



11-27-00

To The Honorable Commission

101552611

to the attached original documents or copy thereof.

1. Name of conveying party(ies):

Iriscan, Inc.

- Individual(s) Association
- General Partnership Limited Partnership
- Corporation-State: **Delaware**
- Other:

Additional name(s) of conveying party(ies) attached? YES NO

3. Nature of Conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other:

Execution Date: **September 15, 2000**

2. Name and address of receiving party(ies):

Name: **Iridian Technologies, Inc.**

Internal Address: **9 East Stow Road, Suite E,**

Street Address: **9 East Stow Road, Suite E,**

City: **Marlton**

State: **New Jersey**

ZIP: **08053-3159**

Individual(s) citizenship:

Association:

General Partnership:

Limited Partnership:

Corporation-State: **Delaware**

Other:

If assignee is not domiciled in the United States, a domestic representative designation is attached: YES NO (Designation must be a separate document from Assignment)

Additional name(s) & address attached? YES NO

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) (See attached)

75/683,266

75/712,596

75/846,456

B. Trademark registration No.(s)

1,983,014 2,377,884

1,983,038

2,302,544

Additional numbers attached? YES NO

5. Name and address of party to whom correspondence concerning documents should be mailed:

Name: **Denise I. Mroz**

Internal Address:

WOODCOCK WASHBURN KURTZ MACKIEW CZ & NORRIS LLP

One Liberty Place - 46th Floor

Street Address: **1650 Market Street**

City: **Philadelphia** State: **Pennsylvania**

ZIP: **19103-7301**

6. Total number of applications and registrations involved

18

7. Total fee (37 CFR 3.41):.....\$465.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number: **23-3050**

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Denise I. Mroz

Name of Person Signing

Signature

November 21, 2000

Date

Total number of pages including cover sheet, attachments, and document: 27

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

12/13/2000 6TDM11 00000107 75683266

Commissioner of Patents and Trademarks

Box Assignments

Washington, D.C. 20231

01 FC:481

40.00 OP

02 FC:482

425.00 OP

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project. (C 651-0011).

Application number(s) or registration number(s)(cont.):

A. Trademark Application No.(s)

75/714,842

75/786,324

75/846,450

75/848,371

76/018,866

76/042,857

76/114,710

76/114,712

76/115,015

76/115,412

76/115,413

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "IRISCAN, INC.", CHANGING ITS NAME FROM "IRISCAN, INC." TO "IRIDIAN TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF SEPTEMBER, A.D. 2000, AT 9:01 O'CLOCK A.M.



A handwritten signature in cursive script that reads "Edward J. Freel".

Edward J. Freel, Secretary of State

AUTHENTICATION: 0761544

2246543 8100

001535833

DATE: 10-27-00

TRADEMARK
REEL: 2194 FRAME: 0735

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
IRISCAN, INC.**

IriScan, Inc., a Delaware corporation whose original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on November 13, 1990, with Certificates of Amendment to the Certificate of Incorporation filed on September 9, 1993, and December 29, 1997, and whose Amended and Restated Certificate of Incorporation was filed on June 3, 1998, with a Certificate of Correction thereto filed on July 17, 1998 and a Certificate of Amendment thereto filed on August 3, 2000, acting pursuant to Sections 242 and 245 of the Delaware General Corporation Law, and having obtained authorization to file this Amended and Restated Certificate of Incorporation by written consent, in lieu of a meeting, pursuant to Section 228 of the Delaware General Corporation Law, of (i) the holders of a majority of the Corporation's voting stock, and (ii) the holders of all of the Corporation's Series A Convertible Preferred Stock, par value \$.01 per share, does hereby certify as follows:

The Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety as follows:

FIRST: The name of this Corporation is Iridian Technologies, Inc. (the "Corporation").

SECOND: The Corporation's registered office in the State of Delaware is c/o 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware 19808. The Registered Agent in charge therefor is Corporation Service Company.

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

FOURTH: A. The total number of shares of stock that the Corporation shall have authority to issue is Sixty-Five Million (65,000,000), consisting of Fifty Million (50,000,000) shares of common stock (the "Common Stock"), par value \$.01 per share, and Fifteen Million (15,000,000) shares of preferred stock (the "Preferred Stock"), par value \$.01 per share.

B. The shares of Preferred Stock may be issued from time to time in one or more series of any number of shares, provided that the aggregate number of shares issued and not canceled of any and all such series shall not exceed the total number of shares of Preferred Stock hereinabove authorized, and with distinctive serial designations, all as shall

hereafter be stated and expressed in the resolution or resolutions providing for the issue of such shares of Preferred Stock from time to time adopted by the Board of Directors pursuant to authority which is hereby vested in the Board of Directors. Each series of shares of Preferred Stock (a) may have such voting powers, full or limited, or may be without voting powers; (b) may be subject to redemption at such time or times and at such prices; (c) may be entitled to receive dividends (which may be cumulative or non-cumulative) at such rate or rates, on such conditions and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or series of stock; (d) may have such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; (e) may be made convertible into or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes of shares of the Corporation at such price or prices or at such rates of exchange and with such adjustments; (f) may be entitled to the benefit of a sinking fund to be applied to the purchase or redemption of shares of such series in such amount or amounts; (g) may be entitled to the benefit of conditions and restrictions upon the creation of indebtedness of the Corporation or any of its Subsidiaries, upon the issue of any additional shares (including additional shares of such series or of any other series) and upon the payment of dividends or the making of other distributions on, and the purchase, redemption or other acquisition by the Corporation or any of its Subsidiaries of, any outstanding shares of the Corporation; and (h) may have such other relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof; all as shall be stated in said resolution or resolutions providing for the issue of such shares of Preferred Stock and all as shall be permitted pursuant to the rights, if any, of the existing holders of Preferred Stock. Shares of Preferred Stock of any series that have been redeemed (whether through the operation of a sinking fund or otherwise) or that, if convertible or exchangeable, have been converted into or exchanged for shares of any other class or classes shall have the status of authorized and unissued shares of Preferred Stock of the same series and may be reissued as a part of the series of which they were originally a part or may be reclassified and reissued as part of a new series of shares of Preferred Stock to be created by resolution or resolutions of the Board of Directors or as part of any other series of shares of Preferred Stock, all subject to the conditions or restrictions on issuance set forth in the resolution or resolutions adopted by the Board of Directors providing for the issue of any series of shares of Preferred Stock and the rights, if any, of the existing holders of Preferred Stock.

C. 1,043,664 authorized shares of Preferred Stock shall be designated as "Series A Convertible Preferred Stock" ("Series A Preferred Stock") and 11,500,000 authorized shares of Preferred Stock shall be designated as "Series B Redeemable Convertible Preferred Stock" ("Series B Preferred Stock"). The powers, preferences, rights, restrictions of, and other matters relating to, the Series A Preferred Stock and the Series B Preferred Stock are as set forth herein. Unless otherwise defined below, capitalized terms below shall have the meanings set forth in Section 6 hereof.

