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

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**FORM 8-K**

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

**Date of Report (Date of Earliest Event Reported): November 1, 2013**

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**Mapleby Holdings Merger Corporation**

(as successor to OfficeMax Incorporated)  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State of Incorporation)

**1-5057**  
(Commission  
File Number)

**35-2471459**  
(IRS Employer  
Identification No.)

**c/o OfficeMax Incorporated**  
**263 Shuman Blvd.**  
**Naperville, Illinois 60563**  
(Address of principal executive offices) (Zip Code)

**(630) 438-7800**  
(Registrant's telephone number, including area code)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.02. Termination of a Material Definitive Agreement**

In connection with and immediately prior to the consummation of the Transactions (defined below), on November 5, 2013, OfficeMax Incorporated (“OfficeMax” or “the Company”) terminated the Second Amended and Restated Loan and Security Agreement (the “Credit Agreement,” originally filed as Exhibit 99.1 to OfficeMax’s Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on October 14, 2011) by and among the Company, certain of its subsidiaries as borrowers under the Credit Agreement, certain of its subsidiaries as guarantors of obligations under the Credit Agreement, the lender parties thereto, and Wells Fargo Bank, National Association, as agent for the lenders. The Credit Agreement permitted OfficeMax to borrow up to a maximum of \$650 million, of which \$50 million was allocated to OfficeMax’s Canadian subsidiary and \$600 million was allocated to OfficeMax and its other participating U.S. subsidiaries, in each case subject to a borrowing base calculation that limited availability to a percentage of eligible trade and credit card receivables plus a percentage of the value of eligible inventory less certain reserves. On November 5, 2013, any amount outstanding under the Credit Agreement was repaid in full, and outstanding letters of credit issued under the Credit Agreement were redesignated as having been issued under new financing arrangements entered into with JPMorgan Chase Bank, N.A. in respect of an existing Office Depot, Inc. (“Office Depot”) credit facility.

**Item 2.01. Completion of Acquisition or Disposition of Assets.**

Effective on November 5, 2013, OfficeMax and Office Depot completed their merger of equals through the series of transactions contemplated by the Agreement and Plan of Merger, dated as of February 20, 2013, as amended by the First Amendment (defined below) (the “Merger Agreement”), by and among Office Depot, Dogwood Merger Sub Inc. (“Merger Sub Two”), Dogwood Merger Sub LLC (“Merger Sub Three”), Mapleby Holdings Merger Corporation (“New OfficeMax”), Mapleby Merger Corporation (“Merger Sub One”), and OfficeMax.

Pursuant to the Merger Agreement, Merger Sub One was merged with and into OfficeMax, with OfficeMax surviving the merger as a wholly owned subsidiary of New OfficeMax (the “First Merger”). Immediately following the First Merger, Merger Sub Two was merged with and into New OfficeMax, with New OfficeMax surviving the merger as a wholly owned subsidiary of Office Depot (the “Second Merger” and, together with the First Merger, the “Transactions”). Upon completion of the Transactions, OfficeMax became a wholly owned direct subsidiary of New OfficeMax, and New OfficeMax, in turn, became a wholly owned direct subsidiary of Office Depot.

Under the Merger Agreement, at the effective time of the First Merger at 4:05 p.m., New York time on November 5, 2013, each share of OfficeMax common stock issued and outstanding immediately prior to the effective time of the First Merger was converted into one share of New OfficeMax common stock, and at the effective time of the Second Merger at 4:06 p.m., New York time on November 5, 2013, each share of New OfficeMax common stock issued and outstanding immediately prior to the effective time of the Second Merger (other than shares of New OfficeMax common stock held by Office Depot, Merger Sub Two or in the treasury of New OfficeMax) was converted into the right to receive 2.69 shares of Office Depot common stock, together with cash in lieu of fractional shares, if any (the “Merger Consideration”).

In connection with the Transactions, Office Depot will issue approximately 240 million shares of Office Depot common stock to former OfficeMax stockholders, representing approximately 45 percent of approximately 530 million total shares of Office Depot common stock outstanding.

The information regarding the Series D Convertible Preferred Stock of OfficeMax set forth in Item 3.03 below is incorporated herein by reference.

New OfficeMax is the successor issuer of OfficeMax for purposes of the Securities Act of 1933, as amended, and the filings made by OfficeMax thereunder. Pursuant to Rule 12g-3(a) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), New OfficeMax is the successor issuer of OfficeMax with respect to shares of OfficeMax common stock, which were registered under the Exchange Act, and shares of New OfficeMax common stock are deemed to be registered under the Exchange Act.

The foregoing description of the Transactions and the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, a copy of which is attached as Exhibit 2.1 to the Current Report on Form 8-K filed with the SEC by OfficeMax on February 22, 2013, and the First Amendment, a copy of which is attached hereto as Exhibit 2.2, and each of which is incorporated herein by reference.

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

In connection with the consummation of the Transactions, the New York Stock Exchange (the "Exchange") was notified that each outstanding share of OfficeMax common stock was converted pursuant to the Transactions into the right to receive the Merger Consideration, subject to the terms and conditions of the Merger Agreement. On November 1, 2013, OfficeMax had requested that the Exchange file a notification of removal from listing on Form 25 with the SEC with respect to the delisting of the shares of OfficeMax common stock (which shares, following the First Merger, became shares of New OfficeMax). The shares of OfficeMax common stock (which shares, following the First Merger, became shares of New OfficeMax) were delisted and removed from trading on the Exchange on November 6, 2013.

In addition, the Company will file with the SEC a certification and notice of termination on Form 15 with respect to its common stock, requesting that such securities be deregistered under Section 12(b) of the Exchange Act, and that the reporting obligations of the Company under Sections 13 and 15(d) of the Exchange Act be suspended.

**Item 3.03. Material Modification to Rights of Security Holders.**

Pursuant to the terms of the Merger Agreement, each share of OfficeMax common stock issued and outstanding immediately prior to the effective time of the First Merger was converted into one share of New OfficeMax common stock, and each share of New OfficeMax common stock issued and outstanding immediately prior to the effective time of the Second Merger (other than shares of New OfficeMax common stock held by Office Depot, Merger Sub Two or in the treasury of New OfficeMax) was converted into the right to receive the Merger Consideration.

At the effective time of the First Merger, holders of shares of OfficeMax common stock ceased to have any rights as stockholders of OfficeMax, other than the right to receive an identical number of shares of New OfficeMax common stock. At the effective time of the Second Merger, holders of shares of New OfficeMax common stock ceased to have any rights as stockholders of New OfficeMax, other than the right to receive the Merger Consideration in accordance with the Merger Agreement.

As a result of the Transactions, each outstanding OfficeMax stock option was converted into an option to purchase, on the same terms and conditions as the OfficeMax stock option, a number of shares of Office Depot common stock that is equal to the number of shares of OfficeMax common stock subject to the OfficeMax stock option multiplied by 2.69, at an exercise price per share of Office Depot Common Stock equal to the exercise price per share of OfficeMax common stock subject to the OfficeMax stock option divided by 2.69. Each other stock-based award granted by OfficeMax was converted into an award, on the same terms and conditions as the OfficeMax stock-based award, with respect to a number of shares of Office Depot common stock equal to the number of shares of OfficeMax common stock underlying such OfficeMax stock-based award multiplied by 2.69, provided that any then outstanding awards that vest based on the attainment of performance goals with a performance period that had not completed prior to the closing of the Transactions was converted at the effective time of the Second Merger into time-based awards that will vest at target levels at the originally scheduled vesting date, subject to any accelerated vesting upon a qualifying termination of employment in accordance with the terms of the 2003 OfficeMax Incentive and Performance Plan.

As contemplated by the Merger Agreement, prior to completion of the Transactions, on November 5, 2013, OfficeMax redeemed each issued and outstanding share of its Series D Convertible Preferred Stock for shares of OfficeMax common stock in accordance with the Certificate of Designation for the Series D Convertible Preferred Stock following the redemption date of November 4, 2013.

The information in Item 2.01 is incorporated herein by reference.

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**Item 5.01. Changes in Control of Registrant.**

As a result of the Second Merger, a change of control of New OfficeMax and OfficeMax occurred on November 5, 2013, and New OfficeMax became a direct, wholly owned subsidiary of Office Depot, and OfficeMax became an indirect, wholly owned subsidiary of Office Depot.

The information in Items 2.01 and 5.02 is incorporated herein by reference.

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

Following the First Merger, the directors and officers of OfficeMax as of immediately prior to the First Merger became the directors and officers of New OfficeMax, with each such director or officer serving in his or her same capacity at New OfficeMax as such director or officer served at OfficeMax immediately prior to the First Merger.

Promptly following the completion of the Transactions, on November 5, 2013, the board of directors of New OfficeMax was reduced in size to a sole director, who is Matthew R. Broad, Executive Vice President and General Counsel of New OfficeMax.

Information related to certain directors and officers of OfficeMax who now serve as directors and co-officers of Office Depot is set forth in Office Depot's Current Report on Form 8-K filed with the SEC on November 7, 2013 at Item 5.02.

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

Immediately prior to the First Merger, the certificate of incorporation and the bylaws of New OfficeMax were amended and restated to be in substantially identical form as the certificate of incorporation and the bylaws of OfficeMax. Promptly following the completion of the Transactions, the certificate of incorporation and the bylaws of New OfficeMax were amended and restated to be in a form appropriate for a wholly-owned subsidiary.

The foregoing description of the amended and restated certificate of incorporation and bylaws of New OfficeMax does not purport to be complete and is qualified in its entirety by reference to such organizational documents, copies of which are attached hereto as Exhibits 3.1, 3.2, 3.3 and 3.4, respectively, and each of which is incorporated herein by reference.

Information related to the amended and restated bylaws adopted by Office Depot on November 5, 2013, as contemplated by the Merger Agreement, is set forth in Office Depot's Current Report on Form 8-K filed with the SEC on November 7, 2013 at Item 5.03.

**Item 8.01. Other Events.**

On November 5, 2013, OfficeMax, Office Depot, Merger Sub Two, Merger Sub Three, New OfficeMax and Merger Sub One entered into a First Amendment (the "First Amendment") to the Merger Agreement. The First Amendment modifies the structure for the proposed merger of equals and the form of amended and restated bylaws of Office Depot following the Transactions. The First Amendment eliminates the transaction steps contemplated in the Merger Agreement that provided for OfficeMax, as the surviving entity of the First Merger, to be converted into a Delaware limited liability company, and for New OfficeMax, as the surviving entity of the Second Merger, to be merged with and into Merger Sub Three.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, a copy of which is attached as Exhibit 2.1 to the Current Report on Form 8-K filed with the SEC by OfficeMax on February 22, 2013, and the First Amendment, a copy of which is attached hereto as Exhibit 2.2, and each of which is incorporated herein by reference.

On November 5, 2013, the combined company issued a joint press release announcing the completion of the Transactions. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

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**Item 9.01. Financial Statements and Exhibits.**

(d) *Exhibits.*

<u>Exhibit Number</u>	<u>Description</u>
2.1	Agreement and Plan of Merger, dated as of February 20, 2013, by and among Office Depot, Inc., Dogwood Merger Sub Inc., Dogwood Merger Sub LLC, Mapleby Holdings Merger Corporation, Mapleby Merger Corporation and OfficeMax Incorporated (filed as Exhibit 2.1 to OfficeMax Incorporated's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 22, 2013 and incorporated herein by reference).
2.2	First Amendment, as of dated November 5, 2013, to the Agreement and Plan of Merger, dated as of February 20, 2013, by and among Office Depot, Inc., Dogwood Merger Sub Inc., Dogwood Merger Sub LLC, Mapleby Holdings Merger Corporation, Mapleby Merger Corporation and OfficeMax Incorporated.
3.1	Amended and Restated Certificate of Incorporation of Mapleby Holdings Merger Corporation, filed with the Delaware Secretary of State on November 5, 2013, effective as of immediately prior to the Transactions.
3.2	Amended and Restated Bylaws of Mapleby Holdings Merger Corporation, dated November 5, 2013, effective as of immediately prior to the Transactions.
3.3	Second Amended and Restated Certificate of Incorporation of Mapleby Holdings Merger Corporation, filed with the Delaware Secretary of State on November 5, 2013, effective following the Transactions.
3.4	Amended and Restated Bylaws of Mapleby Holdings Merger Corporation, dated November 5, 2013, effective following the Transactions.
99.1	Joint Press Release issued by OfficeMax Incorporated and Office Depot, Inc. on November 5, 2013.

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**SIGNATURE**

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

Dated: November 7, 2013

MAPLEBY HOLDINGS MERGER CORPORATION  
(as successor to OfficeMax Incorporated)

By: /s/ Matthew R. Broad

Name: Matthew R. Broad

Title: Executive Vice President and General Counsel

**FIRST AMENDMENT TO AGREEMENT AND PLAN OF MERGER**

This First Amendment (this "Amendment") is made and entered into as of November 5, 2013, by and among Office Depot, Inc., a Delaware corporation ("Office Depot"), Dogwood Merger Sub Inc., a Delaware corporation and a wholly owned direct subsidiary of Office Depot ("Merger Sub Two"), Dogwood Merger Sub LLC, a Delaware limited liability company and a wholly owned direct subsidiary of Office Depot ("Merger Sub Three"), Mapleby Holdings Merger Corporation, a Delaware corporation and a wholly owned direct subsidiary of OfficeMax ("Mapleby Holdco"), Mapleby Merger Corporation, a Delaware corporation and a wholly owned direct subsidiary of Mapleby Holdco ("Merger Sub One"), and OfficeMax Incorporated, a Delaware corporation ("OfficeMax" and, together with Office Depot, Merger Sub Two, Merger Sub Three, Mapleby Holdco and Merger Sub One, the "Original Parties"), and amends the Agreement and Plan of Merger, dated as of February 20, 2013 (the "Agreement"), by and among the Original Parties. Capitalized terms not otherwise defined in this Amendment shall have the respective meanings set forth in the Agreement.

**WITNESSETH:**

WHEREAS, the Board of Directors of Office Depot and the Board of Directors of OfficeMax have determined that this Amendment, whereby the Agreement will be amended to modify the structure for the proposed merger of equals and modify the form of bylaws for the combined company following the merger, is advisable and in the best interests of their respective corporations and their respective stockholders; and

WHEREAS, the Original Parties desire to enter into this Amendment to amend the Agreement pursuant to Section 8.3 of the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements contained in this Amendment, the Original Parties, each intending to be legally bound, agree as follows:

1. Amendment to Index of Defined Terms; Certain References.

(a) The Index of Defined Terms of the Agreement is hereby amended by deleting each of the following defined terms and the corresponding page number references: "Certificate of Conversion," "Conversion Effective Time," "DLLCA," "LLC Conversion," "Merger Sub Three," "OfficeMax Converted LLC," "OfficeMax Surviving LLC," "Third Certificate of Merger," "Third Effective Time" and "Third Merger."

(b) All references in the Agreement to "OfficeMax Converted LLC" and "OfficeMax Surviving LLC" shall be replaced with "OfficeMax Surviving Corporation" and "Mapleby Holdco Surviving Corporation", respectively.

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2. Amendment to Preamble and Recitals.

(a) The first paragraph on page 1 of the Agreement is hereby amended by deleting the fourth parenthetical in its entirety.

(b) The last parenthetical of the first paragraph on page 1 of the Agreement is hereby amended and restated to read as follows:

“(“OfficeMax” and, together with Office Depot, Merger Sub Two, Mapleby Holdco and Merger Sub One, the “parties”)”

(c) The sixth Whereas clause of the Agreement is hereby amended and restated to read as follows:

“WHEREAS, the parties intend that the First Merger (as defined below) and the Second Merger (as defined below) will each constitute a “reorganization” within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”) and the regulations thereunder (the “Treasury Regulations”), and that this Agreement be, and be hereby adopted as, a “plan of reorganization” for purposes of Section 368 of the Code and the Treasury Regulations thereunder; and”

3. Amendment to Section 1.1.

(a) Section 1.1(b) of the Agreement is hereby deleted in its entirety and replaced with “[RESERVED]”.

(b) The first parenthetical in Section 1.1(c) of the Agreement is hereby amended and restated to read as follows:

“(the “Second Merger” and, together with the First Merger, the “Transactions”)”

(c) Section 1.1(d) of the Agreement is hereby deleted in its entirety and replaced with “[RESERVED]”.

4. Amendment to Section 1.2.

(a) Section 1.2(b) of the Agreement is hereby deleted in its entirety and replaced with “[RESERVED]”.

(b) The first sentence of Section 1.2(c) of the Agreement is hereby amended and restated to read as follows:

Subject to the provisions of this Agreement, as promptly as practicable on the Closing Date following the filing of the First Certificate of Merger, the parties shall file with the Secretary of State of the State of Delaware a certificate of merger for the Second Merger, executed in accordance with the relevant provisions of the DGCL (the “Second Certificate of Merger” and, collectively with the First Certificate of Merger, the “Delaware Filings”) and shall make all other filings or recordings required under the DGCL in connection with the Second Merger.

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(c) Section 1.2(d) of the Agreement is hereby deleted in its entirety and replaced with “[RESERVED]”.

5. Amendment to Section 1.3. Sections 1.3(b) and 1.3(d) of the Agreement are hereby deleted in their entirety and each replaced with “[RESERVED]”.

6. Amendment to Section 1.4. Sections 1.4(b) and 1.4(d) of the Agreement are hereby deleted in their entirety and each replaced with “[RESERVED]”.

7. Amendment to Section 2.2. Section 2.2 of the Agreement is hereby deleted in its entirety and replaced with “[RESERVED]”.

8. Amendment to Section 2.7. Section 2.7 of the Agreement is hereby deleted in its entirety and replaced with “[RESERVED]”.

9. Amendment to Section 3.1.

(a) The first and second sentences of Section 3.1 of the Agreement are hereby amended and restated to read as follows:

“Each of Office Depot and Merger Sub Two is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with all requisite power and authority to own, lease, use and operate its properties and to conduct its business as and where now owned, leased, used, operated and conducted. Each of Office Depot and Merger Sub Two is duly qualified to do business and in good standing in each jurisdiction in which the nature of the business conducted by it or the property it owns, leases or operates, makes such qualification necessary, except where the failure to be so qualified or in good standing in such jurisdiction would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Office Depot.”

