



**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**SCHEDULE 14C**

**Information Statement Pursuant to Section 14(c)  
of the Securities Exchange Act of 1934**

Check the appropriate box:

- Preliminary Information Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))
- Definitive Information Statement

**PASW, Inc.**

(Name of Registrant As Specified In Its Charter)

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(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

**PASW, INC.**  
**9453 ALCOSTA BOULEVARD**  
**SAN RAMON, CALIFORNIA 94583-3929**  
**(925) 828-0934**

Notice of Action by Written Consent  
of a  
Majority of the Outstanding Common Shares  
taken on April 18, 2007

To the Shareholders of PASW, Inc.:

Notice is hereby given that the holders of a majority of the outstanding shares of PASW, Inc., a California corporation (the "Company"), have acted by written consent to approve a merger that will change the Company's state of incorporation from the State of California to the State of Delaware.

Only shareholders of record at the close of business on April 18, 2007 are being given Notice of the Action by Written Consent. The Company is not soliciting proxies.

By Order of the Board of Directors

/s/ William E. Sliney  
William E. Sliney  
Secretary

**WE ARE NOT ASKING YOU FOR A PROXY  
AND  
YOU ARE REQUESTED NOT TO SEND US A PROXY.**

**PASW, INC.  
9453 ALCOSTA BOULEVARD  
SAN RAMON, CALIFORNIA 94583-3929  
(925) 828-0934**

**INFORMATION STATEMENT**

**ACTION BY THE HOLDERS OF A MAJORITY OF SHARES**

This Information Statement is furnished to all holders of shares of PASW, Inc., a California corporation (the "Company"), in connection with the action by the holders of a majority of the Company's issued and outstanding shares to change the Company's state of incorporation from the State of California to the State of Delaware. The holders of a majority of the Company's shares acted April 12, 2007. This Information Statement is first being mailed to shareholders on or about May 3, 2007.

Only shareholders of record at the close of business on April 18, 2007 are entitled to notice of the action taken. There will be no vote by the shareholders of the Company on the reincorporation because the reincorporation has already been approved by the written consent of the holders of a majority of the shares of the Company as allowed by Section 603 of the California General Corporation Law. At April 18, 2007, the Company had outstanding 4,997,400 shares, no par value, each of which was entitled to one vote.

The reincorporation will be effected pursuant to an Agreement and Plan of Merger between the Company and PASW, Inc., a Delaware corporation. Under that agreement, the Company will merge with the Delaware corporation, with the Delaware corporation being the surviving corporation. The reasons for the reincorporation and the Agreement and Plan of Merger are described in more detail in this Information Statement.

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AND  
YOU ARE REQUESTED NOT TO SEND US A PROXY.**

## SUMMARY

PASW, Inc. is presently a California corporation with one class of shares outstanding. The Company's Board of Directors has recommended, and the holders of a majority of the Company's outstanding shares have approved, the merger of the Company with and into a newly formed Delaware corporation, PASW, Inc., a wholly owned subsidiary of the Company. The Delaware corporation will be the surviving corporation in the merger and the purpose of the merger is to change the Company's jurisdiction of incorporation from California to Delaware. The California General Corporation Law permits the holders of a majority of a California corporation's outstanding shares to approve a merger by written consent, and the holders of a majority of the Company's shares have approved the merger of the Company with and into the Delaware corporation. Throughout this Information Statement, the terms "PASW California" or the "Company" refer to PASW, Inc., the existing California corporation, and the term "PASW Delaware" refers to the new Delaware corporation that is the proposed successor to PASW California. The principal executive offices of both PASW California and PASW Delaware are located at 9453 Alcosta Boulevard, San Ramon, California 94583, and the telephone numbers of both PASW California and PASW Delaware are (925) 828-0934.

The Delaware corporation that will be the surviving corporation was incorporated under the Delaware General Corporation Law on March 30, 2007, for the purpose of merging with PASW California. We anticipate that, prior to the merger, PASW Delaware will have no material assets or liabilities and will not have carried on any business.

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# REINCORPORATION IN DELAWARE

## INTRODUCTION

For the reasons set forth below, the Board of Directors believes that it is in the best interests of the Company and its shareholders to change the state of incorporation of the Company from California to Delaware (the “Reincorporation”).

As discussed below, the principal reason for the Reincorporation is the potential advantages of the greater flexibility of Delaware corporate law and the substantial body of case law interpreting that law. The Company believes that its shareholders will benefit from the well established principles of corporate governance that Delaware law affords. The Reincorporation was NOT proposed in order to prevent an unsolicited takeover attempt, and the Board of Directors is not aware of any present unsolicited attempt by any person to acquire control of the Company, obtain representation on the Board of Directors or take any action that would materially affect the governance of the Company. On January 18, 2007 PASW entered into a non-binding term sheet regarding a possible business combination with VirnetX, Inc., a development stage software company that is incorporated in Delaware. While no assurance can be given that this proposed business combination will be completed, PASW intends to proceed with the Reincorporation irrespective of this possible transaction in the belief that that the Reincorporation is in the best interests of the shareholders for the reasons described throughout this Schedule.

The Reincorporation will be effected by merging PASW California into PASW Delaware. Upon completion of the merger, PASW California, as a corporate entity, will cease to exist and PASW Delaware will continue to operate the business of the Company under its current name, PASW, Inc.

Pursuant to an Agreement and Plan of Merger between PASW California and PASW Delaware, in substantially the form attached hereto as Appendix A (the “Reincorporation Merger Agreement”), each outstanding share of PASW California will be automatically converted into one share of the common stock of PASW Delaware, par value \$0.00001 per share (“PASW Delaware Common Stock”), upon the effective date of the merger. Each certificate representing issued and outstanding shares of PASW California will continue to represent the same number of shares of PASW Delaware Common Stock.

### **IT WILL NOT BE NECESSARY FOR SHAREHOLDERS TO EXCHANGE THEIR EXISTING SHARE CERTIFICATES FOR SHARE CERTIFICATES OF PASW DELAWARE.**

However, shareholders may exchange their certificates if they so choose. Any shareholder desiring new stock certificates representing common stock of PASW Delaware after the merger may submit their existing stock certificates to PASW Delaware’s transfer agent, Corporate Stock Transfer, 3200 Cherry Creek South Drive, Suite 430, Denver, Colorado 80209. The shares of PASW California are traded on the

OTC Bulletin Board under the symbol "PASW", and, after the Reincorporation, PASW Delaware Common Stock will continue to be traded on the OTC Bulletin Board without interruption, under the same symbol ("PASW") as the shares of PASW California are currently traded.

Under California law, the affirmative vote of a majority of the outstanding shares of PASW California is required for approval of the Reincorporation Merger Agreement and the other terms of the Reincorporation. The Reincorporation has been unanimously approved by the Company's Board of Directors. Shareholders of PASW California are not being requested to consider and approve the reincorporation proposal at a shareholder's meeting and will not vote on the proposal because it has already been approved by the holders of more than 60% of the shares of PASW California pursuant to Section 603(a) of the California General Corporation Law, which allows for shareholder action without notice and a meeting. No vote of holders of outstanding shares of PASW California, other than those shareholders who have already approved the action, is necessary for approval of the Reincorporation.

It is anticipated that the Reincorporation will become effective on or about May 22, 2007 (the "Effective Date"). However, pursuant to the Reincorporation Merger Agreement, the Reincorporation may be abandoned or the Reincorporation Merger Agreement may be amended by the Company's Board of Directors (except that the principal terms may not be amended without shareholder approval) prior to the Effective Date if, in the opinion of the Board of Directors of the Company, circumstances arise which make it inadvisable to proceed under the original terms of the Reincorporation Merger Agreement. In the event the Reincorporation Merger Agreement is terminated or the Reincorporation is abandoned, the Company would remain as a California corporation.

Shareholders of PASW California will have no dissenters' or appraisal rights with respect to the Reincorporation.

The discussion set forth below is qualified in its entirety by reference to the Reincorporation Merger Agreement, the Certificate of Incorporation of PASW Delaware, and the Bylaws of PASW Delaware, copies of which are attached as Appendices A, B, and C.

#### **PRINCIPAL REASONS FOR THE REINCORPORATION**

As PASW plans for the future, the Board of Directors and management believe that it is essential to be able to draw upon well established principles of corporate governance in making legal and business decisions. The prominence and predictability of Delaware corporate law provide a reliable foundation on which the Company's governance decisions can be based, and PASW believes that shareholders will benefit from the responsiveness of Delaware corporate law to their needs and to those of the corporation they own.

### **Prominence, Predictability and Flexibility of Delaware Law.**

For many years Delaware has followed a policy of encouraging incorporation in that state and, in furtherance of that policy, has been a leader in adopting, construing, and implementing comprehensive, flexible corporate laws responsive to the legal and business needs of corporations organized under its laws. Many corporations have chosen Delaware initially as a state of incorporation or have subsequently changed corporate domicile to Delaware in a manner similar to that proposed by the Company. Because of Delaware's prominence as the state of incorporation for many major corporations, both the legislature and courts in Delaware have demonstrated an ability and a willingness to act quickly and effectively to meet changing business needs. The Delaware courts have developed considerable expertise in dealing with corporate issues, and a substantial body of case law has developed construing Delaware law and establishing public policies with respect to corporate legal affairs.

### **Well Established Principles of Corporate Governance**

There is substantial judicial precedent in the Delaware courts as to the legal principles applicable to measures that may be taken by a corporation and to the conduct of a corporation's board of directors, such as under the business judgment rule and other standards. The Company believes that its shareholders will benefit from the well established principles of corporate governance that Delaware law affords.

### **Increased Ability to Attract and Retain Qualified Directors.**

Both California and Delaware law permit a corporation to include a provision in its articles or certificate of incorporation which reduces or eliminates the monetary liability of directors for breaches of fiduciary duty in certain circumstances. The frequency of claims and litigation directed against directors and officers has greatly expanded the risks facing directors and officers of corporations in exercising their respective duties. The amount of time and money required to respond to such claims and to defend such litigation can be substantial. It is PASW's desire to reduce these risks to its directors and officers and to limit situations in which monetary damages can be recovered against directors so that the Company may continue to attract and retain qualified directors who otherwise might be unwilling to serve because of the risks involved. PASW believes that, in general, Delaware law provides greater protection to directors than California law and that Delaware case law regarding a corporation's ability to limit director liability is more developed and provides more guidance than California law does.

