

12-29-1999



101233632

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

12-15-99

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
Effective Date
Month Day Year
- Merger
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual General Partnership Limited Partnership

- Corporation Association

Other

- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 20 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK
REEL: 002004 FRAME: 0333

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark If additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text" value="75/380405"/>	<input type="text" value="75/431251"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75/816801"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75/451087"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties Enter the total number of properties involved. #

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

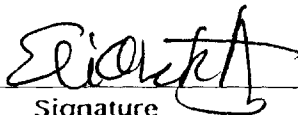
Authorization to charge additional fees: Yes No

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. Charges to deposit account are authorized, as indicated herein.

Eliane Setton, Esq.

Name of Person Signing



Signature

12/15/99

Date Signed

State of Delaware
Office of the Secretary of State PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "FULL CIRCLE SOFTWARE, INC.", CHANGING ITS NAME FROM "FULL CIRCLE SOFTWARE, INC." TO "NO WONDER, INC.", FILED IN THIS OFFICE ON THE TWENTIETH DAY OF OCTOBER, A.D. 1999, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.





Edward J. Freel, Secretary of State

2796791 8100

991444212

AUTHENTICATION: 0038620

DATE: 10-21-99

TRADEMARK

| REEL: 002004 FRAME: 0335

THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
FULL CIRCLE SOFTWARE, INC.

Pursuant to Sections 242 and 245
of the General Corporation Law of
the State of Delaware

Pursuant to Section 242 of the General Corporation Law of the State of Delaware, I, Anthony Lye, President of Full Circle Software, Inc. (hereinafter called the "Corporation"), organized and existing under the General Corporation Law of the State of Delaware (originally incorporated under the name of Full Circle Software Ltd. pursuant to a Certificate of Incorporation filed with the Delaware Secretary of State on October 7, 1997), in accordance with the provisions of Section 103 thereof, DO HEREBY CERTIFY:

That (a) the Board of Directors on October 18, 1999 duly adopted a resolution pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware proposing that this Third Restated Certificate of Incorporation (the "Restated Certificate") be approved and declaring the adoption of such Restated Certificate to be advisable; and (b) the stockholders of the Corporation duly approved this Restated Certificate by written consent in accordance with Sections 228 and 242 of the General Corporation Law of the State of Delaware, and written notice of such consent has been given to all stockholders who have not consented in writing to the Restated Certificate. The resolution setting forth the Third Restated Certificate of Incorporation is as follows:

RESOLVED: That the Certificate of Incorporation of the Corporation, which was originally filed with the Secretary of the State of the State of Delaware on October 7, 1997, amended and restated a first time on November 12, 1997, and amended a restated a second time on September 3, 1998 be and hereby is amended and restated in its entirety so that the same shall read as follows:

FIRST: The name of the Corporation is:

No Wonder, Inc.

SECOND: The address of its registered office in the State of Delaware is 15 East North Street in the City of Dover, County of Kent. The name of its registered agent at such address is Incorporating Services, Ltd.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which Corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 35,000,000 shares of Common Stock, \$0.001 par value per share ("Common Stock") and (ii) 14,200,000 shares of Preferred Stock, \$0.01 par value per share ("Preferred Stock"). The shares of Preferred Stock authorized by this Certificate of Incorporation may be issued from time to time in one or more series. The first series of Preferred Stock shall be comprised of 2,900,000 shares designated as Series A Preferred Stock ("Series A Preferred"). The second series of Preferred Stock shall be comprised of 7,200,000 shares designated as Series B Preferred Stock ("Series B Preferred"). The third series of Preferred Stock shall be comprised of 4,100,000 shares designated as Series C Preferred Stock ("Series C Preferred"). The term "Preferred Stock," when used below without designation as to series refers collectively to the Series A Preferred, Series B Preferred and Series C Preferred.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof of the Preferred Stock of the Corporation.

