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(Requestor's Name)

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(City/State/Zip/Phone #)

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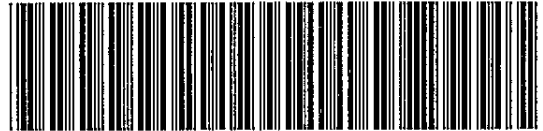
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ARTICLES OF MERGER  
WITH RESPECT TO THE MERGER OF  
FMB INTERIM CORPORATION  
WITH AND INTO  
FMB BANKING CORPORATION

FMB Banking Corporation, a Florida corporation (the "Surviving Corporation"), and FMB Interim Corporation, a Florida corporation (the "Merging Corporation"), hereby certifies as follows:

I.

The name and state of incorporation of each corporation which is merging are as follows:

<u>Name</u>	<u>State of Incorporation</u>
FMB Banking Corporation	Florida
FMB Interim Corporation	Florida

FMB Interim Corporation is merging (the Merger") with and into FMB Banking Corporation pursuant to the Agreement and Plan of Reorganization (the "Plan") attached hereto Appendix A. FMB Banking Corporation shall be the surviving corporation in the Merger.

II.

The Articles of Incorporation of the Surviving Corporation shall be amended as provided in Exhibit A to the Plan pursuant to the terms of the Plan.

III.

The effective date and time of the Merger shall be December 31, 2003 at 11:59 p.m.

IV.

The Plan and Merger were duly adopted, ratified and approved by the sole shareholder of the Merging Corporation by a written consent action dated December 23, 2003.

The Plan and Merger were duly adopted, ratified and approved by the shareholders of the Surviving Corporation at special shareholders meeting held December 11, 2003.

[Remainder of This Page Intentionally Left Blank]

DULY EXECUTED and delivered, under seal, by the officer(s) of the Surviving Corporation and the Merging Corporation on December 23, 2003.

**FMB Banking Corporation**

By: L. GARDWRIGHT  
Name: L. GARDWRIGHT  
Title: PRESIDENT

Attest:

F. Wilson Caraway III  
Name: F. Wilson Caraway III  
Title: Secretary or Assistant Secretary

**FMB Interim Corporation**

By: Sam Lester  
Name: SAM LESTER  
Title: PRESIDENT

Attest:

F. Wilson Caraway III  
Name: F. Wilson Caraway III  
Title: Secretary or Assistant Secretary

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**APPENDIX A:**  
**AGREEMENT AND PLAN**  
**OF**  
**REORGANIZATION**

**FMB BANKING CORPORATION**

200 E. Washington Street  
Monticello, Florida 32345  
(850) 997-2591

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**PROXY STATEMENT**  
**For Special Meeting of Shareholders**  
**To Be Held on December 11, 2003**

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The board of directors of FMB Banking Corporation has determined that it is in the best interests of FMB Banking Corporation and its shareholders to reorganize FMB Banking Corporation so that it can be taxed as a Subchapter S Corporation. In order to effect the reorganization, the board of directors adopted an Agreement and Plan of Reorganization that provides for the merger of FMB Interim Corporation with and into FMB Banking Corporation. Pursuant to the reorganization plan, FMB Banking Corporation will be the surviving corporation and will make an election to be taxed as an S-Corporation after the reorganization. We formed FMB Interim Corporation as a Florida corporation solely to facilitate the reorganization.

If the reorganization plan is approved by FMB Banking Corporation's shareholders, each share of FMB Banking Corporation common stock held immediately prior to the effective time of the reorganization by the following shareholders will be converted into the right to receive \$95.00 in cash:

- Any shareholder who is not eligible to be an S-Corporation shareholder;
- Any shareholder who does not sign and deliver the FMB Banking Corporation Shareholders Agreement and S-Corporation Election Form (IRS Form 2553); or
- Any shareholder who, together with his or her spouse if shares are held jointly, is the record holder of fewer than 700 shares of FMB Banking Corporation common stock.

All other shares of FMB Banking Corporation common stock shall remain outstanding after the effective time of the reorganization. Each outstanding share of FMB Interim Corporation common stock will be cancelled upon the effective time of the reorganization.

Generally, individuals who are citizens or residents of the United States, estates and certain trusts are eligible to be S-Corporation shareholders. Corporations, limited liability companies, partnerships and IRAs, however, are not eligible S-Corporation shareholders. Shares of FMB Banking Corporation common stock held by an ineligible S-Corporation shareholder will be converted to cash as described above unless the shares are transferred to an eligible shareholder on or prior to December 31, 2003 in accordance with the reorganization plan.

This proxy statement provides you with detailed information about the proposed reorganization of FMB Banking Corporation. We encourage you to read this entire document carefully.

The board of directors has determined that the terms of the reorganization are procedurally and substantively fair to unaffiliated shareholders. In conformity with Florida law, those shareholders who receive cash in exchange for their shares of FMB Banking Corporation common stock will receive what we believe to be the fair value of their shares, without taking into effect the proposed reorganization of FMB Banking Corporation as an S-Corporation. The board of directors of FMB Banking Corporation has approved the reorganization plan. The reorganization cannot be completed, however, unless approved by the holders of a majority of the outstanding shares of FMB Banking Corporation. The directors and executive officers of FMB Banking Corporation have agreed to vote their shares of FMB Banking Corporation common stock in favor of the reorganization plan. Consequently, since the directors and executive officers of FMB Banking Corporation, directly or indirectly, own 64% of the outstanding shares, approval of the reorganization is assured.

## **IMPORTANT NOTICES**

We have not authorized any person to give any information or to make any representations other than the information and statements included in this proxy statement. You should not rely on any other information. The information contained in this proxy statement is correct only as of the date of this proxy statement, regardless of the date it is delivered.

We will update this proxy statement to reflect any factors or events arising after the date hereof, which individually or together represent a fundamental change in the information included in this document.

You should not construe the contents of this proxy statement or any communication from FMB Banking Corporation, whether written or oral, as legal, tax, accounting or other expert advice. You should consult with your own counsel, accountant or other professional advisor as to all matters concerning the reorganization plan.

FMB Banking Corporation makes forward-looking statements in this proxy statement that are subject to risks and uncertainties. Forward-looking statements include information about possible or assumed future results of the operations or the performance of FMB Banking Corporation after the reorganization is accomplished. When we use words such as "believes," "anticipates," "expects," "intends," "targeted," and similar expressions, we are making forward-looking statements that are subject to risks and uncertainties. Various economic, regulatory, and technological future events or factors may cause our results of operations or performance to differ materially from those expressed in our forward-looking statements.

The words "we," "our," and "us," as used in this proxy statement, refer to FMB Banking Corporation, its wholly-owned subsidiary, Farmers & Merchants Bank, and FMB Interim Corporation, collectively, unless the context indicates otherwise.

**The date of this proxy statement is November 12, 2003. We first mailed this proxy statement to the shareholders of FMB Banking Corporation on or about that date.**

## SUMMARY TERM SHEET

*The following is a summary of the material terms of the reorganization plan to be voted on at the special meeting of shareholders. This summary is qualified in its entirety by reference to the more detailed information appearing elsewhere in this proxy statement, including the financial information and appendices. We urge you to review the entire proxy statement and accompanying materials carefully.*

- **Reorganization:** The reorganization plan provides for the reorganization of FMB Banking Corporation into a corporation taxable under Subchapter S of the Internal Revenue Code through the merger of FMB Interim Corporation with and into FMB Banking Corporation. FMB Banking Corporation will be the surviving corporation and will elect to be taxed as an S-Corporation after the reorganization. FMB Interim Corporation is a new Florida corporation which was organized solely to facilitate the reorganization. See "DESCRIPTION OF THE REORGANIZATION PLAN—The Reorganization" on page 4.
- **Cash Conversion:** Assuming the reorganization plan is approved by FMB Banking Corporation's shareholders, each share of FMB Banking Corporation common stock held immediately prior to the effective time of the reorganization by the following shareholders will be converted into the right to receive \$95.00 in cash:
  - Any shareholder who is not eligible to be an S-Corporation shareholder;
  - Any shareholder who does not sign and deliver the FMB Banking Corporation Shareholders Agreement and S-Corporation Election Form (IRS Form 2553); or
  - Any shareholder who, together with his or her spouse if shares are held jointly, is the record holder of fewer than 700 shares of FMB Banking Corporation common stock.All other shares of FMB Banking Corporation common stock will remain outstanding after the effective time of the reorganization.
- **FMB Interim Corporation Common Stock:** Each outstanding share of FMB Interim Corporation common stock shall be cancelled upon the effective time of the reorganization. See "DESCRIPTION OF THE REORGANIZATION PLAN—FMB Interim Corporation Common Stock" on page 12.
- **Shareholder Eligibility:** In order to be an FMB Banking Corporation shareholder after the reorganization takes effect, you must be an eligible S-Corporation shareholder holding at least 700 shares of FMB Banking Corporation common stock as of November 7, 2003 and you must sign and return the FMB Banking Corporation Shareholders Agreement and S-Corporation Election Form (IRS Form 2553). Eligible shareholders who wish to continue to be FMB Banking Corporation shareholders after the reorganization must sign and return these documents to FMB Banking Corporation at or before 5:00 p.m. on December 12, 2003. Generally, individuals who are citizens or residents of the United States, estates and some trusts can be shareholders of an S-Corporation; however, corporations, limited liability companies, partnerships, and IRAs may *not* be shareholders of an S-Corporation. The Shareholders Agreement contains transfer restrictions on shares of FMB Banking Corporation common stock which are designed to prevent an inadvertent termination of FMB Banking Corporation's S-Corporation election. See "DESCRIPTION OF THE REORGANIZATION PLAN—The Reorganization—Shareholder Eligibility," "—S-Corporation Election Form 2553," and "—The Shareholders Agreement" beginning on page 4.

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## **INFORMATION REGARDING SPECIAL MEETING OF SHAREHOLDERS**

### **Time and Place of Meeting**

We are soliciting proxies through this proxy statement for use at a special meeting of FMB Banking Corporation shareholders. The special meeting will be held at 2:00 p.m. on Thursday, December 11, 2003, at the Farmers & Merchants Bank Lobby, 200 E. Washington Street, Monticello, Florida.

### **Record Date and Mailing Date**

The close of business of November 7, 2003 is the record date for the determination of shareholders entitled to notice of and to vote at the special meeting. We first mailed the proxy statement and the accompanying form of proxy to shareholders on or about November 12, 2003.

### **Number of Shares Outstanding**

As of the close of business on November 7, 2003, FMB Banking Corporation had a combined 1,000,000 authorized shares of Class A and Class B common stock, \$.10 par value, of which 416,903 shares of Class A common stock and zero shares of Class B common stock were issued and outstanding. Each outstanding share is entitled to one vote on all matters presented at the meeting.

### **Purpose of Special Meeting**

The purpose of the special meeting is for shareholders to consider and vote on the reorganization plan, which provides for the reorganization of FMB Banking Corporation into an S-Corporation through the merger of FMB Interim Corporation with and into FMB Banking Corporation. FMB Banking Corporation will be the surviving corporation and will make an election to be taxed as an S-Corporation.

### **Voting at the Special Meeting**

The reorganization plan must be approved by the affirmative vote of a majority of the outstanding shares of FMB Banking Corporation entitled to vote on the reorganization plan. As of the record date, FMB Banking Corporation's directors and executive officers owned, directly or indirectly, 266,751 shares, or 64%, of the 416,903 outstanding shares. Each of the directors and executive officers has indicated that he or she intends to vote his or her shares in favor of the reorganization plan.

### **Dissenters' Rights**

Shareholders of FMB Banking Corporation are entitled to dissent from the reorganization plan. If you dissent from the reorganization plan, you are entitled to the statutory rights and remedies of dissenting shareholders provided under the Dissenters' Rights Statutes as long as you strictly comply with the procedures of such Dissenters' Rights Statutes. Florida's Dissenters' Rights Statutes provide that a dissenting shareholder is entitled to receive cash in an amount equal to the fair value of his or her shares. We have included a copy of the Dissenters' Rights Statutes in Appendix D to this proxy statement and a summary of Florida's Dissenters' Rights Statutes under "DISSENTERS' RIGHTS" beginning on page 13.

To perfect dissenters' rights, you must comply with the Dissenters' Rights Statutes, which require, among other things, that you give FMB Banking Corporation notice of your intent to dissent from the reorganization plan prior to the vote of the shareholders at the special meeting *and* that you not vote your shares in favor of the reorganization plan. Failure to vote against the reorganization plan will not result in a waiver of your right to dissent. However, any shareholder who returns a signed proxy but fails to provide instructions as to the manner in which his or her shares are to be voted will be deemed to have voted in favor of the reorganization plan and will not be entitled to assert dissenters' rights. Furthermore, voting against the reorganization plan will not satisfy the requirement that you provide FMB Banking Corporation notice of your intent to dissent from the reorganization plan.

#### **Procedures for Voting by Proxy**

If you properly sign, return and do not revoke your proxy, the persons appointed as proxies will vote your shares according to the instructions you have specified on the proxy. If you sign and return your proxy but do not specify how the persons appointed as proxies are to vote your shares, your proxy will be voted for the approval of the reorganization plan and, in the best judgment of the persons appointed as proxies, on all other matters properly brought before the special meeting.

You can revoke your proxy at any time before it is voted by delivering to Sandy Swords, secretary of FMB Banking Corporation, at the main office of FMB Banking Corporation, either a written revocation of the proxy or a duly signed proxy bearing a later date or by attending the special meeting and voting in person.

#### **Requirements for Shareholder Approval**

A quorum will be present at the meeting if a majority of the outstanding shares of FMB Banking Corporation common stock are represented in person or by valid proxy. We will count abstentions and broker non-votes, which are described below, in determining whether a quorum exists. Approval of the reorganization plan requires the affirmative vote of a majority of the outstanding shares of FMB Banking Corporation entitled to vote on the reorganization plan. Any other matter that may properly come before the special meeting requires the affirmative vote of a majority of shares of common stock present in person or by proxy and entitled to vote on the matter. Although abstentions and broker non-votes will not be counted as votes in favor of or against the reorganization plan, abstentions and broker non-votes will have the effect of negative votes since the affirmative vote of a majority of the outstanding shares is required to approve the reorganization plan.

**Abstentions.** A shareholder who is present in person or by proxy at the special meeting and who abstains from voting on any or all proposals will be included in the number of shareholders present at the special meeting for the purpose of determining the presence of a quorum. Abstentions do not count as votes in favor of or against a given matter unless the matter being voted upon requires the affirmative vote of a certain percentage of the outstanding shares of FMB Banking Corporation. Under such circumstances, abstentions will count as votes against the approval of such matter.

**Broker Non-Votes.** Brokers who hold shares for the accounts of their clients may vote these shares either as directed by their clients or in their own discretion if permitted by the exchange or other organization of which they are members. Proxies that contain a broker vote on one or more proposals but no vote on others are referred to as "broker non-votes" with respect to the proposal(s) not voted upon. Broker non-votes are included in determining the presence of a quorum. A broker non-vote, however, does not count as a vote in favor of or against a particular proposal for which the broker has no discretionary voting authority unless the matter being voted upon requires the affirmative vote of a certain

percentage of the outstanding shares of FMB Banking Corporation. Under such circumstances, a broker non-vote will count as a vote against the approval of such matter.

### **Solicitation of Proxies**

Proxies are being solicited by FMB Banking Corporation, and FMB Banking Corporation will pay the cost of the proxy solicitation. Our directors, officers and employees may, without additional compensation, solicit proxies by personal interview, telephone, fax, or otherwise. We will direct brokerage firms or other custodians, nominees or fiduciaries to forward our proxy solicitation material to the beneficial owners of common stock held of record by these institutions and will reimburse them for the reasonable out-of-pocket expenses they incur in connection with this process.

## **DESCRIPTION OF THE REORGANIZATION PLAN**

### **The Reorganization**

The board of directors of FMB Banking Corporation determined that it would be in the best interests of FMB Banking Corporation and its shareholders to reorganize FMB Banking Corporation to enable it to be taxed as an S-Corporation. In order to facilitate FMB Banking Corporation's reorganization into an S-Corporation, the reorganization plan provides for the merger of FMB Interim Corporation with and into FMB Banking Corporation. FMB Interim Corporation is a Florida corporation and has been formed solely to facilitate the reorganization. FMB Banking Corporation will be the surviving corporation and will elect to be taxed as an S-Corporation immediately after the effective time of the reorganization. We anticipate that the effective date of the reorganization will be on or before December 31, 2003.

**Subchapter S Corporations (General Information).** Under a Subchapter S income tax election, FMB Banking Corporation will pass its taxable income through to its shareholders for taxation at their personal rates, thus allowing it to avoid paying corporate income tax. As a result, we will be able to generate a higher level of net income. More importantly, this election will permit FMB Banking Corporation to distribute its net income to shareholders without subjecting the shareholders to additional income taxation upon receipt of distributions from FMB Banking Corporation.

We have described the tax benefits of being taxed as an S-Corporation in more detail under the heading "SPECIAL FACTORS – Benefits of Subchapter S Election" on page 16. The S-Corporation election has numerous special income tax effects on shareholders. *You should consult with your own counsel, accountants and other advisors to understand the effect the S-Corporation election will have on you.*

**Shareholder Eligibility.** In order to be a shareholder of an S-Corporation, you must be a citizen or resident of the United States. Estates and certain trusts (generally, a trust that distributes income annually to its beneficiaries, all of whom are individuals, or a trust that has as its beneficiaries only those persons who are eligible to hold stock in an S-Corporation and who make a qualifying election, provided that no interest in the trust was purchased) can also be shareholders of an S-Corporation. *Corporations, limited liability companies, partnerships and IRAs may not be shareholders of an S-Corporation.*

**S-Corporation Election Form 2553.** In order for FMB Banking Corporation to elect to be taxed as an S-Corporation, each of its shareholders remaining after the reorganization must sign the S-Corporation Election Form on the Internal Revenue Service Form 2553 (the green attachment enclosed with this proxy statement and which is also included in Schedule A of Appendix C). Accordingly,

eligible shareholders must sign and deliver the S-Corporation Election Form 2553 to FMB Banking Corporation in order to remain FMB Banking Corporation shareholders after the reorganization.

**Shareholders Agreement.** The reorganization plan provides that eligible shareholders of FMB Banking Corporation must sign and deliver the Shareholders Agreement to FMB Banking Corporation in order to remain FMB Banking Corporation shareholders after the reorganization. The Shareholders Agreement is designed to prevent an inadvertent termination of FMB Banking Corporation's S-Corporation election and contains resale restrictions. You should review carefully the Shareholders Agreement, which is attached as Appendix B to this proxy statement. The paragraphs below summarize the material provisions of the Shareholders Agreement.

- **Transfer Restrictions:** No shareholder may sell or otherwise dispose of his or her shares of FMB Banking Corporation common stock except as provided in the Shareholders Agreement. Any attempted disposition of shares of FMB Banking Corporation common stock, which is not in accordance with the terms of the Shareholders Agreement, is void *ab initio* and will not be reflected on FMB Banking Corporation's records.

Shareholders may make Permitted Transfers (as defined below) provided that the following transfer conditions are satisfied:

- (1) The transferee qualifies as an S-Corporation shareholder;
- (2) The number of FMB Banking Corporation shareholders may not increase beyond 68 (assuming the shareholder limitation for S-Corporations remains at 75) unless the board approves the increase;
- (3) If the transferee will beneficially own (as defined in the Shareholders Agreement) more than 5% of FMB Banking Corporation's outstanding common stock after the transaction, the board approves the transaction; and
- (4) The transferee agrees to be bound by the Shareholders Agreement.

"Permitted Transfer" means:

- A transfer of all of the shareholder's shares to the shareholder's spouse or one of the shareholder's lineal ancestors or descendants, brothers, sisters, children or grandchildren (or a qualified trust for the benefit of any one of the foregoing); or
- A transfer of some or all of the shareholder's shares to another shareholder of FMB Banking Corporation; or
- A transfer of some or all of the shareholder's shares if the transfer is approved in advance by the affirmative vote of two-thirds of the directors of FMB Banking Corporation then holding office.

- **Sale of Shares:** A shareholder who receives a Qualified Offer may sell his or her shares pursuant to the Shareholders Agreement. A "Qualified Offer" means an offer from a person who satisfies the ownership requirements with respect to an S-Corporation; *provided, however*, that either the number of shareholders of FMB Banking Corporation does not increase as a result of the transfer or the board of directors (by the affirmative vote of two-thirds of the directors then holding office) has approved the transfer. In addition, a Qualified Offer has to be a legally enforceable written offer which is made at arm's length from a person who is financially capable of carrying out the terms of the written offer.

A shareholder who wishes to sell his or her shares upon receipt of a Qualified Offer has to give written notice to FMB Banking Corporation and is thereby deemed to have offered to sell his or her shares to FMB Banking Corporation under the terms of the Qualified Offer. FMB Banking Corporation has 30 days to decide whether to purchase all (but not less than all) of the offered shares at the price contained in the Qualified Offer. The purchase price will be payable in the amount and on substantially the same terms as contained in the Qualified Offer. The closing of the transaction will occur no later than the 60<sup>th</sup> day following the 30-day option period. If FMB Banking Corporation does not agree to purchase all of the offered shares, the shareholder may transfer the shares to the person making the Qualified Offer provided that the transfer satisfies each of the transfer conditions described under the heading "Transfer Restrictions" above. This transfer has to take place within 60 days.

- **Pledge of Shares:** A shareholder may pledge his or her shares as collateral to secure payment of a loan. If the shareholder defaults and the lender is entitled and intends to foreclose on the collateral shares, the lender has to give written notice to FMB Banking Corporation and is thereby deemed to have offered to sell all of the collateral shares to FMB Banking Corporation. FMB Banking Corporation has 30 days to decide whether to purchase all or any part of the collateral shares at the price contained in the lender's notice. The purchase price will be payable in the amount and on substantially the same terms as contained in the lender's notice. The closing of the transaction will occur no later than the 60<sup>th</sup> day following the 30-day option period. If FMB Banking Corporation does not agree to purchase all of the collateral shares, the lender may transfer the collateral shares provided that the transfer satisfies each of the transfer conditions described under the heading "Transfer Restrictions" above.

- **Death of a Shareholder:** Upon the death of a shareholder, FMB Banking Corporation has the right to acquire the deceased shareholder's shares. FMB Banking Corporation has 30 days from its actual knowledge of the shareholder's death to exercise its purchase option which has to be with respect to all of the deceased shareholder's shares. If the shares are not purchased by FMB Banking Corporation (through no fault of the shareholder's estate), the estate, beneficiary or heir of the deceased shareholder will remain the owner of the shares provided that the shares remain subject to the Shareholders Agreement. FMB Banking Corporation will not exercise its purchase option if each of the conditions described under the heading "Transfer Restrictions" above are met and the transfer would qualify as a Permitted Transfer.

