

p 970000 37849



ACCOUNT NO. : 072100000032

REFERENCE : 341633 8739A

AUTHORIZATION :

Patricia Project

COST LIMIT : \$ 78.25

ORDER DATE : April 23, 1997

ORDER TIME : 3:38 PM

ORDER NO. : 341633-015

CUSTOMER NO: 8739A

CUSTOMER: Jonathan Shepard, Esq
SIEGEL LIPMAN DUNAY & SHEPARD,
LLP
Suite 801
5355 Town Center Road
Boca Raton, FL 33486

100002153191--7

DOMESTIC FILING

NAME: KW POMPAÑO, INC.

EFFECTIVE DATE:

XX ARTICLES OF INCORPORATION
 CERTIFICATE OF LIMITED PARTNERSHIP

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

 CERTIFIED COPY
XX PLAIN STAMPED COPY
XX CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Paula K. Kendrick

EXAMINER'S INITIALS:

TALLAHASSEE, FLORIDA

APR 24 PM 1:04

W97-9482

00634

SN APR 24 1997.

9



FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State

April 24, 1997

CSC NETWORKS
1201 HAYS ST.
TALLAHASSEE, FL 32301-2607

SUBJECT: KW POMPANO, INC.
Ref. Number: W97000009480

RESUBMIT

Please give original
submission date as file date

We have received your document for KW POMPANO, INC. and the authorization to debit your account in the amount of \$78.25. However, the document has not been filed and is being returned for the following:

According to section 607.0202(1)(b) or 617.0202(1)(b), Florida Statutes, you must list the corporation's principal office, and if different, a mailing address in the document. If the principal address and the registered office address are the same, please indicate so in your document.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (904) 487-6052.

Sandy Ng
Document Specialist

Letter Number: 697A00021092

697A00021092
APR 24 1997
TALLAHASSEE, FL
DIVISION OF CORPORATIONS

**ARTICLES OF INCORPORATION
OF
KW POMPANO, INC.**

FILED
97 MAR 24 PM 4:04
TALLAHASSEE, FLORIDA

The undersigned natural person of the age of eighteen years or more, acting as the sole incorporator of a corporation under the Florida Business Corporation Act, does hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE I.

The name of the corporation is KW Pompano, Inc.

ARTICLE II.

The period of its duration is perpetual.

ARTICLE III.

The purpose for which the corporation is organized, subject to the provisions of Section 607.0202 of the Florida Business Corporation Act and Article X hereof, is to acquire, manage, own and hold the General Partner interest in KW Pompano Square LP (the "Partnership"), a limited partnership, and to act as the General Partner in such Partnership with all of the rights, powers, obligations and liabilities of General Partner under the Limited Partnership Agreement of such Partnership and to take any and all actions and do any and all things necessary or appropriate to the accomplishment of same.

ARTICLE IV.

The aggregate number of shares that the corporation shall have the authority to issue is 1,000,000 shares of common stock with the par value of \$.01 each.

No shareholder of the corporation shall have the right of cumulative voting at any election of directors or upon any other matter.

No holder of securities of the corporation shall be entitled as a matter of right, preemptive or otherwise, to subscribe for or purchase any securities of the corporation now or hereafter authorized to issue, or securities held in the treasury of the corporation, whether issued or sold for cash or other consideration or as a dividend or otherwise. Any such securities may be issued or disposed of by the Board of Directors to such persons and on such terms as in its discretion it shall deem advisable.

ARTICLE V.

The corporation will not commence business until it has received for the issuance of its shares consideration of the value of not less than One Thousand Dollars (\$1,000.00), consisting of money, labor done or property actually received.

ARTICLE VI.

The street address of the corporation's initial registered office is Suite 801, 5355 Town Center Road, Boca Raton, Florida 33486, and the name of its initial registered agent at such address is Jonathan L. Shepard. The principal address of the corporation shall be the same.

ARTICLE VII.

The number of directors constituting the initial Board of Directors is two (2), and the name and address of the persons who are to serve as directors until the first annual meeting of the shareholders or until their successors are elected and qualified are:

<u>Name</u>	<u>Address</u>
Lawrence A. Krause	500 Washington Street, Suite 750 San Francisco, CA 94111-2975
Dr. Charles M. Spitz	555 Laurel Avenue #401 San Mateo, CA 94401

There shall at all times be an "Independent Director" as set forth in Article X, below.

ARTICLE VIII.

No director shall be liable to the corporation or its shareholders for monetary damages for an act or omission in the director's capacity as a director, except that this Article does not eliminate or limit the liability of a director to the extent the director is found liable for:

- (1) a breach of the director's duty of loyalty to the corporation or its shareholders;
- (2) an act or omission not in good faith that constitutes a breach of duty of the director to the corporation or an act or omission that involves intentional misconduct or a knowing violation of the law;
- (3) a transaction from which the director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or
- (4) an act or omission for which the liability of the director is expressly provided by an applicable statute.