1. Dividends.

(a) Dividend Rights. The holders of outstanding Preferred Stock shall be entitled to receive, out of any funds legally available therefor, distributions, payable in preference and priority to any distribution on Common Stock at the rate of \$0.063 per share of Series A Preferred, \$0.14 per share of Series B Preferred, and \$0.187 per share of Series C Preferred (as adjusted for stock splits, stock dividends, recapitalizations and the like), per annum, when and if declared by the Board of Directors. Each share of Preferred Stock shall rank on a parity with every other share of Preferred Stock, irrespective of series, with regard to distributions at the respective rates fixed for such series, and no distributions shall be declared or paid or set apart for payment on the shares of any series of Preferred Stock unless at the same time a distribution shall be declared or paid or set apart for payment, as the case may be, on the shares of Preferred Stock of each other series then outstanding. All such distributions shall be declared pro rata according to the respective distribution rates of each series. The right to distributions on the Preferred Stock shall not be cumulative, and no right shall accrue to holders of the Preferred Stock by reason of the fact that distributions on such shares are not declared or paid in any prior year nor shall any undeclared or unpaid dividend bear or accrue interest. After distributions shall have been paid to or declared and set apart upon the Series A Preferred, Series B Preferred, and Series C Preferred at the rates provided in this Section 1(a), for any one fiscal year of the Corporation, if the Board of Directors elects to declare additional distributions out of any assets legally available therefor, such additional distributions shall be declared on all shares of Preferred Stock and Common Stock, with the amount of such additional distribution for each share of Preferred Stock equal to the amount of such distribution for one share of Common Stock multiplied by the number of shares of Common Stock into which such share of Preferred Stock is convertible as of the record date fixed for declaration of such additional distribution.

(b) Consent to Repurchases. Each holder of shares of Preferred Stock shall be deemed to have consented to any repurchases by the Corporation of shares of Common Stock issued to or held by employees, directors or consultants pursuant to agreements providing for such repurchase and to any purchase or redemption of shares of Common Stock permitted under or approved in accordance with Section 9 below, and none of the foregoing shall be deemed to be distributions on the Common Stock.

2. Preference on Liquidation.

(a) Amount, Priority, Etc.

(i) the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of the Series A Preferred, Series B Preferred and Series C Preferred then outstanding shall be entitled to be paid, out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any payment shall be made in respect of the Corporation's Common Stock, an amount equal to \$0.786 per share of Series A Preferred, \$1.75 per share of Series B Preferred and \$2.34 per share of Series C Preferred, plus all declared but unpaid dividends thereon to the date fixed for distribution (as adjusted for stock splits, stock dividends, recapitalizations and the like). Each share of Preferred Stock shall rank on a parity with every other share of Preferred Stock, irrespective of series, with regard to the respective preferential amounts fixed for such series payable upon any distribution of assets by way of liquidation, dissolution or winding up of the Corporation, and no such amounts shall be paid or set apart for payment on the shares of any series of Preferred Stock unless at the same time amounts in like proportion to the respective preferential amounts are paid or set apart for payment on the shares of Preferred Stock of each other series then outstanding. If, upon liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of the Preferred Stock the full amounts to which they shall be entitled under this section, the entire assets of the Corporation available for distribution shall be distributed to the holders of the Series A Preferred, Series B Preferred and Series C Preferred ratably according to the respective amounts which would be payable in respect of the shares of Series A Preferred, Series B Preferred and Series C Preferred held by them upon such distribution if all amounts payable under this Section 2(a)(i) on or with respect to said shares were paid in full.

(ii) After the payment or the setting apart for payment to the holders of the Series A Preferred, Series B Preferred and Series C Preferred of the preferential amounts so payable to them pursuant to Section 2(a)(i), the remaining assets and funds of the Corporation available for distribution to stockholders shall be distributed among the holders of the Series A Preferred, Series B Preferred and Common Stock, pro rata on the basis of the number of shares of Common Stock outstanding and issuable upon conversion of the Preferred Stock, until \$0.875 per share is distributed under this Section 2(a)(ii) (that is, until cumulative distributions per share to the Series B Preferred under Sections 2(a)(i) and 2(a)(ii) equal one and one-half times the preference of the Series B Preferred provided under Section 2(a)(i)).

(iii) After the payment or the setting apart for payment to the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Common Stock of the amounts so payable to them pursuant to Sections 2(a)(i) and 2(a)(ii), the remaining assets and funds of the Corporation available for distribution to stockholders shall be distributed among the holders of the Series A Preferred and Common Stock, pro rata on the basis of the number of shares of Common Stock outstanding and issuable upon conversion of the Series A Preferred, until \$0.697 per share is distributed under this Section 2(a)(iii) (that is, until cumulative distributions per share to the Series A Preferred under Sections 2(a)(i), 2(a)(ii) and 2(a)(iii) equals three times the preference of the Series A Preferred provided under Section 2(a)(i)).

