AMENDED AND RESTATED

ARTICLES OF INCORPORATION

OF

INTERCONTINENTAL POTASH CORP. (USA)

* * * * * * * *

Pursuant to the provisions of Section 7-110-107(1) of the Colorado Corporations and Associations Act, the undersigned corporation hereby adopts these Restated Articles of Incorporation.

(a) The name of the corporation is Intercontinental Potash Corp. (USA) (the "Corporation").

(b) The Restated Articles of Incorporation are as follows:

ARTICLE I

The name of the corporation is Intercontinental Potash Corp. (USA).

ARTICLE II

The Corporation shall exist in perpetuity, from and after the date of the filing of these Articles of Incorporation with the Secretary of State of the State of Colorado unless otherwise dissolved according to law.

ARTICLE III

1. Purposes. Except as restricted by these Articles of Incorporation, the Corporation is organized for the purpose of transacting all lawful business for which corporations may be incorporated pursuant to the Colorado Corporations and Associations Act.

2. General Powers. Except as restricted by these Articles of Incorporation, the Corporation shall have and may exercise all powers and rights which a corporation may exercise legally pursuant to the Colorado Corporations and Associations Act.

ARTICLE IV

The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 200,000,000 shares of common stock, par value $0.001 per share ("Common Stock"), and (ii) 500,000 shares of preferred stock, par value $0.001 per share ("Preferred Stock"), all of which are hereby designated "Series A Convertible Preferred Stock" (the "Series A Preferred Stock").

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Series A Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held by them at all meetings of stockholders (and actions taken by written consent in lieu of meetings); provided, however, that holders of Common Stock, as such, shall not be entitled to vote on any amendment to these Articles of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to these Articles of Incorporation or pursuant to the Colorado Corporations and Associations Act; provided further that the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of these Articles of Incorporation, including the Series A Preferred Stock) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of the Colorado Corporations and Associations Act, and the holders of Common Stock shall not be entitled to any separate class vote in connection with any such increase or decrease of the aggregate number of authorized shares of Common Stock.

B. PREFERRED STOCK

The Series A Preferred Stock has the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. Unless otherwise indicated, references to "Sections" or "Subsections" in this Part B of this Article IV refer to sections and subsections of Part B of this Article IV.

1. Dividends. From and after the Series A Original Issue Date (as defined in herein), the holders of the Series A Preferred Stock shall be entitled to receive dividends per share, out of funds legally available therefor, at the rate of twelve percent (12.0%) per annum of the Series A Original Issue Price (as defined below) of such Series A Preferred Stock, compounding annually (the "Accruing Dividends"), before any dividends shall be declared, set apart for or paid upon the Common Stock or any other stock ranking with respect to dividends or on liquidation junior to the Series A Preferred Stock (such stock being referred to hereinafter collectively as "Junior Stock"). Accruing Dividends shall be cumulative and shall continue to accrue on a daily basis, from the Series A Original Issue Date, whether or not declared and whether or not in any fiscal year there shall be net profits or surplus available for the payment of dividends in such fiscal year, so that if in any fiscal year or years, dividends in whole or in part are not paid upon the Series A Preferred Stock, unpaid dividends thereon shall accumulate. The Accruing Dividends shall be paid at times, and subject to the terms, set forth in these Articles of Incorporation. The Corporation shall not declare, pay or set aside any dividends on shares of Junior Stock unless (in addition to the obtaining of any consents required elsewhere in these Articles of Incorporation) the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred

Stock in an amount at least equal to the greater of (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series A Preferred Stock and not previously paid or (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series A Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if each share of such class or series had been converted into Common Stock pursuant to Section 4.1 and (2) the number of shares of Common Stock issuable upon conversion of one share of Series A Preferred Stock pursuant to Section 4.1, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series A Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, stock distribution or combination, subdivision, reclassification or other corporate actions having a similar effect with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Series A Original Issue Price. The "Series A Original Issue Price" shall mean $20.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, stock distribution or combination, subdivision, reclassification or other corporate actions having the similar effect with respect to the Series A Preferred Stock.

2. Deemed Liquidation Events.

2.1 Series A Preferred Stock Liquidation Preference.

2.1.1 In the event of any Deemed Liquidation Event (as defined below), unless a holder of Series A Preferred Stock makes an election to convert, either in whole or in part, pursuant to Section 4.1, in which case the holder of such Series A Preferred Stock will receive the amount payable to holders of Common Stock pursuant to Section 2.2 for that portion of their Series A Preferred Stock they have elected to convert into shares of Common Stock and will not be entitled to compensation under this Section 2.1.1 solely in respect to that portion of their Series A Preferred Stock they have elected to convert, each holder of Series A Preferred Stock shall be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Junior Stock by reason of such holder's ownership thereof the greater of: (a) an amount calculated by multiplying the Series A Original Issue Price of each share of Series A Preferred Stock then held by such holder by two (2); and (b) its pro rata portion of Twenty Million Dollars ($20,000,000), which shall be determined by dividing (x) the number of shares of Series A Preferred Stock then held by such holder, by (y) the total number of Series A Preferred Stock issued and outstanding as of the date hereof.

2.1.2 If upon a Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of Series A Preferred Stock the full amount to which they shall be entitled under this Section 2.1, the holders of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares of Series A Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.1.3 Notwithstanding anything to the contrary herein, upon a Deemed Liquidation Event, each holder of Series A Preferred Stock shall be entitled to elect to receive, for each share of Series A Preferred Stock then held, out of the proceeds available for distribution, (i) the amount of cash, securities or other property to which such holder would be entitled to receive with respect to such shares of Series A Preferred Stock in a Deemed Liquidation Event pursuant to Section 2.1 (without giving effect to this sentence), (ii) the amount of cash, securities or other property to which such holder would be entitled to receive in a Deemed Liquidation Event pursuant to Section 2.2 with respect to such shares of Series A Preferred Stock if the holder elects to have all or a portion of such shares of Series A Preferred Stock converted to shares of Common Stock pursuant to Section 4.1, which conversion will be deemed to have occurred effective immediately prior to such Deemed Liquidation Event, or (iii) any combination of the foregoing by converting a portion of Series A Preferred Stock into Common Stock and continuing to hold a portion of Series A Preferred Stock.

