

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K12B

Notification that a class of securities of successor issuer is deemed to be registered pursuant to section 12(b)

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FILER

MOSAIC CO

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SIC: **2870** Agricultural chemicals

Mailing Address

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PLYMOUTH MN 55441

Business Address

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PLYMOUTH MN 55441
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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): May 24, 2011

THE MOSAIC COMPANY

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-32327
(Commission
File Number)

20-1026454
(IRS Employer
Identification No.)

3033 Campus Drive
Suite E490
Plymouth, Minnesota
(Address of principal executive offices)

55441
(Zip Code)

Registrant's telephone number, including area code: (800) 918-8270

Not applicable

(Former Name or Former Address, if Changed Since Last Report)

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

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

Item 2.01. Completion of Acquisition or Disposition of Assets.

On May 25, 2011, The Mosaic Company (“Old Mosaic”) completed its merger (the “Merger”) with GNS Merger Sub LLC (“Merger Sub”), a wholly-owned subsidiary of GNS II (U.S.) Corp. (“New Mosaic”, which has been renamed “The Mosaic Company” as described below under Item 5.03), whereby Merger Sub merged with and into Old Mosaic with Old Mosaic continuing as the surviving corporation in the Merger. As a result of the Merger, (i) Old Mosaic (renamed “MOS Holdings Inc.” pursuant to the Merger) has become a wholly-owned subsidiary of New Mosaic, (ii) a portion of the shares of Old Mosaic common stock held by Cargill, Incorporated (“Cargill”) were converted, on a one-for-one basis, into the right to receive shares of each series of New Mosaic class A common stock and each series of New Mosaic class B common stock, and (iii) each of the other outstanding shares of Old Mosaic common stock (including a portion of the shares of Old Mosaic common stock held by Cargill) were converted, on a one-for-one basis, into the right to receive shares of New Mosaic common stock.

The Merger was effected pursuant to the terms of the previously announced Merger and Distribution Agreement, dated as of January 18, 2011 (as amended, modified or supplemented from time to time, the “Merger Agreement”), by and among Old Mosaic, New Mosaic, Merger Sub, Cargill and, for the limited purposes set forth therein, the Margaret A. Cargill Foundation, the Acorn Trust, the Lilac Trust and the Anne Ray Charitable Trust (collectively, the “MAC Trusts”). The Merger Agreement was adopted by Old Mosaic stockholders at a special meeting of stockholders held on May 11, 2011.

Upon completion of the Merger, New Mosaic replaced Old Mosaic as the listed parent corporation for Mosaic’s consolidated operations. At such time, New Mosaic common stock was deemed to be registered under Section 12(b) of the Securities Exchange Act of 1934, as amended, pursuant to Rule 12g-3(a) promulgated thereunder and commenced trading on the New York Stock Exchange under the symbol “MOS”. For purposes of Rule 12g-3(a), New Mosaic is the successor issuer to Old Mosaic. Old Mosaic (under the name “MOS Holdings Inc.”) will continue to file reports as a voluntary filer under the Securities Exchange Act of 1934, as amended, in connection with contractual obligations under certain of the company’s debt securities.

The directors and executive officers of New Mosaic immediately following the Merger are the same individuals who were directors and executive officers, respectively, of Old Mosaic immediately prior to the Merger. As previously disclosed in New Mosaic’s proxy statement/prospectus dated April 11, 2011, filed on April 11, 2011 pursuant to Rule 424(b)(3) (Registration No. 333-172076), in connection with entering into the memorandum of understanding regarding the settlement of the stockholder lawsuits, one of the two Cargill-affiliated directors on the New Mosaic board of directors (as will be determined in the sole discretion of New Mosaic in consultation with Cargill) will resign as a director of New Mosaic no later than the date of the next annual meeting of New Mosaic stockholders.

Immediately following the completion of the Merger, the outstanding share capital of New Mosaic is as follows:

- 275,812,954 shares of common stock;
- 57,768,374 shares of class A common stock; and
- 112,991,398 shares of class B common stock.

Immediately following the Merger, New Mosaic had the same number of outstanding shares of stock as did Old Mosaic immediately prior the Merger.

The foregoing description of the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Merger Agreement, a copy of which was filed as Exhibit 2.1 to Old Mosaic’s Current Report on Form 8-K filed with the Securities and Exchange Commission on January 19, 2011.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth in Items 2.01 and 5.03 are incorporated by reference herein.

Item 5.01. Changes in Control of Registrant.

The information set forth in Items 2.01 and 8.01 are incorporated by reference herein.

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

The information set forth in Item 2.01 is incorporated by reference herein.

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

As contemplated by the Merger Agreement, immediately prior to the Merger New Mosaic's restated certificate of incorporation became effective, which recapitalized New Mosaic's share capital (as described below). New Mosaic's restated certificate of incorporation authorizes the issuance of common stock, four series of class A common stock and three series of class B common stock and, among other things, provides that:

each share of each series of class A common stock is entitled to one vote per share with respect to all matters to which holders of class A common stock are entitled to vote, is subject to certain transfer restrictions, is converted into shares of common stock at designated times and has certain class voting rights, as set forth in the restated certificate of incorporation;

each share of each series of class B common stock is entitled to ten votes per share with respect to the election of directors and one vote per share with respect to all other matters on which holders of class B common stock are entitled to vote, is subject to certain transfer restrictions, is converted into a share of either class A common stock or common stock in certain circumstances and has certain class voting rights, as set forth in the restated certificate of incorporation; and

each share of the common stock is entitled to one vote per share with respect to all matters to which holders of common stock are entitled to vote and has certain class voting rights, as set forth in the restated certificate of incorporation.

In addition, immediately following the Merger, New Mosaic also filed a restated certificate of incorporation (which changed the name of New Mosaic to "The Mosaic Company").

This summary description of New Mosaic's common stock, class A common stock and class B common stock does not purport to be complete and is qualified in its entirety by reference to New Mosaic's restated certificate of incorporation filed as Exhibit 3.1 hereto and incorporated by reference herein.

A detailed description of New Mosaic's restated certificate of incorporation was previously reported in New Mosaic's proxy statement/prospectus dated April 11, 2011, which description is incorporated by reference herein.

Bylaws

As contemplated by the Merger Agreement, New Mosaic's amended and restated bylaws were adopted by the New Mosaic board of directors, which bylaws are identical to the bylaws of Old Mosaic immediately prior to the Merger but without provisions relating to a majority stockholder that were included in the Old Mosaic bylaws.

This summary description of the bylaw amendments does not purport to be complete and is qualified in its entirety by reference to the amended and restated bylaws of New Mosaic filed as Exhibit 3.2 hereto and incorporated by reference herein.

Item 8.01. Other Events.**Tax Agreement**

On May 24, 2011, Old Mosaic, New Mosaic and Cargill entered into Amendment No. 1 to the Tax Agreement (the "Tax Agreement Amendment"), a copy of which is attached hereto as Exhibit 2.1, which amends the previously filed Tax Agreement, dated January 18, 2011 (the "Tax Agreement"), among Old Mosaic, New Mosaic and Cargill. The Tax Agreement Amendment clarifies that the payment of a stock dividend by New Mosaic prior to the second anniversary of the closing of Merger constitutes a "Prohibited Act" under the Tax Agreement, and makes certain other administrative changes.

The foregoing description of the Tax Agreement Amendment does not purport to be complete and is qualified in its entirety by reference to the complete text of the Tax Agreement Amendment, which is attached as Exhibit 2.1 hereto and incorporated herein by reference.

Governance Agreement

On May 25, 2011, New Mosaic, Old Mosaic and the other stockholder parties thereto entered into an Amended and Restated Governance Agreement (the "A&R Governance Agreement"), a copy of which is attached hereto as Exhibit 2.2, which amends and

restates the previously announced Governance Agreement, dated January 18, 2011, among New Mosaic, Old Mosaic and the other stockholder parties thereto, in order to implement the changes agreed to in connection with entering into the memorandum of understanding regarding the settlement of the stockholder lawsuits previously described in New Mosaic's proxy statement/prospectus dated April 11, 2011 and to reflect the appropriate signatories to such agreement in connection with the closing of the Merger. As a condition to closing of the Merger, the MAC Trusts and any

other exchanging Cargill stockholder who, to Cargill' s knowledge at the time of closing, was reasonably expected to, or was part of a group of stockholders that was reasonably expected to, beneficially own 5% or more of the voting power of New Mosaic for the election of directors immediately following the Split-off (as defined below), has become a party to the A&R Governance Agreement.

The foregoing description of the A&R Governance Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the A&R Governance Agreement, which is attached as Exhibit 2.2 hereto and incorporated herein by reference.

Cargill Split-off and Debt-Exchange

Pursuant to the Merger Agreement, immediately following the Merger, Cargill consummated a split-off (the "Split-off") in which it exchanged all of the shares of New Mosaic class A common stock, New Mosaic class B common stock and New Mosaic common stock it received in the Merger (other than shares of New Mosaic common stock retained by Cargill (the "Cargill Retained Shares")) for all or a portion of the outstanding shares of Cargill common stock held by the MAC Trusts and by other Cargill stockholders who participated in the Split-off.

Also pursuant to the Merger Agreement, Cargill consummated a debt exchange ("Debt Exchange"), pursuant to which it exchanged with Cargill debt holders all of the Cargill Retained Shares for indebtedness of Cargill pursuant to a debt exchange agreement.

As a result of the Split-off and Debt Exchange, Cargill distributed its entire approximately 64% stake, or 286 million shares, in New Mosaic to Cargill' s stockholders and debt holders.

Secondary Offering

The previously announced registered secondary offering ("Secondary Offering") of 100,000,000 shares of New Mosaic common stock (plus an additional 15,000,000 shares of New Mosaic common stock pursuant to the over-allotment option), at a price of \$65.00 per share, closed on May 25, 2011. New Mosaic received no proceeds from the Secondary Offering.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Reference is made to the Exhibit Index hereto with respect to the exhibits filed herewith.

SIGNATURES

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

THE MOSAIC COMPANY

Date: May 25, 2011

By: /s/ Richard L. Mack

Name: Richard L. Mack

Title: Executive Vice President, General Counsel and Corporate Secretary

EXHIBIT INDEX

Exhibit

<u>No.</u>	<u>Description</u>
2.1	Amendment No. 1 to the Tax Agreement, dated as of May 24, 2011, by and among New Mosaic, Old Mosaic and Cargill.
2.2	Amended and Restated Governance Agreement, dated as of May 25, 2011, by and among New Mosaic, Old Mosaic, and each of the other parties thereto.
3.1	Restated Certificate of Incorporation of New Mosaic.
3.2	Amended and Restated Bylaws of New Mosaic.

**AMENDMENT NO. 1 TO
TAX AGREEMENT**

AMENDMENT NO. 1, dated as of May 24, 2011 (this "Amendment"), to the Tax Agreement (the "Tax Agreement"), dated as of January 18, 2011, by and among The Mosaic Company ("Mosaic"), GNS II (U.S.) Corp. ("GNS") and Cargill, Incorporated ("Cargill"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Tax Agreement.

WHEREAS, Mosaic, GNS and Cargill entered into the Tax Agreement; and

WHEREAS, Mosaic, GNS and Cargill each desire to amend the Tax Agreement as provided herein.

NOW, THEREFORE, in consideration of the mutual agreements specified in this Amendment, Mosaic, GNS and Cargill each agree as follows:

1. The definition of Mosaic Employee Award Amount is hereby deleted in its entirety and replaced with the following:

"Mosaic Employee Award Amount" shall mean that number of shares, determined from time to time, equal to the maximum number of shares of Mosaic Common Stock (or, as a result of the assumption by M Holdings of Mosaic Plans pursuant to Section 3.5 of the Merger and Distribution Agreement, of M Holdings Stock) that could potentially be issued pursuant to options, restricted stock units, and other equity awards granted or agreed to be granted by Mosaic within the period beginning two years prior to the date hereof and ending on the Closing Date, including, for the avoidance of doubt, awards described in Section 7.1(a)(iii)(y) of the Merger and Distribution Agreement but excluding any awards that are included in the Mosaic Issued Amount or that have been terminated.

2. The definition of Mosaic Issued Amount is hereby deleted in its entirety and replaced with the following:

"Mosaic Issued Amount" shall mean the number of shares of Mosaic Common Stock that were the subject of any Primary Equity Issuance within the period beginning two years prior to the date hereof and ending on the Closing Date (other than any shares of Mosaic Common Stock Transferred in the Merger), including, for the avoidance of doubt Mosaic Common Stock described in Section 7.1(a)(iii)(x) of the Merger and Distribution Agreement.

3. The definition of Permitted Trust Distributions is hereby deleted in its entirety.

4. The definition of Primary Equity Issuance is hereby deleted in its entirety and replaced with the following:

"Primary Equity Issuance" shall mean, without duplication, a Transfer of Equity Securities by Mosaic, M Holdings or any of their Subsidiaries or an announcement of an intention to Transfer Equity Securities by Mosaic, M Holdings or any of their Subsidiaries.

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5. Section 2.01(bb) is hereby deleted in its entirety and replaced with the following:

(bb) Aside from the reimbursement of up to \$18.5 million of Mosaic's out-of-pocket expenses by Cargill, each of M Holdings and Mosaic will pay its own expenses, if any, incurred in connection with the Transactions
 6. Section 2.05(a)(iv) is hereby deleted in its entirety and replaced with the following:

(iv) subdivide (by any stock split, reclassification, recapitalization or otherwise) or declare or pay any stock dividend in respect of, or combine (by reverse stock split, reclassification, recapitalization or otherwise), the outstanding shares of M Holdings Common Stock, M Holdings Class A Common Stock (or any series thereof) or M Holdings Class B Common Stock (or any series thereof) (other than Permitted Conversions);
 7. Section 2.05(a)(viii) is hereby deleted in its entirety and replaced with the following:

(viii) (A) amend, alter or change the voting rights of any shares of M Holdings Stock other than a conversion of M Holdings Class B Common Stock into Low-Vote Shares pursuant to a Class B Conversion Approval or (B) pay a stock dividend that increases or decreases the proportionate voting rights of any class of M Holdings Stock;
 8. The parties hereto agree that, except as expressly modified or amended hereby, the Tax Agreement continues in full force and effect in accordance with its terms. This Amendment shall become legally binding and effective only upon the execution hereof by each of the parties hereto.
 9. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Amendment may refer to the Tax Agreement without making specific reference to this Amendment, but nevertheless, all such references shall include this Amendment unless the context otherwise requires.
 10. This Amendment shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to choice of law principles.
 11. This Amendment may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

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

CARGILL, INCORPORATED

By: /s/ Linda Cutler

Name: Linda Cutler

Title: Vice President, Deputy General Counsel
and Assistant Corporate Secretary

[Signature Page to Amendment No. 1 to the Tax Agreement]

THE MOSAIC COMPANY

By: /s/ Richard L. Mack

Name: Richard L. Mack

Title: Executive Vice President, General Counsel
and Corporate Secretary

GNS II (U.S.) CORP.

By: /s/ Richard L. Mack

Name: Richard L. Mack

Title: Executive Vice President, General Counsel
and Corporate Secretary

[Signature Page to Amendment No. 1 to the Tax Agreement]

**AMENDED & RESTATED
GOVERNANCE AGREEMENT**

among

THE MOSAIC COMPANY,

GNS II (U.S.) CORP.

and

THE STOCKHOLDER PARTIES HERETO

Dated as of May 25, 2011

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GOVERNANCE AGREEMENT

AMENDED AND RESTATED GOVERNANCE AGREEMENT, dated as of May 25, 2011 (this "Agreement"), among GNS II (U.S.) CORP., a Delaware corporation which following consummation of the Merger will be renamed "The Mosaic Company" (the "Company"), THE MOSAIC COMPANY, a Delaware corporation which following consummation of the Merger will be renamed "The Mosaic Holding Company" and will be a wholly-owned subsidiary of the Company ("Old Mosaic"), and EACH OF THE OTHER PARTIES HERETO (each, a "Stockholder" and, collectively, the "Stockholders").

WHEREAS, in accordance with the Merger and Distribution Agreement, on the Closing Date, Old Mosaic, the Company and Cargill intend to effect the Merger and Split-off, pursuant to which, among other things, (i) the outstanding shares of Old Mosaic Common Stock held by Cargill immediately prior to the consummation of the Merger will be converted into shares of Common Stock, Class A Common Stock and Class B Common Stock, (ii) the outstanding shares of Old Mosaic Common Stock held by all other stockholders of Old Mosaic immediately prior to the consummation of the Merger will be converted into shares of Common Stock and (iii) Cargill will exchange certain shares of Common Stock and all of the shares of Class A Common Stock and Class B Common Stock with certain stockholders of Cargill for outstanding shares of capital stock of Cargill held by such stockholders of Cargill;

WHEREAS, it is a condition to the obligations of the Company and Old Mosaic to consummate the Merger that all Significant Stockholders enter into this Agreement in order to establish certain rights and obligations of the Stockholders as holders of Company Common Stock.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows.

