

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM633549

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Notal Vision, Inc.		01/18/2001	Corporation: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	NotalVision, Inc.		
<b>Street Address:</b>	7717 Coppermine Drive		
<b>City:</b>	Manassas		
<b>State/Country:</b>	VIRGINIA		
<b>Postal Code:</b>	20109		
<b>Entity Type:</b>	Corporation: DELAWARE		
<b>PROPERTY NUMBERS Total: 11</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	5637393	FORESEEHOME	
<b>Registration Number:</b>	4706856	FORESEEHOME	
<b>Registration Number:</b>	3873833	FORESEEHOME	
<b>Serial Number:</b>	90265111	HOME OCT	
<b>Serial Number:</b>	88035070	NOA	
<b>Registration Number:</b>	5817034	NOTAL VISION	
<b>Registration Number:</b>	4706855	NOTAL VISION	
<b>Serial Number:</b>	90289003	SCANLY	
<b>Serial Number:</b>	90289002	SCANLY	
<b>Serial Number:</b>	88216012	SIGHT SENTRY	
<b>Serial Number:</b>	88216024	SIGHTSENTRY	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	3059615812		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	3055790812		
<b>Email:</b>	marcosm@gtlaw.com		
<b>Correspondent Name:</b>	Manuel R. Valcarcel, Esq.		
<b>Address Line 1:</b>	333 S.E. 2nd Avenue, 44th Floor		
<b>Address Line 2:</b>	Greenberg Traurig, P.A.		

CH \$290.00 5637393

**Address Line 4:** Miami, FLORIDA 33131

**NAME OF SUBMITTER:** Manuel Valcarcel

**SIGNATURE:** /Manuel Valcarcel/

**DATE SIGNED:** 03/22/2021

**Total Attachments: 21**

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# Delaware

The First State

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I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "NOTAL VISION, INC.", CHANGING ITS NAME FROM "NOTAL VISION, INC." TO "NOTALVISION, INC.", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF JANUARY, A.D. 2001, AT 2:20 O`CLOCK P.M.



Jeffrey W. Bullock, Secretary of State

3234586 8100  
SR# 20210984363

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 202784501  
Date: 03-22-21

**TRADEMARK**  
**REEL: 007228 FRAME: 0703**

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**NOTAL VISION, INC.**  
**a Delaware corporation**

Notal Vision, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware ("DGCL"), does hereby certify that:

1. The present name of the Corporation is: Notal Vision, Inc.
2. The date of filing of the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was May 25, 2000.
3. This Amended and Restated Certificate of Incorporation, which amends and restates the Corporation's Certificate of Incorporation in its entirety, has been duly adopted pursuant to the provisions of Sections 242 and 245 of the DGCL, and the stockholders of the Corporation have given their written consent hereto in accordance with Section 228 of the DGCL. The provisions of the Restated Certificate of Incorporation are as follows:

**ARTICLE I**

The name of this corporation is NotalVision, Inc. (the "Corporation")

**ARTICLE II**

The registered office of the Corporation shall be located at 1201 Market Street suite 1600, in the City of Wilmington, County of New Castle 19801, and the registered agent of the Corporation at such address shall be PHS Corporate Service, Inc.

**ARTICLE III**

The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL. The Corporation shall have all power necessary or convenient to the conduct, promotion or attainment of such acts and activities.

