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In the Office of the Secretary of State  
of the State of California

MAR 21 2002

*Bill Jones*  
BILL JONES, Secretary of State

AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
APRISO CORPORATION

Adam Bartkowski and Jeff Kurschner hereby certify that:

A. They are the President and Secretary, respectively, of Apriso Corporation, a California corporation (the "Corporation").

B. The Articles of Incorporation of the Corporation are amended and restated to read as follows:

I.

The name of this corporation is Apriso Corporation (the "Corporation").

II.

The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The Corporation is authorized to issue two classes of shares designated "Common Stock" and "Preferred Stock", respectively, each class without par value. The number of shares of Common Stock authorized to be issued is 30,000,000 and the number of shares of Preferred Stock authorized to be issued is 12,058,149.

The Corporation is authorized to issue 4,389,809 shares of Series A Convertible Preferred Stock and 7,668,340 shares of Series B Convertible Preferred Stock. The rights, preferences, privileges and restrictions of the Preferred Stock and the Common Stock, as well as of the holders of such stock, are as set forth below in this Article III.

Section 1. Definitions.

For purposes of this Article III the following definitions shall apply:

- (a) "Board" shall mean the Board of Directors of the Corporation.
- (b) "Common Stock" shall mean the Common Stock, no par value, of the Corporation.

- (d) "Common Stock Dividend" shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.
- (e) "Conversion Price" shall have the meaning set forth in Section 5(a) of this Article III.
- (f) "Conversion Rights" shall have the meaning set forth in the preamble to Section 5 of this Article III.
- (h) "Convertible Preferred Stock" shall mean the Series A Preferred and the Series B Preferred, collectively.
- (i) "Convertible Securities" shall mean evidences of indebtedness, shares of stock or other securities which are at any time directly or indirectly convertible into or exchangeable for Additional Shares of Common Stock.
- (j) "Corporation" shall mean this corporation.
- (k) "Liquidation" shall include any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and shall also include any reorganization, merger or sale of assets described in Section 3(b) below.
- (l) "Qualified Public Offering" shall have the meaning set forth in Section 5(b)(i) below.
- (m) "Original Issue Price" shall mean \$3.1989 per share for the Series A Preferred, and \$1.8928 per share for the Series B Preferred, as adjusted for any stock splits, stock dividends, reclassifications, recapitalization or similar capital modifications, with respect to each such Series of Convertible Preferred Stock.
- (n) "Permitted Repurchases" shall mean the repurchase by the Corporation of shares of Common Stock held by employees, officers, directors, consultants, independent contractors, advisors, or other persons performing services for the Corporation or a subsidiary that are subject to restricted stock purchase agreements or stock option exercise agreements under which the Corporation has the option to repurchase such shares: (i) at cost, upon the occurrence of certain events, such as the termination of employment or services; or (ii) at any price pursuant to the Corporation's exercise of a right of first refusal to repurchase such shares provided such repurchase is approved by the Board of Directors.
- (o) "Series A Preferred" shall mean the Series A Convertible Preferred Stock, no par value per share, of this Corporation.
- (p) "Series B Preferred" shall mean the Series B Convertible Preferred Stock, no par value per share, of this Corporation.

## Section 2. Dividends

(a) In each calendar year, the holders of shares of Series B Preferred shall be entitled to receive, when and as declared by the Board, out of funds and assets of the Corporation legally available for that purpose, cumulative dividends at the annual rate (prorated for partial calendar years during which such shares are outstanding) of eight percent (8%) of the Original Issue Price per share for the Series B Preferred, before any dividends or other distribution shall be paid or declared and set aside for the Series A Preferred or the Common Stock (other than a Common Stock Dividend). Such dividends on the Series B Preferred shall, if and to the extent not paid, be cumulative, accumulate and accrue (on a non-compounding basis) annually starting in the calendar year in which the such shares are first issued, and (a) shall become payable upon any Liquidation, except that in connection with an event described in Section 3(b) below, the aggregate amount of such accrued and accumulated dividends shall be reduced (but not below zero) by the aggregate amount, if any, of all distributions which are payable and received by the Series B Preferred in such Liquidation under Section 3(a)(iii) below, and (b) shall terminate and no longer be paid or payable upon a Qualified Public Offering. The Board shall not pay any other dividends on, or make any other distributions with respect to, the Common Stock or Series A Preferred Stock in any calendar year (other than a Common Stock Dividend), unless and until all such accumulated and accrued dividends (including all such dividends which shall accrue in such calendar year) on the Series B Preferred have in fact been fully and currently paid by the Corporation; provided, however, that this restriction shall not apply to any Permitted Repurchase.

