

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549
FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES AND EXCHANGE ACT OF 1934

For the quarterly period ended June 28, 1997

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 1-10948

OFFICE DEPOT, INC.

(Exact name of registrant as specified in its charter)

Delaware

59-2663954

(State or other jurisdiction incorporation or organization)

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

2200 Old Germantown Road, Delray Beach, Florida

33445

(Address of principal executive offices)

(Zip Code)

(561) 278-4800

(Registrant's telephone number including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirement for the past 90 days.

Yes

No

The registrant had 157,838,901 shares of common stock outstanding as of August 8, 1997.

OFFICE DEPOT, INC.

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OFFICE DEPOT, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF EARNINGS
(In thousands, except per share amounts)
(Unaudited)

	13 Weeks Ended June 28, 1997 -----	13 Weeks Ended June 29, 1996 -----	26 Weeks Ended June 28, 1997 -----	26 Weeks Ended June 29, 1996 -----
Sales	\$ 1,531,825	\$1,381,365	\$ 3,304,269	\$ 3,014,360
Cost of goods sold and occupancy costs	1,171,291 -----	1,056,661 -----	2,544,194 -----	2,334,278 -----
Gross profit	360,534	324,704	760,075	680,082
Store and warehouse operating and selling expenses	247,904	224,982	522,521	471,755
Pre-opening expenses	792	4,357	1,583	5,498
General and administrative expenses	45,581	40,387	91,647	84,830
Amortization of goodwill	1,311 -----	1,306 -----	2,623 -----	2,636 -----
	295,588 -----	271,032 -----	618,374 -----	564,719 -----
Operating profit	64,946	53,672	141,701	115,363
Other expense (income)				
Interest expense, net	4,306	6,318	9,059	11,174
Equity and franchise (income) loss, net	728	(78)	1,973	367
Merger costs	9,483 -----	--- -----	16,094 -----	--- -----
Earnings before income taxes	50,429	47,432	114,575	103,822
Income taxes	19,955 -----	19,195 -----	45,314 -----	42,102 -----
Net earnings	\$ 30,474 =====	\$ 28,237 =====	\$ 69,261 =====	\$ 61,720 =====
Earnings per common and common equivalent share:				
Primary	\$0.19	\$0.18	\$0.44	\$0.39
Fully diluted	\$0.19	\$0.18	\$0.43	\$0.38

OFFICE DEPOT, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)

	June 28, 1997 -----	December 28, 1996 -----
	(Unaudited)	
ASSETS		
Current assets		
Cash and cash equivalents	\$ 69,905	\$ 51,398
Receivables, net of allowances	382,781	401,900
Merchandise inventories	1,154,705	1,324,506
Deferred income taxes	35,570	29,583
Prepaid expenses	12,594	14,209
	-----	-----
Total current assets	1,655,555	1,821,596
Property and equipment, net	667,034	671,648
Goodwill, net of amortization	187,403	190,052
Other assets	64,624	57,021
	-----	-----
	\$2,574,616	\$2,740,317
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	\$ 641,163	\$ 781,963
Accrued expenses	200,623	177,680
Income taxes	27,477	25,819
Short-term borrowings and current maturities of long-term debt	2,393	142,339
	-----	-----
Total current liabilities	871,656	1,127,801
Long-term debt, less current maturities	15,851	17,128
Deferred taxes and other credits	46,672	39,814
Zero coupon, convertible subordinated notes	408,656	399,629
Common stockholders' equity		
Common stock - authorized 400,000,000 shares of \$.01 par value; issued 159,891,479 in 1997 and 159,417,089 in 1996	1,599	1,594
Additional paid-in capital	637,736	630,049
Foreign currency translation adjustment	(2,190)	(1,073)
Retained earnings	596,386	527,125
Less: 2,163,447 shares of treasury stock, at cost	(1,750)	(1,750)
	-----	-----
	1,231,781	1,155,945
	-----	-----
	\$2,574,616	\$2,740,317
	=====	=====

OFFICE DEPOT, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
Change in Cash and Cash Equivalents
(In thousands)
(Unaudited)

	26 Weeks Ended June 28, 1997	26 Weeks Ended June 29, 1996
	-----	-----
Cash flows from operating activities		
Cash received from customers	\$3,279,285	\$3,019,591
Cash paid for merchandise inventories	(2,360,515)	(2,431,936)
Cash paid for store and warehouse operating, selling and general and administrative expenses	(675,714)	(596,391)
Interest received	1,363	725
Interest paid	(1,955)	(3,286)
Income taxes paid	(47,260)	(42,597)
	-----	-----
Net cash provided by (used in) operating activities	195,204	(53,894)
	-----	-----
Cash flows from investing activities		
Capital expenditures, net	(39,474)	(79,380)
	-----	-----
Net cash used in investing activities	(39,474)	(79,380)
	-----	-----
Cash flows from financing activities		
Proceeds from exercise of stock options and sales of stock under employee stock purchase plan	5,117	9,367
Foreign currency translation adjustment	(1,117)	33
Proceeds from long- and short-term borrowings	---	120,833
Payments on long- and short-term borrowings	(141,223)	(41,363)
	-----	-----
Net cash (used in) provided by financing activities	(137,223)	88,870
	-----	-----
Net increase (decrease) in cash and cash equivalents	18,507	(44,404)
Cash and cash equivalents at beginning of period	51,398	61,993
	-----	-----
Cash and cash equivalents at end of period	\$ 69,905	\$ 17,589
	=====	=====
Reconciliation of net earnings to net cash provided by operating activities		
Net earnings	\$ 69,261	\$ 61,720
	-----	-----
Adjustments to reconcile net earnings to net cash provided by (used in) operating activities		
Depreciation and amortization	47,898	39,025
Provision for inventory shrinkage and bad debts	21,019	10,608
Accreted interest on zero coupon, convertible subordinated notes	9,027	8,420
Contributions of common stock to employee benefit and stock purchase plans	1,617	1,895
Changes in assets and liabilities		
Decrease in receivables	14,590	42,035
Decrease (increase) in merchandise inventories	153,311	(3,674)
Increase in prepaid expenses, deferred income taxes and other assets	(13,136)	(16,198)
Decrease in accounts payable, accrued expenses and deferred credits	(108,383)	(197,725)
	-----	-----
Total adjustments	125,943	(115,614)
	-----	-----
Net cash provided by (used in) operating activities	\$ 195,204	\$ (53,894)
	=====	=====

OFFICE DEPOT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. The interim financial statements as of June 28, 1997 and for the 13 and 26 week periods ended June 28, 1997 and June 29, 1996 are unaudited; however, such interim financial statements reflect all adjustments (consisting only of normal recurring accruals) necessary for a fair presentation of the financial position and the results of operations for the interim periods presented. The results of operations for the interim periods presented are not necessarily indicative of the results to be expected for the full year. Certain reclassifications were made to prior year statements to conform to current year presentations. The interim financial statements should be read in conjunction with the audited financial statements for the year ended December 28, 1996.
2. Net earnings per common and common equivalent share is based upon the weighted average number of common shares and common share equivalents outstanding during each period. Stock options are considered common stock equivalents. The zero coupon, convertible subordinated notes are not common stock equivalents. Net earnings per common and common equivalent share assuming full dilution was determined on the assumption that the convertible notes were converted as of the beginning of the periods. Net earnings under this assumption have been adjusted for interest, net of its income tax effect.