If FMB Banking Corporation purchases the shares, the purchase price will be equal to the *greater* of Fair Market Value Per Share or Book Value Per Share. Fair Market Value Per Share will be determined reasonably and in good faith by FMB Banking Corporation's board of directors. "Fair Market Value Per Share" means the price a third party would pay for the shares as of the applicable valuation date on a per share basis. "Book Value Per Share" means the book value of the shares as determined reasonably and in good faith by FMB Banking Corporation's board of directors as of the quarter end prior to the applicable valuation date, using the data shown in FMB Banking Corporation's consolidated financial statements for that same quarter. If the person selling, directly or indirectly, the shares on behalf of the shareholder's estate is a director of FMB Banking Corporation, he or she will not participate in the determination of Fair Market Value Per Share. If the selling shareholder does not agree with the value determination, the selling shareholder and FMB Banking Corporation will engage an independent appraiser to make the determination, which is to be completed within 30 days. The determination made by the appraiser, absent fraud, will be final and binding. The selling shareholder and FMB Banking Corporation will bear the cost of the appraisal equally.

The closing will occur no later than the last to occur of the 60<sup>th</sup> day following the determination of the purchase price for the shares, the 60<sup>th</sup> day following the qualification of the executor or personal representative of the estate of the deceased shareholder, the 60<sup>th</sup> day following the qualification of a guardian for the property of the deceased shareholder, or the 60<sup>th</sup> day following FMB Banking Corporation's election to purchase the shares.

- **Management:** FMB Banking Corporation's board of directors will manage the business and affairs of FMB Banking Corporation but will refrain from taking any actions in contravention of the Shareholders Agreement and from issuing additional shares of common stock such that FMB Banking Corporation would lose its eligibility to be taxed pursuant to Subchapter S of the Internal Revenue Code.

Additionally, pursuant to the Shareholders Agreement, the FMB Banking Corporation's board of directors intends, subject to regulatory requirements, to cause FMB Banking Corporation to make annual or quarterly distributions equal, on an annualized basis, to approximately the amount representing the tax liability attributable to FMB Banking Corporation's annual taxable income. In determining the amount of any distribution, the board of directors may take into account anticipated events which might increase or reduce the final amount of taxable income for the entire taxable year.

FMB Banking Corporation will also be required to exercise its option to acquire the shares held by a deceased shareholder's estate, if the shares, upon distribution by the estate, would be owned by a person who would cause a termination of FMB Banking Corporation's Subchapter S status.

- **Specific Enforcement; Legend; Etc.:** The Shareholders Agreement can be specifically enforced. Certificates evidencing the shares will bear a legend referring to the Shareholders Agreement. Persons making transfers of shares are required to deliver the appropriate stock powers, but if they do not, FMB Banking Corporation is irrevocably appointed as attorney-in-fact to execute the necessary stock powers and to perform any other actions necessary in order to transfer the stock certificate.

- **S-Corporation Status:** Each shareholder acknowledges that FMB Banking Corporation has elected to be treated for federal and state income tax purposes as an S-Corporation.

If FMB Banking Corporation (by the affirmative vote of two-thirds of its directors then holding office) and the shareholders of FMB Banking Corporation (by the affirmative vote of two-thirds of the outstanding shares) decide to terminate the S-Corporation election, each shareholder will be provided a written notice of the determination. Within 60 days after delivery of the notice, each shareholder agrees (if requested) to deliver a consent (in such form as may be required to comply with applicable income tax rules and regulations) to the revocation to FMB Banking Corporation.

If FMB Banking Corporation's status as an S-Corporation is terminated inadvertently and FMB Banking Corporation and any shareholder desire that the S-Corporation election be continued, everyone agrees to use their best efforts to obtain a waiver of the terminating event from the Internal Revenue Service. If a shareholder causes a terminating event to occur, the shareholder will bear the expense of procuring the waiver, including the legal, accounting and tax costs of taking such steps.

Each shareholder agrees to cause any trust which may be holding the shareholder's shares to be maintained as a permissible shareholder.

To avoid increasing the number of shareholders as a result in a change in the marital status of a shareholder, each shareholder agrees, if his or her shares are owned as husband and wife (whether jointly or individually) and if the individuals are no longer husband and wife, that the shares will be held by only one of the two spouses.

Each shareholder agrees to take all actions that may be required by any state in which FMB Banking Corporation does business to ensure recognition of FMB Banking Corporation's S-Corporation status. Additionally, in the event FMB Banking Corporation elects or is required to make any payment on behalf of a shareholder, such as a tax payment, each shareholder agrees the amount of the payment shall be treated as a non-interest bearing loan. The loan shall be repaid by charging against and reducing the amount of any subsequent distribution due the affected shareholder.

Each shareholder agrees to indemnify and hold FMB Banking Corporation and each other shareholder harmless from and against all loss arising out of any violation of the Shareholders Agreement by the indemnifying shareholder.

- **Amendment.** Except for the vote required to extend the term of the Shareholders Agreement, neither the Shareholders Agreement nor any provision to the Shareholders Agreement may be waived, modified, amended or terminated except by a written agreement approved by FMB Banking Corporation, by the affirmative vote of at least two-thirds of its directors then holding office, and by the shareholders of FMB Banking Corporation, by affirmative vote of at least two-thirds of the then issued and outstanding shares of FMB Banking Corporation.

- **Termination.** The Shareholders Agreement terminates on the earlier to occur of the effective time that an agreement providing for termination of the Shareholders Agreement is signed by FMB Banking Corporation (authorized by the affirmative vote of two-thirds of its directors then holding office) and by its shareholders by the affirmative vote of at least two-thirds of the then-issued and outstanding shares of FMB Banking Corporation or at the effective time of a registration statement filed by FMB Banking Corporation with the Securities and Exchange Commission with respect to a public offering of FMB Banking Corporation's common stock.

- **Enforcement Costs.** Should any party be required to engage legal counsel to enforce or prevent the breach of any of the provisions of the Shareholders Agreement, then the prevailing party in the action will be entitled to be reimbursed by the other party for all costs and expenses incurred by the prevailing party.

- **Separate Counsel.** By signing the Shareholders Agreement, each shareholder acknowledges that he or she has had the opportunity to obtain separate legal counsel and advice regarding the Shareholders Agreement and that he or she has read and understands the Shareholders Agreement.

#### **Source of Funds and Expenses**

We estimate that approximately \$3,000,000 will be required to pay for the shares of FMB Banking Corporation common stock exchanged for cash in the reorganization. FMB Banking Corporation will also pay all of the expenses related to the reorganization. We estimate that the expenses of the reorganization will be as follows:

Legal fees	75,000
Accounting fees	30,000
Appraisal fees	15,000
Printing and mailing costs	<u>3,000</u>
Total	<u>\$ 123,000</u>

FMB Banking Corporation expects to finance the cash amount to be paid to shareholders in the reorganization and the payment of related costs and expenses with the proceeds from an offering of up to \$5.0 million of trust preferred securities.

The offering of trust preferred securities is expected to be completed by December 31, 2003 and will be made through a private offering by a wholly-owned business trust subsidiary of FMB Banking Corporation in a transaction that will rely on one or more exemptions from the registration requirements of the Securities Act of 1933. Although subject to final negotiations, the trust preferred securities are expected:

- To have a term of 30 years;
- To be redeemable by FMB Banking Corporation at any time after five years from the issuance date, subject to Federal Reserve approval if required;
- To be redeemable by FMB Banking Corporation upon the occurrence of various changes in laws or regulation that affect the capital, tax or regulatory treatment of the trust preferred securities, subject to Federal Reserve approval if required;
- To pay interest at a variable rate, to be determined on a quarterly basis;
- To be subject to the possible deferral of interest for a period of up to five years;
- To be issued at face value; and
- To be sold only to accredited or institutional investors.

Although subordinated to the senior debt obligations of FMB Banking Corporation, including other subordinated debt of the company, the trust preferred securities (as unsecured debt) will have a preferential right to distributions ahead of holders of common stock. Accordingly, in the event of liquidation of FMB Banking Corporation, holders of trust preferred securities would receive any liquidating distributions before holders of FMB Banking Corporation common stock. Additionally, FMB Banking Corporation will likely not be able to (1) make payments of principal and interest in connection with the trust preferred securities if FMB Banking Corporation is in default with respect to its senior debt obligations, or (2) pay dividends to holders of its common stock if FMB Banking Corporation is in default as to any payment obligations to holders of the trust preferred securities. The trust preferred securities will not be convertible, nor will they be subject to any sinking fund.

The issuance of the trust preferred securities is not expected to limit our ability to incur any additional indebtedness, including indebtedness that will rank superior in priority of payment to the trust preferred securities. Additionally, we expect there to be no requirement that FMB Banking Corporation maintain any specific financial related ratio in connection with the issuance of the trust preferred securities.

FMB Banking Corporation anticipates that all of the trust preferred securities will qualify for Tier 1 capital treatment for bank regulatory purposes.

#### **Pro Forma Effect of the Reorganization Plan**

See "SPECIAL FACTORS—Pro Forma Effect of the Reorganization Plan" on page 22 for illustrations of the pro forma effect of the reorganization plan on FMB Banking Corporation's September 30, 2003 and December 31, 2002 financial statements.

#### **Cash Conversion of FMB Banking Corporation Common Stock**

Since only eligible persons may be shareholders of an S-Corporation and an S-Corporation may only have 75 shareholders, some shares of FMB Banking Corporation common stock will be converted to



the right to receive \$95.00 per share in cash in the reorganization. The board determined that the fair value of FMB Banking Corporation's common stock, without giving effect to the reorganization, is \$95.00 per share. The board based its determination on the factors described under "SPECIAL FACTORS—Reasons for the Reorganization" on page 15 and "—Recommendation of the Board of Directors; Fairness of the Reorganization Plan" on page 27.

Assuming the reorganization plan is approved by FMB Banking Corporation's shareholders, each share of FMB Banking Corporation common stock held immediately prior to the effective time of the reorganization by the following shareholders will be converted into the right to receive \$95.00 in cash:

- Any shareholder who is not eligible to be an S-Corporation shareholder;
- Any shareholder who does not sign and deliver the FMB Banking Corporation Shareholders Agreement and S-Corporation Election Form 2553; or
- Any shareholder who, together with his or her spouse, is the record holder of fewer than 700 shares of FMB Banking Corporation common stock.

All other outstanding shares of FMB Banking Corporation common stock will remain outstanding after the effective time of the reorganization.

***Shares Held in Street Name.*** If you hold any shares of FMB Banking Corporation common stock in street name (i.e., through a broker), we will look through the broker to the beneficial owner to determine the total number of shares held by the beneficial owner and whether the beneficial owner is an eligible S-Corporation shareholder. The beneficial owner of the shares must sign and return the Shareholders Agreement and S-Corporation Election Form to FMB Banking Corporation in order to remain a shareholder after the reorganization.

***Shareholders Who Are Not Eligible S-Corporation Shareholders.*** Shares of FMB Banking Corporation common stock held by an entity or person who is not eligible to be an S-Corporation shareholder (for example, a corporation, limited liability company, partnership or IRA) will be converted to cash in the reorganization unless the shares are transferred on or prior to December 31, 2003 to an eligible S-Corporation shareholder who otherwise meets the eligibility criteria to be an FMB Banking Corporation shareholder after the effective date of the reorganization. For example, assuming that you were a partner of a partnership that held 700 shares and you meet all of the eligibility criteria to be an FMB Banking Corporation shareholder after the effective date of the reorganization, if your partnership distributed to you all of the 700 shares before the effective date of the reorganization, you would be able to retain such shares as a continuing shareholder of FMB Banking Corporation. To transfer shares of FMB Banking Corporation common stock, the certificate(s) representing the shares to be transferred must be delivered to FMB Banking Corporation along with written instructions from the record holder of the shares directing the transfer of the shares. The certificate(s) and the transfer instructions should be delivered to:

FMB Banking Corporation  
Attn: Sandy Swords, Vice President/Auditor  
200 E. Washington Street  
Monticello, Florida 32345

Additionally, the beneficial owner or transferee of the shares must sign and return the Shareholders Agreement and S-Corporation Election Form 2553 to FMB Banking Corporation in order to remain a shareholder after the reorganization.

There may be significant tax implications associated with an ineligible shareholder's transfer of its FMB Banking Corporation shares to one or more of its beneficial owners. Consequently, you should seek appropriate professional advice before transferring your shares.

***Holders of Less than 700 Shares of FMB Banking Corporation Common Stock.*** Subject to being the recipient of transferred shares from an ineligible S-Corporation shareholder (as discussed above), if you, together with your spouse to the extent you hold shares jointly, are the record holder (or, beneficial owner, in the case of shares held in street name) of fewer than 700 shares of FMB Banking Corporation common stock as of the record date, your shares of FMB Banking Corporation common stock will be converted to cash in the reorganization.

**Notwithstanding any other provision of the reorganization plan, all shares of FMB Banking Corporation common stock held by a shareholder who does not sign and return the FMB Banking Corporation Shareholders Agreement (the blue attachment enclosed with this proxy statement) and S-Corporation Election Form 2553 (the green attachment enclosed with this proxy statement) to FMB Banking Corporation at or before 5:00 p.m. on December 12, 2003 will be converted to cash in the reorganization as described above, unless the board of directors of FMB Banking Corporation, at its sole discretion, accepts the documents after such time.**

We estimate that the number of shares outstanding after the reorganization will be approximately 385,324. The exact change in the number of outstanding shares will depend on the number of shares converted to cash in the reorganization.

***Shares Held Jointly or in Common with Others.*** Under the reorganization plan, a person cannot claim to be the beneficial owner of the same share of FMB Banking Corporation common stock for purposes of meeting the 700-share threshold. Additionally, for purposes of the reorganization plan and in determining whether a shareholder meets the 700-share threshold set by the plan, each person recorded as an "owner" of shares held jointly or in common with someone else, other than with his or her spouse, will be deemed (unless shown otherwise to the satisfaction of FMB Banking Corporation) as being the beneficial owner of only his or her pro rata portion of the shares in question. For example, if a single stock certificate for 1,500 shares was issued to "John Doe and/or Jane Doe," unless John Doe and Jane Doe are husband and wife, John Doe and Jane Doe will each be deemed to be the beneficial owner of 750 shares (as opposed to each being deemed to own all 1,500 shares) in determining whether they each meet the 700-share threshold set by the reorganization plan. Upon the consent of all persons holding shares jointly or in common as of November 7, 2003, such persons may elect to recertify such shares prior to December 31, 2003 to clarify their ownership interests in such shares, provided that such recertification does not result in the transfer of any shares to a person who was not originally named as a record or beneficial owner of such shares as of November 7, 2003.

In the event a shareholder is permitted to continue his or her equity ownership in FMB Banking Corporation through the exchange of his or her shares of FMB Banking Corporation common stock for recertified shares, the stock certificate(s) evidencing such converted shares will only be permitted to list one person's name as the record owner unless such shares are to be held jointly with the person's spouse. For example, in continuation of the same example set forth in the immediately preceding paragraph, if John Doe and Jane Doe are each deemed to be the "beneficial owner" of 750 shares, after the reorganization is effected John Doe and Jane Doe will each receive a stock certificate in his or her own name evidencing 750 shares of FMB Banking Corporation common stock in exchange for their jointly held stock certificate issued by prior to the Reorganization which represented 1,500 shares of FMB Banking Corporation common stock.

### **Exchange of FMB Banking Corporation Stock Certificates**

Promptly after the effective time of the reorganization, FMB Banking Corporation will mail to each FMB Banking Corporation shareholder transmittal materials and delivery instructions for exchanging certificates representing shares entitled to be converted to cash or recertificated shares of FMB Banking Corporation. Until a shareholder delivers his or her certificate(s) evidencing shares of FMB Banking Corporation common stock (or arrangements are made to account for lost, stolen or destroyed certificates according to FMB Banking Corporation's usual procedures), the shareholder:

- Will not be paid any cash, which the certificate may entitle the shareholder to receive;
- Will not be paid dividends or other distributions in respect of the shares of FMB Banking Corporation common stock which the certificate may entitle the shareholder to receive; rather, the dividends or distributions will be retained, without interest, for the shareholder's account until surrender of the certificate; and
- Will not be paid interest on any cash payment, which the certificate may entitle the shareholder to receive.

After the effective time of the reorganization, each remaining FMB Banking Corporation shareholder will, however, be entitled to vote at any meeting of FMB Banking Corporation's shareholders the number of shares of FMB Banking Corporation common stock which the shareholder holds after the effective time of the reorganization, regardless of whether the shareholder has surrendered his or her FMB Banking Corporation stock certificate(s) in exchange for a new certificate(s).

### **Amendment of FMB Banking Corporation's Existing Articles of Incorporation**

Generally, under the Internal Revenue Code, an S-Corporation is not permitted to have separate classes of common stock. Currently, FMB Banking Corporation's articles of incorporation provide for two separate classes of common stock. As a result, FMB Banking Corporation will be required to amend its articles of incorporation to eliminate its Class B common stock prior to electing to become an S-Corporation.

In determining the appropriate amendment to its articles of incorporation, the board of directors of FMB Banking Corporation determined that, to the extent possible, it would be advantageous to the company and its continuing shareholders to provide for both voting and non-voting common stock, as permitted by the Internal Revenue Code. The text of the proposed amendment, in its entirety, is provided in Appendix E.

FMB Banking Corporation has no plans to issue non-voting common stock in connection with the proposed reorganization.

### **FMB Interim Corporation Common Stock**

Each outstanding share of FMB Interim Corporation common stock shall be cancelled upon the effective time of the reorganization.

## **DISSENTERS' RIGHTS**

Pursuant to the provisions of the Florida Business Corporation Act, shareholders have the right to dissent from the reorganization plan and to receive the fair value of such shares in cash. Holders of common stock who fulfill the requirements described below will be entitled to assert dissenters' rights.

Pursuant to Section 607.1321 of the Florida Business Corporation Act, if you wish to assert dissenters' rights, you must:

- Give to FMB Banking Corporation, prior to the vote at the special meeting with respect to the approval of the reorganization plan, written notice of your intent to demand cash payment for your shares of common stock;
- Not vote in favor of the reorganization plan; and
- Comply with the statutory requirements summarized below.

If you perfect your dissenters' rights, you will receive the fair value of your shares as of the effective date of the reorganization plan.

You may assert dissenters' rights as to fewer than all of the shares registered in your name only if you dissent with respect to all shares beneficially owned by any one beneficial shareholder. You must notify FMB Banking Corporation in writing of the name and address of each person on whose behalf you are asserting dissenters' rights. The rights of a partial dissenter are determined as if the shares for which the holder dissents, as compared to other shares held as nominee for other beneficial owners, were registered in the names of different shareholders.

Voting against the reorganization plan will not satisfy the written demand requirement. In addition to not voting in favor of the reorganization plan, if you wish to preserve your statutory dissenters' rights, you must give a separate written notice prior to the shareholders vote regarding the reorganization plan of your intent to demand payment for your shares if the reorganization is effected. Any shareholder who returns a signed proxy but fails to provide instructions as to the manner in which such shares are to be voted will be deemed to have voted in favor of the reorganization plan and will not be entitled to assert dissenters' rights.

Any written objection to the reorganization plan satisfying the requirements discussed above should be addressed to FMB Banking Corporation, 200 E. Washington Street, Monticello, Florida 32345; Attention: Sam Lester, Vice President and Legal Counsel.

If the shareholders of FMB Banking Corporation approve the reorganization plan at the special meeting, FMB Banking Corporation must deliver a written dissenters' notice (the "Dissenters' Notice") to all of its shareholders who satisfied the foregoing requirements notifying them that the reorganization plan was approved. The Dissenters' Notice must be sent within ten (10) days after the effective date of the reorganization and must:

- Supply an appraisal form (the "Appraisal Form") that specifies the date the corporate action became effective and that provides space for the shareholder to state their name and address, the number of shares as to which they are asserting appraisal rights, that they did not vote for the transaction, whether they accept the corporation's offer, and their estimate of the fair value of the shares;
- State where dissenting shareholders should send the Appraisal Form and where and when dissenting shareholders should deposit their stock certificates;

- State a date by which FMB Banking Corporation must receive the Appraisal Form (which date may not be fewer than 40 nor more than 60 days after the form is sent);
- State the FMB Banking Corporation's estimate of the fair value of the shares with an offer to pay that estimate to the shareholder;
- State a date by which FMB Banking Corporation must receive a notice of withdrawal (which date may not be more than 20 days after the deadline for receiving the Appraisal Form); and
- Be accompanied by financial statements of FMB Banking Corporation, including a year-end balance sheet, income statement and cash flow statement, along with the latest available interim financial statements, and a copy of Florida Statutes 607.1301 - 604.1333.

A shareholder may decline to exercise appraisal rights and withdraw from the appraisal process by notifying FMB Banking Corporation in writing by the date set forth in the Dissenters' Notice. After that time a shareholder may not withdraw his or her notice of election to dissent unless FMB Banking Corporation consents to the withdrawal.

A record shareholder who does not return the Appraisal Form or deposit his or her share certificates where required, each by the date set in the Dissenters' Notice, is not entitled to payment for his or her shares under the Florida Business Corporation Act and will be bound by the terms of the reorganization plan.

If the dissenting shareholder accepts FMB Banking Corporation's offer and returns the Appraisal Form by the deadline stated in the Dissenter's Notice, FMB Banking Corporation must pay for the shares within 90 days after receipt of the Appraisal Form. Upon payment of the agreed value, the dissenting shareholder will have no further interest in the shares.

If the dissenting shareholder is dissatisfied with FMB Banking Corporation's offer, the shareholder must return the Appraisal Form with their estimate of the fair value of the shares. If the dissenting shareholder fails to provide a written estimate of the fair value of the shares, they shall be entitled only to the payment offered by the corporation in the Dissenters' Notice.

The costs and expenses of an appraisal proceeding, including any appraisers appointed by the court, will be determined by the court and shall be assessed against FMB Banking Corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court deems equitable against any or all of the dissenting shareholders who are a party to the proceedings, to whom FMB Banking Corporation has made an offer to pay for the shares, if the court finds that the actions of the shareholders in failing to accept such offer were arbitrary, vexatious, or not in good faith. The court may also assess the fees and expenses of counsel and experts for the parties in amounts the court finds equitable.

