

compared with the amounts shown in the consolidated balance sheet of Emery and its consolidated subsidiaries at the date of the most recent financial statements included in the Amended Registration Statement or Joint Proxy Statement; or (iv) for the period from the date of the most recent financial statements included in the Amended Registration Statement or Joint Proxy Statement to said date not more than five business days prior to the Mailing Date, there were, except as set forth in the Amended Registration Statement or Joint Proxy Statement, any decreases as compared with the corresponding portion of the preceding 12 month period, in consolidated sales and revenues or in the total or per share amounts of consolidated income before extraordinary items or net income.

(ii) An opinion of Messrs. Taft, Stettinius & Hollister, dated the Mailing Date, to the effect that, while such counsel assumes no responsibility for any event, occurrences or statements of fact relating to Emery, or for the accuracy, completeness or fairness of any statements contained in or omitted from the Amended Registration Statement or the Joint Proxy Statement, and while such counsel expresses no opinion as to the financial statements or other financial or statistical data contained therein, with respect to information in the Amended Registration Statement or the Joint Proxy Statement relating to Emery, (A) the Joint Proxy Statement complies as to form in all material respects with the requirements of the Exchange Act and the applicable rules and regulations of the Commission promulgated thereunder, (B) such counsel has no reason to believe that the Amended Registration Statement or the Joint Proxy Statement, as amended or supplemented to the date of such opinion, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (C) such counsel does not know of any claim, litigation, arbitration proceeding, labor dispute or investigation of any kind pending or threatened against Emery in any court or before any Federal, State or municipal or other governmental agency or instrumentality or any statute or regulation required to be described in the Amended Registration Statement or the Joint Proxy Statement or any contracts or documents of a character required to be described in the Amended Registration Statement or the Joint Proxy Statement or to be filed as Exhibits to the Amended Registration Statement which have not been described or filed as required.

(iii) A certificate or certificates of Emery's President or any Vice President and Treasurer or Secretary, dated the Mailing Date, in form and substance satisfactory to National stating that (A) Emery has complied in all material respects with the agreements contained in the Merger Agreement on its part to be performed on or prior to such date, and (B) the representations and warranties of Emery contained in the Merger Agreement are true and correct in all material respects at and as of the date of such certificate with the same effect as though such representations and warranties had been made at and as of such date.

**SECTION 6.16. Payment for Stock Options.** To the extent an optionee does not elect to exercise his options, Emery shall pay, at the Effective Time of the Merger, any holder or holders of outstanding options granted pursuant to Emery's 1967 Stock Option Plan or 1975 Stock Option Plan upon surrender and cancellation of any options so purchased an amount equal to the sum of (i) the difference between \$22.25 and the exercise price of such options and (ii) the cash value of any related stock incentive right assuming a market price of \$22.25 per share for the Emery Common Shares. The names of optionees, number of options and exercise prices shall all conform to the information set forth in the schedule previously delivered to National pursuant to Section 5.02 (c)(i).

#### ARTICLE SEVEN

##### CONDITIONS TO OBLIGATIONS OF NATIONAL AND EMERY

The obligations of National and Emery to effect the Merger hereunder are, at their respective elections, subject to the satisfaction, or waiver by both National and Emery, of the following conditions: