

06-22-2001



Form PTO-1594  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)  
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101760293  
**TRADEMARKS ONLY**

U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
PROGRAPH SYSTEMS, INC. 6-1501

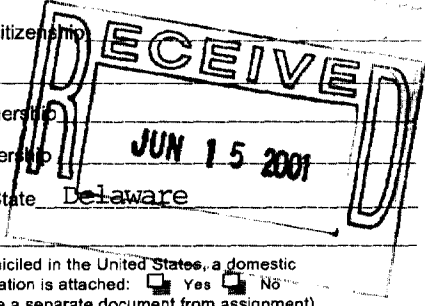
Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State Pennsylvania  
 Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)  
Name: PROGRAPH SYSTEMS, INC.  
Internal  
Address: The Crane Building  
Street Address: 40 24th Street, Fifth Floor  
City: Pittsburgh State: PA Zip: 15222

Individual(s) citizenship  
 Association  
 General Partnership  
 Limited Partnership  
 Corporation-State Delaware  
 Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No



3. Nature of conveyance:  
 Assignment                               Merger  
 Security Agreement                       Change of Name  
 Other \_\_\_\_\_

Execution Date: February 8, 2000

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)  
SEE ATTACHED SCHEDULE 1

B. Trademark Registration No.(s)  
SEE ATTACHED SCHEDULE 2

Additional number(s) attached  Yes  No 75259935

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: DAVID V. RADACK, ESQUIRE  
Internal Address: Eckert Seamans  
Cherin & Mellott, LLC  
Street Address: 600 Grant Street  
44th Floor  
City: Pittsburgh State: PA Zip: 15219

6. Total number of applications and registrations involved: 28

7. Total fee (37 CFR 3.41).....\$715.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
06/21/2001 TDIAZ1 00000165 75259935  
01 FC:481                                      40.00 BP  
02 FC:482                                      675.00 BP  
(Attach duplicate copy of this page if paying by deposit account)

**DO NOT USE THIS SPACE**

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.*

DAVID V. RADACK                                      [Signature]                                      June 13, 2001  
Name of Person Signing                                      Signature                                      Date

Total number of pages including cover sheet, attachments, and document: 34

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

~~06/21/2001 TDIAZ1 00000165 75259935~~  
~~01 FC:481 40.00 BP~~

**SCHEDULE 1****FEDERAL APPLICATIONS**

<b>MARK</b>	<b>APPLICATION SERIAL NO.</b>	<b>FILING DATE</b>
<b>THE FINISHING LINE</b>	<b>75/259,935</b>	<b>March 19, 1997</b>
<b>THE HARMONIQUE SUITE</b>	<b>75/417,572</b>	<b>January 13, 1998</b>
<b>PREDITOR</b>	<b>75/450,825</b>	<b>March 16, 1998</b>
<b>PRODUCTION PLANNER BASIC</b>	<b>75/618,514</b>	<b>January 11, 1999</b>
<b>PRODUCTION PLANNER TOOLBOX LITE</b>	<b>75/618,515</b>	<b>January 11, 1999</b>
<b>PRODUCTION PLANNER</b>	<b>75/618,516</b>	<b>January 11, 1999</b>
<b>PRODUCTION PLANNER ADDRESSING MANAGER</b>	<b>75/618,518</b>	<b>January 11, 1999</b>
<b>PRODUCTION PLANNER PRESS DELIVERED</b>	<b>75/618,717</b>	<b>January 11, 1999</b>
<b>POWERPLANT</b>	<b>75/863,788</b>	<b>December 3, 1999</b>
<b>PRINTCAFE.COM</b>	<b>75/869,637</b>	<b>December 13, 1999</b>
<b>PRINTCAFE</b>	<b>75/869,892</b>	<b>December 13, 1999</b>
<b>PRINTCAFE.NET</b>	<b>75/869,893</b>	<b>December 13, 1999</b>
<b>PRINTCAFE</b>	<b>75/897,513</b>	<b>January 18, 2000</b>
<b>PRINTCAFE.REMOTE</b>	<b>75/897,514</b>	<b>January 18, 2000</b>
<b>WIRED ON PRINT</b>	<b>75/898,330</b>	<b>January 18, 2000</b>
<b>PRINTELLECT.COM</b>	<b>75/898,341</b>	<b>January 18, 2000</b>
<b>PRINTELLECT</b>	<b>75/898,342</b>	<b>January 18, 2000</b>

**SCHEDULE 2****FEDERAL REGISTRATIONS**

<b>MARK</b>	<b>REGISTRATION NO.</b>	<b>REGISTRATION DATE</b>
<b>ELYSIUM AND DESIGN</b>	<b>1,967,919</b>	<b>April 16, 1996</b>
<b>CUSTOMER SERVICE TOOLBOX</b>	<b>2,046,785</b>	<b>March 18, 1997</b>
<b>PROGRAPH</b>	<b>2,060,046</b>	<b>May 6, 1997</b>
<b>MISCELLANEOUS DESIGN</b>	<b>2,060,047</b>	<b>May 6, 1997</b>
<b>RESET</b>	<b>2,080,161</b>	<b>July 15, 1997</b>
<b>MAGPRO</b>	<b>2,093,575</b>	<b>September 2, 1997</b>
<b>PREVIEW</b>	<b>2,100,119</b>	<b>September 23, 1997</b>
<b>BOSS</b>	<b>2,129,352</b>	<b>January 13, 1998</b>
<b>LINEMAN</b>	<b>2,172,578</b>	<b>July 24, 1998</b>
<b>B-STAT</b>	<b>2,190,502</b>	<b>September 22, 1998</b>
<b>BL/ISS</b>	<b>2,277,388</b>	<b>September 14, 1999</b>

*State of Delaware*  
*Office of the Secretary of State*

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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 CERTIFICATE OF MERGER OF "PROGRAPH SYSTEMS, INC.", FILED IN THIS OFFICE ON THE EIGHTH DAY OF FEBRUARY, A.D. 2000, AT 9 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "PRINTCAFE, INC." WAS INCORPORATED ON THE FIFTH DAY OF JANUARY, A.D. 2000.