Any repeal or modification of this Article by the shareholders of the corporation shall be prospective only and shall not adversely affect any limitation on the liability of a director of the corporation existing at the time of such repeal or modification.

ARTICLE IX.

Any action required by the Florida Business Corporation Act to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted. Any such written consents shall be executed, dated, and filed with the corporation in the manner required by Section 607.0704 of the Florida Business Corporation Act.

ARTICLE X.

Notwithstanding anything in these Articles of Incorporation to the contrary, (i) unless and until that certain loan (the "Loan") from Nomura Asset Capital Corporation (together with its successors and assigns, the "Lender") to Heritage Pompano Square LP ("Borrower") made pursuant to that certain Loan Agreement dated on or about April, 1997 (the "Loan Agreement") is paid in full in accordance with the Loan Documents, and (ii) during any period of time that Nomura Asset Capital Corporation (together with its successors or assigns) is an equity owner in the Borrower, (x) the corporation, Borrower, and each SPE Equity Owner (as defined in the Loan Agreement) shall be Single Purpose Entities (as defined below) and (y) the corporation shall act in a manner to cause Borrower and each SPE Equity Owner (as defined in the Loan Agreement) to be Single Purpose Entities (as defined below), and the corporation shall not take any action that would cause the Borrower or any SPE Equity Owner not to be a Single Purpose Entity (as defined below), with capitalized terms used but not defined in these Articles having the meanings ascribed to them in the Loan Agreement

"Single-Purpose Entity" means a corporation, limited partnership, or limited liability company which, at all times since its formation and thereafter (i) was and will be organized solely for the purpose of (w) owning the Facility or (x) acting as the managing member of the limited liability company which owns the Facility or (y) acting as the general partner of a limited partnership which owns the Facility or (z) acting as the general partner of the limited partnership which acts as general partner of the limited partnership which owns the Facility, (ii) has not and will not engage in any business unrelated to the (w) the ownership of the Facility or (x) acting as a member of a limited liability company which owns Facility or (y) acting as a general partner of a limited partnership which owns the Facility or (z) acting as a general partner of a limited partnership which acts as the general partner of the limited partnership which owns the Facility, (iii) has not and will not have any assets other than (w) those related to the Facility or (x) its member interest in the limited liability company which owns the Facility or (y) its general partnership interest in the limited partnership which owns the Facility, as applicable or (z) its general partnership interest in the limited partnership which acts as general partner of the limited partnership which owns the Facility, as applicable, (iv) has not and will not engage in, seek or

consent to any dissolution, winding up, liquidation, consolidation or merger, and, except as otherwise expressly permitted by the Loan Agreement, has not and will not engage in, seek or consent to any asset sale, transfer of partnership or membership or shareholder interests, or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable), (v) if such entity is a limited partnership, has and will have as its only general partners (y) one or more corporations which are and will be Single-Purpose Entities or (z) one or more limited partnerships which are and will be Single-Purpose Entities and which have and will have as their only general partners, one or more corporations which are and will be Single-Purpose Entities, (vi) if such entity is a corporation, at all relevant times, has and will have at least one Independent Director, (vii) the board of directors of such entity has not taken and will not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including without limitation all Independent Directors, shall have participated in such vote, (viii) has not and will not fail to correct any known misunderstanding regarding the separate identity of such entity, (ix) if such entity is a limited liability company, has and will have at least one member that is and will be a Single-Purpose Entity which is and will be a corporation, and such corporation is and will be the managing member of such limited liability company, (x) without the unanimous consent of all of the partners, directors (including without limitation all Independent Directors) or members, as applicable, has not and will not with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest (a) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally; (b) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or all or any portion of such entity's properties; (c) make any assignment for the benefit of such entity's creditors; or (d) take any action that might cause such entity to become insolvent, (xi) has maintained and will maintain its accounts, books and records separate from any other person or entity, (xii) has maintained and will maintain its books, records, resolutions and agreements as official records, (xiii) has not commingled and will not commingle its funds or assets with those of any other entity, (xiv) has held and will hold its assets in its own name, (xv) has conducted and will conduct its business in its name, (xvi) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other person or entity, (xvii) has paid and will pay its own liabilities out of its own funds and assets, (xviii) has observed and will observe all partnership, corporate or limited liability company formalities as applicable, (xix) has maintained and will maintain an arms-length relationship with its affiliates, (xx) (a) if such entity owns the Facility, has and will have no indebtedness other than the Indebtedness and unsecured trade payables in the ordinary course of business relating to the ownership and operation of the Facility which (1) do not exceed, at any time, a maximum amount of one percent (1%) of the Loan Amount and (2) are paid within thirty (30) days of the date incurred, or (b) if such entity acts as the general partner of a limited partnership which owns the Facility, has and will have no indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as general partner of the limited partnership which owns the Facility which (1) do not exceed, at any time, \$25,000 and (2) are paid within thirty (30) days of the date incurred, or (c) if such entity acts as a member of a limited liability company which owns the Facility, has and will have no indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as a member of the limited liability company which owns the Facility which (1) do not

