

# H34389

INTER-OFFICE  
COMMUNICATION

COMPTROLLER OF FLORIDA  
DIVISION OF BANKING

DATE: November 19, 1997

TO: Louise Flemming-Jackson  
Department of State - Division of Corporations

400002355784--2  
-11/25/97-01002-001  
\*\*\*\*227.50 \*\*\*\*227.50

FROM: Bruce Ricca, Licensing and Chartering *BR*

SUBJ: Merger of Southwest Interim Bank No. 2 with and into Mercantile  
Bank of Southwest Florida and with the resulting title of Mercantile  
Bank of Southwest Florida

Please file the attached "Agreement and Plan of Merger" for the above-  
referenced institutions, using 5:00 p.m., NOVEMBER 20, 1997, as the effective  
date.

Please make the following distribution of certified copies:

- (1) One copy to: Division of Banking  
Office of Licensing and Chartering  
Fletcher Building, Suite 636
- (2) One copy to: Federal Reserve Bank of Atlanta  
104 Marietta Street, N.W.  
Post Office Box 1731  
Atlanta, Georgia 30303-1731
- (3) One copy to: Mr. James G. Orie  
F.N.B. Corporation  
Hermitage Square  
Hermitage, Pennsylvania 16148-3389

FILED  
97 NOV 20 PM 2:24  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

*merger*  
*LFS*  
*11-24-97*

Also attached is a check which represents payment of the filing fees, charter tax  
and certified copies. If you have any questions, please call 414-8066.

BR:mergeart

cc: Federal Deposit Insurance Corporation, Atlanta, Georgia  
Bureau of Financial Institutions - District I

FILING 70.00  
R. AGENT \_\_\_\_\_  
CERT. COPY 157.50  
CJS \_\_\_\_\_  
OVERPAYMENT \_\_\_\_\_  
TOTAL 227.50

*72 pages*

# H34389

ARTICLES OF MERGER  
Merger Sheet

-----  
MERGING:

SOUTHWEST INTERIM BANK NO. 2, a Florida corporation (Document  
#P97000098834)

INTO

**MERCANTILE BANK OF SOUTHWEST FLORIDA**, a Florida corporation,  
H34389

File date: November 20, 1997

Corporate Specialist: Louise Flemming-Jackson

SMITH, GAMBRELL & RUSSELL, LLP

ATTORNEYS AT LAW

SUITE 3100, PROMENADE II

1230 PEACHTREE STREET, N.E.

ATLANTA, GEORGIA 30309-3592

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WEBSITE  
www.sgratl.com

CAL SMITH  
(404) 815-3799  
E-MAIL: wcsmith@sgratl.com

November 20, 1997

**VIA FEDERAL EXPRESS**

Ms. Louise Fleming Jackson  
Secretary of State of Florida  
Division of Corporations  
409 East Gaines Street  
Tallahassee, Florida 32399

RE: Agreement and Plan of Merger by and among F.N.B. Corporation, Southwest Banks, Inc. and Mercantile Bank of Southwest Florida to be joined in by Southwest Interim Bank No. 2 (the "Agreement")

Dear Ms. Jackson:

As we discussed, please find enclosed Amendments Nos. 1 and 2 (collectively, the "Amendments") to the Agreement dated as of August 29, 1997 and October 31, 1997, respectively. As you will note, the enclosed Amendments have only been executed by Southwest Interim Bank No. 2. The original executions of F.N.B. Corporation (the "Company"), Southwest Banks, Inc. and Mercantile Bank of Southwest Florida (for Amendment No. 2 only) are being sent to you today by the Company via Federal Express. Mercantile Bank of Southwest Florida is sending its execution of Amendment No. 1 to you today via Federal Express as well.

Thank you very much for your assistance in this matter and, if you have any questions regarding the enclosed, please do not hesitate to call me at 404/815-3799.

Very truly yours,

SMITH, GAMBRELL & RUSSELL, LLP

  
Cal Smith

WCS:jm[113420]

Enclosures

cc: James G. Orie, Esq. (w/encl.)  
Marlon F. Star, Esq.



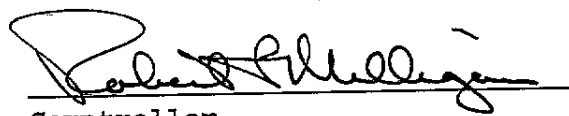
ROBERT F. MILLIGAN  
COMPTROLLER OF FLORIDA

OFFICE OF COMPTROLLER  
DEPARTMENT OF BANKING AND FINANCE  
STATE OF FLORIDA  
TALLAHASSEE  
32399-0350

FILED  
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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Having given my approval on October 29, 1997, to merge Southwest Interim Bank No. 2, Naples, Collier County, Florida, with and into Mercantile Bank of Southwest Florida, Naples, Collier County, Florida, with the resulting title of Mercantile Bank of Southwest Florida, and being satisfied that the conditions of my approval have been met, I hereby approve for filing with the Department of State, the attached "Agreement and Plan of Merger", which contains the Articles of Incorporation of Mercantile Bank of Southwest Florida (the resulting bank), so that effective at 5:00 p.m., on November 20<sup>TH</sup>, 1997, they shall read as stated herein.

Signed on this 10<sup>TH</sup> day  
of November, 1997.

  
Comptroller

**MINUTES OF MEETING OF  
SOUTHWEST BANK, INC., AS  
SOLE SHAREHOLDER OF  
SOUTHWEST INTERIM BANK NO. 2**

**TAKEN AS OF SEPTEMBER 10, 1997  
BY UNANIMOUS WRITTEN CONSENT  
IN LIEU OF A SPECIAL MEETING**

The undersigned, being all the directors of Southwest Banks, Inc. ("Southwest"), pursuant to Section 607.0821 of the Florida Business Corporation Act, do hereby unanimously consent to the adoption of, and do hereby confirm, approve, adopt and ratify the actions set forth in this document (the "Unanimous Consent"). This Unanimous Consent shall be dated and shall be effective as of the date first above written. The within actions by unanimous written consent constitute valid corporate actions as though such actions have been adopted at a formal meeting of the Board of Directors of Southwest.

The following resolutions are hereby unanimously adopted:

**WHEREAS**, the Corporation chartered Southwest Interim Bank No. 2 ("Interim") as a wholly-owned subsidiary for the sole purpose of facilitating its proposed merger with Mercantile Bank of Southwest Florida ("Mercantile") pursuant to the terms and conditions of a July 29, 1997 "Agreement and Plan of Merger By and Among F.N.B. Corporation, Southwest Banks, Inc., Southwest Interim Bank No. 2 and Mercantile Bank of Southwest Florida, as amended" (the "Agreement"); and

**WHEREAS**, under the terms of said Agreement Interim will merge with and into Mercantile and immediately thereafter the resulting bank, Mercantile, will merge with and into Southwest's wholly-owned subsidiary, First National Bank of Naples ("First-Naples"), with First-Naples being the resulting bank; and

**WHEREAS**, consistent with the requirements of the Florida Department of Banking and applicable laws and regulations the purpose of this meeting is to elect the Board of Directors and Officers of Interim and approve the merger of Interim with and into Mercantile.

**RESOLVED**, the Board hereby elects Gary L. Tice, Garret S. Richter, David W. Gomer, C.C. Coghill and Terry Read Walston as directors of Interim to serve until the merger of Interim with and into Mercantile.

**FURTHER RESOLVED**, that the Articles of Incorporation and organization certificate to be filed with the Florida Department of Banking on September 9, 1997 are hereby ratified and approved by the Board.

MERCANTILE BANK OF SOUTHWEST FLORIDA

RESOLUTIONS ADOPTED BY THE  
BOARD OF DIRECTORS AT A MEETING HELD ON  
SEPTEMBER 22, 1997 APPROVING MERGER WITH  
FIRST NATIONAL BANK OF NAPLES

\* \* \*

WHEREAS, Mercantile Bank of Southwest Florida ("Mercantile") entered into an Agreement and Plan of Merger (as it may be amended or supplemented from time to time, the "Merger Transaction"), on July 29, 1997, by and among the F.N.B. Corporation, Hermitage, Pennsylvania ("F.N.B."), Southwest Banks, Inc., a Florida corporation ("Southwest"), and a wholly-owned subsidiary of F.N.B., Southwest Interim Bank No. 2, Naples, Florida, an interim bank to be formed under the laws of the State of Florida ("Interim Bank") and wholly-owned subsidiary of Southwest.

WHEREAS, the Merger Agreement provides for, among other things, at the Effective Time (as defined in the Merger Agreement), the merger of Interim Bank with and into Mercantile (the "Merger") and the payment of a certain amount of cash consideration for each share of Mercantile common stock outstanding ("Cash Consideration"), as set forth in the Merger Agreement; and

WHEREAS, at this meeting of the Board of Directors of Mercantile (the "Board"), the Board at the request of F.N.B. and as an accommodation to F.N.B. considered the final step of the contemplated transaction, namely, the merger of Mercantile with and into First National Bank of Naples, a national bank chartered under the laws of the United States ("First-Naples") and a wholly-owned subsidiary of Southwest, (the "2<sup>nd</sup> Step Merger") which is to occur immediately following consummation of the Merger; and

WHEREAS, the Board of Directors of Mercantile has previously approved Merger whereby Interim Bank No. 2 will be merged with and into Mercantile at a meeting held on July 29, 1997; and

WHEREAS, the Board desires to approve the 2<sup>nd</sup> Step Merger of Mercantile with and into First-Naples consistent with the terms and structure of the Plan of Reorganization and Agreement (the "2<sup>nd</sup> Merger Agreement"), to Merge attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT:

RESOLVED, that in order to accommodate F.N.B. to allow it to file all required regulatory applications with respect to the

2<sup>nd</sup> Step Merger the Board hereby approves and adopts the Merger of Mercantile with and into First-Naples subject to and contingent upon consummation of the Merger prior thereto; and the 2<sup>nd</sup> Merger Agreement and the transactions contemplated thereby; and

FURTHER RESOLVED, that the proper officers of Mercantile be, and each of them hereby is, authorized and directed for and on behalf of the Mercantile, to execute and deliver the 2<sup>nd</sup> Merger Agreement in substantially the form attached hereto as Exhibit A, with such changes therein as the proper officers executing the same, with the advice of counsel, may approve, the execution thereof by any such officer conclusively to evidence the due authorization thereof by this Board; and

FURTHER RESOLVED, that the proper officers of Mercantile be, and each of them hereby is, authorized and directed, on behalf of and in the name of this Mercantile, to prepare, sign and file, or cause to be filed, with any applicable federal, state or foreign country regulatory or supervisory body, including, without limitation, the Office of the Comptroller of the Currency and all appropriate state banking, financial institutions, or insurance regulatory authorities, all applications requests for approval, consents, interpretations, or other determinations, notices and other information and documents, and any modifications or supplements thereto, as may be necessary or convenient in connection with the 2<sup>nd</sup> Merger and the 2<sup>nd</sup> Merger Agreement and the transactions contemplated thereby, together with all agreements and other information and documents required or appropriate, and any publications required, in connection therewith; and

FURTHER RESOLVED, that, without limiting the foregoing, the proper officers of the Mercantile be, and each of them hereby is, authorized and directed, in the name and on behalf of the Mercantile to prepare all documentation, to effect all filings and to obtain all permits, consents, approvals and authorizations of all third parties, regulatory authorities and other governmental authorities necessary to consummate the transactions contemplated by the 2<sup>nd</sup> Merger Agreement, to execute personally or by attorney-in-fact any such required filings or amendments or supplements to any of the foregoing, and to cause any such required filings and any amendments thereto to become effective or otherwise approved; and

FURTHER RESOLVED, that the Board hereby adopts, as if expressly set forth herein, the form of any resolution required by any authority to be filed in connection with any applications, consents to service, issuer's covenants or other documents, applications, reports or filings relating to the foregoing

resolutions if (i) in the opinion of the officers of the Mercantile executing same, the adoption of such resolutions is necessary or desirable and (ii) the Secretary or an Assistant Secretary of the Mercantile evidences such adoption by inserting in the minutes of this meeting copies of such resolutions, which will thereupon be deemed to be adopted by the Board with the same force and effect as if presented at this meeting; and

FURTHER RESOLVED, that the proper officers of Mercantile be, and each of them hereby is, authorized, empowered and directed, in the name of and on behalf of Mercantile, to execute and deliver or cause to be executed and delivered any and all agreements, amendments, certificates, reports, applications, notices, letters or other documents and to do or cause to be done any and all such other acts and things as, in the opinion of any such officer, may be necessary, appropriate or desirable in order to enable Mercantile fully and promptly to carry out the purposes and intent of the foregoing resolutions and any such action taken or any agreement, amendment, certificate, report, application, notice, letter or other document executed and delivered by them or any of them in connection with any such action shall be conclusive evidence of their or his authority to take, execute and deliver the same; and

FURTHER RESOLVED, that all actions heretofore taken by any of the directors, officers, representatives or agents of Mercantile or any of its affiliates in connection with the 2<sup>nd</sup> Merger and any other transactions contemplated in the 2<sup>nd</sup> Merger Agreement or otherwise referred to in the foregoing resolutions be, and each of the same hereby is, ratified, confirmed and approved in all respects as the act and deed of Mercantile; and

FURTHER RESOLVED, that if a specific form of preamble or resolution relating to this transaction is prescribed by any governmental agency having jurisdiction over this transaction or by any other party to this transaction, then each such preamble and resolution shall be deemed to have been and hereby is adopted by this Board, and the Secretary and each Assistant Secretary of the Bank are hereby authorized to certify the adoption of same as though it had now been presented to this meeting, all such preambles and resolutions so certified to be inserted in the minute book of the Mercantile following the minutes of this meeting; and

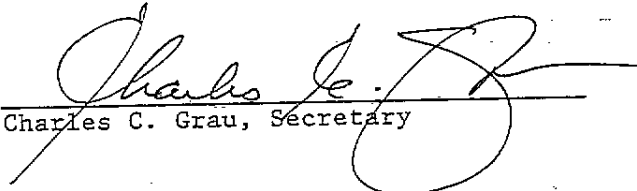
FURTHER RESOLVED, that the officers of Mercantile be and are hereby authorized and directed for and on behalf of Mercantile to execute and file with the appropriate regulatory agencies such applications, certificates, undertakings, consents to service of

process and other documents, together with any amendments and modifications thereof, to execute such other documents and to take such other and further action as to such officers shall appear necessary, proper or convenient in order to carry out the intent and purposes of the foregoing.

I, Charles C. Grau, Secretary of Mercantile Bank of Southwest Florida, do hereby certify that the following is a true and correct copy of the resolutions duly adopted by the Board of Directors at a meeting duly held on September 22, 1997.

I further certify that said resolutions have not been alerted or amended and remain in full force and effect;

In Witness whereof, I have hereunto set my hand and seal this 23<sup>rd</sup> day of September, 1997.

  
Charles C. Grau, Secretary

(Corporate Seal)

JGO:cal  
09/08/97

c:\wpdata\resoluts\mercantile board to approve this resolution

EXHIBIT C

MERCANTILE BANK OF SOUTHWEST FLORIDA  
SPECIAL MEETING OF STOCKHOLDERS

CERTIFICATE AND REPORT OF  
THE INSPECTOR OF ELECTION

I, the undersigned, duly appointed Inspector of Election of Mercantile Bank of Southwest Florida (the "Bank"), DO HEREBY CERTIFY that:

The Special Meeting of Stockholders of the Bank (the "Special Meeting") was held at the Bank's office, 5325 Airport Road, Naples, Florida, on Monday, October 27, 1997 at 8:30 a.m., local time.

According to the certified list of stockholders which was presented at the Special Meeting, there were outstanding and eligible to vote at the Special Meeting 766,681 shares of Common Stock of the Bank which is the only class of capital stock of the Bank outstanding.

There were represented at the Special Meeting in person or by proxy the holders of 727,320 shares of Common Stock of the Bank, representing 94.9 % of the total shares eligible to vote, constituting more than 50 o/o of the outstanding shares eligible to vote.

I inspected the signed proxies and ballots used at the Special Meeting and found the same to be in proper form, and the following is a record of the votes cast:

Ballot No. One

RESOLVED, that the Agreement and Plan of Merger dated July 29, 1997, as amended, (the "Agreement") by and among Mercantile Bank of Southwest Florida (the "Bank"), F.N.B. Corporation ("FNB"), a Pennsylvania Corporation, Southwest Banks, Inc. ("Southwest"), a Florida Corporation and a wholly owned subsidiary of FNB, and Southwest Interim Bank No. 2 ("Interim"), a Florida state banking corporation to-be-formed as a wholly owned subsidiary of Southwest, pursuant to which (i) the Bank will be merged with Interim, with the Bank as the surviving corporation; (ii) each share of the Bank's common stock, \$5.00 par value per share (the "Common Stock") (other than shares held by stockholders of the Bank who have perfected their dissenters' rights of appraisal) will be converted into the right to receive \$17.72 in cash (subject to increase in certain circumstances in the event the Merger is not consummated by January 1, 1998); and (iii) with the exception of certain options held by certain officers of the Bank, each option to acquire Common Stock outstanding as of the effective time of the Merger will be converted into the right to receive the excess of \$17.72 over the exercise price of such option, multiplied by the number of shares subject to such option, under such terms and conditions as are described in the Agreement, and the other transactions contemplated thereby, be adopted and approved.

	<u>Number of Votes</u>	<u>Percentage of Outstanding Shares of Common Stock</u>
FOR	<u>714,426</u>	<u>93.2</u> %
AGAINST	<u>0</u>	<u>0</u> %
ABSTAIN	<u>12,894</u>	<u>1.7</u> %

IN WITNESS WHEREOF, I have made this Certificate and Report of  
the Inspector of Election and have hereunto set my hand this 27th  
day of October, 1997.