A handwritten signature in cursive script, reading "Edward J. Freel", is written over a horizontal line.

*Edward J. Freel, Secretary of State*

3154334 8100

001089587

AUTHENTICATION: 0273738

DATE: 02-23-00

**TRADEMARK**  
**REEL: 002317 FRAME: 0814**

Microfilm Number 200014-1522

Filed with the Department of State on FEB 08 2000

City Number 2922571

Secretary of the Commonwealth

### ARTICLES OF MERGER-DOMESTIC BUSINESS CORPORATION

DSCB:15-1926 (Rev 90)

In compliance with the requirements of 15 Pa.C.S. § 1926 (relating to articles of merger or consolidation), the undersigned business corporations, desiring to effect a merger, hereby state that:

1. The name of the corporation surviving the merger is: Prograph Systems, Inc., a Delaware corporation

2. (Check and complete one of the following):

The surviving corporation is a domestic business corporation and the (a) address of its current registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a) \_\_\_\_\_  
Number and Street City State Zip County

(b) c/o: \_\_\_\_\_  
Name of Commercial Registered Office Provider County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

The surviving corporation is a qualified foreign business corporation incorporated under the laws of Delaware and the (a) address of its current registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a) \_\_\_\_\_  
Number and Street City State Zip County

(b) c/o: CT Corporation System \_\_\_\_\_  
Name of Commercial Registered Office Provider Philadelphia County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

The surviving corporation is a nonqualified foreign business corporation incorporated under the laws of \_\_\_\_\_ and the address of its principal office under the laws of such domicillary jurisdiction is:

\_\_\_\_\_  
Number and Street City State Zip

3. The name and the address of the registered office in this Commonwealth or name of its commercial registered office provider and the county of venue of each other domestic business corporation and qualified foreign business corporation which is a party to the plan of merger are as follows:

Name of Corporation	Address of Registered Office or Name of Commercial Registered Office Provider	County
<u>Prograph Systems, Inc.</u> (a Pennsylvania corporation)	<u>40 24th Street, 5th Floor, Pittsburgh, PA 15222</u>	<u>Philadelphia</u>

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19 FEB 16 10:51

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D: 5-1926 (Rev 90)-2

4. Check, and if appropriate complete, one of the following:

The plan of merger shall be effective upon filing these Articles of Merger in the Department of State.

X The plan of merger shall be effective on: February 8, 2000 at \_\_\_\_\_ Date Hour

5. The manner in which the plan of merger was adopted by each domestic corporation is as follows:

Name of Corporation	Manner of Adoption
<u>Prograph Systems, Inc.</u> (a Pennsylvania corporation)	<u>Unanimous Written Consent of Directors</u>
_____	_____

6. (Strike out this paragraph if no foreign corporation is a party to the merger). The plan was authorized, adopted or approved, as the case may be, by the foreign business corporation (or each of the foreign business corporations) party to the plan in accordance with the laws of the jurisdiction in which it is incorporated.

7. Check, and if appropriate complete, one of the following:

X The plan of merger is set forth in full in Exhibit A attached hereto and made a part hereof.

Pursuant to 15 Pa.C.S. § 1901 (relating to omission of certain provisions from filed plans) the provisions, if any, of the plan of merger that amend or constitute the operative Articles of Incorporation of the surviving corporation as in effect subsequent to the effective date of the plan are set forth in full in Exhibit A attached hereto and made a part hereof. The full text of the plan of merger is on file at the principal place of business of the surviving corporation, the address of which is:

Number and Street City State Zip County

IN TESTIMONY WHEREOF, the undersigned corporation or each undersigned corporation has caused these Articles of Merger to be signed by a duly authorized officer thereof this 8th day of February, 2000.

Prograph Systems, Inc.,  
a Pennsylvania corporation

(Name of Corporation)

BY: [Signature] Lou Andreano (Signature)

TITLE: Vice President of Finance/Controller

Prograph Systems, Inc.,  
a Delaware corporation

(Name of Corporation)

BY: [Signature] Lou Andreano (Signature)

TITLE: Vice President of Finance/Controller

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**AGREEMENT AND PLAN OF MERGER  
OF PROGRAPH SYSTEMS, INC  
A PENNSYLVANIA CORPORATION,  
and  
PROGRAPH SYSTEMS, INC.  
A DELAWARE CORPORATION**

This Agreement and Plan of Merger dated as of February 8, 2000 (the "Agreement") is between Prograph Systems, Inc., a Pennsylvania corporation ("Prograph Pennsylvania"), and Prograph Systems, Inc., a Delaware corporation ("Prograph Delaware"). Prograph Delaware and Prograph Pennsylvania are sometimes referred to in this Agreement as the "Constituent Corporations."

**RECITALS**

A. Prograph Pennsylvania is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and has an authorized capital of 100,000,000 shares, 25,000,000 of which are designated "Common Stock," \$.0001 par value, and 20,000,000 of which are designated "Preferred Stock," \$.0001 par value. 15,000,000 shares of Preferred Stock are designated as "Series A-1 Preferred Stock" and 5,000,000 shares are designated as "Series A Preferred Stock."

