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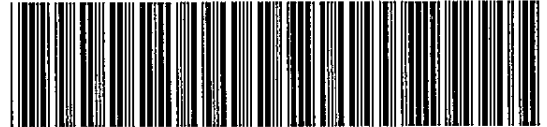
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Merger

3. Gualletto

AUG 20 2004

**ARTICLES OF MERGER  
MADISON BANCSHARES, INC.  
(a Florida corporation)**

**WITH AND INTO**

**WHITNEY HOLDING CORPORATION  
(a Louisiana corporation)**

Pursuant to the provisions of Sections 607.1105 and 607.1107 of the Florida Statutes, these Articles of Merger provide as follows:

**ARTICLE I  
Name of Surviving Corporation**

The names and states of incorporation of the corporations, which are parties to the merger are:

<u>Name</u>	<u>State of Incorporation</u>
Whitney Holding Corporation	Louisiana
Madison BancShares, Inc.	Florida

Whitney Holding Corporation shall be the surviving corporation.

**ARTICLE II  
Plan of Merger**

The Agreement and Plan of Merger is attached hereto as Exhibit A (the "Plan of Merger").

**ARTICLE III  
Approval of the Plan of Merger**

The Executive Committee of the Board of Directors of Whitney Holding Corporation adopted and approved the Plan of Merger on March 9, 2004 and the Board of Directors of Whitney Holding Corporation adopted and approved the Plan of Merger on April 28, 2004 in accordance with Louisiana law. Under Louisiana law, approval of the Plan of Merger by the shareholders of Whitney Holding Corporation was not required.

The Board of Directors of Madison BancShares, Inc. adopted and approved the Plan of Merger on March 9, 2004 in accordance with Florida law and voted to submit the Plan of Merger to a vote of the shareholders of Madison BancShares, Inc. with a unanimous recommendation that the Plan of Merger be approved. The Plan of Merger, having been so submitted to the

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shareholders of Madison BancShares, Inc., as a separate proposal, was adopted by the shareholders at the Special Meeting of such shareholders held on August 17, 2004.

ARTICLE IV  
Effective Date of Merger

These Articles of Merger and the Plan of Merger shall become effective at 1:00 p.m. Eastern Daylight Time on August 20, 2004.

Dated this 20th day of August, 2004.

WHITNEY HOLDING CORPORATION,  
a Louisiana corporation

By: 

Name: R. King Milling

Title: President

MADISON BANCSHARES, INC.,  
a Florida corporation

By: 

Name: Melvin S. Cutler

Title: Chairman of the Board

By: 

Name: Robert B. McGivney

Title: President & CEO

**EXHIBIT "A"**

**AGREEMENT AND PLAN OF MERGER**

**BETWEEN**

**WHITNEY HOLDING CORPORATION**  
**WHITNEY NATIONAL BANK**

**AND**

**MADISON BANCSHARES, INC.**  
**MADISON BANK**

AGREEMENT AND PLAN OF MERGER

BETWEEN

WHITNEY HOLDING CORPORATION  
WHITNEY NATIONAL BANK

AND

MADISON BANCSHARES, INC.  
MADISON BANK

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## **LIST OF EXHIBITS**

Exhibit 1.01(b)	Bank Merger Agreement
Exhibit 1.02(c)	FL Articles of Merger
Exhibit 5.10(a)	Director's and Officer's Commitment
Exhibit 5.10(b)	Shareholder's Commitment
Exhibit 6.02(d)	Form of Opinion of Counsel for Holding
Exhibit 6.03(b)	Form of Opinion of Counsel for Whitney

## **AGREEMENT AND PLAN OF MERGER**

**THIS AGREEMENT AND PLAN OF MERGER** ("Agreement") is made March 19, 2004 among Whitney Holding Corporation ("Whitney"), a Louisiana corporation, and Whitney National Bank ("WNB"), a national banking association, on the one hand, and Madison Bancshares, Inc. ("Holding"), a Florida corporation, and Madison Bank (the "Bank"), a Florida state banking association, on the other hand. Whitney and Holding shall be hereinafter collectively referred to as the "Constituent Corporations."

### **Preamble**

**WHEREAS**, the boards of directors of Whitney and Holding have determined that it is desirable and in the best interests of their respective corporations and shareholders that Holding merge into Whitney (the "Company Merger") on the terms and subject to the conditions set forth in this Agreement. The boards of directors of WNB and the Bank have each determined that it is desirable and in the best interests of each such institution and its respective sole shareholder that the Bank merge into WNB (the "Bank Merger") on the terms and subject to the conditions set forth in this Agreement and the Bank Merger Agreement (as hereinafter defined). The Company Merger and the Bank Merger shall be hereinafter collectively referred to as the "Mergers."

**NOW THEREFORE**, in consideration of the premises and the representations, warranties, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

### **Section 1. The Mergers and Closing**

#### **1.01. Mergers**

(a) Subject to the terms and conditions of this Agreement, at the Effective Time (as hereinafter defined), Holding shall be merged with and into Whitney, which will be the surviving corporation, in accordance with the Louisiana Business Corporation Law (the "LBCL") and the Florida Business Corporation Act (the "FBCA"), and the separate corporate existence of Holding shall thereupon cease.

(b) Prior to the Effective Date, unless Whitney elects to delay the Bank Merger in accordance with the proviso contained in Section 1.02 hereof, the Boards of Directors of WNB and the Bank will execute a merger agreement in substantially the same form as the agreement annexed hereto as Exhibit 1.01(b) (the "Bank Merger Agreement"), pursuant to which, on the terms set forth herein and subject to the conditions set forth in Section 6 hereof, the Bank will merge with and into WNB, which shall be the surviving bank.

(c) **Effects of Mergers.** The Company Merger shall have the effects set forth in the LBCL and the FBCA, as applicable. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time (as hereinafter defined), all the property and assets, rights, privileges and all debts, liabilities and obligations of Holding will become the property and assets, rights, privileges, debts, liabilities and obligations of Whitney as the surviving corporation in the Company Merger. The Bank Merger shall have the effects set forth in the national banking laws and the banking laws of the State of Florida. Without limiting the generality of the foregoing, and subject thereto, at the effective time of the Bank Merger, all the property and assets, rights, privileges and all debts, liabilities and obligations of the

Bank will become the property and assets, rights, privileges, debts, liabilities and obligations of WNB as the surviving association in the Bank Merger.

#### **1.02. The Closing**

The "Closing" of the transactions contemplated hereby will take place in the Board Room of Whitney, 228 St. Charles Avenue, New Orleans, Louisiana 70130 (or such other place to which the parties may agree), at 9:00 a.m., New Orleans time, on a mutually agreeable date as soon as practicable following satisfaction of the conditions set forth in subparagraphs (a), (b) and (d) of Section 6.01 hereof, or if no date has been agreed to, on any date specified by any party to the others upon ten days notice following satisfaction of such conditions; provided, however, that in no event shall the Closing occur in the last calendar month of any Whitney fiscal quarter. The date on which the Closing occurs is herein called the "Closing Date." If all conditions set forth in Section 6 hereof are satisfied or waived by the party entitled to grant such waiver, at the Closing (a) the Constituent Corporations shall each provide to the other such proof of satisfaction of the conditions set forth in Section 6 as the party whose obligations are conditioned upon such satisfaction may reasonably request, (b) the certificates, letters, opinions and other items required by Section 6 shall be delivered, (c) Holding and Whitney shall, as applicable, execute a certificate of merger complying with the requirements of Section 112(F) of the LBCL (the "LA Certificate of Merger") and the appropriate officers of Holding and Whitney shall execute, deliver and acknowledge articles of merger in substantially the form set forth in Exhibit 1.02(c) hereof (the "FL Articles of Merger") in accordance with the FBCA, (d) the appropriate officers of the parties shall execute, deliver and acknowledge the Bank Merger Agreement and (e) the parties shall take such further action as is required to effect the Mergers and to otherwise consummate the transactions contemplated by this Agreement and the Bank Merger Agreement; provided, however, that Whitney may, in its sole discretion, delay execution, delivery, acknowledgment and filing of the Bank Merger Agreement and the consummation of the Bank Merger until such time as it deems appropriate. If on any date established for the Closing all conditions in Section 6 hereof have not been satisfied or waived by the party entitled to grant such waiver, then such party, on one or more occasions, may declare a delay of the Closing of such duration, not exceeding ten business days, as the declaring party shall select, but no such delay shall extend beyond the date set forth in subparagraph (c) of Section 7.01, and no such delay shall interfere with the right of any party to terminate this Agreement pursuant to Section 7.

#### **1.03. The Effective Date and Time**

Immediately following (or concurrently with) the Closing, the LA Certificate of Merger shall be filed with and recorded by the Secretary of State of Louisiana and the FL Articles of Merger shall be filed with and recorded by the Florida Department of State. The Company Merger will be effective on the date (the "Effective Date") and time (the "Effective Time") specified in the LA Certificate of Merger. Subject to Section 1.02, the Bank Merger Agreement will be filed with and recorded by the Office of the Comptroller of the Currency (the "OCC") and the Bank Merger shall be effective at the date and time specified in the Bank Merger Agreement.

#### **1.04. Surviving Corporations**

(a) Company Merger. The Articles of Incorporation and By-Laws of Whitney, as in effect immediately prior to the Effective Time, shall remain unchanged by reason of the Company Merger and shall be the Articles of Incorporation and By-Laws of Whitney as the surviving corporation in the Company Merger. The directors and officers of Whitney at the Effective Time shall be the directors and officers of Whitney as the surviving corporation in the Company Merger until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be. Each share of Whitney common stock, no par value ("Whitney Common Stock"), issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding from and after

the Effective Time. At the Effective Time, the shares of Holding Common Stock (as hereinafter defined in Section 2.01) shall be converted as set forth in Section 2.

(b) **Bank Merger.** The Articles of Association and Bylaws of WNB as in effect immediately prior to the effective time of the Bank Merger shall remain unchanged by reason of the Bank Merger and shall be the Articles of Association and Bylaws of WNB as the surviving entity in the Bank Merger. The directors and officers of WNB at the effective time of the Bank Merger shall be the directors and officers of WNB as the surviving corporation in the Bank Merger until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be. At the effective time of the Bank Merger and by virtue thereof, (i) all shares of capital stock of the Bank shall be canceled and (ii) the shares of capital stock of WNB as the surviving entity in the Bank Merger, issued and outstanding immediately prior to such effective time shall continue to be issued and outstanding, and no additional shares shall be issued as a result of the Bank Merger.

#### **1.05. Tax Consequences**

It is the intention of the parties hereto that the Mergers shall constitute a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and that this Agreement shall constitute a "plan of reorganization" for purposes of Section 368 of the Code.