(iv) After the payment or the setting apart for payment to the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Common Stock of the amounts so payable to them pursuant to Sections 2(a)(i), 2(a)(ii) and 2(a)(iii), the remaining assets and funds of the Corporation available for distribution to stockholders shall be distributed exclusively to the holders of outstanding shares of Common Stock pro rata on the basis of the number of shares of Common Stock then outstanding, until \$0.768 per share of Common Stock is distributed under this Section 2(a)(iv) (that is, until cumulative distributions per share to the Common Stock under Sections 2(a)(ii), 2(a)(iii) and 2(a)(iv) equals the amount then distributed per share to holders of Series C Preferred).

(v) After the payment or the setting apart for payment to the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Common Stock of the amounts so payable to them pursuant to Sections 2(a)(i), 2(a)(ii), 2(a)(iii) and 2(a)(iv), the remaining assets and funds of the Corporation available for distribution to stockholders shall be distributed among the holders of the Series C Preferred and Common Stock, pro rata on the basis of the number of shares of Common Stock outstanding and issuable upon conversion of the Series C Preferred, until \$0.018 per share is distributed under this Section 2(a)(v) (that is, until cumulative distributions per share to the Series C Preferred and Common Stock under Sections 2(a)(i), 2(a)(ii), 2(a)(iii), 2(a)(iv) and 2(a)(v) equals the amount then distributed per share to holders of Series A Preferred).

(vi) After the payment or the setting apart for payment to the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Common Stock of the amounts so payable to them pursuant to Sections 2(a)(i), 2(a)(ii), 2(a)(iii), 2(a)(iv) and 2(a)(v), the remaining assets and funds of the Corporation available for distribution to stockholders shall be distributed among the holders of the Series A Preferred, Series C Preferred and the Common Stock, pro rata on the basis of the number of shares of Common Stock outstanding and issuable upon conversion of the Series A Preferred and Series C Preferred, until \$0.267 per share is distributed under this Section 2(a)(vi) (that is, until cumulative distributions per share to the Series A Preferred, Series C Preferred and Common Stock under Sections 2(a)(i), 2(a)(ii), 2(a)(iii), 2(a)(iv), 2(a)(v) and 2(a)(vi) equals the amount then distributed per share to holders of Series B Preferred).

(vii) After the payment or the setting apart for payment to the holders of the Preferred Stock and the Common Stock of the amounts so payable to them pursuant to

Sections 2(a)(i), 2(a)(ii), 2(a)(iii), 2(a)(iv), 2(a)(v) and 2(a)(vi), all remaining assets and funds of the Corporation available for distribution to Stockholders shall be distributed among the holders of Series A Preferred, Series B Preferred, Series C Preferred and Common Stock pro rata on the basis of the number of shares of Common Stock outstanding and issuable upon conversion of the Preferred Stock.

(b) Merger or Reorganization. The merger, consolidation or reorganization of the Corporation into or with another Corporation through one or a series of related transactions, in which the stockholders of the Corporation shall own less than 50% of the voting securities of the surviving Corporation or the sale, transfer or lease (but not including a transfer by pledge or mortgage to a bona fide lender) of all or substantially all of the assets of the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation as those terms are used in this Section 2.

(c) Notice. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the Corporation shall, within ten (10) days after the date the Board of Directors approves such action, or twenty (20) days prior to any stockholders' meeting called to approve such action, or twenty (20) days after the commencement of any involuntary proceeding, whichever is earlier, give each holder of shares of Preferred Stock written notice of the proposed action. Such written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of shares of Series A Preferred, Series B Preferred and Series C Preferred upon consummation of the proposed action, and the date of delivery thereof. If any material change in the facts set forth in the written notice shall occur, the Corporation shall promptly give written notice of such material change to each holder of shares of Preferred Stock.

(d) Consummation of Liquidation. The Corporation shall not consummate any voluntary or involuntary liquidation, dissolution or winding up of the Corporation before the expiration of thirty (30) days after the mailing of the initial written notice or ten (10) days after the mailing of any subsequent written notice, whichever is later; provided that any such 30-day or 10-day period may be shortened upon the written consent of the holders of sixty-seven percent (67%) or more of the outstanding shares of Preferred Stock.