(b) The sixth sentence of Section 3.1 of the Agreement is hereby deleted in its entirety.

(c) The seventh sentence of Section 3.1 of the Agreement is hereby amended and restated to read as follows:

“Office Depot has furnished to OfficeMax a complete and correct copy of the Office Depot Charter, the Office Depot Bylaws and the certificate of incorporation and bylaws of Merger Sub Two as they exist on the date of this Agreement.”

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10. Amendment to Section 3.3. The first three sentences of Section 3.3 of the Agreement are hereby amended and restated to read as follows:

“Each of Office Depot and Merger Sub Two has all requisite corporate power and authority to enter into and deliver this Agreement and, subject to (i) receipt of the Office Depot Stockholder Approval and (ii) adoption of this Agreement by Office Depot in its capacity as sole stockholder of Merger Sub Two with respect to the Second Merger, to perform its obligations under this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement by Office Depot and Merger Sub Two have been duly authorized by all necessary corporate action on the part of each of Office Depot and Merger Sub Two, subject to (A) receipt of the Office Depot Stockholder Approval and (B) adoption of this Agreement by Office Depot in its capacity as sole stockholder of Merger Sub Two with respect to the Second Merger. This Agreement has been duly executed and delivered by each of Office Depot and Merger Sub Two, and, assuming due authorization, execution and delivery by OfficeMax, Mapleby Holdco and Merger Sub One, constitutes the legal, valid and binding obligation of each of Office Depot and Merger Sub Two enforceable against each of them in accordance with its terms.”

11. Amendment to Section 3.4.

(a) The heading to Section 3.4 of the Agreement is hereby amended and restated to read as follows:

“*Capitalization of Office Depot and Merger Sub Two.*”

(b) The last two sentences of Section 3.4(b) of the Agreement are hereby deleted in their entirety.

12. Amendment to Section 3.5.

(a) The first three lines of the text of Section 3.5 of the Agreement are hereby amended and restated to read as follows:

“Neither the execution and delivery of this Agreement by Office Depot or Merger Sub Two nor the consummation of the Transactions or the Bylaw Amendment will:”

(b) Section 3.5(a) of the Agreement is hereby amended and restated to read as follows:

“conflict with, or result in a breach of any provision of, the Office Depot Charter or the Office Depot Bylaws or the certificate of incorporation or bylaws of Merger Sub Two, subject to (i) receipt of the Office Depot Stockholder Approval and (ii) adoption of this Agreement by Office Depot in its capacity as sole stockholder of Merger Sub Two with respect to the Second Merger;”

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(c) Section 3.5(d) of the Agreement is hereby amended by deleting the phrase “and (C) approval of this Agreement by Office Depot as the sole member of Merger Sub Three with respect to the Third Merger” and inserting the word “and” between subclauses (i)(A) and (i)(B) of Section 3.5(d) of the Agreement.

13. Amendment to Section 3.15. Section 3.15 of the Agreement is hereby amended and restated to read as follows:

“Neither Office Depot nor any of its affiliates has taken or agreed to take any action, has failed to take any action, or has knowledge of any fact, agreement, plan or other circumstance, that would be reasonably likely to prevent or impede the First Merger or the Second Merger from constituting a reorganization qualifying under the provisions of Section 368(a) of the Code.”

14. Amendment to Section 3.24.

(a) The heading to Section 3.24 of the Agreement is hereby amended by deleting the phrase “*and Merger Sub Three*”.

(b) Section 3.24(b) of the Agreement is hereby deleted in its entirety and replaced with “[RESERVED]”.

15. Amendment to Section 4.1. The first sentence of Section 4.1 of the Agreement is hereby amended by deleting the phrase “or limited liability company”.

16. Amendment to Section 4.3. The first three sentences of Section 4.3 of the Agreement are hereby amended and restated to read as follows:

“Each of OfficeMax, Mapleby Holdco and Merger Sub One has all requisite corporate power and authority to enter into and deliver this Agreement and, subject to (i) receipt of the OfficeMax Stockholder Approval, (ii) adoption of this Agreement by Mapleby Holdco in its capacity as sole stockholder of Merger Sub One with respect to the First Merger and (iii) adoption of this Agreement by OfficeMax in its capacity as sole stockholder of Mapleby Holdco with respect to the Second Merger, to perform its obligations under this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement by each of OfficeMax, Mapleby Holdco and Merger Sub One have been duly authorized by all necessary corporate action on the part of OfficeMax, Mapleby Holdco and Merger Sub One, subject to (A) receipt of the OfficeMax Stockholder Approval, (B) adoption of this Agreement by Mapleby Holdco in its capacity as sole stockholder of Merger Sub One with respect to the First Merger and (C) adoption of this Agreement by OfficeMax in its capacity as sole stockholder of Mapleby Holdco with respect to the Second Merger. This Agreement has been duly executed and delivered by each of OfficeMax, Mapleby Holdco and Merger Sub One and, assuming due authorization, execution and delivery by Office Depot and Merger Sub Two, constitutes the legal, valid and binding obligation of each of OfficeMax, Mapleby Holdco and Merger Sub One enforceable against each of them in accordance with its terms.”

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17. Amendment to Section 4.5.

(a) Section 4.5(a) of the Agreement is hereby amended by deleting the phrase “and (iv) approval by Mapleby Holdco in its capacity as sole stockholder of OfficeMax with respect to the LLC conversion” and inserting the word “and” between clauses (ii) and (iii) of Section 4.5(a) of the Agreement.

(b) Section 4.5(d) of the Agreement is hereby amended by deleting the phrase “and (D) approval by Mapleby Holdco in its capacity as sole stockholder of OfficeMax with respect to the LLC Conversion” and inserting the word “and” between subclauses (i)(B) and (i)(C) of Section 4.5(d) of the Agreement.

18. Amendment to Section 4.15. Section 4.15 of the Agreement is hereby amended and restated to read as follows:

“Neither OfficeMax nor any of its affiliates has taken or agreed to take any action, has failed to take any action, or has knowledge of any fact, agreement, plan or other circumstance, that would be reasonably likely to prevent or impede the First Merger or the Second Merger from constituting a reorganization qualifying under the provisions of Section 368(a) of the Code.”

19. Amendment to Section 5.5.

(a) The first sentence of Section 5.5 of the Agreement is hereby amended and restated to read as follows:

“Each of the parties shall, and shall cause each of its respective subsidiaries to, use its reasonable best efforts to cause each of the First Merger and the Second Merger to constitute a “reorganization” under Section 368(a) of the Code and to cooperate with one another in obtaining an opinion from Skadden, Arps, Slate, Meagher & Flom LLP, counsel to OfficeMax (“OfficeMax’s Counsel”), as provided for in Section 7.2(d), and an opinion from Simpson Thacher & Bartlett LLP, counsel to Office Depot (“Office Depot’s Counsel”), as provided for in Section 7.3(d).”

(b) The last sentence of Section 5.5 of the Agreement is hereby amended and restated to read as follows:

“None of the parties and none of their subsidiaries shall take or fail to take any action which action (or failure to act) would reasonably be expected to cause either the First Merger or the Second Merger to fail to qualify as a “reorganization” under Section 368(a) of the Code.”

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20. Amendment to Section 5.9(a). Subclause (a)(ii) of Section 5.9(a) of the Agreement is hereby amended by deleting the phrase “or Merger Sub Three” and inserting the word “or” between “Office Depot” and “Merger Sub Two”.

21. Amendment to Section 6.1(e). Section 6.1(e) of the Agreement is hereby amended by deleting the phrase “or Merger Sub Three” and inserting the word “or” between “any of its Significant Subsidiaries” and “Merger Sub Two” in Section 6.1(e) of the Agreement.

22. Amendment to Section 6.4. The last sentence of Section 6.4 of the Agreement is hereby deleted in its entirety.

23. Amendment to Section 7.2.

(a) Section 7.2(b) of the Agreement is hereby amended by deleting the phrase “and Merger Sub Three” and inserting the word “and” between “Office Depot” and “Merger Sub Two” in Section 7.2(b) of the Agreement.

(b) Section 7.2(d) of the Agreement is hereby amended and restated to read as follows:

“OfficeMax shall have received a written tax opinion from OfficeMax’s Counsel, in form and substance reasonably satisfactory to OfficeMax, dated as of the Closing Date, to the effect that, on the basis of certain facts, representations and assumptions set forth or referred to in such opinion, each of the First Merger and the Second Merger will qualify for United States federal income tax purposes, as a “reorganization” within the meaning of Section 368(a) of the Code.”

24. Amendment to Section 7.3.

(a) The heading to Section 7.3 of the Agreement is hereby amended and restated to read as follows:

“*Conditions to Obligations of Office Depot and Merger Sub Two.*”

(b) The first three lines of the text of Section 7.3 of the Agreement are hereby amended and restated to read as follows:

“The obligations of Office Depot and Merger Sub Two to consummate the Transactions shall be subject to the satisfaction of the following conditions unless waived by Office Depot:”

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(c) Section 7.3(d) of the Agreement is hereby amended and restated to read as follows:

“Office Depot shall have received a written tax opinion from Office Depot’s Counsel, in form and substance reasonably satisfactory to Office Depot, dated as of the Closing Date, to the effect that, on the basis of certain facts, representations and assumptions set forth or referred to in such opinion, each of the First Merger and the Second Merger will qualify for United States federal income tax purposes, as a “reorganization” within the meaning of Section 368(a) of the Code.”

25. Amendment to Section 8.4. The second parenthetical of Section 8.4 of the Agreement is hereby amended and restated to read as follows:

“(with respect to Office Depot and Merger Sub Two)”

26. Amendment to Section 9.2(a). Section 9.2(a) of the Agreement is hereby amended by replacing the phrase “if to Office Depot, Merger Sub Two or Merger Sub Three” with “if to Office Depot or Merger Sub Two”.

27. Amendment to Section 9.11. The first sentence of Section 9.11 of the Agreement is hereby amended and restated to read as follows:

“Neither this Agreement nor any of the rights, interests or obligations arising under this Agreement shall be directly or indirectly assigned, delegated, sublicensed or transferred by any of the parties (whether by operation of law or otherwise), in whole or in part, to any other Person (including any bankruptcy trustee) without the prior written consent of the other parties; *provided* that until the second business day preceding the Closing, Office Depot may cause Merger Sub Two to assign all of its rights, interests and obligations arising under this Agreement to another newly formed, wholly owned subsidiary of Office Depot with substantially identical ownership, capitalization and organizational documents, which subsidiary shall be substituted for Merger Sub Two for all purposes hereunder, and OfficeMax may cause Mapleby Holdco or Merger Sub One to assign all of such Person’s rights, interests and obligations arising under this Agreement to another newly formed, wholly owned subsidiary of OfficeMax with substantially identical ownership, capitalization and organizational documents, which subsidiary shall be substituted for Mapleby Holdco or Merger Sub One, as the case may be, for all purposes hereunder.”

28. Amendment to Exhibit C. Exhibit C to the Merger Agreement is hereby amended and restated in its entirety to read as set forth in Exhibit A attached hereto (the “Amended and Restated Exhibit C”). The Amended and Restated Exhibit C shall supersede any inconsistent provisions in the Agreement and, from and after the Second Effective Time, shall exclusively govern the matters set forth therein.

29. Effectiveness: Waiver. This Amendment shall be effective as of the date first written above following the execution of this Amendment by the Original Parties. Any reference in the Agreement to “this Agreement” shall hereafter be deemed to refer to the Agreement as amended by this Amendment, and any reference in the Office Depot Disclosure Schedule and the OfficeMax Disclosure Schedule to “the Agreement” shall refer to the Agreement as amended by this Amendment. Except as expressly provided in this Amendment, all references in the Agreement, the Office Depot Disclosure Schedule and the OfficeMax Disclosure Schedule to

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“the date hereof” and “the date of this Agreement” shall refer to February 20, 2013. The execution, delivery and performance of this Amendment shall not, except as expressly provided herein, constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Original Parties hereto under the Agreement.

30. Counterparts. This Amendment may be executed in counterparts, which together shall constitute one and the same Amendment. The Original Parties may execute more than one copy of this Amendment, each of which shall constitute an original. Signatures to this Amendment transmitted by facsimile transmission, by electronic mail in “portable document format” (“pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

31. Governing Law. This Amendment 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 thereof.

32. Other Miscellaneous Terms. The provisions of Sections 9.3(a), 9.6 and 9.9 shall apply *mutatis mutandis* to this Amendment.

33. Full Force and Effect. Except as specifically amended herein, the Original Parties hereby acknowledge and agree that all of the terms and provisions set forth in the Agreement remain in full force and effect in all respects.

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IN WITNESS WHEREOF, the Original Parties have executed this Amendment as of the date first written above.

OFFICE DEPOT, INC.

By: /s/ Neil R. Austrian  
Name: Neil R. Austrian  
Title: Chairman and Chief Executive Officer

DOGWOOD MERGER SUB INC.

By: /s/ Michael D. Newman  
Name: Michael D. Newman  
Title: President

DOGWOOD MERGER SUB LLC

By: /s/ Michael D. Newman  
Name: Michael D. Newman  
Title: President

MAPLEBY HOLDINGS MERGER CORPORATION

By: /s/ Matthew R. Broad  
Name: Matthew R. Broad  
Title: President

MAPLEBY MERGER CORPORATION

By: /s/ Matthew R. Broad  
Name: Matthew R. Broad  
Title: President

OFFICEMAX INCORPORATED

By: /s/ Matthew R. Broad  
Name: Matthew R. Broad  
Title: Executive Vice President and General Counsel

[Signature Page to First Amendment to Agreement and Plan of Merger]

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**EXHIBIT A**  
**FORM OF**  
**AMENDED AND RESTATED BYLAWS**  
**OF**  
**OFFICE DEPOT, INC.,**  
**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 and time on such day, other than a legal holiday, as the Chief Executive Officer of the corporation (or, if applicable, as the Co-Chief Executive Officers of the corporation) in each such year determines; *provided*, that if the Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers) do not act, the Board of Directors shall determine the place, time and date of such meeting.

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 applicable, the Co-Chief Executive Officers) 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)

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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.

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(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 as the Board of Directors may determine.

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, if applicable, the Co-Chief Executive Officers) 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

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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 New York Stock Exchange, 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 "withheld" from his or her election (or "against" or "no" votes) 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

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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" or "withhold" 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, subject to the provisions of Article VI of these Bylaws, 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 to withhold authority and votes "against" and "no" votes but shall exclude abstentions with respect to a director's election or with respect to the election of directors in general.

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(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 of these Bylaws 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.

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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.

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(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 Secretary or agent having charge of the stock transfer books shall make, at least 10 days before each meeting or any adjournment thereof, 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 (i) was a stockholder of record at the time of giving of notice provided for in 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 this Bylaw as to such business or nomination; 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.

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(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) 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 except that with regard to the corporation's annual meeting of stockholders to be held during calendar year 2013, to be timely (and notwithstanding anything to the contrary contained in this Section 14(a)(2)), a stockholder's notice of nominations must be delivered to the Secretary at the principal executive offices of the corporation not later than 5:00 p.m. (Eastern time) on the 60th 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) 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, 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 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,

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(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 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 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 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 stockholder'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), and (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;

(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

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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, 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 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.

(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

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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

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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 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.

### **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. Subject to the provisions of Article VI of these Bylaws, 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 (or, if applicable, the Co-Chairmen) of the Board, Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers) 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.

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Section 4. Vacancies. Subject to the provisions of Article VI of these Bylaws, 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 (or, if applicable, the Co-Chief Executive Officers).

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 (or, if applicable, the Co-Chairmen) of the Board or the Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers) on at least 24 hours prior notice to each director, either personally, by telephone, by mail, by telegraph, by telecopy 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; Lead Director. Subject to the provisions of Article VI of these Bylaws, the Chairman (or, if applicable, the Co-Chairmen) 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. Subject to the provisions of Article VI of these Bylaws, if the offices of the Chief Executive Officer and Chairman are not separate or if the Chairman is not considered by the Board of Directors to be an independent director, the independent directors will elect one of their number to serve as Lead Director. The Lead Director (or, if applicable, the Co-Lead Directors), if any, will chair meetings of independent directors, will facilitate communications between other members of the Board of Directors and the Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers) and the Chairman (or, if applicable, the Co-Chairmen), and will assume other duties which the independent directors as a whole may designate from time to time.

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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 (provided that during the Specified Post-Merger Period, such committee shall consist of an equal number of readily available Continuing Office Depot Directors and Continuing OfficeMax 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, subject to the provisions of Article VI of these Bylaws.

Section 10. Other Committees of the Board. Subject to the provisions of Article VI of these Bylaws, the corporation shall have an Audit Committee, consisting of at least three independent directors of the corporation, a Compensation Committee, consisting of at least two independent directors of the corporation who have never been employees or officers of the corporation (except that employment or service as an Interim Office Depot CEO or an Interim OfficeMax CEO, as the case may be, shall not disqualify a director from being independent following the time such director was employed or served as an Interim Office Depot CEO or an Interim OfficeMax CEO, as the case may be), and a Corporate Governance and Nominating Committee, consisting of at least three independent directors. The Board of Directors may, by resolution passed by a majority of the whole Board, designate other committees, and each such other committee shall, subject to the provisions of Article VI of these Bylaws, 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; *provided, however,* that during the Specified Post-Merger Period (as defined in Article VI of these Bylaws), one or more Continuing Office Depot Directors (as defined in Article VI of these Bylaws) shall be designated as alternates for any absent or disqualified members of any committee who are Continuing Office Depot Directors, and one or more Continuing OfficeMax Directors (as defined in Article VI of these Bylaws) shall be designated as alternates for any absent or disqualified members of any committee who are Continuing OfficeMax Directors. Subject to the provisions of Article VI of these Bylaws, 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

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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; *provided, however,* that during the Specified Post-Merger Period, one or more Continuing Office Depot Directors shall be appointed as alternates for any absent or disqualified members of such committee who are Continuing Office Depot Directors, and one or more Continuing OfficeMax Directors shall be appointed as alternates for any absent or disqualified members of such committee who are Continuing OfficeMax Directors.