(b) After payment of all accumulated and accrued dividends on the Series B Preferred, including such dividends in respect of the current calendar year as provided in Section 2(a) above, any further dividends may be paid in such calendar year, when, if and as declared by the Board, out of funds and assets of the Corporation legally available for that purpose, only if paid to all the holders of Common Stock Series A Preferred Stock and Series B Preferred Stock concurrently in equal amounts per share (determined on an as-converted basis with respect to the Convertible Preferred Stock). Dividends under this Section 2(b) shall not be mandatory or cumulative, and no rights or interest shall accrue to the holders of the Common Stock, Series A Preferred or Series B Preferred by reason of the fact that the Corporation shall fail to declare or pay dividends on the such shares in any amount in any calendar year or any fiscal year of the Corporation, whether or not the earnings of the Corporation in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part.

(c) Whenever a dividend or distribution provided for in this Section 2 shall be payable in property other than cash, the value of such dividend or distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation.

Section 3. Liquidation, Dissolution or Winding Up

(a) In the event of a Liquidation, all assets and funds of the Corporation legally available for distribution shall be distributed to the holders of the Common Stock, the Series A Preferred and the Series B Preferred in the following order of priority:

(i) First, ratably among the holders of the Series B Preferred until such holders have received the preferential amount of the Original Issue Price per share of the Series B Preferred plus all declared and unpaid dividends thereon and all accrued but unpaid dividends required to be paid pursuant to clause (a) of Section 2 above; provided, however, that if the assets and funds thus distributed among the holders of the Series B Preferred are insufficient to permit the payment to such holders of their full preferential amounts described in this subsection, then the entire assets and funds of the Corporation legally available for payment or distribution shall be paid or distributed among the holders of the Series B Preferred ratably in proportion to such full preferential amounts each such holder would be entitled to first receive;

(ii) Second, subject to the prior payment in full of the liquidation preference of the Series B Preferred (as provided in clause (i) above), ratably among the holders of the Series A Preferred until such holders have received the preferential amount of the Original Issue Price per share of the Series A Preferred plus all declared and unpaid dividends thereon; provided, however, that if the assets and funds thus distributed among the holders of the Series A Preferred are insufficient to permit the payment to such holders of their full preferential amounts described in this subsection, then the entire remaining assets and funds of the Corporation legally available for payment or distribution shall be paid or distributed among the holders of the Series A Preferred ratably in proportion to such full preferential amounts each such holder would be entitled to then receive;

(iii) Third, subject to the prior payment in full of the liquidation preference of the Series B Preferred and the Series A Preferred (as provided in clauses (i) and (ii) above), ratably among the holders of the Common Stock and the Convertible Preferred Stock according to the number of shares of Common Stock (A) then held, with respect to the Common Stock, and (B) into which the shares of such Convertible Preferred Stock are then convertible, in the case of the Convertible Preferred Stock, until such time as each holder of the then outstanding Series B Preferred has received, in payments or distributions made under this Section 3, (including the amount received by the Series B Preferred in clause (i) above) an aggregate amount equal to four (4) times the Original Issue Price per share of the Series B Preferred for each share of Series B Preferred held by such holder;

(iv) Fourth, subject to the prior payment in full of the liquidation preference of the Series B Preferred and the Series A Preferred (as provided in clauses (i) and (ii) above) and the prior payment of the distribution provided in clause (iii) above, ratably among the holders of the Common Stock and the Series A Preferred according to the number of shares of Common Stock (A) then held, with respect to the Common Stock, and (B) into which the shares of such Series A Preferred are then convertible, in the case of the Series A Preferred, until such time as each holder of the then outstanding Series A Preferred has received, in payments or

distribution under this Section 3 (including the amounts received by the Series A Preferred in clauses (ii) and (iii) above) an aggregate amount equal to four (4) times the Original Issue Price per share of the Series A Preferred for each share of Series A Preferred held by such holder; and

(v) Fifth, subject to the prior payment in full of the liquidation preference of the Series B Preferred and the Series A Preferred (as provided in clauses (i) and (ii) above) and the prior payment of the distributions provided in clauses (iii) and (iv) above, to the holders of the Common Stock on a pro rata basis according to the number of shares of Common Stock then held.

(b) A Liquidation shall be deemed to include, the direct or indirect, (i) sale of all or substantially all of the assets of the Corporation, (ii) reorganization, consolidation or merger of the Corporation with or into any other corporation or entity or any other transaction or series of related transaction, in which transaction the Corporation's shareholders immediately prior to such transaction own immediately after such transaction less than fifty percent (50%) of the outstanding voting securities or outstanding voting power of the surviving corporation (or its parent).

(c) No adjustment to any Conversion Price pursuant to these Amended and Restated Articles of Incorporation shall otherwise alter the above liquidation preference dollar amounts.