ARTICLE I

DEFINITIONS

SECTION 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Acorn Trust" means the Acorn Trust dated January 30, 1995, as amended.

"Affiliate" means, when used with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person; provided, however, that for purposes of this Agreement, none of the Company, Old Mosaic or any of their subsidiaries shall be considered to be an Affiliate of any Stockholder. As used in this definition, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other interests, by contract or otherwise.

“Anne Ray Charitable Trust” means the Anne Ray Charitable Trust dated August 20, 1996, as amended.

“Beneficial Owner” and words of similar import (including “beneficially own” and “beneficial ownership”) have the meaning set forth in the Merger and Distribution Agreement. For purposes of determining the percentage of the Total Voting Power owned at any time by any of the MAC Trusts, such MAC Trust shall be deemed to beneficially own all Voting Securities beneficially owned by all other MAC Trusts.

“Board” means (i) prior to the Closing, the Board of Directors of Old Mosaic and (ii) after the Closing, the Board of Directors of the Company.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banking institutions in the City of New York, New York are authorized or obligated by law or executive order to close.

“Cargill” means Cargill, Incorporated, a Delaware corporation.

“Certificate of Incorporation” has the meaning set forth in Section 2.01.

“Class A Common Stock” means the Class A Common Stock, par value \$0.01 per share, of the Company, including such common stock that is designated as “Class A Common Stock, Series A-1”, “Class A Common Stock, Series A-2”, “Class A Common Stock, Series A-3” and “Class A Common Stock, Series A-4”.

“Class B Common Stock” means the Class B Common Stock, par value \$0.01 per share, of the Company, including such common stock that is designated as “Class B Common Stock, Series B-1”, “Class B Common Stock, Series B-2” and “Class B Common Stock, Series B-3”.

“Class B Conversion Approval” has the meaning given such term in the Certificate of Incorporation.

“Closing” has the meaning given such term in the Merger and Distribution Agreement.

“Closing Date” has the meaning given such term in the Merger and Distribution Agreement.

“Common Market Price” means the average (rounded to the nearest cent) of the volume-weighted average trading price of a share of Common Stock (rounded to the nearest cent) on the New York Stock Exchange for each of the 20 trading days immediately preceding the date of the applicable Transfer.

“Common Stock” means the Common Stock, par value \$0.01 per share, of the Company.

“Company Common Stock” means, collectively, the Common Stock, Class A Common Stock and Class B Common Stock.

“Counted Permitted Transferee” means, with respect to any Stockholder, the transferees of such Stockholder defined in clauses (D), (F), (G), (I), (L) (other than with respect to Transfers to Charitable Organizations) and (M) of the definition of “Permitted Transfer” in the Certificate of Incorporation.

“Determination Notice” has the meaning set forth in Section 2.06.

“Director” means any member of the Board.

“Excess Released Shelf Registration Statement” has the meaning given such term in the Registration Agreement.

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Formation Offerings” has the meaning given such term in the Registration Agreement.

“Governmental Authority” means any nation or government, any foreign or domestic federal, state, county, municipal or other political instrumentality or subdivision thereof and any foreign or domestic entity or body exercising executive, legislative, judicial, regulatory, administrative, supervisory or taxing functions of or pertaining to government, including any court.

“Group” has the meaning given such term in Section 13(d)(3) of the Exchange Act.

“Intended Transferee” has the meaning set forth in Section 2.06.

“Joinder Agreement” has the meaning set forth in Section 2.03.

“Law” means all laws, Orders, statutes, codes, regulations, ordinances, decrees, rules, or other requirements with similar effect of any Governmental Authority.

“Lilac Trust” means the Lilac Trust dated August 20, 1996, as amended.

“Lock-up Expiration Date” has the meaning given such term in the Certificate of Incorporation.

“MAC Trusts” means collectively, the Margaret A. Cargill Foundation, the Acorn Trust, the Lilac Trust and the Anne Ray Charitable Trust.

“Margaret A. Cargill Foundation” means the Margaret A. Cargill Foundation established under the Acorn Trust dated January 30, 1995, as amended.

“Measurement Time” means, with respect to each meeting of the stockholders of the Company, 9 a.m., New York City time, on the date that such meeting is scheduled, or if such meeting is postponed, the date of such rescheduled meeting.

“Merger” has the meaning given such term in the Merger and Distribution Agreement.

“Merger and Distribution Agreement” means that certain Merger and Distribution Agreement, dated as of January 18, 2011 (as the same may be subsequently amended or modified), by and among the Company, Old Mosaic, Cargill and GNS Merger Sub LLC.

“NYSE” means the New York Stock Exchange.

“Old Mosaic Common Stock” means the common stock, par value \$0.01 per share, of Old Mosaic.

“Order” means all judgments, orders, writs, injunctions, decisions, rulings, decrees and awards of any Governmental Authority.

“Permitted Private Transaction” means either of the following types of transactions:

(a) a Transfer after the expiration of the Tax Lock-up Period and before the applicable Lock-up Expiration Date of an amount of Class A Common Stock or Class B Common Stock or a combination thereof that (i) represents in the aggregate 5% or more of the Total Voting Power and (ii) is made to a Person that (x) is not a Prohibited Person and (y) agrees to be bound by the terms of this Agreement in accordance with Section 2.03; and

(b) a Transfer after the expiration of the Tax Lock-up Period and on or after the applicable Lock-up Expiration Date of Common Stock or Class B Common Stock to a Person that is not a Prohibited Person and either (i) will not, after giving effect to the proposed Transfer, beneficially own Voting Securities that represent in the aggregate 5% or more of the Total Voting Power or (ii) will, after giving effect to the proposed Transfer, beneficially own Voting Securities that represent in the aggregate 5% or more of the Total Voting Power and agrees to be bound by the terms of this Agreement in accordance with Section 2.03.

Each Person pursuant to which Voting Securities are Transferred pursuant to either clause (a) or (b)(ii) of this definition shall hereinafter be referred to as a “Significant Transferee”.

“Permitted Transfer” means any Transfer that constitutes a “Permitted Transfer”, as such term is defined in the Certificate of Incorporation.

“Permitted Transferee” means a transferee of any Voting Securities pursuant to a Permitted Transfer. A Stockholder shall be a Permitted Transferee of its Permitted Transferees.

“Person” means any natural person, corporation, partnership, limited liability company, business trust, joint venture, association, company, Group, other entity or government, or any agency or political subdivision thereof.

“Prohibited Person” means (i) any Person (x) whose primary business is in the agribusiness sector, including any Person that is in the business of manufacturing and/or selling crop nutrients or (y) whose primary business is in the business of mining; (ii) any Person who, directly or indirectly, has been a significant customer of the Company or its subsidiaries during both of the two fiscal years prior to the date of this Agreement and is listed on Schedule I attached hereto; or (iii) any Affiliate of any Person specified in the foregoing clause (i) or (ii).

“Public Voting Securities” means those outstanding shares of Common Stock held by Persons other than the Stockholders.

“Qualified Transfer” has the meaning given such term in the Certificate of Incorporation.

“Registration Agreement” means that certain Registration Agreement, dated as of January 18, 2010 (as the same may be subsequently amended or modified), by and among the Company, Old Mosaic, Cargill and the MAC Trusts.

“Released Share Offering” has the meaning given such term in the Registration Agreement.

“S&P 500 Index Inclusion Offering” has the meaning given such term in the Registration Agreement.

“SEC” means the United States Securities and Exchange Commission or any other federal agency at the time administering the Securities Act or the Exchange Act.

“Securities Act” means the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Significant Stockholder” has the meaning given such term in the Merger and Distribution Agreement.

“Significant Transferee” has the meaning given such term in the definition of “Permitted Private Transaction”.

“Split-off” has the meaning given such term in the Registration Agreement.

“Tax Lock-up Period” has the meaning given such term in Section 2.02.

“Total Voting Power” means the total number of votes entitled to be cast by holders of outstanding shares of the Company’ s capital stock in the election of Directors.

“Transfer” means (with its cognates having corresponding meanings), with respect to any Voting Securities, (i) any direct or indirect sale, exchange, issuance, transfer, redemption, grant, pledge, hypothecation or other disposition, whether voluntary or involuntary, by operation or law or otherwise, and whether or not for value, of any of the Voting Securities, or any securities, options, warrants or rights convertible into or exercisable or exchangeable for, or for the purchase or other acquisition of, or otherwise with respect to, any Voting Securities or any contract or other binding arrangement or understanding (in each case, whether written or oral) to take any of the foregoing actions or (ii) entering into any swap or other agreement, arrangement or understanding, whether or not in writing, that, directly or indirectly, transfers, conveys or otherwise disposes of, in whole or in part, any of the economic or other risks or consequences of ownership of any Voting Securities, including short sales of applicable securities, option

transactions with respect to Voting Securities, use of equity or other derivative financial instruments relating to Voting Securities and other hedging arrangements with respect to applicable securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of the Voting Securities, other securities, cash or otherwise; provided, however, that the conversion of any shares of Class B Common Stock into shares of Common Stock or Class A Common Stock and the conversion of any shares of Class A Common Stock into shares of Common Stock in accordance with the Certificate of Incorporation shall not constitute a “Transfer”.

“Transferring Stockholder” has the meaning set forth in Section 2.06.

“Underwritten Public Offering” means the sale of Common Stock for cash in an underwritten public offering or in a block trade pursuant to a registration statement filed and maintained by the Company and which, in any case, is designed to effect a broad distribution of such Common Stock.

“Voting Securities” means any securities of the Company the holders of which are generally entitled to vote in the election of Directors, including the Company Common Stock.

SECTION 1.02 Other Definitional Provisions; Interpretation.

(a) When a reference is made in this Agreement to an Article, a Section, or Exhibit, such reference shall be to an Article or a Section of, or an Exhibit to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Any statute defined or referred to in this Agreement or in any agreement or instrument that is referred to in this Agreement shall mean such statute as from time to time amended, updated, modified, supplemented or superseded, including by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns. Any term incorporated by reference from another agreement shall, for purposes hereof, retain its meaning as set forth in such other agreement as in effect on the Closing Date, notwithstanding any subsequent amendment thereof.

(b) The parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE II

TRANSFER OF VOTING SECURITIES

SECTION 2.01 General Transfer Restrictions. In addition to any restrictions set forth in the Restated Certificate of Incorporation of the Company (as the same may be subsequently amended or modified, the "Certificate of Incorporation"), the right of each Stockholder to Transfer any Voting Securities beneficially owned by such Stockholder is subject to the restrictions set forth in this Article II, and no Transfer of such Voting Securities by such Stockholder may be effected except in compliance with this Article II. Any attempted Transfer in violation of this Agreement shall be null and void and of no effect, regardless of whether the purported transferee has any actual or constructive knowledge of the Transfer restrictions set forth in this Agreement, and shall not be recorded on the stock transfer books of the Company or result in the treatment of any purported transferee of such Voting Securities as the owner of such Voting Securities for any purpose.

SECTION 2.02 Restrictions on Transfer.

(a) Restrictions During Tax Lock-Up Period. During the period from (and including) the date of the Closing through (and including) the two-year anniversary date of the Closing (such period, the "Tax Lock-Up Period"), each Stockholder agrees, severally and not jointly with any other Stockholder, with the Company not to, Transfer any Voting Securities beneficially owned by such Stockholder, except:

(i) with the prior written consent of the Company (acting through its Board or a designated committee thereof) so long as, with respect to any Transfer of shares of Class B Common Stock, such Transfer will occur at a price per share that does not exceed the Common Market Price;

(ii) in a Permitted Transfer so long as, with respect to any Permitted Transfer of shares of Class B Common Stock that requires the approval of the Company (or its Board of Directors) pursuant to the terms the Certificate of Incorporation, such Permitted Transfer will occur at a price per share that does not exceed the Common Market Price;

(iii) if such Stockholder is a MAC Trust, pursuant to any Formation Offering, S&P 500 Index Inclusion Offering or pursuant to Section 2.2(a) of the Registration Agreement, in each case, to the extent permitted by, and effected in accordance with, the Registration Agreement;

(iv) if such Stockholder is a MAC Trust, pursuant to Section 2.2(c) of the Registration Agreement so long as any such Transfer (A) is permitted by, and effected in accordance with, the Registration Agreement and (B) is to a Person that is not a Prohibited Person which either (x) will not, after giving effect to the proposed Transfer, beneficially own Voting Securities that represent in the aggregate 5% or more of the Total Voting Power or (y) will, after giving effect to the proposed Transfer, beneficially own Voting Securities that represent in the aggregate 5% or more of the Total Voting Power and agrees to be bound by the terms of this Agreement in accordance with Section 2.03 as a Significant Transferee; or

(v) pursuant to a Qualified Transfer;

provided, that as to any particular Stockholder the foregoing exceptions shall be subject to any limitations on Transferability of Company Common Stock in any agreement between such Stockholder and Cargill.

(b) Restrictions Following Tax Lock-Up Period. Following the Tax Lock-Up Period each Stockholder agrees, severally, and not jointly with any other Stockholder, with the Company not to, Transfer any Voting Securities beneficially owned by such Stockholder, except:

(i) with the prior written consent of the Company (acting through its Board or a designated committee thereof) so long as, with respect to any Transfer of shares of Class B Common Stock, such Transfer will occur at a price per share that does not exceed the Common Market Price;

(ii) in a Permitted Transfer so long as, with respect to any Permitted Transfer of shares of Class B Common Stock that requires the approval of the Company (or its Board of Directors) pursuant to the terms the Certificate of Incorporation, such Permitted Transfer will occur at a price per share that does not exceed the Common Market Price;

(iii) pursuant to a Qualified Transfer;

(iv) pursuant to any Released Share Offering or other Underwritten Public Offering of Common Stock or pursuant to an Excess Released Shelf Registration Statement;

(v) in open market transactions of Common Stock on NYSE (or other market in which the Common Stock principally trades); or

(vi) in a Permitted Private Transaction;

provided, that as to any particular Stockholder the foregoing exceptions shall be subject to any limitations on Transferability of Company Common Stock in any agreement between such Stockholder and Cargill.

(c) Additional Restrictions Relating to Class B Common Stock. Notwithstanding anything in this Article II to the contrary, each Stockholder agrees, severally and not jointly with any other Stockholder, with the Company that in no event shall such Stockholder Transfer any share of Class B Common Stock to any transferee if, after giving effect to the proposed Transfer, the proposed transferee would beneficially own Voting Securities that represent in the aggregate 5% or more of the Total Voting Power unless (i) such transferee represents that it is acquiring such shares for investment purposes only and with no intention of influencing control over the management, policies or operations of the Company, and (ii) prior to such Transfer, the Company shall have received a certificate (in form reasonably satisfactory to the Company) from such transferee to such effect.

(d) Waiver of Certain Transfer Restrictions. In the event a Stockholder wishes to Transfer any Voting Securities pursuant to Section 2.02(b)(vi), the Company shall (subject to the limitations set forth in Section 2.02(c)) permit such Transfer under Section 3(A)(4)(b) of Article IV of the Certificate of Incorporation.

(e) Investment Fund Transfers. Notwithstanding anything in this Article II to the contrary, a Transfer of Voting Securities by an investment fund in which a Stockholder has investments, or a Transfer by a Stockholder of an interest in an investment fund that holds Voting Securities, shall not be deemed to be a Transfer of Voting Securities by such Stockholder for purposes of this Article II so long as such Stockholder has no authority to control the securities held by such investment fund at the time of the Transfer or at the time such investment fund acquired such Voting Securities and such investment fund did not acquire such Voting Securities from any Stockholder.

SECTION 2.03 Significant Transferees; Permitted Transferees. Prior to the acquisition of beneficial ownership of any Voting Securities by any (a) Significant Transferee or (b) Permitted Transferee who (x) will, after giving effect to such acquisition, beneficially own Voting Securities that represent in the aggregate 5% or more of the Total Voting Power or (y) is a Counted Permitted Transferee, and as a condition thereto, the Stockholder transferring such Voting Securities agrees to cause such Significant Transferee or Permitted Transferee (as applicable) to execute and deliver a Joinder Agreement in the form attached hereto as Exhibit A (the "Joinder Agreement") and, if the transferee is a Significant Transferee, such Significant Transferee also shall have delivered the certificate required pursuant to Section 2.02(c), if applicable.

SECTION 2.04 Notice of Transfer. Any Stockholder Transferring any Voting Securities (other than a Transfer in any public offering permitted by the Registration Agreement) shall, within five (5) Business Days following consummation of such Transfer, deliver notice thereof to the Company.

SECTION 2.05 Legends. In addition to any legend required by the Merger and Distribution Agreement, by the Certificate of Incorporation or by the General Corporation Law of the State of Delaware, the certificates evidencing ownership of Company Common Stock held by Stockholders shall also contain the following (or substantially similar) legend:

“THE SECURITIES EVIDENCED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS AS SET FORTH IN A GOVERNANCE AGREEMENT DATED AS OF JANUARY 18, 2011 BY AND AMONG THE CORPORATION AND THE OTHER PARTIES NAMED THEREIN, AS IT MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE CORPORATION AND WHICH SHALL BE FURNISHED TO ANY STOCKHOLDER OF THE CORPORATION, ON REQUEST AND WITHOUT COST.
NO

REGISTRATION OF TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE CORPORATION UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH. ANY TRANSFER NOT IN COMPLIANCE WITH SUCH AGREEMENT SHALL BE NULL AND VOID AND OF NO EFFECT.”