### **Section 2. Conversion of Stock in the Company Merger**

#### **2.01. Conversion of Shares**

All of the shares of Whitney Common Stock issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding after the Effective Time and shall be unaffected by the Company Merger. The manner and basis of converting the shares of common stock par value \$0.08 per share, of Holding (the "Holding Common Stock") upon consummation of the Company Merger shall be as follows:

(a) At the Effective Time, by virtue of the Company Merger and without any action on the part of Whitney, Holding or the holders of Holding Common Stock:

(i) Subject to the other provisions of this Section 2.01, each share of Holding Common Stock issued and outstanding immediately prior to the Effective Time (excluding any treasury shares, shares held by Holding or any of its subsidiaries (other than in a fiduciary capacity), and shares of Holding Common Stock as to which dissenters' rights have been perfected and not withdrawn or otherwise forfeited under Sections 607.1301-607.1320 of the Florida Statutes ("Dissenters' Shares"), shall be converted into the right to receive the appropriate elected or otherwise assigned Merger Consideration (as hereinafter defined). The "Merger Consideration" shall mean either (a) cash in the amount of the Price Per Share (as defined below), without interest (the "Cash Consideration"), (b) the number of shares of Whitney Common Stock, rounded to the nearest thousandth, equal to the Price Per Share divided by the Average Market Price (as defined below) (the "Stock Consideration"), or (c) a combination of Cash Consideration and Stock Consideration in accordance with subsection (iii) of this subsection 2.01(a). As used in this Agreement, the following terms shall have the meanings set forth below:

(A) "Average Market Price" means the average of the closing per share trading prices of Whitney Common Stock (adjusted appropriately for any stock split, stock dividend, recapitalization, reclassification or similar transaction that is effected, or for which a record date occurs) on the 20 trading days preceding the fifth trading day immediately prior to the Effective Time, as reported

in the Wall Street Journal (corrected for any typographical errors); provided, however, that if the Average Market Price as calculated above is less than \$36.67, the Average Market Price for purposes of this Agreement shall be \$36.67, and if the Average Market Price as calculated above is greater than \$46.67, the Average Market Price for purposes of this Agreement shall be \$46.67.

(B) "Price Per Share" means \$29.89 (less an amount equal to (x) the aggregate amount of any expenses incurred by Holding or Bank in connection with the Company Merger in excess of the Permitted Expenses (as defined in subsection 6.02(b) of this Agreement) divided by (y) the number of shares of Holding Common Stock outstanding immediately prior to the Effective Time).

(ii) The number of shares of Holding Common Stock to be converted into the right to receive Cash Consideration (including any such shares subject to the cash portion of a Combination Election (as defined below)) shall be 35% of the number of shares of Holding Common Stock outstanding immediately prior to the Effective Time (excluding shares to be cancelled pursuant to clause (ix) of this subsection 2.01(a) and any Dissenters' Shares) (the "Maximum Cash Election Number"). The number of shares of Holding Common Stock to be converted into the right to receive Stock Consideration (including any such shares subject to the stock portion of a Combination Election) shall be 65% of the number of shares of Holding Common Stock outstanding immediately prior to the Effective Time (excluding shares to be cancelled pursuant to clause (ix) of this subsection 2.01(a) and any Dissenters' Shares) (the "Maximum Stock Election Number").

(iii) Subject to the proration and election procedures set forth in this subsection 2.01(a), each holder of record of shares of Holding Common Stock (excluding any treasury shares, shares held by Holding or any of its subsidiaries of Whitney or Holding (other than in a fiduciary capacity), and Dissenters' Shares) will be entitled to elect to receive (a) Cash Consideration for all such shares (a "Cash Election"), (b) Stock Consideration for all of such shares (a "Stock Election") or (c) Cash Consideration for 35% of such shares and Stock Consideration for 65% of such shares (a "Combination Election"). All such elections shall be made on a form designed for that purpose prepared by Whitney and reasonably acceptable to Holding (a "Form of Election"). Holders of record of shares of Holding Common Stock who hold such shares as nominees, trustees or in other representative capacities (a "Representative") may submit multiple Forms of Election, provided that such Representative certifies that each such Form of Election covers all the shares of Holding Common Stock held by each such Representative for a particular beneficial owner.

Whitney, with the assistance of Holding, shall mail the Form of Election to all persons who are holders of Holding Common Stock on the record date for the shareholders meeting described in Section 5.09 of this Agreement (the "Special Meeting"), on a date that is not less than twenty (20) business days prior to the Effective Time, and thereafter each of Whitney and Holding shall each use its reasonable efforts to (x) mail the Form of Election to all persons who become holders of Holding Common Stock during the period between the record date for the Special Meeting and 10:00 a.m., Palm Harbor, Florida time, on the date ten business days prior to the anticipated Effective Time and (y) make the Form of Election available to all persons who become holders of Holding Common Stock subsequent to such day and no later than the close of business on the fifth business day prior to the Effective Time. A Form of Election must be received by Whitney in the manner described below no later than by the close of business on the fifth business day prior to the Effective Time (the "Election Deadline") in order to be effective. All elections will be irrevocable.

(v) Elections shall be made by holders of Holding Common Stock by mailing, faxing or otherwise delivering to Whitney, in a manner acceptable to Whitney, a Form of Election. To be

effective, a Form of Election must be properly completed, signed and submitted to Whitney. Whitney will have the discretion to determine whether Forms of Election have been properly completed, signed and submitted and to disregard immaterial defects in Forms of Election. The decision of Whitney in such matters shall be conclusive and binding. Whitney will not be under any obligation to notify any person of any defect in a Form of Election.

(vi) A holder of Holding Common Stock who does not submit a Form of Election that is received by Whitney prior to the Election Deadline shall be deemed to have made a Combination Election. If Whitney shall determine that any purported Cash Election or Stock Election was not properly made, such purported Cash Election or Stock Election shall be deemed to be of no force and effect and the holder of shares of Holding Common Stock making such purported Cash Election or Stock Election shall for purposes hereof be deemed to have made a Combination Election.

(vii) All shares of Holding Common Stock which are subject to Cash Elections are referred to herein as "Cash Election Shares." All shares of Holding Common Stock which are subject to Stock Elections are referred to herein as "Stock Election Shares." If, after the results of the Forms of Election are calculated, the number of shares of Holding Common Stock to be converted into shares of Whitney Common Stock exceeds the Maximum Stock Election Number, Whitney shall determine the number of Stock Election Shares which must be redesignated as Cash Election Shares in order to reduce the number of such shares to the Maximum Stock Election Number. All holders who have Stock Election Shares shall, on a prorata basis, have such number of their Stock Election Shares redesignated as Cash Election Shares so that the Maximum Stock Election Number is achieved. If, after the results of the Forms of Election are calculated, the number of shares of Holding Common Stock to be converted into cash exceeds the Maximum Cash Election Number, Whitney shall determine the number of Cash Election Shares which must be redesignated as Stock Election Shares in order to reduce the amount of such cash to the Maximum Cash Election Number. All holders who have Cash Election Shares shall, on a prorata basis, have such number of their Cash Election Shares redesignated as Stock Election Shares so that the Maximum Cash Election Number is achieved. Holders who make (or who are deemed to have made) Combination Elections will not be subject to the redesignation procedures described herein. Whitney shall make all computations contemplated by this subsection 2.01(a) and all such computations shall be conclusive and binding on the holders of Holding Common Stock.

(viii) After the redesignation procedure set forth in this subsection 2.01(a) is completed, all Cash Election Shares and 35% of the shares of Holding Common Stock which are subject to Combination Elections shall be converted into the right to receive the Cash Consideration and all Stock Election Shares and 65% of the shares of Holding Common Stock which are subject to Combination Elections shall be converted into the right to receive the Stock Consideration. Holding certificates previously evidencing shares of Holding Common Stock shall be exchanged, as applicable, for (a) certificates evidencing the Stock Consideration, or (b) the Cash Consideration, multiplied in each case by the number of shares previously evidenced by the canceled certificate, upon the surrender of such certificates in accordance with the provisions of Section 2.02, without interest. Notwithstanding the foregoing, however, no fractional shares of Whitney Common Stock shall be issued, and, in lieu thereof, a cash payment shall be made pursuant to subsection 2.01(b).

(ix) Each share of Holding Common Stock held in the treasury of Holding or any subsidiary of Holding (other than in a fiduciary capacity) immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof and no payment shall be made with respect thereto.

(b) No certificates or scrip representing fractional shares of Whitney Common Stock will be issued as a result of the Company Merger. In lieu of the issuance of fractional shares pursuant to subsection 2.01(a) of this Agreement, cash adjustments (without interest) will be paid to the holder of Holding Common Stock in respect of any fraction of a share of Whitney Common Stock that would otherwise be issuable to such holder of Holding Common Stock, and the amount of such cash adjustment shall be determined by multiplying the fraction of a share of Whitney Common Stock otherwise issuable by the Average Market Price, and no such holder shall be entitled to dividends, voting rights or any other right of stockholders in respect of any fractional share.

(c) Any Stock Options under the Stock Options Plans (as such terms are hereinafter defined) that are outstanding at the Effective Time shall be converted into options to acquire shares of Whitney Common Stock in the manner set forth in Section 5.25 of this Agreement as if the holder thereof had made a Stock Election, but such options shall have no effect in determining any redesignation pursuant to subsection 2.01(a).

#### **2.02. Exchange of Certificates; Dissenters' Shares**

(a) After the Effective Time, each holder of an outstanding certificate or certificates theretofore representing a share or shares of Holding Common Stock, other than Dissenters' Shares and treasury shares, upon surrender thereof to Whitney, together with duly executed transmittal materials provided pursuant to subsection 2.02(b) or upon compliance by the holder or holders thereof with the procedures of Whitney with respect to lost, stolen or destroyed certificates, shall be entitled to receive in exchange therefor any Merger Consideration payable in exchange for such shares.

(b) Transmittal Materials. Promptly after the Effective Time, Whitney shall send or cause to be sent to each shareholder of record of Holding at the Effective Time, excluding the holders, if any, of Dissenters' Shares, transmittal materials (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates (as hereinafter defined) shall pass, only upon proper delivery of the Certificates to Whitney) for use in exchanging certificates of Holding Common Stock (the "Certificates").

(c) Payment of Merger Consideration. Upon surrender to Whitney of a Certificate, together with such letter of transmittal duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor his or her portion of the Merger Consideration (in the form or forms elected by such holder subject to the provisions hereof) deliverable in respect of the shares of Holding Common Stock represented by such Certificate, and such Certificate shall forthwith be cancelled. No interest will be paid or accrued on the Merger Consideration deliverable upon surrender of the Certificate. If payment is to be made to a person other than the person in whose name the Certificate surrendered is registered, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such payment shall pay any transfer or other taxes required by reason of the payment to a person other than the registered holder of the Certificate surrendered or establish to the satisfaction of Whitney that such tax has been paid or is not applicable. Until surrendered in accordance with the provisions of this Section 2.02, each Certificate (other than Certificates representing Dissenters' Shares) shall represent for all purposes the right to receive the corresponding portion of the Merger Consideration without any interest thereon. Payments to holders of Dissenting Shares shall be made as required by the FBCA.