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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. Subject to the provisions of Article VI of these Bylaws, 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 or, if the Successor CEO Designation (as defined in Article VI of these Bylaws) has not occurred, two Co-Chief Executive Officers until the due appointment of the Successor CEO (as defined in Article VI of these Bylaws) in accordance with the provisions of Article VI of these Bylaws, (2) a Chief Financial Officer, (3) a Secretary and (4) a Treasurer.

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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. Subject to the provisions of Article VI of these Bylaws, pursuant to Section 10 of this Article V, the Board of Directors may delegate to the Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers) 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 (or, if applicable, as the Co-Chief Executive Officers) 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 (or, if applicable, the Co-Chief Executive Officers) 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 (or, if applicable, the Co-Chief Executive Officers).

Section 2. Election and Term of Office. The officers of the corporation (other than those appointed by the Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers) 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 (or, if applicable, the Co-Chief Executive Officers) 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 (or, if applicable, the Co-Chief Executive Officers) pursuant to Section 10 of this Bylaw) may, subject to the provisions of Article VI of these Bylaws, 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 (or, if applicable, the Co-Chief Executive Officers) pursuant to Section 10 of this Bylaw may be removed at any time by the Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers) 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. Subject to the provisions of Article VI of these Bylaws, any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by resolution of the Board of Directors.

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Section 5. Compensation. Compensation of all officers and agents (other than the Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers)) 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 (or, if applicable, the Co-Chief Executive Officers) 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 (or, if applicable, the Co-Chairmen) 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 (or, if applicable, the Co-Chairmen) 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. At any time at which there are Co-Chairmen of the Board, any action to be taken by the Co-Chairmen shall be taken jointly by such Co-Chairmen.

Section 7. Chief Executive Officer. Subject to the provisions of Article VI of these Bylaws, the Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers) 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 (or, if applicable, the Co-Chairmen) of the Board, or if designated to do so by the Board of Directors, the Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers) 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 (or, if applicable, the Co-Chairmen) 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 (or, if applicable, the Co-Chief Executive Officers) shall see to it that all resolutions and orders of the Board of Directors are carried into effect, and the Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers) shall have full power of delegation in so doing. The Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers) 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 (or, if applicable, the Co-Chief Executive Officers) 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. At any time at which there are Co-Chief Executive Officers of the corporation, any action to be taken by the Co-Chief Executive Officers shall be taken jointly by such Co-Chief Executive Officers.

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 (or, if applicable, the Co-Chief Executive Officers) 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 (or, if applicable, the Co-Chairmen) 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 (or, if applicable, the Co-Chief Executive Officers) 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 (or, if applicable, the Co-Chief Executive Officers) 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.

## ARTICLE VI CERTAIN GOVERNANCE MATTERS

### Section 1. Definitions.

- (a) "Appointment Date" shall have the meaning set forth in Section 3(b) of this Bylaw.
- (b) "Cessation Date" shall mean the date of the death, resignation, removal, disqualification or other cessation of service of either of the Co-Chief Executive Officer that is the Office Depot CEO or the Co-Chief Executive Officer that is the OfficeMax CEO.
- (c) "Closing" shall mean the consummation of the merger transactions contemplated by the Merger Agreement.

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(d) “Continuing Office Depot Directors” shall mean (i) the directors as of the Closing who were designated by the corporation pursuant to Section 1.5(b) of the Merger Agreement (including any such director who may serve as an Interim Office Depot CEO) and (ii) any director who takes office after the Closing who is designated by the Continuing Office Depot Directors Committee pursuant to Section 2(d) of this Bylaw; *provided, however*, that each Continuing Office Depot Director shall be “independent” (as defined in the rules and regulations governing the requirements of companies listing on the New York Stock Exchange) with respect to the corporation, except that employment or service as an Interim Office Depot CEO shall not disqualify a director from being a Continuing Office Depot Director either during or following the time such director was employed or served as an Interim Office Depot CEO.

(e) “Continuing Office Depot Directors Committee” shall mean the committee established by Section 2(d) of this Bylaw.

(f) “Continuing OfficeMax Directors” shall mean (i) the directors as of the Closing who were designated by OfficeMax pursuant to Section 1.5(b) of the Merger Agreement (including any such director who may serve as an Interim OfficeMax CEO) and (ii) any director who takes office after the Closing who is designated by the Continuing OfficeMax Directors Committee pursuant to Section 2(e) of this Bylaw; *provided, however*, that each Continuing OfficeMax Director shall be “independent” (as defined in the rules and regulations governing the requirements of companies listing on the New York Stock Exchange) with respect to the corporation, except that employment or service as an Interim OfficeMax CEO shall not disqualify a director from being a Continuing OfficeMax Director either during or following the time such director was employed or served as an Interim OfficeMax CEO.

(g) “Continuing OfficeMax Directors Committee” shall mean the committee established by Section 2(e) of this Bylaw.

(h) “Interim Office Depot CEO” shall have the meaning set forth in Section 5(a) of this Bylaw.

(i) “Interim OfficeMax CEO” shall have the meaning set forth in Section 5(a) of this Bylaw.

(j) “Merger Agreement” shall mean the Agreement and Plan of Merger, dated as of February 20, 2013, by and among the corporation, Dogwood Merger Sub Inc., Dogwood Merger Sub LLC, Mapleby Holdings Merger Corporation, Mapleby Merger Corporation and OfficeMax, as amended, restated or otherwise modified from time to time.

(k) “Office Depot CEO” shall mean the Chief Executive Officer of the corporation immediately prior to the Closing.

(l) “Office Depot Executive” shall mean the Office Depot CEO or any other current or former executive officer of the corporation.

(m) “OfficeMax” shall mean OfficeMax Incorporated.

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- (n) “OfficeMax CEO” shall mean the chief executive officer of OfficeMax immediately prior to the Closing.
- (o) “OfficeMax Executive” shall mean the OfficeMax CEO or any other current or former executive officer of OfficeMax.
- (p) “Remaining Co-CEO Director” shall have the meaning set forth in Section 2(b) of this Bylaw.
- (q) “Rotation Date” shall have the meaning set forth in Section 3(b) of this Bylaw.
- (r) “Selection Committee” shall mean the committee established by Section 5(b) of this Bylaw.
- (s) “Specified Post-Merger Period” shall have the meaning set forth in Section 2(a) of this Bylaw.
- (t) “Successor CEO” shall have the meaning set forth in Section 5(b) of this Bylaw.
- (u) “Successor CEO Designation” shall have the meaning set forth in Section 5(b) of this Bylaw.

Section 2. Board of Directors: Appointment of Officers.

(a) From and after the Closing until the fourth anniversary of the Closing (the “Specified Post-Merger Period”), the Board of Directors shall be comprised of (i) not less than ten (10) and no more than twelve (12) directors if the Successor CEO Designation has not occurred, (ii) twelve (12) directors in the event the Successor CEO Designation has occurred and the Successor CEO is either an OfficeMax Executive or an Office Depot Executive and (iii) eleven (11) directors in the event the Successor CEO Designation has occurred and the Successor CEO is neither an OfficeMax Executive nor an Office Depot Executive.

(b) Subject to the failure of any Continuing Office Depot Director or any Continuing OfficeMax Director to be reelected to the Board of Directors in accordance with Article II of these Bylaws, during the Specified Post-Merger Period, the Board of Directors shall be composed of (i) five (5) Continuing Office Depot Directors (which shall include any Interim Office Depot CEO who is a Continuing Office Depot Director), (ii) five (5) Continuing OfficeMax Directors (which shall include any Interim OfficeMax CEO who is a Continuing OfficeMax Director), (iii) if the Successor CEO Designation has not occurred, until the Cessation Date, each of the Office Depot CEO and the OfficeMax CEO (and, if applicable following the Cessation Date, an additional director that is, if the Remaining Co-CEO Director is the OfficeMax CEO, designated by the Continuing Office Depot Directors Committee or, if the Remaining Co-CEO Director is the Office Depot CEO, designated by the Continuing OfficeMax Directors Committee, in each case in accordance with the proviso of the immediately following sentence), and (iv) if the Successor CEO Designation has occurred, (A) the Successor CEO and (B) if the Successor CEO is an OfficeMax Executive or an Office Depot Executive, an additional director that is, if the Successor CEO is an OfficeMax Executive, a Continuing Office Depot Director or, if the Successor CEO is an Office Depot Executive, a Continuing OfficeMax

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Director. In the event that the Office Depot CEO and the OfficeMax CEO serve as Co-Chief Executive Officers of the corporation, each of the Co-Chief Executive Officers shall resign as director of the corporation effective as of the earlier of (x) the Appointment Date and (y) the Cessation Date; *provided, however,* that, in the case of clause (y), in the event that as of the Cessation Date one of the Co-Chief Executive Officers of the corporation has ceased to serve as a director of the corporation and the resignation of the other Co-Chief Executive Officer as director of the corporation is not effective for any reason (such as director, the “Remaining Co-CEO Director”), the Continuing Office Depot Directors Committee (if the Remaining Co-CEO Director is the OfficeMax CEO) or the Continuing OfficeMax Directors Committee (if the Remaining Co-CEO Director is the Office Depot CEO) shall designate one (1) additional director to become a Continuing Office Depot Director or Continuing OfficeMax Director, as applicable, to serve until the effectiveness of the resignation of the Remaining Co-CEO Director.

(c) During the Specified Post-Merger Period, all vacancies on the Board of Directors created by death, resignation, removal, disqualification or other cessation of service of a Continuing Office Depot Director shall be filled by a nominee selected by the Continuing Office Depot Directors Committee and all vacancies on the Board of Directors created by such cessation of service of a Continuing OfficeMax Director shall be filled by a nominee selected by the Continuing OfficeMax Directors Committee. During the Specified Post-Merger Period, the Continuing Office Depot Directors Committee shall have the exclusive authority to nominate, on behalf of the Board of Directors, directors for election at each annual meeting, or at any special meeting at which directors are to be elected, to fill each seat previously held by a Continuing Office Depot Director. During the Specified Post-Merger Period, the Continuing OfficeMax Directors Committee shall have the exclusive authority to nominate, on behalf of the Board of Directors, directors for election at each annual meeting, or at any special meeting at which directors are to be elected, to fill each seat previously held by a Continuing OfficeMax Director.

(d) The Board of Directors shall constitute a Continuing Office Depot Directors Committee, which shall be comprised of all the Continuing Office Depot Directors. The Continuing Office Depot Directors Committee shall have all the power and may exercise all the authority of the Board of Directors to (i) fill the vacancies on the Board of Directors created by the death, resignation, removal, disqualification or other cessation of service of a Continuing Office Depot Director and (ii) nominate directors for election at each annual meeting, or at any special meeting at which directors are to be elected, to fill each seat previously held by a Continuing Office Depot Director. At the end of the Specified Post-Merger Period, the Continuing Office Depot Directors Committee shall be automatically disbanded.

(e) The Board of Directors shall constitute a Continuing OfficeMax Directors Committee, which shall be comprised of all the Continuing OfficeMax Directors. The Continuing OfficeMax Directors Committee shall have all the power and may exercise all the authority of the Board of Directors to (i) fill the vacancies on the Board of Directors created by the death, resignation, removal, disqualification or other cessation of service of a Continuing OfficeMax Director and (ii) nominate directors for election at each annual meeting, or at any special meeting at which directors are to be elected, to fill each seat previously held by a Continuing OfficeMax Director. At the end of the Specified Post-Merger Period, the Continuing OfficeMax Directors Committee shall be automatically disbanded.

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(f) Each Continuing Office Depot Director and Continuing OfficeMax Director and each director nominated by the Continuing Office Depot Directors Committee or the Continuing OfficeMax Directors Committee shall be “independent” (as defined in the rules and regulations governing the requirements of companies listing on the New York Stock Exchange) with respect to the corporation; *provided, however*, that (i) employment or service as an Interim Office Depot CEO or Interim OfficeMax CEO, as the case may be, shall not disqualify a director from being a Continuing Office Depot Director or Continuing OfficeMax Director, as the case may be, either during or following the time such director was employed or served as an Interim Office Depot CEO or Interim OfficeMax CEO, as the case may be, and (ii) for all purposes of this Article VI, an Office Depot Executive, an OfficeMax Executive and the Successor CEO shall be deemed not to qualify as “independent” (as defined in the rules and regulations governing the requirements of companies listing on the New York Stock Exchange) with respect to the corporation.

Section 3. Chairman and Lead Director. During the Specified Post-Merger Period:

(a) if the Successor CEO Designation has not occurred, a Continuing OfficeMax Director designated by the Continuing OfficeMax Directors Committee and a Continuing Office Depot Director designated by the Continuing Office Depot Directors Committee shall serve as Co-Chairmen of the Board of Directors and Co-Lead Directors; and

(b) following such time that the Successor CEO Designation has occurred, (i) if the Successor CEO is an OfficeMax Executive, the Chairman of the Board and Lead Director shall be a Continuing Office Depot Director designated by the Continuing Office Depot Directors Committee (and if a Continuing OfficeMax Director is serving as Co-Chairman of the Board of Directors and Co-Lead Director at such time, such Continuing OfficeMax Director shall resign from such positions as of the Appointment Date), (ii) if the Successor CEO is an Office Depot Executive, the Chairman of the Board and Lead Director shall be a Continuing OfficeMax Director designated by the Continuing OfficeMax Directors Committee (and if a Continuing Office Depot Director is serving as Co-Chairman of the Board of Directors and Co-Lead Director at such time, such Continuing Office Depot Director shall resign from such positions as of the Appointment Date), and (iii) if the Successor CEO is neither an OfficeMax Executive nor an Office Depot Executive, the Chairman of the Board and Lead Director (or only the Lead Outside Director, if the Successor CEO is appointed as both Chief Executive Officer and Chairman of the Board pursuant to Article III, Section 2 of these Bylaws) shall be (A) a Continuing Office Depot Director designated by the Continuing Office Depot Directors Committee from and after the date of the appointment of the Successor CEO (the “Appointment Date”) (and if a Continuing OfficeMax Director is serving as Co-Chairman of the Board of Directors and Co-Lead Director at such time, such Continuing OfficeMax Director shall resign from such positions as of the Appointment Date) until the date that is nearest to one half of the period from the Appointment Date until the expiration of the Specified Post-Merger Period (such date, the “Rotation Date”), and (B) a Continuing OfficeMax Director designated by the Continuing OfficeMax Directors Committee from and after the Rotation Date until the expiration of the Specified Post-Merger Period.

Section 4. Composition of Committees. During the Specified Post-Merger Period, each committee of the Board of Directors shall be composed of an equal number of Continuing Office Depot Directors and Continuing OfficeMax Directors. With respect to each such committee

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(other than, if applicable, the Selection Committee, which shall be subject to Section 5(b) of this Bylaw), (i) the Continuing OfficeMax Directors Committee shall designate the chairperson of the Audit Committee among the members of the Audit Committee, (ii) the Continuing Office Depot Directors Committee shall designate the chairperson of a committee (other than the Audit Committee) among the members of such committee, (iii) following the designation by the Continuing Office Depot Directors Committee pursuant to clause (ii), the Continuing OfficeMax Directors Committee shall designate the chairperson of a committee (other than the committees referred to in clauses (i) and (ii)) among the members of such committee, (iv) following the designation of the Continuing OfficeMax Directors Committee pursuant to clause (iii), the Continuing Office Depot Directors Committee shall designate the chairperson of a committee (other than the committees referred to in clauses (i), (ii) and (iii)) among the members of such committee, and (v) with respect to any additional committee of the Board of Directors, the Continuing OfficeMax Directors Committee and the Continuing Office Depot Directors Committee shall alternately designate the chairperson of a committee among the members of such committee (with the Continuing OfficeMax Directors Committee designating first following the Continuing Office Depot Directors Committee's designation pursuant to clause (iv)). During the Specified Post-Merger Period, the Audit Committee shall include a Continuing Office Depot Director and a Continuing OfficeMax Director who shall each qualify as an Audit Committee financial expert for purposes of Item 407(d)(5)(ii) of Regulation S-K promulgated under the Exchange Act.

Section 5. Co-Chief Executive Officers; Successor CEO; Selection Committee.

(a) If the Successor CEO Designation has occurred, the Successor CEO shall be appointed to serve as the Chief Executive Officer of the corporation. If the Successor CEO Designation has not occurred, the Office Depot CEO and the OfficeMax CEO shall be appointed to serve as Co-Chief Executive Officers of the corporation until the due appointment of the Successor CEO; *provided, however*, that (i) upon the death, resignation, removal, disqualification or other cessation of service of the Co-Chief Executive Officer that is the Office Depot CEO (or any of his or her successors selected and appointed pursuant to this clause (i)), an individual selected by the Continuing Office Depot Directors Committee (including, if so desired, from among the Continuing Office Depot Directors) shall be appointed to serve as Co-Chief Executive Officer of the corporation (such Co-Chief Executive Officer, an "Interim Office Depot CEO") and (ii) upon the death, resignation, removal, disqualification or other cessation of service of the Co-Chief Executive Officer that is the OfficeMax CEO (or any of his or her successors selected and appointed pursuant to this clause (ii)), an individual selected by the Continuing OfficeMax Directors Committee (including, if so desired, from among the Continuing OfficeMax Directors) shall be appointed to serve as Co-Chief Executive Officer of the corporation (such Co-Chief Executive Officer, an "Interim OfficeMax CEO").

