

08-04-1999

U.S. Patent & TMO/ TM Mail Rpt Dt. #31

08-10-1999



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Docket No.:

14685.3

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To the Honorable Commissioner of Patents and Trademarks, please return the attached original documents or copy thereof.

1. Name of conveying party(ies):

WHEB Systems, Inc.

- Individual(s)
- General Partnership
- Corporation-State California
- Other

- Association
- Limited Partnership

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:

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

Execution Date: November 16, 1998

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

Name: Captiva Software Corporation

Internal Address: PO Box 3267

Street Address: _____

City: Park City State: UT ZIP: 84060

Individual(s) citizenship _____

Association _____

General Partnership _____

Limited Partnership _____

Corporation-State California

Other _____

If assignee is not domiciled in the United States, a domestic designation is Yes No

(Designations must be a separate document from Additional name(s) & address(es) Yes No

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

A. Trademark Application No.(s)

75/548,195

B. Trademark Registration No.(s)

8.4.99

Additional numbers

Yes No

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

Name: John C. Stringham

Internal Address: Registration No. 40,831

Workman, Nydegger & Seeley

Street Address: 1000 Eagle Gate Tower

60 East South Temple

City: Salt Lake City State: UT ZIP: 84111

6. Total number of applications and registrations involved:.....

1

7. Total fee (37 CFR 3.41):.....\$ 540.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

23-3178

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9. Statement and signature.

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

John C. Stringham

Name of Person Signing

John C. Stringham

Signature

August 4, 1999

Date

Total number of pages including cover sheet, attachments, and

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P-514181



SECRETARY OF STATE

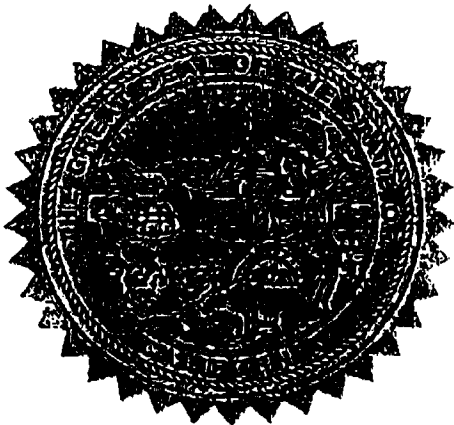
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I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

27th day of October 1998



Bill Jones

Secretary of State

ENDORSED-FILED
In the office of the Secretary of State
of the State of California

AMENDED AND RESTATED ARTICLES OF INCORPORATION SEP 21 1998
OF WHEB SYSTEMS, INC.
a California Corporation

BILL JONES, Secretary of State

The undersigned RANDALL HAWKS, JR. and BARRY BRUESEKE hereby certify that:

ONE: They are the duly elected and acting President and Secretary, respectively, of said corporation.

TWO: The Amended and Restated Articles of Incorporation of said corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of this corporation is Captiva Software Corporation.

ARTICLE 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.

ARTICLE III

A. 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 Fifty-Three Million Four Hundred Eighty-Nine Thousand and Sixty-Four (53,489,064) shares. Forty-Five Million (45,000,000) shares shall be Common Stock and Eight Million Four Hundred Eighty-Nine Thousand and Sixty-Four (8,489,064) shares shall be Preferred Stock. The Preferred Stock shall be issued from time to time in one or more series. Two Million Eight Hundred Seventy-Three Thousand Five Hundred and Sixty-Four (2,873,564) shares are designated "Series A Preferred Stock"; One Million One Hundred Fifteen Thousand Five Hundred (1,115,500) shares are designated "Series B Preferred Stock" and Four Million Five Hundred Thousand (4,500,000) shares are designated "Series C Preferred Stock."