2.2 Distribution of Remaining Assets. In the event of any Deemed Liquidation Event, after the payment of all preferential amounts required to be paid to holders of Series A Preferred Stock pursuant to Section 2.1, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of Common Stock (which shall include shares of (a) restricted Common Stock only to the extent such shares are vested and (b) Common Stock held by holders of Series A Preferred Stock who elect to convert pursuant to Section 4.1), pro rata based on the number of shares of Common Stock held by each such holder, including for this purpose all Series A Preferred Stock that have been converted to Common Stock pursuant to Section 4.1 by election of the holder of the Series A Preferred Stock, which election to convert will be deemed to have occurred immediately prior to such Deemed Liquidation Event.

2.3 Deemed Liquidation Events.

2.3.1 Definition. Unless waived in writing by the holders of at least a majority of Series A Preferred Stock with respect to all or any portion of its shares of Series A Preferred Stock, each of the following events shall be considered a "Deemed Liquidation Event":

(a) a merger or consolidation in which (i) the Corporation is a constituent party or (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock or other equity securities that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock or other equity securities of (1) the surviving or resulting corporation, limited liability company, partnership, association, joint-stock corporation, trust or other form of business entity (a "Party") or (2) if the surviving or resulting Party is a wholly owned subsidiary of another Party immediately following such merger or consolidation, the parent entity of such surviving or resulting Party (provided that, for the purpose of this Section 2.3.1, all shares of Common Stock issuable upon exercise of Options (as defined below) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or

exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged);

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of a majority of the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if a majority of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a direct or indirect wholly owned subsidiary of the Corporation;

(c) the failure of IC Potash Corp., a Canadian corporation ("Parent"), to be listed on an internationally recognized stock exchange at any time, or a change of control of Parent (consisting of the transfer of a majority of the outstanding voting stock of Parent) that was not approved by its board of directors prior to such transfer (i.e., a "hostile takeover" of Parent);

(d) any voluntary or involuntary liquidation, dissolution, winding up or other similar proceeding of the Corporation or Parent; or

(e) the failure of Parent to directly or indirectly own one hundred (100%) of the outstanding capital stock of Intercontinental Potash Corp., a Canadian corporation, or any Affiliate thereof that directly or indirectly owns any of the outstanding capital stock of the Corporation. For purposes of these Articles of Incorporation, (i) "Affiliate" means any Person or entity, directly or indirectly controlling, controlled by or under common control with such Person or entity, and (ii) "Person" means an individual, partnership (whether general or limited), joint-stock company, corporation, limited liability company, trust, unincorporated organization or other legal entity, and a government or agency or political subdivision thereof.

2.3.2 Effecting a Deemed Liquidation Event.

(a) Unless waived in writing by the holders of at least a majority of Series A Preferred Stock, the Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Section 2.3.1(a) or Section 2.3.1(b) unless the agreement, lease, license, plan of merger or other instrument to effect such transaction provides that the consideration payable to the Corporation or the stockholders of the Corporation in such transaction shall first be allocated among the holders of Series A Preferred Stock in accordance with Section 2.1.

(b) In the event of a Deemed Liquidation Event, if the Corporation does not effect a dissolution of the Corporation under the Colorado Corporations and Associations Act within thirty (30) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series A Preferred Stock no later than the forty-fifth (45^{th}) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Series A Preferred Stock (a "Deemed Liquidation Event Notice"), and (ii) if any holder of Series A Preferred Stock so requests in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after receipt of a Deemed Liquidation Event Notice (or such longer period as may be agreed to by such holder of Series A Preferred Stock), the Corporation shall use the consideration received by the Corporation for

such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold, as determined in good faith by the Board of Directors of the Corporation (the "Board"), including the approval of the Series A Director), together with any other assets of the Corporation available for distribution to its stockholders (the "Available Proceeds"), to the extent legally available therefor under Colorado law, on or prior to the one hundred fiftieth (150^{th}) day after such Deemed Liquidation Event, to redeem all outstanding shares of Series A Preferred Stock held by such holder for an aggregate amount to which such holder is entitled to receive under Section 2.1. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock held by such holder, the Corporation shall redeem a pro rata portion of such holder's shares of Series A Preferred Stock to the fullest extent of such Available Proceeds as may be permitted under Colorado law, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. Any shares of Series A Preferred Stock redeemed in full shall be retired and cancelled and may not be reissued as shares of such series or any other class or 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 Series A Preferred Stock accordingly.

