

03-14-2003

Form PTO-1594  
(Rev. 10/02)  
OMB No. 0651-0027 (exp. 6/30/2005)



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

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

1. Name of conveying party(ies): 3-10-03  
Professional Systems Corporation

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: Professional Systems Corporation  
Internal  
Address: Suite 400

Street Address: 2711 Centerville Road  
City: Wilmington State: DE Zip: 19804

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: 07/31/2002

4. Application number(s) or registration number(s):  
 A. Trademark Application No.(s) 76/091,817  
 \_\_\_\_\_  
 \_\_\_\_\_

B. Trademark Registration No.(s) 2,596,480  
 \_\_\_\_\_  
 \_\_\_\_\_

Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
 Name: David M. Perry, Esquire  
 Internal Address: Blank Rome LLP  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Street Address: One Logan Square  
 \_\_\_\_\_  
 City: Philadelphia State: PA Zip: 19103

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41).....\$ 65.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
02-2555

DO NOT USE THIS SPACE

9. Signature.  
David M. Perry, Esquire  
 Name of Person Signing

  
 Signature

3-10-03  
 Date

26

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

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03/13/2003 ECOOPER 00000210 022555 76091817  
 01 FC:4521 40.00 CH  
 02 FC:4522 25.00 CH

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

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# Delaware

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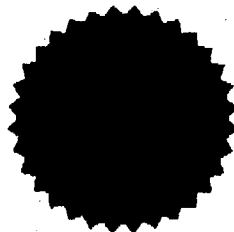
*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"PROFESSIONAL SYSTEMS CORPORATION", A PENNSYLVANIA CORPORATION,

WITH AND INTO "PROFESSIONAL SYSTEMS CORPORATION" UNDER THE NAME OF "PROFESSIONAL SYSTEMS CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTY-FIRST DAY OF JULY, A.D. 2002, AT 9 O'CLOCK A.M.

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



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3550562 8100M

AUTHENTICATION: 1912596

020487158

DATE: 07-31-02

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STATE OF DELAWARE  
CERTIFICATE OF MERGER OF  
PROFESSIONAL SYSTEMS CORPORATION  
(A PENNSYLVANIA CORPORATION)  
INTO  
PROFESSIONAL SYSTEMS CORPORATION  
(A DELAWARE CORPORATION)

Pursuant to Title 8, Section 252 of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

**FIRST:** The name of the surviving corporation is Professional Systems Corporation, a Delaware corporation, and the name of the corporation being merged into this surviving corporation is Professional Systems Corporation, a Pennsylvania corporation.

**SECOND:** The Agreement and Plan of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations pursuant to Title 8 Section 252 of the General Corporation Law of the State of Delaware.

**THIRD:** The name of the surviving corporation is Professional Systems Corporation, a Delaware corporation.

**FOURTH:** The Certificate of Incorporation of the surviving corporation shall be amended and restated in its entirety as stated on Exhibit A attached hereto.

**FIFTH:** The authorized shares and par value of the non-Delaware corporation is an aggregate of 6,000,000 shares of which 500,000 shares are Preferred Stock, no par value, and 5,500,000 shares are Common Stock, no par value.

**SIXTH:** The merger is to become effective upon filing of the necessary documents with the State of Delaware and the Commonwealth of Pennsylvania.

**SEVENTH:** The Agreement and Plan of Merger is on file at 105 Montgomery Avenue, Oaks, PA 19456, the principal office of the surviving corporation.

**EIGHTH:** A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

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IN WITNESS WHEREOF, said surviving corporation has caused this Certificate to be signed by an authorized officer, this 31 day of July, 2002.

PROFESSIONAL SYSTEMS CORPORATION,  
A Delaware corporation

By: Joseph J. Greco  
Name: Joseph J. Greco  
Title: President

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**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**PROFESSIONAL SYSTEMS CORPORATION**

Professional Systems Corporation (hereinafter called the "Corporation"), organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

1. The Corporation filed its original Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Delaware Secretary") on July 23, 2002 (the "Charter").

2. The amendment and restatement herein certified have been duly adopted by the Corporation by written consent of its directors and stockholders in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, and written notice of such consent is being promptly given to all stockholders who have not consented in writing to said Amended and Restated Certificate of Incorporation.

3. The Charter of the Corporation is herein amended and restated in its entirety to read as set forth in this Amended and Restated Certificate of Incorporation hereinafter provided for. The provisions of the Charter, as herein amended, are hereby restated and integrated into the single instrument which is hereinafter set forth, and which is entitled Amended and Restated Certificate of Incorporation.

4. The Charter, as amended and restated herein, shall at the effective time of this Amended and Restated Certificate of Incorporation, read as follows:

**FIRST:** The name of the Corporation is **PROFESSIONAL SYSTEMS CORPORATION** (the "Corporation").

**SECOND:** The address of the registered office of the Corporation in the State Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is Corporation Service Company.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the GCL.

**FOURTH:** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 16,659,734 shares, 8,000,000 shares of which shall be Common Stock (the "Common Stock") and 8,659,734 shares of which shall be Preferred Stock (the "Preferred Stock"). The Common Stock shall have a par value of \$0.00001 per share and the Preferred Stock shall have a par value of \$0.00001 per share.

