

# State of Delaware



## Office of Secretary of State

I, MICHAEL HARKINS, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF RESTATED CERTIFICATE OF INCORPORATION OF ISIS PHARMACEUTICALS, INC. FILED IN THIS OFFICE ON THE NINETEENTH DAY OF JUNE, A.D. 1991, AT 9 O'CLOCK A.M.

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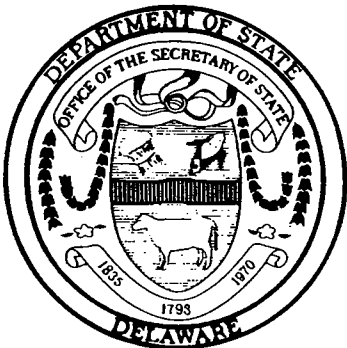
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*June 27* A.D. 1991

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*Michael Harkins*  
Michael Harkins, Secretary of State

AUTHENTICATION:

\*3088682

DATE:

06/24/1991

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RESTATED CERTIFICATE OF INCORPORATION  
OF  
ISIS PHARMACEUTICALS, INC.

Isis Pharmaceuticals, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, does hereby certify as follows:

FIRST: The name of the corporation is Isis Pharmaceuticals, Inc.

SECOND: The Certificate of Incorporation of the corporation was filed by the Secretary of State on March 25, 1991.

THIRD: The Restated Certificate of Incorporation of the corporation, in the form attached hereto as Exhibit A, has been duly adopted in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware by the Board of Directors of the corporation.

FOURTH: Pursuant to Section 245 of the Delaware General Corporation Law, approval of the stockholders of the corporation is not required.

FIFTH: The Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and hereby incorporated by reference.

IN WITNESS WHEREOF, Isis Pharmaceuticals, Inc. has caused this Restated Certificate of Incorporation to be signed by its President and attested to by its Assistant Secretary this 31st day of May 1991.

ISIS PHARMACEUTICALS, INC.

By

  
Stanley T. Crooke  
President

ATTEST:

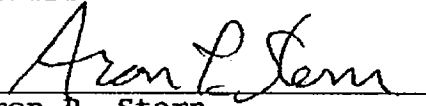
  
Aron P. Stern  
Assistant Secretary

EXHIBIT A

RESTATED CERTIFICATE OF INCORPORATION  
OF  
ISIS PHARMACEUTICALS, INC.

I.

The name of the Corporation is Isis Pharmaceuticals, Inc.

II.

The address of the registered office of the Corporation in the State of Delaware is 32 Lookerman Square, Suite L-100, City of Dover, County of Kent, and the name of the registered agent of the Corporation in the State of Delaware at such address is The Prentice-Hall Corporation System, Inc.

III.

The purpose of the Corporation is to engage in any lawful act or activity for which a Corporation may be organized under the General Corporation Law of Delaware.

IV.

(a) The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under Delaware law.

(b) The Corporation is authorized to provide indemnification of agents (as defined in Section 145 of the Delaware General Corporation Law) for breach of duty to the Corporation and its stockholders through bylaw provisions, through agreements with the agents, and/or through stockholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 145 of the Delaware General Corporation Law, subject to the limitations on such excess indemnification set forth in Section 102 of the Delaware General Corporation Law.

(c) Any repeal or modification of this Article IV shall be prospective and shall not affect the rights under this Article IV in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

## V.

The Corporation is authorized to issue two classes of shares designated respectively "Common Stock" and "Preferred Stock." The total number of shares of all classes of stock which the Corporation has authority to issue is 65,000,000 shares, consisting of 50,000,000 shares of Common Stock, each having a par value of \$.001, and 15,000,000 shares of Preferred Stock, each having a par value of \$.001. The Preferred Stock may be issued in one or more series. The Board of Directors is authorized to fix the number of shares of any such series of Preferred Stock and to determine the designation of any such series (a "Preferred Stock Designation"), subject to (a) such stockholder approvals as may be provided for herein and (b) the number of shares of Preferred Stock authorized at that time by this Article V. Subject to such stockholder approvals as may be provided for herein, the Board of Directors is further authorized to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock, and to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series of Preferred Stock. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution or amendment originally fixing the number of shares of such series.

## VI.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

Section 1. Board of Directors.