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**ARTICLE IV**

1. **Authorized Shares; Classes of Stock.** This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is two million and one hundred thousand (2,100,000) shares, of which one million, five hundred and fifty thousand (1,550,000) shares shall be Common Stock, par value \$0.01 per share, five hundred and fifty thousand (550,000) shares shall be Preferred Stock, par value \$0.01 per share, of which five hundred and fifty thousand (550,000) shares are hereby designated Series A Preferred Stock ("Series A Stock").
2. **Common Stock.**
  - 2.1. **Relative Rights.** The Common Stock shall be subject to all of the rights, privileges, preferences and priorities allowed under the DGCL. Each share of Common Stock shall have the same relative rights as and be identical in all respects to all the other shares of Common Stock.
  - 2.2. **Dividends.** Whenever there shall have been paid, or declared and set aside for payment, to the holders of shares of any class of stock having preference over the Common Stock as to the payment of dividends, the full amount of dividends and of sinking fund or retirement payments, if any, to which such holders respectively are entitled in preference to the Common Stock, then dividends may be paid on the Common Stock and on any class or series of stock entitled to participate therewith as to dividends, out of any assets legally available for the payment of dividends thereon, but only when and as declared by the Board of Directors of the Corporation.
  - 2.3. **Voting Rights.** Each holder of shares of Common Stock shall be entitled to attend all special and annual meetings of the stockholders of the Corporation and, share for share and without regard to class, together with the holders of all other classes of stock entitled to attend such meetings and to vote (except any class or series of stock having special voting rights), to cast one vote for each outstanding share of Common Stock so held upon any matter or thing (including, without limitation, the election of one or more directors) properly considered and acted upon by the stockholders.
  - 2.4. **Redemption.** The Common Stock is not redeemable.
  - 2.5. The Board of Directors of the Corporation is authorized, subject to limitations prescribed by the DGCL and the provisions of this Certificate of Incorporation, to provide, by resolution or resolutions from time to time and by filing a certificate of designations pursuant to the DGCL, for the issuance of the Preferred Stock in series, to establish from time to time the number of shares to be included in each such series, to fix the powers, designations, preferences and

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relative, participating, optional or other special rights of the shares of each such series and to fix the qualifications, limitations or restrictions thereof.

- 2.6. **Rights, Preferences and Restrictions of Series A Stock.** The rights, preferences, privileges and restrictions granted to and imposed on the Series A Stock are as set forth below in this Article IV.

The issuance price of the Series A Stock shall be \$2.85 per share (the "Original Purchase Price"). The Series A Stock shall rank senior to the Common Stock and any other capital stock of the Corporation ranking junior to the Series A Stock as to dividends and upon liquidation, dissolution or winding up. The date on which a share of Series A Stock was issued shall hereinafter be referred to as the "Original Issue Date" for such share.

3. **Preferred Stock**

3.1. **Dividend Provisions.**

- 3.1.1. Subject to Section 2.2 and Section 3.1.2, dividends may be declared, at the discretion of the Board of Directors and paid on the Common Stock if at the same time equivalent dividends are declared and paid to holders of the Series A Stock (as determined on an as converted basis for the Series A Stock). Such dividends on the Common Stock shall not be cumulative.
- 3.1.2. From and after the Original Issue Date, dividends shall accrue on the shares of Series A Stock at the rate of 8% (i.e., \$0.228) per share per annum. The holders of shares of Series A Stock shall be entitled to receive such dividends when and as declared by the Board of Directors of the Corporation, in cash, out of assets legally available for such purpose, semi-annually in arrears on the last day of June and December in each year following the Original Issue Date. Dividends on the Series A Stock shall be cumulative so that if, for any dividend accrual period, cash dividends at the rate hereinabove specified are not declared and paid or set aside for payment, the amount of accrued but unpaid dividends shall accumulate with interest at the then applicable dividend rate per annum and shall be added to the dividends payable for subsequent dividend accrual periods and upon any redemption or conversion of shares of Series A Stock. If the shares of Series A Stock are issued on a date which does not coincide with a dividend payment date, then the initial dividend accrual period applicable to such shares shall be the period from the Original Issue Date through whichever of June 30 or December 31 next occurs after the Original Issue Date. If the date fixed for payment of a final liquidating distribution on any shares of Series A Stock, or the date on which any shares of Series A Stock are redeemed or converted into Common Stock does not coincide with a dividend payment date, then subject to

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the provisions hereof relating to such payment, redemption or conversion, the final dividend accrual period applicable to such shares shall be the period from whichever of July 1 or January 1 most recently precedes the date of such payment, conversion or redemption through the effective date of such payment, conversion or redemption. The rate at which dividends are paid shall be adjusted for any combinations or divisions or similar recapitalizations affecting the shares of Series A Stock. Without the written consent of the holders of at least a majority the then outstanding Series A Stock, the Corporation shall not declare or pay any cash dividend on, or redeem or repurchase or make any other cash distribution in respect of any other equity securities of the Corporation unless at the time of such declaration, payment or distribution all dividends on the Series A Stock accrued for all past dividend accrual periods shall have been paid and the full dividends thereon for the current dividend period shall be paid or declared and set aside for payment.

