the purchase by the Investors of the Preferred Shares pursuant to this Agreement.

6.6 The Board shall have taken all actions necessary and appropriate to permit Mr. Raymond Svider, Mr. James Rubin and Mr. Justin Bateman to be elected to the Board effective immediately upon the delivery of a written consent to such effect to the Investors following the Closing. The Investors shall have received evidence satisfactory to them of the taking of such actions.

6.7 The Company shall have executed and delivered to the Investors a management rights letter to be agreed upon among the parties.

7. Conditions to the Company's Obligations at Closing. The obligations of the Company to issue, sell and deliver to the Investors the Preferred Shares are subject to the fulfillment or waiver on or before the Closing of each of the following conditions:

7.1 The Investors shall have paid to the Company the Purchase Price.

7.2 The Investors shall have executed and delivered the Registration Rights Agreement and the Investor Rights Agreement.

8. Covenants. The Company and the Investors hereby covenant and agree, for the benefit of the other parties to this Agreement and their respective assigns, as follows:

8.1 Shareholder Approvals; Proxy Statement. The Company agrees to use its reasonable best efforts to call and hold as promptly as reasonably practicable following the Closing Date a meeting of the shareholders of the Company to obtain the Shareholder Approvals (the "Shareholder Meeting"), and as promptly as reasonably practicable fol lowing the Closing Date (and in any event within 60 days of the Closing Date), the Company will prepare and file with the SEC a proxy statement to be sent to the Company's shareholders in connection with the Shareholder Meeting (the "Proxy Statement"). Subject to the directors' fiduciary duties, the Proxy Statement shall include the Board's recommendation that the shareholders vote in favor of the Shareholder Approvals. If the Shareholder Approvals are not obtained at the Shareholder Meeting, then the Company will use its reasonable best efforts to obtain the Shareholder Approvals at the next occurring annual meeting of the shareholders of the Company. The Company shall use commercially reasonable efforts to solicit from the shareholders proxies in favor of the Shareholder Approvals and to obtain the Shareholder Approvals. The Investor Representative agrees to furnish to the Company all information concerning the Investors and their Affiliates as the Company may reasonably request in connection with any Shareholder Meeting. The Company shall respond reasonably promptly to any comments received from the SEC with respect to the Proxy Statement, and the Company shall cause the Proxy Statement to be mailed to the Company's shareholders at the earliest reasonably practicable date. The Company shall provide to the Investor Representative, as promptly as reasonably practicable after receipt thereof, any written comments from the SEC or any written request from the SEC or its staff for amendments or supplements to the Proxy Statement and shall provide the Investor Representative with copies of all correspondence between the Company, on the one hand, and the SEC and its staff, on the other hand, relating to the Proxy Statement. Notwithstanding anything to the contrary stated above, prior to filing or mailing the Proxy Statement (or, in each case, any amendme nt or supplement thereto) or responding to any comments of the SEC or its staff with respect thereto, the Company shall provide the Investors with a reasonable opportunity to review and comment on such document or response. Any communications by the Company to the Investor Representative pursuant to this Section 8.1 may made by email to an account designated by the Investor Representative upon request by the Company.

8.2 NYSE Listing of Shares. Promptly following the Closing Date, the Company shall apply to cause the shares of Common Stock to be issued upon conversion of the Series A Preferred to be approved for listing on the NYSE, subject to official notice of issuance.

8.3 Use of Proceeds. The Company shall apply the net proceeds from the issuance and sale of the Preferred Shares for general corporate purposes, including funding working capital, the repayment of indebtedness and the payment of fees and expenses in connection with the transactions contemplated by this Agreement and the Registration Rights Agreement.

8.4 Reservation of Common Stock; Issuance of Shares of Common Stock. For as long as any Preferred Shares remain outstanding, the Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock or shares of Common Stock held in treasury by the Company, for the purpose of effecting the conversion of the Preferred Shares, the full number of shares of Common Stock then issuable upon the conversion of all Preferred Shares (after giving effect to all anti-dilution adjustments) then outstanding. All shares of Common Stock delivered upon conversion or repurchase of the Preferred Shares shall be newly issued shares or shares held in treasury by the Company, shall have been duly authorized and validly issued and shall be fully paid and nonassessable, and shall be free from preemptive rights and free of any lien or adverse claim.