1. Dividends.

(a) The holders of the Series A Preferred Stock shall be entitled to receive a cumulative dividend at the rate of \$0.2683 per share per annum (as adjusted for any stock dividends, combinations or splits), accruing quarterly in arrears commencing on the Series A Original Issue Date, calculated on a simple interest basis and payable out of funds of the

Corporation legally available therefor only upon the occurrence of one of the events described in clauses (i)-(iv) of Section 1(c) below and in the order of priority set forth in Section 1(d) below. At any time or from time to time at the option of any holder of outstanding shares of Series A Preferred Stock exercisable by delivery of written notice to the Corporation and except as otherwise provided in Section 1(c) hereof, accrued and unpaid dividends on the Series A Preferred Stock shall be paid in whole or in part by the issuance of such number of fully paid and non-assessable shares of Common Stock as shall be determined by dividing (i) the amount of accrued and unpaid dividends outstanding on such shares of Series A Preferred Stock as to which such notice shall be given by (ii) the Conversion Price for the Series A Preferred Stock (determined in accordance with Section 5 hereof) in effect on the applicable quarterly dividend payment date (as referenced in clause (iv) of Section 1(c) below); provided, that, no fractional shares of Common Stock shall be issued and cash shall be paid in lieu of any fractional share.

(b) The holders of the Series B Preferred Stock shall be entitled to receive a cumulative dividend at the rate of \$0.3464 per share per annum, as adjusted for any stock dividends, combinations or splits (the "Series B Dividend Rate"), accruing quarterly in arrears commencing on the Series B Original Issue Date, calculated on a simple interest basis and payable out of funds of the Corporation legally available therefor only upon the occurrence of one of the events described in clauses (i)-(iv) of Section 1(c) below and in the order of priority set forth in Section 1(d) below. If an Event of Default shall have occurred and be continuing, the Series B Dividend Rate shall be increased upon the occurrence and during the continuance of such Event of Default to \$0.433 per share per annum (as adjusted for any stock dividends, combinations or splits) as of the date of occurrence of such Event of Default, but shall not be subject to further increase thereafter. Except as otherwise provided in Section 1(c) hereof, accrued and unpaid dividends on the Series B Preferred Stock may, at the option of the holder, be paid in cash or in fully paid and non-assessable shares of Series B Preferred Stock as shall be determined by dividing (i) the amount of accrued and unpaid dividends outstanding on such shares of Series B Preferred Stock by (ii) \$4.33 (subject to appropriate adjustment for any stock dividends, combinations or splits); provided, that, no fractional shares of Series B Preferred Stock shall be issued and cash shall be paid in lieu of any fractional share.

(c) Accrued and unpaid dividends on the Series A Preferred Stock and the Series B Preferred Stock shall be payable in full only on the earliest to occur of any of the following events: (i) the conversion of any shares of such Preferred Stock pursuant to Section 5 hereof, (ii) the redemption or repurchase of any shares of such Preferred Stock pursuant to Section 3 hereof, (iii) the liquidation, dissolution or winding up of the Corporation pursuant to Section 2 hereof, or (iv) as declared by the Board of Directors of the Corporation, in which case such accrued and unpaid dividends shall be paid within 45 days after the end of the calendar quarter in which they were declared. Accrued and unpaid dividends on shares of Series A Preferred Stock and Series B Preferred Stock (x) shall be paid solely in shares of Common Stock in the case of dividends payable pursuant to clause (i) above, (y) shall be paid solely in cash in the case of dividends payable pursuant to clauses (ii) or (iii) above, and (z) shall be paid in cash or in-kind as provided for herein in the case of dividends payable pursuant to clause (iv) above

(d) Dividends shall not be declared or paid (whether in cash or in shares of Common Stock) with respect to the Series A Preferred Stock until all accrued and unpaid dividends on the Series B Preferred Stock shall have been declared and paid in full. All

dividends on the Series A Preferred Stock and the Series B Preferred Stock for all dividend periods shall be paid in full, prior and in preference to any dividends or distributions to the holders of the Common Stock and any other class or series of capital stock of the Corporation that shall rank junior to the Series A Preferred Stock and Series B Preferred Stock as to the payment of dividends or distributions thereon. Subject to the foregoing provisions and the rights on liquidation in Section 2 hereof, neither the Series A Preferred Stock nor the Series B Preferred Stock shall be entitled to participate in any other or additional surplus or net profits of the Corporation.

(e) Subject to the preferential rights of the Preferred Stock, the holders of shares of Common Stock shall be entitled to receive, when and if declared by the Board of Directors of the Corporation out of assets of the Corporation legally available therefor, dividends payable in cash, in property or in shares of capital stock of the Corporation.

2. **Liquidation Preference.**

(a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any distribution of assets shall be made to the holders of Common Stock or any other class or series of the Corporation's capital stock ranking on liquidation junior to the Series A Preferred Stock and the Series B Preferred Stock, the holders of the Series A Preferred Stock shall, subject to Section 2(e) below, be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders an amount equal to the sum of \$3.3536 per share of Series A Preferred Stock (as adjusted for any stock dividends, combinations or splits) plus all accrued and unpaid dividends on such share (the "Series A Liquidation Preference") and the holders of the Series B Preferred Stock shall, subject to Section 2(e) below, be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders an amount equal to the sum of \$4.33 per share of Series B Preferred Stock (as adjusted for any stock dividends, combinations or splits) plus all accrued and unpaid dividends on such share (the "Series B Liquidation Preference"). If upon the occurrence of any of the events described herein, the assets and funds to be distributed among the holders of the Series A Preferred Stock and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among such holders in proportion to the aggregate preferential amount that each holder shall otherwise be entitled to receive.

(b) After the payments set forth in Section 2(a) hereof shall have been made in full, the holders of Common Stock, Series A Preferred Stock and Series B Preferred Stock shall share the remaining assets of the Corporation available for distribution to its stockholders on a pro rata basis, with the amount distributable computed on the basis of the number of shares of Common Stock that would be held by such holders of Series A Preferred Stock and Series B Preferred Stock if, immediately prior to the liquidation, dissolution or winding up of the Corporation, all of the shares of Series A Preferred Stock and Series B Preferred Stock (excluding dividends) had been converted into shares of Common Stock; provided, that, each holder of Series A Preferred Stock and each holder of Series B Preferred Stock shall only be entitled to receive distributions pursuant to this Section 2(b) until the holders of Series B Preferred Stock shall have received an amount (pursuant to Sections 2(a) and 2(b)

hereof) such that the Series B Compounded Internal Rate of Return with respect to the shares of Series B Preferred Stock held by such holders shall be equal to fifty percent (50%) per annum.

(c) Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the Series A Liquidation Preference, the Series B Liquidation Preference, and any other amounts to be paid to the holders of the Common Stock, Series A Preferred Stock and Series B Preferred Stock, and the place at which said payments shall be payable, shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by telecopier or telex, not less than ten (10) days prior to the payment date stated therein, to the holders of record of Common Stock, Series A Preferred Stock and Series B Preferred Stock, at the address of each such holder as shown on the records of the Corporation.

(d) For purposes of this Section 2, any merger, reorganization or consolidation of the Corporation with or into any other Person (other than (i) a merger or consolidation following which the holders of the outstanding capital stock of each class and series of the Corporation immediately preceding such merger or consolidation together own a majority of the outstanding voting capital stock of the surviving corporation; provided that the capital stock owned by each such holder in the surviving corporation shall have the same powers, preferences and rights as the capital stock owned by each such holder immediately preceding such merger or consolidation, (ii) a merger or consolidation of the Corporation with or into any of its Subsidiaries, or (iii) a mere reincorporation transaction), any Change in Control or any sale, lease, transfer or other disposition of all or substantially all of the assets of the Corporation (in each case other than a Qualified Sale), shall be treated as a liquidation, dissolution or winding up of the Corporation.

(e) If the Corporation shall have received a Series A Redemption Notice or a Series B Redemption Notice prior to the date of any liquidation, dissolution or winding up of the Corporation, the Corporation shall make all payments to the holders of Series A Preferred Stock and the holders of Series B Preferred Stock pursuant to and in accordance with Section 3 hereof prior to making any payments in liquidation for any remaining shares of capital stock that were not subject to redemption, and such payments in liquidation shall be made pursuant to Sections 2(a) and 2(b) hereof.