3.1.3. The holders of shares of Series A Stock shall be entitled to participate and receive, in addition to the dividends payable pursuant to Section 3.1.2, their pro-rata portion on an as-converted basis (i.e., as if each share of Series A Stock was converted into shares of Common Stock) of any dividends or distributions declared on the Common Stock by the Board of Directors of the Corporation, whether payable in cash, securities or other property.

3.2. Liquidation, Dissolution or Winding Up.

3.2.1. Subject to Section 3.2.2, Section 3.2.3 and Section 3.2.5, in the event of any dissolution, liquidation, or winding up of the Corporation, whether voluntary or involuntary, the holders of the Common Stock, and holders of any class or series of stock entitled to participate therewith, in whole or in part, as to the distribution of assets in such event, shall become entitled to participate in the distribution of any assets of the Corporation remaining after the Corporation shall have paid, or provided for payment of, all debts and liabilities of the Corporation and after the Corporation shall have paid, or set aside for payment, to the holders of any class of stock having preference over the Common Stock in the event of dissolution, liquidation or winding up the full preferential amounts (if any) to which they are entitled.

3.2.2. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the shares of Series A Stock shall be entitled, before any distribution or payment is made upon any Common Stock or any other class or series of stock ranking junior to the Series A Stock as to distribution of assets upon liquidation, to be paid an amount equal to the Original Purchase Price per share (as adjusted for any combinations, divisions or similar

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recapitalizations affecting the shares of Series A Stock) plus all accrued and unpaid dividends to such date (the "Liquidation Payments"). If upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Series A Stock shall be insufficient to permit payment in full to the holders of Series A Stock of the Liquidation Payments, then the entire assets of the Corporation shall be distributed ratably among such holders in proportion to the full respective distributive amounts to which they are entitled. Upon any liquidation, dissolution or winding up of the Corporation, after the holders of Series A Stock shall have been paid in full the Liquidation Payments, the remaining assets of the Corporation shall be distributed ratably per share in order of preference first to any other class or series of preferred stock ranking junior to the Series A Stock as to distribution of assets upon liquidation, then to the holders of Common Stock and the holders of the Series A Stock on an as-converted basis.

- 3.2.3. Notwithstanding Section 3.2.1 and 3.2.2, if upon any liquidation, dissolution or winding up of the Corporation, the distribution of assets will result in the holders of the Series A Stock receiving at least twice the Original Purchase Price per share (after making equitable adjustment for any stock splits, stock dividends, combinations, recapitalizations or similar events), then all assets and funds of the Corporation shall be distributed first to any other class or series of preferred stock ranking junior to the Series A Stock as to distribution of assets upon liquidation to the extent of such class' or series' stated liquidation preference, then to all stockholders of the Corporation on an as converted basis without any preference, other than the requirement that the holders of the Series A Stock receive at least twice the Original Purchase Price per share.
- 3.2.4. Written notice of a liquidation, dissolution or winding up, stating a payment date, the amount of the Liquidation Payments and the place where said Liquidation Payments shall be payable, shall be given by mail, postage prepaid, not less than 30 days prior to the payment date stated therein, to each holder of record of Series A Stock at his post office address as shown by the records of the Corporation.
- 3.2.5. In the event of the sale of all or substantially all of the assets of the Corporation, the acquisition of the Corporation or all or substantially all of its capital stock, or the merger of the Corporation in which the stockholders of the Corporation do not own at least a majority of the shares of the surviving entity, except for any Qualifying M&A Transactions (as defined in Section 3.5.1) which shall be subject to Section 3.5.2, the holders of the Series A Stock shall be given thirty (30) days written notice (the "Corporation Notice") of any such proposed transaction and the holder or holders of a majority in interest



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of the Series A Stock may, by written notice to the Corporation within 20 days of receipt of the Corporation Notice, declare such proposed transaction to be deemed a liquidation for purposes of this Article 4.

