

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): June 30, 2020

THE ODP CORPORATION

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

1-10948
(Commission
File Number)

85-1457062
(IRS Employer
Identification No.)

**6600 North Military Trail
Boca Raton, FL 33496**
(Address of Principal Executive Offices, including Zip Code)

(561) 438-4800
(Registrant's Telephone Number, including Area Code)

Office Depot, Inc.
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on which Registered
Common Stock, par value \$0.01 per share	ODP	The NASDAQ Stock Market (NASDAQ Global Select Market)
Preferred Share Purchase Rights	N/A	The NASDAQ Stock Market (NASDAQ Global Select Market)

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Explanatory Note

On March 31, 2020, Office Depot, Inc., a Delaware corporation (“ODI”), announced plans to implement a holding company reorganization. Following the implementation of the holding company reorganization, ODI became a wholly-owned subsidiary of a new holding company, The ODP Corporation, a Delaware corporation (“ODP”), which replaced ODI as the public company trading on the Nasdaq Global Select Market (the “Nasdaq”) under ODI’s ticker symbol “ODP”. ODP is providing the disclosure contained in this Current Report on Form 8-K in connection with the June 30, 2020 closing of the holding company reorganization for the purpose of establishing ODP as the successor issuer pursuant to Rule 12g-3(a) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and to disclose certain other matters. Pursuant to Rule 12g-3(a) under the Exchange Act, shares of ODP’s Common Stock, par value \$0.01 per share (“ODP Common Stock”), and the ODP Rights (as defined in Item 1.01 to this Current Report on Form 8-K) attached to the shares of ODP Common Stock are deemed registered under Section 12(b) of the Exchange Act as the common stock and the preferred share purchase rights of the successor issuer, respectively.

Item 1.01. Entry into a Material Definitive Agreement.

Merger Agreement and Consummation of Holding Company Reorganization

On June 30, 2020, ODI filed a Certificate of Amendment to ODI’s Restated Certificate of Incorporation (the “Certificate of Amendment”) with the Secretary of State of the State of Delaware to effect the previously announced reverse stock split of the outstanding shares of Common Stock, par value \$0.01 per share, of ODI (“ODI Common Stock”) at a reverse stock split ratio of 1-for-10 and a corresponding reduction in the number of authorized shares of ODI Common Stock from 800,000,000 to 80,000,000 (together, the “Reverse Stock Split”). The Certificate of Amendment was effective at 4:01 p.m., Eastern Time, on June 30, 2020.

On June 30, 2020, following the Reverse Stock Split, ODI implemented a holding company reorganization pursuant to the Agreement and Plan of Merger (the “Merger Agreement”), dated as of June 30, 2020, by and among ODI, ODP, ODP Investment, LLC, a Delaware limited liability company and a wholly-owned subsidiary of ODP (“ODPI”), and Office Depot, LLC, a Delaware limited liability company and a wholly-owned subsidiary of ODPI (“OD LLC”), which resulted in ODP indirectly owning all of the outstanding capital stock of ODI (the “Reorganization”). Pursuant to the Reorganization, ODI merged with and into OD LLC (the “Merger”), with OD LLC surviving such merger as a direct wholly-owned subsidiary of ODPI and an indirect wholly-owned subsidiary of ODP. Each share of ODI Common Stock issued and outstanding (on a Reverse Stock Split-adjusted basis) immediately prior to the effective time of the Merger automatically converted into an equivalent corresponding share of ODP Common Stock, having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the corresponding share of ODI Common Stock being converted. Accordingly, ODI’s shareholders immediately prior to the consummation of the Merger became shareholders of ODP upon consummation of the Merger. The effective time of the Merger was 8:00 p.m., Eastern Time, on June 30, 2020. The Reorganization is intended to be a tax-free transaction for U.S. federal income tax purposes for ODI shareholders.

The Reorganization was conducted pursuant to Section 251(g) of the General Corporation Law of the State of Delaware (the “DGCL”), which provides for the formation of a holding company without a vote of the shareholders of the constituent corporation. The conversion of stock occurred automatically without an exchange of stock certificates. Upon completion of the Merger, unless exchanged, stock certificates that previously represented shares of ODI Common Stock now represent the same number of shares of ODP Common Stock, as adjusted for the Reverse Stock Split. Following the consummation of the Reorganization, shares of ODP Common Stock continue to trade on Nasdaq on an uninterrupted basis under the ticker symbol “ODP” with the new CUSIP number #88337F 105. Immediately after the consummation of the Reorganization, ODP has, on a consolidated basis, the same directors, executive officers, management, assets, business and operations as ODI had immediately prior to the consummation of the Reorganization.

Amended and Restated Rights Agreement

In connection with the Reorganization, the Rights Agreement, dated as of May 5, 2020, between ODI and Computershare Inc., as rights agent (the “Original Rights Agreement”), was amended and restated in its entirety by the Amended and Restated Rights Agreement, dated as of June 30, 2020, among ODP, Computershare Inc., as rights agent, and, solely with respect to Section 37 thereof, OD LLC (the “A&R Rights Agreement”), pursuant to

which ODP assumed all of the rights and obligations and duties of OD LLC, as the successor by merger to ODI, under the Original Rights Agreement, and references to ODI, ODI Common Stock and Series A Junior Participating Preferred Stock, par value \$0.01 per share, of ODI (the "ODI Series A Preferred Stock") were amended to refer to ODP, ODP Common Stock and Series A Junior Participating Preferred Stock, par value \$0.01 per share, of ODP (the "ODP Series A Preferred Stock"), respectively. Upon execution of the A&R Rights Agreement, the Original Rights Agreement ceased to have any force or effect. The A&R Rights Agreement expires, without any further action required to be taken by the ODP board of directors, on May 4, 2021.

In connection with the Reorganization and pursuant to the A&R Rights Agreement, one preferred share purchase right (an "ODP Right") was issued with respect to each share of ODP Common Stock issued and outstanding as of the effective time of the Merger. Each ODP Right represents the right to purchase from ODP ten ten-thousandths of a share of ODP Series A Preferred Stock upon the terms and conditions of the A&R Rights Agreement. Each ODP Right is subject to the same terms and conditions as one preferred share purchase right representing the right to purchase ODI Series A Preferred Stock (on a Reverse Stock Split-adjusted basis), the description of which is incorporated herein by reference to the description set forth under Items 1.01, 3.03 and 5.03 of ODI's [Current Report on Form 8-K](#), filed with the U.S. Securities and Exchange Commission (the "Commission") on May 6, 2020. The complete terms of the ODP Rights are set forth in the A&R Rights Agreement, and the powers, the relative rights, the preferences and the limitations of the ODP Series A Preferred Stock are set forth in the Certificate of Designations of Series A Junior Participating Preferred Stock of ODP (the "ODP Certificate of Designations"), which was filed by ODP with the Secretary of State of the State of Delaware on June 30, 2020.

As a result of the Reorganization, ODP became the successor issuer to ODI pursuant to Rule 12g-3(a) under the Exchange Act, and as a result, the shares of ODP Common Stock and the ODP Rights attached to the shares of ODP Common Stock are deemed registered under Section 12(b) of the Exchange Act.

The foregoing descriptions of the Reorganization, the Merger Agreement, the ODP Certificate of Designations and the A&R Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the Merger Agreement, the ODP Certificate of Designations and the A&R Rights Agreement, which are filed as Exhibits 2.1, 3.3 and 4.1, respectively, to this Current Report on Form 8-K and which are incorporated by reference herein.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

Following the consummation of the Reorganization, the ODP Common Stock continues to trade on Nasdaq on an uninterrupted basis under the ticker symbol "ODP".

The information set forth in Item 1.01, Item 5.03 and Item 8.01 under the heading "Successor Issuer," describing the succession of ODP to Exchange Act Section 12(b) and reporting obligations of ODI, is hereby incorporated by reference in this Item 3.01.

In connection with the Reorganization, on June 30, 2020, ODI requested that Nasdaq file with the Commission an application on Form 25 to delist the ODI Common Stock from Nasdaq and deregister the ODI Common Stock under Section 12(b) of the Exchange Act. ODI intends to file a certificate on Form 15 requesting that the ODI Common Stock be deregistered under the Exchange Act and that ODI's reporting obligations under Section 15(d) of the Exchange Act be suspended (except to the extent of the succession of ODP to the Exchange Act Section 12(b) registration and reporting obligations of ODI as described under the heading, "Successor Issuer," under Item 8.01 below).

Item 3.03. Material Modification of Rights of Security Holders.

Upon consummation of the Reorganization, each share of ODI Common Stock issued and outstanding immediately prior to the Merger (on a Reverse Stock Split-adjusted basis) automatically converted into an equivalent corresponding share of ODP Common Stock, having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the corresponding share of ODI Common Stock (on a Reverse Stock Split-adjusted basis) that was converted.

The information set forth in Item 1.01, Item 5.03 and Item 8.01 under the heading “Successor Issuer” is hereby incorporated by reference in this Item 3.03.

Item 5.01. Changes in Control of Registrant.

The information set forth in Item 1.01 and Item 5.02 is hereby incorporated by reference in this Item 5.01.

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

The directors of ODP and their committee memberships and titles, which are listed below, are the same as the directors of ODI immediately prior to the Merger.

Directors

<u>Name</u>	<u>Age</u>	<u>Audit Committee</u>	<u>Compensation Committee</u>	<u>Corporate Governance and Nominating Committee</u>
Gerry P. Smith	57			
Quincy L. Allen	60	X		
Kristin A. Campbell	58		X	Chair
Cynthia T. Jamison	60	Chair	X	
Francesca Ruiz de Luzuriaga	66		Chair	X
Shashank Samant	51			X
David M. Szymanski	63	X	X	
Joseph S. Vassalluzzo	72			

Mr. Vassalluzzo will serve as ODP’s non-executive Chairman. Biographical information about ODP’s directors is included in [ODI’s Definitive Proxy Statement](#) for the 2020 Annual Meeting of Shareholders filed with the Commission on March 26, 2020 (the “[2020 Proxy Statement](#)”) under the caption “2020 Nominees for Director” and is incorporated by reference herein.

The executive officers of ODP and their positions and titles, which are listed below, are identical to the executive officers of ODI immediately prior to the effective time of the Reorganization.

Executive Officers

<u>Name</u>	<u>Age</u>	<u>Position with The ODP Corporation</u>
Gerry P. Smith	57	Chief Executive Officer and Principal Financial Officer
N. David Bleisch	60	Executive Vice President, Chief Legal & Administrative Officer
John W. Gannfors	54	Executive Vice President, Chief Merchandising and Supply Chain Officer
Todd Hale	47	Executive Vice President and Chief Information Officer
Kevin Moffitt	47	Executive Vice President and Chief Retail Officer
Stephen M. Mohan	44	Executive Vice President, Business Solutions Division
John “Mick” Slattery	51	President, CompuCom Systems, Inc.

D. Anthony Scaglione (age 47) will serve as Executive Vice President, Chief Financial Officer of ODP effective July 20, 2020. In addition, Richard Haas (age 50) will serve as ODP's Senior Vice President, Chief Accounting Officer. Biographical information about ODP's current executive officers is included in ODI's [Annual Report on Form 10-K](#) for the fiscal year ended December 28, 2019 filed with the Commission on February 26, 2020 under the caption "Information About Our Executive Officers" and is incorporated by reference herein. Biographical information about Mr. Scaglione and a description of agreements between ODP and Mr. Scaglione is included in ODI's [Current Report on Form 8-K](#) filed with the Commission on June 18, 2020 and is incorporated by reference herein. Biographical information about Mr. Haas is included in ODI's [Current Report on Form 8-K](#) filed with the Commission on May 3, 2019 and is incorporated by reference herein.

In connection with the Reverse Stock Split, the number of shares of ODI Common Stock available for future grant under the Office Depot, Inc. 2019 Long-Term Incentive Plan, the Office Depot, Inc. 2017 Long-Term Incentive Plan, the Office Depot, Inc. 2015 Long-Term Incentive Plan, the 2003 OfficeMax Incentive and Performance Plan, the 2003 Director Stock Compensation Plan and the Director Stock Compensation Plan (collectively, the "[Stock Incentive Plans](#)"), the number of shares of ODI Common Stock underlying each equity-based award agreement and/or similar agreement entered into pursuant to the Stock Incentive Plans and each outstanding award granted thereunder (collectively, the "[Equity Awards](#)"), the exercise price per share of ODI Common Stock subject to Equity Awards that are stock options and other terms of outstanding Equity Awards were equitably adjusted at the effective time of the Reverse Stock Split to reflect the effects of the Reverse Stock Split.

In connection with the Reorganization, on June 30, 2020, ODP and OD LLC entered into an Assignment and Assumption Agreement (the "[Assignment and Assumption Agreement](#)"), pursuant to which, effective as of the effective time of the Merger, ODP assumed, among other agreements, the Stock Incentive Plans, the Equity Awards and the indemnification agreements between ODI and the directors and executive officers of ODI (collectively, the "[Assumed Indemnification Agreements](#)" and, together with the Stock Incentive Plans and Equity Awards, the "[Assumed Agreements](#)"). On June 30, 2020, as of the effective time of the Merger, each of the Assumed Agreements was automatically deemed to be amended as necessary to provide that references to ODI in such Assumed Agreement will be read to refer to ODP and references to ODI Common Stock in such Assumed Agreement will be read to refer to ODP Common Stock. Information regarding the compensation arrangements of ODP's named executive officers, including those Assumed Agreements to which the named executive officers are a party, is included in pages 33 through 68 of [ODI's 2020 Proxy Statement](#) under "Compensation Discussion And Analysis" and is incorporated by reference herein.

The foregoing description of the Assignment and Assumption Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Assignment and Assumption Agreement, which is filed as Exhibit 10.1, and which is incorporated by reference herein.

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

On June 30, 2020, ODI filed the Certificate of Amendment with the Secretary of State of the State of Delaware to effect the Reverse Stock Split. The Certificate of Amendment and the Reverse Stock Split were effective at 4:01 p.m., Eastern Time, on June 30, 2020, prior to the effective time of the Merger.

At the effective time of the Certificate of Amendment and as a result of the Reverse Stock Split, the number of preferred share purchase rights representing the right to purchase one ten-thousandth of a share of ODI Series A Preferred Stock (the "[ODI Rights](#)") attached to the shares of ODI Common Stock was contemporaneously decreased in proportion by the same 1-for-10 ratio and, pursuant to the Original Rights Agreement, each ODI Right became a right to purchase from ODI ten ten-thousandths of a share of ODI Series A Preferred Stock upon the terms and conditions of the Original Rights Agreement.

On June 30, 2020, ODI filed an Amended and Restated Certificate of Designations of Series A Junior Participating Preferred Stock (the "[ODI A&R Certificate of Designations](#)") in order to reflect the adjustment to the terms of the ODI Series A Preferred Stock as a result of the Reverse Stock Split. The ODI A&R Certificate of Designations was effective at 4:02 p.m., Eastern Time, on June 30, 2020, prior to the effective time of the Merger.

Upon consummation of the Reorganization, the Amended and Restated Certificate of Incorporation of ODP (the “ODP A&R Certificate of Incorporation”), the Amended and Restated Bylaws of ODP (the “ODP A&R Bylaws”) and the ODP Certificate of Designations are the same as the ODI certificate of incorporation (as amended by the Certificate of Amendment), bylaws and ODI A&R Certificate of Designations immediately prior to the consummation of the Reorganization, respectively, except for changes to the name of the entity and information regarding the registered office and agent as permitted by Section 251(g) of the DGCL. Prior to the consummation of the Reorganization, the sole stockholder of ODP approved the adoption of the ODP A&R Certificate of Incorporation. The ODP A&R Certificate of Incorporation was filed with the Delaware Secretary of State on June 26, 2020.

The foregoing descriptions of the ODP A&R Certificate of Incorporation, the ODP A&R Bylaws, the ODP Certificate of Designations, the Certificate of Amendment and the ODI A&R Certificate of Designations do not purport to be complete and are qualified in their entirety by reference to the full text of the ODP A&R Certificate of Incorporation, the ODP A&R Bylaws, the ODP Certificate of Designations, the Certificate of Amendment and the ODI A&R Certificate of Designations, which are filed as Exhibits 3.1, 3.2, 3.3, 3.4 and 3.5 hereto, respectively, and each of which is incorporated by reference herein.

Item 8.01. Other Items.

Successor Issuer

In connection with the Reorganization and by operation of Rule 12g-3(a) promulgated under the Exchange Act, ODP is the successor issuer to ODI and has succeeded to the attributes of ODI as the registrant. Shares of ODP Common Stock and the ODP Rights attached to the shares of ODP Common Stock are deemed to be registered under Section 12(b) of the Exchange Act, and ODP is subject to the informational requirements of the Exchange Act, and the rules and regulations promulgated thereunder. ODP hereby reports this succession in accordance with Rule 12g-3(f) promulgated under the Exchange Act.

Description of Company Capital Stock

The description of ODP’s capital stock provided in Exhibit 99.3, which is incorporated by reference herein, modifies and supersedes any prior description of ODI’s capital stock in any registration statement or report filed with the Commission and will be available for incorporation by reference into certain of ODP’s filings with the Commission pursuant to the Securities Act of 1933, as amended, the Exchange Act, and the rules and forms promulgated thereunder.

Press Release

On June 30, 2020, prior to the opening of trading, ODI issued a press release confirming the effective time of the Reverse Stock Split. A copy of such press release is included as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

On July 1, 2020, ODP issued a press release announcing the completion of the Reverse Stock Split and the Reorganization. A copy of such press release is included as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
2.1	<u>Agreement and Plan of Merger, dated as of June 30, 2020, by and among Office Depot, Inc., The ODP Corporation, ODP Investment, LLC and Office Depot, LLC</u>
3.1	<u>Amended and Restated Certificate of Incorporation of The ODP Corporation</u>
3.2	<u>Amended and Restated Bylaws of The ODP Corporation</u>
3.3	<u>Certificate of Designations of Series A Junior Participating Preferred Stock of The ODP Corporation</u>
3.4	<u>Certificate of Amendment to Restated Certificate of Incorporation of Office Depot, Inc.</u>
3.5	<u>Amended and Restated Certificate of Designations of Series A Junior Participating Preferred Stock of Office Depot, Inc.</u>
4.1	<u>Amended and Restated Rights Agreement, dated June 30, 2020, among The ODP Corporation, Computershare Inc., as Rights Agent, and solely with respect to Section 37 thereof, Office Depot, LLC</u>
4.2	<u>Specimen Common Stock Certificate of The ODP Corporation</u>
10.1	<u>Assignment and Assumption Agreement, dated as of June 30, 2020, by and between The ODP Corporation and Office Depot, LLC</u>
99.1	<u>Press Release of Office Depot, Inc. dated June 30, 2020</u>
99.2	<u>Press Release of The ODP Corporation dated July 1, 2020</u>
99.3	<u>Description of Capital Stock</u>
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document

SIGNATURE

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

Date: July 1, 2020

THE ODP CORPORATION

/s/ N. David Bleisch

Name: N. David Bleisch

Title: EVP, Chief Legal & Administrative Officer

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (the “Agreement”), entered into as of June 30, 2020, is by and among Office Depot, Inc., a Delaware corporation (the “Company”), The ODP Corporation, a Delaware corporation (“Holdco”) and a direct, wholly owned subsidiary of the Company, ODP Investment, LLC, a Delaware limited liability company (“ODP Investment”) and a direct, wholly owned subsidiary of Holdco, and Office Depot, LLC, a Delaware limited liability company (“Merger Sub”) and a direct, wholly owned subsidiary of ODP Investment.

RECITALS

WHEREAS, on the date hereof and as of immediately prior to the Reverse Stock Split Effective Time (as defined below), the authorized capital stock of the Company consists of 800,000,000 shares of Common Stock, par value \$0.01 per share, of the Company (the “Company Common Stock”) and 1,000,000 shares of Preferred Stock, par value \$0.01 per share, of the Company (the “Company Preferred Stock”), of which 80,000 shares of Company Preferred Stock have been designated as “Series A Junior Participating Preferred Stock” (“Company Series A Preferred Stock”) and have been reserved for issuance upon the exercise of the rights (the “Company Rights”) distributed to holders of record as of May 21, 2020 of shares of Company Common Stock pursuant to a Rights Agreement, dated as of May 5, 2020 (the “Rights Agreement”), between the Company and Computershare Inc., as rights agent (the “Rights Agent”); and

WHEREAS, (i) on the date hereof and prior to the Merger Effective Time (as defined below), the Company will file a Certificate of Amendment to the Restated Certificate of Incorporation of the Company (the “Certificate of Amendment”), executed in accordance with the relevant provisions of the General Corporation Law of the State of Delaware (the “DGCL”), with the Secretary of State of the State of Delaware (the “Secretary of State”), pursuant to which each ten (10) outstanding shares of Common Stock, par value \$0.01 per share, of the Company (the “Company Common Stock”), will be combined into one (1) share of Company Common Stock, the total number of shares of Company Common Stock which the Company has authority to issue will be reduced from 800,000,000 shares to 80,000,000 shares (the “Reverse Stock Split”) and (ii), pursuant to the Rights Agreement, the total number of outstanding Company Rights will be decreased proportionally by the same 1-for-10 ratio effective upon the consummation of the Reverse Stock Split;

WHEREAS, the Reverse Stock Split will become effective on the date hereof at such time specified in the Certificate of Amendment (the date and time the Reverse Stock Split becomes effective, the “Reverse Stock Split Effective Time”), which time shall be prior to the Merger Effective Time (as defined below);

WHEREAS, on the date hereof, following the Reverse Stock Split Effective Time and as of immediately prior to the Merger Effective Time, (i) the authorized capital stock of the Company will consist of 80,000,000 shares of Company Common Stock and 1,000,000 shares of Company Preferred Stock, of which 80,000 shares will be designated as “Series A Junior Participating Preferred Stock”;

WHEREAS, on the date hereof, following the Reverse Stock Split Effective Time and as of immediately prior to the Merger Effective Time, there are no shares of Company Preferred Stock issued or outstanding;

WHEREAS, Holdco was formed as a Delaware corporation and a direct, wholly owned subsidiary of the Company, ODP Investment was formed as a Delaware limited liability company and a direct, wholly owned subsidiary of Holdco, and Merger Sub was formed as a Delaware limited liability company and a direct, wholly owned subsidiary of ODP Investment;

WHEREAS, the Company desires to create a new holding company structure pursuant to Sections 251(g) and 264 of the DGCL and Section 18-209 of the Delaware Limited Liability Company Act (the "DLLCA") by merging the Company with and into Merger Sub, with Merger Sub continuing as the surviving entity of such merger as an indirect, wholly owned subsidiary of Holdco and with each share of Company Common Stock being converted in such merger into a share of Holdco Common Stock (as defined below), in each case, in accordance with the terms of this Agreement;

WHEREAS, as of the date hereof, the authorized capital stock of Holdco consists of 80,000,000 shares of Common Stock, par value \$0.01 per share, of Holdco (the "Holdco Common Stock"), of which 1 share is issued and outstanding and owned by the Company (the "Existing Holdco Share"), and 1,000,000 shares of Preferred Stock, par value \$0.01 per share, of Holdco (the "Holdco Preferred Stock"), of which 80,000 shares of Holdco Preferred Stock have been designated as "Series A Junior Participating Preferred Stock" (the "Holdco Series A Preferred Stock") having the same designations, rights, powers and preferences, and the qualifications, limitations and restrictions thereof, as the Company Series A Preferred Stock;

WHEREAS, as of the date hereof, Holdco owns, indirectly through its ownership of all of the limited liability company interests of ODP Investment, 100 common units in Merger Sub (the "Merger Sub Common Units"), representing 100% of the issued and outstanding limited liability company interests of Merger Sub;

WHEREAS, as of the Merger Effective Time, the designations, rights, powers and preferences, and the qualifications, limitations and restrictions of the Holdco Common Stock and Holdco Preferred Stock will be the same as those of the Company Common Stock and Company Preferred Stock, respectively;

WHEREAS, the Amended and Restated Certificate of Incorporation of Holdco (the "Holdco Charter") and the Bylaws of Holdco (the "Holdco Bylaws"), which will be in effect immediately following the Merger Effective Time, contain provisions identical to the Restated Certificate of Incorporation of the Company, as amended (the "Company Charter"), and the Amended and Restated Bylaws of the Company (the "Company Bylaws"), in effect as of the date hereof and that will be in effect immediately prior to the Merger Effective Time, respectively (other than as permitted by Section 251(g) of the DGCL);

WHEREAS, Holdco is a newly formed corporation and Merger Sub is a newly formed limited liability company, in each case organized for the sole purpose of participating in the transactions herein contemplated and actions related thereto, and neither Holdco nor Merger Sub owns any assets (other than, in the case of Holdco, its ownership of all of the Merger Sub Common Units (indirectly through its ownership of all of the limited liability company interests of ODP Investment) and nominal amounts of cash representing its initial capitalization at the time of its formation) or has taken any actions other than those necessary or advisable to organize Holdco, ODP Investment and Merger Sub, as applicable, and to effect the transactions herein contemplated and actions related thereto;

WHEREAS, the boards of directors of Holdco and the Company have approved and declared advisable this Agreement and the transactions contemplated hereby, including, without limitation, the Merger;

WHEREAS, the board of managers of ODP Investment have approved this Agreement and the transactions contemplated hereby, including, without limitation, the Merger;

WHEREAS, the board of managers of Merger Sub and ODP Investment, as the sole member of Merger Sub, have approved this Agreement and the transactions contemplated hereby, including, without limitation, the Merger;

WHEREAS, the Merger will be implemented pursuant to Sections 251(g) and 264 of the DGCL and Section 18-209 of the DLLCA and, therefore, will not require the approval of the stockholders of the Company;

WHEREAS, the parties intend, for United States federal income tax purposes, the Merger to qualify as a "reorganization" described in Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, simultaneously with the Merger Effective Time, Holdco, the Surviving Company (as defined below) and the Rights Agent will enter into an Amended and Restated Rights Agreement (the "A&R Rights Agreement"), pursuant to which, effective as of the Merger Effective Time, among other things, (i) the Surviving Company will assign to Holdco, and Holdco will assume and agree to perform, all obligations of the Surviving Company pursuant to the Rights Agreement, (ii) the Rights Agreement will be amended such that all references to the Company, Company Common Stock, Company Preferred Stock and Company Series A Preferred Stock shall be deemed to refer to Holdco, Holdco Common Stock, Holdco Preferred Stock and Holdco Series A Preferred Stock, respectively and (iii) each Company Right distributed or distributable under the Rights Agreement will become a right to purchase Holdco Series A Preferred Stock, subject to the same terms and conditions as the Company Rights (as adjusted to reflect the Reverse Stock Split) as of immediately prior to the Merger Effective Time.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained in this Agreement, and intending to be legally bound hereby, the Company, Holdco and Merger Sub hereby agree as follows:

Section 1. The Merger. In accordance with Sections 251(g) and 264 of the DGCL and Section 18-209 of the DLLCA and subject to, and upon the terms and conditions of, this Agreement, the Company shall be merged with and into Merger Sub (the "Merger"), the separate corporate existence of the Company shall cease, and Merger Sub shall continue as the surviving entity of the Merger (the "Surviving Company"). At the Merger Effective Time, the effects of the Merger shall be as provided in this Agreement, in Section 259 of the DGCL and in Section 18-209 of the DLLCA.

Section 2. Effective Time. As soon as practicable on or after the date hereof, Merger Sub shall file a certificate of merger (the "Certificate of Merger"), in substantially the form attached hereto as Exhibit A and executed in accordance with the relevant provisions of the DGCL and the DLLCA, with the Secretary of State of the State of Delaware (the "Secretary of State") and shall make all other filings, recordings or publications required under the DGCL and the DLLCA to effectuate the Merger. The Merger shall become effective following the Reverse Stock Split Effective Time at such time as the Certificate of Merger is duly filed with the Secretary of State or at such later date and time as the parties shall agree and specify in the Certificate of Merger (the date and time the Merger becomes effective being referred to herein as the "Merger Effective Time").

Section 3. Certificate of Formation of Merger Sub. The Certificate of Formation of Merger Sub as in effect immediately prior to the Merger Effective Time shall continue in full force and effect after the Merger Effective Time as the Certificate of Formation of the Surviving Company, until thereafter amended as provided therein or in the DLLCA.

Section 4. Limited Liability Company Agreement of Merger Sub. At the Merger Effective Time, the limited liability company agreement of Merger Sub shall be amended and restated in its entirety to be in the form attached hereto as Exhibit B until thereafter amended as provided therein or in the DLLCA (the "Surviving Company LLCA").

Section 5. Directors.

(a) Surviving Company. The managers of Merger Sub in office immediately prior to the Merger Effective Time shall be the managers of the Surviving Company and will continue to hold office from the Merger Effective Time until the earlier of their resignation or removal or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Company LLCA, or as otherwise provided by law.

(b) Holdco. The directors of the Company in office immediately prior to the Merger Effective Time shall be the directors of Holdco upon the Merger Effective Time and shall continue to hold office until the earlier of their resignation or removal or until their successors are duly elected or appointed and qualified in the manner provided in the Holdco Charter and the Holdco Bylaws, or as otherwise provided by law.

Section 6. Officers.

(a) Surviving Company. The officers of Merger Sub in office immediately prior to the Merger Effective Time shall be the officers of the Surviving Company and will continue to hold office from the Merger Effective Time until the earlier of their resignation or removal or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Company LLCA or as otherwise provided by law.

(b) Holdco. The officers of the Company in office immediately prior to the Merger Effective Time shall be the officers of Holdco upon the Merger Effective Time and shall continue to hold office until the earlier of their resignation or removal or until their successors are duly elected or appointed and qualified in the manner provided in the Holdco Charter and Holdco Bylaws, or as otherwise provided by law.

Section 7. Additional Actions. Subject to the terms of this Agreement, the parties shall take all such reasonable and lawful action as may be necessary or appropriate in order to effectuate the Merger and to comply with the requirements of Sections 251(g) and 264 of the DGCL and Section 18-209 of the DLLCA. If, at any time after the Merger Effective Time, the Surviving Company shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Company its right, title or interest in, to or under any of the rights, properties or assets of either the Company or Merger Sub acquired or to be acquired by the Surviving Company as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and managers of the Surviving Company shall be authorized to execute and deliver, in the name and on behalf of each of the Company and Merger Sub, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of the Company and Merger Sub or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Company or otherwise to carry out this Agreement.

Section 8. Conversion of Securities. At the Merger Effective Time, by virtue of the Merger and without any action on the part of Holdco, ODP Investment, Merger Sub, the Company or any holder of any securities thereof:

(a) Conversion of Company Common Stock. Each share of Company Common Stock issued and outstanding immediately prior to the Merger Effective Time shall be converted into one validly issued, fully paid and nonassessable share of Holdco Common Stock.

(b) Conversion of Company Stock Held as Treasury Stock. Each share of Company Common Stock held in the Company's treasury immediately prior to the Merger Effective Time shall be converted into one validly issued, fully paid and nonassessable share of Holdco Common Stock, to be held immediately after completion of the Merger in the treasury of Holdco.

(c) Capital of Merger Sub. Each Merger Sub Common Unit issued and outstanding immediately prior to the Merger Effective Time shall remain outstanding as one common unit in the Surviving Company.

(d) Rights of Certificate Holders. Upon conversion thereof in accordance with this Section 8, all shares of Company Common Stock shall no longer be outstanding and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect to such shares of Company Common Stock, except, in all cases, as set forth in Section 9 herein. In addition, each outstanding book-entry that, immediately prior to the Merger Effective Time, evidenced shares of Company Common Stock shall, from and after the Merger Effective Time, be deemed and treated for all corporate purposes to evidence the ownership of the same number of shares of Holdco Common Stock.

Section 9. Certificates. At and after the Merger Effective Time until thereafter surrendered for transfer or exchange in the ordinary course, each outstanding certificate which immediately prior thereto represented shares of Company Common Stock (a "Company Stock Certificate") shall be deemed for all purposes to evidence ownership of and to represent the shares of Holdco Common Stock into which the shares of Company Common Stock represented by such Company Stock Certificate have been converted as herein provided and shall be so registered on the books and records of Holdco and its transfer agent. From and after the Merger Effective Time, upon the surrender to Holdco or its transfer or exchange agent for transfer or exchange in the ordinary course of any Company Stock Certificate, Holdco shall (i) issue or cause to be issued to such holder the applicable uncertificated shares of Holdco Common Stock into which the shares of Company Common Stock represented by such Company Stock Certificate have been converted as herein provided by registering such shares of Holdco Common Stock in Holdco's books and records as book-entry shares, upon which such shares shall thereafter be uncertificated, and (ii) take all action necessary under applicable law in accordance therewith, including in accordance with Sections 151(f) and 202 of the DGCL. If any Company Stock Certificate shall have been lost, stolen or destroyed, then, upon the making of an affidavit of such fact by the person or entity claiming such Company Stock Certificate to be lost, stolen or destroyed and the providing of an indemnity by such person or entity to Holdco, in form, substance and amount reasonably satisfactory to Holdco, against any claim that may be made against it with respect to such Company Stock Certificate, Holdco shall issue or cause to be issued to such person or entity, in exchange for such lost, stolen or destroyed Company Stock Certificate, uncertificated shares representing the applicable shares of Holdco Common Stock in accordance with the procedures set forth in the preceding sentence.

Section 10. Assumption of Stock Incentive Plans, the Rights Agreement and Other Agreements.