At such time at which the provisions of this Article II no longer apply to a Stockholder by reason of Section 2.08, upon written request of such Stockholder, the Company shall promptly exchange certificate or certificates representing Voting Securities held by such Stockholder for new certificates or certificates or book-entry confirmation (if such Voting Security is a share of Common Stock) representing such Voting Security which shall not contain such legend.

SECTION 2.06 Prohibited Persons. No later than ten (10) calendar days prior to the date on which a Stockholder (the “Transferring Stockholder”) intends to Transfer Voting Securities pursuant to Section 2.02(b)(vi), or enter into any binding agreement providing for such Transfer, such Stockholder shall notify the Company in writing of the identity of the intended transferee (the “Intended Transferee”) and shall provide the Company any additional information regarding the Intended Transferee as may reasonably be requested by the Company following receipt by the Company of such notice. No later than five (5) Business Days following the receipt by the Company of such notice, the Company shall notify the Transferring Stockholder in writing (a “Determination Notice”) if the Intended Transferee is a Prohibited Person. If the Company determines that the Person is a Prohibited Person, the Determination Notice shall specify in reasonable detail the Company’s basis for such determination. If the Transferring Stockholder does not receive a Determination Notice within the time period prescribed above, the Intended Transferee shall be deemed not to be a Prohibited Person with respect to such transaction.

SECTION 2.07 Delay of Transfer. The Company shall not incur any liability for any delay in recognizing any Transfer of Voting Securities if the Company in good faith reasonably believes that such Transfer may have been or would be in violation in any material respect of the provisions of the Securities Act, applicable state securities or “blue sky” laws, or this Agreement.

SECTION 2.08 Article II Termination. The provisions of this Article II shall cease to apply to a Stockholder at the time such Stockholder, together with its Counted Permitted Transferees, beneficially owns Voting Securities that represent in the aggregate less than 5% of the Total Voting Power.

ARTICLE III

STANDSTILL; VOTING

SECTION 3.01 Standstill Restrictions.

(a) No Acquisitions. Each Stockholder covenants and agrees, severally and not jointly with any other Stockholder, with the Company that until the earlier of the fifty-four

(54) month anniversary of the date of the Closing and the first date upon which such Stockholder, together with its Counted Permitted Transferees, beneficially owns Voting Securities that represent in the aggregate less than 5% of the Total Voting Power, such Stockholder shall not, and shall not cause any of its Affiliates to, directly or indirectly, acquire or seek to acquire, offer or propose to acquire or agree to acquire, the beneficial ownership of any Voting Securities, other than (x) the Voting Securities acquired by each such Stockholder in the Split-off or otherwise from the Company or (y) pursuant to a stock dividend, stock split, reclassification, recapitalization or other similar event by the Company; provided that (i) an acquisition of Voting Securities by an investment fund in which a Stockholder has investments or the acquisition by a Stockholder of an interest in an investment fund that holds Voting Securities shall not constitute a breach of this Section 3.01(a) so long as such Stockholder has no authority to control the securities held by such investment fund at the time of the acquisition or at the time such investment fund acquired such Voting Securities and such investment fund did not acquire such Voting Securities from such Stockholder and (ii) neither (A) any Transfer of shares of Company Common Stock by a Stockholder in a Permitted Transfer nor (B) the conversion of shares of one or more series of Class B Common Stock into shares of one or more series of Class A Common Stock or Common Stock or the conversion of shares of one or more series of Class A Common Stock into shares of one or more series of Class A Common Stock or Common Stock, in each case in accordance with the terms of the Certificate of Incorporation, shall constitute a breach of this Section 3.01(a); provided further, that, in the case of clause (ii)(A), such Stockholder complies with Section 2.03 to the extent applicable.

(b) Other Restrictions. Each Stockholder covenants and agrees, severally and not jointly with any other Stockholder, with the Company that, until the earlier of the fifty-four (54) month anniversary of the Closing Date and the first date upon which such Stockholder, together with its Counted Permitted Transferees, beneficially owns Voting Securities that represent in the aggregate less than 5% of the Total Voting Power, such Stockholder shall not, and shall not cause any of its Affiliates to, directly or indirectly, alone or in concert with others, take any of the actions set forth below (or take any action that would require the Company to make an announcement regarding any of the following):

(i) except as expressly permitted by Sections 2.02(a) or 2.02(b), effect, seek, offer, engage in, propose (whether publicly or otherwise) or cause or participate in, or assist any other Person to effect, seek, engage in, offer or propose (whether publicly or otherwise) or participate in any tender or exchange offer, merger, business combination, recapitalization, restructuring, liquidation, dissolution, share exchange or other extraordinary transaction involving the Company or any material portion of its business or any purchase of all or any substantial part of the assets of the Company or any material portion of its business (it being understood that this clause (i) of this Section 3.01(b) shall not restrict a Stockholder from Transferring any of its shares of Company Common Stock to the extent expressly permitted by Sections 2.02(a) or 2.02(b), including pursuant to a Qualified Transfer);

(ii) take or propose to take any action to seek to affect the control of the management of the Company or any of the businesses, operations or policies of the Company, including through (A) any “solicitation” of “proxies” (as such terms are used

in the proxy rules of the SEC but without regard to the exclusion set forth in Section 14a-1(l)(2)(iv) from the definition of “solicitation”) to vote any securities of the Company or consents to any action from any holder of any Voting Securities, (B) publicly announcing its desire to affect the control of the management or policies of the Company or (C) any filings with any government or judicial authority;

(iii) call or seek to call a special meeting of the stockholders of the Company or nominate any person as a Director or propose any matter to be voted upon by the stockholders of the Company;

(iv) deposit any securities of the Company into a voting trust or subject any securities of the Company to any agreement or arrangement with respect to the voting of such securities with any third party, other than any agreement or arrangement set forth in the organizational documents of such Stockholder;

(v) seek to amend or waive any provision of Section 3.01 (other than a proposal made privately to the Board in a manner that is not intended to result in the Company being required to make any public disclosure or other public announcement related to such proposal);

(vi) take any action, make any statement, or disclose any intention, that to such Stockholder’s knowledge is inconsistent with any of the foregoing; or

(vii) enter into any discussions, negotiations, arrangements or understandings with any Person inconsistent with any of the foregoing, or advise, assist or encourage any Person in connection with the foregoing.

SECTION 3.02 Voting.

(a) Voting on Certain Matters. Each Stockholder covenants and agrees, severally and not jointly with any other Stockholder, with the Company that, until the earlier of the third anniversary of the date of Closing and the first date upon which such Stockholder, together with its Counted Permitted Transferees, beneficially owns Voting Securities that represent in the aggregate less than 10% of the Total Voting Power, such Stockholder shall:

(i) cause the Voting Securities beneficially owned by such Stockholder to be present, in person or represented by proxy, at all meetings of the stockholders of the Company (whether annual or special and whether or not an adjourned or postponed meeting) so that the Voting Securities of such Stockholder may be counted for determining a quorum at each such meeting;

(ii) with respect to shares of Class A Common Stock and Common Stock beneficially owned by such Stockholder, other than for the election of Directors and for any vote with respect to the Class B Conversion Approval, vote, or cause to be voted, such Voting Securities, or execute one or more written consents in respect of such Voting Securities at all meetings (whether annual or special and whether or not an adjourned or postponed meeting) of the stockholders of the Company in accordance with the Board’s

recommendation with respect to each matter, so long as holders of a majority of the Public Voting Securities who have submitted proxies to the Company in respect of such meeting by the Measurement Time have authorized the proxy holder to vote their Voting Securities at such meeting in accordance with the Board' s recommendation on such matter (it being understood that if holders of a majority of the Public Voting Securities who have submitted proxies to the Company in respect of such meeting by the Measurement Time have authorized the proxy holder to vote the Voting Securities represented by such proxies other than in accordance with the Board' s recommendation on such matter, then each Stockholder may vote at such meeting (or execute one or more written consents in respect of) such Voting Securities on such matter in its sole discretion); and

(iii) with respect to shares of Class B Common Stock beneficially owned by such Stockholder, other than for the election of Directors and for any vote with respect to the Class B Conversion Approval, vote, or cause to be voted, such Voting Securities, or execute one or more written consents in respect of such Voting Securities at all meetings (whether annual or special and whether or not an adjourned or postponed meeting) of the stockholders of the Company in a manner that is proportionate to the manner in which shares of Public Voting Securities who have submitted proxies to the Company in respect of such meeting by the Measurement Time are voted.

(b) Irrevocable Proxy. With respect to any meeting of stockholders of the Company that is scheduled to take place at a time during which the provisions of Section 3.02(a) are applicable to a Stockholder, at least ten (10) Business Days prior to such meeting, such Stockholder shall deliver a duly executed irrevocable proxy to the Company specifying for any matter brought before the meeting other than with respect to the election of directors and any stockholder vote with respect to the Class B Conversion Approval (i) with respect to shares of Class A Common Stock and Common Stock beneficially owned by such Stockholder (A) that such Stockholder shall vote such Voting Securities at the meeting in accordance with the Board' s recommendation on such matter if holders of a majority of the Public Voting Securities who have submitted proxies to the Company in respect of such meeting by the Measurement Time have authorized the proxy holder to vote the Voting Securities represented by such proxies in accordance with the Board' s recommendation on such matter and (B) how such Stockholder shall vote such Voting Securities at the meeting with respect to such matter if the holders of a majority of the Public Voting Securities who have submitted proxies to the Company in respect of such meeting by the Measurement Time have agreed to vote their Voting Securities in such proxies other than in accordance with the Board' s recommendation on such matter and (ii) with respect to shares of Class B Common Stock beneficially owned by such Stockholder, that such Stockholder shall vote such Voting Securities at the meeting in a manner that is proportionate to the manner in which shares of Public Voting Securities who have submitted proxies to the Company in respect of such meeting by the Measurement Time are voted. Such proxy shall appoint such officers of the Company as the Board shall designate as such Stockholder' s true and lawful proxies as to the matters to be voted at the meeting and shall state that it is irrevocable and coupled with an interest sufficient in the law to support an irrevocable proxy. The Company shall cause any such proxy to be voted in accordance with the instructions given in conformity herewith.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

SECTION 4.01 Company Representations. The Company hereby represents and warrants to the Stockholders that:

(a) Organization. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) Authorization and Enforceability. The execution, delivery and performance by the Company of this Agreement and the performance by the Company of its obligations hereunder have been duly authorized by all necessary corporate action on the part of the Company. No other corporate proceedings on the part of the Company are necessary to authorize the execution, delivery and performance by the Company of this Agreement. This Agreement has been duly and validly executed and delivered on behalf of the Company and, assuming it has been duly and validly authorized, executed and delivered by the other parties hereto, constitutes a legal, valid and binding agreement of the Company, enforceable against it in accordance with its terms except to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws relating to or affecting enforcement of creditors' rights generally, and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

(c) No Conflict. The execution, delivery and performance of this Agreement by the Company, will not (a) conflict with or result in any breach of any provision of its certificate of incorporation or by-laws as in effect on the date hereof, (b) conflict with or result in the breach of, in any material respect, the terms, conditions or provisions of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give rise to any right of termination, acceleration or cancellation under, any material agreement, lease, mortgage, license, indenture, instrument or other contract to which it or any of its subsidiaries is a party or by which any of its or any of its subsidiaries' properties or assets are bound as in effect on the date hereof, or (c) result in a violation in any material respect of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to it or any of its Subsidiaries or by which any of its or its Subsidiaries' properties or assets are bound or affected as in effect on the date hereof.

SECTION 4.02 Representations and Warranties of the Stockholders. Each Stockholder, severally and not jointly with any other Stockholder, hereby represents and warrants to the Company that as of the date hereof:

(a) Organization. Such Stockholder, if such Stockholder is not a natural person, is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

(b) Authorization and Enforceability. The execution and delivery of this Agreement by such Stockholder have been duly and validly authorized by such Stockholder, and no other proceedings of such Stockholder are necessary to authorize the execution, delivery and performance by such Stockholder of this Agreement. This Agreement has been duly and validly executed and delivered on behalf of such Stockholder and, assuming it has been duly and validly authorized, executed and delivered by the other parties hereto, constitutes a legal, valid and binding agreement of the Stockholder, enforceable against it, him or her in accordance with its terms except to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws relating to or affecting enforcement of creditors' rights generally, and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

(c) No Conflict. The execution, delivery and performance of this Agreement by such Stockholder, will not (a) to the extent applicable, conflict with or result in any breach of any provision of the Stockholder' s organizational documents in effect on the date hereof, (b) conflict with or result in the breach of, in any material respect, the terms, conditions or provisions of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give rise to any right of termination, acceleration or cancellation under, any material agreement, lease, mortgage, license, indenture, instrument or other contract to which it, he or she is a party or by which any of its, his or her properties or assets are bound as in effect on the date hereof, or (c) result in a violation in any material respect of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to it, him or her or by which any of its, his or her properties or assets are bound or affected as in effect on the date hereof.

(d) Ownership. As of the date hereof, such Stockholder does not beneficially own any Voting Securities.

ARTICLE V

GENERAL PROVISIONS

SECTION 5.01 Notices. Unless otherwise expressly set forth herein, all notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made (i) as of the date delivered, if delivered personally; (ii) on the date the delivering party receives confirmation, if delivered by facsimile or electronic mail; (iii) three (3) Business Days after being mailed by registered or certified mail (postage prepaid, return receipt requested); or (iv) one Business Day after being sent by overnight courier (providing proof of delivery), to the parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 5.01):

(a) If to Old Mosaic or the Company, to:

The Mosaic Company
Atria Corporate Center, Suite E490
3033 Campus Drive
Plymouth, MN 55441
Attention: Richard L. Mack

with a copy (which copy alone shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954
Attention: Casey Cogut
Eric Swedenburg

(b) If to the MAC Trusts, to:

Christine M Morse and Paul G. Bush
as Co-Trustees of the Acorn Trust,
Anne Ray Charitable Trust, Lilac Trust and
Margaret A. Cargill Foundation
6889 Rowland Road
Eden Prairie MN 55344

with a copy (which shall not constitute notice) to:

Loeb & Loeb LLP
345 Park Avenue
New York, New York 10 154-1895
Attention: David S. Schaefer, Esq.
Fax: (212) 208-0947

with a copy (which shall not constitute notice) to

Loeb & Loeb LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles CA 90067
Attention: Leah M. Bishop, Esq.
Stuart P. Tobisman, Esq.

(c) if to any other Stockholder, to the address of such Stockholder specified on such Stockholder's signature page hereto or the Joinder Agreement (as applicable).

SECTION 5.02 Assignment. Except as expressly provided in Section 2.02, neither this Agreement, nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other parties, and any attempt to make any such assignment without such consent shall be null and void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by, the parties and their respective successors and assigns.

SECTION 5.03 Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and assigns and nothing herein express or implied shall give or shall be construed to confer any legal or equitable rights or remedies to any Person other than the parties to this Agreement and their respective successors and assigns.

SECTION 5.04 Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes any prior agreement or understanding among them with respect to the matters referred to herein. This Agreement and the provisions hereof may be amended, waived (either generally or in a particular instance and either retroactively or prospectively), modified or supplemented, in whole or in part, at any time by action of the Company; provided, however, that any such amendment, waiver, modification or supplement that would directly and adversely affect the rights, or directly increase the obligations, of any Stockholder, shall require the prior written consent of such adversely affected Stockholder. The execution of a Joinder Agreement to this Agreement after the date hereof shall require only the consent of the Company and shall not be deemed an amendment to this Agreement so long as such Person agrees to be treated as a "Stockholder" hereunder.

SECTION 5.05 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

SECTION 5.06 Consent to Jurisdiction; Waiver of Jury Trial.

(a) All actions and proceedings arising out of or relating to this Agreement shall be heard and determined in the Court of Chancery of the State of Delaware or, in the event that such court does not have subject matter jurisdiction over such action or proceeding, any federal court sitting in the State of Delaware, and the parties to this Agreement irrevocably submit to the exclusive jurisdiction of such courts (and, in the case of appeals, appropriate appellate courts therefrom) in any such action or proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. The consents to jurisdiction set forth in this paragraph shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. To the fullest extent permitted by Law, each of the parties to this Agreement consents to service being made through the notice procedures set forth in Section 5.01 and agrees that service of any process, summons, notice or document by registered mail (return receipt requested and first-class postage prepaid) to the respective addresses of the parties set forth in Section 5.01 shall be effective service of process for any suit or proceeding in connection with this Agreement or the transactions contemplated by this Agreement. The parties hereto agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

(b) EACH OF THE PARTIES TO THIS AGREEMENT IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

SECTION 5.07 Specific Performance.