(d) Dissenters' Shares. Notwithstanding anything in this Agreement to the contrary, Dissenters' Shares shall not be converted into or be exchangeable for the right to receive the corresponding portion of the Merger Consideration provided in subsection 2.01(a) of this Agreement, unless and until such holder shall have failed to perfect or shall have effectively withdrawn or lost his

right to appraisal and payment under the FBCA. If any such holder shall have so failed to perfect or shall have effectively withdrawn or lost such right, such holder's shares of Holding Common Stock shall thereupon be deemed to have been converted into and to have become exchangeable for, at the Effective Time, the right to receive the corresponding portion of the Merger Consideration without any interest thereon.

### **2.03. Closing Transfer Books**

At the Effective Time, the stock transfer books of Holding shall be closed and no transfer of shares of Holding Common Stock shall be made thereafter. At the effective time of the Bank Merger, the stock transfer books of the Bank shall be closed and no transfer of shares of Bank Common Stock (as hereinafter defined in Section 3.02) shall be made thereafter. All shares of Whitney Common Stock issued and cash payments paid upon surrender for exchange of certificates representing shares of Holding Common Stock in accordance with this Section 2 shall be deemed to have been issued in full satisfaction of all rights pertaining to the shares of Holding Common Stock theretofore represented by such certificates.

### **Section 3. Representations and Warranties of Holding and the Bank**

Holding and the Bank represent and warrant to Whitney and WNB that, except as disclosed in the schedule of exceptions delivered by Holding's consolidated group to Whitney (the "Schedule of Exceptions"), as of the date of this Agreement and as of the Closing Date:

#### **3.01. Consolidated Group; Organization; Qualification**

"Holding's consolidated group," as such term is used in this Agreement, consists of Holding and the Bank. Holding is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended (the "Bank Holding Company Act"). The Bank is a state banking association, duly organized, validly existing and in good standing under the laws of the Florida and is domiciled in the State of Florida. Each of Holding and the Bank has all requisite corporate power and authority to own and lease its property and to carry on its business as it is currently being conducted and to execute this Agreement and the Bank Merger Agreement and to consummate the transactions contemplated hereby, and is qualified and in good standing as a foreign corporation in all jurisdictions in which the failure to so qualify would have a material adverse effect on such member's financial condition, results of operations or business.

#### **3.02. Capital Stock; Other Interests**

As of March 12, 2004, the authorized capital stock (i) of Holding consists of 5,000,000 shares of Holding Common Stock, of which 2,171,261 shares are issued and outstanding and there are no shares held as treasury stock, and 1,000,000 shares of Preferred Stock, at \$0.01 par value, of which no shares are issued and outstanding; and (ii) of the Bank consists of 3,000,000 shares of common stock, \$1.10 par value per share ("Bank Common Stock"), of which 1,491,656 shares are issued and outstanding and there are no shares held as treasury stock, and 2,000,000 shares of convertible preferred stock, \$1.00 par value per shares, of which no shares are issued and outstanding. All issued and outstanding shares of capital stock of each member of Holding's consolidated group have been duly authorized and are validly issued, fully paid and (except as provided in 12 U.S.C. Section 55) nonassessable. All of the outstanding shares of capital stock of the Bank are owned by Holding, free and clear of all liens, charges, security interests, mortgages, pledges and other encumbrances, other than the pledge of all shares of the Bank's capital stock as collateral for a loan in the amount of \$5,000,000 with The Bankers Bank. Other than outstanding options to acquire up to an aggregate of 69,541 shares of Holding Common Stock (the "Stock Options") granted pursuant to the Bank's Amended and Restated 1998 Key Employee Stock Compensation

Program, as amended December 17, 2002 (the "Employee Stock Program"), and the Bank's Amended and Restated 1998 Directors' Stock Option Plan (the "Directors Stock Plan") (collectively, the "Stock Option Plans"), which Stock Option Plans were assumed by Holding on November 19, 2001, and all of which Stock Options will be either exercised prior to the Effective Time in exchange for the cash payment to Holding of the exercise price therefore or surrendered prior to the Effective Time in exchange for a cash payment in accordance with subsection 6.02(h) of this Agreement, no member of Holding's consolidated group has outstanding any stock options or other rights to acquire any shares of its capital stock or any security convertible into such shares, or has any obligation or commitment to issue, sell or deliver any of the foregoing or any shares of its capital stock. There are no agreements among Holding and Holding's shareholders or by which Holding is bound with respect to the voting or transfer of Holding Common Stock or granting registration rights to any holder thereof. The outstanding capital stock of each member of Holding's consolidated group has been issued in compliance with all legal requirements and in compliance with any preemptive or similar rights. Except as set forth on Schedule 3.02 of the Schedule of Exceptions, no member of Holding's consolidated group has any subsidiaries (other than the Bank) or any direct or indirect ownership interest in any firm, corporation, partnership or other entity.

### **3.03. Corporate Authorization; No Conflicts**

Subject to the approval of this Agreement and the Bank Merger Agreement by the shareholders of Holding and the Bank, respectively, in accordance with the FBCA, Florida state banking laws and applicable federal law, all corporate acts and other proceedings required of Holding and the Bank for the due and valid authorization, execution, delivery and performance of this Agreement and the Bank Merger Agreement and consummation of the Mergers have been validly and appropriately taken. Subject to their approval by the shareholders of Holding and the Bank and to such regulatory approvals as are required by law, this Agreement and the Bank Merger Agreement are legal, valid and binding obligations of Holding and the Bank and are enforceable against Holding and the Bank, respectively, in accordance with the respective terms hereof and thereof, except that enforcement may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship, and other laws now or hereafter in effect relating to or affecting the enforcement of creditors' rights generally or the rights of creditors of insured depository institutions, (ii) general equitable principles and (iii) laws relating to the safety and soundness of insured depository institutions, and except that no representation is made as to the effect or availability of equitable remedies or injunctive relief (regardless of whether such enforceability is considered in a proceeding in equity or at law). Except as set forth on Schedule 3.03 of the Schedule of Exceptions, with respect to each of Holding and the Bank, neither the execution, delivery or performance of this Agreement or the Bank Merger Agreement, nor the consummation of the transactions contemplated hereby or thereby will (i) violate, conflict with, or result in a breach of any provision of, (ii) constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, (iii) result in the termination of or accelerate the performance required by, or (iv) result in the creation of any lien, security interest, charge or encumbrance upon any of its properties or assets under, any of the terms, conditions or provisions of its articles of incorporation or association or by-laws or any material note, bond, mortgage, indenture, deed of trust, lease, license, agreement or other instrument or obligation to or by which it or any of its assets is bound; or violate any order, writ, injunction, decree, statute, rule or regulation of any governmental body applicable to it or any of its assets.

### **3.04. Financial Statements, Reports and Proxy Statements**

(a) Holding has delivered to Whitney true and complete copies of (i) the consolidated balance sheets as of December 31, 2001 and December 31, 2002 of Holding and its subsidiaries, the related consolidated statements of income, shareholders' equity and cash flows for the respective years then ended, the related notes thereto, and the reports of its independent public accountants with respect

thereto as presented in Holding's Annual Report on Form 10-KSB for the fiscal year ended December 31, 2002 filed with the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (collectively, the "Financial Statements"); (ii) the unaudited consolidated balance sheets as of September 30, 2003 and September 30, 2002 of Holding and its subsidiaries, and the related unaudited statements of income, shareholders' equity and cash flows for the nine-month periods then ended, as presented in Holding's Quarterly Reports on Form 10-QSB filed with the SEC under the Exchange Act (collectively, the "Interim Financial Statements"); (iii) the unaudited consolidated balance sheets as of December 31, 2003 of Holding and its subsidiaries, and the related unaudited statements of income, shareholders' equity and cash flows for the year then ended; (iv) all monthly reports and financial statements of Holding and its subsidiaries that were prepared for Holding's or the Bank's Board of Directors since September 30, 2003; (v) the annual report of Bank Holding Companies to the Board of Governors of the Federal Reserve System ("Federal Reserve Board") for the year ended December 31, 2002, of Holding and its subsidiaries required to file such reports; (vi) all call reports and consolidated and parent company only financial statements, including all amendments thereto, made to the Federal Reserve Board, the Federal Deposit Insurance Corporation (the "FDIC") and the Florida Department of Financial Services, Office of Financial Regulation (the "FL OFR") since December 31, 1999, of Holding's and its subsidiaries required to file such reports; (vii) Holding's Annual Report to Shareholders for the year ended 2002 and all subsequent Quarterly Reports to Shareholders; (viii) all registration statements and reports filed since December 31, 2000 pursuant to the Securities Act of 1933, as amended (the "Securities Act") and pursuant to Section 13 or 15(d) of the Exchange Act, of Holding and its subsidiaries required to file such reports; and (ix) all proxy or information statements (or similar materials) disseminated to Holding's shareholders or the shareholders of any of its subsidiaries at any time since December 31, 1999.

(b) The Financial Statements and the Interim Financial Statements have been (and all financial statements delivered to Whitney as required by this Agreement will be) prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") applied on a basis consistent with prior periods, and present fairly, in conformity with GAAP the financial position, results of operations, changes in shareholders' equity and cash flows of Holding and its subsidiaries as of the dates thereof and for the periods covered thereby. All call and other regulatory reports referred to above have been filed on the appropriate form and prepared in all material respects in accordance with such forms' instructions and the applicable rules and regulations of the regulating federal and/or state agency. As of the date of the latest balance sheet forming part of the Interim Financial Statements (the "Latest Balance Sheet"), none of Holding and its subsidiaries has had, nor are any of such members' assets subject to, any material liability, commitment, indebtedness or obligation (of any kind whatsoever, whether absolute, accrued, contingent, known or unknown, matured or unmatured) which is not reflected and adequately provided for in accordance with GAAP. No report, including any report filed with the SEC, the FDIC, the FL OFR, the Federal Reserve Board, or other banking regulatory agency, and no report, proxy statement, registration statement or offering materials made or given to shareholders of Holding or the Bank since January 1, 2001, as of the respective dates thereof, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. No report, including any report filed with the SEC, the FDIC, the FL OFR, the Federal Reserve Board, or other banking regulatory agency, and no report, proxy statement, registration statement or offering materials made or given to shareholders of Holding or the Bank to be filed or disseminated after the date of this Agreement will contain any untrue statement of a material fact or will omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they will be made, not misleading. The Financial Statements and the Interim Financial Statements are supported by and consistent with a general ledger and detailed trial balances of investment

securities, loans and commitments, depositors' accounts and cash balances on deposit with other institutions, copies of which have been made available to Whitney. Holding and the Bank have timely filed all reports and other documents required to be filed by them under the Securities Act and the Exchange Act.