(a) Management of Corporation. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted from time to time by the Board of Directors.

(b) Classified Board. Following the closing of the initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "1933 Act"), covering the offer and sale of Common Stock to the public (the "Initial Public Offering"):

(i) Designation of Classes. The directors shall be divided with respect to the time for which they generally hold office into three classes designated as Class I, Class II and Class III. Class I shall consist of two directors, with Class II and Class III consisting of three directors each. At the first annual meeting of stockholders held after the closing of the Initial Public Offering, the term 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 stockholders held after the closing of the Initial Public Offering, the term of 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 held after the closing of the Initial Public Offering, the term of office of 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.

(ii) Change in Directorships. In case of any increase in the number of directorships, the additional directorships so created shall be classified so that, as nearly as possible, each class shall consist of one third of the number of directors then constituting the whole board. Newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such newly created directorship shall be filled by the stockholders, be filled only by the affirmative vote of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall serve until the next election of the class to which such additional directorship shall have been assigned. Notwithstanding the requirement that the three classes shall be as nearly equal in the number of directorships as possible, no change in the number of directorships shall operate to prevent a director then in office from continuing to serve as such until the expiration of his term or his earlier death, resignation or removal.

(iii) Modification of Section 1(b). Notwithstanding any other provisions of this Certificate of Incorporation (other than the provision for the change in the number of directorships set forth in Section 1(b)(ii)) or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Voting Stock (as defined in Section 1(a) of Article VII) required by law or this Certificate of Incorporation or any Preferred Stock Designation, the affirmative vote of the holders of at least 66-2/3% of the voting power of all of the then outstanding shares of the Voting Stock, voting together

as a single class, shall be required to alter, amend or repeal this Section 1(b).

(c) Removal. Subject to any limitations imposed by law, the Board of Directors or any individual director may be removed from office at any time (i) with cause by the affirmative vote of the holders of at least a majority of the outstanding Voting Stock; or (ii) without cause by the affirmative vote of the holders of at least 66-2/3% of the outstanding Voting Stock.

## Section 2. General.

(a) The Board of Directors may from time to time make, amend, supplement or repeal the Bylaws; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the holders of at least 66-2/3% of the voting power of all of the then outstanding shares of the capital stock of the Corporation (considered for this purpose as one class); and, provided further, that no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

(b) The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

(c) Following the closing of the Initial Public Offering, no action shall be taken by the stockholders of the Corporation except at an annual or special meeting of stockholders called in accordance with the Bylaws and no action shall be taken by the stockholders by written consent.

(d) Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

## VII.

Following the closing of the Initial Public Offering:

### Section 1. Stockholder Vote Required for Business Combinations.

(a) Stockholder Votes. In addition to any affirmative vote required by law or by this Certificate of Incorporation or by any Preferred Stock Designation, and except as otherwise expressly provided in Section 2 of this Article VII:

(i) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with

(A) any Interested Stockholder (as hereinafter defined) or  
(B) any other corporation (whether or not itself an Interested  
Stockholder) which is, or after such merger or consolidation  
would be, an Affiliate (as hereinafter defined) of an Interested  
Stockholder; or

(ii) any sale, lease, exchange, mortgage, pledge,  
transfer or other disposition (in one transaction or a series of  
transactions) to or with any Interested Stockholder or any  
Affiliate of any Interested Stockholder of any assets of the  
Corporation or any Subsidiary having an aggregate Fair Market  
Value (as hereinafter defined) equal to or greater than 10% of  
the Corporation's assets as set forth on the Corporation's most  
recent audited consolidated financial statements; or

(iii) the issuance or transfer by the Corporation  
or any Subsidiary (in one transaction or a series of trans-  
actions) of any securities of the Corporation or any Subsidiary  
to any Interested Stockholder or any Affiliate of any Interested  
Stockholder in exchange for cash, securities or other property  
(or a combination thereof) having an aggregate Fair Market Value  
equal to or greater than 10% of the Corporation's assets as set  
forth on the Corporation's most recent audited consolidated  
financial statements; or

(iv) the adoption of any plan or proposal for the  
liquidation or dissolution of the Corporation proposed by or on  
behalf of any Interested Stockholder or any Affiliate of any  
Interested Stockholder; or