(a) Holdco and the Surviving Company hereby agree that they will, simultaneously with the Merger Effective Time, execute, acknowledge and deliver an assignment and assumption agreement (the "Assignment and Assumption Agreement"), pursuant to which, effective as of the Merger Effective Time, the Surviving Company will assign to Holdco, and Holdco will assume and agree to perform, all obligations of the Surviving Company pursuant to: (i) any employee, director and executive

compensation plans pursuant to which the Surviving Company is obligated to, or may, issue equity securities to its directors, officers, or employees (collectively, all such plans, including any such plans listed on Exhibit C hereto, the “Stock Incentive Plans”); (ii) each equity-based award agreement and/or similar agreement entered into pursuant to the Stock Incentive Plans, and each outstanding award granted thereunder; and (iii) the other agreements (the “Other Agreements”) listed on Exhibit C hereto. At the Merger Effective Time, the Stock Incentive Plans, any equity award agreements and the Other Agreements shall each be automatically amended as necessary to provide that references to the Company and to the Company Common Stock in such agreements shall be deemed to refer to Holdco and to Holdco Common Stock, respectively.

(b) Holdco and the Surviving Company hereby agree that they will, simultaneously with the Merger Effective Time, execute, acknowledge and deliver the A&R Rights Agreement, pursuant to which, effective as of the Merger Effective Time, among other things, (i) the Surviving Company will assign to Holdco, and Holdco will assume and agree to perform, all obligations of the Surviving Company pursuant to the Rights Agreement, (ii) the Rights Agreement will be amended such that all references to the Company, Company Common Stock, Company Preferred Stock and Company Series A Preferred Stock shall be deemed to refer to Holdco, Holdco Common Stock, Holdco Preferred Stock and Holdco Series A Preferred Stock, respectively and (iii) each Company Right distributed or distributable under the Rights Agreement will become a right to purchase Holdco Series A Preferred Stock, subject to the same terms and conditions as the Company Rights (as adjusted to reflect the Reverse Stock Split) as of immediately prior to the Merger Effective Time.

(c) Holdco, the Company and the Surviving Company shall take or cause to be taken all actions necessary or desirable in order for Holdco to assume the Stock Incentive Plans, and each equity-based award agreement or similar agreement entered into pursuant thereto, the Rights Agreement and the Other Agreements, all to the extent deemed appropriate by the Company, the Surviving Company and Holdco and permitted under applicable law. Except as otherwise expressly described in this Section 10, each equity-based award agreement assumed by Holdco under the Assignment and Assumption Agreement will continue to have, and be subject to, the same terms and conditions as set forth in the applicable Stock Incentive Plan and any award agreements thereunder immediately prior to the Merger Effective Time, including, without limitation, the number of shares, vesting schedule (without acceleration thereof by virtue of the Merger and the transactions contemplated hereby) and per share exercise price, to the extent applicable (as adjusted prior to the Merger Effective Time to reflect the Reverse Stock Split).

Section 11. Amendments to Registration Statements. It is the intent of the parties hereto that Holdings, as of the Merger Effective Time, be deemed a “successor issuer” for purposes of continuing certain offerings under the Securities Act of 1933, as amended. As soon as practicable following the Merger, Holdings will, to the extent deemed appropriate, file a post-effective amendment to the Company’s registration statements on Form S-8 (File Nos. 333-231370, 333-219380, 333-205084 and 333-192185) covering the Stock Incentive Plans, adopting such registration statement as its own registration statements for all purposes of the Securities Act and the Exchange Act and setting forth any additional information necessary to reflect any material changes made in connection with or resulting from the succession, or necessary to keep the registration statement from being misleading.

Section 12. Reservation of Shares. On or prior to the Merger Effective Time, Holdco will reserve sufficient shares of Holdco Common Stock to provide for the issuance of Holdco Common Stock under the Stock Incentive Plans, including upon exercise of stock options outstanding under the Stock Incentive Plans, if applicable.

Section 13. Existing Holdco Share. Immediately following the Merger Effective Time, the Existing Holdco Share shall be repurchased for \$0.01 by Holdco from the Surviving Company for retirement by Holdco and shall be retired.

Section 14. No Appraisal Rights. In accordance with the DGCL and the DLLCA, no appraisal rights shall be available to any holder of shares of Company Common Stock or the Merger Sub Common Units or any member of Merger Sub in connection with the Merger.

Section 15. Termination. This Agreement may be terminated, and the Merger and the other transactions provided for herein may be abandoned, whether before or after the adoption of this Agreement by the sole member of Merger Sub, at any time prior to the Merger Effective Time, by action of the board of directors of the Company. In the event of termination of this Agreement, this Agreement shall forthwith become void and have no effect, and neither the Company, Holdco, ODP Investment, Merger Sub nor their respective stockholders, members, directors or officers shall have any liability with respect to such termination or abandonment.

Section 16. Amendments. At any time prior to the Merger Effective Time, this Agreement may be supplemented, amended or modified, whether before or after the adoption of this Agreement by the sole member of Merger Sub, by the mutual consent of the parties to this Agreement by action by their respective boards of directors; provided, however, that, no amendment shall be effected subsequent to the adoption of this Agreement by the sole member of Merger Sub that by law requires further approval or authorization by the sole member of Merger Sub or the stockholders of the Company without such further approval or authorization. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the parties hereto.

Section 17. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws.

Section 18. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which shall constitute one and the same agreement.

Section 19. Entire Agreement. This Agreement, including the documents and instruments referred to herein, constitutes the entire agreement and supersedes all other prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof.

Section 20. Severability. The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company, Holdco, ODP Investment and Merger Sub have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

OFFICE DEPOT, INC.

By: /s/ N. David Bleisch

Name: N. David Bleisch

Title: Executive Vice President, Chief Legal &
Administrative Officer

THE ODP CORPORATION

By: /s/ N. David Bleisch

Name: N. David Bleisch

Title: Vice President

ODP INVESTMENT, LLC

By: /s/ N. David Bleisch

Name: N. David Bleisch

Title: Vice President

OFFICE DEPOT, LLC

By: /s/ N. David Bleisch

Name: N. David Bleisch

Title: Executive Vice President, Chief Legal &
Administrative Officer

Signature Page to Agreement and Plan of Merger

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**OF****THE ODP CORPORATION**

The present name of the corporation is The ODP Corporation. The corporation was incorporated under the name “The ODP Corporation” by the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware on June 9, 2020. This Amended and Restated Certificate of Incorporation of the corporation (this “restated certificate of incorporation”), which amends and restates the provisions of the corporation’s Certificate of Incorporation, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware and by the written consent of its sole stockholder in accordance with Section 228 of the General Corporation Law of the State of Delaware. The Certificate of Incorporation of the corporation is hereby amended, integrated and restated to read in its entirety as follows:

ARTICLE ONE

The name of the corporation is The ODP Corporation.

ARTICLE TWO

The address of the Corporation’s registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE THREE

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE FOUR

4.1 Capital Stock. The total number of shares of capital stock which the corporation has authority to issue is 80 million shares of Common Stock, par value of \$0.01 per share, and 1 million shares of Preferred Stock, par value of \$0.01 per share.

4.2 Common Stock. Except as otherwise provided by the General Corporation Law of the State of Delaware, by this restated certificate of incorporation or any amendments thereto or by resolutions adopted by the board of directors of the corporation providing for the issuance of Preferred Stock, all of the voting power of the corporation shall be vested in the holders of the Common Stock, and each holder of Common Stock shall have one (1) vote for each share of Common Stock held by such holder on all matters voted upon by the stockholders.

4.3 Preferred Stock. The board of directors of the corporation is authorized, subject to the limitations prescribed by law and the provisions of this restated certificate of incorporation, to provide for the issuance of shares of the Preferred Stock in one or more series, to establish from time to time the number of shares to be included in each such series and to fix the designations, voting powers, preferences, rights and qualifications, limitations or restrictions of the shares of the Preferred Stock of each such series.

ARTICLE FIVE

The Corporation is to have perpetual existence.

ARTICLE SIX

In furtherance and not in limitation of the powers conferred by statute, the board of directors of the corporation is expressly authorized to make, alter or repeal the by-laws of the corporation.

ARTICLE SEVEN

Meetings of stockholders may be held within or without the State of Delaware, as the by-laws of the corporation may provide. The books of the corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the board of directors of the corporation or in the by-laws of the corporation. Election of directors need not be by written ballot unless the by-laws of the corporation so provide.

ARTICLE EIGHT

To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a director of this corporation shall not be liable to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. Any repeal or modification of this ARTICLE EIGHT shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

ARTICLE NINE

The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation in the manner now or hereafter prescribed herein and by the laws of the State of Delaware, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE TEN

The corporation has expressly elected not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed and acknowledged by the undersigned this 26th day of June, 2020.

/s/ N. David Bleisch

Name: N. David Bleisch

Title: Executive Vice President, Chief Legal &
Administrative Officer

**AMENDED AND RESTATED BYLAWS
OF
THE ODP CORPORATION,
A DELAWARE CORPORATION**

**ARTICLE I
OFFICES**

Section 1. Registered Office. The registered office of the corporation shall be located at the corporation's principal place of business in the State of Delaware or at the office of the person or entity then acting as the corporation's registered agent in Delaware. The registered office and/or registered agent of the corporation may be changed from time to time by resolution of the Board of Directors.

Section 2. Other Offices. The corporation may also have offices at such other places as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE II
STOCKHOLDERS**

Section 1. Annual Meeting. The annual meeting of stockholders for the election of directors and the conduct of such other business as may properly come before the meeting in accordance with these Bylaws shall be held at such place, if any, and time on such day, other than a legal holiday, as the Board of Directors in each such year determines. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 2. Special Meetings. Special meetings of stockholders may be called for any purpose and may be held at such time and place as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting.

(a) A special meeting of stockholders may be called at any time by the Chief Executive Officer or, if directed by resolution of the Board of Directors, the Secretary.

(b) A special meeting of stockholders shall be called by the Secretary at the written request (a "Special Meeting Request") of holders of record of at least 25% of the outstanding common stock of the corporation entitled to vote on the matter or matters to be brought before the proposed special meeting (the "Requisite Percentage"). A Special Meeting Request to the Secretary shall be signed by each stockholder requesting the special meeting (each, a "Requesting Stockholder") and shall be accompanied by a notice setting forth the information required by Section 14(a)(2)(A)-(D) of this Bylaw, as if such Section were applicable to Special Meeting Requests. Requesting Stockholders who collectively hold at least the Requisite Percentage on the date the Special Meeting Request is submitted to the Secretary must (i) continue to hold at least the number of shares of common stock set forth in the Special Meeting Request with respect to each such Requesting Stockholder through the date of the special meeting and (ii) submit a written certification (an "Ownership Certification") confirming the continuation of such holdings on the business day immediately preceding the special meeting, which Ownership Certification shall include the information required by Section 14(a)(2)(A) of this Bylaw as of the date of such special meeting with respect to each such Requesting Stockholder.

(c) A special meeting called pursuant to Section 2(a) or Section 2(b) of this Bylaw shall be held at such date, time and place as may be fixed by the Board of Directors in accordance with these Bylaws; *provided, however*, that the date of any special meeting called pursuant to Section 2(b) of this Bylaw shall not be more than 90 days after a Special Meeting Request that satisfies the requirements of this Section 2 is received by the Secretary. The day, place and hour of such special meeting shall be set forth in the notice of special meeting. If a valid Special Meeting Request is received by the Secretary subsequent to a valid Special Meeting Request and before the date of the corresponding special meeting of shareholders, all items of business contained in such Special Meeting Requests may be presented at one special meeting.

(d) Notwithstanding the foregoing provisions of this Section 2, a special meeting requested by stockholders pursuant to Section 2(b) of this Bylaw shall not be held if (i) the Special Meeting Request does not comply with this Section 2; (ii) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law; (iii) the Special Meeting Request is received by the corporation during the period commencing 90 days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (iv) an annual or special meeting of stockholders that included a substantially similar item of business (“Similar Business”) (as determined in good faith by the Board of Directors) was held not more than 120 days before the Special Meeting Request was received by the Secretary; (v) the Board of Directors has called or calls for an annual or special meeting of stockholders to be held within 90 days after the Special Meeting Request is received by the Secretary and the Board of Directors determines in good faith that the business to be conducted at such meeting includes the Similar Business; (vi) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or other applicable law; or (vii) two or more special meetings of stockholders called pursuant to the request of stockholders have been held within the 12-month period before the Special Meeting Request was received by the Secretary. For purposes of this Section 2(d), the nomination, election or removal of directors shall be deemed to be Similar Business with respect to all items of business involving the nomination, election or removal of directors, changing the size of the Board of Directors and filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors.

(e) Any Requesting Stockholder may revoke such stockholder’s participation in a Special Meeting Request at any time by written revocation delivered to the Secretary and if, following any such revocation, there are outstanding un-revoked requests from stockholders holding less than the Requisite Percentage in accordance with this Section 2, the Board of Directors may, in its discretion, cancel the special meeting. If none of the Requesting Stockholders appears or sends a duly authorized agent to present the business to be presented for consideration that was specified in the Special Meeting Request, or if the Ownership Certification does not satisfy the requirements set forth in Section 2(b) of this Bylaw, the corporation need not present such business for a vote at such special meeting.

(f) Business conducted at a special meeting requested by stockholders pursuant to Section 2(b) of this Bylaw shall be limited to the matters described in the applicable Special Meeting Request; *provided* that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any such special meeting requested by stockholders.

Section 3. Place of Meetings. Annual and special meetings may be held at such place, if any, either within or without the State of Delaware, as the Board of Directors may determine. The Board of Directors may, in its sole discretion, determine that meetings of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication as described in Article II, Section 17 of these Bylaws in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware.

Section 4. Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting. All such notices shall be delivered, either (a) personally or by mail, by or at the direction of the Chief Executive Officer or the Secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation or (b) by a form of electronic transmission, including electronic mail, in the manner provided in and to the extent permitted by the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”). Nothing in these Bylaws shall preclude the stockholders from waiving notice as provided in Article IV hereof. Any previously scheduled annual meeting of the stockholders may be postponed, and any previously scheduled special meeting of the stockholders may be postponed or cancelled, by resolution of the Board of Directors upon public notice given prior to the time previously scheduled for such meeting of stockholders.

Section 5. Fixing a Record Date for Stockholder Meetings. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the

record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of any such meeting. Only stockholders as of the record date are entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment or postponement of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned or postponement meeting.

Section 6. Quorum. The holders of a majority of the issued and outstanding shares of common stock of the corporation entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders. If a quorum is not present, the chairman of the meeting or the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote at the meeting may adjourn the meeting to another time and/or place from time to time. When a quorum is once present to commence a meeting of stockholders, it shall not be broken by the subsequent withdrawal of the stockholders or their proxies.

Section 7. Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At any such adjourned meeting at which a quorum shall be present or represented, the corporation may transact any business which might have been transacted at the original meeting. Notwithstanding the foregoing, if the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given as provided in Section 4 of Article II hereof, but such notice may be waived as provided in Article IV hereof.

Section 8. Voting by Stockholders on Matters Other Than the Election of Directors. With respect to any matters as to which no other voting requirement is specified by the Delaware General Corporation Law, the certificate of incorporation of the corporation (the "Certificate of Incorporation") or these Bylaws, the affirmative vote required for stockholder action shall be that of a majority of the shares present in person or represented by proxy (as counted for purposes of determining the existence of a quorum) and entitled to vote at a meeting of stockholders at which a quorum is present. In the case of a matter submitted for a vote of the stockholders as to which a stockholder approval requirement is applicable under the stockholder approval policy of the NASDAQ Stock Market (or any other exchange on which the corporation's securities are listed), the requirements of Rule 16b-3 under the Exchange Act, or any provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Code Section 162(m), in each case for which no higher voting requirement is specified by the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws, the vote required for approval shall be the requisite vote specified in such stockholder approval policy, Rule 16b-3 or such Code provision, as the case may be (or the highest such requirement if more than one is applicable). For the approval of the appointment of independent public accountants (if submitted for a vote of the stockholders), the vote required for approval shall be a majority of the votes cast on the matter.

Section 9. Voting by Stockholders in the Election of Directors. Each director to be elected by the stockholders shall be elected by a majority of the votes cast at any meeting held for the purpose of the election of directors at which a quorum is present, subject to the following provisions:

(a) Resignation of Incumbent Director Who Fails to Receive a Majority Vote: In any non-contested election of directors, any director nominee who is an incumbent director who receives a greater number of votes "against" his or her election than votes "for" such election shall immediately tender his or her resignation to the Board of Directors, which resignation shall be irrevocable. Thereafter, the Board of Directors shall decide, through a process managed by the Corporate Governance and Nominating Committee (and excluding the nominee in question from all Board of Directors and Committee deliberations), whether to accept such resignation within 90 days of the date of such resignation. Absent a compelling reason for the director to remain on the Board of Directors (as determined by the Board of Directors), the Board of Directors shall accept the resignation from the director. To the extent that the Board of Directors determines that there is a compelling reason for the director to remain on the Board of Directors and does not accept the resignation, the Board of Directors' explanation of its decision shall be disclosed promptly in a Current Report on Form 8-K filed with the United States Securities and Exchange Commission (the "SEC") or in a press release that is widely disseminated.

(b) Definition of “Compelling Reason”: For purposes of this policy, a “compelling reason” shall be determined by the Board of Directors (excluding the nominee in question from all Board of Directors and Committee deliberations) and could include, by way of example and without limitation, situations in which a director nominee was the target of a “vote no” campaign on what the Board of Directors believes to be an illegitimate or inappropriate basis or if the resignation would cause the corporation to be in violation of its constituent documents or regulatory requirements.

(c) Consequences of the Board of Directors’ Acceptance or Non-Acceptance of a Director’s Resignation: If such incumbent director’s resignation is accepted by the Board of Directors, then such director shall immediately cease to be a member of the Board of Directors upon the date of action taken by the Board of Directors to accept such resignation. If such incumbent director’s resignation is not accepted by the Board of Directors, such director will continue to serve until the next annual meeting, or until his or her subsequent resignation or removal.

(d) Failure of a Non-Incumbent Director to Win Election: If any nominee for director who is not an incumbent fails in a non-contested election to receive a majority vote for his or her election at any meeting for the purpose of the election of directors at which a quorum is present, such candidate shall not be elected and shall not take office.

(e) Filling Vacancies: If an incumbent director’s resignation is accepted by the Board of Directors pursuant to this Bylaw, or if a non-incumbent nominee for director is not elected, the Board of Directors, may fill any resulting vacancy pursuant to the provisions of Article III, Section 4 of these Bylaws, or may decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 2 of these Bylaws.

(f) Nominees to Agree in Writing to Abide by this Bylaw: To be eligible for election as a director of the corporation, each nominee (including incumbent directors and nominees proposed by stockholders in accordance with Article II, Section 14 of these Bylaws) must agree in writing in advance to comply with the requirements of this Section 9 of Article II of these Bylaws.

(g) Majority Vote Defined: For purposes of this Bylaw, a majority of votes cast shall mean that the number of shares voted “for” a director’s election exceeds 50% of the total number of votes cast with respect to that director’s election. Votes “cast” shall include votes “against” but shall exclude abstentions with respect to a director’s election or with respect to the election of directors in general.

(h) Vote Standard in Contested Elections: Notwithstanding anything to the contrary contained in this Article II, Section 9 of these Bylaws, in the event of a contested election, directors shall be elected by the vote of a plurality of the votes cast at any meeting for the election of directors at which a quorum is present. For purposes of this Bylaw, a contested election shall mean any election of directors in which the number of candidates for election as directors exceeds the number of directors to be elected, with the determination thereof being made by the Secretary (i) as of the close of the applicable notice of nomination period set forth in Article II, Section 14(a)(2) or Article II, Section 14(a)(4) of these Bylaws, whichever is later, based on whether one or more notice(s) of nomination were timely filed in accordance with said Bylaws or (ii) if later, reasonably promptly following the determination by any court or other tribunal of competent jurisdiction that one or more notice(s) of nomination were timely filed in accordance with said Bylaws; *provided*, that the determination that an election is a contested election by the Secretary pursuant to clause (i) or (ii) shall be determinative only as to the timeliness of a notice of nomination and not otherwise as to its validity. If, prior to the time the corporation mails its initial proxy statement in connection with such election of directors, one or more notices of nomination are withdrawn (or declared invalid or untimely by any court or other tribunal of competent jurisdiction) such that the number of candidates for election as director no longer exceeds the number of directors to be elected, the election shall not be considered a contested election, but in all other cases, once an election is determined to be a contested election, directors shall be elected by the vote of a plurality of the votes cast.

Section 10. Voting Rights. Except as otherwise provided by the Delaware General Corporation Law or by the Certificate of Incorporation and subject to Article VIII, Section 3 of these Bylaws, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of common stock held by such stockholder.

Section 11. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy specifically provides for a longer period. Each proxy shall be in writing executed by the stockholder giving the proxy or by his duly authorized attorney. Unless and until voted, every proxy shall be revocable at the pleasure of the person who executed it, or his legal representatives or assigns except in those cases where an irrevocable proxy permitted by statute has been given. Any proxy is suspended when the person executing the proxy is present at a meeting of stockholders and elects to vote, except that when such proxy is coupled with an interest sufficient in law to support an irrevocable power and the fact of the interest appears on the face of the proxy, the agent named in the proxy shall have all voting and other rights referred to in the proxy, notwithstanding the presence of the person executing the proxy. At each meeting of the stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the Secretary or a person designated by the Secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

Section 12. Action by Written Consent.

(a) General. Any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the State of Delaware, or the corporation's principal place(s) of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested, *provided, however*, that no consent or consents delivered by certified or registered mail shall be deemed delivered until received at the registered office. All consents properly delivered in accordance with this Section shall be deemed to be recorded when so delivered. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting of stockholders.

(b) Inspectors of Written Consent. In the event of the delivery, in the manner provided by Section 12(a) of this Bylaw, to the corporation of the requisite written consent or consents to take corporate action and/or any related revocation or revocations, the corporation shall engage nationally recognized independent inspectors of elections for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspectors certify to the corporation that the consents delivered to the corporation in accordance with Section 12(a) of this Bylaw represent at least the minimum number of votes that would be necessary to take the corporate action. Nothing contained in this paragraph shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(c) Effectiveness of Action by Written Consent. No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered to the corporation as required by this section, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded.

(d) Notice of Action by Written Consent. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were recorded.

(e) Fixing a Record Date for Action by Written Consent. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Only stockholders as of the record date are entitled to

consent to corporate action in writing without a meeting. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Bylaw). If no record date has been fixed by the Board of Directors, pursuant to this Bylaw or otherwise within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place(s) of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 13. Stock Records. The corporation shall prepare, at least 10 days before each meeting or any adjournment thereof, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date) arranged in alphabetical order and showing the address of and the number and class and series, if any, of shares held by each. For a period of 10 days prior to such meeting, such list shall be kept at the principal place(s) of business of the corporation or at the office of the transfer agent or registrar of the corporation and such other places, if any, as required by statute and shall be subject to inspection by any stockholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder at any time during the meeting.

Section 14. Notice of Stockholder Nominations and Other Business.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the corporation's stockholders may be made at an annual meeting of stockholders (A) by or at the direction of the Board of Directors, including pursuant to the corporation's notice of meeting, or (B) by any stockholder of the corporation who, (x) with respect to nominations of persons and the proposal of any business not intended to be included in the corporation's proxy statement for such annual meeting, (i) was a stockholder of record at the time of giving of notice provided for in Section (a)(2) of this Bylaw and at the time of the annual meeting (including any adjournment or postponement thereof), (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures set forth in Section (a)(2) of this Bylaw as to such business or nomination or (y) with respect to nominations of persons intended to be included in the corporation's proxy statement for such annual meeting, by a Nominator (as defined below) who complies with the notice and other procedures set forth in Section (a)(4) of this Bylaw; this clause (B) shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the corporation's notice of meeting) before an annual meeting of stockholders.

(2) Without qualification, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 14(a)(1)(B)(x) of this Bylaw, the stockholder must have given timely notice in writing to the Secretary and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the tenth day following the day on which public announcement of the date of such meeting is first made by the corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

To be in proper form, a stockholder's notice (whether given pursuant to this Section 14(a)(2), Section 14(a)(4) or Section 14(b) of this Bylaw) to the Secretary must:

(A) set forth, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, if any, (ii) (1) the class or series and number of shares of the corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (2) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the corporation or with a value derived in whole or in part from the value of any class or series of shares of the corporation, or which is intended to increase or decrease (or has the effect of increasing or decreasing) the voting power of any person with respect to the shares of any class or series of shares in the corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder and such beneficial owner and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the corporation, (3) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the corporation or influence the voting over any such shares, (4) any short interest in any security of the corporation (for purposes of this Bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (5) any rights to dividends on the shares of the corporation owned beneficially by such stockholder and such beneficial owner that are separated or separable from the underlying shares of the corporation, (6) any proportionate interest in shares of the corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder and such beneficial owner is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (7) any performance-related fees (other than an asset-based fee) that such stockholder and such beneficial owner is entitled to based on any increase or decrease in the value of shares of the corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such person's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date), (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (iv) a representation that the stockholder is a stockholder of record of stock of the corporation at the time of the giving of notice provided for in these Bylaws, is entitled to vote at such meeting and that the stockholder (or a qualified representative thereof) intends to appear in person at the meeting to present such nominee for election or to bring such business before the meeting; and (v) a statement as to whether or not such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to a number of holders of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect such nominee or nominees or to carry such proposal under applicable law;

(B) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the annual meeting, set forth (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, in such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; (C) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships,

between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and (D) with respect to each nominee for election or reelection to the Board of Directors, include a completed and signed questionnaire, representation and agreement required by Article II, Section 15 of these Bylaws. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(3) Notwithstanding anything in the second sentence of Section 14(a)(2) of this Bylaw to the contrary, with respect to nominations of persons not intended to be included in the corporation's proxy statement, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement by the corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by Section (a)(2) of this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the corporation.

(4) Proxy Access for Director Nominations.

(A) Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting, in addition to any persons nominated for election to the Board of Directors by or at the direction of the Board of Directors, subject to the provisions of this Section 14(a)(4), the corporation shall: (i) include in its notice of meeting and proxy materials, as applicable, for any annual meeting of stockholders (1) the name of any person nominated for election (the "Stockholder Nominee") by a stockholder as of the date that the Notice of Proxy Access Nomination (as defined below) is received by the Secretary at the principal executive offices of the corporation in accordance with this Section 14(a)(4) who is entitled to vote for the election of directors at the annual meeting and who satisfies the notice, ownership and other requirements of this Section 14(a)(4) (such stockholder, together with the beneficial owner of such shares, a "Nominator") or by a group of no more than 20 such stockholders (such stockholders, together with the beneficial owners of such shares, a "Nominator Group") that, collectively as a Nominator Group, satisfies the notice, ownership and other requirements of this Section 14(a)(4) applicable to a Nominator Group; provided that, in the case of a Nominator Group, each member thereof (each a "Group Member") shall have satisfied the notice, ownership and other requirements of this Section 14(a)(4) applicable to Group Members, and (2) if the Nominator or the Nominator Group, as applicable, so elects, the Nomination Statement (as defined below) furnished by such Nominator or Nominator Group; and (ii) include such Stockholder Nominee's name on any ballot distributed at such annual meeting and on the corporation's proxy card (or any other format through which the corporation permits proxies to be submitted) distributed in connection with such annual meeting. Nothing in this Section 14(a)(4) shall limit the corporation's ability to solicit against, and include in its proxy materials its own statements relating to, any Stockholder Nominee, Nominator or Nominator Group, or to include such Stockholder Nominee as a nominee of the Board of Directors.

(B) At each annual meeting, a Nominator or Nominator Group may nominate one or more Stockholder Nominees for election at such meeting pursuant to this Section 14(a)(4); provided that the maximum number of Stockholder Nominees nominated by all Nominators and Nominator Groups (including Stockholder Nominees that were submitted by a Nominator or Nominator Group for inclusion in the corporation's proxy materials pursuant to this Section 14(a)(4) but either are subsequently withdrawn, disregarded, declared invalid or ineligible pursuant to this Section 14(a)(4)) to appear in the corporation's proxy materials with respect to an annual meeting shall not exceed the greater of (i) two nominees and (ii) 20% of the total number of directors in office as of the Final Proxy Access Deadline (as defined below), or if such number is not a whole number, the closest whole number below 20% (the "Maximum Number").

The Maximum Number shall be reduced, but not below zero, by the sum of:

(x) the number of persons that the Board of Directors decides to nominate pursuant to an agreement, arrangement or other understanding with one or more stockholders or beneficial owners, as the case may be, in lieu of such person being formally nominated as a director pursuant to this Section 14(a)(4) or Section 14(a)(2); and

(y) the number of persons that the Board decides to nominate for re-election who were previously elected to the Board based on a nomination made pursuant to this Section 14(a)(4) or Section 14(a)(2) or pursuant to an agreement, arrangement or other understanding with one or more stockholders or beneficial owners, as the case may be, in lieu of such person being formally nominated as a director pursuant to this Section 14(a)(4) or Section 14(a)(2), in each case, at one of the previous two annual meetings.

If one or more vacancies for any reason occurs on the Board of Directors at any time after the Final Proxy Access Deadline but before the date of the applicable annual meeting and the Board of Directors determines to reduce the size of the Board of Directors in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

Any Nominator or Nominator Group submitting more than one Stockholder Nominee for inclusion in the corporation's proxy materials pursuant to this Section 14(a)(4) shall rank in its Notice of Proxy Access Nomination such Stockholder Nominees based on the order that the Nominator or Nominator Group desires such Stockholder Nominees to be selected for inclusion in the corporation's proxy materials in the event that the total number of Stockholder Nominees submitted by Nominators or Nominator Groups pursuant to this Section 14(a)(4) exceeds the Maximum Number. In the event that the number of Stockholder Nominees submitted by Nominators or Nominator Groups pursuant to this Section 14(a)(4) exceeds the Maximum Number, the highest ranking Stockholder Nominee who meets the requirements of this Section 14(a)(4) from each Nominator and Nominator Group will be selected for inclusion in the corporation's proxy materials until the Maximum Number is reached, beginning with the Nominator or Nominator Group with the largest number of shares disclosed as owned (as defined below) in its respective Notice of Proxy Access Nomination submitted to the corporation and proceeding through each Nominator or Nominator Group in descending order of ownership. If the Maximum Number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 14(a)(4) from each Nominator and Nominator Group has been selected, this process will continue as many times as necessary, following the same order each time, until the Maximum Number is reached.

If, after the Final Proxy Access Deadline, whether before or after the mailing of the corporation's definitive proxy statement, (i) a Stockholder Nominee who satisfies the requirements of this Section 14(a)(4) becomes ineligible for inclusion in the corporation's proxy materials pursuant to this Section 14(a)(4), becomes unwilling to serve on the Board of Directors, dies, becomes disabled or is otherwise disqualified from being nominated for election or serving as a director of the corporation or (ii) a Nominator or Nominator Group withdraws its nomination or becomes ineligible, in each case as determined by the Board of Directors or the chairman of the meeting, then the Board of Directors or the chairman of the meeting shall declare each nomination by such Nominator or Nominator Group to be invalid, and each such nomination shall be disregarded, no replacement nominee or nominees shall be included in the corporation's proxy materials or otherwise submitted for election as a director in substitution thereof and the corporation (1) may omit from its proxy materials information concerning such Stockholder Nominee and (2) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy materials, that the Stockholder Nominee will not be eligible for election at the annual meeting and will not be included as a Stockholder Nominee in the proxy materials.