Upon the filing of these Amended and Restated Articles of Incorporation as set forth herein, each one (1) share of Common Stock, no par value, issued and outstanding at such time shall be split into 1.3211181 shares of Common Stock, no par value (the "New Shares"). No fractional share shall be issued upon the stock split of any share or shares of Common Stock. All shares of Common Stock (including fractions thereof) issuable upon the stock split of one (1)

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or more shares of Common Stock by a holder thereof (including, for this purpose, a holder of shares of Common Stock issuable upon conversion of Preferred Stock) shall be aggregated for purposes of determining whether the stock split would result in the issuance of any fractional share. If, after the aforementioned aggregation, the stock split would result in the issuance of a fraction of a share of Common Stock, the number of shares of Common Stock to be issued shall be rounded up to the nearest whole share. Unless otherwise requested by the holders thereof, the share certificates representing the shares outstanding prior to the filing of these Amended and Restated Articles of Incorporation shall represent such number of New Shares as split following the filing of these Amended and Restated Articles of Incorporation. Upon surrender by a holder of Common Stock of a certificate or certificates for Common Stock, duly endorsed, at the office of this corporation, this corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Common Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of New Shares to which such holder shall be entitled as aforesaid.

B. Rights, Preferences and Restrictions of Preferred Stock. The rights, preferences, restrictions and other matters relating to the Preferred Stock are as follows:

1. Dividend Provisions.

(a) The holders of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Common Stock of this corporation, at the rate of \$0.07 per share of Series A Preferred Stock per annum, \$0.08 per share of Series B Preferred Stock per annum and \$0.09 per share of Series C Preferred Stock per annum ("Preferred Dividend Preference") payable when, as and if declared by the Board of Directors. Such dividends shall not be cumulative. No cash dividend shall be declared or paid with respect to the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock unless at the same time a like proportionate cash dividend for the same dividend period, ratably in proportion to the respective annual dividend rates set forth above, is declared and paid with respect to the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock.

(b) After paying the full Preferred Dividend Preference in any calendar year, whenever this corporation declares a further dividend in such calendar year, the holders of Common Stock and the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled to receive dividends ratably based on the number of shares of Common Stock held by each (assuming conversion of all such Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock as applicable).

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled to receive, prior to and in

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preference to any distribution of any of the assets of this corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the sum of (i) \$0.87 for each outstanding share of Series A Preferred Stock (subject to appropriate adjustments for stock splits, stock dividends, combinations or other recapitalizations and hereafter referred to as the "Original Series A Issue Price"), (ii) \$1.00 for each outstanding share of Series B Preferred Stock (subject to appropriate adjustments for stock splits, stock dividends, combinations or other recapitalizations and hereafter referred to as the "Original Series B Issue Price"), and (iii) \$1.00 for each outstanding share of Series C Preferred Stock (subject to appropriate adjustments or stock splits, stock dividends, combinations or other recapitalizations and hereafter referred to as the "Original Series C Issue Price"), and (iv) an amount equal to declared but unpaid dividends on such shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as applicable. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock, the Series B Preferred Stock, and Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock in proportion to the aggregate liquidation preferences of the respective series, and ratably among the holders of that series in proportion to the amount of such stock owned by each such holder.

(b) Upon the completion of the distribution required by subparagraph (a) of this Section 2, if assets remain in this corporation the holders of Common Stock shall be entitled to receive an amount equal to \$0.87 per share (subject to appropriate adjustments for stock splits, stock dividends, combinations or other recapitalizations). If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the corporation legally available for distribution (after giving effect to the distribution referred to in subsection 2(a) hereof) shall be distributed ratably among the holders of the Common Stock in proportion to the amount of such stock owned by each such holder.

(c) After the distributions described in subsections (a) and (b) above have been paid the remaining assets of the corporation available for distribution to shareholders shall be distributed among the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each (assuming conversion of all such Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock).

(d) A consolidation or merger of this corporation with or into any other corporation or corporations, or a sale, conveyance or disposition of all or substantially all of the assets of this corporation or the effectuation by the corporation of a transaction or series of related transactions in which more than 50% of the voting power of the corporation is disposed of (excluding the issuance of Series A Preferred Stock pursuant to the Series A Preferred Stock Purchase Agreement, the issuance of Series B Preferred Stock pursuant to the Series B Preferred Stock Purchase Agreement and the issuance of Series C Preferred Stock pursuant to a Series C Preferred Stock Purchase Agreement), shall be deemed to be a liquidation, dissolution or

winding up within the meaning of this Section 2; provided, however, that the acquisition of FormWare Corporation pursuant to that certain Agreement and Plan of Reorganization, dated July 24, 1998, among this corporation, Web Acquisition Corporation and FormWare Corporation, shall not be deemed to be a liquidation, dissolution or winding up within the meaning of this Section 2.