(d) Insofar as any distribution pursuant to Section 3 consists of property other than cash, then the value thereof shall, for purposes of the provisions of Section 3, be the fair value at the time of such distribution, as determined in good faith by the Board, except that any securities to be distributed to shareholders in a Liquidation of the Corporation shall be valued as follows:

(i) The method of valuation of securities not subject to investment representation letter or other similar restrictions on free marketability shall be as follows:

(1) unless otherwise specified in a definitive agreement for the acquisition of the Corporation, if the securities are then traded on a national securities exchange or the Nasdaq National Market (or a similar national quotation system), then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) calendar day period ending three (3) trading days prior to the distribution; and

(2) if (1) above does not apply but the securities are actively traded over-the-counter, then, unless otherwise specified in a definitive agreement for the acquisition of the Corporation, the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) days prior to the distribution; and

(3) if there is no active public market as described in clauses (i) or (ii) above, then the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in subparagraphs (d)(1),(2) or (3) of this subsection to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

(e) Each holder of Convertible Preferred Stock shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code, to distributions made by the Corporation and approved by the Board in connection with any Permitted Repurchase.

#### Section 4. Voting

(a) Voting Rights. At all meetings of the shareholders of the Corporation and in the case of any actions of shareholders in lieu of a meeting, each share of Common Stock shall be entitled to one vote, and each share of Convertible Preferred Stock shall be entitled to one vote for each share of Common Stock into which such share could then be converted (in accordance with Section 5 hereof) on the record date set for the meeting or action or, if no record date is set, on the date of such meeting or the date such action is taken. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred or Series B Preferred held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). Except as otherwise expressly provided below in this Section 4 or as required by law, the holders of Common Stock and Convertible Preferred Stock shall vote together as a single class in accordance with the preceding sentence, and neither the Common Stock nor any of the Convertible Preferred Stock shall be entitled to vote as a separate class on any matter to be voted on by shareholders of the Corporation.

(b) Protective Provisions - Series A Preferred: The Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of at least a majority of the then outstanding shares of the Series A Preferred:

(i) Increase the authorized number of shares of Series A Preferred or the Series B Preferred.

(ii) Amend, alter, reclassify or repeal the preferences, privileges, special rights or other powers of the Series A Preferred, as set forth herein, or in the Bylaws of the Corporation, in a manner adverse to the holders thereof; provided, however, that an amendment authorizing any preferred equity security which is junior to the Series A Preferred as to dividend rights, redemption rights, voting rights, conversion rights and liquidation preferences shall not require the separate approval of the Series A Preferred under this clause (ii).

(iii) Authorize or issue, or obligate itself to issue, any capital stock or other equity security, or reclassify any outstanding shares of the Corporation's capital stock into any other security, in any case having rights, preferences or privileges senior to or on a parity

with the Series A Preferred as to dividend rights, redemption rights, voting rights, conversion rights or liquidation preferences.

(iv) Effect any Liquidation, including any transaction referred to in Section 3(b).

(c) Protective Provisions - Series B Preferred. The Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of a majority of the then outstanding shares of the Series B Preferred:

(i) Increase the authorized number of shares of Series B Preferred.

(ii) Amend, alter, reclassify or repeal the preferences, privileges, special rights or other powers of the Series B Preferred, as set forth herein, or in the Bylaws of the Corporation, in a manner adverse to the holders thereof; provided, however, that an amendment authorizing any preferred equity security which is junior to the Series B Preferred as to dividend rights, redemption rights, voting rights, conversion rights and liquidation preferences shall not require the separate approval of the Series B Preferred under this clause (ii).

(iii) Authorize or issue, or obligate itself to issue, any capital stock or other equity security, or reclassify any outstanding shares of the Corporation's capital stock into any other security, in any case having rights, preferences or privileges senior to or on a parity with the Series B Preferred as to dividend rights, redemption rights, voting rights, conversion rights or liquidation preferences.

(iv) Effect any Liquidation, including any transaction referred to in Section 3(b).

(d) Board Size. The authorized number of directors of the Corporation's Board of Directors shall be seven (7). The Corporation shall not alter the authorized number of directors in its Articles of Incorporation, Bylaws or otherwise, without first obtaining the written consent, or affirmative vote at a meeting, of the holders of at least a majority of the then outstanding shares of the Series B Preferred and Series A Preferred, each consenting or voting (as the case may be), as a separate class.

(e) Board of Directors Election and Removal.

(i) Election of Directors. So long as at least 1,861,600 shares of Series B Preferred are outstanding (such number of shares being subject to proportional adjustments to reflect combinations or subdivisions thereof or dividends declared in shares of such stock), the holders of the Series B Preferred, voting as a separate class (with cumulative voting rights as among themselves in accordance with Section 708 of the California Corporations Code), shall be entitled to elect two (2) directors of the Corporation (the "Series B Directors") and (ii) the holders



of the Convertible Preferred Stock and the Common Stock, voting together as a single class (with cumulative voting rights as among themselves in accordance with Section 708 of the California Corporations Code) shall be entitled to elect the remaining directors of the Corporation.

(2) Quorum; Required Vote.

(i) Quorum. At any meeting held for the purpose of electing directors, the presence in person or by proxy (A) of the holders of a majority of the shares of the Series B Preferred then outstanding shall constitute a quorum for the election of directors to be elected solely by the holders of the Series B Preferred, and (B) of holders of a majority of the voting power of all the then-outstanding shares of Convertible Preferred Stock and Common Stock shall constitute a quorum for the election of the directors to be elected jointly by the holders of the Convertible Preferred Stock and the Common Stock.