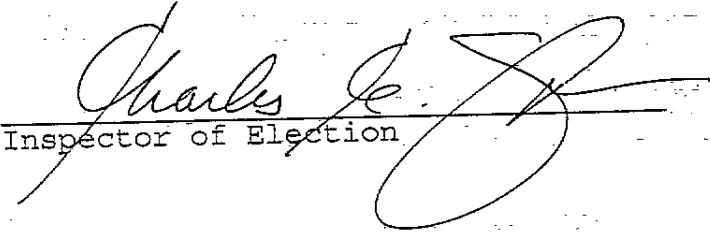
  
Inspector of Election

EXHIBIT A

MERCANTILE BANK OF SOUTHWEST FLORIDA

SPECIAL MEETING OF STOCKHOLDERS

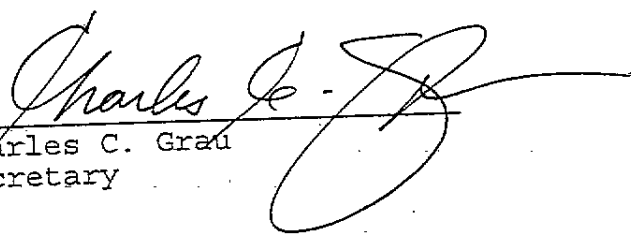
AFFIDAVIT OF MAILING

STATE OF FLORIDA )

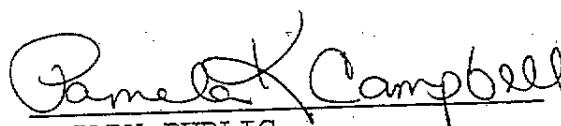
COUNTY OF COLLIER )

SS: \_\_\_\_\_

I, Charles C. Grau, being duly sworn, depose and say that on or about September 29, 1997, Mercantile Bank of Southwest Florida duly mailed or caused to be mailed to each stockholder of record as of the close of business on September 22, 1997, the attached Notice of Special Meeting of Stockholders, Proxy Statement, including the appendices thereto, and Form of Proxy.

  
Charles C. Grau  
Secretary

Subscribed and sworn to before me this 27th day of October, 1997.

  
NOTARY PUBLIC

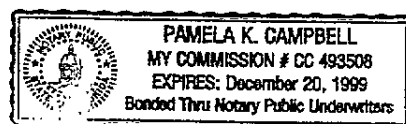


EXHIBIT B

MERCANTILE BANK OF SOUTHWEST FLORIDA

SPECIAL MEETING OF STOCKHOLDERS

AFFIDAVIT OF MAILING

STATE OF FLORIDA )  
COUNTY OF COLLIER )

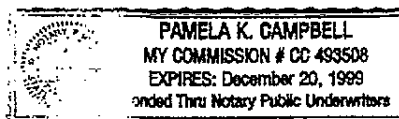
ss: \_\_\_\_\_

I, Charles C. Grau, the undersigned, duly appointed Inspector of Election for the Special Meeting of Stockholders of Mercantile Bank of Southwest Florida (the "Bank") being sworn, do solemnly swear that I will faithfully execute my duty as Inspector of Election with strict impartiality and to the best of my ability at the election to be held at the Special Meeting of Stockholders this 27th day of October, 1997, for the approval of the Agreement and Plan of Merger, as set forth in the Notice of Special Meeting, and will faithfully and diligently tabulate the votes cast at such meeting, and will honestly and truthfully report the results of the voting.

Charles C. Grau  
Inspector of Election

Subscribed and sworn to before me this 27th day of October, 1997.

Pamela K. Campbell  
Notary Public



**AMENDMENT No. 1**  
**to the**  
**AGREEMENT AND PLAN OF MERGER**  
**by and among**  
**F.N.B. CORPORATION, SOUTHWEST BANKS, INC.**  
**AND MERCANTILE BANK OF SOUTHWEST FLORIDA**  
**to be joined in by**  
**SOUTHWEST INTERIM BANK No. 2, N.A.**

This Amendment No. 1 to the Agreement and Plan of Merger dated as of July 29, 1997 (the "Amendment"), is made and entered into this 29th day of August, 1997, by and among F.N.B. Corporation ("FNB"), a Pennsylvania corporation having its principal office located in Hermitage, Pennsylvania; Southwest Banks, Inc. ("Southwest"), a Florida corporation having its principal office located in Naples, Florida, and a wholly-owned subsidiary of FNB; and Mercantile Bank of Southwest Florida ("Mercantile"), a Florida state banking corporation having its principal office located in Naples, Florida; to be joined into by Southwest Interim Bank No. 2 ("Interim"), a state banking corporation to be chartered under the laws of the State of Florida and to become a wholly-owned subsidiary of Southwest.

**WITNESSETH:**

WHEREAS, FNB, Southwest and Mercantile entered into that Agreement and Plan of Merger dated July 29, 1997 (the "Agreement"); and

WHEREAS, the parties to the Agreement have determined that it is in the best interests of the parties if the interim corporation to be used as a merger vehicle in the Agreement is chartered under the laws of the State of Florida rather than under the laws of the United States; and

WHEREAS, the Boards of Directors of the parties deem it in the best interests of each, respectively, and of their respective shareholders that the Agreement be amended;

NOW, THEREFORE, in consideration of the premises and the mutual covenants, representations, warranties and agreements herein contained, the parties hereby amend the Agreement in the manner hereinafter set forth.

(1) The parties hereby agree that Interim, as referred to in the Agreement, shall not be chartered under the laws of the United States, but shall be chartered under the laws of the State of Florida and shall become a party to the Agreement as soon as practicable after becoming a body corporate under the laws of the State of Florida.

(2) The parties further agree that all references to Interim in the Agreement shall mean Southwest Interim Bank No. 2, a state bank to be chartered under the laws of the State of Florida.

(3) Except as otherwise provided herein, all terms and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered and their respective seals affixed hereto by their officers thereunto duly authorized and have caused this Amendment to be dated as of the date and year first above written.

F.N.B. CORPORATION

By: \_\_\_\_\_  
Name: Peter Mortensen  
Title: Chairman of the Board and President

SOUTHWEST BANKS, INC.

By: \_\_\_\_\_  
Name: Gary L. Tice  
Title: Chairman of the Board, President,  
and Chief Executive Officer

MERCANTILE BANK OF SOUTHWEST FLORIDA

By: \_\_\_\_\_  
Name: Russell R. Kempker, Jr.  
Title: President and Chief Executive Officer

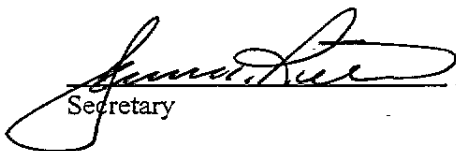
Southwest Interim Bank No. 2 hereby joins in the foregoing Amendment, undertakes that it will be bound thereby and that it will duly perform all acts and things therein referred to or provided to be done by it.

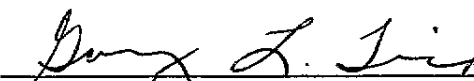
IN WITNESS WHEREOF, Southwest Interim Bank No. 2 has caused this undertaking to be made in counterparts by its duly authorized officers and its corporate seal to be hereunto affixed as of this 19 day of November, 1997.

[Corporate Seal]

Attest:

SOUTHWEST INTERIM BANK NO. 2

  
Secretary

By:   
Name: Gary L. Tice  
Title: President

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered and their respective seals affixed hereto by their officers thereunto duly authorized and have caused this Amendment to be dated as of the date and year first above written.

F.N.B. CORPORATION

By: \_\_\_\_\_  
Name: Peter Mortensen  
Title: Chairman of the Board and President

SOUTHWEST BANKS, INC.

By: \_\_\_\_\_  
Name: Gary L. Tice  
Title: Chairman of the Board, President,  
and Chief Executive Officer

MERCANTILE BANK OF SOUTHWEST FLORIDA

By: Russell R. Kempker, Jr.  
Name: Russell R. Kempker, Jr.  
Title: President and Chief Executive Officer

Southwest Interim Bank No. 2 hereby joins in the foregoing Amendment, undertakes that it will be bound thereby and that it will duly perform all acts and things therein referred to or provided to be done by it.

IN WITNESS WHEREOF, Southwest Interim Bank No. 2 has caused this undertaking to be made in counterparts by its duly authorized officers and its corporate seal to be hereunto affixed as of this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

SOUTHWEST INTERIM BANK NO. 2

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

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered and their respective seals affixed hereto by their officers thereunto duly authorized and have caused this Amendment to be dated as of the date and year first above written.

F.N.B. CORPORATION

By: \_\_\_\_\_

Name:

Peter Mortensen

Title:

Chairman of the Board and President

SOUTHWEST BANKS, INC.

By: \_\_\_\_\_

Name:

Gary L. Tice

Title:

Chairman of the Board, President,  
and Chief Executive Officer

MERCANTILE BANK OF SOUTHWEST FLORIDA

By: \_\_\_\_\_

Name:

Russell R. Kempker, Jr.

Title:

President and Chief Executive Officer

Southwest Interim Bank No. 2 hereby joins in the foregoing Amendment, undertakes that it will be bound thereby and that it will duly perform all acts and things therein referred to or provided to be done by it.

IN WITNESS WHEREOF, Southwest Interim Bank No. 2 has caused this undertaking to be made in counterparts by its duly authorized officers and its corporate seal to be hereunto affixed as of this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

[Corporate Seal]

Attest:

SOUTHWEST INTERIM BANK NO. 2

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Name:

Title:

**AMENDMENT NO. 2**  
**to the**  
**AGREEMENT AND PLAN OF MERGER**  
**by and among**  
**F.N.B. CORPORATION, SOUTHWEST BANKS, INC.**  
**AND MERCANTILE BANK OF SOUTHWEST FLORIDA**  
**to be joined in by**  
**SOUTHWEST INTERIM BANK NO. 2**

This Amendment No. 2 to the Agreement and Plan of Merger dated as of July 29, 1997 (the "Amendment"), is made and entered into this 31st day of October, 1997, by and among F.N.B. Corporation ("FNB"), a Pennsylvania corporation having its principal office located in Hermitage, Pennsylvania; Southwest Banks, Inc. ("Southwest"), a Florida corporation having its principal office located in Naples, Florida, and a wholly-owned subsidiary of FNB; and Mercantile Bank of Southwest Florida ("Mercantile"), a Florida state banking corporation having its principal office located in Naples, Florida; to be joined into by Southwest Interim Bank No. 2 ("Interim"), a state banking corporation to be organized under the laws of the State of Florida and to become a wholly-owned subsidiary of Southwest.

**WITNESSETH:**

WHEREAS, FNB, Southwest and Mercantile entered into that Agreement and Plan of Merger dated as of July 29, 1997, as amended by Amendment No. 1 dated August 29, 1997 (the "Merger Agreement"); and

WHEREAS, the Boards of Directors of the parties deem it to be in the best interests of each, respectively, and of their respective shareholders that the Merger Agreement be amended as provided herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants, representations, warranties and agreements herein contained, the parties hereby amend the Merger Agreement in the manner hereinafter set forth.

(1) *Treatment of Options and Warrants.* Section 3.3(a) of the Merger Agreement is hereby amended by deleting clauses (iii) and (iv) thereof in their entirety and by substituting the following in lieu thereof:

"(iii) the number of shares of FNB Common Stock subject to each such Mercantile Option shall be equal to (at the election of the option holder which election shall be communicated in writing to FNB no later than the Closing) either (A) the number of shares of Mercantile Common Stock subject to each such Mercantile Option immediately prior to the Effective Time or (B) the number of shares of Mercantile Common Stock subject to each such Mercantile Option immediately prior to the Effective Time multiplied by the quotient (such quotient hereinafter referred to as the "Adjustment Factor") arrived at by dividing (A) the Cash Consideration by (B) the average of the closing bid and ask prices of the FNB Common Stock as reported by the Nasdaq Stock Market for the five (5) consecutive full trading days prior to the effective date (including expiration of any applicable waiting period required by Law) of the last required Consent of any Regulatory Authority having authority over and approving or exempting the Merger (the "Average Bid and Ask Price"), and (iv) the per share exercise price under each such Mercantile Option will be adjusted (A) in the event the number of shares subject to option is determined as specified in clause (iii)(A) of this Section 3.3(a), to equal the difference between (I) the Average Bid and Ask Price and (II) the difference between (x) the Cash Consideration and (y) the exercise price for each such Mercantile Option or (B) in the event the number of shares subject to option is

determined as specified in clause (iii)(B) of this Section 3.3(a), by dividing the per share exercise price under each such Mercantile Option by the Adjustment Factor.”

(2) All terms which are capitalized herein, but which are not defined herein, shall have the meanings ascribed to them in the Merger Agreement.

(3) Except as otherwise provided herein, all terms and provisions of the Merger Agreement shall remain in full force and effect. Notwithstanding the foregoing to the contrary, to the extent that there is any inconsistency between the provisions of the Merger Agreement, as previously amended, and the provisions of this Amendment No. 2, the provisions of this Amendment No. 2 shall control and be binding.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered and their respective seals affixed hereto by their officers thereunto duly authorized and have caused this Amendment to be dated as of the date and year first above written.

F.N.B. CORPORATION

By: \_\_\_\_\_  
Name: Peter Mortensen  
Title: Chairman of the Board and President

SOUTHWEST BANKS, INC.

By: \_\_\_\_\_  
Name: Gary L. Tice  
Title: Chairman of the Board, President,  
and Chief Executive Officer

MERCANTILE BANK OF SOUTHWEST FLORIDA

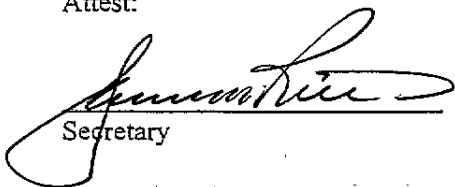
By: \_\_\_\_\_  
Name: Russell R. Kempker, Jr.  
Title: President and Chief Executive Officer

Southwest Interim Bank No. 2 hereby joins in the foregoing Amendment, undertakes that it will be bound thereby and that it will duly perform all acts and things therein referred to or provided to be done by it.

IN WITNESS WHEREOF, Southwest Interim Bank No. 2 has caused this undertaking to be made in counterparts by its duly authorized officers and its corporate seal to be hereunto affixed as of this 19 day of November, 1997.

[Corporate Seal]

Attest:

  
Secretary

SOUTHWEST INTERIM BANK NO. 2

By:   
Name: Gary L. Tice  
Title: President

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered and their respective seals affixed hereto by their officers thereunto duly authorized and have caused this Amendment to be dated as of the date and year first above written. This Amendment may be executed in two or more counterparts which, when taken together, shall constitute a single original.

F.N.B. CORPORATION

By: Peter Mortensen  
Name: Peter Mortensen  
Title: Chairman of the Board and President

SOUTHWEST BANKS, INC.

By: Gary L. Tice  
Name: Gary L. Tice  
Title: Chairman of the Board, President,  
and Chief Executive Officer

MERCANTILE BANK OF SOUTHWEST FLORIDA

By: Russell R. Kempker, Jr.  
Name: Russell R. Kempker, Jr.  
Title: President and Chief Executive Officer

Southwest Interim Bank No. 2 hereby joins in the foregoing Amendment, undertakes that it will be bound thereby and that it will duly perform all acts and things therein referred to or provided to be done by it.

IN WITNESS WHEREOF, Southwest Interim Bank No. 2 has caused this undertaking to be made in counterparts by its duly authorized officers and its corporate seal to be hereunto affixed as of this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

[Corporate Seal]

Attest:

SOUTHWEST INTERIM BANK NO. 2

\_\_\_\_\_  
Secretary

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

Attachment No. 4

**AGREEMENT AND PLAN OF MERGER**

**BY AND AMONG**

**F.N.B. CORPORATION,**

**SOUTHWEST BANKS, INC.,**

**SOUTHWEST INTERIM BANK NO. 2, N.A.**

**AND**

**MERCANTILE BANK OF SOUTHWEST FLORIDA**

**Dated as of July 29, 1997**

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## LIST OF EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
1	Form of Stock Option Agreement (Section 1.4)
2	Information and Documents of the Surviving Corporation (Section 1.1)
3	Form of Employment Agreement between Southwest Banks, Inc., First National Bank of Naples, N.A. and Charles C. Grau (Section 8.12)

FILED

EFFECTIVE AS OF NOVEMBER 20, 1997 AT 5:00 P.M.

97 NOV 20 PM 2: 24

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of July 29, 1997, by and among F.N.B. CORPORATION ("FNB"), a Pennsylvania corporation having its principal office located in Hermitage, Pennsylvania; SOUTHWEST BANKS, INC. ("Southwest"), a Florida corporation having its principal office located in Naples, Florida, and a wholly-owned subsidiary of FNB; to be joined in by SOUTHWEST INTERIM BANK NO. 2, N.A., a national bank to be chartered under the laws of the United States and to become a wholly-owned subsidiary of Southwest ("Interim"); and MERCANTILE BANK OF SOUTHWEST FLORIDA ("Mercantile"), a Florida state banking corporation having its principal office located in Naples, Florida.

### PREAMBLE

The Boards of Directors of FNB, and once it is chartered, Interim, are of the opinion that the acquisition described herein is in the best interests of the parties and their respective shareholders. The Board of Directors of Mercantile has unanimously voted in favor of the acquisition described herein and, subject to Section 8.1 herein, unanimously recommends same for approval by Mercantile shareholders. This Agreement provides for the acquisition of Mercantile by FNB pursuant to the merger of Mercantile with Interim, with Mercantile to be the surviving entity in the merger (the "Merger"). At the effective time of such Merger, the outstanding shares of the capital stock of Mercantile shall be converted into the right to receive the Cash Consideration payable by FNB as defined in Section 3.1(c) herein. The transactions described in this Agreement are subject to the approvals of the shareholders of Mercantile and Interim, the Board of Governors of the Federal Reserve System, the Florida Department of Banking and Finance, and the satisfaction of certain other conditions described in this Agreement. It is the intention of the parties to this Agreement that the Merger for accounting purposes shall qualify for treatment as a purchase.

Immediately after the execution and delivery of this Agreement, as a condition and inducement to FNB's willingness to enter into this Agreement, Mercantile and FNB are entering into a stock option agreement (the "Stock Option Agreement"), in substantially the form of Exhibit 1, pursuant to which Mercantile is granting to FNB an option to purchase shares of Mercantile Common Stock.

Certain terms used in this Agreement are defined in Section 11.1 of this Agreement.

NOW, THEREFORE, in consideration of the above and the mutual warranties, representations, covenants, and agreements set forth herein, the parties agree as follows:

### ARTICLE 1

#### TRANSACTIONS AND TERMS OF MERGER

1.1 *Merger.* Subject to the terms and conditions of this Agreement, at the Effective Time, Mercantile shall be merged with Interim in accordance with the provisions of and with the effect contemplated by the National Bank Act and the FFIC. The separate existence of Interim shall thereupon cease and Mercantile shall be the Surviving Corporation resulting from the Merger and shall continue to be governed by the FFIC. The name and location of the main office and each branch office of FNB, Southwest, Interim and Mercantile, along with the name and address of the main office of the Surviving Corporation and each existing and proposed branch office as well as the name and address of each director and executive officer, and a copy of the complete articles of incorporation of the Surviving Corporation are attached as Exhibit 2 to this Agreement. Exhibit 2 further includes the amount of the Surviving Corporation's surplus fund and retained earnings at June 30, 1997. The Surviving Corporation will not have trust powers. The Merger shall be consummated pursuant to the terms of this Agreement, which has

been approved and adopted by the respective Boards of Directors of Mercantile, FNB and Southwest, and will be approved and adopted by the Board of Directors of Interim when formed.