### **3.05. Loan and Investment Portfolios**

All loans, discounts and financing leases (in which a member of Holding's consolidated group is lessor) reflected on the Latest Balance Sheet (a) were, at the time and under the circumstances in which made, made for good, valuable and adequate consideration in the ordinary course of business of its consolidated group and are the legal, valid and binding obligations of the obligors thereof, (b) are evidenced by genuine notes, agreements or other evidences of indebtedness and (c) to the extent secured, have been secured, to the knowledge of Holding, by valid liens and security interests which have been perfected. Accurate lists of all loans, discounts and financing leases as of the date of the Latest Balance Sheet (or a more recent date), and of the investment portfolios of each member of Holding's consolidated group as of such date, have been delivered to Whitney. Except as specifically set forth on Schedule 3.05 of the Schedule of Exceptions, neither Holding nor the Bank is a party to any written or oral loan agreement, note or borrowing arrangement, including any loan guaranty, that was, as of the most recent month-end (i) delinquent by more than 30 days in the payment of principal or interest, (ii) known by any member of Holding's consolidated group to be otherwise in material default for more than 30 days, (iii) classified as "substandard," "doubtful," "loss," "other assets especially mentioned" or any comparable classification by any member of Holding's consolidated group or the FDIC, the Bank, the FRB or the FL OFR, (iv) an obligation of any director, executive officer or 10% shareholder of any member of Holding's consolidated group who is subject to Regulation O of the Federal Reserve Board (12 C.F.R. Part 215), or any person, corporation or enterprise controlling, controlled by or under common control with any of the foregoing, or (v) in violation of any law, regulation or rule of any governmental authority, other than those that are immaterial in amount.

### **3.06. Adequacy of Allowances for Losses**

Each of the allowances for losses on loans, financing leases and other real estate shown on the Latest Balance Sheet is adequate in accordance with applicable regulatory guidelines and GAAP in all material respects, and there are no facts or circumstances known to the Bank which are likely to require in accordance with applicable regulatory guidelines or GAAP a future material increase in any such provisions for losses or a material decrease in any of the allowances therefor reflected in the Latest Balance Sheet. Each of the allowances for losses on loans, financing leases and other real estate reflected on the books of Holding's consolidated group at all times from and after the date of the Latest Balance Sheet is adequate in accordance with applicable regulatory guidelines and GAAP in all material respects, and there are no facts or circumstances known to the Bank which are likely to require, in accordance with applicable regulatory guidelines or GAAP, a future material increase in any of such provisions for losses or a material decrease in any of the allowances therefor reflected in the Latest Balance Sheet.

### **3.07. Absence of Certain Changes or Events**

Since the date of the Latest Balance Sheet, except as provided in subsection 5.07(a), Holding has not declared, set aside for payment or paid any dividend to holders of, or declared or made any distribution on, any shares of Holding's capital stock. In the event that Holding declares any dividends prior to Closing, Whitney and Holding shall cooperate in selecting the record date of Holding's dividends for the quarter in which the Effective Time is to occur to ensure that, with respect to such quarterly period, the holders of Holding Common Stock do not receive both a dividend in respect of their shares of Holding Common Stock and Whitney Common Stock. Since the date of the Latest Balance Sheet, there has been no event or condition of any character (whether actual or threatened, to the knowledge of

Holding or the Bank) that has had, or can reasonably be anticipated to have, a material adverse effect on the financial condition, results of operations or business of Holding and the Bank, taken as a whole. Except as may result from the transactions contemplated by this Agreement, no such member has, since the date of the Latest Balance Sheet:

(a) except as set forth on Schedule 3.07(a) of the Schedule of Exceptions, borrowed any money or entered into any capital lease or leases; or, except in the ordinary course of business consistent with past practices: (i) lent any money or pledged any of its credit in connection with any aspect of its business whether as a guarantor, surety, issuer of a letter of credit or otherwise, (ii) mortgaged or otherwise subjected to any lien, encumbrance or other liability any of its assets, (iii) sold, assigned or transferred any of its assets in excess of \$50,000.00 in the aggregate or (iv) incurred any material liability, commitment, indebtedness or obligation (of any kind whatsoever, whether absolute or contingent);

(b) suffered any material damage, destruction or loss to immovable or movable property, whether or not covered by insurance;

(c) experienced any material change in asset concentrations as to customers or industries or in the nature and source of its liabilities or in the mix of interest-bearing versus noninterest bearing deposits such that any such material change would have a material adverse effect on the Bank (for purposes of this subsection 3.07(c), the term "material adverse effect" shall mean, with respect to the Bank, any effect or effects which taken individually or in the aggregate are, or can reasonably be expected to be, material and adverse to the Bank's financial condition, results of operations or business);

(d) received notice or had knowledge or reason to believe that any material labor unrest exists among any of its employees or that any group, organization or union has attempted to organize any of its employees;

(e) received notice that one or more substantial customers have terminated or intends to terminate such customers' relationship with it, with the result being a material adverse effect on the Bank (for purposes of this subsection 3.07(e), the term "material adverse effect" shall have the meaning set forth in subsection 3.07(c) hereof);

(f) failed to operate its business in the ordinary course consistent with past practices, or failed to use reasonable efforts to preserve its business organization intact or to preserve the goodwill of its customers and others with whom it has business relations;

(g) incurred any material loss except for losses adequately provided for on the date of this Agreement or on the Latest Balance Sheet and expenses associated with this transaction, or waived any material right in connection with any aspect of its business, whether or not in the ordinary course of business;

(h) forgiven any material debt owed to it, or canceled any of its claims or paid any of its noncurrent obligations or liabilities;

(i) except as set forth on Schedule 3.07(i) of the Schedule of Exceptions, made any capital expenditure or capital addition or betterment in excess of \$50,000.00;

(j) except as set forth in Schedule 3.07(j) of the Schedule of Exceptions, entered into any agreement requiring the payment, conditionally or otherwise, of any salary, bonus, extra compensation

(including payments for unused vacation or sick time), pension or severance payment to any of its present or former directors, officers or employees, except such agreements as are terminable at will without any penalty or other payment by it or increased (except for increases of not more than 5% consistent with past practices) the compensation (including salaries, fees, bonuses, profit sharing, incentive, pension, retirement or other similar payments) of any such person whose annual compensation would, following such increase, exceed \$50,000.00;

(k) except as required in accordance with GAAP, changed any accounting practice followed or employed in preparing the Financial Statements;

(l) made any loan, given any discount or entered into any financing lease which has not been (i) made, at the time and under the circumstances in which made, for good, valuable and adequate consideration in the ordinary course of business, (ii) evidenced by genuine notes, agreements or other evidences of indebtedness and (iii) fully provided for in an amount sufficient in accordance with applicable regulatory guidelines to provide for all charge-offs reasonably anticipated in the ordinary course of business after taking into account all recoveries reasonably anticipated in the ordinary course of business;

(m) entered into any agreement, contract or commitment to do any of the foregoing; or

(n) authorized or issued any additional shares of Holding Common Stock, Holding preferred stock, Bank Common Stock or Bank convertible preferred stock, other than (i) the issuance of shares of Holding Common Stock pursuant to the exercise of Stock Options outstanding as of the date of this Agreement to purchase Holding Common Stock, (ii) the surrender of Stock Options prior to the Effective Time in exchange for a cash payment in accordance with subsection 6.02(h) of this Agreement or (iii) the grant of 400 shares of Holding Common Stock to each nonemployee director of Holding as part of an annual retainer, which shares were issued by Holding on January 2, 2004, subject to shareholder approval.

### **3.08. Taxes**

Each member of Holding's consolidated group has timely filed all federal, state and local income, franchise, excise, sales and use, real and personal property, employment, intangible and other tax returns, tax information returns and reports required to be filed, has paid all material taxes, interest payments and penalties as reflected therein which have become due, other than taxes which are being contested in good faith and for which adequate accruals have been made on the Latest Balance Sheet, has made adequate provision for the payment of all such taxes accruable for all periods ending on or before the date of this Agreement (and will make such accruals through the Closing Date) to any city, county, state, the United States or any other taxing authority, and is not delinquent in the payment of any material tax or material governmental charge of any nature. To Holding's knowledge, the consolidated federal income tax returns of Holding's consolidated group have never been audited by the Internal Revenue Service. No audit or examination is presently being conducted by any taxing authority nor has any member of Holding's consolidated group received written notice from any such taxing authority of its intention to conduct any investigation or audit or to commence any such proceeding; no material unpaid tax deficiencies or additional liabilities of any sort have been proposed to any member of Holding's consolidated group by any governmental representative, and no agreements for extension of time for the assessment of any tax have been entered into by or on behalf of any member of Holding's consolidated group. Each such member has withheld from its employees (and timely paid to the appropriate governmental entity) proper and accurate amounts for all periods in material compliance with all tax withholding provisions of applicable federal, state and local laws (including, without limitation, income, social security and employment tax withholding for all forms of compensation).

### **3.09. Title to Assets**

(a) On the date of the Latest Balance Sheet, each member of Holding's consolidated group had and, except with respect to assets disposed of for adequate consideration in the ordinary course of business since such date, now has, good and marketable title to all real property and good and merchantable title to all other material properties and assets reflected on the Latest Balance Sheet, and has good and marketable title to all real property and good and merchantable title to all other material properties and assets acquired since the date of the Latest Balance Sheet, in each case free and clear of all mortgages, liens, pledges, restrictions, security interests, charges and encumbrances of any nature except for (i) mortgages and encumbrances which secure indebtedness which is properly reflected in the Latest Balance Sheet or which secure deposits of public funds as required by law; (ii) liens for taxes accrued but not yet payable; (iii) liens arising as a matter of law in the ordinary course of business, provided that the obligations secured by such liens are not delinquent or are being contested in good faith; (iv) such imperfections of title and encumbrances, if any, as do not materially detract from the value or materially interfere with the present use of any of such properties or assets or the potential sale of any of such owned properties or assets; and (v) capital leases and leases, if any, to third parties for fair and adequate consideration. Each member of Holding's consolidated group owns, or has valid leasehold interests in, all properties and assets used in the conduct of its business. Any real property and other material assets held under lease by any such member are held under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made of and proposed to be made of such property by such member of such property. No real property held by any member of Holding's consolidated group, or any real property subject to a security interest, has been deed recorded or otherwise been identified in public records or should have been recorded or so identified as containing Hazardous Materials (as hereinafter defined).