**NO CHANGE IN THE NAME, BOARD MEMBERS, BUSINESS, MANAGEMENT, EMPLOYEE BENEFIT PLANS, OR LOCATION OF PRINCIPAL FACILITIES OF THE COMPANY.**

The Reincorporation will effect only a change in the legal domicile of the Company and certain other changes of a legal nature including those described in this Information Statement. The Reincorporation will NOT result in any change in the name, business, management, fiscal year, assets or liabilities, or location of the principal facilities of the Company. The current directors and officers of the Company will become the directors and officers of PASW Delaware. All employee benefits, share options, and warrants of PASW California will be assumed and continued by PASW Delaware, and each option or right issued pursuant to such plans will automatically be converted into an option or right to purchase the same number of shares of PASW Delaware Common Stock at the same price per share, upon the same terms, and subject to the same conditions. Other employee benefit arrangements of PASW California will also be continued by PASW Delaware upon the terms and subject to the conditions currently in effect. As noted above, after the merger the shares of PASW Delaware Common Stock will continue to be traded without interruption on the OTC Bulletin Board under the same symbol ("PASW") as the shares of PASW California are currently traded. The Company believes that the Reincorporation will not affect any of its material contracts with any third parties and that PASW California's rights and obligations under such material contractual arrangements will continue and be assumed by PASW Delaware.

**ANTI-TAKEOVER IMPLICATIONS**

Delaware, like many other states, permits a corporation to adopt a number of measures designed to reduce a corporation's vulnerability to unsolicited takeover attempts through amendment of the corporate charter or bylaws or otherwise. The Reincorporation was NOT proposed in order to prevent such a change in control, and the Board of Directors is not aware of any present attempt to acquire control of the Company, or to obtain representation on the Board of Directors.

In the discharge of its fiduciary obligations to its shareholders, the Board of Directors has evaluated the Company's vulnerability to potential unsolicited bidders. In the course of such evaluation, the Board of Directors of the Company has considered or may consider in the future certain defensive strategies designed to enhance the Board's ability to negotiate with an unsolicited bidder. These strategies include, but are not limited to, the establishment of a classified board of directors, the elimination of the right to remove a director other than for cause, the elimination of shareholder action by written consent, and the authorization of preferred shares, the rights and preferences of which may be determined by the Board of Directors. The Certificate of Incorporation and Bylaws of PASW Delaware contain certain of these provisions, and certain effects of the Reincorporation may be considered to have anti-takeover implications. Section 203 of the Delaware General Corporation Law, from which PASW Delaware does not intend to opt out, restricts certain "business combinations" with "interested stockholders" for three years following the date that a person becomes an interested stockholder, unless (i) the Board of Directors approves the business combination prior to the transaction; (ii) the

interested stockholder owns at least 85% of the outstanding stock of the corporation at the time of the transaction; or (iii) at or subsequent to the transaction the Board of Directors and at least 66 2/3% of the disinterested outstanding voting stock of the corporation approves the transaction. The Certificate of Incorporation of PASW Delaware and/or Bylaws contain the following provisions that may have anti-takeover implications:

- a provision authorizing PASW Delaware's Board of Directors to issue preferred stock with rights, privileges, and preferences determined by the Board;
- a provision permitting vacancies on PASW Delaware's Board of Directors to be filled by a vote of the directors then in office;
- a provision authorizing PASW Delaware's Board of Directors or its President or the Chairman of its Board to call a special meeting of stockholders, but eliminating the ability of any other person to call a special meeting;
- a provision allowing the PASW Delaware Board of Directors to adopt bylaws, including changing the number of directors.

For a detailed discussion of the changes which will be implemented as part of the Reincorporation, see "The Charters and Bylaws of PASW California and PASW Delaware" and "Significant Differences Between the Corporation Laws of California and Delaware" below.

The Board of Directors believes that unsolicited takeover attempts may be unfair or disadvantageous to the Company, to PASW Delaware, and to the owners of their securities because, among other reasons: (i) a non-negotiated takeover bid may be timed to take advantage of temporarily depressed share prices; (ii) a non-negotiated takeover bid may be designed to foreclose or minimize the possibility of more favorable competing bids or alternative transactions; and (iii) a non-negotiated takeover bid may involve the acquisition of only a controlling interest in the corporation's shares, without affording all shareholders the opportunity to receive the same economic benefits.

By contrast, in a transaction in which a potential acquiror must negotiate with an independent board of directors, the board can and should take account of the underlying and long-term values of the corporation's business, technology, and other assets, the possibilities for alternative transactions on more favorable terms, possible advantages from a tax-free reorganization, anticipated favorable developments in the corporation's business not yet reflected in the share price, and equality of treatment of all shareholders.

Despite the belief of the Board of Directors as to the benefits to shareholders of the Reincorporation, it may be disadvantageous to the extent that it has the effect of discouraging a future takeover attempt which is not approved by the Board of Directors, but which a majority of the shareholders may deem to be in their best interests or in which shareholders may receive a substantial premium for their shares over the then

current market value or over their cost bases in such shares. As a result, shareholders who might wish to participate in an unsolicited tender offer may not have an opportunity to do so. In addition, to the extent that provisions of Delaware law enable the Board of Directors to resist a takeover or a change in control of PASW Delaware, such provisions could make it more difficult to change PASW Delaware's existing Board of Directors and management.

## **THE CHARTERS AND BYLAWS OF PASW CALIFORNIA AND PASW DELAWARE**

PASW California has relatively brief Articles of Incorporation, which are supplemented by its Bylaws. Taken as a whole, the provisions of PASW Delaware's Certificate of Incorporation and Bylaws are similar to PASW California's Articles of Incorporation and Bylaws in many respects. This discussion of the Certificate of Incorporation and Bylaws of PASW Delaware is qualified in its entirety by reference to Appendices B and C hereto.

**Number of Authorized Shares.** The Articles of Incorporation of PASW California currently authorize the Company to issue up to 50,000,000 shares, \$0.001 par value per share and 10,000,000 authorized shares of preferred stock, par value \$0.01 per share. The Certificate of Incorporation of PASW Delaware provides that it will have 200,000,000 authorized shares of common stock, par value \$0.00001 per share, and 10,000,000 authorized shares of preferred stock, par value \$0.00001 per share. PASW Delaware's Certificate of Incorporation provides that the Board of Directors is entitled to determine the powers, preferences, and rights, and the qualifications, limitations, or restrictions, of the authorized and unissued preferred stock. These rights and privileges may include, among others, dividend rights, voting rights, redemption provisions, liquidation preferences, conversion rights, and preemptive rights.

The issuance of preferred stock, while providing desirable flexibility in connection with possible acquisitions and other corporate purposes, could adversely affect the voting power or rights of the holders of PASW Delaware Common Stock. In addition, the issuance of preferred stock could make it more difficult for a third party to acquire PASW Delaware, or discourage a third party from attempting to acquire PASW Delaware.

The authorization of the additional common shares will increase PASW Delaware's ability to issue additional shares without further stockholder action, unless otherwise required by law or the rules of any securities exchange or market on which its securities are then listed or quoted. The availability of these additional shares will enhance PASW Delaware's flexibility in connection with any possible acquisition or merger, stock splits or dividends, financings, and other corporate purposes, and will allow such shares to be issued without a stockholders' meeting, unless a meeting or other action is required by applicable law or the rules of any securities exchange or market on which the corporation's securities are then listed or quoted.

**Monetary Liability of Directors.** The Certificate of Incorporation of PASW Delaware provides for the elimination of personal monetary liability of directors to the fullest extent permissible under the laws of Delaware. The Articles of Incorporation of PASW California contain a similar provision. For a more detailed discussion of the indemnification provisions of the charters and bylaws of PASW California and PASW Delaware, please see “Significant Differences Between the Corporation Laws of California and Delaware - Indemnification and Limitation of Liability.”

**Size of Board of Directors; Manner of Filling Vacancies.** The Bylaws of PASW California provide for a Board of Directors consisting of not less than three members nor more than five, until changed by a duly adopted amendment. Under California law, although changes in the number of directors, in general, must be approved by a majority of the outstanding shares, a board of directors may fix the exact number of directors within a stated range set forth in the articles of incorporation or bylaws, if the stated range has been approved by the shareholders. Delaware law permits a board of directors, acting alone, to change the authorized number of directors by amendment to the bylaws, unless the directors are not authorized to amend the bylaws or the number of directors is fixed in the certificate of incorporation (in which case a change in the number of directors may be made only by amendment to the certificate of incorporation following approval of such change by stockholders). PASW Delaware’s Certificate of Incorporation provides that the number of directors will be determined as provided in its Bylaws. The PASW Delaware Bylaws provide that the size of the Board shall initially be five (5) members. PASW Delaware’s Certificate of Incorporation also authorizes the Board of Directors to adopt, alter, amend, or repeal the corporation’s Bylaws, including fixing the number of directors. Following the Reincorporation, the Board of Directors of PASW Delaware could amend the Bylaws to change the size of the Board of Directors without further stockholder approval (subject to the power of the stockholders to repeal such amendment). After the Reincorporation is completed, the three directors of PASW California will continue as the three directors of PASW Delaware. Directors of PASW Delaware will serve until the earliest of their death, resignation, or removal from the Board or until their successors have been duly elected and qualified.

