

E-121-1557

VOL 1119 PAGE 243

024

Warrants to purchase 250,000 Emery Common Shares issued in connection with Emery's acquisition of the Rewe Group shall be converted into and become warrants to purchase 250,000 shares of National Preference Stock, upon the terms and subject to the conditions of the Rewe Warrants.

SECTION 3.08 *Stock Options and Stock Savings Plan*. (a) Upon adoption of the Merger Agreement by the Emery shareholders at the shareholders' meeting referred to in Section 6.04, all outstanding options and stock incentive rights issued prior to November 28, 1977 pursuant to Emery's 1967 Stock Option Plan or 1975 Stock Option Plan shall immediately become exercisable in full, and, if exercised, all Emery Common Shares issuable as a result of such exercise shall be deemed to be outstanding at the Effective Time of the Merger and fully entitled to be exchanged for shares of National Preference Stock pursuant to Section 3.01(b)(ii) or exchanged for cash pursuant to Section 3.01(b)(iii). Any outstanding options issued pursuant to Emery's 1967 Stock Option Plan or 1975 Stock Option Plan which are not exercised prior to the Effective Time of the Merger shall be cancelled at the Effective Time of the Merger.

(b) As soon as practicable after the Effective Time of the Merger Emery will pay each participant in Emery's Employees' Stock Savings Plan whose name is set forth on the schedule delivered to National pursuant to Section 5.02(c)(iii) and who is a participant in such Plan at the Effective Time of the Merger an amount determined by calculating the number of Emery Common Shares which each such participant could expect to acquire in each Offering (as defined for purposes of Emery's Employees' Stock Savings Plan) presently in effect, and multiplying that number of shares by the difference between \$22.25 and the Entry Date Price (as defined for purposes of Emery's Employees' Stock Savings Plan) applicable to such Emery Common Shares.

ARTICLE FOUR

REPRESENTATIONS AND WARRANTIES OF NATIONAL

National hereby represents and warrants to Emery as follows:

SECTION 4.01. *Incorporation of National and NDCC*. National is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. NDCC is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio.

SECTION 4.02. *Capitalization*. (a) As of March 1, 1978, National's authorized capital stock consisted of (i) 40,000,000 shares of Common Stock, par value \$2.50 per share, of which 25,916,815 shares were issued and outstanding and 2,289,720 shares were held in the treasury of National, (ii) 500,000 shares of \$100 Cumulative preferred 4 1/2% stock, of which 103,300 shares were issued and outstanding and 56,174 shares were held in the treasury of National, and (iii) 129,768 shares of \$50 Cumulative preferred 4 1/2% stock, of which 78,550 shares were issued and outstanding and 51,178 shares were held in the treasury of National.

(b) NDCC's authorized capital stock consists of 1,000 Common Shares, par value \$5.01 per share, of which 1,000 shares are issued and outstanding. All the outstanding shares of NDCC are owned by National.

(c) All outstanding NDCC Common Shares and shares of National Common Stock are duly and validly authorized and issued, fully paid and non-assessable and none of such shares have been issued in violation of any preemptive right of any present or former shareholders.

SECTION 4.03. *Brokers*. Neither National nor any subsidiary nor, to the knowledge of National, any shareholder, director, officer or employee thereof has incurred or will incur any broker's or finder's fee in connection with the Merger except for fees to be paid to Morgan Stanley & Co. Incorporated.

SECTION 4.04. *Proxy Statement and Amended Registration Statement*. When the post-effective amendment to the registration statement on Form S-14 to be filed with the Securities and Exchange Commission (the "Commission") covering the shares of National Preference Stock to be issued pursuant to the Merger Agreement or any additional post-effective amendment thereto shall become effective (the "Amended Registration Statement"), and when the joint proxy statement to be distrib-

4328 RV.2