3.3. Voting.

3.3.1. Each share of Series A Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which such share of Series A Stock are convertible (as adjusted from time to time pursuant to Section 3.4 hereof) at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law or by the provisions of Section 3.3.2 below, the Series A Stock shall vote together with the Common Stock as a single class.

3.3.2. Until a Qualifying IPO or Qualifying M&A (as such terms are defined in Section 3.5.1) and for so long as any of the outstanding shares of Series A Stock represent 8% or more of the Corporation's outstanding capital stock on a fully diluted basis the Corporation shall not, without first obtaining the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series A Stock (or if such action requires only approval of the Board of Directors, the consent of the board member appointed by the holders of the Series A Stock), given in writing or by vote at a meeting, consenting or voting, as the case may be, separately as a class:

(a) merge with or into or consolidate with any other corporation or enter into any other similar transaction or series of related transactions as a result of which (i) the holders of the Corporation's voting securities immediately prior to such transaction or transactions own less than a majority of the voting power of the surviving entity in the transaction or (ii) all or substantially all of the assets of the Corporation or any of its subsidiaries are sold, in each case in a transaction in which the holders of the Series A Stock receive less than five times the Original Issuance Price per share;

(b) effectuate a liquidation, dissolution or winding up of the Corporation or any of its subsidiaries;

(c) amend, alter or repeal any provisions of the Certificate of Incorporation or the By-laws of the Corporation, or any other certificate of designation filed pursuant to Section 151 of the GCL, or in a manner that

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changes or modifies the rights, preferences, or privileges of the Series A Stock;

(d) authorize any other class or series of stock having rights senior or pari passu to the Series A Stock;

(e) take any action which would result in taxation of the holders of Series A Stock under Section 305 of the Internal Revenue Code of 1986 (or any comparable provisions of the Internal Revenue Code as hereafter from time to time as amended).]

3.4. Optional Conversion. The holders of shares of Series A Stock shall have conversion rights as follows (the "Conversion Rights"):

3.4.1. Right to Convert. Each share of Series A Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Purchase Price by the Conversion Price (as defined below) in effect at the time of conversion. The conversion price at which shares of Common Stock shall be deliverable upon conversion of Series A Stock without payment of additional consideration by the holder thereof (the "Conversion Price") shall initially be the Original Purchase Price. Such initial Conversion Price, and the rate at which shares of Series A Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

3.4.2. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the shares of Series A Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price. Whether or not a holder would otherwise be entitled to a fractional share shall be determined on the basis of the total number of shares of Series A Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

3.4.3. Mechanics of Conversion.

3.4.3.1. In order for a holder to convert shares of Series A Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Stock at the office of the transfer agent for such shares (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of shares of

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the Series A Stock represented by such certificate or certificates. Such notice shall state such holders' name or the name 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 his or her or its attorney-in-fact duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date (the "Conversion Date"). The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of shares of Series A Stock, or to his or her or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. Other than as set forth in Section 3.5 below, if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act of 1933, as amended (the "Securities Act"), the conversion may, at the option of any holder tendering shares of Series A Stock for conversion, be conditioned upon the closing of the sale of securities pursuant to such offering in which event the person entitled to receive the Common Stock issuable upon such conversion of the shares of Series A Stock shall not be deemed to have converted such shares of Series A Stock until immediately prior to the closing of such sale of securities. If a holder converts shares of Series A Stock, the Corporation shall pay any documentary, stamp or similar issue or transfer tax due on the issue of the Common Stock.

- 3.4.3.2. The Corporation shall, at all times when the Series A Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the shares of Series A 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 Stock. Before taking any action that would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the shares of Series A Stock, the Corporation will take any corporate action that may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Stock, in addition to such other remedies as shall be available to the holder of such shares of Series A Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

3.4.3.3. All shares of Series A Stock that 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, including the rights, if any, to receive notices and dividends or to vote, 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 therefor. Any shares of Series A Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to eliminate the authorized Series A Stock or reduce the authorized number thereof as may be appropriate.