(C) To nominate a Stockholder Nominee, the Nominator or Nominator Group shall submit to the Secretary the information required by this Section 14(a)(4) on a timely basis. To be timely, the Notice of Proxy Access Nomination must be addressed to and received by the Secretary not less than 120 days nor more than 150 days prior to the first anniversary of the date on which the corporation's definitive proxy statement was released to stockholders in connection with the prior year's annual meeting; provided, however, that if the annual meeting is convened more than 30 days prior to or delayed by more than 60 days after the first anniversary of the date of the preceding year's annual meeting, the information must be so received not earlier than 120 days prior to such annual meeting and not later than the close of business on the later of (x) the 90th day prior to such annual meeting or (y) the 10th day following the day on which a public announcement of the date of the annual meeting is first made (the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 14(a)(4), the "Final Proxy Access Deadline"); provided further that in no event shall any adjournment or

postponement of an annual meeting, or the public announcement thereof, commence a new time period or extend any time period for the receipt of the information required by this Section 14(a)(4). The written notice required by this Section 14(a)(4) (the "Notice of Proxy Access Nomination") shall include:

(i) a written notice of the nomination by such Nominator or Nominator Group expressly requesting to have its Stockholder Nominee included in the corporation's proxy materials pursuant to this Section 14(a)(4) that includes, with respect to the Stockholder Nominee and the Nominator (including any beneficial owner on whose behalf the nomination is made) or, in the case of a Nominator Group, with respect to each Group Member (including any beneficial owner on whose behalf the nomination is made) all of the representations, agreements and other information required in a stockholder notice submitted under Section 14(a)(2) of these By-Laws;

(ii) if the Nominator or Nominator Group so elects, a written statement of the Nominator or Nominator Group for inclusion in the corporation's proxy statement in support of the election of the Stockholder Nominee(s) to the Board of Directors, which statement shall not exceed 500 words with respect to each Stockholder Nominee (the "Nomination Statement") and for the avoidance of doubt, the Nomination Statement shall be limited to 500 words and shall not include any images, charts, pictures, graphic presentations or similar items;

(iii) in the case of a nomination by a Nominator Group, the designation by all Group Members of one specified Group Member (or a qualified representative thereof) that is authorized to act on behalf of all Group Members with respect to the nomination and matters related thereto, including withdrawal of the nomination;

(iv) a representation by the Stockholder Nominee and the Nominator or Nominator Group (including each Group Member) and any beneficial owner on whose behalf the nomination is made that each such person has provided and will provide facts, statements and other information in all communications with the corporation and its stockholders and beneficial owners, including without limitation the Notice of Proxy Access Nomination and the Nomination Statement, that are and will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading;

(v) a statement of the Nominator or Nominator Group (including each Group Member) and any beneficial owner on whose behalf the nomination is made, setting forth and certifying the number of shares such Nominator or Nominator Group is deemed to own (as determined in accordance with subparagraph (d) of this Section 14(a)(4)) continuously for at least three years as of the date of the Notice of Proxy Access Nomination and one or more written statements from the stockholder of the Required Shares (as defined below), and from each intermediary through which such shares are or have been held during the requisite three-year holding period, verifying that, as of a date within seven days prior to the date that the Notice of Proxy Access Nomination is received by the Secretary, the Nominator or the Nominator Group, as the case may be, owns, and has owned continuously for the preceding three years, the Required Shares, and the Nominator's or, in the case of a Nominator Group, each Group Member's agreement to provide (1) within seven days after the record date for the applicable annual meeting, written statements from the stockholder and intermediaries verifying the Nominator's or the Nominator Group's, as the case may be, continuous ownership of the Required Shares through the record date; provided that if and to the extent that a stockholder is acting on behalf of one or more beneficial owners, such written statements shall also be submitted by any such beneficial owner or owners, and (2) immediate notice if the Nominator or the Nominator Group, as the case may be, ceases to own the Required Shares prior to the date of the applicable annual meeting;

(vi) a copy of any Schedule 14N that has been filed with the SEC as required by Rule 14a-18 under the Exchange Act;

(vii) a representation by the Nominator (including any beneficial owner on whose behalf the nomination is made), or, in the case of a Nominator Group, each Group Member (including any beneficial owner on whose behalf the nomination is made) that:

(1) the Required Shares were acquired in the ordinary course of business and not with intent to change or influence control of the corporation, and each such person does not presently have such intent;

(2) each such person will maintain ownership (as defined in this Section 14(a)(4)) of the Required Shares through the date of the applicable annual meeting;

(3) each such person has not nominated, and will not nominate, for election to the Board of Directors at the applicable annual meeting any person other than its Stockholder Nominee(s) pursuant to this Section 14(a)(4);

(4) each such person has not distributed, and will not distribute, to any stockholders or beneficial owners any form of proxy for the applicable annual meeting other than the form distributed by the corporation;

(5) each such person has not engaged in, and will not directly or indirectly engage in, and has not been and will not be a participant (as defined in Schedule 14A of the Exchange Act) in, a "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting other than with respect to such Nominator or Nominator Group's Stockholder Nominee(s) or a nominee of the Board of Directors; and

(6) each such person consents to the public disclosure of the information provided pursuant to this Section 14(a)(4);

(viii) an executed agreement, in a form deemed satisfactory by the Board of Directors or any committee thereof, pursuant to which the Nominator (including any beneficial owner on whose behalf the nomination is made) or, in the case of a Nominator Group, each Group Member (including any beneficial owner on whose behalf the nomination is made) agrees to:

(1) comply with all applicable laws, rules and regulations arising out of or relating to the nomination of each Stockholder Nominee pursuant to this Section 14(a)(4);

(2) assume all liability stemming from any legal or regulatory violation arising out of the communications and information provided by such person(s) to the corporation and its stockholders and beneficial owners, including without limitation the Notice of Proxy Access Nomination and Nomination Statement;

(3) indemnify and hold harmless the corporation and each of its directors, officers, employees, agents and affiliates individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers, employees, agents and affiliates arising out of or relating to any nomination submitted by such person(s) pursuant to this Section 14(a)(4);

(4) file with the SEC any solicitation by or on behalf of the Nominator or Nominator Group (including each Group Member) and any beneficial owner on whose behalf the nomination is made relating to the meeting at which the Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation under Regulation 14A of the Exchange Act;

(5) furnish to the corporation all notifications and updated information required by this Section 14(a)(4), including, without limitation, the information required by sub-paragraph (E) of this Section 14(a)(4); and

(6) upon request, provide to the corporation within five business days after such request, but in any event prior to the day of the annual meeting, such additional information as reasonably requested by the corporation; and

(ix) a letter of resignation signed by each Stockholder Nominee, which letter shall specify that such Stockholder Nominee's resignation is irrevocable and that it shall become effective upon a determination by the Board of Directors or any committee thereof that (1) any of the information provided to the corporation by the Nominator, the Nominator Group, any Group Member (including, in each case, any beneficial owner on whose behalf the nomination is made) or the Stockholder Nominee in respect of the nomination of such Stockholder Nominee pursuant to this Section 14(a)(4) is or was untrue in any material respect (or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading) or (2) the Stockholder Nominee, the Nominator, the Nominator Group or any Group Member (including, in each case, any beneficial owner on whose behalf the nomination is made) or any affiliate thereof shall have breached any of its representations, obligations or agreements under this Section 14(a)(4).

(D) Ownership Requirements.

(i) To nominate a Stockholder Nominee pursuant to this Section 14(a)(4), the Nominator or Nominator Group shall have owned shares representing 3% or more of the voting power entitled to vote generally in the election of directors (the "Required Shares") continuously for at least three years as of both the date the Notice of Proxy Access Nomination is submitted to the corporation and the record date for determining stockholders eligible to vote at the applicable annual meeting and must continue to own the Required Shares at all times between and including the date the Notice of Proxy Access Nomination is submitted to the corporation and the date of the applicable annual meeting; provided that if and to the extent a stockholder is acting on behalf of one or more beneficial owners (i) only the shares owned by such beneficial owner or owners, and not any other shares owned by any such stockholder, shall be counted for purposes of satisfying the foregoing ownership requirement and (ii) the aggregate number of stockholders and all such beneficial owners whose share ownership is counted for the purposes of satisfying the foregoing ownership requirement shall not exceed 20. For the purposes of determining whether the Nominator or Nominator Group owned the Required Shares for the requisite three-year period, the aggregate number of shares entitled to vote generally in the election of directors shall be determined by reference to the corporation's periodic filings with the SEC during the ownership period. Two or more funds that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer or (iii) a "group of investment companies," as such term is defined in the Investment Company Act of 1940, as amended, shall be treated as one stockholder or beneficial owner, as the case may be, for the purpose of satisfying the foregoing ownership requirements; provided that each fund otherwise meets the requirements set forth in this Section 14(a)(4); and provided further that any such funds for which shares are aggregated for the purpose of satisfying the foregoing ownership requirements provide documentation reasonably satisfactory to the corporation that demonstrates that the funds satisfy the criteria for being treated as one stockholder within seven days after the Notice of Proxy Access Nomination is delivered to the corporation. No shares may be attributed to more than one Nominator or Nominator Group, and no stockholder or beneficial owner may be a member of more than one Nominator Group (other than a stockholder directed to act by more than one beneficial owner) for the purposes of this Section 14(a)(4).

(ii) For purposes of this Section 14(a)(4), "ownership" shall be deemed to consist of and include only the outstanding shares as to which a person possesses both (i) the full voting and investment rights pertaining to such shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the ownership of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (1) that a person or any of its affiliates has sold in any transaction that has not been settled or closed, including any short sale, (2) that a person or any of its affiliates has borrowed for any purposes or purchased pursuant to an agreement to resell or (3) that are subject to any Derivative Instrument or similar agreement entered into by a person or any of its affiliates, whether any such security, instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares, in any case in which such security, instrument or agreement has, or is intended to have, or if exercised by either party would have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, the person's or such person's affiliates' full right to vote

or direct the voting of any such shares, and/or (y) hedging, offsetting or altering to any degree any gain or loss arising from the full economic ownership of such person's or such person's affiliates' shares. "Ownership" shall include shares held in the name of a nominee or other intermediary so long as the person claiming ownership of such shares retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A person's ownership of shares shall be deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the person. A person's ownership of shares shall be deemed to continue during any period in which the person has loaned such shares provided that the person has the power to recall such loaned shares on five business days' notice, will vote such shares at the annual meeting and will hold such shares through the date of the annual meeting. The determination of whether the requirements of "ownership" of shares for purposes of this Section 14(a)(4) are met shall be made by the Board of Directors or any committee thereof. Any such determination adopted in good faith by the Board of Directors or any committee thereof shall be conclusive and binding on the corporation, its stockholders and beneficial owners and all other parties. For the purposes of this Section 14(a)(4), the terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. For the purposes of this Section 14(a)(4), the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the rules and regulations of the Exchange Act.

(E) For the avoidance of doubt, with respect to any nomination submitted by a Nominator Group pursuant to this Section 14(a)(4), the information required by sub-paragraph (C) of this Section 14(a)(4) to be included in the Notice of Proxy Access Nomination shall be provided by each Group Member (including any beneficial owner on whose behalf the nomination is made), and each such Group Member (including any beneficial owner on whose behalf the nomination is made) shall execute and deliver to the Secretary the representations and agreements required under sub-paragraph (C) of this Section 14(a)(4) at the time the Notice of Proxy Access Nomination is submitted to the corporation. In the event that the Nominator, Nominator Group or any Group Member shall have breached any of their agreements with the corporation or any information included in the Nomination Statement or the Notice of Proxy Access Nomination, or any other communications by the Nominator, Nominator Group or any Group Member (including any beneficial owner on whose behalf the nomination is made) with the corporation or its stockholders and beneficial owners, ceases to be true and correct in all material respects (or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made and as of such later date, not misleading), each Nominator, Nominator Group or Group Member (including any beneficial owner on whose behalf the nomination is made), as the case may be, shall promptly (and in any event within 48 hours of discovering such breach or that such information has ceased to be true and correct in all material respects (or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made and as of such later date, not misleading)) notify the Secretary of any such breach, inaccuracy or omission in such previously provided information and shall provide the information that is required to correct any such defect, if applicable, it being understood that providing any such notification shall not be deemed to cure any defect or limit the corporation's rights to omit a Stockholder Nominee from its proxy materials as provided in this Section 14(a)(4).

(F) Stockholder Nominee Requirements.

(i) Within the time period specified in this Section 14(a)(4) for delivering the Notice of Proxy Access Nomination, each Stockholder Nominee must deliver to the Secretary a written representation and agreement, which shall be deemed a part of the Notice of Proxy Access Nomination for purposes of this Section 14(a)(4), that such person: (1) consents to being named in the corporation's proxy statement as a nominee, to serve as a director if elected and to the public disclosure of the information provided pursuant to this Section 14(a)(4); (2) understands his or her duties as a director under the Delaware General Corporation Law and agrees to act in accordance with those duties while serving as a director; (3) is not and will not become a party to (x) any Voting Commitment (as defined in Article II, Section 15 herein) that has not been disclosed to the corporation or (y) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law; (4) is not and will not become a party to any Third Party Compensation Arrangement (as defined in Article II, Section 15 herein) that has not been disclosed to the corporation, and has not and will not receive any such Third Party Compensation Arrangement that has not been disclosed to the corporation; (5) if elected as a director of the corporation, will comply with all applicable laws and stock exchange listing standards and the corporation's policies, guidelines and principles applicable to directors, including, without limitation, the corporation's publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and

guidelines and any other codes, policies and guidelines or any rules, regulations and listing standards, in each case, as applicable to directors; (6) agrees to meet with the Board of Directors or any committee or delegate thereof to discuss matters relating to the nomination of the Stockholder Nominee, including information in the Notice of Proxy Access Nomination and such Stockholder Nominee's eligibility to serve as a member of the Board of Directors; and (7) will provide facts, statements and other information in all communications with the corporation and its stockholders and beneficial owners that are and will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(ii) At the request of the corporation, each Stockholder Nominee must promptly submit (but in no event later than seven days after receipt of the request) to the Secretary all completed and signed questionnaires required of directors. The corporation may request such additional information as necessary to permit the Board of Directors to determine if each nominee is independent, including for purposes of serving on the committees of the Board of Directors, under the listing standards of each principal securities exchange upon which the corporation's shares are listed, any applicable rules of the SEC and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's directors and to determine whether the nominee otherwise meets all other publicly disclosed standards applicable to directors.

(iii) In the event that a Stockholder Nominee shall have breached any of their agreements with the corporation or any information or communications provided by a Stockholder Nominee to the corporation or its stockholders and beneficial owners ceases to be true and correct in any respect or omits a fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, such nominee shall promptly (and in any event within 48 hours of discovering such breach or that such information has ceased to be true and correct in all material respects (or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made and as of such later date, not misleading)) notify the Secretary of any such breach, inaccuracy or omission in such previously provided information and shall provide the information that is required to make such information or communication true and correct, if applicable, it being understood that providing any such notification shall not be deemed to cure any defect or limit the corporation's rights to omit a Stockholder Nominee from its proxy materials as provided in this Section 14(a)(4).

(G) Notwithstanding anything to the contrary contained in this Section 14(a)(4), the corporation shall not be required to include, pursuant to this Section 14(a)(4), a Stockholder Nominee in its proxy materials for any annual meeting, or, if the proxy statement already has been filed, to submit the nomination of a Stockholder Nominee to a vote at the annual meeting, notwithstanding that proxies in respect of such vote may have been received by the corporation:

(i) for any meeting for which the Secretary receives notice that any stockholder or beneficial owner, as the case may be, intends to nominate one or more persons for election to the Board of Directors pursuant to Section 14(a)(2);

(ii) who is not determined by the Board of Directors in its sole discretion to be independent under the listing standards of each principal securities exchange upon which the shares of the corporation are listed, any applicable rules of the SEC and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's directors, including those applicable to a director's service on any of the committees of the Board of Directors, in each case as determined by the Board of Directors or any committee thereof, in its sole discretion;

(iii) whose election as a member of the Board of Directors would cause the corporation to be in violation of these Bylaws, the Certificate of Incorporation, the rules and listing standards of the principal securities exchanges upon which the shares of the corporation are listed, or any applicable law, rule or regulation or of any publicly disclosed standards of the corporation applicable to directors, in each case, as determined by the Board of Directors or any committee thereof, in its sole discretion;

(iv) who is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended;

(v) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten years;

(vi) who is subject to any order of the type specified in Rule 506(d) of Regulation D under the Securities Act of 1933, as amended;

(vii) if the Stockholder Nominee or Nominator (including any beneficial owner on whose behalf the nomination is made), or, in the case of a Nominator Group, any Group Member (including any beneficial owner on whose behalf the nomination is made) shall have provided information to the corporation in connection with such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make any statement made, in light of the circumstances under which it was made, not misleading, as determined by the Board of Directors or any committee thereof, in its sole discretion;

(viii) the Nominator (or a qualified representative thereof) or, in the case of a Nominator Group, the representative designated by the Nominator Group in accordance with sub-paragraph (c)(iii) of this Section 14(a)(4) (or a qualified representative thereof), or the Stockholder Nominee does not appear at the applicable annual meeting to present the Stockholder Nominee for election;

(ix) if the Nominator (including any beneficial owner on whose behalf the nomination is made), or, in the case of a Nominator Group, any Group Member (including any beneficial owner on whose behalf the nomination is made) has engaged in or is currently engaged in, or has been or is a participant (as defined in Schedule 14A of the Exchange Act) in, a "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting other than with respect to such Nominator or Nominator Group's Stockholder Nominee(s) or a nominee of the Board of Directors; or

(x) the Nominator or, in the case of a Nominator Group, any Group Member, or applicable Stockholder Nominee otherwise breaches or fails to comply with its representations or obligations pursuant to these By-Laws, including, without limitation, this Section 14(a)(4).

For the purpose of this sub-paragraph (G), clauses (ii) through (x) will result in the exclusion from the proxy materials pursuant to this Section 14(a)(4) of the specific Stockholder Nominee(s) to whom the ineligibility applies, or, if the proxy statement has already been filed, the ineligibility of the Stockholder Nominee(s) and, in either case, the inability of the Nominator or Nominator Group that nominated any such Stockholder Nominee to substitute another Stockholder Nominee therefor; however, clause (i) will result in the exclusion from the proxy materials pursuant to this Section 14(a)(4) of all Stockholder Nominees for the applicable annual meeting, or, if the proxy statement already has been filed, the ineligibility of all Stockholder Nominees.

(H) Notwithstanding anything to the contrary contained in this Section 14(a)(4):

(i) the corporation may omit from its proxy materials any information, including all or any portion of the Nomination Statement, if the Board of Directors determines that the disclosure of such information would violate any applicable law or regulation or that such information is not true and correct in all material respects or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(ii) if any Nominator, Nominator Group or Group Member (including any beneficial owner on whose behalf the nomination is made) or Stockholder Nominee has failed to comply with the requirements of this Section 14(a)(4), the Board of Directors or the chairman of the meeting shall declare the nomination by such Nominator or Nominator Group to be invalid, and such nomination shall be disregarded.

(I) The Board of Directors (or any other person or body authorized by the Board of Directors) shall have the exclusive power and authority to interpret the provisions of this Section 14(a)(4) and make all determinations deemed necessary or advisable in connection with this Section 14(a)(4) to any person, facts or circumstances. All such actions, interpretations and determinations that are done or made by the Board of Directors (or any other person or body authorized by the Board of Directors) shall be final, conclusive and binding on the corporation, its stockholders and beneficial owners and all other parties.

(J) This Section 14(a)(4) shall be the exclusive method for stockholders to include nominees for director in the corporation's proxy materials.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (1) by or at the direction of the Board of Directors, including pursuant to the corporation's notice of meeting, (2) pursuant to Section 2 of this Bylaw, or (3) by any stockholder of the corporation who (i) is a stockholder of record at the time of giving of notice provided for in this Bylaw and at the time of the special meeting, (ii) is entitled to vote at the meeting (including any adjournment or postponement thereof), and (iii) complies with the notice procedures set forth in this Bylaw as to such nomination. In the event a special meeting of stockholders is called for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by Section 14(a)(2) of this Bylaw with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Section 15 of this Bylaw) shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the 120th day prior to the date of such special meeting and not later than the close of business on the later of the 90th day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Bylaw shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Bylaw. Except as otherwise provided by law, the Certificate of Incorporation or this Bylaw, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Bylaw and, if any proposed nomination or business is not in compliance with this Bylaw, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the SEC pursuant to Sections 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw; *provided, however*, that any references in this Bylaw to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 14(a)(1)(B) or Section 14(b) of this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Certificate of Incorporation or this Bylaw.

Section 15. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the corporation, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under Article II, Section 14 of these Bylaws) to the Secretary at the principal executive offices of the corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is

being made (which questionnaire shall be in the form provided by the corporation, and shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (a) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law, (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director (a "Third Party Compensation Arrangement") that has not been disclosed therein and (c) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the corporation.

Section 16. Fixing a Record Date for Other Purposes. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, the Board of Directors may fix a record date, which record date, shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. Only stockholders as of the record date are entitled to receive such payments, distributions or other allotments or exercise such rights or take such other lawful action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 17. Remote Communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

(a) participate in a meeting of stockholders; and

(b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication,

provided, that

(1) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder;

(2) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and

(3) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

ARTICLE III

DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors.

Section 2. Number, Election and Term of Office. The number of directors which shall constitute the Board of Directors shall be established from time to time by a vote of a majority of the entire Board of Directors; *provided, however,* that the number of Directors shall not be reduced so as to shorten the term of any Director at the time in office. The Board of Directors shall be elected at the annual meeting of the stockholders and each director elected shall hold office until the next annual meeting of stockholders or until a successor is duly elected and qualified or until his or her earlier resignation or removal as hereinafter provided.

Section 3. Removal and Resignation. Any director or the entire Board of Directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as otherwise provided by law. Any director may resign at any time upon written notice to the corporation. Such written resignation shall take effect at the time specified therein, and if no time is specified, at the time of its receipt by the Chairman of the Board, Chief Executive Officer or the Secretary. Except as provided in Article II, Section 9(a) of these Bylaws, the acceptance of a resignation shall not be necessary to make it effective.

Section 4. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may only be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until the next annual meeting of stockholders or until a successor is duly elected and qualified or until his or her earlier resignation or removal as herein provided. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Each director chosen by any class or classes of stock or series thereof shall hold office until the next election of the class for which such directors have been chosen and until their successors shall be elected and qualified.

Section 5. Annual Meetings of Board of Directors. The annual meeting of each newly elected Board of Directors shall be held without other notice than this Bylaw as soon as practicable after the annual meeting of stockholders at such location as is convenient and established by the Chief Executive Officer.

Section 6. Other Meetings and Notice. Regular meetings, other than the annual meeting, of the Board of Directors may be held at such location as is convenient and without notice at such time and at such place as shall from time to time be determined by resolution of the Board of Directors. Special meetings of the Board of Directors may be called (i) by the Chairman of the Board or the Chief Executive Officer on at least 24 hours prior notice to each director, either personally, by telephone, by mail, by telegraph, by teletype or by e-mail or (ii) upon the request of at least three directors, by the Secretary on at least 72 hours' prior notice. If notice of less than three days is given, it shall be oral, whether by telephone or in person, or sent by special delivery mail, facsimile, telegraph or e-mail. If mailed, the notice shall be given when deposited in the United States mail, postage pre-paid. Nothing herein contained shall preclude the directors from waiving notice as provided in Article IV hereof.

Section 7. Chairman of the Board. The Chairman of the Board shall be appointed by resolution of the Board of Directors and shall preside at all meetings of the Board of Directors and stockholders.

Section 8. Quorum, Required Vote and Adjournment. A majority of the total number of directors shall constitute a quorum for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation or these Bylaws. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless otherwise provided by an applicable provision of law, by these Bylaws, by the Certificate of Incorporation or by a resolution of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. Emergency Management Committee. If as a result of a catastrophe or other emergency condition a quorum of any committee of the Board of Directors having power to act in the premises cannot readily be convened and a quorum of the Board of Directors cannot readily be convened, then all the powers and duties of the Board of Directors shall automatically vest and continue, until a quorum of the Board of Directors can be convened, in the Emergency Management Committee, which shall consist of all readily available members of the Board of Directors and two of whose members shall constitute a quorum. The Emergency Management Committee shall call a meeting of the Board of Directors as soon as circumstances permit for the purpose of filling any vacancies on the Board of Directors and its committees and taking such other action as may be appropriate.

Section 10. Other Committees of the Board. The corporation shall have an Audit Committee, a Compensation Committee, and a Corporate Governance and Nominating Committee. The Board of Directors may, by resolution passed by a majority of the whole Board, designate other committees, and each such other committee shall consist of two or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of a committee. Such committee or committees (including the members thereof) shall serve at the pleasure of the Board of Directors and have such name or names and have as many members as may be determined from time to time by resolution adopted by the Board of Directors. Any member of the Board of Directors may participate in the meetings of any such committee, subject to the approval of the chairman of such committee. The Board of Directors shall adopt a charter for each committee it designates (other than special committees), and each committee shall assess the adequacy of such charter annually and recommend any changes to the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 11. Limitations on Committee Powers. No committee of the Board of Directors, acting without concurrence of the entire Board, shall have power or authority to:

- (a) amend the Certificate of Incorporation or recommend the same to the stockholders;
- (b) adopt an agreement of merger or consolidation or recommend the same to the stockholders;
- (c) recommend to the stockholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets;
- (d) recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution;
- (e) amend or repeal these Bylaws;
- (f) unless expressly so provided by resolution of the Board of Directors, (i) declare a dividend; or (ii) authorize the issuance of shares of the corporation of any class; and
- (g) amend, alter, or repeal any resolution of the Board of Directors which, by its terms, provides that it shall not be amended, altered or repealed by any committee or, as applicable, a certain committee.

Section 12. Committee Rules. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. In the event that a member and that member's alternate, if alternates are designated by the Board of Directors as provided in Section 10 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

Section 13. Use of Communications Equipment in Conducting Meetings. Members of the Board of Directors or any committee thereof may participate in and act at any meeting of the Board of Directors or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute attendance and presence in person at the meeting of the person or persons so participating.

Section 14. Action Without a Meeting by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee.

Section 15. Compensation. The Board of Directors shall have the authority to fix the compensation of directors by written resolution. Nothing herein shall be construed to preclude any director from serving the corporation in any other capacity as an officer, employee, agent or otherwise, and receiving compensation therefor.

Section 16. Books and Records. The Board of Directors shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board of Directors and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the corporation.

ARTICLE IV WAIVER OF NOTICE

Whenever a notice is required to be given by any provision of law, by these Bylaws, or by the Certificate of Incorporation, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to such notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the sole and express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE V OFFICERS

Section 1. Number and Authority. The Board of Directors of the corporation shall from time to time elect from its membership a Chairman of the Board, who may also be the Chief Executive Officer or any other officer of the corporation. The officers of the corporation shall consist of at least the following: (1) a Chief Executive Officer, (2) a Chief Financial Officer, (3) a Secretary and (4) a Treasurer.

The Board of Directors may appoint such other officers and agents, including but not limited to, a President, a Chief Operating Officer, one or more Presidents of Divisions or Business Groups, one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers, as it shall at any time or from time to time deem necessary or advisable. Pursuant to Section 10 of this Article V, the Board of Directors may delegate to the Chief Executive Officer the right to appoint such Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers and agents, as the Chief Executive Officer shall deem appropriate and necessary from time to time.

Any number of offices may be held by the same person, except that neither the Chief Executive Officer nor any President shall also hold the office of either Treasurer or Secretary. All officers, as between themselves and the corporation, shall have such authority and perform such duties in the management of the business and affairs of the corporation as may be provided in these Bylaws, or, to the extent not so provided, as may be prescribed by the Board of Directors or by the Chief Executive Officer.

Section 2. Election and Term of Office. The officers of the corporation (other than those appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw) shall be elected at least once annually by the Board of Directors, and each such officer shall hold office until the next annual meeting of the Board of Directors or until a successor is duly elected and qualified or until his or her earlier resignation or removal as herein provided. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors (or by the Chief Executive Officer pursuant to Section 10 of this Bylaw).

Section 3. Removal. All officers and agents shall hold office at the pleasure of the Board of Directors, and any officer or agent elected or appointed by the Board of Directors (or appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw) may be removed at any time by the Board of Directors for cause or without cause at any regular or special meeting, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Officers and agents appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw may be removed at any time by the Chief Executive Officer for cause or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by resolution of the Board of Directors.

Section 5. Compensation. Compensation of all officers and agents (other than the Chief Executive Officer) shall be fixed by or in the manner prescribed by the Compensation Committee, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation. The compensation of the Chief Executive Officer shall be fixed by or in the manner prescribed by the Compensation Committee, but such compensation shall be subject to the approval of a majority of the independent directors of the Board of Directors.

Section 6. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the directors, or (a) if the offices of the Chairman of the Board and Lead Director are separate, the Chairman may delegate such duties to the Lead Director or (b) if the offices of the Chief Executive Officer and Chairman of the Board are separate, the Chairman may delegate such duties to the Chief Executive Officer. The Chairman of the Board shall perform such other duties as are required of him by the Board of Directors and shall have no other duties except such as are delegated to him by the Board of Directors.

Section 7. Chief Executive Officer. The Chief Executive Officer of the corporation shall have the general charge of the business and affairs of the corporation and shall oversee the management of the business of the corporation. In the absence of the Chairman of the Board, or if designated to do so by the Board of Directors, the Chief Executive Officer shall preside at all meetings of the stockholders and of the directors and shall exercise the other powers and perform the other duties of the Chairman of the Board or designate the executive officers of the corporation by whom such other powers shall be exercised and other duties performed. The Chief Executive Officer shall see to it that all resolutions and orders of the Board of Directors are carried into effect, and the Chief Executive Officer shall have full power of delegation in so doing. The Chief Executive Officer shall have such other powers and perform such other duties as the Board of Directors or these Bylaws may, from time to time, prescribe. The Chief Executive Officer shall have the power to execute any and all instruments and documents on behalf of the corporation and to delegate to any other officer of the corporation the power to execute any and all such instruments and documents.

Section 8. Secretary. The Secretary shall attend all meetings of the Board of Directors and its committees and all meetings of the stockholders and shall record all the proceedings of the meetings in a book or books to be kept for that purpose; he or she shall see that all notices required to be given by these Bylaws or by law are duly given in accordance with the provisions of these Bylaws or as required by law; he or she shall be the custodian of the records and of the corporate seal or seals of the corporation; he or she shall have authority to affix the corporate seal or seals to all documents, the execution of which, on behalf of the corporation, under its seal, is duly authorized, and when so affixed it may be attested by his or her signature; and in general, he or she shall perform all duties incident to the office of the Secretary of a corporation, and such other duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 9. Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the corporation and shall deposit, or cause to be deposited, all moneys and other valuable effects in the name and to the credit of the corporation in such banks, trust companies, or other depositories as shall from time to time be selected by the Board of Directors. He or she shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation; he or she shall render to the Chairman of the Board and to each member of the Board of Directors, whenever requested, an account of the Treasurer's actions and of the financial condition of the corporation. The Treasurer shall perform all of the duties incident to the office of the Treasurer of a corporation, and have such other powers and perform such other duties as the Board of Directors may, from time to time, prescribe. In the event the corporation shall fail to have a Treasurer at any time, then the duties of the Treasurer may be assumed and performed by the Chief Financial Officer and delegated by him to one or more assistant Treasurers.

Section 10. Other Officers, Assistant Officers and Agents. The Board of Directors may also elect or may delegate to the Chief Executive Officer the power to appoint such other officers, assistant officers and agents, as it may at any time or from time to time deem advisable, and any officers, assistant officers and agents so elected or appointed shall have such authority and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 11. Reservation of Authority. All other powers not expressly delegated or provided for herein, or in the Delaware General Corporation Law to any officer, are expressly reserved to the Board of Directors and may be delegated by it to any officer by resolution adopted from time to time by the Board of Directors.

Reserved.

ARTICLE VII

INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

Section 1. **Coverage.** Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (“proceeding”), by reason of the fact that he or she is or was a director, officer of the corporation (which term shall include any predecessor corporation of the corporation) or is or was serving at the request of the corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust or other enterprise of any type or kind, domestic or foreign, including service with respect to employee benefit plans (“indemnitee”), whether the basis of such proceeding is an alleged action in an official capacity as a director, officer, employee, fiduciary or agent or in any other capacity while serving as a director, officer, employee, fiduciary or agent, shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), against all expenses, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement or other disposition) incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee’s heirs, executors and administrators. The right to indemnification conferred in this Bylaw shall be a contract right that vests at the time of such person’s service to or at the request of the corporation and includes the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition, such advances to be paid by the corporation within 20 days after the receipt by the corporation of a statement or statements from the claimant requesting such advance or advances from time to time; provided, however, that if the Delaware General Corporation Law requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Bylaw or otherwise.

Section 2. **Claims.** To obtain indemnification under this Bylaw, a claimant shall submit to the corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon such written request by a claimant for indemnification, a determination, if required by applicable law, with respect to the claimant’s entitlement thereto shall be made as follows: (a) if requested by the claimant, by Independent Counsel (as defined below), or (b) if no request is made by the claimant for a determination by Independent Counsel, (i) by the Board of Directors by a majority vote of a quorum consisting of Disinterested Directors (as defined below), or (ii) if a quorum of the Board of Directors consisting of Disinterested Directors is not obtainable or, even if obtainable, such quorum of Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (iii) if a quorum of Disinterested Directors so directs, by the stockholders of the corporation. In the event the determination of entitlement to indemnification is to be made by Independent Counsel at the request of the claimant, the Independent Counsel shall be selected by the Board of Directors unless there shall have occurred within two years prior to the date of the commencement of the action, suit or proceeding for which indemnification is claimed a “Change of Control” as defined in the 2008 Office Depot Bonus Plan for Executive Management Employees, in which case the Independent Counsel shall be selected by the claimant unless the claimant shall request that such selection be made by the Board of Directors. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within 10 days after such determination.

For purposes of this Bylaw:

“Disinterested Director” means a director of the corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

“Independent Counsel” means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and shall include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the corporation or the claimant in an action to determine the claimant’s rights under this Bylaw.

Section 3. Enforcement of Claims. If a claim under Section 1 of this Bylaw is not paid in full by the corporation within 60 days after a written claim pursuant to Section 2 of this Bylaw has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the corporation) that the claimant has not met the standard of conduct which makes it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, Independent Counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. If a determination shall have been made pursuant to this Section 2 that the claimant is entitled to indemnification, the corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 3. The corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 3 that the procedures and presumptions of this Bylaw are not valid, binding and enforceable and shall stipulate in such proceeding that the corporation is bound by all the provisions of this Bylaw.

Section 4. Enforceability. If any provision or provisions of this Bylaw shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Bylaw (including, without limitation, each portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Bylaw (including, without limitation, each such portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 5. Rights Not Exclusive. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Bylaw (i) shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise and (ii) cannot be terminated by the corporation, the Board of Directors or the stockholders of the corporation with respect to a person’s service prior to the date of such termination. No repeal or modification of this Bylaw shall in any way diminish or adversely affect the rights of any current or former director, officer, employee or agent of the corporation hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

Section 6. Employees and Agents. Persons who are not covered by the foregoing provisions of this Article VII and who are or were employees or agents of the corporation may be indemnified and may have their expenses paid to the extent and subject to such terms and conditions as may be authorized at any time or from time to time by the Board of Directors or the Chief Executive Officer.

Section 7. Insurance. The corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary or agent of the corporation or who is serving or has served at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify such person against such liability under this Article VII.

Section 8. Merger or Consolidation. For purposes of this Article VII, references to “the corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article VII with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 9. Notices. Any notice, request or other communication required or permitted to be given to the corporation under this Article VII shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary and shall be effective only upon receipt by the Secretary.