(a) The parties hereto agree that the Company would suffer irreparable damage if any covenant or obligation of any Stockholder under this Agreement were not performed in accordance with the terms hereof. Accordingly, each Stockholder agrees that the Company shall be entitled (in addition to any other remedy to which the Company may be entitled at law or in equity) to specific performance and injunctive and other equitable relief to prevent a breach or non-performance by any Stockholder of its obligations under this Agreement, without the posting of any bond, and if any action should be brought in equity to enforce any of the provisions of this Agreement, no Stockholder shall raise the defense that there is an adequate remedy at law.

(b) The parties hereto agree that each Stockholder would suffer irreparable damage if any covenant or obligation of the Company under this Agreement were not performed in accordance with the terms hereof. Accordingly, the Company agrees that each Stockholder shall be entitled (in addition to any other remedy to which such Stockholder may be entitled at law or in equity) to specific performance and injunctive and other equitable relief to prevent a breach or non-performance by the Company of its obligations under this Agreement, without the posting of any bond, and if any action should be brought in equity to enforce any of the provisions of this Agreement, the Company shall not raise the defense that there is an adequate remedy at law.

SECTION 5.08 Counterparts. This Agreement may be executed in any number of separate counterparts each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

SECTION 5.09 Severability. In the event that any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be construed by limiting it so as to be valid, legal and enforceable to the maximum extent provided by law and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

SECTION 5.10 Termination. This Agreement shall automatically terminate and be of no further force and effect upon the termination of the Merger and Distribution Agreement in accordance with its terms. In addition, if following the Split-off, any Person who has executed this Agreement has not received a number of shares of Company Common Stock necessary for such Person to be deemed a Significant Stockholder, this Agreement shall automatically terminate and be of no further force and effect with respect to such Person.

SECTION 5.11 Legal Expenses. In addition to any other relief to which it may be entitled, the prevailing party in any action or proceeding to enforce this Agreement shall, to the fullest extent permitted by law, be entitled to recover from the non-prevailing party all court costs, counsel fees, and other costs or expenses incurred by the prevailing party in connection with such action, including in enforcing this section and proving the amounts to which the prevailing party is entitled pursuant to this section.

IN WITNESS WHEREOF, each of the following parties hereto has caused this Agreement to be duly executed and delivered in its name and on its behalf, all as of the day and year first above written.

THE MOSAIC COMPANY

By: /s/ Richard L. Mack

Name: Richard L. Mack

Title: Executive Vice President, General Counsel
and Corporate Secretary

GNS II (U.S.) CORP.

By: /s/ Richard L. Mack

Name: Richard L. Mack

Title: Executive Vice President, General Counsel
and Corporate Secretary

CHRISTINE M. MORSE, in her capacity as
Co-Trustee of the Anne Ray Charitable Trust dated
August 20, 1996, as amended; as Co-Trustee of the
Margaret A. Cargill Foundation established under the
Acorn Trust dated January 30, 1995, as amended; and
on behalf of John Bryson Chane, as Co-Trustee of the
Anne Ray Charitable Trust dated August 20, 1996, as
amended

/s/ Christine M. Morse, Trustee

PAUL G. BUSCH, in his capacity as Co-Trustee of
the Anne Ray Charitable Trust dated August 20, 1996,
as amended; as Co-Trustee of the Margaret A. Cargill
Foundation established under the Acorn Trust dated
January 30, 1995, as amended; and on behalf of John
Bryson Chane, as Co-Trustee of the Anne Ray
Charitable Trust dated August 20, 1996, as amended

/s/ Paul G. Busch, Trustee

[EXECUTED BY VARIOUS STOCKHOLDERS]

FORM OF JOINDER AGREEMENT

The undersigned is executing and delivering this Joinder Agreement pursuant to the Amended and Restated Governance Agreement, dated as of May 25, 2011, among The Mosaic Company, a Delaware corporation, GNS II (U.S.) Corp., a Delaware corporation, and the Stockholders from time to time party thereto (as amended, supplemented or otherwise modified in accordance with the terms thereof, the "Governance Agreement"). Capitalized terms used but not defined in this Joinder Agreement shall have the respective meanings ascribed to them in the Governance Agreement.

By executing and delivering this Joinder Agreement to the Governance Agreement, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of the Governance Agreement as a Stockholder. In connection therewith, effective as of the date hereof, the undersigned hereby makes the representations and warranties contained in the Governance Agreement as if made on the date hereof (other than the representations and warranties contained in Section 4.02(d)).

As of the date hereof, the Stockholder is the sole record owner and a Beneficial Owner of [-] Voting Securities, consisting of [**set forth class and series of the Voting Securities**], and as of the date hereof, such Voting Securities are the only securities of the Company and any of its subsidiaries (to the extent applicable) held of record or beneficially owned by such party.

Accordingly, the undersigned has executed and delivered this Joinder Agreement as of the __ day of _____, ____.

[Stockholder]

By: _____

Name:

Title:

Address:

AGREED AND ACCEPTED

as of the __ day of _____, ____.

THE MOSAIC COMPANY

By: _____

Name:

Title:

**RESTATED
CERTIFICATE OF INCORPORATION
OF
GNS II (U.S.) CORP.**

**(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)**

GNS II (U.S.) Corp., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “**DGCL**”), **DOES HEREBY CERTIFY**:

1) That the name of this corporation is GNS II (U.S.) Corp., and that this corporation was originally incorporated pursuant to the DGCL on March 25, 2004.

2) That the Board of Directors duly adopted resolutions proposing to amend and restate the restated certificate of incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the restated certificate of incorporation of this corporation be amended and restated in its entirety to read as follows (the “**Restated Certificate of Incorporation**”):

**ARTICLE I
NAME**

The name of the corporation (hereinafter called the “*Corporation*”) is The Mosaic Company.

**ARTICLE II
REGISTERED OFFICE**

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

**ARTICLE III
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “*General Corporation Law*”).

**ARTICLE IV
CAPITAL STOCK**

1. Authorized Stock. (A) The total number of shares of capital stock that the Corporation has authority to issue is 1,490,000,000 of which:

(1) 1,000,000,000 shares shall be shares of Common Stock, par value \$0.01 per share (the “*Common Stock*”);

(2) 275,000,000 shares shall be shares of Class A Common Stock, par value \$0.01 per share, of which (i) 77,666,668 shall be designated Class A Common Stock, Series A-1 (the “*Series A-1 Common Stock*”); (ii) 77,666,667 shall be designated Class A Common Stock, Series A-2 (the “*Series A-2 Common Stock*”); (iii) 77,666,665 shall be designated Class A Common Stock, Series A-3 (the “*Series A-3 Common Stock*”); and (iv) 42,000,000 shall be designated Class A Common Stock, Series A-4 (the “*Series A-4 Common Stock*”);

(3) 200,000,000 shares shall be shares of Class B Common Stock, par value \$0.01 per share, of which (i) 66,666,668 shall be designated Class B Common Stock, Series B-1 (the “*Series B-1 Common Stock*”); (ii) 66,666,667 shall be designated Class B Common Stock, Series B-2 (the “*Series B-2 Common Stock*”); and (iii) 66,666,665 shall be designated Class B Common Stock, Series B-3 (the “*Series B-3 Common Stock*”); and

(4) 15,000,000 shares shall be shares of Preferred Stock, par value \$0.01 per share (the “*Preferred Stock*”).

(B) The Series A-1 Common Stock, the Series A-2 Common Stock, the Series A-3 Common Stock and the Series A-4 Common Stock are referred to collectively as the “*Class A Common Stock*”. The Series B-1 Common Stock, the Series B-2 Common Stock and the Series B-3 Common Stock are referred to collectively as the “*Class B Common Stock*”. The Common Stock, the Class A Common Stock and the Class B Common Stock are referred to collectively as the “*Company Common Stock*”.

2. Company Common Stock.

(A) **General.** Except as expressly provided for in this Article IV and in Article IX, the shares of each class and series of Company Common Stock shall have the same powers, rights and privileges and rank equally, share ratably and be identical in all respects as to all matters. Subject to the rights of the holders of any series of Preferred Stock from time to time outstanding, stockholders of the Corporation shall not have any preemptive rights to subscribe for, purchase or receive any part of any new or additional issue of stock of the Corporation and no stockholder will be entitled to cumulate votes at any election of directors.

(B) **Dividends and Other Distributions.** Subject to the rights of the holders of any series of Preferred Stock from time to time outstanding, and except as expressly provided for in this Article IV, holders of shares of Company Common Stock shall be entitled to receive such dividends and other distributions in cash, securities or property as may be declared thereon by the

Board of Directors from time to time out of assets or funds of the Corporation legally available therefor; *provided, however*, that no dividend or other distribution may be declared or paid in respect of any share of any class or series of Company Common Stock unless a dividend or other distribution, payable in the same amount, ratio, form and manner, is simultaneously declared or paid, as the case may be, in respect of all shares of each class and series of Company Common Stock, without preference or priority of any kind, except that, whenever a dividend or other distribution is paid in shares of Company Common Stock, (i) only shares of Common Stock shall be paid in respect of the shares of Common Stock outstanding as of the record date therefor, (ii) only shares of Series A-1 Common Stock shall be paid in respect of the shares of Series A-1 Common Stock and shares of Series B-1 Common Stock, in each case outstanding as of the record date therefor, (iii) only shares of Series A-2 Common Stock shall be paid in respect of the shares of Series A-2 Common Stock and shares of Series B-2 Common Stock, in each case outstanding as of the record date therefor, (iv) only shares of Series A-3 Common Stock shall be paid in respect of the shares of Series A-3 Common Stock and shares of Series B-3 Common Stock, in each case outstanding as of the record date therefor and (v) only shares of Series A-4 Common Stock shall be paid in respect of the shares of Series A-4 Common Stock outstanding as of the record date therefor. No dividends or distributions shall be paid in shares of Class B Common Stock. The Corporation shall not issue any option, warrant or other right to acquire shares of Class B Common Stock nor shall it implement any rights plan that provides for the distribution of rights to purchase shares of Class B Common Stock.

(C) Liquidation and Other Transactions.

(1) **Liquidation.** Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, after the payment in full of all amounts to which the holders of each series, if any, of the then outstanding Preferred Stock shall be entitled, the remaining assets of the Corporation to be distributed to the holders of the capital stock of the Corporation shall be distributed ratably, on a share for share basis, among the holders of the shares of all classes and series of Company Common Stock, together with the holders of the shares of any class of stock ranking on a parity with the Company Common Stock in respect of such distribution. For purposes of this paragraph, unless otherwise provided with respect to any then outstanding series of Preferred Stock, the voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the assets of the Corporation or a consolidation or merger of the Corporation with one or more other corporations (whether or not the Corporation is the corporation surviving such consolidation or merger) shall not be deemed to be a liquidation, dissolution or winding up, either voluntary or involuntary.

(2) **Other Transactions.** The Corporation shall not (i) effect any reorganization, consolidation, combination or merger with or into another corporation or other entity (whether or not the Corporation is the surviving entity), (ii) consummate any agreement providing for, or otherwise approve, any tender or exchange offer for any shares of Company Common Stock, or (iii) grant any “top-up” option or other option in connection with any tender or exchange offer for any shares of Company Common Stock, unless, in each case (other than in the case of an implementation by the Corporation of a rights plan), the holders of outstanding shares of each class and series of Company Common Stock shall be entitled to receive the same kind and amount of consideration (including shares of stock and other securities and property (including cash)), if any, for each share so held, receivable upon such reorganization, consolidation, combination, merger or tender or exchange offer, in each case, without distinction between classes or series of Company Common Stock.

(D) Voting.

(1) Except as otherwise provided in this Article IV and except as required by law, holders of shares of each class and series of Company Common Stock shall be entitled to vote, and shall vote together as one class, on all matters to be voted on by the stockholders of the Corporation. Except as otherwise provided in this Article IV and except as required by law, (x) with respect to all matters other than the election of directors, each holder of shares of Company Common Stock shall be entitled to one (1) vote in person or by proxy for each share of Company Common Stock held of record by such holder, and (y) with respect to the election of directors, each holder of shares of Common Stock and/or Class A Common Stock shall be entitled to one (1) vote in person or by proxy for each share of Common Stock and/or Class A Common Stock held of record by such holder, and each holder of shares of Class B Common Stock shall be entitled to ten (10) votes in person or by proxy for each share of Class B Common Stock held of record by such holder.

(2) Notwithstanding anything to the contrary contained in this Restated Certificate of Incorporation, for so long as any shares of Class A Common Stock or Class B Common Stock remain outstanding, without the Requisite Vote or Requisite Votes, as applicable (and any other vote of stockholders required by this Restated Certificate of Incorporation or applicable law):

(i) this Restated Certificate of Incorporation shall not be amended, altered or repealed (including by merger, consolidation or otherwise) in a manner that would alter or change the powers, preferences, or relative, participating, optional or other special rights of the shares of Class A Common Stock and/or Class B Common Stock (or any series thereof), or the qualifications, limitations or restrictions with respect thereto, so as to affect them adversely;

(ii) no series of Preferred Stock shall be established by the Board of Directors, and no shares of any series of Preferred Stock shall be issued by the Corporation (by merger, consolidation or otherwise), if the terms of such series of Preferred Stock would be violated or breached by or as a result of the conversion of the shares of Class A Common Stock or Class B Common Stock (or any series thereof), or the Transfer of any such shares, in accordance with the terms of this Article IV;

(iii) no shares of Class A Common Stock (or any series thereof) or Class B Common Stock (or any series thereof) shall be issued by the Corporation (including by merger, consolidation or otherwise), other than pursuant to the Merger and other than the issuance of shares of Class A Common Stock upon the conversion of shares of Class B Common Stock in accordance with the terms of this Article IV or upon a dividend or other distribution paid by the Corporation in shares of Common Stock or Class A Common Stock in accordance with the terms of this Article IV;

(iv) no reorganization, consolidation, combination or merger of the Corporation with or into another corporation or other entity in which shares of Class A Common Stock (or any series thereof) and/or Class B Common Stock (or any series thereof) are converted

into (or entitled to receive with respect thereto) shares of stock or other securities or property (including cash) shall be permitted, unless, in such reorganization, consolidation, combination or merger, each holder of a share of Class A Common Stock and/or Class B Common Stock shall be entitled to receive with respect to each such share the same kind and amount of shares of stock or other securities or property (including cash) as any holder of a share of Common Stock shall be entitled to receive for a share of Common Stock;

(v) the Corporation (including its Board of Directors) shall not, and shall not permit any of its subsidiaries to, make, agree to, approve or recommend any tender or exchange offer for any shares of Company Common Stock, unless such tender or exchange offer is open to all holders of shares of all series and classes of Company Common Stock and the consideration paid to any such holder for shares of Company Common Stock tendered into such tender or exchange offer is the highest consideration paid to any other holder for shares of Company Common Stock tendered into such tender or exchange offer;

(vi) the Corporation shall not subdivide (by any stock split, reclassification, recapitalization or otherwise) or combine (by reverse stock split, reclassification, recapitalization or otherwise) the outstanding shares of Common Stock, Class A Common Stock (or any series thereof) or Class B Common Stock (or any series thereof), unless the outstanding shares of the other such classes and series of Company Common Stock shall be proportionately subdivided or combined in the same manner, in each case so that the numbers of shares of Common Stock, Class A Common Stock (and each series thereof) and Class B Common Stock (and each series thereof) outstanding immediately following such subdivision or combination shall bear the same relationship to one another as did the numbers of shares of Common Stock, Class A Common Stock (and each series thereof) and Class B Common Stock (and each series thereof) outstanding immediately prior to such subdivision or combination; and

(vii) this Section 2(D)(2) and Section 2(D)(4)(a) of this Article IV of this Restated Certificate of Incorporation shall not be amended, altered or repealed (including by merger, consolidation or otherwise), and no provision of this Restated Certificate of Incorporation that is inconsistent with this Section 2(D)(2) or Section 2(D)(4)(a) of this Article IV shall be adopted (including by merger, consolidation or otherwise); *provided, however* that no vote otherwise required by this Section 2(D)(2) shall be required for the implementation by the Corporation of a rights plan, including the distribution of rights to all holders of the Company Common Stock, the designation of a series of preferred stock in connection therewith, and all other actions contemplated by any such rights plan and the operation thereof, so long as all shares of all holders of shares of Company Common Stock are treated identically pursuant to such distribution and, other than a holder who is an “Acquiring Person” and certain transferees of any such “Acquiring Person” under such rights plan, the operation of such rights plan.