8.5 Transfer Taxes. The Company shall pay any and all documentary, stamp or similar issue or transfer tax due on (x) the issue of the Preferred Shares at Closing and (y) the issue of shares of Common Stock upon conversion of the Preferred Shares. However, in the case of conversion of Preferred

Shares, the Company shall not be required to pay any tax or duty that may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the holder of the Preferred Shares to be converted, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

8.6 Public Disclosure. On the date of this Agreement, or within 24 hours thereafter the Company shall issue a press release in a form mutually agreed to by the Company and the Investor Representative. No other written release, announcement or filing concerning the purchase of the Preferred Shares or the transactions contemplated by this Agreement, the Investor Rights Agreement and the Registration Rights Agreement shall be issued, filed or furnished, as the case may be, by any p arty without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), except as such release, announcement or filing as may be required by Law or the rules or regulations of any securities exchange, in which case the party required to make the release or announcement shall, to the extent reasonably practicable, allow the other party reasonable time to comment on such release or announcement in advance of such issuance. The provisions of this Section shall not restrict the ability of a party to summarize or describe the transactions contemplated by this Agreement in any prospectus or similar offering document so long as the other party is provided a reasonable opportunity to review such disclosure in advance.

8.7 Tax Related Covenants. Absent a change in Law or Internal Revenue Service practice or a contrary determination (as defined in Section 1313(a) of the Code) the Investors and the Company agree not to treat the Preferred Shares as "preferred stock" within the meaning of Section 305 of the Code and Treasury Regulation Section 1.305 -5 for United States federal income tax reporting and withholding tax purposes and shall not take any tax position inconsistent with such t reatment.

8.8 Further Assurances. Each of the Investors and the Company will cooperate and consult with each other and use commercially reasonable efforts to prepare and file all necessary documentation, to effect all necessary applications, notices, petitions, filings and other documents, and to obtain all necessary permits, consents, orders, approvals and authorizations of, or any exemption by, all third Persons required to consummate the transactions contemplated by this Agreement. The Company shall pay the Investor Representative a funding fee equal to $3,500,000 in accordance with Section 6.4, without duplication.

9. Miscellaneous.

9.1 Governing Law. This Agreement shall be governed in all respects by the laws of the State of New York without regard to any choice of laws or conflict of laws provisions that would require the application of the laws of any other jurisdiction.

9.2 Jurisdiction; Enforcement. The parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each of the parties shall be entitled (in addition to any other remedy that may be available to it, including monetary damages) to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically th e terms and provisions of this Agreement exclusively in any state or federal courts located in the City of New York and any appellate court therefrom within the State of New York. In addition, each of the parties irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party or its successors or assigns, shall be brought and determined exclusively in any state or federal courts located in the City of New York and any appellate court therefrom within the State of New York. The parties further agree that no party to this Agreement shall be required to obtain, furnish or

post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section and each party waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. Each of the parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jur isdiction of the above named courts for any reason other than the failure to serve in accordance with this Section, (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each party hereby consents to service being made through the notice procedures set forth in Section 9.8 and agrees that service of any process, summons, notice or document by registered mail (return receipt requested and first-class postage prepaid) to the respective addresses set forth in Se ction 9.8 shall be effective service of process for any suit or proceeding in connection with this Agreement or the transactions contemplated by this Agreement. EACH OF THE PARTIES KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WITH AND UPON THE ADVICE OF COMPETENT COUNSEL IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9.3 Survival. The representations and warranties in this Agreement shall expire at the Closing and have no further force and effect, other than the representations and warranties set forth in Sections 4.3, 4.12, 5.1 and 5.4 which shall survive until the third anniversary of the Closing Date.

9.4 Successors and Assigns. Except as otherwise provided in this Agreement, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties; provided, however, the rights of the Investors under this Agreement shall not be assignable to any Person without the consent of the Company.

9.5 No Third-Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the parties any rights, remedies, obligations or liabilities under or by reason of this Agreement, and no Person that is not a party to this Agreement (including any partner, member, shareholder, director, officer, employee or other beneficial owner of any party, in its own capac ity as such or in bringing a derivative action on behalf of a party) shall have any standing as third-party beneficiary with respect to this Agreement or the transactions contemplated by this Agreement.