3. Series A and Series B Redemption Rights.

(a) At any time on or after the fifth anniversary of the Series B Original Issue Date, the holders of outstanding shares of Series A Preferred Stock representing at least twenty-five percent (25%) of the shares of Series A Preferred Stock issued on the Series A Original Issue Date (or if less than 25% of the shares of Series A Preferred Stock issued on the Series A Original Issue Date shall remain outstanding, the holders of all outstanding shares of Series A Preferred Stock) shall have the option to cause the Corporation to redeem all the shares of Series A Preferred Stock held by such holders. Such option may be exercised by delivering to the Corporation a written notice requesting such redemption (a "Series A Redemption Notice"), and provided that a Transaction shall not have been consummated prior to the delivery of such notice, the Corporation shall, subject to the priority provisions of Section 3(d) below, redeem all shares of Series A Preferred Stock requested to be redeemed pursuant to this Section 3(a) and

Section 3(e) hereof, by payment, in cash, of the Series A Redemption Price (as hereinafter defined) payable not more than thirty (30) days after the final determination of the Appraised Value of the Corporation (the "Series A Redemption Date"). The delivery of the Series A Redemption Notice shall be irrevocable and the shares of Series A Preferred Stock referred to in the Series A Redemption Notice shall be redeemed by the Corporation. The "Series A Redemption Price" shall be equal to the greater of (1) the Appraised Value of the Corporation multiplied by the Ownership Percentage represented by the Series A Preferred Stock to be redeemed pursuant to this Section 3(a) and Section 3(e) hereof or (2) the sum of (x) \$3.3536 per share for all shares of Series A Preferred Stock to be redeemed and (y) any accrued and unpaid dividends on such shares.

(b) At any time on or after the fifth anniversary of the Series B Original Issue Date, the holders of outstanding shares of Series B Preferred Stock representing at least twenty-six percent (26%) of the shares of Series B Preferred Stock issued on the Series B Original Issue Date (or if less than 26% of the shares of Series B Preferred Stock issued on the Series B Original Issue Date shall remain outstanding, the holders of all outstanding shares of Series B Preferred Stock) shall have the option to cause the Corporation to redeem all the shares of Series B Preferred Stock held by such holders. Such option may be exercised by delivering a written notice to the Corporation requesting such redemption (a "Series B Redemption Notice"). The Corporation shall thereafter redeem all shares of Series B Preferred Stock required to be redeemed pursuant to this Section 3(b) and Section 3(e) hereof by payment, in cash, of the Series B Redemption Price (as hereinafter defined), payable not more than thirty (30) days after the final determination of the Appraised Value of the Corporation (the "Series B Redemption Date"). The delivery of the Series B Redemption Notice shall be irrevocable and the shares of Series B Preferred Stock referred to in the Series B Redemption Notice shall be redeemed by the Corporation. The "Series B Redemption Price" shall be equal to the greater of (1) the Appraised Value of the Corporation multiplied by the Ownership Percentage represented by the Series B Preferred Stock to be redeemed pursuant to this Section 3(b) and Section 3(e) hereof or (2) the sum of (x) \$4.33 per share for all shares of Series B Preferred Stock to be redeemed and (y) any accrued and unpaid dividends on such shares.

(c) Certificates representing all of the shares of Series A Preferred Stock and Series B Preferred Stock being redeemed shall be surrendered to the Corporation for redemption on any Series A Redemption Date and on any Series B Redemption Date.

(d) If the funds of the Corporation legally available for redemption of any shares of Series A Preferred Stock or Series B Preferred Stock shall be insufficient to redeem the total number of shares of Series A Preferred Stock and Series B Preferred Stock required to be redeemed on any Series A or Series B Redemption Date, those funds that are legally available shall be used first to redeem the maximum number of shares of Series B Preferred Stock, pro rata based upon the number of such shares then so required to be redeemed, and then to redeem the maximum number of shares of Series A Preferred Stock, pro rata based upon the number of such shares then so required to be redeemed. At any time thereafter when additional funds of the Corporation shall be legally available for the redemption of shares of Series A Preferred Stock and Series B Preferred Stock, such funds shall immediately be used to redeem the balance of such shares, or such portion thereof for which funds shall be then legally available, with such

funds paid first to the holders of shares of Series B Preferred Stock and any remaining funds paid thereafter to the holders of shares of Series A Preferred Stock, on the basis set forth above.

(e) Promptly upon receipt of a Series A or Series B Redemption Notice pursuant to Sections 3(a) and 3(b) above, the Corporation shall cause written notice relating to the receipt thereof to be furnished to the holders of Series A Preferred Stock and Series B Preferred Stock within ten days of the receipt thereof and cause the Appraised Value of the Corporation to be determined as of the last day of the month preceding the date of the delivery of the Series A and/or Series B Redemption Notice. Upon final determination of such Appraised Value of the Corporation, the Corporation shall promptly, but in no event later than fifteen (15) days after such final determination, provide written notice (the "Corporation Redemption Notice") to each holder of record of shares of Series A Preferred Stock and Series B Preferred Stock. Each such Corporation Redemption Notice shall state (i) the Series A or Series B Redemption Date, (ii) the applicable Redemption Price to be paid on such Redemption Date, (iii) the place or places where certificates for the shares to be redeemed on the Redemption Date shall be surrendered by the holders to the Corporation, and (iv) that dividends on the shares then being redeemed will cease to accrue on the Redemption Date. Holders of Series A Preferred Stock and Series B Preferred Stock not signatories to the triggering Series A and/or Series B Redemption Notice(s) shall have the right, but shall not be required, to give a Series A or Series B Redemption Notice; provided, that, such Series A and/or Series B Redemption Notices must be given no later than fifteen (15) days following the date of the Corporation Redemption Notice, and in such event, the shares of Series A Preferred Stock and/or Series B Preferred Stock set forth in such Series A and/or Series B Redemption Notices shall be redeemed on the same Redemption Date set forth in the Corporation Redemption Notice pursuant to which such Series A and/or Series B Redemption Notices shall have been delivered.

(f) From and after any Series A Redemption Date and any Series B Redemption Date, dividends on the shares of the Series A Preferred Stock or Series B Preferred Stock so redeemed shall cease to accrue, and said shares shall no longer be deemed to be outstanding and shall have the status of authorized but unissued shares of Preferred Stock, and shall not be reissued as shares of Series A Preferred Stock or shares of Series B Preferred Stock, and all rights of the holders thereof as stockholders of the Corporation with respect to said shares (except the right to receive from the Corporation the Series A and Series B Redemption Price) shall cease. In the event that less than all of the shares represented by any certificate for such shares shall be redeemed, a new certificate shall be issued representing the unredeemed shares.