(3) Notwithstanding anything to the contrary contained in this Restated Certificate of Incorporation, for so long as any shares of Class A Common Stock or Class B Common Stock remain outstanding, without the Requisite Common Vote (and any other vote of stockholders required by this Restated Certificate of Incorporation or applicable law):

(i) this Restated Certificate of Incorporation shall not be amended, altered or repealed (including by merger, consolidation or otherwise) in a manner that would alter or change the powers, preferences, or relative, participating, optional or other special rights of the shares of Common Stock, or the qualifications, limitations or restrictions with respect thereto, so as to affect them adversely;

(ii) the Corporation shall not subdivide (by any stock split, reclassification, recapitalization or otherwise) or combine (by reverse stock split, reclassification, recapitalization or otherwise) the outstanding shares of Common Stock, Class A Common Stock (or any series thereof) or Class B Common Stock (or any series thereof), unless the outstanding shares of the other such classes and series of Company Common Stock shall be proportionately subdivided or combined in the same manner, in each case so that the numbers of shares of Common Stock, Class A Common Stock (and each series thereof) and Class B Common Stock (and each series thereof) outstanding immediately following such subdivision or combination shall bear the same relationship to one another as did the numbers of shares of Common Stock, Class A Common Stock (and each series thereof) and Class B Common Stock (and each series thereof) outstanding immediately prior to such subdivision or combination; and

(iii) Section 2(C)(2), this Section 2(D)(3) and Section 2(D)(4)(b) of this Article IV of this Restated Certificate of Incorporation shall not be amended, altered or repealed (including by merger, consolidation or otherwise), and no provision of this Restated Certificate of Incorporation that is inconsistent with Section 2(C)(2), this Section 2(D)(3) or Section 2(D)(4)(b) of this Article IV shall be adopted (including by merger, consolidation or otherwise); *provided, however*, that no vote otherwise required by this Section 2(D)(3) shall be required for the implementation by the Corporation of a rights plan, including the distribution of rights to all holders of the Company Common Stock, the designation of a series of preferred stock in connection therewith, and all other actions contemplated by any such rights plan and the operation thereof, so long as all shares of all holders of shares of Company Common Stock are treated identically pursuant to such a distribution and, other than a holder who is an “Acquiring Person” and certain transferees of any such “Acquiring Person” under such rights plan, the operation of such rights plan.

(4) (a) “*Requisite Vote*” and “*Requisite Votes*,” as applicable, means, in addition to any other or different vote required by applicable law, for purposes of any action described in clauses (i) through (vii) of Section 2(D)(2) of this Article IV, (1) the affirmative vote of holders of at least a majority of the voting power of the shares of all series of Class A Common Stock and all series of Class B Common Stock outstanding as of the record date therefor, voting together as a single class and, (2) if any such action would affect a class or series of Class A Common Stock and/or Class B Common Stock, as applicable, less favorably, or more adversely, than it does any other class or series of Class A Common Stock and/or Class B Common Stock, the affirmative vote of holders of at least a majority of the voting power outstanding as of the record date therefor of the shares of the class or series less favorably or more adversely affected by such action, voting as a separate class.

(b) “*Requisite Common Vote*” means, in addition to any other or different vote required by applicable law, for purposes of any action described in clauses (i) through (iii) of Section 2(D)(3) of this Article IV, the affirmative vote of holders of at least a majority of the voting power of the shares of Common Stock outstanding as of the record date therefor.

3. Transfer Restrictions and Conversion Applicable to Shares of Class A Common Stock and Class B Common Stock.

(A) Transfer Restrictions of Class A Common Stock and Class B Common Stock.

(1) Except as otherwise set forth in Section 3(A)(2), Section 3(A)(3) or Section 3(A)(4) of this Article IV, (x) shares of Class A Common Stock may not be Transferred by or at the request of any record or beneficial owner of such shares of Class A Common Stock, and (y) shares of Class B Common Stock may not be Transferred by or at the request of any record or beneficial owner of such shares of Class B Common Stock until the Lock-Up Expiration Date applicable to such shares of Class B Common Stock shall have occurred.

(2) Section 3(A)(1) of this Article IV shall not prohibit a record or beneficial owner of shares of Class A Common Stock or Class B Common Stock from Transferring such shares in a Permitted Transfer, *provided* that (i) any record or beneficial owner of shares of Class A Common Stock or Class B Common Stock that seeks to Transfer one or more of such shares pursuant to this Section 3(A)(2) must, upon the Corporation's request, provide to the Corporation affidavits or other proof reasonably acceptable to the Corporation that any such Transfer qualifies as a Permitted Transfer, and any good faith determination of the Corporation that a particular Transfer so qualifies or does not so qualify shall be conclusive and binding; and (ii) if a record or beneficial owner of shares of Class A Common Stock or Class B Common Stock makes any Transfer of one or more such shares in a Permitted Transfer, each share of Class A Common Stock and/or Class B Common Stock so Transferred shall continue to be bound by the terms of this Article IV, including the restrictions on Transfer set forth in this Article IV.

(3) Section 3(A)(1) of this Article IV shall not prohibit a record or beneficial owner of shares of Class A Common Stock from Transferring such shares pursuant to a Qualified Transfer.

(4) (a) At any time or from time to time on or prior to the second (2nd) anniversary of the Issue Date, if the Board of Directors (or any committee thereof designated thereby) determines in good faith it is in the best interests of the Corporation and its stockholders, the Board of Directors (or such committee) may (x) waive or otherwise remove the restrictions on Transfer set forth in Section 3(A)(1) of this Article IV with respect to all or any number of the shares of Series A-4 Common Stock, on such terms and conditions as may be fixed by the Board of Directors (or such committee) in its sole discretion and (y) waive or otherwise remove the restrictions on Transfer set forth in Section 3(A)(1) of this Article IV (on such terms and conditions as may be fixed by the Board of Directors (or such committee) in its sole discretion) to allow any of the MAC Trusts to Transfer all or any number of the shares of Class A Common Stock held by it so long as such Transfer will occur on or prior to the second (2nd) anniversary of the Issue Date.

(b) At any time or from time to time after the second (2nd) anniversary of the Issue Date, if the Board of Directors (or any committee thereof designated thereby) determines in good faith it is in the best interests of the Corporation and its stockholders,

the Board of Directors (or such committee) may, in its sole discretion, waive or otherwise remove the restrictions on Transfer set forth in Section 3(A)(1) of this Article IV, on such terms and conditions as may be fixed by the Board of Directors (or such committee) in its sole discretion, with respect to (w) all or any number of the shares of Series A-1 Common Stock and Series B-1 Common Stock (such shares, the “*Combined Series 1 Stock*”), (x) all or any number of the shares of Series A-2 Common Stock and Series B-2 Common Stock (such shares, the “*Combined Series 2 Stock*”), or (y) all or any number of the shares of Series A-3 Common Stock and Series B-3 Common Stock (such shares, the “*Combined Series 3 Stock*,” and each of the Combined Series 1 Stock, Combined Series 2 Stock and Combined Series 3 Stock is referred to individually as a “*Combined Series of Stock*”); *provided, however*, that, except in the case of a waiver or removal of the restrictions on Transfer if required to permit Transfers pursuant to Section 2.02(b)(vi) of the Governance Agreement, if the Board of Directors (or such committee) waives or otherwise removes the restrictions on Transfer set forth in Section 3(A)(1) of this Article IV pursuant to this Section 3(A)(4)(b) with respect to less than all of the outstanding shares of a Combined Series of Stock, the number of shares of such Combined Series of Stock of each holder in respect of which the restrictions on Transfer set forth in Section 3(A)(1) of this Article IV shall be waived or otherwise removed shall be equal to the result obtained by multiplying (i) the number of shares of such Combined Series of Stock held by such holder as of a record date determined by the Board of Directors (or such committee) by (ii) a fraction, the numerator of which shall be the number of outstanding shares of such Combined Series of Stock as of such record date in respect of which the Board of Directors (or such committee) is waiving or otherwise removing the restrictions on Transfer set forth in Section 3(A)(1) of this Article IV and the denominator of which shall be the number of outstanding shares of such Combined Series of Stock as of such record date, rounded down to the nearest whole share. In the event that the Board of Directors (or such committee) waives or otherwise removes the restrictions set forth in Section 3(A)(1) of this Article IV pursuant to this Section 3(A)(4)(b) with respect to less than all of the shares of any Combined Series of Stock held by any holder, such waiver or removal of restrictions shall apply first to such holder’ s shares of Class A Common Stock of the Combined Series of Stock and second to such holder’ s shares of Class B Common Stock of such Combined Series of Stock.

(5) Notwithstanding anything to the contrary contained in this Restated Certificate of Incorporation, the Corporation shall not, and shall not permit any of its subsidiaries to, purchase or otherwise acquire any shares of Class A Common Stock or Class B Common Stock at a price per share that exceeds the Common Market Price.

(B) Conversion of Class A Common Stock.

(1) Series A-1 Common Stock; Series A-2 Common Stock; Series A-3 Common Stock. Each share of Series A-1 Common Stock, Series A-2 Common Stock and Series A-3 Common Stock shall be converted into shares of Common Stock on the terms and conditions set forth below in this Section 3(B)(1). Any conversion effected in accordance with this Section 3(B)(1) (other than paragraph (d) of this Section 3(B)(1)) shall be effective upon the applicable Conversion Time whether or not certificates representing such shares are surrendered to the Corporation.

(a) Conversion Upon Lock-up Release Date. (i) Each share of Series A-1 Common Stock outstanding on the First Lock-up Release Date shall be converted, immediately prior to the close of business on such date, automatically and without payment of additional consideration or further action by the holder thereof, into one fully paid and non-assessable share of Common Stock; (ii) each share of Series A-2 Common Stock outstanding on the Second Lock-up Release Date shall be converted, immediately prior to the close of business on such date, automatically and without payment of additional consideration or further action by the holder thereof, into one fully paid and non-assessable share of Common Stock; and (iii) each share of Series A-3 Common Stock outstanding on the Third Lock-up Release Date shall be converted, immediately prior to the close of business on such date, automatically and without payment of additional consideration or further action by the holder thereof, into one fully paid and non-assessable share of Common Stock.

(b) Conversion in Connection with a Released Share Offering. Each share of Series A-1 Common Stock, Series A-2 Common Stock and Series A-3 Common Stock shall be converted, automatically and without payment of additional consideration or further action by the holder thereof, into one fully paid and non-assessable share of Common Stock upon the Transfer of such share pursuant to a Released Share Offering in accordance with the Registration Agreement.

(c) Conversion by the Board.

(i) At any time or from time to time on or prior to the second (2nd) anniversary of the Issue Date, the Board of Directors (or any committee thereof designated thereby) may, in its sole discretion, convert all or any number of the shares of any series of Class A Common Stock (other than Series A-4 Common Stock) held by any MAC Trust, automatically and without payment of additional consideration or further action by the holder thereof, on a share-for-share basis, into fully paid and non-assessable shares of Common Stock (at such time or times and on such terms and conditions as may be fixed by the Board of Directors (or such committee) in its sole discretion) so long as (x) such conversion will occur and is conditioned upon the Transfer of all such shares of Common Stock pursuant to a Structured Formation Offering, Market Sale or Private Sale, (y) such conversion and Transfer will occur on or prior to the second (2nd) anniversary of the Issue Date and (z) the shares of Class A Common Stock that are to be converted pursuant to this clause (i) at any one time shall consist of an equal number of shares of Series A-1 Common Stock, Series A-2 Common Stock and Series A-3 Common Stock then held by such MAC Trust.

(ii) At any time or from time to time after the later of the Class B Conversion Approval and the second (2nd) anniversary of the Issue Date, the Board of Directors (or any committee thereof designated thereby) may, in its sole discretion, convert all or any number of the shares of any series of Class A Common Stock automatically and without payment of additional consideration or further action by the holder thereof, on a share-for-share basis, into fully paid and non-assessable shares of Common Stock (at such time or times and on such terms and conditions as may be fixed by the Board of Directors (or such committee) in its sole discretion); *provided, however*, that if the Board of Directors (or such committee) elects to convert less than all of the outstanding shares of

any series of Class A Common Stock at any time pursuant to this Section 3(B)(1)(c)(ii), the number of shares of such series of Class A Common Stock of each holder that shall be converted shall be equal to the result obtained by multiplying (x) the number of shares of such series of Class A Common Stock held by such holder as of a record date determined by the Board of Directors (or such committee) by (y) a fraction, the numerator of which shall be the number of outstanding shares of such series of Class A Common Stock as of such record date being converted by the Board of Directors (or any such committee), and the denominator of which shall be the number of outstanding shares of such series of Class A Common Stock as of such record date, rounded down to the nearest whole share.

(d) Death Conversion. In the event an estate of a person who shall have died after the Execution Date is a holder of shares of Class A Common Stock or in the event a grantor, settlor or beneficiary of a trust that holds shares of Class A Common Stock shall have died after the Execution Date, such estate or trust may, without payment of additional consideration, convert any shares of Class A Common Stock held by such trust or estate, on a share-for-share basis, into fully paid and non-assessable shares of Common Stock in connection with (a) the Transfer of such shares of Common Stock so long as the proceeds of such Transfer are to be used (or the proceeds of a prior Permitted Transfer (made pursuant to clause (B) of such definition) of shares of Class B Common Stock that were previously converted into such shares of Class A Common Stock were used) to pay estate taxes and expenses payable by reason of the death of such deceased person or the death of the grantor or settlor of such trust or any one or more beneficiaries of such trust (as applicable), and (b) the Transfer of such shares of Common Stock after the second (2nd) anniversary of the Issue Date so long as (x) the proceeds of such Transfer are to be used to pay estate taxes, debts, obligations and expenses payable by reason of the death of such deceased person or the death of the grantor or settlor of such trust or any one or more beneficiaries of such trust (as applicable) or (y) such Transfer is made in connection with a foreclosure on shares of Class A Common Stock that were pledged pursuant to a Permitted Transfer. In order for a trust or estate to convert shares of Class A Common Stock into shares of Common Stock pursuant to this Section 3(B)(1)(d), such trust or estate shall surrender such the certificate or certificates for such shares (or, if such trust or estate alleges that such certificate or certificates has been lost, stolen or destroyed, such trust or estate shall provide the Corporation with a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation and the transfer agent (if the Corporation does not serve as its own transfer agent) at the office of the transfer agent for the Class A Common Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) and if requested by the Corporation or the transfer agent (if applicable), the posting of a surety bond in customary amount and upon customary terms, against any claim that may be made against the Corporation and/or the transfer agent on account of the alleged loss, theft or destruction of such certificate or certificates), at the office of the transfer agent for the Class A Common Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice (x) stating that such trust or estate elects to convert all or a number of shares of Class A Common Stock represented by such certificate or certificates (if any) pursuant to this Section 3(B)(1)(d) and (y) presenting facts indicating that such conversion complies with this Section 3(B)(1)(d). Such notice shall also state such trust or estate's name or the names of the nominees in which such trust or estate wishes such shares

of Common Stock, and the certificate or certificates (if any) for such shares of Common Stock, to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. In addition, the trust or estate seeking to convert shares of Class A Common Stock into shares of Common Stock pursuant to this Section 3(B)(1)(d) shall (i) provide to the Corporation affidavits stating that such conversion and the related Transfer of shares of Common Stock is in compliance with any agreement such trust or estate may have with Cargill and (ii) upon the Corporation's request, provide to the Corporation affidavits or other proof reasonably acceptable to the Corporation that such conversion complies with this Section 3(B)(1)(d), and any good faith determination of the Corporation that a particular conversion so qualifies or does not so qualify shall be conclusive and binding. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of the certificates (or lost certificate affidavit and agreement), notice and, if requested in accordance with the foregoing, any surety bond, affidavits or other proof, shall be the Conversion Time and the shares of Common Stock issuable upon conversion of such shares of Class A Common Stock shall be deemed outstanding of record as of such time. The Corporation shall, as soon as practicable after any such surrender following such Conversion Time, issue and deliver to the applicable trust or estate or to its nominees, a certificate or certificates (if any) for the number of shares of Common Stock into which such shares of Class A Common Stock were converted pursuant to this Section 3(B)(1)(d) and a certificate representing the shares of Class A Common Stock represented by a surrendered certificate that were not converted into shares of Common Stock pursuant to this Section 3(B)(1)(d).

(2) Series A-4 Common Stock. The shares of Series A-4 Common Stock shall be converted into shares of Common Stock on the terms and conditions set forth in this Section 3(B)(2). Any conversion effected in accordance with this Section 3(B)(2) shall be effective upon the applicable Conversion Time whether or not certificates representing such shares are surrendered to the Corporation.

(a) Conversion in Connection with Certain Sales. Prior to the second (2nd) anniversary of the Issue Date, each share of Series A-4 Common Stock shall be converted, automatically and without payment of additional consideration or further action by the holder thereof, into one fully paid and non-assessable share of Common Stock upon the Transfer of that share pursuant to a Structured Formation Offering, Market Sale or Private Sale, as applicable.

(b) Other Conversion. Immediately after the close of business on the second (2nd) anniversary of the Issue Date, each then outstanding share of Series A-4 Common Stock shall be converted, automatically and without payment of additional consideration or further action by the holder thereof, into one share of Common Stock.

(3) 90% Owner After Tender Offer. In the event that any Person becomes the record and beneficial owner of 90% or more of the outstanding shares of Company Common Stock as a result of a tender or exchange offer approved or recommended by the Board of Directors (or the exercise of any "top-up" option granted by the Corporation in connection with any such tender or exchange offer), each outstanding share of Class A Common Stock, whether or not held by such

Person, shall be converted, automatically and without payment of additional consideration or further action by the holder thereof, into one fully paid and non-assessable share of Common Stock.