(ii) Required Vote. With respect to the election of any director or directors by the holders of the outstanding shares of a specified series of stock given the right to elect such director or directors pursuant to subsection 4(e)(1) above (the "Specified Stock"), that candidate or those candidates (as applicable) shall be elected who either: (x) in the case of any such vote conducted at a meeting of the holders of such Specified Stock, receive the highest number of affirmative votes (on an as-converted basis) of the outstanding shares of such Specified Stock, up to the number of directors to be elected by such Specified Stock; or (y) in the case of any such vote taken by written consent without a meeting, are elected by the unanimous written consent of the holders of shares of such Specified Stock, except that, if such vote is to fill a vacancy on the Board other than a vacancy created by removal of a director, such vacancy may be filled by election by the written consent of the holders of a majority (on an as-converted basis) of the outstanding shares of such Specified Stock entitled to vote pursuant to Section 305(b) of the California Corporations Code.

(3) Vacancy. If there shall be any vacancy in the office of a director elected or to be elected by the holders of any Specified Stock, then a director to hold office for the unexpired term of such directorship may be elected by the required vote of holders of the shares of such Specified Stock specified in subsection 4(e)(2)(ii) above that are entitled to elect such director.

(4) Removal. Subject to Section 303 of the California Corporations Code, any director who shall have been elected to the Board by the holders of any Specified Stock, or by any director or directors elected by holders of any Specified Stock as provided in subsection 4(e)(2)(ii), may be removed during his or her term of office, without cause, by, and only by, the affirmative vote of the shares of such Specified Stock entitled to vote, given either at a meeting of such shareholders duly called for that purpose or pursuant to a written consent of shareholders without a meeting, in either case in accordance with, and subject to the provisions of, Section 303 of the California Corporations Code, and any vacancy created by such removal may be filled only in the manner provided in subsection 4(e)(3).

(f) Procedures. Any meeting of the holders of any Specified Stock, and any action taken by the holders of any Specified Stock by written consent without a meeting,



in order to elect or remove a director under this subsection 4(e), shall be held in accordance with the procedures and provisions of the Corporation's Bylaws, the California Corporations Code and applicable law regarding shareholder meetings and shareholder actions by written consent, as such are then in effect (including but not limited to procedures and provisions for determining the record date for shares entitled to vote).

#### Section 5. Conversion.

The holders of the Convertible Preferred Stock shall have the following conversion rights (the "Conversion Rights"):

(a) Optional Conversion. Each share of Convertible Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Common Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$3.1989 (in the case of the Series A Preferred), and \$1.8928 (in the case of the Series B Preferred), by the then applicable Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The Conversion Price at which shares of Common Stock shall be deliverable upon conversion of the Convertible Preferred Stock without the payment of any additional consideration by the holder thereof (the "Conversion Price") shall, immediately upon the filing of these Amended and Restated Articles of Incorporation, be \$3.1989 (in the case of the Series A Preferred), and \$1.8928 (in the case of the Series B Preferred). Such initial Conversion Price of the Series A Preferred shall be adjusted in connection with the issuance of shares of Series B Preferred and subject to further adjustment as hereinafter provided, and the initial Conversion Price of the Series B Preferred shall be subject to adjustment as hereinafter provided.

#### (b) Automatic Conversion.

(i) Upon the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Act, covering the offer and sale of the Corporation's Common Stock at a per share price to the public is not less than three (3) times the Original Issue Price per share of the Series B Preferred and with aggregate proceeds to the Corporation of the Common Stock sold in such offering equals or exceeds \$30,000,000 (a "Qualified Public Offering"), then each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$3.1989, in the case of the Series A Preferred Stock, or \$1.8928, in the case of the Series B Preferred Stock, by the applicable Conversion Price then in effect for a share of such stock.

(ii) Additionally, each share of each series of Convertible Preferred Stock shall be automatically converted into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$3.1989 (in the case of the Series A Preferred

Stock), and \$1.8928 (in the case of the Series B Preferred Stock) by the applicable Conversion Price then in effect for a share of such stock upon the approval (by vote or written consent, as provided by law) of at least a majority of the then outstanding shares of such series. Each such series shall vote separately (and not together with other series as a class) with respect to any such automatic conversion of such series pursuant to this subparagraph (ii).

(c) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Convertible Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of the Corporation's Common Stock as determined in good faith by the Board.

(d) Status of Converted Stock. In the event any shares of Convertible Preferred Stock shall be converted pursuant to this Section 5, the shares so converted shall be cancelled, shall not be reissued by the Corporation and shall cease to be part of the authorized capital stock of the Corporation.