3.4.4. Adjustments to Conversion Price for Diluting Issues:

3.4.4.1. Special Definitions. For purposes of this Section 3.4.4, the following definitions shall apply:

(A) "Option" shall mean any rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities (as defined below) or restricted stock, excluding the Reserved Shares.

(B) "Reserved Shares" shall mean shares of Common Stock and rights, options or warrants to subscribe for, purchase or otherwise acquire shares of Common Stock (i) pursuant to any equity incentive plan or benefit plan or

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grant approved by a majority of the Directors of the Corporation (including approval of the designee of the holders of the Series A Stock) or (ii) issued to equipment lessors, customers, suppliers, strategic partners, banks or similar institutional credit financing sources or as the consideration for the purchase of technology or assets pursuant to agreements approved by a majority of the Directors of the Corporation and any shares of Common Stock issued on exercise of such rights, options or warrants such excluded securities.

(C) "Original Issue Date" shall have the definition set forth in Section 2.6.

(D) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Series A Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock or Preferred Stock.

(E) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 3.4.4.3 below, deemed to be issued) by the Corporation after the Original Issue Date, other than:

- (1) any securities issued as a stock dividend, stock split or other similar event in respect of Common Stock outstanding on the date hereof or Series A Stock;
- (2) the Reserved Shares;
- (3) any issuance of securities in a Qualifying IPO (as defined in Section 3.5 below);
- (4) any shares issued upon conversion of the Series A Stock.

3.4.4.2. **No Adjustment of Conversion Price.** Notwithstanding any provision herein to the contrary, no adjustment in the number of shares of Common Stock into which the shares of Series A Stock are convertible shall be made, by adjustment in the applicable Conversion Price thereof, unless the consideration per share (determined pursuant to Section 3.4.4.1) for Additional Shares of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to the issue of such Additional Shares of Common Stock.

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3.4.4.3. Issue of Options and Convertible Securities Deemed Issuance of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, which are by their terms convertible to Common Stock for consideration per share (determined pursuant to Section 3.4.4.1) that is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issuance of such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, issuable upon the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities; and

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities, provided, that no adjustment pursuant to this clause (B) shall have the effect of increasing the Conversion Price to an amount that exceeds the Conversion Price on the original adjustment date.

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- 3.4.4.4. **Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.** In the event the Corporation shall, after the Original Issue Date, issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3.4.4.3), without consideration or for a consideration per share less than the Conversion Price in effect on the date of, and immediately prior to such issue, then and in such event, the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest tenth of a cent) determined by multiplying the Conversion Price by a fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue (including all shares issuable upon the conversion of shares of Series A Stock) plus the number of shares of Common Stock that the Aggregate Consideration (as defined in Section 3.4.4.5 below) received by the Corporation for the total number of Additional Shares of Common Stock so 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 (including all shares issuable upon the conversion of shares of Series A Stock) plus the number of such Additional Shares of Common Stock so issued.
- 3.4.4.5. **Determination of Consideration.** For purposes of this Section 3.4.4, the "Aggregate Consideration" shall mean the net consideration received by the Corporation for the issue of all Additional Shares of Common Stock and shall be computed as follows:
- (A) **Cash and Property.** Such consideration shall:
- (1) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, after deducting therefrom any commissions, compensations or other expenses paid or incurred by the Corporation for any underwriting or placement of, or otherwise in connection with the issuance or sale of shares;
  - (2) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board; and
  - (3) in the event Additional Shares of Common Stock are issued together with other shares or securities or other

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assets of the Corporation for consideration that covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3.4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

3.4.4.6. Adjustment for Combinations or Consolidation of Common Stock. If, at any time after the Original Issue Date, the number of shares of Common Stock outstanding are decreased by a combination of the outstanding shares of Common Stock, then following the record date fixed for such combination (or the date of such combination, if no record date is fixed), the applicable Conversion Price shall be increased so that the number of shares of Common Stock issuable on conversion of each share of Series A Stock shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

3.4.4.7. Adjustment for Stock Dividends, Splits, Etc. If the Corporation shall at any time after the applicable Original Issue Date fix a record date for the subdivision, split-up or stock dividend of shares of Common Stock, then, following



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the record date fixed for the determination of holders of shares of Common Stock entitled to receive such subdivision, split-up or dividend (or the date of such subdivision, split-up or dividend, if no record date is fixed), the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series A Stock shall be increased in proportion to such increase in outstanding shares.