(b) If the Successor CEO Designation has not occurred, the Board of Directors shall constitute a Selection Committee comprised of such equal number of Continuing OfficeMax Directors (one of whom shall be a co-chairman of such committee) and Continuing Office Depot Directors (one of whom shall be a co-chairman of such committee) selected prior to the Closing in accordance with Section 1.5(d) of the Merger Agreement. The Selection Committee shall engage an independent search firm to identify and recommend Successor CEO candidates with the terms of the engagement and the search criteria to be established by the Selection Committee;

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*provided, however,* that the Selection Committee shall cause the search firm to consider each of the Office Depot CEO and the OfficeMax CEO as potential candidates. The Selection Committee shall, working through the search firm, seek to recommend to the Board of Directors, by a majority vote of the members of the Selection Committee, an individual to serve as Chief Executive Officer of the corporation (the “Successor CEO”) as soon as practicable after the Closing (the “Successor CEO Designation”). As soon as practicable following any Successor CEO Designation, the Board of Directors shall take all actions as may be necessary to appoint the Successor CEO as the sole Chief Executive Officer of the corporation, and the Co-Chief Executive Officers of the corporation shall resign their offices as Co-Chief Executive Officers effective as of the Appointment Date. The appointment of the Successor CEO shall require the vote of a majority of the entire Board of Directors; *provided, however,* that the election of either an Office Depot Executive or an OfficeMax Executive as the Successor CEO shall require the affirmative vote of at least two-thirds of all of the independent directors of the Board of Directors. Upon the due appointment of the Successor CEO, the Selection Committee shall be automatically disbanded.

(c) In the event of the death, resignation, removal, disqualification or other cessation of service of the Successor CEO prior to the second anniversary of the Appointment Date, the election of either an Office Depot Executive or an OfficeMax Executive as successor to the Successor CEO shall require the affirmative vote of at least two-thirds of all of the independent directors of the Board of Directors.

(d) During the Specified Post-Merger Period, if the Successor CEO is either an Office Depot Executive or an OfficeMax Executive, the removal of the Successor CEO shall require the affirmative vote of at least two-thirds of all of the independent directors of the Board of Directors.

Section 6. Corporate Headquarters; Operation of Businesses; Brand Names; Reporting Authority.

(a) From and after the Closing, the corporation shall have dual headquarters in Boca Raton, Florida and Naperville, Illinois (which headquarters shall, for purposes of these Bylaws, be deemed to be the “principal executive offices” and “principal places of business” of the corporation) unless and until the Board of Directors shall approve new headquarters.

(b) From and after the Closing, the businesses of the corporation and its subsidiaries as conducted immediately prior to the Closing shall continue to operate under the name “Office Depot,” and the businesses of OfficeMax and its subsidiaries as conducted immediately prior to the Closing shall continue to operate under the name “OfficeMax,” unless and until the Board of Directors shall approve the name under which the combined businesses of the corporation and its subsidiaries shall operate.

(c) From and after the Closing until the Appointment Date, except as may be otherwise determined by a majority of each of the Continuing OfficeMax Directors Committee and the Continuing Office Depot Directors Committee, the Office Depot CEO shall maintain sole chief executive officer authority reporting directly to the Board of Directors for the operation of the businesses of Office Depot and its subsidiaries (other than OfficeMax and its subsidiaries) and the OfficeMax CEO shall maintain sole chief executive officer authority reporting directly to the Board of Directors for the operation of the businesses of OfficeMax and its subsidiaries.

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Section 7. Amendments; Interpretation. During the Specified Post-Merger Period, the provisions of this Article VI, Section 10 of Article III and Section 12 of Article III of these Bylaws may be modified, amended or repealed, and any provision of these Bylaws or other resolution inconsistent with this Article VI, Section 10 of Article III or Section 12 of Article III of these Bylaws may be adopted, or any such modification, amendment, repeal or inconsistent provision of these Bylaws or other resolutions recommended for adoption by the stockholders of the corporation, only by an affirmative vote of at least (a) 75 per cent of the entire Board of Directors and (b) a majority of each of the Continuing OfficeMax Directors Committee and the Continuing Office Depot Directors Committee. In the event of any inconsistency between any other provision of these Bylaws and any provision of this Article VI, the provisions of this Article VI shall control.

## **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

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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

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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 (or, if applicable, the Co-Chief Executive Officers).

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,

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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 the Chairman of the Board (or, if applicable, the Co-Chairmen), the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the corporation, 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

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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

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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 (or, if applicable, the Co-Chairmen) of the Board or the Chief Executive Officer (or, if applicable, the Co-Chief Executive Officers), 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

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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 General Corporation Law of Delaware. The Bylaw amendment adopting this provision shall not be further amended by the Board of Directors of the corporation.

## **ARTICLE X AMENDMENTS**

Subject to the requirements of Article VI, Section 7, 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.

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**MAPLEBY HOLDINGS MERGER CORPORATION**

Mapleby Holdings Merger Corporation, a corporation organized and existing under the laws of the state of Delaware, pursuant to Sections 242 and 245 of the General Corporation Law of the state of Delaware (the "DGCL"), as it may be amended, hereby certifies as follows:

1. The name of this corporation is Mapleby Holdings Merger Corporation. The original Certificate of Incorporation was filed on February 19, 2013.
2. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL, and is to become effective as of 4:04 p.m., New York time, on November 5, 2013.
3. This Amended and Restated Certificate of Incorporation restates and amends the original Certificate of Incorporation to read in its entirety as follows:

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**FIRST:** The name of this corporation is MAPLEBY HOLDINGS MERGER CORPORATION.

**SECOND:** Its registered office in the state of Delaware is located at 2711 Centerville Road, Suite 400, in the city of Wilmington, county of New Castle. The name and address of its registered agent is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

**THIRD:** The nature of the business, or objects or purposes to be transacted, promoted, or carried on are:

(a) To engage in and carry on the business of acquiring, owning, buying, selling, leasing, mortgaging, and exchanging timber and timberlands, and in manufacturing, distributing, marketing, or otherwise dealing in timber and lumber and all of the various products thereof, and to carry on in any capacity any business pertaining to, or which in the judgment of the corporation may at any time be convenient and lawfully conducted in conjunction with, any of the matters aforesaid.

(b) To acquire, own, lease, occupy, use, or develop any lands containing timber or containing coal, iron, manganese, stone, or any other ores or minerals of any nature, or oil or any woodlands or any other lands for any purposes.

(c) To erect, install, and operate lumber mills, sawmills, paper mills, smelters, or any other mills or manufacturing plants of any nature. To construct, operate, and equip private logging railroads to be used and operated only for the purpose of carrying on the business of this corporation and not as a public carrier.

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(d) To manufacture, purchase, or otherwise acquire, invest in, own, mortgage, pledge, sell, assign, and transfer or otherwise dispose of, trade, deal in, and deal with goods, wares, and merchandise and personal property of every class and description.

(e) To acquire, and pay for in cash, stock, or bonds of this corporation or otherwise, the good will, rights, assets, and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association, or corporation.

(f) To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage, or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trademarks, and trade names.

(g) To acquire by purchase, subscription, or otherwise, and to receive, hold, own, guarantee, sell, assign, exchange, transfer, mortgage, pledge, or otherwise dispose of or deal in and with any of the shares of the capital stock, or any voting trust certificates in respect of the shares of capital stock, scrip, warrants, rights, bonds, debentures, notes, trust receipts, and other securities, obligations, choses in action and evidences of indebtedness or interest issued or created by any corporations, joint stock companies, syndicates, associations, firms, trusts, or persons, public or private, or by the government of the United States of America, or by any foreign government, or by any state, territory, province, municipality, or other political subdivision or by any governmental agency, and as owner thereof to possess and exercise all the rights, powers, and privileges of ownership, including the right to execute consents and vote thereon, and to do any and all acts and things necessary or advisable for the preservation, protection, improvement, and enhancement in value thereof.

(h) To enter into, make, and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic, or government or colony or dependency thereof.

(i) To borrow or raise moneys for any purposes of the corporation and, from time to time without limit as to amount, to draw, make, accept, endorse, execute, and issue promissory notes, draft, bills of exchange, warrants, bonds, debentures, and other negotiable or nonnegotiable instruments and evidences of indebtedness, and to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance, or assignment in trust of the whole or any part of the property of the corporation, whether at the time owned or thereafter acquired, and to sell, pledge, or otherwise dispose of such bonds or other obligations of the corporation for its corporate purposes.

(j) To loan to any person, firm, or corporation any of its surplus funds, either with or without security.

(k) To purchase, hold, sell, and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital except as otherwise permitted by law, and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

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(l) To have one or more offices and to carry on all or any of its operations and business in any of the states, districts, territories, or colonies of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, colony, or country.

(m) Without restriction or limit as to amount, to purchase or otherwise acquire, hold, own, improve, convert, mortgage, sell, lease, convey, or otherwise dispose of or deal in, as a real estate agent, builder, contractor, or otherwise, real and personal property of every class and description in any of the states, districts, territories, or colonies of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, colony, or country.

(n) To enter into partnership, joint venture, or other arrangement with any person, corporation, partnership, or other entity or entities for the purpose of engaging in any business or transaction which the corporation is authorized to carry on; and to invest in, lend money to, and otherwise assist any such partnership or venture.

(o) In general, to carry on any other business and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the General Corporation Law of the state of Delaware, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, be in nowise limited or restricted by reference to, or inference from, the terms of any other clause in this Certificate of Incorporation, but the objects and purposes specified in each of the foregoing clauses of this article shall be regarded as independent objects and purposes.

**FOURTH:** The total number of shares of all classes of stock which the corporation shall have authority to issue is two hundred ten million (210,000,000), of which two hundred million (200,000,000) shares of the par value of \$0.01 each are to be of a class designated Common Stock and ten million (10,000,000) shares of the par value of \$0.01 each are to be of a class designated Preferred Stock. The Preferred Stock shall be issuable in series.

#### **1. Common Stock Provisions.**

1.1 *Dividend Rights.* Subject to provisions of law and the preferences of the Preferred Stock, the holders of the Common Stock shall be entitled to receive dividends at such time and in such amounts as may be determined by the board of directors.

1.2 *Voting Rights.* Except as provided in the final two paragraphs of Section 2.6, the holders of the Common Stock shall have one vote for each share on each matter submitted to a vote of the stockholders of the corporation. Except as otherwise provided by law or by the provisions of the Certificate of Incorporation or any amendment thereto or by resolutions of the board of directors providing for the issue of any series of Preferred Stock, the holders of the Common Stock shall have sole voting power.

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1.3 *Liquidation Rights.* In the event of any liquidation, dissolution, or winding up of the corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the corporation and the preferential amounts to which the holders of the Preferred Stock shall be entitled, the holders of the Common Stock shall be entitled to share ratably in the remaining assets of the corporation.

## 2. Preferred Stock Provisions.

2.1 *Authority of the Board of Directors to Issue in Series.* The Preferred Stock may be issued from time to time in one or more series. Subject to the provisions of the Certificate of Incorporation or any amendment thereto, authority is expressly granted to the board of directors to authorize the issue of one or more series of Preferred Stock, and to fix by resolutions providing for the issue of each such series the voting powers, designations, preferences and relative, participating, optional, or other special rights, and qualifications, limitations, and restrictions thereof (sometimes referred to as powers, preferences, and rights) to the full extent now or hereafter permitted by law, including but not limited to the following:

- (a) The number of shares of such series (which may subsequently be increased by resolutions of the board of directors) and the distinctive designation thereof;
- (b) The dividend rate of such series and any limitations, restrictions, or conditions on the payment of such dividends;
- (c) The price or prices at which, and the terms and conditions on which, the shares of such series may be redeemed;
- (d) The amounts which the holders of the shares of such series are entitled to receive upon any liquidation, dissolution, or winding up of the corporation;
- (e) The terms of any purchase, retirement, or sinking fund to be provided for the shares of such series;
- (f) The terms, if any, upon which the shares of such series shall be convertible into or exchangeable for shares of any other series, class or classes, or other securities, and the terms and conditions of such conversion or exchange; and
- (g) The voting powers, if any (not to exceed one vote per share), of such series in addition to the voting powers provided in Sections 2.6 and 2.8.

The Preferred Stock of each series shall rank on a parity with the Preferred Stock of every other series in priority of payment of dividends and in the distribution of assets in the event of any liquidation, dissolution, or winding up of the corporation, whether voluntary or involuntary, to the extent of the preferential amounts to which the Preferred Stock of the respective series shall be entitled under the provisions of the Certificate of Incorporation or any amendment thereto or the resolutions of the board of directors providing for the issue of such series. All shares of any one series of Preferred Stock shall be identical except as to the dates of issue and the dates from which dividends on shares of the series issued on different dates shall accumulate (if cumulative).

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## 2.2 Definitions.

(a) The term “arrearages,” whenever used in connection with dividends on any share of Preferred Stock, shall refer to the condition that exists as to dividends, to the extent that they are cumulative (either unconditionally, or conditionally to the extent that the conditions have been fulfilled), on such share which shall not have been paid or declared and set apart for payment to the date or for the period indicated, but the term shall not refer to the condition that exists as to dividends, to the extent that they are noncumulative, on such share which shall not have been paid or declared and set apart for payment.

(b) The term “stock junior to the Preferred Stock,” whenever used with reference to the Preferred Stock, shall mean the Common Stock and other stock of the corporation over which the Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any dissolution, liquidation, or winding up of the corporation.

(c) The term “subsidiary” shall mean any corporation, association, or business trust, the majority of whose outstanding shares (at the time of determination) having voting power for the election of directors or trustees, either at all times or only so long as no senior class of shares has such voting power because of arrearages in dividends or because of the existence of some default, is owned directly or indirectly by the corporation.

## 2.3 Dividend Rights.

(a) The holders of the Preferred Stock of each series shall be entitled to receive, when and as declared by the board of directors, preferential dividends in cash payable at such rate, from such date, and on such quarterly dividend payment dates and, if cumulative, cumulative from such date or dates, as may be fixed by the provisions of the Certificate of Incorporation or any amendment thereto or by the resolutions of the board of directors providing for the issue of such series. The holders of the Preferred Stock shall not be entitled to receive any dividends thereon other than those specifically provided for by the Certificate of Incorporation or any amendment thereto, or such resolutions of the board of directors, nor shall any arrearages in dividends on the Preferred Stock bear any interest.

(b) So long as any of the Preferred Stock is outstanding, no dividends (other than dividends payable in stock junior to the Preferred Stock and cash in lieu of fractional shares in connection with any such dividend) shall be paid or declared in cash or otherwise, nor shall any other distribution be made, on any stock junior to the Preferred Stock, unless

(i) There shall be no arrearages in dividends on Preferred Stock for any past quarterly dividend period, and dividends in full for the current quarterly dividend period shall have been paid or declared on all Preferred Stock (cumulative and noncumulative); and

(ii) The corporation shall have paid or set aside all amounts, if any, then or theretofore required to be paid or set aside for all purchase, retirement, and sinking funds, if any, for the Preferred Stock of any series; and

(iii) The corporation shall not be in default on any of its obligations to redeem any of the Preferred Stock.

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(c) So long as any of the Preferred Stock is outstanding, no shares of any stock junior to the Preferred Stock shall be purchased, redeemed, or otherwise acquired by the corporation or by any subsidiary except in connection with a reclassification or exchange of any stock junior to the Preferred Stock through the issuance of other stock junior to the Preferred Stock, or the purchase, redemption, or other acquisition of any stock junior to the Preferred Stock, with proceeds of a reasonably contemporaneous sale of other stock junior to the Preferred Stock, nor shall any funds be set aside or made available for any sinking fund for the purchase or redemption of any stock junior to the Preferred Stock, unless

(i) There shall be no arrearages in dividends on Preferred Stock for any past quarterly dividend period; and

(ii) The corporation shall have paid or set aside all amounts, if any, then or theretofore required to be paid or set aside for all purchase, retirement, and sinking funds, if any, for the Preferred Stock of any series; and

(iii) The corporation shall not be in default on any of its obligations to redeem any of the Preferred Stock.

(d) Subject to the foregoing provisions and not otherwise, such dividends (payable in cash, property, or stock junior to the Preferred Stock) as may be determined by the board of directors may be declared and paid on the shares of any stock junior to the Preferred Stock from time to time, and in the event of the declaration and payment of any such dividends, the holders of such junior stock shall be entitled, to the exclusion of holders of the Preferred Stock, to share ratably therein according to their respective interests.

(e) Dividends in full shall not be declared or paid or set apart for payment on any series of Preferred Stock unless there shall be no arrearages in dividends on Preferred Stock for any past quarterly dividend period and dividends in full for the current quarterly dividend period shall have been paid or declared on all Preferred Stock to the extent that such dividends are cumulative, and any dividends paid or declared when dividends are not so paid or declared in full shall be shared ratably by the holders of all series of Preferred Stock in proportion to such respective arrearages and unpaid and undeclared current quarterly cumulative dividends.

#### *2.4 Liquidation Rights.*

(a) In the event of any liquidation, dissolution, or winding up of the corporation, whether voluntary or involuntary, the holders of Preferred Stock of each series shall be entitled to receive the full preferential amount fixed by the Certificate of Incorporation or any amendment thereto, or by the resolutions of the board of directors providing for the issue of such series, including any arrearages in dividends thereon to the date fixed for the payment in liquidation, before any distribution shall be made to the holders of any stock junior to the Preferred Stock. After such payment in full to the holders of the Preferred Stock, the remaining assets of the corporation shall then be distributable exclusively among the holders of any stock junior to the Preferred Stock, according to their respective interests.

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(b) If the assets of the corporation are insufficient to permit the payment of the full preferential amounts payable to the holders of the Preferred Stock of the respective series in the event of a liquidation, dissolution, or winding up, then the assets available for distribution to holders of the Preferred Stock shall be distributed ratably to such holders in proportion to the full preferential amounts payable on the respective shares.

(c) A consolidation or merger of the corporation with or into one or more other corporations or a sale of all or substantially all of the assets of the corporation shall not be deemed to be a liquidation, dissolution, or winding up, voluntary or involuntary.

#### *2.5 Redemption.*

(a) Subject to the provisions of paragraph (a)(v) of Section 2.6, the corporation may, at the option of the board of directors, redeem the whole or any part of the Preferred Stock, or of any series thereof, at any time or from time to time within the period during which such stock is by its terms redeemable at the option of the board of directors, by paying such redemption price thereof as shall have been fixed by the Certificate of Incorporation or any amendment thereto or by the resolutions of the board of directors providing for the issue of the Preferred Stock to be redeemed, including an amount in the case of each share so to be redeemed equal to any arrearages in dividends thereon to the date fixed for redemption (the total amount so to be paid being hereinafter called the "redemption price").