1.2 *Time and Place of Closing.* The closing of the transactions contemplated by this Agreement (the "Closing"), including the Merger, shall take place at 10:00 A.M., local time, on a date specified by the Parties as they, acting through their chief executive officers or chief financial officers, may mutually agree. Subject to the terms and conditions hereof, unless mutually agreed upon in writing by each Party, the Parties shall use their reasonable best efforts to cause the Closing to occur on but not prior to the fifth business day following the Determination Date; provided, however, that in no event shall the Closing occur prior to October 5, 1997.

1.3 *Effective Time.* The Merger and other transactions contemplated by this Agreement shall become effective on the date and at the time set forth in the certificate of merger (the "Certificate of Merger") issued by the Florida Department of Banking and Finance (the "Effective Time"). Unless the Parties otherwise mutually agree in writing, the Parties shall file the Certificate of Merger on the date of Closing and shall use their best efforts to cause the Effective Time to occur on the date of the Closing.

1.4 *Execution of Stock Option Agreement* Immediately after the execution of this Agreement and as a condition thereto, Mercantile is executing and delivering to FNB the Stock Option Agreement.

## ARTICLE 2

### TERMS OF MERGER

2.1 *Charter.* Pursuant to the Merger, the Articles of Incorporation of Mercantile in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Corporation until otherwise amended or repealed.

2.2 *Bylaws.* The Bylaws of Mercantile in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation until otherwise amended or repealed.

## ARTICLE 3

### MANNER OF CONVERTING SHARES

3.1 *Conversion of Shares.* Subject to the provisions of this Article 3, at the Effective Time, by virtue of the Merger and without any action on the part of FNB, Southwest, Interim, or Mercantile, or the shareholders of any of the foregoing, the shares of the constituent corporations shall be converted as follows:

(a) Each share of common stock of Interim issued and outstanding prior to the Effective Time shall be converted into the same number of shares of \$5.00 par value common stock of the Surviving Corporation.

(b) Each share of FNB Capital Stock issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding from and after the Effective Time.

(c) Except for Mercantile Common Stock issued and outstanding immediately prior to the Effective Time as to which dissenters' rights have been perfected and not withdrawn, each share of Mercantile Common Stock (excluding shares to be canceled pursuant to Section 3.2 of

this Agreement) issued and outstanding at the Effective Time shall cease to be outstanding and shall be converted into the right to receive \$17.72 per share in cash (the "Cash Consideration"). If the Effective Time occurs on or after January 1, 1998, and the reason that the Merger has not closed prior to that date is solely due to the fault of FNB, then the Cash Consideration shall include interest on such amount payable from January 1, 1998 at the rate of FNB prime as in effect at that time.

(d) Notwithstanding Section 3.1(c) of this Agreement, Mercantile Common Stock issued and outstanding at the Effective Time which is held by a holder who has not voted in favor of the Merger and who has demanded payment of the fair cash value of such shares in accordance with Title 38, Chapter 658, Section 658.44 of the FFIC ("Dissenting Mercantile Shares") shall not be converted into or represent the right to receive the Cash Consideration payable thereon pursuant to Section 3.1(c) of this Agreement, and shall be entitled only to such rights of appraisal as are granted by Title 38, Chapter 658, Section 658.44 of the FFIC ("Dissent Provisions"), unless and until such holder fails to perfect or effectively withdraws or otherwise loses his right to appraisal. If after the Effective Time any such holder fails to perfect or effectively withdraws or loses his right to appraisal, such shares of Mercantile Common Stock shall be treated as if they had been converted at the Effective Time into the right to receive the Cash Consideration payable thereon pursuant to Section 3.1(c) of this Agreement. Mercantile shall give FNB prompt notice upon receipt by Mercantile of any written objection to the Merger and such written demands for payment of the fair value of shares of Mercantile Common Stock, and the withdrawals of such demands, and any other instruments provided to Mercantile pursuant to the Dissent Provisions (any shareholder duly making such demand being hereinafter called a "Dissenting Shareholder"). Each Dissenting Shareholder that becomes entitled, pursuant to the Dissent Provisions, to payment for any shares of Mercantile Common Stock held by such Dissenting Shareholder shall receive payment therefor from FNB (but only after the amount thereof shall have been agreed upon or at the times and in the amounts required by the Dissent Provisions) and all of such Dissenting Shareholders shares of Mercantile Common Stock shall be canceled. Mercantile shall not, except with the prior written consent of FNB, voluntarily make any payment with respect to, or settle or offer to settle, any demand for payment by any Dissenting Shareholder.

3.2 *Shares Held by Mercantile or FNB.* Each of the shares of Mercantile Common Stock held by Mercantile or by any FNB Company, in each case other than in a fiduciary capacity or as a result of debts previously contracted, shall be canceled and retired at the Effective Time and no consideration shall be issued in exchange therefor.

### 3.3 *Treatment of Options and Warrants.*

(a) At the Effective Time of the Merger, all rights with respect to Mercantile Common Stock issuable pursuant to the exercise of options, warrants, or other rights to purchase or acquire Mercantile Common Stock (collectively, the "Mercantile Options") granted by Mercantile pursuant to stock option plans or other agreements of Mercantile (collectively, the "Mercantile Stock Plans") and held by Messrs. Kempker and Grau, which Mercantile Options as of the date hereof are listed and described in Section 3.3 of the Mercantile Disclosure Memorandum and which Mercantile Options are outstanding at the Effective Time of the Merger, whether or not such Mercantile Options are then exercisable, shall be converted into and become rights with respect to FNB Common Stock, and FNB shall assume each Mercantile Option, in accordance with the terms of each of the Mercantile Stock Plans or agreements by which such Mercantile Option is evidenced, except that from and after the Effective Time (i) FNB and its Compensation Committee shall be substituted for Mercantile and the Compensation Committee

of Mercantile's Board of Directors, including, if applicable, the entire Board of Directors of Mercantile, administering such Mercantile Stock Plan, (ii) each Mercantile Option assumed by FNB may be exercised solely for shares of FNB Common Stock (or cash in the case of stock appreciation rights), (iii) the number of shares of FNB Common Stock subject to each such Mercantile Option shall be equal to the number of shares of Mercantile Common Stock subject to each such Mercantile Option immediately prior to the Effective time, and (iv) the per share exercise price under each such Mercantile Option will be adjusted to equal the difference between (A) the average of the closing bid and ask prices of the FNB Common Stock as reported on the Nasdaq national market during the five (5) business days prior to the effective date (including expiration of any applicable waiting period required by Law) of the last required Consent of any Regulatory Authority having authority over and approving or exempting the Merger and (B) the difference between (i) the Cash Consideration and (ii) the exercise price for each such Mercantile Option. Notwithstanding the provisions of clause (iii), each Mercantile Option which is an "incentive stock option" shall be adjusted as required by Section 424 of the Internal Revenue Code, and the regulations promulgated thereunder, so as not to constitute a modification, extension, or renewal of the Option within the meaning of Section 424(h) of the Internal Revenue Code. Mercantile and FNB agree to take all necessary steps to effectuate the foregoing provisions of this Section 3.3.

(ii) With respect to all other Mercantile Options outstanding as of the date hereof, which are also listed and described in Section 3.3 of the Mercantile Disclosure Schedule, each holder of such other Mercantile Option shall, immediately prior to the Effective Time, receive in cancellation of such Mercantile Option a cash payment in an amount equal to the excess of (A) the Cash Consideration over (B) the exercise price of such Mercantile Option, multiplied by the number of shares of Mercantile Common Stock subject to such other Mercantile Option.

(b) As soon as practicable after the Effective Time, FNB shall deliver to Messrs. Kempker and Grau an appropriate notice setting forth such participant's rights pursuant thereto and the grants pursuant to such Mercantile Stock Plan shall continue in effect on the same terms and conditions (subject to the adjustments required by Section 3.3(a) after giving effect to the Merger), and FNB shall comply with the terms of each Mercantile Stock Plan to ensure, to the extent required by, and subject to the provisions of, such Mercantile Stock Plan, that Mercantile Options which qualified as incentive stock options prior to the Effective time continue to qualify as incentive stock options after the Effective Time. Further, notwithstanding anything to the contrary herein, the Parties acknowledge and agree that pursuant to Section 6(c) of the Mercantile 1989 Stock Option Plan all outstanding Mercantile Options granted pursuant to such Plan become immediately exercisable to the extent not exercisable beforehand, as a result of the changes of control of Mercantile contemplated by this Agreement.

At or prior to the Effective time, FNB shall take all corporate action necessary to reserve for issuance sufficient shares of FNB Common Stock for delivery upon exercise of Mercantile Options assumed by it in accordance with this Section 3.3. Within thirty (30) days after the Effective Time, FNB shall file a registration statement on Form S-3 or Form S-8, as the case may be (or any successor or other appropriate forms), with respect to the shares of FNB Common Stock subject to such Mercantile Options and shall use its reasonable efforts to maintain the effectiveness of such registration statement (and maintain the current status of the prospectus or the prospectuses contained therein), for so long as such options remain outstanding. With respect to individuals who subsequent to the Merger will be subject to the reporting requirements under Section 16(a) of the 1934 Act, where applicable, FNB shall administer the Mercantile Stock Plan assumed pursuant to this Section 3.3 in a manner which complies with Rule 16b-3

promulgated under the 1934 Act to the extent the Mercantile Stock Plan complied with such Rule prior to the Merger.

(c) All restrictions or limitations on transfer with respect to the Mercantile Common Stock awarded under the Mercantile Stock Plan or any other plan, program, or arrangement of Mercantile, to the extent that such restrictions or limitations shall not have already lapsed, and except as otherwise expressly provided in such plan, program, or arrangement, shall remain in full force and effect.

## ARTICLE 4

### EXCHANGE OF SHARES

4.1 *Exchange Procedures.* At the Effective Time, FNB shall deposit or shall cause to be deposited with the exchange agent selected by FNB (the "Exchange Agent") the Cash Consideration in such amount necessary to provide all consideration required to be exchanged by FNB for Mercantile Common Stock pursuant to the terms of this Agreement. Within five (5) business days after the Effective Time, FNB shall cause the Exchange Agent to mail to the former shareholders of Mercantile appropriate transmittal materials (which shall specify that delivery shall be effected, and risk of loss and title to the certificates theretofore representing shares of Mercantile Common Stock shall pass, only upon proper delivery of such certificates to the Exchange Agent). After the Effective Time, each holder of shares of Mercantile Common Stock (other than shares to be canceled pursuant to Section 3.2 of this Agreement and other than with respect to Dissenting Mercantile Shares) issued and outstanding at the Effective Time shall surrender the certificate or certificates representing such shares to the Exchange Agent and shall upon surrender thereof promptly receive in exchange therefor the consideration provided in Section 3.1(c) of this Agreement. FNB shall not be obligated to deliver the Cash Consideration to which any former holder of Mercantile Common Stock is entitled as a result of the Merger until such holder surrenders such holder's certificate or certificates representing the shares of Mercantile Common Stock for exchange as provided in this Section 4.1. The certificate or certificates of Mercantile Common Stock so surrendered shall be duly endorsed as the Exchange Agent may require. Any other provision of this Agreement notwithstanding, neither FNB nor the Exchange Agent shall be liable to a holder of Mercantile Common Stock for any amounts paid or property delivered in good faith to a public official pursuant to any applicable abandoned property Law. In the event any certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such certificate to be lost, stolen or destroyed, and the posting by such person of a bond in such amount as FNB may reasonably direct as indemnity against any claim that may be made against it with respect to such certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed certificate the Cash Consideration deliverable in respect thereof pursuant to this Agreement.

4.2 *Rights of Former Mercantile Shareholders.* At the Effective Time, the stock transfer books of Mercantile shall be closed as to holders of Mercantile Common Stock immediately prior to the Effective Time and no transfer of Mercantile Common Stock by any such holder shall thereafter be made or recognized. Until surrendered for exchange in accordance with the provisions of Section 4.1 of this Agreement, each certificate theretofore representing shares of Mercantile Common Stock (other than shares to be canceled pursuant to Section 3.2 of this Agreement and other than Dissenting Mercantile Shares) shall from and after the Effective Time represent for all purposes only the right to receive the consideration provided in Section 3.1 of this Agreement in exchange therefor. However, upon surrender of such Mercantile Common Stock certificate, the Cash Consideration shall be delivered and paid with respect to each share represented by such certificate. Any portion of the Cash Consideration (including the proceeds of any investments thereof) which had been made payable to the Exchange Agent pursuant

to Section 4.1 of this Agreement that remain unclaimed by the shareholders of Mercantile for six (6) months after the Effective Time shall be paid to FNB. Any shareholders of Mercantile who have not theretofore complied with this Article 4 shall thereafter look only to FNB for payment of the Cash Consideration deliverable in respect of each Mercantile share of Common Stock such shareholder holds as determined pursuant to this Agreement, in each case, without any interest thereon.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES OF MERCANTILE

Mercantile hereby represents and warrants to FNB as follows:

5.1 *Organization, Standing, and Power.* Mercantile is a state banking corporation duly organized, validly existing, and in active status under the laws of the State of Florida, and has the corporate power and authority to carry on its business as now conducted and to own, lease, and operate its material Assets. Mercantile is duly qualified or licensed to transact business as a foreign corporation and is in good standing in each jurisdiction where the character of its Assets or the nature or conduct of its business requires it to be so qualified or licensed, except for such jurisdictions in which the failure to be so qualified or licensed is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile.

5.2 *Authority; No Breach by Agreement.*

(a) Mercantile has the corporate power and authority necessary to execute and deliver this Agreement and, subject to the approval and adoption of this Agreement by the shareholders of Mercantile, to perform its obligations under this Agreement and consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement by Mercantile and the consummation by Mercantile of the transactions contemplated herein, including the Merger, have been duly and validly authorized by all necessary corporate action in respect thereof on the part of Mercantile, subject to the approval of this Agreement by its shareholders as contemplated by Section 8.1 of this Agreement. Subject to such requisite shareholder approval (and assuring due authorization, execution and delivery by FNB, Southwest and Interim, this Agreement represents a legal, valid, and binding obligation of Mercantile, enforceable against Mercantile in accordance with its terms (except in all cases as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding may be brought). The Mercantile Board of Directors has received from The Robinson-Humphrey Company, Inc. a letter dated as of the date of this Agreement to the effect that, in the opinion of such firm, the Cash Consideration is fair, from a financial point of view, to the holders of Mercantile Common Stock.

(b) Except as disclosed in Section 5.2 of the Mercantile Disclosure Memorandum, neither the execution and delivery of this Agreement by Mercantile, nor the consummation by Mercantile of the transactions contemplated hereby, nor compliance by Mercantile with any of the provisions hereof, will (i) conflict with or result in a breach of any provision of Mercantile's Articles of Incorporation or Bylaws, or (ii) constitute or result in a Default under, or require any Consent pursuant to, or result in the creation of any Lien on any Asset of any Mercantile Company under, any Contract or Permit of any Mercantile Company, where such Default or Lien, or any failure to obtain such Consent, is reasonably likely to have, individually or in the

aggregate, a Material Adverse Effect on Mercantile, or (iii) subject to receipt of the requisite Consents referred to in Section 9.1(b) of this Agreement, violate any Law or Order applicable to any Mercantile Company or any of their respective material Assets.

(c) Other than in connection or compliance with the provisions of the Securities Laws, applicable state corporate and securities Laws, and rules of the Nasdaq, and other than Consents required from Regulatory Authorities, and other than notices to or filings with the Internal Revenue Service or the Pension Benefit Guaranty Corporation with respect to any employee benefit plans, or under the HSR Act, and other than Consents, filings, or notifications which, if not obtained or made, are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile, no notice to, filing with, or Consent of, any public body or authority is necessary for the consummation by Mercantile of the Merger and the other transactions contemplated in this Agreement.

### 5.3 *Capital Stock.*

(a) The authorized capital stock of Mercantile consists of (i) 1,500,000 shares of Mercantile Common Stock, of which 766,681 shares are issued and outstanding as of the date of this Agreement and not more than 847,006 shares will be issued and outstanding at the Effective Time, and (ii) zero shares of preferred stock. All of the issued and outstanding shares of capital stock of Mercantile are duly and validly issued and outstanding and are fully paid and nonassessable under the FFIC. None of the outstanding shares of capital stock of Mercantile has been issued in violation of any preemptive rights. Mercantile has reserved 100,000 shares of Mercantile Common Stock for issuance under the Mercantile Stock Plans, pursuant to which options and warrants to purchase not more than 80,325 shares of Mercantile Common Stock are outstanding.

(b) Except as set forth in Section 5.3(a) of this Agreement, or as provided pursuant to the Stock Option Agreement, there are no shares of capital stock or other equity securities of Mercantile outstanding and no outstanding Rights relating to the capital stock of Mercantile.

5.4 *No Mercantile Subsidiaries.* Mercantile does not have any subsidiaries.

5.5 *Regulatory Filings; Financial Statements.* Mercantile has made available to FNB copies of the Mercantile Financial Statements and all management letters of its outside independent certified public accountants relating to any audits performed in connection with the preparation of the Mercantile Financial Statements. Each of the Mercantile Financial Statements (including, in each case, any related notes), including any Mercantile Financial Statements filed after the date of this Agreement until the Effective Time, was prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated therein or in the notes to such financial statements), and fairly present or will present the financial position of Mercantile at the respective dates and the results of its operations and cash flows at and for the periods indicated, except that the unaudited interim financial statements were or are subject to normal and recurring year-end adjustments which were not or are not expected to be material in amount, and except for the absence of certain footnote information in the unaudited interim financial statements.

### 5.6 *Notes and Obligations.*

(a) Except as set forth in Section 5.6 of the Mercantile Disclosure Memorandum or as provided in the loss reserve described in subparagraph (b) below, without conducting any

independent investigation, Mercantile is not aware of any facts which would cause management of Mercantile to believe that any notes receivable or any other obligations owned by Mercantile or due to it shown on the Mercantile Interim Balance Sheet or any such notes receivable and obligations on the date hereof and as of the Effective Time have not been and will not be genuine, legal, valid and collectible obligations of the respective makers thereof and are not and will not be subject to any offset or counterclaim. Except as set forth in subparagraph (b) below, all such notes and obligations are evidenced by written agreements, true and correct copies of which will be made available to FNB for examination prior to the Effective Time. All such notes and obligations were entered into by Mercantile in the ordinary course of its business and in compliance with all applicable laws and regulations, except as to any non-compliance which has not and will not have a Material Adverse Effect on Mercantile.