ARTICLE VIII CERTIFICATES OF STOCK

Section 1. Form. The shares of capital stock of the corporation shall be represented by certificates; provided, that the Board of Directors of the corporation may provide by a resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of capital stock in the corporation represented by certificates shall be entitled to have a certificate for shares of capital stock of the corporation signed by or in the name of the corporation by any two authorized officers of the corporation (it being understood that each of the Chairman of the Board, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary and any Assistant Secretary of the corporation shall be an authorized officer for such purpose), certifying the number of shares owned by such holder in the corporation and registered in certificated form. Any or all such signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed, or whose facsimile signature has been placed upon, any such certificate or certificates shall cease to be such officer, transfer agent or registrar of the corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer, transfer agent or registrar of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom certificated or uncertificated shares are issued, together with the number of shares and date of issue, shall be entered on the books of the corporation. Shares of stock of the corporation shall only be transferred on the books of the corporation by the holder of record thereof or by such holder’s attorney duly authorized in writing and, (i) if such shares are certificated, upon surrender to the corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization and other matters as the corporation may reasonably require, and accompanied by all necessary stock transfer stamps, or (ii) upon proper instructions from the holder of uncertificated shares. In the event of such transfer of certificated shares, it shall be the duty of the corporation to issue a new certificate or evidence of the issuance of uncertificated shares to the person entitled thereto, cancel the old certificate or certificates and record the transaction on its books. Upon receipt of proper transfer instructions from the holder of uncertificated shares, the corporation shall cancel such uncertificated shares and issue new equivalent uncertificated shares or certificated shares to the person entitled thereto and record such transaction upon its books. Except as otherwise provided by law, the Board of Directors may make or adopt such additional rules and regulations, not inconsistent with these Bylaws, as it may deem expedient, concerning the issue, transfer and registration of securities of the corporation. The Board of Directors may appoint or authorize any officer or officers to appoint, one or more transfer agents or registrars or both in connection with the transfer of any class or series of securities of the corporation.

Section 2. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed

certificate or certificates, or his or her legal representative, to indemnify the corporation or to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against the corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. Registered Stockholders. Prior to the surrender to the corporation of the certificate or certificates for a share or shares of stock with a request to record the transfer of such share or shares, the corporation may treat the registered owner as the person entitled to receive dividends or other distributions, to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner, and as the person to hold liable for calls and assessments. The corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE IX GENERAL PROVISIONS

Section 1. Dividends and Distributions. The Board of Directors shall have full power and discretion pursuant to law, at any regular or special meeting, subject to the provisions of the Certificate of Incorporation or the terms of any other corporate document or instrument, to determine what, if any, dividends or distributions shall be declared and paid or made upon or with respect to outstanding shares of the capital stock of the corporation. Dividends may be paid in cash, bonds, property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 2. Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation and all notes and other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers or agent, or agents of the corporation, and in such manner, as shall be determined by resolution of the Board of Directors or a duly authorized committee thereof.

Section 3. Contracts. The Board of Directors may authorize any officer or officers or any agent or agents of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 4. Loans. Subject to applicable laws limiting or prohibiting the corporation's ability to make such loans, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

Section 5. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

Section 6. Corporate Seal. The Board of Directors may provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7. Voting Securities Owned By Corporation. Voting securities in any other entity held by the corporation shall be voted by the Chairman of the Board or the Chief Executive Officer, unless the Board of Directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with or without general power of substitution.

Section 8. General and Special Bank Accounts. The Board of Directors may authorize from time to time the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board of Directors may designate or as may be designated by any officer or officers of the corporation to whom such power of designation may be delegated by the Board of Directors from time to time. The Board of Directors may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

Section 9. Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10. Election Out of Section 203. The corporation expressly elects not to be governed by Section 203 of the Delaware General Corporation Law. The Bylaw amendment adopting this provision shall not be further amended by the Board of Directors of the corporation.

Section 11. Forum Selection Bylaw. Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery (the "Court of Chancery") of the State of Delaware (or, in the event that the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (1) any derivative action or proceeding brought on behalf of the corporation, (2) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the corporation to the corporation or the corporation's stockholders, (3) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws, or (4) any action asserting a claim governed by the internal affairs doctrine, except as to each of (1) through (4) above, for any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination). Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the provisions of this Section 11.

ARTICLE X AMENDMENTS

These Bylaws may be amended, altered, or repealed and new Bylaws adopted at any meeting of the Board of Directors by a majority vote; provided, that these Bylaws and any other Bylaws amended or adopted by the Board of Directors may be amended, may be reinstated, and new Bylaws may be adopted, by the stockholders of the corporation entitled to vote at the time for the election of directors; provided, that notice of the proposed change was given in the corporation's notice of meeting.

CERTIFICATE OF DESIGNATIONS

of

SERIES A JUNIOR PARTICIPATING PREFERRED STOCK

of

THE ODP CORPORATION

(Pursuant to Section 151 of the

Delaware General Corporation Law)

The ODP Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), hereby certifies that the following resolution was unanimously adopted by the Board of Directors of the Corporation, acting by written consent in lieu of a meeting pursuant to Section 141(f) of the General Corporation Law of the State of Delaware, on June 29, 2020 as required by Section 151 of the General Corporation Law of the State of Delaware:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of this Corporation (hereinafter called the "Board of Directors" or the "Board") in accordance with the provisions of the Certificate of Incorporation of the Corporation (as heretofore amended and or restated, the "Certificate of Incorporation"), the number of shares, and the powers, the relative rights, the preferences, and the limitations of the Series A Junior Participating Preferred Stock are fixed as follows:

Series A Junior Participating Preferred Stock:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock", par value \$0.01 per share (the "Series A Preferred Stock"), and the number of shares constituting the Series A Preferred Stock shall be 80,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series A Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of Common Stock, par value \$0.01 per share (the "Common Stock"), of the Corporation, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest.

(D) Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Certificate of Incorporation, or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made (A) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received the greater of (a) \$1.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, or (b) an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (B) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser

number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (A) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property (other than any merger of the Corporation with and into a direct or indirect subsidiary of the Corporation pursuant to which the Corporation becomes a direct or indirect wholly-owned subsidiary of a holding company that is, immediately prior to the effective time of such merger, a direct or indirect subsidiary of the Corporation, in accordance with Section 251(g) of the General Corporation Law of the State of Delaware), then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Preferred Stock shall not be redeemable.

Section 9. Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Corporation's Preferred Stock.

Section 10. Amendment. The Certificate of Incorporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting together as a single class.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations to be signed and acknowledged by the undersigned this 29th day of June, 2020.

/s/ N. David Bleisch

Name: N. David Bleisch

Title: EVP, Chief Legal & Administrative Officer

CERTIFICATE OF AMENDMENT TO THE
RESTATED CERTIFICATE OF INCORPORATION OF
OFFICE DEPOT, INC.

Office Depot, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the “**Corporation**”), DOES HEREBY CERTIFY AS FOLLOWS:

FIRST: That the Board of Directors of the Corporation has duly adopted resolutions authorizing the Corporation to execute and file with the Secretary of State of the State of Delaware this Certificate of Amendment to the Restated Certificate of Incorporation of the Corporation, as amended (this “**Amendment**”), to combine each ten (10) outstanding shares of the Corporation’s Common Stock, par value \$0.01 per share (the “**Common Stock**”), into one (1) validly issued, fully paid and non-assessable share of Common Stock.

SECOND: That this Amendment was duly adopted in accordance with the terms of the Restated Certificate of Incorporation of the Corporation, as amended, and the provisions of the Delaware General Corporation Law by the Board of Directors and stockholders of the Corporation.

THIRD: That, upon the effectiveness of this Amendment, the Restated Certificate of Incorporation of the Corporation, as amended, is hereby amended such that Section 4.1 is amended and restated in its entirety to read as set forth below:

“4.1 Capital Stock. The total number of shares of stock which the corporation has authority to issue is 80 million shares of Common Stock, par value of \$0.01 per share, and 1 million shares of Preferred Stock, par value of \$0.01 per share. Upon the effectiveness of this Certificate of Amendment to the Restated Certificate of Incorporation of this corporation, each ten (10) shares of Common Stock issued and outstanding at such time shall, automatically and without any further action on the part of the corporation or the holder thereof, be combined into one (1) validly issued, fully paid and non-assessable share of Common Stock (the “Reverse Stock Split”). The par value of the Common Stock following the Reverse Stock Split shall remain \$0.01 per share. No fractional shares shall be issued, and, in lieu thereof, the corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock, as determined by the board of directors of the corporation. Each certificate that immediately prior to the effectiveness of this Certificate of Amendment to the Restated Certificate of Incorporation of this corporation represented shares of Common Stock (an “Old Certificate”) shall thereafter represent that number of shares of Common Stock into which the shares of Common Stock represented by the Old Certificate shall have been combined, subject to the elimination of fractional share interests as described above.”

FOURTH: This Amendment shall be effective as of 4:01 p.m., Eastern Time, on June 30, 2020.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Restated Certificate of Incorporation to be executed by its Chief Executive Officer this 30th day of June, 2020.

OFFICE DEPOT, INC.

By: /s/ Gerry P. Smith

Name: Gerry P. Smith

Title: Chief Executive Officer

AMENDED AND RESTATED
CERTIFICATE OF DESIGNATIONS
of
SERIES A JUNIOR PARTICIPATING PREFERRED STOCK
of
OFFICE DEPOT, INC.
(Pursuant to Section 151 of the Delaware General Corporation Law)

Office Depot, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), hereby certifies the following:

That pursuant to the authority vested in the Board of Directors of the Corporation in accordance with the provisions of the Certificate of Incorporation of the Corporation, the Board of Directors of the Corporation adopted, on May 5, 2020, a resolution authorizing the creation of a series of 80,000 shares of Preferred Stock designated as "Series A Junior Participating Preferred Stock", par value \$0.01 per share, and the Certificate of Designation for the Series A Junior Participating Preferred Stock was filed with the Secretary of State of Delaware on May 6, 2020;

That no shares of Series A Junior Participating Preferred Stock have been issued; and

That pursuant to the authority granted to and vested in the Board of Directors of the Corporation in accordance with the provisions of the Certificate of Incorporation of the Corporation, the Board of Directors adopted, on June 29, 2020, the following resolution for purposes of amending and restating the Certificate of Designation for the Series A Junior Participating Preferred Stock filed with the Secretary of State of Delaware on May 6, 2020:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of this Corporation (hereinafter called the "Board of Directors" or the "Board") in accordance with the

provisions of the Certificate of Incorporation of the Corporation (as heretofore amended and or restated, the "Certificate of Incorporation"), the Certificate of Designations, filed with the Secretary of State of Delaware on May 6, 2020, which created a series of Preferred Stock, par value \$0.01 per share, of the Corporation designated as "Series A Junior Participating Preferred Stock" (such Certificate of Designation, the "Series A Certificate"), be and hereby is amended and restated in its entirety as set forth herein, and the terms of the Series A Junior Participating Preferred Stock be and hereby are amended and restated in their entirety such that the number of shares, and the powers, the relative rights, the preferences, and the limitations of the Series A Junior Participating Preferred Stock are fixed as follows:

Series A Junior Participating Preferred Stock:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock", par value \$0.01 per share (the "Series A Preferred Stock"), and the number of shares constituting the Series A Preferred Stock shall be 80,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series A Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of Common Stock, par value \$0.01 per share (the "Common Stock"), of the Corporation, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock

(by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest.

(D) Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Certificate of Incorporation, or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made (A) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received the greater of (a) \$1.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, or (b) an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (B) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (A) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property (other than any merger of the Corporation with and into a direct or indirect subsidiary of the Corporation pursuant to which the Corporation becomes a direct or indirect wholly-owned subsidiary of a holding company that is, immediately prior to the effective time of such merger, a direct or indirect subsidiary of the Corporation, in accordance with Section 251(g) of the General Corporation Law of the State of Delaware), then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect

a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Preferred Stock shall not be redeemable.

Section 9. Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Corporation's Preferred Stock.

Section 10. Amendment. The Certificate of Incorporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting together as a single class.

* * *

This Amended and Restated Certificate of Designation shall become effective on June 30, 2020 at 4:02 p.m. Eastern Time.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations to be signed and acknowledged by the undersigned this 30th day of June, 2020.

/s/ N. David Bleisch

Name: N. David Bleisch

Title: EVP, Chief Legal & Administrative Officer

THE ODP CORPORATION

and

COMPUTERSHARE INC.,
as Rights Agent

and

solely with respect to Section 37 thereof,

OFFICE DEPOT, LLC

Amended and Restated Rights Agreement

Dated as of June 30, 2020

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AMENDED AND RESTATED RIGHTS AGREEMENT, dated as of June 30, 2020 (as amended, supplemented or otherwise modified from time to time, the "Agreement"), among The ODP Corporation, a Delaware corporation (the "Company"), Computershare Inc., a Delaware corporation, as rights agent (the "Rights Agent"), and, solely with respect to Section 37, Office Depot, LLC, a Delaware limited liability company ("OD LLC") and successor by merger to Office Depot, Inc., a Delaware corporation ("ODI").

WHEREAS, the Board of Directors of ODI authorized the issuance and declared a dividend of one preferred share purchase right (an "ODI Right") for each share of Common Stock, par value \$0.01 per share, of ODI (an "ODI Common Share") outstanding on May 21, 2020 (the "ODI Record Date"), each ODI Right representing the right to purchase one ten-thousandth of an ODI Preferred Share (as hereinafter defined), upon the terms and subject to the conditions set forth in that certain Rights Agreement, dated as of May 5, 2020 (the "Original Agreement"), between ODI and the Rights Agent, and further authorized and directed the issuance of one ODI Right with respect to each ODI Common Share that shall become outstanding between the ODI Record Date and the earliest of the Distribution Date, the Redemption Date and the Final Expiration Date (as such terms are defined in the Original Agreement);

WHEREAS, on the date hereof, ODI effected a reverse stock split of all of the outstanding ODI Common Shares by a ratio of 1-to-10 (the "Reverse Stock Split"), as a result of which, pursuant to the adjustments provided in Section 11(n) of the Original Agreement, (i) each ODI Right became a right to purchase, upon proper exercise, ten ten-thousandths of an ODI Preferred Share, and (ii) each ODI Common Share outstanding immediately after the Reverse Stock Split had issued with respect to it one ODI Right;

WHEREAS, on the date hereof and following the Reverse Stock Split, ODI consummated a Holding Company Reorganization (as defined in the Original Agreement), pursuant to that certain Agreement and Plan of Merger, dated as of the date hereof (the "Merger Agreement"), by and among ODI, the Company, ODP Investment, LLC, a Delaware limited liability company and a wholly owned subsidiary of the Company ("ODP Investment"), and OD LLC, pursuant to which ODI merged with and into OD LLC, with OD LLC continuing as the surviving entity of such merger as an indirect, wholly owned subsidiary of the Company (the "Merger");

WHEREAS, pursuant to the Merger, each ODI Common Share issued and outstanding immediately prior to the effective time of the Merger (the "Merger Effective Time") and following the Reverse Stock Split was converted into one Common Share (as herein defined) of the Company;

WHEREAS, on June 29, 2020, the Board of Directors of the Company authorized, effective upon the Company's entry into the Agreement, the issuance of one preferred share purchase right (a "Right") for each Common Share of the Company outstanding on June 30, 2020 as of the Merger Effective Time, each Right representing the right to purchase ten ten-thousandths of a Preferred Share (as hereinafter defined), upon the terms and subject to the conditions set forth herein, and further authorized and directed the issuance of one Right with respect to each Common Share of the Company that shall become outstanding after the Merger Effective Time but prior to the earliest of the Distribution Date, the Redemption Date and the Final Expiration Date (as such terms are hereinafter defined); and

WHEREAS, pursuant to Section 13(d) of the Original Agreement and in connection with the Merger, (i) Company desires to assume, effective as of the Merger Effective Time, all of the rights and obligations and duties of ODI under the Original Agreement, and (ii) the parties desire to amend and restate the Original Agreement in its entirety, effective as of the Merger Effective Time, to provide that references in the Original Agreement to the terms “Company”, “Common Shares of the Company” and “Preferred Shares” and similar terms are deemed to refer to the Company, Common Shares of the Company and Preferred Shares (each as herein defined), respectively, and that each ODI Right distributed or distributable under the Original Agreement become a Right, subject to the same terms and conditions as the ODI Rights (as adjusted to reflect the Reverse Stock Split) as of immediately prior to the Merger Effective Time.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the Original Agreement is hereby amended and restated in its entirety as follows:

Section 1. Definitions. For purposes of this Agreement, the following terms have the meanings indicated:

(a) “Acquiring Person” shall mean any Person (other than a Grandfathered Stockholder who has not been deemed an Acquiring Person pursuant to the definition thereof) who or which, together with all Affiliates and Associates of such Person, shall be the Beneficial Owner of 10% (20% in the case of a Passive Institutional Investor) or more of the Common Shares of the Company then outstanding, but shall not include the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company, or any entity holding Common Shares of the Company for or pursuant to the terms of any such employee benefit plan. Notwithstanding the foregoing, no Person shall become an Acquiring Person as the result of an acquisition of Common Shares of the Company by the Company which, by reducing the number of Common Shares of the Company outstanding, increases the proportionate number of Common Shares of the Company Beneficially Owned by such Person to 10% (20% in the case of a Passive Institutional Investor) or more of the Common Shares of the Company then outstanding; provided, however, that, if a Person, together with all Affiliates and Associates of such Person, shall become the Beneficial Owner of 10% (20% in the case of a Passive Institutional Investor) or more of the Common Shares of the Company then outstanding by reason of share purchases by the Company and shall, after such share purchases by the Company, become the Beneficial Owner, together with all Affiliates and Associates of such Person, of any additional Common Shares of the Company (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Shares of the Company or pursuant to a split or subdivision of the outstanding Common Shares of the Company), then such Person shall be deemed to be an Acquiring Person. Notwithstanding the foregoing, if the Board of Directors of the Company determines that a Person who or which would otherwise be an Acquiring Person, as defined pursuant to the foregoing provisions of this paragraph (a), has become such inadvertently (including, without limitation, because such Person was unaware that it Beneficially Owned a percentage of the Common Shares of the Company that would otherwise cause such Person to be an Acquiring Person or such Person was aware of the extent of the Common Shares of the Company that it Beneficially Owned but had no actual knowledge of the consequences of such Beneficial Ownership pursuant to this Agreement), and such Person divests as promptly as practicable (as determined by the Board of Directors of the Company) a sufficient number of Common Shares of the Company (or, in the case solely of shares of Derivative Common Shares of the Company, such Person terminates the subject

Derivative Contract or disposes of the subject derivative security or securities with respect to a sufficient number of Derivative Common Shares of the Company) so that such Person would no longer be an Acquiring Person, as defined pursuant to the foregoing provisions of this paragraph (a), then such Person shall not be deemed to be an Acquiring Person for any purposes of this Agreement. The Company shall provide prompt written notice to the Rights Agent of a determination by the Board of Directors under the preceding sentence. Notwithstanding the foregoing, if a bona fide swaps dealer who would otherwise be an Acquiring Person has become so as a result of its actions in the ordinary course of its business that the Board of Directors of the Company determines, in its sole discretion, were taken without the intent or effect of evading, or assisting any other Person to evade, the purposes and intent of this Agreement, or otherwise seeking to control or influence the management or policies of the Company, then, and unless and until the Board of Directors of the Company shall otherwise determine, such Person shall not be deemed to be an Acquiring Person for any purposes of this Agreement. Notwithstanding anything in this Section 1(a) to the contrary, no New Holding Company or its Affiliates or Associates, either individually, collectively or in any combination, shall be deemed to be an "Acquiring Person" solely by virtue or as a result of the approval, public announcement or consummation of a Holding Company Reorganization.

(b) "Adjustment Shares" shall have the meaning set forth in Section 11(a)(ii) hereof.

(c) "Affiliate" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act (as hereinafter defined) as in effect on the date of this Agreement.

(d) "Agreement" shall have the meaning set forth in the first paragraph hereof.

(e) "Associate" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act as in effect on the date of this Agreement.

(f) A Person shall be deemed the "Beneficial Owner" of, shall be deemed to have "Beneficial Ownership" of, and shall be deemed to "Beneficially Own," any securities:

(i) which such Person or any of such Person's Affiliates or Associates beneficially owns, directly or indirectly, within the meaning of Rule 13d-3 of the General Rules and Regulations under the Exchange Act as in effect on the date of this Agreement;

(ii) which such Person or any of such Person's Affiliates or Associates has, directly or indirectly, (A) the right or the obligation to acquire (whether such right is exercisable, or such obligation is required to be performed, immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), written or otherwise, or upon the exercise of conversion rights, exchange rights, rights (other than the Rights), warrants or options, or otherwise; provided, however, that a Person shall not be deemed the Beneficial Owner of, or to Beneficially Own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or

any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange; or (B) the right to vote pursuant to any agreement, arrangement or understanding, written or otherwise; provided, however, that a Person shall not be deemed the Beneficial Owner of, or to Beneficially Own, any security if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act, (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report), and (3) does not constitute a trust, proxy, power of attorney or other device with the purpose or effect of allowing two or more persons, acting in concert, to avoid being deemed Beneficial Owners of such security or otherwise avoid the status of "Acquiring Person" under the terms of this Agreement or as part of a plan or scheme to evade the reporting requirements under Schedule 13D or Sections 13(d) or 13(g) of the Exchange Act; or

(iii) which are beneficially owned, directly or indirectly, by any other Person with which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), whether or not in writing, (A) for the purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to Section 1(f)(ii)(B) hereof) or disposing of any securities of the Company, or (B) to obtain, change or influence control of the Company.

(iv) Notwithstanding anything in this definition of Beneficial Ownership to the contrary:

(A) The phrase "then outstanding," when used with reference to a Person's Beneficial Ownership of securities of the Company, shall mean the number of such securities then issued and outstanding together with the number of such securities not then actually issued and outstanding which are issuable by the Company and which such Person would be deemed to Beneficially Own hereunder.

(B) For purposes of determining whether a Person is an Acquiring Person, the number of Common Shares of the Company that a Person is deemed to Beneficially Own in connection with a particular Derivatives Contract shall equal the number of Notional Common Shares associated with such Derivatives Contract.

(C) Solely for purposes of determining whether a Right is Beneficially Owned by a Person who has become an Acquiring Person (thereby rendering such Right null and void pursuant to Section 11(a)(i)), an Acquiring Person shall be deemed to Beneficially Own the Common Shares of the Company which are beneficially owned, directly or indirectly, by a Counterparty (or any of such Counterparty's Affiliates or Associates) under any Derivatives Contract (without regard to any short or similar position under the same or any other Derivatives Contract) to which such Acquiring Person or any of such Acquiring Person's Affiliates or Associates is a Receiving Party, including without limitation all securities specified or referenced in such Derivatives Contract that are beneficially owned, directly or indirectly, by any other Counterparty (or any of such other Counterparty's Affiliates or Associates) under any Derivatives Contract to which such first Counterparty (or any of such first Counterparty's

Affiliates or Associates) is a Receiving Party, with this proviso being applied to successive Counterparties as appropriate; provided, however, that (1) the number of Common Shares of the Company that an Acquiring Person is deemed to Beneficially Own pursuant to this clause (C) in connection with a particular Derivatives Contract shall not exceed the number of Notional Common Shares associated with such Derivatives Contract, and (2) the Board may determine in a particular instance that an Acquiring Person shall not be deemed to Beneficially Own securities which were acquired by a Counterparty for purposes other than hedging against its economic exposure under Derivatives Contracts.

(g) "Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which banking institutions in the City of New York, New York, the State of New York, or the state in which the principal office of the Rights Agent is located are authorized or obligated by law or executive order to close.

(h) "Close of Business" on any given date shall mean 5:00 P.M., New York City time, on such date; provided, however, that, if such date is not a Business Day, it shall mean 5:00 P.M., New York City time, on the following Business Day.

(i) "Common Shares" when used with reference to the Company shall mean the shares of Common Stock, par value \$0.01 per share, of the Company. "Common Shares" when used with reference to any Person other than the Company shall mean the capital stock (or the equivalent equity interest) with the greatest voting power of such other Person or, if such other Person is a Subsidiary of another Person, the Person or Persons who or which ultimately control such first-mentioned Person.

(j) "Common Stock Equivalents" shall have the meaning set forth in Section 11(a)(iii) hereof.

(k) "Company" shall have the meaning set forth in the first paragraph hereof.

(l) "Counterparty" shall have the meaning set forth in Section 1(p) hereof.

(m) "Current Value" shall have the meaning set forth in Section 11(a)(iii) hereof.

(n) "Customer Identification Program" shall have the meaning set forth in Section 36 hereof.

(o) "Derivative Common Shares" shall mean Common Shares that are deemed to be Beneficially Owned pursuant to Section 1(f)(iv)(B) hereof.

(p) "Derivatives Contract" shall mean a contract between two parties that is designed to produce economic benefits and risks for one party (the "Receiving Party", and the other party, the "Counterparty") that correspond substantially to the ownership by such Receiving Party of a number of Common Shares as specified or referenced in such contract (such number corresponding to such economic benefits and risks, the "Notional Common Shares"), regardless of (i) whether such contract conveys any voting rights, (ii) whether obligations under such contract are required or permitted to be settled through the delivery of cash, Common Shares or other

property, or (iii) any short position under the same or any other Derivative Contract. For the avoidance of doubt, interests in broad-based index options, broad-based index futures and broad-based publicly traded market baskets of stocks approved for trading by the appropriate federal governmental authority shall not be deemed to be Derivatives Contracts.

- (q) “Distribution Date” shall have the meaning set forth in Section 3(a) hereof.
- (r) “equivalent preferred shares” shall have the meaning set forth in Section 11(b) hereof.
- (s) “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.
- (t) “Exchange Ratio” shall have the meaning set forth in Section 24(a) hereof.
- (u) “Final Expiration Date” shall have the meaning set forth in Section 7(a) hereof.

(v) “Grandfathered Stockholder” shall mean any Person who or which, together with all Affiliates and Associates of such Person, at the time of the first public announcement of this Agreement, is a Beneficial Owner of 10% (20% in the case of a Passive Institutional Investor) or more of the Common Shares of the Company then outstanding; provided, however, that if a Grandfathered Stockholder, together with all Affiliates and Associates of such Grandfathered Stockholder, becomes, after such time, the Beneficial Owner of any additional Common Shares of the Company (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Shares of the Company or pursuant to a split or subdivision of the outstanding Common Shares of the Company), regardless of whether, thereafter or as a result thereof, there is an increase, decrease or no change in the percentage of Common Shares of the Company then outstanding Beneficially Owned by such Grandfathered Stockholder, then such Grandfathered Stockholder shall be deemed to be an Acquiring Person; provided, further, that upon the first decrease of a Grandfathered Stockholder’s Beneficial Ownership below 10% (20% in the case of a Passive Institutional Investor), such Grandfathered Stockholder shall cease to be a Grandfathered Stockholder and this definition shall have no further force or effect with respect to such Person.

For the avoidance of doubt, in the event that after the time of the first public announcement of this Agreement, any agreement, arrangement or understanding pursuant to which any Grandfathered Stockholder is deemed to be the Beneficial Owner of Common Shares of the Company expires, terminates or no longer confers any benefit to or imposes any obligation on the Grandfathered Stockholder, then in such event any direct or indirect replacement or extension of or substitution for such agreement, arrangement or understanding which confers Beneficial Ownership of Common Shares of the Company on such Grandfathered Stockholder shall be considered the acquisition of Beneficial Ownership of additional Common Shares of the Company by such Grandfathered Stockholder; provided, however, that a Grandfathered Stockholder shall not be deemed to acquire Beneficial Ownership of additional Common Shares of the Company if, upon final expiration of a Derivatives Contract which is settled solely in cash or in cash-settled instruments (a “Cash Settled Derivative”) pursuant to which such Grandfathered Stockholder was

deemed to have Beneficial Ownership of Common Shares of the Company such Grandfathered Stockholder replaces, extends or substitutes such Cash Settled Derivative with a Cash Settled Derivative which does not result in such Grandfathered Stockholder having Beneficial Ownership of a greater number of Common Shares of the Company than such Grandfathered Stockholder Beneficially Owned pursuant to the expiring Derivatives Contract.

(w) "Holding Company Reorganization" means a merger of the Company with a direct or indirect Subsidiary of the Company pursuant to which the Company becomes a direct or indirect wholly-owned Subsidiary of a holding company that is, immediately prior to the effective time of such merger, a direct or indirect Subsidiary of the Company ("New Holding Company") in accordance with Section 251(g) of the General Corporation Law of the State of Delaware.

(x) "NASDAQ" shall mean The Nasdaq Stock Market LLC.

(y) "New Holding Company" shall have the meaning set forth in Section 1(w) hereof.

(z) "Notional Common Shares" shall have the meaning set forth in Section 1(p) hereof.

(aa) "ODI Preferred Shares" shall mean shares of Series A Junior Participating Preferred Stock, par value \$0.01 per share, of ODI having the rights and preferences set forth in the Certificate of Designations of Series A Junior Participating Preferred Stock of ODI filed by ODI with the Secretary of State of Delaware on May 5, 2020.

(bb) "Passive Institutional Investor" shall mean any Person who or which has reported or is required to report Beneficial Ownership of Common Shares of the Company on Schedule 13G under the Exchange Act (or any comparable or successor report), but only so long as (i) such Person is eligible to report such ownership on Schedule 13G under the Exchange Act (or any comparable or successor report), and (ii) such Person has not reported and is not required to report such ownership on Schedule 13D under the Exchange Act (or any comparable or successor report) and such Person does not hold Common Shares of the Company on behalf of any other Person who is required to report Beneficial Ownership of Common Shares of the Company on such Schedule 13D; provided, however, that if a formerly Passive Institutional Investor should report or become required to report Beneficial Ownership of Common Shares of the Company on Schedule 13D, that formerly Passive Institutional Investor will not be deemed to be or to have become an Acquiring Person if and for so long as (A) at the time it reports or becomes required to report Beneficial Ownership of Common Shares of the Company on Schedule 13D, that formerly Passive Institutional Investor has Beneficial Ownership of less than 10% of the Common Shares of the Company then outstanding; or (B) (1) it divests as promptly as practicable (but in any event not later than five Business Days after becoming required to report on Schedule 13D) Beneficial Ownership of a sufficient number of Common Shares of the Company so that it would no longer be an "Acquiring Person" as defined herein, and (2) prior to reducing its Beneficial Ownership of Common Shares of the Company then outstanding to below 10%, it does not increase its Beneficial Ownership of the Common Shares then outstanding (other than by reason of share purchases by the Company) above such Person's lowest Beneficial Ownership of the Common Shares then outstanding at any time during such five Business Day period.

(cc) "Person" shall mean any individual, partnership, firm, corporation, limited liability company, association, trust, joint venture, unincorporated organization or other entity, and shall include any successor (by merger or otherwise) of such entity, as well as any group under Rule 13d-5(b)(1) of the Exchange Act.

(dd) "Preferred Shares" shall mean shares of Series A Junior Participating Preferred Stock, par value \$0.01 per share, of the Company having the rights and preferences set forth in the Certificate of Designations, which was filed by the Company with the Secretary of State of Delaware on June 29, 2020, a copy of which is attached to this Agreement as Exhibit A.

(ee) "Purchase Price" shall mean the price (subject to adjustment as provided herein) at which a holder of a Right may purchase one ten-thousandth of a Preferred Share (subject to adjustment as provided herein), which price shall initially be \$9.00.

(ff) "Receiving Party." shall have the meaning set forth in Section 1(p) hereof.

(gg) "Record Date" shall mean June 30, 2020.

(hh) "Redemption Date" shall have the meaning set forth in Section 7(a) hereof.

(ii) "Redemption Price" shall have the meaning set forth in Section 23(a) hereof.

(jj) "Right" shall have the meaning set forth in the recitals herein.

(kk) "Right Certificate" shall have the meaning set forth in Section 3(a) hereof.

(ll) "Rights Agent" shall have the meaning set forth in the first paragraph hereof.

(mm) "Securities Act" shall mean the Securities Act of 1933, as amended.

(nn) "Security." shall have the meaning set forth in Section 11(d)(i) hereof.

(oo) "Shares Acquisition Date" shall mean the first date of public announcement (which for purposes of this definition shall include, without limitation, a report filed pursuant to Section 13(d) of the Exchange Act) by the Company or an Acquiring Person that an Acquiring Person has become such. Notwithstanding anything in this Agreement to the contrary, a Share Acquisition Date shall not be deemed to have occurred solely by virtue or as a result of the approval, public announcement, or consummation of a Holding Company Reorganization.

(pp) "Signature Guarantee" has the meaning set forth in Section 6(a) hereof.

(qq) "Subsidiary" of any Person shall mean any corporation or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such Person.

(rr) “Summary of Rights” shall have the meaning set forth in Section 3(b) hereof.

(ss) “Trading Day” shall have the meaning set forth in Section 11(d) hereof.

(tt) “Trust” shall have the meaning set forth in Section 24(a) hereof.

(uu) “Trust Agreement” shall have the meaning set forth in Section 24(a) hereof.

Section 2. Appointment of Rights Agent. The Company hereby appoints the Rights Agent to act as rights agent for the Company in accordance with the express terms and conditions (and no implied terms or conditions) hereof, and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such co-rights agents as it may deem necessary or desirable, upon 10 days’ prior written notice to the Rights Agent. The Rights Agent shall have no duty to supervise, and shall in no event be liable for, the acts or omissions of any such co-rights agent. In the event the Company appoints one or more co-rights agent(s), the respective duties of the Rights Agent and any co-rights agent shall be as the Company shall reasonably determine, provided that such duties and determination are consistent with the terms and provisions of this Agreement and that contemporaneous with such appointment, if any, the Company shall notify the Rights Agent in writing thereof.