(e) Mechanics of Optional Conversion. Each holder of Convertible Preferred Stock who elects to convert the same into full shares of Common Stock, shall surrender the certificate or certificates therefor, endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his attorney duly authorized in writing, at the office of the Corporation or of any transfer agent for the Convertible Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein 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. The Corporation shall, promptly thereafter, issue and deliver at such office to such holder of Convertible Preferred Stock, or to such holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, 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 Convertible Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock at the close of business on such date. From and after such date, all rights of the holder with respect to the Convertible Preferred Stock so converted shall terminate, except only the right of such holder to receive certificates for the number of shares of Common Stock issuable upon conversion thereof and cash for fractional shares, plus any dividends thereon (excluding any cumulative dividends provided for by Section 2(a) which have not been declared or become payable at the time of such conversion) declared and unpaid as of the time of such conversion. If a conversion election under this Section 5(e) is made in connection with an underwritten offering of the Corporation's securities pursuant to the Securities Act of 1933, as amended (the "Act") (which underwritten offering does not cause an automatic conversion pursuant to Section 5(b)(i) to take place) the conversion may, at the option of the holder tendering shares of Convertible Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of the Corporation's

securities pursuant to such offering, in which event the holders making such elections who are entitled to receive Common Stock upon conversion of their Convertible Preferred Stock shall not be deemed to have converted such shares of Convertible Preferred Stock until immediately prior to the closing of such sale of the Corporation's securities in the offering.

(f) Mechanics of Automatic Conversion. All holders of record of shares of one or more applicable series of Convertible Preferred Stock will be given written notice of the date of any automatic conversion referenced in Section 5(b) at least ten (10) days prior to the anticipated date of such conversion. Such notice will be sent by mail, first class, postage prepaid, to each record holder of such Convertible Preferred Stock at such holder's address appearing on the stock register. Upon the occurrence of any event specified in subparagraph 5(b) above, the outstanding shares of Convertible Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the holders of such shares whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Convertible Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the date of any such automatic conversion, all rights with respect to such Convertible Preferred Stock will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock or other securities into which such Convertible Preferred Stock has been converted and cash for fractional shares, plus any dividends thereon declared accumulated and/or and unpaid as of the time of such conversion. All certificates evidencing shares of Convertible Preferred Stock which are automatically converted in accordance with the provisions hereof shall, from and after the date of such automatic conversion, be deemed to have been retired and canceled and the shares of Convertible Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates. As soon as practicable after the date of any such automatic conversion and the surrender of the certificate or certificates for Convertible Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered to such holder, or to such holder's written order, a certificate or certificates for the number of full shares of Common Stock or other securities issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection 5(c) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(g) Certain Adjustments to Conversion Price.

(i) Adjustment for Stock Splits, Stock Dividends and Combinations of Common Stock. In the event the outstanding shares of Common Stock shall, after the filing of these Amended and Restated Articles of Incorporation, be further subdivided (split), or combined (reverse split), or in the event of any dividend or other distribution payable on the Common Stock

in shares of Common Stock (a "Common Stock Event"), the Conversion Price in effect immediately prior to such subdivision, combination, dividend or other distribution shall, concurrently with the effectiveness of such Common Stock Event be proportionately adjusted by multiplying the Conversion Price of such series of Convertible Preferred Stock in effect immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event, and the product so obtained shall thereafter be the Conversion Price for such series of Convertible Preferred Stock, subject to further adjustment as provided herein. The Conversion Price for a series of Convertible Preferred Stock shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event.

(ii) Adjustment for Merger or Reorganization, Etc. In case of a reorganization or exchange transaction or any consolidation or merger of the Corporation with another corporation (other than a merger or other reorganization which is deemed to be a Liquidation and other than a Common Stock Event or reclassification or recapitalization provided for elsewhere in this Section 5(g)), then as a part of such reorganization, exchange, consolidation or merger provision shall be made such that each share of Convertible Preferred Stock shall thereafter be convertible into the number 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 Convertible Preferred Stock would have been entitled upon such reorganization, exchange, consolidation or merger; and, in any such case, appropriate adjustment (as determined in good faith by the Board) shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of the Convertible Preferred Stock, to the end that the provisions set forth herein (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly equivalently as reasonably possible.

(iii) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the filing of these Amended and Restated Articles of Incorporation pays, makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company other than shares of Common Stock, then and in each such event provision shall be made so that the holders of Convertible Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Company which they would have received had their Convertible Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) 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, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Convertible Preferred Stock.