2.3.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon a Deemed Liquidation Event, shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring Person. The value of such property, rights or securities shall be determined in good faith by the Board, including the approval of the Series A Director, provided, however, that if the Board cannot unanimously agree on the fair market value of such consideration, then the Corporation shall submit such issue to a third-party valuation firm for determination, which determination shall be deemed to be final and binding. With respect to any matter hereunder requiring the selection of a third-party valuation firm, the Corporation, on the one hand, and the holders of at least a majority of the outstanding shares of Series A Preferred Stock, on the other hand, shall each promptly appoint as an appraiser an individual who shall be a member of an independent recognized investment banking firm, accounting firm or consulting firm that has no conflicts with respect to such engagement as reasonably determined by the Corporation and such holders. Each appraiser shall, within thirty (30) days of appointment, separately investigate the fair market value of the non-cash assets or consideration. Each appraiser shall be instructed to determine such fair market value without regard to income tax consequences as a result of receiving cash rather than other consideration. If the appraised values of such consideration (the "Earlier Appraisals") vary by fifteen percent (15%) or less, the average of the two (2) appraisals shall be controlling as to the fair market value. If the appraised values vary by more than fifteen percent (15%), the appraisers, within ten (10) days of the submission of the last appraisal, shall appoint a third appraiser, such third appraiser shall be a member of a recognized investment banking firm, accounting firm or consulting firm. The third appraiser shall, within thirty (30) days of his appointment, appraise the fair market value of the non-cash assets or consideration. The value determined by the third appraiser shall be controlling as the fair market value unless the value is greater than the two (2) Earlier Appraisals, in which case the higher of the two (2) Earlier Appraisals will control, and unless that value is lower than the two (2) Earlier Appraisals, in which case the lower of the two Earlier Appraisals will control. The Corporation shall bear the costs of the foregoing appraisals.

2.3.4 Allocation of Escrow. In the event of a Deemed Liquidation Event pursuant to Section 2.3.1(a) or Section 2.3.1(b), unless the holders of at least a majority of the outstanding shares of Series A Preferred Stock elect otherwise in writing, if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the Corporation or the stockholders of the Corporation, as applicable, subject to contingencies, the agreement, lease, license or other instrument to effect the transaction shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "Initial Consideration") shall be allocated first among the holders of Series A Preferred Stock, in accordance with Section 2.1.1 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (b) any additional consideration which becomes payable to the Corporation or the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated first to the holders of Series A Preferred Stock in accordance with Section 2.1.1, after taking into account the previous payment of the Initial Consideration as part of the same transaction, and then to the holders of capital stock of the Corporation, as applicable, in accordance with these Articles of Incorporation.

3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of a meeting), each holder of outstanding shares of Series A Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible pursuant to Section 4.1 herein as of the record date for determining stockholders entitled to vote on such matter. Except as provided by the Colorado Corporations and Associations Act or other applicable law or by the other provisions of these Articles of Incorporation, holders of Series A Preferred Stock shall vote together with the holders of Common Stock as a single class on all matters.

3.2 Election of Directors. The holders of record of the outstanding shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect one director of the Corporation (the "Series A Director"). Any Series A Director elected as provided in the preceding sentence may be removed with or without cause by, and only by, the affirmative vote of the holders of the outstanding shares of Series A Preferred Stock, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of such stockholders. If the holders of Series A Preferred Stock fail to elect a Series A Director, voting exclusively and as a separate class, pursuant to the first sentence of this Section 3.2, then such directorship not so filled shall remain vacant until such time as the holders of the Series A Preferred Stock elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by the Board or the stockholders of the Corporation other than by the holders of record of a majority of the outstanding shares of Series A Preferred Stock, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series A Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the

balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 3.2, a vacancy in any directorship filled by the stockholders entitled to elect such directors shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 3.2. The rights of the holders of the Series A Preferred Stock under the first sentence of this Section 3.2 shall terminate when (following the Series A Original Issue Date) the shares of Common Stock issuable upon conversion of the outstanding shares of Series A Preferred Stock represent less than seven and eight-tenths percent (7.8%) of the sum of (x) the outstanding shares of Common Stock the Corporation and (y) the number of shares of Common Stock of the Corporation issuable upon the conversion of the outstanding shares of Series A Preferred Stock.

3.3 Series A Preferred Stock Protective Provisions. At any time when (following the Series A Original Issue Date) the shares of Common Stock issuable upon conversion of the outstanding shares of Series A Preferred Stock represent at least five percent (5.0%) of the sum of (x) the outstanding shares of Common Stock the Corporation and (y) the number of shares of Common Stock of the Corporation issuable upon the conversion of the outstanding shares of Series A Preferred Stock, the Corporation shall not, and shall not permit any subsidiary to, either directly or indirectly, by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by the Colorado Corporations and Associations Act or these Articles of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class:

(a) amend, change, waive, alter or repeal any provision of these Articles of Incorporation or the Bylaws of the Corporation in a manner that would adversely affect the rights of any holder of Series A Preferred Stock

(b) create, or authorize the creation of, or issue or obligate itself to issue any additional shares of Series A Preferred Stock or any equity security that is senior to the Series A Preferred Stock, increase the authorized number of shares of Series A Preferred Stock or increase the authorized number of shares of any class or series of capital stock, or reclassify, alter or amend any equity security of the Corporation that is senior to or *pari passu* with the Series A Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation or the payment of dividends or rights of redemption;

(c) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Series A Preferred Stock as expressly authorized herein or (ii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service, provided such repurchases have been approved by the Board, including the approval of the Series A Director.

(d) incur indebtedness, except for Senior Secured Debt or Junior Subordinated Debt to (i) finance the construction costs of the Ochoa project so long as such Senior Secured Debt or Junior Subordinated Debt is in the form of a bridge loan, construction loan, mini-perm loan, bond sale or financing or convertible loan with an option to convert such loan into common shares of the Corporation, (ii) refinance the indebtedness described in clause (i), and (iii) following construction, fund the Corporation's subsequent ongoing operations, working capital requirements and expansion of the Ochoa Project (any such indebtedness, "Permitted Debt");

(e) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary (other than to a wholly owned subsidiary of the Corporation or its wholly owned subsidiaries);

(f) approve or effect any changes in the Corporation's or any subsidiary's accounting methods or policies (except with respect to adoption of Generally Accepted Accounting Principles in the United States), or change the auditors of the Corporation or any subsidiary;