exceed, at any time, \$25,000 and (2) are paid within thirty (30) days of the date incurred, or (d) if such entity acts as the general partner of a limited partnership which is the general partner of the limited partnership which owns the Facility, has and will have no indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as a member of the limited liability company which owns the Facility which (1) do not exceed, at any time, \$25,000 and (2) are paid within thirty (30) days of the date incurred, (xxi) has not and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity except for the Indebtedness, (xxii) has not acquired and will not acquire obligations or securities of its partners, members or shareholders, (xxiii) has allocated and will allocate fairly and reasonably shared expenses, including, without limitation, shared office space and uses separate stationery, invoices and checks, (xxiv) except pursuant to the Loan Agreement, has not and will not pledge its assets for the benefit of any other person or entity, (xxv) has held and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other person or entity, (xxvi) has not made and will not make loans to any person or entity, (xxvii) has not and will not identify its partners, members or shareholders, or any affiliates of any of them as a division or part of it, (xxviii) if such entity is a limited liability company, such entity shall dissolve only upon the bankruptcy of the managing member, and such entity's articles of organization, certificate of formation and/or operating agreement, as applicable, shall contain such provision, (xxix) has not entered and will not enter into or be a party to, any transaction with its partners, members, shareholders or its affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arms-length transaction with an unrelated third party, (xxx) has paid and will pay the salaries of its own employees from its own funds, (xxxi) has maintained and will maintain adequate capital in light of its contemplated business operations and (xxxii) if such entity is a limited liability company or limited partnership, and such entity has one or more managing members or general partners, as applicable, then such entity shall continue (and not dissolve) for so long as a solvent managing member or general partner, as applicable, exists and such entity's organizational documents shall contain such provision.

"Independent Director" means a duly appointed member of the board of directors of the relevant entity who shall not have been, at the time of such appointment or at any time in the preceding five (5) years, (a) a direct or indirect legal or beneficial owner in such entity or any of its affiliates, (b) a creditor, supplier, employee, officer, director, manager or contractor of such entity or any of its affiliates, (c) a person who controls such entity or any of its affiliates, or (d) a member of the immediate family of a person defined in (a), (b) or (c) above.

ARTICLE XI.

The corporation shall not, without the affirmative vote of 100 percent of the Board of Directors, including the affirmative vote of the Independent Director, institute proceedings to be adjudicated bankrupt or insolvent; or consent to the institution of bankruptcy or insolvency proceedings against it; or file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy; or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the corporation

or a substantial part of its property; or make any assignment for the benefit of creditors or admit in writing its inability to pay its debts generally as they become due; or take any corporate action in furtherance of any such action.

**ARTICLE XII.
CORPORATE AUTHORITY**

Additionally, the corporation shall not, without the affirmative vote of 100 percent of the Board of Directors, including the affirmative vote of the Independent Director, (a) liquidate or dissolve the corporation in whole or in part, (b) consolidate, merger or enter into any form of consolidation with or into any other entity, nor convey, transfer or lease its assets substantially a an entirety to any person or entity nor permit any entity to consolidate, merger or enter into any form of consolidation with or into the corporation, nor convey, transfer or lease its assets substantially as an entirety to any person or entity and (c) amend or modify these Articles of Incorporation.

ARTICLE XIII.

The name and address of the incorporator is:

Name

Address

Jonathan L. Shepard

5355 Town Center Road, Suite 801
Boca Raton, Florida 33486

EXECUTED BY THE UNDERSIGNED INCORPORATOR on this 22nd day
of April, 1997.



JONATHAN L. SHEPARD

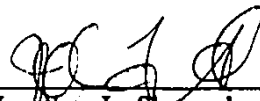
**CERTIFICATE OF
DESIGNATION OF REGISTERED AGENT
FOR
KW POMPANO, INC.**

Pursuant to Section 607.0505, Florida Statutes, the following is submitted:

KW POMPANO, INC., desiring to organize under the laws of the State of Florida, with its registered office as indicated in the Articles of Incorporation, has named Jonathan L. Shepard, located at 5355 Town Center Road, Suite 801, City of Boca Raton, County of Palm Beach, State of Florida, as its registered agent for service of process within this State.

ACKNOWLEDGEMENT:

Having been named to accept service of process for the above-stated Corporation, at the place designated in this Certificate, I hereby agree to act in this capacity, and I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties and I accept the duties and obligations as set forth in Section 607.0505, Florida Statutes.



Jonathan L. Shepard

TALLAHASSEE, FLORIDA

JAN 11 1994

NOTARY PUBLIC