3. Voting. Except as otherwise required by law or as set forth herein, the shares of Preferred Stock shall be voted equally with the shares of the Corporation's Common Stock as one class at any annual or special meeting of stockholders of the Corporation, or may act by written consent in the same manner as the Corporation's Common Stock, upon the following basis: each holder of shares of Preferred Stock shall be entitled to such number of votes for the Preferred Stock held by the holder on the record date fixed for such meeting, or on the effective date of such written consent, as shall be equal to the whole number of shares of the Corporation's Common Stock into which all of his or her shares of Preferred Stock are convertible immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

4. Board Size: Election of Directors. With respect to the election of the Corporation's board of directors, so long as 1,000,000 shares of Preferred Stock are outstanding, the number of directors constituting the full board of directors of the Corporation shall be not fewer than five (5) and not more than seven (7), with the exact number within that range to be set from time to time by resolution of the board of directors of the Corporation. The minimum and maximum numbers for such range may be changed only by the written consent or affirmative vote of the stockholders, given in writing or by vote at a meeting, including the approval required under Section 9 below. From and after such time as there shall no longer be 1,000,000 or more shares of Preferred Stock issued and outstanding, the number of directors constituting the full board of directors shall be fixed and determined by the majority vote of the board of directors of the Corporation. So long as at least 1,000,000 shares of Preferred Stock are outstanding, at each meeting or pursuant to each consent of the Corporation's stockholders for the election or removal of directors, two (2) members of the board of directors shall be elected by (and are subject to removal only with the approval of) the holders of the Preferred Stock, voting as a separate class, two (2) directors shall be elected by (and are subject to removal only with the approval of) the holders of Common Stock voting as a separate class, and the remaining directors shall be elected by (and are subject to removal only with the approval of) the holders of the outstanding shares of Preferred Stock and Common Stock voting together as a single class, and any vacancy caused by the resignation, death or removal of any such director or directors shall be filled only upon the vote or consent of the class or classes who had elected such former director. The number of votes to which each share of Preferred Stock is entitled shall be as set forth in Section 3 above. From and after such time as there shall no longer be 1,000,000 or more shares of Preferred Stock issued and outstanding, all members of the board of directors shall be elected by the outstanding shares of Preferred Stock and Common Stock voting together as a single class.

5. Election by Ballot. The election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

6. Conversion Rights.

(a) Optional and Automatic Conversion. Each share of Preferred Stock shall be convertible at the option of the holder thereof at any time into fully paid and nonassessable shares of Common Stock of the Corporation. Each and every share of Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock of the Corporation (i) upon approval by vote or written consent of the holders of at least sixty-seven percent (67%) or more of the total number of shares of Preferred Stock outstanding, or (ii) immediately upon the closing of the sale of the Corporation's Common Stock, in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act") at a public offering price of at least \$8.00 per share (as adjusted for any combination, stock splits and the like) with aggregate proceeds to the Corporation and/or any selling stockholders of at least \$10,000,000.

(b) Conversion Price. The number of shares of Common Stock into which each share of the Series A Preferred may be converted shall be determined by dividing \$0.786 by the Series A Conversion Price (determined as hereinafter provided) in effect at the time of the

conversion. The number of shares of Common Stock into which each share of the Series B Preferred may be converted shall be determined by dividing \$1.75 by the Series B Conversion Price (determined as hereinafter provided) in effect at the time of the conversion. The number of shares of Common Stock into which each share of Series C Preferred may be converted shall be determined by dividing \$2.34 by the Series C Conversion Price (determined as hereinafter provided) in effect at the time of conversion. The initial Series A Conversion Price shall be \$0.786, the initial Series B Conversion Price shall be \$1.75 and the initial Series C Conversion Price shall be \$2.34 (so that each share of Series A Preferred, each share of Series B Preferred and each share of Series C Preferred will initially be convertible into one (1) share of Common Stock), subject to adjustment as provided in Section 7 hereof. The terms "Conversion Price" and "Conversion Prices" when used below without designation as to series refers collectively to the Series A Conversion Price, Series B Conversion Price and Series C Conversion Price, or whichever of them is relevant.