9.6 No Personal Liability of Directors, Officers, Owners, Etc. No director, officer, employee, incorporator, shareholder, managing member, member, general partner, limited partner, principal or other agent of any of the Investors or the Company shall have any liability for any obligations of the Investors or the Company, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the respective obligations of the Investors or the Company, as applicabl e, under this Agreement. Each party hereby waives and releases all such liability. This waiver and release is a material inducement to each party's entry into this Agreement.

9.7 Entire Agreement. This Agreement and the other documents delivered pursuant to this Agreement, including the Registration Rights Agreement and the Investor Rights Agreement, constitute

the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof.

9.8 Notices. Except as otherwise provided in this Agreement, all notices, requests, claims, demands, waivers and other communications required or permitted under this Agreement shall be in writing and shall be mailed by reliable overnight delivery service or delivered by hand, facsimile or messenger as follows:

if to the Company:	Office Depot, Inc. 6600 North Military Trail Boca Raton FL 33496 Attention: Steve Odland Facsimile: (561) 438-4400
with a copy to:	Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, New York 10019 A Attention: David A. Katz Facsimile: (212) 403-2000
if to the Investors or the Investor Representative:	BC Partners, Inc. 667 Madison Avenue New York, New York 10065 Attention: James Rubin and Justin Bateman Facsimile: (212) 891-2899
with a copy to:	Latham & Watkins LLP 885 Third Avenue New York, NY 10022 Attention: Raymond Lin and John Giouroukakis Facsimile: (212) 751-4864

or in any such case to such other address, facsimile number or telephone as either party may, from time to time, designate in a written notice given in a like manner. Notices shall be deemed given when actually delivered by overnight delivery service, hand or messenger, or when received by facsimile if promptly confirmed.

9.9 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement shall impair any such right, power, or remedy of such party, nor shall it be construed to be a waiver of or acquiescence to any breach or default, or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default. All remedies, either under this Agreement or by law or otherwise afforded to any holder, shall be cumulative and not alternative.

9.10 Expenses. The Company and the Investors shall bear their own expenses and legal fees incurred on their behalf with respect to this Agreement and the transactions contemplated hereby, except as otherwise provided in Section 6.5.

9.11 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only if such amendment or waiver is in writing and signed, in the case of

an amendment, by the Company and the Investor Representative or, in the case of a waiver, by the party against whom the waiver is to be effective. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities are convertible), each future holder of all such securities, and the Company.

9.12 Counterparts. This Agreement may be executed in any number of counterparts and signatures may be delivered by facsimile or in electronic format, each of which may be executed by less than all the parties, each of which shall be enforceable against the parties actually executing such counterparts and all of which together shall constitute one instrument.

9.13 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement and the balance of this Agreement shall be enforceable in accordance with its terms.

9.14 Titles and Subtitles; Interpretation. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article, Section, Schedule or Exhibit of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including 48; are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to in this Agreement means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.< /FONT>

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

OFFICE DEPOT, INC.

By: /s/ Michael Newman
Name: Michael Newman
Title: Executive Vice President &
Chief Financial Officer

For and on behalf of the Limited Partnerships BC European Capital VIII – 1 to 12 and 14 to 34

/s/ Matthew Elston
Name: Matthew Elston
Director, CIE Management II Limited acting as General Partner of the Limited Partnerships BC European Capital VIII - 1 to 12 and 14 to 34

/s/ Mark Rodliffe
Name: Mark Rodliffe
Director, CIE Management II Limited acting as General Partner of the Limited Partnerships BC European Capital VIII - 1 to 12 and 14 to 34

For and on behalf of BC European Capital 35 SC to 39 SC:

/s/Matthew Elston
Name: Matthew Elston
Director, LMBO Europe SAS
As Gérant to BC European Capital 35 SC to 39 SC

/s/ Mike Twinning
Name: Mike Twinning
Director, LMBO Europe SAS
As Gérant to BC European Capital 35 SC to 39 SC