A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

2. Voting. The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

Except as otherwise provided in the Corporation's Amended and Restated Certificate of Incorporation, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

B. PREFERRED STOCK.

1. Designation and Amount. The Corporation shall be authorized to issue (i) 4,329,867 shares designated Series A Redeemable Preferred Stock ("Series A Preferred Stock") and (ii) 4,329,867 shares designated as Series B Convertible Preferred Stock (the "Series B Preferred Stock" and, together with the Series A Preferred Stock, the "Preferred Stock"). The Preferred Stock shall have the preferences, limitations and rights set forth below.

2. Dividends.

(a) General. The holders of the then outstanding Preferred Stock shall be entitled to receive, out of funds legally available therefor, cumulative annual dividends when and as they may be declared from time to time by the Board of Directors of the Corporation at an annual rate per share equal to one and one-quarter percent (1.25%) of the original purchase price of \$1.7454 paid per share of the Preferred Stock (together with the other share and per share numbers used herein shall be subject to equitable adjustment whenever there shall occur a stock split, combination, reclassification or other similar event involving the class or series of stock in question), and such amount shall be compounded annually such that if the dividend is not paid for such year the unpaid amount shall be added to the original purchase price paid per share of the Preferred Stock for purposes of calculating succeeding years' dividends. Such dividends shall be deemed to accrue on the Preferred Stock and be cumulative, whether or not earned or

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declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. If such cumulative dividends in respect of any prior or current annual dividend period shall not have been declared and paid or if there shall not have been a sum sufficient for the payment thereof set apart, the deficiency shall first be fully paid before any dividend or other distribution shall be paid or declared and set apart with respect to any class of the Corporation's capital stock, now or hereafter outstanding. Upon conversion of the Series B Preferred Stock as herein provided, any dividends which have accrued but have not been paid with respect to the Series B Preferred Stock shall attach to the Series A Preferred Stock into which such Series B Preferred Stock is convertible, and thereafter shall be payable with respect to the Series A Preferred Stock as provided herein. Notwithstanding the foregoing, if the Corporation shall be in breach of the covenant contained in Section 5(m) of that certain Shareholders' Agreement dated as of July 31, 2002 by and among the Corporation and the shareholders named therein (the "Shareholders' Agreement"), then the dividend shall accrue at three and three-quarters percent (3.75%) per annum for so long as any such breach continues. For so long as any shares of Preferred Stock remain outstanding, the Corporation shall not make or issue or fix a record date for determination of any dividends or other distribution on the Common Stock (as hereafter defined) ("Common Stock Dividends") of the Corporation except as specifically provided herein.

In the event the Corporation shall make or issue, or shall fix a record date for the determination of Common Stock Dividends, then and in each such event the holders of Series B Preferred Stock shall receive, at the same time such distribution is made with respect to such class of Common Stock, such cash of the Corporation which they would have received had their Series B Preferred Stock been converted in accordance with Section 5 hereof immediately prior to the record date for determining holders of such class of Common Stock entitled to receive the Common Stock Dividends.

(b) Limitation on Restrictions. The Corporation shall not, and shall not permit any Subsidiaries to, agree to any provision in any agreement which would impose any restrictions on the Corporation's right to make any mandatory redemption of the Series A Preferred Stock or, except as set forth in documentation related to financings for the Corporation approved by the Board of Directors, on the Corporation's right to declare and pay dividends on the Series A Preferred Stock as provided for herein.

### 3. Liquidation, Dissolution or Winding Up.

(a) Treatment at Liquidation, Dissolution and Winding Up. In the event of a Liquidity Event (as herein defined), before any distribution or payment may be made with respect to the Common Stock or any other series or class of capital stock, holders of each share of Preferred Stock, on a pari passu basis, shall be entitled to be paid out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock of all classes, whether such assets are capital, surplus, or capital earnings, an amount in cash equal to (i) the greater of (1) \$1.7454 per share of outstanding Series B Preferred Stock (subject to appropriate adjustments for stock splits, stock dividends and the like), plus accrued dividends from the date of issuance thereof up to and including the date full payment shall be tendered to the holders of the Series B Preferred Stock with respect to such Liquidity Event (the "Series B Liquidation

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Amount") or (2) such amount per share of outstanding Series B Preferred Stock as would have been payable had each share been converted pursuant to the provisions of Section 5 hereof into Common Stock and Series A Preferred Stock immediately prior to such Liquidity Event, and (ii) \$1.7454 per share of outstanding Series A Preferred Stock (subject to appropriate adjustments for stock splits, stock dividends and the like), plus accrued dividends from the date of issuance thereof up to and including the date full payment shall be tendered to the holders of the Series A Preferred Stock with respect to such Liquidity Event (the "Series A Liquidation Amount").

The term "Liquidity Event" shall mean any one or more of the following: (i) a liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary; (ii) a sale, merger or similar transaction involving the Corporation, as the result of which those persons who held 100% of the voting stock of the Corporation immediately prior to such transaction do not hold more than 50% of the voting stock of the Corporation (or the surviving or resulting entity) after giving effect to such transaction, other than the sale of shares of Series B Preferred Stock pursuant to that certain Debenture and Stock Purchase Agreement dated as of July 31, 2002; or (iii) the sale of all or substantially all of the assets of the Corporation.

If upon any such Liquidity Event the assets of the Corporation available for distribution to its shareholders shall be insufficient to permit payment to the holders of the Preferred Stock of the full amount of the Series A Liquidation Amount or Series B Liquidation Amount to which they are entitled to be paid, the holders of shares of Preferred Stock shall be paid in any distribution of assets according to the amounts which would be payable with respect to the shares of Preferred Stock held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(b) Distributions in Cash. The Series A Liquidation Amount and Series B Liquidation Amount shall in all events be paid in cash. Whenever a distribution provided for in this Section 3 is payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Corporation's Board of Directors.