(b) Mercantile has established a loss reserve on the Mercantile Interim Balance Sheet which, in the opinion of Mercantile, is adequate in all material respects to cover all known and reasonably anticipated losses which might result from such items as the insolvency or default of borrowers or obligors on such loans or obligations, defects in the notes or evidences of obligation (including losses of original notes or instruments), offsets or counterclaims properly chargeable to such reserve, or the availability of legal or equitable defenses which might preclude or limit the ability of Mercantile to enforce the note or obligation as of the date thereof, and the representations set forth in subparagraph (a) above are qualified in their entirety by the aggregate of such loss reserves. As of the Effective Time, the ratio of the loss reserve, as established on such date in good faith by management of Mercantile, to total loans outstanding at such time shall not exceed by a material amount the ratio of the loss reserve to the total loans outstanding as reflected on the Mercantile Interim Balance Sheet (except as otherwise agreed to by Mercantile and FNB), and the representations set forth in subparagraph (a) above made as of the Effective Time shall be qualified in their entirety by the aggregate of such loss reserve on such date.

5.7 *Absence of Certain Changes or Events.* Except as disclosed in Section 5.7 of the Mercantile Disclosure Memorandum, since (i) March 31, 1997, to the date hereof there have been no events, changes, or occurrences which have had, or are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile, and (ii) the date of this Agreement Mercantile has not taken any action, or failed to take any action, prior to the date of this Agreement, which action or failure, if taken after the date of this Agreement, would represent or result in a material breach or violation of any of the material covenants and agreements of Mercantile provided in Article 7 of this Agreement.

#### 5.8 *Tax Matters.*

(a) All Tax Returns required to be filed by or on behalf of Mercantile have been timely filed or requests for extensions have been timely filed, granted, and have not expired for periods ended on or before December 31, 1996, and on or before the date of the most recent fiscal year end immediately preceding the Effective Time, except to the extent that all such failures to file, taken together, are not reasonably likely to have a Material Adverse Effect on Mercantile, and all Tax Returns filed are complete and accurate in all material respects to the Knowledge of Mercantile. All Taxes shown on filed Tax Returns have been paid. There is no audit examination, deficiency, or refund Litigation with respect to any Taxes that is reasonably likely to result in a determination that would have, individually or in the aggregate, a Material Adverse Effect on Mercantile, except as reserved against in the Mercantile Financial Statements delivered prior to the date of this Agreement or as disclosed in Section 5.8 of the Mercantile Disclosure Memorandum. All Taxes and other Liabilities due with respect to completed and settled examinations or concluded Litigation have been paid.

(b) Except as disclosed in Section 5.8 of the Mercantile Disclosure Memorandum, Mercantile has not executed an extension or waiver of any statute of limitations on the assessment or collection of any Tax due that is currently in effect.

(c) Adequate provision for any Taxes due or to become due for Mercantile for the period or periods through and including the date of the respective Mercantile Financial Statements has been made and is reflected on such Mercantile Financial Statements, except as disclosed in Section 5.8 of the Mercantile Disclosure Memorandum.

(d) Deferred Taxes of the Mercantile Companies have been adequately provided for in the Mercantile Financial Statements, prepared as of the fiscal year end.

(e) Mercantile is in compliance with, and its records contain all information and documents (including properly completed Internal Revenue Service Forms W-9) necessary to comply with, all applicable information reporting and Tax withholding requirements under federal, state, and local Tax Laws, and such records identify with specificity all accounts subject to backup withholding under Section 3406 of the Internal Revenue Code, except for such instances of noncompliance and such omissions as are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile.

(f) Except as disclosed in Section 5.8 of the Mercantile Disclosure Memorandum, Mercantile has not made any payments, is obligated to make any payments, or is a party to any contract, agreement, or other arrangement that could obligate it to make any payments that would be disallowed as a deduction under Section 280G or 162(m) of the Internal Revenue Code.

(g) There are no Liens with respect to Taxes upon any of the assets of Mercantile.

(h) There has not been an ownership change, as defined in Internal Revenue Code Section 382(g), of Mercantile that occurred during or after any Taxable Period in which Mercantile incurred a net operating loss that carries over to any Taxable Period ending after December 31, 1996.

(i) Mercantile has not filed any consent under Section 341(f) of the Internal Revenue Code concerning collapsible corporation.

(j) All material elections with respect to Taxes affecting Mercantile as of the date of this Agreement have been or will be timely made as set forth in Section 5.8 of the Mercantile Disclosure Memorandum. After the date hereof, other than as set forth in Section 5.8 of the Mercantile Disclosure Memorandum, no election with respect to Taxes will be made without the prior written consent of FNB, which consent will not be unreasonably withheld.

(k) Mercantile has not had a permanent establishment in any foreign country, as defined in any applicable tax treaty or convention between the United States and such foreign country.

5.9 *Assets.* Except as disclosed in Section 5.9 of the Mercantile Disclosure Memorandum or as reflected in the Mercantile Financial Statements, Mercantile has good and marketable title, free and clear of all Liens, to all of its respective Assets. All tangible properties used in the businesses of Mercantile are in good condition, reasonable wear and tear excepted, and are usable in the ordinary course

of business consistent with Mercantile's past practices. All Assets which are material to Mercantile's business, held under leases or subleases by Mercantile, are held under valid Contracts enforceable in accordance with their respective terms (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other Laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceedings may be brought), and each such Contract is in full force and effect. Mercantile currently maintains insurance in amounts, scope, and coverage as disclosed in Section 5.9 of the Mercantile Disclosure Memorandum. Mercantile has not received written notice from any insurance carrier that (i) such insurance will be canceled or that coverage thereunder will be reduced or eliminated, or (ii) premium costs with respect to such policies of insurance will be substantially increased. Except as disclosed in Section 5.9 of the Mercantile Disclosure Memorandum, there are presently no claims pending under such policies of insurance and no notices have been given by Mercantile under such policies. The Assets of Mercantile include all Assets required to operate the business of Mercantile as presently conducted.

#### 5.10 *Environmental Matters.*

(a) To the Knowledge of Mercantile, except as disclosed in Section 5.10 of the Mercantile Disclosure Memorandum, its Participation Facilities, and its Loan Properties are, and have been, in compliance with all Environmental Laws, except for violations which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile.

(b) Except as disclosed in Section 5.10 of the Mercantile Disclosure Memorandum, to the Knowledge of Mercantile, there is no Litigation pending or threatened before any court, governmental agency, or authority or other forum in which Mercantile or any of its Loan Properties or Participation Facilities has been or, with respect to threatened Litigation, may be named as a defendant or potentially responsible party (i) for alleged noncompliance (including by any predecessor) with any Environmental Law or (ii) relating to the release into the environment of any Hazardous Material, whether or not occurring at, on, under, or involving any of its Loan Properties or Participation Facilities, except for such Litigation pending or threatened that is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile.

(c) To the Knowledge of Mercantile, except as disclosed in Section 5.10 of the Mercantile Disclosure Memorandum, there is no reasonable basis for any Litigation of a type described above in subsection (b), except such as is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile.

(d) To the Knowledge of Mercantile, except as disclosed in Section 5.10 of the Mercantile Disclosure Memorandum, there have been no releases of Hazardous Material in, on, under, or affecting any Participation Facility or Loan Property of Mercantile, except such as are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile.

5.11 *Compliance With Laws.* Mercantile has in effect all Permits necessary for it to own, lease, or operate its material Assets and to carry on its business as now conducted, except for those Permits the absence of which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile, and there has occurred no Default under any such Permit, other than Defaults which

are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile. Mercantile:

(a) to the knowledge of Mercantile, is not in violation of any Laws, Orders, or Permits applicable to its business or employees conducting its business, except for violations which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile; and

(b) has not received any written notification or communication from any agency or department of federal, state, or local government or any Regulatory Authority or the staff thereof (i) asserting that Mercantile is not in substantial compliance with any of the Laws or Orders which such governmental authority or Regulatory Authority enforces, where such noncompliance is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile, (ii) threatening to revoke any Permits, the revocation of which is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile, or (iii) requiring Mercantile to enter into or consent to the issuance of a cease and desist order, formal agreement, directive, commitment, or memorandum of understanding, or to adopt any Board resolution or similar undertaking, which restricts materially the conduct of its business, or in any manner relates to its capital adequacy, its credit or reserve policies, its management, or the payment of dividends.

5.12 *Labor Relations.* Mercantile is not the subject of any Litigation asserting that it has committed an unfair labor practice (within the meaning of the National Labor Relations Act or comparable state law) or seeking to compel it to bargain with any labor organization as to wages or conditions of employment, nor is there any strike or other labor dispute involving Mercantile, pending or, to the Knowledge of Mercantile, threatened, nor is there any activity involving Mercantile's employees seeking to certify a collective bargaining unit or engaging in any other organization activity.

#### 5.13 *Employee Benefit Plans.*

(a) Mercantile has disclosed in Section 5.13 of the Mercantile Disclosure Memorandum, and has or will deliver or make available to FNB copies or summaries of, all material pension, retirement, profit-sharing, deferred compensation, stock option, employee stock ownership, severance pay, vacation, bonus, or other material incentive plans, all other material written employee programs, arrangements, or agreements, and all other material employee benefit plans or fringe benefit plans, including, without limitation, all "employee benefit plans" (as that term is defined in Section 3(3) of ERISA), currently adopted, maintained by, sponsored in whole or in part by, or contributed to by Mercantile for the benefit of employees, retirees, dependents, spouses, directors, independent contractors or other beneficiaries who are eligible to participate (collectively, the "Mercantile Benefit Plans"). Any of the Mercantile Benefit Plans which is an "employee pension benefit plan" (as that term is defined in Section 3(2) of ERISA) is referred to herein as a "Mercantile ERISA Plan". No Mercantile Benefit Plan is or has been a multi-employer plan within the meaning of Section 3(37) of ERISA.

(b) Except as disclosed in Section 5.13 of the Mercantile Disclosure Memorandum, all Mercantile Benefit Plans are in compliance in all material respects with the applicable terms of ERISA, the Internal Revenue Code, and any other applicable Laws, the breach or violation of which are reasonably likely to have a Material Adverse Effect on Mercantile.

(c) Except as disclosed in Section 5.13 of the Mercantile Disclosure Memorandum, no Mercantile ERISA Plan which is a "defined benefit pension plan" (as defined in Section 4140

of the Internal Revenue Code) has any "unfunded current liability" (as that term is defined in Section 302(d)(8)(A) of ERISA) and the present fair market value of the assets of any such plan exceeds the plan's "benefit liabilities" (as that term is defined in Section 4001(a)(16) of ERISA) when determined under actuarial factors that would apply if the plan terminated in accordance with all applicable legal requirements.

(d) Except as disclosed in Section 5.13 of the Mercantile Disclosure Memorandum, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any payment (including, without limitation, severance, unemployment compensation, golden parachute, or otherwise) becoming due to any director or any employee of Mercantile from Mercantile under any Mercantile Benefit Plan, (ii) increase any benefits otherwise payable under any Mercantile Benefit Plan, or (iii) result in any acceleration of the time of payment or vesting of any such benefit, where such payment, increase, or acceleration is reasonably likely to have a Material Adverse Effect on Mercantile.

5.14 *Material Contracts.* Except as disclosed in Section 5.14 of the Mercantile Disclosure Memorandum, Mercantile is not a party to or subject to the following: (i) any employment, severance, termination, consulting, or retirement Contract providing for aggregate payments to any Person in any calendar year in excess of \$50,000, (ii) any Contract relating to the borrowing of money by Mercantile or the guarantee by Mercantile of any such obligation exceeding \$50,000 (other than Contracts evidencing deposit liabilities, purchases of federal funds, fully-secured repurchase agreements, and Federal Home Loan Bank advances, trade payables, and Contracts relating to borrowings or guarantees made in the ordinary course of business), and (iii) any other material Contract or amendment thereto as of the date of this Agreement not made in the ordinary course of business to which Mercantile is a party or by which it is bound (together with all Contracts referred to in Sections 5.9 and 5.13(a) of this Agreement, the "Mercantile Contracts"). With respect to each Mercantile Contract and except as disclosed in Section 5.14 of the Mercantile Disclosure Memorandum: (i) the Contract is in full force and effect; (ii) Mercantile is not in default thereunder, other than defaults which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile; (iii) Mercantile has not repudiated or waived any material provision of any such Mercantile Contract; and (iv) no other party to any such Mercantile Contract is, to the Knowledge of Mercantile, in Default in any material respect, other than defaults which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile, or has repudiated or waived any material provision thereunder. Except for Federal Home Loan Bank advances, all of the indebtedness of Mercantile for money borrowed is prepayable at any time by Mercantile without penalty or premium.

5.15 *Legal Proceedings.* Except as disclosed in Section 5.15 of the Mercantile Disclosure Memorandum, there is no Litigation instituted or pending, or, to the Knowledge of Mercantile, threatened (or unasserted but considered probable of assertion and which if asserted would have at least a reasonable probability of an unfavorable outcome) against Mercantile, or against any Asset, employee benefit plan, interest, or right of any of them, that is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile, nor are there any Orders of any Regulatory Authorities, other governmental authorities, or arbitrators outstanding against Mercantile, that are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Mercantile. Section 5.15 of the Mercantile Disclosure Memorandum includes a summary report of all Litigation as of the date of this Agreement to which Mercantile is a party and which names Mercantile as a defendant or cross-defendant and where the estimated maximum exposure is \$10,000 or more.

5.16 *Reports.* For the three years ended December 31, 1996, 1995 and 1994, and since January 1, 1997, Mercantile has timely filed, and to the extent permitted by Law has made available for

FNB review, all reports and statements, together with any amendments required to be made with respect thereto, that it was required to file with any Regulatory Authorities. As of their respective dates, each of such reports and documents, including the financial statements, exhibits, and schedules thereto, complied in all material respects with all applicable Laws enforced or promulgated by the Florida Department of Banking and Finance or the Board of Governors of the Federal Reserve System, except for those which would not have a Material Adverse Effect on Mercantile.

5.17 *Statements True and Correct.* None of the information supplied or to be supplied by Mercantile for inclusion in the Proxy Statement to be mailed to Mercantile's shareholders in connection with the Shareholders' Meeting, and any other documents to be filed by Mercantile with any Regulatory Authority in connection with the transactions contemplated hereby, will, at the respective time such documents are filed, and with respect to the Proxy Statement, when first mailed to the shareholders of Mercantile, be false or misleading with respect to any material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or, in the case of the Proxy Statement or any amendment thereof or supplement thereto, at the time of the Shareholders' Meeting, be false or misleading with respect to any material fact, or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of any proxy for the Shareholders' Meeting. All documents that Mercantile is responsible for filing with any Regulatory Authority in connection with the transactions contemplated hereby will comply as to form in all material respects with the provisions of applicable Law.

5.18 *Accounting, Tax and Regulatory Matters.* To the knowledge of Mercantile, Mercantile has not taken or agreed to take any action or has any Knowledge of any fact or circumstance that is reasonably likely to materially impede or delay receipt of any Consents of Regulatory Authorities referred to in Section 9.1(b) of this Agreement.

5.19 *Articles of Incorporation Provisions.* Mercantile has taken all action so that the entering into of this Agreement and the consummation of the Merger and the other transactions contemplated by this Agreement do not and will not result in any super-majority voting requirement or the grant of any rights to any Person under the Articles of Incorporation, Bylaws, or other governing instruments of Mercantile or restrict or impair the ability of FNB or any of its Subsidiaries to vote, or otherwise to exercise the rights of a shareholder with respect to, shares of Mercantile that may be directly or indirectly acquired or controlled by it.

5.20 *Derivatives Contracts.* Except as disclosed in Section 5.20 of the Mercantile Disclosure Memorandum, Mercantile is not a party to or has agreed to enter into an exchange-traded or over-the-counter swap, forward, future, option, cap, floor, or collar financial contract, or any other interest rate or foreign currency protection contract not included on its balance sheet which is a financial derivative contract (including various combinations thereof) (each a "Derivatives Contract").

5.21 *Disclosure Memorandum.* The Mercantile Disclosure Memorandum sets forth, among other things, exceptions to Mercantile's representations and warranties in this Article 5. While Mercantile has used its best efforts to identify in the Mercantile Disclosure Memorandum the particular representation or warranty to which each such exception relates, each such exception shall be deemed disclosed for purposes of all representations and warranties in Article 5 and the Mercantile Disclosure Memorandum; provided, however, that exceptions disclosed pursuant to Sections 5.7 and 5.15 must be disclosed under the appropriate section in order to constitute an exception to Mercantile's representations and warranties in Article 5.

## ARTICLE 6

### REPRESENTATIONS AND WARRANTIES OF FNB, SOUTHWEST AND INTERIM

FNB and Southwest hereby represent and warrant to Mercantile and Interim, when formed, will represent and warrant to Mercantile as follows:

#### 6.1 *Organization, Standing, and Power.*

(a) FNB is a corporation duly organized, validly existing, and in good standing under the Laws of the Commonwealth of Pennsylvania, and has the corporate power and authority to carry on its business as now conducted and to own, lease, and operate its material Assets. FNB is duly qualified or licensed to transact business as a foreign corporation in good standing in the States of the United States and foreign jurisdictions where the character of its Assets or the nature or conduct of its business requires it to be so qualified or licensed, except for such jurisdictions in which the failure to be so qualified or licensed is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on FNB.

(b) Southwest is a corporation duly organized, validly existing, and in active status under the Laws of the State of Florida, and has the corporate power and authority to carry on its business as now conducted and to own, lease, and operate its material Assets. Southwest is duly qualified or licensed to transact business as a foreign corporation in good standing in the States of the United States and foreign jurisdictions where the character of its Assets or the nature or conduct of its business requires it to be so qualified or licensed, except for such jurisdictions in which the failure to be so qualified or licensed is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Southwest.

(c) Interim when formed will be a national bank organized under the National Bank Act, validly existing and in good standing and a wholly-owned subsidiary of Southwest, and will have the corporate power and authority to carry on the business of banking. Interim will be duly qualified or licensed to transact business as a foreign corporation, and will maintain its corporate status in good standing, in the States of the United States and foreign jurisdictions where the character of the assets, or the nature or conduct of the business, to be purchased, received or operated by Interim, shall require it to be so qualified or licensed, except for such jurisdictions in which the failure to be so qualified or licensed is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Interim.