**Cumulative Voting for Directors.** Under California law, the shareholders of a California corporation may cumulate their votes in any election of directors, unless the corporation’s articles or bylaws have been amended to eliminate cumulative voting. PASW California’s Articles and Bylaws had not been so amended. Cumulative voting provides that each share of stock normally having one vote is entitled to a number of votes equal to the number of directors to be elected. A shareholder may then cast all such votes for a single candidate or may allocate them among as many candidates as the shareholder may choose. Under Delaware law, cumulative voting in the election of directors is permitted if the corporation’s charter permits it. PASW Delaware’s Certificate of Incorporation does not provide for cumulative voting, and, therefore, stockholders of PASW Delaware will not have cumulative voting rights immediately following the Reincorporation. In the absence of cumulative voting, the holders of the majority of the shares present or represented at a meeting in which directors are to be elected would have the power to elect all the directors to be elected at such meeting, and

no person could be elected without the support of holders of the majority of shares present or represented at such meeting. Elimination of cumulative voting could make it more difficult for a minority shareholder adverse to a majority of the shareholders to obtain representation on the Board of Directors.

**Power to Call Special Shareholders' Meetings.** Under California law and PASW California's Bylaws, a special meeting of shareholders may be called by the Chairman of the Board, Board of Directors, the President, or the holders of shares entitled to cast not less than 10% of the votes at such meeting. California law also provides that a special meeting of shareholders may be called by such additional persons as are authorized by the articles of incorporation or the bylaws. Neither PASW California's Bylaws nor Articles of Incorporation authorize any other person to call a special meeting. Under Delaware law, a special meeting of stockholders may be called by the board of directors or any other person authorized to do so in the certificate of incorporation or the bylaws. PASW Delaware's Bylaws authorize the Board of Directors, the Chairman of the Board, or the Chief Executive Officer to call a special meeting of stockholders, but do not authorize any stockholder or other person to call a meeting. This provision could delay until the next stockholders' meeting actions that are favored by the holders of a majority of PASW Delaware's outstanding voting securities. This provision may also discourage another person or entity from making a tender offer for PASW Delaware Common Stock, because such person or entity, even if it acquired a majority of PASW Delaware's outstanding voting securities, would be able to take action as a stockholder, such as electing new directors or approving a merger, only at a duly called stockholders' meeting.

## **SIGNIFICANT DIFFERENCES BETWEEN THE CORPORATION LAWS OF CALIFORNIA AND DELAWARE**

The following provides a summary of major substantive differences between the Corporation Laws of California and Delaware. It is not an exhaustive description of all differences between the two states' laws.

### **Shareholder Approval of Certain Business Combinations**

**Delaware.** Under Section 203 of the Delaware General Corporation Law, a Delaware corporation is prohibited from engaging in a "business combination" with an "interested stockholder" for three years following the date that such person or entity becomes an interested stockholder. With certain exceptions, an interested stockholder is a person or entity who or which owns, individually or with or through certain other persons or entities, 15% or more of the corporation's outstanding voting shares (including any rights to acquire shares pursuant to an option, warrant, agreement, arrangement, or understanding, or upon the exercise of conversion or exchange rights, and shares with respect to which the person or entity has voting rights only). The three-year moratorium imposed by Section 203 on business combinations does not apply if (i) prior to the date on which such stockholder becomes an interested stockholder the board of directors of the subject corporation approves either the business combination or the transaction that resulted in the person or entity becoming an interested stockholder; (ii) upon

consummation of the transaction that made him or her an interested stockholder, the interested stockholder owns at least 85% of the corporation's voting shares outstanding at the time the transaction commenced (excluding from the 85% calculation shares owned by directors who are also officers of the subject corporation and shares held by employee stock plans that do not give employee participants the right to decide confidentially whether to accept a tender or exchange offer); or (iii) on or after the date such person or entity becomes an interested stockholder, the board approves the business combination and it is also approved at a stockholders' meeting by 66 2/3% of the outstanding voting shares not owned by the interested stockholder. Although a Delaware corporation to which Section 203 applies may elect not to be governed by Section 203, the Board of Directors of the Company intends that PASW Delaware be, and PAS W Delaware has elected to be, governed by Section 203. The Company believes that most Delaware corporations have availed themselves of this statute and have not opted out of Section 203.

PASW believes that Section 203 will encourage any potential acquirer to negotiate with PASW Delaware's Board of Directors. Section 203 also might have the effect of limiting the ability of a potential acquirer to make a two-tiered bid for PASW Delaware in which all stockholders would not be treated equally. Shareholders should note, however, that the application of Section 203 to PASW Delaware will confer upon the Board the power to reject a proposed business combination in certain circumstances, even though a potential acquirer may be offering a substantial premium for PASW Delaware's shares over the then-current market price. Section 203 would also discourage certain potential acquirors unwilling to comply with its provisions.

California. California law provides that, in the case of a cash and certain other mergers of a California corporation with another corporation, where the latter corporation or certain of its affiliates own shares having more than 50% but less than 90% of the voting power of that first corporation, the merger must be approved by all of the first corporation's shareholders or the California Commissioner of Corporations must determine after a hearing that the terms and conditions of the merger are fair. This provision of California law may have the effect of making a "cash-out" merger by a majority shareholder more difficult to accomplish. Although Delaware law does not parallel California law in this respect, under some circumstances Delaware Section 203 does provide protection to stockholders against coercive two-tiered bids for a corporation in which the stockholders are not treated equally.

#### **Classified Board of Directors.**

A classified board is one on which a certain number, but not all, of the directors are elected on a rotating basis each year.

Delaware. Delaware law permits a corporation to establish a classified board of directors, pursuant to which the directors can be divided into as many as three classes with staggered three-year terms of office, with only one class of directors standing for

election each year. PASW Delaware's Certificate of Incorporation and Bylaws do not provide for a classified board.

California. Under California law, certain publicly traded companies may adopt a classified board of directors by adopting amendments to their charter or bylaws, which amendments must be approved by the shareholders. PASW California's Articles of Incorporation and Bylaws do not currently provide for a classified board.

### **Removal of Directors**

Delaware. Under Delaware law, any director or the entire board of directors of a corporation that does not have a classified board of directors or cumulative voting may be removed with or without cause with the approval of at least a majority of the outstanding shares entitled to vote at an election of directors. PASW Delaware's Certificate of Incorporation and Bylaws do not provide for cumulative voting or a classified board. However, the restriction on stockholders' ability to call special meetings, described below, could affect the rapidity with which the holder of a majority of PASW Delaware's voting securities could replace the corporation's directors.

California. Under California law, any director or the entire board of directors may be removed with or without cause, with the approval of a majority of the outstanding shares entitled to vote; however, no individual director may be removed (unless the entire board is removed) if the number of votes cast against such removal would be sufficient to elect the director under cumulative voting.

### **Limitation of Liability**

California law and Delaware law both permit a corporation to adopt a charter provision eliminating or limiting, with exceptions, the monetary liability of a director to the corporation or its shareholders for breach of the director's duty.

Delaware. PASW Delaware's Certificate of Incorporation eliminates the liability of directors to the corporation or its stockholders for monetary damages for breach of fiduciary duty as directors to the fullest extent permitted by Delaware law, as that law exists currently and as it may be amended in the future. Under Delaware law, such a provision may not eliminate or limit a director's monetary liability for: (i) breaches of the director's duty of loyalty to the corporation or its stockholders; (ii) acts or omissions not in good faith or involving intentional misconduct or knowing violations of law; (iii) the payment of unlawful dividends or stock repurchases or redemptions; or (iv) transactions in which the director received an improper personal benefit. This provision in PASW Delaware's Certificate of Incorporation also does not eliminate or limit a director's liability for violations of federal law (such as the federal securities laws) and certain state laws (including state securities laws), or affect the availability of non-monetary remedies such as injunctive relief or rescission.

California. California law permits California corporations to include, in their charters, a provision eliminating or limiting the monetary liability of the corporation's directors to the corporation or its shareholders for breaches of their duties as directors, subject to exceptions that are similar but not identical to the exceptions specified by Delaware law.

## **Indemnification**

California and Delaware each has laws, similar in some respects but not identical, regarding indemnification by a corporation of its officers, directors, employees, and agents.

Delaware. Delaware law generally permits the indemnification of expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in the defense or settlement of a direct, derivative, or third-party action, provided there is a determination by a majority vote of a disinterested quorum of the directors or a committee of the board, by independent legal counsel, or by the stockholders, that the person seeking indemnification acted 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 and, with respect to any criminal action, had no reasonable cause to believe the conduct was unlawful. Without court approval, however, no indemnification may be made in respect of any action by the corporation, including any derivative action, in which the person was adjudged liable. PASW Delaware's Bylaws require PASW Delaware to indemnify its officers and directors and former officers and directors to the fullest extent permitted by Delaware law and as the same may be amended from time to time. These rights of the directors, officers, and other persons to indemnification are addressed in Article XII of PASW Delaware's Certificate of Incorporation (which is attached as Appendix B), and Article VI of PASW Delaware Bylaws (which are attached as Appendix C).

Irrespective of the contents of PASW Delaware's charter documents, Delaware law requires indemnification of reasonable defense expenses incurred by a director or officer, in any such proceeding, to the extent the director or officer was successful in the defense of the proceeding.

Expenses incurred by an officer or director in defending an action may be advanced before the conclusion of a proceeding, under Delaware law, if the individual undertakes to repay such amounts if it ultimately is determined that he or she is not entitled to indemnification. In addition, Delaware law authorizes a corporation to purchase insurance for the benefit of its officers and directors whether or not the corporation would have the power to indemnify against the liability covered by the policy but subject to limits imposed by insurance law.

California. California law permits a California corporation to indemnify any director, officer, employee, or agent of the corporation for expenses, monetary damages, fines, and settlement amounts to the extent, as determined by a majority vote of a

disinterested quorum of directors, independent legal counsel, disinterested shareholders, or the court in which the proceeding is pending, that the individual acted in good faith and in a manner he or she believed to be in the best interests of the corporation and, with respect to any criminal action, had no reasonable cause to believe the conduct was unlawful. California law does not permit indemnification if the person is held liable to the corporation, including in a derivative action, except to the extent that an appropriate court concludes that despite the adjudication of liability but in view of all the circumstances, the person is fairly and reasonably entitled to indemnification for those expenses that the court deems proper. PASW California's Bylaws provide that PASW California will indemnify any director, officer, employee or agent "who was or is a party or threatened to be a party . . . by reason of the fact that such person was or is an agent of the corporation against expenses, judgments, . . . settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of this corporation and in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful."