4. Voting Power. Except as otherwise expressly provided in Section 7 hereof, or as required by law, the holders of the Series A Preferred Stock shall not be entitled to vote on any corporate matters. The holders of the Series B Preferred Stock shall vote on an as-converted basis with respect to the shares of Common Stock that would be acquired upon conversion of the Series B Preferred Stock.

5. Conversion Rights of the Series B Preferred Stock. The holders of the Series B Preferred Stock shall have the following rights with respect to the conversion of the Series B Preferred Stock into shares of Common Stock and Series A Preferred Stock:

(a) Conversion. Subject to and in compliance with the provisions of this Section 5, any share of the Series B Preferred Stock may, at the option of the holder, be converted at any time into a combination of fully-paid and non-assessable shares of Common Stock and Series A Preferred Stock. Upon conversion, a holder of Series B Preferred Stock shall be entitled to (i) a number of shares of Series A Preferred Stock equal to the number of shares of

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Series B Preferred Stock being converted and (ii) the number of shares of Common Stock to which a holder of Series B Preferred Stock equal to the product obtained by multiplying the number of shares of Series B Preferred Stock being converted by the Applicable Conversion Rate (as determined by Section 5(b)). Upon conversion of the Series B Preferred Stock all dividends declared thereon but unpaid shall be paid in cash.

(b) Applicable Conversion Rate. The conversion rate in effect at any time (the "Applicable Conversion Rate") shall be the quotient obtained by dividing \$1.7454 by the Applicable Conversion Value, calculated as provided in Section 5(c).

(c) Applicable Conversion Value. The Applicable Conversion Value shall be \$1.7454, except that such amounts shall be adjusted from time to time in accordance with this Section 5.

(d) Adjustments to Applicable Conversion Values.

(i) (A) Upon Sale of Common Stock. If the Corporation shall, while there are any shares of Series B Preferred Stock outstanding, issue or sell shares of its Common Stock without consideration or at a price per share less than \$3.4908 (as adjusted for stock splits, stock combinations, stock dividends and recapitalizations), then in each such case such Applicable Conversion Value for the Series B Preferred Stock, upon each such issuance or sale, except as hereinafter provided, shall be lowered so as to be equal to an amount determined by multiplying the Applicable Conversion Value by a fraction:

(1) the numerator of which shall be (a) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock, plus (b) the number of shares of Common Stock which the net aggregate consideration, if any, received by the Corporation for the total number of such additional shares of Common Stock so issued would purchase at the Applicable Conversion Value in effect immediately prior to such issuance, and

(2) the denominator of which shall be (a) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock plus (b) the number of such additional shares of Common stock so issued.

(B) Upon Issuance of Warrants, Options and Rights to Common Stock.

(1) For the purposes of this Section 5(d)(i), the issuance of any warrants, options, subscriptions, or purchase rights with respect to shares of Common Stock and the issuance of any securities convertible into or exchangeable for shares of Common Stock (or the issuance of any warrants, options or any rights with respect to such convertible or exchangeable securities) shall be deemed an issuance of such Common Stock at such time if the Net Consideration Per Share (as hereinafter determined) which may be received by the Corporation for such Common Stock shall be less than the Applicable Conversion Value at the time of such issuance. Any obligation, agreement, or undertaking to issue warrants, options, subscriptions, or purchase rights at any time in the future shall be deemed to be an issuance at the time such obligation, agreement or undertaking is made or

arises. No adjustment of the Applicable Conversion Value shall be made under this Section 5(d)(i) upon the issuance of any shares of Common Stock which are issued pursuant to the exercise of any warrants, options, subscriptions, or purchase rights or pursuant to the exercise of any conversion or exchange rights in any convertible securities if any adjustment shall previously have been made or deemed not required hereunder, upon the issuance of any such warrants, options, or subscription or purchase rights or upon the issuance of any convertible securities (or upon the issuance of any warrants, options or any rights therefor) as above provided.

Should the Net Consideration Per Share of any such warrants, options, subscriptions, or purchase rights or convertible securities be increased or decreased from time to time, then, upon the effectiveness of each such change, the Applicable Conversion Value shall be adjusted to such Applicable Conversion Value as would have obtained (1) had the adjustments made upon the issuance of such warrants, options, rights, or convertible securities been made upon the basis of the decreased Net Consideration Per Share of such securities, and (2) had adjustments made to the Applicable Conversion Value since the date of issuance of such securities been made to the Applicable Conversion Value as adjusted pursuant to (1) above. Any adjustment of the Applicable Conversion Value with respect to this paragraph which relates to warrants, options, subscriptions, purchase rights or convertible securities with respect to shares of Common Stock shall be disregarded if, as, when and to the extent such warrants, options, subscriptions, purchase rights or convertible securities expire or are canceled without being exercised or converted, so that the Applicable Conversion Value effective immediately upon such cancellation or expiration shall be equal to the Applicable Conversion Value in effect at the time of the issuance of the expired or canceled warrants, options, subscriptions, purchase rights, or convertible securities with such additional adjustments as would have been made to that Applicable Conversion Value had the expired or canceled warrants, options, subscriptions, purchase rights or convertible securities not been issued.