**ANY DISSENTING SHAREHOLDER OF FMB BANKING CORPORATION WHO DOES NOT FOLLOW THE PRESCRIBED PROCEDURE WILL NOT BE ENTITLED TO EXERCISE DISSENTERS' RIGHTS.**

This is a summary of the material rights of a dissenting shareholder and is qualified in its entirety by reference to Sections 607.1301 through 607.1333 of the Florida Business Corporate Act, included as Appendix D to this proxy statement. If you intend to dissent from approval of the reorganization plan, you should review carefully the text of Appendix D and should also consult with your attorney. We will not give you any further notice of the events giving rise to dissenters' rights or any steps associated with perfecting dissenters' rights, except as indicated above or otherwise required by law.

Any dissenting shareholder who perfects his or her right to be paid the value of his or her shares will recognize taxable gain or loss upon receipt of cash for such shares for federal income tax purposes. See "SPECIAL FACTORS—Federal Income Tax Consequences of the Reorganization Plan" beginning on page 21.

## **SPECIAL FACTORS**

### **Purpose of the Reorganization Plan**

The primary purpose of the reorganization plan is to promote more efficient capital utilization and enhance shareholder value by reducing the combined taxes paid by FMB Banking Corporation and its shareholders under Subchapter S of the Internal Revenue Code. The reorganization plan is also designed to decrease the administrative expense incurred in servicing a large number of shareholders who own relatively small numbers of shares.

As an S-Corporation, FMB Banking Corporation will pass through its taxable income to remaining shareholders for taxation at their personal rates, thus allowing FMB Banking Corporation to avoid paying corporate income tax. As a result, FMB Banking Corporation will be able to generate a higher level of net income and, consequently, a higher return to its shareholders.

Because the number of shareholders of an S-Corporation is limited to 75, the reorganization plan is designed to substantially reduce the number of FMB Banking Corporation's shareholders. As of the record date, FMB Banking Corporation had approximately 116 shareholders who owned fewer than 700 shares. The reorganization plan will allow us to pay these shareholders a fair price for their shares while eliminating the costs associated with servicing shareholders who own relatively small numbers of shares. In addition, since there is only a limited trading market for shares of FMB Banking Corporation's common stock, the payments to shareholders receiving cash in the reorganization will provide an opportunity for those shareholders to realize a fair value for their shares without the need of having to find a third party buyer.

### **Reasons for the Reorganization**

The executive committee of FMB Banking Corporation began discussing the various strategic alternatives for improving shareholder returns and capital utilization in 2002. After considering various alternatives, the board of directors met on September 10, 2003 to consider the proposed reorganization plan, including the potential benefits and disadvantages of the reorganization plan. After considering the benefits and disadvantages of the reorganization plan, the board of directors, which includes directors who are not employees of FMB Banking Corporation, authorized senior executive officers to begin drafting the appropriate transaction documents and to select an independent financial advisor knowledgeable in valuing financial services companies to provide an opinion regarding the value of FMB Banking Corporation's common stock. Accordingly, the law firm of Powell, Goldstein, Frazer & Murphy LLP was retained by the company to provide transactional and legal services and Kendrick Pierce Securities was, in turn, retained by Powell, Goldstein, Frazer & Murphy to provide an opinion regarding the fair market value of FMB Banking Corporation's common stock.

On October 29, 2003, after considering Kendrick Pierce Securities' opinion, the effect of the reorganization plan, the tax consequences, and the pro forma effect of the reorganization plan, each of which is described below, the board of directors adopted the form of Agreement and Plan of Reorganization which is attached as Appendix A to this proxy statement.

**Benefits of Subchapter S Election.** FMB Banking Corporation's board of directors believes that the ability of FMB Banking Corporation to be taxed as an S-Corporation under the Internal Revenue Code is beneficial to FMB Banking Corporation and its shareholders for the following reasons:

- Earnings of an S-Corporation can be distributed to shareholders with only one level of income tax imposed on such earnings;
- Undistributed earnings of an S-Corporation will increase a shareholder's basis in his or her stock, which will reduce any gain (or increase any loss) recognized by a shareholder upon a subsequent disposition of his or her stock; and
- There is increased ability to structure a tax-advantaged sale of assets in the event that a subsequent decision is made by our shareholders to sell FMB Banking Corporation. In this regard, we have no sale plans under discussion at this time nor is a sale contemplated.

Generally, an S-Corporation is exempt from federal income taxation. Instead, the S-Corporation's shareholders are taxed (proportionately, based upon their shareholdings) on the taxable income of the S-Corporation. These earnings may then be distributed by the S-Corporation to its shareholders "tax-free" – that is, without the shareholder having to include the earnings in income again as a dividend, which is unlike a distribution by a regular corporation.

In the case of an S-Corporation having earnings and profits, the S-Corporation is entitled to distribute the earnings that have been taxed to its shareholders first. Thus, undistributed earnings that have been taxed to its shareholders after the Subchapter S election is effective will not be subject to further taxation in the hands of the S-Corporation's shareholders. Distributions in excess of the S-Corporation's income that has been taxed to its shareholders will be taxable to the S-Corporation's shareholders (the same as dividends made prior to electing S-Corporation status) to the extent of the S-Corporation's historic earnings and profits. Each shareholder's tax basis in his or her S-Corporation stock is increased by the amount of income taxed to the shareholder after the Subchapter S election has been made, and decreased by the amount of distributions received by the shareholder in connection with his or her stock. Accordingly, unlike a regular corporation, the S-Corporation's undistributed income (as to that portion earned after the Subchapter S election has been made) will reduce the amount of gain (or increase the amount of loss) recognized by its shareholders upon subsequent dispositions of their S-Corporation's common stock.

Since FMB Banking Corporation shareholders will become subject to tax on FMB Banking Corporation's taxable income once the Subchapter S election is effective, we intend to distribute enough of FMB Banking Corporation's earnings to provide shareholders with cash sufficient to pay their individual tax liabilities arising from their respective portions of FMB Banking Corporation taxable income. However, because we must comply with the Florida Business Corporation Act and are subject to the rules and regulations of various regulatory authorities with respect to the declaration of dividends, there can be no assurance that we will be allowed to make distributions in amounts sufficient to cover all of each shareholder's income tax liability that results from being taxed on their respective share of FMB Banking Corporation's taxable income.

As stated above, an S-Corporation is subject to tax in limited circumstances. Accordingly, an S-Corporation (unlike a regular corporation) may sell its assets in a taxable sale and distribute the proceeds from the sale to its shareholders with the shareholders being taxed only once on the gain generated by the sale. In the case of a regular corporation, a similar sale of assets would be subject to corporate taxation and then the proceeds remaining after paying the corporate-level tax would be subject to tax again when distributed to the corporation's shareholders. Thus, an S-Corporation has a distinct advantage over a regular corporation in structuring a more tax-advantaged sale of the corporation's

business to a prospective buyer. (Generally, the shareholders of a regular corporation will have to sell their stock of the corporation in order to realize the same net, after-tax proceeds as the shareholders of an S-Corporation realize in the case of an asset sale. However, a buyer of a business generally may claim tax deductions for any premium paid for the business only when it acquires assets, instead of stock.)

An S-Corporation can be subject to a corporate-level tax upon a sale of some or all of its assets where it has been taxed as a regular corporation and then subsequently makes an election to be taxed as an S-Corporation. The corporate-level tax generally applies to any "built-in" gains of the Corporation. "Built-in" gains are those gains which economically accrue prior to the time that the Subchapter S election becomes effective. The "built-in" gains tax applies generally only to built-in gains that are recognized during the first ten (10) years after the Subchapter S election is effective. We do not have sale plans under discussion nor is a sale contemplated.

**Benefits of FMB Banking Corporation to the Community.** In reaching the conclusion to recommend the reorganization plan, the board of directors has given long and serious attention to the fact that our shareholders have been loyal and supportive of FMB Banking Corporation. The board also recognized that the reorganization plan will result in the shares of a large number of shareholders being converted to cash, in some cases against the wishes of the shareholders.

While the board was mindful of these issues, the board ultimately concluded that given the vital role played by FMB Banking Corporation in its communities – as an employer, as a source of credit for capital and business growth, and as a community resource – the continued viability of FMB Banking Corporation as an independent financial institution was of significant benefit to its communities and to FMB Banking Corporation's shareholders as a whole.

**Potential Disadvantages of the Reorganization Plan to Shareholders.** Currently, only a limited trading market exists for FMB Banking Corporation common stock. Furthermore, the market liquidity for shares of FMB Banking Corporation common stock will decrease after the reorganization because the number of outstanding shares of FMB Banking Corporation common stock available to be traded will decrease as a result of the reorganization. A decrease in the market liquidity for the shares of FMB Banking Corporation common stock may cause a decrease in the value of the shares. Additionally, each shareholder will be bound by the terms of a Shareholders Agreement, which, among other obligations, will place restrictions on the sale of FMB Banking Corporation common stock.

Although FMB Banking Corporation intends to distribute at least enough of its earnings to provide shareholders with sufficient cash to pay their individual tax liabilities resulting from being taxed on their respective shares of FMB Banking Corporation income, we can give no assurance that these distributions will be made. Shareholders of FMB Banking Corporation will be subject to tax on FMB Banking Corporation's taxable income regardless of whether or not FMB Banking Corporation distributes any of its earnings to its shareholders. As a result, FMB Banking Corporation shareholders may be required to pay taxes on their respective share of FMB Banking Corporation's taxable income at a time when they have no cash flow from their shares with which to pay the taxes.

Because the number of shareholders of an S-Corporation is limited to 75, after the reorganization, FMB Banking Corporation will have limited sources from which to obtain additional capital to support growth. As a result, future growth of FMB Banking Corporation may be restricted if we are unable to obtain required capital.

Finally, in order to be a shareholder of FMB Banking Corporation after the reorganization, you must be eligible to be an S-Corporation shareholder. As a result, some FMB Banking Corporation shareholders who are not eligible S-Corporation shareholders but who desire to remain shareholders may have no choice but to receive cash in the reorganization.



## **Effects of the Reorganization Plan on FMB Banking Corporation**

The reorganization plan will have various effects on FMB Banking Corporation, as described below.

**Reduction in the Number of Shareholders and the Number of Outstanding Shares.** FMB Banking Corporation believes that the reorganization will reduce its number of record shareholders from approximately 172 to approximately 55. We estimate that approximately 31,579 shares held by approximately 116 shareholders will be converted into cash in the reorganization. The number of outstanding shares of FMB Banking Corporation common stock will decrease from 416,903 shares to approximately 385,324 shares. Accordingly, the liquidity of shares of FMB Banking Corporation common stock will decrease after the reorganization.

**Net Income Per Share and Book Value.** We estimate that approximately 31,579 shares will be converted to cash at a price of \$95.00 per share, or an aggregate of \$3,000,000, as a result of the reorganization. Additionally, we estimate the total cost to FMB Banking Corporation to effect the reorganization, including expenses, will be approximately \$3,123,000. Accordingly, we expect as a result of the reorganization that:

- Net income per share of common stock (including non-recurring income and expenses) for the year ended December 31, 2002 will decrease from \$5.83 on a historical basis to \$5.64 on a pro forma basis;
- Net income per share of common stock (including non-recurring income and expenses) for the nine months ended September 30, 2003 will decrease from \$6.13 on a historical basis to \$6.03 on a pro forma basis;
- Aggregate shareholders' equity of FMB Banking Corporation as of December 31, 2002 will be reduced from \$18,684,481 on a historical basis to approximately \$15,430,000 on a pro forma basis;
- The book value per share of common stock as of December 31, 2002 will be reduced from \$45.10 per share on a historical basis to approximately \$40.32 per share on a pro forma basis;
- Aggregate shareholders' equity of FMB Banking Corporation as of September 30, 2003 will be reduced from \$21,165,000 on a historical basis to approximately \$17,935,000 on a pro forma basis; and
- The book value per share of common stock as of September 30, 2003 will be reduced from \$50.94 per share on a historical basis to approximately \$46.67 per share on a pro forma basis.

**Decrease in Capital.** While FMB Banking Corporation's equity capital will be reduced as a result of the reorganization, FMB Banking Corporation anticipates that it will remain "well capitalized" for bank regulatory purposes. FMB Banking Corporation's Tier 1 capital as of September 30, 2003 will increase from \$21,202,877 on a historical basis to approximately \$22,973,000 on a pro forma basis, after taking into effect its anticipated offering of trust preferred securities as its primary source of capital to fund the planned reorganization.

**Dividends.** After the reorganization, FMB Banking Corporation intends to distribute at least enough of its earnings to provide shareholders with sufficient cash to pay their individual tax liabilities resulting from being taxed on their respective shares of FMB Banking Corporation's taxable income. However, because FMB Banking Corporation's payment of dividends is subject to regulatory limitations, it may be unable to pay dividends sufficient to cover all of every remaining shareholder's tax liability, and may not be able to pay dividends at all.

**Financial Effects of the Reorganization; Financing of the Reorganization.** We estimate that approximately \$3,000,000 will be required to pay for the shares of FMB Banking Corporation common stock converted to cash in the reorganization. Additionally, we estimate that professional fees and other expenses related to the transaction will total approximately \$123,000. We do not expect that the net payment to shareholders receiving cash in the reorganization and the payment of expenses will have any material adverse effect on FMB Banking Corporation's capital adequacy, liquidity, results of operations or cash flow. You should read the discussion under "DESCRIPTION OF THE REORGANIZATION PLAN—Source of Funds and Expenses" on page 8 for a description of the fees and expenses FMB Banking Corporation expects to incur in connection with the reorganization.

FMB Banking Corporation expects to finance the net cash amount to be paid to shareholders in the reorganization and the payment of related costs and expenses through the issuance of Trust Preferred Securities.

#### **Effects of the Reorganization Plan on Qualified Retirement Plans of FMB Banking Corporation**

FMB Banking Corporation currently maintains the FMB Banking Corporation Employee Stock Ownership Plan with 401(k) Features (referred to as the "ESOP"). The ESOP contains both 401(k) plan and employee stock ownership plan features. In connection with the reorganization, various amendments will be made to the ESOP to account for FMB Banking Corporation's proposed conversion to an S-Corporation. Participants in the ESOP will receive a summary of the proposed amendments to the ESOP, as well as any elections available to them in connection with the proposed amendments and/or their investments in the ESOP.

The reorganization plan generally provides that all shares held in the ESOP will be exchanged for recertificate shares of FMB Banking Corporation. Accordingly, if you hold shares of FMB Banking Corporation common stock in the ESOP, you will not be receiving cash for such shares; instead, your equity ownership of FMB Banking Corporation represented by such shares will continue in the form of recertificate shares of FMB Banking Corporation and will continue to be held in the ESOP.

The ESOP is a tax-qualified retirement plan under the Internal Revenue Code, which means that it will generally be exempt from federal income taxation. As a result, the trustees and participants of the ESOP will not have federal income tax liability with respect to the proportionate share of FMB Banking Corporation's earnings received in connection with the shares of FMB Banking Corporation common stock held by or in the ESOP. Unlike FMB Banking Corporation shareholders generally, the trustees and/or plan participants will not have to apply S-Corporation distributions to the payment of federal income taxes on its and/or their share of FMB Banking Corporation's earnings. Instead, the trustees and/or plan participants will be able to reinvest any such S-Corporation distributions in accordance with the terms of the ESOP, as amended.

In connection with the corporation's election of S-corporation status and the reorganization, certain ESOP provisions must be modified. In particular, participants will no longer be able to take their distributions in the form of FMB Banking Corporation stock when they terminate employment. This is because the number and types of shareholders of S-Corporation stock is limited by law. At the time of distribution, any FMB Banking Corporation stock will be liquidated for cash in accordance with the terms of the ESOP. Furthermore, allocations of FMB Banking Corporation stock will be limited to participants who are credited with 10 percent or more of the total stock in the ESOP or who, with family members who are participants will, in the aggregate, hold 20 percent or more of the total stock in the ESOP, but only if such participants collectively own 50 percent or more of FMB Banking Corporation stock (when ownership both in and outside the ESOP is considered).

## Effects of the Reorganization Plan on Affiliates

The reorganization will also have various effects on the executive officers and directors of FMB Banking Corporation, each of whom may, as a result of his or her position with FMB Banking Corporation, be deemed to be an affiliate of FMB Banking Corporation.

The following table sets forth the number and the percentage ownership of shares of FMB Banking Corporation common stock directly or indirectly owned by each director and executive officer of FMB Banking Corporation, and by all directors and executive officers as a group, as of September 30, 2003. The address for each person named in the table is 200 E. Washington Street, Monticello, Florida 32345. As presented in the table below, a person is deemed to be a "beneficial owner" of a security if that person has or shares "voting power," which is the power to vote or to direct the voting of such security, or "investment power" which is the power to dispose or to direct the disposition of such security. The number of shares indirectly owned also includes any shares the person has the right to acquire within the next 60 days.

Name	Ownership Before Reorganization (In Shares)	% of Shares Outstanding Before Reorganization	Ownership After Reorganization (In Shares) <sup>4</sup>	% of Shares Outstanding After Reorganization <sup>4</sup>
F. W. Carraway, Jr.	38,547 <sup>1</sup>	9.3	40,681 <sup>1,5</sup>	10.6
Edward H. Carraway	161,479 <sup>1,2</sup>	38.7 <sup>1,2</sup>	161,479 <sup>1,2</sup>	41.9
F. Wilson Carraway, III	161,615 <sup>1,2</sup>	38.7 <sup>1,2</sup>	161,615 <sup>1,2</sup>	41.9
John E. Hawkins	7,377	1.8	7,377	1.9
C. J. Reams	5,019	1.2	5,019	1.3
L. Gary Wright	3,756 <sup>1</sup>	*	3,756 <sup>1</sup>	*
T. Buckingham Bird	1,630	*	1,630	*
T. B. Walker	2,818	*	2,818	*
Herbert G. Demott	1,097	*	1,097	*
George Walker	1,020	*	1,020	*
R. Michael Sims	2,013	*	2,013	*
Davis T. Revell	348	*	0	*
Tracey B. Jackson	313	*	0	*
Wallace C. Childs	104	*	0	*
John B. Brinson, MD	100	*	0	*
W. Theo Proctor, Jr.	600	*	0	*
Ronald B. Vonier	104	*	0	*
Employee Stock Ownership Plan (Allocated Shares Only, as a Group)	27,576	6.6	25,442	6.6
<b>Total<sup>3</sup> (as a Group)</b>	<b>266,751</b>	<b>64.0</b>	<b>265,182</b>	<b>68.8</b>

\* Represents an ownership percentage of less than 1.0%.

(1) Does not include 65,017 shares held in the FMB Banking Corporation's employee stock ownership plan for which F. W. Carraway, Jr., F. Wilson Carraway, III and L. Gary Wright are trustees.

(2) Includes 148,765 shares which are also beneficially owned by one or more other listed persons.

(3) Does not include duplicated shares which are beneficially owned by one or more other listed persons.

(4) Reported number of shares and percentages are subject to permitted shareholders elections made by the listed persons. Accordingly, the reported number of shares and percentages provided may be different if certain listed persons elect to receive cash in lieu of recertificated shares of FMB Banking Corporation in connection with the reorganization.

(5) Includes an expected in-kind distribution of 2,134 shares from the ESOP.

The percentage of shares beneficially owned by the directors and executive officers of FMB Banking Corporation after the reorganization plan takes effect will depend on the number of shares purchased and the number of shares exchanged for cash in the reorganization.

#### **Federal Income Tax Consequences of the Reorganization Plan**

We have received a legal opinion from Powell, Goldstein, Frazer & Murphy LLP, Atlanta, Georgia, that the merger of FMB Interim Corporation with and into FMB Banking Corporation will be considered a redemption for federal income tax purposes of only those shares of FMB Banking Corporation stock that are exchanged for cash, including shares held by FMB Banking Corporation shareholders who exercise their right to dissent. The opinion will further provide that no gain or loss will be recognized by an FMB Banking Corporation shareholder whose shares remain outstanding after completion of the reorganization (which is being effected as a merger). Presented below is a discussion of the material federal income tax consequences of the merger to FMB Banking Corporation, FMB Interim Corporation and FMB Banking Corporation's shareholders.

The discussion does not address all U.S. federal income tax consequences that may be relevant to certain FMB Banking Corporation shareholders in light of their particular circumstances. The discussion assumes that the FMB Banking Corporation shareholders hold their shares of FMB Banking Corporation common stock as capital assets (generally for investment). In addition, the discussion does not address any foreign, state or local income tax consequences of the reorganization, or the tax consequences of any transaction effected prior to, concurrently with, or subsequent to the merger of FMB Interim Corporation with FMB Banking Corporation that are not consummated under the terms of the reorganization plan, including without limitation transactions in which FMB Banking Corporation or FMB Interim Corporation common stock is acquired or disposed of pursuant to the exercise of options or otherwise.

**Accordingly, FMB Banking Corporation shareholders are urged to consult their own tax advisors as to the specific tax consequences of the merger, including applicable federal, foreign, state and local tax consequences to them of the reorganization in light of their own particular circumstances.**

The following are the material federal income tax consequences of the merger:

- No gain or loss will be recognized by an FMB Banking Corporation shareholder whose shares of FMB Banking Corporation common stock remain outstanding after the merger.
- An FMB Banking Corporation shareholder who receives solely cash for his or her shares of FMB Banking Corporation common stock because (1) the shareholder is not eligible to be a shareholder of an S-Corporation; (2) the shareholder does not execute the Shareholders Agreement or S-Corporation Election Form; or (3) the shareholder exercises dissenters' rights, generally will recognize gain or loss equal to the difference between the cash received and the basis in the shareholder's shares of FMB Banking Corporation common stock that are cancelled as a result of the reorganization. Any gain recognized by the shareholder will be long-term capital gain provided that the FMB Banking Corporation common stock was held as a capital asset and the shareholder has held the FMB Banking Corporation shares for more than one year on the date of the merger.
- No gain or loss will be recognized by either FMB Banking Corporation or FMB Interim Corporation as a result of the merger.

No ruling has been or will be obtained from the Internal Revenue Service in connection with the merger. FMB Banking Corporation shareholders should be aware that the tax opinion does not bind the Internal Revenue Service and that the Internal Revenue Service is therefore not precluded from

successfully asserting a contrary opinion. The validity of the tax opinion is also subject to assumptions and qualifications and will be based on the truth and accuracy of representations made by FMB Banking Corporation and FMB Interim Corporation, including without limitation representations in certificates to be delivered to counsel by the management of FMB Banking Corporation and FMB Interim Corporation.