#### 6.2 *Authority; No Breach By Agreement.*

(a) Each of FNB and Southwest has, and upon its formation Interim shall have, the corporate power and authority necessary to execute, deliver, and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated herein, including the Merger, have been duly and validly authorized by all necessary corporate action in respect thereof on the part of FNB and Southwest and shall be duly and validly authorized by all necessary corporate action in respect thereof by Interim upon its formation including the approval of this Agreement by Southwest as the sole shareholder of Interim. This Agreement represents a legal, valid, and binding obligation of FNB and Southwest and shall become such an obligation of Interim upon its formation, enforceable against FNB and Southwest, and to become enforceable against Interim upon its formation, in accordance with its terms (except in all cases as such

enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar Laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding may be brought).

(b) Neither the execution and delivery of this Agreement by FNB, Southwest or, upon its formation, Interim, nor the consummation by FNB, Southwest, or Interim of the transactions contemplated hereby, nor compliance by FNB, Southwest, or Interim with any of the provisions hereof, will (i) conflict with or result in a breach of any provision of the Articles of Association or Bylaws of FNB, Southwest, or, upon its formation, Interim, or (ii) constitute or result in a Default under, or require any Consent pursuant to, or result in the creation of any Lien on any Asset of any FNB Company, Southwest, or Interim under, any Contract or Permit of any FNB Company, Southwest, or, upon its formation, Interim, where such Default or Lien, or any failure to obtain such Consent, is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on FNB, Southwest, or Interim, or (iii) subject to receipt of the requisite Consents referred to in Section 9.1(b) of this Agreement, violate any Law or Order applicable to any FNB Company, Southwest, or, upon its formation, Interim or any of their respective material Assets.

(c) Other than in connection or compliance with the provisions of the Securities Laws, applicable state corporate and securities Laws, and rules of Nasdaq, and other than Consents required from Regulatory Authorities, and other than notices to or filings with the Internal Revenue Service or the Pension Benefit Guaranty Corporation with respect to any employee benefit plans, or under the HSR Act, and other than Consents, filings, or notifications which, if not obtained or made, are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on FNB, Southwest and, upon its formation, Interim, no notice to, filing with, or Consent of, any public body or authority is necessary for the consummation by FNB, Southwest and Interim of the Merger and the other transactions contemplated in this Agreement.

6.3 *Capital Stock.* The authorized capital stock of FNB consists of (i) 100,000,000 shares of FNB Common Stock, of which 14,049,998 shares were issued and outstanding as of the date of this Agreement and (ii) 20,000,000 shares of FNB Preferred Stock, of which 317,568 shares were issued and outstanding as of the date of this Agreement (the "FNB Capital Stock"). All of the issued and outstanding shares of FNB Capital Stock are duly and validly issued and outstanding and fully paid and nonassessable under the PBCL. None of the outstanding shares of FNB Capital Stock has been issued in violation of any preemptive rights of the current or past shareholders of FNB.

6.4 *FNB Subsidiaries.* Except as disclosed in Section 6.4 of the FNB Disclosure Memorandum, the list of Subsidiaries of FNB filed by FNB with its most recent FNB Report on Form 10-K for the fiscal year ended December 31, 1996 is a true and complete list of all of the FNB Subsidiaries as of the date of this Agreement. Except as disclosed in Section 6.4 of the FNB Disclosure Memorandum, FNB or one of its Subsidiaries owns all of the issued and outstanding shares of capital stock of each FNB Subsidiary. No equity securities of any FNB Subsidiary are or may become required to be issued (other than to another FNB Company) by reason of any Rights, and there are no Contracts by which any FNB Subsidiary is bound to issue (other than to another FNB Company) additional shares of its capital stock or Rights or by which any FNB Company is or may be bound to transfer any shares of the capital stock of any FNB Subsidiary (other than to another FNB Company). There are no Contracts relating to the rights of any FNB Company to vote or to dispose of any shares of the capital stock of any FNB Subsidiary. All of the shares of capital stock of each FNB Subsidiary held by a FNB Company are fully paid and nonassessable under the applicable corporation Law of the jurisdiction in which such Subsidiary is incorporated or organized (except, in the case of Subsidiaries that are national banks, for the assessment

contemplated by 12 U.S.C. § 55), and are owned by the FNB Company free and clear of any Lien. Each FNB Subsidiary is either a bank or a corporation, and is duly organized, validly existing, and (as to corporations) in good standing under the Laws of the jurisdiction in which it is incorporated or organized, and has the corporate power and authority necessary for it to own, lease, and operate its Assets and to carry on its business as now conducted. Each FNB Subsidiary is duly qualified or licensed to transact business as a foreign corporation and is in good standing in each jurisdiction where the character of its Assets or the nature or conduct of its business requires it to be so qualified or licensed, except for such jurisdictions in which the failure to be so qualified or licensed is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on FNB. Each FNB Subsidiary that is a depository institution is an "insured institution" as defined in the Federal Deposit Insurance Act and applicable regulations thereunder, and the deposits in each such FNB Subsidiary that is a depository institution which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund.

#### 6.5 *SEC Filings; Financial Statements.*

(a) FNB has filed and made available to Mercantile accurate and complete copies of all forms, reports, and documents required to be filed by FNB with the SEC since January 1, 1994, (collectively, the "FNB SEC Reports"). The FNB SEC Reports (i) at the time filed, complied in all material respects with the applicable requirements of the 1933 Act and the 1934 Act, as the case may be, and (ii) did not at the time they were filed (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated in such FNB SEC Reports or necessary in order to make the statements in such FNB SEC Reports, in light of the circumstances under which they were made, not misleading. Except for FNB Subsidiaries that are registered as brokers, dealers, investment advisers, or associated persons thereof, none of the FNB Subsidiaries is required to file any forms, reports or other documents with the SEC. None of the FNB Subsidiaries is required to file any forms, reports, or other documents with the SEC under the 1933 Act or Sections 12, 13, 14, or 16 of the 1934 Act.

(b) Each of the FNB Financial Statements (including, in each case, any related notes) contained in the FNB SEC Reports, complied, and each SEC Report filed after the date of this Agreement until the Effective Time will comply, as to form in all material respects with the applicable published rules and regulations of the SEC with respect thereto, was prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated in the notes to such financial statements or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC), and fairly presented the consolidated financial position of FNB and its Subsidiaries as at the respective dates and the consolidated results of its operations and cash flows for the periods indicated, except that the unaudited interim financial statements were or are subject to normal and recurring year-end adjustments which were not or are not expected to be material in amount.

6.6 *Absence of Certain Changes or Events.* Since January 1, 1997, (i) there have been no events, changes or occurrences which have had, or are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on FNB, and (ii) the FNB Companies have not taken any action, or failed to take any action, prior to the date of this Agreement, which action or failure, if taken after the date of this Agreement, would represent or result in a material breach or violation of any of the covenants and agreements of FNB, Southwest, or Interim provided in Articles 7 or 8 of this Agreement.

6.7 *Statements True and Correct.* None of the information supplied or to be supplied by any FNB Company or any Affiliate thereof for inclusion in the Proxy Statement to be mailed to Mercantile's

shareholders in connection with the Shareholders' Meeting, and any other documents to be filed by any FNB Company or any Affiliate thereof with the SEC or any other Regulatory Authority in connection with the transactions contemplated hereby, will, at the respective time such documents are filed, and with respect to the Proxy Statement, when first mailed to the shareholders of Mercantile, be false or misleading with respect to any material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or, in the case of the Proxy Statement or any amendment thereof or supplement thereto, at the time of the Shareholders' Meeting, be false or misleading with respect to any material fact, or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of any proxy for the Shareholders' Meeting. All documents that any FNB Company or any Affiliate thereof is responsible for filing with any Regulatory Authority in connection with the transactions contemplated hereby will comply as to form in all material respects with the provisions of applicable Law.

6.8 *Regulatory Matters.* To the Knowledge of FNB, no FNB Company or any Affiliate thereof has taken or agreed to take any action or has any Knowledge of any fact or circumstance that is reasonably likely to materially impede or delay receipt of any Consents of Regulatory Authorities referred to in Section 9.1(b) of this Agreement or result in the imposition of a condition or restriction of the type referred to in the last sentence of such Section.

6.9 *Outstanding Mercantile Common Stock.* As of the date of this Agreement, FNB Companies do not beneficially own any shares of Mercantile Common Stock for their own accounts (not including those held in a fiduciary or trust capacity for, or on behalf of, unaffiliated third parties). During the term of this Agreement, no FNB Company shall purchase or otherwise acquire beneficial ownership of any additional Mercantile Common Stock except pursuant to the terms of this Agreement.

6.10 *Financial Capacity.* To the knowledge of FNB, there are no facts or circumstances relating to the business or financial condition of the FNB Companies which may prevent, restrict or impair the ability of FNB to consummate the transactions contemplated by this Agreement. FNB has the financial capacity to fund the aggregate Cash Consideration for all outstanding shares of Mercantile Common Stock in full at the Effective Time.

## ARTICLE 7

### CONDUCT OF BUSINESS PENDING CONSUMMATION

7.1 *Affirmative Covenants of Mercantile.* Unless the prior written consent of FNB shall have been obtained, and except as otherwise expressly contemplated herein, Mercantile shall (i) operate its business only in the usual, regular, and ordinary course, (ii) use its reasonable best efforts to preserve intact its business organization and Assets and maintain its rights and franchises, (iii) use its reasonable best efforts to maintain its current employee relationships, and (iv) take no action which would materially adversely affect the ability of any Party to obtain any Consents of Regulatory Authorities required for the transactions contemplated hereby or materially adversely affect the ability of any Party to perform its covenants and agreements under this Agreement.

7.2 *Negative Covenants of Mercantile.* Except as otherwise contemplated in this Agreement, from the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement, Mercantile covenants and agrees that it will not do or agree or commit to do any of the following without the prior written consent of the chief executive officer, president, chief financial officer, or any executive vice president of FNB which consent shall not be unreasonably withheld:

(a) amend the Articles of Incorporation, Bylaws, or other governing instruments of Mercantile, except as expressly contemplated by this Agreement; or

(b) except for loans secured by a first mortgage on a single family owner-occupied real estate, (i) make any unsecured loan or other extension of credit in excess of \$100,000, or (ii) make any fully secured loan, to any Person (except those who have received a commitment for a loan or extension of credit prior to the date of this Agreement) in excess of \$250,000 (in either case FNB shall object thereto within two business days, and the failure to provide a written objection within two business days shall be deemed as the approval of FNB to make such loan or extend such credit); or

(c) incur any additional debt obligation or other obligation for borrowed money in excess of an aggregate of \$100,000 except in the ordinary course of the business of Mercantile consistent with past practices (it being understood and agreed that the incurrence of indebtedness in the ordinary course of business shall include, without limitation, creation of deposit liabilities, purchases of federal funds, advances from the Federal Reserve Bank or Federal Home Loan Bank, and entry into repurchase agreements fully secured by U.S. government or agency securities; provided, however, that before incurring such non-deposit indebtedness Mercantile shall offer FNB the opportunity to fund such indebtedness on a similar basis), or impose, or suffer the imposition, on any Asset of Mercantile of any Lien or permit any such Lien to exist (other than in connection with deposits, advances from the Federal Reserve Bank or the Federal Home Loan Bank, repurchase agreements, bankers acceptances, "treasury tax and loan" accounts established in the ordinary course of business, the satisfaction of legal requirements in the exercise of trust powers, and Liens in effect as of the date hereof that are disclosed in the Mercantile Disclosure Memorandum); or

(d) repurchase, redeem, or otherwise acquire or exchange (other than exchanges in the ordinary course under employee benefit plans), directly or indirectly, any shares, or any securities convertible into any shares, of the capital stock of Mercantile, or declare or pay any dividend or make any other distribution in respect of Mercantile's capital stock; or

(e) except for this Agreement, or pursuant to the Stock Option Agreement or pursuant to the exercise of stock options outstanding as of the date hereof and pursuant to the terms thereof in existence on the date hereof, or as disclosed in Section 7.2(e) of the Mercantile Disclosure Memorandum, issue, sell, pledge, encumber, authorize the issuance of, enter into any Contract to issue, sell, pledge, encumber, or authorize the issuance of, or otherwise permit to become outstanding, any additional shares of Mercantile Common Stock or any other capital stock of any Mercantile Company, or any stock appreciation rights, or any option, warrant, conversion, or other right to acquire any such stock, or any security convertible into any such stock; or

(f) adjust, split, combine, or reclassify any capital stock of Mercantile or issue or authorize the issuance of any other securities in respect of or in substitution for shares of Mercantile Common Stock; or

(g) except for purchases of United States Treasury securities or United States Government agency securities, which in either case have maturities of five years or less, purchase any securities or make any material investment in excess of \$100,000, either by purchase of stock or securities, contributions to capital, Asset transfers, or purchase of any Assets, in any Person or otherwise acquire direct or indirect control over any Person, other than in connection with (i)

foreclosures in the ordinary course of business, (ii) acquisitions of control by a depository institution Subsidiary in its fiduciary capacity, or (iii) the creation of new wholly owned Subsidiaries organized to conduct or continue activities otherwise permitted by this Agreement; or

(h) grant any increase in compensation or benefits or pay bonuses to the employees or officers of Mercantile, except that bonuses which have been accrued by Mercantile through June 30, 1997, may be paid to officers and employees of Mercantile or as required by Law; pay any severance or termination pay other than pursuant to written policies or written Contracts in effect on the date of this Agreement or as otherwise disclosed in Section 7.2(h) of the Mercantile Disclosure Memorandum; enter into or amend any severance agreements with officers of any Mercantile Company; grant any material increase in fees or other increases in compensation or other benefits to directors of any Mercantile Company except in accordance with past practice disclosed in Section 7.2(h) of the Mercantile Disclosure Memorandum; or voluntarily (which shall not include any acceleration occurring automatically pursuant to the terms of the stock option plan, which automatic acceleration shall be permissible) accelerate the vesting of any stock options or other stock-based compensation or employee benefits; or

(i) enter into or amend any employment Contract between Mercantile and any Person (unless such amendment is required by Law), at any time on or after the Effective Time; or

(j) except as disclosed in Section 7.2(j) of the Mercantile Disclosure Memorandum, adopt any new employee benefit plan of Mercantile or make any material change in or to any existing employee benefit plans of Mercantile other than any such change that is required by Law or that, in the opinion of counsel, is necessary or advisable to maintain the tax qualified status of any such plan; or

(k) make any significant change in any Tax or accounting methods or systems of internal accounting controls, except as may be appropriate to conform to changes in Tax Laws or regulatory accounting requirements or GAAP; or

(l) except as disclosed in Section 7.2(l) of the Mercantile Disclosure Memorandum, commence any Litigation other than in accordance with past practice or settle any Litigation involving any Liability of Mercantile for material money damages or restrictions upon the operations of Mercantile; or

(m) except in the ordinary course of business, modify, amend, or terminate any material Contract other than renewals without material adverse change of terms, or waive, release, compromise, or assign any material rights or claims; or

(n) sell, transfer, mortgage, encumber or otherwise dispose of any of its material properties or assets to any individual, corporation or other entity other than a direct or indirect wholly owned Subsidiary, or cancel, release or assign any indebtedness to any such Person or any claims held by any such Person, except in the ordinary course of business consistent with past practice or pursuant to contracts or agreements in force at the date of this Agreement; or

(o) agree to, or make any commitment to, take any of the actions prohibited by this Section 7.2.

7.3 *Covenants of FNB.* From the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement, FNB covenants and agrees that it shall take no action which would (a) materially adversely affect or delay the ability of any Party to obtain any Consents required for the transactions contemplated hereby without imposition of a condition or restriction of the type referred to in the last sentence of Section 9.1(b) of this Agreement, or (b) materially adversely affect the ability of any Party to perform its covenants and agreements under this Agreement; provided, that the foregoing shall not prevent any FNB Company from discontinuing or disposing of any of its Assets or business if such action is, in the judgment of FNB, desirable in the conduct of the business of FNB and its Subsidiaries.

7.4 *Adverse Changes In Condition.* Each Party agrees to give written notice promptly to the other Party upon becoming aware of the occurrence or impending occurrence of any event or circumstance relating to it or any of its Subsidiaries which (i) is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on it or (ii) would cause or constitute a material breach of any of its representations, warranties, or covenants contained herein, and to use its reasonable best efforts to prevent or promptly to remedy the same.

7.5 *Reports.* Each Party and their respective Subsidiaries shall file all reports required to be filed by each of them with Regulatory Authorities between the date of this Agreement and the Effective Time and shall deliver to the other Party copies of all such reports promptly after the same are filed. If financial statements are contained in any such reports filed with the SEC, such financial statements will fairly present the consolidated financial position of the entity filing such statements as of the dates indicated and the consolidated results of operations, changes in shareholders' equity, and cash flows for the periods then ended in accordance with GAAP (subject in the case of interim financial statements to normal recurring year-end adjustments that are not material and except for the absence of certain footnote information in the unaudited financial statements). As of their respective dates, such reports filed with the SEC will comply in all material respects with the Securities Laws and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Any financial statements contained in any other reports to another Regulatory Authority shall be prepared in accordance with Laws applicable to such reports.

## ARTICLE 8

### ADDITIONAL AGREEMENTS

8.1 *Proxy Statement; Shareholder Approval.* Mercantile shall call a Shareholders' Meeting, to be held on a date that is determined by the Parties to be a mutually desirable date, for the purpose of voting upon approval of this Agreement and such other related matters as it deems appropriate. In connection with the Shareholders' Meeting, (i) Mercantile shall prepare a Proxy Statement relating to the Merger and mail such Proxy Statement to its shareholders, (ii) the Parties shall furnish to each other all information concerning them that they may reasonably request in connection with such Proxy Statement, (iii) the Board of Directors of Mercantile shall unanimously recommend (subject to compliance with their fiduciary duties under applicable law as advised by counsel) to its shareholders the approval of this Agreement, (iv) each member of the Board of Directors of Mercantile shall vote all Mercantile Common Stock beneficially owned by each in favor of the approval of this Agreement (unless they are not obligated to recommend approval pursuant to (iii), above), and (v) the Board of Directors and officers of Mercantile shall (subject to compliance with their fiduciary duties under applicable law as advised by counsel) use their reasonable best efforts to obtain such shareholders' approval.

8.2 *Applications.* FNB shall within 45 days from the date hereof prepare and file, and Mercantile shall cooperate in the preparation and, where appropriate, filing of, applications with all Regulatory Authorities having jurisdiction over the transactions contemplated by this Agreement seeking the requisite Consents necessary to consummate the transactions contemplated by this Agreement. At least five (5) business days prior to filing, FNB shall provide copies of each such application to Mercantile and its counsel for review and comment.

8.3 *Filings With Regulatory Authorities.* Upon the terms and subject to the conditions of this Agreement, FNB shall execute and file the Application to Merge with the Department of Banking of the State of Florida and the Office of the Comptroller of the Currency in connection with the Closing.