(2) For purposes of this paragraph, the "Net Consideration Per Share" which may be received by the Corporation shall be determined as follows:

(a) The "Net Consideration Per Share" shall mean the amount equal to the total amount of consideration, if any, received by the Corporation for the issuance of such warrants, options, subscriptions, or other purchase rights or convertible or exchangeable securities, plus the minimum amount of consideration, if any, payable to the Corporation upon exercise or conversion thereof, divided by the aggregate number of shares of Common Stock that would be issued if all such warrants, options, subscriptions, or other purchase rights or convertible or exchangeable securities were exercised, exchanged, or converted.

(b) The Net Consideration Per Share which may be received by the Corporation shall be determined in each instance as of the date of issuance of warrants, options, subscriptions, or other purchase rights or convertible or exchangeable securities without giving effect to any possible future upward price adjustments or rate adjustments which may be applicable with respect to such

warrants, options, subscriptions, or other purchase rights or convertible or exchangeable securities.

(C) Stock Dividends. In the event the Corporation shall make or issue a dividend or other distribution payable in Common Stock or securities of the Corporation convertible into or otherwise exchangeable for Common Stock of the Corporation, then such Common Stock or other securities issued in payment of such dividend shall be deemed to have been issued without consideration (except for dividends payable in shares of Common Stock payable pro rata to all holders of Preferred Stock and to holders of any other class of stock, in which case the securities so issued shall be deemed to have been issued with the consideration equal to the Applicable Conversion Value).

(D) Consideration Other than Cash. For purposes of this Section 5(d), if a part or all of the consideration received by the Corporation in connection with the issuance of shares of the Common Stock or the issuance of any of the securities described in this Section 5(d) consists of property other than cash, such consideration shall be deemed to have a fair market value as is reasonably determined in good faith by the Board of Directors of the Corporation.

(E) Exceptions. This Section 5(d) shall not apply under any of the circumstances which would constitute an Extraordinary Common Stock Event (as hereinafter defined in Section 5(d)(ii)). Further, the provisions of this Section 5(d) shall not apply to (i) shares issued upon conversion of the Series B Preferred Stock, (ii) options (and the shares issuable upon exercise thereof) to purchase up to 469,586 shares of Common Stock (including options outstanding on the date hereof) granted to employees of the Corporation, which grants shall have been approved in writing by a majority of the members of the Compensation Committee of the Board of Directors or if such Compensation Committee has not yet been established, the Board of Directors, (iii) shares issued in connection with a merger or other acquisition by the Corporation resulting in the acquisition of a business which is approved by a majority of the Corporation's Board of Directors, which majority must include at least one director designated solely by the holders of the Preferred Stock; (iv) shares issued in connection with an initial public offering of the Corporation's equity securities resulting in gross proceeds to the Corporation (before underwriting discounts and offering expenses) of at least Forty Million Dollars (\$40,000,000) and which has a per share price to the public of not less than \$17.454; or (v) shares issued pursuant to agreements with lenders (in connection with a bank or other financing), or with strategic partners or suppliers which are approved by a majority of the Corporation's Board of Directors, which majority must include at least one director designated solely by the holders of the Preferred Stock. In each instance set forth above, the number of shares shall be proportionately adjusted to reflect any stock dividend, stock split, stock combination or the like.

(ii) Upon Extraordinary Common Stock Event. Upon the happening of an Extraordinary Common Stock Event (as hereinafter defined), the Applicable Conversion Value for the Series B Preferred Stock shall, simultaneously with the happening of such Extraordinary Common Stock Event, be adjusted by multiplying the then effective Applicable Conversion

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Value with respect to the Series B Preferred Stock by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such Extraordinary Common Stock Event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such Extraordinary Common Stock Event, and the product so obtained shall thereafter be the Applicable Conversion Value; provided, however, that the Applicable Conversion Value shall not be adjusted if the Series B Preferred Stock are subdivided or combined at the same rates and in the same manner as the Common Stock. The Applicable Conversion Value for the Series B Preferred Stock shall be readjusted in the same manner upon the happening of any successive Extraordinary Common Stock Event or Events.

"Extraordinary Common Stock Event" shall mean (i) a subdivision of outstanding shares of Common Stock into a greater number of shares of Common Stock, or (ii) a combination of outstanding shares of the Common Stock into a smaller number of shares of Common Stock.

(e) Capital Reorganization or Reclassification. If the Common Stock issuable upon the conversion of the Series B Preferred Stock shall be changed into the same or different number of shares of any class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 5 or by a Liquidity Event), then and in each such event, the holder of each share of Series B Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such capital reorganization, reclassification or other change by holders of the number of shares of Common Stock into which such share of Series B Preferred Stock would have been converted immediately prior to such capital reorganization, reclassification or other change.

(f) Liquidity Event. If at any time or from time to time there shall be a Liquidity Event (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 5), then as a part of such Liquidity Event, provision shall be made so that the holders of the Series B Preferred Stock shall thereafter be entitled to receive upon conversion of the Series B Preferred Stock, the number of shares of stock or other securities or property of the Corporation, or of the successor corporation resulting from such Liquidity Event, including, without limitation, any amounts payable with respect to the Series A Preferred Stock pursuant to Section 6 below, to which such holder would have been entitled if such holder had converted its shares of Series B Preferred Stock immediately prior to such Liquidity Event. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of the Series B Preferred Stock after the Liquidity Event, to the end that the provisions of this Section 5 (including adjustment of the Applicable Conversion Value then in effect and the number of shares issuable upon conversion of the Series B Preferred Stock) shall be applicable after that event in as nearly equivalent a manner as may be practicable.