B. Prograph Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 100,000,000 shares, 25,000,000 of which are designated "Common Stock," \$.0001 par value, and 20,000,000 of which are designated "Preferred Stock," \$.0001 par value. 15,000,000 shares are designated as "Series A-1 Preferred Stock" and 5,000,000 shares are designated as "Series A Preferred Stock." As of February 3, 2000, 100 shares of Prograph Delaware Common Stock were issued and outstanding and no shares of Preferred Stock were issued and outstanding.

C. The Board of Directors of Prograph Pennsylvania has determined that, for the purpose of effecting the reincorporation of Prograph Pennsylvania in the State of Delaware, it is advisable and in the best interests of Prograph Pennsylvania that Prograph Pennsylvania merge with and into Prograph Delaware upon the terms and conditions provided in this Agreement.

D. The respective Boards of Directors of Prograph Delaware and Prograph Pennsylvania have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective stockholders and executed by the undersigned officers.

200014-1525**AGREEMENT**

In consideration of the mutual agreements and covenants set forth herein, Prograph Delaware and Prograph Pennsylvania hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

1. **Merger.**

1.1 **Merger.** In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the Pennsylvania Business Corporation Law, Prograph Pennsylvania shall be merged with and into Prograph Delaware (the "**Merger**"), the separate existence of Prograph Pennsylvania shall cease and Prograph Delaware shall be, and is sometimes referred to below as, the "**Surviving Corporation**," and the name of the Surviving Corporation shall be "Prograph Systems, Inc."

1.2 **Filing and Effectiveness.** The Merger shall become effective upon completion of the following actions:

(a) Adoption and approval of this Agreement and the Merger by the stockholders of each Constituent Corporation in accordance with the applicable requirements of the Delaware General Corporation Law and the Pennsylvania Business Corporation Law;

(b) The satisfaction or waiver of all of the conditions precedent to the consummation of the Merger as specified in this Agreement; and

(c) The filing with the Secretary of State of Delaware of an executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law.

The date and time when the Merger becomes effective is referred to in this Agreement as the "**Effective Date of the Merger**."

1.3 **Effect of the Merger.** Upon the Effective Date of the Merger, the separate existence of Prograph Pennsylvania shall cease and Prograph Delaware, as the Surviving Corporation, (a) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (b) shall be subject to all actions previously taken by its and Prograph Pennsylvania's Board of Directors, (c) shall succeed, without other transfer, to all of the assets, rights, powers and property of Prograph Pennsylvania in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (d) shall continue to be subject to all of the debts, liabilities and obligations of Prograph Delaware as constituted immediately prior to the Effective Date of the Merger, and (e) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Prograph Pennsylvania in the same manner as if Prograph Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the Pennsylvania Business Corporation Law.

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## 2. Charter Documents, Directors and Officers

2.1 **Certificate of Incorporation.** The Amended and Restated Certificate of Incorporation of Prograph Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Amended and Restated Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 **Bylaws.** The Bylaws of Prograph Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 **Directors and Officers.** The directors and officers of Prograph Delaware immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

## 3. Manner of Conversion of Stock

3.1 **Prograph Pennsylvania Common Stock.** Upon the Effective Date of the Merger, each one share of Prograph Pennsylvania Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock of the Surviving Corporation. No fractional share interests of the Surviving Corporation shall be issued. Any fractional share interests to which a holder would otherwise be entitled shall be aggregated so that no Prograph Pennsylvania shareholder shall receive cash in an amount greater than the value of one (1) full share of Prograph Delaware Common Stock.

3.2 **Prograph Pennsylvania Preferred Stock.** Upon the Effective Date of the Merger, each share of Prograph Pennsylvania Series A Preferred Stock and Series A-1 Preferred Stock, issued and outstanding immediately prior thereto, which shares are convertible into such number of shares of Prograph Pennsylvania Common Stock as set forth in the Prograph Pennsylvania Restated and Amended Articles of Incorporation shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and non-assessable share of Series A Preferred Stock or Series A-1 Preferred Stock, as applicable, of the Surviving Corporation, having such rights, preferences and privileges as set forth in the Amended and Restated Certification of Incorporation of the Surviving Corporation, which shares of Preferred Stock shall be convertible into the same number of shares of the Surviving Corporation's Common Stock, as such share of Prograph Pennsylvania Preferred Stock was convertible into shares of Prograph Pennsylvania common stock immediately prior to the Effective Date of the Merger, subject to adjustment pursuant to the terms of the Amended and Restated Certificate of Incorporation of the Surviving Corporation.



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**3.3 Prograph Pennsylvania Options, Stock Purchase Rights and Convertible Securities.**

(a) Each outstanding and unexercised option or warrant, other right to purchase, or security convertible into, Prograph Pennsylvania Common Stock or Preferred Stock (a "Right") shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase, or a security convertible into the Surviving Corporation's Common Stock or Preferred Stock, respectively, on the basis of one share of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, for each one share of Prograph Pennsylvania Common Stock or Preferred Stock, issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such Prograph Pennsylvania Right at the Effective Date of the Merger. This paragraph 3.3(a) shall not apply to Prograph Pennsylvania Common Stock or Preferred Stock. Such Common Stock and Preferred Stock are subject to paragraph 3.1 and 3.2 hereof, respectively.

(b) A number of shares of the Surviving Corporation's Common Stock and Preferred Stock shall be reserved for issuance upon the exercise or conversion of Rights equal to the number of shares of Prograph Pennsylvania Common Stock and Preferred Stock so reserved immediately prior to the Effective Date of the Merger.