(b) With respect to each lease of any real property or personal property to which any member of Holding's consolidated group is a party (whether as lessee or lessor), except for financing leases in which a member of such consolidated group is lessor, (i) such lease is in full force and effect in accordance with its terms; (ii) all rents and other monetary amounts that have become due and payable thereunder have been paid; (iii) there exists no default, or event, occurrence, condition or act, which with the giving of notice, the lapse of time or the happening of any further event, occurrence, condition or act would become a default under such lease; and (iv) the Mergers will not constitute a default or a cause for termination or modification of such lease.

(c) No member of Holding's consolidated group has any legal obligation, absolute or contingent, to any other person to sell or otherwise dispose of any substantial part of its assets or to sell or dispose of any of its assets except in the ordinary course of business consistent with past practices.

### **3.10. Legal Matters**

(a) To the knowledge of Holding, (i) there is no material claim, action, suit, proceeding, arbitration or investigation pending in any court or before or by any governmental agency or instrumentality or arbitration panel or otherwise, or threatened against any member of Holding's consolidated group nor (ii) do any facts or circumstances exist that would be likely to form the basis for any material claim against any member of Holding's consolidated group that, if adversely determined, would have a material adverse effect on Holding's consolidated group.

(b) To the knowledge of Holding, each member of Holding's consolidated group has complied in all material respects with and is not in default in any material respect under (and has not been charged or threatened with or come under investigation with respect to any charge concerning any

material violation of any provision of) any federal, state or local law, regulation, ordinance, rule or order (whether executive, judicial, legislative or administrative) or any order, writ, injunction or decree of any court, agency or instrumentality.

(c) There are no material uncured violations, or violations with respect to which material refunds or restitution may be required, cited in any compliance report to any member of Holding's consolidated group as a result of examination by any bank regulatory authority, bank holding company regulatory authority or other regulatory authority.

(d) No member of Holding's consolidated group is subject to any written agreement, memorandum or order with or by any bank regulatory authority, bank holding company regulatory authority or other regulatory authority.

(e) To the knowledge of Holding, there is no claim, action, suit, proceeding, arbitration, or investigation, pending or threatened, in which any material claim or demand is made or threatened to be made against any officer, director, advisory director or employee of Holding's consolidated group, in each case by reason of any person being or having been an officer, director, advisory director or employee of any such member.

### **3.11. Employee Benefit Plans**

(a) Except for the plans, policies, contracts and arrangements listed on Schedule 3.11(a) of the Schedule of Exceptions (the "Employee Benefit Plans"), no member of Holding's consolidated group sponsors, maintains or contributes to, and no such member has at any time sponsored, maintained or contributed to, any employee benefit plan, payroll practice, severance pay arrangement, employment agreement or similar arrangement, whether or not subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), in which Holding or the Bank employees participate or under which Holding or the Bank employees are entitled to compensation or benefits. Each of the Employee Benefit Plans has been maintained and administered in all material respects in compliance with its terms, the applicable provisions of ERISA and all other applicable laws, and, where applicable, the provisions of the Code. No Employee Benefit Plan, including any "party in interest" or "disqualified person" with respect thereto, has engaged in a nonexempt prohibited transaction under Section 4975 of the Code or Section 502(i) of ERISA; there is no claim relating to any of the Employee Benefit Plans pending or threatened, nor are there any facts or circumstances existing that could reasonably be expected to lead to (other than routine filings such as qualification determination filings), proceedings before, or administrative actions by, any governmental agency; there are no actions, suits or claims pending or threatened (including, without limitation, breach of fiduciary duty actions, but excluding routine uncontested claims for benefits) against any of the Employee Benefit Plans or the assets thereof. Each member of Holding's consolidated group has complied in all material respects with the applicable reporting and disclosure requirements of ERISA and the Code. None of the Employee Benefit Plans is a multi-employer plan within the meaning of Section 3(37) of ERISA. A favorable determination letter has been issued by the Internal Revenue Service with respect to each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code and the Internal Revenue Service has taken no action to revoke any such letter and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification. No member of Holding's consolidated group has sponsored, maintained or made contributions to any plan, fund or arrangement subject to Title IV of ERISA or the requirements of Section 412 of the Code or providing for medical benefits, insurance coverage or other similar benefits for any period extending beyond the termination of employment, except as may be required under the "COBRA" provisions of ERISA and the Code or under similar requirements of state law.

(b) True and complete copies of all Employee Benefit Plans (including all amendments and modifications thereof), together with copies of any tax determination letters, trust agreements, summary plan descriptions, insurance contracts, investment management agreements and the three most recent annual reports on form series 5500, if applicable, with respect to such plan or arrangement have been delivered to Whitney with the Schedule of Exceptions. No such Employee Benefit Plan or other plan constitutes a defined benefit pension plan or has any "accumulated funding deficiency" within the meaning of the Code.

(c) All group health plans of any member of Holding's consolidated group to which Section 4980B(f) of the Code or Section 601 of ERISA applies are in compliance in all material respects with continuation coverage requirements of Section 4980B(f) of the Code and Section 601 of ERISA and any prior violations of such sections have been cured prior to the date hereof, and all such group health plans are in compliance in all material respects with the notice, certification and design requirements imposed under Section 701 of ERISA, et seq. (Health Insurance Portability and Accountability Act of 1996).

(d) With respect to each Employee Benefit Plan previously or currently sponsored or maintained by any member of Holding's consolidated group, or to which any member of Holding's consolidated group previously made or is currently making contributions, which is ongoing or has been terminated by any member of Holding's consolidated group, no event has occurred and no condition exists that would subject Holding, the Bank, Whitney or WNB to any tax, penalty, fine or other liability as a result of the sponsorship, contribution to or maintenance of such Employee Benefit Plan.

(e) No payment or benefit made, to be made or due to any participant under the Employee Benefit Plans, the Stock Option Plans, or other arrangement on account of the transactions contemplated hereunder will be deemed to constitute an "excess parachute payment" within the meaning of Code Section 280G and the regulations promulgated thereunder unless such payment receives shareholder approval as required by the Code.

(f) Each grant, award or other form of incentive relating to shares of Holding Common Stock made under the Employee Benefit Plans and/or the Stock Option Plans was granted or awarded in compliance with all applicable laws, including Federal and state securities laws.

### **3.12. Insurance Policies**

Each member of Holding's consolidated group maintains in full force and effect insurance policies and bonds in such amounts and against such liabilities and hazards as are considered by it to be adequate. An accurate list of all such insurance policies is attached as Schedule 3.12 to the Schedule of Exceptions. No member of Holding's consolidated group is now liable for, nor has any such member received notice of, any material retroactive premium adjustment. All policies are valid and enforceable and in full force and effect, and no member of Holding's consolidated group has received any notice of a material premium increase or cancellation with respect to any of its insurance policies or bonds. Within the last three years, no member of Holding's consolidated group has been refused any basic insurance coverage sought or applied for (other than certain exclusions for coverage of certain events or circumstances as stated in such policies), and neither Holding nor the Bank has any reason to believe that its existing insurance coverage cannot be renewed as and when the same shall expire, upon terms and conditions standard in the market at the time renewal is sought as favorable as those presently in effect.

### **3.13. Agreements**

(a) No member of Holding's consolidated group is a party to:

(i) any collective bargaining agreement;

(ii) any employment or other agreement or contract with or commitment to any employee other than the Employee Benefit Plans and the Employee Stock Option Program; the employment related agreements, arrangements, policies and practices referred to in Schedule 3.13(a)(ii) of the Schedule of Exceptions; and, such employment related agreements as are terminable without penalty upon not more than 30 days notice by the employer;

(iii) any obligation of guaranty or indemnification, other than as set forth on Schedule 3.13(a)(iii) of the Schedule of Exceptions, except such indemnification of officers, directors, employees and agents of Holding's consolidated group as on the date of this Agreement may be provided in their respective articles of incorporation or association and by-laws (and no indemnification of any such officer, director, employee or agent has been authorized, granted or awarded), except if entered into in the ordinary course of business with respect to customers of any member of Holding's consolidated group, letters of credit, guaranties of endorsements and guaranties of signatures;

(iv) any agreement, contract or commitment which is or if performed will be materially adverse to the financial condition, results of operations or business of Holding's consolidated group;

(v) any agreement, contract or commitment containing any covenant limiting the freedom of any member of Holding's consolidated group (x) to engage in any line of business permitted by regulatory authorities, (y) to compete with any person in a line of business permitted by applicable regulatory guidelines to be engaged in by bank holding companies or Florida state or national banks, or the subsidiaries of either Holding or the Bank, or (z) to fulfill any of its requirements or needs for services or products (including, for example, contracts with vendors to supply customers with credit insurance) except those designated as such on Schedule 3.13(b) of the Schedule of Exceptions; or

(vi) any written agreement, memorandum, letter, order or decree, formal or informal, with any federal or state regulatory agency, nor has any member of Holding's consolidated group been advised by any regulatory agency that it is considering issuing or requesting any such written agreement, memorandum, letter, order or decree.

(b) Schedule 3.13(b) of the Schedule of Exceptions contains a list of each agreement, contract or commitment (except those entered into in the ordinary course of business with respect to loans, lines of credit, letters of credit, depositor agreements, certificates of deposit and similar banking activities and equipment maintenance agreements that are not material) to which any member of Holding's consolidated group is a party or which affects any such member. To Holding's knowledge, no member of Holding's consolidated group has in any material respect breached, nor is there any pending or threatened claim that it has materially breached, any of the terms or conditions of any of such agreements, contracts or commitments or of any material agreement, contract or commitment that it enters into after the date of this Agreement. Neither Holding nor the Bank is in violation of any written agreement, memorandum, letter, order or decree, formal or informal, with any federal or state regulatory agency.

#### **3.14. Licenses, Franchises and Governmental Authorizations**

Each member of Holding's consolidated group possesses all licenses, franchises, permits and other governmental authorizations necessary for the continued conduct of its business without interference or interruption. The deposits of the Bank are insured by the FDIC to the extent provided by

applicable law, and there are no pending or threatened proceedings to revoke or modify that insurance or for relief under 12 U.S.C. Section 1818.

### **3.15. Corporate Documents**

Holding has delivered to Whitney, with respect to each member of Holding's consolidated group, true and correct copies of its articles of incorporation or articles of association, and its by-laws, all as amended and currently in effect. All of the foregoing and all of the corporate minutes and stock transfer records of each member of Holding's consolidated group have been made available to Whitney and are current, complete and correct in all material respects.

### **3.16. Certain Transactions**

No past or present director, executive officer or five percent or greater shareholder of any member of Holding's consolidated group has, since January 1, 2003, engaged in any transaction or series of transactions which, if such member had been subject to Section 14(a) of the Exchange Act, would be required to be disclosed pursuant to Item 404 of Regulation S-B of the Rules and Regulations of the SEC.