(C) Conversion of Class B Common Stock. Each share of Class B Common Stock shall be converted into shares of Series A-1 Common Stock, Series A-2 Common Stock, Series A-3 Common Stock or Common Stock, as applicable, on the terms and conditions set forth below in this Section 3(C). Any conversion effected in accordance with this Section 3(C) shall be effective upon the applicable Conversion Time whether or not certificates representing such shares are surrendered to the Corporation.

(1) Conversion upon Shareholder Approval. If the Corporation's Board of Directors determines to submit to the stockholders of the Corporation, at a duly called meeting of stockholders, a proposal to effect a conversion of the shares of Class B Common Stock, and such proposal is approved by the affirmative vote of the holders of a majority of the voting power of the shares of Common Stock, Class A Common Stock and Class B Common Stock entitled to vote and present in person or by proxy at the meeting, voting together as a single class (any such approval, the "*Class B Conversion Approval*"), all of the shares of Class B Common Stock then outstanding shall be converted, automatically and without payment of additional consideration or further action by the holders thereof, as follows:

(a) If the Class B Conversion Approval occurs prior to the First Lock-up Release Date, then immediately prior to the close of business on the date of such Class B Conversion Approval (i) each share of Series B-1 Common Stock shall be converted into one fully paid and non-assessable share of Series A-1 Common Stock, (ii) each share of Series B-2 Common Stock shall be converted into one fully paid and non-assessable share of Series A-2 Common Stock, and (iii) each share of Series B-3 Common Stock shall be converted into one fully paid and non-assessable share of Series A-3 Common Stock;

(b) If the Class B Conversion Approval occurs on or after the First Lock-up Release Date but prior to the Second Lock-up Release Date, then immediately prior to the close of business on the date of such Class B Conversion Approval, (i) each share of Series B-1 Common Stock shall be converted into one fully paid and non-assessable share of Common Stock, (ii) each share of Series B-2 Common Stock shall be converted into one fully paid and non-assessable share of Series A-2 Common Stock, and (iii) each share of Series B-3 Common Stock shall be converted into one fully paid and non-assessable share of Series A-3 Common Stock;

(c) If the Class B Conversion Approval occurs on or after the Second Lock-up Release Date but before the Third Lock-up Release Date, then immediately prior to the close of business on the date of such Class B Conversion Approval, (i) each share of Series B-1 Common Stock and Series B-2 Common Stock shall be converted into one fully paid and non-assessable share of Common Stock, and (ii) each share of Series B-3 Common Stock shall be converted into one fully paid and non-assessable share of Series A-3 Common Stock; and

(d) If the Class B Conversion Approval occurs on or after the Third-Lock-up Release Date, then immediately prior to the close of business on the date of such Class B Conversion Approval, each share of Class B Common Stock shall be converted into one fully paid and non-assessable share of Common Stock.

(2) 90% Owner After Tender Offer. In the event that any Person becomes the record and beneficial owner of 90% or more of the outstanding shares of Company Common Stock as a result of a tender or exchange offer approved or recommended by the Board of Directors (or the exercise of any “top-up” option granted by the Corporation in connection with any such tender or exchange offer), each outstanding share of Class B Common Stock, whether or not held by such Person, shall be converted, automatically and without payment of additional consideration or further action by the holder thereof, into one fully paid and non-assessable share of Common Stock.

(D) Conversion Mechanics.

(1) Manner of Conversion.

(a) Upon the automatic conversion of any shares of Class A Common Stock or any shares of Class B Common Stock pursuant to Section 3(B) or Section 3(C) of this Article IV (other than pursuant to Section 3(B)(1)(d)) (any such conversion, an “*Automatic Conversion*”), the Corporation will provide written notice of the conversion of such shares to the holders of record of such shares, at such holders’ respective addresses as they appear on the transfer books of the Corporation, as soon as reasonably practicable following the applicable Conversion Time; *provided, however*, that neither the failure to give such notice nor any defect therein shall affect the validity of the conversion. Such notice, which need not be sent in advance of the occurrence of the applicable Conversion Time, shall state, as appropriate and together with such other information as the Corporation may deem appropriate to include in such notice: (i) the effective date of the conversion; and (ii) the number and series of shares of Class A Common Stock or Class B Common Stock, as the case may be, that were or are to be automatically converted and the number and class and series of shares, as applicable, into which the converted (or to be converted) shares were (or are to be) converted.

(b) In the event of an Automatic Conversion of any shares of Class A Common Stock or any shares of Class B Common Stock, the certificates formerly representing each such share of Class A Common Stock or Class B Common Stock shall thereupon and thereafter be deemed to represent such number and series (if applicable) of shares of Class A Common Stock or Common Stock, as applicable, into which such shares of Class A Common Stock or Class B Common Stock were converted pursuant to such Automatic Conversion unless and until such certificate or certificates are exchanged in accordance with the following paragraph.

(c) From and after the Conversion Time applicable to shares of Class A Common Stock or Class B Common Stock converted pursuant to an Automatic Conversion any holder of such shares of former Class A Common Stock or former Class B Common Stock may surrender such holder’ s certificate or certificates for such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, such holder shall provide the Corporation with a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation and the transfer

agent (if the Corporation does not serve as its own transfer agent) at the office of the transfer agent for the Class A Common Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) and if requested by the Corporation or the transfer agent (if applicable), the posting of a surety bond in customary amount and upon customary terms, against any claim that may be made against the Corporation and/or the transfer agent on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Class A Common Stock and/or Class B Common Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder would like one or more new certificates (if any) representing the shares of Class A Common Stock or Common Stock, as applicable, into which such shares of Class A Common Stock and/or Class B Common Stock were converted pursuant to the Automatic Conversion. Such notice shall state such holder's name or, where shares were converted into shares of Common Stock, the names of the nominees in which such holder wishes the certificate or certificates (if any) for such shares to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The Corporation shall, as soon as practicable after any such surrender following the Conversion Time applicable to any such shares, issue and deliver to such holder, or where shares were converted into shares of Common Stock, to his, her or its nominees, a certificate or certificates (if any) for the number of shares of Class A Common Stock or Common Stock into which such shares of Class A Common Stock and/or Class B Common Stock were converted pursuant to the Automatic Conversion.

(2) Reservation of Shares. The Corporation shall at all times when Class A Common Stock or Class B Common Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Class A Common Stock or Class B Common Stock, such number of its duly authorized shares of Class A Common Stock and Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class A Common Stock and Class B Common Stock at such time; and if at any time the number of authorized but unissued shares of Class A Common Stock or Common Stock, as applicable, shall not be sufficient to effect the conversion of all then outstanding shares of Class A Common Stock and Class B Common Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Class A Common Stock or Common Stock, as applicable, to such number of shares as shall be sufficient for such purposes, including, if applicable, seeking to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate of Incorporation.

(3) Effect of Conversion. Each share of Class A Common Stock and Class B Common Stock converted as herein provided shall no longer be deemed to be outstanding and all rights with respect to such share shall immediately cease and terminate at the Conversion Time applicable to such share, except only the right of the holder thereof to receive shares of Class A Common Stock or Common Stock, as the case may be, in exchange therefor and to receive payment of any dividends declared but unpaid on the share so converted for which the record date has already occurred. Any shares of any series of Class A Common Stock or Class B Common Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of the applicable series of Class A Common Stock or Class B Common Stock accordingly.

(4) Treatment of Certain Dividends.

(a) With respect to any dividends that (i) are declared on shares of Series A-1 Common Stock, Series A-2 Common Stock, Series A-3 Common Stock or Series A-4 Common Stock, (ii) are payable in shares of Series A-1 Common Stock, Series A-2 Common Stock, Series A-3 Common Stock, or Series A-4 Common Stock, respectively, and (iii) have not been paid prior to the conversion of such shares of Series A-1 Common Stock, Series A-2 Common Stock, Series A-3 Common Stock or Series A-4 Common Stock, as applicable, into shares of Common Stock, such dividend shall be paid in the form of shares of Common Stock rather than in the form of shares of Series A-1 Common Stock, Series A-2 Common Stock, Series A-3 Common Stock or Series A-4 Common Stock, as applicable.

(b) With respect to any dividends that (i) are declared on shares of Series B-1 Common Stock, Series B-2 Common Stock or Series B-3 Common Stock, (ii) are payable in shares of Series A-1 Common Stock, Series A-2 Common Stock, or Series A-3 Common Stock, respectively, and (iii) have not been paid prior to the conversion of such shares of Series B-1 Common Stock, Series B-2 Common Stock or Series B-3 Common Stock, as applicable, into shares of Common Stock, such dividend shall be paid in the form of shares of Common Stock rather than in the form of shares of Series A-1 Common Stock, Series A-2 Common Stock or Series A-3 Common Stock, as applicable.

(5) Taxes. The issuance of shares of Common Stock or Class A Common Stock, as the case may be, on the conversion of Class A Common Stock or Class B Common Stock shall be made by the Corporation without charge for expenses or for any documentary, stamp or similar issue or transfer taxes payable in respect of the issue or delivery of shares of Common Stock or Class A Common Stock, as applicable. However, if any such shares are to be issued in a name other than that of the holder of the share or shares of Class A Common Stock and/or Class B Common Stock converted, the person or persons requesting the issuance thereof shall pay to the Corporation the amount of any tax which may be payable in respect of any transfer involved in such issuance or shall establish to the satisfaction of the Corporation that such tax has been paid or is not required to be paid.

(E) General.

(1) The restrictions on Transfer set forth in this Section 3 of Article IV shall be referred to as the “*Lock-up*.” The Corporation shall not register the purported Transfer of any shares of Class A Common Stock or Class B Common Stock in violation of the Lock-up and any such Transfer in violation of the Lock-up shall be null and void *ab initio*.

(2) All shares of Class A Common Stock and Class B Common Stock shall be issued solely in certificated form, which certificate shall at all times bear a legend to the effect that such shares are subject to the Lock-up.

(F) Definitions.

The following terms shall have the meanings set forth below:

“*Acorn Trust*” means the Acorn Trust dated January 30, 1995, as amended.

“*Anne Ray Charitable Trust*” means the Anne Ray Charitable Trust dated August 20, 1996, as amended.

“*beneficial owner*” and words of similar import (including “*beneficially own*” and “*beneficial ownership*”) shall have the meaning attributed to them under Rule 13d-3 promulgated under the Exchange Act except that a Person shall be deemed to have “beneficial ownership” of all shares that such Person has the right to acquire, whether such right is exercisable immediately or only after passage of time.

“*Cargill*” means Cargill, Incorporated and its successors.

“*Cargill Family Entity*” means any corporation, partnership or limited liability company of which, in each case, at least ninety percent (90%) in value of the stock or other ownership interests is owned by one or more Cargill Family Members, Cargill Family Trusts, other Cargill Family Entities or Cargill Family Member Estates.

“*Cargill Family Member*” means (a) any natural person who is a lineal descendent of W.W. Cargill, including a legally adopted descendent and his or her descendants; (b) any natural person who is a spouse of any person referred to in clause (a); and (c) any natural person who is a brother, sister or parent, including as a result of a legal adoption, of any person referred to in clause (a).

“*Cargill Family Member Estate*” means the estate of any Cargill Family Member.

“*Cargill Family Trust*” means any trust the primary beneficiaries of which are Cargill Family Members, Cargill Family Entities, other Cargill Family Trusts and/or Charitable Organizations.

“*Charitable Organization*” means an organization described in Section 170(c), Section 501(c)(3) or Section 501(c)(4) of the Code.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Common Market Price*” means the average (rounded to the nearest cent) of the volume-weighted average trading price of a share of Common Stock (rounded to the nearest cent) on the New York Stock Exchange for each of the 20 trading days immediately preceding the date of the Transfer.

“*Conversion Time*” means, with respect to any share of Company Common Stock, the date and time that such share is converted into any other class or series of Company Common Stock as set forth in Section 3 of this Article IV.

“*Exchange Act*” means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“*Execution Date*” means January 18, 2011.

“*Family Members*” means, with respect to any natural person, such person’s spouse, parents, grandparents, children, grandchildren, great-grandchildren, brothers and sisters, mother-in-law and father-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law. Adopted and step-members are also included as “Family Members.”

“*First Lock-Up Release Date*” means the first day after the thirty (30) month anniversary of the Issue Date.

“*Governance Agreement*” means that certain Amended and Restated Governance Agreement, dated as of May 25, 2011, by and among GNS II (U.S.) Corp., The Mosaic Company and the Stockholder Parties thereto, as such agreement may be amended from time to time.

“*Issue Date*” means the date on which Cargill consummates the Split-off, as such term is defined in the Merger and Distribution Agreement, in accordance with the terms thereof.

“*Lock-Up Expiration Date*” means: (A) with respect to each share of Series B-1 Common Stock, the First Lock-Up Release Date, (B) with respect to each share of Series B-2 Common Stock, the Second Lock-Up Release Date and (C) with respect to each share of Series B-3 Common Stock, the Third Lock-Up Release Date.

“*Lilac Trust*” means the Lilac Trust dated August 20, 1996, as amended.

“*MAC Trusts*” means the Margaret A. Cargill Foundation, the Acorn Trust, the Lilac Trust and the Anne Ray Charitable Trust.

“*Margaret A. Cargill Foundation*” means the Margaret A. Cargill Foundation established under the Acorn Trust dated January 30, 1995, as amended.

“*Market Sale*” means a sale of capital stock of the Corporation by the MAC Trusts pursuant to and in accordance with Section 2.2(a) of the Registration Agreement.

“*Merger*” shall have the meaning assigned to such term in the Merger and Distribution Agreement.

“*Merger and Distribution Agreement*” means that certain Merger and Distribution Agreement, dated as of January 18, 2011, by and among GNS II (U.S.) Corp., The Mosaic Company, GNS Merger Sub LLC, the MAC Trusts and Cargill, as such agreement may be amended from time to time.

“*Permitted Transfer*” means:

(A) any Transfer of shares to the Corporation or any of its subsidiaries other than any such Transfer of shares of Class A Common Stock or Class B Common Stock at a price per share that exceeds the Common Market Price;

(B) any Transfer of shares by an estate of a person who shall have died after the Execution Date or by a trust (in the event a grantor, settlor or beneficiary of such trust shall have died after the Execution Date), in each case so long as the proceeds of such Transfer are to be used to pay estate taxes and expenses payable by reason of the death of such deceased person or the death of the grantor or settlor of such trust or any one or more beneficiaries of such trust (as applicable);

(C) any pledge of shares by an estate of a person who shall have died after the Execution Date or by a trust (in the event a grantor, settlor or beneficiary of such trust shall have died after the Execution Date), in each case so long as such pledge of shares is made to a bank, trust company or other financial institution as security for a bona fide loan and the proceeds of such loan are to be, or shall have been, used to pay estate taxes, debts, obligations and expenses payable by reason of the death of such deceased person or the death of the grantor or settlor of such trust or any one or more beneficiaries of such trust (as applicable), and the Transfer of any such pledged shares in connection with a foreclosure on such pledged shares;

(D) any Transfer of shares of a deceased holder to the estate of such deceased holder upon such deceased holder's death and the Transfer of such shares from the estate of such deceased holder to the beneficiaries thereof, *provided* that each such Transfer is pursuant to the deceased holder's will or the laws of descent or distribution;

(E) any Transfer of shares of a holder to the bankruptcy estate of such holder if such holder has become bankrupt or insolvent;

(F) any Transfer of shares by a natural person to (i) any of such holder's Family Members, (ii) a trust for the benefit of the holder or one or more of such holder's Family Members (a "*Qualified Trust*") or (iii) any corporation, partnership or limited liability company of which, in each case, 100% of the voting and equity interests are beneficially owned by one or more of such holder and such holder's Family Members or a trust for the benefit of one or more of such holder's Family Members;

(G) any Transfer of shares by a Qualified Trust to the beneficiaries and/or grantor or settlor of such trust, in each case in accordance with the terms of the governing trust instrument;

(H) any Transfer of shares of Series A-4 Common Stock by a Charitable Organization to another Charitable Organization to satisfy the transferor's annual distribution requirements under the Code, applicable treasury regulations or state law; to the extent, and only to the extent, such transferor's liquid assets are insufficient, in the good faith judgment of the transferor, to meet such annual distribution requirements and operating requirements for such period;

(I) any Transfer of shares by the Acorn Trust to the MAC Foundation in accordance with the governing trust agreement for the Acorn Trust and any Transfer of shares from the Lilac Trust to the Anne Ray Charitable Trust in accordance with the governing trust agreement for the Lilac Trust;

(J) any Transfer of shares by a holder thereof (other than a Transfer of shares to the Corporation or any of its subsidiaries, which is the subject of clause (A) of this definition) approved by the Board of Directors and by Cargill;

(K) any Transfer of shares after the second (2nd) anniversary of the Issue Date with respect to which no gain or loss is recognized for U.S. federal income tax purposes;

(L) any Transfer of shares after the second (2nd) anniversary of the Issue Date to Cargill Family Members, Cargill Family Entities, Cargill Family Member Estates, Cargill Family Trusts and Charitable Organizations; and

(M) any Transfer of shares after the second (2nd) anniversary of the Issue Date by a Cargill Family Trust to the beneficiaries and/or grantors or settlors of such trust.