(g) pledge, mortgage or otherwise subject to any charge, lien, security interest or other encumbrance on all or substantially all of the assets of the Corporation or any of its subsidiaries, except and only to the extent required by the applicable lender of any Permitted Debt;

(h) authorize or effect any sale, lease, transfer or other disposition of any assets of the Corporation or any subsidiary in excess of $1,000,000 outside of the ordinary course of business;

(i) enter into any, or amend any existing, transaction or agreement between or among the Corporation or any Affiliate, on the one hand, and any director, officer, employee or holder, directly or indirectly, of capital stock of any class or series of capital stock of the Corporation or any Affiliate, members of the family of any such person, or any Affiliate or other associate thereof, on the other hand, except in the case of employees, for transactions on customary terms related to such person's employment or pursuant to an employment agreement;

(j) increase the authorized number of directors constituting the Board to greater than eleven (11);

(k) make or adopt any material change in the Corporation's line of business;

(l) effect an underwritten initial public offering on NASDAQ or NYSE, except if such offering (i) is at a price per share implying a pre-issuance market capitalization of $400,000,000 or greater and (ii) involves issuance of that number of shares of the Corporation comprising twenty percent (20%) or more of the issued and outstanding shares of Common Stock immediately following such issuance; or

(m) enter into any agreement that would prevent the Corporation from

performing its obligations in respect of the Series A Preferred Stock.

3.3.2 Special Definitions. For purposes of this Article III, the following definitions shall apply:

(a) "Junior Subordinated Debt" shall mean indebtedness for borrowed money that is secured by liens filed by or on behalf of the holders of Senior Secured Debt or is not secured by any liens or other similar encumbrances on the common shares or assets of the Corporation, including the Ochoa Project.

(b) "Mining Activities" shall mean activities of the Corporation or any of its Affiliates that involve or are related to any type of exploration, evaluation, development of resources and/or reserves, mining, processing, sale or transporting of polyhalite and produced potassium or sulphate materials and related activities, and the providing of services related thereto, in each case in Lea County, New Mexico referred to by the Company as the "Ochoa Project", including financing activities, general administrative management and operational activities to advance the financing and development of the Ochoa Project and activities contemplated in the Management Services Agreement, as amended.

(c) "Ochoa Project" shall mean on-going development project of the Company to construct and operate the Ochoa mining and production facility.

(d) "Senior Secured Debt" shall mean indebtedness for borrowed money that is senior to all other indebtedness and secured by a lien that is senior to all other liens or other similar encumbrances on the common shares or assets of the Corporation, including the Ochoa Project.

4. Conversion Upon Maturity and in connection with exercising Tag-Along Rights.

At least forty-five (45) days prior to the second (2nd) anniversary of November 21, 2014 (the "Maturity Date") or upon a transaction that would trigger any tag-along rights or registration rights, the Corporation shall provide all holders of shares of Series A Preferred Stock of such date or event, and at least thirty (30) days prior thereto, each holder of shares of Series A Preferred Stock then outstanding shall send a notice to the Corporation (the "Conversion Notice") with respect to such holder's shares of Series A Preferred Stock, which notice shall specify such holder election to exercise (i) the conversion rights set forth in this Section 4 (the "Conversion Rights") or in the case of the Maturity Date, the redemption rights set forth in Section 6 or (ii) its registration rights, as applicable. If the notice referred to in clause (i) is not received from a holder of Series A Preferred Stock by the Corporation at least fifteen (15) days prior to the Maturity Date, the Corporation shall have the right, in its sole discretion, upon five (5) days written notice, to either, (a) convert all shares of Series A Preferred Stock then held by such holder pursuant to this Section 4 or (b) redeem all shares of Series A Preferred Stock then held by such holder pursuant to Section 6. If the notice referred to in clause (ii) is not received from a holder of Series A Preferred Stock by the Corporation with respect to such holder's registration rights at least fifteen (15) days prior to the applicable event, the holder thereof shall be deemed to have waived any such rights.

4.1 Elective Conversion.

4.1.1 Conversion Ratio. If a holder of Series A Preferred Stock elects to exercise the Conversion Rights, effective as of the Maturity Date or the last full day preceding the date fixed for the payment of any such amounts distributable on a Deemed Liquidation Event to the holders of Series A Preferred Stock, each share of Series A Preferred Stock held by such holder shall be convertible, without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock that will entitle such holder of the Series A Preferred Stock to its pro rata share (based on the number of shares of Series A Preferred Stock held by such holder divided by the total number of shares of Series A Preferred Stock then outstanding) of seven and eight-tenths percent (7.8%) of the Common Stock of the Corporation.

4.1.2 Termination of Conversion Rights. In the event of a notice of redemption of any shares of Series A Preferred Stock pursuant to Section 4(b) or Section 6, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series A Preferred Stock.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board, including the approval of the Series A Director. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Series A Preferred Stock to convert shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates representing such shares of Series A Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate which agreement shall not require the posting of a bond), at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with a Conversion Notice. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates representing 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 reasonably satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney-in-fact duly authorized in writing. The close of business on the Maturity Date, or the date on which the transaction occurs which triggers the tag-along rights, as applicable, shall be the time

of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, promptly following the Conversion Time, (i) issue and deliver to such holder of Series A Preferred Stock, or to his, her or its nominees, a certificate or certificates representing the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate representing the number (if any) of the shares of Series A Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, and (ii) pay in cash such amount as provided in Section 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Series A Preferred 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 Series A Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to these Articles of Incorporation.

4.3.3 Effect of Conversion. All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Section 4.2. Any shares of Series A Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series or any other class or 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 Series A Preferred Stock accordingly.