Irrespective of the contents of PASW California's charter documents, California law requires indemnification of reasonable defense expenses incurred by a director, officer, employee or agent, in any such proceeding, to the extent the director, officer, employee or agent was successful in the defense of the proceeding.

Expenses incurred by an officer, director, employee or agent in defending an action may be advanced before the conclusion of a proceeding, under California law, if the individual undertakes to repay such amounts if it ultimately is determined that he or she is not entitled to indemnification. In addition, California law authorizes a corporation to purchase insurance for the benefit of its officers, directors, employees, and agents whether or not the corporation would have the power to indemnify against the liability covered by the policy but subject to limits imposed by insurance law.

#### **Inspection of Shareholder List and Books and Records**

Both California and Delaware law allow any shareholder to inspect the shareholder list for a purpose reasonably related to such person's interest as a shareholder. California law provides, in addition, for an absolute right to inspect and copy the corporation's shareholder list by persons holding an aggregate of 5% or more of the corporation's voting shares, or shareholders holding an aggregate of 1% or more of such shares who have contested an election of directors. Finally, California law permits any shareholder, on written demand to the corporation, to inspect the corporation's accounting books and records and minutes of proceedings of the shareholders for a purpose reasonably related to the shareholder's interest as such. Delaware law also permits any stockholder of record, upon compliance with procedures specified in the Delaware General Corporation Law, to inspect a list of stockholders entitled to vote at a meeting and the corporation's other books and records for any proper purpose reasonably related to such person's interest as a stockholder. However, Delaware law contains no

provision comparable to the absolute right of inspection provided by California law to certain shareholders.

### **Dividends and Repurchases of Shares**

California law dispenses with the concepts of par value of shares as well as statutory definitions of capital, surplus, and the like. The concepts of par value, capital, and surplus exist under Delaware law.

**Delaware.** Delaware law permits a corporation to declare and pay dividends out of surplus or, if there is no surplus, out of net profits for the fiscal year in which the dividend is declared and/or for the preceding fiscal year as long as the amount of capital of the corporation following the declaration and payment of the dividend is not less than the aggregate amount of the capital represented by the issued and outstanding shares of all classes having a preference upon the distribution of assets. In addition, Delaware law generally provides that a corporation may redeem or repurchase its shares only if the capital of the corporation is not impaired and such redemption or repurchase would not impair the capital of the corporation.

**California.** Under California law, a corporation may not make any distribution to its shareholders unless either: (i) the corporation's retained earnings immediately prior to the proposed distribution equal or exceed the amount of the proposed distribution, or (ii) immediately after giving effect to such distribution, the corporation's assets (exclusive of goodwill, capitalized research and development expenses, and deferred charges) would be at least equal to 125% of its liabilities (not including deferred taxes, deferred income, and other deferred credits), and the corporation's current assets would be at least equal to its current liabilities (or 125% of its current liabilities if the average pre-tax and pre-interest expense earnings for the preceding two fiscal years were less than the average interest expense for such years). Such tests are applied to California corporations on a consolidated basis.

### **Shareholder Voting**

**Amendment of Charter Documents.** Under California and Delaware law, the provisions of a corporation's charter document may be amended by the affirmative vote of the holders of a simple majority of the outstanding shares entitled to vote on such an amendment. California law permits the board to amend the corporation's articles of incorporation after shares have been issued without a vote of shareholders in certain circumstances, including to adopt an amendment effecting a stock split only. Delaware law contains no comparable provision.

**Statutory Mergers.** Delaware law does not require the vote of the stockholders of a Delaware parent corporation whose subsidiary is involved in a merger with another corporation unless the parent corporation itself is a "constituent corporation" in the merger. Under California law, the vote of the stockholders of a California parent corporation is required in certain circumstances when the California corporation's

subsidiary merges with another corporation. Those circumstances include the situation in which shares of the California parent corporation are issued to the shareholders of the acquired company and the shareholders of the California parent corporation immediately prior to the merger own less than 83.3% of the California parent corporation's shares immediately following the merger.

Both California and Delaware law generally require that the holders of a majority of the shares of the constituent corporations in a statutory merger approve the merger. However, Delaware law does not require a vote of stockholders of the surviving corporation in a merger (unless the corporation provides otherwise in its certificate of incorporation) if (i) the merger agreement does not amend the corporation's existing certificate of incorporation; (ii) each share of the surviving corporation outstanding immediately before the effective date of the merger is an identical outstanding share after the merger; and (iii) either no shares of common stock of the surviving corporation and no shares, securities, or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities, or obligations to be issued or delivered under such plan do not exceed 20% of the shares of common stock of such corporation outstanding immediately prior to the effective date of the merger. California law contains a similar exception to its voting requirements for reorganizations where shareholders or the corporation itself, or both, immediately prior to the reorganization will own immediately after the reorganization equity securities constituting more than 83.3% of the voting power of the surviving or acquiring corporation or its parent entity.

### **Action by Written Consent**

Under California law, and unless otherwise provided in a California corporation's articles of incorporation, any action that may be taken at a shareholders' meeting may be taken without a meeting if a written consent, setting forth the action so taken, is signed by the holders of outstanding shares having sufficient votes to take such action at meeting at which all shares entitled to vote on such action were present and voting. PASW California's Articles of Incorporation do not contain any provision limiting the ability of shareholders to take action by written consent. Under Delaware law, and unless otherwise provided in a Delaware corporation's certificate of incorporation, any action that may be taken at a stockholders' meeting may be taken without a meeting if a written consent, setting forth the action so taken, is signed by the holders of outstanding stock having sufficient votes to take such action at meeting at which all shares entitled to vote on such action were present and voting. PASW Delaware's Certificate of Incorporation does not contain any provision limiting the ability of stockholders to take action by written consent.

## **Appraisal Rights**

Under both California and Delaware law, a shareholder of a corporation participating in certain major corporate transactions may, under varying circumstances, be entitled to appraisal rights, pursuant to which such shareholder may receive cash in the amount of the fair market value of his or her shares in lieu of the consideration he or she would otherwise receive in the transaction.

Delaware. Under Delaware law, such fair market value is determined exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, and such appraisal rights are not available: (i) with respect to the sale, lease, or exchange of all or substantially all of the assets of a corporation; (ii) with respect to a merger or consolidation by a corporation the shares of which are either listed on a national securities exchange or are held of record by more than 2,000 holders if such stockholders receive only shares of the surviving corporation or shares of any other corporation that are either listed on a national securities exchange or held of record by more than 2,000 holders, plus cash in lieu of fractional shares of such corporations; or (iii) to stockholders of a corporation surviving a merger if no vote of the stockholders of the surviving corporation is required to approve the merger under Delaware law.

California. The limitations on the availability of appraisal rights under California law are different from those under Delaware law. Shareholders of a California corporation whose shares are listed on a national securities exchange generally do not have such appraisal rights unless the holders of at least 5% of the class of outstanding shares claim the right or the corporation or any law restricts the transfer of such shares. Appraisal rights are also unavailable if the shareholders of a corporation or the corporation itself, or both, immediately prior to the reorganization will own immediately after the reorganization equity securities constituting more than 83.3% of the voting power of the surviving or acquiring corporation or its parent entity. California law generally affords appraisal rights in sale of assets reorganizations. Under California dissenters' law, fair market value is measured as of the day before the first announcement of the terms of a merger, excluding any appreciation or depreciation in stock value as a result of the proposed action.

## **Fairness Opinion Requirement**

California law provides that, except in certain circumstances, when a tender offer or a proposal for a reorganization or for a sale of assets is made by an interested party (generally a controlling or managing party of the target corporation), an affirmative opinion in writing as to the fairness of the consideration to be paid to the shareholders must be delivered to the shareholders. This fairness opinion requirement does not apply to a corporation that does not have shares held of record by at least 100 persons, or to a transaction that has been qualified under California state securities laws. Furthermore, if a tender of shares or vote is sought pursuant to an interested party's proposal and a later proposal is made by another party at least ten days prior to the date of acceptance of the interested party proposal, the shareholders must be informed of the later offer and be

afforded a reasonable opportunity to withdraw any vote, consent, or proxy, or to withdraw any tendered shares. Delaware law has no comparable provision.

### **Dissolution**

Under California law, shareholders holding 50% or more of the total voting power of the corporation may require a corporation's dissolution, with or without the approval of the corporation's board of directors, and this right may not be modified by the articles of incorporation. Shareholders not voting for dissolution of the corporation may avoid the dissolution of the corporation by purchasing for cash at fair value the shares owned by the parties initiating the dissolution proceeding. Under Delaware law, unless the board of directors approves the proposal to dissolve, the dissolution must be unanimously approved by all the stockholders entitled to vote thereon. Only if the dissolution is initially approved by the board of directors may the dissolution be approved by a simple majority of the outstanding shares of the corporation's stock entitled to vote. In the event of such a board-initiated dissolution, Delaware law allows a Delaware corporation to include in its certificate of incorporation a supermajority (greater than a simple majority) voting requirement in connection with dissolutions. PASW Delaware's Certificate of Incorporation contains no such supermajority voting requirement.

### **Interested Director Transactions**

Under both California and Delaware law, certain contracts or transactions in which one or more of a corporation's directors has an interest are not void or voidable simply because of such interest, provided that certain conditions are met, such as obtaining required disinterested board approval, fulfilling the requirements of good faith and full disclosure, or proving the fairness of the transaction. With certain minor exceptions, the conditions are similar under California and Delaware law.

### **Loans to Officers and Employees**

Under California law, any loan or guaranty to or for the benefit of a director or officer of the corporation or its parent requires approval of the corporation's shareholders unless such loan or guaranty or an employee benefit plan authorizing the loan or guaranty was approved by shareholders owning a majority of the outstanding shares of the corporation. However, under California law, shareholders of any corporation with 100 or more shareholders of record may approve a bylaw authorizing the board of directors alone to approve loans or guaranties to or on behalf of officers (whether or not such officers are directors) if the board determines that any such loan or guaranty may reasonably be expected to benefit the corporation. Under Delaware law, a Delaware corporation may make loans to, guarantee the obligations of, or otherwise assist its officers or other employees and those of its subsidiaries (including directors who are also officers or employees) when such action, in the judgment of the directors, may reasonably be expected to benefit the corporation.