(c) The assumed Rights shall not entitle any holder thereof to a fractional share upon exercise or conversion. In lieu thereof, any fractional share interests to which a holder of an assumed Right would otherwise be entitled upon exercise or conversion shall be aggregated (but only with other similar Rights which have the same per share terms). To the extent that after such aggregation, the holder would still be entitled to a fractional share with respect thereto upon exercise or conversion, the holder shall be entitled upon the exercise or conversion of all such assumed Rights pursuant to their terms (as modified herein), to one full share of Common Stock or Preferred Stock in lieu of such fractional share. With respect to each class of such similar Rights, no holder will be entitled to more than one full share in lieu of a fractional share upon exercise or conversion.

Notwithstanding the foregoing, with respect to options issued under the Prograph Pennsylvania option plans that are assumed in the Merger, the number of shares of Common Stock to which the holder would be otherwise entitled upon exercise of each such assumed option following the Merger shall be rounded down to the nearest whole number and the exercise price shall be rounded up to the nearest whole cent. In addition, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionees pursuant to the assumption of their options.

**3.4 Prograph Delaware Common Stock.** Upon the Effective Date of the Merger, each share of Common Stock, \$.0001 par value, of Prograph Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Prograph Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

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3.5 **Exchange of Certificates.** After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Prograph Pennsylvania Common Stock or Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to holders prior to any requested exchange (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the appropriate class and series of the Surviving Corporation's capital stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of Prograph Pennsylvania capital stock shall be deemed for all purposes to represent the number of whole shares of the appropriate class and series of the Surviving Corporation's capital stock into which such shares of Prograph Pennsylvania capital stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of capital stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing capital stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Prograph Pennsylvania so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of Surviving Corporation's stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

#### 4. **General**

4.1 **Covenants of Prograph Delaware.** Prograph Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the Commonwealth of Pennsylvania and irrevocably appoint an agent for service of process as required by the Pennsylvania Business Corporation Law.

(b) File any and all documents with the Pennsylvania Department of State necessary for the assumption by Prograph Delaware of all of the franchise tax liabilities of Prograph Pennsylvania; and

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(c) Take such other actions as may be required by the Pennsylvania Business Corporation Law.

4.2 **Further Assurances.** From time to time, as and when required by Prograph Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Prograph Pennsylvania such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Prograph Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Prograph Pennsylvania and otherwise to carry out the purposes of this Agreement, and the officers and directors of Prograph Delaware are fully authorized in the name and on behalf of Prograph Pennsylvania or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 **Abandonment.** At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Prograph Pennsylvania or Prograph Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of Prograph Pennsylvania or by the sole stockholder of Prograph Delaware, or by both.

4.4 **Amendment.** The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (a) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (b) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (c) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class of shares or series of capital stock of such Constituent Corporation.

4.5 **Registered Office.** The registered office of the Surviving Corporation in the State of Delaware is located at 15 East North Street in the City of Dover, County of Kent. The Registered Agent in charge of the Surviving Corporation is Incorporating Services, Ltd.

4.6 **FIRPTA Notification.**

(a) On the Effective Date of the Merger, to the extent required by applicable law, Prograph Pennsylvania shall deliver to Prograph Delaware, as agent for the shareholders of Prograph Pennsylvania, a properly executed statement (the "Statement") in substantially the form attached hereto as Exhibit A. Prograph Delaware shall retain the Statement for a period of not less than seven years and shall, upon request, provide a copy thereof to any person that was a shareholder of Prograph Pennsylvania immediately prior to the Merger. In consequence of the approval of the Merger by the shareholders of Prograph Pennsylvania, (i) such shareholders shall be considered to have requested that the Statement be delivered to Prograph Delaware as their

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agent and (ii) Prograph Delaware shall be considered to have received a copy of the Statement at the request of the Prograph Pennsylvania shareholders for purposes of satisfying Prograph Delaware's obligations under Treasury Regulation Section 1.1445-2(c)(3).

(b) Prograph Pennsylvania shall deliver to the Internal Revenue Service a notice regarding the Statement in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2).

4.7 **Agreement.** Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

4.8 **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

4.9 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

200014-1531

The undersigned authorized representatives of the Constituent Corporations have executed and acknowledged this Agreement as of the date first set forth above.

Prograph Systems, Inc., a Delaware corporation

  
\_\_\_\_\_  
Marc Olin,  
Co-CEO and Co-Chairman

Prograph Systems, Inc., a Pennsylvania corporation

\_\_\_\_\_  
William L. Guttman,  
Co-CEO and Co-Chairman

200014-1532

The undersigned authorized representatives of the Constituent Corporations have executed and acknowledged this Agreement as of the date first set forth above.

Prograph Systems, Inc., a Delaware corporation

---

Marc Olin,  
Co-CEO and Co-Chairman

Prograph Systems, Inc., a Pennsylvania corporation



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William L. Guttman,  
Co-CEO and Co-Chairman

200014-1533**EXHIBIT A -- FORM OF FIRPTA CERTIFICATE**

February \_\_, 2000

Assistant Commissioner (International)  
Director, Office of Compliance  
OP:I:C:E:666  
950 L'Enfant Plaza South, S.W.  
COMSAT Building  
Washington, D.C. 20024

**NOTICE TO THE INTERNAL REVENUE SERVICE OF PROGRAPH SYSTEMS,  
INC. UNITED STATES REAL PROPERTY HOLDING CORPORATION STATUS  
UNDER TREASURY REGULATION 1.897-2(H)(2)**

Dear Sir:

1. This Notice is being filed by Prograph Systems, Inc., a Pennsylvania corporation ("Target"), pursuant to section 1.897-2(h)(2) of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended (the "Code").