3. Redemption.

(a) On or at any time after January 1, 2000, upon the receipt by this corporation of the written request of the holders of a majority of the then outstanding Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock treated as a single class ("Redemption Request"), this corporation shall, to the extent it may lawfully do so, redeem (i) all of the shares of Series A Preferred Stock then outstanding by paying in cash therefor a sum per share equal to the Original Series A Issue Price plus an amount equal to declared but unpaid dividends on such share (such total amount is hereinafter referred to as the "Series A Redemption Price"); (ii) all of the shares of Series B Preferred Stock then outstanding by paying in cash therefor a sum per share equal to the Original Series B Issue Price plus an amount equal to declared but unpaid dividends on such share (such total amount is hereinafter referred to as the "Series B Redemption Price"); and (iii) all of the shares of Series C Preferred Stock then outstanding by paying in cash therefor a sum per share equal to the Original Series C Issue Price plus an amount equal to declared but unpaid dividends on such share (such total amount is hereinafter referred to as the "Series C Redemption Price"). Upon the receipt of a Redemption Request, this corporation shall either (A) redeem all of the shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock as applicable, within ninety (90) days of the corporation's receipt of such Redemption Request or (B) redeem all of the shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock as applicable, in three (3) equal semi-annual installments beginning on the anniversary of the Purchase Date (as defined in subsection 4(c)(i)(A) below) of the Series C Preferred Stock in the period immediately following the receipt of the Redemption Request.

(b) With respect to any redemption to be conducted in installments pursuant to subsection 3(a), the corporation shall effect such redemption pro rata according to the number of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock held by each holder.

(c) At least 20 but no more than 60 days prior to the date fixed for any redemption of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (the "Redemption Date"), written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock as applicable, to be redeemed, at the address last shown on the records of this corporation for such holder or given by the holder to this corporation for the purpose of notice or if no such address appears or is given at the place where the principal executive office of this corporation is located, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Series A Redemption Price, Series B Redemption Price or Series C Redemption Price as applicable, the place at which payment may

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be obtained and the date on which such holder's Conversion Rights (as hereinafter defined) as to such shares terminate and calling upon such holder to surrender to this corporation, in the manner and at the place designated, his certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in subsection 3(d) and except as prohibited by applicable California corporate law, on or after the Redemption Date, each holder of Preferred Stock to be redeemed shall surrender to this corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Series A Redemption Price, Series B Redemption Price or Series C Redemption Price as applicable, of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(d) From and after the Redemption Date, unless there shall have been a default in payment of the Series A Redemption Price, Series B Redemption Price or Series C Redemption Price as applicable, all rights of the holders of such shares as holders of Preferred Stock (except the right to receive the Series A Redemption Price, Series B Redemption Price or Series C Redemption Price as applicable, without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of this corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the corporation legally available for redemption of shares of Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock in proportion to the respective Series A Redemption Price, Series B Redemption Price and Series C Redemption Price and ratably among the holders of each series in proportion to the amount of such stock owned by each such holder. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the corporation are legally available for the redemption of shares of Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

4. Conversion. The holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert.

(i) Subject to subsection 4(c), each share of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share and prior to the close of business on any Redemption Date as may have been fixed in any Redemption Notice with respect to such share, at the office of this corporation or any transfer agent for the particular series of Preferred Stock, into such number of fully paid and nonassessable shares of Common

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holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering Series A Preferred Stock and/or Series B Preferred Stock and/or Series C Preferred Stock for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series A Preferred Stock and/or Series B Preferred Stock and/or Series C Preferred Stock shall not be deemed to have converted such Series A Preferred Stock and/or Series B Preferred Stock and/or Series C Preferred Stock until immediately prior to the closing of such sale of securities.