(b) Unless expressly provided otherwise in the Certificate of Incorporation or any amendment thereto or by the resolutions of the board of directors providing for the issue of the Preferred Stock to be redeemed, (i) notice of each such redemption shall be mailed not less than 30 days nor more than 90 days prior to the date fixed for redemption to each holder of record of shares of the Preferred Stock to be redeemed, at his address as the same may appear on the books of the corporation, and (ii) in case of a redemption of a part only of any series of the Preferred Stock, the shares of such series to be redeemed shall be selected pro rata or by lot or in such other manner as the board of directors may determine. The board of directors shall have full power and authority, subject to the limitations and provisions contained in the Certificate of Incorporation or any amendment thereto or in the resolutions of the board of directors providing for the issue of the Preferred Stock to be redeemed, to prescribe the manner in which and the terms and conditions upon which the Preferred Stock may be redeemed from time to time.

(c) If any such notice of redemption shall have been duly given, then on and after the date fixed in such notice of redemption (unless default shall be made by the corporation in the payment or deposit of the redemption price pursuant to such notice) all arrearages in dividends, if any, on the shares of Preferred Stock so called for redemption shall cease to accumulate, and on such date all rights of the holders of the Preferred Stock so called for redemption shall cease and terminate except the right to receive the redemption price upon surrender of their certificates for redemption and such rights, if any, of conversion or exchange as may exist with respect to such Preferred Stock under the provisions of the Certificate of Incorporation or any amendment thereto or in the resolutions of the board of directors providing for the issue of such Preferred Stock.

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(d) If, before the redemption date specified in any notice of the redemption of any Preferred Stock, the corporation shall deposit the redemption price with a bank or trust company in New York, New York, having a capital and surplus of at least \$10,000,000 according to its last published statement of condition, in trust for payment on the redemption date to the holders of the Preferred Stock to be redeemed, from and after the date of such deposit all rights of the holders of the Preferred Stock so called for redemption shall cease and terminate except the right to receive the redemption price upon surrender of their certificates for redemption and such rights, if any, of conversion or exchange as may exist with respect to such Preferred Stock under the provisions of the Certificate of Incorporation or any amendment thereto or in the resolutions of the board of directors providing for the issue of such Preferred Stock. Any funds so deposited which are not required for such redemption because of the exercise of any such right of conversion or exchange subsequent to the date of such deposit shall be returned to the corporation forthwith. The corporation shall be entitled to receive from the depository, from time to time, the interest, if any, allowed on such funds deposited with it, and the holders of the shares so redeemed shall have no claim to any such interest. Any funds so deposited and remaining unclaimed at the end of six years from the redemption date shall, if thereafter requested by the board of directors, be repaid to the corporation.

(e) Shares of Preferred Stock of any series may also be subject to redemption, in the manner hereinabove prescribed under this Section 2.5, through operation of any sinking or retirement fund created therefor, at the redemption prices and under the terms and provisions contained in the resolutions of the board of directors providing for the issue of such series.

(f) The corporation shall not be required to register a transfer of any share of Preferred Stock (i) within 15 days preceding a selection for redemption of shares of the series of Preferred Stock of which such share is a part or (ii) which has been selected for redemption.

(g) If any obligation to retire shares of Preferred Stock is not paid in full on all series as to which such obligation exists, the number of shares of each such series to be retired pursuant to any such obligation shall be in proportion to the respective amounts which would be payable if all amounts payable for the retirement of all such series were discharged in full.

*2.6 Restrictions on Certain Action Affecting Preferred Stock.* The corporation will not, without the consent given in writing or affirmative vote given in person or by proxy at a meeting held for the purpose,

(a) By the holders of at 66 2/3% of the shares of Preferred Stock then outstanding,

(i) Amend, alter, or repeal any of the provisions of the Certificate of Incorporation, or any amendment thereto, or the bylaws, of the corporation,

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so as to affect adversely the powers, preferences, or rights of the holders of the Preferred Stock or reduce the time for any notice to which only the holders of the Preferred Stock may be entitled; provided, however, the amendment of the provisions of the Certificate of Incorporation, as amended, so as to authorize or create, or to increase the authorized amount of Common Stock or other stock junior to the Preferred Stock or any stock of any class ranking on a parity with the Preferred Stock shall not be deemed to affect adversely the powers, preferences, or rights of the holders of the Preferred Stock;

(ii) Authorize or create, or increase the authorized amount of, any stock of any class or any security convertible into stock of any class ranking prior to the Preferred Stock;

(iii) Voluntarily dissolve, liquidate, or wind up the affairs of the corporation, or sell, lease, or convey all or substantially all its property and assets;

(iv) Merge or consolidate with or into any other corporation, unless each holder of Preferred Stock immediately preceding such merger or consolidation shall receive in the resulting corporation the same number of shares, with substantially the same rights and preferences, as correspond to the Preferred Stock so held (in determining whether the shares in the resulting corporation so received have substantially the same rights and preferences the circumstance that such shares may constitute a different proportion of the ordinary voting power in the resulting corporation than the Preferred Stock constitutes of such voting power in the corporation shall be disregarded), and unless the corporation resulting from such merger or consolidation will have after such merger or consolidation no class of stock either authorized or outstanding ranking prior to the shares received by such holder and no securities either authorized or outstanding which are convertible into such prior stock, except the same number of shares of prior stock and the same amount of such convertible securities, with the same rights and preferences, as correspond to the prior stock of the corporation and securities convertible into prior stock of the corporation, respectively, authorized and outstanding immediately preceding such merger or consolidation; or

(v) Purchase or redeem less than all of the Preferred Stock at the time outstanding unless the full cumulative dividend on all shares of Preferred Stock then outstanding shall have been paid or declared and a sum sufficient for payment thereof set apart;

(b) By the holders of at 66 2/3% of the shares of any series of Preferred Stock then outstanding, amend, alter, or repeal any of the provisions of the Certificate of Incorporation or any amendment thereto, or the bylaws, or of the resolutions of the board of directors providing for the issue of such series so as to affect adversely the powers, preferences, or rights of the holders of the Preferred Stock of such series in a manner not equally applicable to all series of Preferred Stock; or

(c) By the holders of at least a majority of the shares of Preferred Stock then outstanding,

(i) Increase the authorized amount of the Preferred Stock; or

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(ii) Create any other class or classes of stock ranking on a parity with the Preferred Stock, either as to dividends or upon liquidation, or create any stock or other security convertible into or exchangeable for or evidencing the right to purchase any such stock ranking on a parity with the Preferred Stock, or increase the authorized number of shares of any such other class of stock or other security;

provided, however, that no such consent of the holders of the Preferred Stock shall be required if, at or prior to the time when such amendment, alteration, or repeal is to take effect or when the issuance of any such prior stock or convertible security is to be made, or when such consolidation or merger, voluntary liquidation, dissolution, or winding up, sale, lease, conveyance, purchase, or redemption is to take effect, as the case may be, provision is to be made for the redemption of all shares of Preferred Stock at the time outstanding, or, in the case of any such amendment, alteration, or repeal as to which the consent of less than all the Preferred Stock would otherwise be required, for the redemption of all shares of Preferred Stock the consent of which would otherwise be required.

If an amendment described in clause (i) of paragraph (a) of this Section 2.6 would in no way affect adversely the powers, preferences, or rights of the holders of any stock of the corporation other than the Preferred Stock, such amendment may, to the extent permitted by Delaware law, be made effective by the adoption and filing of an appropriate amendment to the Certificate of Incorporation without obtaining the consent or vote of the holders of any stock of the corporation other than the Preferred Stock.

If an amendment described in paragraph (b) of this Section 2.6 would in no way affect adversely the powers, preferences, or rights of the holders of any stock of the corporation other than the Preferred Stock of a particular series, such amendment may, to the extent permitted by Delaware law, be made effective by the adoption and filing of an appropriate amendment to the Certificate of Incorporation of the corporation without obtaining the consent or vote of the holders of any stock of the corporation other than the Preferred Stock of such series.

*2.7 Status of Preferred Stock Purchased, Redeemed, or Converted.* Shares of Preferred Stock purchased, redeemed, or converted into or exchanged for shares of any other class or series shall be deemed to be authorized but unissued shares of Preferred Stock undesignated as to series.

*2.8 Election of Directors by Holders of Certain Preferred Stock in Event of Nondeclaration of Dividends.*

(a) The provisions of this Section 2.8 shall apply only to those series of Preferred Stock (applicable Preferred Stock) to which such provisions are expressly made applicable by the Certificate of Incorporation or any amendment thereto or resolutions of the board of directors providing for the issue of such series.

(b) Whenever declarations or payments of dividends (including noncumulative dividends) on the shares of any series of applicable Preferred Stock shall be

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omitted in an aggregate amount equal to six quarterly dividends, the holders of the applicable Preferred Stock shall have the exclusive and special right, voting separately as a class and without regard to series, to elect at an annual meeting of stockholders or special meeting held in place thereof, or at a special meeting of the holders of the applicable Preferred Stock called as hereinafter provided, three members of the board of directors, until four consecutive quarterly dividends shall have been paid on or declared and set apart for payment on the shares of such series, if the shares of such series are noncumulative, or until all arrearages in dividends and dividends in full for the current quarterly period shall have been paid on or declared and set apart for payment on the shares of such series, if the shares of such series are cumulative, whereupon all voting rights as a class provided for under this Section 2.8 shall be divested from the applicable Preferred Stock (subject, however, to being at any time or from time to time similarly revived if declarations or payments of dividends for subsequent quarterly periods shall be omitted).

(c) At any time after the holders of the applicable Preferred Stock shall have thus become entitled to elect three members of the board of directors, the secretary of the corporation may, and upon written request of holders of record of at least 5% of the shares of the applicable Preferred Stock then outstanding addressed to him at the principal office of the corporation shall, call a special meeting of the holders of the applicable Preferred Stock for the purpose of electing such directors, to be held at the place of annual meetings of stockholders of the corporation as soon as practicable after the receipt of such request upon the notice provided by law and the bylaws of the corporation for the holding of special meetings of stockholders; provided, however, the secretary need not call any such special meeting if the next annual meeting of stockholders is to convene within 90 days after the receipt of such request. If such special meeting shall not be called by the secretary within 30 days after receipt of such request (not including, however, a request falling within the proviso to the foregoing sentence), then the holders of record of at least 5% of the shares of the applicable Preferred Stock then outstanding may designate in writing one of their number to call such a meeting at the place and upon the notice above provided, and any person so designated for that purpose shall have access to the stock records of the corporation for such purpose.

(d) At any meeting at which the holders of the applicable Preferred Stock shall be entitled to vote for the election of such three directors as above provided, the holders of a majority of the applicable Preferred Stock then outstanding present in person or by proxy shall constitute a quorum for the election of such three directors and for no other purpose, and the vote of the holders of a majority of the applicable Preferred Stock so present at any such meeting at which there shall be such a quorum shall be sufficient to elect three directors. The election of any such directors shall automatically increase the number of members of the board of directors by the number of directors so elected. The persons so elected as directors by the holders of the applicable Preferred Stock shall hold office until their successors shall have been elected by such holders or until the right of the holders of the applicable Preferred Stock to vote as a class in the election of directors shall be divested as provided in paragraph (b) of this Section 2.8. Upon divestment of the right to elect directors as above provided, any directors so elected by the holders of the applicable Preferred Stock shall forthwith cease to be directors of the corporation, and the number of directorships shall automatically be reduced accordingly. If a vacancy occurs in a directorship elected by the holders of the applicable Preferred Stock voting as a class, a successor may be appointed by the remaining director or directors so elected by the holders of the applicable Preferred Stock.

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(e) At any such meeting or any adjournment thereof, (i) the absence of a quorum of the holders of the applicable Preferred Stock shall not prevent the election of the directors other than those to be elected by holders of the applicable Preferred Stock voting as a class, and the absence of a quorum of holders of the shares entitled to vote for directors other than those to be elected by the holders of the applicable Preferred Stock voting as a class shall not prevent the election of the directors to be elected by the holders of the applicable Preferred Stock voting as a class, and (ii) in the absence of a quorum of the holders of the applicable Preferred Stock, the holders of a majority of the applicable Preferred Stock present in person or by proxy shall have power to adjourn from time to time the meeting for the election of the directors which they are entitled to elect voting as a class, without notice other than announcement at the meeting, until a quorum shall be present, and in the absence of a quorum of the holders of the shares entitled to vote for directors other than those elected by the holders of the applicable Preferred Stock voting as a class, the holders of a majority of such stock present in person or by proxy shall have power to adjourn from time to time the meeting for the election of the directors which they are entitled to elect, without notice other than announcement at the meeting, until a quorum shall be present.

### **3. Other Provisions.**

3.1 *Authority for Issuance of Shares.* The board of directors shall have authority to authorize the issuance, from time to time without any vote or other action by the stockholders, of any or all shares of stock of the corporation of any class at any time authorized, and any securities convertible into or exchangeable for any such shares, in each case to such persons and for such consideration and on such terms as the board of directors from time to time in its discretion lawfully may determine; provided, however, the consideration for the issuance of shares of stock of the corporation having par value shall not be less than such par value. Shares so issued, for which the consideration has been paid to the corporation, shall be full paid stock, and the holders of such stock shall not be liable to any further call or assessments thereon.

3.2 *Voting for Directors.* All elections of directors may be by voice vote, rather than by ballot, unless, by resolution adopted by the majority vote of the stockholders represented at the meeting, the election of directors by ballot is required.

3.3 *No Preemptive Rights.* No holder of shares of any class of the corporation nor of any security or obligation convertible into, nor of any warrant, option, or right to purchase, subscribe for, or otherwise acquire, shares of any class of the corporation, whether now or hereafter authorized, shall, as such holder, have any preemptive right whatsoever to purchase, subscribe for, or otherwise acquire, shares of any class of the corporation or of any security convertible into, or of any warrant, option, or right to purchase, subscribe for, or otherwise acquire, shares of any class of the corporation, whether now or hereafter authorized.

3.4 *Abandonment of Dividends and Distributions.* Anything herein contained to the contrary notwithstanding, any and all right, title, interest, and claim in or to any dividends declared, or other distributions made, by the corporation, whether in cash, stock, or otherwise,

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which are unclaimed by the stockholder entitled thereto for a period of six years after the close of business on the payment date, shall be and be deemed to be extinguished and abandoned, and such unclaimed dividends or other distributions in the possession of the corporation, its transfer agents, or other agents or depositaries, shall at such time become the absolute property of the corporation, free and clear of any and all claims of any persons whatsoever.

3.5 *Record Date.* The board of directors may set a record date in the manner and for the purposes authorized in the bylaws of the corporation, with respect to shares of stock of the corporation of any class or series.

3.6 *Reserved.*

**FIFTH:** Reserved.

**SIXTH:** Reserved.

**SEVENTH:** The corporation is to have perpetual existence.

**EIGHTH:** The private property of the stockholders shall not be subject to the payment of the corporate debts to any extent whatever.

**NINTH:**

9.1 The business and affairs of the corporation shall be managed by or under the direction of a board of directors. The number of the directors of the corporation shall be fixed from time to time by resolution adopted by the affirmative vote of a majority of the entire board of directors of the corporation, except that the minimum number of directors shall be fixed at no less than one and the maximum number of directors shall be fixed at no more than 15. The directors shall be elected by the stockholders at each annual meeting for a one-year term. Each director shall hold office for a one-year term and until such director's successor shall have been duly elected and qualified.

9.2 Nominations for election to the board of directors of the corporation at a meeting of stockholders may be made by the board, on behalf of the board by any nominating committee appointed by the board, or by any stockholder of the corporation entitled to vote for the election of directors at the meeting. Nominations, other than those made by or on behalf of the board, shall be made by notice in writing delivered to or mailed, postage prepaid, and received by the Corporate Secretary not less than 30 nor more than 60 days prior to any meeting of stockholders called for the election of directors; provided, however, if less than 35 days' notice or prior public disclosure of the date of the meeting is given to stockholders, the nomination must be received by the Corporate Secretary not later than the close of business on the seventh day following the day on which the notice of the meeting was mailed. The notice shall set forth: (i) the name and address of the stockholder who intends to make the nomination; (ii) the name, age, business address, and, if known, residence address of each nominee; (iii) the principal occupation or employment of each nominee; (iv) the number of shares of stock of the corporation which are beneficially owned by each nominee and by the nominating stockholder; (v) any other information concerning the nominee that must be disclosed of nominees in proxy solicitation pursuant to Regulation 14A of the Securities Exchange Act of 1934; and (vi) the executed

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consent of each nominee to serve as a director of the corporation, if elected. The chairman of the meeting of stockholders may, if the facts warrant, determine that a nomination was not made in accordance with the foregoing procedures, and if the chairman should so determine, the chairman shall so declare to the meeting and the defective nomination shall be disregarded.

9.3 Newly created directorships resulting from any increase in the number of directors and any vacancies on the board of directors resulting from death, resignation, disqualification, removal, or other cause shall be filled by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum, or by a sole remaining director. Any additional director elected to fill a vacancy shall hold office until the next annual meeting of stockholders and until such director's successor shall have been elected and qualified, but in no case will a decrease in the number of directors shorten the term of any incumbent director. A director shall hold office until the next annual meeting and until such director's successor shall have been elected and qualified.

9.4 Any director may be removed from office with cause or without cause by the affirmative vote of the holders of at least a majority of the voting power of all the shares of the corporation entitled to vote in the election of directors, voting together as a single class.

9.5 Notwithstanding the foregoing paragraphs 9.1, 9.2, 9.3, and 9.4, whenever the holders of any one or more classes or series of Preferred Stock issued by the corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies, and other features of such directorships shall be governed by the terms of this Certificate of Incorporation applicable thereto, the then authorized number of directors of the corporation shall be increased by the number of additional directors to be elected.

9.6 Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least a majority of the voting power of all the shares of the corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend, repeal, or adopt any provision inconsistent with the purpose and intent of this Article NINTH.

9.7 In furtherance, and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make and alter the bylaws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose or to abolish any such reserve in the manner in which it was created.

By resolution or resolutions passed by a majority of the whole board, to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in said resolution or resolutions or in the bylaws of the

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corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may have power to authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the bylaws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

The corporation may in its bylaws confer powers upon its board of directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon it by statute.

