

V10987

ARTICLES OF MERGER
Merger Sheet

MERGING:

APPLIED PRODUCTIVITY SYSTEMS, INC., a Florida corporation, V10987

INTO

APS SUB, INC., a Delaware corporation not qualified in Florida

File date: June 24, 1997

Corporate Specialist: Darlene Connell

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6/24/97

FLORIDA DIVISION OF CORPORATIONS
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NAME: APS SUB, INC.

AUDIT NUMBER.....H97000010384

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ARTICLES OF MERGER
MERGING
APPLIED PRODUCTIVITY SYSTEMS, INC., A FLORIDA CORPORATION
INTO
APS SUB, INC.,
A DELAWARE CORPORATION

FILED
97 JUN 24 PM 4:28
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of the Florida Business Corporation Act, Sections 607.1105 and 607.1107(1)(c) of the Florida Statutes, 1995, the undersigned corporations adopt the following Articles of Merger:

1. APPLIED PRODUCTIVITY SYSTEMS, INC., a Florida corporation (the "Parent"), is hereby merged into APS SUB, INC., a Delaware corporation ("APS"), with APS being the surviving corporation.

2. A copy of the Agreement and Plan of Merger dated as of June 18, 1997 (the "Plan of Merger") among the Parent and APS is attached hereto as Exhibit "A" and incorporated fully herein by this reference.

3. This merger shall become effective on the later of June 18, 1997, or the date these Articles of Merger are filed with the Florida Department of State.

4. The Plan of Merger was adopted on June 18, 1997 by the written consent of the sole shareholder and the Board of Directors of the Parent, and by the unanimous written consent of the Board of Directors of APS.

5. Pursuant to Section 607.1107(2) of the Florida Statutes, APS hereby appoints the Secretary of State of the State of Florida as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the Parent, and hereby agrees to promptly pay to the dissenting shareholders of the Parent the amount, if any, to which they are entitled under Section 607.1302 of the Florida Statutes.

Leslie Wager Hudock, Esquire
Barnett, Bolt, Kirkwood & Long, P.A.
601 Bayshore Blvd., Suite 700
Tampa, FL 33606
813-253-2020
Florida Bar No. 650706

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IN WITNESS WHEREOF, the constituent corporations have executed these Articles of
Merger this 18 day of June, 1997.

APPLIED PRODUCTIVITY SYSTEMS, INC.
a Florida corporation

By: 
Jerry N. Stein, MD, President

APS SUB, INC., a Delaware corporation

By: 
Jerry N. Stein, MD, President

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Plan") is adopted as of June 18, 1997, between and among APS SUB, INC., a Delaware corporation (hereinafter referred to alternatively as "APS" or the "Surviving Corporation"), and APPLIED PRODUCTIVITY SYSTEMS, INC., a Florida corporation (hereinafter referred to as the "Parent").

TERMS

WHEREAS, APS, being a wholly-owned subsidiary of the Parent, has an authorized capital stock consisting of 4,000,000 shares of common stock, par value \$0.01 per share, of which 100 shares have been duly issued and are now outstanding, and 3,000,000 shares of preferred stock, par value \$0.01 per share, of which 2,600,000 shares have been designated as Series A Convertible Preferred Stock and no shares have been issued; and

WHEREAS, the Parent has an authorized capital stock consisting of 10,000 shares of common stock, par value \$1.00 per share, of which 1,000 shares have been duly issued and are now outstanding; and

WHEREAS, the Board of Directors of APS and the Parent, respectively, deem it advisable and generally to the advantage and welfare of the two corporate parties and their respective shareholders that the Parent merge with APS pursuant to the provisions of the Florida Business Corporation Act and the General Corporation Law of the State of Delaware (the "DGCL") and in accordance with Section 368(a)(1)(A) of the Internal Revenue Code of 1986, as amended (the "Code").

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements herein contained and of the mutual benefits hereby provided, the constituent corporations hereby agree as follows:

SECTION 1.
THE MERGER

1.1. Merger. On the Effective Date (as defined in Section 4.1), the Parent shall be merged with and into APS.

1.2. Surviving Corporation. APS shall survive the merger contemplated herein and shall continue to be governed by the laws of the State of Delaware. The separate existence of the Parent shall cease forthwith upon the Effective Date.

1.3. Terms and Conditions of Merger. On the Effective Date, APS, as the Surviving Corporation, shall succeed, without other transfer or assignment, to all of the rights and property interests of the Parent and shall be subject to all of the debts and liabilities of the Parent in the same manner as if APS had itself incurred them. All rights of creditors and all liens upon the property of the Parent and APS shall be preserved unimpaired, with any such liens limited to the property affected by such liens immediately prior to the merger. The Surviving Corporation will carry on the

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EXHIBIT "A"

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business of the Parent with the assets of the Parent, as well as the business of APS with the assets of APS, following the merger.