2. The undersigned, on behalf of Target, hereby declares that stock of Target is not a United States real property interest within the meaning of section 897 of the Code because Target is not and has not been a United States real property holding corporation as that term is defined in section 897(c) (2) of the Code during the applicable period specified in section 897(c) (1) (A) (ii) of the Code.

3. Target's United States taxpayer identifying number is: [\_\_\_\_\_]

4. Target's address is:

40 Twenty-fourth Street, Fifth Floor  
Pittsburgh, Pennsylvania 15222

5. In connection with the acquisition of Target by Prograph Systems, Inc., a Delaware corporation ("Acquiror"), the undersigned provided the attached statement to Acquiror declaring that an interest in Target is not a United States real property interest. The statement was voluntarily provided in response to a request from the transferee, Acquiror under Regulation 1.1445-2(c) (3) (i).

Acquiror's United States taxpayer identifying number is:[\_\_\_\_\_]

200014-1534

Acquiror's address is: 40 Twenty-fourth Street, Fifth Floor,  
Pittsburgh, Pennsylvania 15222

6. No supplemental statements pursuant to Treasury Regulations section 1.897-2(h)(5) are required to be filed herewith.

7. Under penalties of perjury the undersigned declares that he has examined this certification, and the attachment hereto, and to the best of his knowledge and belief they are true, correct and complete. The undersigned further declares that he is a responsible officer and that he has authority to sign this document on behalf of Target.

A copy of the statement provided pursuant to Treasury Regulation §§1.897-2(h)(2) and 1.1445-2(c)(3)(i) is attached.

\_\_\_\_\_  
Marc Olin, Co-CEO



200014-1535

Prograph Systems, Inc.

A Pennsylvania Corporation

**OFFICERS' CERTIFICATE OF APPROVAL OF THE MERGER**

Marc Olin and Matthew D'Emilio certify that:

1. They are the Co-Chief Executive Officer and the Secretary, respectively, of Prograph Systems, Inc., a corporation organized under the laws of the Commonwealth of Pennsylvania.
2. The corporation has authorized two classes of stock, designated as "Common Stock" and "Preferred Stock," respectively.
3. There were 4,162,518 shares of Common Stock and 12,180,894 shares of Preferred Stock outstanding as of the record date (the "Record Date") and entitled to vote by written consent of the shareholders whereby the Agreement and Plan of Merger attached hereto (the "Merger Agreement") was approved.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equalled or exceeded the vote required.
5. The percentage vote required was more than 50% of the outstanding shares of Common Stock and 66-2/3% of the outstanding shares of Preferred Stock, voting as together as a class.

Marc Olin and Matthew D'Emilio further declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania and the State of Delaware that each has read the foregoing certificate and knows the contents thereof and that the same is true and correct of his own knowledge.

Executed in Pittsburgh, Pennsylvania on February 8, 2000.

  
 \_\_\_\_\_  
 Marc Olin, Co-Chief Executive Officer

\_\_\_\_\_  
 Matthew D'Emilio, Secretary

200014-1536

Prograph Systems, Inc.

A Pennsylvania Corporation

## OFFICERS' CERTIFICATE OF APPROVAL OF THE MERGER

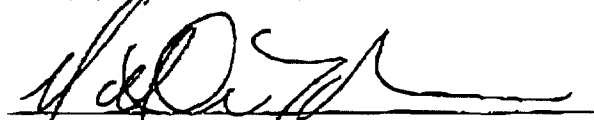
Marc Olin and Matthew D'Emilio certify that:

1. They are the Co-Chief Executive Officer and the Secretary, respectively, of Prograph Systems, Inc., a corporation organized under the laws of the Commonwealth of Pennsylvania.
2. The corporation has authorized two classes of stock, designated as "Common Stock" and "Preferred Stock," respectively.
3. There were 4,162,518 shares of Common Stock and 12,180,894 shares of Preferred Stock outstanding as of the record date (the "Record Date") and entitled to vote by written consent of the shareholders whereby the Agreement and Plan of Merger attached hereto (the "Merger Agreement") was approved.
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Marc Olin and Matthew D'Emilio further declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania and the State of Delaware that each has read the foregoing certificate and knows the contents thereof and that the same is true and correct of his own knowledge.

Executed in Pittsburgh, Pennsylvania on February 8, 2000.

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Marc Olin, Co-Chief Executive Officer

---

Matthew D'Emilio, Secretary

200014-1537

Prograph Systems, Inc.

A Delaware Corporation

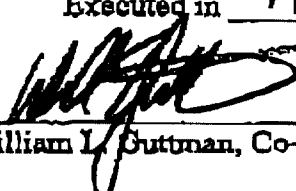
## OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

William L. Guttman and Matthew D'Emilio certify that:

1. They are the Co-Chief Executive Officer and the Secretary, respectively, of Prograph Systems, Inc., a corporation organized under the laws of the State of Delaware.
2. The corporation has authorized two classes of stock, designated as "Common Stock" and "Preferred Stock," respectively.
3. There are 100 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto (the "Merger Agreement"). There are no shares of Preferred Stock outstanding.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the votes entitled to be cast by holders of outstanding shares of Common Stock.

William L. Guttman and Matthew D'Emilio further declare under penalty of perjury under the laws of the State of Delaware and the Commonwealth of Pennsylvania that each has read the foregoing certificate and knows the contents thereof and that the same is true and correct of each's own knowledge.

Executed in Pittsburgh, Delaware on February 8, 2000.

  
\_\_\_\_\_  
William L. Guttman, Co-Chief Executive Officer

\_\_\_\_\_  
Matthew D'Emilio, Secretary

200014-1538

Prograph Systems, Inc.

A Delaware Corporation

## OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

William L. Guttman and Matthew D'Emilio certify that:

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2. The corporation has authorized two classes of stock, designated as "Common Stock" and "Preferred Stock," respectively.
3. There are 100 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto (the "Merger Agreement"). There are no shares of Preferred Stock outstanding.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the votes entitled to be cast by holders of outstanding shares of Common Stock.

William L. Guttman and Matthew D'Emilio further declare under penalty of perjury under the laws of the State of Delaware and the Commonwealth of Pennsylvania that each has read the foregoing certificate and knows the contents thereof and that the same is true and correct of each's own knowledge.

Executed in Pittsburgh, Delaware on February 8, 2000.

\_\_\_\_\_  
William L. Guttman, Co-Chief Executive Officer

  
\_\_\_\_\_  
Matthew D'Emilio, Secretary

STATE OF DELAWARE  
 SECRETARY OF STATE  
 DIVISION OF CORPORATIONS  
 FILED 09:00 AM 02/08/2000  
 001062627 - 3154334

**AGREEMENT AND PLAN OF MERGER  
 OF PROGRAPH SYTEMS, INC.  
 A PENNSYLVANIA CORPORATION,  
 and  
 PROGRAPH SYSTEMS, INC.  
 A DELAWARE CORPORATION**

This Agreement and Plan of Merger dated as of February 3, 2000 (the "Agreement") is between Prograph Systems, Inc., a Pennsylvania corporation ("Prograph Pennsylvania"), and Prograph Systems, Inc., a Delaware corporation ("Prograph Delaware"). Prograph Delaware and Prograph Pennsylvania are sometimes referred to in this Agreement as the "Constituent Corporations."

**RECITALS**

A. Prograph Pennsylvania is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and has an authorized capital of 100,000,000 shares, 25,000,000 of which are designated "Common Stock," \$0.0001 par value, and 20,000,000 of which are designated "Preferred Stock" \$0.0001 par value. 15,000,000 shares of Preferred Stock are designated as "Series A-1 Preferred Stock" and 5,000,000 shares are designated as "Series A Preferred Stock."

B. Prograph Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 100,000,000 shares, 25,000,000 of which are designated "Common Stock," \$0.0001 par value, and 20,000,000 of which are designated "Preferred Stock," \$0.0001 par value. 15,000,000 shares are designated as "Series A-1 Preferred Stock" and 5,000,000 shares are designated as "Series A Preferred Stock." As of February 3, 2000, 100 shares of Prograph Delaware Common Stock were issued and outstanding and no shares of Preferred Stock were issued and outstanding.

C. The Board of Directors of Prograph Pennsylvania has determined that, for the purpose of effecting the reincorporation of Prograph Pennsylvania in the State of Delaware, it is advisable and in the best interests of Prograph Pennsylvania that Prograph Pennsylvania merge with and into Prograph Delaware upon the terms and conditions provided in this Agreement.

D. The respective Boards of Directors of Prograph Delaware and Prograph Pennsylvania have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective stockholders and executed by the undersigned officers.

## AGREEMENT

In consideration of the mutual agreements and covenants set forth herein, Prograph Delaware and Prograph Pennsylvania hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

1. Merger.

1.1 Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the Pennsylvania Business Corporation Law, Prograph Pennsylvania shall be merged with and into Prograph Delaware (the "Merger"), the separate existence of Prograph Pennsylvania shall cease and Prograph Delaware shall be, and is sometimes referred to below as, the "Surviving Corporation." and the name of the Surviving Corporation shall be "Prograph Systems, Inc."

1.2 Filing and Effectiveness. The Merger shall become effective upon completion of the following actions:

(a) Adoption and approval of this Agreement and the Merger by the stockholders of each Constituent Corporation in accordance with the applicable requirements of the Delaware General Corporation Law and the Pennsylvania Business Corporation Law;

(b) The satisfaction or waiver of all of the conditions precedent to the consummation of the Merger as specified in this Agreement; and

(c) The filing with the Secretary of State of Delaware of an executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law.

The date and time when the Merger becomes effective is referred to in this Agreement as the "Effective Date of the Merger."

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of Prograph Pennsylvania shall cease and Prograph Delaware, as the Surviving Corporation, (a) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (b) shall be subject to all actions previously taken by its and Prograph Pennsylvania's Board of Directors, (c) shall succeed, without other transfer, to all of the assets, rights, powers and property of Prograph Pennsylvania in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (d) shall continue to be subject to all of the debts, liabilities and obligations of Prograph Delaware as constituted immediately prior to the Effective Date of the Merger, and (e) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Prograph Pennsylvania in the same manner as if Prograph Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the Pennsylvania Business Corporation Law.

## **2. Charter Documents, Directors and Officers**

**2.1 Certificate of Incorporation.** The Amended and Restated Certificate of Incorporation of Prograph Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Amended and Restated Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

**2.2 Bylaws.** The Bylaws of Prograph Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

**2.3 Directors and Officers.** The directors and officers of Prograph Delaware immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

## **3. Manner of Conversion of Stock**

**3.1 Prograph Pennsylvania Common Stock.** Upon the Effective Date of the Merger, each one share of Prograph Pennsylvania Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock of the Surviving Corporation. No fractional share interests of the Surviving Corporation shall be issued. Any fractional share interests to which a holder would otherwise be entitled shall be aggregated so that no Prograph Pennsylvania shareholder shall receive cash in an amount greater than the value of one (1) full share of Prograph Delaware Common Stock.