(g) Notwithstanding anything to the contrary in this Section 3,

(i) Subject to the proviso set forth below, the holders of Series A Preferred Stock representing at least 25% of the shares of Series A Preferred Stock issued on the Series A Original Issue Date (or if less than 25% of the shares of Series A Preferred Stock issued on the Series A Original Issue Date remain outstanding, the holders of all outstanding shares of Series A Preferred Stock) shall have the option, exercisable by delivering a written notice to the Corporation at any time prior to the fifth anniversary of the Series B Original Issue Date, and upon the occurrence and continuation of an Event of Default (a "Series A Event of Default Notice"), to have the Corporation redeem all of the shares of Series A Preferred Stock requested to be redeemed pursuant to this Section 3(g)(i) and Section 3(g)(iii) hereof for a

special Series A Redemption Price payable, in cash, not later than thirty (30) days after the delivery of such Series A Event of Default Notice (the "Series A Event of Default Repayment Date"), equal to the Series A Liquidation Preference on such shares of Series A Preferred Stock; provided, however, that the Corporation shall not be required to redeem any shares of Series A Preferred Stock pursuant to this Section 3(g) unless the holders of at least 75% of the shares of Series B Preferred Stock outstanding on the date of the Corporation's receipt of the Series A Event of Default Notice shall have consented to such redemption. Each Series A Event of Default Notice shall specify in reasonable detail the Event of Default that shall have prompted its delivery.

(ii) The holders of Series B Preferred Stock representing at least 26% of the shares of Series B Preferred Stock issued on the Series B Original Issue Date (or if less than 26% of the shares of Series B Preferred Stock issued on the Series B Original Issue Date remain outstanding, the holders of all outstanding shares of Series B Preferred Stock) shall have the option, exercisable by delivering a written notice to the Corporation at any time prior to the fifth anniversary of the Series B Original Issue Date, and upon the occurrence and continuation of an Event of Default (a "Series B Event of Default Notice"), to have the Corporation redeem all of the shares of Series B Preferred Stock requested to be redeemed pursuant to this Section 3(g)(ii) and Section 3(g)(iii) hereof for a special Series B Redemption Price payable, in cash, not later than thirty (30) days after the delivery of such Series B Event of Default Notice (the "Series B Event of Default Repayment Date"), equal to the Series B Liquidation Preference on such shares of Series B Preferred Stock. Each Series B Event of Default Notice shall specify in reasonable detail the Event of Default that shall have prompted its delivery.

(iii) Upon receipt of a Series A and/or Series B Event of Default Notice as provided in this Section 3(g), the Corporation shall promptly, but in no event less than twenty (20) days prior to the Series A and/or Series B Event of Default Repayment Date, provide written notice (the "Corporation Event of Default Notice") to each holder of record of shares of Series A Preferred Stock and Series B Preferred Stock. Each such Corporation Event of Default Notice shall state (i) the applicable Series A or Series B Event of Default Repayment Date, (ii) the applicable Redemption Price, (iii) the place or places at which certificates for the shares to be redeemed on the applicable Series A or Series B Event of Default Repayment Date shall be surrendered by the holders thereof, and (iv) that dividends on the shares then being redeemed shall cease to accrue on the applicable Series A or Series B Event of Default Repayment Date. Each holder of Series A Preferred Stock and Series B Preferred Stock not a signatory to the triggering Series A or Series B Event of Default Notice(s) shall have the right, but shall not be required, to give a Series A or Series B Event of Default Notice; provided, that such Series A and/or Series B Event of Default Notice(s) must be given no later than ten (10) days prior to the Series A or Series B Event of Default Repayment Date set forth in the Corporation Event of Default Notice pursuant to which any such Series A or Series B Event of Default Notices are being delivered, and, in such event, the shares of Series A Preferred Stock and/or Series B Preferred Stock requested to be redeemed in any such Series A or Series B Event of Default Notices shall be redeemed on the Event of Default Repayment Date set forth in the Corporation Event of Default Notice pursuant to which such Series A and/or Series B Event of Default Notices have been delivered.

(iv) If redemption shall have been requested pursuant to this Section 3(g) by the holders of both Series A Preferred Stock and Series B Preferred Stock and the funds of the Corporation legally available for redemption of such shares to be redeemed shall be insufficient to redeem the total number of shares of Series A Preferred Stock and Series B Preferred Stock required to be redeemed, the Corporation shall redeem such shares in the order of priority set forth in Section 3(d) hereof.

4. Voting Rights; Actions Requiring Consent of Series A Preferred Stock and Series B Preferred Stock; Special Director Election Rights.

(a) Except as provided in Section 5 of the Shareholders Agreement with respect to election of directors or as provided in this Section 4, each holder of shares of Series A Preferred Stock and Series B Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series A Preferred Stock and Series B Preferred Stock may be converted, shall vote together with the holders of Common Stock as a single class and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Common Stock as a single class) and shall be entitled to notice of any stockholders' meetings in accordance with the By-Laws of the Corporation. Fractional votes shall not, however, be permitted, and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Series A Preferred Stock or Series B Preferred Stock held by each holder may be converted) shall be rounded upward to the nearest whole number. Each holder of Common Stock shall be entitled to one (1) vote for each whole share of Common Stock held.

(b) Notwithstanding the provisions of Section 4(a) above, the Corporation shall not, and shall not permit any of its Subsidiaries to, amend, alter or repeal the Certificate of Incorporation or the By-Laws of the Corporation without the prior written consent of the holders of at least 75% of the Series A Preferred Stock if the effect of such amendment, alteration or repeal would be adverse with respect to the holders of Series A Preferred Stock; provided, however, that an amendment or alteration that shall result in the creation, authorization or issuance of any class or series of capital stock of the Corporation that shall be pari passu or senior to the Series B Preferred Stock in any respect shall not be deemed to affect adversely the Series A Preferred Stock.

(c) Notwithstanding the provisions of Sections 4(a) and 4(b) above, the Corporation shall not, and shall not permit any of its Subsidiaries to, take any of the following actions, directly or indirectly, without the prior written consent of the holders of a majority of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock, voting together as a single class:

(i) redeem, repurchase, retire or otherwise acquire any equity securities of the Corporation except in accordance with the terms of (x) this Certificate of Incorporation, (y) the Shareholders Agreement or (z) any other agreement, approved in advance by the Board of Directors of the Corporation for the repurchase of shares of Common Stock from a director, employee or consultant upon termination of service or employment; provided, that the maximum number of shares of Common Stock repurchased pursuant to this clause (z) may

not exceed ten percent (10%) of the shares of Common Stock outstanding on the Series B Original Issue Date without the prior approval of the Board of Directors of the Corporation (which approval shall include the affirmative vote of the Series B Directors);

(ii) authorize, create, issue or sell any shares of capital stock of the Corporation, or any option, warrant or other right exchangeable for or convertible into any of such shares, other than (i) shares of capital stock, options, warrants or rights whose authorization, creation, issuance or sale shall have been approved by the Corporation's Board of Directors (which approval shall include the affirmative vote of the Series B Directors), (ii) securities issued to the Corporation's employees, officers or directors pursuant to a stock option, restricted stock or other plan or arrangement approved by the Corporation's Board of Directors (which approval shall include the affirmative vote of the Series B Directors), and (iii) the issuance of shares of capital stock of the Corporation pursuant to rights, options, warrants or other agreements (including stock option plans) in effect as of the Series B Original Issue Date;

(iii) amend, modify or otherwise alter in any material respect, or terminate or waive, in whole or in part, any provisions of the employment agreements between the Corporation and each of John E. Siedlarz and William H. Voltmer or the consulting agreement between the Corporation and Dr. John Daugman, each as in effect on the Series B Original Issue Date, or any non-disclosure, non-solicitation, non-compete, assignment of invention and any other similar agreements entered into by an employee or consultant of the Corporation or any of its Subsidiaries;

(iv) create, incur, assume, suffer to exist or guarantee (however designated), any indebtedness for borrowed money except for (1) indebtedness in such amounts that would not result in the Corporation and its Subsidiaries being indebted for more than \$2,000,000 in the aggregate (exclusive of the indebtedness described in clause (4) below); (2) trade accounts of the Corporation or any of its Subsidiaries arising in the ordinary course of business; (3) indebtedness in favor of the Corporation's shareholders outstanding on the Series B Original Issue Date; and (4) indebtedness arising under lines of credit or term loans (as in existence on the Series B Original Issue Date) from banks or other financial institutions to the Corporation or Sensar, Inc. in the amounts permitted to be outstanding thereunder; provided, that, the Corporation and its Subsidiaries shall not be indebted for more than \$5,120,000 in the aggregate under such lines of credit and term loans;

(v) adopt or implement any new employee stock option, stock incentive, stock bonus or similar plan after the Series B Original Issue Date, unless such plan shall be approved by the Board of Directors of the Corporation (which approval shall include the affirmative vote of the Series B Directors); or

(vi) amend this Section 4(c).