A successful Internal Revenue Service challenge to the tax-free status of the merger would result in all FMB Banking Corporation shareholders, including those shareholders who continue to hold FMB Banking Corporation common stock after the merger, recognizing taxable capital gain or loss with respect to each share of FMB Banking Corporation common stock surrendered in the reorganization in an amount equal to the difference between the FMB Banking Corporation shareholder's basis in such stock and the fair market value, as of the effective time of the reorganization, of the FMB Interim Corporation common stock and any other consideration received in exchange therefor. In such event, an FMB Banking Corporation shareholder's aggregate basis in the FMB Interim Corporation common stock so received would equal its fair market value as of the effective time of the reorganization and the holding period for such stock would begin the day after the closing of the reorganization.

Non-corporate shareholders of FMB Banking Corporation may be subject to backup withholding at a rate of 30% on cash payments received in the reorganization. Backup withholding will not apply, however, to a shareholder who (1) furnishes a correct taxpayer identification number and certifies that he or she is not subject to backup withholding on the substitute Form W-9 which will be included in the transmittal materials that will be delivered to shareholders after the effective time of the reorganization, (2) who provides a certificate of foreign status on an appropriate Form W-8, or (3) who is otherwise exempt from backup withholding. A shareholder who fails to provide the correct taxpayer identification number on Form W-9 may be subject to a \$50 penalty imposed by the Internal Revenue Service.

The preceding discussion is intended only as a summary of the material United States income tax consequences of the merger and does not purport to be a complete analysis or discussion of all potential tax effects relevant to the reorganization. Thus, FMB Banking Corporation shareholders are urged to consult their own tax advisors as to the specific tax consequences to them of the merger, including tax return reporting requirements, the applicability and effect of foreign, federal, state, local and other applicable tax laws and the effect of any proposed changes in the tax laws.

#### **Pro Forma Effect of the Reorganization Plan**

The following financial statements illustrate the pro forma effect of the transactions contemplated by the reorganization plan on FMB Banking Corporation's financial statements as of December 31, 2002 and September 30, 2003. Management has prepared this information based on its estimate that a total amount of \$3,000,000 will be paid to shareholders whose shares are converted to cash in the reorganization.

FMB Banking Corporation  
Pro Forma September 30, 2003 Balance Sheet  
(In thousands)

ASSETS	Historical	Adjustments	Pro Forma
Cash and due from banks	\$ 10,153	(a) \$ 4,975 (b) (3,829) (c) (123)	\$ 11,176
Federal funds sold	15,700		15,700
Investment securities	28,106		28,106
Loans, net of allowance	209,415		209,415
Properties and equipment	7,679		7,679
Accrued interest receivable	1,440	(f) 7	1,447
Other assets	<u>7,232</u>		<u>7,232</u>
	<u>\$ 279,725</u>	<u>\$ 1,030</u>	<u>\$ 280,755</u>
LIABILITIES AND STOCKHOLDERS' EQUITY			
Liabilities:			
Deposits	\$ 224,355	\$	\$ 224,355
Repurchase agreements	12,760		12,760
FHLB advances	16,143		16,143
Long-term debt	829	(a) 5,000	5,000
Other liabilities	4,473	(d) 148 (e) (59)	<u>4,562</u>
	<u>258,560</u>	4,260	<u>262,820</u>
		(e) 59 (f) 7 (c) (123) (d) (173)	
Total equity	<u>21,165</u>	(g) (3,000)	<u>17,935</u>
	<u>\$ 279,725</u>	<u>\$ 1,030</u>	<u>\$ 280,755</u>

Footnotes:

- (a) To reflect borrowings incurred to finance repurchase less 0.50% fee.
- (b) To reflect purchase of common shares and to retire certain debt.
- (c) To reflect payment of reorganization costs.
- (d) To reflect interest expense on new borrowings and interest reduction on debt retired.
- (e) To reflect reduction in income tax for additional interest expense on new debt.
- (f) To reflect earnings on Federal Reserve funds from cash generated from new debt.
- (g) To reflect purchase of shares of FMB Banking Corporation common stock as a result of the reorganization.

FMB Banking Corporation  
Pro Forma September 30, 2003 Income Statement  
(In thousands)

	<u>Historical</u>	<u>Adjustments</u>	<u>Pro Forma</u>
Interest income:			
Loans	\$ 9,898	\$	\$ 9,898
Securities	1,011		1,011
Federal funds sold	92	(d) 7	99
Deposits with banks	<u>23</u>	<u>—</u>	<u>23</u>
Total interest income	<u>11,024</u>	<u>7</u>	<u>11,031</u>
Interest expense:			
Interest on deposits	2,223		2,223
Interest on fed funds and repurchase agreements	191		191
Interest on debt and borrowed funds	455	(b) (23)	
		(b) <u>196</u>	<u>628</u>
Total interest expense	<u>2,869</u>	<u>173</u>	<u>3,042</u>
Total interest income	8,155	(166)	7,989
Provision for loan losses	<u>255</u>	<u>—</u>	<u>255</u>
Net interest income after Provision for loan losses	7,900	(166)	7,734
Other income	1,841		1,841
Other expense	<u>(5,973)</u>	(a) <u>123</u>	<u>(6,096)</u>
Income before income taxes	3,768	(289)	3,479
Income taxes	<u>1,231</u>	(c) <u>(59)</u>	<u>1,172</u>
Net income	<u>\$ 2,537</u>	<u>\$ (230)</u>	<u>\$ 2,307</u>

Footnotes:

- (a) To reflect payment of reorganization costs.
- (b) To reflect interest expense on new borrowings and interest reduction on debt retired.
- (c) To reflect reduction in income tax for additional interest expense on new debt.
- (d) To reflect earnings on Federal Reserve funds from cash generated from new debt.

FMB Banking Corporation  
Pro Forma December 31, 2002 Balance Sheet  
(In thousands)

ASSETS	Historical	Adjustments	Pro Forma
Cash and due from banks	\$ 9,780	(a) \$ 4,975 (b) (4,052) (c) (123)	\$ 10,580
Federal funds sold	14,800		14,800
Investment securities	34,440		34,440
Loans, net of allowance	167,724		167,724
Properties and equipment	6,189		6,189
Accrued interest receivable	1,450	(f) 5	1,450
Other assets	<u>5,752</u>		<u>5,757</u>
	<u>\$ 240,135</u>	<u>\$ 805</u>	<u>\$ 240,940</u>
LIABILITIES AND STOCKHOLDERS' EQUITY			
Liabilities:			
Deposits	\$ 192,344	\$	\$ 192,344
Repurchase agreements	12,188		12,188
FHLB advances	11,536		11,536
Long-term debt	1,052	(a) 5,000 (b) (1,052)	5,000
Other liabilities	4,331	(d) 188 (e) (77)	<u>4,442</u>
	<u>221,451</u>	4,059	<u>225,510</u>
		(e) 77 (f) 5 (c) (123) (d) (213)	
Total equity	<u>18,684</u>	(g) (3,000)	<u>15,430</u>
	<u>\$ 240,135</u>	<u>\$ 805</u>	<u>\$ 240,940</u>

Footnotes:

- (a) To reflect borrowings incurred to finance repurchase less 0.50% fee.
- (b) To reflect purchase of common shares and to retire certain debt.
- (c) To reflect payment of reorganization costs.
- (d) To reflect interest expense on new borrowings and interest reduction on debt retired.
- (e) To reflect reduction in income tax for additional interest expense on new debt.
- (f) To reflect earnings on fed funds from cash generated from new debt.
- (g) To reflect purchase of shares of FMB Banking Corporation common stock as a result of the reorganization.



FMB Banking Corporation  
Pro Forma December 31, 2002 Income Statement  
(In thousands)

	<u>Historical</u>	<u>Adjustments</u>	<u>Pro Forma</u>
Interest income:			
Loans	\$ 11,812	\$	\$ 11,812
Securities	1,898		1,898
Federal funds sold	112	(d) 5	117
Deposits with banks	<u>1</u>	<u>1</u>	<u>1</u>
Total interest income	<u>13,823</u>	<u>5</u>	<u>13,828</u>
Interest expense:			
Interest on deposits	3,402		3,402
Interest on fed funds and repurchase agreements	691		691
Interest on debt and borrowed funds	85	(b) (39)	
		(b) <u>252</u>	<u>298</u>
Total interest expense	<u>4,178</u>	<u>213</u>	<u>4,391</u>
Total interest income	9,645	(208)	9,437
Provision for loan losses	<u>240</u>		<u>240</u>
Net interest income after Provision for loan losses	9,405	(208)	9,197
Other income	2,538		2,538
Other expense	<u>(8,611)</u>	(a) <u>123</u>	<u>(8,734)</u>
Income before income taxes	3,332	(331)	3,001
Income taxes	<u>930</u>	(c) <u>(77)</u>	<u>853</u>
Net income	<u>\$ 2,402</u>	<u>\$ (254)</u>	<u>\$ 2,148</u>

Footnotes:

- (a) To reflect payment of reorganization costs.
- (b) To reflect interest expense on new borrowings and interest reduction on debt retired.
- (c) To reflect reduction in income tax for additional interest expense on new debt.
- (d) To reflect earnings on Federal Reserve funds from cash generated from new debt.

## **Recommendation of the Board of Directors; Fairness of the Reorganization Plan**

The board believes that the reorganization plan, taken as a whole, is substantively and procedurally fair to, and in the best interests of, FMB Banking Corporation and its shareholders, including unaffiliated shareholders and shareholders who will receive cash in the reorganization. The board of directors of FMB Banking Corporation, which includes directors who are not employees of FMB Banking Corporation, has approved the reorganization plan, and the board recommends that the shareholders vote for approval and adoption of the reorganization plan. Although the board as a whole recommends that the shareholders vote in favor of the reorganization plan for the reasons set forth under “—Reasons for the Reorganization” on page 15, no director or executive officer is making any recommendation to the shareholders in his or her individual capacity.

The board considered a number of factors in determining to approve the reorganization plan, including the relative advantages and disadvantages described under “—Reasons for the Reorganization” on page 15. The board also reviewed the pro forma financial and tax effects on FMB Banking Corporation and its shareholders related to the S-Corporation election. The tax benefits and the earnings potential that result from the S-Corporation election were significant factors in the board’s determination that the S-Corporation election should be a part of the reorganization plan. FMB Banking Corporation’s primary reason for the reorganization is to enable FMB Banking Corporation to be taxed as an S-Corporation.

The board considered alternative transactions to accomplish the proposed S-Corporation transaction but ultimately approved the reorganization proposal.

**Substantive Fairness.** The board considered numerous factors, discussed below, in reaching its conclusion as to the substantive fairness of the reorganization plan, both to affiliated and unaffiliated shareholders. The board did not assign any specific weights to the factors listed below, and individual directors may have given differing weights to different factors.

- **Historical and Current Market Prices of FMB Banking Corporation’s Common Stock:** There is only a limited trading market for FMB Banking Corporation’s common stock with a total trade volume (as known to FMB Banking Corporation) since January 1, 2003 of only 48 shares, as follows:

<u>Trade Date</u>	<u>No. of Shares</u>	<u>Price/Share</u>
2/17/2003	30	\$65.19
7/23/2003	18	\$79.14

The trading activity noted above excludes gifts or other transfers made without the payment of any monetary consideration.

- **Book Value:** As of September 30, 2003, the book value per share of outstanding FMB Banking Corporation common stock was approximately \$50.94. Although book value was a factor considered by the board in determining the consideration to be paid to shareholders whose shares are converted to cash in the reorganization, the board determined that it was not directly relevant. However, the board noted that the per share cash price of \$95.00 payable in the reorganization reflected a multiple of 1.87 times FMB Banking Corporation’s September 30, 2003 book value per share.

- **Going-Concern Value:** In determining the cash amount to be paid to shareholders whose shares are converted to cash in the reorganization, the board valued FMB Banking Corporation’s shares on the basis of a going concern, without giving effect to any anticipated effects of the reorganization.

Also, the board did not consider the amount per share that might be realized in a sale of 100% of the stock of FMB Banking Corporation, as the board determined that consideration of such an amount was inappropriate in the context of a transaction that would not result in a change of control of FMB Banking Corporation. In determining the going-concern value of FMB Banking Corporation's shares, the board adopted the analyses and conclusions of Kendrick Pierce Securities, Inc. which are described in this section under "—The Kendrick Pierce Securities Opinion" on page 30.

- **Historical Prices Paid by FMB Banking Corporation:** Since January 1, 2003, FMB Banking Corporation purchased 48 shares from shareholders wishing to sell their shares. The board considered historical prices paid by FMB Banking Corporation for these shares which ranged from \$65.19 to \$79.14 per share.

- **Earnings:** The board reviewed the earnings of FMB Banking Corporation for the previous three fiscal years. For the three years ended December 31, 2000, 2001 and 2002, FMB Banking Corporation reported earnings per share of \$4.13, \$4.33 and \$5.83, respectively. The board noted that the cash price of \$95.00 payable in the reorganization reflected a multiple of 13.75 times FMB Banking Corporation's earnings per share for the year ended December 31, 2002.

- **Opinion of Kendrick Pierce Securities:** Powell, Goldstein, Frazer & Murphy, on behalf of FMB Banking Corporation, engaged Kendrick Pierce Securities to render a valuation of the fair market value of FMB Banking Corporation's common stock. The Kendrick Pierce Securities valuation indicated that as of November 4, 2003, the fair market value of FMB Banking Corporation's common stock ranged from a low of \$83.74 per share to a high of \$84.79 per share. The board also reviewed and considered the financial analyses presented in connection with the valuation and adopted Kendrick Pierce Securities' conclusions and analyses as its own. You should read the discussion under "—The Kendrick Pierce Securities Opinion" on page 30 for more information relating to the valuation and the related financial analyses.

- **Opportunity to Liquidate Shares of Common Stock:** The board considered the opportunity the reorganization proposal presents for shareholders owning fewer than 700 shares or any other shareholder who does not want to be a shareholder of an S-Corporation to liquidate their holdings without incurring brokerage costs, particularly given the relatively illiquid market for shares of FMB Banking Corporation's common stock. The board also recognized that the \$95.00 per share to be paid to shareholders whose shares are converted to cash in the reorganization reflected a premium over recent trading prices for FMB Banking Corporation stock. Although the board believes that recent trading prices of \$79.14 per share in July 2003 generally reflect the fair value of FMB Banking Corporation common stock, the board decided to pay shareholders receiving cash in the reorganization a premium over recent trading prices.

In connection with its deliberations, the board did not consider FMB Banking Corporation's liquidation value. The board did not view FMB Banking Corporation's liquidation value to be a relevant measure of valuation, given that the cash amount per share to be paid to shareholders whose share are converted to cash significantly exceeded the book value per share of FMB Banking Corporation, and it was the board's view that FMB Banking Corporation is far more valuable as a going concern than its net book value per share of \$50.94 as of September 30, 2003. The board also believes liquidation is not a feasible alternative for a financial institution because of tax and regulatory concerns. However, book value per share is a historical accounting number, and an evaluation of liquidation value could produce a higher valuation than book value per share. Additionally, FMB Banking Corporation can give no assurance that the liquidation value would not produce a higher valuation of FMB Banking Corporation than its value as a going concern.

The board is not aware of any firm offers, other than in conjunction with the reorganization, having been made by an unaffiliated person or entity during the preceding two years for:

- (1) The merger or consolidation of FMB Banking Corporation into or with that unaffiliated person or entity;
- (2) The sale or other transfer of all or any substantial part of the assets of FMB Banking Corporation; or
- (3) The purchase of a number of shares of common stock that would enable the holder thereof to exercise control over FMB Banking Corporation.

After consideration of all of the foregoing information, the board determined that a fair price to be paid shareholders whose shares will be converted to cash in the reorganization is \$95.00 per share. The board of directors directed Powell, Goldstein, Frazer & Murphy to engage Kendrick Pierce Securities to make a determination of the fair market value of FMB Banking Corporation common stock as of November 4, 2003 so as to ensure the cash price to be paid in the reorganization as determined by the board of directors represents an independent and fair valuation.

**Procedural Fairness.** The Florida Business Corporation Act requires shareholder approval of the transactions contemplated by the reorganization plan. The vote of a majority of the outstanding shares of FMB Banking Corporation common stock entitled to vote on the reorganization plan will be required to approve the reorganization plan. Approval by a majority of unaffiliated shareholders is not required. The board determined that any such voting requirement would usurp the power of the holders of greater than a majority of FMB Banking Corporation's shares to consider and approve the reorganization plan as provided under Florida law and the terms of the reorganization plan. The board also considered such a provision unnecessary in view of the right of shareholders, whether affiliated or unaffiliated, to dissent from the reorganization plan and receive the "fair value" of their shares.

No unaffiliated representative acting solely on behalf of unaffiliated shareholders for the purpose of negotiating the terms of the reorganization or preparing a report covering the fairness of the reorganization was retained by FMB Banking Corporation or by a majority of directors who are not employees of FMB Banking Corporation. FMB Banking Corporation has not made any provision in connection with the reorganization to grant unaffiliated shareholders access to FMB Banking Corporation's corporate files, except as provided under the Florida Business Corporation Act, or to obtain legal counsel or appraisal services at FMB Banking Corporation's expense. With respect to unaffiliated shareholders' access to FMB Banking Corporation's corporate files, the board determined that this proxy statement provided adequate information for unaffiliated shareholders to make an informed decision with respect to the reorganization plan. The board also considered the fact that under the Florida Business Corporation Act, and subject to specified conditions set forth under Florida law, shareholders have the right to review FMB Banking Corporation's relevant books and records. As for obtaining legal counsel or appraisal services for unaffiliated shareholders at FMB Banking Corporation's expense, the board did not consider these procedures necessary or customary. In deciding not to adopt these additional procedures, the board also took into account factors such as the size and financial capacity of FMB Banking Corporation, the cost of such procedures, and that most of FMB Banking Corporation's shareholders are familiar with FMB Banking Corporation's operations and management.

After consideration of the factors described above, the board of directors believes that the transaction is procedurally fair notwithstanding the absence of an unaffiliated shareholder approval requirement, an unaffiliated shareholder representative and the provision of legal counsel or appraisal services at the expense of FMB Banking Corporation. Additionally, the board believes that the reorganization plan is substantively fair to FMB Banking Corporation's unaffiliated shareholders. The reorganization plan was adopted by the directors of FMB Banking Corporation, which includes directors who are not employees of FMB Banking Corporation.

#### **FMB Banking Corporation Affiliates' Determination of Fairness of the Reorganization Plan**

FMB Banking Corporation's affiliates consist of its directors and executive officers – T. Buckingham Bird, John B. Brinson, M.D., F.W. Carraway, Jr., F. Wilson Carraway, III, Edward H. Carraway, Wallace C. Childs, Herbert G. Demott, John E. Hawkins, Tracey B. Jackson, W. Theo Proctor, Jr., C.J. Reams, Davis T. Revell, R. Michael Sims, Ronald B. Vonier, George K. Walker, T.B. Walker, and L. Gary Wright. Each of FMB Banking Corporation's affiliates believes that the reorganization plan is substantively and procedurally fair to, and in the best interests of, all of FMB Banking Corporation's shareholders, including unaffiliated shareholders and shareholders who will receive cash in the reorganization and shareholders whose shares of FMB Banking Corporation common stock will remain outstanding after the reorganization. In reaching this conclusion, FMB Banking Corporation's affiliates relied upon the factors considered by and the analyses and conclusions of the board of directors of FMB Banking Corporation and adopted such factors, analyses, and conclusions as their own. See “— Recommendation of the Board of Directors; Fairness of the Reorganization Plan” on page 27.

#### **The Kendrick Pierce Securities Opinion**

As special counsel to FMB Banking Corporation, Powell, Goldstein, Frazer and Murphy LLP engaged Kendrick Pierce Securities, Inc. to provide an opinion of the fair market value of FMB Banking Corporation's common stock, on a per share basis, to assist FMB Banking Corporation's board of directors in determining the cash price to be paid for shares of FMB Banking Corporation common stock in the reorganization. Kendrick Pierce Securities is an independent investment banking firm located in Tampa, Florida.

Prior to engaging Kendrick Pierce Securities, other professional appraisal firms were considered. Kendrick Pierce Securities was selected to issue the valuation opinion based on Kendrick Pierce Securities' reputation within the communities served by FMB Banking Corporation, its familiarity with the market area and with the banking industry, as well as advice from outside advisors.

Powell, Goldstein, Frazer and Murphy and FMB Banking Corporation's board placed no limitations on the scope of Kendrick Pierce Securities' analysis, nor did it provide any instructions to Kendrick Pierce Securities regarding the engagement, other than describing the transaction giving rise to the engagement and providing Kendrick Pierce Securities with any requested information regarding FMB Banking Corporation. No relationship exists or has existed within the past two years between FMB Banking Corporation, Kendrick Pierce Securities or any of their respective affiliates. Powell, Goldstein, Frazer and Murphy, on behalf of FMB Banking Corporation, will pay Kendrick Pierce Securities a fee of approximately \$15,000, plus expenses, for its services rendered in connection with its valuation opinion.

**General Methodologies Applied.** Kendrick Pierce Securities applied two primary methods to value FMB Banking Corporation's common stock as of November 4, 2003:

- Peer Group Stock Trading Multiple Analysis approach; and
- Discounted to Present Value (DPV) approach.

The Peer Group Stock Trading Multiple Analysis approach generally identifies and compares, among other factors, the price-to-book, price-to-tangible book and price-to-earnings multiples of publicly-traded banks and bank holding companies that are similar in size to the bank or bank holding company being valued.

The DPV approach is more theoretical in nature and determines the value of a security based on the aggregate value of projected cash flows related to the security, which are then discounted back to present value at a risk-adjusted discounting rate.

To arrive at a fair value range for FMB Banking Corporation's common stock, on a per-share basis, Kendrick Pierce Securities weighted equally the Peer Group Stock Trading Multiple Analysis approach and the DPV approach.

**Analysis Under Peer Group Stock Trading Multiple Analysis Approach.** The price-to-book, price-to-tangible book and price-to-earnings multiples of publicly-traded banks and bank holding companies within Florida and the southeast area with assets between \$150 million and \$500 million were analyzed. The banks and bank holding companies selected were considered by Kendrick Pierce Securities to be a sufficient peer group of publicly-traded banks and bank holding companies, which could be further evaluated in terms of their historical profitability (i.e., return-on-equity, return-on-assets, growth rates, etc.). Based on September 30, 2003 closing prices related to these selected peer groups, Kendrick Pierce Securities derived the following peer group multiples:

Florida Peer:

Price-to-book value median	165.06% (approximate)
Price-to-tangible book median	180.34% (approximate)
Price-to-earnings median	22.17x (approximate; based on last twelve months earnings)

Southeast Peer:

Price-to-book value median	167.70% (approximate)
Price-to-tangible book median	174.52% (approximate)
Price-to-earnings median	18.03x (approximate; based on last twelve months earnings)

While the median price-to-book, median price-to-tangible book and median price-to-earnings multiples provide a peer group baseline, further analysis is required in evaluating FMB Banking Corporation's historical performance as compared with its peer group. Generally, higher comparative earnings growth rates and higher return-on-equity levels are associated with above-average valuation multiples.