Schedule 1

Investors

Investor	Jurisdiction of Incorporation	Form of Entity	Series A Preferred	Series B Preferred
BC European Capital VIII-1	UK	Limited Partnership	20,046.00	5,506.00
BC European Capital VIII-2	UK	Limited Partnership	20,186.00	5,543.00
BC European Capital VIII-3	UK	Limited Partnership	20,723.00	5,690.00
BC European Capital VIII-4	UK	Limited Partnership	26,615.00	7,309.00
BC European Capital VIII-5	UK	Limited Partnership	26,615.00	7,309.00
BC European Capital VIII-6	UK	Limited Partnership	26,382.00	7,244.00
BC European Capital VIII-7	UK	Limited Partnership	26,382.00	7,244.00
BC European Capital VIII-8	UK	Limited Partnership	26,172.00	7,187.00
BC European Capital VIII-9	UK	Limited Partnership	26,382.00	7,244.00
BC European Capital VIII-10	UK	Limited Partnership	26,055.00	7,155.00
BC European Capital VIII-11	UK	Limited Partnership	15,040.00	4,130.00
BC European Capital VIII-12	UK	Limited Partnership	4,202.00	1,154.00
BC European Capital VIII-14	UK	Limited Partnership	4,674.00	1,283.00
BC European Capital VIII-15	UK	Limited Partnership	374.00	103.00
BC European Capital VIII-16	UK	Limited Partnership	2,335.00	641.00
BC European Capital VIII-17	UK	Limited Partnership	140.00	38.00
BC European Capital VIII-18	UK	Limited Partnership	9.00	3.00
BC European Capital VIII-19	UK	Limited Partnership	145.00	40.00
BC European Capital VIII-20	UK	Limited Partnership	135.00	37.00
BC European Capital VIII-21	UK	Limited Partnership	61.00	17.00
BC European Capital VIII-22	UK	Limited Partnership	70.00	19.00
BC European Capital VIII-23	UK	Limited Partnership	47.00	13.00

BC European Capital VIII-24	UK	Limited Partnership	700.00	192.00
BC European Capital VIII-25	UK	Limited Partnership	47.00	13.00
BC European Capital VIII-26	UK	Limited Partnership	747.00	205.00
BC European Capital VIII-27	UK	Limited Partnership	42.00	12.00
BC European Capital VIII-28	UK	Limited Partnership	23.00	6.00
BC European Capital VIII-29	UK	Limited Partnership	23.00	6.00
BC European Capital VIII-30	UK	Limited Partnership	23.00	6.00
BC European Capital VIII-31	UK	Limited Partnership	9.00	3.00
BC European Capital VIII-32	UK	Limited Partnership	14.00	4.00
BC European Capital VIII-33	UK	Limited Partnership	5.00	1.00
BC European Capital VIII-34	UK	Limited Partnership	5.00	1.00
BC European Capital VIII-35 SC	France	Sociétés Civiles	140.00	38.00
BC European Capital VIII-36 SC	France	Sociétés Civiles	9.00	3.00
BC European Capital VIII-37 SC	France	Sociétés Civiles	9.00	3.00
BC European Capital VIII-38 SC	France	Sociétés Civiles	5.00	1.00
BC European Capital VIII-39 SC	France	Sociétés Civiles	5.00	1.00
TOTAL	--	--	274,596.00	75,404.00

CONTACTS:

Brian Turcotte
Investor Relations
561-438-3657
brian.turcotte@officedepot.com

Brian Levine
Public Relations
561-438-2895
brian.levine@officedepot.com

OFFICE DEPOT ANNOUNCES $350 MILLION PREFERRED STOCK INVESTMENT BY BC PARTNERS

Transaction Has Been Completed and Funds Have Been Received

Boca Raton, Fla., June 23, 2009 -- Office Depot, Inc. (NYSE: ODP), a leading global provider of office products and services, today announced that funds advised by BC Partners, a leading international private equity firm, had invested $350 million in the Company by purchasing approximately $275 million of the Company's newly created 10% Series A Redeemable Convertible Perpetual Preferred Stock and approximately $75 million of the Company's newly created 10% Series B Redeemable Conditional Convertible Perpetual Preferred Stock. The transaction closed this morning with the completion of the sale of the preferred shares to funds advised by BC Partners and the corresponding receipt of proceeds by Office Depot. Office Depot will use the proceeds for general corporate purposes.

The Series A Preferred is immediately convertible into shares of the Company's common stock at a conversion price of $5.00 per share (subject to a conversion cap). This conversion price represents a 32% premium to the closing price of $3.79 per share on Monday, June 22, 2009, and a 55% premium to the 60-day average closing price of $3.23 per share. The Series B Preferred will become convertible into shares of the Company's common stock on the same terms as the Series A Preferred if the Company's shareholders approve the issuance of shares in connection with such conversion as required by the New York Stock Exchange. The investment equates to an initial ownership interest of approximately 20%, assuming the receipt of shareholder approval and the full conversion of each series of preferred stock into the Company's common stock.