Except as otherwise provided in Section 3, upon the occurrence of a Liquidity Event, under circumstances which make the preceding paragraph applicable, each holder of Series A Preferred Stock shall have the option of electing treatment for his shares of Series A Preferred Stock under

either this Section 5(f) or Section 3 hereof, notice of which election shall be submitted in writing to the Corporation at its principal offices no later than ten (10) business days before the effective date of such event.

(g) Certificate as to Adjustments; Notice by Corporation. In each case of an adjustment or readjustment of the Applicable Conversion Rate, the Corporation at its expense will furnish each holder of Series B Preferred Stock with a certificate, executed by the president and chief financial officer (or in the absence of a person designated as the chief financial officer, by the treasurer) showing such adjustment or readjustment, and stating in detail the facts upon which such adjustment or readjustment is based.

(h) Exercise of Conversion Privilege. To exercise its conversion privilege, a holder of Series B Preferred Stock shall surrender the certificate or certificates representing the shares being converted to the Corporation at its principal office, and shall give written notice to the Corporation at that office that such holder elects to convert such shares. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock and Series A Preferred Stock issuable upon such conversion shall be issued. The certificate or certificates for shares of Series B Preferred Stock surrendered for conversion shall be accompanied by proper assignment thereof to the Corporation or in blank. The date when such written notice is received by the Corporation, together with the certificate or certificates representing the shares of Series B Preferred Stock being converted, shall be the "Conversion Date." As promptly as practicable after the Conversion Date, the Corporation shall issue and shall deliver to the holder of the shares of Series B Preferred Stock being converted, or on its written order, such certificate or certificates as it may request for the number of whole or fractional shares of Common Stock and Series A Preferred Stock issuable upon the conversion of such shares of Series B Preferred Stock in accordance with the provisions of this Section 5. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Conversion Date, and at such time the rights of the holder as holder of the converted shares of Series B Preferred Stock shall cease and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby. The Corporation shall pay any taxes payable with respect to the issuance of Common Stock and Series A Preferred Stock upon conversion of the Series B Preferred Stock, other than any taxes payable with respect to income by the holders thereof.

(i) Cash in Lieu of Fractional Shares. The Corporation may, if it so elects, issue fractional shares of Common Stock or Series A Preferred Stock or scrip representing fractional shares upon the conversion of shares of Series B Preferred Stock. If the Corporation does not elect to issue fractional shares, the Corporation shall pay to the holder of the shares of Series B Preferred Stock which were converted a cash adjustment in respect of such fractional shares in an amount equal to the same fraction of the market price per share of the Common Stock or Series A Preferred Stock (as determined in a reasonable manner prescribed by the Board of Directors) at the close of business on the Conversion Date. The determination as to whether or not any fractional shares are issuable shall be based upon the total number of shares of Series B Preferred Stock being converted at any one time by any holder thereof, not upon each share of Series B Preferred Stock being converted.

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(j) Partial Conversion. In the event some but not all of the shares of Series B Preferred Stock represented by a certificate or certificates surrendered by a holder are converted, the Corporation shall execute and deliver to or on the order of the holder, at the expense of the Corporation, a new certificate representing the number of shares of Series B Preferred Stock which were not converted.

(k) Reservation of Common Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock and Series A Preferred Stock, solely for the purpose of effecting the conversion of the shares of the Series B Preferred Stock, such number of its shares of Common Stock and Series A Preferred Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock or Series A Preferred Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock or Series A Preferred Stock to such number of shares as shall be sufficient for such purpose.

(l) Cash Payment. Notwithstanding the foregoing, upon any conversion of any shares of Series B Preferred Stock any time after the holders thereof would otherwise be entitled to payment of the Series A Redemption Price pursuant to Section 6 below, the holder may elect to take such Series A Redemption Price with respect to and in lieu of the shares of Series A Preferred Stock into which the Series B Preferred Stock is convertible.

## 6. Redemption.

(a) Optional Redemption of Series A Preferred Stock by Holders Upon a Liquidity Event or Public Offering. In the event of (i) an underwritten public offering by the Corporation pursuant to a Registration Statement filed and declared effective under the Act covering the offer and sale of Common Stock for the account of the Corporation (a "Public Offering"), or (ii) a Liquidity Event, the holders of a majority of Series A Preferred Stock may, at their election, if not paid pursuant to Section 3(a) hereof, require the Corporation to redeem all or any portion of the Series A Preferred Stock. The Corporation shall give the holders of the Series A Preferred Stock forty-five (45) days' written notice of the pendency of a transaction constituting a Liquidity Event or Public Offering. Such notice shall be mailed by the Corporation, postage prepaid, to each holder of record of Series A Preferred Stock at its address shown on the records of the Corporation. If the holders of a majority of Series A Preferred Stock elect to require the redemption of their Series A Preferred Stock, they shall so notify the Corporation in writing within twenty (20) days of receipt of the Corporation's notice of the Liquidity Event or Public Offering and specify the number of shares to be redeemed. The holders' election to require the redemption of the Series A Preferred Stock will be contingent upon the consummation of the Liquidity Event or Public Offering. The Corporation will be required, to the extent funds are legally available therefor, to redeem the shares of Series A Preferred Stock requested to be redeemed concurrently with the closing of the event constituting the Liquidity Event or upon consummation of the Public Offering. Any shares of Series A Preferred Stock redeemed pursuant to this Section 6 shall be redeemed at the Series A Liquidation Amount (the "Series A Preferred Stock Redemption Price").