4.3.4 Dividend Rights. Upon a conversion pursuant to Section 4.1, any Accruing Dividends on the shares of Series A Preferred Stock being converted, together with any other dividends payable on such Series A Preferred Stock that have been declared but remain unpaid, shall be forfeited by the holder of such shares of Series A Preferred Stock being converted.

4.3.5 Taxes. The Corporation shall pay any and all stamp, issue and other similar taxes (excluding any income, gross receipts, franchise or other similar taxes) that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the Person requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation,

that such tax has been paid.

4.4 Tag-Along Rights. If a holder of Series A Preferred Stock is entitled to co-sale or tag-along rights, such holder may elect to exercise the elective Conversion Rights, effective as of the closing of the transaction that triggers such rights, with respect to all or the portion of the Series A Preferred Stock that such holder elects to sell in the triggering transaction, without the payment of additional consideration by the holder thereof, into the applicable number of fully paid and nonassessable shares of Common Stock that the holder of Series A Preferred Stock has elected to sell in the triggering transaction.

5. Anti-Dilution Protection.

5.1 Special Definitions. For purposes of this Article IV, the following definitions shall apply:

5.1.1 "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation after the Series A Original Issue Date, including upon the exercise of any Options or the conversion of any Convertible Securities.

5.1.2 "Convertible Securities" shall mean any evidence of rights, indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

5.1.3 "Dilution Protection Sunset Date" shall mean the first day of the month immediately following a continuous 9-month period during which (a) the Ochoa Project produced at least 535,807 short tons of potassium sulphate and (b) the Corporation earned $135,000,000 of EBITDA.

5.1.4 "EBITDA" shall mean the Corporation's earnings before interest, tax, depreciation and amortization; provided that the Corporation's EBITDA shall only include a pro rata portion of the EBITDA of any entity partially owned by the Corporation, which pro rata portion shall equal the Corporation's fully diluted equity ownership of such entity.

5.1.5 "Ochoa Project" shall mean any activities of the Corporation or any of its Affiliates that involve or are related to any type of exploration, evaluation, development of resources and/or reserves, mining, processing, sale or transporting of polyhalite and produced potassium or sulphate materials and related activities, and the providing of services related thereto, in each case in Lea County, New Mexico, including financing activities, general administrative management and operational activities to advance the financing and development of the project.

5.1.6 "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

5.1.7 "Permitted Transferee" means any Person, directly or indirectly controlling, controlled by or under common control with the original holder of the Series A Preferred Stock.

5.1.8 "Series A Original Issue Date" shall mean November 25, 2014.

5.2 Deemed Issuance of Additional Shares of Common Stock.

5.2.1 Prior to Conversion or Redemption. If the Corporation at any time or from time to time after the Series A Original Issue Date, but prior to the conversion or redemption of the Series A Preferred Stock issues Additional Shares of Common Stock for any purpose (including pursuant to the exercise of Option or the conversion of any Convertible Securities), then the number of shares of Common Stock into which the Series A Preferred Stock is convertible shall be adjusted so that upon such conversion of all shares of Series A Preferred Stock, the holders thereof will receive shares of Common Stock that represent seven and eight-tenths percent (7.8%) of the issued and outstanding shares of Common Stock. For the avoidance of doubt, and without limiting the generality of the transfer of any rights of the Series A Preferred Stock from a holder thereof to a Permitted Transferee, the anti-dilution rights set forth in this Section 5 shall transfer along with the ownership of any such transfer of Series A Preferred Stock.

5.2.2 Following Conversion. If the Corporation at any time after conversion of the Series A Preferred Stock to Common Stock issues Additional Shares of Common Stock for any purpose (including pursuant to the exercise of Option or the conversion of any Convertible Securities), then the Corporation shall also issue shares of Common Stock to the former holders of the Series A Preferred Stock in order to maintain such holders' seven and eight-tenths percent (7.8%) ownership of the issued and outstanding shares of Common Stock.

5.2.3 Dilution Protection Sunset. Notwithstanding the foregoing, contemporaneously on the date on which the Board, including the Series A Director, each acting reasonably and in good faith, determine that the Dilution Protection Sunset Date has occurred, the rights in Section 5 shall terminate immediately before the issuance of shares of Common Stock by the Corporation or any Affiliate thereof whose proceeds are used exclusively for the expansion of production at the Ochoa Project. Notwithstanding anything to the contrary herein, the rights of the holders of Series A Preferred Stock pursuant to this Section 5 shall not terminate on the Dilution Protection Sunset Date, or at any point thereafter, with respect to any shares of capital stock issued by the Company pursuant to an Option or Convertible Securities, in each case issued, granted or agreed to prior to the Dilution Protection Sunset Date.

5.3 Issuance of Shares; Update to the Corporation's Books And Records. Upon each issuance of Additional Shares of Common Stock, the Corporation shall, as applicable and without delivery of any consideration to the Corporation or any action being taken by any Person (other than the Corporation): (i) update the Corporation's books and records to reflect the additional shares of Common Stock into which the Series A Preferred Stock shall be convertible to give effect to the adjustment indicated in Section 5.2.1; or (ii) issue additional shares to former holders of Series A Preferred Stock, at no cost or other consideration to such holders, to give effect to the adjustment indicated in Section 5.2.2.

5.4 Adjustment for Stock Splits and Combinations. In the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock or Common Stock, the Corporation shall take the necessary actions, such that the holders of the Series A Preferred Stock or the former holders of the Series A Preferred Stock

will, immediately following any such dividend, split, combination or other similar recapitalization, hold or be entitled to convert into that number of shares of Common Stock that represents, or upon conversion would represent, seven and eight-tenths percent (7.8%) of the issued and outstanding shares of Common Stock.