(v) any reclassification of securities (including  
any reverse stock split), or recapitalization of the Corpo-  
ration, or any merger or consolidation of the Corporation with  
any of its Subsidiaries or any other transaction (whether or not  
with or into or otherwise involving any Interested Stockholder)  
which has the effect, directly or indirectly, of increasing the  
proportionate share of the outstanding shares of any class of  
equity or convertible securities of the Corporation or any  
Subsidiary which is Beneficially Owned (as hereinafter defined)  
by any Interested Stockholder or any Affiliate of any Interested  
Stockholder;

shall require the affirmative vote of the holders of at least  
66-2/3% of the voting power of all of the then outstanding shares  
of capital stock of the Corporation entitled to vote generally in  
the election of directors (the "Voting Stock"), voting together  
as a single class. Such affirmative vote shall be required  
notwithstanding any other provisions of this Certificate of

Incorporation or any provision of law or of any agreement with any national securities exchange or otherwise which might otherwise permit a lesser vote or no vote.

(b) Definition of Business Combination. The term "Business Combination" as used in this Article VII shall mean any transaction which is referred to in any one or more of subparagraphs (i) through (v) of paragraph (a) of this Section 1.

Section 2. Exceptions to Stockholder Vote Requirement.

The provisions of Section 1 of this Article VII shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Certificate of Incorporation and any Preferred Stock Designation, if, in the case of a Business Combination that does not involve any cash or other consideration being received by the stockholders of the Corporation, solely in their respective capacities as stockholders of the Corporation, the condition specified in the following paragraph (a) is met, or, in the case of any other Business Combination, the conditions specified in either of the following paragraph (a) or paragraph (b) are met:

(a) The Business Combination shall have been approved by a majority of the Continuing Directors (as hereinafter defined); provided however, that this condition shall not be capable of satisfaction unless there are at least two Continuing Directors.

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

(i) The consideration to be received by holders of shares of a particular class (or series) of outstanding capital stock of the Corporation (including Common Stock and other than Excluded Preferred Stock (as hereinafter defined)) shall be in cash or in the same form as the Interested Stockholder or any of its Affiliates has previously paid for shares of such class (or series) of capital stock. If the Interested Stockholder or any of its Affiliates have paid for shares of any class (or series) of capital stock with varying forms of consideration, the form of consideration to be received per share by holders of shares of such class (or series) of capital stock shall be either cash or the form used to acquire the largest number of shares of such class (or series) of capital stock previously acquired by the Interested Stockholder.

(ii) The aggregate amount of (x) the cash and (y) the Fair Market Value, as of the date (the "Consummation Date") of the consummation of the Business Combination, of the consideration other than cash to be received per share by holders



of Common Stock in such Business Combination shall be at least equal to the higher of the following (in each case appropriately adjusted in the event of any stock dividend, stock split, combination of shares or similar event):

(A) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder or any of its Affiliates for any shares of Common Stock acquired by them within the two-year period immediately prior to the date of the first public announcement of the proposal of the Business Combination (the "Announcement Date") or in any transaction in which the Interested Stockholder became an Interested Stockholder, whichever is higher, plus interest compounded annually from the first date on which the Interested Stockholder became an Interested Stockholder (the "Determination Date") through the Consummation Date at the publicly announced reference rate of interest of Bank of America, N.T. & S.A. (or such other major bank headquartered in the State of California as may be selected by the Continuing Directors) from time to time in effect in the City of San Francisco less the aggregate amount of any cash dividends paid, and the Fair Market Value of any dividends paid in other than cash, on each share of Common Stock from the Determination Date through the Consummation Date in an amount up to but not exceeding the amount of interest so payable per share of Common Stock; and

(B) the Fair Market Value per share of Common Stock on the Announcement Date or the Determination Date, whichever is higher.