The information required to compute net earnings per share on a primary and fully diluted basis is as follows:

	13 Weeks Ended June 28, 1997 -----	13 Weeks Ended June 29, 1996 -----	26 Weeks Ended June 28, 1997 -----	26 Weeks Ended June 29, 1996 -----
Primary:				
Weighted average number of common and common equivalent shares	158,864 =====	158,718 =====	159,080 =====	158,424 =====
Fully Diluted:				
Net Earnings	\$30,474	\$28,237	\$69,261	\$61,720
Interest expense related to convertible notes, net of tax	2,860 -----	2,596 -----	5,552 -----	5,136 -----
Adjusted net earnings	\$33,334 =====	\$30,833 =====	\$74,813 =====	\$66,856 =====
Weighted average number of common and common equivalent shares	159,179	158,720	159,315	158,433
Shares issued upon assumed conversion of convertible notes	16,565 -----	16,565 -----	16,565 -----	16,565 -----
Shares used in computing net earnings per common and common equivalent share assuming full dilution	175,744 =====	175,285 =====	175,880 =====	174,998 =====

3. In September 1996, the Company entered into an agreement and plan of merger with Staples, Inc. ("Staples") and Marlin Acquisition Corp., a wholly-owned subsidiary of Staples. On April 4, 1997, the Federal Trade Commission ("FTC") initiated legal action to challenge the proposed merger. The Company and Staples contested the FTC's efforts to challenge the merger, and a preliminary injunction hearing in the Federal District Court in Washington, DC was held in May 1997. On June 30, 1997, the judge granted the FTC's request for a preliminary injunction to block the proposed merger, and on July 2, 1997, the Company and Staples announced that the merger agreement had been terminated.

During the 13 and 26 week periods ended June 28, 1997, the Company expensed approximately \$9,483,000 and \$16,094,000, respectively, of costs directly related to the terminated merger. These costs, consisting primarily of legal fees, investment banker fees and personnel retention costs, represent estimated costs incurred through June 28, 1997; however, final billings have not, as yet, been determined for certain litigation and other costs.

4. The Consolidated Statements of Cash Flows do not include the following non-cash investing and financing transactions:

	26 Weeks Ended June 28, 1997	26 Weeks Ended June 29, 1996
	-----	-----
	(in thousands)	
Additional paid-in capital related to tax benefit on stock options exercised	\$ 957	\$2,021
Equipment purchased under capital leases	---	5,252
Conversion of convertible subordinated notes to common stock	---	6

5. In February 1997, Statement of Financial Accounting Standards ("SFAS") No. 128, "Earnings Per Share," was issued. SFAS No. 128, which supersedes Accounting Principles Board ("APB") Opinion No. 15, requires a dual presentation of basic and diluted earnings per share on the face of the income statement. Basic earnings per share excludes dilution and is computed by dividing income or loss attributable to common stockholders by the weighted-average number of common shares outstanding for the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that then shared in the earnings of the entity. Diluted earnings per share is computed similarly to fully diluted earnings per share under APB Opinion No. 15. SFAS No. 128 is effective for financial statements issued for periods ending after December 15, 1997, including interim periods; earlier application is not permitted. When adopted, all prior-period earnings per share data are required to be restated. For the 13 and 26 weeks ended June 28, 1997 and June 29, 1996, basic earnings per common share, as computed under SFAS No. 128, would be the same as primary earnings per common and common equivalent share shown on the

accompanying consolidated statements of earnings. Similarly, for the 13 and 26 weeks ended June 28, 1997 and June 29, 1996, diluted earnings per common share, as computed under SFAS No. 128, would be the same as fully diluted earnings per common and common equivalent share shown on the accompanying consolidated statements of earnings.

In June 1997, SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," was issued. SFAS No. 131 establishes standards for the way that public companies report selected information about operating segments in annual financial statements and requires that those companies report selected information about segments in interim financial reports issued to shareholders. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. SFAS No. 131, which supersedes SFAS No. 14, "Financial Reporting for Segments of a Business Enterprise," but retains the requirement to report information about major customers, requires that a public company report financial and descriptive information about its reportable operating segments. Operating segments are components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance. Generally, financial information is required to be reported on the basis that it is used internally for evaluating segment performance and deciding how to allocate resources to segments. SFAS No. 131 requires that a public company report a measure of segment profit or loss, certain specific revenue and expense items, and segment assets. However, SFAS No. 131 does not require the reporting of information that is not prepared for internal use if reporting it would be impracticable. SFAS No. 131 also requires that a public company report descriptive information about the way that the operating segments were determined, the products and services provided by the operating segments, differences between the measurements used in reporting segment information and those used in the enterprise's general-purpose financial statements, and changes in the measurement of segment amounts from period to period. SFAS No. 131 is effective for financial statements for periods beginning after December 15, 1997. The Company has not determined the effects, if any, that SFAS No. 131 will have on the disclosures in its consolidated financial statements.

Item 2 MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL
CONDITION AND RESULTS OF OPERATIONS

RESULTS OF OPERATIONS

Sales increased 11% to \$1,531,825,000 in the second quarter of 1997 from \$1,381,365,000 in the second quarter of 1996 and 10% to \$3,304,269,000 for the first six months of 1997 from \$3,014,360,000 for the first six months of 1996. Approximately 38% of the increase in sales for the first six months of 1997 was due to the 38 new office supply stores opened subsequent to the second quarter of 1996. Comparable sales for stores and delivery facilities open for more than one year at June 28, 1997 increased 6% for the second quarter of 1997 and 4% for the first six months of 1997. Sales of computers, business machines and related supplies rose slightly as a percentage of total sales in the second quarter of 1997 over the comparable 1996 period, driven primarily by increases in sales of machine supplies. The average unit sales prices and comparable unit sales of computers have decreased from 1996. Average unit retail prices for copy paper and related products were approximately 20% below prior year levels as a result of a soft paper market.