“*Person*” means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, governmental entity or agency or other entity of any kind or nature.

“*Private Sale*” means a sale of capital stock of the Corporation by the MAC Trusts pursuant to and in accordance with Section 2.2(c) of the Registration Agreement.

“*Qualified Transfer*” means a Transfer (A) pursuant to a tender or exchange offer that is made by the Corporation or any of its subsidiaries or approved (including solely for the purposes of this definition) or recommended by the Board of Directors (or a designated committee thereof) in which all classes of Company Common Stock are offered the same form and amount of consideration per share or (B) arising as a result of a reorganization, consolidation, combination or merger or similar transaction to which the Corporation is a party and in which all classes of Company Common Stock are offered the same kind and amount of consideration per share.

“*Registration Agreement*” means that certain Registration Agreement, dated as of January 18, 2011, by and among GNS II (U.S.) Corp., The Mosaic Company, Cargill, the MAC Trusts and the other Persons party thereto, as such agreement may be amended from time to time.

“*Released Share Offering*” has the meaning assigned to such term in the Registration Agreement.

“*Second Lock-Up Release Date*” means the first day after the forty-two (42) month anniversary of the Issue Date.

“*Structured Formation Offering*” means any of the First Formation Offering, the Second Formation Offering, the Third Formation Offering, the Fourth Formation Offering, and the S&P 500 Index Inclusion Offering, as each such term is defined in, and pursuant to, the Registration Agreement.

“*Third Lock-Up Release Date*” means the first day after the fifty-four (54) month anniversary of the Issue Date.

“*Transfer*” means (with its cognates having corresponding meanings), with respect to any securities (“*applicable securities*”), (i) any direct or indirect sale, exchange, issuance, transfer, redemption, grant, pledge, hypothecation or other disposition, whether voluntary or involuntary, by operation of law or otherwise, and whether or not for value, of any of the applicable securities, or any securities, options, warrants or rights convertible into or exercisable or exchangeable for, or

for the purchase or other acquisition of, any applicable securities or any contract or other binding arrangement or understanding (in each case, whether written or oral) to take any of the foregoing actions or (ii) entering into any swap or other agreement, arrangement or understanding, whether or not in writing, that, directly or indirectly, transfers, conveys or otherwise disposes of, in whole or in part, any of the economic or other risks or consequences of ownership of any applicable securities, including short sales of applicable securities, option transactions with respect to applicable securities, use of equity or other derivative financial instruments relating to applicable securities and other hedging arrangements with respect to applicable securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of the applicable securities, other securities, cash or otherwise; *provided, however*, that the grant of a proxy in connection with a solicitation of proxies subject to the provisions of Section 14 of the Exchange Act shall not constitute a “Transfer”.

4. Preferred Stock.

The Board of Directors is authorized, subject to limitations prescribed by law and Section 2(D)(2) of this Article IV, to provide by resolution or resolutions for the issuance of shares of Preferred Stock from time to time in one or more series, and, by filing a certificate pursuant to the applicable law of the State of Delaware (each a “*Preferred Stock Designation*”), to establish the number of shares to be included in each such series, and to fix the voting powers (if any), designations, powers, preferences, and relative, participating, optional or other rights, if any, of the shares of each such series, and any qualifications, limitations and restrictions thereof. The shares of Preferred Stock of any one series shall be identical with each other in all respects except as to the dates from and after which dividends thereon shall cumulate, if cumulative.

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

- (a) the designation of the series, which may be by distinguishing number, letter or title;
- (b) the number of the shares of the series, which number the Board of Directors may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares of such series then outstanding);
- (c) whether dividends, if any, shall be cumulative or noncumulative and the dividend rate of the series;
- (d) the dates at which dividends, if any, shall be payable;
- (e) the redemption rights and price or prices, if any, for shares of the series;
- (f) the terms and amount of any sinking fund provided for the purchase or redemption of shares of the series;
- (g) the amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;

(h) whether the shares of the series shall be convertible or exchangeable into shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series or of such other security, the conversion price or prices or exchange rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made;

(i) restrictions on the issuance of shares of the same series or of any other class or series;

(j) the voting rights, if any, of the holders of shares of the series; and

(k) such other powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof as the Board of Directors shall determine.

ARTICLE V BYLAWS

In furtherance and not in limitation of the powers conferred by statute and except as provided herein or in the bylaws, the Board of Directors shall have the power to adopt, amend, repeal or otherwise alter the bylaws without any action on the part of the stockholders in accordance with the bylaws; *provided, however*, that any bylaws made by the Board of Directors and any and all powers conferred by any of said bylaws may be amended, altered or repealed by the stockholders.

ARTICLE VI LIMITATION OF DIRECTORS' LIABILITY; INDEMNIFICATION

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. Each person who is or was a director or officer of the Corporation, and each person who serves or served at the request of the Corporation as a director or officer of another enterprise, shall be indemnified by the Corporation in accordance with, and to the fullest extent authorized by, the General Corporation Law.

If the General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

**ARTICLE VII
ELECTION OF DIRECTORS**

The election of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

**ARTICLE VIII
BOARD OF DIRECTORS**

The business of the Corporation shall be managed by or under the direction of the Board of Directors. A majority of the whole Board of Directors shall constitute a quorum for the transaction of business. Any director may tender his resignation at any time. Subject to any rights of the holders of any series of Preferred Stock, any director may be removed from office at any time, but only for cause and then only by the affirmative vote of the holders of at least a majority of the voting power of the then outstanding Voting Stock (as hereafter defined), voting together as a single class. For purposes of this Restated Certificate of Incorporation, "*Voting Stock*" shall mean the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors.

The number of directors to constitute the whole Board of Directors shall be established as provided in the bylaws. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the Board of Directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. At the first annual meeting of stockholders, the terms of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of the stockholders, the term office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders, the term of office for the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time such classification becomes effective.

Notwithstanding the foregoing provisions of this section, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. If the number of directors is hereafter changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, except as may be expressly provided as to any directors who may be elected by the holders of any series of Preferred Stock.

**ARTICLE IX
STOCKHOLDER ACTION BY WRITTEN CONSENT**

Action shall be taken by the stockholders of the Corporation only at annual or special meetings of the stockholders, and stockholders may not act by written consent; *provided, however*, that any action required or permitted to be taken by stockholders for or in connection with any action set forth in Section 2(D)(2) of Article IV and recommended by the Board of Directors may

be taken without a meeting if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of the applicable classes and/or series of shares of Class A Common Stock and/or Class B Common Stock representing the Requisite Votes (in addition to the holders of outstanding shares of Company Common Stock representing the minimum number of votes that are otherwise required under applicable law or this Restated Certificate of Incorporation) and shall otherwise comply with the procedures set forth in the bylaws of the Corporation. Special meetings of the stockholders may only be called as provided in the bylaws.

**ARTICLE X
AMENDMENT**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute (but subject to Section 2(D)(2) and Section 2(D)(3) of Article IV), and all rights conferred upon stockholders herein are granted subject to this reservation; *provided, however*, that no Preferred Stock Designation shall be amended after the issuance of any shares of the series of Preferred Stock created thereby, except in accordance with the terms of such Preferred Stock Designation and the requirements of applicable law.

3) That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the DGCL.

4) That said restated certificate of incorporation, which restates and integrates and further amends the provisions of this corporation's certificate of incorporation, has been duly adopted in accordance with Sections 242 and 245 of the DGCL.

5) That said restated certificate of incorporation shall become effective at 8:31 a.m. Eastern Time on May 25, 2011.

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IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation on this 24th day of May, 2011.

GNS II (U.S.) CORP.

By: /s/ Richard L. Mack

Name: Richard L. Mack

Title: Executive Vice President, General
Counsel and Corporate Secretary

[Signature Page to Restated Certificate of Incorporation]

AMENDED AND RESTATED
BYLAWS
OF
THE MOSAIC COMPANY
EFFECTIVE DATE: May 25, 2011

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AMENDED AND RESTATED

BYLAWS OF THE MOSAIC COMPANY (THE “CORPORATION”)

(effective as of May 25, 2011)

**ARTICLE I
MEETINGS OF STOCKHOLDERS**

SECTION 1.1. Annual Meeting. An annual meeting of the stockholders, for the election of directors and for the transaction of such other business as may properly come before the meeting, shall be held at such place, on such date, and at such time as the Board of Directors shall each year fix. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but shall be held solely by means of remote communication, subject to such guidelines and procedures as the Board of Directors may adopt, as permitted by applicable law. Subject to Section 1.7, any other proper business may be transacted at an annual meeting.

SECTION 1.2. Special Meetings.

(a) Special meetings of the stockholders, for any purpose or purposes prescribed in the notice of the meeting, may be called by (x) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption), or (y) the Chairman of the Board, and shall be held at such place, on such date, and at such time as the Board of Directors shall fix. Business transacted at special meetings shall be confined to the purpose or purposes stated in the notice.

(b) The Board of Directors may, in its sole discretion, determine that the special meeting shall not be held at any place, but shall be held solely by means of remote communications, subject to such guidelines and procedures as the Board of Directors may adopt, as permitted by applicable law.

SECTION 1.3. Notice of Meetings. Written notice of the place, date, and time of all meetings of the stockholders, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall be given, not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each stockholder of record entitled to vote at such meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the General Corporation Law of the State of Delaware, as may be amended from time to time (the “General Corporation Law”) or the Restated Certificate of Incorporation of the Corporation (the “Restated Certificate of Incorporation”)).

When a meeting is adjourned to another place, date or time, written notice need not be given of the adjourned meeting if the place, date and time thereof and the means of remote communication, if any, by which stockholders and proxyholders may be deemed present in person and vote at such adjourned meeting are announced at the meeting at which the

adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, written notice of the place, date, and time of the adjourned meeting shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

SECTION 1.4. Quorum. At any meeting of the stockholders, the holders of a majority of all of the shares of the stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law. If a quorum is present when a meeting is convened, the subsequent withdrawal of stockholders, even though less than a quorum remains, shall not affect the ability of the remaining stockholders lawfully to transact business.

If a quorum shall fail to attend any meeting, the chairman of the meeting or the holders of a majority of the shares of stock entitled to vote who are present, in person or by proxy, may adjourn the meeting to another place, date, or time until a quorum is present.

SECTION 1.5. Organization. The Chairman of the Board or such person as the Board of Directors may have designated or, in the absence of such a person, the Chief Executive Officer of the Corporation, or in the absence of such officer, the President of the Corporation or, in the absence of such officer, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as chairman of the meeting. The secretary of the meeting shall be such person as the chairman appoints.

SECTION 1.6. Conduct of Business; Remote Communication. The chairman of any meeting of stockholders shall determine the order of business and the rules, regulations and procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

If authorized by the Board of Directors in accordance with these Bylaws and applicable law, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication, (1) participate in a meeting of stockholders and (2) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

SECTION 1.7. Notice of Stockholder Business.

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) properly brought before the meeting by or at the direction of the Board of Directors, or (c) properly brought before an annual meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal offices of the Corporation no more than one hundred twenty (120) days and no less than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting (provided, however, that in the event that no annual meeting was held in the previous year or the annual meeting is called for a date that is not within thirty (30) days from the anniversary date of the preceding year's annual meeting date, written notice by a stockholder in order to be timely must be received by the later of (x) the twentieth (20th) day following the day on which the first public disclosure of the date of the annual meeting was made or (y) ninety (90) days prior to the date of such annual meeting). Delivery shall be by hand or by certified or registered mail, return receipt requested. In no event shall the public disclosure of an adjournment of an annual meeting commence a new time period for the giving of stockholder's notice as described above.

(b) A stockholder's notice to the Secretary with respect to an annual meeting shall set forth as to each matter the stockholder proposes to bring before the annual or special meeting (1) a brief description of the business desired to be brought before the annual or special meeting and the reasons for conducting such business at the annual or special meeting, (2) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (3) a representation that the stockholder is a holder of record of shares of stock of the Corporation entitled to vote with respect to such business and intends to appear in person or by proxy at the meeting to move the consideration of such business, (4) the class and number of shares of the Corporation which are beneficially owned by the stockholder, and (5) any material interest of the stockholder in such business.

(c) Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual or special meeting except in accordance with the procedures set forth in this Section 1.7. The Chair of an annual or special meeting shall, if the facts warrant, determine and declare to the meeting that business was not so properly brought before the meeting, and in such event, such business not properly brought before the meeting shall not be transacted.

SECTION 1.8. Proxies and Voting. At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing filed in accordance with the procedure established for the meeting.

Each stockholder shall have one vote for every share of stock entitled to vote which is registered in his name on the record date for the meeting, except as otherwise provided herein or required by law.

All voting, including on the election of directors, and except where otherwise required by law, may be by a voice vote; provided, however, that upon demand therefor by a stockholder entitled to vote or by his proxy, a stock vote shall be taken. Every stock vote shall be taken by

ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. Every vote taken by ballots shall be counted by an inspector or inspectors appointed by the chairman of the meeting.

All elections shall be determined by a plurality of the votes cast, and except as otherwise required by law, the Restated Certificate of Incorporation or these Bylaws, all other matters shall be decided by the vote of the holders of stock having a majority of the votes cast by the holders of all stock entitled to vote on such question which are present in person or proxy at the meeting.

SECTION 1.9. Stock List. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in his name, shall be open to the examination of any such stockholder, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, 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. If the meeting is to be held solely by means of remote communication, the list shall be open to the examination of any stockholder during the whole time thereof on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

ARTICLE II BOARD OF DIRECTORS

SECTION 2.1. Number and Term of Office. The number of directors and term of office shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption). The number of directors shall be twelve (12) until otherwise fixed. Each director shall hold office until his successor is elected and qualified or until his earlier death, resignation, retirement, disqualification or removal.

SECTION 2.2. Vacancies and Newly Created Directorships. Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors above thirteen (13) may be filled only by the stockholders at an annual or special meeting of stockholders by the vote of a plurality of the shares entitled to vote for the election of directors at such annual or special meeting. Any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, or other cause (other than (x) as a result of an increase in the authorized number

of directors above thirteen (13) or (y) one or more directors' removal from office by a vote of the stockholders) may be filled only by a majority vote of the directors then in office, though less than a quorum. Any director chosen in accordance with this Section 2.2 shall hold office for a term expiring at the next annual meeting of stockholders at which the class of directors of such director is elected, in the case of a newly created directorship resulting from any increase in the authorized number of directors, or for the remainder of the term of the director he or she is replacing. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

SECTION 2.3. Removal and Resignation. Subject to the rights of the holders of any series of Preferred Stock then outstanding, any director, or the entire Board of Directors, may be removed from office at any time, only for cause, and only by the affirmative vote of the holders of at least a majority of the voting power of its then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. Vacancies in the Board of Directors resulting from such removal may be filled by (i) a majority of the directors then in office, though less than a quorum, or (ii) the stockholders at a special meeting of the stockholders properly called for that purpose, by the vote of the holders of a plurality of the shares entitled to vote at such special meeting. A director so chosen shall hold office until the next annual meeting of stockholders at which the class of directors of such director is elected.

Any director may resign at any time by giving written notice to the Chairman of the Board, if any, the President or the Secretary. Unless otherwise stated in a notice of resignation, it shall take effect when received by the officer to whom it is directed, without any need for its acceptance.

SECTION 2.4. Regular Meetings. Unless otherwise determined by the Board of Directors, a regular annual meeting of the Board of Directors shall be held, without call or notice, immediately after and, if the annual meeting of stockholders is held at a place, at the same place as the annual meeting of stockholders, for the purpose of organizing the Board of Directors, electing officers and transacting any other business that may properly come before such meeting. Additional regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

SECTION 2.5. Special Meetings. Special meetings of the Board of Directors may be called by three (3) of the directors then in office, by the Chairman of the Board or by the Chief Executive Officer and shall be held at such place, on such date, and at such time as may be fixed by the person or persons calling the special meeting. Notice of the place, date, and time of each such special meeting shall be given to each director who does not waive the right to a notice by (i) mailing written notice not less than five (5) days before the meeting, (ii) sending notice one (1) day before the meeting by an overnight courier service and two (2) days before the meeting if by overseas courier service, or (iii) by telephoning, telecopying, telegraphing, electronically transmitting or personally delivering the same not less than twenty-four (24) hours before the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

SECTION 2.6. Quorum. At any meeting of the Board of Directors, a majority of the total number of authorized directors shall constitute a quorum for all purposes. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date, or time, without further notice or waiver thereof.

SECTION 2.7. Participation in Meetings by Conference Communications Equipment. Members of the Board of Directors, or of any committee of the Board of Directors, may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

SECTION 2.8. Conduct of Business. At any meeting of the Board of Directors, business shall be transacted in such order and manner as the Board may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present at a meeting at which a quorum is present, except as otherwise provided herein or required by law.