The Company's board of directors approved the transaction and will recommend that the Company's shareholders vote to approve the issuance of shares of common stock pursuant to the Series B Preferred and the issuance of the shares of common stock pursuant to the Series A Preferred in excess of the conversion cap.

"We are very pleased that BC Partners has made this investment in Office Depot, and that three representatives from BC Partners have joined our Board. They have a very successful investment track record and consistently demonstrate a commitment to working with companies to implement long-term strategic plans," said Steve Odland, Office Depot's Chairman and Chief Executive Officer. "This investment, combined with the continued success of our liquidity and cash flow initiatives, significantly strengthens our balance sheet. Going forward, as business conditions improve we believe this financial flexibility is a strategic advantage as we look to invest in high-return projects to drive profitability."

"BC Partners invests in high quality businesses, such as Office Depot, that enjoy strong competitive positions, demonstrate high profit and cash flow improvement potential, and have a strong management team in place," said Raymond Svider, managing partner of BC Partners. "We are impressed with Steve and his leadership team and we look forward to helping them continue to navigate this challenging

economic environment and position Office Depot for sustainable long-term profitable growth. We think this is the right time to invest in a fundamentally strong global franchise that is well positioned to succeed when the economic climate improves."

The initial dividend rate is 10% on both the Series A and Series B Preferred, and dividends are paid quarterly in cash or are added to the liquidation preference at the Company's option and subject to certain restrictions. After three years, the dividend rate on both the Series A and Series B Preferred will decrease to: (i) 7.87% if the Company's common stock price is greater than or equal to $6.62 per share and (ii) 5.75% if the Company's common stock price is greater than or equal to $8.50 per share, in each case for 20 consecutive trading days. If shareholder approval is not obtained within (i) 180 days, the dividend rate on the Series B Preferred will increase to 15%, (ii) 270 days, the dividend rate on the Series B Preferred will increase to 17.125% and (iii) 360 days, the dividend rate on the Series B Preferred will increase to 19%.

After three years, the Company will have the option to redeem both the Series A and Series B Preferred, in whole or in part, at a 7% premium to the liquidation preference, which premium will decline by 1% each year until there is no premium in year 10 and thereafter. In addition, after two years the Company will have the option to redeem both the Series A and Series B Preferred, in whole or in part, at no premium if the Company's common stock price is greater than or equal to $9.75 per share for 20 consecutive trading days.

In connection with the preferred stock investment, BC Partners' Raymond Svider, managing partner, James Rubin, senior partner, and Justin Bateman, partner, have joined the Office Depot board of directors, which was expanded to 14 members. Biographies for the new Office Depot board members can be found below.

Peter J. Solomon Company, L.P. and Morgan Stanley & Co., Inc. served as financial advisors, and Wachtell, Lipton, Rosen & Katz served as legal advisor to Office Depot in this transaction. Goldman, Sachs & Co. served as financial advisor and Latham & Watkins LLP served as legal advisor to BC Partners in this transaction.

About Office Depot
Every day, Office Depot is Taking Care of Business for millions of customers around the globe. For the local corner store as well as Fortune 500 companies, Office Depot provides products and services to its customers through 1,604 worldwide retail stores, a dedicated sales force, top-rated catalogs and a $4.6 billion e-commerce operation. Office Depot has annual sales of approximately $14.5 billion, and employs about 42,000 associates around the world. The Company provides more office products and services to more customers in more countries than any other company, and currently sells to customers directly or through affiliates in 48 countries.

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

About BC Partners
BC Partners is a leading international private equity firm with advised funds of approximately €11billion. Established in 1986, BC Partners operates as an integrated team through offices in Europe and North America to acquire and develop businesses and create value in partnership with management. Since inception, BC Partners has invested in 68 companies with a total enterprise value of approximately €64 billion.