(iii) The aggregate amount of (x) the cash and (y) the Fair Market Value, as of the Consummation Date, of the consideration other than cash to be received per share by holders of shares of any class (or series), other than Common Stock or Excluded Preferred Stock, of outstanding Voting Stock shall be at least equal to the highest of the following (in each case appropriately adjusted in the event of any stock dividend, stock split, combination of shares or similar event), it being intended that the requirements of this paragraph (b)(iii) shall be required to be met with respect to every such class (or series) of outstanding Voting Stock whether or not the Interested Stockholder or any of its Affiliates has previously acquired any shares of a particular class (or series) of Voting Stock):

(A) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the

Interested Stockholder or any of its Affiliates for any shares of such class (or series) of Voting Stock acquired by them within the two-year period immediately prior to the Announcement Date or in any transaction in which it became an Interested Stockholder, whichever is higher, plus interest compounded annually from the Determination Date through the Consummation Date at the publicly announced reference rate of interest of Bank of America, N.T. & S.A. (or such other major bank headquartered in the State of California as may be selected by the Continuing Directors) from time to time in effect in the City of San Francisco less the aggregate amount of any cash dividends paid, and the Fair Market Value of any dividends paid in other than cash, on each share of such class (or series) of Voting Stock from the Determination Date through the Consummation Date in an amount up to but not exceeding the amount of interest so payable per share of such class (or series) of Voting Stock;

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

(C) the highest preferential amount per share, if any, to which the holders of shares of such class (or series) of Voting Stock would be entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation.

(iv) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (x) except as approved by a majority of the Continuing Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on any outstanding Preferred Stock; (y) there shall have been (A) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Continuing Directors, and (B) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Continuing Directors; and (z) neither such Interested Stockholder nor any of its Affiliates shall have become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder; provided, however, that no approval by

Continuing Directors shall satisfy the requirements of this subparagraph (iv) unless at the time of such approval there are at least two Continuing Directors.

(v) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder and any of its Affiliates shall not have received the benefit, directly or indirectly (except proportionately, solely in such Interested Stockholder's or Affiliate's capacity as a stockholder of the Corporation), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise.

(vi) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934, as amended (the "1934 Act") and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to all stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).

(vii) Such Interested Stockholder shall have supplied the Corporation with such information as shall have been requested pursuant to Section 5 of this Article VII within the time period set forth therein.

### Section 3. Definitions.

For the purposes of this Article VII:

(a) A "person" means any individual, limited partnership, general partnership, corporation or other firm or entity.

(b) "Interested Stockholder" means any person (other than the Corporation or any Subsidiary) who or which:

(i) is the Beneficial Owner (as hereinafter defined), directly or indirectly, of 15% or more of the voting power of the then outstanding Voting Stock; or

(ii) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was the Beneficial Owner, directly or indirectly, of 15% or more of the voting power of the then outstanding Voting Stock; or

(iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the

two-year period immediately prior to the date in question Beneficially Owned by an Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the 1933 Act.

(c) A person shall be a "Beneficial Owner" of or shall "Beneficially Own" any Voting Stock:

(i) which such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly, within the meaning of Rule 13d-3 under the 1934 Act as in effect on March 14, 1988; or

(ii) which such person or any of its Affiliates or Associates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (B) the right to vote pursuant to any agreement, arrangement or understanding (but shall not be deemed to be the beneficial owner of any shares of Voting Stock solely by reason of a revocable proxy granted for a particular meeting of stockholders, pursuant to a public solicitation of proxies for such meeting, and with respect to which shares neither such person nor any such Affiliate or Associate is otherwise deemed the beneficial owner); or

(iii) which is beneficially owned, directly or indirectly, within the meaning of Rule 13d-3 under the 1934 Act as in effect on the adoption date of this Certificate of Incorporation, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (other than solely by reason of a revocable proxy as described in subparagraph (ii) of this paragraph (c)) or disposing of any shares of Voting Stock;

provided, however, that in case of any employee stock ownership or similar plan of the Corporation or of any Subsidiary in which the beneficiaries thereof possess the right to vote any shares of Voting Stock held by such plan, no such plan nor any trustee with respect thereto (nor any Affiliate of such trustee), solely by reason of such capacity of such trustee, shall be deemed, for any purposes hereof, to Beneficially Own any shares of Voting Stock held under any such plan.

(d) For the purposes of determining whether a person is an Interested Stockholder pursuant to paragraph (b) of this Section 3, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed Beneficially Owned through application of paragraph (c) of this Section 3 but shall

not include any other unissued shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(e) "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 under the 1934 Act as in effect on the adoption date of this Certificate of Incorporation.

(f) "Subsidiary" means any corporation of which a majority of the outstanding shares of any class of equity security is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in paragraph (b) of this Section 3, the term "Subsidiary" shall mean only a corporation of which a majority of the outstanding shares of each class of equity security is owned, directly or indirectly, by the Corporation.