Section 3. Issue of Right Certificates. The Rights shall be deemed issued, upon the terms and subject to the conditions set forth herein, as of the Record Date, or if later, the date on which the Common Shares of the Company underlying such Rights become outstanding, provided that:

(a) Until the earlier of (i) the Close of Business on the 10th day after the Shares Acquisition Date (or, if the 10th day after the Shares Acquisition Date occurs before the Record Date, the Close of Business on the Record Date) and (ii) the Close of Business on the 10th day (or such later date as the Board of Directors of the Company shall determine, prior to such time as any Person becomes an Acquiring Person) after the date that a tender or exchange offer by any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company, or any Person or entity organized, appointed or established by the Company or any Subsidiary of the Company for or pursuant to the terms of any such plan) is first published or sent or given within the meaning of Rule 14d-2(a) of the General Rules and Regulations under the Exchange Act, if, upon consummation thereof, such Person would become an Acquiring Person (the earlier of (i) and (ii), the “Distribution Date”), (x) the Rights, unless earlier expired, redeemed or terminated, will be evidenced (subject to the provisions of Section 3(b) hereof) by the certificates for Common Shares of the Company registered in the names of the holders thereof (which certificates shall also be deemed to be Right Certificates), or, in the case of Common Shares of the Company held in uncertificated form, by the transaction statement or other record of ownership of such Common Shares of the Company, and not by separate Right Certificates, and (y) the Rights, including the right to receive Right Certificates, will be transferable only in connection with the transfer of Common Shares of the Company. The Company shall promptly notify the Rights Agent in writing upon the occurrence of the Distribution Date and, if such notification is given orally, the Company shall confirm the same in writing on, or prior to, the Business Day next following the day on which such oral notification is given. Until

such written notice is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that the Distribution Date has not occurred. As soon as practicable after the Distribution Date, the Company will prepare and execute, and upon written request from the Company, the Rights Agent will countersign, and the Company will send or cause to be sent (and the Rights Agent will, if requested and provided with all necessary information and documents at the expense of the Company, send) by first-class, postage-prepaid mail, to each record holder of Common Shares of the Company as of the Close of Business on the Distribution Date (other than any Acquiring Person or any Associate or Affiliate of an Acquiring Person), at the address of such holder shown on the records of the Company or the transfer agent or registrar for the Common Shares of the Company, a Right Certificate, in substantially the form of Exhibit B hereto (a "Right Certificate"), evidencing one Right for each Common Share so held, subject to adjustment as provided herein. As of and after the Distribution Date, the Rights will be evidenced solely by such Right Certificates. Notwithstanding anything in this Agreement to the contrary, a Distribution Date shall not be deemed to have occurred solely by virtue or as the result of the approval, public announcement or consummation of a Holding Company Reorganization.

(b) As soon as practicable after the Record Date, the Company will send (directly, or at the expense of the Company, upon the written request of the Company and after providing all necessary information and documents, through the Rights Agent or the Company's transfer agent for the Common Shares of the Company) a copy of a Summary of Rights to Purchase Preferred Shares, in substantially the form of Exhibit C hereto (the "Summary of Rights"), by first-class, postage-prepaid mail, to any record holder of Common Shares of the Company as of the Merger Effective Time on the Record Date (other than any Acquiring Person or any Associate or Affiliate of an Acquiring Person) who may request it prior to the Final Expiration Date, at the address of such holder shown on the records of the Company or the transfer agent or registrar for the Common Shares of the Company. With respect to any Common Shares of the Company outstanding as of the Record Date, and until the earliest of the Distribution Date, the Redemption Date and the Final Expiration Date, (i) in the case of certificated Common Shares of the Company, (A) the Rights associated with the Common Shares of the Company represented by any certificate will be evidenced by such certificate and the registered holders of the Common Shares of the Company shall also be the registered holders of the associated Rights and (B) the surrender for transfer of any such certificate shall also constitute the transfer of the Rights associated with the Common Shares of the Company represented thereby, and (ii) in the case of Common Shares of the Company held in uncertificated form, (A) the Rights associated with the Common Shares of the Company shall be evidenced by the balances indicated in the book-entry account system of the transfer agent for such Common Shares of the Company and the registered holders of the Common Shares of the Company shall also be the registered holders of the associated Rights and (B) the transfer of any Common Shares of the Company in the book-entry account system of the transfer agent for such Common Shares of the Company shall also constitute the transfer of the Rights associated with such Common Shares of the Company.

(c) In the case of certificated Common Shares of the Company, certificates issued for Common Shares of the Company after the Record Date (including upon transfer or exchange of outstanding Common Shares of the Company), but prior to the earliest of the Distribution Date, the Redemption Date and the Final Expiration Date, shall have impressed on, printed on, written on or otherwise affixed to them a legend in substantially the following form:

This certificate also evidences and entitles the holder hereof to certain rights as set forth in an Amended and Restated Rights Agreement among The ODP Corporation, Computershare Inc., as Rights Agent (or any successor rights agent), and solely with respect to Section 37 thereof, Office Depot, LLC, dated as of June 30, 2020, as it may be amended, supplemented or otherwise modified from time to time (the "Agreement"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of The ODP Corporation. Under certain circumstances, as set forth in the Agreement, such Rights (as defined in the Agreement) will be evidenced by separate certificates and will no longer be evidenced by this certificate. The ODP Corporation will mail to the holder of this certificate a copy of the Agreement without charge after receipt of a written request therefor. As set forth in the Agreement, Rights Beneficially Owned (as defined in the Agreement) by any Person (as defined in the Agreement) who becomes an Acquiring Person (as defined in the Agreement) shall be null and void.

With respect to such certificates containing the foregoing legend, until the Distribution Date, the Rights associated with the Common Shares of the Company represented by such certificates shall be evidenced by such certificates alone, and the surrender for transfer of any such certificate shall also constitute the transfer of the Rights associated with the Common Shares of the Company represented thereby. In the event that the Company purchases or otherwise acquires any Common Shares of the Company after the Record Date but prior to the Distribution Date, any Rights associated with such Common Shares of the Company shall be deemed cancelled and retired so that the Company shall not be entitled to exercise any Rights associated with the Common Shares of the Company which are no longer outstanding. Notwithstanding this Section 3(c), the omission of a legend shall not affect the enforceability of any part of this Agreement or the rights of any holder of the Rights.

(d) In the case of Common Shares of the Company held in uncertificated form, the Company shall cause the confirmation and account statements sent to holders of Common Shares of the Company in book-entry form (including upon transfer or exchange of outstanding Common Shares of the Company) prior to the earliest of the Distribution Date, the Redemption Date and the Final Expiration Date to bear a legend in substantially the following form:

Each share of common stock, \$0.01 par value per share, of The ODP Corporation entitles the holder thereof to certain rights as set forth in a Rights Agreement among The ODP Corporation, Computershare Inc., as Rights Agent (or any successor rights agent), and solely with respect to Section 37 thereof, Office Depot, LLC, dated as of June 30, 2020, as it may be amended, supplemented or otherwise modified from time to time (the "Agreement"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of The ODP Corporation. Under certain circumstances, as set forth in the

Agreement, such Rights (as defined in the Agreement) will be evidenced by separate certificates and will no longer be evidenced by the shares to which this statement relates. The ODP Corporation will mail to the holder of the shares to which this statement relates a copy of the Agreement without charge after receipt of a written request therefor. As set forth in the Agreement, Rights Beneficially Owned (as defined in the Agreement) by any Person (as defined in the Agreement) who becomes an Acquiring Person (as defined in the Agreement) shall be null and void.

Notwithstanding this Section 3(d), the omission of a legend shall not affect the enforceability of any part of this Agreement or the rights of any holder of the Rights.

Section 4. Form of Right Certificates. The Right Certificates (and the forms of election to purchase Preferred Shares and of assignment to be printed on the reverse thereof), when and if issued, shall be substantially the same as Exhibit B hereto, and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate (but which do not affect the rights, duties, liabilities or responsibilities of the Rights Agent) and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law or with any applicable rule or regulation made pursuant thereto or with any applicable rule or regulation of any stock exchange or the Financial Industry Regulatory Authority, or to conform to customary usage. Subject to the provisions of Sections 11 and 22 hereof, the Right Certificates shall entitle the holders thereof to purchase such number of one ten-thousandths of a Preferred Share as shall be set forth therein at the Purchase Price, but the number of such one ten-thousandths of a Preferred Share and the Purchase Price shall be subject to adjustment as provided herein.

Section 5. Countersignature and Registration.

(a) The Right Certificates shall be duly executed on behalf of the Company by its Chairman of the Board of Directors, its Chief Executive Officer, its President, any of its Vice Presidents or its Treasurer, either manually or by electronic signature, and shall be attested by the Secretary or an Assistant Secretary of the Company, either manually or by electronic signature. Upon written request by the Company, the Right Certificates shall be countersigned by the Rights Agent, either manually or by electronic or facsimile signature, and shall not be valid for any purpose unless so countersigned. In case any officer of the Company who shall have signed or attested any of the Right Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Right Certificates, nevertheless, may be countersigned by the Rights Agent and issued and delivered by the Company with the same force and effect as though the individual who signed or attested such Right Certificates had not ceased to be such officer of the Company; and any Right Certificate may be signed or attested on behalf of the Company by any individual who, at the actual date of the execution of such Right Certificate, shall be a proper officer of the Company to sign such Right Certificate, although at the date of the execution of this Agreement any such individual was not such an officer.

(b) Following the Distribution Date and receipt by the Rights Agent of written notice to that effect and all other relevant information and documents referred to in Section 3(a), the Rights Agent will keep or cause to be kept, at its office or offices designated for such purpose, books for registration and transfer of the Right Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Right Certificates, the number of Rights evidenced on its face by each of the Right Certificates and the date of each of the Right Certificates.

Section 6. Transfer, Split Up, Combination and Exchange of Right Certificates; Mutilated, Destroyed, Lost or Stolen Right Certificates.

(a) Subject to the provisions of Section 14 hereof, at any time after the Close of Business on the Distribution Date, and at or prior to the Close of Business on the earlier of the Redemption Date or the Final Expiration Date, any Right Certificate or Right Certificates (other than Right Certificates representing Rights that have become null and void pursuant to Section 11(a)(ii) hereof or that have been exchanged pursuant to Section 24 hereof) may be transferred, split up, combined or exchanged for another Right Certificate or Right Certificates entitling the registered holder to purchase a like number of one ten-thousandths of a Preferred Share (subject to adjustment as provided herein) as the Right Certificate or Right Certificates surrendered then entitled such holder to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Right Certificate or Right Certificates shall make such request in writing delivered to the Rights Agent, and shall surrender the Right Certificate or Right Certificates to be transferred, split up, combined or exchanged at the office or offices of the Rights Agent designated for such purpose, accompanied by a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association (a "Signature Guarantee") and such documentation as the Rights Agent may reasonably request. The Right Certificates are transferrable only on the registry books of the Rights Agent. Neither the Rights Agent nor the Company shall be obligated to take any action whatsoever with respect to the transfer of any such surrendered Right Certificate until the registered holder thereof shall have (i) properly completed and duly executed the certificate contained in the form of assignment on the reverse side of such Right Certificate, (ii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) thereof and of the Rights evidenced thereby and the Affiliates and Associates of such Beneficial Owner (or former Beneficial Owner) thereof as the Company or the Rights Agent shall reasonably request, and (iii) paid a sum sufficient to cover any tax or charge that may be imposed in connection with any transfer, split up, combination or exchange of Right Certificates as required hereunder. Thereupon the Rights Agent shall, subject to Sections 11(a)(ii), 14 and 24 hereof, countersign and deliver to the Person entitled thereto a Right Certificate or Right Certificates, as the case may be, as so requested, registered in such name or names as may be designated by the surrendering registered holder. The Company may require payment of a sum sufficient to cover any tax or charge that may be imposed in connection with any transfer, split up, combination or exchange of Right Certificates. The Rights Agent shall forward any such sum collected by it to the Company or to such Persons as the Company shall specify by written notice. The Rights Agent shall have no duty or obligation under any section of this Agreement that requires the payment of taxes or charges unless and until it is satisfied that all such taxes or charges have been paid.

(b) Upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Right Certificate, and such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company or the Rights Agent shall reasonably request, accompanied by such documentation as the Rights Agent may reasonably request, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and, at the Company's or the Rights Agent's request, reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Right Certificate if mutilated, the Company will issue, execute, and deliver a new Right Certificate of like tenor to the Rights Agent for countersignature and delivery to the registered holder in lieu of the Right Certificate so lost, stolen, destroyed or mutilated.

(c) Notwithstanding any other provisions hereof, the Company and the Rights Agent may amend this Agreement to provide for uncertificated Rights in addition to or in place of Rights evidenced by Right Certificates.

Section 7. Exercise of Rights; Purchase Price; Expiration Date of Rights.

(a) The registered holder of any Right Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein), in whole or in part, at any time after the Distribution Date, upon surrender of the Right Certificate, with the appropriate form of election to purchase on the reverse side thereof properly completed and duly executed, to the Rights Agent at the office or offices of the Rights Agent designated for such purpose, accompanied by a Signature Guarantee and such documentation as the Rights Agent may reasonably request, together with payment of the Purchase Price for each one ten-thousandth of a Preferred Share as to which the Rights are exercised and an amount equal to any tax or charge required to be paid in cash, or by certified check, cashier's check or money order payable to the order of the Company, at or prior to the earliest of (i) the Close of Business on May 4, 2021 (the "Final Expiration Date"), (ii) the time at which the Rights are redeemed as provided in Section 23 hereof (the "Redemption Date"), and (iii) the time at which such Rights are exchanged as provided in Section 24 hereof. Except for those provisions herein that expressly survive the termination of this Agreement, this Agreement shall terminate at such time as the Rights are no longer exercisable hereunder.

(b) The Purchase Price shall be subject to adjustment from time to time as provided in Section 11 or 13 hereof, and shall be payable in lawful money of the United States of America in accordance with paragraph (c) below.

(c) Upon receipt of a Right Certificate representing exercisable Rights, with the appropriate form of election to purchase properly completed and duly executed, accompanied by payment of the aggregate Purchase Price for the number of Preferred Shares to be purchased and an amount equal to any applicable transfer tax or charge required to be paid by the holder of such Right Certificate in accordance with Section 9 hereof by cash or by certified check, cashier's check or money order payable to the order of the Company, the Rights Agent shall thereupon promptly (i) (A) requisition from any transfer agent of the Preferred Shares (or from the Company if there shall be no such transfer agent, or make available if the Rights Agent is the transfer agent) certificates for the number of Preferred Shares to be purchased and the Company hereby irrevocably authorizes any such transfer agent to comply with all such requests, or (B) requisition from the depositary agent depositary receipts representing such number of one ten-thousandths of a Preferred Share as are to be purchased (in which case certificates for the Preferred Shares

represented by such receipts shall be deposited by the transfer agent of the Preferred Shares with such depository agent) and the Company hereby directs such depository agent to comply with such request; (ii) when necessary to comply with this Agreement, requisition from the Company the amount of cash to be paid in lieu of issuance of fractional shares in accordance with Section 14 hereof; (iii) after receipt of such certificates or depository receipts, cause the same to be delivered to or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated in writing by such holder; and (iv) when necessary to comply with this Agreement, after receipt, deliver such cash to or upon the order of the registered holder of such Right Certificate. In the event that the Company is obligated to issue securities of the Company other than Preferred Shares (including Common Shares of the Company) of the Company pursuant to Section 11(a) hereof, the Company will make all arrangements necessary so that such other securities are available for distribution by the Rights Agent.

(d) In case the registered holder of any Right Certificate shall exercise less than all the Rights evidenced thereby, a new Right Certificate evidencing Rights equivalent to the Rights remaining unexercised shall be issued by the Rights Agent to the registered holder of such Right Certificate or to such holder's duly authorized assigns, subject to the provisions of Section 14 hereof.

(e) Notwithstanding anything in this Agreement or any Right Certificate to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder of Rights or other securities upon the occurrence of any purported transfer or exercise as set forth in Section 6 hereof or this Section 7 unless such registered holder shall have (i) properly completed and duly executed the certification following the appropriate form of election to purchase set forth on the reverse side of the Right Certificate surrendered for such transfer or exercise and affixing a Signature Guarantee, (ii) tendered the Purchase Price (and an amount equal to any applicable transfer tax required to be paid by the holder of such Right Certificate in accordance with Section 9) to the Company in the manner set forth in Section 7(c), and (iii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company or the Rights Agent shall reasonably request.

Section 8. Cancellation and Destruction of Right Certificates. All Right Certificates surrendered for the purpose of and accepted for exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or to any of its agents (other than the Rights Agent), be delivered to the Rights Agent for cancellation or in cancelled form, or, if delivered or surrendered to the Rights Agent, shall be cancelled by it, and no Right Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Right Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent shall deliver all cancelled Right Certificates to the Company, or shall, at the written request and expense of the Company, destroy or cause to be destroyed such cancelled Right Certificates, and, in such case, shall deliver a certificate of destruction thereof to the Company.

Section 9. Availability of Preferred Shares.

(a) The Company covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued Preferred Shares or any Preferred Shares held in its treasury the number of Preferred Shares that will be sufficient to permit the exercise in full of all outstanding Rights in accordance with Section 7 hereof. The Company covenants and agrees that it will take all such action as may be necessary to ensure that all Preferred Shares (or Common Shares of the Company or other securities, as the case may be) delivered upon exercise of Rights shall, at the time of delivery of the certificates for such Preferred Shares (or Common Shares of the Company and other securities, as the case may be) (subject to payment of the Purchase Price and compliance with all other applicable provisions of this Agreement), be duly and validly authorized and issued and fully paid and nonassessable shares.

(b) The Company further covenants and agrees that it will pay when due and payable any and all taxes and charges that may be payable in respect of the issuance or delivery of the Right Certificates or of any Preferred Shares upon the exercise of Rights. The Company shall not, however, be required to pay any tax or charge that may be payable in respect of any transfer or delivery of Right Certificates to a Person other than, or the issuance or delivery of certificates or depositary receipts for the Preferred Shares in a name other than that of, the registered holder of the Right Certificate evidencing Rights surrendered for exercise or to issue or to deliver any certificates or depositary receipts for Preferred Shares upon the exercise of any Rights until any such tax or charge shall have been paid (any such tax or charge being payable by the holder of such Right Certificate at the time of surrender) or until it has been established to the Company's and the Rights Agent's reasonable satisfaction that no such tax or charge is due.

Section 10. Preferred Shares Record Date. Each Person in whose name any certificate for Preferred Shares is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of the Preferred Shares represented thereby on, and such certificate shall be dated, the date upon which the Right Certificate evidencing such Rights was duly surrendered with the forms of election and certification properly completed and duly executed and payment of the Purchase Price (and any applicable taxes or charges) was made; provided, however, that, if the date of such surrender and payment is a date upon which the Preferred Shares transfer books of the Company are closed, such Person shall be deemed to have become the record holder of such shares on, and such certificate shall be dated, the next succeeding Business Day on which the Preferred Shares transfer books of the Company are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Right Certificate shall not be entitled to any rights of a holder of Preferred Shares for which the Rights shall be exercisable, including, without limitation, the right to vote, to receive dividends or other distributions or to exercise any preemptive rights, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

Section 11. Adjustment of Purchase Price, Number of Shares or Number of Rights. The Purchase Price, the number of Preferred Shares covered by each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

(a) (i) In the event the Company shall at any time after the date of this Agreement (A) declare a dividend on the Preferred Shares payable in Preferred Shares, (B) subdivide the outstanding Preferred Shares, (C) combine the outstanding Preferred Shares into a smaller number of Preferred Shares or (D) issue any shares of its capital stock in a reclassification of the Preferred Shares (including any such reclassification in connection with a share exchange, consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11(a), the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, and the number and kind of shares of capital stock issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive the aggregate number and kind of shares of capital stock which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Shares transfer books of the Company were open, such holder would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification; provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right.

(ii) Subject to Section 24 hereof, in the event any Person becomes an Acquiring Person, each holder of a Right shall thereafter have a right to receive, upon exercise thereof at a price equal to the then-current Purchase Price multiplied by the number of one ten-thousandths of a Preferred Share for which a Right is then exercisable, in accordance with the terms of this Agreement and in lieu of Preferred Shares, such number of Common Shares of the Company as shall equal the result obtained by (A) multiplying the then-current Purchase Price by the number of one ten-thousandths of a Preferred Share for which a Right is then exercisable and dividing that product by (B) 50% of the then-current per share market price of the Common Shares of the Company (determined pursuant to Section 11(d) hereof) on the date on which such Person becomes an Acquiring Person (such number of shares, the "Adjustment Shares"). In the event that any Person shall become an Acquiring Person and the Rights shall then be outstanding, the Company shall not take any action which would eliminate or diminish the benefits intended to be afforded by the Rights.

From and after the occurrence of any Person becoming an Acquiring Person, any Rights that are or were acquired or Beneficially Owned by (i) any Acquiring Person (or any Associate or Affiliate of such Acquiring Person), (ii) a transferee of an Acquiring Person (or of any Associate or Affiliate of an Acquiring Person) who becomes a transferee after any Person becomes an Acquiring Person, (iii) a transferee of an Acquiring Person (or of any Associate or Affiliate of an Acquiring Person) who becomes a transferee prior to or concurrently with any Person becoming an Acquiring Person and receives such Rights pursuant to either (x) a transfer (whether or not for consideration) from the Acquiring Person (or any Associate or Affiliate of an Acquiring Person) to holders of equity interests in such Acquiring Person (or in any Associate or Affiliate of an Acquiring Person) or to any Person with whom the Acquiring Person (or any Associate or Affiliate of an Acquiring Person) has any continuing agreement, arrangement or understanding regarding the transferred Rights or (y) a transfer which the Board of Directors of the Company determines is part of a plan, arrangement or understanding which has as a primary purpose or effect the avoidance of this section, or (iv) any subsequent transferee receiving transferred Rights from any such transferee referred to in clauses (ii) or (iii), either directly or through one or more intermediate transferees, shall, in each case, be null and void without any further action, and any holder of such Rights shall thereafter have no right to exercise such Rights under any provision of this Agreement

or otherwise. Neither the Company nor the Rights Agent shall have liability to any holder of Right Certificates or other Person as a result of the Company's failure to make any determinations with respect to an Acquiring Person or its Affiliates, Associates or transferees hereunder. No Right Certificate shall be issued pursuant to Section 3 hereof that represents Rights Beneficially Owned by an Acquiring Person whose Rights would be null and void pursuant to this subparagraph (ii) or any Associate or Affiliate thereof; no Right Certificate shall be issued at any time upon the transfer of any Rights to an Acquiring Person whose Rights would be null and void pursuant to this subparagraph (ii) or any Associate or Affiliate thereof or to any nominee of such Acquiring Person, Associate or Affiliate or with respect to any Common Shares of the Company otherwise deemed to be Beneficially Owned by any of the foregoing; and any Right Certificate delivered to the Rights Agent for transfer to an Acquiring Person or other Person whose Rights would be null and void pursuant to this subparagraph (ii) shall be cancelled. The Company shall give the Rights Agent written notice of the identity of any such Acquiring Person, Associate or Affiliate, or the nominee of any of the foregoing, and the Rights Agent may rely on such written notice in carrying out its duties under this Agreement and shall be deemed not to have any knowledge of the identity of any such Acquiring Person, Associate or Affiliate, or the nominee of any of the foregoing, unless and until it shall have received such written notice.

(iii) In the event that there shall not be sufficient Common Shares of the Company issued but not outstanding or authorized but unissued (after taking into account, at the discretion of the Board of Directors of the Company, any necessary reserves of Common Shares of the Company) to permit the exercise in full of the Rights in accordance with subparagraph (ii) above, the Company shall either (x) take all such action as may be necessary to authorize additional Common Shares of the Company for issuance upon exercise of the Rights or (y) (A) determine the value of the Adjustment Shares issuable upon the exercise of a Right (the "Current Value"), and (B) with respect to each Right (which shall not include Rights that have become void pursuant to the provisions of Section 11(a)(ii) hereof), make adequate provision to substitute for some or all of the Adjustment Shares, upon the exercise of a Right and payment of the applicable Purchase Price, (1) cash, (2) a reduction in the Purchase Price, (3) shares (or fractions of a share) of other equity securities of the Company (including, without limitation, shares or units of shares of any series of preferred stock which the Board of Directors of the Company has deemed to have the same value or economic rights as a Common Share of the Company) (such shares of equity securities, the "Common Stock Equivalents"), (4) Preferred Shares (or fractions of a Preferred Share), (5) debt securities of the Company, (6) other assets or (7) any combination of the foregoing, in any case set forth in clauses (1) through (7) above, having an aggregate value equal to the Current Value, where such aggregate value has been determined by the Board of Directors of the Company based upon the advice of an investment banking firm selected by the Board of Directors of the Company. To the extent that action is to be taken pursuant to the preceding sentence, the Company (x) shall provide that such action shall apply uniformly to all outstanding Rights (other than Rights that have become void pursuant to the provisions of Section 11(a)(ii) hereof), and (y) may suspend the exercisability of the Rights in order to seek any authorization of additional shares and/or to decide the appropriate form of distribution to be made pursuant to this second sentence of this Section 11(a)(iii) and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement (with prompt written notice thereof to the Rights Agent) stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement (with prompt written notice thereof to the Rights Agent) at such time as the suspension is no longer in effect. For purposes of this Section 11(a)(iii), (I) the value of each

Adjustment Share shall be the current per share market price of the Common Shares of the Company (as determined pursuant to Section 11(d) hereof), (II) the value of each Common Share shall be the current per share market price of the Common Shares of the Company (as determined pursuant to Section 11(d) hereof), (III) the value of each Preferred Share shall be the current per share market price of the Preferred Shares (as determined pursuant to Section 11(d) hereof), and (IV) the value of any Common Stock Equivalent shall be the same value as a Common Share of the Company, in each case of clauses (I) through (IV), on such date as any Person becomes an Acquiring Person.

(b) In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of Preferred Shares entitling them (for a period expiring within 45 calendar days after such record date) to subscribe for or purchase Preferred Shares (or shares having similar rights, privileges and preferences as the Preferred Shares (“equivalent preferred shares”)) or securities convertible into Preferred Shares or equivalent preferred shares at a price per Preferred Share or equivalent preferred share (or having a conversion price per share, if a security convertible into Preferred Shares or equivalent preferred shares) less than the then-current per share market price (as defined in Section 11(d)) of the Preferred Shares on such record date, the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of Preferred Shares outstanding on such record date plus the number of Preferred Shares which the aggregate offering price of the total number of Preferred Shares and/or equivalent preferred shares so to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such current market price and the denominator of which shall be the number of Preferred Shares outstanding on such record date plus the number of additional Preferred Shares and/or equivalent preferred shares to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible); provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. In case such subscription price may be paid in consideration part or all of which shall be in a form other than cash, the value of such consideration shall be as determined by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and holders of the Rights. Preferred Shares owned by or held for the account of the Company or any Subsidiary of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustment shall be made successively whenever such a record date is fixed; and, in the event that such rights, options or warrants are not so issued, the Purchase Price shall be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(c) In case the Company shall fix a record date for the making of a distribution to all holders of the Preferred Shares (including any such distribution made in connection with a share exchange, consolidation or merger in which the Company is the continuing or surviving corporation) of evidences of indebtedness or assets (other than a regular quarterly cash dividend or a dividend payable in Preferred Shares) or subscription rights or warrants (excluding those referred to in Section 11(b) hereof), the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the then current per share market price of the

Preferred Shares on such record date, less the fair market value (as determined by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and holders of the Rights and conclusive for all purposes) of the portion of the assets or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to one Preferred Share and the denominator of which shall be such then current per share market price of the Preferred Shares on such record date; provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company to be issued upon exercise of one Right. Such adjustments shall be made successively whenever such a record date is fixed; and, in the event that such distribution is not so made, the Purchase Price shall again be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(d) (i) For the purpose of any computation hereunder, the “current per share market price” of any security (a “Security” for the purpose of this Section 11(d)(i)) on any date shall be deemed to be the average of the daily closing prices per share of such Security for the 30 consecutive Trading Days immediately prior to such date; provided, however, that, in the event that the current per share market price of the Security is determined during a period following the announcement by the issuer of such Security of (A) a dividend or distribution on such Security payable in shares of such Security or Securities convertible into such shares, or (B) any subdivision, combination or reclassification of such Security, and prior to the expiration of 30 Trading Days after the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, then, and in each such case, the current per share market price shall be appropriately adjusted to reflect the current market price per share equivalent of such Security. The closing price for each day shall be the last sale price, regular way, reported at or prior to 4:00 P.M. Eastern time or, in case no such sale takes place on such day, the average of the bid and asked prices, regular way, reported as of 4:00 P.M. Eastern time, in either case, as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on NASDAQ or, if the Security is not listed or admitted to trading on NASDAQ, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Security is listed or admitted to trading or, if the Security is not listed or admitted to trading on any national securities exchange, the last quoted price reported at or prior to 4:00 P.M. Eastern time or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported as of 4:00 P.M. Eastern time by NASDAQ or such other system then in use, or, if on any such date the Security is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Security selected by the Board of Directors of the Company. The term “Trading Day” shall mean a day on which the principal national securities exchange on which the Security is listed or admitted to trading is open for the transaction of business, or, if the Security is not listed or admitted to trading on any national securities exchange, a Business Day.

(ii) For the purpose of any computation hereunder, the “current per share market price” of the Preferred Shares shall be determined in accordance with the method set forth in Section 11(d)(i). If the Preferred Shares are not publicly traded, the “current per share market price” of the Preferred Shares shall be conclusively deemed to be the current per share market price of the Common Shares of the Company as determined pursuant to Section 11(d)(i).

hereof (appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof), multiplied by ten thousand. If neither the Common Shares of the Company nor the Preferred Shares are publicly held or so listed or traded, "current per share market price" shall mean the fair value per share as determined by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and conclusive for all purposes.

(e) No adjustment in the Purchase Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Purchase Price; provided, however, that any adjustments which by reason of this Section 11(e) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest one one-millionth of a Preferred Share or one ten-thousandth of any other share or security as the case may be. Notwithstanding the first sentence of this Section 11(e), any adjustment required by this Section 11 shall be made no later than the earlier of (i) three years from the date of the transaction which requires such adjustment or (ii) the date of the expiration of the right to exercise any Rights.

(f) If, as a result of an adjustment made pursuant to Section 11(a) hereof, the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock of the Company other than Preferred Shares, the number of such other shares so receivable upon exercise of any Right shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Shares contained in Section 11(a) through (c) hereof, inclusive, and the provisions of Sections 7, 9, 10 and 13 hereof with respect to the Preferred Shares shall apply on like terms to any such other shares.

(g) All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of one ten-thousandths of a Preferred Share purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Unless the Company shall have exercised its election as provided in Section 11(i) hereof, upon each adjustment of the Purchase Price as a result of the calculations made in Sections 11(b) and (c) hereof, each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Purchase Price, that number of one ten-thousandths of a Preferred Share (calculated to the nearest one one-millionth of a Preferred Share) obtained by (A) multiplying (x) the number of one ten-thousandths of a share covered by a Right immediately prior to this adjustment by (y) the Purchase Price in effect immediately prior to such adjustment of the Purchase Price and (B) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment of the Purchase Price.

(i) The Company may elect, on or after the date of any adjustment of the Purchase Price, to adjust the number of Rights in substitution for any adjustment in the number of one ten-thousandths of a Preferred Share purchasable upon the exercise of a Right. Each of the Rights outstanding after such adjustment of the number of Rights shall be exercisable for the number of one ten-thousandths of a Preferred Share for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest one ten-thousandth) obtained

by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of the Purchase Price. The Company shall make a public announcement (with prompt written notice thereof to the Rights Agent) of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Right Certificates have been issued, shall be at least 10 days later than the date of the public announcement. If Right Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11(i), the Company shall, as promptly as practicable, cause to be distributed to holders of record of Right Certificates on such record date Right Certificates evidencing, subject to Section 14 hereof, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Right Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Right Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Right Certificates so to be distributed shall be issued, executed and delivered by the Company, and countersigned by the Rights Agent in the manner provided for herein, and shall be registered in the names of the holders of record of Right Certificates on the record date specified in the public announcement.

(j) Irrespective of any adjustment or change in the Purchase Price or in the number of one ten-thousandths of a Preferred Share issuable upon the exercise of the Rights, the Right Certificates theretofore and thereafter issued may continue to express the Purchase Price and the number of one ten-thousandths of a Preferred Share which were expressed in the initial Right Certificates issued hereunder.

(k) Before taking any action that would cause an adjustment reducing the Purchase Price below the then par value, if any, of one ten-thousandths of a Preferred Share issuable upon exercise of the Rights, the Company shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and non-assessable Preferred Shares at such adjusted Purchase Price.

(l) In any case in which this Section 11 shall require that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer (with prompt written notice thereof to the Rights Agent) until the occurrence of such event the issuing to the holder of any Right exercised after such record date of the Preferred Shares and other capital stock or securities of the Company, if any, issuable upon such exercise over and above the Preferred Shares and other capital stock or securities of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; provided, however, that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares upon the occurrence of the event requiring such adjustment.

(m) Anything in this Section 11 to the contrary notwithstanding, the Company shall be entitled to make such adjustments in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that it, in its sole discretion, shall determine to be advisable in order that any consolidation or subdivision of the Preferred Shares, issuance wholly for cash of any Preferred Shares at less than the current market price, issuance

wholly for cash of Preferred Shares or securities which by their terms are convertible into or exchangeable for Preferred Shares, dividends on Preferred Shares payable in Preferred Shares or issuance of rights, options or warrants referred to in [Section 11\(b\)](#) hereof, hereafter made by the Company to holders of the Preferred Shares, shall not be taxable to such stockholders.

(n) In the event that, at any time after the date of this Agreement and prior to the Distribution Date (or, with respect to any combination or consolidation of the Common Shares of the Company approved by the stockholders of the Company prior to the Distribution Date and effected substantially concurrently with a Holding Company Reorganization, after the Distribution Date), the Company shall (i) declare or pay any dividend on the Common Shares of the Company payable in Common Shares of the Company, or (ii) effect a subdivision, combination or consolidation of the Common Shares of the Company (by reclassification or otherwise than by payment of dividends in Common Shares of the Company) into a greater or lesser number of Common Shares of the Company, then, in any such case, (A) the number of one ten-thousandths of a Preferred Share purchasable after such event upon proper exercise of each Right shall be determined by multiplying the number of one ten-thousandths of a Preferred Share so purchasable immediately prior to such event by a fraction, the numerator of which is the number of Common Shares of the Company outstanding immediately before such event and the denominator of which is the number of Common Shares of the Company outstanding immediately after such event, and (B) each Common Share of the Company outstanding immediately after such event shall have issued with respect to it that number of Rights which each Common Share of the Company outstanding immediately prior to such event had issued with respect to it. The adjustments provided for in this [Section 11\(n\)](#) shall be made successively whenever such a dividend is declared or paid or such a subdivision, combination or consolidation occurs.