## **Shareholder Derivative Suits**

California law provides that a shareholder bringing a derivative action on behalf of a corporation need not have been a shareholder at the time of the transaction in question, provided that certain tests are met. Under Delaware law, a stockholder may bring a derivative action on behalf of the corporation only if the stockholder was a stockholder of the corporation at the time of the transaction in question or if his or her stock thereafter devolved upon him or her by operation of law. California law also provides that the corporation or the defendant in a derivative suit may make a motion to the court for an order requiring the plaintiff shareholder to furnish a security bond. Delaware does not have a similar bonding requirement.

## **APPLICATION OF THE GENERAL CORPORATION LAW OF CALIFORNIA TO DELAWARE CORPORATIONS**

Under Section 2115 of the California General Corporation Law, certain corporations not organized under California law that have significant contacts with California are subject to a number of key provisions of the California General Corporation Law. Section 2115 applies provisions of California law to a corporation if more than one-half of the corporation's outstanding voting securities are held of record by persons having California addresses, and if the average of the "property factor, payroll factor, and sales factor" under California law exceeds 50%. However, an exemption from Section 2115 is provided for corporations whose shares are listed on the New York or American Stock Exchange or designated as Nasdaq national market securities. Although PASW Delaware Common Stock will not be listed on such an exchange or quoted on Nasdaq immediately following the Reincorporation, PASW Delaware anticipates that more than one-half of its outstanding voting securities will continue to be held of record by persons with California addresses, and therefore provisions of the California General Corporation Law may be applied to PASW Delaware pursuant to Section 2115, if certain tests are met in the 2007 income year of PASW Delaware.

## **CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES**

The following is a discussion of certain United States federal income tax considerations that may be relevant to holders of shares of PASW California who receive PASW Delaware Common Stock in exchange for their shares of PASW California as a result of the Reincorporation. The discussion addresses only the specific United States federal income tax consequences set forth below and does not address any other federal, state, local or foreign income, estate, gift, transfer, sales, use, or other tax consequences that may result from the Reincorporation or any other transaction including any transaction undertaken in connection with the Reincorporation and including the Company's merger with PASW Delaware. The discussion does not address all of the tax consequences of the Reincorporation that may be relevant to particular PASW California shareholders, such as dealers in securities, or those PASW California shareholders who acquired the ir shares upon the exercise of share options, nor does it address the tax consequences to holders of options or warrants to acquire shares of PASW California.

IN VIEW OF THE VARYING NATURE OF SUCH TAX CONSEQUENCES, EACH SHAREHOLDER IS URGED TO CONSULT HIS OR HER OWN TAX ADVISOR AS TO THE SPECIFIC TAX CONSEQUENCES OF THE REINCORPORATION, INCLUDING THE APPLICABILITY OF FEDERAL, STATE, LOCAL, AND FOREIGN TAX LAWS.

Subject to the limitations, qualifications, and exceptions described herein, and assuming the Reincorporation qualifies as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (“Code”), the following tax consequences generally should result:

(a) No gain or loss should be recognized by holders of shares of PASW California upon receipt of PASW Delaware Common Stock pursuant to the Reincorporation;

(b) The aggregate tax basis of the PASW Delaware Common Stock received by each shareholder in the Reincorporation should be equal to the aggregate tax basis of the shares of PASW California surrendered in exchange therefor; and

(c) The holding period of the PASW Delaware Common Stock received by each shareholder of PASW California should include the period for which such shareholder held the shares of PASW California surrendered in exchange therefor, provided that such shares of PASW California were held by the shareholder as a capital asset at the time of the Reincorporation.

The Company has not requested a ruling from the Internal Revenue Service, nor an opinion from its outside legal counsel, with respect to the federal income tax consequences of the Reincorporation under the Code. In any case, such an opinion would neither bind the IRS nor preclude it from asserting a contrary position.

State, local, or foreign income tax consequences to shareholders may vary from the federal tax consequences described above.

The Company should not recognize gain or loss for federal income tax purposes as a result of the Reincorporation, and PASW Delaware should succeed, without adjustment, to the federal income tax attributes of PASW California.

#### **SECURITIES ACT CONSEQUENCES**

The shares of the PASW Delaware Common Stock to be issued in exchange for shares of PASW California are not being registered under the Securities Act of 1933. In that regard, PASW Delaware is relying on Rule 145(a)(2) under the Securities Act of 1933, which provides that a merger which has “as its sole purpose” a change in the domicile of a corporation does not involve the sale of securities for purposes of the Securities Act of 1933, and on interpretations of that rule by the Securities and Exchange

Commission (“SEC”) which indicate that the making of certain changes in the Company’s Articles of Incorporation which could otherwise be made only with the approval of the shareholders of either corporation does not render Rule 145(a)(2) inapplicable.

After the Reincorporation, PASW Delaware will continue to file periodic reports and other documents with the SEC and provide to its stockholders the same type of information that the Company has previously filed and provided. Stockholders holding restricted shares of PASW California will have shares of PASW Delaware Common Stock that are subject to the same restrictions on transfer as those to which their present shares are subject, and their stock certificates, if surrendered for replacement certificates representing shares of PASW Delaware Common Stock, will bear the same restrictive legend as appears on their present stock certificates. For purposes of computing compliance with the holding period requirement of Rule 144 under the Securities Act of 1933, stockholders will be deemed to have acquired their shares of PASW Delaware Common Stock on the date full payment of the purchase price was made for the shares of PASW California. In summary, PASW Delaware and its stockholders will be in the same respective positions under Rule 144 after the merger as were PASW California and its shareholders prior to the merger.

#### **INTEREST OF CERTAIN PERSONS IN OR OPPOSITION TO MATTERS TO BE ACTED UPON**

No person who has been a director or officer of the Company at any time since the beginning of the last fiscal year, nominee for election as a director of the Company, nor associate of the foregoing persons has any substantial interest, direct or indirect, in the Company’s change of state of incorporation that differs from that of other shareholders of the Company. No director of the Company opposed the Reincorporation.

#### **VOTING SECURITIES AND PRINCIPAL HOLDERS THEREOF**

#### **SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth certain information as of April 18, 2007 with respect to the beneficial ownership of the shares of PASW California by each person known to the Company to own beneficially more than 5% of the Company’s outstanding shares, each of the Company’s directors and executive officers, and the directors and executive officers as a group. The percentages shown are based on 4,997,400 shares of common shares outstanding as of April 18, 2007.

The number of shares beneficially owned by each 5% shareholder, director, or executive officer is determined under rules of the SEC. Under such rules, beneficial ownership includes any shares as to which the individual or entity has sole or shared voting power or investment power and also includes any shares which the individual or entity has the right to acquire on or before July 17, 2007 through the exercise of share

options, and any reference in the footnotes to this table to shares subject to share options refers only to share options that are so exercisable. For purposes of computing the percentage of outstanding shares held by each person or entity, any shares which that person or entity has the right to acquire on or before July 17, 2007 are deemed to be outstanding but are not deemed to be outstanding for the purpose of computing the percentage ownership of any other person. Unless otherwise indicated, each person or entity has sole investment and voting power (or shares such power with his or her spouse) with respect to the shares set forth in the following table. The inclusion herein of any shares deemed beneficially owned does not constitute an admission of beneficial ownership of those shares. Unless otherwise indicated, the address for each person below is: 9453 Alcosta Boulevard, San Ramon, California 94583.

<b>Name and Address of Beneficial Owner</b>	<b>Amount and Nature of Beneficial Ownership</b>	<b>Percentage of Shares</b>
Glenn P. Russell	3,000,000(1)	60 %
William E. Sliney	500	*
	-	-
All directors and executive officers as a group (3 persons)	3,000,500	60 %

\* Less than 1%.

(1) Represents shares held of record by Russell Trust Dated June 23, 1999, of which Glenn P. Russell and Laura J. Russell, husband and wife, are trustees and principal beneficiaries. Glenn P. Russell is a founder and director of PASW.

Under California law, the affirmative vote of holders of a majority of the outstanding shares of the Company's common stock is required for approval of the terms of the Reincorporation. The Reincorporation has been approved by PASW California's Board and by the PASW's principal shareholder, the Russell Trust dated June 23, 1999, the record holder of 3,000,000 of the shares. PASW anticipates that the Reincorporation will become effective as soon as practicable (the "Effective Date"). However, pursuant to the Merger Agreement, the Merger may be abandoned or the Merger Agreement may be amended (except that the principal terms may not be amended without shareholder approval) either before or after shareholder approval has been obtained and prior to the Effective Date if, in the opinion of the Board of either PASW California or PASW Delaware, circumstances arise which make it inadvisable to proceed.



**AGREEMENT AND PLAN OF MERGER  
OF PASW, INC.  
A DELAWARE CORPORATION,  
AND  
PASW, INC.  
A CALIFORNIA CORPORATION**

This Agreement and Plan of Merger dated as of May \_\_, 2007 (the "Agreement") is between PASW, Inc., a California corporation ("PASW, Inc. California"), and PASW, Inc., a Delaware corporation ("PASW, Inc. Delaware"). PASW, Inc. Delaware and PASW, Inc. California are sometimes referred to in this Agreement as the "Constituent Corporations."

**R E C I T A L S**

A. PASW, Inc. Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 160,000,000 shares, 150,000,000 of which are designated "Common Stock," \$0.00001 par value, and 10,000,000 of which are designated "Preferred Stock," \$0.00001 par value. As of the date of this Agreement, 100 shares of PASW, Inc. Delaware Common Stock were issued and outstanding, all of which are held by PASW, Inc. California, and no shares of Preferred Stock were issued and outstanding.

B. PASW, Inc. California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 60,000,000 shares, 50,000,000 of which are designated "Common Stock," \$0.001 par value per share and 10,000,000 of which are designated "Preferred Stock," \$0.01 par value per share. As of April 18, 2007, 4,997,400 shares of PASW, Inc. California Common Stock were issued and outstanding and no shares of Preferred Stock were issued and outstanding.