(d) Notwithstanding the provisions of Sections 4(a), 4(b) and 4(c) above, the Corporation shall not, and shall not permit any of its Subsidiaries to, take any of the following actions, directly or indirectly, without the prior written consent of the holders of at least two-thirds (2/3) of the Common Stock, Series A Preferred Stock and Series B Preferred Stock, voting together as a single class:

(i) change the number of individuals who shall comprise the Board of Directors of the Corporation or increase the number of inside directors or change any procedure of the Corporation related to the designation, nomination or election of the Board of Directors of the Corporation; or

(ii) amend this Section 4(d).

(e) Notwithstanding the provisions of Sections 4(a), 4(b), 4(c) and 4(d) above, the Corporation shall not, and shall not permit any of its Subsidiaries to, take any of the following actions, directly or indirectly, without the prior written consent of the holders of at least two-thirds (2/3) of the Series B Preferred Stock:

(i) adopt or make any fundamental or substantial change in the nature of the business of the Corporation and its Subsidiaries as presently conducted on the filing date of this Certificate of Incorporation;

(ii) declare or pay any dividend or distribution on any shares of capital stock of the Corporation except (x) pursuant to the terms of this Certificate of Incorporation and (y) for a single payment of dividends on shares of Series A Preferred Stock representing all accrued and unpaid dividends on such shares for the period commencing on the Series A Original Issue Date and ending on the Series B Original Issue Date; provided, that, such dividends shall be payable solely in shares of Common Stock;

(iii) merge or consolidate with or into any other Person or permit any other Person to consolidate or merge with or into it (other than a merger or consolidation of one of the Corporation's Subsidiaries into the Corporation or a mere reincorporation transaction or a Qualified Sale), or sell, lease, abandon, transfer or otherwise dispose of all or substantially all of its assets or property or otherwise dispose of all or any substantial part of its assets (tangible or intangible), or all or any substantial part of its Intellectual Property, other than (x) a Qualified Sale, or (y) transfers by the Corporation to one of its Subsidiaries or by one of the Corporation's Subsidiaries to the Corporation or another one of its Subsidiaries;

(iv) effect a reclassification or recapitalization of the outstanding capital stock of the Corporation;

(v) effect a Change in Control, other than a Qualified Sale;

(vi) liquidate, dissolve or wind-up the Corporation;

(vii) increase the authorized number of shares of Series B Preferred Stock or issue any shares of Series B Preferred Stock other than pursuant to (i) the terms of the Series B Preferred Stock Purchase Agreement, and (ii) Section 1(b) hereof;

(viii) change the number of individuals who shall comprise the Board of Directors of the Corporation or increase the number of inside directors or change any procedure of the Corporation related to the designation, nomination or election of the Board of Directors of the Corporation;

(ix) amend, modify, alter or repeal the preferences, privileges, special rights or other powers of the Series B Preferred Stock so as to affect adversely the Series B Preferred Stock, provided, that, no such amendment, modification, alteration or repeal shall, without the consent of each holder of Series B Preferred Stock affected thereby, (a) alter or change the redemption terms of the Series B Preferred Stock, (b) reduce the Series B Liquidation Preference or the Series B Dividend Rate, (c) change the place or currency of payment of the Series B Liquidation Preference or dividends payable on the Series B Preferred Stock, (d) impair the right of any holder of Series B Preferred Stock to institute an action for the enforcement of any payment with respect to the Series B Preferred Stock, (e) adversely affect any conversion rights with respect to the Series B Preferred Stock or (f) reduce the percentage of the outstanding shares of Series B Preferred Stock necessary to modify, amend, or waive any of the terms of the Series B Preferred Stock Purchase Agreement;

(x) create or authorize the creation of any additional class or series of capital stock unless the same shall rank junior to the Series B Preferred Stock in all respects, including, without limitation, as to rights of redemption, voting and dividends, and as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, or increase the authorized amount of any additional class or series of capital stock unless the same shall rank junior to the Series B Preferred Stock in all respects, including, without limitation, as to rights of redemption, voting and dividends and as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, or create or authorize any obligation or security convertible into shares of Series B Preferred Stock or into shares of any other class or series of stock unless the same shall rank junior to the Series B Preferred Stock in all respects, including, without limitation, as to rights of redemption, voting and dividends and as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, whether any such creation, authorization or increase shall be by means of an amendment to this Certificate of Incorporation or by merger, consolidation or otherwise;

(xi) amend, alter or repeal the By-Laws of the Corporation as in effect on the Series B Original Issue Date; or

(xii) amend this Section 4(e).

(f) Notwithstanding the provisions of Sections 4(a), 4(b), 4(c), 4(d) or 4(e) above, the holders of the Series A Preferred Stock shall have the right, upon a vote or written consent of the holders of a majority of the Series A Preferred Stock, to elect one director to the Board of Directors of the Corporation (the "Series A Director") and the holders of the Series B Preferred Stock shall have the right, upon a vote or written consent of the holders of a majority of the Series B Preferred Stock, to elect two directors to the Board of Directors of the Corporation (one of whom shall be designated by GE Capital Equity Investments, Inc. ("GE Equity") or any transferee or assignee of all of its shares of Series B Preferred Stock, and one of whom shall be designated by Perseus 2000, L.L.C. ("Perseus") or any transferee or assignee of all of its shares of Series B Preferred Stock). If an Event of Default shall have occurred and be continuing, the holders of the Series B Preferred Stock shall have the right, upon a vote or written consent of the holders of a majority of the Series B Preferred Stock, to elect two additional directors to the Board of Directors of the Corporation (one of whom shall be designated by GE Equity or any transferee or assignee of all of its shares of Series B Preferred

Stock, and one of whom shall be designated by Perseus or any transferee or assignee of all of its shares of Series B Preferred Stock), at which time two of the directors previously elected shall resign or be removed without cause if such resignation or removal shall be necessary to ensure that there shall be no more than seven (7) directors; provided, that neither the Series A Director nor either of the directors elected by the holders of Series B Preferred Stock shall resign or be removed in order to comply with the terms of this Section 4(f). The directors elected by the holders of the Series B Preferred Stock shall be referred to as the "Series B Directors."

(g) Notwithstanding the provisions of Sections 4(a), 4(b), 4(c), 4(d), 4(e) or 4(f) above and subject to the right provided in Section 4(f) above of the holders of Series B Preferred Stock to elect two additional directors upon the occurrence and continuation of an Event of Default, the holders of Common Stock shall have the right to elect four directors to the Board of Directors of the Corporation.