At September 30, 2003, FMB Banking Corporation's book value per share was approximately \$50.94, its tangible book value per share was approximately \$50.94 and its earnings per share for the last twelve months ended September 30, 2003 was approximately \$6.91. Because FMB Banking Corporation's historical earnings growth rate and return-on-equity have been in-line with the median level of its selected peer group, Kendrick Pierce Securities assigned FMB Banking Corporation a price-to-book, price-to-tangible book and price-to-earnings multiple that was at the median range of its peers. Accordingly, Kendrick Pierce Securities' valuation conclusion of one share of FMB Banking

Corporation's common stock under the Peer Group Stock Trading Multiple Analysis approach, after factoring in what Kendrick Pierce Securities considered to be an appropriate adjustment to account for FMB Banking Corporation common stock's marketability and the level of shareholder influence on matters subject to shareholder vote, was \$83.74 per share, which equates to a 1.64 price-to-book multiple and a 12.07 price-to-earnings multiple for FMB Banking Corporation's common stock.

**Analysis Under DPV Approach.** Kendrick Pierce Securities also applied a discounted cash flow model based on a multiple of earnings, which included an assumed increase in earnings at FMB Banking Corporation's historical growth rate. Based on the assumptions applied by Kendrick Pierce Securities, which included a risk-adjusted discount rate of 13%, the DPV approach suggested a valuation conclusion of one share of FMB Banking Corporation's common stock, after factoring in what Kendrick Pierce Securities considered to be an appropriate adjustment to account for FMB Banking Corporation common stock's marketability and the level of shareholder influence on matters subject to shareholder vote, of \$84.79 per share.

**Other Indicators of Value.** In reaching its final valuation conclusion, Kendrick Pierce Securities also considered recent trades of FMB Banking Corporation's common stock, including their frequency, trade size, related party affiliation and other similar considerations. Additionally, Kendrick Pierce Securities considered the valuation analysis and conclusions rendered by an independent appraiser in connection with FMB Banking Corporation's employee stock ownership plan.

**Final Determination of Fair Value.** Application of the foregoing methodologies and factors produced a range of values for FMB Banking Corporation's common stock. Based on FMB Banking Corporation's historical operating performance, current financial condition, competition, anticipated growth and various economic factors, as generally discussed above, Kendrick Pierce Securities determined that the fair market valuation range for one share of FMB Banking Corporation common stock was between \$83.74 and \$84.79.

The above description of Kendrick Pierce Securities' valuation opinion is qualified in its entirety to the actual Valuation Opinion report and letter dated November 5, 2003 summarizing its valuation analysis. This report and letter will be made available for inspection and copying at FMB Banking Corporation's principal executive offices during its regular business hours by any interested shareholder or his or her representative who has been so designated in writing. We will mail a copy of this summary to any interested shareholder or his or her representative upon written request and at the expense of the requesting shareholder.

## FINANCIAL STATEMENTS

An annual report containing FMB Banking Corporation's audited financial statements for 2002 and 2001 prepared in conformity with accounting principles generally accepted in the United States was previously furnished to shareholders in connection with FMB Banking Corporation's 2003 annual shareholders meeting held on March 20, 2003. If you did not receive a copy of the annual report containing FMB Banking Corporation's financial statements or would like to request another copy of FMB Banking Corporation's audited financial statements for 2002 and 2001, please call Jerald Ikner at (850) 997-2591 or send a written request to: FMB Banking Corporation, 200 E. Washington Street, Monticello, Florida 32345. FMB Banking Corporation's financial statements are made available to shareholders as supplemental information only. They are not a part of this proxy statement nor are they incorporated herein by reference.

FMB Banking Corporation's audited financial statements for 2002 and 2001 were prepared by James D.A. Holley & Co., P.A., independent certified public accountants.

## **LEGAL MATTERS**

The tax consequences of the reorganization have been passed upon by Powell, Goldstein, Frazer & Murphy LLP, Atlanta, Georgia.

## **OTHER MATTERS**

The board of directors of FMB Banking Corporation knows of no other matters that may be brought before the meeting. If, however, any matter other than the proposed reorganization or matters incident to the proposed reorganization should properly come before the meeting, votes will be cast pursuant to the proxies in accordance with the best judgment of the proxy holders.

Whether or not you plan to attend the special meeting, please complete, sign, date and return the enclosed proxy promptly. An envelope has been provided for that purpose. No postage is required if the proxy is mailed in the United States.

November 12, 2003

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## APPENDIX A

### **AGREEMENT AND PLAN OF REORGANIZATION**

THIS AGREEMENT AND PLAN OF REORGANIZATION (the "Plan of Reorganization") is made and entered into as of the 4<sup>th</sup> day of November 2003, by and between FMB Banking Corporation ("FMB"), a Florida corporation, and FMB Interim Corp ("Interim"), a Florida corporation.

#### WITNESSETH

WHEREAS, in order to reorganize FMB as a Subchapter S Corporation, FMB has caused Interim to be organized as a Florida corporation for the sole purpose of effecting this Plan of Reorganization by merging Interim with and into FMB, with FMB being the surviving corporation;

WHEREAS, in connection with the reorganization, FMB will elect to be taxed in accordance with the provisions of Subchapter S of the Internal Revenue Code (the "Code");

WHEREAS, the authorized capital stock of FMB consists of a combined 1,000,000 shares of Class A and Class B common stock ("FMB Common Stock"), \$.10 par value, of which 416,903 shares of Class A common stock and no shares of Class B common stock are issued and outstanding;

WHEREAS, the authorized capital stock of Interim consists of 2,000,000 shares of common stock ("Interim Common Stock"), \$.10 par value, of which one (1) share is issued and outstanding;

WHEREAS, the respective Boards of Directors of FMB and Interim deem it advisable and in the best interests of FMB and Interim and their respective shareholders that Interim be merged with and into FMB in accordance with this Plan of Reorganization;

WHEREAS, the respective Boards of Directors of FMB and Interim, by resolutions duly adopted, have approved and adopted this Plan of Reorganization and directed that it be submitted to the respective shareholders of FMB and Interim for their approval; and

NOW, THEREFORE, in consideration of the premises, mutual covenants and agreements herein contained, and for the purpose of stating the method, terms and conditions of the merger provided for herein, the mode of carrying the same into effect, the manner and basis of converting and exchanging the shares of FMB Common Stock and Interim Common Stock as hereinafter provided, and such other provisions relating to the reorganization and merger as the parties deem necessary or desirable, the parties hereto agree as follows:

#### **SECTION 1**

#### REORGANIZATION

Pursuant to the applicable provisions of Florida law, Interim shall be merged with and into FMB (the "Reorganization") to facilitate FMB's ability to elect to be taxed as a Subchapter S Corporation. FMB shall be the survivor of the merger (the "Surviving Corporation"). Immediately following the Effective Date, as defined in Section 2, FMB shall elect to be taxed as a Subchapter S Corporation in accordance with Section 1362(a)(1) of the Code.

## SECTION 2

### EFFECTIVE DATE OF THE REORGANIZATION

The Merger of Interim with and into FMB shall be effective as of the date specified in the certificate of merger to be issued by the Florida Secretary of State, or if none, the effective date designated in the certificate or articles of merger filed by FMB with the Florida Secretary of State (the "Effective Date").

## SECTION 3

### LOCATION, ARTICLES AND BYLAWS, AND MANAGEMENT

On the Effective Date:

(a) The principal office of the Surviving Corporation shall be located at 200 E. Washington Street, Monticello, Jefferson County, Florida 32345, or such other location where FMB is located immediately prior to the Effective Date of the Reorganization.

(b) Except as provided for in Exhibit A, the Articles of Incorporation and Bylaws of the Surviving Corporation shall be the same as the Articles of Incorporation and Bylaws of FMB as in effect immediately prior to the Effective Date of the Reorganization.

(c) The directors and officers of the Surviving Corporation shall be the directors and officers of FMB immediately prior to the Effective Date of the Reorganization. All such directors and officers of the Surviving Corporation shall serve until their respective successors are elected or appointed pursuant to the Bylaws of the Surviving Corporation.

## SECTION 4

### EXISTENCE, RIGHTS, DUTIES, ASSETS, AND LIABILITIES

(a) As of the Effective Date of the Reorganization, the existence of Interim as a separate entity shall cease, but its existence shall continue in the Surviving Corporation.

(b) As of the Effective Date of the Reorganization, the Surviving Corporation shall have, without further act or deed, all of the properties, rights, powers, trusts, duties and obligations of FMB and Interim.

(c) As of the Effective Date of the Reorganization, the Surviving Corporation shall have the authority to engage only in such businesses and to exercise only such powers as are provided for in the Articles of Incorporation of the Surviving Corporation, and the Surviving Corporation shall be subject to the same prohibitions and limitations to which it would be subject upon original incorporation, except that the Surviving Corporation may engage in any business and may exercise any right that FMB or Interim could lawfully have exercised or engaged in immediately prior to the Effective Date of the Reorganization.

(d) No liability of FMB or Interim or of any of their shareholders, directors or officers shall be affected by the Reorganization, nor shall any lien on any property of FMB or Interim be impaired by the Reorganization. Any claim existing or any action pending by or against FMB or Interim may be prosecuted to judgment as if the Reorganization had not taken place, or the Surviving Corporation may be substituted in place of FMB or Interim.

## SECTION 5

### EFFECT OF MERGER ON INTERIM SHAREHOLDERS

Each share of Interim Common Stock outstanding immediately prior to the Effective Date of the Reorganization shall be cancelled and shall no longer be outstanding.

## SECTION 6

### MANNER AND BASIS OF CONVERTING SHARES OF FMB COMMON STOCK

(a) Conversion of Shares. The manner and basis of converting shares of FMB Common Stock, which are outstanding immediately prior to the Effective Date of the Reorganization, into cash or new shares of FMB Common Stock (the "FMB New Common Stock"), excluding those shares of FMB Common Stock held by shareholders who have perfected dissenters' rights of appraisal under the applicable provisions of the Florida Business Corporation Act, Section 607.1301, et seq. (the "Dissenters' Rights Provisions"), shall be as follows:

(1) Ineligible Subchapter S Shareholders. Each share of FMB Common Stock which is held of record, as of the record date for the special meeting of FMB shareholders at which this Plan or Reorganization will be voted upon (the "Record Date"), by an FMB shareholder or, if such share is held by the shareholder as a street name nominee, then each share of FMB Common Stock which is beneficially owned by a person (such shareholder of record or such beneficial owner, as the case may be, is referred to hereafter as the "Shareholder") who is not eligible under the Code to be a shareholder of a Subchapter S Corporation will, by virtue of the Reorganization and without any action on part of any person, be converted into the right to receive cash, payable by the Surviving Corporation, in the amount of \$95.00 per share of FMB Common Stock.

(2) Eligible Subchapter S Shareholders: Documentation Required. Each share of FMB Common Stock which is held, as of the Record Date, by a Shareholder who is eligible to be a shareholder of a Subchapter S Corporation, but who fails to execute the Shareholders Agreement attached hereto as Exhibit B (the "Shareholders Agreement") and the Form 2553 attached hereto as Exhibit C (the "Form 2553") relating to FMB's Subchapter S Corporation Election will, by virtue of the Reorganization and without any action on part of any person, be converted into the right to receive cash, payable by the Surviving Corporation, in the amount of \$95.00 per share of FMB Common Stock.

(3) Eligible Subchapter S Shareholders Below the Share Threshold. Except as modified by Section 6(a)(5), each share of FMB Common Stock held by a Shareholder who is the holder, as of the Record Date, of less than 700 shares of FMB Common Stock shall be converted into the right to receive cash, payable by the Surviving Corporation, in the amount of \$95.00 per share of FMB Common Stock.

(4) Eligible Subchapter S Shareholders: General Qualifications. Except as modified by Section 6(a)(5), each share of FMB Common Stock held by a Shareholder who is the holder, as of the Record Date, of 700 or more shares of FMB Common Stock shall be converted into the right to receive one share of FMB New Common Stock if the Shareholder of each such share:

- (i) is eligible under the Code to be a shareholder of a Subchapter S Corporation;
- (ii) signs and delivers the Shareholders Agreement to FMB; and
- (iii) signs and delivers the Form 2553 to FMB.

(5) Share Threshold Exceptions.

- (i) in the event the Shareholder, as of the Record Date, is a corporation, partnership, limited liability company or other entity or organization which is not eligible to be a shareholder of a Subchapter S Corporation under Section

6(a)(4), such Shareholder may transfer some or all of its shares of FMB Common Stock after the Record Date to one or more persons who hold an ownership or pecuniary interest in the Shareholder on the Record Date, and any such transferee will be deemed to be the owner (as of the Record Date) of such FMB Common Stock transferred to the transferee for purposes this Plan of Reorganization, provided that such transfer occurs on or prior to December 31, 2003.

- (ii) In the event the shares of FMB Common Stock, as of the Record Date, are held in the name of two or more persons (except for shares held jointly with a spouse), then solely for purposes of this Plan of Reorganization FMB shall treat (unless the named persons can evidence otherwise to the satisfaction of FMB's board of directors) each named person as being the Shareholder of his or her pro rata portion of the FMB Common Stock in question. For example, if a single stock certificate for 1,500 shares was issued to John Doe and/or Jane Doe, unless John Doe and Jane Doe are husband and wife, John Doe and Jane Doe will each be deemed to be the beneficial owner of 750 shares in determining whether they each meet the share threshold specified in Section 6(a)(3). Upon the consent of all persons holding FMB Common Stock jointly or in common, as of the Record Date, such persons may elect to recertify such FMB Common Stock prior to December 31, 2003 to clarify their ownership interests, provided that such recertification does not result in the transfer of shares of FMB Common Stock to a person who was not originally named as a record or beneficial owner of such shares as of the Record Date.
- (iii) Except for shares held jointly with a spouse or as approved by the board of directors of FMB, (A) a person cannot claim to be the Shareholder of the same share of FMB Common Stock for purposes of this Plan or Reorganization, and (B) in the event a Shareholder is permitted to exchange his or her shares of FMB Common Stock for FMB New Common Stock pursuant to this Plan of Reorganization, the stock certificate(s) evidencing such converted shares will only be permitted to list one person's name as the record owner thereof. For example, if pursuant to the example set forth in Section 6(a)(5)(ii) John Doe and Jane Doe are each deemed to be the Shareholder of 750 shares, after the Reorganization is effected, John Doe and Jane Doe will each receive a stock certificate in his or her own name only evidencing 750 shares of FMB New Common Stock in exchange for their one stock certificate issued by FMB prior to the Reorganization in both of their names which represented 1,500 shares of FMB Common Stock.

(b) Shares Held in a Qualified Retirement Plan of FMB. Any shares of FMB Common Stock credited to participants under FMB's employee stock ownership plan (the "ESOP"), including any shares of FMB Common Stock transferred by participants through one or more direct rollovers to the ESOP on or prior to December 31, 2003, will be permitted to be exchanged for shares of FMB New Common Stock in accordance with the terms of this Plan of Reorganization. Notwithstanding the foregoing, if:

- (1) any participant's account in the ESOP individual holds sufficient FMB Common Stock to equal or exceed ten (10) percent or more of the total shares in the ESOP after the Reorganization occurs, or
- (2) the combination of any participants' accounts who are family members under Internal Revenue Code ("Code") Section 409(p)(4)(D) holds sufficient FMB Common Stock to equal or exceed twenty (20) percent or more of the total shares in the ESOP after the Reorganization occurs,

sufficient shares in such accounts will be redeemed under this Reorganization so that the number of shares in these accounts is less than the thresholds under subparagraphs (1) and (2) above. The trustees of the ESOP shall determine in a nondiscriminatory fashion which accounts shall be affected by this redemption.

(c) Rights of Former FMB Shareholders. As of the Effective Date of the Reorganization, each certificate theretofore representing one or more outstanding shares of FMB Common Stock shall be deemed for all corporate purposes to evidence only the right to receive a certificate representing shares of FMB New Common Stock or cash in accordance with this Plan of Reorganization.

(d) Election Form and Shareholders Agreement. Notwithstanding any other provisions of this Section 6, if a Shareholder is eligible to be a shareholder of a Subchapter S Corporation and wants to receive FMB New Common Stock in the Reorganization, he or she must complete and sign (1) the Shareholders Agreement (see Exhibit B), (2) the Form 2553 (see Exhibit C) and (3) a Shareholder Election Form (the form of which shall be established by the Board of Directors of FMB) and return all such documents to FMB at or before the date and time selected by FMB and set forth in the proxy statement sent to FMB shareholders in connection with the solicitation of shareholder approval of this Plan of Reorganization (the "Delivery Date"). Regardless of his or her eligibility otherwise to receive FMB New Common Stock, any Shareholder who fails to deliver a properly executed Shareholders Agreement, Form 2553 and Shareholder Election Form at or before the Delivery Date shall receive \$95.00 cash per share for his or her FMB Common Stock, unless the Board of Directors of FMB, at its sole discretion, accepts such documents after the Delivery Date.

(e) Failure to Surrender FMB Common Stock Certificates. Until a Shareholder surrenders his or her FMB Common Stock certificate or certificates to FMB (or suitable arrangements are made to account for any lost, stolen or destroyed certificates according to procedures established by FMB), the Shareholder:

(1) shall not be issued a certificate representing the shares of FMB New Common Stock or the cash, which such FMB Common Stock certificate may entitle the shareholder to receive;

(2) shall not be paid dividends or other distributions in respect of the shares of FMB New Common Stock which such FMB Common Stock certificate may entitle the Shareholder to receive; instead, such dividends or distributions shall be retained, without interest, for the Shareholder's account until surrender of such FMB Common Stock certificate; and

(3) shall not be paid interest on any cash payment, which such FMB Common Stock certificate may entitle the Shareholder, as to the cash payment, to receive.

After the Effective Date of the Reorganization, each Shareholder shall, however, be entitled to vote at any meeting of the Surviving Corporation's shareholders the number of shares of FMB New Common Stock which such Shareholder may be entitled to receive as a result of the Reorganization, regardless of whether the Shareholder has surrendered his or her FMB Common Stock certificate or certificates to FMB.

(f) Failure to Consummate the Merger. In the event that this Plan of Reorganization is terminated as provided under Section 10 of this Plan of Reorganization and the Reorganization is not consummated, all FMB Common Stock certificates received by FMB pursuant to this Section 6 shall be returned to the holder of record of the certificate within 30 days of the termination of this Plan of Reorganization.

## SECTION 7

### ACQUISITION OF DISSENTERS' STOCK

FMB shall pay to any Shareholder who fully complies with the Dissenters' Rights Provisions an amount of cash (as determined under such Provisions) for his or her shares of FMB Common Stock in accordance with such Dissenters' Rights Provisions. To the extent permitted by law, the shares of FMB Common Stock so acquired shall be cancelled.

## SECTION 8

### FURTHER ACTIONS

From time to time, as and when requested by the Surviving Corporation, or by its successors or assigns, FMB shall execute and deliver or cause to be executed and delivered all such deeds and other instruments, and shall take or cause to be taken all such other actions, as the Surviving Corporation, or its successors and assigns, may deem necessary or desirable in order to vest in and confirm to the Surviving Corporation, and its successors and assigns, title to and possession of all the property, rights, powers, trusts, duties and obligations referred to in Section 4 hereof and otherwise to carry out the intent and purposes of this Plan of Reorganization.

## SECTION 9

### CONDITIONS PRECEDENT TO CONSUMMATION OF THE REORGANIZATION

This Plan of Reorganization is subject to, and consummation of the Reorganization herein provided for is conditioned upon, the fulfillment prior to the Effective Date of the Reorganization of each of the following conditions:

- (a) Approval of the Plan of Reorganization by the affirmative vote of the holders of a majority of the outstanding shares of FMB Common Stock and Interim Common Stock;
- (b) The number of shares held by persons who have perfected dissenters' rights of appraisal pursuant to the Dissenters' Rights Provisions shall not be deemed by the parties hereto to make consummation of this Plan of Reorganization inadvisable;
- (c) Procurement of any action, consent, approval or ruling, governmental or otherwise, which is, or in the opinion of counsel for FMB and Interim may be, necessary to permit or enable the Surviving Corporation, upon and after the Reorganization, to conduct all or any part of the business and activities conducted by the FMB prior to the Reorganization;
- (d) The receipt by FMB and Interim of a written opinion of special counsel to FMB and Interim that for federal income tax purposes no gain or loss will be recognized by a shareholder who exchanges his or her FMB Common Stock for FMB New Common Stock, as provided by this Plan of Reorganization; and
- (e) The ability of the Surviving Corporation to satisfy all of the requirements to make the election to be a Subchapter S Corporation under the Code.

## SECTION 10

### TERMINATION

In the event that:

- (a) The number of shares of Interim Common Stock or FMB Common Stock voted against the Reorganization shall make consummation of the Reorganization inadvisable in the opinion of the Board of Directors of FMB or Interim;
- (b) Any action, consent, approval, opinion, or ruling required to be provided by Section 10 of this Plan of Reorganization shall not have been obtained; or
- (c) For any other reason consummation of the Reorganization is deemed inadvisable in the opinion of the Board of Directors of FMB or Interim;

then this Plan of Reorganization may be terminated at any time before consummation of the Reorganization by written notice, approved or authorized by the Board of Directors of the party wishing to terminate, to the other party. Upon termination by written notice as provided by this Section 10, this Plan of Reorganization shall be void and of no further effect except as provided under Section 6(f) of this Plan of Reorganization, and there shall be no liability by reason of this Plan of Reorganization or the termination hereof on the part of FMB, Interim, or their directors, officers, employees, agents or shareholders.

## SECTION 11

### AMENDMENT; WAIVER

(a) At any time before or after approval and adoption hereof by the respective shareholders of FMB and Interim, this Plan of Reorganization may be amended by written agreement by FMB and Interim; provided, however, that after the approval and adoption of this Plan of Reorganization by the shareholders of FMB and Interim, no amendment reducing the consideration payable to FMB and Interim shareholders shall be valid without having been approved by the shareholders of FMB and Interim in the manner required for approval of this Plan of Reorganization.