(c) Conversion Price Adjustments of Preferred Stock. The Conversion Price of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be subject to adjustment from time to time as follows:

(i) A. Upon each issuance by the corporation of any Additional Stock (as defined in subsection 4(c)(ii) below), after the date upon which any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock were first issued (the "Purchase Date" with respect to such series), without consideration or for a consideration per share less than the Conversion Price for the Series A Preferred Stock, the Conversion Price for the Series B Preferred Stock or the Conversion Price for the Series C Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock or the Series C Preferred Stock as the case may be, in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying the applicable Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including, without limitation, the number of shares of Common Stock issuable upon the conversion of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock) plus the number of shares of Common Stock which the aggregate consideration received by the corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including, without limitation, the number of shares of Common Stock issuable upon the conversion of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock) plus the number of shares of such Additional Stock.

B. No adjustment of the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to 3 years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of 3 years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (E)(3) and (E)(4), no adjustment of such Conversion Price pursuant to this subsection 4(c)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

C. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

D. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

E. In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 4(c)(i) and subsection 4(c)(ii):

1. The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(c)(i)(C) and (c)(i)(D)), if any, received by the corporation upon the issuance of such options or rights plus the exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

2. The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(c)(i)(C) and (c)(i)(D)).

3. In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, without limitation, a change resulting from the antidilution provisions thereof, the applicable Conversion Price of the Preferred Stock to the extent in any

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way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

4. Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the applicable Conversion Price of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, as applicable, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

5. The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4(c)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(c)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(c)(i)(E)) by this corporation after the applicable Purchase Date other than:

A. shares of Common Stock issued pursuant to a transaction described in subsection 4(c)(iii) hereof,

B. shares of Common Stock issued upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock,

C. shares of Common Stock issuable or issued to employees, consultants or directors of this corporation, or to vendors, suppliers, customers or other persons or organizations with which the corporation has a commercial relationship, at any time when the total number of shares of Common Stock so issuable or issued (and not repurchased at cost by the corporation in connection with the termination of employment or the commercial relationship) does not exceed 2,788,000 (subject to appropriate adjustments for stock splits, stock dividends, combinations or other recapitalizations) subsequent to the Purchase Date with respect to the Series A Preferred Stock,

D. shares of Common Stock issued or issuable (I) in a public offering before or in connection with which all outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock will be converted to Common Stock or (II) upon exercise of warrants or rights granted to underwriters in connection with such a public offering, or

E. shares of the corporation's Common Stock issued to holders of FormWare Corporation's common stock pursuant to that certain Agreement and Plan of Reorganization, dated July 24, 1998, among this corporation, Web Acquisition Corporation and FormWare Corporation (the "Merger Agreement), and any shares of the corporation's Common Stock issued to holders of options and warrants to purchase shares of FormWare's common stock assumed by the corporation pursuant to the Merger Agreement.

(iii) In the event the corporation should at any time or from time to time after the applicable Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the applicable Conversion Price of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock then in effect shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iv) If the number of shares of Common Stock outstanding at any time after the applicable Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the applicable Conversion Price for the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock then in effect shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(d) Other Distributions. In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, or assets (excluding cash dividends) or options or rights not referred to in subsection 4(c)(iii), then, in each such case for the purpose of this subsection 4(d), the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the corporation into which their shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the corporation entitled to receive such distribution.

(e) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4), provision shall be made so that the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock

shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock respectively, the number of shares of stock or other securities or property of the Company or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect for each series and the number of shares purchasable upon conversion of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(f) No Impairment. This corporation shall 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 this corporation, but shall at all times in good faith assist in the carrying out of all the provisions of this Section 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 Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock against impairment.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon conversion of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock pursuant to this Section 4, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the applicable Conversion Price at the time in effect, and (C) 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 a share of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock.

(h) Notices of Record Date. In the event of any taking by this 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) or 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, this corporation shall mail to each holder of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(i) Reservation of Stock Issuable Upon Conversion. This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C 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 Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, this corporation shall 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.

(j) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this corporation.

5. Voting Rights.

(a) General Voting Rights. The holder of each share of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock could then be converted (with any fractional share determined on an aggregate conversion basis being rounded to the nearest whole share), and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the By-laws of this corporation, and shall be entitled to vote, together as a single class with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except for the election of directors as provided in subsection 5(b) below.