5. Conversion. The holders of the Series A Preferred Stock and Series B Preferred Stock shall have conversion rights as follows:

(a) Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time following either (x) the consummation of a Sale or Merger Transaction or (y) the execution by the Corporation of any underwriting agreement in connection with an Initial Public Offering, into the number of fully paid and non-assessable shares of Common Stock of the Corporation as is determined by dividing the Series A Liquidation Preference by the Conversion Price for the Series A Preferred Stock in effect at the time of conversion. The Conversion Price at which shares of Common Stock shall be deliverable upon conversion of the Series A Preferred Stock shall initially be \$2.5797 per share.

(b) Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into the number of fully paid and non-assessable shares of Common Stock of the Corporation as is determined by dividing the Series B Liquidation Preference by the Conversion Price in effect at the time of conversion. The Conversion Price at which shares of Common Stock shall be deliverable upon conversion of the Series B Preferred Stock shall initially be \$4.33 per share.

(c) Notwithstanding the rights of the holders of Series A Preferred Stock and Series B Preferred Stock under Sections 5(a) and 5(b) above, respectively, each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into shares of Common Stock at the applicable Conversion Price then in effect upon the occurrence of a Mandatory Conversion Event. A "Mandatory Conversion Event" shall mean (i) the closing of a Qualified Public Offering, or (ii) the closing of a Qualified Sale. The Corporation shall deliver written notice of the occurrence of a Mandatory Conversion Event to the holders of all outstanding shares of Series A Preferred Stock and Series B Preferred Stock.

(d) In order for a holder of Series A Preferred Stock or Series B Preferred Stock to convert such shares into shares of Common Stock pursuant to Sections 5(a) or 5(b) above, or upon the occurrence of a Mandatory Conversion Event pursuant to Section 5(c) above, such holder shall surrender the certificate or certificates representing such shares of Series

A Preferred Stock or Series B Preferred Stock at the principal office of the Corporation (or the designated transfer agent for the Series A Preferred Stock and the Series B Preferred Stock), together with written notice that all of such shares of Series A Preferred Stock and Series B Preferred Stock are subject to mandatory conversion or that such holder elects to convert all or any number of the shares of the Series A Preferred Stock or Series B Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or its attorney duly authorized in writing; provided, however, that, in the event of a mandatory conversion, the certificates representing shares of Series A Preferred Stock and Series B Preferred Stock shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof, notwithstanding that such holder shall not have yet surrendered such certificates. The date of receipt of such certificates and notice by the Corporation or the transfer agent (or the date of the occurrence of the Mandatory Conversion Event pursuant to which shares of Series A Preferred Stock and Series B Preferred Stock are being converted) is referred to herein as the "Conversion Date." The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver to such holder, or to its nominee, at such holder's address as shown in the records of the Corporation, a certificate or certificates for the number of whole shares of Common Stock issuable upon such conversion in accordance with the provisions hereof, together with cash in lieu of fractional shares calculated in accordance with Section 5(e) below. If less than all of the shares of Series A Preferred Stock or Series B Preferred Stock represented by a stock certificate shall be converted into shares of Common Stock, the Corporation shall issue a new stock certificate in the amount of the shares not so converted.

(e) No fractional shares of Common Stock shall be issued upon conversion of shares of Series A Preferred Stock or Series B Preferred Stock and any fractional share to which the holder would otherwise be entitled shall be rounded down to the nearest whole number, and cash shall be paid in respect of the fractional share.

(f) The Corporation shall at all times when the Series A Preferred Stock or Series B 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 and the Series B 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 shares of Series A Preferred Stock and Series B Preferred Stock (including all accrued and unpaid dividends thereon).

(g) All shares of Series A Preferred Stock and Series B 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 on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange for (i) such shares of Preferred Stock, and (ii) any accrued and unpaid dividends thereon. On the Conversion Date, the shares of Common Stock issuable upon such conversion shall be deemed to be outstanding, and the holder thereof shall be entitled to exercise and enjoy all rights with respect to such shares of Common Stock. All shares of Series

A Preferred Stock and Series B Preferred Stock tendered for conversion shall, from and after the Conversion Date, be deemed to have been retired and cancelled and shall not be reissued as Series A Preferred Stock or, as applicable, Series B Preferred Stock and the Corporation may thereafter take such appropriate action as may be necessary to reduce accordingly the authorized number of shares of Series A Preferred Stock and Series B Preferred Stock, as applicable.

(h) The initial conversion prices as stated in paragraphs (a) and (b) of this Section 5 shall be subject to adjustment from time to time and such conversion prices as adjusted shall likewise be subject to further adjustment, all as hereinafter set forth. The term "Conversion Price" shall mean, as of any time, the conversion price of the Series A Preferred Stock or the conversion price of the Series B Preferred Stock, as applicable and in effect at the time in question, as specified in Sections 5(a) and 5(b) hereof in case no adjustment shall have been required, or such conversion prices as adjusted pursuant to this Section 5(h), as the case may be, it being expressly contemplated that an adjustment may, in certain circumstances, be made to the conversion price of the Series B Preferred Stock without a change to the conversion price of the Series A Preferred Stock and that the proportionate change in the respective conversion prices of the Series A Preferred Stock and Series B Preferred Stock may be different.

(i) If at any time the Corporation shall issue any shares of Common Stock or any Convertible Securities, Rights or Related Rights (as herein defined) (such Convertible Securities, Rights or Related Rights being hereinafter referred to collectively as "Securities") (other than a dividend or other distribution payable in Common Stock or such Securities) for a consideration per share of Common Stock (the consideration in each case to be determined in the manner provided in (E) and (F) below) less than the Conversion Price in effect immediately prior to the issuance of such Common Stock or Securities, then the Conversion Price in effect immediately prior to each such issuance shall, subject to the provisions of Section 5(h)(ii) below, forthwith be reduced to a Conversion Price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for the total number of additional shares of Common Stock so issued, or deemed to be issued, would purchase at the Conversion Price in effect prior to such issue, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of additional shares of Common Stock so issued or deemed to be issued. For purposes of the above calculation, all shares of Common Stock issuable upon conversion of shares of Series A Preferred Stock and Series B Preferred Stock shall be deemed to be outstanding.

(ii) Notwithstanding clause (i) above, the Conversion Price of the Series B Preferred Stock, upon the issue, at any time within eighteen months of the Series B Original Issue Date, of any Common Stock or any Securities (other than a dividend or other distribution payable in Common Stock or such Securities) for a consideration per share of Common Stock (the consideration to be determined in the manner provided in (E) and (F) below) less than such Conversion Price, shall forthwith be reduced to the consideration per share of Common Stock received by the Corporation for such Common Stock or Securities issued by the Corporation.

(iii) For the purpose of any adjustment of the Conversion Price pursuant to this Section 5(h), the following provisions shall be applicable:

(A) In the case of the issuance of options or warrants to purchase or rights to subscribe for Common Stock (collectively, the "Rights"), the aggregate maximum number of shares of Common Stock deliverable upon exercise of such Rights shall be deemed to have been issued at the time such Rights were issued, for a consideration equal to the consideration (determined in the manner provided in (E) and (F) below), if any, received by the Corporation upon the issuance of such Rights, plus the minimum purchase price provided in such Rights for the Common Stock covered thereby.

(B) In the case of the issuance of securities by their terms convertible into or exchangeable for Common Stock (collectively, the "Convertible Securities"), or options or warrants to purchase or rights to subscribe for securities by their terms convertible or exchangeable for Common Stock (collectively, the "Related Rights") the aggregate maximum number of shares of Common Stock deliverable upon conversion, exchange or exercise of any such Convertible Securities or such Related Rights shall be deemed to have been issued at the time such Convertible Securities or such Related Rights were issued and for a consideration equal to the consideration received by the Corporation upon issuance of such Convertible Securities or such Related Rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Corporation upon the conversion, exchange or exercise of such Convertible Securities or Related Rights (the consideration in each case to be determined in the manner provided in (E) and (F) below).