**TENTH:** Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them, and/or between this corporation and its stockholders or any class of them, any Court of equitable jurisdiction within the state of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said Court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and said reorganization shall, if sanctioned by the Court of which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of this corporation, as the case may be, and also on this corporation.

**ELEVENTH:** Both stockholders and directors shall have power, if the bylaws so provide, to hold their meetings, and to have one or more offices within or without the state of Delaware, and to keep the books of this corporation (subject to the provisions of the statutes), outside of the state of Delaware at such places as may be from time to time designated by the board of directors.

**TWELFTH:**

12.1 In addition to any affirmative vote required by law or this Certificate of Incorporation or the bylaws, and except as otherwise expressly herein provided in this Article TWELFTH, a Business Combination (as hereinafter defined) shall require the affirmative vote of a majority of the voting power of all the shares of Voting Stock (as hereinafter defined) held by stockholders other than an Interested Stockholder (as hereinafter defined), with which or by or on whose behalf, directly or indirectly, a Business Combination is proposed, voting together as a single class. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage or separate class vote may be specified, by law or in any agreement with any national securities exchange or otherwise.

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12.2 The provisions of Section 12.1 of this Article TWELFTH shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote, if any, as is required by law or by any other provision of this Certificate of Incorporation, the bylaws of the corporation, or any agreement with any national securities exchange, if all the conditions specified in either of the following paragraphs (a) or (b) are met or, in the case of a Business Combination not involving the payment of consideration to the holders of the corporation's outstanding Capital Stock (as hereinafter defined), if the condition specified in the following paragraph (a) is met:

(a) The Business Combination shall have been approved by a majority (whether such approval is made prior to or subsequent to the acquisition of beneficial ownership of the Voting Stock that caused the Interested Stockholder as hereinafter defined to become an Interested Stockholder) of the Continuing Directors (as hereinafter defined); or

(b) All of the following conditions shall have been met:

(1) The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be at least equal to the highest amount determined under subparagraphs (i) and (ii) below:

(i) (if applicable) The highest per-share price (including any brokerage commissions, transfer taxes, and soliciting dealers' fees) paid by or on behalf of the Interested Stockholder for any shares of Common Stock in connection with the acquisition by the Interested Stockholder of beneficial ownership of shares of Common Stock (a) within the two-year period immediately prior to the first public announcement of the proposed Business Combination (the "Announcement Date") or (b) in the transaction in which it became an Interested Stockholder, whichever is higher; and

(ii) The Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested Stockholder became an Interested Stockholder (such latter date referred to in this Article TWELFTH as the "Determination Date"), whichever is higher.

All per-share prices shall be adjusted to reflect any intervening stock splits, stock dividends, and reverse stock splits.

(2) The aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of shares of any class or series of outstanding Capital Stock (as hereinafter defined), other than Common Stock, shall be at least equal to the highest amount determined under clauses (i), (ii), and (iii) below:

(i) (if applicable) The highest per-share price (including any brokerage commissions, transfer taxes, and soliciting dealers' fees) paid by or on behalf of the Interested Stockholder for any share of such class or series of

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Capital Stock in connection with the acquisition by the Interested Stockholder of beneficial ownership of shares of such class or series of Capital Stock (a) within the two-year period immediately prior to the Announcement Date or (b) in the transaction in which it became an Interested Stockholder, whichever is higher;

(ii) The Fair Market Value per share of such class or series of Capital Stock on the Announcement Date or on the Determination Date, whichever is higher; and

(iii) (if applicable) The highest preferential amount per share to which the holders of shares of such class or series of Capital Stock would be entitled in the event of any voluntary or involuntary liquidation, dissolution, or winding up of the corporation, regardless of whether the Business Combination to be consummated constitutes such an event.

All per-share prices shall be adjusted for intervening stock splits, stock dividends, and reverse stock splits.

The provisions of this paragraph (b)(2) shall be required to be met with respect to every class or series of outstanding Capital Stock, whether or not the Interested Stockholder has previously acquired beneficial ownership of any shares of a particular class or series of Capital Stock.

(3) The consideration to be received by holders of a particular class or series of outstanding Capital Stock (including Common Stock) shall be cash or in the same form as previously has been paid by or on behalf of the Interested Stockholder in connection with its direct or indirect acquisition of beneficial ownership of shares of such class or series of Capital Stock. If the consideration so paid for shares of any class or series of Capital Stock varied as to form, the form of consideration for such class or series of Capital Stock shall be either cash or the form used to acquire beneficial ownership of the largest number of shares of such class or series of Capital Stock previously acquired by the Interested Stockholder.

(4) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (a) except as approved by a majority of the Continuing Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) in accordance with the terms of the outstanding Preferred Stock; (b) there shall have been (1) no reduction in the annual rate of dividend paid on the Common Stock (except as necessary to reflect any stock split, stock dividend, or subdivision of the Common Stock), except as approved by a majority of the Continuing Directors; and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization, or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Continuing Directors; and (c) such Interested Stockholder shall have not become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder and except in a transaction that, after giving effect thereto, would not result in any increase in the Interested Stockholder's percentage beneficial ownership of any class or series of Capital Stock.

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(5) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately as a stockholder), of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by the corporation, whether in anticipation of or in connection with such Business Combination or otherwise.

(6) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules, or regulations) shall be mailed to public stockholders of the corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions). The proxy or information statement shall contain on the first page thereof, in a prominent place, any statement as to the advisability (or inadvisability) of the Business Combination that the Continuing Directors, or any of them, may choose to make and, if deemed advisable by a majority of the Continuing Directors, the opinion of an investment banking firm selected by a majority of the Continuing Directors as to the fairness (or not) of the terms of the Business Combination from a financial point of view to the holders of the outstanding shares of Capital Stock other than the Interested Stockholder and its Affiliates or Associates (as hereinafter defined), such investment banking firm to be paid a reasonable fee for its services by the corporation.

(7) Such Interested Stockholder shall not have made any major change in the corporation's business or equity capital structure without the approval of a majority of the Continuing Directors.

12.3 For the purposes of this Article TWELFTH:

(a) The term "Business Combination" shall mean:

(1) Any merger or consolidation of the corporation or any Subsidiary (as hereinafter defined) with (a) any Interested Stockholder or (b) any other company (whether or not such other company is an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate or Associate of an Interested Stockholder; or

(2) Any sale, lease, exchange, mortgage, pledge, transfer, or other disposition or security arrangement, investment, loan, advance, guarantee, agreement to purchase, agreement to pay, extension of credit, joint venture participation, or other arrangement (in one transaction or a series of transactions) with or for the benefit of any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder involving any assets, securities, or commitments of the corporation, any Subsidiary or any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder having an aggregate Fair Market Value and/or involving aggregate commitments of \$40,000,000 or more or constituting more than 5% of the book value of the total assets (in the case of transactions involving assets or commitments

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other than capital stock) or 5% of stockholders' equity (in the case of transactions involving capital stock) of the entity in question (the "Substantial Part"), as reflected in the most recent fiscal year-end consolidated balance sheet of such entity existing at the time the stockholders of the corporation would be required to approve or authorize the Business Combination involving the assets, securities, and/or commitments constituting any Substantial Part; or

(3) The adoption of any plan or proposal for the liquidation or dissolution of the corporation proposed by or on behalf of any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder; or

(4) Any reclassification of securities (including any reverse stock split), or recapitalization of the corporation or any merger or consolidation of the corporation with any of its Subsidiaries or any other transaction (whether or not with or otherwise involving an Interested Stockholder) that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of Capital Stock, or any securities convertible into Capital Stock, or into equity securities of any Subsidiary, that is beneficially owned by any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder; or

(5) Any agreement, contract, or other arrangement providing for any one or more of the actions specified in the foregoing clauses (1) through (4).

(b) The term "Capital Stock" shall mean all capital stock of this corporation authorized to be issued from time to time under Article FOURTH of this Certificate of Incorporation, and the term "Voting Stock" shall mean all Capital Stock which by its terms may be voted on all matters submitted to stockholders of the corporation generally.

(c) A "person" shall mean any individual, firm, corporation, partnership, trust, or other entity and shall include any group comprised of any person and any other person with whom such person or any Affiliate or Associate of such person has any agreement, arrangement, or understanding, directly or indirectly, for the purpose of acquiring, holding, voting, or disposing of Capital Stock.

(d) "Interested Stockholder" shall mean any person (other than the corporation or any Subsidiary and other than any profit-sharing, employee stock ownership, or other employee benefit plan of the corporation or any Subsidiary or any trustee of or fiduciary with respect to any such plan when acting in such capacity) who or which:

(1) Is the beneficial owner, directly or indirectly, of more than 10% of the voting power of the then outstanding Voting Stock; or

(2) Is an Affiliate or Associate of the corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner of 10% or more of the voting power of the then outstanding Voting Stock; or

(3) Is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

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(e) A person shall be a “beneficial owner” of any Capital Stock:

(1) Which such person or any of its Affiliates or Associates beneficially owns, directly or indirectly; or

(2) Which such person or any of its Affiliates or Associates has (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement, or understanding or upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise, or (b) the right to vote pursuant to any agreement, arrangement, or understanding; or

(3) Which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of any shares of Voting Stock. For the purposes of determining whether a person is an Interested Stockholder pursuant to paragraph (d) of this Article, the number of shares of Capital Stock deemed to be outstanding shall include shares deemed beneficially owned by such person through application of paragraph (c) of this Article but shall not include any other shares of Capital Stock that may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise.

(f) “Affiliate” or “Associate” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on March 1, 1985 (the term “registrant” in said Rule 12b-2 meaning, in this case, the corporation).

(g) “Subsidiary” means any company of which a majority of any class of equity security is owned, directly or indirectly, by the corporation; provided, however, for the purposes of the definition of Interested Stockholder set forth in paragraph (d) of this section, the term “Subsidiary” shall mean only a company of which a majority of each class of equity security is beneficially owned, directly or indirectly, by the corporation.

(h) “Continuing Director” means any member of the board of directors of the corporation (the “Board”) while such person is a member of the Board, who is not an Affiliate or Associate or representative of the Interested Stockholder and was a member of the board of directors of OfficeMax Incorporated or its predecessor on March 1, 1985, or prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Continuing Director, while such successor is a member of the Board, who is not an Affiliate or Associate or representative of the Interested Stockholder and is recommended to succeed the Continuing Director by a majority of Continuing Directors then on the Board.

(i) “Fair Market Value” means: (a) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not

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listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotations System or any system then in use, or if no such quotations are available, the Fair Market Value on the date in question of a share of such stock as determined by a majority of the Continuing Directors in good faith; and (b) in the case of property other than cash or stock, the Fair Market Value of such property on the date in question as determined by a majority of Continuing Directors then on the Board.

(j) In the event of any Business Combination in which the corporation survives, the phrase “consideration other than cash to be received” as used in paragraphs (b)(1) and (2) of Section 12.2 of this Article shall include the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

12.4 The board of directors of the corporation shall have the power and duty to determine for the purposes of this Article TWELFTH, on the basis of information known to them after reasonable inquiry (a) whether a person is an Interested Stockholder, (b) the number of shares of Voting Stock beneficially owned by any person, (c) whether a person is an Affiliate or Associate of another, (d) whether the requirements of paragraph (b) of Section 12.2 have been met with respect to any Business Combination, and (e) whether any sale, lease, exchange, mortgage, pledge, transfer, or other disposition or security arrangement, investment, loan, advance, guarantee, agreement to purchase, agreement to pay, extension of credit, joint venture participation, or other arrangement (in one transaction or a series of transactions) with or for the benefit of any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder involving any assets, securities, or commitments of the corporation, any Subsidiary or any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder has an aggregate Fair Market Value and/or involves aggregate commitments of \$40,000,000 or more or constitutes a Substantial Part. Any such determination made in good faith shall be binding and conclusive on all parties.

12.5 Nothing contained in this Article TWELFTH shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

12.6 Consideration for shares to be paid to any stockholder pursuant to this Article TWELFTH shall be the minimum consideration payable to the stockholder and shall not limit a stockholder's right under any provision of law or otherwise to receive greater consideration for any shares of the corporation.

12.7 The fact that any Business Combination complies with the provisions of Section 12.2 of this Article TWELFTH shall not be construed to impose any fiduciary duty, obligation, or responsibility on the Board, or any member thereof, to approve such Business Combination or recommend its adoption or approval to the stockholders of the corporation, nor shall such compliance limit, prohibit, or otherwise restrict in any manner the Board, or any member thereof, with respect to evaluations of or actions and responses taken with respect to such Business Combination.

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12.8 Notwithstanding any other provisions of this Certificate of Incorporation or the bylaws of the corporation (and notwithstanding the fact that a lesser percentage may be specified by law, this Certificate of Incorporation or the bylaws of the corporation), the affirmative vote of the holders of at least a majority of the voting power of all the shares of the Voting Stock, voting together as a single class, shall be required to alter, amend, or adopt any provisions inconsistent with or repeal this Article TWELFTH; provided, however, if such action has been proposed, directly or indirectly, on behalf of an Interested Stockholder, it must also be approved by the affirmative vote of a majority of the voting power of all of the shares of Voting Stock held by stockholders other than such Interested Stockholder, and further provided that this proviso shall not apply to any amendment, repeal, or adoption unanimously recommended by the Board, if all of such directors are persons who would be eligible to serve as Continuing Directors within the meaning of paragraph (h) of Section 12.3 of this Article TWELFTH.

12.9 This Article TWELFTH shall not apply to any of the transactions contemplated by the Agreement and Plan of Merger, dated as of February 20, 2013, as amended from time to time, by and among Office Depot, Inc., Dogwood Merger Sub Inc., Dogwood Merger Sub LLC, the corporation, Mapleby Merger Corporation and OfficeMax Incorporated.

**THIRTEENTH:**

13.1 No director of the corporation shall be personally liable to the corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law (i) for breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article 13.1 shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions prior to such amendment or repeal.

13.2 The corporation shall indemnify, to the fullest extent authorized or permitted and in the manner provided by law, any person made, or threatened to be made, a party to any action, suit, or proceeding (whether civil, criminal, or otherwise) by reason of the fact that he or she, his or her testator or intestate, is or was a director or officer of the corporation or by reason of the fact that such director or officer, at the request of the corporation, is or was serving any other corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, in any capacity. Nothing contained herein shall affect any rights to indemnification to which employees and agents other than directors and officers may be entitled by law, and the corporation may indemnify such employees and agents to the fullest extent and in the manner permitted by law. The rights to indemnification set forth in this Section 13.2 shall not be exclusive of any other rights to which any person may be entitled under any statute, provision of this Certificate of Incorporation, bylaw, agreement, contract, vote of stockholders or disinterested directors, or otherwise. The corporation also is authorized to enter into contracts of indemnification.

**FOURTEENTH:** 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 by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

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IN WITNESS WHEREOF, said MAPLEBY HOLDINGS MERGER CORPORATION has caused this Amended and Restated Certificate of Incorporation to be signed by its President this November 5, 2013.

MAPLEBY HOLDINGS MERGER CORPORATION

By: /s/ Matthew R. Broad  
Matthew R. Broad  
President

[Amended and Restated Certificate of Incorporation of Mapleby Holdings Merger Corporation]

**BYLAWS**  
**OF**  
**MAPLEBY HOLDINGS MERGER CORPORATION**

As Amended and Restated November 5, 2013

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Offices

Section 1. The registered office of the corporation in Delaware shall be in the city of Wilmington, county of New Castle.

Section 2. The corporation may also have offices at such other places both within and without the state of Delaware as the board of directors may from time to time determine or the business of the corporation may require.

Meetings of Stockholders

Section 3. All meetings of the stockholders for the election of directors shall be held in Naperville, Illinois, at such place as may be fixed from time to time by the board of directors, or at such other place either within or without the state of Delaware as shall be designated from time to time by the board of directors and stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the state of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

At a meeting of the stockholders, only business shall be conducted which has been properly brought before the meeting. To be properly brought before a meeting of the stockholders, business must be specified in the notice of meeting (or any supplement thereto) given by, or at the direction of, the board of directors or otherwise properly brought before the meeting by a stockholder. For business to be properly brought before a meeting by a stockholder, the stockholder must have given timely notice of the business to the corporate secretary. To be timely filed, a stockholder's notice must be in writing and received by the corporate secretary at least 45 days before the date the corporation first mailed its proxy materials for the prior year's annual meeting of shareholders. For each matter the stockholder proposes to bring before the meeting, the notice to the corporate secretary shall include (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting the business at the meeting, (ii) the name and record address of the stockholder proposing the business, (iii) the class and number of shares of the corporation which are beneficially owned by the stockholder and (iv) any material interest of the stockholder in such business.

Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at the meeting except in accordance with the procedures set forth in this Section 3.

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The chairman of a meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 3. If the chairman determines that business was not properly brought before the meeting, the business shall not be transacted.

Section 4. Annual meetings of stockholders, at such date and time as shall be designated from time to time by the board of directors and stated in the notice of the meeting, at which the stockholders shall elect by majority vote a board of directors, and transact such other business as may properly be brought before the meeting. Elections of directors may be by voice vote, rather than by written ballot, unless by resolution adopted by the majority vote of the stockholders represented at the meeting, the election of directors by written ballot is required.

Section 5. Written notice of the annual meeting stating the place, date, and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than 10 nor more than 60 days (or in the case a vote of stockholders on a merger or consolidation is one of the stated purposes of the annual meeting, not less than 20 nor more than 60 days) before the date of the meeting.

Section 6. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 7. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called by the chairman of the board and shall be called by the chairman of the board or corporate secretary at the request in writing of a majority of the board of directors or a majority of the executive committee. Such request shall state the purpose or purposes of the proposed meeting.

Section 8. Written notice of a special meeting stating the place, date, and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not less than 10 nor more than 60 days (or in the case of a merger or consolidation, not less than 20 nor more than 60 days) before the date of the meeting, to each stockholder entitled to vote at such meeting.

Section 9. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 10. The holders of a majority of the shares of stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, by the certificate of incorporation, or by these bylaws. If, however, such quorum shall not

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be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified. 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 to each stockholder of record entitled to vote at the meeting.

