

National Preference Stock, will be the same as the adjusted basis of such Emery Common Shares surrendered in exchange therefor, and the holding period of such National Preference Stock will include the period during which such Emery Common Shares exchanged therefor were held by them provided that such Emery Common Shares are held as a capital asset at the Effective Time of the Merger.

(f) Amounts received by the former holders of Emery Common Shares who, pursuant to the Merger Agreement, exchange such Emery Common Shares solely for cash will be treated as received by such holders as a distribution in redemption of such Emery Common Shares subject to the provisions of Section 302 of the Internal Revenue Code.

(g) No loss will be recognized by former holders of Emery Common Shares who, pursuant to the Merger Agreement, exchange such Emery Common Shares for both cash and National Preference Stock, and such holders' gain, if any, will be recognized in an amount not in excess of the cash received, in accordance with Section 356 of the Internal Revenue Code.

(h) The adjusted basis of the shares of National Preference Stock received by the former holders of Emery Common Shares who, pursuant to the Merger Agreement, receive both cash and National Preference Stock, will be the same as the adjusted basis of such Emery Common Shares surrendered in exchange therefor, decreased by the amount of cash received and increased by the amount of gain or income recognized, and the holding period of such National Preference Stock will include the period during which such Emery Common Shares exchanged therefor was held provided that the Emery Common Shares are held as a capital asset at the Effective Time of the Merger.

(i) The receipt of National Preference Stock by former shareholders of Emery pursuant to the Merger Agreement will not be treated as a distribution of property to which Section 301 of the Internal Revenue Code applies by reason of the application of Section 305 of the Internal Revenue Code.

SECTION 8.09. *Consents.* National shall have received evidence, reasonably satisfactory to National and its counsel, that Emery has obtained all necessary waivers and consents under, or has prepaid, any material note, bond, mortgage, indenture, license, agreement or other instrument to which Emery is a party.

#### ARTICLE NINE

##### CONDITIONS PRECEDENT TO EMERY'S OBLIGATIONS

All obligations of Emery under the Merger Agreement are subject to the fulfillment and satisfaction, at or prior to the Effective Time of the Merger, of each of the following conditions, any one or more of which may be waived by Emery.

SECTION 9.01. *Representations and Warranties True at the Effective Time of the Merger.* The representations and warranties of National and NDCC contained in the Merger Agreement shall be deemed to have been made again, except to the extent that changes are contemplated by the Merger Agreement, at and as of the Effective Time of the Merger. At the Effective Time of the Merger any breaches of such representations and warranties shall not, when taken in the aggregate, be material in relation to the operations or the condition, financial or otherwise, of National and at the Effective Time of the Merger National shall have delivered to Emery a certificate to such effect signed by the Chairman of the Board, the President or any Vice President and the Secretary or the Treasurer of National.

SECTION 9.02. *National's and NDCC's Performance.* Each of the obligations of National and NDCC to be performed by them at or prior to the Effective Time of the Merger pursuant to the terms of the Merger Agreement shall have been duly performed in all material respects at the Effective Time of the Merger and at the Effective Time of the Merger National shall have delivered to Emery a certificate to such effect signed by the Chairman of the Board, the President or any Vice President and the Secretary or the Treasurer of National.

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