(C) On any change in the number of shares of Common Stock deliverable upon the exercise of such Rights or Related Rights or upon the conversion, exchange or exercise of such Convertible Securities or on any change in the minimum purchase price of such Rights, Related Rights or Convertible Securities other than any change resulting from the anti-dilution provisions of such Rights, Related Rights or Convertible Securities, the Conversion Price that had previously been adjusted shall forthwith be readjusted to such Conversion Price as would have been in effect had the adjustment that was made upon the issuance of such Rights, Related Rights or Convertible Securities not converted, exchanged or exercised prior to such change been made on the basis of such change, but no further adjustment shall be made for the actual issuance of Common Stock upon conversion, exchange or exercise of any such Right, Related Right or Convertible Security.

(D) On the expiration of any such Rights, Related Rights or Convertible Securities, the Conversion Price that had previously been adjusted shall forthwith be readjusted to the Conversion Price as would have been obtained had the adjustment made upon the issuance of such Rights or Related Rights or the issuance of any such Convertible Securities been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such Rights or Related Rights or the conversion, exchange or exercise of any such Convertible Securities.

(E) In the case of the issuance of Common Stock or Securities for cash, the consideration shall be deemed to be the amount of cash paid therefor.

(F) In the case of the issuance of Common Stock or Securities for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors of the Corporation

(G) In the event of any adjustment to the Conversion Price resulting from the issuance of any Securities, no further adjustment shall be made for the actual issuance of Common Stock upon the conversion, exchange or exercise of any such Securities.

(iv) Anything to the contrary contained in this Section 5(h) notwithstanding, no adjustment shall be made in the Conversion Price as a result of or pursuant to (1) the issuance of shares of Common Stock pursuant to any Rights, Related Rights and Convertible Securities outstanding on the Series B Original Issue Date, (2) the issuance of shares of Common Stock and Convertible Securities as dividends or distributions on the Series A Preferred Stock or Series B Preferred Stock, (3) the granting of any Rights or Related Rights, or the issuance of shares of Common Stock to the Corporation's officers, employees, directors, vendors, consultants, co-developers or joint-venturers after the Series B Original Issue Date, pursuant to any agreement, plan or arrangement approved by the Board of Directors of the Corporation; provided, that, the maximum number of shares of Common Stock granted or issued pursuant to this clause (3) may not exceed fifteen percent (15%) of the shares of Common Stock outstanding on the Series B Original Issue Date (giving effect to the exercise and conversion of all securities exercisable or convertible into shares of Common Stock) without the prior approval of the Compensation Committee of the Board of Directors of the Corporation and the Board of Directors of the Corporation (which approval shall include the affirmative vote of the Series B Directors), (4) the granting of any Rights or Related Rights to GE Capital Equity Investments, Inc. pursuant to the Series B Preferred Stock Purchase Agreement or strategic agreements with the Corporation, (5) the granting of any Rights, Related Rights or Securities pursuant to or in connection with the acquisition by the Corporation of the assets or stock of another corporation or legal entity; provided, that, such acquisition is approved by the holders of a majority of the Series B Preferred Stock or by the Board of Directors of the Corporation (which approval shall include the affirmative vote of the Series B Directors), and (6) the issuance of shares of Common Stock or Securities upon exercise or conversion of any of the Securities referenced in clauses (2) through (5) above.

(i) In case the Corporation shall consummate a Change in Control or a Transaction which shall not be a Mandatory Conversion Event, and, pursuant to the terms of such Transaction or Change in Control, shares of stock or other securities, property or assets of the Corporation, successor or transferee or an affiliate thereof are to be received by or distributed to the holders of Common Stock, then each holder of Series A Preferred Stock and Series B Preferred Stock shall be provided with written notice from the Corporation informing each holder of Series A Preferred Stock and Series B Preferred Stock of the terms of such Transaction or Change in Control and of the record date thereof for any distribution pursuant thereto, at least thirty (30) days in advance of such record date, and each holder of Series A Preferred Stock and

Series B Preferred Stock shall have, in addition to the rights provided for herein, the right to receive, at the holder's election, either (i) upon conversion of such Series A Preferred Stock and Series B Preferred Stock, the number of shares of stock or other securities, property or assets of the Corporation, successor or transferee or affiliate thereof or cash receivable by the holders of the Common Stock upon or as a result of such Transaction or Change in Control, (ii) the securities into which the shares of Series A Preferred Stock and Series B Preferred Stock are converted, upon or as a result of such Transaction or Change in Control, or (iii) the Series A Liquidation Preference or the Series B Liquidation Preference, as applicable. The provisions of this Section 5(i) shall similarly apply to successive Transactions and Changes in Control that shall not be Mandatory Conversion Events.

(j) In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased. If the Corporation shall make or issue a dividend or other distribution payable in securities, then and in each such event provision shall be made so that the holders of shares of the Series A Preferred Stock and Series B Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities that they would have received had their Series A Preferred Stock or Series B Preferred Stock been converted into Common Stock on the date of such event and had they thereafter during the period from the date of such event to and including the Conversion Date, retained such securities receivable by them as aforesaid during such period giving effect to all adjustments called for during such period under this paragraph, with respect to the rights of the holders of the Series A Preferred Stock and Series B Preferred Stock.

(k) Whenever the Conversion Price shall be adjusted as provided in this Section 5, the Corporation shall forthwith file, at the office of the transfer agent, if any, for the Series A Preferred Stock and Series B Preferred Stock a statement, certified by the chief financial officer of the Corporation, showing in detail the facts requiring such adjustment and the Conversion Price that shall be in effect after such adjustment. The Corporation shall also cause a copy of such statement to be sent by first class mail, postage prepaid, to each holder of record of Series A Preferred Stock and Series B Preferred Stock at such holder's address as shown in the records of the Corporation.

(l) If a state of facts shall occur which, without being specifically controlled by the provisions of this Section 5, would not fairly protect the conversion rights of the holders of the Series A Preferred Stock and Series B Preferred Stock in accordance with the essential intent and the principles of such provisions, then the Board of Directors of the Corporation shall make an adjustment in the application of such provisions, in accordance with such essential intent and principles, so as to protect such conversion rights.

(m) The issuance of certificates for shares of Common Stock upon conversion of shares of Series A Preferred Stock and Series B Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the

Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series A Preferred Stock or Series B Preferred Stock that is being converted.