5.5 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 2, including Section 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property, then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holders of seven and eight-tenths percent (7.8%) of the number of issued and outstanding shares of Common Stock of the Corporation that the applicable holder would have been entitled to receive pursuant to such transaction of the number of issued and outstanding shares of Common Stock of the Corporation; and, in such case, appropriate adjustment (as determined in good faith by the Board, including the approval of the Series A Director[1]) shall be made in the application of the provisions in this Section 5 with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section 5 shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock. The provisions of these Articles of Incorporation, including this Section 5.5, shall not affect the right, if any, of any holder of Series A Preferred Stock to seek an appraisal of his, her or its shares pursuant to Section 7-113-102(1.3) of the Colorado Corporations and Associations Act.

5.6 Certificate as to Adjustments. Upon the occurrence of any adjustment or readjustment pursuant to this Section 5, the Corporation at its expense shall, as promptly as reasonably practicable thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the particulars of the Series A Preferred Stock conversion then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock.

5.7 Notice of Record Date. In the event the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any

[1] Note to Draft: It seems that allowing the Series A Director to participate in this determination is in keeping with the spirit of the provision and agreement generally.

shares of capital stock of any class or any other securities, or to receive any other security, or of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event, then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Common Stock. Such notice shall be sent as promptly as practicable prior to the record date or effective date for the event specified in such notice.

5.8 Confirmation. Notwithstanding anything to contrary herein, prior to the Dilution Protection Sunset Date, each current or former holder of any Series A Preferred Stock shall have the right upon 30 days' prior written notice to require the Corporation to provide such holder with materials reasonably necessary to confirm (a) that the current and/or former holders of Series A Preferred Stock, as applicable, hold in the aggregate seven and eight-tenths percent (7.8%) of the number of issued and outstanding shares of Common Stock of the Corporation and (b) the requesting holder's pro rata share of such percentage.

6. Redemption.

6.1 Redemption. Upon the failure by a holder of Series A Preferred Stock to deliver a Conversion Notice within fifteen (15) days prior to the Maturity Date (the "Redemption Trigger") (together with any request as described in the foregoing subclause (x), each a "Redemption Request"), the number of shares of Series A Preferred Stock held by such holder, shall be redeemed by the Corporation for cash out of funds lawfully available therefor at a price equal to the Series A Original Issue Price per share, plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (the "Redemption Price") on the Maturity Date (the "Redemption Date"); provided that any such holder shall have the ability to retract a Redemption Request at any time prior to the Business Day prior to the Maturity Date. In addition, within thirty (30) days of the Dilution Protection Sunset Date, upon written notice from any holder of Series A Preferred Stock with respect to all or any portion of shares of Series A Preferred Stock held by such holder (such request also referred to as a "Redemption Request"), the shares of Series A Preferred Stock set forth in such notice shall be redeemed by the Corporation for cash out of funds lawfully available therefor at a price equal to the greater of (a) the Redemption Price or (b) the fair market value of the shares of capital stock to be redeemed, as determined in good faith by the Board, including the approval of the Series A Director, no less than thirty (30) days following the receipt by the Corporation of a request for such redemption (such date also referred to as the "Redemption Date"); provided that if the Board cannot agree on such fair market value, then the Corporation shall submit such issue to third-party valuation firms for determination in accordance with procedures set forth in Section 2.3.3, which determination shall be deemed to be final and

binding. If the Corporation does not have sufficient funds legally available to redeem on the Redemption Date all shares of Series A Preferred Stock to be redeemed on such date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such capital stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor; provided, however, that with respect to any shares of Series A Preferred Stock that were requested to be redeemed in the Redemption Request and were not so redeemed on the Redemption Date, the Redemption Price for such shares shall be determined as of the date on which such shares are actually redeemed and shall be increased by an amount equal to 12.0% per annum, compounding annually, which amount shall cumulate and accrue on a daily basis during the period from the original Redemption Date through and including the actual redemption date (such amount, the "Additional Interest").

6.2 Redemption Notice. The Corporation shall send written notice of the redemption (the "Redemption Notice") to each holder of record of Series A Preferred Stock that is to be redeemed not less than ten (10) days prior to the Redemption Date. Each Redemption Notice shall state:

(a) the number of shares of Series A Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(b) the Redemption Date and the Redemption Price;

(c) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section 4.1); and

(d) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series A Preferred Stock to be redeemed.

6.3 Surrender of Certificates; Payment. On or before the Redemption Date, each holder of shares of Series A Preferred Stock to be redeemed on the Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4.1, shall surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate which agreement shall not require the posting of a bond) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price (plus any Additional Interest payable thereon, if applicable) for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series A Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series A Preferred Stock shall promptly be issued by the Corporation to such holder or their designee.

6.4 Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the Redemption Date the Redemption Price (plus any Additional Interest payable thereon, if applicable) payable upon redemption of the shares of Series A Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares of Series A Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series A Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after such Redemption Date terminate, except only the right of the holders to receive the Redemption Price (plus any Additional Interest payable thereon, if applicable) without interest upon surrender of their certificate or certificates therefor.

6.5 Costs. The Corporation agrees to pay all reasonable costs of collection by the holders of Series A Preferred Stock that delivered the Redemption Request of any amounts due hereunder arising as a result of any default by the Corporation hereunder, including, without limitation, attorneys' fees and expenses.

7. Redeemed or Otherwise Acquired Shares. Any shares of Series A Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series A Preferred Stock following the redemption or any other acquisition of shares of Series A Preferred Stock.