**3.2 Prograph Pennsylvania Preferred Stock.** Upon the Effective Date of the Merger, each share of Prograph Pennsylvania Series A Preferred Stock and Series A-1 Preferred Stock, issued and outstanding immediately prior thereto, which shares are convertible into such number of shares of Prograph Pennsylvania Common Stock as set forth in the Prograph Pennsylvania Restated and Amended Articles of Incorporation shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and non-assessable share of Series A Preferred Stock or Series A-1 Preferred Stock, as applicable, of the Surviving Corporation, having such rights, preferences and privileges as set forth in the Amended and Restated Certification of Incorporation of the Surviving Corporation, which shares of Preferred Stock shall be convertible into the same number of shares of the Surviving Corporation's Common Stock, as such share of Prograph Pennsylvania Preferred Stock was convertible into shares of Prograph Pennsylvania common stock immediately prior to the Effective Date of the Merger, subject to adjustment pursuant to the terms of the Amended and Restated Certificate of Incorporation of the Surviving Corporation.

**3.3 Prograph Pennsylvania Options, Stock Purchase Rights and Convertible Securities.**

(a) Each outstanding and unexercised option or warrant, other right to purchase, or security convertible into, Prograph Pennsylvania Common Stock or Preferred Stock (a "Right") shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase, or a security convertible into the Surviving Corporation's Common Stock or Preferred Stock, respectively, on the basis of one share of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, for each one share of Prograph Pennsylvania Common Stock or Preferred Stock, issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such Prograph Pennsylvania Right at the Effective Date of the Merger. This paragraph 3.3(a) shall not apply to Prograph Pennsylvania Common Stock or Preferred Stock. Such Common Stock and Preferred Stock are subject to paragraph 3.1 and 3.2 hereof, respectively.

(b) A number of shares of the Surviving Corporation's Common Stock and Preferred Stock shall be reserved for issuance upon the exercise or conversion of Rights equal to the number of shares of Prograph Pennsylvania Common Stock and Preferred Stock so reserved immediately prior to the Effective Date of the Merger.

(c) The assumed Rights shall not entitle any holder thereof to a fractional share upon exercise or conversion. In lieu thereof, any fractional share interests to which a holder of an assumed Right would otherwise be entitled upon exercise or conversion shall be aggregated (but only with other similar Rights which have the same per share terms). To the extent that after such aggregation, the holder would still be entitled to a fractional share with respect thereto upon exercise or conversion, the holder shall be entitled upon the exercise or conversion of all such assumed Rights pursuant to their terms (as modified herein), to one full share of Common Stock or Preferred Stock in lieu of such fractional share. With respect to each class of such similar Rights, no holder will be entitled to more than one full share in lieu of a fractional share upon exercise or conversion.

Notwithstanding the foregoing, with respect to options issued under the Prograph Pennsylvania option plans that are assumed in the Merger, the number of shares of Common Stock to which the holder would be otherwise entitled upon exercise of each such assumed option following the Merger shall be rounded down to the nearest whole number and the exercise price shall be rounded up to the nearest whole cent. In addition, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionees pursuant to the assumption of their options.

**3.4 Prograph Delaware Common Stock.** Upon the Effective Date of the Merger, each share of Common Stock, \$.0001 par value, of Prograph Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Prograph Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.



**3.5 Exchange of Certificates.** After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Prograph Pennsylvania Common Stock or Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to holders prior to any requested exchange (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the appropriate class and series of the Surviving Corporation's capital stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of Prograph Pennsylvania capital stock shall be deemed for all purposes to represent the number of whole shares of the appropriate class and series of the Surviving Corporation's capital stock into which such shares of Prograph Pennsylvania capital stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of capital stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing capital stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Prograph Pennsylvania so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of Surviving Corporation's stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

#### **4. General**

**4.1 Covenants of Prograph Delaware.** Prograph Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the Commonwealth of Pennsylvania and irrevocably appoint an agent for service of process as required by the Pennsylvania Business Corporation Law.

(b) File any and all documents with the Pennsylvania Department of State necessary for the assumption by Prograph Delaware of all of the franchise tax liabilities of Prograph Pennsylvania; and

(c) Take such other actions as may be required by the Pennsylvania Business Corporation Law.

4.2 **Further Assurances.** From time to time, as and when required by Prograph Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Prograph Pennsylvania such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Prograph Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Prograph Pennsylvania and otherwise to carry out the purposes of this Agreement, and the officers and directors of Prograph Delaware are fully authorized in the name and on behalf of Prograph Pennsylvania or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 **Abandonment.** At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Prograph Pennsylvania or Prograph Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of Prograph Pennsylvania or by the sole stockholder of Prograph Delaware, or by both.

4.4 **Amendment.** The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (a) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (b) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (c) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class of shares or series of capital stock of such Constituent Corporation.

4.5 **Registered Office.** The registered office of the Surviving Corporation in the State of Delaware is located at 15 East North Street in the City of Dover, County of Kent. The Registered Agent in charge of the Surviving Corporation is Incorporating Services, Ltd.