The Company opened four and closed one office supply store in the second quarter of 1997, bringing the total number of office supply stores open at the end of the second quarter to 565, compared with 527 stores open at the end of the second quarter of 1996. The Company also operated 23 contract stationer and delivery warehouses (customer service centers ("CSC's")) at the end of the second quarters of both 1997 and 1996. Several of these are newer, larger facilities which replaced existing facilities acquired as part of the contract stationer acquisitions in 1993 and 1994. As of June 28, 1997, the Company also operated three Images(TM), two Office Depot Express(TM) and five Furniture At Work(TM) stores.

Gross profit as a percentage of sales was 23.5% and 23.0% during the second quarter and first half of 1997, respectively, as compared with 23.5% and 22.6% during the comparable quarter and first six months of 1996, respectively. Improvements in margin for the first six months of 1997 have been realized primarily through the decrease in sales of computers as a percentage of total sales. The Company's management believes that gross profit as a percentage of sales can fluctuate as a result of numerous factors, including continued expansion of its contract stationer business, competitive pricing in more market areas, continued change in product mix, continued fluctuation in paper prices, as well as the Company's ability to achieve purchasing efficiencies through growth in total merchandise purchases. Additionally, occupancy costs can increase in new markets and in certain existing markets where the Company plans to add new stores and warehouses to complete its market plan.

Store and warehouse operating and selling expenses as a percentage of sales were 16.2% and 15.8% in the second quarter and first six months of 1997, respectively, as compared to 16.3% and 15.7% in the second quarter and first six months of 1996, respectively. Store and warehouse operating and selling expenses consist primarily of payroll and advertising expenses. While store and warehouse operating and selling expenses as a percentage of sales continue to be significantly higher in the contract

stationer business than in the retail business, principally due to the need for a more experienced and more highly compensated sales force, these expenses have begun to decline as a percentage of sales as the Company progresses toward full integration of this business. Management expects that as the Company continues this progress, certain fixed expenses should decrease as a percentage of sales, thereby improving the Company's overall store and warehouse operating expenses as a percentage of sales. In the retail business, while the majority of store expenses vary proportionately with sales, there is a fixed cost component to these expenses that, as sales increase within each store and within a cluster of stores in a given market area, should decrease as a percentage of sales. This benefit in the retail business did not significantly improve the Company's operating margins for the first six months of 1997, since new store openings were limited during this period. When the Company first enters a large metropolitan market area where the advertising costs for the full market must be absorbed by the small number of facilities opened, advertising expenses are initially higher as a percentage of sales. As additional stores are opened in the same market, advertising costs, which are substantially a fixed expense for a market area, have been and should continue to be reduced as a percentage of total sales. The Company has also continued, while on a more limited scale than in prior periods, a strategy of opening stores in existing markets. While increasing the number of stores increases operating results in absolute dollars, this also has the effect of increasing expenses as a percentage of sales since the sales of certain existing stores in the market may be adversely affected.

Pre-opening expenses decreased to \$792,000 in the second quarter of 1997 from \$4,357,000 in the comparable quarter of 1996 and decreased to \$1,583,000 from \$5,498,000 in the first half of 1997, as compared to the same period in 1996. The Company added five new and one replacement office supply store in the first half of 1997, four of which were added in the second quarter, as compared with 26 new stores in the comparable 1996 period, 22 of which were added in the second quarter. Pre-opening expenses, which currently approximate \$150,000 per standard office supply store, are predominately incurred during a six-week period prior to the store opening. CSC pre-opening expenses are approximately \$500,000; however, these expenses may vary with the size and type of future CSC's. These expenses consist principally of amounts paid for salaries and property expenses. Since the Company's policy is to expense these items during the period in which they occur, the amount of pre-opening expenses in each period is generally proportional to the number of new stores or customer service centers opened or in the process of being opened during the period.

General and administrative expenses increased as a percentage of sales to 3.0% for the quarter ended June 28, 1997 from 2.9% for the comparable 1996 period, while these expenses were 2.8% as a percentage of sales for both the first half of 1997 and 1996. Still impacting these expenses is the Company's commitment to improving the efficiency of its management information systems and increasing its information systems programming staff. While this investment in systems has and will continue to increase general and administrative expenses in the short term, the Company believes it will provide benefits in the future. Increases resulting from this initiative have been partially offset by decreases in other general and administrative expenses, both as a result of the Company's ability to increase sales without a proportionate increase in

corporate expenditures, and as a result of reduction in certain costs achieved through systems initiatives already being implemented. However, there can be no assurance that the Company will be able to continue to increase sales without a proportionate increase in corporate expenditures. Additionally, uncertainty surrounding the terminated merger with Staples has, to some extent, resulted in a decline in corporate personnel costs and, thus, reduced general and administrative expenses the first half of 1997.

During the second quarter and first half of 1997, the Company expensed approximately \$9,483,000 and \$16,094,000, respectively, of costs directly related to the terminated merger with Staples. These costs, consisting primarily of legal fees, investment banker fees and personnel retention costs, represent estimated costs incurred through June 28, 1997; however, final billings have not, as yet, been determined for certain litigation and other costs. The Company does not expect to incur significant additional costs associated with the terminated merger in future periods.

TERMINATED MERGER

In September 1996, the Company entered into an agreement and plan of merger with Staples, Inc. ("Staples") and Marlin Acquisition Corp., a wholly-owned subsidiary of Staples. On April 4, 1997, the Federal Trade Commission ("FTC") initiated legal action to challenge the proposed merger. The Company and Staples contested the FTC's efforts to challenge the merger, and a preliminary injunction hearing in the Federal District Court in Washington, DC was held in May 1997. On June 30, 1997, the judge granted the FTC's request for a preliminary injunction to block the proposed merger, and on July 2, 1997, the Company and Staples announced that the merger agreement had been terminated.

While the Company believed that the merger with Staples would have been in the best interests of its customers and shareholders, the Company has prepared itself to continue on a stand alone basis. Many of the initiatives undertaken in planning for the merger have and will continue to strengthen the Company's support systems and operating practices.

LIQUIDITY AND CAPITAL RESOURCES

Since the Company's inception in March 1986, the Company has relied on equity capital, convertible debt and bank borrowings as the primary sources of its funds. Since the Company's store sales are substantially on a cash and carry basis, cash flow generated from operating stores provides a source of liquidity to the Company. Working capital requirements are reduced by vendor credit terms, which allow the Company to finance a portion of its inventories. The Company utilizes private label credit card programs administered and financed by financial service companies, which allow the Company to expand its store sales without the burden of additional receivables. The Company has also utilized equipment financings as a source of funds in previous periods.

Sales made to larger customers are generally made under regular commercial credit terms where the Company carries its own receivables, as opposed to sales made to smaller customers, in which payments are generally tendered in cash or by credit card. Thus, as the Company continues to expand into servicing additional large companies, it is expected that the Company's trade receivables will continue to grow.