Section 11. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy, excluding, however, any shares where the holder has expressly indicated that the holder is abstaining from voting on the matter, shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the certificate of incorporation or of these bylaws, a different vote is required in which case such express provision shall govern and control the decision of such question.

Section 12. Each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. In the election of each director of the corporation, each holder of stock shall have one vote for each share held.

Section 13. [Reserved.]

#### Board of Directors

Section 14. The number of directors which shall constitute the whole board of directors shall be fixed from time to time by resolution adopted by the affirmative vote of a majority of the entire board of directors of the corporation, except that the minimum number of directors shall be fixed at no less than one and the maximum number of directors shall be fixed at no more than 15. The directors shall be elected by the stockholders at each annual meeting for a one-year term. Each director shall hold office for a one-year term and until such director's successor shall have been duly elected and qualified or until his or her earlier resignation or removal. No person shall serve as a director of this corporation after the annual stockholders meeting next following his or her 70th birthday.

Nominations for election to the board of directors of the corporation at a meeting of stockholders may be made by the board, on behalf of the board, by any nominating committee appointed by that board, or by any stockholder of the corporation entitled to vote for the election of directors at the meeting. Nominations, other than those made by or on behalf of the board, shall be made by notice in writing delivered to or mailed, postage prepaid, and received by the corporate secretary not less than 30 days nor more than 60 days prior to any meeting of stockholders called for the election of directors; provided, however, that if less than 35 days' notice or prior public disclosure of the date of the meeting is given to stockholders, the nomination must be received by the corporate secretary not later than the close of business on the seventh day following the day on which the notice of meeting was mailed. The notice shall set

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forth: (i) the name and address of the stockholder who intends to make the nomination; (ii) the name, age, business address, and, if known, residence address of each nominee; (iii) the principal occupation or employment of each nominee; (iv) the number of shares of stock of the corporation which are beneficially owned by each nominee and by the nominating stockholder; (v) any other information concerning the nominee that must be disclosed of nominees in proxy solicitations pursuant to Regulation 14A of the Securities Exchange Act of 1934; and (vi) the executed consent of each nominee to serve as a director of the corporation if elected.

The chairman of the meeting of stockholders may, if the facts warrant, determine that a nomination was not made in accordance with the foregoing procedures, and if the chairman should so determine, the chairman shall so declare to the meeting and the defective nomination shall be disregarded.

Removal of directors shall be as provided in the certificate of incorporation.

Section 15. Vacancies and newly created directorships resulting from any increase in the authorized number of directors shall be filled by a majority of the remaining directors then in office, even though less than a quorum, or by a sole remaining director. Any additional director elected to fill a vacancy shall hold office until the next annual meeting of stockholders and until such director's successor shall have been elected and qualified, but in no case will a decrease in the number of directors shorten the term of any incumbent director. A director shall hold office until the next annual meeting and until the director's successor shall have been elected and qualified or until his or her earlier resignation or removal.

Section 16. The business of the corporation shall be managed by its board of directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

Section 16.1 At any meeting of stockholders called for the election of directors at which a quorum is present, a nominee for director shall be elected to the board of directors by a vote of the majority of the votes cast (meaning the votes cast "for" such nominee's election must exceed the votes "withheld" from or cast "against" such nominee's election); provided, however, that the directors shall be elected by a plurality of the votes cast in person or by proxy at any meeting of stockholders at which a quorum is present and for which (i) the corporate secretary of the corporation receives a notice in compliance with the requirements for stockholder nominees for director set forth in these bylaws that a stockholder proposes to nominate a person for election to the board of directors and (ii) such proposed nomination has not been withdrawn by such stockholder on or prior to the tenth day preceding the date the corporation first mails or otherwise transmits its notice of meeting for such meeting to its stockholders. If directors are to be elected by a plurality of the votes cast, stockholders shall not be permitted to vote "against" any nominee. Abstentions from voting and broker non-votes, if any, will not be treated as votes cast with respect to a director's election.

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### Meetings of the Board of Directors

Section 17. The board of directors of the corporation may hold meetings, both regular and special, either within or without the state of Delaware.

Section 18. The first meeting of each newly elected board of directors shall be held without other notice than this bylaw, immediately after, and at the same place as, the annual meeting of stockholders. In the event of the failure to hold the first meeting of a newly elected board at such time and place, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

Section 19. Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board.

Section 20. Special meetings of the board may be called by the chairman of the board on not less than 48 hours' notice to each director, either personally or by mail or by telegram; special meetings shall be called by the chairman of the board or corporate secretary in like manner and on like notice on the written request of two directors.

Section 21. At all meetings of the board a majority of the total number of directors then constituting the whole board shall constitute a quorum for the transaction of business and the vote of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum 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 22. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting, if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee; and any member of the board of directors or of any committee thereof designated by such board may participate in a meeting of such board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such meeting shall constitute presence in person at such meeting.

### Committees of Directors

Section 23. The board of directors shall have an executive committee and such other committees as they may designate by resolution passed by a majority of the whole board, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution, when the board of directors is not in session, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may

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require it. The member of a committee of one or a majority of the members of any other committee shall constitute a quorum for the transaction of business at a meeting thereof, and action by any committee must be authorized by the affirmative vote of the member of a committee of one or of a majority of the members of any other committee present at a meeting at which a quorum is present. If a member of a committee is absent or disqualified from voting at any meeting, the member or members thereof present at the meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member; provided that at any such meeting, the committee shall not revise or rescind any previous action of the committee without the affirmative vote of a majority of the regular members present.

Special meetings of any committee of the board may be called by the chairman of the board or the chairman of the committee on not less than 48 hours' notice to each member of the committee, either personally or by mail or by telegram. Special meetings of any committee of the board at which members participate by means of conference telephone or similar communications equipment as provided by Section 22 of these bylaws, and at which at least a majority of the members of the committee participate, may be called by the chairman of the board on not less than six hours' notice to each member of the committee either personally or by telegram.

Section 24. Each committee shall have a chairman, appointed by the board of directors, who shall preside at all meetings of such committee. Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

#### Compensation of Directors

Section 25. The directors shall receive such compensation and reimbursement of expenses, if any, of attendance at regular and special meetings of the board of directors as may be set from time to time by the board. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees, including the executive committee, may receive such compensation as shall be approved from time to time by the board.

#### Notices

Section 26. Notices to directors and stockholders shall be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the corporation. Notice by mail shall be deemed to be given when the notice is mailed. Notice to directors may also be given by telegram, and shall be deemed to be given at the time of delivery to the telegraph company. Notice to members of committees of the directors as such may also be given orally.

Section 27. Whenever any notice is required to be given under the provisions of the statutes or of the certificate of incorporation or of these bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute

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a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

#### Officers

Section 28. The board of directors shall elect any officers required by the laws of the state of incorporation and, in addition, shall elect the chairman of the board, chief executive officer, chief financial officer, secretary, treasurer, any presidents, executive vice presidents, and senior vice presidents, as it may determine are appropriate. The same person may hold two or more offices.

Section 29. Each elected officer shall hold office until the officer's successor is elected and is qualified or until the officer's earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation.

Section 30. Management may appoint such other officers as it so determines. Such appointees shall hold their offices for such terms and shall perform such duties as management may prescribe.

Section 31. Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the board of directors, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

#### Chief Executive Officer

Section 31A. The chief executive officer of the corporation, who shall be designated from time to time by the board of directors and who shall be either the chairman of the board or the president (as hereinabove provided), shall have general authority over the business and affairs of the corporation, subject to the board of directors, and shall see that all orders and resolutions of the board of directors are carried out.

#### Chairman of the Board

Section 32. The chairman of the board shall preside at all meetings of the stockholders and the board of directors. The chairman of the board may sign certificates for shares of the corporation, and any deeds, mortgages, bonds, contracts, or other instruments which the board of directors has authorized to be executed, whether or not under the seal of the corporation, except in cases where the execution thereof shall be expressly delegated by the board of directors or by these bylaws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed, and shall perform such other duties and have such other powers as from time to time may be prescribed by the board of directors.

#### President

Section 33. The president shall have general direction and supervision of the operations of the corporation, subject to the board of directors and the chairman of the board. In the absence of the chairman of the board, or in the event of his or her inability to act, the

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president shall perform the duties of the chairman of the board and when so acting shall have all the powers of, and be subject to all the restrictions upon, the chairman of the board. The president may sign certificates for shares of the corporation, and any deeds, mortgages, bonds, contracts, or other instruments which the board of directors has authorized to be executed, whether or not under the seal of the corporation, except in cases where the execution thereof shall be expressly delegated by the board of directors or by these bylaws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed, and shall perform such other duties as from time to time may be prescribed by the board of directors or as may be delegated by the chairman of the board.

#### Vice Presidents

Section 34. In the absence of the president, or in the event of his inability to act, the vice presidents (or if there be more than one, the executive vice president, senior vice presidents, or the vice presidents in the order designated, or in the absence of any designation then in the order of their election or in the order named for election) shall perform the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. Each vice president shall perform such other duties as from time to time may be assigned to him by the chairman of the board, the president, or the board of directors.

#### Treasurer

Section 35. The treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation, and the deposit of all moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected or approved by the board of directors; and in general shall perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the chairman of the board or the board of directors. If required by the board of directors, the treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the board of directors shall determine.

#### Controller

Section 36. The controller shall be the principal officer in charge of the accounts of the corporation, and shall perform such duties as from time to time may be assigned to him by the chairman of the board or the board of directors.

#### Corporate Secretary

Section 37. The corporate secretary shall: (a) keep the minutes of the stockholders' and the board of directors' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all certificates for shares prior to the issue thereof and to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws; (d) sign with the chairman of the board, the president, or a vice president, certificates for shares of the corporation, the issue of which shall have been authorized by resolution of the board of directors; (e) have general charge of the stock

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transfer books of the corporation; and (f) in general perform all duties incident to the office of corporate secretary and such other duties as from time to time may be assigned to him by the chairman of the board or the board of directors.

#### Assistant Treasurers, Assistant Controllers, and Assistant Secretaries

Section 38. The assistant treasurers shall respectively, if required by the board of directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the board of directors shall determine. The assistant secretaries as thereunto authorized by the board of directors may sign with the chairman of the board, the president, or a vice president, certificates for shares of the corporation, the issue of which shall have been authorized by a resolution of the board of directors. The assistant treasurers, assistant controllers, and assistant secretaries in general shall perform such duties as from time to time may be delegated to them by the treasurer, controller, or the corporate secretary, respectively, or assigned to them by the chairman of the board or the board of directors.

#### Compensation of Officers

Section 39. The salaries (including bonuses and similar supplemental payments) of the officers other than of assistant treasurers, assistant controllers, and assistant secretaries shall be fixed or approved from time to time by the board of directors or by the committee of directors to whom such authority shall be delegated by the board of directors, and no officer shall be prevented from receiving such salaries, bonuses, or similar supplemental payments by reason of the fact that he is also a director of the corporation.

#### Voting and Transfer of Stock in Other Corporations

Section 40. The board of directors may by resolution designate an officer or any other person to act for the corporation and vote its shares in any company in which it may own or hold stock, and may direct in what manner, and for or against what propositions and in case of elections for whom its vote shall be cast. In case, however, the board of directors has not taken express action, the chairman of the board, the president, any vice president, the treasurer, or the corporate secretary may act for this corporation on all stockholder matters connected with any such company, including voting the shares owned or held by this corporation and executing and delivering proxies, waivers and stockholder consents. Certificates of stock owned by this corporation in any other company may be endorsed for transfer by any one of the above listed officers.

#### Indemnification of Directors, Officers and Others

Section 41. Each person who is or was a director, officer or employee of the corporation, and each person who serves or may have served at the request of the corporation as a director, officer or employee of another corporation, partnership, joint venture, trust, or other enterprise (and the heirs, executors, administrators, and estates of any such person), shall be entitled to indemnity to the fullest extent now or hereafter permitted or authorized by the General Corporation Law of the State of Delaware against any expenses, judgments, fines, and settlement amounts actually and reasonably incurred by such person arising out of his or her status as such director, officer or employee. The corporation shall indemnify any director or officer of the

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corporation unless the board of directors acting reasonably and in good faith makes a determination that the person has not acted in good faith and in a manner he or she reasonably believed to have been in, or not opposed to, the best interests of the corporation. Such determination shall be made by a majority vote of a quorum consisting of directors who were not parties to the action, suit, or proceeding out of which the claim for indemnification arose, or, if such a quorum is not obtainable, by independent legal counsel selected by the board of directors. Except as expressly provided in any Indemnification Agreement, indemnification and any advancement of expenses under this bylaw will not be mandatory for any person seeking indemnity in connection with a proceeding voluntarily initiated by such person unless the proceeding was authorized by a majority of the entire board of directors. Expenses incurred by a director or officer in defending a civil or criminal action, suit, or proceeding arising out of his or her status as a director or officer shall be paid by the corporation, as these expenses become due, in advance of the final disposition of such action, suit, or proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay amounts advanced only if it shall ultimately be determined that he or she is not entitled to be indemnified by the corporation. The provisions of this Section 41 shall not be deemed exclusive of any other rights to which any person seeking indemnification may be lawfully entitled under the law of Delaware or any other competent jurisdiction. Any amendment or repeal of this bylaw shall not limit the right of any person to indemnity with respect to actions taken or omitted to be taken by such person prior to such amendment or repeal.

#### Certificates for Shares and Their Transfer

Section 42. Shares of the corporation's stock may be certificated or uncertificated, as provided in the Delaware General Corporation Law. Each holder of stock in the corporation represented by certificates, and upon request every holder of uncertificated shares, shall be entitled to have a certificate signed by or in the name of the corporation by the chairman of the board, the president, or a vice president and by the corporate secretary or an assistant secretary, or the treasurer or an assistant treasurer of the corporation, certifying the number of shares owned by him and sealed with the seal or a facsimile of the seal of the corporation. Any of or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 43. Shares of capital stock of the corporation shall be transferable in the manner prescribed by applicable law and in these bylaws. Transfers of shares of the corporation shall be made only on the records of the corporation kept at an office of the corporation or by the transfer agent designated by the corporation to transfer shares. Transfers of shares may be made only by the record holder, or by the record holder's legal representative authorized by power of attorney duly executed and filed with the Secretary or with the transfer agent designated by the corporation and, in the case of certificated shares, upon the surrender of the certificate or certificates for such shares properly endorsed.

Section 44. The board of directors may authorize the issuance of a new certificate or uncertificated shares to be issued in lieu of a certificate alleged by the holder thereof to have

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been lost, stolen, or destroyed, upon compliance by such holder, or his legal representatives, with such requirements as the board of directors may impose or authorize. Such authorization by the board of directors may be general or confined to specific instances.

#### Fixing Record Date

Section 45. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

#### Registered Stockholders

Section 46. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, 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, except as otherwise provided by the laws of Delaware.

#### Dividends

Section 47. Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation, if any, may be declared by the board of directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation.

Section 48. 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 fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interest of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

#### Checks

Section 49. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may, from time to time, designate.

#### Fiscal Year

Section 50. The fiscal year shall end on the last Saturday in December in each year.

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Seal

Section 51. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization, 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.

Amendments

Section 52. These bylaws may be altered, amended, or repealed or new bylaws may be adopted by the stockholders or by the board of directors at any regular meeting of the stockholders or of the board of directors or at any special meeting of the stockholders or of the board of directors if notice of such alteration, amendment, repeal, or adoption of new bylaws is contained in the notice of such special meeting.

**SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**MAPLEBY HOLDINGS MERGER CORPORATION**

Mapleby Holdings Merger Corporation, a corporation organized and existing under the laws of the state of Delaware, pursuant to Sections 242 and 245 of the General Corporation Law of the state of Delaware (the "DGCL"), as it may be amended, hereby certifies as follows:

1. The name of this corporation is Mapleby Holdings Merger Corporation. The original Certificate of Incorporation was filed on February 19, 2013.
2. This Second Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL, and is to become effective as of 4:31 p.m., New York time, on November 5, 2013.
3. This Second Amended and Restated Certificate of Incorporation restates and amends the Amended and Restated Certificate of Incorporation to read in its entirety as follows:

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**FIRST:** The name of the Corporation is Mapleby Holdings Merger Corporation (the "Corporation").

**SECOND:** The address of the registered office of the Corporation in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, in the city of Wilmington, County of New Castle, 19808. The name of its registered agent at that address is Corporation Service Company.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law (the "DGCL").

**FOURTH:** The total number of shares of stock which the Corporation shall have the authority to issue is 100 shares of Common Stock, \$0.01 par value.

**FIFTH:** The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

- 5.1 The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors (the "Board").
- 5.2 The directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the Bylaws of the Corporation.

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**5.3** The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the Bylaws of the Corporation. Election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

**5.4** No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article FIFTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

**5.5** In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate of Incorporation, and any Bylaws adopted by the stockholders; provided, however, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

**SIXTH:** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws of the Corporation.

**SEVENTH:** 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 by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

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IN WITNESS WHEREOF, said MAPLEBY HOLDINGS MERGER CORPORATION has caused this Second Amended and Restated Certificate of Incorporation to be signed by its Executive Vice President and General Counsel this November 5, 2013.

MAPLEBY HOLDINGS MERGER CORPORATION

By: /s/ Matthew R. Broad  
Matthew R. Broad  
Executive Vice President and General Counsel

AMENDED AND RESTATED BYLAWS  
OF  
MAPLEBY HOLDINGS MERGER CORPORATION  
A Delaware Corporation  
Effective November 5, 2013

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AMENDED AND RESTATED BYLAWS  
OF  
MAPLEBY HOLDINGS MERGER CORPORATION  
(hereinafter called the "Corporation")

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the Corporation in Delaware shall be in the City of Wilmington, County of New Castle.

Section 2. Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors (the "Board") may from time to time determine.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board. The Board may, in its sole discretion, determine that a meeting of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication in the manner authorized by the General Corporation Law of the State of Delaware (the "DGCL").

Section 2. Annual Meetings. The annual meeting of stockholders for the election of directors shall be held on such date and at such time as shall be designated from time to time by the Board. Any other proper business may be transacted at the annual meeting of stockholders.