(iv) Adjustment for Reclassification, Exchange and Substitution. In the event that at any time or from time to time after the filing of these Amended and Restated Articles of Incorporation the Common Stock issuable upon the conversion of the Convertible Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than by a Common Stock Event or a stock dividend, reorganization, merger or consolidation provided for elsewhere in this Section 5(g)), then in any such event each holder of Convertible Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(h) Sale of Shares Below Conversion Price. The applicable Conversion Price of the Series A Preferred and the Series B Preferred shall be subject to adjustment, as follows:

(i) If at any time or from time to time after the filing of these Amended and Restated Articles of Incorporation, the Corporation issues or sells, or is deemed by the express provisions of this subparagraph (h) to have issued or sold, Additional Shares of Common Stock (as defined in clause (v) below), other than upon a Common Stock Event as provided in subparagraph (g)(i) above, a reorganization, exchange, consolidation or merger as provided in subparagraph (g)(ii) above, a dividend or other distribution payable in securities of the Company as provided in subparagraph (g)(iii) above, or a recapitalization, reclassification or other change as provided in subparagraph (g)(iv) above, for an Effective Price (as defined in clause (v) below) less than the then existing Conversion Price (or, if an adjusted Conversion Price shall be in effect by reason of a previous adjustment, then less than such adjusted Conversion Price) applicable to the Series A Preferred, the then-existing Conversion Price of the Series A Preferred shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the then-existing Conversion Price of the Series A Preferred by a fraction (i) the numerator of which shall be the sum of (A) the number of shares of Common Stock outstanding at the close of business on the day next preceding the date of such issue or sale, plus (B) the number of shares of Common Stock that the aggregate consideration received (or by the express provisions hereof deemed to have been received) by the Corporation for the total number of Additional Shares of Common Stock so issued or sold would purchase at such Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date of such issue after giving effect to such issue of Additional Shares of Common Stock; provided, however, that for the purposes of this clause (i), all shares of Common Stock then issuable upon conversion or exercise of then outstanding rights or options to acquire Common Stock or other stocks or securities convertible into Common Stock shall be deemed to be outstanding.

If at any time or from time to time after the date hereof, the Corporation issues or sells, or is deemed by the express provisions of this paragraph (h) to have issued or sold,



Additional Shares of Common Stock (as defined in clause (v) below), other than upon a Common Stock Event as provided in subparagraph (g)(i) above, a reorganization, exchange, consolidation or merger as provided in subparagraph (g)(ii) above, a dividend or other distribution payable in securities of the Company as provided in subparagraph (g)(iii) above, or a recapitalization, reclassification or other change as provided in subparagraph (g)(iv) above, for an Effective Price less than the then-existing Conversion Price (or, if an adjusted Conversion Price shall be in effect by reason of a previous adjustment, then less than such adjusted Conversion Price) applicable to the Series B Preferred, then in each such case the then-existing Conversion Price of the Series B Preferred shall be reduced, as of the opening of business on the date of such issue or sale, to a price equal to the lowest consideration per share for which any such Additional Shares of Common Stock are issued or deemed issued.

(ii) For the purpose of making any adjustment required under this subparagraph (h), the consideration received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash be computed at the gross amount of cash received by the Corporation before deducting any expenses payable by the Corporation and any underwriting or similar commissions, compensation, or concessions paid or allowed by the Corporation in connection with such issue or sale, (B) to the extent it consists of property, be computed as determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options, as the case may be.

(iii) For the purpose of the adjustment required under this subparagraph (h), if the Corporation issues or sells any rights, warrants or options to purchase Common Stock or any Convertible Securities, then the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights, warrants or options or Convertible Securities, plus, in the case of such rights, warrants or options, the minimum amount of consideration, if any, payable to the Corporation upon the exercise of such rights, warrants or options, plus, in the case of Convertible Securities, the minimum amount of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof. No further adjustment of the Conversion Price of the applicable series of Convertible Preferred Stock, adjusted upon the issuance of such rights, warrants, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights, warrants options or the conversion of any such Convertible Securities. If any such rights, warrants or options or the conversion privilege represented by any such Convertible Securities shall expire without having been fully exercised, then the Conversion Price of the

applicable series of Convertible Preferred Stock, adjusted upon the issuance of such rights, warrants, options or Convertible Securities, shall be readjusted to the applicable Conversion Price that would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights, warrants or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights, warrants or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities.

(iv) For the purpose of the adjustment required under this subparagraph (h), if the Corporation issues or sells any rights, warrants or options for the purchase of Convertible Securities, then the Corporation shall be deemed to have issued at the time of the issuance of such rights, warrants or options the maximum number of Additional Shares of Common Stock issuable upon conversion of the total amount of Convertible Securities covered by such rights, warrants or options and to have received as consideration for the issuance of such Additional Shares of Common Stock an amount equal to the amount of consideration, if any, received by the Corporation for the issuance of such rights, warrants or options, plus the minimum amount of consideration, if any, payable to the Corporation upon the exercise of such rights, warrants or options and plus the minimum amount of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion of such Convertible Securities. No further adjustment of any Conversion Price, adjusted upon the issuance of such rights, warrants or options, shall be made as a result of the actual issuance of the Convertible Securities upon the exercise of such rights, warrants or options or upon the actual issuance of Additional Shares of Common Stock upon the conversion of such Convertible Securities. The provisions of clause (iii) above for the readjustment of any Conversion Price upon the expiration of rights, warrants or options or the rights of conversion of Convertible Securities shall apply, the necessary changes having been made, to the rights, warrants, options and Convertible Securities referred to in this subpart (iv).