(n) The Corporation shall at no time close its transfer books against the transfer of any shares of Series A Preferred Stock or Series B Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion thereof in any manner that shall interfere with the timely conversion of such Series A Preferred Stock or Series B Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

6. **Definitions.** As used in this Certificate of Incorporation, the following terms shall have the meanings set forth below:

"Appraised Value of the Corporation" shall mean the appraised value of the Corporation pursuant to an appraisal conducted by a nationally recognized independent appraiser selected by the Corporation. Such independent appraisal shall be conducted in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation and the fees and expenses of such appraiser in connection with such appraisal shall be paid for by the Corporation. Prior to any redemption payments pursuant to Section 3 hereof, the Corporation shall forward to each holder of Preferred Stock a copy of the appraisal performed by the independent appraiser, together with all "back-up" documentation and materials provided by the independent appraiser to the Corporation in connection with the appraisal. If such appraisal shall have been conducted pursuant to a Series A Redemption Notice delivered in accordance with Section 3(a) hereof or a Series B Redemption Notice delivered in accordance with Section 3(b) hereof, holders of a majority of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock, voting together as one class, may accept such appraisal or provide written notice to the Corporation of their objection to the appraised value in the appraisal within ten (10) days after receipt of the appraisal. In the event any such objection notices are so provided, holders of a majority of the shares of Series A Preferred Stock and Series B Preferred Stock may select a second nationally recognized independent appraiser to conduct a second appraisal of the Corporation. The second appraiser shall forward a copy of the appraisal, together with all "back-up" documentation and materials in connection with the second appraisal, to the Corporation. Within ten (10) days after receipt of the second appraisal, the Corporation may accept the second appraisal or may provide written notice of its objection to the second appraisal to the holders of the Series A Preferred Stock and Series B Preferred Stock. If the Corporation shall object to the second appraisal, the first appraiser and the second appraiser shall select a third nationally recognized independent appraiser to conduct a third appraisal of the Corporation. The Appraised Value of the Corporation shall be equal to the average of the two appraisals that shall be closest in value. The expenses of the second and third appraisals shall be borne by the Corporation if the third appraisal shall be closer in amount to the second appraisal, and the expenses of the second and third appraisals shall be borne by the holders of the Series A Preferred Stock and Series B Preferred Stock if the third appraisal shall be closer in amount to the first appraisal.

"Change in Control" shall mean any accepted offer or acquisition by any Person, or any group of Persons (other than the Corporation or any of its Subsidiaries), acting together in any transaction or related series of transactions, of capital stock of the Corporation after which

such Person or group of Persons would be the beneficial owner of a majority of the outstanding shares of Common Stock of the Corporation, after giving effect to the conversion or exchange of all outstanding convertible or exchangeable securities, whether by merger, consolidation, acquisition or exchange of capital stock or otherwise. For purposes hereof, the term "beneficial owner" shall have the meaning set forth in Rule 13d-3 under the Securities Exchange Act of 1934.

"Conversion Date" shall have the meaning provided in Section 5.

"Conversion Price" shall have the meaning provided in Section 5.

"Conversion Share" shall mean the shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock and the Series B Preferred Stock.

"Convertible Securities" shall have the meaning provided in Section 5.

"Corporation Event of Default Notice" shall have the meaning provided in Section 3.

"Corporation Redemption Notice" shall have the meaning provided in Section 3.

"Event of Default" shall mean an event of default as specified under the Investors Rights Agreement between the Corporation and the Investors named therein that was executed in connection with the Series B Preferred Stock Purchase Agreement.

"GE Equity" shall have the meaning provided in Section 4.

"Initial Public Offering" shall mean an initial public offering of shares of Common Stock under the Securities Act of 1933, as amended.

"Intellectual Property" shall have the meaning provided in the Series B Preferred Stock Purchase Agreement.

"Mandatory Conversion Event" shall have the meaning provided in Section 5.

"Ownership Percentage" shall mean with respect to a holder of Series A Preferred Stock, Series B Preferred Stock or Conversion Shares, (a) the number of shares of Series A Preferred Stock, Series B Preferred Stock or Conversion Shares, as applicable, held by such holder, calculated in each case on an "as converted" basis, divided by (b) the aggregate number of shares of Common Stock outstanding on a fully-diluted basis, giving effect to the exercise or conversion of all Rights, Related Rights and Convertible Securities.

"Perseus" shall have the meaning provided in Section 4.

"Person" shall mean any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, entity or government (whether federal, state, county, city,

municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

"Qualified Public Offering" shall mean the closing of a firm commitment underwritten Initial Public Offering resulting in at least \$40,000,000 of gross proceeds to the Corporation (before underwriting discounts and commissions), at a price per share at least equal to \$12.99, plus accrued and unpaid dividends per share on the Series B Preferred Stock (as adjusted for any stock dividends, combinations or splits on the Series B Preferred Stock) that is effected pursuant to a registration statement on Form S-1 or Form SB-2, or any successor form covering a public offering of securities of the Corporation, filed with, and declared effective by, the Securities and Exchange Commission, and underwritten by a nationally recognized investment bank.

"Qualified Sale" shall mean a Sale or Merger Transaction pursuant to which holders of Series B Preferred Stock, on an as converted basis, shall be entitled to receive an aggregate amount that shall provide each holder of Series B Preferred Stock with a Series B Compounded Internal Rate of Return equal to at least fifty percent (50%) per annum.

"Related Rights" shall have the meaning provided in Section 5.

"Reserved Shares" shall have the meaning provided in Section 5.

"Rights" shall have the meaning provided in Section 5.

"Sale or Merger Transaction" shall mean (a) a sale by the Corporation of all or substantially all of its assets, (b) a merger or consolidation of the Corporation with or into another Person or (c) a sale by the stockholders of the Corporation of all or substantially all of the outstanding capital stock of the Corporation.

"Securities" shall have the meaning provided in Section 5.

"Series A Director" shall have the meaning provided in Section 4.

"Series A Event of Default Notice" shall have the meaning provided in Section 3.

"Series A Event of Default Repayment Date" shall have the meaning provided in Section 3.

"Series A Liquidation Preference" shall have the meaning provided in Section 2.

"Series A Original Issue Date" shall mean the date on which shares of Series A Preferred Stock shall have been initially issued by the Corporation.

"Series A Redemption Date" shall have the meaning provided in Section 3.

"Series A Redemption Notice" shall have the meaning provided in Section 3.

"Series A Redemption Price" shall have the meaning provided in Section 3.

"Series B Compounded Internal Rate of Return" shall mean the "internal rate of return" received by the holders of Series B Preferred Stock with respect to the purchase price of the Series B Preferred Stock of \$4.33 per share (excluding stock dividends thereon), calculated from the Series B Original Issue Date and compounded on an annual basis, with cash dividends being credited against and included as a part of the "internal rate of return."

"Series B Directors" shall have the meaning provided in Section 4.

"Series B Dividend Rate" shall have the meaning provided in Section 1.

"Series B Event of Default Notice" shall have the meaning provided in Section 3.

"Series B Event of Default Repayment Date" shall have the meaning provided in Section 3.

"Series B Liquidation Preference" shall have the meaning provided in Section 2.

"Series B Original Issue Date" shall mean the date on which shares of Series B Preferred Stock shall have been initially issued by the Corporation.

"Series B Preferred Stock Purchase Agreement" shall mean the Series B Redeemable Convertible Preferred Stock Purchase Agreement among the Corporation and the Investors named therein providing for the issuance and sale of shares of Series B Preferred Stock.

"Series B Redemption Date" shall have the meaning provided in Section 3.

"Series B Redemption Notice" shall have the meaning provided in Section 3.

"Series B Redemption Price" shall have the meaning provided in Section 3.

"Shareholders Agreement" shall mean the Amended and Restated Shareholders Agreement among the Corporation and certain of its shareholders that shall be executed in connection with the Series B Preferred Stock Purchase Agreement.

"Subsidiary" shall have the meaning provided in the Series B Preferred Stock Purchase Agreement.

"Transaction" shall mean a Sale or Merger Transaction or an Initial Public Offering.

FIFTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this

Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholder or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

SIXTH: The existence of the Corporation shall be perpetual.


SEVENTH: A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Law as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

EIGHTH: The Corporation shall, to the fullest extent permitted by Section 145 of the Delaware General Corporation Law, as the same may be amended and supplemented, indemnify any and all Persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

IN WITNESS WHEREOF, I have signed my name and make this Certificate and affirm that the statements herein are true under the penalties of perjury this 15th day of September, 2000.

IRISCAN, INC.

By: _____


William H. Voltmer
President