Section 12. [Certificate of Adjusted Purchase Price or Number of Shares](#). Whenever an adjustment is made or any event occurs affecting the Rights or their exercisability (including an event that causes Rights to become null and void) as provided in [Section 11](#) or [13](#) hereof, the Company shall promptly (a) prepare a certificate setting forth such adjustment or describing such event and a brief, reasonably detailed statement of the facts, computation and methodology accounting for such adjustment or describing such event, (b) file with the Rights Agent and with each transfer agent for the Common Shares of the Company and the Preferred Shares a copy of such certificate and (c) if such adjustment occurs at any time after the Distribution Date, mail a brief summary thereof to each holder of a Right Certificate who shall request it in accordance with [Section 25](#) hereof. The Rights Agent shall be fully protected and incur no liability in relying on any such certificate and on any adjustment contained therein and shall not be deemed to have knowledge of any such adjustment or event unless and until it shall have received such a certificate. Notwithstanding the foregoing, the failure of the Company to make such certification or give such notice shall not affect the validity of, or the force or effect of, the requirement for such adjustment. Any adjustment to be made pursuant to [Section 11](#) or [13](#) hereof shall be effective as of the date of the event giving rise to such adjustment.

Section 13. Consolidation, Merger or Sale or Transfer of Assets or Earning Power.

(a) In the event, directly or indirectly, at any time after a Person has become an Acquiring Person, (i) the Company shall effect a share exchange, consolidate with, or merge with and into, any other Person, (ii) any Person shall effect a share exchange, consolidate with the Company, or merge with and into the Company, and the Company shall be the continuing or surviving corporation of such share exchange, consolidation or merger (and, in connection with such merger, all or part of the Common Shares of the Company shall be changed into or exchanged for stock or other securities of any other Person (or the Company) or cash or any other property), or (iii) the Company shall sell or otherwise transfer (or one or more of its Subsidiaries shall sell or otherwise transfer), in one or more transactions, assets or earning power aggregating 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any Person other than the Company or one or more of its wholly-owned Subsidiaries (in each case of clauses (i) through (iii), other than pursuant to a Holding Company Reorganization), then, and in each such case, proper provision shall be made so that (A) each holder of a Right (except as otherwise provided herein) shall thereafter have the right to receive, upon the exercise thereof at a price equal to the then-current Purchase Price multiplied by the number of one ten-thousandths of a Preferred Share for which a Right is then exercisable, in accordance with the terms of this Agreement and in lieu of Preferred Shares, such number of validly issued, fully paid and non-assessable and freely tradable Common Shares of such other Person (including the Company as successor thereto or as the surviving corporation) (such "issuer") as shall equal the result obtained by (1) multiplying the then current Purchase Price by the number of one ten-thousandths of a Preferred Share for which a Right is then exercisable and dividing that product by (2) 50% of the then current per share market price of the Common Shares of such issuer (determined pursuant to Section 11(d) hereof) on the date of consummation of such consolidation, merger, sale or transfer; (B) such issuer of such Common Shares shall thereafter be liable for, and shall assume, by virtue of such consolidation, merger, sale or transfer, all the obligations and duties of the Company pursuant to this Agreement; (C) the term "Company" shall thereafter be deemed to refer to such issuer; and (D) such issuer shall take such steps (including, but not limited to, the reservation of a sufficient number of its Common Shares in accordance with Section 9 hereof) in connection with such consummation as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to the Common Shares of the Company thereafter deliverable upon the exercise of the Rights.

(b) Except pursuant to a Holding Company Reorganization, the Company shall not consummate any such consolidation, merger, sale or transfer described in the foregoing subsection (a) unless, prior thereto, the Company and such issuer shall have executed and delivered to the Rights Agent a supplemental agreement so providing and further providing that, as soon as practicable after executing such agreement pursuant to this Section 13, such issuer will:

(i) prepare and file a registration statement under the Securities Act, if necessary, with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, use its best efforts to cause such registration statement to become effective as soon as practicable after such filing and use its best efforts to cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Securities Act) until the Final Expiration Date, and similarly comply with applicable state securities laws;

(ii) use its best efforts, if the Common Shares of such issuer shall be listed or admitted to trading on NASDAQ or on another national securities exchange, to list or admit to trading (or continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on NASDAQ or such securities exchange, or, if the Common Shares of such issuer shall not be listed or admitted to trading on NASDAQ or a national securities exchange, to cause the Rights and the securities receivable upon exercise of the Rights to be reported by such other system then in use;

(iii) deliver to holders of the Rights historical financial statements for such issuer which comply in all respects with the requirements for registration on Form 10 (or any successor form) under the Exchange Act; and

(iv) obtain waivers of any rights of first refusal or preemptive rights in respect of the Common Shares of such issuer subject to purchase upon exercise of outstanding Rights.

(c) The Company shall not enter into any transaction of the kind referred to in Section 13(a) if at the time of or immediately after such transaction there are any rights, warrants, instruments or securities outstanding or any agreements or arrangements which, as a result of the consummation of such transaction, would eliminate or substantially diminish the benefits intended to be afforded by the Rights. The provisions of this Section 13 shall similarly apply to successive mergers, share exchanges, or consolidations or sales or other transfers described in the foregoing subsection (a).

(d) In the event the Company shall effect a Holding Company Reorganization, (i) the applicable New Holding Company shall thereafter be liable for, and shall assume, by virtue of such Holding Company Reorganization, all the obligations and duties of the Company pursuant to this Agreement; (ii) the term "Company" shall thereafter be deemed to refer to such New Holding Company; and (iii) such New Holding Company shall take such steps (including, but not limited to, the reservation of a sufficient number of its Common Shares in accordance with Section 9 hereof) in connection with such consummation as may be necessary to assure that the provisions hereof shall thereafter be applicable to the shares of capital stock of such New Holding Company, as nearly as reasonably may be, in relation to the Common Shares of the Company and the Preferred Shares thereafter deliverable upon the exercise of the Rights.

Section 14. Fractional Rights and Fractional Shares.

(a) The Company shall not be required to issue fractions of Rights or to distribute Right Certificates which evidence fractional Rights. In lieu of such fractional Rights, there shall be paid to the registered holders of the Right Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash equal to the same fraction of the current market value of a whole Right. For the purposes of this Section 14(a), the current market value of a whole Right shall be the closing price of the Rights for the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable. The closing price for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case, as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on NASDAQ or, if the Rights are not listed or admitted to trading on NASDAQ, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading or, if the Rights are not listed or admitted to trading on any national securities

exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by NASDAQ or such other system then in use or, if on any such date the Rights are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights selected by the Board of Directors of the Company. If on any such date no such market maker is making a market in the Rights, the fair value of the Rights on such date as determined by the Board of Directors of the Company shall be used and shall be conclusive for all purposes.

(b) The Company shall not be required to issue fractions of Preferred Shares (other than fractions which are integral multiples of one ten-thousandth of a Preferred Share) upon exercise of the Rights or to distribute certificates which evidence fractional Preferred Shares (other than fractions which are integral multiples of one ten-thousandth of a Preferred Share). Fractions of Preferred Shares in integral multiples of one ten-thousandth of a Preferred Share may, at the election of the Company, be evidenced by depositary receipts, pursuant to an appropriate agreement between the Company and a depositary selected by it; provided that such agreement shall provide that the holders of such depositary receipts shall have all the rights, privileges and preferences to which they are entitled as beneficial owners of the Preferred Shares represented by such depositary receipts. In lieu of fractional Preferred Shares that are not integral multiples of one ten-thousandth of a Preferred Share, the Company shall pay to the registered holders of Right Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the current market value of one Preferred Share. For the purposes of this Section 14(b), the current market value of a Preferred Share shall be the closing price of a Preferred Share (as determined pursuant to the second sentence of Section 11(d)(i) hereof) for the Trading Day immediately prior to the date of such exercise.

(c) Following the occurrence of one of the events specified in Section 11 hereof giving rise to the right to receive Common Shares of the Company, Common Stock Equivalents or other securities upon the exercise of a Right, the Company shall not be required to issue fractions of Common Shares, Common Stock Equivalents or other securities upon exercise of the Rights or to distribute certificates which evidence fractional Common Shares of the Company, Common Stock Equivalents or other securities. In lieu of fractional Common Shares of the Company, Common Stock Equivalents or other securities, the Company may pay to the registered holders of Rights Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the current market value of one Common Share, such Common Stock Equivalent or such other security. For purposes of this Section 14(c), the current market value of one Common Share of the Company, Common Stock Equivalent or such other security shall be the closing price of one Common of the Company (as determined pursuant to Section 11(d)(i) hereof) for the Trading Day immediately prior to the date of such exercise.

(d) The holder of a Right, by the acceptance of the Right, expressly waives such holder's right to receive any fractional Rights or any fractional shares upon exercise of a Right (except as provided above).

(e) Whenever a payment for fractional Rights or fractional shares or other securities is to be made by the Rights Agent under any section of this Agreement, the Company shall (i) promptly prepare and deliver to the Rights Agent a certificate setting forth in reasonable detail the facts related to such payments and the prices and/or formulas utilized in calculating such

payments, and (ii) provide sufficient monies to the Rights Agent in the form of fully collected funds to make such payments. The Rights Agent shall be fully protected in relying upon such a certificate and shall have no duty with respect to, and shall not be deemed to have knowledge of any payment for fractional Rights or fractional shares or other securities under any section of this Agreement relating to the payment of fractional Rights or fractional shares or other securities unless and until the Rights Agent shall have received such a certificate and sufficient monies.

Section 15. Rights of Action. All rights of action in respect of this Agreement, excepting the rights of action given to the Rights Agent under any section of this Agreement, are vested in the respective registered holders of the Right Certificates (and, prior to the Distribution Date, the registered holders of the Common Shares of the Company); and any registered holder of any Right Certificate (or, prior to the Distribution Date, of the Common Shares of the Company), without the consent of the Rights Agent or of the holder of any other Right Certificate (or, prior to the Distribution Date, of the Common Shares of the Company), may, on such holder's own behalf and for such holder's own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, such holder's right to exercise the Rights evidenced by such Right Certificate in the manner provided in such Right Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement by the Company, and will be entitled to specific performance of the obligations under, and injunctive relief against actual or threatened violations by the Company of its obligations under this Agreement. Notwithstanding anything in this Agreement to the contrary, neither the Company nor the Rights Agent shall have any liability to any holder of a Right or other Person as a result of the Company's or the Rights Agent's inability to perform any of their respective obligations under this Agreement by reason of any preliminary or permanent injunction or other order, judgment, decree or ruling (whether interlocutory or final) issued by a court or a governmental, regulatory, self-regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation.

Section 16. Agreement of Right Holders. Every holder of a Right, by accepting the same, consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will be transferable only in connection with the transfer of the Common Shares of the Company;

(b) after the Distribution Date, the Right Certificates are transferable (subject to the provisions of this Agreement) only on the registry books maintained by the Rights Agent if surrendered at the office or offices of the Rights Agent designated for such purpose, duly endorsed or accompanied by a proper instrument of transfer and with the appropriate form of assignment and certificates with a Signature Guarantee affixed thereto, properly completed and duly executed, accompanied by such documentation as the Rights Agent may reasonably request; and

(c) the Company and the Rights Agent may deem and treat the person in whose name the Right Certificate (or, prior to the Distribution Date, the associated Common Shares of the Company certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Right Certificate or the associated Common Shares of the Company certificate made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent shall be affected by any notice to the contrary.

Section 17. Right Certificate Holder Not Deemed a Stockholder. No holder, as such, of any Right Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the Preferred Shares or any other securities of the Company which may at any time be issuable on the exercise or exchange of the Rights represented thereby, nor shall anything contained herein or in any Right Certificate be construed to confer upon the holder of any Right Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in Section 25 hereof), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Right Certificate shall have been exercised or exchanged in accordance with the provisions hereof.

Section 18. Concerning the Rights Agent.

(a) The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder in accordance with a mutually agreed upon fee schedule, and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and expenses and other disbursements incurred in the preparation, negotiation, delivery, amendment, administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable fees and expenses of legal counsel) that may be paid, incurred or suffered by it, or which it may become subject, without gross negligence, bad faith or willful misconduct on the part of the Rights Agent (each as determined by a final, nonappealable judgment of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Rights Agent in connection with the execution, acceptance, administration, exercise and performance of its duties under this Agreement, including the costs and expenses of defending against any claim in connection herewith. The costs and expenses incurred in enforcing this right of indemnification shall also be paid by the Company. The provisions of this Section 18 and Section 20 below shall survive the exercise or expiration of the Rights, the termination of this Agreement and the resignation, replacement or removal of the Rights Agent.

(b) The Rights Agent may conclusively rely upon and shall be fully authorized and protected and shall incur no liability for, or in respect of any action taken, suffered or omitted to be taken by it in connection with its acceptance and administration of this Agreement, and the exercise and performance of its duties hereunder, in reliance upon any Right Certificate or certificate for the Preferred Shares or Common Shares of the Company or for other securities of the Company (including in the case of uncertificated securities, by notation in book entry accounts reflecting ownership), instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, instruction, direction, consent, certificate, statement, or other paper or document reasonably believed by it to be genuine and to be signed, executed and, where necessary,

verified or acknowledged, by the proper Person or Persons, or otherwise upon the advice of counsel as set forth in Section 20 hereof. The Rights Agent shall not be deemed to have knowledge of any event of which it was supposed to receive notice thereof hereunder, and the Rights Agent shall be fully protected and shall incur no liability for failing to take any action in connection therewith unless and until it has received such notice in writing in accordance with Section 26.

Section 19. Merger or Consolidation or Change of Name of Rights Agent.

(a) Any Person into which the Rights Agent (or any successor Rights Agent) may be merged or with which it may effect a share exchange, be consolidated, or any Person resulting from any merger, share exchange, or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any Person succeeding to the stock transfer or other shareholder services business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or document or any further act on the part of any of the parties hereto; provided that such Person would be eligible for appointment as a successor Rights Agent under the provisions of Section 21 hereof. The purchase of all or substantially all of the Rights Agent's assets employed in the performance of transfer agent activities shall be deemed a merger or consolidation for purposes of this Section 19. In case at the time such successor Rights Agent shall succeed to the agency created by this Agreement, any of the Right Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of the predecessor Rights Agent and deliver such Right Certificates so countersigned; and, in case at that time any of the Right Certificates shall not have been countersigned, any successor Rights Agent may countersign such Right Certificates either in the name of the predecessor Rights Agent or in the name of the successor Rights Agent; and, in all such cases, such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

(b) In case at any time the name of the Rights Agent shall be changed and at such time any of the Right Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Right Certificates so countersigned; and, in case at that time any of the Right Certificates shall not have been countersigned, the Rights Agent may countersign such Right Certificates either in its prior name or in its changed name; and, in all such cases, such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

Section 20. Rights and Duties of Rights Agent. The Rights Agent undertakes to perform only the duties and obligations expressly set forth in this Agreement and no implied duties or obligations shall be read into this Agreement against the Rights Agent. The Rights Agent shall perform those duties and obligations upon the following terms and conditions, by all of which the Company and the holders of Right Certificates, or, prior to the Distribution Date, Common Shares, by their acceptance thereof, shall be bound:

(a) The Rights Agent may consult with legal counsel selected by it (who may be legal counsel for the Company), and the advice or opinion of such counsel shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it in accordance with such advice or opinion.

(b) Whenever in the performance of its duties under this Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter (including, without limitation, the identity of an Acquiring Person or Affiliate or Associate thereof, and the determination of the current per share market price of any security) be proved or established by the Company prior to taking, suffering or omitting to take any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by a person reasonably believed by the Rights Agent to be any one of the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Treasurer, the Secretary or any Assistant Secretary of the Company and delivered to the Rights Agent; and such certificate shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Agreement in reliance upon such a certificate.

(c) The Rights Agent shall be liable hereunder to the Company and any other Person only for its own gross negligence, bad faith or willful misconduct (each as determined by a final, nonappealable judgment of a court of competent jurisdiction). Notwithstanding anything in this Agreement to the contrary, any liability of the Rights Agent under this Agreement will be limited to three (3) times the amount of annual fees paid by the Company to the Rights Agent under this Agreement. Anything to the contrary notwithstanding, in no event will the Rights Agent be liable for special, punitive, indirect, incidental or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Rights Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(d) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Right Certificates (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

(e) The Rights Agent shall not have any liability for or be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the legality or validity or execution of any Right Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or failure by the Company to satisfy any condition contained in this Agreement or in any Right Certificate; nor shall it be liable or responsible for any modification by or order of any court, tribunal, or governmental authority in connection with the foregoing, or any change in the exercisability of the Rights (including the Rights becoming null and void pursuant to Section 11(a)(ii) hereof) or any adjustment or change in the terms of the Rights (including the manner, method or amount thereof) provided for in Sections 3, 11, 13, 23 or 24 hereof, or the ascertaining of the existence of facts that would require any such change or adjustment (except with respect to the exercise of Rights evidenced by Right Certificates after receipt of a certificate pursuant to Section 12 describing such change or adjustment upon which the Rights Agent may rely); nor shall it be responsible for any determination by the Board of Directors of the current market value of the Rights or Preferred Shares or Common Shares pursuant to this Agreement; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Preferred Shares or other securities to be issued pursuant to this Agreement or any Right Certificate or as to whether any Preferred Shares or other securities will, when so issued, be validly authorized and issued, fully paid and nonassessable.

(f) The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required or requested by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(g) The Rights Agent is hereby authorized and directed to accept written instructions with respect to the performance of its duties hereunder and certificates delivered pursuant to any provision hereof from any person reasonably believed by the Rights Agent to be one of the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company, and to apply to such officers for advice or instructions in connection with its duties, and such instructions shall be full authorization and protection to the Rights Agent and it shall not be liable for or in respect of any action taken, suffered or omitted to be taken by it in accordance with written advice or instructions of any such officer or for any delay in acting while waiting for those instructions or advice. The Rights Agent shall be fully authorized and protected in relying upon the most recent advice or instructions received by any such officer. Any application by the Rights Agent for written instructions from the Company may, at the option of the Rights Agent, set forth in writing any action proposed to be taken, suffered or omitted to be taken by the Rights Agent with respect to its duties and obligations under this Agreement and the date on or after which such action shall be taken, suffered or such omission shall be effective. The Rights Agent shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with a proposal included in any such application on or after the date specified therein (which date shall not be less than three Business Days after the date indicated in such application unless any such officer shall have consented in writing to an earlier date) unless, prior to taking, suffering or omitting to take any such action, the Rights Agent has received written instructions from the Company in response to such application specifying the action to be taken, suffered or omitted to be taken. Notwithstanding anything in this Agreement to the contrary, the Rights Agent shall not be required to take any action or to follow any instruction of the Company that the Rights Agent believes, in its sole discretion, would cause the Rights Agent to take action that is illegal.

(h) The Rights Agent and any stockholder, Affiliate, member, director, agent, representative, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent or any stockholder, Affiliate, member director, agent, representative, officer or employee from acting in any other capacity for the Company or for any other Person.

(i) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself (through its directors, officers and employees) or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, omission, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company or any other Person resulting from any such act, omission, default, neglect or misconduct, absent gross negligence, bad faith or willful misconduct (as each is determined by a final, nonappealable judgment of a court of competent jurisdiction) in the selection and continued employment thereof.

(j) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise any of its rights or powers if it believes that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

(k) The Rights Agent shall have no responsibility to the Company, any holders of Rights or any holders of shares of Common Shares for interest or earnings on any moneys held by the Rights Agent pursuant to this Agreement.

(l) The Rights Agent shall not be required to take notice or be deemed to have notice of any event or condition hereunder, including any event or condition that may require action by the Rights Agent, unless the Rights Agent shall be specifically notified in writing of such event or condition by the Company, and all notices or other instruments required by this Agreement to be delivered to the Rights Agent must, in order to be effective, be received by the Rights Agent as specified in Section 26 hereof, and in the absence of such notice so delivered, the Rights Agent may conclusively assume no such event or condition exists.

(m) The Rights Agent may rely on and be fully authorized and protected in acting or failing to act upon any guaranty of signature by an “eligible guarantor institution” that is a member or participant in the Securities Transfer Agents Medallion Program or other comparable “signature guarantee program” or insurance program in addition to, or in substitution for, the foregoing.

(n) The Rights Agent shall not have any duty or responsibility in the case of the receipt of any written demand from any holder of Rights with respect to any action or default by the Company, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon the Company; provided that upon the receipt of any such written demand, the Rights Agent shall use reasonable efforts to provide the Company with notice thereof as soon as commercially practicable.

(o) The Rights Agent shall act hereunder solely as agent for the Company (as such term may be amended pursuant to Section 13(d) in connection with a Holding Company Reorganization). The Rights Agent shall not assume any obligations or relationship of agency or trust with any of the owners or holders of the Rights or other securities of the Company.

Section 21. Change of Rights Agent. The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Agreement upon 30 days’ prior notice in writing mailed to the Company and, in the event that the Rights Agent or one of its Affiliates is not also the transfer agent for the Company, to each transfer agent of the Common Shares of the Company or Preferred Shares known to the Rights Agent. In the event the transfer agency relationship in effect between the Company and the Rights Agent terminates, the Rights Agent will be deemed to have resigned automatically and be discharged from its duties under this Agreement as of the effective date of such termination, and the Company shall be responsible for

sending any required notice. The Company may remove the Rights Agent or any successor Rights Agent (with or without cause) upon 30 days' prior notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Shares of the Company or Preferred Shares by registered or certified mail, and to the holders of the Right Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Rights Agent. If the Company shall fail to make such appointment within a period of 30 days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Right Certificate (which holder shall, with such notice, submit such holder's Right Certificate for inspection by the Company), then the incumbent Rights Agent or registered holder of any Right Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be either (a) a Person, other than a natural Person, organized and doing business under the laws of the United States (or of any state of the United States), in good standing, which is authorized under such laws to exercise stock transfer powers and is subject to supervision or examination by federal or state authority and which has, along with its Affiliates, at the time of its appointment as Rights Agent a combined capital and surplus of at least \$50 million or (b) an Affiliate or direct or indirect wholly-owned Subsidiary of such Person or its wholly-owning parent. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for such purpose, but such predecessor Rights Agent shall not be required to make any additional expenditure or assume any additional liability in connection with the foregoing; and, except as the context herein otherwise requires, such successor Rights Agent shall be deemed to be the "Rights Agent" for all purposes of this Agreement. Not later than the effective date of any such appointment, the Company shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Shares of the Company or Preferred Shares, and mail a notice thereof in writing to the registered holders of the Right Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22. Issuance of New Right Certificates. Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Right Certificates evidencing Rights in such form as may be approved by the Board of Directors of the Company to reflect any adjustment or change in the Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Right Certificates made in accordance with the provisions of this Agreement.

Section 23. Redemption.

(a) The Board of Directors of the Company may, at its option, at any time prior to such time as any Person becomes an Acquiring Person, redeem all but not less than all of the then outstanding Rights at a redemption price of \$0.01 per Right, appropriately adjusted to reflect any stock split, stock combination or consolidation, stock dividend or similar transaction occurring

after the date hereof (such redemption price being hereinafter referred to as the “Redemption Price”). The redemption of the Rights by the Board of Directors of the Company may be made effective at such time, on such basis and with such conditions as the Board of Directors of the Company, in its sole discretion, may establish. The Company may, at its option, pay the Redemption Price in cash, Common Shares of the Company (based on the current market price of the Common Shares of the Company at the time of the election by the Board of Directors of the Company to redeem the Rights as determined pursuant to Section 11(d)(i) hereof) or any other form of consideration deemed appropriate by the Board of Directors of the Company.

(b) Immediately upon the action of the Board of Directors of the Company ordering the redemption of the Rights pursuant to paragraph (a) of this Section 23, and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price. The Company shall promptly give public notice of any such redemption (with prompt written notice thereof to the Rights Agent); provided, however, that the failure to give, or any defect in, any such notice shall not affect the validity of such redemption. Within 10 days after such action of the Board of Directors of the Company ordering the redemption of the Rights, the Company shall mail a notice of redemption to the Rights Agent and all the holders of the then outstanding Rights at their last addresses as they appear upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Shares of the Company. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption will state the method by which the payment of the Redemption Price will be made. Neither the Company nor any of its Affiliates or Associates may redeem, acquire or purchase for value any Rights at any time in any manner other than that specifically set forth in this Section 23 or in Section 24 hereof, and other than in connection with the purchase of Common Shares of the Company prior to the Distribution Date.

Section 24. Exchange.

(a) The Board of Directors of the Company may, at its option, at any time after any Person becomes an Acquiring Person, exchange Common Shares of the Company for all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become null and void pursuant to the provisions of Section 11(a)(ii) hereof) at an exchange ratio of one Common Share of the Company per Right, appropriately adjusted to reflect any adjustment in the number of Rights pursuant to Section 11(i) (such exchange ratio being hereinafter referred to as the “Exchange Ratio”). Notwithstanding the foregoing, the Board of Directors of the Company shall not be empowered to effect such exchange at any time after an Acquiring Person becomes the Beneficial Owner of 50% or more of the Common Shares of the Company then outstanding. Prior to effecting an exchange pursuant to this Section 24, the Board of Directors of the Company may direct the Company to enter into a trust agreement in such form and with such terms as the Board of Directors of the Company shall then approve (the “Trust Agreement”). If the Board of Directors of the Company so directs, the Company shall enter into the Trust Agreement and shall issue to the trust created by such agreement (the “Trust”) all of the Common Shares of the Company issuable pursuant to the exchange, and all Persons entitled to receive Common Shares of the Company pursuant to the exchange shall be entitled to receive such Common Shares of the Company (and any dividends or distributions made thereon after the date on which such Common Shares of the Company are deposited in the Trust) only from the Trust and solely upon compliance with the relevant terms and provisions of the Trust Agreement.

(b) Immediately upon the action of the Board of Directors of the Company ordering the exchange of any Rights pursuant to paragraph (a) of this Section 24 and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive that number of Common Shares of the Company equal to the number of such Rights held by such holder multiplied by the Exchange Ratio. The Company shall promptly give public notice of any such exchange (with prompt written notice thereof to the Rights Agent); provided, however, that the failure to give, or any defect in, such notice shall not affect the validity of such exchange. The Company promptly shall mail a notice of any such exchange to the Rights Agent and all of the holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange will state the method by which the exchange of the Common Shares of the Company for Rights will be effected, and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange shall be effected pro rata based on the number of Rights (other than Rights which have become null and void pursuant to the provisions of Section 11(a)(ii) hereof) held by each holder of Rights.

(c) In the event that there shall not be sufficient Common Shares of the Company issued but not outstanding or authorized but unissued (after taking into account, at the discretion of the Board of Directors of the Company, any necessary reserves of Common Shares of the Company) to permit the exchange of Rights in accordance with Section 24(a) hereof, the Company shall either (i) take all such action as may be necessary to authorize additional Common Shares of the Company for issuance upon exchange of the Rights or (ii) with respect to each Right (which shall not include Rights that have become null and void pursuant to the provisions of Section 11(a)(ii) hereof), make adequate provision to substitute, for each Common Share of the Company that would otherwise be issuable upon exchange of a Right, (A) Preferred Shares (or fractions of a Preferred Share), (B) Common Stock Equivalents, or (C) any combination of the foregoing, in any case set forth in clauses (A) through (C) above, having an aggregate value equal to the product of the current per share market price of the Common Shares of the Company times the Exchange Ratio as of the date of issuance of such shares or fraction thereof, where such aggregate value has been determined by the Board of Directors of the Company based upon the advice of an investment banking firm selected by the Board of Directors of the Company; provided, that, for purposes of this Section 24(c), (x) the value of each Common Share of the Company shall be the current per share market price of the Common Shares of the Company (as determined pursuant to Section 11(d) hereof), (y) the value of each Preferred Share shall be the current per share market price of the Preferred Shares (as determined pursuant to Section 11(d) hereof), and (c) the value of any Common Stock Equivalent shall be deemed to be the same value as a Common Share of the Company, in each case, as of the date of issuance of such shares or fraction thereof. To the extent that action is to be taken pursuant to the preceding sentence, the Company may suspend the exercisability of the Rights in order to seek any authorization of additional shares and/or to decide the appropriate form of distribution to be made pursuant to the preceding sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement (with prompt written notice thereof to the Rights Agent) stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement (with prompt written notice thereof to the Rights Agent) at such time as the suspension is no longer in effect.

(d) The Company shall not be required to issue fractions of Common Shares of the Company or Preferred Shares or to distribute certificates which evidence fractional Common Shares of the Company or Preferred Shares. In lieu of such fractional Common Shares of the Company or Preferred Shares, the Company shall pay to the registered holders of the Right Certificates with regard to which such fractional Common Shares of the Company or Preferred Shares would otherwise be issuable an amount in cash equal to the same fraction of the current market value of a whole Common Share of the Company or Preferred Share. For the purposes of this paragraph (d), the current market value of a whole Common Share of the Company or Preferred Share shall be the closing price of a Common Share of the Company or Preferred Share (as determined pursuant to the second sentence of Section 11(d)(i) hereof) for the Trading Day immediately prior to the date of exchange pursuant to this Section 24.

Section 25. Notice of Certain Events.

(a) In case the Company shall, at any time after the Distribution Date, propose (i) to pay any dividend payable in stock of any class to the holders of the Preferred Shares or to make any other distribution to the holders of the Preferred Shares (other than a regular quarterly cash dividend), (ii) to offer to the holders of the Preferred Shares rights or warrants to subscribe for or to purchase any additional Preferred Shares or shares of stock of any class or any other securities, rights or options, (iii) to effect any reclassification of the Preferred Shares (other than a reclassification involving only the subdivision of outstanding Preferred Shares), (iv) to effect any share exchange, consolidation or merger into or with, or to effect any sale or other transfer (or to permit one or more of its Subsidiaries to effect any sale or other transfer), in one or more transactions, of 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to, any other Person, (v) to effect the liquidation, dissolution or winding up of the Company, or (vi) to declare or pay any dividend on the Common Shares of the Company payable in Common Shares of the Company or to effect a subdivision, combination or consolidation of the Common Shares of the Company (by reclassification or otherwise than by payment of dividends in Common Shares of the Company), then, in each such case, the Company shall give to the Rights Agent and each holder of a Right Certificate, in accordance with Section 26 hereof, a reasonably detailed notice of such proposed action, which shall specify the record date for the purposes of such stock dividend, or distribution of rights or warrants, or the date on which such share exchange, reclassification, consolidation, merger, sale, transfer, liquidation, dissolution, or winding up is to take place and the date of participation therein by the holders of the Common Shares of the Company and/or Preferred Shares, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (i) or (ii) above at least 10 days prior to the record date for determining holders of the Preferred Shares for purposes of such action, and, in the case of any such other action, at least 10 days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the Common Shares of the Company and/or Preferred Shares, whichever shall be the earlier.

(b) In case the event set forth in Section 11(a)(ii) hereof shall occur, then the Company shall, as soon as practicable thereafter, give to the Rights Agent and to each holder of a Right Certificate, in accordance with Section 26 hereof, a notice of the occurrence of such event, which notice shall describe such event and the consequences of such event to holders of Rights under Section 11(a)(ii) hereof.

(c) Notwithstanding anything to the contrary in this [Section 25](#) or [Section 26](#), if the Company (i) proposes or consummates a Holding Company Reorganization or (ii) proposes or effects a combination or consolidation of the Common Shares of the Company substantially concurrently with a Holding Company Reorganization, then, in each case of [clauses \(i\)](#) and [\(ii\)](#), the Company shall be deemed to have satisfied all of its obligations under this [Section 25](#) and [Section 26](#) with respect to such Holding Company Reorganization or combination of the Common Shares of the Company, as applicable, if the Company issues a reasonably detailed press release or current report on Form 8-K with respect thereto.

Section 26. [Notices](#). Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Right Certificate to or on the Company shall be sufficiently given or made if in writing and sent by overnight delivery service or first-class mail, postage prepaid, properly addressed (until another address is filed in writing with the Rights Agent) as follows:

The ODP Corporation
6600 N Military Trail
Boca Raton, Florida 33496
Attention: N. David Bleisch, EVP, Chief Legal and Administrative Officer and Corporate Secretary
With an electronic copy to: David.Bleisch@officedepot.com

Subject to the provisions of [Section 21](#) hereof, any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Right Certificate to or on the Rights Agent shall be sufficiently given or made if in writing and sent by overnight delivery service or first-class mail, postage prepaid, properly addressed (until another address is filed in writing with the Company) as follows:

Computershare Inc.
150 Royall Street
Canton, Massachusetts 02021
Attention: Client Services
With an electronic courtesy copy (that shall not constitute noticed under this Section 26 to: Cassandra.Shedd@computershare.com

Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holder of any Right Certificate shall be sufficiently given or made if in writing and sent by overnight delivery service or first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company.

Section 27. [Supplements and Amendments](#). Subject to this [Section 27](#), the Company may, and the Rights Agent shall, if directed by the Company, from time to time supplement or amend this Agreement without the approval of any holders of Right Certificates in order to cure any ambiguity, to correct or supplement any provision contained herein which may be defective

or inconsistent with any other provisions herein, or to make any other provisions with respect to the Rights, this Agreement or otherwise, which the Company may deem necessary or desirable, any such supplement or amendment to be evidenced by a writing signed by the Company and the Rights Agent; provided, however, that, from and after such time as any Person becomes an Acquiring Person, this Agreement shall not be amended in any manner which would adversely affect the interests of the holders of Rights (other than pursuant to Section 13(d) in connection with a Holding Company Reorganization). Upon delivery of a certificate from an appropriate officer of the Company that states that the proposed supplement or amendment is in compliance with the terms of this section, the Rights Agent shall execute such supplement or amendment. The Rights Agent shall execute a supplement or amendment to this Agreement to the extent reasonably requested by the Company pursuant to Section 13(d) in connection with a Holding Company Reorganization. Notwithstanding anything in this Agreement to the contrary, the Rights Agent may, but shall not be obligated to, enter into any supplement or amendment that adversely affects the Rights Agent's own rights, duties, obligations or immunities under this Agreement. No supplement or amendment to this Agreement shall be effective unless executed by the Rights Agent.

