

E-121-102

SECTION 11.03. Survival. The representations, warranties, covenants, agreements, terms and conditions contained or referred to in the Merger Agreement, except those contained in Section 1.03, Article Three, the last sentence of Section 6.05(a), the last sentence of Section 6.05(b) and Article Eleven, shall not survive the Effective Time of the Merger or termination of the Merger Agreement pursuant to Section 10.01(a) or (b).

SECTION 11.04. Amendments. The Merger Agreement may be amended at any time prior to the Effective Time of the Merger to cure any ambiguity or to correct or supplement any provision of the Merger Agreement which may be defective or inconsistent with any other provision of the Merger Agreement or to effect any other change in the provisions of the Merger Agreement which shall not adversely affect the interests of the shareholders of Emery or NDCC, whether before or after the meeting of the Emery shareholders, by a written instrument executed by Emery, NDCC and National with the approval of their respective Boards of Directors or Executive Committees, provided that no amendment shall reduce the conversion or exchange ratios set forth in Section 3.01 without the approval of the shareholders of Emery.

SECTION 11.05. Entire Understanding. The Merger Agreement contains the entire understanding of the parties hereto relating to the transaction herein contained and may not be changed or terminated orally.

SECTION 11.06. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

SECTION 11.07. Headings. The headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of the Merger Agreement.

SECTION 11.08. No Assignment. The Merger Agreement may not be assigned by operation of law or otherwise.

SECTION 11.09. Counterparts. For the convenience of the parties hereto and to facilitate the filing and recording of the Merger Agreement, it may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

SECTION 11.10. Expenses. If the Merger becomes effective, National and the Surviving Corporation shall pay their respective expenses incurred in connection therewith. If the Merger shall not become effective or shall be abandoned, National, NDCC and Emery shall each bear their expenses separately incurred in connection therewith, except that National and Emery shall each pay one-half of any expenses incurred in connection with the printing of documents relating to the transactions contemplated by the Merger Agreement.

SECTION 11.11. Indemnification. To the extent the indemnification provisions of the Emery Regulations or the Emery officers and directors liability policy are not applicable, National, to the full extent permitted by law, will indemnify Emery's directors, officers and employees a most reasonable expenses, including legal fees, judgments and amounts paid in settlement arising out of any threatened, pending or completed action, suit or proceeding to the extent such action, suit or proceeding alleges a breach by such director, officer or employee in his duty to Emery or its shareholders in connection with the transactions contemplated by the Merger Agreement or any prior agreement related to the Merger. Any party which proposes to assert the right to be indemnified hereunder will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim is to be made against National hereunder, notify National of the commencement of such action, suit or proceeding, enclosing a copy of all papers served, but the omission so to notify National of any such action, suit or proceeding shall not relieve National from any liability which it may have to any indemnified party otherwise than hereunder. In case any such action, suit or proceeding shall be brought against any indemnified party and it shall notify National of the commencement thereof, National shall