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(b) Optional Redemption of Series A Preferred Stock by Holders Upon Certain Anniversaries. At the election of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, the Corporation shall, to the extent it may do so under applicable law, redeem pro rata from all holders of Series A Preferred Stock on July 31, 2007 (the "Initial Redemption Date"), one-half of the shares of Series A Preferred Stock outstanding on July 31, 2007, and the remaining shares of Series A Preferred Stock outstanding on July 31, 2008 (the "Final Redemption Date"). The Corporation shall give the holders of the Series A Preferred Stock at least ninety (90) days' notice of the Initial Redemption Date (the "Initial Redemption Notice"). In the event that the Corporation does not provide the Initial Redemption Notice, the option of the holders of the Series A Preferred Stock to require the Corporation to redeem the remaining shares of Series A Preferred Stock on the Initial Redemption Date shall be extended beyond the Initial Redemption Date to a date which is ninety (90) days from the date that the Corporation elects to mail the Initial Redemption Notice and the Final Redemption Date shall be extended to the date that is the first anniversary of the Initial Redemption Date. In the event shares of Series A Preferred Stock scheduled for redemption are not redeemed because of a prohibition under applicable law, such shares shall be redeemed as soon as such prohibition no longer exists.

(c) Redemption Notice. If an election is made pursuant to Section 6(b) hereof, written notice of such election shall be mailed, postage prepaid, to the Corporation, not later than sixty (60) days before the date fixed for each redemption pursuant to Section 6(b) or, in the event the Corporation does not provide the Initial Redemption Notice pursuant to Section 6(b) hereof, not later than sixty (60) days before the date that the Initial Redemption Date has been extended as provided in Section 6(b) (each of the dates fixed for redemption and the extended redemption date is hereinafter referred to as a "Redemption Date"). If such election is made and appropriate notice is given then, at least forty-five (45) days before the Redemption Date, written notice (hereinafter referred to as the "Redemption Notice") shall be mailed, postage prepaid, to each holder of record of Series A Preferred Stock entitled to be redeemed pursuant to the applicable Section hereof at its address shown on the records of the Corporation; provided, however, that the Corporation's failure to give such Redemption Notice shall in no way affect its obligation to redeem the shares of Series A Preferred Stock. The Redemption Notice shall contain the following instructions:

(i) the number of shares of Series A Preferred Stock held by the holder and the total number of shares of Series A Preferred Stock held by all holders subject to redemption as of such Redemption Date; and

(ii) the Redemption Date and the Redemption Price.

(f) Surrender of Certificates. Each holder of shares of Series A Preferred Stock to be redeemed under this Section 6 shall surrender the certificate or certificates representing such shares to the Corporation at the place designated in the Redemption Notice and thereupon the Series A Redemption Price, as the case may be, for such shares as set forth in this Section 6 shall be paid to the order of the person whose name appears on such certificate or certificates. Irrespective of whether the certificates therefor shall have been surrendered, all shares of Series A Preferred Stock which are the subject of a Redemption Notice shall be deemed

to have been redeemed and shall be cancelled effective as of the closing of the Redemption Date, as the case may be, unless the Corporation shall default in the payment of the applicable Series A Redemption Price.

(g) Rights Offering. In the event the Corporation is obligated to redeem shares of Series A Preferred Stock hereunder, but has insufficient funds with which to fund such redemption, the Corporation shall initiate a rights offering to its shareholders (the "Rights Offering"). The Rights Offering shall be comprised of Common Stock which shall be offered to all shareholders of the Corporation at a price per share equal to the fair market value thereof, determined by an independent appraiser selected by the Board of Directors. Such Rights Offering shall have a gross offering price equal to the amount payable to respect to shares of Preferred Stock to be redeemed. All shareholders shall have the right to participate in the Rights Offering in proportion to the shares of Common Stock owned by each (including any such shares issuable upon exercise of options, warrants or convertible securities held by such shareholders), with a right of over-subscription. The Rights Offering shall be commenced within thirty (30) days after the date on which the Corporation is obligated to redeem the Series A Preferred Stock, and shall remain open for a maximum of sixty (60) days. All proceeds to the Rights Offering shall be used to fund the redemption of the Series A Preferred Stock which is then required.

(h) Remedies. In the event that the Corporation is obligated to redeem shares of Series A Preferred Stock hereunder, but fails to redeem the full number of shares of Series Preferred Stock scheduled to be redeemed on such Redemption Date for the full Series A Preferred Stock Redemption Price, for any reason including, but not limited to, lack of sufficient legally available funds, then (i) the Series A Preferred Stock Redemption Price owed on such Redemption Date shall accrue interest at a rate of fifteen percent (15%) per annum and (ii) the Corporation's Board of Directors shall be constituted as set forth in Section 8 of that certain Shareholders' Agreement dated as of July 31, 2002 in the event of a failure to redeem by the Corporation.