Receivables from vendors under rebate, cooperative advertising and marketing programs, which comprise a significant percentage of total receivables, tend to fluctuate seasonally, growing during the second half of the year and declining during the first half. This is the result of collections generally made after an entire program year is completed.

In the first six months of 1997, the Company added five and replaced one office supply store and added one Furniture At Work(TM) store, compared with 26 new office supply stores, two new Images(TM) and one new Furniture At Work(TM) store added in the comparable period of 1996. Uncertainty and a loss of certain real estate personnel, both resulting from the terminated merger with Staples, has had a negative short-term effect on the Company's store opening program. Net cash provided by operating activities was \$195,204,000 in the six months of 1997, compared with net cash used by operating activities of \$53,894,000 in the comparable 1996 period. As stores mature and become more profitable, and as the number of new stores opened in a year becomes a smaller percentage of the existing store base, cash generated from operations of existing stores should provide a greater portion of funds required for new store inventories and other working capital requirements. Cash utilized for capital expenditures was \$39,474,000 and \$79,380,000 in the first six months of 1997 and 1996, respectively.

During the 26 weeks ended June 28, 1997, the Company's cash balance increased by \$18,507,000 and long- and short-term debt decreased by \$141,223,000, excluding \$9,027,000 in non-cash accretion of interest on the Company's zero coupon, convertible subordinated debt.

The Company has a credit agreement with its principal bank and a syndicate of commercial banks which provides for a working capital line and letters of credit totaling \$300,000,000. The credit agreement provides that funds borrowed will bear interest, at the Company's option, at either .3125% over the LIBOR rate, 1.75% over the Federal Funds rate, a base rate linked to the prime rate, or under a competitive bid facility. The Company must also pay a facility fee of .1875% per annum on the total credit facility. The credit facility currently expires June 30, 2000. As of June 28, 1997, the Company had no outstanding borrowings under the line of credit and had outstanding letters of credit totaling \$10,828,000 under the credit facility. The credit agreement contains certain restrictive covenants relating to various financial statement ratios. In addition to the credit facility, the bank has provided a lease facility to the Company under which the bank has agreed to purchase up to \$25,000,000 of equipment on behalf of the Company and lease such equipment to the Company. As of June 28, 1997, the Company had utilized approximately \$18,321,000 of this lease facility. In July 1996, the Company entered into an additional lease facility with another bank for up to

\$25,000,000 of equipment. As of June 28, 1997, the Company had utilized approximately \$21,484,000 of this additional lease facility.

The Company currently plans to open approximately 35 new office supply stores and relocate one delivery warehouses during the second half of 1997. Management estimates that the Company's cash requirements, exclusive of pre-opening expenses, will be approximately \$1,900,000 for each additional office supply store, which includes an average of approximately \$1,100,000 for leasehold improvements, fixtures, point-of-sale terminals and other equipment in the stores, as well as approximately \$800,000 for the portion of the store inventories that is not financed by vendors. The cash requirements, exclusive of pre-opening expenses, for a delivery warehouse is expected to be approximately \$5,300,000, which includes an average of \$3,100,000 for leasehold improvements, fixtures and other equipment and \$2,200,000 for the portion of inventories not financed by vendors. In addition, management estimates that each new store and warehouse will require pre-opening expenses of between \$115,000 and \$500,000, depending on the type of facility. In January 1996, the Company entered into a lease commitment for an additional corporate office building which was completed in July 1997. The lease is classified as a capital lease and will be recorded as such in the third quarter of 1997. This lease will result in a capital lease asset and obligation of approximately \$24,000,000 and initial annual lease commitments of approximately \$2,200,000.

NEW ACCOUNTING PRONOUNCEMENT

In February 1997, Statement of Financial Accounting Standards ("SFAS") No. 128, "Earnings Per Share" was issued. SFAS No. 128, which supersedes Accounting Principles Board ("APB") Opinion No. 15, requires a dual presentation of basic and diluted earnings per share on the face of the income statement. Basic earnings per share excludes dilution and is computed by dividing income or loss attributable to common stockholders by the weighted-average number of common shares outstanding for the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that then shared in the earnings of the entity. Diluted earnings per share is computed similarly to fully diluted earnings per share under APB Opinion No. 15. SFAS No. 128 is effective for financial statements issued for periods ending after December 15, 1997, including interim periods; earlier application is not permitted. When adopted, all prior-period earnings per share data are required to be restated. For the 13 and 26 weeks ended June 28, 1997 and June 29, 1996, basic earnings per common share, as computed under SFAS No. 128, would be the same as primary earnings per common and common equivalent share shown on the accompanying consolidated statements of earnings. Similarly, for the 13 and 26 weeks ended June 28, 1997 and June 29, 1996, diluted earnings per common share, as computed under SFAS No. 128, would be the same as fully diluted earnings per common and common equivalent share shown on the accompanying consolidated statements of earnings.

In June 1997, SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," was issued. SFAS No. 131 establishes standards for the way that public companies report selected information about operating segments in annual financial statements and requires that those companies report selected information about segments in interim financial reports issued to shareholders. It also establishes standards for related disclosures about products and services, geographic areas, and major customers. SFAS No. 131, which supersedes SFAS No. 14, "Financial Reporting for Segments of a Business Enterprise," but retains the requirement to report information about major customers, requires that a public company report financial and descriptive information about its reportable operating segments. Operating segments are components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance. Generally, financial information is required to be reported on the basis that it is used internally for evaluating segment performance and deciding how to allocate resources to segments. SFAS No. 131 requires that a public company report a measure of segment profit or loss, certain specific revenue and expense items, and segment assets. However, SFAS No. 131 does not require the reporting of information that is not prepared for internal use if reporting it would be impracticable. SFAS No. 131 also requires that a public company report descriptive information about the way that the operating segments were determined, the products and services provided by the operating segments, differences between the measurements used in reporting segment information and those used in the enterprise's general-purpose financial statements, and changes in the measurement of segment amounts from period to period. SFAS No. 131 is effective for financial statements for periods beginning after December 15, 1997. The Company has not determined the effects, if any, that SFAS No. 131 will have on the disclosures in its consolidated financial statements.

FUTURE OPERATING RESULTS

With the exception of historical matters, the matters discussed in this Quarterly Report on Form 10-Q are forward-looking statements that involve risks and uncertainties, including those discussed below. The factors discussed below could affect the Company's actual results and could cause the Company's actual results during the remainder of 1997 and beyond to differ materially from those expressed in any forward-looking statement made by the Company.

With respect to the terminated merger, the Company and its Board of Directors believed that the merger would have been in the best interests of its customers and shareholders; however the Company is fully prepared to continue on a stand-alone basis. Many of the initiatives undertaken in planning for the terminated merger have and will continue to strengthen the Company's support systems and operating practices.

