

consolidation or merger are not adversely affected and there shall not be outstanding as a result of the merger or consolidation any class of stock ranking prior to or on a parity with the Preference Stock, or (B) if the Corporation is not the surviving corporation, (i) the preferences and the relative, participating, optional and other special rights, including, without limitation, the dividend, redemption, liquidation and voting rights, of the shares of the surviving corporation issued in exchange for the shares of this series are at least as great as such preferences and rights of the shares of this series outstanding immediately prior to the effective date of such consolidation or merger and (ii) the surviving corporation shall not have outstanding at the time of, or as a result of, such merger or consolidation any class of stock ranking prior to or on a parity with the Preference Stock, other than the shares issued in exchange for the shares of the Preference Stock under the circumstances contemplated by clause (B)(i) hereof or shares issued in exchange for the Preferred Stock which have substantially the same preferences and rights as the Preferred Stock.

VOL 1119 PAGE 270

B
7
2
0

6. Miscellaneous.

(a) Shares of this series which have been issued and reacquired in any manner by the Corporation shall have the status of authorized and unissued shares of Preference Stock and may be reissued as part of this series or may be reclassified and reissued as part of a new series of Preference Stock to be created by resolution or resolutions of the Board of Directors pursuant to Part D of this Article III, subject to the conditions or restrictions on issuance set forth herein; provided, however, that shares of this series redeemed by the Corporation whether through the operation of the sinking fund or otherwise may not be reissued as part of this series.

(b) Shares of this series which are not issued and delivered to shareholders of Emery Industries, Inc. in connection with the merger of Emery Industries, Inc. and NDCC Corp., a wholly owned subsidiary of the Corporation, shall have the status of authorized and unissued shares of Preference Stock and may be issued as part of a new series of Preference Stock to be created by resolution or resolutions of the Board of Directors pursuant to Part D of this Article III, subject to the conditions or restrictions of issuance set forth herein.

(c) So long as any shares of this series are outstanding, in the event of any conflict between the provisions of this Part E and the remainder of the Articles of Incorporation or the By-laws of the Corporation (both as presently existing or hereafter amended and supplemented) the provisions of this Part E, or as the same may be amended or supplemented pursuant to its provisions, shall be and remain controlling.

(C) To relate the dividend, liquidation and voting rights of the Common Stock to those of the Preference Stock and to redesignate Part D as Part F by amending present Part D of Article III to read as follows:

**PART F
COMMON STOCK**

1. Subject to all of the rights of the Preferred Stock and the Preference Stock, dividends may be paid upon the Common Stock as and when declared by the Board of Directors out of any funds of the Corporation legally available therefor.

2. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, and after the holders of the Preferred Stock and the Preference Stock of each class and series shall have been paid in full the amounts to which they respectively shall be entitled or an amount sufficient to pay the aggregate amount to which the holders of the Preferred Stock and the Preference Stock of each class and series shall be entitled shall have been deposited with a bank or trust company in the Borough of Manhattan, City and State of New York, having capital, surplus and undivided profits of at least five million dollars (\$5,000,000) as a trust fund for the benefit of the holders of such Preferred Stock and

4328 RV-2