Section 28. Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 29. Benefits of this Agreement. Nothing in this Agreement shall be construed to give to any Person other than the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Shares of the Company) any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Shares of the Company).

Section 30. Determinations and Actions by the Board of Directors. Without limiting the rights and immunities of the Rights Agent under this Agreement, the Board of Directors of the Company or a duly authorized committee thereof shall have the exclusive power and authority to administer this Agreement and to exercise the rights and powers specifically granted to the Board of Directors of the Company or to the Company, or as may be necessary or advisable in the administration of this Agreement, including, without limitation, the right and power to (a) interpret the provisions of this Agreement and (b) make all determinations deemed necessary or advisable for the administration of this Agreement (including, without limitation, a determination to redeem or not redeem the Rights or to amend this Agreement). All such actions, calculations, interpretations and determinations that are done or made by the Board of Directors of the Company or a duly authorized committee thereof, shall be final, conclusive and binding on the Company, the Rights Agent (except with respect to any dispute concerning the Rights Agent's own rights, duties, obligations or immunities under this Agreement), the holders of the Rights, as such, and all other parties. The Rights Agent is always entitled to assume that the Company's Board of Directors acted in good faith and shall be fully protected and incur no liability in reliance thereon.

Section 31. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated; provided, however, that, notwithstanding anything to the contrary in this Agreement, if any such term, provision, covenant or restriction is held by such court or authority to be invalid, void or unenforceable and the Board of Directors of the Company determines in its good faith judgment that severing the invalid language from this Agreement would adversely affect the purpose or effect of this Agreement, then the right of redemption set forth in Section 23 will be reinstated (if earlier expired) and (without regard to whether earlier expired) will not expire until the Close of Business on the 10th Business Day following the date of such determination by the Board of Directors of the Company; provided, further, that if any such excluded term, provision, covenant or restriction shall adversely affect the rights, immunities, liabilities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately.

Section 32. Governing Law. This Agreement and each Right Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts to be made and performed entirely within such State, without regard to the principles or rules concerning conflicts of laws which might otherwise require application of the substantive laws of another jurisdiction.

Section 33. Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. A signature to this Agreement transmitted electronically shall have the same authority, effect, and enforceability as an original signature.

Section 34. Descriptive Headings; Interpretation. Descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Each reference in this Agreement to a period of time following or after a specified date or event shall be calculated without including such specified date or the day on which such specified event occurs.

Section 35. Force Majeure. Notwithstanding anything to the contrary contained herein, the Rights Agent shall not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, pandemics, epidemics, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

Section 36. Customer Identification Program. The Company acknowledges that the Rights Agent is subject to the customer identification program (“Customer Identification Program”) requirements under the USA PATRIOT Act and its implementing regulations, and that the Rights Agent must obtain, verify and record information that allows the Rights Agent to identify the Company. Accordingly, prior to accepting an appointment hereunder, the Rights Agent may request information from the Company that will help the Rights Agent to identify the Company, including without limitation the Company’s physical address, tax identification number, organizational documents, certificate of good standing, license to do business, or any other information that the Rights Agent deems necessary. The Company agrees that the Rights Agent cannot accept an appointment hereunder unless and until the Rights Agent verifies the Company’s identity in accordance with the Customer Identification Program requirements.

Section 37. Assignment of Original Agreement. Effective as of the Merger Effective Time, OD LLC, as the successor by merger to ODI, hereby assigns to the Company, and the Company hereby assumes from OD LLC, all of the rights and obligations and duties of OD LLC under the Original Agreement. The parties hereto agree that this Agreement amends and restates the Original Agreement in its entirety and upon execution and delivery of this Agreement by the parties hereto, the Original Agreement shall cease to have any force or effect and no person shall have any rights or obligations with respect thereto.

[The remainder of this page has been left blank intentionally]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and attested, all as of the day and year first above written.

THE ODP CORPORATION

By: /s/ N. David Bleisch

Name: N. David Bleisch

Title: EVP, Chief Legal & Administrative Officer

[Signature Page to Amended and Restated Rights Agreement]

By: /s/ Fred Papenmeier

Name: Fred Papenmeier

Title: Vice President & Manager

[Signature Page to Amended and Restated Rights Agreement]

Solely with respect to Section 37

OFFICE DEPOT, LLC

By: /s/ N. David Bleisch

Name: N. David Bleisch

Title: EVP, Chief Legal & Administrative Officer

[Signature Page to Amended and Restated Rights Agreement]

CERTIFICATE OF DESIGNATIONS
of
SERIES A JUNIOR PARTICIPATING PREFERRED STOCK
of
THE ODP CORPORATION
(Pursuant to Section 151 of the
Delaware General Corporation Law)

The ODP Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), hereby certifies that the following resolution was unanimously adopted by the Board of Directors of the Corporation, acting by written consent in lieu of a meeting pursuant to Section 141(f) of the General Corporation Law of the State of Delaware, on June 29, 2020 as required by Section 151 of the General Corporation Law of the State of Delaware:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of this Corporation (hereinafter called the "Board of Directors" or the "Board") in accordance with the provisions of the Certificate of Incorporation of the Corporation (as heretofore amended and or restated, the "Certificate of Incorporation"), the number of shares, and the powers, the relative rights, the preferences, and the limitations of the Series A Junior Participating Preferred Stock are fixed as follows:

Series A Junior Participating Preferred Stock:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock", par value \$0.01 per share (the "Series A Preferred Stock"), and the number of shares constituting the Series A Preferred Stock shall be 80,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series A Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of Common Stock, par value \$0.01 per share (the "Common Stock"), of the Corporation, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest.

(D) Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Certificate of Incorporation, or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made (A) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received the greater of (a) \$1.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, or (b) an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (B) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser

number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (A) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property (other than any merger of the Corporation with and into a direct or indirect subsidiary of the Corporation pursuant to which the Corporation becomes a direct or indirect wholly-owned subsidiary of a holding company that is, immediately prior to the effective time of such merger, a direct or indirect subsidiary of the Corporation, in accordance with Section 251(g) of the General Corporation Law of the State of Delaware), then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Preferred Stock shall not be redeemable.

Section 9. Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Corporation's Preferred Stock.

Section 10. Amendment. The Certificate of Incorporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting together as a single class.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations to be signed and acknowledged by the undersigned this 29th day of June, 2020.

Name: N. David Bleisch
Title: EVP, Chief Legal & Administrative Officer

Form of Right Certificate

Certificate No. R-___

___ Rights

NOT EXERCISABLE AFTER MAY 4, 2021 OR EARLIER IF REDEMPTION OR EXCHANGE OCCURS. THE RIGHTS ARE SUBJECT TO REDEMPTION AT \$0.01 PER RIGHT AND TO EXCHANGE ON THE TERMS SET FORTH IN THE AGREEMENT. UNDER CERTAIN CIRCUMSTANCES, AS SET FORTH IN THE AGREEMENT, RIGHTS OWNED BY OR TRANSFERRED TO ANY PERSON WHO IS OR BECOMES AN ACQUIRING PERSON (AS DEFINED IN THE AGREEMENT) AND CERTAIN TRANSFEREES THEREOF SHALL BE NULL AND VOID AND SHALL BE NO LONGER BE TRANSFERABLE.

Right Certificate

THE ODP CORPORATION

This certifies that _____, or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Amended and Restated Rights Agreement, dated as of June 30, 2020 (as it may be amended, supplemented or otherwise modified from time to time, the "Agreement"), among The ODP Corporation, a Delaware corporation (the "Company"), Computershare Inc. (or any successor rights agent) (the "Rights Agent"), and, solely with respect to Section 37 thereof, Office Depot, LLC, a Delaware limited liability company ("OD LLC"), wholly owned subsidiary of the Company and successor by merger to Office Depot, Inc., a Delaware corporation ("ODI"), to purchase from the Company at any time after the Distribution Date (as such term is defined in the Agreement) and prior to 5:00 P.M., New York City time, on May 4, 2021, at the office of the Rights Agent designated for such purpose, or at the office of its successor as Rights Agent, ten ten-thousandths of a fully paid non-assessable share of Series A Junior Participating Preferred Stock, par value \$0.01 per share, of the Company (the "Preferred Shares"), at a purchase price of \$9.00 per one ten-thousandth of a Preferred Share (the "Purchase Price"), upon presentation and surrender of this Right Certificate with the appropriate Form of Election to Purchase duly completed executed, accompanied by such documentation as the Rights Agent may reasonably request. The number of Rights evidenced by this Right Certificate (and the number of one ten-thousandths of a Preferred Share which may be purchased upon exercise hereof) set forth above, and the Purchase Price set forth above, are the number and Purchase Price as of June 30, 2020, based on the Preferred Shares as constituted at such date. As provided in the Agreement, the Purchase Price and the number of one ten-thousandths of a Preferred Share which may be purchased upon the exercise of the Rights evidenced by this Right Certificate are subject to modification and adjustment upon the happening of certain events.

This Right Certificate is subject to all of the terms, provisions and conditions of the Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Right Certificates. Copies of the Agreement are on file at the principal executive offices of the Company and the offices of the Rights Agent. The Company will mail to the holder of this Right Certificate a copy of the Agreement without charge after receipt of a written request therefor.

This Right Certificate, with or without other Right Certificates, upon surrender at the office or offices of the Rights Agent designated for such purpose, accompanied by such documentation as the Rights Agent may reasonably request, may be exchanged for another Right Certificate or Right Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of Preferred Shares as the Rights evidenced by the Right Certificate or Right Certificates surrendered shall have entitled such holder to purchase. If this Right Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Right Certificate or Right Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Agreement, the Rights evidenced by this Right Certificate (i) may be redeemed by the Company at a redemption price of \$0.01 per Right or (ii) may be exchanged in whole or in part for shares of the Company's Common Stock, par value \$0.01 per share or, in certain circumstances, Preferred Shares, other equity securities or a combination thereof which are deemed by the Board of Directors of the Company to have the same value as such shares of the Company's Common Stock, subject to adjustment.

No fractional Preferred Shares will be issued upon the exercise or exchange of any Right or Rights evidenced hereby (other than fractions which are integral multiples of one ten-thousandth of a Preferred Share, which may, at the election of the Company, be evidenced by depositary receipts), but, in lieu thereof, a cash payment will be made, as provided in the Agreement.

No holder of this Right Certificate shall be entitled to vote or receive dividends or be deemed for any purpose the holder of the Preferred Shares or of any other securities of the Company which may at any time be issuable on the exercise or exchange hereof, nor shall anything contained in the Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in the Agreement), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Right Certificate shall have been exercised or exchanged as provided in the Agreement.

This Right Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by an authorized signatory of the Rights Agent.

Chairman of the Board

Attest:

Secretary

Countersigned:

COMPUTERSHARE INC.,
as Rights Agent

By:

Name:

Title:

Form of Reverse Side of Right Certificate

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Right Certificate.)

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto

(Please print name and address of transferee)

Rights represented by this Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ Attorney, to transfer said Rights on the books of the within-named Company, with full power of substitution.

Dated: _____

Signature

Signature Guaranteed:

Signatures must be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level acceptable to the Company's Rights Agent. A notary public is not sufficient.

The undersigned hereby certifies that the Rights evidenced by this Right Certificate are not Beneficially Owned by, were not acquired by the undersigned from and are not being assigned to an Acquiring Person or an Affiliate or Associate thereof (each as defined in the Agreement).

Signature

FORM OF ELECTION TO PURCHASE

(To be executed if holder desires to exercise

Rights represented by the Right Certificate.)

To: THE ODP CORPORATION

The undersigned hereby irrevocably elects to exercise _____ Rights represented by this Right Certificate to purchase the Preferred Shares issuable upon the exercise of such Rights and requests that certificates for such Preferred Shares be issued in the name of:

Please insert social security or other identifying number:

Please print name and address:

If such number of Rights shall not be all the Rights evidenced by this Right Certificate, a new Right Certificate for the balance remaining of such Rights shall be registered in the name of and delivered to:

Please insert social security or other identifying number:

Please print name and address:

Dated: _____

Signature

Signature Guaranteed:

Signatures must be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level acceptable to the Company's Rights Agent. A notary public is not sufficient.

The undersigned hereby certifies that the Rights evidenced by this Right Certificate are not Beneficially Owned by and are not being exercised by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate thereof (each as defined in the Agreement).

Signature

NOTICE

The signature in the Form of Assignment or Form of Election to Purchase, as the case may be, must conform to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

In the event the certification set forth above in the Form of Assignment or the Form of Election to Purchase, as the case may be, is not completed, the Company and the Rights Agent will deem the Beneficial Owner of the Rights evidenced by this Right Certificate to be an Acquiring Person or an Affiliate or Associate thereof (each as defined in the Agreement) and such Assignment or Election to Purchase will not be honored.

SUMMARY OF RIGHTS TO PURCHASE
PREFERRED SHARES

Introduction

As previously disclosed, on May 5, 2020, the Board of Directors of Office Depot, Inc., a Delaware corporation (“ODI”), declared a dividend of one preferred share purchase right (an “ODI Right”) for each outstanding share of Common Stock, par value \$0.01 per share, of ODI (the “ODI common stock”). The dividend was paid on May 21, 2020 to ODI’s stockholders of record on May 21, 2020.

The description and terms of the ODI Rights are set forth in the Rights Agreement, dated as of May 5, 2020 (the “Original Agreement”), between ODI and Computershare Inc., as Rights Agent (the “Rights Agent”), which was filed by ODI with the Securities and Exchange Commission as an exhibit to a Current Report on Form 8-K filed on May 6, 2020. A copy of the Original Agreement is available free of charge from The ODP Corporation, a Delaware corporation (our “Company”).

The Board of Directors of ODI adopted the Original Agreement to preserve the ability of the Board of Directors of ODI to protect the interests of stockholders in transactions that may result in an acquisition of control of ODI, including tender offers and open market purchases of ODI’s securities. In general terms, the Original Agreement worked by significantly diluting the stock ownership of any person or group that acquires 10% (or in the case of Passive Institutional Investors (as that term is defined in the Original Agreement), 20%), or more, of the outstanding shares of ODI common stock after the adoption of the Original Agreement without the approval of the Board of Directors of ODI.

On June 30, 2020, ODI effected a reverse stock split of all of the outstanding shares of ODI common stock by a ratio of 1-to-10 (the “Reverse Stock Split”), as a result of which, pursuant to the terms of the Original Agreement, (i) each ODI Right became a right to purchase, upon proper exercise, ten ten-thousandths of a share of Series A Junior Participating Preferred Stock of ODI (the “ODI Preferred Share”), and (ii) each share of ODI common stock outstanding immediately after the Reverse Stock Split had issued with respect to it one ODI Right.

On June 30, 2020, following the Reverse Stock Split, ODI consummated a holding company reorganization pursuant to that certain Agreement and Plan of Merger, dated as of June 30, 2020 (the “Merger Agreement”), by and among ODI, our Company, ODP Investment, LLC, a Delaware limited liability company and a wholly owned subsidiary of our Company (“ODP Investment”), and Office Depot, LLC, a Delaware limited liability company and a wholly owned subsidiary of ODP Investment (“OD LLC”), pursuant to which ODI merged with and into OD LLC, with OD LLC continuing as the surviving entity of such merger as an indirect, wholly owned subsidiary of our Company (the “Merger”).

Pursuant to the Merger, each share of ODI common stock issued and outstanding immediately prior to the Merger Effective Time (on a Reverse Stock Split-adjusted basis) was converted into one share of Common Stock, par value \$0.01 per share, of our Company (the “common stock”).

On June 30, 2020, simultaneously with the Merger Effective Time, our Company, the Rights Agent and, solely with respect to Section 37 thereof, OD LLC, entered into an Amended and Restated Rights Agreement, dated as of June 30, 2020 (as it may be amended, supplemented or otherwise modified from time to time, the "Agreement"), pursuant to which (i) our Company assumed, effective as of the Merger Effective Time, all of the rights and obligations and duties of ODI under the Original Agreement and (ii) the Original Agreement was amended and restated in its entirety, effective as of the Merger Effective Time, to provide that references in the Original Agreement to the terms "Company", "Common Shares of the Company" and "Preferred Shares" and similar terms are deemed to refer to our Company, shares of common stock of our Company and shares of Series A Junior Participating Preferred Stock, par value \$0.01 per share, of our Company (the "Preferred Shares"), respectively, and that each ODI Right distributed or distributable under the Original Agreement become a preferred share purchase right (a "Right") representing the right to purchase ten ten-thousandths of a Preferred Share upon the terms and subject to the conditions set forth in the Agreement.

For those interested in the specific terms of the Agreement, we provide the following summary description. Please note, however, that this description is only a summary, and is not complete, and should be read together with the entire Agreement, which has been filed with the Securities and Exchange Commission as an exhibit to a Current Report on Form 8-K filed on July 1, 2020. A copy of the Agreement is available free of charge from our Company.

The Rights. On June 29, 2020, our Board authorized, effective upon our Company's entry into the Agreement, the issuance of a Right with respect to each outstanding share of common stock on June 30, 2020 as of the Merger Effective Time and each share of common stock issued (whether as an original issuance or from our Company's treasury) or transferred by our Company after the Merger Effective Time. The Rights will initially trade with, and will be inseparable from, the common stock. The Rights are evidenced by certificates that represent shares of common stock or, in the case of shares of common stock held in uncertificated form, by the transaction statement or other record of ownership of such shares. New Rights will accompany any new shares of common stock we issue after the Merger Effective Time until the earliest of the date when the Rights become exercisable (the "Distribution Date"), the date that the Rights are redeemed by the Board and the date on which the Rights expire.

Purchase Price. Each Right will allow its holder to purchase from our Company ten ten-thousandths of a Preferred Share for \$9.00 per one ten-thousandth of a Preferred Share (the "Purchase Price"), subject to adjustment, once the Rights become exercisable. Ten ten-thousandths of a Preferred Share will give the stockholder approximately the same dividend, voting, and liquidation rights as would one share of common stock. Prior to exercise, the Right does not give its holder any dividend, voting or liquidation rights.

Exercisability. The Rights will not be exercisable until the close of business on the tenth day after the public announcement that a person or group has become an Acquiring Person by obtaining Beneficial Ownership (based on a definition of Beneficial Ownership in the Agreement, which differs from and is generally broader than the definition of Beneficial Ownership under the federal securities laws) of 10% (20% in the case of Passive Institutional Investors) or more of our outstanding common stock (and not being a Grandfathered Stockholder as that term is defined in the Agreement).

Certain synthetic interests in our common stock created by derivative positions—whether or not such interests are considered to be ownership of the underlying common stock or are reportable for purposes of Regulation 13D of the Securities Exchange Act—are treated as Beneficial Ownership of the notional number of shares of the Company’s common stock referenced in such derivative position for purposes of determining whether a Person is an Acquiring Person and, for purposes of determining whether particular Rights are Beneficially Owned by an Acquiring Person (and therefore null and void) such Acquiring Person is deemed to be the Beneficial Owner of shares of the Company’s common stock that are directly or indirectly held by counterparties to the derivatives contracts. Swaps dealers unassociated with any control intent or intent to evade the purposes of the Agreement are excepted from such imputed beneficial ownership.

Until the earliest of the Distribution Date, the date that the Rights are redeemed by the Board and the date on which the Rights expire, (i) in the case of certificated shares, the Rights associated with the shares of common stock represented by any certificate will be evidenced by such certificate, and the surrender for transfer of any such certificate shall also constitute the transfer of the Rights associated with the shares of common stock represented thereby, and (ii) in the case of shares of common stock held in uncertificated form, the Rights associated with the shares of common stock shall be evidenced by the balances indicated in the book-entry account system of the transfer agent for such shares and the transfer of any shares of common stock in the book-entry account system of the transfer agent for such shares shall also constitute the transfer of the Rights associated with such shares. Therefore, until the Distribution Date, the Rights may be transferred with and only with the underlying shares of common stock of the Company. After that date, the Rights will separate from the common stock and be evidenced by Rights certificates that we will mail to all eligible holders of common stock. Any Rights held by an Acquiring Person will become null and void and may not be exercised.

Consequences of a Person or Group Becoming an Acquiring Person.

- *Flip In.* If a person or group becomes an Acquiring Person, all holders of Rights (not including the Rights of the Acquiring Person, which will have become null and void) may, for \$9.00, purchase shares of our common stock (or, in certain circumstances, Preferred Shares, other securities, cash, assets or a combination thereof) with a market value of \$18.00, based on the market value of the common stock prior to such acquisition.
- *Flip Over.* In the event that, at any time after a person or group has become an Acquiring Person, (i) the Company or its subsidiaries are party to a merger with another company in which the Common Shares are converted into other securities, cash or property, or (ii) the Company sells or otherwise transfers 50% or more of the assets or earning power of the Company and its subsidiaries (taken as a whole) to another company, all holders of Rights (not including the Rights of the Acquiring Person, which will have become null and void) may, for \$9.00, purchase shares of common stock of such other company with a then current market value of \$18.00, based on the market price of the acquiring company’s stock prior to such merger or sale.

Notional Common Shares. Shares held by Affiliates and Associates of an Acquiring Person, and Notional Common Shares (as such term is defined in the Agreement) held by counterparties to a derivatives contract with an Acquiring Person, will be deemed to be beneficially owned by the Acquiring Person.

Preferred Share Provisions. Each one ten-thousandth of a Preferred Share, if issued:

- will not be redeemable.
- will entitle holders to quarterly dividend payments of \$0.0001, or an amount equal to one-tenth of the dividend paid on one share of common stock, whichever is greater.
- will entitle holders upon liquidation either to receive \$0.0001 or an amount equal to one-tenth of the payment made on one share of common stock, whichever is greater.
- will have the same voting power as one-tenth of a share of common stock.
- if shares of our common stock are exchanged via merger, consolidation, or a similar transaction (other than pursuant to a Holding Company Reorganization (as such term is defined in the Agreement)), will entitle holders to a per share payment equal to one-tenth of the payment made on one share of common stock.

The value of ten ten-thousandths interest in a Preferred Share should approximate the value of one share of common stock.

Expiration. The Rights will expire on May 4, 2021.

Redemption. Our Board may redeem the Rights for \$0.01 per Right at any time before any person or group becomes an Acquiring Person. If our Board redeems any Rights, it must redeem all of the Rights. Once the Rights are redeemed, the only right of the holders of Rights will be to receive the redemption price of \$0.01 per Right. The redemption price will be adjusted if we have a stock split, reverse stock split or stock dividends of our common stock.

Exchange. After a person or group becomes an Acquiring Person, but before an Acquiring Person owns 50% or more of our outstanding common stock, our Board may extinguish the Rights by exchanging one share of common stock (or, in certain circumstances, Preferred Shares, other equity securities or a combination thereof which are deemed by our Board to have the same value as one Common Share, subject to adjustment) for each Right (not including the Rights of the Acquiring Person, which will have become null and void).

Anti-Dilution Provisions. Our Board may adjust the Purchase Price, the number of Preferred Shares issuable and the number of outstanding Rights to prevent dilution that may occur from a stock dividend, a stock split, a reverse stock split or a reclassification of the Preferred Shares or common stock. No adjustments to the Purchase Price of less than 1% will be made.

Amendments. The terms of the Agreement may be amended by our Board without the consent of the holders of the Rights. After a person or group becomes an Acquiring Person, our Board may not amend the Agreement in a way that adversely affects holders of the Rights.

COMMON STOCK

COMMON STOCK



ODP

THE ODP CORPORATION

THIS CERTIFICATE IS TRANSFERABLE IN CITIES DESIGNATED BY THE TRANSFER AGENT. AVAILABLE ONLINE AT www.computershare.com

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

CUSIP 86337F 10 5
SEE REVERSE FOR CERTAIN DEFINITIONS

This Certifies That

SPECIMEN

is the owner of

FULLY PAID AND NON-ASSESSABLE SHARES OF THE COMMON STOCK, PAR VALUE \$0.01 PER SHARE, OF

The ODP Corporation transferable on the books of the Corporation in person or by duly authorized Attorney on surrender of this Certificate properly endorsed. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar.

In Witness Whereof, the Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed.

Dated:

CHIEF EXECUTIVE OFFICER



EXECUTIVE VICE PRESIDENT,
CHIEF LEGAL & ADMINISTRATIVE OFFICER

AUTHORIZED SIGNATURE

BY: COUNTERSIGNED AND REGISTERED
COMPUTERSHARE INC.
TRANSFER AGENT AND REGISTRAR

The Corporation will furnish without charge, to each stockholder who so requests, a copy of the provisions setting forth the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof which the Corporation is authorized to issue, and the qualifications, limitations or restrictions of such preferences and/or rights. Any such request should be addressed to the Secretary of the Corporation.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	— as tenants in common	UNIF GIFT MIN ACT	— _____ Custodian _____
TEN ENT	— as tenants by the entireties		(Cust) (Minor)
JT TEN	— as joint tenants with right of survivorship and not as tenants in common		under Uniform Gifts to Minors Act _____
			(State)

Additional abbreviations may also be used though not in the above list.

For value received, _____ hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

Please print or typewrite name and address including postal zip code of assignee

_____ *Shares*
of the Common Stock represented by the within Certificate, and
hereby irrevocably constitutes and appoints _____

Attorney to transfer the said stock on the books of the within-named
Corporation with full power of substitution in the premises.

Dated, _____

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement, or any change whatever.

SIGNATURE(S) GUARANTEED: _____

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION, (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17A-15.

This certificate also evidences and entitles the holder hereof to certain rights as set forth in an Amended and Restated Rights Agreement among The ODP Corporation, Computershare Inc., as Rights Agent (or any successor rights agent), and solely with respect to Section 37 thereof, Office Depot, LLC, dated as of June 30, 2020, as it may be amended, supplemented or otherwise modified from time to time (the "Agreement"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of The ODP Corporation. Under certain circumstances, as set forth in the Agreement, such Rights (as defined in the Agreement) will be evidenced by separate certificates and will no longer be evidenced by this certificate. The ODP Corporation will mail to the holder of this certificate a copy of the Agreement without charge after receipt of a written request therefor. As set forth in the Agreement, Rights Beneficially Owned (as defined in the Agreement) by any Person (as defined in the Agreement) who becomes an Acquiring Person (as defined in the Agreement) shall be null and void.

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is made as of June 30, 2020, by and between Office Depot, LLC, a Delaware limited liability company ("Assignor"), and The ODP Corporation, a Delaware corporation ("Assignee").

RECITALS

Pursuant to the Agreement and Plan of Merger, dated as the date hereof (the "Merger Agreement"), by and among Office Depot, Inc., a Delaware corporation ("ODI"), Assignor, Assignee, and ODP Investment, LLC, a Delaware limited liability company, ODI created a new holding company structure pursuant to Sections 251(g) and 264 of the General Corporation Law of the State of Delaware and Section 18-209 of the Delaware Limited Liability Company Act by merging with and into Assignor (the "Merger"), with Assignor continuing as the surviving entity of such Merger as an indirect, wholly owned subsidiary of Assignee. In connection with the Merger, Assignor has agreed to assign to Assignee, and Assignee has agreed to assume from Assignor, (i) any employee, director and executive compensation plans pursuant to which the Surviving Company is obligated to, or may, issue equity securities to its directors, officers, or employees (collectively, all such plans, including any such plans listed on Exhibit A hereto, the "Stock Incentive Plans"), (ii) each equity-based award agreement and/or similar agreement entered into pursuant to the Stock Incentive Plans, and each outstanding award granted thereunder (collectively, the "Award Agreements"); and (iii) the other agreements listed on Exhibit A hereto (the "Other Agreements" and, collectively with the Stock Incentive Plans and the Award Agreements, the "Assumed Agreements").

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the receipt and sufficiency of which is acknowledged by the parties hereto, the parties intending to be legally bound, agree as follows:

Section 1. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined shall have the respective meanings assigned to them in the Merger Agreement.

Section 2. Assignment. Effective as of the Merger Effective Time, Assignor hereby assigns to Assignee all of its rights and obligations under the Assumed Agreements listed on Exhibit A hereto.

Section 3. Assumption. Effective as of the Merger Effective Time, Assignee hereby assumes all of the rights and obligations of Assignor under the Assumed Agreements, and agrees to abide by and perform all terms, covenants and conditions of Assignor under such Assumed Agreements. In consideration of the assumption by Assignee of all of the rights and obligations of Assignor under the Assumed Agreements, Assignor agrees to pay (i) all expenses incurred by Assignee in connection with the assumption of the Assumed Agreements pursuant to this Agreement and (ii) all expenses incurred by Assignee in connection with the registration on Form S-8 of shares of Common Stock, par value \$0.01 per share, of Assignee to the extent required in connection with the assumption of all of the rights and obligations of Assignor under the Stock Incentive Plans, each equity-based award agreement and/or similar agreement entered into pursuant to the Stock Incentive Plans, and each outstanding award granted thereunder, including, without limitation, registration fees imposed by the Securities and Exchange Commission. At the Merger Effective Time, the Assumed Agreements shall each be automatically amended as necessary to provide that references to Office Depot, Inc. in such agreements shall be read to refer to Assignee and references to the Common Stock, par value \$0.01 per share, of Office Depot, Inc. in such agreements shall be read to refer to the Common Stock, par value \$0.01 per share, of Assignee.

Section 4. Further Assurances. Subject to the terms of this Agreement, the parties hereto shall take all reasonable and lawful action as may be necessary or appropriate to cause the intent of this Agreement to be carried out, including, without limitation, entering into amendments to the Assumed Agreements and notifying other parties thereto of such assignment and assumption.

Section 5. Successors and Assigns. This Agreement shall be binding upon Assignor and Assignee, and their respective successors and assigns. The terms and conditions of this Agreement shall survive the consummation of the transfers provided for herein.

Section 6. Governing Law. This Agreement shall be governed by and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws.

Section 7. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which shall constitute one and the same agreement.

Section 8. Entire Agreement. This Agreement, including Exhibit A attached hereto, together with the Merger Agreement, constitute the entire agreement and supersede all other agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof.

Section 9. Amendments. This Agreement may not be modified or amended except by a writing executed by the parties hereto.

Section 10. Severability. The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

Section 11. Third Party Beneficiaries. The parties to the various equity-based award agreements and/or similar agreements entered into pursuant to the Stock Incentive Plans, and each outstanding award granted thereunder, and the parties to the Other Agreements, are intended to be third party beneficiaries to this Agreement.

Section 12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment and Assumption Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ASSIGNOR:

OFFICE DEPOT, LLC

By: /s/ N. David Bleisch

Name: N. David Bleisch

Title: Executive Vice President, Chief Legal &
Administrative Officer

ASSIGNEE:

THE ODP CORPORATION

By: /s/ N. David Bleisch

Name: N. David Bleisch

Title: Executive Vice President, Chief Legal &
Administrative Officer

Exhibit A

Assumed Agreements

Stock Incentive Plans (and all applicable award agreements thereunder):

1. Office Depot, Inc. 2019 Long-Term Incentive Plan
2. Office Depot, Inc. 2017 Long-Term Incentive Plan
3. Office Depot, Inc. 2015 Long-Term Incentive Plan
4. 2003 OfficeMax Incentive and Performance Plan
5. 2003 Director Stock Compensation Plan
6. Director Stock Compensation Plan

Other Agreements:

1. Indemnification Agreements between Office Depot, Inc. and each of the individuals set forth below:
 - a. Quincy Allen
 - b. N. David Bleisch
 - c. Kristin Campbell
 - d. John Gannfors
 - e. Richard Haas
 - f. Todd Hale
 - g. Cynthia Jamison
 - h. Francesca Luiz de Luzuriaga
 - i. Stephen M. Mohan
 - j. Kevin Moffitt
 - k. Shashank Samant
 - l. John M. Slattery II
 - m. Gerry Smith
 - n. David Szymanski
 - o. Joseph Vassalluzzo
 - p. Stephen R. Calkins
 - q. Jerri DeVard
 - r. Scott Kriss
 - s. Joseph T. Lower
 - t. V. James Marino
 - u. Janet Schijns
 - v. Dan Stone
 - w. Nigel Travis
 - x. Prentis Wilson
2. The Office Depot, Inc. Executive Change in Control Severance Plan
3. Office Depot, Inc. Deferred Compensation Plan (DCP)
4. Office Depot, Inc. Non-Qualified Deferred Compensation Plan II

**CONTACTS:**

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Danny Jovic
Media Relations
561-438-1594
Danny.Jovic@officedepot.com

Office Depot, Inc. Confirms Reverse Stock Split will be Effective at 4:01 p.m. EDT on June 30, 2020; Trading on Split-Adjusted Basis to Commence July 1, 2020

Boca Raton, Fla., June 30, 2020 – Office Depot, Inc. (NASDAQ: ODP) (the “Company”), a leading provider of business services and supplies, products and technology solutions through an integrated B2B distribution platform, today confirmed that its previously announced reverse stock split of the Company’s common stock at a ratio of 1-for-10 will become effective at 4:01 p.m. EDT on June 30, 2020 as previously disclosed.

Trading on a reverse stock split-adjusted basis will commence on the NASDAQ Global Select Market at the opening of trading on July 1, 2020.

Additional details will be contained in a Current Report on Form 8-K to be filed with the U.S. Securities and Exchange Commission upon the effectiveness of the reverse stock split.

About Office Depot, Inc.