8.4 *Agreement As To Efforts To Consummate.* Subject to the terms and conditions of this Agreement, each Party agrees to use, and FNB to cause its Subsidiaries to use, its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, or advisable under applicable Laws to consummate and make effective, as soon as practicable after the date of this Agreement, the transactions contemplated by this Agreement, including the use of their respective reasonable best efforts to lift or rescind any Order adversely affecting its ability to consummate the transactions contemplated herein and to cause to be satisfied the conditions referred to in Article 9 of this Agreement; provided, that nothing herein shall preclude either Party from exercising its rights under this Agreement. In this regard, FNB and Southwest agree to vote all shares of Interim in favor of the Merger. Each Party shall use, and shall cause each of its Subsidiaries, if any, to use, its reasonable best efforts to obtain all Permits and Consents of all third parties and Regulatory Authorities necessary or desirable for the consummation of the transactions contemplated by this Agreement.

8.5 *Access to Information; Confidentiality.* From the date hereof to the Effective Time, subject to applicable Laws, FNB shall furnish promptly to Mercantile a copy of all filings made with any Regulatory Authorities or other governmental entities in connection with the transactions contemplated by this Agreement and all written communications received from such Regulatory Authorities and governmental entities related thereto. From the date hereof to the Effective Time, upon reasonable notice and subject to applicable Laws, Mercantile shall afford FNB and its accountants, counsel, and other representatives, during normal working hours for the period of time prior to the Effective Time, reasonable access to all of its properties, books, contracts, commitments, and records and, during such period, shall furnish promptly to FNB (i) a copy of each report, schedule, and other document filed or received by it during such period pursuant to the requirements of the Securities Laws, (ii) a copy of all filings made with any Regulatory Authorities or other governmental entities in connection with the transactions contemplated by this Agreement and all written communications received from such Regulatory Authorities and governmental entities related thereto, and (iii) all other information concerning its business, properties and personnel as FNB may reasonably request, including reports of condition filed with Regulatory Authorities. FNB shall, and shall cause its advisors and representatives to (x) conduct its investigation in such a manner which will not unreasonably interfere with the normal operations, customers or employee relations of Mercantile and shall be in accordance with procedures established by the parties having the due regard for the foregoing, and (y) refrain from using for any purposes other than as set forth in this Agreement, and shall treat as confidential, all information obtained hereunder or in connection herewith and not otherwise known to FNB prior to the Effective Time. Except as otherwise agreed to in writing by Mercantile (which agreement shall not be deemed to include this Agreement), unless and until certification of the Merger is received from the Comptroller of the Currency, FNB, and its Subsidiaries and Affiliates will be bound by, and all information received with respect to Mercantile pursuant to this Section 8.5 shall be subject to, the terms of that certain confidentiality agreement entered into with Mercantile, dated June 9, 1997 (the "Confidentiality Agreement"), the terms of which shall, notwithstanding anything to the contrary in this Agreement, survive the termination of this Agreement.

8.6 *Press Releases.* Prior to the Effective Time, Mercantile and FNB shall consult with each other as to the form and substance of any press release or other public disclosure materially related to this Agreement or any other transaction contemplated hereby; provided, that nothing in this Section 8.6 shall be deemed to prohibit any Party from making any disclosure which its counsel deems necessary or advisable in order to satisfy such Party's disclosure obligations imposed by Law.

8.7 *Certain Actions.* Except with respect to this Agreement and the transactions contemplated hereby, from the date of this Agreement until the Effective Time or termination pursuant to Article 10, neither Mercantile nor any Representative thereof retained by Mercantile shall directly or indirectly solicit any Acquisition Proposal by any Person. Except to the extent necessary to comply with the fiduciary duties of Mercantile's Board of Directors determined after consultation with counsel, neither Mercantile nor any Representative thereof shall furnish any nonpublic information that it is not legally obligated to furnish or negotiate with respect to, any Acquisition Proposal, but Mercantile may communicate information about such an Acquisition Proposal to its shareholders if and to the extent that it is required to do so in order to comply with its legal obligations as advised by counsel. Mercantile shall promptly notify FNB orally and in writing in the event that it receives any inquiry or proposal relating to any such transaction. Mercantile shall (i) immediately cease and cause to be terminated any existing activities, discussions, or negotiations with any Persons conducted heretofore with respect to any of the foregoing, and (ii) direct and use its reasonable best efforts to cause of all its Representatives not to engage in any of the foregoing.

8.8 *Articles of Incorporation Provisions.* Mercantile shall take all necessary action to ensure that the entering into of this Agreement and the consummation of the Merger and the other transactions contemplated hereby do not and will not result in any super-majority voting requirements or the grant of any rights to any Person under the Articles of Incorporation, Bylaws, or other governing instruments of Mercantile or restrict or impair the ability of FNB or any of its Subsidiaries to vote, or otherwise to exercise the rights of a shareholder with respect to, shares of Mercantile that may be directly or indirectly acquired or controlled by it.

8.9 *Employee Benefits and Contracts.* Following the Effective Time, FNB shall provide generally to officers and employees of Mercantile employee benefits under employee benefit plans (other than stock option or other plans involving the potential issuance of FNB Common Stock (except as set forth in Section 3.3. hereof), on terms and conditions which when taken as a whole are no less favorable than those currently provided by the FNB Companies to their similarly situated officers and employees; provided, that, for a period of six (6) months after the Effective Time, FNB shall provide generally to officers and employees of Mercantile one week of severance pay for each year of service (with a minimum of two weeks pay). Further, any officer or employee of Mercantile whose employment is terminated within six (6) months of the Effective Time will be offered an opportunity to apply for and be considered for hiring by FNB for any other vacant position with an FNB Company for which such terminated officer or employee shall desire to be considered. Prior to the Effective Time, Mercantile may pay bonuses accrued by Mercantile through June 30, 1997, to officers or employees of Mercantile. The Mercantile 401(k) plan disclosed in Section 5.13 of the Mercantile Disclosure Memorandum shall be merged into FNB's 401(k) plan or shall be terminated at the Effective Time and all assets and benefits thereunder distributed to the Mercantile officers and employees participating in such plan. For purposes of participation and vesting (but not benefit accrual under any employee benefit plans of FNB and its subsidiaries other than the Mercantile Benefit Plans) under such employee benefit plans, the service of the employees of Mercantile prior to the Effective Time shall be treated as service with a FNB Company participating in such employee benefit plans. FNB shall, and shall cause its Subsidiaries to, honor in accordance with their terms all employment, severance, consulting, and other compensation Contracts

disclosed in Section 8.9 of the Mercantile Disclosure Memorandum between Mercantile and any current or former director, officer, or employee thereof (other than the contract of Russell R. Kempker, Jr., which shall be subject to Section 8.12 hereof), and all provisions for vested benefits or other vested amounts earned or accrued through the Effective Time under the Mercantile Benefit Plans.

#### 8.10 *Indemnification.*

(a) FNB shall, and shall cause the Surviving Corporation (and its successors and assigns) to, indemnify, defend, and hold harmless the present and former directors, officers, employees, and agents of Mercantile (each, an "Indemnified Party") against all Liabilities arising out of actions or omissions occurring at or prior to the Effective Time (including the transactions contemplated by this Agreement) without regard to the time a claim is first asserted to the full extent permitted under Florida Law and by Mercantile's Articles of Incorporation and Bylaws as in effect on the date hereof, including provisions relating to advances of expenses incurred in the defense of any Litigation. Without limiting the foregoing, in any case in which approval by FNB is required to effectuate any indemnification, FNB shall direct, at the election of the Indemnified Party, that the determination of any such approval shall be made by independent counsel mutually agreed upon between FNB and the Indemnified Party. On or prior to the Effective Time, FNB agrees to permit Mercantile to purchase and to keep in force for a period of three (3) years directors and officers liability insurance of the type commonly referred to as "tail insurance" to the extent necessary to provide coverage for actions or omissions of the type and in the amount currently covered by Mercantile's existing directors and officers liability insurance for actions or omissions occurring on or prior to the Effective Time (including those resulting from the transactions contemplated by this Agreement).

(b) If FNB or the Surviving Corporation or any of their successors or assigns shall consolidate with or merge into any other Person and shall not be the continuing or surviving Person of such consolidation or merger or shall transfer all or substantially all of its assets to any Person, then and in each case, proper provision shall be made so that the successors and assigns of FNB shall assume the obligations set forth in this Section 8.10.

(c) The provisions of this Section 8.10 are intended to be for the benefit of and shall be enforceable by, each Indemnified Party, his or her heirs and representatives and shall survive the consummation of the Merger and be binding on all successors and assigns of FNB and the Surviving Corporation.

8.11 *Accounting Adjustments and Sale of Securities.* At the request of FNB, and in amounts reasonably agreed to by FNB and Mercantile, on the day prior to the Closing Mercantile shall make adjustments to its balance sheet and income statement or accruals relating to same and shall sell or place binding orders to sell securities in its portfolio; provided, however, that Mercantile shall not be required to take any such action unless FNB provides a written waiver on behalf of itself and the FNB Companies of any right any such entity may have to terminate this Agreement and acknowledges and agrees that all conditions precedent to the obligations of the FNB Companies in this Agreement have either been satisfied or waived. No such adjustment or sale taken by Mercantile pursuant to this Section 8.11 shall be deemed in and of itself to be a breach or violation of any representation, warranty, covenant, condition or other provision of this Agreement.

8.12 *Employment Contracts of Certain Officers.* (a) Southwest and its wholly-owned subsidiary, First National Bank of Naples, N.A. shall, as of the Effective Time, enter into an employment agreement with Charles C. Grau, such employment agreement to be in substantially the form attached as Exhibit 3

hereto. In consideration for entering into such employment agreement, Mr. Grau shall agree to terminate his existing Change of Control Agreement with Mercantile, dated November 15, 1996, without further obligation or liability thereunder to any of the parties thereto.

(b) The parties hereto agree that as of the Effective Time the Change of Control Agreement between Mercantile and Russell R. Kempker, Jr., dated November 15, 1996 (the "Kempker Agreement"), shall be terminated without further obligation or liability to any of the parties thereto and, in consideration therefor, Mr. Kempker shall receive (i) the payment contemplated in Section 1(a)(1) of the Kempker Agreement and (ii) in lieu of any continuing obligation of FNB, Southwest or any of their subsidiary companies to provide, pursuant to Section 1(a)(2) of the Kempker Agreement, Mr. Kempker continued health insurance following the Effective Time, an additional cash payment in an amount equal to (A) \$389,411 less the payment to be paid pursuant to clause (i) of this Section 8.12(b) (if the Effective Time occurs during calendar year 1997) or (B) \$405,171 less the payment to be paid pursuant to clause (i) of this Section 8.12(b) (if the Effective Time occurs during calendar year 1998). The payment shall be paid to Mr. Kempker by bank check at the Closing.

## ARTICLE 9

### CONDITIONS PRECEDENT TO OBLIGATIONS TO CONSUMMATE

9.1 *Conditions to Obligations of Each Party.* The respective obligations of each Party to perform this Agreement and consummate the Merger and the other transactions contemplated hereby are subject to the satisfaction of the following conditions, unless waived by both Parties pursuant to Section 11.7 of this Agreement:

(a) *Shareholder Approval.* The shareholders of Mercantile shall have approved this Agreement, and the consummation of the transactions contemplated hereby, including the Merger, as and to the extent required by Law.

(b) *Regulatory Approvals.* All Consents of, filings and registrations with, and notifications to, all Regulatory Authorities required for consummation of the Merger shall have been obtained or made and shall be in full force and effect and all waiting periods required by Law shall have expired. No Consent obtained from any Regulatory Authority which is necessary to consummate the transactions contemplated hereby shall be conditioned or restricted in a manner relating to the raising of additional capital or the disposition of or limitation in growth of Assets.

(c) *Consents and Approvals.* Other than the receipt and filing of the Certificate of Merger, each Party shall have obtained any and all Consents required for consummation of the Merger (other than those referred to in Section 9.1(b) of this Agreement or listed in Section 9.1(c) of the Mercantile Disclosure Memorandum) or for the preventing of any Default under any Contract or Permit of such Party which, if not obtained or made, is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on such Party.

(d) *Legal Proceedings.* No court or governmental or regulatory authority of competent jurisdiction shall have enacted, issued, promulgated, enforced, or entered any Law or Order (whether temporary, preliminary, or permanent) or taken any other action which prohibits, restricts, or makes illegal consummation of the transactions contemplated by this Agreement.

9.2 *Conditions to Obligations of FNB.* The obligations of FNB to perform this Agreement and consummate the Merger and the other transactions contemplated hereby are subject to the satisfaction of the following conditions, unless waived by FNB pursuant to Section 11.7(a) of this Agreement:

(a) *Representations and Warranties.* For purposes of this Section 9.2(a), the accuracy of the representations and warranties of Mercantile set forth in this Agreement shall be assessed as of the date of this Agreement and as of the Effective Time with the same effect as though all such representations and warranties had been made on and as of the Effective Time (provided that representations and warranties which are confined to a specified date shall speak only as of such date). The representations and warranties of Mercantile set forth in Section 5.3 of this Agreement shall be true and correct (except for inaccuracies which are de minimus in amount). The representations and warranties of Mercantile set forth in Sections 5.17, 5.18, 5.19, and 5.20 of this Agreement shall be true and correct in all material respects. There shall not exist inaccuracies in the representations and warranties of Mercantile set forth in this Agreement (including the representations and warranties set forth in Sections 5.3, 5.17, 5.18, 5.19, and 5.20) such that the aggregate effect of such inaccuracies has, or is reasonably likely to have, a Material Adverse Effect on Mercantile; provided that, for purposes of this sentence only, those representations and warranties which are qualified by references to "Immaterial" or "Material Adverse Effect" shall be deemed not to include such qualifications.

(b) *Performance of Agreements and Covenants.* Each and all of the agreements and covenants of Mercantile to be performed and complied with pursuant to this Agreement and the other agreements contemplated hereby prior to the Effective Time shall have been duly performed and complied with in all respects, except for the failure to perform any agreement or covenant which is not reasonably likely to have a Material Adverse Effect on Mercantile.

(c) *Certificates.* Mercantile shall have delivered to FNB (i) a certificate, dated as of the Effective Time and signed on its behalf by its chief executive officer and its chief financial officer, to the effect that the conditions of its obligations set forth in Section 9.2(a) and 9.2(b) of this Agreement have been satisfied, and (ii) certified copies of resolutions duly adopted by Mercantile's Board of Directors and shareholders evidencing the taking of all corporate action necessary to authorize the execution, delivery, and performance of this Agreement, and the consummation of the transactions contemplated hereby, all in such reasonable detail as FNB and its counsel shall request.

(d) *Opinion of Counsel.* FNB shall have received a written opinion of Housley Kantarian & Bronstein, P.C., counsel to Mercantile, dated as of the Effective Time, with respect to such matters and in such form as shall be agreed upon between such firm and FNB.

9.3 *Conditions to Obligations of Mercantile.* The obligations of Mercantile to perform this Agreement and consummate the Merger and the other transactions contemplated hereby are subject to the satisfaction of the following conditions, unless waived by Mercantile pursuant to Section 11.7(b) of this Agreement:

(a) *Representations and Warranties.* For purposes of this Section 9.3(a), the accuracy of the representations and warranties of FNB set forth in this Agreement shall be assessed as of the date of this Agreement and as of the Effective Time with the same effect as though all such representations and warranties had been made on and as of the Effective Time (provided that representations and warranties which are confined to a specified date shall speak only as of such date). The representations and warranties of FNB set forth in Section 6.3 of this Agreement shall

be true and correct (except for inaccuracies which are de minimus in amount). There shall not exist inaccuracies in the representations and warranties of FNB set forth in this Agreement (including the representations and warranties set forth in Section 6.3) such that the aggregate effect of such inaccuracies has, or is reasonably likely to have, a Material Adverse Effect on FNB; provided that, for purposes of this sentence only, those representations and warranties which are qualified by references to "material" or "Material Adverse Effect" shall be deemed not to include such qualifications.

(b) *Performance of Agreements and Covenants.* Each and all of the agreements and covenants of FNB to be performed and complied with pursuant to this Agreement and the other agreements contemplated hereby prior to the Effective Time shall have been duly performed and complied with in all material respects.

(c) *Certificates.* FNB shall have delivered to Mercantile (i) a certificate, dated as of the Effective Time and signed on its behalf by its chief executive officer and its chief financial officer, to the effect that the conditions of its obligations set forth in Section 9.3(a) and 9.3(b) of this Agreement have been satisfied, and (ii) certified copies of resolutions duly adopted by FNB's Board of Directors evidencing the taking of all corporate action necessary to authorize the execution, delivery, and performance of this Agreement, and the consummation of the transactions contemplated hereby, all in such reasonable detail as Southwest and its counsel shall request.

(d) *Fairness Opinion.* Mercantile shall have received from The Robinson-Humphrey Company, Inc. a letter, dated not more than five business days prior to the date of the Proxy Statement, to the effect that, in the opinion of such firm, the Cash Consideration is fair, from a financial point of view, to the holders of Mercantile Common Stock.

(e) *Payment of Consideration.* FNB shall have delivered to the Exchange Agent the consideration in immediately available funds to be paid to holders of the Mercantile Common Stock pursuant to Section 3.1 of this Agreement and the Exchange Agent shall provide Mercantile with a certificate evidencing such delivery.

(f) *Opinion of Counsel.* Mercantile shall have received a written opinion of Smith, Gambrell & Russell, LLP, counsel to FNB, dated as of the Effective Time, with respect to such matters and in such form as shall be agreed upon between such firm and Mercantile.