### **3.17. Broker's or Finder's Fees**

Except for Hovde Financial, LLC ("Hovde"), whose fees and right to reimbursement of expenses are as disclosed pursuant to a contract dated December 16, 2003 (a copy of which has been provided to Whitney) (the "Hovde Agreement"), no agent, broker, investment banker, investment or financial advisor or other person acting on behalf of any member of Holding's consolidated group is entitled to any commission, broker's or finder's fee from any of the parties hereto in connection with any of the transactions contemplated by this Agreement.

### **3.18. Environmental Matters**

(a) (i) Each member of Holding's consolidated group has obtained all material permits, licenses and other authorizations that are required to be obtained by it under any applicable Environmental Law Requirements (as hereinafter defined) in connection with the operation of its businesses and ownership of its properties (collectively, the "Subject Properties"), including without limitation, to the knowledge of Holding, properties acquired by foreclosure or in settlement of loans;

(ii) Each member of Holding's consolidated group is in compliance with all terms and conditions of such permits, licenses and authorizations and with all applicable Environmental Law Requirements, except for such noncompliance as would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the financial condition, results of operations or business of Holding and its consolidated group, taken as a whole;

(iii) To Holding's knowledge, there are no past or present events, conditions, circumstances, activities or plans by any member of Holding's consolidated group related in any manner to any member of Holding's consolidated group or the Subject Properties that did or would violate or prevent compliance or continued compliance with any of the Environmental Law Requirements, or give rise to any Environmental Liability, as hereinafter defined, except for such as would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the financial condition, results of operations or business of Holding and its consolidated group, taken as a whole;

(iv) To Holding's knowledge, there is no civil, criminal or administrative action, suit, demand, claim, order, judgment, hearing, notice or demand letter, notice of violation, investigation or proceeding pending or threatened by any person against any member of Holding's consolidated group, or

any prior owner of any of the Subject Properties which relates to the Subject Properties and relates in any way to any Environmental Law Requirement or seeks to impose any Environmental Liability; and

(v) To Holding's knowledge, no member of Holding's consolidated group is subject to or responsible for any material Environmental Liability which is not set forth and adequately provided for on the Latest Balance Sheet.

(b) "Environmental Law Requirement" means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including without limitation: (A) all requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials, chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials, chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes, whether solid, liquid, or gaseous in nature; (B) all requirements pertaining to protection of the health and safety of employees or the public; and (C) all requirements pertaining to the (i) drilling, production, and abandonment of oil and gas wells, (ii) the transportation of produced oil and gas, and (iii) the remediation of sites related to that drilling, production or transportation.

(c) "Hazardous Materials" shall mean: (A) any "hazardous substance" as defined by either the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.) ("CERCLA") as amended from time to time, or regulations promulgated thereunder; (B) asbestos; (C) polychlorinated biphenyls; (D) any "regulated substance" as defined by 40 C.F.R. Section 280.12 or the FL Ad. Code, Title 62, Chapter 62-761 and Sec. 62-761.200; (E) any naturally occurring radioactive material ("NORM"), as defined by applicable federal or state laws or regulations as amended from time to time, irrespective of whether the NORM is located in Florida or another jurisdiction; (F) any nonhazardous oilfield wastes ("NOW") defined under applicable federal or state laws or regulations, irrespective of whether those wastes are located in Florida or another jurisdiction; (G) any substance the presence of which on the Subject Properties is prohibited by any lawful rules and regulations of legally constituted authorities from time to time in force and effect relating to the Subject Properties; and (H) any other substance which by any such rule or regulation requires special handling in its collection, storage, treatment or disposal.

(d) "Environmental Liability" shall mean (i) any liability or obligation arising under any Environmental Law Requirement, or (ii) any liability or obligation under any other theory of law or equity (including without limitation any liability for personal injury, property damage or remediation) that results from, or is based upon or related to, the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Material, pollutant, contaminant, chemical, or industrial, toxic or hazardous substance or waste.

(e) There is currently no contamination of the Subject Properties by *stachybotrys chartarum* mold or other mold presenting a hazard to human health, and Holding has no knowledge of any event or condition that could result in such contamination of the Subject Properties in the future.

### **3.19. Compliance with Laws**

Each member of Holding's consolidated group is in compliance in all material respects with all applicable laws, rules, regulations, orders, writs, judgments and decrees. There are no governmental investigations pending or, to Holding's knowledge, threatened against any member of Holding's consolidated group. There are no material uncured violations, or violations with respect to which material refunds or restitution may be required, cited in any compliance report to any member of Holding's consolidated group as a result of examination by any bank regulatory authority, bank holding company regulatory authority or other regulatory authority, except those cited in examination reports previously submitted to, and reviewed by, Whitney.

### **3.20. Intellectual Property**

(a) Schedule 3.20 of the Schedule of Exceptions sets forth a complete list of all patents, trademarks, trade names, trade secrets, copyrights, processes, service marks, royalty rights or design rights owned, used or licensed (as licensor or licensee) by either Holding or the Bank in the operation of their business and all applications therefor and registrations thereof, whether foreign or domestic, owned or controlled by either Holding or the Bank (the "Intellectual Property"), and, in the case of any such rights that are so owned, the jurisdiction in which such rights or applications have been registered, filed or issued, and, in the case of any such rights that are not so owned, the agreements under which such rights arise. Each of Holding and the Bank is the sole and exclusive owner of the Intellectual Property listed on Schedule 3.20 as being owned by it, with the sole and exclusive right, except to the extent indicated therein, to use and license such property. No claim has been asserted or threatened seeking cancellation or concurrent use of any registered trademark, tradename or service mark listed on Schedule 3.20.

(b) There are no claims, demands or suits pending or threatened against either Holding or the Bank claiming an infringement by either Holding or the Bank of any patents, copyrights, processes, licenses, trademarks, service marks or trade names of others in connection with their business; none of the Intellectual Property or, as the case may be, the rights granted to Holding or the Bank in respect thereof, infringes on the rights of any person or is being infringed upon by any person, and none is subject to any outstanding order, decree, judgment, stipulation, injunction, restriction or agreement restricting the scope of their use by either Holding or the Bank.

### **3.21. Community Reinvestment Act**

The Bank has complied in all material respects with the provisions of the Community Reinvestment Act ("CRA") and the rules and regulations thereunder, has a CRA rating of not less than "satisfactory," has received no material criticism from regulators with respect to discriminatory lending practices, and has no knowledge of any conditions or circumstances that are likely to result in a CRA rating of less than "satisfactory" or material criticism from regulators with respect to discriminatory lending practices.

### **3.22. Loans to Executives; Internal Controls**

Holding has not, directly or indirectly, including through the Bank or any other subsidiary, extended or maintained credit, arranged for the extension of credit, or renewed any extension of credit, in the form of a personal loan to or for any director or executive officer (or an equivalent thereof) in violation of Section 13(k) of the Exchange Act. Holding and the Bank have devised and maintain a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Holding and the Bank have devised and maintained a system of disclosure controls and procedures sufficient to assure that information required to be disclosed by Holding in the reports that it

files or submits under the Exchange Act is accumulated and communicated to Holding's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosures.

### **3.23. Accuracy of Statements**

No warranty or representation made or to be made by any member of Holding's consolidated group in this Agreement or in any document furnished or to be furnished by any member of Holding's consolidated group pursuant to this Agreement contains or will contain, as of the date of this Agreement, the effective date of the Registration Statement (as defined in Section 5.14 hereof) and the Closing Date, an untrue statement of a material fact or an omission of a material fact necessary to make the statements contained herein and therein, in light of the circumstances in which they are made, not misleading.

## **Section 4. Representations and Warranties of Whitney and WNB**

Whitney and WNB represent and warrant to Holding and the Bank that as of the date of this Agreement and as of the Closing Date:

### **4.01. Consolidated Group; Organization; Qualification.**

"Whitney's consolidated group," as such term is used in this Agreement, consists of Whitney and WNB. Whitney is a corporation duly organized and validly existing under the laws of the State of Louisiana and is a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended. WNB is a national banking association duly organized and validly existing and in good standing under the laws of the United States of America. Each of Whitney and WNB have all requisite corporate power and authority to own and lease its property and to carry on its business as it is currently being conducted and to execute and deliver this Agreement and the Bank Merger Agreement to which it is a party and to consummate the transactions contemplated hereby and thereby, and is qualified and in good standing as a foreign corporation in all jurisdictions in which the failure to so qualify would have a material adverse effect on the financial condition, results of operations or business of Whitney's consolidated group, taken as a whole.

### **4.02. Capital Stock**

As of the date of this Agreement, the authorized capital stock of Whitney consists of 100,000,000 shares of Whitney Common Stock. As of February 29, 2004, 40,555,744 shares of Whitney Common Stock were issued and outstanding and 0 shares were held in its treasury. All issued and outstanding shares of capital stock of Whitney and WNB have been duly authorized and are validly issued, fully paid and (except as provided in 12 U.S.C. Section 55) nonassessable. The outstanding capital stock of Whitney and WNB has been issued in compliance with all legal requirements and any preemptive or similar rights. Whitney owns all of the issued and outstanding shares of capital stock of WNB free and clear of all liens, charges, security interests, mortgages, pledges and other encumbrances.

### **4.03. Corporate Authorization; No Conflicts**

Subject to approval of the Bank Merger Agreement by WNB's Board of Directors and by Whitney as the sole shareholder of WNB, all corporate acts and other proceedings required of Whitney and WNB for the due and valid authorization, execution, delivery and performance of this Agreement and the Bank Merger Agreement and consummation of the Mergers have been validly and appropriately taken. Subject to such regulatory approvals as are required by law, this Agreement and the Bank Merger Agreement are legal, valid and binding obligations of Whitney and WNB as the case may be, and are enforceable against them in accordance with the respective terms of such agreements, except that enforcement may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship, and other laws now or hereafter in effect relating to or affecting the enforcement of

creditors' rights generally or the rights of creditors of insured depository institutions, (ii) general equitable principles and (iii) laws relating to the safety and soundness of insured depository institutions, and except that no representation is made as to the effect or availability of equitable remedies or injunctive relief (regardless of whether such enforceability is considered in a proceeding in equity or at law). With respect to each of Whitney and WNB, neither the execution, delivery or performance of this Agreement or the Bank Merger Agreement, nor the consummation of the transactions contemplated hereby or thereby will (i) violate, conflict with, or result in a breach of any provision of, (ii) constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, (iii) result in the termination of or accelerate the performance required by, or (iv) result in the creation of any lien, security interest, charge or encumbrance upon any of its properties or assets under, any of the terms, conditions or provisions of its articles of incorporation or association or its by-laws (or comparable documents) or any material note, bond, mortgage, indenture, deed of trust, lease, license, agreement or other instrument or obligation to or by which it or any of its assets is bound; or violate any order, writ, injunction, decree, statute, rule or regulation of any governmental body applicable to it or any of its assets.