(b) A waiver by any party hereto of any breach of a term or condition of this Plan of Reorganization shall not operate as a waiver of any other breach of such term or condition or of other terms or conditions, nor shall failure to enforce any term or condition operate as a waiver or release of any other right, in law or in equity, or claim which any party may have against another party for anything arising out of, connected with or based upon this Plan of Reorganization. A waiver shall be effective only if evidenced by a writing signed by the party who is entitled to the benefit of the term or condition of this Plan of Reorganization which is to be waived. A waiver of a term or condition on one occasion shall not be deemed to be a waiver of the same or of any other term or condition on a future occasion.

## SECTION 12

### BINDING EFFECT; COUNTERPARTS; HEADINGS; GOVERNING LAW

This Plan of Reorganization is binding upon the parties hereto and upon their successors and assigns. This Plan of Reorganization may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The title of this Plan of Reorganization and the headings herein set out are for convenience or reference only and shall not be deemed a part of this Plan of Reorganization. This Plan of Reorganization shall be governed by and construed in accordance with the laws of the State of Florida. The Board of Directors of FMB shall be authorized to interpret and implement this Plan of Reorganization and shall be the exclusive arbitrating body with respect to any dispute, disagreement or issue arising hereunder.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Plan of Reorganization to be executed by their duly authorized officers and their corporate seals to be affixed hereto all as of the day and year first above written.

**FMB BANKING CORPORATION**

By: *[Signature]*  
Name: F.W. Carraway Jr.  
Title: Chairman

ATTEST:

*[Signature]*  
Name: F. Wilson Carraway Jr.  
Secretary

**FMB INTERIM CORP**

By: *[Signature]*  
Name: Sam Lester  
Title: President

ATTEST:

*[Signature]*  
Name: F. Wilson Carraway Jr.  
Secretary



**EXHIBIT A**

**ARTICLES OF AMENDMENT TO  
THE  
ARTICLES OF INCORPORATION  
OF  
FMB BANKING CORPORATION**

Pursuant to Section 607.1006 Florida Business Corporation Act (the "Act"), FMB Banking Corporation (the "Corporation") hereby adopts the following Articles of Amendment, to wit:

1.

The name of the Corporation is **FMB Banking Corporation**.

2.

The street address of the Corporation's main office is 200 East Washington Street, Monticello, Jefferson County, Florida 32345.

3.

In accordance with the Act, the shareholders of the Corporation approved the resolution to amend its Articles of Incorporation as specified herein at a duly called special meeting of shareholders held at the main office of the Corporation on December 11, 2003.

4.

In accordance with the Act, the Corporation hereby deletes, in its entirety, Article IV of the Corporation's Articles of Incorporation and replaces it with the following new Article IV:

**"ARTICLE IV**

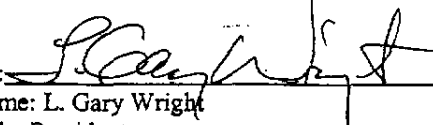
"The corporation shall have authority to issue One Million (1,000,000) shares of voting common stock, \$.10 par value, and One Million (1,000,000) shares of non-voting common stock, \$.10 par value. The authorized shares of non-voting common stock shall have identical terms, conditions, designations, preferences, limitations and relative rights as that of authorized shares of voting common stock except for the voting rights associated with such voting common stock, and then only to the extent such voting rights differential is permitted under Subchapter S of the Internal Revenue Code, as amended, of the United States or the then applicable revenue rulings and regulations of the Internal Revenue Services as promulgated thereunder. Preemptive rights are hereby denied as to all authorized shares of the corporation."

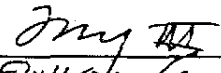
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IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be executed and its corporation seal to be affixed hereto, and caused the foregoing to be attested, all by its duly authorized corporate officers this 23 day of December, 2003.

[SEAL]

FMB BANKING CORPORATION

By:   
Name: L. Gary Wright  
Title: President

Attest:   
Name: F. Wilson Conway III  
Title: Secretary

## **APPENDIX B**

### **FMB BANKING CORPORATION SHAREHOLDERS AGREEMENT**

**THIS SHAREHOLDERS AGREEMENT** (the "Agreement"), made by and among FMB BANKING CORPORATION, a Florida corporation (the "Company"), and the shareholders of the Company listed on Schedule I hereto and any future shareholder of the Company (individually, a "Shareholder," and collectively, the "Shareholders"), is dated as of the effective date of the Reorganization of the Company, as defined below (December 31, 2003).

#### **WITNESSETH:**

**WHEREAS**, the Board of Directors of the Company believes it is in the best interest of the Company and its shareholders to be taxed as a Subchapter S corporation for federal income tax purposes;

**WHEREAS**, the Board of Directors and shareholders of the Company have authorized a reorganization of the Company to a Subchapter S corporation through the merger of FMB Interim Corp with and into the Company (the "Reorganization");

**WHEREAS**, the existing Shareholders as of the date of this Agreement and all future shareholders of the Company will become parties to this Agreement;

**WHEREAS**, on the date hereof, the Shareholders are the sole owners of all of the outstanding shares of the Company's Common Stock, the only class of Company stock that is issued and outstanding, with each such individual owning the number of Shares (as defined in Section 12) set forth on Schedule I hereof;

**WHEREAS**, each Shareholder is either an individual (who is not a nonresident alien), an estate, a trust described in Section 1361(c)(2) of the Internal Revenue Code (the "Code"), including a trust for which an election is in effect under Section 1361(d) or (e) of the Code, or an organization described in Section 1361(c)(6) of the Code;

**WHEREAS**, the number of Shareholders of the Company is not more than seventy-five (75);

**WHEREAS**, the Company otherwise satisfies all other requirements for making an election to be taxed in accordance with the provisions of Subchapter S of the Code, and the Company desires to make, and the Shareholders wish to consent to, such an election; and

**WHEREAS**, the Company and the Shareholders desire to enter into this Agreement to prevent the inadvertent termination of that election, knowing that it is in the best interests of the Company and fair to each of the Shareholders.

**NOW, THEREFORE**, for and in consideration of the premises, the sum of Ten Dollars (\$10.00), the mutual agreements and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Transfer Restrictions.**

- (a) **General Restriction.** No Shareholder may sell, assign, transfer, pledge, hypothecate, mortgage, encumber, or otherwise dispose of any Shares, whether voluntarily, involuntarily or by operation of law (collectively, a "Disposition") except as expressly

provided in this Agreement. Any attempted Disposition of Shares that is not in accordance with the terms of this Agreement shall be void ab initio and will not be reflected in the Company's records. All Shares held by the Shareholders are subject to purchase by the Company pursuant to this Agreement.

- (b) Permitted Transfer. A Shareholder may make a Permitted Transfer, provided that the Disposition satisfies all of the Transfer Conditions set forth in Section 1(c). "Permitted Transfer" means the Disposition of (i) all Shares held by a Shareholder to one and only one member of a class consisting of a Shareholder's spouse, lineal ancestors or descendants, brothers, sisters, children and grandchildren (or a qualifying trust for the benefit of any one member of such class), (ii) some or all of the Shares held by a Shareholder to another Shareholder, or (iii) any Shares held by a Shareholder which is approved in advance by the affirmative vote of 66-2/3% of the directors of the Company then holding office.
- (c) Transfer Conditions. Any Permitted Transfer by a Shareholder must satisfy all of the following conditions (the "Transfer Conditions"):
  - (i) the transferee must satisfy all of the then-existing ownership requirements with respect to the stock of a corporation that has in effect an election to be taxed under the provisions of Subchapter S of the Code;
  - (ii) the number of shareholders of the Company must not increase as a result of the Disposition (unless the number of shareholders after the Disposition is less than 87% of the number of permitted shareholders set forth in Section 1361(b)(1)(A), or any successor section, of the Code or the Board approves the increase);
  - (iii) the number of shares Beneficially Owned (as defined in Section 12) by the transferee must not exceed 5% of the outstanding shares of the Company's Common Stock (or such greater percentage which has been previously approved by the Board of Directors of the Company as provided in this Section 1(c)(iii)) unless the increased percentage is approved by the affirmative vote of at least 66-2/3% of the directors of the Company then holding office; and
  - (iv) the transferring Shareholder (or the transferring Shareholder's Representative) (as defined in Section 4(a)) must have obtained the written agreement of the proposed transferee (satisfactory in form and substance to the Company), including without limitation any pledgee, that such transferee will be bound by, and the Shares proposed to be transferred will be subject to, this Agreement.

2. Sale of Shares. A Shareholder who receives a Qualified Offer (as defined in Section 12) for the Shareholder's Shares may sell or otherwise transfer such Shareholder's Shares if the Shareholder complies with this Section.

(a) Notice of Proposed Sale. A Shareholder who receives a Qualified Offer, and who wishes to sell such Shares, must promptly send a written notice to the Company (the "Notice"), and shall offer (or be deemed to have offered), to sell such Shares (the "Offered Shares") to the Company. The Notice must include the identity of the proposed transferee, the terms of the transfer, and the price offered by the proposed transferee for the Offered Shares. The selling Shareholder shall be bound to the terms of the Qualified Offer as stated in the Notice, and shall keep the Company informed of any material changes in the proposed transfer. The selling Shareholder shall also provide the Company with any other information regarding the Qualified Offer and the proposed transfer if such information is reasonably requested by the Company.

(b) Purchase Option. The Company shall have thirty (30) days from its receipt of the Notice in which to elect to purchase all of the Offered Shares.

(c) Price. The purchase price for the Offered Shares shall be the price contained in the

Qualified Offer.

(d) Terms of Purchase. The price shall be paid on substantially the same terms as the terms contained in the Qualified Offer.

(e) Closing. The closing of the purchase and sale contemplated by this Section shall occur at the offices of the Company no later than 10:00 a.m. on the sixtieth (60<sup>th</sup>) day immediately following the expiration of the option period provided in Section 2(b).

(f) Waiver. Unless the Company agrees to purchase all (and not less than all) of the Offered Shares, the Company shall endorse upon the certificate or certificates evidencing the Offered Shares the specific waiver by the Company of the noticed transaction, so as to permit the transfer of such Shares. Any transfer shall be made only in strict accordance with the terms stated in the Notice and the terms of this Agreement. If the selling Shareholder shall fail to make the sale within sixty (60) days following the endorsement of the Offered Shares, the waiver for such sale shall lapse.

(g) Transfer Conditions Applicable. The sale must satisfy all of the Transfer Conditions set forth in Section 1(c). Any person acquiring the Offered Shares shall take the Offered Shares subject to all of the terms, conditions, and options of this Agreement and shall be required to execute and deliver a copy of this Agreement prior to the receipt by such person of any certificates representing the Offered Shares.

3. Pledge of Shares. A Shareholder may pledge his or her outstanding Shares of the Company that he or she holds to a lender (the "Lender") as collateral (the "Collateral Shares") to secure repayment of a loan if the Shareholder complies with this Section.

(a) Notice of Default. In the event the pledging Shareholder defaults and the Lender is entitled and intends to force the sale of Collateral Shares in order to secure payment of the debt, the Lender must promptly send a written notice to the Company (the "Lender's Notice") (with a copy to the pledging Shareholder) and shall offer (or be deemed to have offered) to sell all of the Collateral Shares to the Company. The Lender's Notice must include the number of Collateral Shares offered, the balance of the loan, the identity of the proposed transferee, the terms of the transfer and the price at which the Lender is offering the Collateral Shares to the proposed transferee. The Lender shall also provide the Company with any other information regarding the proposed transfer if such information is reasonably requested by the Company.

(b) Purchase Option. The Company shall have thirty (30) days from its receipt of the Lender's Notice in which to elect to purchase all of the Collateral Shares.

(c) Price. The purchase price for the Collateral Shares shall be the price contained in the Lender's Notice, but in no event shall be less than the Fair Market Value of the Shares as defined in Section 4(d)(i) to this Agreement as of the date the Lender's Notice is delivered to the Company.

(d) Terms of Purchase. The price shall be paid on substantially the same terms as the terms contained in the Lender's Notice.

(e) Closing. The closing of the purchase and sale contemplated by this Section shall occur at the offices of the Company no later than 10:00 a.m. on the sixtieth (60<sup>th</sup>) day immediately following the expiration of the option period provided for in Section 3(b).

(f) Waiver. If the Company does not agree to purchase all (and not less than all) of the Collateral Shares, the Company shall endorse upon the certificate or certificates evidencing the Collateral Shares the specific waiver by the Company of the noticed transaction, so as to permit the transfer of the Collateral Shares. Any transfer shall be made only in strict accordance with the terms stated in the Lender's Notice and the terms of this Agreement. If the Lender, acting on the pledging Shareholder's behalf, shall fail to make the sale within sixty (60) days following endorsement of the Collateral Shares, the waiver for such sale shall lapse, and the Collateral Shares shall remain owned by, and registered in the name of, the pledging Shareholder.

(g) Transfer Conditions Applicable. The sale must satisfy all of the Transfer Conditions set forth in Section 1(c). Any person acquiring the Collateral Shares shall take the Collateral Shares subject to all of the terms, conditions, and options of this Agreement and shall be required to execute and deliver a copy of this Agreement prior to receipt by any such person of any certificates representing the Collateral Shares.

4. Death of Shareholder.

(a) Generally. Upon the death of a Shareholder, the deceased Shareholder's estate, executor, personal representative or other successor in interest (the "Shareholder's Representative") must sell the deceased Shareholder's Shares to the Company, to the extent the Company exercises its right to acquire the deceased Shareholder's Shares under this Section 4. Any purchase or sale of Shares pursuant to this Section 4 shall be for the purchase price and upon the terms set forth below.

(b) Purchase Option.

(i) Upon the death of any Shareholder, the Company may, for a period of thirty (30) days from the date of the Company's actual knowledge of such Shareholder's death, exercise its option to purchase from the deceased Shareholder's Representative all or any portion of such Shareholder's Shares, but if the Company elects to purchase less than all of such Shareholder's Shares, the Shareholder's Representative will not be bound to sell such portion of the Shares to the Company.

(ii) The Company shall not exercise this option if the Disposition of the Shares formerly held by the deceased Shareholder would result in a Permitted Transfer and such Permitted Transfer satisfies all of the Transfer Conditions of Section 1(c).

(c) Failure to Exercise. If the Shares of the deceased Shareholder are not purchased as contemplated above, through no fault of the Shareholder's Representative, such Representative or any beneficiary or heir of the deceased Shareholder succeeding in ownership of the Shares shall remain the owner of such Shares subject to this Agreement, provided that such transferee agrees in writing (satisfactory in form and substance to the Company), that such transferee will be bound by, and the Shares of such transferee will be subject to, this Agreement.

(d) Purchase Price. The purchase price per share to be paid for any Shares sold by a Shareholder's Representative to the Company pursuant to this Agreement must be equal to the greater of Fair Market Value Per Share or Book Value Per Share.

(i) Fair Market Value Per Share means the fair market value per share as determined reasonably and in good faith by the Company's Board of Directors, which means the price a third party would pay for the Shares owned by the Shareholder's Representative as of the applicable valuation date on a per share basis.

(ii) Book Value Per Share means book value per share as determined reasonably and in good faith by the Company's Board of Directors as of the quarter-end prior to the applicable valuation date, based on the Company's Consolidated Financial Statements prepared in accordance with generally accepted accounting principles as of such quarter end.

(iii) If the executor of the Shareholder's estate, or any beneficiary or heir of the deceased Shareholder (collectively referred to in this Section 4(d) as the "Selling Shareholder") is a member of the Board of Directors of the Company, the selling Shareholder shall not participate in the determination of the Fair Market Value Per Share.

(e) Appraisal Rights. If the selling Shareholder does not agree with the Fair Market Value Per Share as determined by the Board of Directors, the selling Shareholder and the Company shall engage a qualified, independent appraiser (the "Appraiser"), experienced in appraising companies similar to the Company, to determine the Fair Market Value Per Share. The Company and the selling Shareholder must supply all information necessary to

allow the Appraiser to perform the appraisal, and the Appraiser will be instructed to use its best efforts to complete the appraisal within thirty (30) days. The Fair Market Value Per Share determined by the Appraiser will, absent fraud, be final and binding upon all parties to the particular transaction, free of challenge or review in any court. Upon the completion of the appraisal, the Appraiser will provide the Company and the other parties instituting the appraisal procedures a written determination of the Fair Market Value Per Share. All costs associated with such an appraisal will be borne equally by the selling Shareholder and the Company.

(f) Purchase Price Determination Date. The Fair Market Value Per Share shall be determined as of the date of the death of the Shareholder.

(g) Terms of Purchase. At the election of the Company, it must pay the purchase price at closing by the delivery of either cash or certified cashiers' check.

(h) Closing. The closing of each purchase and sale of Shares contemplated by this Section 4 must occur at the offices of the Company no later than 10:00 a.m. on the later to occur of:

(i) the sixtieth (60<sup>th</sup>) day following the determination of the purchase price for the Shares pursuant to Section 4(d) above;

(ii) the sixtieth (60<sup>th</sup>) day following the qualification of the executor or personal representative of the estate of the deceased Shareholder (if applicable under the circumstances);

(iii) the sixtieth (60<sup>th</sup>) day following the date of the qualification of a guardian for the property of the deceased Shareholder (if applicable under the circumstances); or

(iv) the sixtieth (60<sup>th</sup>) day following the date upon which the Company timely exercises its right to purchase Shares pursuant to Section 4(b).

5. Management.

(a) The Board of Directors shall manage the business and affairs of the Company in accordance with the Company's Articles of Incorporation and its Bylaws; provided, however, that the Board of Directors, and the officers of the Company acting at the direction of the Board of Directors, shall refrain from taking the following actions:

(i) doing any act in contravention of this Agreement; or

(ii) issuing additional Shares of Company stock such that the Company loses its eligibility to be taxed in accordance with the provisions of Subchapter S of the Code.

(b) The Board of Directors intends, subject to applicable laws and regulatory requirements, limitations or approvals, to cause the Company to make annual or quarterly distributions which are equal, on an annualized basis, to approximately the amount which represents the tax liability attributable to the Company's annual taxable income, calculated using the highest individual income tax rate set forth in the Code. In determining the amount of the distribution, in addition to computing annualized taxable income based upon year-to-date income, the Board of Directors may take into account future anticipated events which might increase or reduce the final amount of taxable income for the entire taxable year.

(c) The Board of Directors shall, subject to applicable laws and regulatory requirements, limitations or approvals, cause the Company to exercise the option granted pursuant to Section 4 of this Agreement to purchase the Shares held by a Shareholder's Representative if the Shares, upon transfer or distribution by the Representative, would be owned by a person who would cause a termination of the Company's election to be taxed in accordance with the provisions of Subchapter S of the Code.

6. Specific Enforcement. The Shareholders expressly agree that the Company and the Shareholders will be irreparably damaged if this Agreement is not specifically enforced. Upon a breach or threatened breach of

the terms, covenants and/or conditions of this Agreement by any Shareholder, the Company and the other Shareholders shall, in addition to all other remedies, be entitled to a temporary or permanent injunction, without showing any actual damage, and/or a decree for specific performance, in accordance with the provisions hereof.

7. **Legend.** Each certificate evidencing any of the Shares owned by any Shareholder shall bear a legend substantially as follows:

On the face of the certificate:

"Transfer of these Shares is restricted in accordance with conditions printed on the reverse of this certificate."

On the reverse of the certificate:

"The Shares evidenced by this certificate are subject to and transferable only in accordance with that certain Shareholders Agreement between FMB Banking Corporation (the "Company") and its shareholders, dated as of \_\_\_\_\_ 2003, a copy of which is on file at the principal office of the Company. No transfer or pledge of the shares evidenced hereby may be made except in accordance with and subject to the provisions of said Agreement. By acceptance of this certificate, any holder, transferee or pledgee hereof agrees to be bound by all of the provisions of said Agreement."

"The shares evidenced by this certificate have been acquired for investment and have not been registered under the Securities Act of 1933, as amended (the "Act") or applicable state securities law (the "State Acts"), and may not be offered, sold or otherwise transferred, pledged or hypothecated unless and until registered under the Act, the State Acts and any other applicable securities laws unless, in the opinion of counsel satisfactory to the Company, in form and substance satisfactory to the Company, such offer, sale, transfer, pledge or hypothecation is exempt from registration or is otherwise in compliance with the Act, the State Acts and any other applicable securities laws."

If a Shareholder should receive a certificate without the foregoing legend, such Shareholder shall promptly surrender such certificate to the Company so that the Company may affix the foregoing legend thereto.

8. **Securities Laws.**

(a) The Shareholders acknowledge that the Shares acquired by them have not been registered under the Securities Act of 1933 (the "Act") or any other applicable state securities law (the "State Acts").

(b) Each Shareholder represents and warrants that he or she did not acquire his or her Shares with a view to effecting a distribution, and that he or she will hold such Shares indefinitely unless subsequently registered under the Act, and the State Acts, as applicable, or unless an exemption from such registration is available and, if so required by the Company, an opinion of counsel for the Company, in form and substance satisfactory to the Company, is obtained to that effect. The provisions of this Agreement are in all respects subject to the restrictions of the Act, and the State Acts and the rules and regulations thereunder.

(c) Each Shareholder realizes that the Company does not file, and does not in the foreseeable future contemplate filing, periodic reports in accordance with the provisions of Section 13 or 15(d) of the Securities and Exchange Act of 1934, and also understands that the Company has not agreed to register any of its securities for distribution in accordance with the provisions of the Act or to take any actions respecting the obtaining of an exemption from registration for such securities or any transaction with respect thereto.

9. **Delivery of Certificates.** On the closing date for any transfer of Shares as provided in this Agreement, certificates representing such Shares shall be delivered to the Company with appropriate stock powers



or endorsements duly executed in blank. If the stock certificate or certificates with appropriate stock powers or endorsements duly executed as aforesaid are not delivered contemporaneously with the tender of the purchase price, then the Company shall be appointed, and the Company is hereby irrevocably constituted and appointed, the attorney-in-fact with full power and authority to execute the necessary stock powers and to perform all other acts necessary and proper in order to transfer such stock certificate or certificates to the Company or other Shareholders in accordance with the provisions of this Agreement.

10. Subchapter S Corporation Status. Notwithstanding the provisions of any other Section of this Agreement, the following provisions shall apply:

(a) Subchapter S Election. Each Shareholder acknowledges that the Company has elected, and its Shareholders have consented, to have the Company treated for federal and state income tax purposes as a Subchapter S corporation and that each Shareholder, as necessary, has delivered to the Company a written consent to the Company's treatment as a Subchapter S corporation. Each Shareholder will deliver to the Company, immediately upon the Company's request, such properly signed consents or other documents as, in the opinion of the Company, may be necessary or useful in maintaining the Company's status as a Subchapter S corporation. Each Shareholder covenants that such Shareholder will not do anything to interfere with the Company's maintaining its status as a Subchapter S corporation.