Office Depot, Inc. (NASDAQ:ODP) is a leading provider of business services and supplies, products and technology solutions to small, medium and enterprise businesses, through a fully integrated B2B distribution platform of approximately 1,300 stores, online presence, and dedicated sales professionals and technicians. Through its banner brands Office Depot®, OfficeMax®, CompuCom® and Grand&Toy®, as well as others, the Company offers its customers the tools and resources they need to focus on their passion of starting, growing and running their business. For more information, visit news.officedepot.com and follow @officedepot on Facebook, Twitter and Instagram.

Office Depot is a trademark of The Office Club, Inc. OfficeMax is a trademark of OMX, Inc. CompuCom is a trademark of CompuCom Systems, Inc. Grand & Toy is a trademark of Grand & Toy, LLC in Canada. ©2020 Office Depot, Inc. All rights reserved. Any other product or company names mentioned herein are the trademarks of their respective owners.

FORWARD LOOKING STATEMENTS

This communication may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements or disclosures may discuss goals, intentions and expectations as to future trends, plans, events, results of operations, cash flow or financial condition, the potential impacts on our business due to the unknown severity and duration of the COVID-19 outbreak, or state other information relating

to, among other things, Office Depot, based on current beliefs and assumptions made by, and information currently available to, management. Forward-looking statements generally will be accompanied by words such as “anticipate,” “believe,” “plan,” “could,” “estimate,” “expect,” “forecast,” “guidance,” “outlook,” “intend,” “may,” “possible,” “potential,” “predict,” “project,” “propose” or other similar words, phrases or expressions, or other variations of such words. These forward-looking statements are subject to various risks and uncertainties, many of which are outside of Office Depot’s control. There can be no assurances that Office Depot will realize these expectations or that these beliefs will prove correct, and therefore investors and stakeholders should not place undue reliance on such statements.

Factors that could cause actual results to differ materially from those in the forward-looking statements include, among other things, highly competitive office products market and failure to differentiate Office Depot from other office supply resellers or respond to decline in general office supplies sales or to shifting consumer demands; competitive pressures on Office Depot’s sales and pricing; the risk that Office Depot is unable to transform the business into a service-driven company or that such a strategy will not result in the benefits anticipated; the risk that Office Depot may not be able to realize the anticipated benefits of acquisitions due to unforeseen liabilities, future capital expenditures, expenses, indebtedness and the unanticipated loss of key customers or the inability to achieve expected revenues, synergies, cost savings or financial performance; the risk that Office Depot is unable to successfully maintain a relevant omni-channel experience for its customers; the risk that Office Depot is unable to execute the Business Acceleration Program successfully or that such program will not result in the benefits anticipated; failure to effectively manage Office Depot real estate portfolio; loss of business with government entities, purchasing consortiums, and sole- or limited- source distribution arrangements; failure to attract and retain qualified personnel, including employees in stores, service centers, distribution centers, field and corporate offices and executive management, and the inability to keep supply of skills and resources in balance with customer demand; failure to execute effective advertising efforts and maintain the Office Depot reputation and brand at a high level; disruptions in Office Depot computer systems, including delivery of technology services; breach of Office Depot information technology systems affecting reputation, business partner and customer relationships and operations and resulting in high costs; unanticipated downturns in business relationships with customers or terms with the suppliers, third-party vendors and business partners; disruption of global sourcing activities, evolving foreign trade policy (including tariffs imposed on certain foreign made goods); exclusive Office Depot branded products are subject to additional product, supply chain and legal risks; product safety and quality concerns of manufacturers’ branded products and services and Office Depot private branded products; covenants in the credit facility; a downgrade in Office Depot credit ratings or a general disruption in the credit markets; incurrence of significant impairment charges; retained responsibility for liabilities of acquired companies; fluctuation in quarterly operating results due to seasonality of Office Depot business; changes in tax laws in jurisdictions where Office Depot operates; increases in wage and benefit costs and changes in labor regulations; changes in the regulatory environment, legal compliance risks and violations of the U.S. Foreign Corrupt Practices Act and other worldwide anti-bribery laws; volatility in Office Depot common stock price; changes in or the elimination of the payment of cash dividends on Office Depot common stock; macroeconomic conditions such as future declines in business or consumer spending; increases in fuel and other commodity prices and the cost of material, energy and other production costs, or unexpected costs that cannot be recouped in product pricing; unexpected claims, charges, litigation, dispute resolutions or settlement expenses; catastrophic events, including the impact of weather events on Office Depot’s business; the discouragement of lawsuits by shareholders against Office Depot and its directors and officers as a result of the exclusive forum selection of the Court of Chancery, the federal district court for the District of Delaware or other Delaware state courts by Office Depot as the sole and exclusive forum for such lawsuits; and the impact of the COVID-19 pandemic on our business, including on the demand for our and our customers’ products and services, on trade and transport restrictions and generally on our ability to effectively manage the impacts of the COVID-19 pandemic on our business operations. The foregoing list of factors is not exhaustive. Investors and shareholders should carefully consider the foregoing factors and the other risks and uncertainties described in Office Depot’s Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K filed with the U.S. Securities and Exchange Commission. Office Depot does not assume any obligation to update or revise any forward-looking statements.

**CONTACTS:**

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Media Relations
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The ODP Corporation Announces Completion of Office Depot Holding Company Reorganization and Reverse Stock Split

Office Depot is Now a Subsidiary of the New Public Company, The ODP Corporation

Reverse Stock Split Implemented at a 1-for-10 Ratio Effective at 4:01 p.m. EDT on June 30, 2020

Boca Raton, Fla., July 1, 2020 — The ODP Corporation (“ODP” or the “Company”) (NASDAQ: ODP), a leading provider of business services, products and digital workplace technology solutions through an integrated B2B distribution platform, announced that it has completed its previously announced holding company reorganization creating a newly-formed public company named “The ODP Corporation” and implemented a 1-for-10 reverse stock split effective June 30, 2020.

The ODP Corporation replaces Office Depot, Inc. (“Office Depot”) as the public company trading on Nasdaq under the ticker symbol “ODP”. All outstanding shares of Office Depot have been automatically converted into shares of common stock in The ODP Corporation, and Office Depot now operates as a wholly-owned subsidiary of The ODP Corporation. This holding company reorganization is intended to be a tax-free transaction for federal income tax purposes for the Company’s shareholders. The holding company reorganization is expected to simplify the Company’s legal entity and tax structure, more closely align the Company’s operating assets to their respective operating channels within the legal entity structure, and increase its operational flexibility. Neither the holding company reorganization nor the reverse stock split resulted in a change in the directors, executive officers, management or business of the Company.

In connection with the implementation of the holding company reorganization, the Company announced that it also completed a 1-for-10 reverse stock split for all issued and outstanding common stock effective at 4:01 p.m. EDT on June 30, 2020. As previously disclosed, the Company’s shareholders previously approved a reverse stock split at a ratio in the range of not less than 1-for-5 and not more than 1-for-10 at its annual shareholder meeting held on May 11, 2020, with the exact ratio and effective time to be determined by the Office Depot Board of Directors. ODP’s common stock will begin trading at the opening of trading on July 1, 2020 under the new CUSIP number 88337F105. The reverse stock split applies to all of the Company’s outstanding common stock, reducing the number of shares of common stock issued and outstanding from approximately 526 million shares to approximately 52.6 million shares (without giving effect to the treatment of fractional shares) and proportionately decreasing the number of authorized shares of common stock from 800,000,000 to 80,000,000.

The reverse stock split will affect all holders of common stock uniformly and will not alter any shareholder’s percentage ownership interest in the Company, except to the extent that the reverse stock split would result in a shareholder owning a fractional share. No fractional shares of common stock will be issued in connection with the reverse stock split. Shareholders who would have otherwise been entitled to a fractional share of common stock as a result of the reverse stock split will instead be entitled to receive a cash payment in lieu of such fractional shares.

The rights, privileges and interests of the Company's shareholders will remain the same with respect to the new holding company. The limited duration shareholder rights plan, previously announced on May 6, 2020, will continue to apply to the shares of the Company. The shareholder rights plan expires, without any further action required to be taken by the ODP Board of Directors, on May 4, 2021.

Holders of the Company's common stock held in book-entry form or through a bank, broker or other nominee do not need to take any action in connection with the reverse stock split. Shareholders of record will be receiving information from Computershare Trust Company, N.A., the Company's transfer agent, regarding their reverse stock split-adjusted stock ownership. All other questions regarding the mechanics of the reverse stock split can be directed to the Company's transfer agent, Computershare, at 800-681-8059.

About The ODP Corporation

The ODP Corporation (NASDAQ:ODP) is a leading provider of business services, products and digital workplace technology solutions to small, medium and enterprise businesses. ODP, operating through its direct and indirect subsidiaries, maintains a fully integrated B2B distribution platform of approximately 1,300 stores, online presence, and thousands of dedicated sales and technology service professionals, all supported by its world-class supply chain facilities and delivery operations. Through its banner brands Office Depot®, OfficeMax®, CompuCom® and Grand&Toy®, as well as others, the Company offers its customers the tools and resources they need to focus on their passion of starting, growing and running their business. For more information, visit news.officedepot.com and follow @officedepot on Facebook, Twitter and Instagram.

The ODP Corporation and Office Depot are trademarks of The Office Club, Inc. OfficeMax is a trademark of OMX, Inc. CompuCom is a trademark of CompuCom Systems, Inc. Grand&Toy is a trademark of Grand & Toy, LLC in Canada. ©2020 Office Depot, Inc. All rights reserved. Any other product or company names mentioned herein are the trademarks of their respective owners.

FORWARD LOOKING STATEMENTS

This communication may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements or disclosures may discuss goals, intentions and expectations as to future trends, plans, events, results of operations, cash flow or financial condition, the potential impacts on our business due to the unknown severity and duration of the COVID-19 outbreak, or state other information relating to, among other things, the Company, based on current beliefs and assumptions made by, and information currently available to, management. Forward-looking statements generally will be accompanied by words such as "anticipate," "believe," "plan," "could," "estimate," "expect," "forecast," "guidance," "outlook," "intend," "may," "possible," "potential," "predict," "project," "propose" or other similar words, phrases or expressions, or other variations of such words. These forward-looking statements are subject to various risks and uncertainties, many of which are outside of the Company's control. There can be no assurances that the Company will realize these expectations or that these beliefs will prove correct, and therefore investors and stakeholders should not place undue reliance on such statements.

Factors that could cause actual results to differ materially from those in the forward-looking statements include, among other things, highly competitive office products market and failure to differentiate the Company from other office supply resellers or respond to decline in general office supplies sales or to shifting consumer demands; competitive pressures on the Company's sales and pricing; the risk that the Company is unable to transform the business into a service-driven company or that such a strategy will not result in the benefits anticipated; the risk that the Company may not be able to realize the anticipated benefits of acquisitions due to unforeseen liabilities, future capital expenditures, expenses, indebtedness and the unanticipated loss of key customers or the inability to achieve expected revenues, synergies, cost savings or financial performance; the risk that the Company is unable to successfully maintain a relevant omni-channel experience for its customers; the risk that the Company is unable to execute the Business Acceleration Program successfully or that such program will not result in the benefits anticipated; failure to effectively manage the Company's real estate portfolio;

loss of business with government entities, purchasing consortiums, and sole- or limited- source distribution arrangements; failure to attract and retain qualified personnel, including employees in stores, service centers, distribution centers, field and corporate offices and executive management, and the inability to keep supply of skills and resources in balance with customer demand; failure to execute effective advertising efforts and maintain the Company's reputation and brand at a high level; disruptions in computer systems, including delivery of technology services; breach of information technology systems affecting reputation, business partner and customer relationships and operations and resulting in high costs; unanticipated downturns in business relationships with customers or terms with the suppliers, third-party vendors and business partners; disruption of global sourcing activities, evolving foreign trade policy (including tariffs imposed on certain foreign made goods); exclusive Office Depot branded products are subject to additional product, supply chain and legal risks; product safety and quality concerns of manufacturers' branded products and services and Office Depot private branded products; covenants in the credit facility; a downgrade in the Company's credit ratings or a general disruption in the credit markets; incurrence of significant impairment charges; retained responsibility for liabilities of acquired companies; fluctuation in quarterly operating results due to seasonality of the Company's business; changes in tax laws in jurisdictions where the Company operates; increases in wage and benefit costs and changes in labor regulations; changes in the regulatory environment, legal compliance risks and violations of the U.S. Foreign Corrupt Practices Act and other worldwide anti-bribery laws; volatility in the Company's common stock price; changes in or the elimination of the payment of cash dividends on Company common stock; macroeconomic conditions such as future declines in business or consumer spending; increases in fuel and other commodity prices and the cost of material, energy and other production costs, or unexpected costs that cannot be recouped in product pricing; unexpected claims, charges, litigation, dispute resolutions or settlement expenses; catastrophic events, including the impact of weather events on the Company's business; the discouragement of lawsuits by shareholders against the Company and its directors and officers as a result of the exclusive forum selection of the Court of Chancery, the federal district court for the District of Delaware or other Delaware state courts by the Company as the sole and exclusive forum for such lawsuits; and the impact of the COVID-19 pandemic on the Company's business, including on the demand for its and our customers' products and services, on trade and transport restrictions and generally on our ability to effectively manage the impacts of the COVID-19 pandemic on our business operations. The foregoing list of factors is not exhaustive. Investors and shareholders should carefully consider the foregoing factors and the other risks and uncertainties described in the Company's Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K filed with the U.S. Securities and Exchange Commission. The Company does not assume any obligation to update or revise any forward-looking statements.

**DESCRIPTION OF REGISTRANT'S SECURITIES
REGISTERED PURSUANT TO SECTION 12 OF THE
SECURITIES EXCHANGE ACT OF 1934**

The ODP Corporation (“ODP”, “we,” “our,” or “us”) has two classes of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended: our Common Stock, par value \$0.01 per share (our “Common Stock”), and our preferred share purchase rights (our “Preferred Rights”).

The following description of our Common Stock is based upon our Amended and Restated Certificate of Incorporation (our “Charter”), our Amended and Restated Bylaws (our “Bylaws”), our Certificate of Designations of Series A Junior Participating Preferred Stock (our “Certificate of Designations”), that certain Amended and Restated Rights Agreement, dated June 30, 2020, among ODP, Computershare Inc., as Rights Agent, and, solely with respect to Section 37 thereof, Office Depot, LLC (the “Amended and Restated Rights Agreement”), and applicable provisions of the Delaware General Corporation Law (the “DGCL”). The description does not purport to be complete and is subject to, and qualified in its entirety by express reference to, our Charter, our Bylaws, our Certificate of Designations and the Amended and Restated Rights Agreement, each of which is filed as an exhibit to our Current Report on Form 8-K of which this Exhibit 99.3 is a part and is incorporated by reference herein. We encourage you to read our Charter, our Bylaws, our Certificate of Designations, the Amended and Restated Rights Agreement and the applicable provisions of the DGCL for additional information.

Under our Charter, our authorized capital stock consists of 80,000,000 shares of Common Stock, and 1,000,000 shares of Preferred Stock, par value \$0.01 per share (our “Preferred Stock”). The outstanding shares of our Common Stock are duly authorized, validly issued, fully paid and nonassessable.

DESCRIPTION OF COMMON STOCK

Listing

Our Common Stock is listed and principally traded on the Nasdaq Global Select Market under the ticker symbol “ODP.”

Voting Rights

Each holder of our Common Stock is entitled to one vote for each share held by such holder on all matters voted upon by our stockholders.

Dividend Rights

The holders of our Common Stock are entitled to receive dividends when, as, and if declared by our board of directors out of funds legally available therefor, subject to the rights of any then outstanding shares of Preferred Stock.

Liquidation Rights

Subject to the rights of any then outstanding shares of Preferred Stock, in the event of a liquidation, dissolution or winding up of ODP, the holders of our Common Stock will be entitled to receive, after payment or provision for payment of all of its debts and liabilities, all of the assets of ODP legally available for distribution to stockholders.

Special Meeting of Stockholders

Our Bylaws vest the power to call special meetings of stockholders in the Chief Executive Officer, board of directors, or stockholders holding shares representing not less than 25% of our outstanding Common Stock entitled to vote on the matter or matters to be brought before the meeting. Stockholders are permitted under the Bylaws to act by written consent in lieu of a meeting.

Preemptive and Other Rights

Holders of our Common Stock are not entitled to preemptive rights with respect to any shares which may be issued, and there are no conversion rights or redemption, purchase, retirement or sinking fund provisions with respect to our Common Stock.

Transfer Agent and Registrar

The transfer agent and registrar for our Common Stock is Computershare Shareowner Services LLC.

DESCRIPTION OF PREFERRED RIGHTS

Preferred Rights

On May 5, 2020, the board of directors of Office Depot, Inc. (“ODI”) adopted a stockholder rights plan, as set forth in a Rights Agreement, dated as of May 5, 2020, between ODI and Computershare Inc., as rights agent (the “Original Rights Agreement”), and authorized and declared a dividend of one preferred share purchase right (an “ODI Right”) for each outstanding share of Common Stock, par value \$0.01 per share, of ODI (the “ODI Common Stock”) to stockholders of record at the close of business on May 21, 2020. The board of directors of ODI adopted the Original Rights Agreement to ensure that the board of directors of ODI remains in the best position to fulfill its fiduciary duties and to enable all stockholders of ODI to receive fair and equal treatment. The Original Rights Agreement was intended to protect ODI and its stockholders from efforts to influence or obtain control of ODI by open market accumulation or other tactics without paying an appropriate premium, in each case, to enable all stockholders to realize the long-term value of their investment in ODI.

On June 30, 2020, ODI implemented a holding company reorganization pursuant to the Agreement and Plan of Merger (the “Merger Agreement”), dated as of June 30, 2020, by and among ODI, ODP, ODP Investment, LLC, a Delaware limited liability company and a wholly-owned subsidiary of ODP (“ODPI”), and Office Depot, LLC, a Delaware limited liability company and a wholly-owned subsidiary of ODPI (“OD LLC”), which resulted in ODP indirectly owning all of the outstanding capital stock of ODI (the “Reorganization”). Pursuant to the Reorganization, ODI merged with and into OD LLC (the “Merger”), with OD LLC surviving such merger as a direct wholly-owned subsidiary of ODPI and an indirect wholly-owned subsidiary of ODP. The effective time of the Merger was 8:00 p.m., Eastern Time, on June 30, 2020. The Merger Agreement is filed as an exhibit to our Current Report on Form 8-K of which this Exhibit 99.3 is a part and is incorporated by reference herein.

In connection with the Reorganization, the Original Rights Agreement was amended and restated in its entirety by the Amended and Restated Rights Agreement, pursuant to which ODP assumed all of the rights and obligations and duties of OD LLC, as the successor by merger to ODI, under the Original Rights Agreement, and references to ODI, ODI Common Stock and Series A Junior Participating Preferred Stock, par value \$0.01 per share, of ODI were amended to refer to ODP, our Common Stock and Series A Junior Participating Preferred Stock, par value \$0.01 per share, of ODP (the “Series A Preferred Stock” and each share of Series A Preferred Stock, a “Preferred Share”), respectively. Each Preferred Right is subject to the same terms and conditions as one ODI Right (as adjusted in accordance with the Original Rights Agreement for the reverse stock split of the ODI Common Stock at a ratio of 1-for-10 effected on June 30, 2020 prior to the effective time of the Merger). Upon execution of the Amended and Restated Rights Agreement, the Original Rights Agreement ceased to have any force or effect.

In connection with the Reorganization and pursuant to the Amended and Restated Rights Agreement, one Preferred Right was issued with respect to each share of our Common Stock issued and outstanding on June 30, 2020 (the “Record Date”) as of the effective time of the Merger. Except as set forth below, each Preferred Right, if it becomes exercisable, entitles the registered holder to purchase from ODP ten ten-thousandths of a Preferred Share at a purchase price of \$9.00 per one ten-thousandth of a Preferred Share (the “Purchase Price”), subject to adjustment as provided in the Amended and Restated Rights Agreement. In addition, one Preferred Right will automatically attach to each share of our Common Stock that becomes outstanding between the effective time of the Merger and the earliest of the Distribution Date (as defined below), the redemption of the Preferred Rights or the expiration of the Preferred Rights. The complete terms of the Preferred Rights are set forth in the Amended and Restated Rights Agreement.

The Preferred Rights will initially trade with, and will be inseparable from, our Common Stock. Initially, the Preferred Rights will be evidenced by the certificates representing shares of our Common Stock then outstanding (or, in the case of shares of our Common Stock held in uncertificated form, by the transaction statement or other record of ownership of such shares), and no separate Right Certificates (as defined below) will be distributed. Upon the occurrence of the Distribution Date, the Preferred Rights will separate from the shares of our Common Stock and, as soon as practicable thereafter, separate certificates evidencing the Preferred Rights (the "Right Certificates") will be mailed to holders of record of shares of our Common Stock as of the close of business on the Distribution Date, and such separate Right Certificates alone will evidence the Preferred Rights. The "Distribution Date" is the earlier of (i) the close of business on the 10th day after the first date of public announcement that any person has become a person or group that acquires ten percent (10%) (twenty percent (20%) in the case of certain passive institutional investors) or more of the shares of our Common Stock without the approval of our board of directors (such person, an "Acquiring Person" and, such date, the "Shares Acquisition Date") (or, if the 10th day after the Shares Acquisition Date occurs before the Record Date, the close of business on the Record Date) and (ii) the close of business on the 10th day (or such later date as our board of directors shall determine, prior to such time as any person becomes an Acquiring Person) after the date that a tender or exchange offer by any person is first published, sent or given, if, upon consummation thereof, such person would become an Acquiring Person.

Until the earliest of the Distribution Date, the date that the Preferred Rights are redeemed by our board of directors and the date on which the Preferred Rights expire, (i) in the case of certificated shares, the Preferred Rights associated with shares of our Common Stock represented by any certificate will be evidenced by such certificate and the surrender for transfer of any such certificate shall also constitute the transfer of the Preferred Rights associated with the shares of our Common Stock represented thereby, and (ii) in the case of shares of our Common Stock held in uncertificated form, the Preferred Rights associated with shares of our Common Stock shall be evidenced by the balances indicated in the book-entry account system of the transfer agent for such shares and the transfer of any shares of our Common Stock in the book-entry account system of the transfer agent for such shares shall also constitute the transfer of the Preferred Rights associated with such shares. Therefore, until the Distribution Date, the Preferred Rights may be transferred with and only with the underlying shares of our Common Stock. After the Distribution Date, the Preferred Rights may be transferred only on the registry book of the rights agent. Any Preferred Rights held by an Acquiring Person will become null and void and may not be exercised.

Until a Preferred Right is exercised, the holder thereof, as such, will have no rights as a stockholder of ODP, including, without limitation, the right to vote or to receive dividends.

Exercisability. The Preferred Rights are not exercisable until the Distribution Date.

Flip In. In the event that any person or group becomes an Acquiring Person, all holders of Preferred Rights (not including the Preferred Rights of the Acquiring Person, which will have become null and void) may, for the Purchase Price, purchase shares of our Common Stock (or, in certain circumstances, Preferred Shares, other securities, cash, assets or a combination thereof) with a market value of twice the Purchase Price, based on the market value of shares of our Common Stock.

Flip Over. In the event that, at any time after a person or group has become an Acquiring Person, (i) ODP or its subsidiaries are party to a merger with another company in which shares of our Common Stock are converted into other securities, cash or property, or (ii) ODP sells or otherwise transfers 50% or more of the assets or earning power of ODP and its subsidiaries (taken as a whole) to another company, all holders of Preferred Rights (not including the Preferred Rights of the Acquiring Person, which will have become null and void) may, for the Purchase Price, purchase shares of common stock of such other company with a then-current market value of twice the Purchase Price, based on the market price of such common stock prior to such merger or sale.

Expiration. Unless earlier redeemed or exchanged by ODP as described below, the Preferred Rights will expire at the close of business on May 4, 2021.

Exchange. After a person or group becomes an Acquiring Person, but before an Acquiring Person owns 50% or more of the outstanding shares of our Common Stock, our board of directors may extinguish the Preferred Rights by exchanging one share of our Common Stock (or, in certain circumstances, Preferred Shares, other equity securities or a combination thereof which are deemed by our board of directors to have the same value as one share of our Common Stock, subject to adjustment) for each Preferred Right (not including the Preferred Rights of the Acquiring Person, which will have become null and void).

Anti-Dilution Provisions. Our board of directors may adjust the Purchase Price, the number of Preferred Shares issuable and the number of outstanding Preferred Rights to prevent dilution that may occur from a stock dividend, a stock split, a reverse stock split or a reclassification of the Preferred Shares or shares of our Common Stock. No adjustments to the Purchase Price of less than 1% will be made.

Preferred Share Provisions. Preferred Shares purchasable upon exercise of the Preferred Rights will not be redeemable. The holders of the Preferred Shares will be entitled, in preference to the holders of shares of our Common Stock, to receive, when and if declared, quarterly dividends in an amount equal to the greater of (i) \$1.00 per Preferred Share and (ii) an aggregate amount per Preferred Share subject to certain adjustments equal to 1,000 times the aggregate dividend amount declared per share of our Common Stock. In the event of liquidation, the holders of the Preferred Shares will be entitled to a preferential liquidation payment equal to the greater of (x) \$1.00 per Preferred Share (plus an amount equal to accrued and unpaid dividends and distributions thereon) and (y) an aggregate amount per Preferred Share subject to certain adjustments equal to 1,000 times the aggregate amount to be distributed per share to the holders of shares of our Common Stock. Finally, in the event of any merger, consolidation or other transaction in which shares of our Common Stock are exchanged (subject to certain exceptions), each ten-thousandth of a Preferred Share will be entitled to receive (subject to certain adjustments) one-tenth of the amount received per share of our Common Stock. These rights are protected by customary anti-dilution provisions.

No fractional Preferred Shares will be issued other than fractions which are integral multiples of one ten-thousandth of a Preferred Share (which may, at the election of ODP, be evidenced by depositary receipts), but, in lieu thereof, an adjustment in cash will be made based on the closing price of the Preferred Shares on the last trading day prior to the date of exercise.

Redemption. Our board of directors may, at its option, at any time prior to such time as any person or group becomes an Acquiring Person, redeem all but not less than all the then outstanding Preferred Rights at a redemption price of \$0.01 per Right, subject to adjustment (the "Redemption Price"). Immediately upon the action of our board of directors ordering redemption of the Preferred Rights, the Preferred Rights will terminate and the only right of the holders of Preferred Rights will be to receive the Redemption Price.

Amendments. ODP may from time to time supplement or amend the Amended and Restated Rights Agreement without the approval of any holders of Right Certificates in order to, among other things, make any provisions with respect to the Preferred Rights, the Amended and Restated Rights Agreement or otherwise, which ODP may deem necessary or desirable; provided, however, that from and after such time as any person or group becomes an Acquiring Person, the Amended and Restated Rights Agreement may not be amended in any manner which would adversely affect the interests of the holders of Preferred Rights.

Series A Junior Participating Preferred Stock

Of our 1,000,000 shares of authorized Preferred Stock, our board of directors has designated 80,000 shares as "Series A Junior Participating Preferred Shares".

Dividends. Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of Preferred Shares, in preference to the holders of our Common Stock and of any other junior stock, shall be entitled to receive, when, as and if declared by our board of directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date, a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a Preferred Share or fraction of a Preferred Share, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment discussed below, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of our Common Stock or a subdivision of the outstanding shares of our Common Stock (by reclassification or otherwise), declared on our Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the

first issuance of any Preferred Share or fraction of a Preferred Share. In the event ODP shall at any time declare or pay any dividend on our Common Stock payable in shares of our Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of our Common Stock (by reclassification or otherwise than by payment of a dividend in shares of our Common Stock) into a greater or lesser number of shares of our Common Stock, then in each such case the amount to which holders of Preferred Shares were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of our Common Stock outstanding immediately after such event and the denominator of which is the number of shares of our Common Stock that were outstanding immediately prior to such event.

ODP shall declare a dividend or distribution on the Series A Preferred Stock as discussed in the above paragraph immediately after it declares a dividend or distribution on our Common Stock (other than a dividend payable in shares of our Common Stock); provided that, in the event no dividend or distribution shall have been declared on our Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

Dividends shall begin to accrue and be cumulative on outstanding Preferred Shares from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, subject to certain exceptions. Accrued but unpaid dividends shall not bear interest.

Dividends paid on the Preferred Shares in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. Our board of directors may fix a record date for the determination of holders of Preferred Shares entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Voting Rights. The holders of Preferred Shares shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each Preferred Share shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of our stockholders. In the event ODP shall at any time declare or pay any dividend on our Common Stock payable in shares of our Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of our Common Stock (by reclassification or otherwise than by payment of a dividend in shares of our Common Stock) into a greater or lesser number of shares of our Common Stock, then in each such case the number of votes per share to which holders of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of our Common Stock outstanding immediately after such event and the denominator of which is the number of shares of our Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of Preferred Shares and the holders of shares of our Common Stock and any other capital stock of ODP having general voting rights shall vote together as one class on all matters submitted to a vote of our stockholders.

(C) Except as set forth in the Certificate of Designations, or as otherwise provided by law, holders of Preferred Shares shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of our Common Stock as set forth herein) for taking any corporate action.

Certain Restrictions. Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on Preferred Shares outstanding shall have been paid in full, ODP shall not: (i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock; (ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all

such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled; (iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that ODP may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of ODP ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or (iv) redeem or purchase or otherwise acquire for consideration any Preferred Shares, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by our board of directors) to all holders of such shares upon such terms as our board of directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine will result in fair and equitable treatment among the respective series or classes.

ODP shall not permit any of its subsidiaries to purchase or otherwise acquire for consideration any shares of stock of ODP unless ODP could, under the terms of the Certificate of Designations, purchase or otherwise acquire such shares at such time and in such manner.

Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of ODP, no distribution shall be made (A) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of Preferred Shares shall have received the greater of (a) \$1.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, or (b) an aggregate amount per share, subject to the provision for adjustment described below, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of our Common Stock, or (B) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event ODP shall at any time declare or pay any dividend on our Common Stock payable in shares of our Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of our Common Stock (by reclassification or otherwise than by payment of a dividend in shares of our Common Stock) into a greater or lesser number of shares of our Common Stock, then in each such case the aggregate amount to which holders of Preferred Shares were entitled immediately prior to such event under the proviso in clause (A) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of our Common Stock outstanding immediately after such event and the denominator of which is the number of shares of our Common Stock that were outstanding immediately prior to such event.

Consolidation, Merger, etc. In case ODP shall enter into any consolidation, merger, combination or other transaction in which the shares of our Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property (other than any merger of ODP with and into a direct or indirect subsidiary of ODP pursuant to which ODP becomes a direct or indirect wholly-owned subsidiary of a holding company that is, immediately prior to the effective time of such merger, a direct or indirect subsidiary of ODP, in accordance with Section 251(g) of the DGCL), then in any such case each Preferred Share shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of our Common Stock is changed or exchanged. In the event ODP shall at any time declare or pay any dividend on our Common Stock payable in shares of our Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of our Common Stock (by reclassification or otherwise than by payment of a dividend in shares of our Common Stock) into a greater or lesser number of shares of our Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of Preferred Shares shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of our Common Stock outstanding immediately after such event and the denominator of which is the number of shares of our Common Stock that were outstanding immediately prior to such event.

No Redemption. The Preferred Shares shall not be redeemable.

Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of ODP's Preferred Stock.

CERTAIN ANTI-TAKEOVER EFFECTS

Certain provisions of our Charter, our Bylaws, the Amended and Restated Rights Agreement and the DGCL could have certain anti-takeover effects and may delay, deter or prevent a tender offer or takeover attempt that a stockholder might consider to be in its best interests, as discussed below:

Authorized but Unissued Shares. Subject to the requirements of The NASDAQ Stock Market LLC and other applicable law, our authorized but unissued shares of our Common Stock may be available for future issuance without stockholder approval. We may use these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of our Common Stock could render more difficult or discourage an attempt to obtain control of us by means of a tender offer, takeover attempt or otherwise.

Undesignated Preferred Stock. Our Charter provides that our board of directors may issue shares of Preferred Stock and fix the designations, voting powers, preferences and rights related to that Preferred Stock. Preferred Stock could be issued by our board of directors to increase the number of outstanding shares making a takeover more difficult and expensive.

Advance Notice Requirements. Our Bylaws establish an advance notice procedure for stockholders seeking to nominate candidates for election to the board of directors or for proposing matters which can be acted upon at stockholders' meetings.

Proxy Access. Our Bylaws contain provisions which provide that a stockholder, or group of up to 20 stockholders, that has owned continuously for at least three years shares of our Common Stock representing an aggregate of at least 3% of the voting power entitled to vote generally in the election of directors, may nominate and include in ODP's proxy materials a specified number of director nominees, provided that the stockholder(s) and nominee(s) satisfy the requirements in our Bylaws. The maximum number of stockholder nominees is generally the greater of (x) two or (y) 20% of the total number of our directors in office as of the last day on which notice of a nomination may be delivered or, if such amount is not a whole number, the closest whole number below 20%.

No Cumulative Voting or Classified Board. Our Charter and Bylaws do not provide for cumulative voting on the election of directors and we currently do not have a classified board.

Delaware Business Combination Statute. In general, Section 203 of the DGCL ("Section 203") prohibits a publicly held Delaware corporation from engaging in various "business combination" transactions with any interested stockholder for a period of three years following the date of the transactions in which the person became an interested stockholder. We are not subject to Section 203, as our Charter contains a provision electing to "opt-out" of Section 203.

Preferred Rights. As described above, the Amended and Restated Rights Agreement imposes significant dilution upon any person or group that acquires ten percent (10%) (twenty percent (20%) in the case of certain passive institutional investors) or more of the outstanding shares of our Common Stock without the approval of our board of directors, which may render more difficult or discourage a merger, tender or exchange offer or other business combination involving ODP that is not approved by our board of directors. For more information about the Preferred Rights and the Amended and Restated Rights Agreement, see "Description of Preferred Rights."