## ARTICLE 10

### TERMINATION

10.1 *Termination.* Notwithstanding any other provision of this Agreement, and notwithstanding the approval of this Agreement by the shareholders of Mercantile, this Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time:

(a) By mutual written consent of the Board of Directors of FNB and the Board of Directors of Mercantile; or

(b) By the Board of Directors of either FNB or Mercantile (provided that the terminating Party is not then in breach of any representation or warranty contained in this Agreement under the applicable standard set forth in Section 9.2(a) of this Agreement in the case of Mercantile and Section 9.3(a) in the case of FNB or in material breach of any covenant or

other agreement contained in this Agreement) in the event of an inaccuracy of any representation or warranty of the other Party contained in this Agreement which cannot be or has not been cured within 30 days after the giving of written notice to the breaching Party of such inaccuracy and which inaccuracy would provide the terminating Party the ability to refuse to consummate the Merger under the applicable standard set forth in Section 9.2(a) of this Agreement in the case of Mercantile and Section 9.3(a) of this Agreement in the case of FNB; or

(c) By the Board of Directors of either FNB or Mercantile in the event of a material breach by the other Party of any material covenant, agreement, or obligation contained in this Agreement which breach cannot be or has not been cured within 30 days after the giving of written notice to the breaching Party of such breach; or

(d) By the Board of Directors of either FNB or Mercantile in the event (i) any Consent of any Regulatory Authority required for consummation of the Merger and the other transactions contemplated hereby shall have been denied by final nonappealable action of such authority or if any action taken by such authority is not appealed within the time limit for appeal, or (ii) the shareholders of Mercantile fail to vote their approval of this Agreement and the transactions contemplated hereby as required by the FBCA at the Shareholders' Meeting where the transactions were presented to such shareholders for approval and voted upon; or

(e) By the Board of Directors of either FNB or Mercantile in the event that the Merger shall not have been consummated by April 1, 1998, if the failure to consummate the transactions contemplated hereby on or before such date is not caused by any breach of this Agreement by the Party electing to terminate pursuant to this Section 10.1(e); or

(f) By FNB in the event dissenters' rights are claimed, pursuant to the applicable provisions of the FFIC, by persons owning in the aggregate more than 10% of the issued and outstanding Mercantile Common Stock; or

(g) By the Board of Directors of either FNB or Mercantile (provided that the terminating Party is not then in breach of any representation or warranty contained in this Agreement under the applicable standard set forth in Section 9.2(a) of this Agreement in the case of Mercantile and Section 9.3(a) in the case of FNB or in material breach of any covenant or other agreement contained in this Agreement) in the event that any of the conditions precedent to the obligations of such Party to consummate the Merger cannot be satisfied or fulfilled by the date specified in Section 10.1(e) of this Agreement; or

(h) By Mercantile, if at any time prior to the Effective Time, the fairness opinion of The Robinson-Humphrey Company, Inc. is withdrawn; or

(i) By Mercantile if prior to the Effective Time, a corporation, partnership, person, or other entity or group shall have made a bona fide Acquisition Proposal that the Mercantile Board determines in its good faith judgment and in the exercise of its fiduciary duties, with respect to legal matters upon the advice of legal counsel and as to financial matters on the advice of an investment banking firm of national reputation, is more favorable to the Mercantile stockholders and that the failure to terminate this Agreement and accept such alternative Acquisition Proposal would be inconsistent with the proper exercise of such fiduciary duties.

(j) By FNB, if any Regulatory Authority provides written notice to Mercantile of its intention to impose or assess a civil money penalty against Mercantile in excess of \$200,000.

10.2 *Effect of Termination.* In the event of the termination and abandonment of this Agreement pursuant to Section 10.1 of this Agreement, this Agreement shall become void and have no effect, except that (i) the provisions of this Section 10.2 and Section 11.1 and Section 8.5 of this Agreement shall survive any such termination and abandonment, and (ii) a termination pursuant to Sections 10.1(b), 10.1(c), or 10.1(e) of this Agreement shall not relieve the breaching Party from Liability for an uncured willful breach of a representation, warranty, covenant, or agreement giving rise to such termination.

10.3 *Non-Survival of Representations and Covenants.* The respective representations and warranties of the Parties shall not survive the Effective Time. All agreements of the Parties to this Agreement which by their terms are to be performed following the Effective Time shall survive the Effective Time until performed in accordance with their terms.

## ARTICLE 11

### MISCELLANEOUS

#### 11.1 *Definitions.*

(a) Except as otherwise provided herein, the capitalized terms set forth below shall have the following meanings:

"1933 Act" shall mean the Securities Act of 1933, as amended.

"1934 Act" shall mean the Securities Exchange Act of 1934, as amended.

"Acquisition Proposal" with respect to a Party shall mean any tender offer or exchange offer or any proposal for a merger, acquisition of all of the stock or assets of, or other business combination involving such Party or any of its Subsidiaries or any proposal or offer to acquire in any manner a 25% or greater equity interest in, or a substantial portion of the assets of, such Party or any of its Subsidiaries (other than the transactions contemplated or permitted by this Agreement).

"Affiliate" of a Person shall mean: (i) any other Person directly, or indirectly through one or more intermediaries, controlling, controlled by or under common control with such Person; (ii) any officer, director, partner, employer, or direct or indirect beneficial owner of any 10% or greater equity or voting interest of such Person; or (iii) any other Person for which a Person described in clause (ii) acts in any such capacity.

"Agreement" shall mean this Agreement and Plan of Merger, including the Exhibits delivered pursuant hereto and incorporated herein by reference.

"Assets" of a Person shall mean all of the assets, properties, businesses, and rights of such Person of every kind, nature, character, and description, whether real, personal, or mixed, tangible or intangible, accrued or contingent, or otherwise relating to or utilized in such Person's business, directly or indirectly, in whole or in part, whether or not carried on the books and records of such Person, and whether or not owned in the name of such Person or any Affiliate of such Person and wherever located.

"BHC Act" shall mean the Federal Bank Holding Company Act of 1956, as amended.

*"Cash Consideration"* shall have the meaning set forth in Section 3.1 of this Agreement.

*"Closing"* shall have the meaning set forth in Section 1.2 of this Agreement.

*"Confidentiality Agreement"* shall mean that certain Confidentiality Agreement referred to in Section 8.5 of this Agreement.

*"Consent"* shall mean any consent, approval, authorization, clearance, exemption, waiver, or similar affirmation by any Person pursuant to any Contract, Law, Order, or Permit.

*"Contract"* shall mean any written agreement, commitment, contract, note, bond, mortgage, indenture, instrument, lease, obligation, license, or plan of any kind or character, or other document to which any Person is a party or that is binding on any Person or its capital stock or Assets.

*"Default"* shall mean (i) any breach or violation of or default under any Contract, (ii) any occurrence of any event that with the passage of time or the giving of notice or both would constitute a breach or violation of or default under any Contract, or (iii) any occurrence of any event that with or without the passage of time or the giving of notice would give rise to a right to terminate or revoke, change the current terms of, or renegotiate, or to accelerate, increase, or impose any liability under, any Contract where, in any such event, such default is reasonably likely to have a Material Adverse Effect on a Party.

*"Derivatives Contract"* shall have the meaning set forth in Section 5.20 of this Agreement.

*"Determination Date"* shall mean the date on which the last of the following occurs: (i) the effective date (including expiration of any applicable waiting period required by Law) of the last required Consent of any Regulatory Authority having authority over and approving or exempting the Merger, and (ii) the date on which the shareholders of Mercantile approve this Agreement to the extent that such approval is required by applicable Law.

*"Effective Time"* shall have the meaning set forth in Section 1.3 of this Agreement.

*"Environmental Laws"* shall mean all Laws relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface, or subsurface strata) and which are administered, interpreted, or enforced by the United States Environmental Protection Agency and state and local agencies with jurisdiction over, and including common law in respect of, pollution or protection of the environment, including the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., and other Laws relating to emissions, discharges, releases, or threatened releases of any Hazardous Material, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of any Hazardous Material.

*"ERISA"* shall mean the Employee Retirement Income Security Act of 1974, as amended.

*"Exchange Agent"* shall have the meaning set forth in Section 4.1 of this Agreement.

*"Exhibit"* 1, 2 and 3 shall mean the Exhibit so marked, copies of which are attached to this Agreement. Such Exhibit is hereby incorporated by reference herein and made a part hereof,

and may be referred to in this Agreement and any other related instrument or document without being attached hereto.

*"FFIC"* shall mean the Florida Financial Institutions Code, which includes those Florida Laws identified in Section 655.005(j) of the Florida Statutes.

*"FNB"* shall have the meaning set forth in the first paragraph of this Agreement.

*"FNB Capital Stock"* shall mean, collectively, the FNB Common Stock, the FNB Preferred Stock, and any other class or series of capital stock of FNB.

*"FNB Common Stock"* shall mean the \$2 par value common stock of FNB.

*"FNB Companies"* shall mean, collectively, FNB and all FNB Subsidiaries.

*"FNB Disclosure Memorandum"* shall mean the written information entitled "FNB Corporation Disclosure Memorandum" delivered prior to the date of this Agreement to Mercantile describing in reasonable detail the matters contained therein and, with respect to each disclosure made therein, specifically referencing each Section of this Agreement under which such disclosure is being made.

*"FNB Financial Statements"* shall mean (i) the consolidated statements of condition (including related notes and schedules, if any) of FNB as of March 31, 1997, and as of December 31, 1996 and 1995, and the related statements of income, changes in shareholders' equity, and cash flows (including related notes and schedules, if any) for the three months ended March 31, 1997, and for each of the three years ended December 31, 1996, 1995, and 1994, as filed by FNB in SEC Documents, and (ii) the consolidated statements of condition of FNB (including related notes and schedules, if any) and related statements of income, changes in shareholders' equity, and cash flows (including related notes and schedules, if any) included in SEC Documents filed with respect to periods ended subsequent to March 31, 1997.

*"FNB Preferred Stock"* shall mean the \$10 par value preferred stock of FNB.

*"FNB SEC Reports"* shall have the meaning set forth in Section 6.5(a) of this Agreement.

*"FNB Subsidiaries"* shall mean the Subsidiaries of FNB, which shall include any corporation, bank, savings association, or other organization acquired as a Subsidiary of FNB in the future and owned by FNB at the Effective Time.

*"GAAP"* shall mean generally accepted accounting principles in the United States, consistently applied during the periods involved applicable to banks or bank holding companies, as the case may be.

*"Hazardous Material"* shall mean (i) any hazardous substance, hazardous material, hazardous waste, regulated substance, or toxic substance (as those terms are defined by any applicable Environmental Laws) and (ii) any chemicals, pollutants, contaminants, petroleum, petroleum products, or oil (and specifically shall include asbestos requiring abatement, removal, or encapsulation pursuant to the requirements of governmental authorities and any polychlorinated biphenyls).

*"HSR Act"* shall mean Section 7A of the Clayton Act, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

*"Indemnified Party"* shall have the meaning set forth in Section 8.10 of this Agreement.

*"Internal Revenue Code"* shall mean the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

*"Knowledge"* as used with respect to a Person (including references to such Person being aware of a particular matter) shall mean the personal knowledge of the chairman, president, chief financial officer, chief accounting officer, chief credit officer, general counsel, any assistant or deputy general counsel, or any senior or executive vice president of such Person.

*"Law"* shall mean any code, law, ordinance, regulation, reporting or licensing requirement, rule, or statute applicable to a Person or its Assets, Liabilities, or business, including those promulgated, interpreted, or enforced by any Regulatory Authority.

*"Liability"* shall mean any direct or indirect, primary or secondary, liability, indebtedness, obligation, penalty, cost, or expense (including costs of investigation, collection and defense), claim, deficiency, guaranty, or endorsement of or by any Person (other than endorsements of notes, bills, checks, and drafts presented for collection or deposit in the ordinary course of business) of any type, whether accrued, absolute or contingent, liquidated or unliquidated, matured or unmatured, or otherwise.

*"Lien"* with respect to any Asset, shall mean any conditional sale agreement, default of title, easement, encroachment, encumbrance, hypothecation, infringement, lien, mortgage, pledge, reservation, restriction, security interest, title retention, or other security arrangement, or any adverse right or interest, charge, or claim of any nature whatsoever of, on, or with respect to any property or property interest, other than (i) Liens for current property Taxes not yet due and payable, (ii) for depository institution Subsidiaries of a Party, pledges to secure deposits, and (iii) other Liens incurred in the ordinary course of the banking business, and (iv) minor defects or irregularities in title that do not materially adversely impair the use or ownership of the Property.

*"Litigation"* shall mean any action, arbitration, cause of action, claim, complaint, criminal prosecution, demand letter, governmental or other examination or investigation, hearing, inquiry, administrative or other proceeding, or notice by any Person alleging potential liability.

*"Loan Property"* shall mean any property owned, leased, or operated by the Party in question or by any of its Subsidiaries or in which such Party or its Subsidiary holds a security or other interest (including an interest in a fiduciary capacity), and, where required by the context, includes the owner or operator of such property, but only with respect to such property.

*"Material Adverse Effect"* on a Party shall mean an event, change, or occurrence which, individually or together with any other event, change, or occurrence, has a material adverse impact on (i) the financial position, business, or results of operations of such Party and its Subsidiaries, taken as a whole, or (ii) the ability of such Party to perform its obligations under this Agreement or to consummate the Merger or the other transactions contemplated by this Agreement, provided that "Material Adverse Effect" shall not be deemed to include the impact of (a) changes in banking and similar Laws of general applicability or interpretations thereof by courts or

governmental authorities, (b) changes in GAAP or regulatory accounting principles generally applicable to banks and their holding companies, (c) actions and omissions of a Party (or any of its Subsidiaries) taken with the prior informed consent of the other Party in contemplation of the transactions contemplated hereby, (d) circumstances affecting banking companies in Southwest Florida due to general economic conditions and the level of interest rates, and (e) the Merger and compliance with the provisions of this Agreement on the operating performance of the Parties.

*"Mercantile"* shall have the meaning set forth in the first paragraph of this Agreement.

*"Mercantile Benefits Plans"* shall have the meaning set forth in Section 5.13(a) of this Agreement.

*"Mercantile Common Stock"* shall mean the \$5.00 par value common stock of Mercantile.

*"Mercantile Contract"* shall have the meaning set forth in Section 5.14.

*"Mercantile Disclosure Memorandum"* shall mean the written information entitled "Mercantile Corporation Disclosure Memorandum" delivered prior to the date of this Agreement to FNB describing in reasonable detail the matters contained therein and, with respect to each disclosure made therein, specifically referencing each Section of this Agreement under which such disclosure is being made. Information disclosed with respect to one Section shall be deemed to be disclosed for purposes of any other Section not specifically referenced with respect thereto.

*"Mercantile ERISA Plan"* shall have the meaning set forth in Section 5.13(a) of this Agreement.

*"Mercantile Financial Statements"* shall mean (i) the consolidated balance sheets (including related notes and schedules, if any) of Mercantile as of March 31, 1997, and as of December 31, 1996, 1995 and 1994, and the related statements of income, changes in shareholders' equity, and cash flows (including related notes and schedules, if any) for the three months ended March 31, 1997, and for each of the three fiscal years ended December 31, 1996, 1995, and 1994, and (ii) the consolidated balance sheets of Mercantile (including related notes and schedules, if any) and related statements of income, changes in shareholders' equity, and cash flows (including related notes and schedules, if any) included in Mercantile Call Reports filed and published in accordance with applicable federal regulation with respect to periods ended subsequent to March 31, 1997.

*"Mercantile Interim Balance Sheet"* shall mean the consolidated balance sheet (including related notes and schedules, if any) of Mercantile as of March 31, 1997.

*"Mercantile Options"* shall have the meaning set forth in Section 3.3(a) of this Agreement.

*"Mercantile Stock Plans"* shall mean the existing stock option and other stock-based compensation plans and warrant instruments of Mercantile set forth in Section 3.3 of the Mercantile Disclosure Memorandum.

*"Merger"* shall have the meaning set forth in Section 1.1 of this Agreement.

*"Nasdaq"* shall mean the Nasdaq Stock Market.

*"Order"* shall mean any decree, injunction, judgment, order, decision or award, ruling, or writ of any federal, state, local, or foreign or other court, arbitrator, mediator, tribunal, administrative agency, or Regulatory Authority.

*"Participation Facility"* shall mean any facility or property in which the Party in question or any of its Subsidiaries participates in the management and, where required by the context, said term means the owner or operator of such facility or property, but only with respect to such facility or property.

*"Party"* shall mean either Mercantile or FNB, and *"Parties"* shall mean both Mercantile and FNB.

*"PBCL"* shall mean the Pennsylvania Business Corporation Law.

*"Permit"* shall mean any federal, state, local, and foreign governmental approval, authorization, certificate, easement, filing, franchise, license, notice, permit, or right to which any Person is a party or that is or may be binding upon or inure to the benefit of any Person.

*"Person"* shall mean a natural person or any legal, commercial, or governmental entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, business association, group acting in concert, or any person acting in a representative capacity.

*"Proxy Statement"* shall mean the proxy statement used by Mercantile to solicit the approval of its shareholders of the transactions contemplated by this Agreement.

*"Regulatory Authorities"* shall mean, collectively, the Federal Trade Commission, the United States Department of Justice, the Board of the Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the SEC, NASD, Nasdaq and all state regulatory agencies having jurisdiction over the Parties and their respective Subsidiaries.

*"Rights"* shall mean all arrangements, calls, Contracts, options, rights to subscribe to, scrip, understandings, warrants, or other binding obligations of any character whatsoever relating to, or securities or rights convertible into or exchangeable for, shares of the capital stock of a Person or any Contract, commitments or other arrangements by which a Person is or may be bound to issue additional shares of its capital stock or options, warrants, rights to purchase or acquire any additional shares of its capital stock, or other Rights.

*"SEC"* shall mean the Securities and Exchange Commission.

*"SEC Documents"* shall mean all forms, proxy statements, registration statements, reports, schedules, and other documents filed, or required to be filed, by a Party or any of its Subsidiaries with any Regulatory Authority pursuant to the Securities Laws.

*"Securities Laws"* shall mean the 1933 Act, the 1934 Act, the Investment Company Act of 1940, as amended, the Investment Advisors Act of 1940, as amended, the Trust Indenture Act of 1939, as amended, and the rules and regulations of any Regulatory Authority promulgated thereunder.

"*Shareholders' Meeting*" shall mean the meeting of the shareholders of Mercantile to be held pursuant to Section 8.1 of this Agreement, including any adjournment or adjournments thereof.

"*Southwest*" shall have the meaning set forth in the first paragraph of this Agreement.

"*Stock Option Agreement*" shall have the meaning set forth in the Preamble of this Agreement.

"*Subsidiaries*" shall mean all those corporations, banks, associations, or other entities of which the entity in question owns or controls 50% or more of the outstanding equity securities either directly or through an unbroken chain of entities as to each of which 50% or more of the outstanding equity securities is owned directly or indirectly by its parent; provided, there shall not be included any such entity acquired through foreclosure or any such entity the equity securities of which are owned or controlled in a fiduciary capacity.

"*Surviving Corporation*" shall mean Mercantile as the surviving corporation resulting from the Merger.

"*Tax*" or "*Taxes*" shall mean all federal, state, local, and foreign taxes, charges, fees, levies, imposts, duties, or other assessments, including income, gross receipts, excise, employment, sales, use, transfer, license, payroll, franchise, severance, stamp, occupation, windfall profits, environmental, federal highway use, commercial rent, customs duties, capital stock, paid-up capital, profits, withholding, Social Security, single business and unemployment, disability, real property, personal property, registration, ad valorem, value added, alternative or add-on minimum, estimated, or other tax or governmental fee of any kind whatsoever, imposed or required to be withheld by the United States or any state, local, foreign government or subdivision or agency thereof, including any interest, penalties or additions thereto.