The Company's strategy of aggressive store growth has been negatively affected in the short-term by the uncertainty of the terminated merger. The Company currently plans

to open approximately 35 additional stores during the second half of 1997. There can be no assurance that the Company will be able to find favorable store locations, negotiate favorable leases, hire and train employees and store managers, and integrate the new stores in a manner that will allow it to meet its expansion schedule. The failure to be able to expand by opening new stores on plan could have a material adverse effect on the Company's future sales growth and profitability.

The Company competes with a variety of retailers, dealers and distributors in a highly competitive marketplace. High-volume office supply chains, mass merchandisers, warehouse clubs, computer stores and contract stationers that compete directly with the Company operate in most of its geographic markets. This competition will increase in the future as both the Company and these and other companies continue to expand their operations. There can be no assurance that such competition will not have an adverse effect on the Company's business in the future. The opening of additional Office Depot stores, the expansion of the Company's contract stationer business in new and existing markets, competition from other office supply chains, mass merchandisers, warehouse clubs, computer stores and contract stationers, and regional and national economic conditions will all affect the Company's comparable sales results. In addition, the Company's gross margin and profitability would be adversely affected if its competitors were to attempt to capture market share by reducing prices.

In addition, as the Company expands the number of its stores in existing markets, sales of existing stores can suffer. New stores typically take time to reach the levels of sales and profitability of the Company's existing stores and there can be no assurance that new stores will ever be as profitable as existing stores because of competition from other store chains and the tendency of existing stores to share sales as the Company opens new stores in its more mature markets.

Fluctuations in the Company's quarterly operating results have occurred in the past and may occur in the future. A variety of factors such as new store openings with their concurrent pre-opening expenses, the extent to which new stores are less profitable as they commence operations, the effect new stores have on the sales of existing stores in more mature markets, the pricing activity of competitors in the Company's markets, changes in the Company's product mix, increases and decreases in advertising and promotional expenses, the effects of seasonality, acquisitions of contract stationers and stores of competitors or other events could contribute to this quarter to quarter variability.

The Company has grown dramatically over the past several years and has shown significant increases in its sales, stores in operation, employees and warehouse and delivery operations. In addition, the Company acquired a number of contract stationer operations, and the expenses incurred in the integration of acquired facilities in its delivery business have contributed to increased warehouse expenses. These integration costs are expected to continue to impact store and warehouse expenses at decreasing levels through the end of 1997. The failure to achieve the projected decrease in integration costs towards the end of 1997 could result in a significant impact on the Company's net income. The Company's growth, through both store openings and acquisitions, will continue to require the expansion and upgrading of the

Company's operational and financial systems, as well as necessitate the hiring of new managers at the store and supervisory level.

The Company has entered a number of international markets using licensing agreements and joint venture arrangements. The Company intends to enter other international markets as attractive opportunities arise. In addition to the risks described above that face the Company's domestic store and delivery operations, internationally the Company also faces the risk of foreign currency fluctuations, local conditions and competitors, obtaining adequate and appropriate inventory and, since its foreign operations are not wholly-owned, a lack of operating control in certain countries.

The Company believes that its current cash and cash equivalents, equipment leased under the Company's existing or new lease financing arrangements and funds available under its revolving credit facility should be sufficient to fund its planned store and delivery center openings and other operating cash needs, including investments in international joint ventures, for at least the next twelve months. However, there can be no assurance that additional sources of financing will not be required during the next twelve months as a result of unanticipated cash demands or opportunities for expansion or acquisition, changes in growth strategy or adverse operating results. Also, alternative financing will be considered if market conditions make it financially attractive. There also can be no assurance that any additional funds required by the Company, whether within the next twelve months or thereafter, will be available to the Company on satisfactory terms.

PART II. OTHER INFORMATION

Item 1 Legal Proceedings

Items 2-5 Not applicable.

Item 6 Exhibits and Reports on Form 8-K

- a. See "Index to Exhibits"
- b. The Company filed a Current Report on Form 8-K on May 30, 1997, effective May 27, 1997, disclosing that it had executed Amendment No. 2 to the September 4, 1996 Agreement and Plan of Merger by and among Office Depot, Staples, Inc. and Marlin Acquisition Corp., a wholly-owned subsidiary of Staples. The amendment modified the merger agreement with respect to various termination provisions. On July 2, 1997, subsequent to a Federal Trade District Court judge granting the Federal Trade Commission a preliminary injunction to block the merger, the Company and Staples, Inc. terminated the merger agreement.

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 thereunto duly authorized.

OFFICE DEPOT, INC.

(Registrant)

Date: August 12, 1997

By: /s/ BARRY J. GOLDSTEIN

Barry J. Goldstein
Executive Vice President-Finance
and Chief Financial Officer

INDEX TO EXHIBITS

EXHIBIT NO. -----	DESCRIPTION -----	PAGE NO. -----
3.1	Amended and Restated Bylaws	
27.1	Financial Data Schedule (for SEC use only)	

AMENDED AND RESTATED BY-LAWS

OF

OFFICE DEPOT, INC.

A DELAWARE CORPORATION

ARTICLE I

OFFICES

SECTION 1. REGISTERED OFFICE. The registered office of the corporation in the State of Delaware shall be located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, County of New Castle. The name of the corporation's registered agent at such address shall be The Corporation Trust Company. 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, 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.

ARTICLE II

MEETINGS OF STOCKHOLDERS

SECTION 1. ANNUAL MEETING. An annual meeting of the stockholders shall be held each year within two hundred eighty-five (285) days after the close of the immediately preceding fiscal year of the corporation for the purpose of electing directors and conducting such other proper business as may come before the meeting. The date, time and place of the annual meeting shall be determined by the Chairman of the Board or the Chief Executive Officer of the corporation; provided, that if the Chairman of the

Board or the Chief Executive Officer does not act, the Board of Directors shall determine the date, time and place 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. Such meetings may be called at any time by the Chairman of the Board, the Chief Executive Officer or, if directed by resolution of the Board of Directors, the Secretary.

SECTION 3. PLACE OF MEETINGS. Annual and special meetings may be held within or without the State of Delaware. If no designation is made, the place of meeting shall be the principal executive office of the corporation.

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 personally or by mail, by or at the direction of the Chairman of the Board, the Chief Executive Officer or the Secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, unless such person attends 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.