(c) Procedure for Conversion. The holder of any shares of Preferred Stock may exercise the conversion rights as to such shares or any part thereof by delivering to the Corporation during regular business hours, at the Corporation's principal office or at the office of any transfer agent of the Corporation for such Preferred Stock, or at such other place as may be designated by the Corporation, the certificate or certificates for the shares to be converted, duly endorsed for transfer to the Corporation (if required by it), accompanied by written notice stating that the holder elects to convert such shares. Conversion shall be deemed to have been effected on the date when such delivery is made, or the conditions for automatic conversion set forth in subsection 6(a) above have been satisfied and such date is referred to herein as the "Conversion Date." As promptly as practicable thereafter the Corporation shall issue and deliver to or upon the written order of such holder, at such office or other place designated by the Corporation, a certificate or certificates for the number of full shares of Common Stock to which such holder is entitled and a check for cash with respect to any fractional interest in a share of Common Stock as provided in subsection 6(d) below. The holder shall be deemed to have become a stockholder of record on the applicable Conversion Date unless the transfer books of the Corporation are closed on that date, in which event the holder shall be deemed to have become a stockholder of record on the next succeeding date on which the transfer books are open, but the Conversion Price shall be that in effect on the Conversion Date. Upon conversion of only a portion of the number of shares of Preferred Stock represented by a certificate surrendered for conversion, the Corporation shall issue and deliver to or upon the written order of the holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Preferred Stock representing the unconverted portion of the certificate so surrendered.

(d) No Fractional Shares. No fractional shares of Common Stock or scrip shall be issued upon conversion of shares of Preferred Stock. If more than one share of Preferred Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Preferred Stock so surrendered. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any shares of Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest equal to

the fair market value of such fractional interest as determined by the Corporation's Board of Directors.

(e) Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Preferred Stock pursuant hereto. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Corporation the amount of any such tax, or has established, to the satisfaction of the Corporation, that such tax has been paid.

(f) Common Stock Reserve. The Corporation shall at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of the Preferred Stock, the full number of shares of Common Stock issuable upon the conversion of all Preferred Stock from time to time outstanding. The Corporation shall from time to time (subject to obtaining necessary director and stockholder action), in accordance with the laws of the State of Delaware, increase the authorized amount of its Common Stock if at any time the authorized number of shares of its Common Stock remaining unissued shall not be sufficient to permit the conversion of all of the shares of Preferred Stock at the time outstanding.

(g) Registration of Common Stock Issued Upon Conversion. If any shares of Common Stock to be reserved for the purpose of conversion of shares of Preferred Stock require registration or listing with, or approval of, any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise, before such shares may be validly issued or delivered upon conversion, the Corporation will in good faith and as expeditiously as possible endeavor to secure such registration, listing or approval, as the case may be.

(h) Status of Common Stock Issued Upon Conversion. All shares of Common Stock which may be issued upon conversion of the shares of Preferred Stock will upon issuance by the Corporation be validly issued, fully paid and non-assessable and free from all taxes, liens and charges with respect to the issuance thereof.

(i) Status of Converted Stock. All certificates of Preferred Stock surrendered for conversion shall be appropriately canceled on the books of the Corporation, and the shares so converted shall be restored to the status of authorized but unissued Preferred Stock of the Corporation, undesignated as to series.

(j) Notice of Certain Events. In case:

(i) the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend, or any other distribution, payable otherwise than in cash; or

(ii) the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to subscribe for or purchase any shares of stock of any class or to receive any other rights; or

(iii) of any capital reorganization of the Corporation, reclassification of the capital stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock), consolidation or merger of the Corporation with or into another Corporation or conveyance of all or substantially all of the assets of the Corporation to another Corporation; then, and in any such case, the Corporation shall cause to be mailed by first class mail to the transfer agent for the Preferred Stock, and to the holders of record of the outstanding Preferred Stock, at least ten (10) days prior to the date hereinafter specified, a notice stating the date on which (x) a record is to be taken for the purpose of such dividend, distribution or rights, or (y) such reclassification, reorganization, consolidation, merger or conveyance is to take place and the date, if any is to be fixed, as of which holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, reorganization, consolidation, merger or conveyance.

(k) No Dilution or Impairment. Without the consent of the holders of then outstanding Preferred Stock as required under Section 9, the Corporation shall not amend its Amended and Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, or dissolution, or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in carrying out all such actions as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against impairment.