"*Tax Return*" shall mean any report, return, information return, or other information required to be supplied to a taxing authority in connection with Taxes, including any return of an affiliated or combined or unitary group that includes a Party or its Subsidiaries.

"*Taxable Period*" shall mean any period prescribed by any governmental authority, including the United States or any state, local, foreign government or subdivision or agency thereof for which a Tax Return is required to be filed or Tax is required to be paid.

(b) Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed followed by the words "without limitation."

#### 11.2 *Expenses.*

(a) Except as otherwise provided in this Section 11.2, each of FNB and Mercantile shall bear and pay all direct costs and expenses incurred by it or on its behalf in connection with the transactions contemplated hereunder, including filing, registration, and application fees, printing fees, and fees and expenses of its own financial or other consultants, investment bankers, accountants, and counsel, except that each of FNB and Mercantile shall bear and pay one-half of the printing costs incurred in connection with the printing of the Proxy Statement. Notwithstanding the foregoing, in the event that this Agreement is terminated in accordance with

Section 10.1(b), then the terminating Party shall be promptly reimbursed by the other Party for the terminating Party's reasonable expenses incurred in connection with the transactions contemplated by this Agreement.

(b) Nothing contained in this Section 11.2 shall constitute or shall be deemed to constitute liquidated damages for the willful breach by a Party of the terms of this Agreement or otherwise limit the rights of the nonbreaching Party.

11.3 *Brokers and Finders.* Except for The Robinson-Humphrey Company, Inc. as to Mercantile, each of the Parties represents and warrants that neither it nor any of its officers, directors, employees, or Affiliates has employed any broker or finder in connection with this Agreement or the transactions contemplated hereby. In the event of a claim by any broker or finder based upon his or its representing or being retained by or allegedly representing or being retained by Mercantile or FNB, each of Mercantile and FNB, as the case may be, agrees to indemnify and hold the other Party harmless of and from any Liability in respect of any such claim.

11.4 *Entire Agreement.* Except with respect to the Confidentiality Agreement or as otherwise expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated hereunder and supersedes all prior arrangements or understandings with respect thereto, written or oral (except for the Confidentiality Agreements). Nothing in this Agreement expressed or implied, is intended to confer upon any Person, other than the Parties or their respective successors, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, other than as provided in Sections 8.9, 8.10 and 8.12 of this Agreement.

11.5 *Amendments.* To the extent permitted by Law, this Agreement may be amended by a subsequent writing signed by each of the Parties upon the approval of the Boards of Directors of each of the Parties, whether before or after shareholder approval of this Agreement has been obtained; provided, that after any such approval by the holders of Mercantile Common Stock, there shall be made no amendment that reduces or modifies in any material respect the consideration to be received by holders of Mercantile Common Stock without the further approval of such shareholders.

11.6 *Obligations of FNB.* Whenever this Agreement requires FNB (including the Surviving Corporation) to take any action, such requirement shall be deemed to include an undertaking by FNB to cause the FNB Subsidiaries to take such action.

11.7 *Waivers.*

(a) Prior to or at the Effective Time, FNB, acting through its Board of Directors, chief executive officer, president or other authorized officer, shall have the right to waive any default in the performance of any term of this Agreement by Mercantile, to waive or extend the time for the compliance or fulfillment by Mercantile of any and all of its obligations under this Agreement, and to waive any or all of the conditions precedent to the obligations of FNB under this Agreement, except any condition which, if not satisfied, would result in the violation of any Law. No such waiver shall be effective unless in writing signed by a duly authorized officer of FNB.

(b) Prior to or at the Effective Time, Mercantile, acting through its Board of Directors, chief executive officer, president or other authorized officer, shall have the right to waive any default in the performance of any term of this Agreement by FNB, to waive or extend the time for the compliance or fulfillment by FNB of any and all of its obligations under this

Agreement, and to waive any or all of the conditions precedent to the obligations of Mercantile under this Agreement, except any condition which, if not satisfied, would result in the violation of any Law. No such waiver shall be effective unless in writing signed by a duly authorized officer of Mercantile.

(c) The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect the right of such Party at a later time to enforce the same or any other provision of this Agreement. No waiver of any condition or of the breach of any term contained in this Agreement in one or more instances shall be deemed to be or construed as a further or continuing waiver of such condition or breach or a waiver of any other condition or of the breach of any other term of this Agreement.

11.8 *Assignment.* Except as expressly contemplated hereby, neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by any Party hereto (whether by operation of Law or otherwise) without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assigns.

11.9 *Notices.* All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if delivered by hand, by facsimile transmission, by registered or certified mail, postage pre-paid, or by courier or overnight carrier, to the persons at the addresses set forth below (or at such other address as may be provided hereunder), and shall be deemed to have been delivered as of the date so delivered:

Mercantile:	2375 Tamiami Trail North Naples, Florida 34103 Telecopy Number: 941-643-6191 Attention: President and Chief Executive Officer
Copy to Counsel:	Housley Kantarian & Bronstein, P.C. 1220 19th Street, N.W. Suite 700 Washington, D.C. 20036 Telecopy Number: 202-822-0140 Attention: Harry K. Kantarian
FNB:	Hermitage Square Hermitage, PA 16148 Telecopy Number: 412-983-3515 Attention: Chairman and Chief Executive Officer
Copy to Counsel:	Smith, Gambrell & Russell, LLP 3343 Peachtree Road, NE Suite 1800 Atlanta, Georgia 30326 Telecopy Number: 404-264-2652 Attention: Robert C. Schwartz

11.10 *Governing Law.* This Agreement shall be governed by and construed in accordance with the Laws of the Commonwealth of Pennsylvania, without regard to any applicable conflicts of Laws, except to the extent that the Laws of the State of Florida relate to the consummation of the Merger.

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

11.12 *Captions.* The captions contained in this Agreement are for reference purposes only and are not part of this Agreement.

11.13 *Enforcement of Agreement.* The Parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

11.14 *Severability.* Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on its behalf and its corporate seal to be hereunto affixed and attested by officers thereunto as of the day and year first above written.

F.N.B. CORPORATION

By: *Peter Mortensen*  
Name: Peter Mortensen  
Title: Chairman of the Board and President

SOUTHWEST BANKS, INC.

By: *Gary L. Tice*  
Name: Gary L. Tice  
Title: Chairman of the Board, President, and Chief Executive Officer

MERCANTILE BANK OF SOUTHWEST FLORIDA

By: *Russell R. Kempker, Jr.*  
Name: Russell R. Kempker, Jr.  
Title: President and Chief Executive Officer

Southwest Interim Bank No. 2, N.A. hereby joins in the foregoing Agreement, undertakes that it will be bound thereby and that it will duly perform all acts and things therein referred to or provided to be done by it.

IN WITNESS WHEREOF, Southwest Interim Bank No. 2, N.A. has caused this undertaking to be made in counterparts by its duly authorized officers and its corporate seal to be hereunto affixed as of this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

[Corporate Seal]

Attest:

SOUTHWEST INTERIM BANK NO. 2, N.A.

\_\_\_\_\_  
Secretary

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

ARTICLES OF INCORPORATION

MERCANTILE BANK OF NAPLES

The undersigned incorporators hereby associate themselves together for the purpose of forming a corporation under and by virtue of the Laws of the State of Florida, with and under the following Articles of Incorporation.

ARTICLE I

The name of the corporation shall be:

MERCANTILE BANK OF NAPLES

and its principal place of business shall be at 341 Airport Road North in the County of Collier and the State of Florida., City of Naples.

ARTICLE II

The general nature of the business to be transacted by this corporation shall be: That of a general banking business with all the rights, powers and privileges granted and conferred by the banking laws of the State of Florida, regulating the organization, powers and management of banking corporations.

ARTICLE III

The amount of capital stock authorized shall be FIVE HUNDRED THOUSAND (500,000) shares of the par value of FIVE DOLLARS (\$5.00) each. The amount of capital stock with which the corporation will begin business, shall be ONE MILLION TWO HUNDRED FIFTY THOUSAND and no/100 DOLLARS (\$1,250,000) of Common Stock to be divided into TWO HUNDRED FIFTY THOUSAND (250,000) shares of the par value of FIVE DOLLARS (\$5.00) each; the amount of surplus with which the corporation will begin business shall be ONE MILLION and no/100 DOLLARS (\$1,000,000) and the amount of undivided profits TWO HUNDRED FIFTY THOUSAND and no/100 DOLLARS (\$250,000) all of which capital stock, surplus and undivided profits shall be paid in cash.

ARTICLE IV

The term for which said corporation shall exist shall be perpetual.

ARTICLE V

The business and affairs of this corporation shall be managed and conducted by a Board of not less than five directors who shall be elected annually by the stockholders at their annual meeting to be held during the first four months of each year after the corporation shall be fully authorized to commence business; provided, however, that if so authorized by a majority

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TALLAHASSEE, FLORIDA

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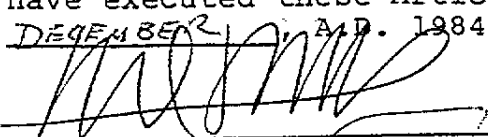
of the stockholders by appropriate action of the stockholders at the next preceding annual meeting, a majority of the full board of directors may, at any time during the year following the annual meeting of stockholders in which such action has been authorized, increase the number of directors within the limits specified above and appoint persons to fill the resulting vacancies, provided further, that in any one year not more than two such additional directors shall be authorized pursuant to this provision; and by a President and one or more Vice Presidents and a Cashier and such other officers as may be designated in the by-laws of the corporation, who shall be elected by the Board of Directors, at the same place, on the same day and immediately after said Board of Directors shall be elected by the stockholders; provided, that the offices of Vice President and Cashier may be combined in one and the same person.

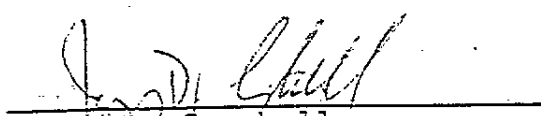
#### ARTICLE VI

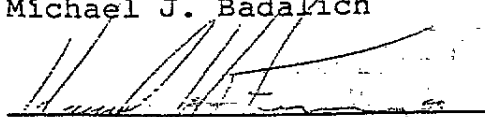
Until the directors elected at the first annual meeting of the stockholders and the officers elected at the first annual meeting of the directors shall be qualified, the business of this corporation shall be conducted by the following named directors:


<u>Name</u>	<u>Street Address</u>
Michael J. Badalich	6351 Hutchinson Road Miami Lakes, Florida 33014
Jerry D. Campbell	1203 Ada Street Owosso, Michigan 48867
Harold H. Feeney, II	1400 Pompert Lane, Apartment 46 Naples, Florida 33940
Thomas V. Porter	3301 Rum Row Naples, Florida 33940
William B. Stone	2358 Pinewoods Circle Naples, Florida 33942

In witness of the foregoing and of the fact that all of the stock has been subscribed for, the undersigned incorporators have executed these Articles of Incorporation this 5<sup>th</sup> day of DECEMBER, A.D. 1984.

  
Michael J. Badalich

  
Jerry D. Campbell

  
Harold H. Feeney, II

  
Thomas V. Porter

  
William B. Stone

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STATE OF FLORIDA )

SS

COUNTY OF COLLIER

Before me, the undersigned Notary Public in and for the State of Florida at Large, personally appeared Harold H. Feeney, II, Thomas V. Porter, and William B. Stone all to me well known, and known to me to be the individuals described in and who executed the foregoing Articles of Incorporation of MERCANTILE BANK OF NAPLES and each being duly sworn severally acknowledged that he executed the same for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this 5<sup>th</sup> day of DECEMBER, A.D. 1984.

(SEAL)

Carol M. Wilson  
Notary Public-State of Florida  
at Large  
My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES JUNE 19, 1988  
BONDED THROUGH MURSKI-ASHTON, INC.

STATE OF FLORIDA )

SS

COUNTY OF COLLIER

Before me, the undersigned Notary Public in and for the State of Florida at Large, personally appeared Michael J. Badalich known to me to be the individual described in and who executed the foregoing Articles of Incorporation of MERCANTILE BANK OF NAPLES and being duly sworn acknowledged that he executed the same for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this 5<sup>th</sup> day of DECEMBER, A.D. 1984.

(SEAL)

Carol M. Wilson  
Notary Public-State of Florida  
at Large  
My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES JUNE 19, 1988  
BONDED THROUGH MURSKI-ASHTON, INC.

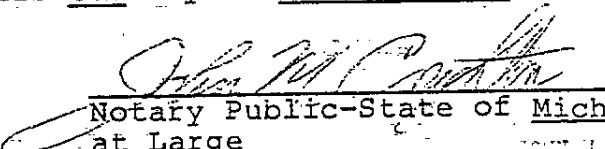
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STATE OF MICHIGAN )  
 ) SS  
COUNTY OF OSHTIAWASSEE

Before me, the undersigned Notary Public in and for the State of Michigan at Large, personally appeared Jerry D. Campbell known to me to be the individual described in and who executed the foregoing Articles of Incorporation of MERCANTILE BANK OF NAPLES and being duly sworn acknowledged that he executed the same for the uses and purposes therein expressed.


IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this 5th day of December, A.D. 1984.

(SEAL)

  
Notary Public-State of Michigan  
at Large  
My Commission Expires:

Approved by the Department of Banking and Finance this  
14th day of December, 1984.

Tallahassee, Florida

  
GERALD LEWIS  
Comptroller of the State of  
Florida and Head of the  
Department of Banking and  
Finance

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AMENDMENT OF  
ARTICLES OF INCORPORATION  
OF  
MERCANTILE BANK OF NAPLES

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The undersigned officers of MERCANTILE BANK OF NAPLES, Naples, Florida, do hereby certify that the Board of Directors of said bank approved and proposed to the shareholders thereof amendment of Article I and Article III of the Articles of Incorporation of said bank as set out herein and that thereafter on the 13th day of October, A.D. 1989, at a special meeting of the shareholders called and held in compliance with Section 607.181, Florida Statutes, and with the Articles of Incorporation and by-laws of said bank, at the office of the bank in Naples, Florida, at which meeting the holders of a majority of the outstanding capital stock were present, the said shareholders passed a resolution amending and restating Article I in its entirety by changing the location of the corporation to 2375 Tamiami Trail North, and amending the first sentence of Article III by increasing the amount of capital stock authorized from Five Hundred Thousand (500,000) shares to One Million Five Hundred Thousand (1,500,000) shares of common stock at par value of Five Dollars (\$5.00) each, of the Articles of Incorporation so that in lieu of its present language Article I and the first sentence of Article III shall read:

ARTICLE I

The name of the corporation shall be:

MERCANTILE BANK OF NAPLES

and its principal place of business shall be at 2375 Tamiami Trail North, in the City of Naples, in the County of Collier, and the State of Florida.

ARTICLE III

The amount of capital stock authorized shall be ONE MILLION FIVE HUNDRED THOUSAND (1,500,000) shares common stock of par value of FIVE DOLLARS (\$5.00) each.

(Corporate Seal)

Russell R. Kempker, Jr.  
Russell R. Kempker, Jr.  
President

Richard L. Hopkins  
Richard L. Hopkins  
Cashier

STATE OF FLORIDA  
COUNTY OF Collier

The foregoing instrument was acknowledged before me this 26  
day of JANUARY A.D. 1990, by Russell R. Kempker,  
Jr., President and Richard L. Hopkins, Cashier of Mercantile Bank  
of Naples, a banking corporation of the State of Florida, on  
behalf of the corporation.

Pamela Karen Peterson  
Notary Public - State of Florida at  
Large  
My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES DEC. 20, 1991  
BONDED THROUGH ASHTON AGENCY, INC

The foregoing amendment is hereby approved this 9th day  
of February A.D. 1990.

Gerald Lewis  
Comptroller of the State of Florida  
as State Commissioner of Banking

AMENDMENT OF  
ARTICLES OF INCORPORATION OF  
MERCANTILE BANK OF NAPLES

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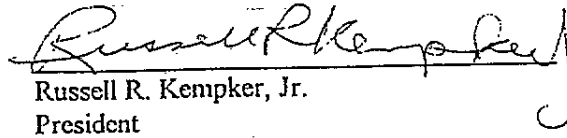
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TALLAHASSEE, FLORIDA

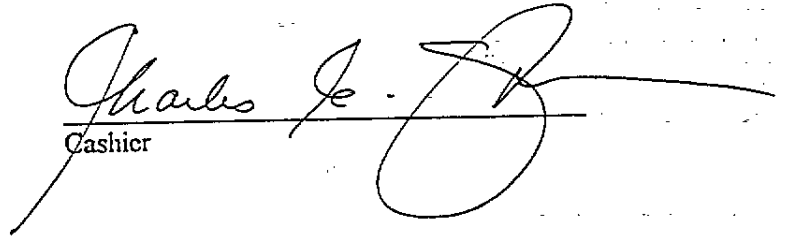
The undersigned officers of MERCANTILE BANK OF NAPLES, Naples, Florida, do hereby certify that the Board of Directors of said financial institution approved and proposed to the shareholders thereof, amendment to Article I of the Articles of Incorporation as set out herein, and that thereafter on the 16th day of December, A.D. 1996 at a special meeting of the shareholders called and held in compliance with Section 607.1006, Florida Statutes, and with the Articles of Incorporation and bylaws of said corporation at its office in Naples, Florida, at which meeting the holders of a majority of the outstanding capital stock of said corporation were present. There is only one class of stock, and a majority, which was sufficient for approval, approved the amendment changing the name of the corporation to MERCANTILE BANK OF SOUTHWEST FLORIDA and amending Article I of the Articles of Incorporation so that, effective January 15, 1997, in lieu of its present language it shall read:

ARTICLE I

The name of the corporation shall be: MERCANTILE BANK OF SOUTHWEST FLORIDA and its place of business, now known as its initial place of business, shall be 2375 Tamiami Trail North in the City of Naples, in the County of Collier, and the State of Florida.

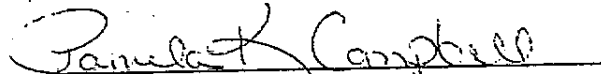
(Corporate Seal)

  
Russell R. Kempker, Jr.  
President

  
Cashier


STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 18 day of December, A.D.  
1996.

  
Notary Public -- State of Florida at  
Large -- My Commission Expires:



Approved by the Department of Banking and Finance this 15<sup>TH</sup> day of JANUARY, 1997.

  
ROBERT F. MILLIGAN  
Comptroller of Florida