SECTION 5. STOCKHOLDER PROPOSALS. At an annual meeting of stockholders, only such business shall be conducted, and only such proposals shall be acted upon, as shall have been brought before the annual meeting, (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who complies with the requirements of this Article II, Section 5 and as shall otherwise be proper subjects for stockholder action and shall be properly introduced at the meeting. For a proposal to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely advance notice thereof in

writing to the Secretary of the corporation. To be timely in connection with an annual meeting, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the corporation not less than 90 days prior to the date of the previous year's annual meeting; provided, however, that if the date of an annual meeting differs from that of the previous year by more than 30 days, notice by the stockholder, to be timely, must be so delivered or received not later than seven days after notice of such meeting has been given (or such greater period of time as is set forth in such notice). To be timely in connection with a special meeting, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the corporation not less than seven days after notice of such meeting has been given (or such greater period of time as is set forth in such notice). A stockholder's notice to the Secretary shall set forth, as to each matter the stockholder proposes to bring before the meeting, (i) a description of the proposal desired to be brought before the meeting and the reasons for conducting such business at the meeting, (ii) the name and address, as they appear on the corporation's books, of the stockholder proposing such business and any other stockholders known by such stockholder to be supporting such proposal, (iii) the class and number of shares of the corporation's stock which are beneficially owned by the stockholder on the date of such notice, the dates upon which such shares were acquired and documentary support for such beneficial ownership claim, (iv) any financial interest of the stockholder in such proposal, and (v) if such proposal includes the nomination of directors, the information required by Article III, Section 3. The presiding officer of the meeting of stockholders shall determine whether the requirements of this Article II, Section 5 have been met with respect to any stockholder proposal. If the presiding officer determines that a stockholder proposal was not made in accordance with the terms of this Article II, Section 5, he or she shall notify the proposing stockholder of such determination within a reasonable period of time prior to the meeting and shall so declare at the meeting, and any such proposal shall not be acted upon at the meeting. At a special meeting of stockholders, only such business shall be conducted, and only such proposals shall be acted upon, as (i) shall have been set forth in the notice relating to such meeting required by Article II, Section 4 or as shall constitute matters incident to the conduct of the meeting as the presiding officer of the meeting shall determine to be appropriate or (ii) as shall have been brought before such special meeting by any stockholder of the corporation who complies

with the requirements of this Article II, Section 5, as shall otherwise be proper subjects for stockholder action at such special meeting and as shall be properly introduced at such meeting.

SECTION 6. STOCKHOLDERS LIST. The officer having charge of the stock ledger of the corporation shall make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting arranged in alphabetical order, 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. QUORUM. The holders of a majority of the outstanding shares of common stock present in person or represented by proxy shall constitute a quorum at all meetings of the stockholders, except as otherwise provided by statute or by the certificate of incorporation. If a quorum is not present, 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. 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 8. 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 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 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 9. 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 General Corporation Law of the State of Delaware, the certificate of incorporation of the corporation or these by-laws, 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 Securities Exchange Act of 1934 (the "Exchange Act") or any provision of the Internal Revenue Code of 1986 (the "Code"), including Code Section 162(m), in each case for which no higher voting requirement is specified by the General Corporation Law of the State of Delaware, the certificate of incorporation of the corporation or these by-laws, 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 10. VOTING BY STOCKHOLDERS IN THE ELECTION OF DIRECTORS. Unless otherwise provided in the certificate of incorporation of the corporation, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote in the election of directors at a meeting of stockholders at which a quorum is present.

SECTION 11. VOTING RIGHTS. Except as otherwise provided by the General Corporation Law of the State of Delaware or by the certificate of incorporation of the corporation or any amendments thereto and subject to Section 3 of Article VI hereof, 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 12. 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 provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally. 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 and the fact of the interest appears on the face of the proxy, the agent named in the proxy shall have all voting and other rights referred to in the proxy, notwithstanding the presence of the person executing the proxy. At each meeting of the stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the Secretary or a person designated by the Secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

SECTION 13. ACTION BY WRITTEN CONSENT. Unless otherwise provided in the certificate of incorporation, 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 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. 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. 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. 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 thereof.

ARTICLE III

DIRECTORS

SECTION 1. GENERAL POWERS. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors.

SECTION 2. NUMBER, ELECTION AND TERM OF OFFICE. The number of directors which shall constitute the Board of Directors shall be established from time to time by resolution of the Board of Directors. 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. NOMINATION OF DIRECTORS. Subject to such rights of the holders of one or more outstanding series of preferred stock of the corporation to elect one or more directors in case of arrearages in the payment of dividends as shall be prescribed in the certificate of incorporation of the corporation or in the resolutions of the Board of Directors providing for the establishment of any such series, only persons who are nominated in accordance with the procedures set forth in this Article III, Section 3 shall be eligible for election as, and to serve as, directors. Nominations of persons for election to the Board of Directors may be made at a meeting of the stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation entitled to vote at such meeting in the election of directors who complies with the requirements of this Article III, Section 3. Such

nominations, other than those made by or at the direction of the Board of Directors, shall be preceded by timely advance notice in writing to the Secretary of the corporation. To be timely in connection with an annual meeting, a stockholder's notice shall be delivered to, or mailed and received at, the principal executive offices of the corporation not less than 90 days prior to the date of the previous year's annual meeting; PROVIDED, HOWEVER, that if the date of an annual meeting differs from that of the previous year by more than 30 days, notice by the stockholder, to be timely, must be so delivered or received not later than seven days after notice of such meeting has been given (or such greater period of time as is set forth in such notice). To be timely in connection with a special meeting, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the corporation not less than seven days after notice of such meeting has been given (or such greater period of time as is set forth in such notice). A stockholder's notice to the Secretary shall set forth (x) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of such person, (ii) the principal occupation or employment of such person, (iii) the number of shares of each class of capital stock of the corporation beneficially owned by such person, (iv) the written consent of such person to having such person's name placed in nomination at the meeting and to serve as a director if elected, and (v) any other information required by Regulation 14(a)-8 under the Securities Exchange Act of 1934 or any replacement thereof and (y) as to the stockholder giving the notice, (i) the name and address, as they appear on the corporation's books, of such stockholder and (ii) the number of shares of each class of voting stock of the corporation which are then beneficially owned by such stockholder, the dates upon which such shares were acquired and documentary support for such beneficial ownership claim. The presiding officer of the meeting of stockholders shall determine whether the requirements of Article III, Section 3 have been met with respect to any nomination or intended nomination. If the presiding officer determines that any nomination was not made in accordance with the requirements of this Article III, Section 3, he shall notify the proposing stockholder of such determination within a reasonable period of time prior to the meeting and shall so declare at the meeting, and the defective nomination shall be disregarded.

SECTION 4. 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 be specified, at the time of its receipt by the Chairman of the Board, Chief Executive Officer or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

SECTION 5. VACANCIES. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may 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.

SECTION 6. ANNUAL MEETINGS. The annual meeting of each newly elected Board of Directors shall be held without other notice than this By-law immediately after, and at the same place as, the annual meeting of stockholders.