(v) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation or deemed issued by the Corporation pursuant to subsection (h)(iii) and (h)(iv) upon or after the filing of these Amended and Restated Articles of Incorporation, whether or not subsequently reacquired or retired by the Corporation, other than shares of Common Stock issued or issuable (A) upon conversion of the Convertible Preferred Stock; provided, however, that any shares of Common Stock issuable upon conversion of the Series B Preferred shall be deemed "Additional Shares of Common Stock" solely with respect to the Series A Preferred (such that the issuance of the Series B Preferred shall be considered an issuance of Additional Shares of Common Stock for purposes of adjusting the Conversion Price applicable to the Series A Preferred); (B) to (1) officers, employees or directors of, or consultants and advisors to, the Corporation or any subsidiary pursuant to any stock purchase or stock option



plans or other similar compensatory arrangements outstanding on the date hereof or approved by the Board of Directors after the date hereof (without limiting the foregoing and notwithstanding the provisions of this Corporation's Articles of Incorporation as in effect prior to the filing of these Amended and Restated Articles of Incorporation, any and all grants of stock options prior to the filing of these Amended and Restated Articles of Incorporation, and the exercise thereof, shall not result in any adjustment to the Conversion Price of the Series A Preferred); (2) financial institutions, equipment leasing companies or persons with whom the Corporation has a strategic business relationship (such as a customer or vendor) pursuant to arrangements determined by the Board to be in the best business interests of the Corporation; (C) as a dividend or distribution on the Convertible Preferred Stock; or (D) in connection with the acquisition of any company, business or assets determined by the Board to be in the best interests of the Corporation. The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this subparagraph (h), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this subparagraph (h), for such Additional Shares of Common Stock.

(i) Duration of Adjusted Conversion Price. Following each computation or readjustment of an adjusted Conversion Price as provided above in this Section 5, the new adjusted Conversion Price shall remain in effect until a further computation or readjustment thereof is required by this Section 5.

(j) Other Action Affecting Common Stock. In case after the filing of these Amended and Restated Articles of Incorporation the Corporation shall take any action affecting its shares of Common Stock, other than an action described above in this Section 5, that in the good faith opinion of the Board would have a materially adverse effect upon the Conversion Rights set forth herein, the Conversion Price of the affected Convertible Preferred Stock shall be adjusted in a manner and at a time as the Board may in good faith determine to be equitable to the holders of the affected Convertible Preferred Stock in the circumstances.

(k) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of a Conversion Price of any of the Convertible Preferred Stock pursuant to this Section 5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such Convertible Preferred Stock a certificate executed by the Chief Financial Officer of the Corporation 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 any Convertible Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth: (i) such adjustments and readjustments; (ii) the applicable Conversion Price of such Convertible Preferred Stock at the time in effect; and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such Convertible Preferred Stock.

(l) Notices of Record Date. In the event of any taking by the Corporation of 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 which is the same as cash dividends paid in previous quarters) or other distribution, any capital reorganization of the Corporation, any reclassification or recapitalization of the Corporation's capital stock, any consolidation or merger with or into another corporation, any transfer of all or substantially all of the assets of the Corporation or any dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Convertible Preferred Stock at least ten (10) days prior to the date specified for the taking of a record, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or other such event.

(m) Common Stock Reserved. The Corporation shall at times reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect the full conversion of all outstanding Convertible Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Convertible Preferred 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 purpose.

(n) Payment of Taxes. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Convertible Preferred Stock, other than any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Convertible Preferred Stock so converted were registered.

(o) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, 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 hereof, 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 Convertible Preferred Stock as set forth herein against impairment.

#### Section 6. Mandatory Redemption of Series B Preferred.

(a) Mandatory Redemption. The Corporation shall, as soon as practicable (subject to paragraph (c) below) upon or after any date on or after March 28, 2007 specified by the affirmative vote of the holders of at least a majority of the then outstanding shares of the Series B Preferred (the "Series B Majority Holders"), voting as a single series (such date the "Redemption Date"), redeem all but not less than all of the Series B Preferred in the manner and at the applicable Redemption Price (as defined below) hereinafter specified. The Series B Majority Holders shall specify in writing (the "Series B Notice") to the Corporation the

Redemption Date which shall be at least thirty (30) days after the date of such vote and the determination by an independent investment banking firm of Fair Market Value (as defined herein). In the event the Corporation does not have sufficient funds legally available to redeem all of the Series B Preferred on such date, the Corporation shall on such date redeem pro rata in proportion to the aggregate Redemption Price (as defined in subparagraph (b) below) each holder would be entitled to receive upon redemption of all of the Series B Preferred, the maximum number of shares of Series B Preferred it can legally redeem, and shall redeem the remainder as soon as the Corporation has funds legally available therefor on one or more occasions as necessary. Shares of Series B Preferred, which are subject to redemption hereunder but which have not been redeemed due to insufficient legally available funds and assets of the Corporation shall continue to be outstanding and entitled to all dividend, liquidation, voting, conversion and other rights, preferences, privileges and restrictions of the Series B Preferred until such shares have been converted or redeemed. Each deferred date upon which the Corporation redeems shares of Series B Preferred in accordance with the immediately preceding sentence is also herein referred to as a "Redemption Date."