(b) Revocation of Election. In the event that the Company, by the affirmative vote of at least 66-2/3% of its directors then holding office, and the Shareholders of the Company, by the affirmative vote of at least 66-2/3% of the then issued and outstanding Shares of the Company, decide to terminate the Subchapter S election, each Shareholder will be provided a written notice of such determination. Within sixty (60) days after the delivery of such notice, each Shareholder, if requested, will sign and deliver a consent to such revocation to the Secretary of the Company in the form prescribed by the Internal Revenue Service or the State Department of Revenue, or both, as the case may be.

(c) Inadvertent Termination of Subchapter S Election. In the event the Company's status as a Subchapter S corporation is terminated inadvertently and the Company and any Shareholder desire that the Subchapter S election be continued, the Company and the Shareholders agree to use their best efforts to obtain a waiver of the terminating event on the ground of inadvertence from the Internal Revenue Service. The Company and the Shareholders further agree to take such steps, and make such adjustments, as may be required by the Internal Revenue Service pursuant to Sections 1362(f)(3) and (4) or any successor section of the Code. If a Shareholder causes the terminating event to occur, such Shareholder shall bear the expense of procuring the waiver, including the legal, accounting and tax costs of taking such steps and of making such adjustments as may be required.

(d) Restrictions on Transfer. So long as the Company maintains its Subchapter S election, no Shareholder shall transfer or offer to transfer any Shares that would in any manner cause the termination of the status of the Company as a Subchapter S corporation. Any such action as may be attempted in violation of the foregoing shall be void *ab initio*. In the event of any purported or attempted transfer of Shares that does not comply with the provisions of this Agreement, the purported transferee shall not be deemed to be a shareholder of the Company and shall not be entitled to receive a new certificate evidencing the Shares or any dividends or other distributions with respect to the Shares.

(e) Trust Shareholders. Each Shareholder hereby agrees that if his or her Shares are now or hereafter held by a trust, such Shareholder shall cause the trustee of such trust to take all such necessary or appropriate action to maintain such trust as a permissible shareholder of a Subchapter S corporation, including, without limitation, distributing all of the income of such trust currently to the income beneficiary of such trust.

(f) Shares Owned By Husband and Wife. Each Shareholder hereby agrees that if his or her Shares are now or hereafter owned as husband and wife (whether held jointly or individually) and in the event that the individuals are no longer husband and wife, the Shares will be held by only one person, unless 66-2/3% of the directors of the Company then holding office approve such Shares being held by two or more persons. The purpose of this section is to avoid increasing the number of Shareholders as a result of a change in marital status.

(g) State Tax Matters.

(i) Each Shareholder hereby agrees to take all such actions as may be required by any state in which the Company does business to ensure recognition of the Company's Subchapter S corporation status for state tax purposes, including without limitation, the payment, where applicable, of state taxes on such Shareholder's allocable shares of the Company's income attributable to each such state.

(ii) In the event that the Company elects or is required to make any payment on behalf of any Shareholder in an amount required to discharge any legal obligation of the Company to withhold or make payment ("Tax Payment") to any governmental authority with respect to any Federal, state, or local tax liability of such Shareholder arising as a result of the ownership of Shares by such Shareholder, then the Shareholder and the Company agree that the amount of any such Tax Payment shall be treated as a non-interest bearing loan made by the Company to such Shareholder, which amount shall be repaid by charging against and reducing the amount of any subsequent distribution made by the Company with respect to the Shares held by such Shareholder. By way of example, but not limitation, in the event that the Company elects to file a composite income tax return with the State of Florida on behalf of the Company's non-resident Shareholders, in lieu of the filing of individual income tax returns with the State of Florida by each of such non-resident Shareholders, and to pay any income tax due with such income tax return, then each such non-resident Shareholder's proportionate share of such income tax paid by the Company shall be regarded as a Tax Payment. If and to the extent the amount of Tax Payment exceeds the amount of distributions to which a Member is subsequently entitled, and all or a portion of the Tax Payment remains unpaid at the time of a subsequent disposition of Shares by the Shareholder, then the unpaid balance of the loan made by the Company to such Shareholder that is the result of any such remaining unpaid Tax Payment shall be repaid to the Company on demand and, in the event that such payment of such loan is not made within three (3) business days of such demand, such former Shareholder shall be charged interest at an annual rate equal to the Prime Rate plus two percent (2%) for the period beginning three (3) business days after such demand for payment ending on the date that repayment of the loan is made.

(h) Indemnity. Each Shareholder hereby agrees to indemnify and hold the Company and each other Shareholder of the Company harmless from and against all loss, liability, damage, cost and expense, including reasonable attorneys' fees and any additional federal or state tax liability, actually incurred by the Company or any other Shareholder, arising out of or in connection with any violation of this Agreement by such indemnifying Shareholder.

(i) Close of Taxable Year. In the event a Shareholder sells or otherwise transfers all of such Shareholder's Shares on any date other than the date on which the Company's taxable year ends, to the extent permitted the Company may elect, pursuant to Code Section 1377(a)(2), or any successor section, of the Code, to treat its tax year as if it closes on the day of such Shareholder's sale or transfer. In such event, the Company's applicable tax year shall be treated as two tax years for the allocation of income and loss items pursuant to Code Section 1377(a)(1), or any successor section, of the Code. Each Shareholder who owned Shares in the Company during such taxable year agrees to consent to such an election. The Company and the Shareholders agree to execute such documents and take such actions as may be required by the Internal Revenue Service or any State Department of Revenue having jurisdiction, or both, as the case may be, to effect this election. In connection with this election, the selling Shareholder's basis in such Shareholder's Shares shall be determined as of the date of the sale or transfer of the selling Shareholder's Shares. The Company shall bear the expense of carrying out the election, including the legal and accounting costs necessary to determine the basis of the selling Shareholder and to ascertain the applicable allocations attributable to the short taxable year.

11. Notices. All notices, requests, consents, and other communications required or permitted hereunder shall be in writing and shall be delivered in person or mailed by certified or registered mail, return receipt requested, addressed as follows (or at such other address for the parties as shall be specified by like notice):

- (a) if to the Company:

FMB Banking Corporation  
200 E. Washington Street  
Monticello, Florida 32345  
Attention: President & CEO

- (b) if to a Shareholder, to the Shareholder's address as listed on Schedule I hereto or such address as the Shareholder otherwise designates to the Company in writing.

12. Certain Defined Terms. As used in this Agreement, the following terms have the meanings set forth below:

- (a) Beneficially Owned.

- (i) Shares "Beneficially Owned" by any Shareholder shall be deemed to include Shares:

(A) which the Shareholder owns directly, whether or not of record; or

(B) which the Shareholder has the right to acquire, pursuant to any agreement or understanding or upon exercise of conversion rights, warrants or options or otherwise; or

(C) which are owned, directly or indirectly (including Shares deemed to be owned through application of Section 12(a)(i)(B) above), by an "affiliate" or "associate" (as those terms are defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934 as in effect on \_\_\_\_\_, 2003) of the Shareholder; or

(D) which are beneficially owned, directly or indirectly (including shares deemed owned through application of Section 12(a)(i)(B) above), by any other corporation, person or entity with which the Shareholder or the Shareholder's "affiliate" or "associate" (as defined above) has any agreement or arrangement or understanding for the purpose of acquiring, holding, voting or disposing of shares of the Company.

(ii) For the purpose of determining whether a Shareholder Beneficially Owns one or more of the issued and outstanding Shares of the Company, the issued and outstanding shares of the Company shall include shares not in fact issued and outstanding but deemed owned through the application of Sections 12(a)(i)(B) and 12(a)(i)(C) above, but shall not include any other shares which are not then issued and outstanding but which may be issuable pursuant to any agreement or upon exercise of conversion rights, warrants, options or otherwise.

(iii) The Board of Directors shall have the power and duty to determine for the purposes of this Agreement, on the basis of information known to the Company, whether:

(A) such Shareholder Beneficially Owns, directly or indirectly, more than five percent (5%) of the issued and outstanding Shares of the Company; and

(B) a corporation, person or entity is an "affiliate" or "associate" (as defined above) of a Shareholder.

(b) Qualified Offer. A Qualified Offer means a legally enforceable arms' length written offer received by a Shareholder to purchase the Shareholder's Shares from a person who is financially capable of carrying out the terms of the written offer and who satisfies all of the then existing ownership requirements with respect to the stock of a corporation that has in effect an election to be taxed in accordance with the provisions of

Subchapter S of the Code, provided, however, that either (i) the number of Shareholders of the Company does not increase as a result of any transfer of Shares if such offer were to be accepted, or (ii) the Board of Directors (by the affirmative vote of 66-2/3% of the directors then holding office) approves the transfer.

(c) **Shares.** "Shares" means and includes (i) all shares of the Common Stock of the Company now or hereafter owned by the Shareholders, (ii) all securities of the Company that may be issued in exchange for or in respect of its Common Stock, and (iii) all securities of the Company hereafter acquired that may be exchangeable for or convertible into Common Stock.

(d) **Shareholder.** "Shareholder" means each of the Shareholders listed on Schedule I, and, also, any person who receives Shares of the Company following execution of this Agreement.

13. **Entire Agreement and Amendments.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. Except as otherwise provided in Section 21 below, neither this Agreement nor any provision hereof may be waived, modified, amended, or terminated except by a written agreement approved by the Company, by the affirmative vote of at least 66-2/3% of its directors then holding office, and by the Shareholders of the Company, by the affirmative vote of at least 66-2/3's of the then-issued and outstanding shares of the Company. To the extent any term or other provision of any other indenture, agreement, or instrument by which any party hereto is bound conflicts with this Agreement, this Agreement shall have precedence over such conflicting term or provision.

14. **Governing Law; Successors and Assigns.** This Agreement shall be governed by the laws of Florida without respect to conflicts of laws provisions thereof, and shall be binding upon the heirs, personal representatives, executors, administrators, successors, and permitted assigns of the parties.

15. **Waivers.** No waiver of any breach or default hereunder shall be considered valid unless in writing, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

16. **Severability.** If any provision of this Agreement shall be held to be illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall attach only to such provision and shall not in any manner affect or render illegal, invalid, or unenforceable any other provision of this Agreement, and this Agreement shall be carried out as if any such illegal, invalid, or unenforceable provision were not contained herein.

17. **Captions.** Captions and section headings are for convenience only and are not deemed to be part of this Agreement.

18. **Effect of Other Laws and Agreements.** The rights and obligations of the parties under this Agreement shall be subject to any restrictions on the purchase of Shares which may be imposed by Florida law, federal or state regulations affecting financial institutions and their holding companies, and any agreement now or hereafter entered into between the Company and any financial institution with respect to loans or other financial accommodations made to the Company.

19. **Further Assurances.** Each party hereto shall do and perform, or cause to be done and performed, all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party hereto may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

20. **Effective Date of Agreement.** This Agreement shall be effective as to each Shareholder as of the date this Agreement or as of the date any counterpart of this Agreement is executed by such Shareholder.

21. **Termination.** This Agreement shall remain in full force and effect until the earlier of (a) the effective date that a written agreement providing for termination of this Agreement is signed by the Company (authorized by the affirmative vote of 66-2/3% of its directors then holding office) and by the holders of 66-2/3% of the then issued and outstanding Shares of the Company, (b) the effective date of a registration statement filed by the

Company with the Securities and Exchange Commission with respect to a public offering of the Company's common Shares, (c) the effective date of dissolution of the Company, either voluntarily or involuntarily, in accordance with the Company's articles of incorporation and/or bylaws, (d) the effective date of the termination of the subchapter S election by the Company pursuant to Section 10(b) hereof, or (e) the final expiration date of any mandatory term limit applicable to this Agreement under Florida law.

22. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23. **Enforcement.** This Agreement has been negotiated, executed and delivered in the State of Florida, and each party (a) submits to personal jurisdiction in the State of Florida for the enforcement of this Agreement, and (b) waives any and all rights under the laws of any state to object to jurisdiction within the State of Florida for the purposes of litigation to enforce this Agreement. Notwithstanding the foregoing, nothing contained in this Agreement shall prevent a party from bringing any action against another party within any other state or country. Initiating such proceeding or taking such action in any jurisdiction shall not constitute a waiver of the agreement that the laws of the State of Florida shall govern or of the submission made by a party to personal jurisdiction within the State of Florida.

24. **Enforcement Costs.** Should a party be required to engage legal counsel to enforce or prevent the breach of any of the provisions of this Agreement, to institute any action or proceeding to enforce any such provision of this Agreement, to seek an injunction, to seek damages by reason of any alleged breach of any provisions, to seek a declaration of its rights or obligations, or to seek any other judicial or equitable remedy, then the prevailing party in such action shall be entitled to be reimbursed by the other party or parties for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees actually incurred.

25. **SEPARATE COUNSEL.** BY SIGNING THIS AGREEMENT, THE PARTIES ACKNOWLEDGE THAT THEY HAVE HAD THE OPPORTUNITY TO OBTAIN SEPARATE LEGAL COUNSEL AND ADVICE REGARDING THIS AGREEMENT AND THAT THEY HAVE READ AND UNDERSTAND THIS AGREEMENT.

IN WITNESS WHEREOF, this Agreement has been executed under seal as of the date and year first above written.

FMB BANKING CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**SCHEDULE I**

**FMB BANKING CORPORATION  
SHAREHOLDERS AGREEMENT  
DATED DECEMBER 31, 2003**

**SHAREHOLDERS OF FMB BANKING CORPORATION**

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Signature

---

Print Name

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Date Agreement  
Signed

---

Number of Shares Owned

### APPENDIX C

This Shareholder Election Form is to be completed by FMB Banking Corporation shareholders.

If you are ineligible or do not wish to continue your equity ownership in FMB Banking Corporation, we ask that you mark this box ☐, complete Sections C, E and F only and return this form to the address below as soon as possible, but not later than 5:00 p.m. on December 12, 2003.

IF YOU HOLD FMB BANKING CORPORATION SHARES IN A TRUST AND WISH TO REMAIN A SHAREHOLDER AFTER THE REORGANIZATION, PLEASE CONTACT SAM LESTER AT (850) 942-2626 AS SOON AS POSSIBLE TO VERIFY THE ELIGIBILITY OF YOUR TRUST AS AN S-CORPORATION SHAREHOLDER.

#### **FMB BANKING CORPORATION SHAREHOLDER ELECTION FORM REGARDING THE TREATMENT OF SHARES**

The purpose of this Shareholder Election Form is to notify FMB Banking Corporation of how you want your shares of FMB Banking Corporation common stock converted after the Reorganization takes effect. Selection of some of the options provided may require that you complete and return additional schedules or documents related to that option.

If you are completing this form for a trust, Schedule B to this election form has been provided for you as a general guide in determining whether your trust qualifies as an S-Corporation shareholder. In addition to the information provided in Schedule B, you should seek the guidance of a qualified professional to help you understand whether your trust is eligible to retain FMB Banking Corporation common stock due to the reorganization plan.

Please note that if you are the holder of more than one FMB Banking Corporation common stock certificate, AND the title of your ownership is different from one stock certificate to another (for example, you hold one certificate in your name alone and another certificate as custodian for a minor child or jointly with your spouse), you must fill out a separate Shareholder Election Form for each stock certificate that establishes your title of ownership as being something other than the sole owner of the shares in your individual capacity.

In order to receive recertificated shares of FMB Banking Corporation common stock after the reorganization you must also sign and return the Shareholders' Agreement. Please complete and sign this form (including all applicable schedules) and the Shareholders' Agreement and return them to the address below at or before 5:00 p.m. on December 12, 2003:

Return to:  
FMB Banking Corporation  
Attn: Sandy Swords, Vice President/Auditor  
200 E. Washington Street  
Monticello, Florida 32345

If you do not return this form (including any required schedules) and the Shareholders' Agreement to FMB Banking Corporation at or before 5:00 p.m. on December 12, 2003, upon the effective date of the reorganization, you will automatically receive cash at a rate of \$95.00 per share for your shares of FMB Banking Corporation common stock.

**A. Eligibility**

Are you eligible to become an S corporation shareholder? ☐ YES ☐ NO

Generally, you must be an individual citizen or resident of the United States to be a shareholder of an S Corporation. Estates and certain trusts (generally, a trust that distributes income annually to its beneficiaries, all of whom are individuals, or a trust that has as its beneficiaries only those persons who are eligible to hold stock in an S corporation and who make a qualifying election, provided that no interest in the trust was purchased) can also be shareholders of an S Corporation. *See Schedule B for more information on qualifying trusts.* Corporations, partnerships and IRAs may not be shareholders of an S Corporation.

If you hold FMB Banking Corporation shares in a trust and wish to remain a shareholder after the reorganization, please contact Sam Lester at (850) 942-2626 as soon as possible to verify the eligibility of your trust as an S-Corporation shareholder. FMB Banking Corporation reserves the right to determine whether a trust meets the eligibility criteria to be an FMB Banking Corporation shareholder after the reorganization and the eligibility determination made by FMB Banking Corporation will be final and binding as to whether the trust receives cash or recertificated shares under the reorganization plan.

The board of FMB Banking Corporation reserves the right to request additional information to verify shareholder eligibility.

If you are not an eligible S corporation shareholder, upon the effective date of the Reorganization, you will receive \$95.00 per share of FMB Banking Corporation common stock that you hold.

**B. Co-Ownership of Shares**

Do you own shares of FMB Banking Corporation common stock with someone else (e.g., your stock certificate is issued in your name and the name of at least one other person)?

☐ YES – Read this Section B carefully; then proceed to Section C.

☐ NO – You may proceed to Section C.

If you answered “yes” above, for purposes of the reorganization plan, each person recorded as an “owner” of shares held jointly or in common with someone else will be deemed (unless shown otherwise to FMB Banking Corporation) as being the beneficial owner of only his or her pro rata portion of the shares in question. For example, if a single stock certificate for 1,500 shares was issued to John Doe and/or Jane Doe, unless John Doe and Jane Doe are husband and wife, John Doe and Jane Doe will each be deemed to be the beneficial owner of 750 shares (as opposed to each being deemed to own 1,500 shares) in determining whether they each meet the 700 share threshold set by the reorganization plan. If shares held jointly or in common with someone else are exchanged for cash as a result of the reorganization, FMB Banking Corporation will issue a check only in the names of those persons listed on the issued stock certificate and only as such ownership is presented on such stock certificate unless otherwise deemed advisable by legal counsel (e.g., a stock certificate issued to “John Doe and Jane Doe” will only be entitled to receive a check payable to the order of “John Doe and Jane Doe”).

Upon the consent of all persons holding shares jointly or in common as of November 7, 2003, such persons may elect to recerticate such shares prior to December 31, 2003 to clarify their ownership interests in such shares, provided that such recertification does not result in the transfer of any shares to a person who was not originally named as a record or beneficial owner of such shares as of November 7, 2003. *Note, however, that such a transfer may result in a taxable transaction. Accordingly, you are urged to consult with your own tax advisors as to the specific tax consequences that could result before deciding to effect such a transfer.*

If you feel that your beneficial ownership of shares held jointly or in common with someone else exceeds your pro rata percentage or portion of such shares, please contact Sam Lester at (850) 942-2626 as soon as possible for further instructions.



**C. Shareholders to Receive Cash**

If any of the following apply to you, you will receive \$95.00 per share of FMB Banking Corporation common stock after the reorganization is complete and after you have surrendered your shares to FMB Banking Corporation:

(Mark applicable boxes)

- ☐ I am NOT eligible to become an S-Corporation shareholder and will not be transferring shares to any of my beneficial owners.
- ☐ As of November 7, 2003, I (including my spouse if shares are held jointly) was NOT the holder of 700 or more shares of FMB Banking Corporation common stock.
- ☐ As of November 7, 2003, I was the holder of 700 or more shares of FMB Banking Corporation common stock but DO NOT wish to continue my equity ownership in the company. *The marking of this option will not constitute notice of dissent. Accordingly, to perfect your dissenters' rights, you will (among other things) be required to provide a separate written notice to FMB Banking Corporation of your intent to dissent to the reorganization plan prior to the shareholders vote at the special meeting of shareholders.*

If you selected any of the boxes in this Section C, please go to Section E.

**D. Shareholders Continuing Their Equity Ownership in FMB Banking Corporation**

If any of the following apply to you, you will be permitted to continue your equity ownership in FMB Banking Corporation and receive recertificated shares of FMB Banking Corporation common stock after the reorganization is complete and after you have surrendered your existing shares to FMB Banking Corporation:

(Mark applicable boxes)

- ☐ I am an eligible S-Corporation shareholder AND I (including my spouse if shares are held jointly) was the holder of 700 or more shares of FMB Banking Corporation as of November 7, 2003.
- ☐ I am an eligible S-Corporation shareholder AND although I (including my spouse if shares are held jointly) was NOT the holder of 700 or more shares of FMB Banking Corporation common stock I AM OR EXPECT TO BE the recipient of transferred shares of FMB Banking Corporation common stock from an ineligible S-Corporation shareholder which held such transferred shares as of November 7, 2003 AND after such transfer I (including shares owned jointly with my spouse) will be the holder of at least 700 shares of FMB Banking Corporation common stock. *If you mark this option, you must also submit the applicable stock transfer documents necessary to record the stock transfer with FMB Banking Corporation on or before December 31, 2003. Failure to record the stock transfer on or before December 31, 2003 may prevent you from continuing as an FMB Banking Corporation shareholder after the reorganization.*

IF YOU SELECTED EITHER BOX IN THIS SECTION D, YOU MUST ALSO COMPLETE SCHEDULE A AND SIGN AND RETURN THE SHAREHOLDERS' AGREEMENT.

If you selected either box in this Section D, please go to Section F.

**E. Cash Conversion Worksheet**

Each FMB Banking Corporation shareholder receiving cash in the reorganization in exchange for shares of FMB Banking Corporation common stock should complete this Section.

(1) Total number of shares of FMB Banking Corporation common stock that I hold of record \_\_\_\_\_

(2) Equals the total amount of cash expected to be payable to you for your shares of FMB Banking Corporation common stock \_\_\_\_\_

X \$95.00

\$ \_\_\_\_\_

After completing this Section, please continue to Section F.

**F. Signatures**

I certify that the information provided in this Shareholder Election Form (and any attached schedules) is true and correct as of the date indicated below.