- 3.4.4.8. Adjustment for Merger or Reorganization, Etc. In case of any consolidation, recapitalization or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation (other than a subdivision or combination provided for elsewhere in this Section 3.4 and other than a consolidation, merger or sale that is treated as a liquidation pursuant to Section 3.2), each share of Series A Stock shall thereafter be convertible into the kind and amount of shares of stock or other Securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such shares of Series A Stock would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors ) shall be made in the application of the provisions in this Section 3.4 set forth with respect to the rights and interest thereafter of the holders of the shares of Series A Stock, to the end that the provisions set forth in this Section 3.4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the shares of Series A Stock.
- 3.4.5. No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3.4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the shares of Series A Stock against impairment.

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3.4.6. **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 3.4 the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of shares of Series A Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that then would be received upon the conversion of the shares of Series A Stock.

3.4.7. **Notice of Record Date.** In the event:

(A) that the Corporation takes a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or any other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right;

(B) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(C) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another corporation, or of the sale of all or substantially all of the assets of the Corporation; or

(D) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Series A Stock, and shall cause to be mailed to the holders of the Series A Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten (10) days prior to the record date specified in (x) below or twenty (20) days before the date specified in (y) below, a notice stating:

(x) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which

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the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(y) the date on which such reclassification, consolidation, merger, Sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

3.5. Automatic Conversion.

3.5.1. Triggering Event. All outstanding shares of Series A Stock shall automatically convert to shares of Common Stock, at the then effective Conversion Price pursuant to Section 3.4: (a) in the event of an underwritten public offering of shares of the Common Stock, pursuant to an effective registration statement under the Securities Act, at a public offering price per share that is not less than three times the Original Purchase Price of the Series A Stock (after making equitable adjustment for any stock splits, stock dividends, combinations, recapitalizations or similar events) and at a price per share that yields an aggregate offering of not less than twenty million (\$20,000,000) dollars ("Qualifying IPO"), before deduction of underwriters commissions and expenses; (b) the vote of the holders of a majority of the shares of the Series A Stock then outstanding; or (c) in the event of the completion of a merger of the Corporation or the acquisition of all of the shares of the Corporation's Common Stock or all of the Corporation's assets which results in consideration per share payable to the holders of the Series A Stock which is at least five times the Original Purchase Price (after making equitable adjustment for any stock splits, stock dividends, combinations, recapitalizations or similar events) (a "Qualifying M&A Transaction").

3.5.2. No Further Action. In the case of an automatic conversion pursuant to this Section 3.5, the outstanding shares of Series A Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, that the Corporation shall not be obligated to issue to any holder certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of Series A Stock are delivered either to the Corporation or any transfer agent of the Corporation.

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- 3.5.3. **Surrender of Certificates; Retirement and Cancellation of Converted Shares.** All certificates evidencing shares of Series A Stock that are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date such certificates are so required to be surrendered, be deemed to have been retired and canceled and the shares of Series A Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action as may be necessary to reduce the authorized Series A Stock accordingly.
- 3.6. **Redemption.** The Series A Stock shall not be redeemable.
- 3.7. **Mutilated or Missing Series A Stock Certificates.** If any of the Series A Stock certificates shall be mutilated, lost, stolen or destroyed, the Corporation shall issue, in exchange and in substitution for and upon cancellation of the mutilated Series A Stock certificate, or in lieu of and substitution for the Series A Stock certificate lost, stolen or destroyed, a new Series A Stock certificate of like tenor and representing an equivalent amount of such Series A Stock certificate.
- 3.8. **Registered Holders.** A holder of Series A Stock registered on the Corporation's stock transfer books as the owner of shares of Series A Stock shall be treated as the owner of such shares for all purposes. All notices and all payments required to be mailed to a holder of shares of Series A Stock shall be mailed to such holder's registered address on the Corporation's stock transfer books, and all dividend and redemption payments to a holder of shares of Series A Stock made hereunder shall be deemed to be paid in compliance hereof on the date such payments are deposited into the mail addressed to such holder at his registered address on the Corporation's stock transfer books.