Section 3. Special Meetings. Unless otherwise required by law, special meetings of stockholders, for any purpose or purposes, may be called by either (i) the Chairman of the Board, if there be one, (ii) the President or (iii) the Board. The ability of the stockholders to call a special meeting of stockholders is hereby specifically denied.

Section 4. Notice. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to notice of and to vote at such meeting.

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Section 5. Adjournments. Any meeting of the stockholders may be adjourned from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place, if any, thereof and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting in accordance with the requirements of Section 4 hereof shall be given to each stockholder of record entitled to notice of and to vote at the meeting.

Section 6. Quorum. Unless otherwise required by applicable law or the certificate of incorporation of the Corporation, as amended and restated from time to time (the "Certificate of Incorporation"), the holders of a majority of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 7. Voting. Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, or permitted by the rules of any stock exchange on which the Corporation's shares are listed and traded, any question brought before any meeting of the stockholders, other than the election of directors, shall be decided by the vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented at the meeting and entitled to vote on such question, voting as a single class. Unless otherwise provided in the Certificate of Incorporation, each stockholder represented at a meeting of the stockholders shall be entitled to cast one (1) vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy. The Board, in its discretion, or the officer of the Corporation presiding at a meeting of the stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 8. Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation 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, 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, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded.

Section 9. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at

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least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 10. Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders, the Board 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, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of the stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board 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, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by applicable law, 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 of business, or an officer or agent of the Corporation having custody of the book 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. If no record date has been fixed by the Board and prior action by the Board is required by applicable law, 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 adopts the resolution taking such prior action.

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Section 11. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 9 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of the stockholders.

### ARTICLE III

#### DIRECTORS

Section 1. Number and Election of Directors. The Board shall consist of not less than one nor more than fifteen members, the exact number of which shall initially be fixed by the Incorporator and thereafter from time to time by the Board. Except as provided in Section 2 of this Article III, directors shall be elected by a plurality of the votes cast at each annual meeting of stockholders and each director so elected shall hold office until the next annual meeting of stockholders and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal. Directors need not be stockholders.

Section 2. Vacancies. Unless otherwise required by law or the Certificate of Incorporation, vacancies on the Board or any committee thereof arising through death, resignation, removal, an increase in the number of directors constituting the Board or such committee or otherwise may be filled only by a majority of the directors then in office, though less than a quorum, or by a sole remaining director. The directors so chosen shall, in the case of the Board, hold office until the next annual election and until their successors are duly elected and qualified, or until their earlier death, resignation or removal and, in the case of any committee of the Board, shall hold office until their successors are duly appointed by the Board or until their earlier death, resignation or removal.

Section 3. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders.

Section 4. Meetings. The Board and any committee thereof may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board or any committee thereof may be held without notice at such time and at such place as may from time to time be determined by the Board or such committee, respectively. Special meetings of the Board may be called by the Chairman, if there be one, the President, or by any director. Special meetings of any committee of the Board may be called by the chairman of such committee, if there be one, the President, or any director serving on such committee. Notice thereof stating the place, date and hour of the meeting shall be given to each director (or, in the case of a committee, to each member of such committee) either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone, telegram or electronic means on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

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Section 5. Organization. At each meeting of the Board or any committee thereof, the Chairman of the Board or the chairman of such committee, as the case may be, or, in his or her absence or if there be none, a director chosen by a majority of the directors present, shall act as chairman. The Secretary of the Corporation shall act as secretary at each meeting of the Board and of each committee thereof. Notwithstanding the foregoing, the members of each committee of the Board may appoint any person to act as secretary of any meeting of such committee and the Secretary of the Corporation may, but need not if such committee so elects, serve in such capacity.

Section 6. Resignations and Removals of Directors. Any director of the Corporation may resign from the Board or any committee thereof at any time, by giving notice in writing or by electronic transmission to the Chairman of the Board, if there be one, the President or the Secretary of the Corporation and, in the case of a committee, to the chairman of such committee, if there be one. Such resignation shall take effect at the time therein specified or, if no time is specified, immediately; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Except as otherwise required by applicable law, any director may be removed from office at any time by the affirmative vote of the holders of at least a majority in voting power of the issued and outstanding capital stock of the Corporation entitled to vote in the election of directors. Any director serving on a committee of the Board may be removed from such committee at any time by the Board.

Section 7. Quorum. Except as otherwise required by law, or the Certificate of Incorporation or the rules and regulations of any securities exchange or quotation system on which the Corporation's securities are listed or quoted for trading, at all meetings of the Board or any committee thereof, a majority of the Board or a majority of the directors constituting such committee, as the case may be, shall constitute a quorum for the transaction of business and the act of a majority of the directors or committee members present at any meeting at which there is a quorum shall be the act of the Board or such committee, as applicable.

Section 8. Actions of the Board by Written Consent. Unless otherwise provided in the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all the members of the Board or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 9. Meetings by Means of Conference Telephone. Unless otherwise provided in the Certificate of Incorporation or these Bylaws, members of the Board, or any committee thereof, may participate in a meeting of the Board or such committee by means 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 a meeting pursuant to this Section 9 shall constitute presence in person at such meeting.

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Section 10. Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each member of a committee must meet the requirements for membership, if any, imposed by applicable law and the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading. Any committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Section 11. Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board and may be paid a fixed sum for attendance at each meeting of the Board or a stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for service as committee members.

#### ARTICLE IV

##### OFFICERS

Section 1. General. The officers of the Corporation shall be chosen by the Board and shall be a President, a Secretary and a Treasurer. The Board, in its discretion, also may choose a Chairman of the Board (who must be a director) and one or more Vice Presidents and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these Bylaws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman of the Board, need such officers be directors of the Corporation.

Section 2. Election. The Board, at its first meeting held after each annual meeting of stockholders (or action by written consent of stockholders in lieu of the annual meeting of stockholders), shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board; and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer elected by the Board may be removed at any time by the Board. Any vacancy occurring in any office of the Corporation shall be filled by the Board. The salaries of all officers of the Corporation shall be fixed by the Board.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President or any other officer authorized to do so by the Board and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders

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of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chairman of the Board. The Chairman of the Board, if there be one, shall preside at all meetings of the stockholders and of the Board. The Chairman of the Board shall be the Chief Executive Officer of the Corporation, unless the Board designates the President as the Chief Executive Officer, and, except where by law the signature of the President is required, the Chairman of the Board shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board. During the absence or disability of the President, the Chairman of the Board shall exercise all the powers and discharge all the duties of the President. The Chairman of the Board shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these Bylaws or by the Board.

Section 5. President. The President shall, subject to the control of the Board and, if there be one, the Chairman of the Board, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board are carried into effect. The President shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these Bylaws, the Board or the President. In the absence or disability of the Chairman of the Board, or if there be none, the President shall preside at all meetings of the stockholders and, provided the President is also a director, the Board. If there be no Chairman of the Board, or if the Board shall otherwise designate, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these Bylaws or by the Board.

Section 6. Vice Presidents. At the request of the President or in the President's absence or in the event of the President's inability or refusal to act (and if there be no Chairman of the Board), the Vice President, or the Vice Presidents if there are more than one (in the order designated by the Board), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board from time to time may prescribe. If there be no Chairman of the Board and no Vice President, the Board shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 7. Secretary. The Secretary shall attend all meetings of the Board and all meetings of the stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board when required. The Secretary shall give, or cause to be given, notice of all meetings of the

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stockholders and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board, the Chairman of the Board or the President, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board, then either the Board or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 8. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements.

Section 9. Other Officers. Such other officers as the Board may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board. The Board may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

## ARTICLE V

### STOCK

Section 1. Form of Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of the Corporation (i) by the Chairman of the Board, or the President or a Vice President and (ii) by the Treasurer or the Secretary of the Corporation, certifying the number of shares owned by such stockholder in the Corporation. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 2. Lost Certificates. The Board may direct a new certificate to be issued in place of any certificate theretofore 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, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board shall require and/or to give the

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Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate.

Section 3. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; provided, however, that such surrender and endorsement or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. Every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 4. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 5. Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board.

## ARTICLE VI

### NOTICES

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under applicable law, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission if consented to by the stockholder to whom the notice is given. Notice given by electronic transmission, as described above, shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a

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posting on an electronic network, together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder. Notice to directors or committee members may be given personally or by telegram, telex, cable or by means of electronic transmission.

Section 2. Waivers of Notice. Whenever any notice is required by applicable law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, or a waiver by electronic transmission by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, if any, may be declared by the Board at any regular or special meeting of the Board (or any action by written consent in lieu thereof in accordance with Section 8 of Article III hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. 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 Board from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board.

Section 4. Corporate Seal. The corporate seal, if any, shall have inscribed thereon the name of the Corporation, the year of its organization 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.

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ARTICLE VIII

INDEMNIFICATION

Section 1. Indemnification. Each person who is or was a director or officer of the Corporation, and each person who serves or may have served at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust, or other enterprise (and the heirs, executors, administrators, and estates of any such person), shall be entitled to indemnity to the fullest extent now or hereafter permitted or authorized by the General Corporation Law of the State of Delaware against any expenses, judgments, fines, and settlement amounts actually and reasonably incurred by such person arising out of his or her status as such director, officer or employee. The Corporation shall indemnify any director or officer of the Corporation unless the Board acting reasonably and in good faith makes a determination that the person has not acted in good faith and in a manner he or she reasonably believed to have been in, or not opposed to, the best interests of the Corporation. Such determination shall be made by a majority vote of a quorum consisting of directors who were not parties to the action, suit, or proceeding out of which the claim for indemnification arose, or, if such a quorum is not obtainable, by independent legal counsel selected by the Board. Except as expressly provided in any Indemnification Agreement, indemnification and any advancement of expenses under this Section 1 will not be mandatory for any person seeking indemnity in connection with a proceeding voluntarily initiated by such person unless the proceeding was authorized by a majority of the entire Board. Expenses incurred by a director or officer in defending a civil or criminal action, suit, or proceeding arising out of his or her status as a director or officer shall be paid by the Corporation, as these expenses become due, in advance of the final disposition of such action, suit, or proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay amounts advanced only if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation. The provisions of this Section 1 shall not be deemed exclusive of any other rights to which any person seeking indemnification may be lawfully entitled under the law of Delaware or any other competent jurisdiction. Any amendment or repeal of this bylaw shall not limit the right of any person to indemnity with respect to actions taken or omitted to be taken by such person prior to such amendment or repeal.

ARTICLE IX

AMENDMENTS

Section 1. Amendments. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the stockholders or by the Board; provided, however, that notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such meeting of the stockholders or Board, as the case may be. All such amendments must be approved by either the holders of a majority of the outstanding capital stock entitled to vote thereon or by a majority of the Board then in office.

\* \* \*

Adopted as of: November 5, 2013



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**OFFICE DEPOT AND OFFICEMAX COMPLETE MERGER**

*Neil Austrian and Ravi Saligram to Serve as Co-CEOs*

*Board of Directors for New Company Named*

*Updates Synergy Benefits and One-Time Merger Costs*

*Focus is Now on Executing Integration Plans and Delivering Synergies*

**Boca Raton, Fla. and Naperville, Ill., November 5, 2013** – Office Depot, Inc. and OfficeMax Incorporated today announced the completion of their merger of equals, creating a stronger, more competitive and more efficient global provider of office products, services and solutions. The combined company will use the name Office Depot, Inc. and will trade on the New York Stock Exchange under the symbol ODP.

Office Depot, Inc. is a single source for everything customers need to make their workplaces more productive, including the latest technology, core office supplies, print and document services, business services, facilities products, furniture, and school essentials.

The new Office Depot, Inc., which would have had combined revenue for the 12 months ended September 28, 2013 of approximately \$17 billion, now employs about 66,000 associates worldwide. The company serves consumers and businesses in 59 countries with more than 2,200 retail stores, award-winning e-commerce sites, and a dedicated business-to-business sales organization – all delivered through a global network of wholly owned operations, joint ventures, franchisees, licensees and alliance partners. The company’s portfolio of leading brands includes Office Depot, OfficeMax, OfficeMax Grand & Toy, Viking, Ativa, TUL, Foray, and DiVOGA.

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Customers can interact with each brand as they always have, including shopping at Office Depot and OfficeMax stores and online at [www.officedepot.com](http://www.officedepot.com) and [www.officemax.com](http://www.officemax.com). Each company will maintain its respective loyalty programs and expects to announce a combined loyalty program sometime in 2014.

#### **Austrian and Saligram to Serve as Co-CEOs**

According to the CEO Selection Committee, the uncertainty surrounding the timing and any potential conditions of the Federal Trade Commission approval made it challenging for the search to be finalized in time to coincide with the closing of the merger. The CEO Selection Committee is hopeful of completing the process in the near future, now that unconditional FTC clearance has been obtained.

In the interim, as stated in the merger agreement, Neil Austrian, Chairman and CEO of Office Depot, and Ravi Saligram, President and CEO of OfficeMax, will serve together as co-CEOs, executing the integration plans they and their teams have built to combine the two businesses.

The company will continue to operate in both Boca Raton, Florida and Naperville, Illinois until the new CEO is on board and a decision on a headquarters location is finalized.

#### **Board of Directors Named for New Company**

Office Depot, Inc. also announced the members of its new Board of Directors. Aside from Saligram and Austrian, the 12-person board includes five independent directors from each of the Office Depot and OfficeMax Boards. Additional Directors are Warren Bryant, Rakesh Gangwal, Cynthia Jamison, Jim Marino, Michael Massey, Francesca Ruiz de Luzuriaga, Jeff Smith, David Szymanski, Nigel Travis and Joseph Vassalluzzo. Travis and Gangwal will serve as Co-Chairmen/Co-Lead Directors.

The newly appointed Board members bring a wide variety of expertise, qualifications, attributes and skills to the governance of the combined company.

#### **Update to Synergy Benefits and One-Time Merger Costs**

The combined company will have significantly improved financial strength and flexibility, with the ability to deliver long-term operating performance improvements through its increased competitiveness.

As a result of the detailed integration planning that has been performed so far, total estimated annual cost synergies by the end of the third year following the close of the merger are now expected to be in the upper half of the previously estimated \$400-\$600 million range. This excludes any potential synergies from approximately \$2 billion of other operating expenses related to retail stores that have not yet been evaluated, as well as any potential working capital savings that may result from vendor or supply chain facility consolidation.

The combined company expects to incur a total of approximately \$200 million in one-time operating costs in 2013 related to the merger and up to an additional \$400 million in integration costs and approximately \$200-\$250 million in capital spending over the next three years in order to realize the estimated synergies.

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## **Transaction Information**

In accordance with the terms of the merger agreement, OfficeMax shareholders will receive 2.69 shares of Office Depot, Inc. common stock in exchange for each share of OfficeMax common stock. OfficeMax is now a wholly owned subsidiary of Office Depot, Inc. and will no longer be publicly traded. In total, approximately 240 million shares of Office Depot, Inc. common stock were issued to OfficeMax shareholders, representing approximately 45 percent of the 530 million total shares outstanding.

As of September 28, 2013, and before the redemption of the BC Partners' interest, the combined company would have had approximately \$1.2 billion in cash. Effective with the merger closing, the company also increased the size of the existing Office Depot, Inc. Amended and Restated Credit Agreement to \$1.25 billion. With total liquidity approaching \$2.5 billion before the redemption of BC Partners' interest, the newly combined company will have a strong financial foundation for the future.

In conjunction with the closing of the transaction, Office Depot, Inc. also paid \$218 million to fully redeem the ODP preferred shares that were held by BC Partners.

## **About Office Depot, Inc.**

Formed by the merger of Office Depot and OfficeMax, Office Depot, Inc. is a leading global provider of products, services, and solutions for every workplace – whether your workplace is an office, home, school, or car.

Office Depot, Inc. is a resource and a catalyst to help customers work better. We are a single source for everything customers need to be more productive, including the latest technology, core office supplies, print and document services, business services, facilities products, furniture, and school essentials.

The company has combined annual sales of approximately \$17 billion, employs about 66,000 associates, and serves consumers and businesses in 59 countries with more than 2,200 retail stores, award-winning e-commerce sites and a dedicated business-to-business sales organization – all delivered through a global network of wholly owned operations, joint ventures, franchisees, licensees and alliance partners. The company's portfolio of leading brands includes Office Depot, OfficeMax, OfficeMax Grand & Toy, Viking, Ativa, TUL, Foray, and DiVOGA.

Office Depot, Inc.'s common stock is listed on the New York Stock Exchange under the symbol ODP. Additional press information can be found at: <http://news.officedepot.com>.

Additional information about the recently completed merger of Office Depot and OfficeMax can be found at <http://officedepotmaxmerger.com>.

*All trademarks, service marks and trade names of Office Depot, Inc. and OfficeMax Incorporated used herein are trademarks or registered trademarks of Office Depot, Inc. and OfficeMax Incorporated, respectively. 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 or financial condition, or state other information relating to, among other things, the Company, the merger and other transactions contemplated by the merger agreement, based on current beliefs and assumptions made by, and information currently available to, management. Forward-looking

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statements generally will be accompanied by words such as “anticipate,” “believe,” “plan,” “could,” “estimate,” “expect,” “forecast,” “guidance,” “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 shareholders 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 adverse regulatory decisions; the risks that the combined company will not realize the estimated accretive effects of the merger or the estimated cost savings and synergies; the businesses of Office Depot and OfficeMax may not be integrated successfully or such integration may take longer, be more difficult, time-consuming or costly to accomplish than expected; the business disruption following the merger, including adverse effects on employee retention; the combined company’s ability to maintain its long-term credit rating; unanticipated changes in the markets for the combined company’s business segments; unanticipated downturns in business relationships with customers; competitive pressures on the combined company’s sales and pricing; increases in the cost of material, energy and other production costs, or unexpected costs that cannot be recouped in product pricing; the introduction of competing technologies; unexpected technical or marketing difficulties; unexpected claims, charges, litigation or dispute resolutions; new laws and governmental regulations. 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 and OfficeMax’s Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q filed with the Securities and Exchange Commission. The combined company does not assume any obligation to update or revise any forward-looking statements.