#### **4.04. Financial Statements; Reports and Proxy Statements**

(a) Whitney has delivered to Holding true and complete copies of the (i) consolidated balance sheets as of December 31, 2001 and December 31, 2002 of Whitney and its subsidiaries, the related consolidated statements of income, changes in shareholders' equity and cash flows for the respective years then ended, the related notes thereto, and the report of its independent public accountants with respect thereto, as presented in Whitney's Annual Report on Form 10-K for the fiscal year ended December 31, 2002 filed with the SEC (collectively, the "Whitney Financial Statements"); and (ii) the unaudited consolidated balance sheet as of September 30, 2003 of Whitney and its subsidiaries and the related unaudited statements of income and cash flows for the nine-month period then ended, as presented in Whitney's quarterly report on Form 10-Q for the quarter then ended filed with the SEC (the "Whitney Interim Financial Statements").

(b) The Whitney Financial Statements and the Whitney Interim Financial Statements have been prepared in conformity with GAAP applied on a basis consistent with prior periods, and present fairly, in conformity with GAAP, the consolidated results of operations of Whitney and its subsidiaries for the respective periods covered thereby and the consolidated financial condition of Whitney and its subsidiaries as of the respective dates thereof. All call and other regulatory reports have been filed on the appropriate form and prepared in all material respects in accordance with such forms' instructions and the applicable rules and regulations of the regulating federal agency. As of the date of the latest balance sheet forming part of the Whitney Interim Financial Statements (the "Whitney Latest Balance Sheet"), none of Whitney and its subsidiaries has had, nor are any of such members' assets subject to, any material liability, commitment, indebtedness or obligation (of any kind whatsoever, whether absolute, accrued, contingent, matured or unmatured), which is not reflected and adequately provided for in accordance with GAAP.

#### **4.05. Legality of Whitney Securities**

All shares of Whitney Common Stock to be issued pursuant to the Company Merger have been duly authorized and, when issued pursuant to this Agreement, will be validly and legally issued, fully paid and nonassessable, and will be, at the time of their delivery, free and clear of all liens, charges, security interests, mortgages, pledges and other encumbrances and any preemptive or similar rights.

#### **4.06. SEC Reports**

Whitney has previously delivered to Holding an accurate and complete copy of the following Whitney reports filed with the SEC pursuant to the Exchange Act: (a) annual reports on Form 10-K for

the years ended December 31, 2000, 2001 and 2002; (b) quarterly reports on Form 10-Q for the quarters ended March 31, 2003, June 30, 2003 and September 30, 2003; and (c) proxy statements for the years 2001, 2002 and 2003; as of their respective dates, no such report or communication contained any untrue statement of a material fact or omitted to state any 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. Whitney has timely filed all reports and other documents required to be filed by it under the Securities Act and the Exchange Act.

#### **4.07. Absence of Certain Changes or Events.**

Since the date of Whitney's quarterly report on Form 10-Q for the quarter ended September 30, 2003, there has been no event or condition of any character (whether actual or threatened) that has had, or can reasonably be anticipated to have, a material adverse effect on the financial condition, results of operations or business of Whitney's consolidated group taken as a whole.

#### **4.08. Legal Matters**

(a) There are no material actions, suits, proceedings, arbitrations or investigations pending or, to Whitney's knowledge threatened, against any member of Whitney's consolidated group which would be required to be disclosed in a Form 10-K or Form 10-Q pursuant to Item 103 of Regulation S-K of the SEC's Rules and Regulations that are not so disclosed.

(b) To Whitney's knowledge, there are no material uncured violations of federal banking laws (and as of the date of this Agreement, there are no pending or threatened claims of such violations) or violations with respect to which material refunds or restitution may be required, cited in any compliance report to any member of Whitney's consolidated group as a result of examination by any bank or bank holding company regulatory authority.

(c) No member of Whitney's consolidated group is subject to any written agreement, memorandum or order or decree with or by any bank or bank holding company regulatory authority, nor has any member of Whitney's consolidated group been advised by any regulatory agency that it is considering issuing or requesting any such written agreement, memorandum, letter, order or decree.

#### **4.09. Community Reinvestment Act**

WNB has complied in all material respects with the provisions of the CRA and the rules and regulations thereunder, has CRA ratings of not less than "satisfactory," and has received no material criticism from regulators with respect to discriminatory lending practices, and has no knowledge of any conditions or circumstances that are likely to result in CRA ratings of less than "satisfactory" or material criticism from regulators with respect to discriminatory lending practices.

#### **4.10. Accuracy of Statements**

No warranty or representation made or to be made by any member of Whitney's consolidated group in this Agreement or in any document furnished or to be furnished by any member of Whitney's consolidated group pursuant to this Agreement contains or will contain, as of the date of this Agreement, the effective date of the Registration Statement and the Closing Date, an untrue statement of a material fact or an omission of a material fact necessary to make the statements contained herein and therein, in light of the circumstances in which they are made, not misleading.

### **Section 5. Covenants and Conduct of Parties Prior to the Effective Date**

The parties further covenant and agree as follows:

#### **5.01. Investigations; Planning**

Each member of Holding's consolidated group shall continue to provide to Whitney and WNB and to their authorized representatives full access during all reasonable times to its premises, properties, books and records (including, without limitation, all corporate minutes and stock transfer records), and to furnish Whitney and WNB and such representatives with such financial and operating data and other information of any kind respecting its business and properties as Whitney and WNB shall from time to time reasonably request. Any investigation shall be conducted in a manner that does not unreasonably interfere with the operation of the business of Holding's consolidated group. Each member of Holding's consolidated group agrees to cooperate with Whitney and WNB in connection with planning for the efficient and orderly combination of the parties and the operation of Whitney and WNB (and, if applicable, the Bank) after consummation of the Mergers. In the event of termination of this Agreement prior to the Effective Date, Whitney and WNB shall, except to any extent necessary to assert any rights under this Agreement or the Bank Merger Agreement, return, without retaining copies thereof, or destroy (and certify to same under penalty of perjury) all confidential or nonpublic documents, work papers and other materials obtained from Holding's consolidated group in connection with the transactions contemplated hereby and shall keep such information confidential, not disclose such information to any other person or entity except as may be required by legal process, and not use such information in connection with its business, and shall cause all of its employees, agents and representatives to keep such information confidential and not to disclose such information or to use it in connection with its business, in each case unless and until such information shall come into the public domain through no fault of Whitney or WNB. Whitney and WNB shall continue to provide Holding's executive officers with access to Whitney's and WNB's respective executive officers, during normal business hours and upon reasonable notice, to discuss the business and affairs of Whitney and WNB to the extent customary in transactions of the nature contemplated by this Agreement.

#### **5.02. Cooperation and Commercially Reasonable Efforts**

Each of the parties hereto will cooperate with the other parties and use all commercially reasonable efforts to (a) procure all necessary consents and approvals of third parties, (b) complete all necessary filings, registrations, applications, schedules and certificates, (c) satisfy all requirements prescribed by law for, and all conditions set forth in this Agreement to, the consummation of the Mergers and the transactions contemplated hereby and by the Bank Merger Agreement, and (d) effect the transactions contemplated by this Agreement and the Bank Merger Agreement at the earliest practicable date subject to the proviso contained in Section 1.02 hereof. Holding and the Bank shall provide Whitney and WNB full and complete access to all their third party vendors and shall consult Whitney and WNB prior to negotiating new third party vendor agreements or amendments to or modifications of existing third party agreements.

#### **5.03. Information for, and Preparation of, Registration Statement and Proxy Statement**

Each of the parties hereto will cooperate in the preparation of the Registration Statement referred to in Section 5.14 and a proxy statement of Holding (the "Proxy Statement") which complies with the requirements of the Securities Act, the Exchange Act, the rules and regulations promulgated thereunder and other applicable federal and state laws, for the purpose of submitting this Agreement and the transactions contemplated hereby to Holding's shareholders for approval. Each of the parties will as promptly as practicable after the date hereof furnish all such data and information relating to it and its subsidiaries as any of the other parties may reasonably request for the purpose of including such data and information in the Registration Statement and the Proxy Statement.

#### **5.04. Approval of Bank Merger Agreement**

Whitney, as the sole shareholder of WNB, shall take all action necessary to effect shareholder approval of the Bank Merger Agreement, subject to its right to delay consummation of the Bank Merger in accordance with Section 1.02.

#### **5.05. Press Releases**

Whitney and Holding will cooperate with each other in the preparation of any press releases announcing the execution of this Agreement or the consummation of the transactions contemplated hereby. Without the prior written consent of the chief executive officer of the other party, no member of Holding's consolidated group or Whitney's consolidated group will issue any press release or other written statement for general circulation relating to the transactions contemplated hereby, except as may otherwise be required by law in the reasonable judgment of the disclosing party and, if practical, prior notice of such release is provided to the other parties.

#### **5.06. Preservation of Business**

Each member of Holding's consolidated group will use its best efforts to preserve the possession and control of all of its assets other than those consumed or disposed of for value in the ordinary course of business to preserve the goodwill of customers and others having business relations with it and to do nothing knowingly to impair its ability to keep and preserve its business as it exists on the date of this Agreement.

