

EM21-1535

**SECTION 7.01. Shareholder Approvals.** On or before the Effective Time of the Merger, National shareholders shall have adopted the Amendment and Emery shareholders shall have adopted the Merger Agreement.

**SECTION 7.02. Amended Registration Statement.** Prior to the Mailing Date the Commission shall have declared the Amended Registration Statement effective and at or prior to the time required any required approvals of state securities administrators shall have been obtained. At the Effective Time of the Merger, no stop order or similar restraining order shall have been threatened or entered by the Commission or any state securities administrator.

**SECTION 7.03. Listing.** On or before the Effective Time of the Merger, the New York Stock Exchange shall have approved the listing, upon official notice of issuance and evidence of satisfactory distribution, of the shares of National Preference Stock to be issued pursuant to the Merger as contemplated by Article Three.

**SECTION 7.04. Mailing Date Documents.** National and Emery shall each have received on the Mailing Date the documents which they are to receive under Section 6.15.

#### ARTICLE EIGHT

##### CONDITIONS PRECEDENT TO NATIONAL'S AND NDCC'S OBLIGATIONS

All obligations of National and NDCC 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 National.

**SECTION 8.01. Representations and Warranties True at the Effective Time of the Merger.** The representations and warranties of Emery 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 Emery and at the Effective Time of the Merger Emery shall have delivered to National a certificate to such effect signed by the President or any Vice President and the Treasurer or the Secretary of Emery.

**SECTION 8.02. Emery's Performance.** Each of the obligations of Emery to be performed by it 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 and at the Effective Time of the Merger Emery shall have delivered to National a certificate to such effect signed by the President or any Vice President and the Treasurer or the Secretary of Emery.

**SECTION 8.03. Authority.** All action required to be taken by or on the part of Emery to authorize the execution, delivery and performance of the Merger Agreement by Emery and the consummation of the transactions contemplated hereby shall have been duly and validly taken by the Board of Directors and shareholders of Emery.

**SECTION 8.04. Accountants' Letter.** National shall have received a letter from Coopers & Lybrand, dated the day of the Effective Time of the Merger and addressed to Emery and National, in form and substance satisfactory to National which covers the period to a specified date not more than five business days prior to the day of the Effective Time of the Merger and which confirms the information and conclusions included in the accountants' letter previously furnished to National pursuant to Section 6.15(b) on the basis of procedures set forth therein or describing in what respects such information and conclusions cannot be confirmed.

**SECTION 8.05. No Material Adverse Change.** Since January 31, 1978, no material adverse change shall have occurred in the consolidated financial condition or business of Emery and its subsidiaries, and Emery shall not have suffered any material loss or damage which materially affects or