

10-21-2009

DEPARTMENT OF COMMERCE  
Patent and Trademark Office



103578119

10/20/09

RECORD  
TRA

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies):

Portico Systems of Delaware, Inc.  
518 East Township Road, Suite 100  
Blue Bell, PA 19422

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

Citizenship (see guidelines) \_\_\_\_\_

Additional names of conveying parties attached?  Yes  No

3. Nature of conveyance )/Execution Date(s) :

Execution Date(s) October 13, 2009

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

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached?  Yes  No

Name: MMV FINANCE INC. 007 1 9 2009

Internal Address: \_\_\_\_\_

Street Address: 370 King Street West, Suite 604

City: TORONTO

State: ONTARIO

Country: CANADA Zip: MSV1J9

- Association Citizenship \_\_\_\_\_
- General Partnership Citizenship \_\_\_\_\_
- Limited Partnership Citizenship \_\_\_\_\_
- Corporation Citizenship CANADA
- Other \_\_\_\_\_ Citizenship \_\_\_\_\_

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

3205337, 2915293, 2918105, 2867915, 2582149, 2422778, 2452443, 3032393, 2993777, 2937430, 7760617

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

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

Name: Bonnie R. Golub, Esquire

Internal Address: Weir & Partners LLP  
The Widener Building

Street Address: 1339 Chestnut Street, Suite 500

City: Philadelphia

State: PA Zip: 19107

Phone Number: 215-665-8181

Fax Number: 215-665-8464

Email Address: bgolub@weirpartners.com

6. Total number of applications and registrations involved:

11

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$290.00

- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

Deposit Account 10/21/2009 DBYRNE 0000001 3205337

Authorized User 01 FC:8521 40.00 OP

02 FC:8522 250.00 OP

9. Signature:

Signature

10/15/09

Date

Bonnie R. Golub, Esquire

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 6

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

# AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

**THIS AGREEMENT AND PLAN OF MERGER AND REORGANIZATION** (this "Agreement") is made and entered into this 13<sup>th</sup> day of October, 2009, by and between **PORTICO SYSTEMS, INC.**, a Pennsylvania corporation ("**Portico-PA**"), and **PORTICO SYSTEMS OF DELAWARE, INC.**, a Delaware corporation ("**Portico-DE**"). Portico-PA and Portico-DE are together referred to herein as the "**Constituent Corporations.**"

## BACKGROUND

**WHEREAS**, Portico-PA is a corporation duly organized, existing under and governed by the laws of the Commonwealth of Pennsylvania; and

**WHEREAS**, Portico-DE is a corporation duly organized, existing under and governed by the laws of the State of Delaware; and

**WHEREAS**, Portico-PA has an authorized capitalization consisting of 33,430,640 shares of capital stock, consisting of two separate classes of stock divided and designated as follows: (i) 21,234,554 shares of Common Stock ("**Portico-PA Common Stock**"), no par value per share; and (ii) 12,196,086 shares of Preferred Stock ("**Portico-PA Preferred Stock**"), no par value per share, of which Portico-PA Preferred Stock (a) 6,055,045 shares are designated as Series A Preferred Stock ("**Portico-PA Series A Preferred Stock**"), (b) 4,906,487 shares are designated as Series B Preferred Stock ("**Portico-PA Series B Preferred Stock**"), and (c) 1,234,554 shares are designated as Series B-1 Preferred Stock ("**Portico-PA Series B-1 Preferred Stock**"). As of the date hereof, 5,998,534 shares of Portico-PA Common Stock are issued and outstanding, 6,055,045 shares of Portico-PA Series A Preferred Stock are issued and outstanding, 4,906,487 shares of Portico PA Series B Preferred Stock are issued and outstanding and 995,608 shares of Portico Series B-1 Preferred Stock are issued and outstanding; and

**WHEREAS**, Portico-DE has an authorized capitalization consisting of 33,508,295 shares of capital stock, consisting of two separate classes of stock divided and designated as follows: (i) 21,234,554 shares of Common Stock ("**Portico-DE Common Stock**"), par value \$0.001 per share; and (ii) 12,273,741 shares of Preferred Stock ("**Portico-DE Preferred Stock**"), par value \$0.001 per share, of which Portico-PA Preferred Stock (a) 6,055,045 shares are designated as Series A Preferred Stock ("**Portico-DE Series A Preferred Stock**"), (b) 4,906,487 shares are designated as Series B Preferred Stock ("**Portico-DE Series B Preferred Stock**"), and (c) 1,312,209 shares are designated as Series B-1 Preferred Stock ("**Portico-DE Series B-1 Preferred Stock**"). As of the date hereof, no shares of capital stock of Portico-DE are issued and outstanding; and

