

Surviving Corporation, subject to the provisions of the by-laws of the Surviving Corporation. *749*

6. Capital Stock of Surviving Corporation. On the effective date of the merger, the total amount of capital stock of the Surviving Corporation to be authorized, the number of shares into which the capital stock is to be divided, and the par value of the shares shall be as follows:

- (a) Eleven thousand (11,000) shares of \$5 cumulative non-convertible preferred stock without par value;
- (b) Ten million (10,000,000) shares of common stock of \$1 par value per share, amounting in the aggregate to \$10,000,000.

7. Conditions Precedent to the Merger. Neither this Agreement nor the certificates of its adoption and approval shall be filed or recorded until and unless the following conditions are fulfilled:

- (a) *Stockholder Approval.* This Agreement shall have been submitted to and approved by, at meetings duly called of, the stockholders of both the Constituent Corporations, as provided by their certificates of incorporation, by-laws, and the statutes of their respective states of incorporation. Said approval shall have been by the holders of at least two-thirds of the total number (not including treasury shares) of issued and outstanding shares of stock of each of the Constituent Corporations.
- (b) *State Regulatory Matters.* The Constituent Corporations shall have complied with all applicable regulatory requirements of their states of incorporation or of any other state having jurisdiction, and all necessary authorizations, permits, and/or approvals of appropriate governmental agencies shall have been obtained.
- (c) *Redemption of Sunset Series A and Series B Preferred Stock.* Sunset shall have redeemed, cancelled, retired or otherwise eliminated any outstanding shares of Sunset Series A preferred stock and any outstanding shares of Sunset Series B preferred stock, so that on the effective date of the merger no shares of said Sunset Series A or Series B preferred stock shall be issued or outstanding.

8. Conversion of Outstanding Securities on Merger. The manner and basis of converting the outstanding shares of the capital stock of each of the Constituent Corporations into the shares or other securities of the Surviving Corporation shall be as follows:

- (a) *Sunset Stock.* Immediately upon the effective date of the merger, each share of stock of Sunset issued and outstanding (including shares of Sunset common stock held in the treasury of Sunset), ipso facto, without the issuance or exchange of new shares or share certificates and without any action on the part of the holder thereof, shall automatically become and be converted into stock of the Surviving Corporation, at the rate of one share of the preferred stock of the Surviving Corporation for each one share of the Series C preferred stock of Sunset, and one share of the common stock of the Surviving Corporation for each one share of the common stock of Sunset; and each outstanding certificate representing shares of stock of Sunset shall thereupon be deemed for all corporate purposes to evidence the ownership of the number of fully paid, nonassessable shares of the stock of the Surviving Corporation into which such shares of stock of Sunset shall have been so converted.