7. Adjustment of Conversion Price. The respective Conversion Prices of the Series A Preferred, Series B Preferred and Series C Preferred from time to time in effect shall be subject to adjustment from time to time as follows:

(a) Stock Dividends, Stock Splits, Etc. In case the Corporation shall at any time subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, the respective Conversion Prices in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, the respective Conversion Prices in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of with such subdivision, dividend or combination, as the case may be.

(b) Reorganization, Etc. In case of any capital reorganization or any reclassification of the capital stock of the Corporation or in case of the consolidation or merger of the Corporation with or into another Corporation or the conveyance of all or substantially all of the assets of the Corporation to another Corporation (but not including any merger, consolidation, reorganization or conveyance of assets deemed to be a liquidation, dissolution, or winding up of the Corporation pursuant to Section 2(b) above), each share of Series A Preferred,

each share of Series B Preferred and each share of Series C Preferred, as the case may be, 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 Series A Preferred, such Series B Preferred or such Series C Preferred would have been entitled upon such reorganization, reclassification, consolidation, merger or conveyance; and, in any such case, appropriate adjustment (as determined by the Board of Directors) 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 Series A Preferred, Series B Preferred and Series C Preferred, to the end that the provisions set forth herein (including provisions with respect to changes in and other adjustments of the respective Conversion Prices) shall thereafter be applicable, as nearly as reasonably may be, in relation to any share of stock or other property thereafter deliverable upon the conversion of the Series A Preferred, Series B Preferred and Series C Preferred.

(c) Certain Dilutive Issuances. If the Corporation issues Equity Securities (as defined below) at a consideration per share (the "New Issuance Price") less than the Series C Conversion Price, as in effect immediately prior to the time of such issue or sale of Equity Securities, then the Series C Conversion Price shall be reduced to a price (calculated to the nearest hundredth of a cent) determined by multiplying such Series C Conversion Price by the fraction:

(i) the numerator of which is equal to the sum of (x) the number of shares of Common Stock outstanding immediately prior to such issue or sale of Equity Securities, (y) the number of shares of Common Stock issuable upon full conversion, exercise or exchange of any obligations or any securities of the Corporation outstanding immediately prior to such issue or sale of Equity Securities, and (z) the number of shares of Common Stock that an amount equal to the aggregate "consideration actually received" by the Corporation upon such issue or sale of Equity Securities would purchase at the Series C Conversion Price, and

(ii) the denominator of which is equal to the sum of the number of shares of Common Stock outstanding immediately after such issue or sale of Equity Securities and the number of shares of Common Stock issuable upon full conversion, exercise or exchange of any obligations or any securities of the Corporation outstanding immediately after such issue or sale of Equity Securities.

(d) For purposes of this Section 7(c), the following provisions shall be applicable:

(i) The term "Equity Securities" as used in this Section 7(c) shall mean any shares of Common Stock, or any obligation, or share of stock or other security of the Corporation convertible into or exercisable or exchangeable for Common Stock, except for shares of Common Stock or options to purchase Common Stock issued or granted to officers, directors, employees or consultants of the Corporation pursuant to any option or stock plan or agreement approved by the Corporation's Board of Directors (B) capital stock issued pursuant to a merger, acquisition or purchase of all or substantially all of the assets of another Corporation or

other entity approved by the Corporation's Board of Directors, (C) any capital stock issued in connection with equipment leases or commercial loans approved by the Corporation's Board of Directors, (D) capital stock issued pursuant to subsections 7(a) or 7(b) above, and (E) Common Stock issued upon conversion of Preferred Stock.

(ii) In the case of an issue or sale for cash of Equity Securities, the "consideration actually received" by the Corporation therefor shall be deemed to be the amount of cash received, before deducting therefrom any commissions or expenses paid by the Corporation.

(iii) In case of the issuance (otherwise than upon conversion or exchange of obligations or shares of the Corporation) of Equity Securities for a consideration other than cash or a consideration partly other than cash, the amount of the "consideration actually received" by the Corporation other than cash for such shares shall be deemed to be the value of such consideration as determined in good faith by the Corporation's Board of Directors.