(g) "Continuing Director" means a member of the Board of Directors of the Corporation who is originally elected upon the incorporation of the Corporation or who is not an Interested Stockholder or affiliated with an Interested Stockholder or in connection with his or her initial assumption of office is recommended and approved for an appointment or election by a majority of Continuing Directors then on the Board.

(h) "Fair Market Value" means: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the 1934 Act on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing sale price quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the Board in accordance with Section 4 of this Article VII; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by the Board in accordance with Section 4 of this Article VII.

(i) In the event of any Business Combination in which the Corporation survives, the phrase "consideration other than cash to be received" as used in paragraphs (b)(ii) and (b)(iii) of Section 2 of this Article VII shall include the shares of

Common Stock and/or the shares of any other class (or series) of outstanding Voting Stock retained by the holders of such shares.

(j) "Whole Board" means the total number of directors which this corporation would have if there were no vacancies.

(k) "Excluded Preferred Stock" means any series of Preferred Stock with respect to which the Preferred Stock Designation creating such series expressly provides that the provisions of this Article VII shall not apply.

#### Section 4. Board Enforcement.

(a) Compliance. A majority of the Whole Board but only if a majority of the Whole Board shall then consist of Continuing Directors or, if a majority of the Whole Board shall not then consist of Continuing Directors, a majority of the then Continuing Directors, shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article VII, including, without limitation, (i) whether a person is an Interested Stockholder, (ii) the number of shares of Voting Stock beneficially owned by any person, (iii) whether a person is an Affiliate or Associate of another, (iv) whether the applicable conditions set forth in paragraph (b) of Section 2 have been met with respect to any Business Combination, (v) the Fair Market Value of stock or other property in accordance with paragraph (h) of Section 3, and (vi) whether the assets which are the subject of any Business Combination referred to in paragraph (a)(ii) of Section 1 have or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination referred to in paragraph (a)(iii) of Section 1 has, an aggregate Fair Market Value equal to or greater than 10% of the Corporation's assets as set forth on the Corporation's most recent audited consolidated financial statements.

(b) Demand as to Interested Stockholder. A majority of the Whole Board shall have the right to demand, but only if a majority of the Whole Board shall then consist of Continuing Directors, or, if a majority of the Whole Board shall not then consist of Continuing Directors, a majority of the then Continuing Directors shall have the right to demand, that any person who it is reasonably believed is an Interested Stockholder (or holds of record shares of Voting Stock Beneficially Owned by any Interested Stockholder) supply this Corporation with complete information as to (i) the record owner(s) of all shares Beneficially Owned by such person who it is reasonably believed is an Interested Stockholder, (ii) the number of, and class or series of, shares Beneficially Owned by such person who it is reasonably believed is an Interested Stockholder and held of record by each such record owner and the number(s) of the stock

certificate(s) evidencing such shares, and (iii) any other factual matter relating to the applicability or effect of this Article VII, as may be reasonably requested of such person, and such person shall furnish such information within 10 days after receipt of such demand.

(c) Fiduciary Obligation of Interested Stockholder. Nothing contained in this Article VII shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

(d) Modification of Article VII. Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Voting Stock required by law or this Certificate of Incorporation or any Preferred Stock Designation, the affirmative vote of the holders of at least 66-2/3% of the voting power of all of the then outstanding shares of the Voting Stock, voting together as a single class, shall be required to alter, amend or repeal this Article VII.

#### VIII.

No holder of shares of stock of the Corporation shall have any preemptive or other right, except as such rights are expressly provided by contract, to purchase or subscribe for or receive any shares of any class, or series thereof, of stock of the Corporation, whether now or hereafter authorized, or any warrants, options, bonds, debentures or other securities convertible into, exchangeable for or carrying any right to purchase any share of any class, or series thereof, of stock; but such additional shares of stock and such warrants, options, bonds, debentures or other securities convertible into, exchangeable for or carrying any right to purchase any shares of any class, or series thereof, of stock may be issued or disposed of by the Board of Directors to such persons, and on such terms and for such lawful consideration, as in its discretion it shall deem advisable or as the Corporation shall have by contract agreed.