Signature\* \_\_\_\_\_

Signature (if shares are held jointly)\* \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name (if shares are held jointly) \_\_\_\_\_

Title (if applicable)\*\* \_\_\_\_\_

Date \_\_\_\_\_

Number of Shares Held of Record \_\_\_\_\_

Certificate No(s). \_\_\_\_\_

**Do NOT Include Your FMB Banking Corporation Stock Certificates with this Shareholder Election Form. You Will Receive Instructions on How to Submit Your Stock Certificate(s) after the Reorganization is Completed.**

\* Please sign exactly as your name appears on your FMB Banking Corporation Stock Certificate(s).

\*\* If the shareholder is a corporation, partnership or other business entity, this form must be signed by a duly authorized officer of the entity. Any person signing as an officer, attorney, trustee, administrator or guardian must give his or her full title as such. In the case of joint ownership, each joint owner must sign.

**SCHEDULE A**  
**FMB BANKING CORPORATION**  
**IRS ELECTION FORMS**

FMB Banking Corporation shareholders who wish to become FMB Banking Corporation shareholders must complete, sign and return the following:

- Form 2553: All prospective S Corporation shareholders must complete this form.
- ESBT Election: Prospective S Corporation shareholders that are Electing Small Business Trusts (ESBTs) must also complete this form.
- QSST Election: Prospective S Corporation shareholders that are Qualified Subchapter S Trusts (QSSTs) must also complete this form.

You may ignore the ESBT and QSST election forms if you are not signing on behalf of a trust.

# FORM 2553

<p><b>J</b> Name and address of each shareholder; shareholder's spouse having a community property interest in the corporation's stock; and each tenant in common, joint tenant, and tenant by the entirety. (A husband and wife (and their estates) are counted as one shareholder in determining the number of shareholders without regard to the manner in which the stock is owned.)</p>	<p><b>K</b> Shareholders' Consent Statement. Under penalties of perjury, we declare that we consent to the election of the above-named corporation to be an S corporation under section 1362(a) and that we have examined this consent statement, including accompanying schedules and statements, and to the best of our knowledge and belief, it is true, correct, and complete. We understand our consent is binding and may not be withdrawn after the corporation has made a valid election. (Shareholders sign and date below.)</p>		<p><b>L</b> Stock owned</p>	<p><b>M</b> Social Security number or employer identification number (see Instructions)</p>	<p><b>N</b> Shareholder's tax year ends (month and day)</p>
	<p>Signature</p>	<p>Date</p>			

**ESBT ELECTION**  
(For Use Only by Certain Trusts – See Schedule B)

<b>(A) Identification of Parties</b>	
For TRUST provide the following:	
Trust's name and address	Employer identification number
For BENEFICIARIES provide the following (for additional beneficiaries, please attach separate sheet):	
Beneficiary's name and address	Social Security or Employer identification number
Beneficiary's name and address	Social Security or Employer identification number
Beneficiary's name and address	Social Security or Employer identification number
Beneficiary's name and address	Social Security or Employer identification number
Beneficiary's name and address	Social Security or Employer identification number
Beneficiary's name and address	Social Security or Employer identification number
Beneficiary's name and address	Social Security or Employer identification number
<b>S CORPORATIONS IN WHICH THE TRUST OWNS STOCK</b>	
S Corporation's name and address FMB Banking Corporation 200 E. Washington Street Monticello, Florida 32345	Employer identification number
<b>(B) This ESBT election is hereby made under Treas. Reg. section 1361(e)(3).</b>	
<b>(C) The first date on which the trust owned stock in the S corporation is as follows:</b>	
S Corporation FMB Banking Corporation	Date
<b>(D) This ESBT election under section 1361(e)(3) is effective ..... January 1, 2004</b>	
<b>(E) The undersigned hereby makes this ESBT election under Treas. Reg. section 1361(e)(3). Under penalties of perjury, I certify that the trust meets the definitional requirements of section 1361(e)(1), that all potential current beneficiaries of the trust meet the shareholder requirement of section 1361(b)(1), and that all other information provided above is true, correct, and complete.</b>	
Signature of Trustee	Date

**QSST ELECTION**  
**(For Use Only by Certain Trusts – See Schedule B)**

<b>Part III      Qualified Subchapter S Trust (QSST) Election Under Section 1361(d)(2)*</b>	
Income beneficiary's name and address	Social Security Number
Trust's name and address	Employer identification number
Date on which stock of the corporation was transferred to the trust (month, day, year) ..... ▶	
In order for the trust named above to be a QSST and thus a qualifying shareholder of the S corporation for which this Form 2553 is filed, I hereby make the election under section 1361(d)(2). Under penalties of perjury, I certify that the trust meets the definitional requirements of section 1361(d)(3) and that all other information provided in Part III is true, correct, and complete.	
Signature of income beneficiary or signature and title of legal representative or other qualified person making the election _____	
Date _____	
*Use Part III to make the QSST election only if stock of the corporation has been transferred to the trust on or before the date on which the corporation makes its election to be an S Corporation. The QSST election must be made and filed separately if stock of the corporation is transferred to the trust after the date on which the corporation makes the S election.	

Form **2553** (Rev. 10-2001)

## SCHEDULE B

The information provided below is being provided as a courtesy to you and represents general information only. You are urged to consult your own legal and tax advisors as to the specific consequences of the reorganization to you and to your eligibility to hold FMB Banking Corporation common stock through a trust after the reorganization is effected.

If you hold FMB Banking Corporation shares in a trust and wish to remain a shareholder after the reorganization, please contact Sam Lester at (850) 942-2626 as soon as possible to verify the eligibility of your trust as an S-Corporation shareholder. FMB Banking Corporation reserves the right to determine whether a trust meets the eligibility criteria to be an FMB Banking Corporation shareholder after the reorganization and the eligibility determination made by FMB Banking Corporation will be final and binding as to whether the trust receives cash or recertificated shares under the reorganization plan.

The following types of trusts are eligible subchapter S shareholders. If your trust does not generally meet the requirements set forth in one of the following categories, it may not own stock in FMB Banking Corporation.

### Grantor Trust

A grantor trust is a trust in which the individual who transferred ownership of the stock to the trust is still considered (despite the transfer) to be the owner of the stock for federal income tax purposes. In the case of a grantor trust, the individual who transferred the stock to the trust is taxable on all of the income from the stock as if he or she owned the stock outright, instead of a through the trust, and will be treated as the shareholder of FMB Banking Corporation for federal income tax reporting purposes. The grantor trust generally will not be required to file an income tax return reporting the subchapter S earnings. The individual who is deemed to be the owner of the stock for federal income tax purposes (and not the trustee of the grantor trust) must sign the subchapter S election form (IRS Form 2553) provided in Schedule A to the Shareholder Election Form. The signature page on which such consent must be acknowledged has been included for execution with the Proxy materials.

### Voting Trust

A voting trust is sometimes established by (some or all) shareholders of a corporation to ensure that the stock is voted as a block with respect to matters on which the shareholders are entitled to vote. Typically, that is the sole purpose of a voting trust and the individuals who transferred the stock to the voting trust are still considered (despite the transfer) to be the owners of the respective shares each shareholder transferred to the voting trust. The trust must provide that the individuals who contributed stock to the voting trust have the right to their pro rata share of distributions and other proceeds from the stock that are received by the voting trust, and that title to the stock will be return and vest in the individuals who contributed such stock to the voting trust. In addition, the trust must terminate under state law or by its terms on a certain date or upon the occurrence of a specified event. In the case of a voting trust, each individual who transferred stock to the voting trust is taxable on all of the income with respect to the stock so transferred as if he or she owned the stock outright, instead of a through the voting trust, and will be treated as the shareholder of FMB Banking Corporation for federal income tax reporting purposes. The grantor trust generally will not be required to file an income tax return reporting the subchapter S earnings. The individuals who are deemed to be the owners of the stock for federal income tax purposes (and not the trustee of the voting trust) must sign the subchapter S election form (IRS Form 2553) provided in Schedule A to the Shareholder Election Form. The signature page on which such consent must be acknowledged has been included for execution with the Proxy materials.

### Qualified Subchapter S Trust ("QSST")

A QSST is a trust that meets the following requirements:

- There can be only one (1) current income beneficiary of the trust.

- The trust must require that all of the trust's income is distributed annually only to the current income beneficiary or the trust must agree only to distribute all of the income on an annual basis to the current income beneficiary.
- The current income beneficiary generally must be a US citizen or US resident for federal income tax purposes.
- Distributions of corpus or principal by the trust can be made only to the current income beneficiary and to no other person while the current income beneficiary is alive.
- If the trust terminates during the life of the current income beneficiary, then the trust must distribute all of its assets only to the current income beneficiary.
- The current income beneficiary's income interest in the trust must terminate no later than the death or the current income beneficiary or upon termination of the trust under its terms.
- A proper election is made by the current income beneficiary.

In the case of a QSST, the QSST will be reported as the shareholder on the annual tax filings made by FMB Banking Corporation. However, the current income beneficiary will be taxable on all of the income with respect to the stock held by the QSST, the same as if he or she owned the stock outright, instead of a through the QSST. The QSST will be required to file a federal income tax return reporting ownership of the subchapter S stock and the taxation of the earnings from the subchapter S stock to the current income beneficiary. The current income beneficiary (and not the trustee of the QSST) must sign the consent to be taxed as a subchapter S corporation (Column K of IRS Form 2553). The signature page on which such consent must be acknowledged has been included for execution with the Proxy materials. In addition, the current income beneficiary also must sign the QSST Election included in Part III of the IRS Form 2553. Part III of the IRS Form 2553 has been included for execution with the Proxy materials. These forms are provided in Schedule A to the Shareholder Election Form.

#### **Electing Small Business Trust ("ESBT")**

An ESBT is a trust that meets the following requirements:

- The beneficiaries under the trust generally must be a US citizen, US resident, or a qualified charity for federal income tax purposes.
- None of the beneficiaries of the trust may have acquired such interest as a beneficiary through a purchase of such interest.
- No person may possess a power of appointment over the assets in the ESBT, i.e., possess the right to order a distribution of trust income or corpus to one or more persons.
- The trustee of the ESBT makes a proper election.

In the case of an ESBT, the ESBT will be reported as the shareholder on the annual tax filings made by FMB Banking Corporation and will be taxable on all of the income with respect to the stock held by the ESBT. None of the beneficiaries of the ESBT will be taxable on the earnings from the subchapter S stock held by the ESBT. The trustee of the ESBT (and not the ESBT's beneficiaries) must sign the consent to be taxed as a subchapter S corporation (Column K of IRS Form 2553). The signature page on which such consent must be acknowledged has been included for execution with the Proxy materials. In addition, the trustee must complete and execute the ESBT election form that has been included with the Proxy materials. (These forms are provided in Schedule A to the Shareholder Election Form.) The ESBT Election Form will be filed by FMB Banking Corporation with the IRS Service Center where FMB Banking Corporation files its federal tax return.



## APPENDIX D

### **EXCERPTS FROM THE FLORIDA BUSINESS CORPORATION ACT RELATING TO DISSENTERS' RIGHTS**

#### **607.1301 Appraisal rights; definitions.**

The following definitions apply to ss. 607.1302 - 607.1333:

(1) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of s. 607.1302(2)(d), a person is deemed to be an affiliate of its senior executives.

(2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

(3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in ss. 607.1322-607.1333, includes the surviving entity in a merger.

(4) "Fair value" means the value of the corporation's shares determined:

(a) Immediately before the effectuation of the corporate action to which the shareholder objects.

(b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable to the corporation and its remaining shareholders.

(5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(6) "Preferred shares" means a class or series of shares the holders of which have preference over any other class or series with respect to distributions.

(7) "Record shareholder" means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

(8) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, or anyone in charge of a principal business unit or function.

(9) "Shareholder" means both a record shareholder and a beneficial shareholder.

#### **607.1302 Right of shareholders to appraisal. —**

(1) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(a) Consummation of a merger to which the corporation is a party if shareholder approval is required for the merger by s. 607.1103 and the shareholder is entitled to vote on the merger or if the corporation is a subsidiary and the merger is governed by s. 607.1104;

(b) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of

shares of the corporation that is not exchanged;

(c) Consummation of a disposition of assets pursuant to s. 607.1202 if the shareholder is entitled to vote on the disposition, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

(d) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors, except that no bylaw or board resolution providing for appraisal rights may be amended or otherwise altered except by shareholder approval; or

(e) With regard to shares issued prior to October 1, 2003, any amendment of the articles of incorporation if the shareholder is entitled to vote on the amendment and if such amendment would adversely affect such shareholder by:

1. Altering or abolishing any preemptive rights attached to any of his or her shares;
2. Altering or abolishing the voting rights pertaining to any of his or her shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares;
3. Effecting an exchange, cancellation, or reclassification of any of his or her shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his or her percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;
4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his or her shares, or making any of his or her shares subject to redemption when they are not otherwise redeemable;
5. Making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore been cumulative;
6. Reducing the stated dividend preference of any of the shareholder's preferred shares;  
or
7. Reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation.

(2) Notwithstanding subsection (1), the availability of appraisal rights under paragraphs (1)(a), (b), (c), and (d) shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

1. Listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or
2. Not so listed or designated, but has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least \$10 million, exclusive of the value of such shares held by its subsidiaries, senior executives, directors, and beneficial shareholders owning more than 10 percent of such shares.

(b) The applicability of paragraph (a) shall be determined as of:

1. The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

2. If there will be no meeting of shareholders, the close of business on the day on which the board of directors adopts the resolution recommending such corporate action.

(c) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in paragraph (a) at the time the corporate action becomes effective.

(d) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares if:

1. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

a. Is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within 1 year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

b. Directly or indirectly has, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

2. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

a. Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

b. Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in s. 607.0832; or

c. In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(e) For the purposes of paragraph (d) only, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the recordholder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within 1 year of that date if such action would otherwise afford appraisal rights.

(4) A shareholder entitled to appraisal rights under this chapter may not challenge a completed corporate action for which appraisal rights are available unless such corporate action:

(a) Was not effectuated in accordance with the applicable provisions of this section or the corporation's articles of incorporation, bylaws, or board of directors' resolution authorizing the corporate action; or

(b) Was procured as a result of fraud or material misrepresentation.

#### **607.1303 Assertion of rights by nominees and beneficial owners. --**

(1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(a) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in s. 607.1322(2)(b)2.

(b) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

#### **607.1320 Notice of appraisal rights. --**

(1) If proposed corporate action described in s. 607.1302(1) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders are, are not, or may be

entitled to assert appraisal rights under this chapter. If the corporation concludes that appraisal rights are or may be available, a copy of ss. 607.1301-607.1333 must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to s. 607.1104, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within 10 days after the corporate action became effective and include the materials described in s. 607.1322.

(3) If the proposed corporate action described in s. 607.1302(1) is to be approved other than by a shareholders' meeting, the notice referred to in subsection (1) must be sent to all shareholders at the time that consents are first solicited pursuant to s. 607.0704, whether or not consents are solicited from all shareholders, and include the materials described in s. 607.1322.

#### **607.1321 Notice of intent to demand payment. --**

(1) If proposed corporate action requiring appraisal rights under s. 607.1302 is submitted to a vote at a shareholders' meeting, or is submitted to a shareholder pursuant to a consent vote under s. 607.0704, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must deliver to the corporation before the vote is taken, or within 20 days after receiving the notice pursuant to s. 607.1320(3) if action is to be taken without a shareholder meeting, written notice of the shareholder's intent to demand payment if the proposed action is effectuated.

(b) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) is not entitled to payment under this chapter.

#### **607.1322 Appraisal notice and form. --**

(1) If proposed corporate action requiring appraisal rights under s. 607.1302(1) becomes effective, the corporation must deliver a written appraisal notice and form required by paragraph (2)(a) to all shareholders who satisfied the requirements of s. 607.1321. In the case of a merger under s. 607.1104, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be sent no earlier than the date the corporate action became effective and no later than 10 days after such date and must:

(a) Supply a form that specifies the date that the corporate action became effective and that provides for the shareholder to state:

1. The shareholder's name and address.
2. The number, classes, and series of shares as to which the shareholder asserts appraisal rights.
3. That the shareholder did not vote for the transaction.
4. Whether the shareholder accepts the corporation's offer as stated in subparagraph (b)4.
5. If the offer is not accepted, the shareholder's estimated fair value of the shares and a demand for payment of the shareholder's estimated value plus interest.

(b) State:

1. Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph 2.

2. A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the subsection (1) appraisal notice and form are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date.

3. The corporation's estimate of the fair value of the shares.

4. An offer to each shareholder who is entitled to appraisal rights to pay the corporation's estimate of fair value set forth in subparagraph 3.

5. That, if requested in writing, the corporation will provide to the shareholder so requesting, within 10 days after the date specified in subparagraph 2., the number of shareholders who return the forms by the specified date and the total number of shares owned by them.

6. The date by which the notice to withdraw under s. 607.1323 must be received, which date must be within 20 days after the date specified in subparagraph 2.

(c) Be accompanied by:

1. Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of the fiscal year ending not more than 15 months prior to the date of the corporation's appraisal notice, an income statement for that year, a cash flow statement for that year, and the latest available interim financial statements, if any.

2. A copy of ss. 607.1301-607.1333.

#### **607.1323 Perfection of rights; right to withdraw. --**

(1) A shareholder who wishes to exercise appraisal rights must execute and return the form received pursuant to s. 607.1322(1) and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to s. 607.1322(2)(b)2. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (2).

(2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to s. 607.1322(2)(b)6. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates if required, each by the date set forth in the notice described in subsection (2), shall not be entitled to payment under this chapter.

**607.1324 Shareholder's acceptance of corporation's offer. --**

(1) If the shareholder states on the form provided in s. 607.1322(1) that the shareholder accepts the offer of the corporation to pay the corporation's estimated fair value for the shares, the corporation shall make such payment to the shareholder within 90 days after the corporation's receipt of the form from the shareholder.

(2) Upon payment of the agreed value, the shareholder shall cease to have any interest in the shares.

**607.1326 Procedure if shareholder is dissatisfied with offer. --**

(1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant to s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s. 607.1322(1) of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand payment under this section and shall be entitled only to the payment offered by the corporation pursuant to s. 607.1322(2)(b)4.

**607.1331 Court costs and counsel fees. --**

(1) The court in an appraisal proceeding commenced under s. 607.1330 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(2) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with ss. 607.1320 and 607.1322; or

(b) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(3) If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to s. 607.1324, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.

**607.1332 Disposition of acquired shares. --**

(1) Shares acquired by a corporation pursuant to payment of the agreed value thereof or pursuant to payment of the judgment entered therefor, as provided in this chapter, may be held and disposed of by such corporation as authorized but unissued shares of the corporation, except that, in the case of a merger or share exchange, they may be held and disposed of as the plan of merger or share exchange otherwise provides. The shares of the surviving corporation into which the shares of such shareholders demanding appraisal rights would have been

converted had they assented to the merger shall have the status of authorized but unissued shares of the surviving corporation.

**607.1333 Limitation on corporate payment. --**

(1) No payment shall be made to a shareholder seeking appraisal rights if, at the time of payment, the corporation is unable to meet the distribution standards of s. 607.06401. In such event, the shareholder shall, at the shareholder's option:

(a) Withdraw his or her notice of intent to assert appraisal rights, which shall in such event be deemed withdrawn with the consent of the corporation; or

(b) Retain his or her status as a claimant against the corporation and, if it is liquidated, be subordinated to the rights of creditors of the corporation, but have rights superior to the shareholders not asserting appraisal rights, and if it is not liquidated, retain his or her right to be paid for the shares, which right the corporation shall be obliged to satisfy when the restrictions of this section do not apply.

(2) The shareholder shall exercise the option under paragraph (1)(a) or paragraph (b) by written notice filed with the corporation within 30 days after the corporation has given written notice that the payment for shares cannot be made because of the restrictions of this section. If the shareholder fails to exercise the option, the shareholder shall be deemed to have withdrawn his or her notice of intent to assert appraisal rights.



APPENDIX E

ARTICLES OF AMENDMENT TO  
THE  
ARTICLES OF INCORPORATION  
OF  
FMB BANKING CORPORATION

Pursuant to Section 607.1006 Florida Business Corporation Act (the "Act"), FMB Banking Corporation (the "Corporation") hereby adopts the following Articles of Amendment, to wit:

1.

The name of the Corporation is **FMB Banking Corporation**.

2.

The street address of the Corporation's main office is 200 East Washington Street, Monticello, Jefferson County, Florida 32345.

3.

In accordance with the Act, the shareholders of the Corporation approved the resolution to amend its Articles of Incorporation as specified herein at a duly called special meeting of shareholders held at the main office of the Corporation on December 11, 2003.

4.

In accordance with the Act, the Corporation hereby deletes, in its entirety, Article IV of the Corporation's Articles of Incorporation and replaces it with the following new Article IV:

"ARTICLE IV

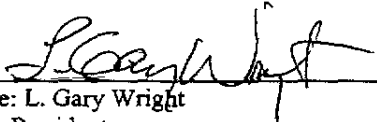
"The corporation shall have authority to issue One Million (1,000,000) shares of voting common stock, \$.10 par value, and One Million (1,000,000) shares of non-voting common stock, \$.10 par value. The authorized shares of non-voting common stock shall have identical terms, conditions, designations, preferences, limitations and relative rights as that of authorized shares of voting common stock except for the voting rights associated with such voting common stock, and then only to the extent such voting rights differential is permitted under Subchapter S of the Internal Revenue Code, as amended, of the United States or the then applicable revenue rulings and regulations of the Internal Revenue Services as promulgated thereunder. Preemptive rights are hereby denied as to all authorized shares of the corporation."

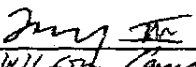
[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be executed and its corporation seal to be affixed hereto, and caused the foregoing to be attested, all by its duly authorized corporate officers this 23 day of December, 2003.

[SEAL]

FMB BANKING CORPORATION

By:   
Name: L. Gary Wright  
Title: President

Attest:   
Name: F. Wilcox Canaway  
Title: Secretary

**FMB INTERIM CORPORATION  
CONSENT ACTION BY SOLE SHAREHOLDER**

The undersigned, being the sole shareholder of FMB Interim Corporation (the "Company"), a Florida corporation, hereby adopts and approves the following resolution, all as if the same had been done at a meeting of the sole shareholder of the Company duly and validly called and held, and by doing so, hereby waives, whether arising under federal or state law, (i) any and all rights of notice of the shareholder meeting called to consider the resolution and matters hereinafter set forth, and (ii) any dissenters' rights associated with the actions contemplated by the following resolution.

RESOLVED, that the Agreement and Plan of Reorganization dated November 4, 2003 by and between the Company and FMB Banking Corporation, a Florida corporation, be approved, ratified and adopted.

This 23<sup>rd</sup> day of December, 2003.

FMB Interim Corporation  
Name: Sam Lester  
President