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

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

**A G R E E M E N T**

In consideration of the mutual agreements and covenants set forth herein, PASW, Inc. Delaware and PASW, Inc. California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

Merger.

1.1 Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, PASW, Inc. California shall be merged with and into PASW, Inc. Delaware (the "Merger"), the separate existence of PASW, Inc. California shall cease and PASW, Inc. Delaware shall

be, and is sometimes referred to below as, the "Surviving Corporation," and the name of the Surviving Corporation shall be PASW, Inc..

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

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

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

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

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

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

#### Charter Documents, Directors and Officers

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

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

2.3 Directors and Officers. The directors and officers of PASW, Inc. Delaware immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and

qualified or as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

### Manner of Conversion of Stock

3.1 PASW, Inc. California Common Stock. Upon the Effective Date of the Merger, each one share of PASW, Inc. California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.00001 par value, of the Surviving Corporation. No fractional share interests of the Surviving Corporation shall be issued. Any fractional share interests to which a holder would otherwise be entitled shall be aggregated so that no PASW, Inc. California shareholder shall receive cash in an amount greater than the value of one (1) full share of PASW, Inc. Delaware Common Stock.

### 3.2 PASW, Inc. California Options, Stock Purchase Rights and Convertible Securities.

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume and continue any and all stock option, stock incentive, employee benefit and other equity-based award plans heretofore adopted by PASW, Inc. California (the "Plans"). Each outstanding and unexercised option, other right to purchase, or security convertible into, PASW, Inc. California Common Stock (a "Right") shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase, or a security convertible into the Surviving Corporation's Common Stock, respectively, on the basis of one share of the Surviving Corporation's Common Stock, as the case may be, for each one share of PASW, Inc. California Common Stock, issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such PASW, Inc. California Right at the Effective Date of the Merger. This paragraph 3.2(a) shall not apply to PASW, Inc. California Common Stock. Such Common Stock is subject to paragraph 3.1 hereof.

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

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

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

3.3 PASW, Inc. Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$0.00001 par value, of PASW, Inc. Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by PASW, Inc. Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.4 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing PASW, Inc. California Common Stock may, at such holder's option, surrender the same for cancellation to Corporate Stock Transfer, as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which the surrendered shares were converted as provided herein. Until so surrendered, each outstanding certificate theretofore representing shares of PASW, Inc. California capital stock shall be deemed for all purposes to represent the number of whole shares of the appropriate class and series of the Surviving Corporation's capital stock into which such shares of PASW, Inc. California capital stock were converted in the Merger.

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

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

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

General.

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

(a) Qualify to do business as a foreign corporation in the State of California and irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California General Corporation Law.

(b) File any and all documents with the California Franchise Tax Board necessary for the assumption by PASW, Inc. Delaware of all of the franchise tax liabilities of PASW, Inc. California; and

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

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

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

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

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is located at 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, Delaware 19808. Corporation Service Company is the registered agent of the Surviving Corporation at such address.

4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 9453 Alcosta Boulevard, San Ramon, California 94583 and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

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

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

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

**PASW, INC. CALIFORNIA:**

**PASW, Inc.**, a California corporation

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

Name:

Title:

**PASW, INC. DELAWARE:**

**PASW, Inc.**, a Delaware corporation

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

Name:

Title:



**Certificate of Incorporation  
of  
PASW, Inc.  
a Delaware corporation**

## I.

The name of this corporation is "**PASW, Inc.**" (the "Corporation").

## II.

The address of the Corporation's registered office in the State of Delaware is 160 Greentree Drive, Suite 101, Dover, County of Kent, 19904. The name of its registered agent at such address is National Registered Agents Inc.

## III.

The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware.

## IV.

**A. Classes of Stock.** This Corporation is authorized to issue two classes of stock to be designated, respectively, as "Common Stock" and "Preferred Stock". The total number of shares which the Corporation is authorized to issue is two hundred ten million (210,000,000) shares, each unit a par value of \$0.00001 per share. Two Hundred million (200,000,000) shares shall be Common Stock and ten million (10,000,000) shares shall be Preferred Stock.

**B. Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, by filing a certificate pursuant to the applicable law of the State of Delaware and within the limitations and restrictions set forth in this Certificate of Incorporation, to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and the liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series subsequent to the issuance of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status they had prior to the adoption of the resolution originally fixing the number of shares of such series.

## V.

The number of directors of the Corporation shall be fixed from time to time by a bylaw or amendment thereof duly adopted by the Board of Directors.

VI.

In the election of directors, each holder of shares of any class or series of capital stock of the Corporation shall be entitled to one vote for each share held. No stockholder will be permitted to cumulate votes at any election of directors.

VII.

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

VIII.

A. Except as otherwise provided in the Bylaws, the Bylaws may be amended or repealed or new Bylaws adopted by the vote or written consent of holders of a majority of the outstanding shares entitled to vote generally in the election of directors. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal Bylaws.

B. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

C. Advance notice of stockholder nominations for the election of directors or of business to be brought by the stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

IX.

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

X.

The Corporation shall have perpetual existence.

XI.

A. To the fullest extent permitted by the General Corporation Law of Delaware but not limited to Section 102(b)(7) thereof, as the same may be amended from time to time, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law of Delaware is hereafter amended to authorize, with the approval of a corporation's stockholders, further reductions in the liability of a corporation's directors for breach of fiduciary duty, then a director of the Corporation

shall not be liable for any such breach to the fullest extent permitted by the General Corporation Law of Delaware as so amended.

B. Any repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director of the Corporation with respect to any acts or omissions of such director occurring prior to such repeal or modification.

XII.

A. To the fullest extent permitted by applicable law, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees and other agents of the Corporation (and any other persons to which Delaware law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law of Delaware, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to a corporation.

B. Any repeal or modification of any of the foregoing provisions of this Article XII shall not adversely affect any right or protection of any such agent or other person existing at the time of, or increase the liability of any such agent or other person with respect to any acts or omissions of such agent or other person occurring prior to such repeal or modification.

XIII.

The name and mailing address of the incorporator are as follows:

William E. Sliney  
c/o PASW, Inc.  
9453 Alcosta Boulevard,  
San Ramon, California 94583

Executed this 29<sup>th</sup> day of March 2007.

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William E. Sliney, Incorporator



**FORM OF  
BYLAWS  
OF  
PASW**  
a Delaware corporation  
(as adopted on \_\_\_\_\_, 2007)

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Bylaws for the regulation, except as  
otherwise provided by statute or its  
Certificate of Incorporation,  
of  
**PASW, Inc.**  
a Delaware corporation

ARTICLE I  
OFFICES

Section 1. *Registered Office.* The registered office of PASW, Inc., a Delaware corporation (the "Corporation"), shall be fixed in the Certificate of Incorporation of the Corporation.

Section 2. *Other Offices.* The Corporation shall also have and maintain a principal executive office at 9453 Alcosta Boulevard, San Ramon, California 94583, and may also have offices at such other places both within and without the State of Delaware as the Board of Directors (the "Board") may from time to time determine or the business of the Corporation may require.

ARTICLE II  
MEETINGS OF STOCKHOLDERS

Section 1. *Place of Meetings.* Meetings of stockholders shall be held either at the principal executive office of the Corporation or at any other place within or without the State of Delaware which may be designated either by the Board or by the written consent of all persons entitled to vote thereat, given either before or after the meeting and filed with the Secretary.

Section 2. *Annual Meetings.* The annual meetings of the stockholders shall be held on such date and at such time as may be fixed by the Board. At such meetings, directors shall be elected and any other proper business may be transacted.

Section 3. *Special Meetings.* Special meetings of the stockholders may be called at any time by the Board, the Chairman of the Board, or the Chief Executive Officer and may not be called by any other person or persons. Business transacted at any special meeting shall be limited to the purposes stated in the notice of the meeting.

Section 4. *Notice of Annual or Special Meeting.* Written notice of each annual or special meeting of stockholders shall be given neither less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote thereat. Such notice shall state the place, date and

hour of the meeting and (a) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (b) in the case of the annual meeting, those matters which the Board, at the time of the mailing of the notice, intends to present for action by the stockholders, but, subject to the provisions of applicable law, any proper matter may be presented at the meeting for such action. The notice of any meeting at which directors are to be elected shall include the names of nominees intended at the time of the notice to be presented by management for election.

Notice of a stockholders' meeting shall be given either personally or by mail or by other means of written communication, addressed to the stockholder at the address of such stockholder appearing on the books of the Corporation or given by the stockholder to the Corporation for the purpose of notice; or, if no such address appears or is given, at the place where the principal executive office of the Corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal executive office is located. Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission to the recipient. Any notice to stockholders may be given by electronic mail or other electronic transmission, in the manner provided by Section 232 of the Delaware General Corporation Law. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the giving of such notice. Notice of the time, place and purpose of any meeting of stockholders may be waived in writing, either before or after the meeting, and to the extent permitted by law, will be waived by any stockholder by attendance thereat, in person or by proxy, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

Notwithstanding the foregoing provisions of this Section 4, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations thereunder with respect to matters set forth in this Section 4.

Section 5. *Quorum*. A majority of the issued and outstanding stock entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to have less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (a) the chairman of the meeting or (b) holders of a majority of the shares of stock

entitled to vote who are present, in person or in proxy, shall have power to adjourn the meeting to another place (if any), date or time in accordance with Section 6 of this Article.

Section 6. *Adjourned Meeting and Notice Thereof.* Any stockholders' meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the shares, the holders of which are either present in person or represented by proxy thereat, but in the absence of a quorum (except as provided in Section 5 of this Article) no other business may be transacted at such meeting.

It shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted thereat, other than by announcement at the meeting at which such adjournment is taken; provided, however, when any stockholders' meeting is adjourned for more than thirty (30) days or, if after adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given as in the case of an original meeting.

Section 7. *Voting.* The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 8 of this Article, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements). Except as may be otherwise provided in the Certificate of Incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. All elections shall be determined by a plurality of the votes cast, and except as otherwise required by law, all other matters shall be determined by a majority of the votes cast affirmatively or negatively.