4.6 **FIRPTA Notification.**

(a) On the Effective Date of the Merger, to the extent required by applicable law, Prograph Pennsylvania shall deliver to Prograph Delaware, as agent for the shareholders of Prograph Pennsylvania, a properly executed statement (the "Statement") in substantially the form attached hereto as Exhibit A. Prograph Delaware shall retain the Statement for a period of not less than seven years and shall, upon request, provide a copy thereof to any person that was a shareholder of Prograph Pennsylvania immediately prior to the Merger. In consequence of the approval of the Merger by the shareholders of Prograph Pennsylvania, (i) such shareholders shall be considered to have requested that the Statement be delivered to Prograph Delaware as their

agent and (ii) Prograph Delaware shall be considered to have received a copy of the Statement at the request of the Prograph Pennsylvania shareholders for purposes of satisfying Prograph Delaware's obligations under Treasury Regulation Section 1.1445-2(c)(3).

(b) Prograph Pennsylvania shall deliver to the Internal Revenue Service a notice regarding the Statement in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2).

4.7 **Agreement.** Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

4.8 **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

4.9 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

The undersigned authorized representatives of the Constituent Corporations have executed and acknowledged this Agreement as of the date first set forth above.

Prograph Systems, Inc., a Delaware corporation

  
\_\_\_\_\_  
Marc Olin,  
Co-CEO and Co-Chairman

Prograph Systems, Inc., a Pennsylvania corporation

\_\_\_\_\_  
William L. Outman,  
Co-CEO and Co-Chairman

The undersigned authorized representatives of the Constituent Corporations have executed and acknowledged this Agreement as of the date first set forth above.

Prograph Systems, Inc., a Delaware corporation

\_\_\_\_\_  
Marc Olin,  
Co-CEO and Co-Chairman

Prograph Systems, Inc., a Pennsylvania corporation

  
\_\_\_\_\_  
William L. Guttman,  
Co-CEO and Co-Chairman

**EXHIBIT A -- FORM OF FIRPTA CERTIFICATE**

February \_\_, 2000

Assistant Commissioner (International)  
Director, Office of Compliance  
OP:I:C:E:666  
950 L'Enfant Plaza South, S.W.  
COMSAT Building  
Washington, D.C. 20024

**NOTICE TO THE INTERNAL REVENUE SERVICE OF PROGRAPH SYSTEMS,  
INC. UNITED STATES REAL PROPERTY HOLDING CORPORATION STATUS  
UNDER TREASURY REGULATION 1.897-2(H)(2)**

Dear Sir:

1. This Notice is being filed by Prograph Systems, Inc., a Pennsylvania corporation ("Target"), pursuant to section 1.897-2(h)(2) of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended (the "Code").

2. The undersigned, on behalf of Target, hereby declares that stock of Target is not a United States real property interest within the meaning of section 897 of the Code because Target is not and has not been a United States real property holding corporation as that term is defined in section 897(c) (2) of the Code during the applicable period specified in section 897(e) (1) (A) (i) of the Code.

3. Target's United States taxpayer identifying number is: [\_\_\_\_\_]

4. Target's address is:

40 Twenty-fourth Street, Fifth Floor  
Pittsburgh, Pennsylvania 15222

5. In connection with the acquisition of Target by Prograph Systems, Inc., a Delaware corporation ("Acquiror"), the undersigned provided the attached statement to Acquiror declaring that an interest in Target is not a United States real property interest. The statement was voluntarily provided in response to a request from the transferee, Acquiror under Regulation 1.1445-2(c) (3) (i).

Acquiror's United States taxpayer identifying number is: [\_\_\_\_\_]

Prograph Systems, Inc.

A Pennsylvania Corporation

**OFFICERS' CERTIFICATE OF APPROVAL OF THE MERGER**

Marc Olin and Matthew D'Emilio certify that:

1. They are the Co-Chief Executive Officer and the Secretary, respectively, of Prograph Systems, Inc., a corporation organized under the laws of the Commonwealth of Pennsylvania.
2. The corporation has authorized two classes of stock, designated as "Common Stock" and "Preferred Stock," respectively.
3. There were 4,162,518 shares of Common Stock and 12,180,894 shares of Preferred Stock outstanding as of the record date (the "Record Date") and entitled to vote by written consent of the shareholders whereby the Agreement and Plan of Merger attached hereto (the "Merger Agreement") was approved.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the outstanding shares of Common Stock and 66-2/3% of the outstanding shares of Preferred Stock, voting as together as a class.

Marc Olin and Matthew D'Emilio further declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania and the State of Delaware that each has read the foregoing certificate and knows the contents thereof and that the same is true and correct of his own knowledge.

Executed in Pittsburgh, Pennsylvania on February 8, 2000.

  
\_\_\_\_\_  
Marc Olin, Co-Chief Executive Officer

\_\_\_\_\_  
Matthew D'Emilio, Secretary

Prograph Systems, Inc.

A Pennsylvania Corporation

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Marc Olin and Matthew D'Emilio further declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania and the State of Delaware that each has read the foregoing certificate and knows the contents thereof and that the same is true and correct of his own knowledge.

Executed in Pittsburgh, Pennsylvania on February 9, 2000.

\_\_\_\_\_  
Marc Olin, Co-Chief Executive Officer

  
\_\_\_\_\_  
Matthew D'Emilio, Secretary



Prograph Systems, Inc.

A Delaware Corporation

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William L. Guttman and Matthew D'Emilio further declare under penalty of perjury under the laws of the State of Delaware and the Commonwealth of Pennsylvania that each has read the foregoing certificate and knows the contents thereof and that the same is true and correct of each's own knowledge.

Executed in Pittsburgh, Delaware on February 8, 2000.

  
\_\_\_\_\_  
William L. Guttman, Co-Chief Executive Officer

\_\_\_\_\_  
Matthew D'Emilio, Secretary

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Executed in Pittsburgh, Delaware on February 8, 2000.

William L. Guttman, Co-Chief Executive Officer

  
Matthew D'Emilio, Secretary