**WHEREAS**, the Delaware General Corporation Law ("**DGCL**") permits the merger of a business corporation of the State of Delaware with and into a business corporation of another jurisdiction; and

**WHEREAS**, the Pennsylvania Business Corporation Law ("**PBCL**") permits the merger of a business corporation of another jurisdiction with and into a business corporation of the Commonwealth of Pennsylvania; and

**WHEREAS**, the stockholders and board of directors, as applicable, of each of the Constituent Corporations, by resolutions duly adopted, have each approved this Agreement and

declare it to be advisable and in the best interests of the Constituent Corporations and their stockholders that Portico-PA be merged with and into Portico-DE, with Portico-DE being the surviving corporation, in the manner and under the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Merger.

(a) Upon the Effective Date (as defined in Section 7 hereof) and in compliance with the applicable provisions of the DGCL and the PBCL, Portico-PA shall be merged with and into Portico-DE, with Portico-DE being the surviving corporation and with the separate existence of Portico-PA thereupon ceasing (the "**Merger**"). The name of the surviving corporation shall upon and after the Effective Date be that of Portico-DE. The Merger is intended to constitute an "F" Reorganization within the meaning of Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended.

(b) Subject to the terms and conditions herein, on the Effective Date, by virtue of the Merger and without any action on the part of the holder of any shares of capital stock of the Constituent Corporations:

1. each then outstanding share of Portico-PA Common Stock shall be deemed cancelled, and shall be converted into one share of Portico-DE Common Stock;

2. each then outstanding share of Portico-PA Series A Preferred Stock shall be deemed cancelled, and shall be converted into one share of Portico-DE Series A Preferred Stock, which such Portico-DE Series A Preferred Stock shall have the rights, privileges and preferences as set forth in the Certificate of Incorporation of Portico-DE as referenced in Section 2(a) below and attached hereto as Exhibit A;

3. each then outstanding share of Portico-PA Series B Preferred Stock shall be deemed cancelled, and shall be converted into one share of Portico-DE Series B Preferred Stock, which such Portico-DE Series B Preferred Stock shall have the rights, privileges and preferences as set forth in the Certificate of Incorporation of Portico-DE as referenced in Section 2(a) below and attached hereto as Exhibit A; and

4. each then outstanding share of Portico-PA Series B-1 Preferred Stock shall be deemed cancelled, and shall be converted into one share of Portico-DE Series B-1 Preferred Stock, which such Portico-DE Series B-1 Preferred Stock shall have the rights, privileges and preferences as set forth in the Certificate of Incorporation of Portico-DE as referenced in Section 2(a) below and attached hereto as Exhibit A.

(c) Each option, purchase right or other security of Portico-PA issued and outstanding immediately prior to the Effective Date shall be converted into and shall be an identical security of Portico-DE, convertible into the right to acquire the same number of shares of Portico-DE Common Stock as the number of shares of Portico-PA Common Stock that were acquirable pursuant to such option, purchase right or other security immediately prior to the

Effective Date. The same number of shares of Portico-DE Common Stock shall be reserved for purposes of the exercise of such options, warrants, purchase rights or other securities as is equal to the number of shares of Portico-PA Common Stock so reserved as of the Effective Date.

(d) As of the Effective Date, each share of capital stock of Portico-DE, if any, issued and outstanding immediately prior to the Effective Date, shall, by virtue of the merger and without any action by Portico-DE, be cancelled and returned to the status of authorized but unissued shares.

(e) From and after the Effective Date, any holder of outstanding shares of Portico-PA Common Stock or Portico-PA Preferred Stock may surrender certificates representing such shares in exchange for certificates registered in the name of such holder representing shares of Portico-DE Common Stock or Portico-DE Preferred Stock, as applicable, of like amount and series; provided, however, that if any certificate representing the shares of Portico-DE Common Stock or Portico-DE Preferred Stock is to be issued in a name other than that in which the certificate therefor representing the share of Portico-PA Common Stock or Portico-PA Preferred Stock surrendered is registered, it shall be a condition of such issuance that the certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer.