## ARTICLE V

**Preemptive Rights** Each stockholder shall have such preemptive rights as are set forth in that certain Investors Rights Agreement dated as of January 17, 2001 among the Corporation and its stockholders.

## ARTICLE VI

1. **Limitation of Liability.** To the maximum extent permitted by the DGCL, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any repeal or modification of this Section 1 shall be prospective only and shall not adversely affect any right or protection of, or any limitation of the liability of, a director of the Corporation existing at, or arising

out of facts or incidents occurring prior to, the effective date of such repeal or modification.

2. **Indemnification.** To the fullest extent permitted by the DGCL, the Corporation shall fully indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer or employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, liabilities, losses, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding. The Corporation shall advance expenses (including attorneys' fees) incurred by a director or officer in advance of the final disposition of such action, suit or proceeding upon the receipt of any undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that such director or officer is not entitled to indemnification.
3. **Compromise or Arrangements.** Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the 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 the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the 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 the 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 the 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 stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the 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 the Corporation, as the case may be, and also on the Corporation.
4. **Amendments.** Neither any amendment nor repeal of this Article IV, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article IV, shall eliminate or reduce the effect of this Article IV, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article IV, would accrue or arise, prior to such amendment, repeal, or adoption of an inconsistent provision.

## ARTICLE VII

1. Number and Election of Directors. The number of directors of the Corporation shall be such number as from time to time shall be fixed by, or in the manner provided in, the bylaws of the Corporation. Unless and except to the extent that the bylaws of the Corporation shall otherwise require, the election of directors of the Corporation need not be by written ballot. An annual meeting of the stockholders of the Corporation for the election of directors and for the transaction of such other business as may come before the meeting shall be held at such time and place as shall be determined in accordance with the bylaws of the Corporation.
  
2. Board of Directors.

The Corporation's Board of Directors shall consist of not less than three (3) but up to five (5) members. Until a Qualifying IPO, the members of the Board of Directors shall be elected as follows:

  - (i) The holders of Series A Stock, voting separately as a class, shall be entitled to elect one (1) director for so long as they collectively hold as a class 8% or more of the Corporation's capital stock (computed on an as converted fully diluted basis), and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director;
  - (ii) The holders of Common Stock, voting separately as a class, shall be entitled to elect two (2) directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors;
  - (iii) Additional directors, if any, shall be nominated by the unanimous approval of the remaining members of the Board of Directors and shall be elected by all the stockholders of the Corporation voting as a single class.
  
3. Management of Business and Affairs of the Corporation. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The books and records of the Corporation may be kept (subject to applicable laws) inside or outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Corporation.

## ARTICLE VIII

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized and empowered to adopt, make, alter, amend or repeal the Bylaws of the Corporation.

**ARTICLE IX**

Upon this Certificate of Incorporation becoming effective pursuant to the DGCL (the "Effective Time"), each share of the Corporation's Common Stock issued and outstanding immediately prior to the Effective Time ("Old Common Stock"), will be automatically reclassified as and split into 40 shares of Common Stock ("New Common Stock"). Any stock certificate that, immediately prior to the Effective Time, represented shares of the Old Common Stock, will, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent the number of shares of Common Stock as equals the product obtained by multiplying the number of shares of Old Common Stock represented by such certificate immediately prior to the Effective Time by 40.

\* \* \*

IN WITNESS WHEREOF, the undersigned, being the President and Chief Executive Officer of the Corporation, hereby certifies that the facts hereinabove stated are truly set forth, and accordingly has executed this Second Amended and Restated Certificate of Incorporation on this 17 day of January, 2001.

NOTAL VISION, INC.

By: \_\_\_\_\_

Name: Barak Azmon

Title: Chief Executive Officer