(iv) In case of the issuance by the Corporation in any manner of any rights to subscribe for or to purchase shares of Common Stock, or any options for the purchase of shares of Common Stock or stock convertible into Common Stock, all shares of Common Stock or stock convertible into Common Stock to which the holders of such rights or options shall be entitled to subscribe for or purchase pursuant to such rights or options shall be deemed "outstanding" as of the date of the issuance or granting of such rights or the granting of such options, as the case may be, and the minimum aggregate consideration named in such rights or options for the acquisition of the shares of Common Stock or stock convertible into Common Stock covered thereby, plus the consideration, if any, received by the Corporation for such rights or options, shall be deemed to be the "consideration actually received" by the Corporation (as of the date of the issuance or granting of such rights or the granting of such options, as the case may be) for the issuance of such shares.

(v) In case of the issuance or issuances by the Corporation in any manner of any obligations or of any shares of stock of the Corporation that shall be convertible into or exchangeable for Common Stock, all shares of Common Stock issuable upon the conversion or exchange of such obligations or shares shall be deemed issued as of the date such obligations or shares are issued, and the amount of the "consideration actually received" by the Corporation for such additional shares of Common Stock shall be deemed to be the total of (x) the amount of consideration received by the Corporation upon the issuance of such obligations or convertible shares, plus (y) the minimum aggregate consideration, if any, other than such obligations or convertible shares, receivable by the Corporation upon such conversion or exchange, except in adjustment of dividends.

(vi) The amount of the "consideration actually received" by the Corporation upon the issuance of any rights or options referred to in subsection (iv) above or upon the issuance of any obligations or shares which are convertible or exchangeable as described in subsection (v) above, and the amount of the consideration, if any, other than such obligations or shares so convertible or exchangeable, receivable by the Corporation upon the

exercise, conversion or exchange thereof shall be determined in the same manner provided in subsections (ii) and (iii) above with respect to the consideration received by the Corporation in case of the issuance of additional shares of Common Stock. On the expiration of any rights or options referred to in subsection (iv), or the termination of any right of conversion or exchange referred to in subsection (v), or any change in the number of shares of Common Stock deliverable upon exercise of such options or rights or upon conversion of or exchange of such convertible or exchangeable securities, to the extent the Series C Conversion Price then in effect was previously adjusted based on the issuance of such rights, options, shares or obligations, it shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustments made upon the issuance of such option, right or convertible or exchangeable securities been made upon the basis of the delivery of only the number of shares of Common Stock actually delivered or deliverable upon the exercise of such rights or options or upon the conversion or exchange of such securities.

(vii) 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 options or rights not referred to in this Section 7(c), then, in each such case, the holders of the Preferred Stock shall be entitled to the distributions provided for in Section 1 above regarding dividends, and no adjustment to the Series C Conversion Price provided for in this Section 7 shall be applicable.

(e) Certificate of Adjustment. Upon the occurrence of each adjustment or readjustment of the Conversion Prices pursuant to this Section 7, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock affected thereby a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (1) such adjustment or readjustment, (2) the Conversion Prices at the time in effect, and (3) 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 his or her shares.

8. Redemption.

(a) At any time after November 15, 2002, and upon the written request of sixty-seven percent (67%) of the Preferred Stock, the Corporation may redeem all, but not less than all, of the outstanding Preferred Stock held by each holder in equal quarterly installments over a period of two years from the first Redemption Date (as defined below) by paying therefor an amount per share of Series A Preferred equal to \$0.786, an amount per share of Series B Preferred equal to \$1.75 and an amount per share of Series C Preferred equal to \$2.34 (subject in each case to adjustment for stock splits, recapitalization and the like) plus any dividends declared but unpaid, with respect to all such shares to the Redemption Date. The total amount to be paid for each share of Series A Preferred, for each share of Series B Preferred and for each share of Series C Preferred is hereinafter referred to as the respective "Redemption Price." The number of shares of each respective series of Preferred Stock that the Company shall be required to

redem on any one Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of such series of Preferred Stock outstanding immediately prior to the Redemption Date by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies).

(b) Mechanics of Redemption.