SECTION 2.9. Powers. The Board of Directors may, except as otherwise required by law, exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, including, without limiting the generality of the foregoing, the unqualified power:

- (a) To declare dividends from time to time in accordance with law;
- (b) To purchase or otherwise acquire any property, rights or privileges on such terms as it shall determine;
- (c) To authorize the creation, making and issuance, in such form as it may determine, of written obligations of every kind, negotiable or non-negotiable, secured or unsecured, and to do all things necessary in connection therewith;
- (d) To remove any officer of the Corporation with or without cause, and from time to time to pass on the powers and duties of any officer upon any other person for the time being;
- (e) To confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers, employees and agents;
- (f) To adopt from time to time such stock option, stock purchase, bonus or other compensation plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine;
- (g) To adopt from time to time such insurance, retirement, and other benefit plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine; and
- (h) To adopt from time to time regulations, not inconsistent with these Bylaws, for the management of the Corporation' s business and affairs.

SECTION 2.10. Action Without Meeting. Unless otherwise restricted by the Restated Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any

meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing (which may be in counterparts) or by electronic transmission, and the written consent or consents or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or such committee. Such filing shall be made in paper form if the minutes of the Corporation are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

SECTION 2.11. Compensation of Directors. Directors, as such, may receive, pursuant to resolution of the Board of Directors or a committee of the Board of Directors, reimbursement of their reasonable expenses, if any, of attendance at meetings and fixed fees and other compensation for their services as directors, including, without limitation, their services as members of committees of the Board of Directors.

SECTION 2.12. Nomination of Director Candidates. (a) Subject to any limitations stated in the Restated Certificate of Incorporation, nominations for the election of directors may be made by the Board of Directors or a proxy committee appointed by the Board of Directors or by any stockholder entitled to vote in the election of directors generally who complies with the notice procedures set forth in this Section 2.12. Any stockholder entitled to vote in the election of directors generally may nominate one or more persons for election as directors at an annual meeting of stockholders or a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting only if written notice of such stockholder's intent to make such nomination or nominations has been timely given, to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal offices of the Corporation (i), with respect to an election to be held at an annual meeting of stockholders, no more than one hundred twenty (120) days and no less than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting (provided, however, that in the event that no annual meeting was held in the previous year or the annual meeting is called for a date that is not within thirty (30) days from the anniversary date of the preceding year's annual meeting, written notice by a stockholder in order to be timely must be received by the later of (x) the twentieth (20th) day following the day on which the first public disclosure of the date of the annual meeting was made or (y) ninety (90) days prior to the date of such annual meeting), and (ii), with respect to the election to be held at a special meeting of stockholders for the election of directors, prior to the close of business on the tenth (10th) day following the date on which the first public disclosure of the date of the special meeting was made or in accordance with Section 1.2. Delivery shall be by hand, or by certified or registered mail, return receipt requested. In no event shall the public announcement of an adjournment of any annual or special meeting commence a new time period for giving of a stockholder notice as described above.

(b) 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: (1) the name, age, business address and residence address of such person, (2) the principal occupation or employment of such person, (3) the class and number of shares of stock of the Corporation which are beneficially owned by such person, (4) any other information relating to such person that would be required to be disclosed in solicitations of proxies for the election of such person as a director of the Corporation pursuant to Regulation 14A under the Securities Exchange Act

of 1934, as amended, had the nominee been nominated by the Board of Directors, and (5) such person' s written consent to being named in any proxy statement as a nominee and to serving as a director if elected; and (y) as to the stockholder giving notice: (1) the name and address, as they appear on the Corporation' s records, of such stockholder, (2) the class and number of shares of stock of the Corporation which are beneficially owned by such stockholder (determined as provided in clause (x)(3) above), (3) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote on the election of directors at such meeting and that such stockholder intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice, and (4) a description of all agreements, arrangements or understandings between the stockholder and each nominee of the stockholder and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder.

(c) At the request of the Board of Directors any person nominated by the Board of Directors for election as a director shall furnish to the Secretary that information required to be set forth in a stockholder' s notice of nomination which pertains to the nominee. The Corporation may require any proposed nominee of the Board of Directors to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

(d) The presiding officer of the meeting shall refuse to acknowledge the nomination of any person not made in compliance with the foregoing procedure.

ARTICLE III COMMITTEES

SECTION 3.1. Committees of the Board of Directors. The Board of Directors shall have four (4) standing committees consisting of one or more directors as determined by the Board of Directors, which shall be designated the Executive Committee, the Audit Committee, the Corporate Governance and Nominating Committee and the Compensation Committee, and each of which shall be governed by its charter as approved by the Board of Directors and which shall comply with the applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations of the Securities and Exchange Commission and the New York Stock Exchange. The Board of Directors, by a vote of a majority of the whole Board, may from time to time designate one or more other committees of the Board, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board. All committees of the Board of Directors shall be comprised of one or more directors. The Board of Directors may, if it desires, designate directors as alternate members who may replace any absent or disqualified member at any meeting of a committee.

The Audit Committee shall be comprised entirely of Non-Associated Directors, all of whom satisfy the applicable independence requirements of the New York Stock Exchange applicable to audit committees. The Corporate Governance and Nominating Committee shall be comprised of a majority of Non-Associated Directors. The Chairman of the Compensation Committee, if there be such an officer, shall be a Non-Associated Director and, if required by Section 162(m) of the Internal Revenue Code of 1986, as amended, or Section 16 of the Securities Exchange Act of 1934, as amended, all other members of the Compensation

Committee shall be Non-Associated Directors. The term “Non-Associated Director” shall mean a member of the Board of Directors who would be considered an “independent director” of the Corporation under (a) Section 303A.02 of the New York Stock Exchange Listed Company Manual and (b) the applicable rules and regulations of the Securities and Exchange Commission.

Any committee so designated may exercise the power and authority of the Board of Directors to declare a dividend, to authorize the issuance of stock or to adopt a certificate of ownership and merger if the resolution which designates the committee or a supplemental resolution of the Board of Directors shall so provide. In the absence or disqualification of any member of any committee and any alternate member in his place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

SECTION 3.2. Conduct of Business. Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or required by law. In the absence of such rules, each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

ARTICLE IV OFFICERS

SECTION 4.1. Generally. The officers of the Corporation shall consist of a President, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Board of Directors, a Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, and such other officers as may from time to time be appointed by the Board of Directors. Officers shall be elected by the Board of Directors, which shall consider that subject at its first meeting after every annual meeting of stockholders. Each officer shall hold office at the pleasure of the Board, until his successor is elected and qualified or until his earlier resignation or removal. Any number of offices may be held by the same person.

SECTION 4.2. Powers and Duties of Executive Officers. The officers of the Corporation shall have such powers and duties in the management of the Corporation as may be prescribed by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

SECTION 4.3. Chairman of the Board. The Chairman of the Board, if there shall be such an officer, shall, if present, preside at all meetings of the Board of Directors, and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or as provided by these Bylaws.

SECTION 4.4. President. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if there be such officers, the President shall be the general manager and chief executive officer of the

Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and other officers, employees and agents of the Corporation. The President shall preside at all meetings of the stockholders. The President shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or by these Bylaws. The President shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized by the Board of Directors.

SECTION 4.5. Vice President. In the absence or disability of the President, the Vice Presidents, if any, in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice Presidents, if any, shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors or these Bylaws.

SECTION 4.6. Treasurer. The Treasurer shall keep and maintain or cause to be kept and maintained, adequate and correct financial books and records of account of the Corporation in written form or any other form capable of being converted into written form. The Treasurer shall deposit all monies and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. The Treasurer shall disburse all funds of the Corporation as may be ordered by the Board of Directors, shall render to the President and directors, whenever they request it, an account of all transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws.

SECTION 4.7. Secretary. The Secretary shall keep, or cause to be kept, a book of minutes in written form of the proceedings of the Board of Directors, committees of the Board, and stockholders. Such minutes shall include all waivers of notice, consents to the holding of meetings, or approvals of the minutes of meetings executed pursuant to these Bylaws or the General Corporation Law. The Secretary shall keep, or cause to be kept at the principal executive office or at the office of the Corporation's transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders and the number and class of shares held by each.

The Secretary shall give or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required by these Bylaws or by law to be given, and shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

SECTION 4.8. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

SECTION 4.9. Resignation; Removal; Vacancies. Subject to the rights and obligations set forth in a written employment agreement, if any, any officer of the Corporation may be

removed at any time, with or without cause, by the Board of Directors. Any officer may resign at any time by giving written notice to the Chairman of the Board, if any, the President or the Secretary. A vacancy occurring in any office of the Corporation may be filled for the unexpired portion of the term thereof by the Board of Directors at any regular or special meeting.

SECTION 4.10. Action With Respect to Securities of Other Corporations. Unless otherwise directed by the Board of Directors, the President or any officer of the Corporation authorized by the President shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE V STOCK

SECTION 5.1. Certificates of Stock. Each stockholder shall be entitled to a certificate signed by, or in the name of the Corporation by, the Chief Executive Officer, the President or a Vice President, and the Secretary, an Assistant Secretary or the Treasurer, certifying the number of shares owned by him or her. Any or all the signatures on the certificate may be facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile, stamp or other imprint signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such officer, transfer agent, or registrar continued to be such at the date of issue.

SECTION 5.2. Transfers of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for stock of the Corporation duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer or, if the relevant stock certificate is claimed to have been lost, stolen or destroyed, upon compliance with the provisions of Section 5.4 of these Bylaws, and upon payment of applicable taxes with respect to such transfer, and in compliance with any restrictions on transfer applicable to such stock certificate or the shares represented thereby of which the Corporation shall have notice and subject to such rules and regulations as the Board of Directors may from time to time deem advisable concerning the transfer and registration of stock certificates, the Corporation shall issue a new certificate or certificates for such stock to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation.

SECTION 5.3. Record Date. The Board of Directors may fix a record date, which shall not be more than sixty (60) nor fewer than ten (10) days before the date of any meeting of stockholders, nor more than sixty (60) days prior to the time for the other action hereinafter described, as of which there shall be determined the stockholders who are entitled: (i) to notice of or to vote at any meeting of stockholders or any adjournment thereof; (ii) to receive payment of any dividend or other distribution or allotment of any rights; (iii) to exercise any rights with respect to any change, conversion or exchange of stock; or (iv) to take, receive or participate in any other lawful action.

If no record date is fixed, (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and (ii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

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, but the Board of Directors may fix a new record date for the adjourned meeting.

SECTION 5.4. Lost, Stolen or Destroyed Certificates. In the event of the loss, theft or destruction of any certificate of stock, the Corporation may issue a new certificate for stock in the place of any such certificate, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such stockholder's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

SECTION 5.5. Stockholders of Record. The Corporation shall be entitled to treat the holder of record of any stock of the Corporation as the holder thereof and shall not be bound to recognize any equitable or other claim to or interest in such stock on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by the laws of the State of Delaware.

SECTION 5.6. Regulations. The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board of Directors may establish.

ARTICLE VI NOTICES

SECTION 6.1. Notices. Except as otherwise specifically provided herein or required by law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by prepaid telegram, mailgram or commercial courier service or any other reliable means permitted by applicable law (including, subject to the next paragraph, electronic transmission). Any such notice shall be addressed to such stockholder, director, officer, employee or agent at his last known address as the same appears on the books of the Corporation. The time when such notice is received by such stockholder, director, officer, employee or agent, or by any person accepting such notice on behalf of such person, if hand delivered, or dispatched, if delivered through the mails or by telegram, courier or mailgram, shall be the time of the giving of the notice. Such requirement for notice shall also be deemed satisfied, except in the case of stockholder meetings, if actual notice is received orally or by other writing by the person entitled thereto as far in advance of the event with respect to which notice is being given as the minimum notice period required by law or these Bylaws.

Without limiting the foregoing, any notice to stockholders given by the Corporation pursuant to these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation and shall also be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary of the Corporation, the transfer agent or other person responsible for the giving of notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by a form of electronic transmission in accordance with these Bylaws shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network, together with separate notice to the stockholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (iv) if by another form of electronic transmission, when directed to the stockholder.

SECTION 6.2. Waivers. A written waiver of any notice, signed by a stockholder, director, officer, employee or agent, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such stockholder, director, officer, employee or agent. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance of a person at a meeting shall constitute a waiver of notice for such meeting, except when the person attends a meeting for the express purpose of objecting, and does in fact object, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE VII MISCELLANEOUS

SECTION 7.1. Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

SECTION 7.2. Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or other officer designated by the Board of Directors.

SECTION 7.3. Reliance Upon Books, Reports and Records. Each director, each member of any committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of his duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation, including reports made to the Corporation by any of its officers, by an independent certified public accountant, or by an appraiser.

SECTION 7.4. Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

SECTION 7.5. Time Periods. In applying any provision of these Bylaws which require that an act be done or not done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

SECTION 7.6. Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or be in electronic format or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

SECTION 7.7. Transactions With Interested Parties. No contract or transaction between the Corporation and one or more of the directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of the directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or a committee of the Board of Directors at which the contract or transaction is authorized or solely because any such director' s or officer' s votes are counted for such purpose if (a) the material facts as to the director' s or officer' s relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and (b) the Board of Directors or the committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

SECTION 7.8. Definitions. (a) For purposes of these Bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(b) For purposes of these Bylaws, "public disclosure" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service, or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended.

ARTICLE VIII INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 8.1. Right to Indemnification. 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, or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against all expenses, liability and loss (including attorneys’ fees, judgments, fines, penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in Section 8.2, the Corporation shall indemnify any such person seeking indemnity in connection with a Proceeding (or part thereof) initiated by such person only if such Proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. Such right shall be a contract right enforceable by each such person, and shall include the right to be paid by the Corporation expenses incurred in defending or otherwise responding to (e.g., as a witness or subpoenaed party) any such Proceeding in advance of its final disposition to the extent not prohibited by the Sarbanes-Oxley Act of 2002; provided, however, that, if required by the General Corporation Law, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of such Proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it should be determined ultimately that such director or officer is not entitled to be indemnified under this Section 8.1 or otherwise.

Any indemnification as provided herein (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of a director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in the General Corporation Law. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

For purposes of this Article VIII: (i) any reference to “other enterprise” shall include all plans, programs, policies, agreements, contracts and payroll practices and related trusts for the benefit of or relating to employees of the Corporation and its related entities (“employee benefit plans”); (ii) any reference to “fines”, “penalties”, “liability” and “expenses” shall include any excise taxes, penalties, claims, liabilities and reasonable expenses (including reasonable legal fees and related expenses) assessed against or incurred by a person with respect to any employee benefit plan; (iii) any reference to “serving at the request of the Corporation” shall include any

service as a director, officer, employee or agent of the Corporation or trustee or administrator of any employee benefit plan which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, beneficiaries, fiduciaries, administrators and service providers; and (iv) any reference to serving at the request of the Corporation as a director, officer, employee or agent of a partnership or trust shall include service as a partner or trustee.

SECTION 8.2. Right of Claimant to Bring Suit. If a claim for indemnification or advancement of expenses under Section 8.1 is not paid in full by the Corporation within ninety (90) days after a written claim therefor has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the required undertaking, if any, 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 for the Corporation to indemnify the claimant for the amount claimed. 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, 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 claimant has not met the applicable standard of conduct.

SECTION 8.3. Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the advancement of related expenses to the extent not prohibited by the Sarbanes-Oxley Act of 2002, to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VIII with respect to the indemnification of and advancement of expenses to directors and officers of the Corporation.

SECTION 8.4. Non-Exclusivity of Rights. The rights conferred on any person by Sections 8.1, 8.2 and 8.3 shall not be exclusive of any other right which such persons may have or hereafter acquire under any statute, provisions of the Restated Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

SECTION 8.5. Indemnification Contracts. The Board of Directors is authorized to enter into a contract with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing for indemnification and expense advancement rights at least equivalent to those provided for in this Article VIII.

SECTION 8.6. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any such director, officer, employee or agent of the Corporation or another

corporation, partnership, joint venture trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expenses, liability or loss under the General Corporation Law.

SECTION 8.7. Effect of Amendment. Any amendment, repeal or modification of any provision of this Article VIII by the stockholders or the directors of the Corporation shall not adversely affect any right or protection of any present or former director or officer of the Corporation existing pursuant to this Article VIII at the time of such amendment, repeal or modification without the prior written consent of such present or former director or officer whose rights or protections would be adversely affected by such amendment, repeal or modification.

SECTION 8.8. Savings Clause. If this Article VIII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each director, officer, employee and agent of the Corporation as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article VIII that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE IX AMENDMENTS

The Board of Directors is expressly empowered to adopt, amend, alter or repeal the Bylaws of the Corporation, subject to the right of the stockholders to adopt, amend, alter or repeal the Bylaws of the Corporation; provided, however, that the Board of Directors may make no such adoption, amendment, alteration or repeal of, or that is inconsistent with the terms of Section 8.7. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board of Directors permitted under this Article IX shall require the approval of a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any resolution providing for adoption, amendment or repeal is presented to the Board). The stockholders shall also have power to adopt, amend, alter or repeal the Bylaws of the Corporation.

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