Mr. Raymond Svider. Mr. Svider has been a managing partner of BC Partners, since 2003. He joined BC Partners in 1992 in Paris before moving to London in 2000 to lead its investments in the technology and telecoms industries. Over the years, Mr. Svider has participated in or led a variety of investments including Tubesca, Nutreco, UTL, Neopost, Polyconcept, Neuf Telecom and Unity Media/ Tele Columbus. He is currently on the board of Neopost and Unity Media, as well as the chairman of the board of Intelsat Ltd.

Prior to joining BC Partners, Mr. Svider worked in investment banking at Wasserstein Perella in New York and Paris, and at the Boston Consulting Group in Chicago. Mr. Svider holds a Master of Business Administration from the University of Chicago and a Master of Science in Engineering from both Ecole Polytechnique and Ecole Nationale Superieure des Telecommunications in France.

Mr. James Rubin. Mr. Rubin is a senior partner of BC Partners, which he joined in May 2008 from One Equity Partners, where he was a founding partner since its inception in 2001. Mr. Rubin originated and executed One Equity's purchases of Quintiles Transnational, NCO Group, and Oncology Therapeutics Network, among others. He was also responsible for building One Equity's practice in India. Prior to One Equity, Mr. Rubin was a vice president with Allen & Company Incorporated, a New York merchant bank specializing in media and entertainment transactions and advisory work. From 1996 to 1998, he held a number of senior policy positions with the Federal Communications Commission. He received his A.B. from Harvard College and a J.D. from Yale Law School. Mr. Rubin is currently a board member of Intelsat Ltd, the leading international provider of fixed satellite ser vices, and of New York City non-profit Common Ground Communities. He also serves on the board of The Dalton School.

Mr. Justin Bateman. Mr. Bateman is a partner of BC Partners based in its New York office, the investment arm of which he co-established in early 2008. He initially joined BC Partners' London office in 2000 from PricewaterhouseCoopers, where he spent three years in Transaction Services working on due diligence projects for both financial investors and corporate clients. In 2002/2003 he left BC Partners to complete his MBA at INSEAD before rejoining its London office. Over the years he has participated in or been a board member of the funds' investments in the General Healthcare Group, Baxi and Regency Entertainment. He is currently a director of Intelsat, Ltd, the leading international provider of fixed satellite services. He has a degree in economics from the University of Cambridge in the UK.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS: The Private Securities Litigation Reform Act of 1995, as amended (the "Act") provides protection from liability in private lawsuits for "forward-looking" statements made by public companies under certain circumstances, provided that the public company discloses with specificity the risk factors that may impact its future results. We want to take advantage of the "safe harbor" provisions of the Act. Certain statements made in this press release are 'forward-looking' statements under the Act. Except for historical financial and business performance information, statements made in this press release should be considered 'forward-looking' as referred to in the Act. Much of the information that looks towards future performance of our company is based on various factors and important assumptions about future events that may or may not actually come true. As a result, our operations and financial results in the future could differ materially and substantially from those we have discussed in the forward-looking statements made in this press release. Certain risks and uncertainties are detailed from time to time in our filings with the United States Securities and Exchange Commission ("SEC"). You are strongly urged to review all such filings for a more detailed discussion of such risks and uncertainties. The Company's SEC filings are readily obtainable at no charge at www.sec.gov and at www.freeEDGAR.com, as well as on a number of other commercial web sites.

Additional Information: In connection with the transaction described above, Office Depot will be filing documents with the SEC, including the filing of a preliminary and definitive proxy statement. Investors and security holders are urged to read the preliminary and definitive proxy when they become available because they will contain important information about the transaction. Investors and security holders may obtain free copies of these documents (when they are available) and other documents filed with the SEC at the SEC's web site at www.sec.gov and by contacting Office Depot's Investor Relations at 561-438-3657. Investors and security holders may obtain free copies of the documents filed with the SEC on Office Depot's website at www.officedepot.com or the SEC's website at www.sec.g ov.

Office Depot and its directors and executive officers may be deemed participants in the solicitation of proxies from the stockholders of Office Depot in connection with the proposed transaction. Information regarding the special interests of these directors and executive officers in the proposed transaction will be included in the proxy statement/prospectus described above. Additional information regarding the directors and executive officers of Office Depot is also included in Office Depot's proxy statement for its

2009 Annual Meeting of Stockholders, which was filed with the SEC on March 11, 2009. These documents are available free of charge at the SEC's web site at www.sec.gov and from Office Depot's Investor Relations at as described above.