(b) Price. The per share redemption price (the "Redemption Price") shall be an amount per share equal to the greater of (i) the Original Issue Price per share of the Series B Preferred, or (ii) the Fair Market Value (as determined pursuant to Section 6(f) below) of each share of Series B Preferred.

(c) Redemption Notice by Company. The Corporation shall, not less than twenty (20) days nor more than sixty (60) days prior to any Redemption Date, mail written notice (a "Redemption Notice"), postage prepaid, to each holder of record of Series B Preferred at the holder's post office address last shown on the records of the Corporation. Each Redemption Notice shall state:

(i) the number of the outstanding shares of each series of the Series B Preferred to be redeemed on such Redemption Date;

(ii) the number of shares of each series of the Series B Preferred held by the holder which the Corporation shall redeem on such Redemption Date in accordance with the provisions hereof;

(iii) that the shares of each series of Series B Preferred held by the holder which the Corporation shall so redeem on such Redemption Date shall be redeemed on such Redemption Date, which shall be specified as a calendar date and shall be a business day;

(iv) the applicable Redemption Price; and

(v) the time and manner in, and place at, which the holder is to surrender to the Corporation on such Redemption Date the certificate or certificates representing the shares of Series B Preferred to be redeemed on such date.

(d) Surrender of Stock. On or before each Redemption Date, each holder of Series B Preferred to be redeemed pursuant to this Section 6 shall surrender to the Corporation the certificate or certificates representing the shares to be redeemed on such Redemption Date, in the manner and at the place designated in the Redemption Notice, and upon each such Redemption Date the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, or to such payee as such owner may designate in writing to the Corporation prior to each such Redemption Date, and each surrendered certificate shall be canceled and retired.

(e) Termination of Rights. If a Redemption Notice is duly given and if, on or prior to a Redemption Date, the Redemption Price is paid, then notwithstanding that the certificates evidencing any of the shares of Series B Preferred so called for redemption on such Redemption Date have not been surrendered, all rights with respect to such shares shall forthwith after such Redemption Date cease.

(f) Fair Market Value. For purposes of this Section 6 only, "Fair Market Value" of a share of Series B Preferred as of a particular date shall mean the fair market value of a share of Series B Preferred, exclusive of liquidating or minority ownership discounts and shall be determined by an independent investment banking or valuation firm. The independent investment banking or valuation firm named on the Series B Notice shall determine the Fair Market Value of the Series B Preferred, unless it is an investment banking or valuation firm other than Merrill Lynch and Co. or Goldman Sachs and Co. and, within ten days of such notice the Corporation shall deliver to the Series B Majority Holders written notice of its objection to the selection of such firm for such purpose, in which case the firm which shall determine the Fair Market Value shall be either Merrill Lynch and Co. or Goldman Sachs and Co. (or their respective successors, if applicable), as selected by the Series B Majority Holders by written notice delivered to the Corporation.

#### Section 7. Reissuance of Preferred Stock.

No shares of Convertible Preferred Stock which are redeemed, purchased or acquired by the Corporation or converted into Common Stock shall be reissued, and all such shares shall be canceled and eliminated from the shares which the Corporation shall be authorized to issue.

#### IV.

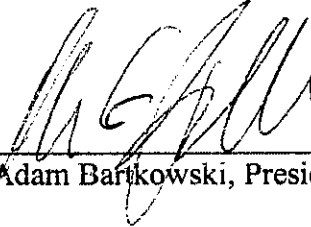
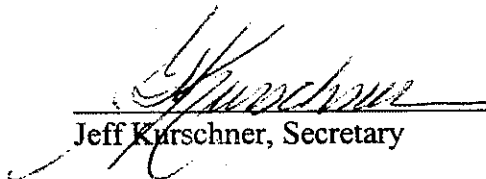
The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the Corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

C. The amendments and restatement set forth herein have been duly approved and adopted by the Board of Directors of this Corporation.

D. The amendments set forth herein have been duly approved by the required vote of the shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The Corporation has outstanding 6,881,375 shares of Common Stock, 4,376,475 shares of Series A Convertible Preferred Stock, and no shares of Series B Convertible Preferred Stock. The number of shares voting in favor of the amendments equaled or exceeded the vote required for approval. The percentage vote required for the approval of the amendments was more than 50% of the Common Stock and more than 50% of the Series A Convertible Preferred Stock.

Each of the undersigned further declares under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate are true and correct of his own knowledge.

Dated: March 21, 2002

  
Adam Bartkowski, President  
Jeff Kurschner, Secretary