(f) Immediately following the Merger, the stockholders of Portico-PA will own all of the outstanding stock of Portico-DE and will own such stock solely by reason of their ownership of the shares of stock of Portico-PA immediately prior to the Merger.

2. Certificate of Incorporation and Bylaws of the Surviving Corporation.

(a) As of the Effective Date, the Certificate of Incorporation of Portico-DE shall read as set forth on Exhibit A attached hereto and such Certificate of Incorporation shall be the Certificate of Incorporation of the surviving corporation following consummation of the Merger, until amended in accordance with the provisions provided therein or applicable law.

(b) The Bylaws of Portico-DE in effect as of the Effective Date shall be the bylaws of the surviving corporation following consummation of the Merger, until amended in accordance with the provisions provided therein or applicable law.

3. Directors and Officers of the Surviving Corporation.

(a) The directors and the members of the various committees of the Board of Directors of Portico-PA as of the date immediately prior to the Effective Date shall, from and after the Effective Date, be the directors and members of such committees of the surviving corporation, serving in the same capacities, until their successors have been duly elected or appointed and qualified, or until their earlier death, resignation or removal.

(b) The officers of Portico-PA as of the date immediately prior to the Effective Date shall, from and after the Effective Date, be the officers of the surviving corporation, until their successors have been duly elected or appointed and qualified, or until their earlier death, resignation or removal.

4. State Filings. The proper officers of the Constituent Corporations shall make and execute whatever certificates, articles and documents as are required by the DGCL or the PBCL to effectuate the Merger, and to cause the same to be filed, in the manner provided by law, and to do all things whatsoever, which may be necessary and proper to effectuate the Merger in accordance with this Agreement and the applicable provisions of the DGCL and the PBCL.

5. Effect of Merger. Upon the Effective Date:

(a) The separate existence of Portico-PA shall cease and Portico-DE shall continue to exist as the surviving corporation.

(b) Portico-DE shall succeed to and possess all the properties, assets, rights, privileges, amenities, powers, purposes and franchises, and shall be subject to all the obligations, restrictions and liabilities of Portico-PA, all without further act or deed.

(c) The properties, assets, liabilities, reserves and accounts of Portico-PA shall be taken upon the books of Portico-DE in the amounts which they are carried on the books of Portico-PA.

(d) All corporate acts, plans, policies, approvals and authorizations of Portico-PA, its stockholders, board of directors, committees elected or appointed by the board of directors, officers and agents, which are valid and effective immediately prior to the Effective Date, shall be considered for all purposes as acts, plans, policies, approvals and authorizations Portico-DE and shall be effective and binding thereon.

6. Applicable Law; Registered Agent; Registered Office. Portico-DE, as the surviving corporation, shall be governed by the laws of the State of Delaware and the registered office of Portico-DE shall be the registered office of the surviving corporation.

7. Effective Date. The Effective Date of the Merger shall be upon the later of the filing of the Certificate of Merger with the Delaware Secretary of State and the filing of the Articles of Merger with the Pennsylvania Secretary of State (the "Effective Date").

8. Termination or Modification of Merger.


(a) This Agreement may be terminated and abandoned by the Board of Directors of either of the Constituent Corporations at any time prior to the Effective Date notwithstanding the approval of this Agreement by the stockholders and/or Board of Directors of either or both Constituent Corporations. In the event of such termination and/or abandonment, this Agreement shall be void and have no effect, without liability on the part of either Constituent Corporation, their stockholders, directors or officers and in which event all actions taken as of the date hereof in furtherance of the Merger shall be deemed to have not occurred *nunc pro tunc*.

(b) Upon the authorization of the Board of Directors of the Constituent Corporations, at any time prior to the Effective Date, notwithstanding approval of this Agreement by the stockholders of either or both Constituent Corporations, this Agreement may


be modified and amended in any manner which may be necessary or appropriate to conform it to the requirements of the DGCL and/or the PBCL.

**IN WITNESS WHEREOF**, each of the Constituent Corporations has caused this Agreement to be duly executed and delivered as of the date first written above.

PORTICO SYSTEMS, INC.,  
a Pennsylvania corporation

By:   
Edmund Moore, Chief Executive  
Officer

PORTICO SYSTEMS OF DELAWARE,  
INC.,  
a Delaware corporation

By:   
Edmund Moore, Chief Executive  
Officer