Section 8. *Record Date.* The Board may fix, in advance, a record date for the determination of the stockholders entitled to notice of any meeting to vote or entitled to receive payment of any dividend or other distribution, or any allotment of rights, or to exercise rights in respect of any other lawful action. The record date so fixed shall be neither more than sixty (60) days nor less than ten (10) days prior to the date of the meeting nor more than sixty (60) days prior to any other action. When a record date is so fixed, only stockholders of record on that date are entitled to notice of and to vote at the meeting or to receive the dividend, distribution, or allotment of rights, or to the exercise of the rights, as the case may be, notwithstanding any transfer of shares on the books of the Corporation after the record date. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting unless the Board fixes a new record date for the adjourned meeting. The Board shall fix a new record date if the meeting is adjourned for more than thirty (30) days.

If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the next business day next preceding the day on which the meeting is held. The record date for determining stockholders for any purpose other than set forth in this Section 8 or Section 10 of this Article shall be at the close of business on the day on which the Board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later.

Section 9. *Consent of Absentees.* The transactions of any meeting of stockholders, however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of the meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of stockholders need be specified in any written waiver of notice, except as provided in the Certificate of Incorporation or these Bylaws.

Section 10. *Action Without Meeting.* Subject to Section 228 of the Delaware General Corporation Law, any action which, under any provision of the Delaware General Corporation Law, may be taken at any annual or special meeting of stockholders, may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Unless a record date for voting purposes be fixed as provided in Section 8 of this Article, the record date for determining stockholders entitled to give consent shall be the day on which the first written consent is given.

Section 11. *Proxies.* Every person entitled to vote shares has the right to do so either in person or by one or more persons authorized by a written proxy executed by such stockholder and filed with the Secretary. Every proxy duly executed shall continue in full force and effect until revoked by the person executing it prior to the vote pursuant thereto effected by a writing delivered to the Corporation stating that the proxy is revoked or by a subsequent proxy executed by the person executing the prior proxy and presented to the meeting, or by attendance at the meeting and voting in person by the person executing the proxy; provided, however, that no proxy shall be valid after the expiration of eleven months from the date of its execution unless otherwise provided in the proxy. The revocability of a proxy that states on its face that it is irrevocable shall

be governed by the provisions of Section 212(a) of the Delaware General Corporation Law.

Section 12. *Inspectors of Election.* In advance of any meeting of stockholders, the Board may appoint any persons, other than nominees for office inspectors of election to act at such meeting and any adjournment thereof. If inspectors of election are not so appointed, or if any persons so appointed fail to appear or refuse to act, the chairman of any such meeting may, and on the request of any stockholder or stockholder's proxy shall, make such appointment at the meeting. The number of inspectors shall be either one or three. If appointed at a meeting on the request of one or more stockholders or proxies, the majority of shares present shall determine whether one or three inspectors are to be appointed.

The duties of such inspectors shall include: determining, and certifying as appropriate, the number of shares outstanding and the voting power of each; the shares represented at the meeting; the existence of a quorum; the authenticity, validity and effect of proxies; receiving votes, ballots or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining when the polls shall close; determining the result; and doing such acts as may be proper to conduct the election or vote with fairness to all stockholders. If there are three inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all.

### ARTICLE III DIRECTORS

Section 1. *Powers.* Subject to limitations of the Certificate of Incorporation, of these Bylaws and of the Delaware General Corporation Law relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the day-to-day operation of the business of the Corporation to a management company or other person provided that the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these Bylaws:

(a) To select and remove all the other officers, agents and employees of the Corporation, prescribe the powers and duties for them as may not be inconsistent with applicable law, with the Certificate of the Corporation or these Bylaws, fix their compensation and require from them security for faithful service.

(b) To conduct, manage and control the affairs and business of the Corporation and to make such rules and regulations therefor not inconsistent with applicable law, or with the Certificate of the Corporation or these Bylaws, as they may deem best.

(c) To adopt, make and use a corporate seal, and to prescribe the forms of certificates of stock, and to alter the form of such seal and of such certificates from time to time as in their judgment they may deem best.

(d) To authorize the issuance of shares of stock of the Corporation from time to time, upon such terms and for such consideration as may be lawful.

(e) To borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecation or other evidences of debt and securities thereof.

Section 2. *Number of Directors.* The authorized number of directors shall be, until changed by amendment of the Bylaws or by a Bylaw duly adopted by the holders of a majority of the outstanding capital stock entitled to vote thereon or a majority of the Board, such number as may from time to time be authorized by resolution of the Board or the stockholders, provided that such number shall initially be five (5).

Section 3. *Election and Term of Office.* The directors shall be elected at each annual meeting of the stockholders, but if any such annual meeting is not held or the directors are not elected thereat, the directors may be elected at any special meeting of stockholders held for that purpose. Each director shall hold office until the next annual meeting and until a successor has been elected and qualified.

Section 4. *Vacancies.* Any director may resign effective upon giving written notice to the Chairman of the Board, the President, the Secretary or the Board, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Vacancies in the Board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, and each director so elected shall hold office until the next annual meeting and until such director's successor has been elected and qualified.

A vacancy or vacancies in the Board shall be deemed to exist in the case of the death, resignation or removal of any director, or if the authorized number of directors be increased, or if the stockholders fail, at any annual or special

meeting of stockholders at which any director or directors are elected, to elect the full authorized number of directors to be voted for at that meeting.

The Board may declare vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony.

The stockholders may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors. Any such election by written consent requires the consent of a majority of the outstanding shares entitled to vote. If the Board accepts the resignation of a director tendered to take effect at a future time, the Board or the stockholders shall have power to elect a successor to take office when the resignation is to become effective.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of the director's term of office.

Section 5. *Place of Meeting.* Regular or special meetings of the Board shall be held at any place within or without the State of Delaware which has been designated from time to time by the Board. In the absence of such designation, regular meetings shall be held at the principal executive office of the Corporation.

Section 6. *Regular Meetings.* Immediately following each annual meeting of stockholders, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business. Call and notice of all such regular meetings of the Board is hereby dispensed with. Other regular meetings of the Board shall be held without call on such dates and at such times as may be fixed by the Board, and shall be subject to the notice requirements set forth in Section 7 of this Article.

Section 7. *Special Meetings.* Special meetings of the Board for any purpose or purposes may be called at any time by the Chief Executive Officer, Chairman of the Board, or by any two directors.

Special meetings of the Board shall be held upon four (4) days' written notice by mail or forty-eight (48) hours' notice given personally or by telephone, telecopier, e-mail or other similar means of communication. Any such notice shall be addressed or delivered to each director at such director's address as it is shown upon the records of the Corporation or as may have been given to the Corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually

transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated in person or by telephone or wireless, to the recipient or to a person at the office or residence of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

Section 8. *Quorum*. One third of the authorized number of directors or two directors, whichever is larger, constitutes a quorum of the Board for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number be required by law or by the Certificate. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 9. *Participation in Meetings by Conference Telephone*. Members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another.

Section 10. *Waiver of Notice*. The transactions of any meeting of the Board, however called and noticed or wherever held, are as valid as though had at a meeting duly held after regular call and notice if a quorum be present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding such a meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 11. *Adjournment*. A majority of the directors present, whether or not a quorum is present, may adjourn any directors' meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place be fixed at the meeting adjourned. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 12. *Fees and Compensation*. Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by the Board.

Section 13. *Action Without Meeting*. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such action. Such consent or

consents shall have the same effect as a unanimous vote of the Board and shall be filed with minutes of the proceedings of the Board.

Section 14. *Rights and Inspection.* Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation and also of its subsidiary corporations, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney and includes the right to copy and obtain extracts.

Section 15. *Committees.* The Board may appoint one or more committees, each consisting of two or more directors, and delegate to such committees any of the authority of the Board except with respect to:

- (i) The approval of any action for which the Delaware General Corporation Law also requires stockholders' approval;
- (ii) The filling of vacancies on the Board or in any committee;
- (iii) The fixing of compensation of the directors for serving on the Board or on any committee;
- (iv) The amendment or repeal of Bylaws or the adoption of new Bylaws;
- (v) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- (vi) A distribution to the stockholders of the Corporation except at a rate or in a periodic amount or within a price range determined by the Board; or
- (vii) The appointment of other committees of the Board or the members thereof.

Any such committee must be appointed by resolution adopted by a majority of the authorized number of directors and may be designated an Executive Committee or by such other name as the Board shall specify. The Board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or such committee shall otherwise provide, the regular and special meetings and other actions of any such committee shall be governed by the provisions of this Article applicable to meetings and actions of the Board. Minutes shall be kept of each meeting of each committee.

#### ARTICLE IV OFFICERS

Section 1. *Officers.* The officers of the Corporation shall be a Chief Executive Officer, a Secretary and a Chief Financial Officer. The Corporation may also have, at the discretion of the Board, a Chairman of the Board, a President, a Chief Operating Officer, one or more Vice Presidents (who may be designated as executive or senior vice presidents as the Board may, from time to

time, deem necessary), one or more Assistant Secretaries, one or more Assistant Financial Officers and such other officers as may be elected or appointed in accordance with the provisions of Section 3 of this Article. Any number of offices may be held by the same person.

Section 2. *Election.* The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article, shall be chosen annually by, and shall serve at the pleasure of the Board, and shall hold their respective offices until their resignation, removal or other disqualification from service, or until their respective successors shall be elected.

Section 3. *Subordinate Officers.* The Board may appoint, and may empower the Chief Executive Officer or the President to appoint, such other officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time determine. Any officer appointed pursuant to this Section 3 may be removed, with or without cause, by the Board or any such officer upon whom the power of removal has been conferred by the Board at any time. Any such removal shall be without prejudice to the rights, if any, of the officer under any contract of employment.

Section 4. *Removal and Resignation.* Any officer not appointed in accordance with the provisions of Section 3 or 5 hereof may be removed, either with or without cause, by the Board at any time. Any such removal shall be without prejudice to the rights, if any, of the officer under any contract of employment.