(b) Election of Directors. Notwithstanding subsection 5(a) above, the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, voting together as a separate class on an as converted basis, shall be entitled to elect two (2)

directors of the corporation and the holders of Common Stock, voting as a separate class, shall be entitled to elect four (4) directors. At any meeting held for the purpose of electing or nominating directors, the presence in person or by proxy of the holders of a majority of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock then outstanding, treated together as a single class on an as converted basis, shall constitute a quorum of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock for the election or nomination of directors to be elected or nominated solely by the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the Common Stock then outstanding shall constitute a quorum of the Common Stock for the election of directors to be elected by the holders of Common Stock. A vacancy in any directorship elected by the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be filled only by vote of the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and a vacancy in any directorship elected by the holders of Common Stock voting together shall be filled only by the vote of the holders of Common Stock.

6. Protective Provisions. Subject to the rights of series of Preferred Stock which may from time to time come into existence, so long as shares of Series A Preferred Stock and/or Series B Preferred Stock and/or Series C Preferred Stock are outstanding, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, voting together as a single class on an as converted basis:

- (a) convey, or otherwise dispose of or encumber all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly owned subsidiary corporation) or effect any transaction or series of related transactions in which more than 50% of the voting power of the corporation is disposed of or effect any voluntary liquidation, dissolution or winding up of the corporation (any such event hereinafter referred to as a "Corporate Transaction"); or
- (b) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock; or
- (c) increase the authorized number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Preferred Stock or Common Stock; or
- (d) increase the number of directors to more than six (6); or
- (e) authorize, issue or sell any additional shares of Preferred Stock; or
- (f) create any new class or series of stock or any other securities convertible into equity securities of the corporation having a preference over, or being on a parity with, the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock with respect to voting, dividends or upon liquidation; or

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(g) enter into a transaction which will result in this corporation incurring indebtedness not in the ordinary course of business in excess of One Hundred Thousand Dollars (\$100,000); or

(h) enter into a transaction by which this corporation acquires all or substantially all of the assets or stock of an entity which transaction exceeds Five Hundred Thousand Dollars (\$500,000); or

(i) enter into any agreements to make loans or extend or guarantee credit in excess of Ten Thousand Dollars (\$10,000) with any employee, officer or director of this corporation or member of such employee's, officer's or director's immediate family; or

(j) adopt any material changes to the Web Systems, Inc. 1994 Stock Option/Stock Issuance Plan, as amended, or adopt any other employee incentive plan.

7. Status of Converted or Redeemed Stock. In the event any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be redeemed or converted pursuant to Section 3 or Section 4 hereof, the shares so converted or redeemed shall be cancelled and shall not be issuable by the corporation. The Articles of Incorporation of this corporation shall be appropriately amended to effect the corresponding reduction in the corporation's authorized capital stock.

8. Repurchase of Shares. In connection with repurchases by this Corporation of its Common Stock pursuant to its agreements with certain of the holders thereof, Sections 502 and 503 of the California General Corporation Law shall not apply in whole or in part with respect to such repurchases.

C. Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the corporation, the assets of the corporation shall be distributed as provided in Section 2 of Division (B) of this Article III.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any shareholders' meeting in accordance with the By-laws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law and subsection 5(b) of Division (B) of this Article III.

IN WITNESS WHEREOF, the undersigned have executed this certificate on Sept 21, 1998.

Randall Hawks, Jr.

Randall Hawks, Jr., President and Chief Executive Officer

Barry Brueseke

Barry Brueseke, Secretary

The undersigned certify under penalty of perjury that they have read the foregoing Amended and Restated Articles of Incorporation and know the contents thereof, and that the statements therein are true.

Executed at San Diego, California, on Sept 21, 1998.

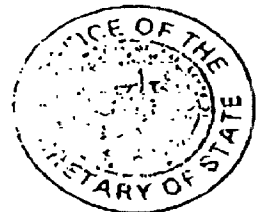
Randall Hawks, Jr.

Randall Hawks, Jr., President and Chief Executive Officer

Barry Brueseke

Barry Brueseke, Secretary

[SIGNATURE PAGE TO AMENDED AND RESTATED ARTICLES OF INCORPORATION]



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