

F11-1535

ated to Emery and National shareholders (the "Joint Proxy Statement") in connection with the Merger and the Amendment (as defined in Section 6.01) shall be first mailed to such shareholders (the "Mailing Date"), and at all times subsequent to such effectiveness or Mailing Date up to and including the Effective Time of the Merger, the information with respect to National set forth in the Amended Registration Statement or the Joint Proxy Statement and all amendments and supplements thereto, (i) will comply in all material respects with the provisions of the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the General Rules and Regulations of the Commission thereunder and (ii) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading, except that no representation is hereby made as to any statements or omissions as described in this clause (ii) with respect to which (A) prior to the date of such effectiveness or the Mailing Date, National shall have requested in writing any addition or modification to the Joint Proxy Statement or (B) after the date of such effectiveness or the Mailing Date, and prior to the Effective Time of the Merger, National shall have requested in writing any supplement to or amendment of the Joint Proxy Statement which shall be necessary in order to make the Joint Proxy Statement not untrue or misleading in any material respect, unless such addition or modification shall have been made by Emery prior to the date of such effectiveness or the Mailing Date or such supplement or amendment shall have been made by Emery prior to the Effective Time of the Merger.

#### ARTICLE FIVE

##### REPRESENTATIONS AND WARRANTIES OF EMERY

Emery hereby represents and warrants to National and NDCC as follows:

**SECTION 5.01. Incorporation of Emery.** Emery is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio.

**SECTION 5.02. Capitalization of Emery.** (a) As of March 1, 1978, the authorized capital shares of Emery consisted of (i) 25,000,000 Common Shares, no par value, of which 8,351,703 shares were issued and outstanding and 92,610 shares were held in Emery's treasury, and (ii) 50,000 Convertible Series A preferred shares, of which no shares were issued and outstanding and no shares were held in Emery's treasury.

(b) All outstanding Emery Common Shares 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. As of March 1, 1978, there was no existing option, warrant, call, subscription or other agreement or commitment obligating Emery to issue any of its capital shares, except for (i) options to purchase 18,760 Emery Common Shares granted pursuant to Emery's 1967 Stock Option Plan and options to purchase 260,225 Emery Common Shares granted pursuant to Emery's 1975 Stock Option Plan, (ii) the Rewo Warrants to purchase 250,000 Emery Common Shares and (iii) the agreement of Emery to issue up to 54,317 Emery Common Shares to employees pursuant to Emery's Employees' Stock Savings Plan.

(c) Emery has previously delivered to National a copy of its 1967 Stock Option Plan, 1975 Stock Option Plan, Employees' Stock Savings Plan and the Rewo Warrants, as in effect on the date hereof, and a copy of the form of option agreement between Emery and each holder of such options. In addition, Emery has previously delivered to National a schedule, which is complete and accurate as of the date hereof, which sets forth (i) the holders of such outstanding options, the number of shares each is entitled to purchase on account of such options, the exercise dates and prices of such options, and the expiration dates of such options, (ii) the holders of the Rewo Warrants, the number of shares each is entitled to purchase on account of such Rewo Warrants, the exercise price of such Rewo Warrants and their expiration dates and (iii) the participants in Emery's Employees' Stock Savings Plan, the number of shares which each such participant could acquire under each Offering (as defined for purposes of Emery's Employees' Stock Savings Plan) now in effect under Emery's Employees' Stock Savings Plan and the Entry Date Price (as defined for purposes of Emery's Employees' Stock Savings Plan) applicable to such Emery Common Shares.