Any officer may resign at any time by giving written notice to the Corporation, but without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. *Vacancies.* A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to such office.

Section 6. *Chairman of the Board.* The Chairman of the Board, shall, if present, preside at all meetings of the Board and exercise and perform such other powers and duties as may be from time to time assigned by the Board.

Section 7. *Chief Executive Officer.* The Chief Executive Officer shall be subject to the control of the Board and have general supervision, direction and

control of the business and the officers of the corporation. The Chief Executive Officer shall preside at all meetings of the stockholders and shall act as Chairman of the Board unless the Board has appointed a different person as Chairman.

Section 8. *President; Chief Operating Officer.* The President or the Chief Operating Officer has the general powers and duties of management usually vested in the office of president, general manager and chief operating officer of a corporation and such other powers and duties as may be prescribed by the Board. In the absence of the Chief Executive Officer, the President shall perform the duties required of the Chief Executive Officer under these Bylaws.

Section 9. *Vice President.* In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board or, if not ranked, the Vice President designated by the Board, shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board.

Section 10. *Secretary.* The Secretary shall keep or cause to be kept, at the principal executive office and such other place as the Board may order, a book of minutes of all meetings of stockholders, the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, a copy of the Bylaws of the Corporation at the principal executive offices or business office.

The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Corporation's transfer agent or registrar, if one be appointed, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all meetings of the stockholders of the Board and of any committees thereof required by these Bylaws or by law to be given, shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board.

Section 11. *Chief Financial Officer.* The Chief Financial Officer is the principal financial officer of the Corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the

properties and business transactions of the Corporation, and shall send or cause to be sent to the stockholders of the Corporation such financial statements and reports as are by law or these Bylaws required to be sent to them. The books of account shall at all times be open to inspection by any director.

The Chief Financial Officer shall deposit all monies and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. The Chief Financial Officer shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the Chief Executive Officer or the President or directors, whenever they request it, an account of all transactions entered into as Chief Financial Officer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board.

## ARTICLE V OTHER PROVISIONS

**Section 1. *Inspection of Corporate Records.*** The Corporation shall, either at its principal executive offices or at such place or places as designated by the Board, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books, and other records.

(a) Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in Delaware or at its principal place of business.

(b) A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in each such stockholder's name, shall be open to the examination of any such stockholder for a period of at least ten (10) days prior to the meeting in the manner provided by law. The stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

Section 2. *Inspection of Bylaws.* The Corporation shall keep in its principal executive office the original or a copy of these Bylaws as amended to date, which shall be open to inspection by stockholders at all reasonable times, during office hours. If the principal executive office of the Corporation is located outside the State of Delaware and the Corporation has no principal business office in such state, it shall upon the written notice of any stockholder furnish to such stockholder a copy of these Bylaws as amended to date.

Section 3. *Endorsement of Documents; Contracts.* Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, share certificate, conveyance or other instrument in writing and any assignment or endorsements thereof executed or entered into between the Corporation and any other person, when signed by the Chief Executive Officer, the Chairman of the Board, the President, the Chief Operating Officer or any Vice President and the Secretary, the Chief Financial Officer or any Assistant Financial Officer of the Corporation shall be valid and binding on the Corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by another person or persons and in such manner as from time to time shall be determined by the Board, and, unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

Section 4. *Certificates of Stock.* Every holder of shares of the Corporation shall be entitled to have a certificate signed in the name of the Corporation by the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer or a Vice President and by the Chief Financial Officer or an Assistant Financial Officer or the Secretary or an Assistant Secretary, certifying the number of shares and the class or series of shares owned by the stockholder. Any or all of the signatures on the certificate may be provided by facsimile. If any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

Certificates for shares may be issued prior to full payment under such restrictions and for such purposes as the Board may provide; provided, however, that on any certificate issued to represent any partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated.

Except as provided in this section, no new certificate for shares shall be issued in lieu of an old one unless the latter is surrendered and cancelled at the same time. The Board may, however, if any certificate for shares is alleged to

have been lost, stolen or destroyed, authorize the issuance of a new certificate in lieu thereof, and the Corporation may require that the Corporation be given a bond or other adequate security sufficient to indemnify it against any claim that may be made against it (including expense or liability) on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate.

Section 5. *Representation of Shares of other Corporations.* The President, the Chief Operating Officer, the Chief Executive Officer or any other officer or officers authorized by the Board, the Chief Executive Officer, the President, or the Chief Operating Officer are each authorized to vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the Corporation. The authority herein granted may be exercised either by any such officer in person or by any other person authorized so to do by proxy or power of attorney duly executed by said officer.

Section 6. *Stock Purchase Plans.* The Corporation may adopt and carry out a stock purchase plan or agreement or stock option plan or agreement providing for the issue and sale for such consideration as may be fixed of its unissued shares, or of issued shares acquired or to be acquired, to one or more of the employees or directors of the Corporation or of a subsidiary or to a trustee on their behalf and for the payment for such shares in installments or at one time, and may provide for aiding any such persons in paying for such shares by compensation for services rendered, promissory notes or otherwise.

Any such stock purchase plan or agreement or stock option plan or agreement may include, among other features, the fixing of eligibility for participation therein, the class and price of shares to be issued or sold under the plan or agreement, the number of shares which may be subscribed for, the method of payment therefor, the reservation of title until full payment therefor, the effect of the termination of employment and option or obligation on the part of the Corporation to repurchase the shares upon termination of employment, restrictions upon transfer of the shares, the time limits of and termination of the plan, and any other matters, not in violation of applicable law, as may be included in the plan as approved or authorized by the Board or any committee of the Board.

Section 7. *Construction and Definitions.* Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the Delaware General Corporation Law shall govern the construction of these Bylaws.

ARTICLE VI  
INDEMNIFICATION

Section 1. *Indemnification*. The Corporation shall indemnify its officers and directors, and former officers and directors, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as required or permitted by the Delaware General Corporation Law, as amended from time to time. The determination of whether any such person is eligible for indemnification under this Section 1 shall be made (a) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (b) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (c) by the stockholders; provided, however, that if a Change in Control (as defined below) has occurred and the person seeking indemnification so requests, a determination of whether such person is eligible for indemnification under this Section 1 shall be made in a written opinion rendered by independent legal counsel chosen by the person seeking indemnification and not reasonably objected to by the Board, and such determination shall be binding on the Corporation. The fees and expenses of such independent counsel shall be paid by the Corporation. For such purpose, (i) "independent legal counsel" shall mean legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or has performed services for the Corporation or the person seeking indemnification within the previous three years; and (ii) a "Change in Control" shall be deemed to have occurred if:

(i) a majority of the directors of the Corporation shall be persons other than persons (A) who were directors of the Corporation on the date this Section was adopted, (B) for whose election proxies shall have been solicited by the Board or (C) who are then serving as directors appointed by the Board to fill vacancies on the Board caused by newly created directorships or the death or resignation (but not removal) of a director;

(ii) thirty percent (30%) or more of the outstanding shares of voting stock of the Corporation is acquired or beneficially owned (as defined in Rule 13d 3 under the Securities Exchange Act of 1934, as amended, or any successor rule thereto) by any person (other than the Corporation, a subsidiary of the Corporation or the person seeking indemnification) or group of persons, not including the person seeking indemnification, acting in concert;

(iii) the stockholders of the Corporation approve a definitive agreement or plan to (A) merge or consolidate the Corporation with or into another corporation (other than (1) a merger or consolidation with a subsidiary of the Corporation or (2) a merger in which the Corporation is the surviving corporation and no outstanding voting stock of the Corporation (other than fractional shares) held by stockholders immediately before the merger is converted into cash, securities, or other property), (B) sell or otherwise dispose of all or substantially all of the

assets of the Corporation (in one transaction or a series of transactions) or (C) liquidate or dissolve the Corporation, unless a majority of the voting stock (or the voting equity interest) of the surviving corporation or of any corporation (or other entity) acquiring all or substantially all of the assets of the Corporation (in the case of a merger, consolidation or disposition of assets) is, immediately following the merger, consolidation or disposition of assets, beneficially owned by the person seeking indemnification or a group of persons, including the person seeking indemnification, acting in concert; or

(iv) the Corporation enters into an agreement in principle or a definitive agreement relating to an event described in clause (i), (ii) or (iii) above which ultimately results in an event described therein, or a tender or exchange offer or proxy contest is commenced which ultimately results in an event described therein.

Section 2. *Insurance.* The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, trustee or agent of another corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise, against any liability or expense asserted against or incurred by such person in or arising from that capacity, or arising out of his or her status as such, whether or not the Corporation would otherwise have the power or the obligation to indemnify the person against such liability or expense. The Corporation shall not be obligated under these Bylaws to make any payment in connection with any claim made against any person if and to the extent that such person has actually received payment therefor under any insurance policy or policies.

Section 3. *Expenses Payable in Advance.* Expenses (including attorneys' fees and expenses) incurred by a director or officer, or a former director or officer, in defending, investigating, preparing to defend, or being or preparing to be a witness in, a threatened or pending action, suit, proceeding or claim against him or her, whether civil or criminal, shall be paid by the Corporation in advance of the final disposition of such action, suit, proceeding or claim upon receipt by the Corporation of a request therefor and an undertaking by or on behalf of the director or officer, or former director or officer, to repay such amounts if it ultimately shall be determined that he or she is not entitled to be indemnified by the Corporation.

## ARTICLE VII AMENDMENTS

These Bylaws may be repealed, altered or amended or new Bylaws adopted at any meeting of the stockholders, either annual or special, by the affirmative vote of at least a majority of the stock entitled to vote at such meeting, unless a larger vote is required by these Bylaws or the Certificate of Incorporation. The

Board shall also have the authority to repeal, alter or amend these Bylaws or adopt new Bylaws (including, without limitation, the amendment of any Bylaws setting forth the number of directors who shall constitute the whole Board) by unanimous written consent or at any annual, regular, or special meeting of the Board by the affirmative vote of a majority of the whole number of directors, subject to the power of the stockholders to change or repeal such Bylaws.