(i) At least 30, but no more than 60, days prior to the date fixed for any redemption of Preferred Stock (each a "Redemption Date"), written notice shall be mailed first class, postage prepaid, to each holder of record of Preferred Stock (at the close of business on the business day next preceding the day on which notice is given) at the address shown on the records of the Corporation for such holder or given by the holder to the Corporation for the purpose of notice or if no such address appears or is given at the place where the principal executive office of the Corporation is located, notifying such holder of the redemption from such holder, the Redemption Date, the applicable Redemption Price, and the place at which payment may be obtained, and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). On or after the Redemption Date, each holder of Preferred Stock to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the requisite Redemption Price 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 canceled.

(ii) On or prior to each Redemption Date, the Corporation shall deposit the aggregate Redemption Price of all shares to be redeemed on such Redemption Date with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Redemption Date, the Redemption Price of the shares of Series A Preferred, Series B Preferred and Series C Preferred to their respective holders upon the surrender of their share certificates.

(iii) From and after each respective Redemption Date, unless there shall have been a default in payment of the Redemption Price with respect to the shares then to be redeemed, all rights of the holders of such shares as holders of Preferred Stock (except the right to receive the applicable Redemption Price 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 are insufficient to redeem the total number of shares of Preferred Stock to be redeemed on any such date, those funds which are legally available will be used to redeem the maximum possible number of shares, determined pro rata among the holders of such Preferred Stock shares to be redeemed in proportion to the number of Preferred Stock shares held 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 the Redemption Date but which it has not redeemed.

(iv) Should the holders of Preferred Stock elect to redeem the shares held by such holders as set forth in this Section 8, the Corporation must notify in writing the holders of all other shares of Preferred Stock who have not themselves elected to redeem their stock of the intention of any such holders of Preferred Stock to redeem their shares.

9. Protective Provisions. So long as at least 1,000,000 shares of Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of sixty-seven percent (67%) or more of the then outstanding shares of Preferred Stock:

(a) Amend, alter or repeal any provision of, or add any provision to, the Corporation's Certificate of Incorporation or Bylaws (including filing a Certificate of Designation), if such action would materially or adversely affect the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Preferred Stock;

(b) Authorize, designate or issue, whether by reclassification or otherwise, any new or existing class or classes or series of capital stock having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of the Preferred Stock, or having voting rights superior to the voting rights of the Preferred Stock, or authorize or issue shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having rights to purchase, any shares of stock of the Corporation having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of the Preferred Stock, or having voting rights superior to the voting rights of the Preferred Stock;

(c) Reclassify any Common Stock into shares having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of the Preferred Stock, or having voting rights superior to the voting rights of the Preferred Stock;

(d) Increase or decrease the authorized number of shares of Preferred Stock or the authorized number of shares of Common Stock;

(e) Pay or declare any dividend or distribution on any shares of its capital stock, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of its capital stock, except as otherwise permitted under this Section 9;

(f) Merge or consolidate into or with any other Corporation or other entity, sell all or substantially all of the Corporation's assets or otherwise transfer control of the Corporation;

(g) Purchase or redeem any shares of the Preferred Stock except in accordance with Section 8;

(h) Repurchase any shares of Common Stock for amounts exceeding \$25,000 in any twelve-month period, except for repurchases from individual members of its Board of Directors, employees and/or independent consultants pursuant to agreements providing for such repurchase;

(i) Permit a subsidiary to issue stock to third parties;

(j) dissolve, liquidate or wind up; or

(k) Increase the maximum or decrease the minimum authorized number of members of the Corporation's Board of Directors from the numbers provided in Section 4.

FIFTH: The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the power and authority expressly conferred upon them by statute or by this Third Restated Certificate of Incorporation or the Bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such sets and things as may be exercised or done by the Corporation. Election of directors need not be by written ballot, unless the Bylaws so provide.

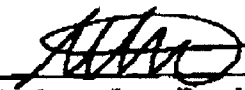
SIXTH: The Board of Directors is authorized to make, adopt, amend, alter or repeal the Bylaws of the Corporation. The Stockholders shall also have power to make, adopt, amend, alter or repeal the Bylaws of the Corporation.

SEVENTH: To the fullest extent permitted by the Delaware General Corporation Law, a director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any repeal or modification of the foregoing provisions of this Article SEVENTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the Corporation has caused its corporate seal to be affixed hereto and this Third Restated Certificate of Incorporation to be signed by its President this 9th day of October, 1999.

FULL CIRCLE SOFTWARE, INC.

By: 
Anthony Lye, President

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