SECTION 7. OTHER MEETINGS AND NOTICE. Regular meetings, other than the annual meeting, of the Board of Directors may be held within or without the State of Delaware and without notice at such time and at such place as shall from time to time be determined by resolution of the Board of Directors. Special meetings of the Board of Directors may be called (i) by the Chairman of the Board or the Chief Executive Officer on at least 24 hours prior notice to each director, either personally, by telephone, by mail, by telegraph or by telecopy or (ii) upon the request of any director, by the Secretary on at least 72 hours such prior notice.

SECTION 8. CHAIRMAN OF THE BOARD. The Chairman of the Board shall be appointed by resolution of the Board of Directors and shall preside at all meetings of the Board of Directors and stockholders.

SECTION 9. 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. 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. 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 10. COMMITTEES. The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation, which to the extent provided in such resolution or these By-laws shall have and may exercise the powers of the Board of Directors in the management and affairs of the corporation, except as otherwise limited by law. 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 the committee. Such committee or committees shall 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. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

SECTION 11. 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 8 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

SECTION 12. EXECUTIVE COMMITTEE. The Executive Committee shall consist of members of the Board of Directors who shall from time to time be appointed to such committee by resolution of the Board of Directors. To the extent provided in the resolution

establishing the Executive Committee or any subsequent resolution of the Board of Directors, the Executive Committee shall have and may exercise all of the authority of the Board of Directors in the management of the corporation, except that the committee shall have no authority in reference to amending the certificate of incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, amending the By-laws of the corporation, electing or removing directors or officers of the corporation or members of the Executive Committee, declaring dividends or amending, altering, or repealing any resolution of the Board of Directors which, by its terms, provides that it shall not be amended, altered or repealed by the Executive Committee.

SECTION 13. AUDIT COMMITTEE. The Audit Committee shall consist of members of the Board of Directors who shall from time to time be appointed to such committee by resolution of the Board of Directors. The Audit Committee shall recommend to the Board of Directors the appointment of the corporation's independent accountants. The Audit Committee shall meet with the independent auditors to discuss the scope of the audit, any nonaudit related assignments, fees, the independence of the accountants, the results of the audit and the effectiveness of the corporation's internal accounting controls, which discussions the Audit Committee shall then report to the Board of Directors. The Audit Committee shall be accessible to the independent accountants, with or without management's knowledge, to discuss auditing and any other accounting matters.

SECTION 14. COMPENSATION COMMITTEE. The Compensation Committee shall consist of members of the Board of Directors who shall from time to time be appointed to such committee by resolution of the Board of Directors. The Compensation Committee shall recommend action by the Board of Directors regarding the salaries and incentive compensation of elected officers of the corporation. The Compensation Committee shall also review the compensation of certain other principal management employees and administer the employee benefit plans of the corporation.

SECTION 15. NOMINATING COMMITTEE. The Nominating Committee shall consist of members of the Board of Directors who shall from time to time be appointed to such committee by resolution of the

Board of Directors. The Nominating Committee shall evaluate the performance of incumbent directors, consider nominees recommended by management or stockholders of the corporation, and develop its recommendations to be presented to the Board of Directors for their approval.

SECTION 16. STOCK OPTION PLAN COMMITTEE. The Board of Directors may appoint a Stock Option Plan Committee comprised of two or more directors, each of whom meet the qualifications for "disinterested directors" as set forth under Rule 16b-3 under the Exchange Act and for "outside directors" as set forth under Section 162(m) of the Code. Unless otherwise directed by resolution of the Board of Directors, the Stock Option Plan Committee shall administer the stock option plans of the corporation. If no Stock Option Plan Committee is appointed, the Compensation Committee shall perform the functions of the Stock Option Plan Committee, in which case the Compensation Committee shall be comprised of two or more directors, each of whom meet the qualifications for "disinterested directors" as set forth under Rule 16b-3 and for "outside directors" as set forth under Section 162(m).

SECTION 17. USE OF COMMUNICATIONS EQUIPMENT. 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 18. WAIVER OF NOTICE AND PRESUMPTION OF ASSENT. Any member of the Board of Directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting, unless such member attends 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. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the Secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the Secretary of the corporation immediately after the adjournment of the

meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

SECTION 19. ACTION BY WRITTEN CONSENT. Unless otherwise restricted by the certificate of incorporation, 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 of Directors or committee.

SECTION 20. COMPENSATION. Unless otherwise restricted by the certificate of incorporation, 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.

ARTICLE IV

OFFICERS

SECTION 1. NUMBER. The officers of the corporation shall be elected by the Board of Directors and shall consist of a Chief Executive Officer, a President, a Chief Financial Officer, one or more Vice-Presidents, a Treasurer, a Secretary and such other officers and assistant officers as may be deemed necessary or desirable by the Board of Directors. Any number of offices may be held by the same person, except that neither the Chairman of the Board nor the President shall also hold the office of either Treasurer or Secretary. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable, except that the office of Secretary shall be filled as expeditiously as possible.

SECTION 2. ELECTION AND TERM OF OFFICE. The officers of the corporation shall be elected annually by the Board of Directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as conveniently may be. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each 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.

SECTION 3. REMOVAL. Any officer or agent elected by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

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

SECTION 5. COMPENSATION. Compensation of all officers shall be fixed by the Board of Directors, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation.

SECTION 6. CHIEF EXECUTIVE OFFICER. The Chief Executive Officer shall be the chief executive officer of the corporation and shall have the powers and perform the duties incident to that position. Subject to the powers of the Board of Directors, the Chief Executive Officer shall have general and active charge of the entire business and affairs of the corporation, and shall be its chief policy making officer. The Chief Executive Officer shall have such other powers and perform such other duties as the Board of Directors or these By-laws may, from time to time, prescribe. Whenever the office of President is vacant or the President is unable to serve, by reason of sickness, absence or otherwise, the Chief Executive Officer shall perform all the duties and responsibilities and exercise all the powers of the President.

SECTION 7. THE PRESIDENT. The President shall be the chief operating officer and, subject to the powers of the Board of Directors and the Chief Executive Officer, shall have general charge of the business, affairs and property of the corporation, and control over its officers, agents and employees, and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the corporation. The

President shall have such other powers and perform such other duties as the Board of Directors, the Chief Executive Officer, or these By-laws may, from time to time, prescribe.

SECTION 8. CHIEF FINANCIAL OFFICER. The Chief Financial Officer of the corporation shall, under the direction of the Chief Executive Officer, be responsible for all financial and accounting matters and for the direction of the office of Treasurer. The Chief Financial Officer shall have such other powers and perform such other duties as the Board of Directors, the Chief Executive Officer, the President, or these By-laws may, from time to time, prescribe. If no Treasurer is elected, the Chief Financial Officer shall perform all the duties and responsibilities and exercise all of the powers of the Treasurer.