8. Waiver. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock to be exercised by holders of Series A Preferred Stock with respect to its shares of Series A Preferred Stock may be waived by such holder by the affirmative written consent or vote of such holder of Series A Preferred Stock. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock to be exercised by or on behalf of a majority of the holders of Series A Preferred Stock with respect to the Series A Preferred Stock may be waived by the affirmative written consent or vote of the holders of at least a majority of such shares then outstanding, and such waiver shall be binding on all of the holders of the Series A Preferred Stock whether or not all of the holders of Series A Preferred Stock consent to such waiver.

9. Preemptive Rights. No stockholder of the Corporation shall have a right to purchase shares of capital stock of the Corporation sold or issued by the Corporation except to the extent that such a right may from time to time be set forth in a written agreement between the Corporation and such stockholder, including a stockholders agreement among the Corporation and the stockholders identified therein.

10. Notices. Any notice required or permitted by the provisions of this Article IV to be given to a holder of shares of Series A Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the Colorado Corporations and Associations Act, and shall be deemed sent upon such mailing or electronic transmission.

ARTICLE V

Subject to any additional vote required by these Articles of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by the Colorado Corporations and Associations Act, the Board is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

ARTICLE VI

Subject to any additional vote required by these Articles of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

Meetings of stockholders may be held within or without the State of Colorado, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Colorado at such place or places as may be designated from time to time by the Board or in the Bylaws of the Corporation.

ARTICLE IX

To the fullest extent permitted by law, 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. If the Colorado Corporations and Associations Act or any other applicable law is amended to further eliminate or limit the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Colorado Corporations and Associations Act as so amended or such other applicable laws.

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

ARTICLE X

The following indemnification provisions shall apply to the Persons enumerated below.

1. Right to Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by the Colorado Corporations and Associations Act as it presently exists or may hereafter be amended, any Person (an "Indemnified Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative

(a "Proceeding"), by reason of the fact that such Person, or a Person for whom such Person is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, 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, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans (collectively, "Another Enterprise"), against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article X, the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board.

2. Advancement of Expenses of Directors. The Corporation shall pay the expenses (including attorneys' fees) incurred by a Person in defending any Proceeding in advance of its final disposition by reason of the fact that such Person, or a Person for whom such Person is the legal representative, is or was a director of the Corporation or, while a director of the Corporation, is or was serving at the request of the Corporation as a director of Another Enterprise (a "Director Indemnified Person"); provided, however, that (i) such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Director Indemnified Person to repay all amounts advanced if it should ultimately be determined that the Director Indemnified Person is not entitled to be indemnified under this Article X or otherwise and (ii) this subsection 2 shall not be deemed to apply to directors who are or were officers, employees or agents of the Corporation or Another Enterprise, which Persons shall be subject to subsection 5 below.

3. Claims by Directors and Officers. If a claim for indemnification by an Indemnified Person or advancement of expenses by a Director Indemnified Person under this Article X is not paid in full within 90 days after a written claim therefor by the Indemnified Person or Director Indemnified Person, as applicable, has been received by the Corporation, the Indemnified Person or Director Indemnified Person, as applicable, may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Indemnified Person or Director Indemnified Person, as applicable, is not entitled to the requested indemnification or advancement of expenses under these Articles of Incorporation.

4. Indemnification of Employees and Agents. The Corporation may indemnify and advance expenses to any Person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such Person, or a Person for whom such Person is the legal representative, is or was a non-director or non-officer employee or agent of the Corporation or, while a non-director or non-officer employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of Another Enterprise against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of Persons who are non-director or non-officer employees or agents shall be made in such manner as is determined by the Board in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to

indemnify a Person in connection with a Proceeding initiated by such Person if the Proceeding was not authorized in advance by the Board.

5. Advancement of Expenses of Officers, Employees and Agents. The Corporation may pay the expenses (including attorneys' fees) incurred by an officer, employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board; provided, however, that such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the officer, employee or agent to repay all amounts advanced if it should ultimately be determined that the officer, employee or agent is not entitled to be indemnified under this Article X or otherwise.

6. Non-Exclusivity of Rights. The rights conferred on any Person by this Article X shall not be exclusive of any other rights which such Person may have or hereafter acquire under any statute, provision of these Articles of Incorporation or the Bylaws of the Corporation, agreement, vote of stockholders or disinterested directors or otherwise.

7. Insurance. The Board may, to the full extent permitted by the Colorado Corporations and Associations Act as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers, agents and employees under the provisions of this Article X; and (b) to indemnify or insure directors, officers, agents and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article X.

8. Amendment or Repeal. The rights to indemnification and advancement of expenses conferred upon any current or former director or officer of the Corporation pursuant to this Article X (whether by reason of the fact that such person is or was a director or officer of the Corporation, or while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of Another Enterprise) shall be contract rights, shall vest when such person becomes a director or officer of the Corporation, and shall continue as vested contract rights even if such person ceases to be a director or officer of the Corporation. Any amendment, repeal or modification of, or adoption of any provision inconsistent with, this Article X (or any provision hereof) shall not adversely affect any right to indemnification or advancement of expenses granted to any person pursuant hereto with respect to any act or omission of such person occurring prior to the time of such amendment, repeal, modification or adoption (regardless of whether the Proceeding relating to such acts or omissions, or any proceeding relating to such person's rights to indemnification or to advancement of expenses, is commenced before or after the time of such amendment, repeal, modification or adoption), and any such amendment, repeal, modification or adoption that would adversely affect such person's rights to indemnification or advancement of expenses hereunder shall be ineffective as to such person, except with respect to any threatened, pending or completed Proceeding that relates to or arises from (and only to the extent such Proceeding relates to or arises from) any act or omission of such person occurring after the effective time of such amendment, repeal, modification or adoption. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person's heirs, executors and administrators.