## 7. Restrictions and Limitations.

(a) Corporate Action. Except as expressly provided herein or as required by law, so long as any shares of Preferred Stock remain outstanding, the Corporation shall not, and shall not permit any subsidiary (which shall mean any corporation, association or other business entity of which the Corporation and/or any of its other subsidiaries directly or indirectly owns at the time more than fifty percent (50%) of the outstanding voting securities, other than directors' qualifying shares) to, without the approval by vote or written consent by the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a separate class:

(i) redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose), or declare and pay or set aside funds for the payment of any dividend or other distribution with respect to, any shares of capital stock, except as required or permitted under the terms of the Series A Preferred Stock or under that certain Shareholders Redemption Agreement among the Corporation and certain of its shareholders dated July 31, 2002 or under that certain Redemption Agreement among the Corporation and certain of its shareholders dated July 31, 2002;

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(ii) authorize or issue, or obligate itself to authorize or issue, additional shares of Preferred Stock;

(iii) authorize or issue, or obligate itself to authorize or issue, any equity security senior to or on parity with the Preferred Stock as to liquidation preferences, redemption rights or dividend rights;

(iv) merge or consolidate with any other corporation, or acquire the stock or assets of any other corporation, partnership or business, or sell, assign, lease or otherwise dispose of or voluntarily part with the control of (whether in one transaction or in a series of transactions) all, or substantially all, of its assets (whether now owned or hereinafter acquired), or consent to any liquidation, dissolution or winding up of the Corporation, or permit any subsidiary to do any of the foregoing, except for (1) the merger or consolidation of any wholly-owned subsidiary into any other wholly-owned subsidiary or the Corporation; (2) the transfer by any wholly-owned subsidiary of assets to another wholly-owned subsidiary or to the Corporation; or

(v) amend, restate, modify or alter the by-laws of the Corporation in any way which adversely affects the rights of the holders of the Preferred Stock.

(b) Amendments to Charter. The Corporation shall not amend its charter without the approval, by vote or written consent, by the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a separate class, if such amendment would have an adverse effect on the rights, preferences, privileges of or limitations provided for herein for the benefit of any shares of Preferred Stock. Without limiting the generality of the preceding sentence, the Corporation will not amend its charter without the approval by the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a separate class, if such amendment would:

(i) change the relative seniority rights of the holders of Preferred Stock as to the payment of dividends in relation to the holders of any other capital stock of the Corporation, or create any other class or series of capital stock entitled to seniority as to the payment of dividends in relation to the holders of Preferred Stock;

(ii) reduce the amount payable to the holders of Preferred Stock upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, or change the relative seniority of the liquidation preferences of the holders of Preferred Stock to the rights upon liquidation of the holders of other capital stock of the Corporation, or change the dividend rights of the holders of Preferred Stock;

(iii) cancel or modify the redemption rights of the holders of the Preferred Stock provided for in Section 5 herein; or

(iv) cancel or modify the rights of the holders of the Preferred Stock provided for in this Section 7.

8. Notices of Record Date. In the event of

(a) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or

(b) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger of the Corporation, or any transfer of all or substantially all of the assets of the Corporation to any other corporation, or any other entity or person, or

(c) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, then and in each such event the Corporation shall mail or cause to be mailed to each holder of Preferred Stock a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and a description of such dividend, distribution or right, (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, merger, dissolution, liquidation or winding up is expected to become effective and (iii) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, recapitalization, transfer, merger, dissolution, liquidation or winding up. Such notice shall be mailed at least ten (10) business days prior to the date specified in such notice on which such action is to be taken.

9. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue. The Corporation may from time to time take such appropriate corporate action as may be necessary to reduce the authorized number of shares of the Preferred Stock accordingly.

**FIFTH:** In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

- A. The Board of Directors of the Corporation is expressly authorized to adopt, amend, or repeal the by-laws of the Corporation.
- B. Elections of directors need not be by written ballot unless the by-laws of the Corporation shall so provide.
- C. The books of the Corporation may be kept at such place within or without the State of Delaware as the by-laws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

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**SIXTH:** Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholders thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to reorganization of this corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

**SEVENTH:** The Corporation hereby elects in this Amended and Restated Certificate of Incorporation not to be governed by Section 203 of the General Corporation Law of Delaware.

**EIGHTH:** Except as stated in Article Ninth of this Amended and Restated Certificate of Incorporation, the Corporation reserves the right to amend or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon a stockholder herein are granted subject to this reservation.

**NINTH:** Except to the extent that the General Corporation Law of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

**TENTH:** The Corporation shall provide indemnification as follows:

1. Actions, Suits and Proceedings Other than by or in the Right of the Corporation. The Corporation shall indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an "Indemnitee"), or by reason of any action

alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

2. Actions or Suits by or in the Right of the Corporation. The Corporation shall indemnify any Indemnitee who was or is a party to or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made under the Section 2 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Corporation, unless, and only to the extent, that the Court of Chancery of Delaware shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses (including attorneys' fees) which the Court of Chancery of Delaware shall deem proper.

3. Indemnification for Expenses of Successful Party. Notwithstanding any other provisions of this Article, to the extent that an Indemnitee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article TENTH, or in defense of any claim, issue or matter therein, or on appeal from any such action, suit or proceeding, Indemnitee shall be indemnified against all expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of Indemnitee in connection therewith. Without limiting the foregoing, if any action, suit or proceeding is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to Indemnitee, (ii) an adjudication that Indemnitee was liable to the Corporation, (iii) a plea of guilty or nolo contendere by Indemnitee, (iv) an adjudication that Indemnitee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and (v) with respect to any criminal proceeding, an adjudication that

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Indemnitee had reasonable cause to believe his conduct was unlawful, Indemnitee shall be considered for the purposes hereof to have been wholly successful with respect thereto.