1.4. Further Assurances. From time to time as and when requested by APS or its successors or assigns, the officers and directors of the Parent last in office shall execute and deliver such deeds and other instruments and shall take or cause to be taken such other actions as shall be necessary to vest or perfect in or to confirm of record or otherwise the Parent's title to, and possession of, all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of the Parent, and otherwise to carry out the purposes of this Agreement.

SECTION 2. THE SURVIVING CORPORATION

2.1. Authorized Capital. The authorized capital stock of the Surviving Corporation following the Effective Date shall consist of 4,000,000 shares of common stock, par value \$0.01 per share, and 3,000,000 shares of preferred stock, par value \$0.01 per share, of which 2,600,000 shares have been designated as Series A Convertible Preferred Stock, unless and until the same shall be changed in accordance with the provisions of the Certificate of Incorporation and applicable law.

2.2. Certificate of Incorporation.

(a) On the Effective Date, Article First of the Certificate of Incorporation of APS shall be amended to read as follows:

FIRST: The name of the corporation (hereinafter referred to as the "Corporation") is Applied Productivity Systems, Inc.

(b) The Certificate of Incorporation of APS in effect on the Effective Date, as amended pursuant to Section 2.2(a) hereof, shall be the Articles of Incorporation of the Surviving Corporation until thereafter amended in accordance with the provisions thereof and applicable law.

2.3. Bylaws. The Bylaws of APS in effect on the Effective Date shall be the Bylaws of the Surviving Corporation until thereafter amended in accordance with the provisions thereof and applicable law.

2.4. Directors. The individuals comprising the Board of Directors of APS on the Effective Date shall, collectively, be the initial directors of the Surviving Corporation and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal.

2.5. Officers. The individuals comprising all the officers of APS on the Effective Date shall be the initial officers of the Surviving Corporation and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal.

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SECTION 3.
CONVERSION AND EXCHANGE OF SHARES

3.1. APS. Each share of APS capital stock issued and outstanding immediately prior to the Effective Date and all rights in respect thereof shall, upon the Effective Date, by virtue of the merger and without any further action on the part of the holder thereof, cease to exist and shall be deemed canceled, retired and eliminated.

3.2. The Parent. Each share of Parent common stock issued and outstanding immediately prior to the Effective Date shall, by virtue of the merger and without any further action on the part of the holder thereof, be converted by the merger into the right to receive 335.018 shares of common stock of the Surviving Corporation and 871 shares of Series A Convertible Preferred Stock of the Surviving Corporation. All of such shares shall be, when issued, fully paid and nonassessable.

3.3. Surrender of Certificates. On or after the Effective Date, the holders of outstanding common stock of the Parent may surrender to the Surviving Corporation the certificates evidencing their issued and outstanding capital stock of the Parent and shall receive in exchange therefor the certificates evidencing the shares of capital stock of the Surviving Corporation to which they are entitled hereunder.

SECTION 4.
GENERAL PROVISIONS

4.1. Effective Date. The merger of the Parent into APS shall become effective (the "Effective Date") at 12:01 a.m. on June 18, 1997, or on such later date when all of the following actions shall have then been taken in the following order:

(a) This Plan shall have been adopted and approved by the Board of Directors of APS in accordance with Section 253 of the DGCL, and by the Board of Directors and the shareholders of the Parent in accordance with Fla. Stat. Sections 607.1103 and 607.1107; and

(b) Articles of Merger setting forth the information required by, and executed and acknowledged in accordance with, Fla. Stat. Section 607.1105 shall be filed with the Florida Department of State; and

(c) a Certificate of Ownership and Merger setting forth the information required by, and executed and acknowledged in accordance with, Sections 103 and 253 of the DGCL shall be filed with the Delaware Department of State and recorded in the office of the recorder in New Castle County, Delaware.

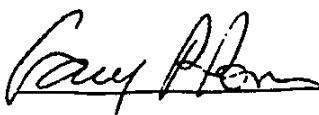
4.2. Termination. At any time before the Effective Date, this Plan may be terminated and the merger abandoned (subject to contractual rights, if any) by the Board of Directors of either constituent corporation, notwithstanding favorable action by the shareholders of the respective constituent corporations.

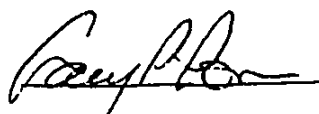
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IN WITNESS WHEREOF, the corporate parties hereto have caused this Agreement and Plan of Merger to be signed by their duly authorized officers on the date first written above.

WITNESSES:


GARY P. POSNER
As to APS


GARY P. POSNER
As to the Parent

APS SUB, INC., a Delaware corporation

By: 
Jerry N. Stein, MD, President

APPLIED PRODUCTIVITY SYSTEMS, INC.
a Florida corporation

By: 
Jerry N. Stein, MD, President

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