9. Exceptions to Right of Indemnification. Notwithstanding any provision in this Article X to the contrary, the Corporation shall not be obligated to make any indemnity in connection with any claim made against an Indemnified Person (including, but not limited to, advancement of expenses under Section 5 of this Article):

(a) for an accounting of profits made from the purchase and sale (or sale and purchase) by an Indemnified Person of securities of the Corporation within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law; and

(b) in connection with any proceeding (or any part of any proceeding) initiated by an Indemnified Person, including any proceeding (or any part of any proceeding) initiated by an Indemnified Person against the Corporation or any of its directors, officers, employees or other Indemnified Persons, unless (i) the Board authorized the proceeding (or the relevant part of any proceeding) prior to its initiation or (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law.

ARTICLE XI

In recognition that each Principal Stockholder (as defined below) and their respective Representatives (as defined below) currently have, and may in the future have or may consider acquiring, investments in corporations, limited liability companies, partnerships, associations, joint-stock corporations, trusts or other forms of business entity with respect to which each Principal Stockholder or their respective Representatives may serve as an advisor, a director or in some other capacity, and in recognition that each Principal Stockholder and their respective Representatives may have myriad duties to various investors and partners, and in anticipation that the Corporation and its subsidiaries, on the one hand and each of the Principal Stockholders, on the other hand, may engage in the same or similar activities or lines of business and have an interest in the same areas of corporate opportunities, and in recognition of the benefits to be derived by the Corporation hereunder and in recognition of the difficulties which may confront any advisor who desires and endeavors fully to satisfy such advisor's duties in determining the full scope of such duties in any particular situation, the provisions of this Article XI are set forth to regulate, define and guide the conduct of certain affairs of the Corporation as they may involve such Principal Stockholder and its respective Representatives. Except (i) as a Principal Stockholder may otherwise agree in writing after the date hereof, (ii) as to the fiduciary obligations of any Principal Stockholder or any Representative of a Principal Stockholder that is a member of the Board to the extent such fiduciary duties cannot be waived or limited as a matter of applicable law, and (iii) to the extent that any such provisions may be limited by the Colorado Corporations and Associations Act, in which case such provisions shall be given effect to the fullest extent permitted by the Colorado Corporations and Associations Act:

(a) Such Principal Stockholder and its respective Representatives shall have the right: (A) to directly or indirectly engage in any mining or related business activities or lines of business that are the same as or similar to those pursued by, or competitive with, the Corporation and its subsidiaries, (B) to directly or indirectly do business with any client or customer of the Corporation and its subsidiaries, (C) to take any other action that such Principal Stockholder believes in good faith is necessary to or appropriate to fulfill its obligations as described in the

first sentence of this Article XI, and (D) not to present potential transactions, matters or business opportunities to the Corporation or any of its subsidiaries, and to pursue, directly or indirectly, any such opportunity for itself, and to direct any such opportunity to another Person; provided however, that nothing herein shall be interpreted to permit a Principal Stockholder or its Representatives to use the confidential or proprietary information of the Corporation in furtherance of the activities permitted by this Article XI, unless expressly agreed to by the Corporation in writing.

(b) Such Principal Stockholder and its Representatives shall have no duty (contractual or otherwise) to communicate or present any corporate opportunities to the Corporation or any of its stockholders, subsidiaries or Affiliates or to refrain from any actions specified in this Article XI, and the Corporation, on its own behalf and on behalf of its stockholders, subsidiaries and Affiliates, hereby renounces and waives any right to require such Principal Stockholder or any of its Representatives to act in a manner inconsistent with the provisions of this Article XI.

(c) None of the Principal Stockholders, nor any of their respective Representatives shall (a) be liable to the Corporation or any of its stockholders, subsidiaries or Affiliates for breach of any duty (contractual or otherwise) by reason of any activities or omissions of the types referred to in this Article XI or of any such Person's participation therein, or (b) have any duty to communicate or present any activities or omissions of the types referred to in this Article XI to the Corporation or its stockholders, subsidiaries or Affiliates. The Principal Stockholders and their respective Representatives shall have the right to hold any of the activities or omissions of the types referred to in this Article XI for its own account, or the account of another Person, or to recommend, sell, assign or otherwise transfer such activity or omission to Persons other than the Corporation or any stockholder, subsidiary or Affiliate of the Corporation. To the fullest extent permitted by law, the Corporation hereby waives any claim against each Principal Stockholder and its Representative and agrees to indemnify each Principal Stockholder and its Representatives against any claim, that is based on fiduciary duties, the corporate opportunity doctrine or any other legal theory which could limit any Principal Stockholder or its Representatives from pursuing or engaging in transactions contemplated by this Article XI.

As used herein, "Principal Stockholder" means Cartesian and any stockholder of the Corporation who is not, and is not controlled (directly or indirectly) by any Person who is, also a current or former employee or officer of the Corporation or its subsidiaries.

As used herein, "Representatives" means the officers, directors, agents, members, partners, employees or Affiliates of such Principal Stockholder.

As used herein, "Cartesian" means Pangaea Two Acquisition Holdings XI, LLC, a Delaware limited liability company (or an Affiliate of one or more of such entities) or their respective subsidiaries, (ii) any investment fund, vehicle or account which is managed by Cartesian or in respect of which Cartesian has investment discretion or (iii) an Affiliate of Cartesian or a Cartesian Fund or Account.

ARTICLE XII

The address of the registered office of the Corporation is 1400 Wewatta Street,

Suite 400, Denver, Colorado 80202, and the name of the registered agent at such address is Dorsey & Whitney LLP. Either the registered office or the registered agent may be changed in the manner permitted by law.

* * *

IN WITNESS WHEREOF, these Amended and Restated Articles of Incorporation have been executed by a duly authorized officer of this Corporation on the 25th day of November, 2014.

By: _____
Name: Sidney Himmel
Title: President and Chief Executive Officer