4. Notification and Defense of Claim. As a condition precedent to an Indemnitee's right to be indemnified, such Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such Indemnitee for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to Indemnitee. After notice from the Corporation to Indemnitee of its election so to assume such defense, the Corporation shall not be liable to Indemnitee for any legal or other expenses subsequently incurred by Indemnitee in connection with such action, suit, proceeding or investigation, other than as provided below in this Section 4. Indemnitee shall have the right to employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Corporation, (ii) counsel to Indemnitee shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Corporation and Indemnitee in the conduct of the defense of such action, suit, proceeding or investigation or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for Indemnitee shall be at the expense of the Corporation, except as otherwise expressly provided by this Article. The Corporation shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation or as to which counsel for Indemnitee shall have reasonably made the conclusion provided for in clause (ii) above. The Corporation shall not be required to indemnify Indemnitee under this Article TENTH for any amounts paid in settlement of any action, suit, proceeding or investigation effected without its written consent. The Corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold or delay its consent to any proposed settlement.

5. Advance of Expenses. Subject to the provisions of Section 6 of this Article TENTH, in the event that the Corporation does not assume the defense pursuant to Section 4 of this Article TENTH of any action, suit, proceeding or investigation of which the Corporation receives notice under this Article, any expenses (including attorneys' fees) incurred by or on behalf of an Indemnitee in defending an action, suit, proceeding or investigation or any appeal therefrom shall be paid by the Corporation in advance of the final disposition of such matter; provided, however, that the payment of such expenses incurred by or on behalf of Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article; and further provided that no such advancement of expenses shall be made under this Article TENTH if it is determined (in the manner described in Section 6) that (i) Indemnitee did not act in good faith and in a manner he or she reasonably believed to be in, or

not opposed to, the best interests of the Corporation, or (ii) with respect to any criminal action or proceeding, Indemnitee had reasonable cause to believe his or her conduct was unlawful. Such undertaking shall be accepted without reference to the financial ability of Indemnitee to make such repayment.

6. Procedure for Indemnification. In order to obtain indemnification or advancement of expenses pursuant to Section 1, 2, 3 or 5 of this Article TENTH, an Indemnitee shall submit to the Corporation a written request. Any such advancement of expenses shall be made promptly, and in any event within 30 days after receipt by the Corporation of the written request of Indemnitee, unless the Corporation determines within such 30-day period that Indemnitee did not meet the applicable standard of conduct set forth in Section 1, 2 or 5 of this Article TENTH, as the case may be. Any such indemnification, unless ordered by a court, shall be made with respect to requests under Section 1 or 2 only as authorized in the specific case upon a determination by the Corporation that the indemnification of Indemnitee is proper because Indemnitee has met the applicable standard of conduct set forth in Section 1 or 2, as the case may be. Such determination shall be made in each instance (a) by a majority vote of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question ("disinterested directors"), whether or not a quorum, (b) by a committee of disinterested directors designated by majority vote of disinterested directors, whether or not a quorum, (c) if there are no disinterested directors, or if the disinterested directors so direct, by independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation) in a written opinion, or (d) by the stockholders of the Corporation.

7. Remedies. The right to indemnification or advancement of expenses as granted by this Article shall be enforceable by Indemnitee in any court of competent jurisdiction. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation pursuant to Section 6 of this Article TENTH that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct. Indemnitee's expenses (including attorneys' fees) reasonably incurred in connection with successfully establishing Indemnitee's right to indemnification, in whole or in part, in any such proceeding shall also be indemnified by the Corporation.

8. Limitations. Notwithstanding anything to the contrary in this Article, except as set forth in Section 7 of the Article TENTH, the Corporation shall not indemnify an Indemnitee pursuant to this Article TENTH in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board of Directors of the Corporation. Notwithstanding anything to the contrary in this Article, the Corporation shall not indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, Indemnitee shall promptly refund such indemnification payments to the Corporation to the extent of such insurance reimbursement.

9. Subsequent Amendment. No amendment, termination or repeal of this Article or of the relevant provisions of the General Corporation Law of Delaware or any other applicable laws shall affect or diminish in any way the rights of any Indemnitee to indemnification under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

10. Other Rights. The indemnification and advancement of expenses provided by this Article shall not be deemed exclusive of any other rights to which an Indemnitee seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement or vote of stockholders or disinterested directors or otherwise, both as to action in Indemnitee's official capacity and as to action in any other capacity while holding office for the Corporation, and shall continue as to an Indemnitee who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of Indemnitee. Nothing contained in this Article shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements with officers and directors providing indemnification rights and procedures different from those set forth in this Article. In addition, the Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article.

11. Partial Indemnification. If an Indemnitee is entitled under any provision of this Article to indemnification by the Corporation for some or a portion of the expenses (including attorneys' fees), judgments, fines or amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with any action, suit, proceeding or investigation and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such expenses (including attorneys' fees), judgments, fines or amounts paid in settlement to which Indemnitee is entitled.

12. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) against any expense, liability or loss incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of Delaware.

13. Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with any action, suit, proceeding or investigation, whether civil, criminal or administrative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

14. **Definitions.** Terms used herein and defined in Section 145(h) and Section 145(i) of the General Corporation Law of Delaware shall have the respective meanings assigned to such terms in such Section 145(h) and Section 145(i).

IN WITNESS WHEREOF, the Corporation as caused this Amended and Restated Certificate of Incorporation to be signed by its President this 31 day of July, 2002.

**PROFESSIONAL SYSTEMS CORPORATION**

By: \_\_\_\_\_

Name: Joseph J. Greco

Title: President

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RECORDED: 03/10/2003

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