

have been declared by the New York Company on such shares of the New York Company Common Stock and remain unpaid at the Effective Time of the Merger.

(i) All shares of Common Stock of the Surviving Corporation into which the New York Company Common Stock is converted shall be full paid and nonassessable.

9. At the Effective Time of the Merger all and singular the rights, privileges, powers and franchises, as well of a public as of a private nature, and all the property, real, personal and mixed, of the New York Company, and all debts due to the New York Company on whatever account, including subscriptions to shares and all other things in action, or belonging to the New York Company, shall be taken and deemed to be transferred to, and shall be vested in, the Surviving Corporation without further act or deed; and all property, rights, privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the New York Company, and the title to any real estate, whether vested by deed or otherwise in the New York Company, shall not revert or be in any way impaired by reason of the Merger; but the Surviving Corporation shall thenceforth be liable for all debts, liabilities, obligations, duties and penalties of the New York Company, and all said debts, liabilities, obligations, duties and penalties shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities, obligations, duties and penalties had been incurred or contracted by it. No liability or obligation due or to become due at the Effective Time of the Merger, or any claim or demand for any cause then existing against the New York Company or any stockholder, officer or director thereof, shall be released or impaired by the Merger, and all rights of creditors and all liens upon property of the New York Company shall be preserved unimpaired.

10. At the Effective Time of the Merger, the assets and liabilities of the New York Company (except items of capital and surplus) shall be taken up or continued, as the case may be, on the books of the Surviving Corporation at the amounts at which they respectively shall be carried on the books of the New York Company immediately prior to the Effective Time of the Merger, and the capital and surplus accounts of the Surviving Corporation shall be determined in accordance with generally accepted accounting principles by the Board of Directors of the Surviving Corporation.

11. (a) For the convenience of the parties hereto and to facilitate the filing and recording of this Agreement, any number of counterparts hereof may be executed, and each such counterpart shall be deemed to be an original instrument.

(b) At any time prior to the filing of this Agreement, the parties hereto may, by written agreement, make any modification of this Agreement approved by the Boards of Directors of the parties hereto except a modification which is prohibited by law. This Agreement cannot be altered or amended except pursuant to an instrument in writing executed and delivered on behalf of the parties hereto, which instrument, when so executed and delivered, shall thereupon become a part of this Agreement and the provisions thereof shall be given effect as if contained in this Agreement as of September 5, 1959.

(c) This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Delaware covering contracts made and to be performed in that State, except insofar as the internal law of any other political entity or jurisdiction shall specifically or mandatorily apply to the transactions contemplated hereby.

(d) This Agreement shall not be assignable by either of the parties hereto.

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