SECTION 9. VICE-PRESIDENTS. The Vice-President, or if there shall be more than one, the Vice-Presidents, shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, the President, or these By-laws may, from time to time, prescribe.

SECTION 10. THE TREASURER AND ASSISTANT TREASURER. The Treasurer shall have the custody of the corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, shall deposit all monies and other valuable effects in the name and to the credit of the corporation as may be ordered by the Board of Directors, shall cause the funds of the corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meeting or when the Board of Directors so requires, an account of the Treasurer's actions. The Treasurer shall have such other powers and perform such other duties as the Board of Directors, the Chief Executive Officer, the President, or these By-laws may, from time to time, prescribe. If required by the Board of Directors, the Treasurer shall give the corporation a bond (which shall be rendered every six years) in such sums and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of Treasurer and for the restoration to the corporation, in case of death, resignation, retirement, or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the possession or under the control of the Treasurer belonging to the corporation. The Assistant Treasurer, or if there

shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, shall in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, the President, or these By-laws may, from time to time, prescribe.

SECTION 11. THE SECRETARY AND ASSISTANT SECRETARIES. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose. Under the President's supervision, the Secretary shall give, or cause to be given, all notices required to be given by these By-laws or by law; shall have such powers and perform such duties as the Board of Directors, the Chief Executive Officer, the President, or these By-laws may, from time to time, prescribe and shall have custody of the corporate seal of the corporation. The Secretary, or an Assistant Secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such Secretary or Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his or her signature. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, the President, or these By-laws may, from time to time, prescribe.

SECTION 12. OTHER OFFICERS, ASSISTANT OFFICERS AND AGENTS. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these By-laws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the Board of Directors.

SECTION 13. ABSENCE OR DISABILITY OF OFFICERS. In the case of the absence or disability of any officer of the corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the Board of Directors may by resolution delegate the powers and duties of such officer to

any other officer or to any director, or to any other person whom it may select.

ARTICLE V

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 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 or 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, including service with respect to employee benefit plans ("indemnitee"), whether the basis of such proceeding is 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 General Corporation Law of the State of Delaware, 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 expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably 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; provided however, that, except as provided in Section 2 of this Article V with respect to proceedings to enforce rights to indemnification, the corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) which has been initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors. The right to indemnification conferred in this Article V shall be a contract right and, subject to Section 2 hereof, shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided,

however, that if the General Corporation Law of the State of Delaware 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 indemnitee, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it ultimately is determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Article V or otherwise.

SECTION 2. CLAIMS. Any indemnification of a director or officer of the corporation or advance of expenses under Section 1 of this Article V shall be made promptly, and in any event within 30 days, upon the written request of the director or officer. If a determination by the corporation that the director or officer is entitled to indemnification pursuant to this Article V is required, and the corporation fails to respond within 30 days to a written request for indemnity, the corporation shall be deemed to have approved the request. If the corporation denies a written request for indemnification or advancing of expenses, in whole or in part, or if payment in full pursuant to such request is not made within 30 days, the right to indemnification or advances as granted by this Article V shall be enforceable by the director or officer in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the corporation. 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, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware for the corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its 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 General Corporation Law of the State of Delaware, nor

an actual determination by the corporation (including its Board of Directors, independent legal counsel, or its 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.

SECTION 3. RIGHTS NOT EXCLUSIVE. The rights conferred on any person by Sections 1 and 2 of this Article V shall not be exclusive of any other rights which such person may have or hereafter acquire under these By-laws, any statute, the certificate of incorporation, any agreement, any vote of stockholders or disinterested directors or otherwise.

SECTION 4. EMPLOYEES AND AGENTS. Persons who are not covered by the foregoing provisions of this Article V 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.

SECTION 5. 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 was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her and incurred by him or her in any such capacity, whether or not the corporation would have the power to indemnify such person against such liability under this Article V.

SECTION 6. CONTRACT RIGHT. The provisions of this Article V shall be deemed to be a contract right between the corporation and each director or officer who serves in any such capacity at any time while this Article V and the relevant provisions of the General Corporation Law of the State of Delaware or other applicable law are in effect, and any repeal or modification of this Article V or any such law shall not affect any rights or obligations then existing with respect to any state of facts or proceeding then existing.

SECTION 7. MERGER OR CONSOLIDATION. For purposes of this Article V, 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 V 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.

ARTICLE VI

CERTIFICATES OF STOCK

SECTION 1. FORM. Every holder of stock in the corporation 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 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. If such a certificate is countersigned (1) by a transfer agent or an assistant transfer agent other than the corporation or its employee or (2) by a registrar, other than the corporation or its employee, the signature of any such Chairman of the Board, President, Vice-President, Treasurer, Assistant Treasurer, Secretary, or Assistant Secretary may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers 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 or officers of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the books of the corporation. Shares of stock of the corporation shall only be transferred on the books of the corporation by the holder of

record thereof or by such holder's attorney duly authorized in writing, 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. In that event, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate or certificates and record the transaction on its books. The Board of Directors may appoint a bank or trust company organized under the laws of the United States or any state thereof to act as its transfer agent or registrar 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. 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 such meeting. 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 of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

SECTION 4. 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. If no record date has been fixed by the Board of Directors, 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 of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of 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 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 5. 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 or 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. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the

close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 6. 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, to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner. 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 VII

GENERAL PROVISIONS

SECTION 1. DIVIDENDS. 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. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

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

SECTION 3. CONTRACTS. The Board of Directors may authorize any officer or officers or any agent or agents of the corporation to enter into any contract or to execute and deliver any

instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

SECTION 4. LOANS. 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 company held by the corporation shall be voted by the Chief Executive Officer or the President, 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. INSPECTION OF BOOKS AND RECORDS. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person's interest as a stockholder. In

every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in the State of Delaware or at its principal place of business.

SECTION 9. SECTION HEADINGS. Section headings in these By-laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

SECTION 10. INCONSISTENT PROVISIONS. In the event that any provision of these By-laws is or becomes inconsistent with any provision of the certificate of incorporation, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these By-laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

SECTION 11. ELECTION OUT OF SECTION 203. The corporation expressly elects not to be governed by Section 203 of the General Corporation Law of Delaware. The By-law amendment adopting this provision shall not be further amended by the Board of Directors of the corporation.

ARTICLE VIII

AMENDMENTS

These By-laws may be amended, altered, or repealed and new By-laws adopted at any meeting of the Board of Directors by a majority vote. The fact that the power to adopt, amend, alter, or repeal the By-laws has been conferred upon the Board of Directors shall not divest the stockholders of the same powers.

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE FINANCIAL STATEMENTS OF OFFICE DEPOT, INC. FOR THE QUARTER ENDED JUNE 28, 1997, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

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