#### **5.07. Conduct of Business in the Ordinary Course**

Each member of Holding's consolidated group shall conduct its business only in the ordinary course consistent with past practices, and shall not, without the prior written consent of the chief executive officer of Whitney or his duly authorized designee:

(a) except for the declaration and payment of a regular dividend of \$.10 per share during 2004, declare, set aside, increase or pay any dividend, or declare or make any distribution on, or directly or indirectly combine, redeem, reclassify, purchase, or otherwise acquire, any shares of its capital stock or authorize the creation or issuance of or issue any additional shares of its capital stock or any securities or obligations convertible into or exchangeable for its capital stock; other than in connection with (i) the issuance of shares of Holding Common Stock pursuant to the exercise of Stock Options outstanding as of the date of this Agreement to purchase Holding Common Stock, (ii) the surrender of Stock Options prior to the Effective Time in exchange for a cash payment in accordance with subsection 6.02(h) of this Agreement or (iii) the grant of 400 shares of Holding Common Stock to each nonemployee director of Holding as part of an annual retainer, which shares were issued by Holding on January 2, 2004, subject to shareholder approval;

(b) amend its articles of incorporation or association or by-laws or adopt or amend any resolution or agreement concerning indemnification of its directors or officers;

(c) enter into or modify any agreement so as to require the payment, conditionally or otherwise, of any salary, bonus, extra compensation (including payments for unused vacation or sick time), pension or severance payment to any of its present or former directors, officers or employees except such agreements as are terminable at will without any penalty or other payment by it, or increase the compensation (including salaries, fees, bonuses, profit sharing, incentive, pension, retirement or other similar benefits and payments) of any such person in any manner inconsistent with its past practices (except as to the satisfaction of the Stock Option Plans as provided for in subsection 6.02(h) hereof);

(d) except in the ordinary course of business consistent with past practices, place or suffer to exist on any of its assets or properties any mortgage, pledge, lien, charge or other encumbrance, except those of the character described in clauses (i) through (iv) of subsection 3.09(a) hereof, or cancel any material indebtedness owing to it or any claims which it may have possessed, or waive any right of substantial value or discharge or satisfy any material noncurrent liability;

(e) acquire another business or merge or consolidate with another entity, or sell or otherwise dispose of a material part of its assets or, except in the ordinary course of business consistent with past practices;

(f) commit any act that is intended or reasonably may be expected to result in any of its representations and warranties set forth in this Agreement being or becoming untrue in any material respect, or in any of the conditions to the Mergers set forth in Section 6 not being satisfied, or in a violation of any provision of this Agreement, except, in every case, as may be required by applicable law;

(g) commit or fail to take any act which act or omission is intended or reasonably may be expected to result in a material breach or violation of any applicable law, statute, rule, governmental regulation or order;

(h) fail to maintain its books, accounts and records in the usual manner on a basis consistent with that heretofore employed;

(i) fail to pay, or to make adequate provision in all material respects for the payment of, all taxes, interest payments and penalties due and payable (for all periods up to the Effective Date, including that portion of its fiscal year to and including the Effective Date) to any city, county, state, the United States or any other taxing authority, except those being contested in good faith by appropriate proceedings and for which sufficient reserves have been established;

(j) dispose of investment securities in amounts or in a manner inconsistent with past practices; or make investments in noninvestment grade securities or which are inconsistent with past investment practices (except as necessary to divest itself at no less than par of any and all holdings of F.N.B. Corporation in accordance with subsection 6.02(i) hereof);

(k) enter into any new line of banking or nonbanking business in which it is not actively engaged as of the date of this Agreement;

(l) (i) charge off (except as may otherwise be required by law or by regulatory authorities or by GAAP consistently applied) or sell (except in the ordinary course of business consistent with past practices) any of its portfolio of loans, discounts or financing leases, or (ii) sell any asset held as other real estate or other foreclosed assets for an amount materially less than 100% of its book value at the date of the Latest Balance Sheet;

(m) make any extension of credit which, when added to all other extensions of credit to a borrower and its affiliates, would exceed any member of Holding's consolidated group's applicable regulatory lending limits;

(n) take or cause to be taken any action that would disqualify the Mergers as a "reorganization" within the meaning of Section 368(a) of the Code; or

- (o) agree or commit to do any of the foregoing.

#### **5.08. Additional Information.**

Holding will provide Whitney with prompt written notice of any material adverse change in the financial condition, results of operations, business or prospects of any member of Holding's consolidated group, or any material action taken or proposed to be taken by any regulatory agency. Holding will provide Whitney and Whitney will provide Holding with (a) prompt written notice of any material breach by any member of such party's consolidated group of any of its warranties, representations or covenants in this Agreement, (b) as soon as they become available, as to Holding and the Bank, true and complete copies of any financial statements, reports and other documents of the type referred to in Section 3.04, and quarterly unaudited consolidated balance sheets of Holding and its subsidiaries, and the related unaudited statements of income, shareholders' equity and cash flows for the periods then ended, with respect to Holding and its subsidiaries; and, as to Whitney, true and complete copies of financial statements, reports and other documents of the type referred to in Sections 4.04 and 4.06, with respect to Whitney and its subsidiaries, (c) promptly upon its dissemination, any report disseminated to their respective shareholders. Holding shall make available for inspection by Whitney at the Bank's executive offices true and complete copies of any examination reports issued by any bank regulatory authority or any bank holding company regulatory authority.

#### **5.09. Holding Shareholder Approval**

Holding's Board of Directors shall submit this Agreement to its shareholders for approval in accordance with the applicable law, together with its recommendation that such approval be given, at a special meeting of the shareholders of Holding duly called and convened for that purpose as soon as practicable after the effective date of the Registration Statement. Holding, as the sole shareholder of the Bank, shall take all action to effect shareholder approval of the Bank Merger Agreement. The foregoing obligations of Holding and its Board of Directors specified in this Section 5.09 are subject to the proviso in the last sentence of Section 5.12.

#### **5.10. Restricted Whitney Common Stock**

(a) Holding shall obtain and deliver to Whitney, no later than 20 days after the execution of this Agreement, a written agreement in the form attached as Exhibit 5.10(a) hereto from each person who is a director or executive officer of Holding who will receive shares of Whitney Common Stock by virtue of the Company Merger to the effect that such person (i) has not disposed of any Holding Common Stock, (ii) will not dispose of any Holding Common Stock, (iii) will not dispose of any Whitney Common Stock received pursuant to the Company Merger in violation of Rule 145 of the Securities Act or the rules and regulations of the SEC thereunder or in a manner that would disqualify the transactions contemplated hereby tax-free reorganization treatment, and (iv) in the case of directors and executive officers, will (a) agree to vote in favor of this Agreement and the Company Merger all shares registered in their name individually or as to which they otherwise have sole voting power and (b) to use their best efforts, subject to any fiduciary duty they may have, to cause all shares as to which they share voting power with others to be voted in favor of this Agreement and the Company Merger (the "Director's and Officer's Commitment").

(b) Holding shall use all commercially reasonable efforts to obtain and deliver to Whitney, a written agreement in the form attached as Exhibit 5.10(b) hereto from each person who is not a director or executive officer of Holding or the Bank and who is a 5% or greater beneficial owner of securities of Holding who will receive shares of Whitney Common Stock by virtue of the Company Merger to the effect that such person (i) has not disposed of any Holding Common Stock, (ii) will not dispose of any Holding Common Stock, and (iii) will not dispose of any Whitney Common Stock received pursuant to

the Company Merger in violation of Rule 145 of the Securities Act or the rules and regulations of the SEC thereunder or in a manner that would disqualify the transactions contemplated hereby from receiving tax-free reorganization treatment (the "Shareholder's Commitment").

#### **5.11. Loan Policy**

From the date hereof through the Effective Time, neither Holding nor the Bank will make any loans, or enter into any commitments to make loans, which vary other than in immaterial respects from its written loan policies, a true and correct copy of which loan policies has been provided to Whitney, provided that this covenant shall not prohibit the Bank from extending or renewing credit or loans in the ordinary course of business consistent with past lending practices or in connection with the workout or renegotiation of loans currently in its loan portfolio. Concurrent with the execution of this Agreement, Holding shall provide Whitney a calendar of any board or committee meetings of the Bank at which the board or any committee will vote on proposed new or renewal loans or investments. Holding and the Bank will allow a representative of WNB to be present at all such meetings for informational purposes only and such WNB representative shall not take part in discussions or voting on any matters presented at such meetings.

#### **5.12. No Solicitations**

Prior to the Effective Time or until the termination of this Agreement, no member of Holding's consolidated group shall, without the prior approval of Whitney, directly or indirectly, solicit or initiate inquiries or proposals with respect to, or, except to the extent determined by the Board of Directors of Holding in good faith, after consultation with its financial advisors and its legal counsel, to be required to discharge properly the directors' fiduciary duties to Holding's consolidated group and its shareholders, furnish any information relating to, or participate in any negotiations or discussions concerning, any Acquisition Transaction (as defined in subsection 7.01(e)) or any other acquisition or purchase of all or a substantial portion of its assets, or of a substantial equity interest in it or withdraw its recommendation to the shareholders of Holding of the Company Merger or make a recommendation of any other Acquisition Transaction, or any other business combination with it, other than as contemplated by this Agreement (and in no event will any such information be supplied except pursuant to a confidentiality agreement in form and substance as to confidentiality substantially the same as the confidentiality agreement between Holding and Whitney); and each member of Holding's consolidated group shall instruct its officers, directors, agents and affiliates to refrain from doing any of the above, and will notify Whitney immediately if any such inquiries or proposals are received by it, any such information is requested from it, or any such negotiations or discussions are sought to be initiated with it or any of its officers, directors, agents and affiliates; provided, however, that nothing contained herein shall be deemed to prohibit any officer or director of Holding or the Bank from taking any action that the Board of Directors of Holding or the Bank, as the case may be, determines, in good faith after consultation with and receipt of a written opinion of counsel, is required by law or is required to discharge his fiduciary duties to Holding's consolidated group and its shareholders.

#### **5.13. Operating Functions**

Each member of Holding's consolidated group agrees to cooperate in the consolidation of appropriate operating functions with Whitney to be effective on the Effective Date, provided that the foregoing shall not be deemed to require any action that, in the opinion of such member's Board of Directors, would adversely affect its operations if the Mergers were not consummated.

#### **5.14. Whitney Registration Statement**

(a) Whitney will prepare and file on Form S-4 a registration statement (the "Registration Statement") under the Securities Act (which will include the Proxy Statement) complying with all the

requirements of the Securities Act (and the rules and regulations thereunder) applicable thereto, for the purpose, among other things, of registering the Whitney Common Stock which will be issued to the holders of Holding Common Stock pursuant to the Company Merger; provided, however, that Whitney shall not be required to file the Registration Statement until Whitney determines that any offerings of Whitney Common Stock being made by Whitney pursuant to Section 4(2) of the Securities Act (as disclosed to Holding in Schedule 5.14(a)) are either completed or terminated. Subject to the foregoing proviso, Whitney shall use its best efforts to cause the Registration Statement to become effective as soon as practicable, to qualify the Whitney Common Stock under the securities or blue sky laws of such jurisdictions as may be required and to keep the Registration Statement and such qualifications current and in effect for so long as is necessary to consummate the transactions contemplated hereby. As a result of the registration of the Whitney Common Stock pursuant to the Registration Statement, such stock shall be freely tradeable by the shareholders of Holding except to the extent that the transfer of any shares of Whitney Common Stock received by shareholders of Holding is subject to the provisions of Rule 145 under the Securities Act or restricted under applicable tax rules. Holding and its counsel shall have reasonable opportunity to review and comment on the Registration Statement being filed with the SEC and any responses filed with the SEC regarding the Registration Statement.

(b) Whitney will indemnify and hold harmless each member of Holding's consolidated group and each of their respective directors, officers and other persons, if any, who control Holding within the meaning of the Securities Act from and against any losses, claims, damages, liabilities or judgments, joint or several, to which they or any of them may become subject, insofar as such losses, claims, damages, liabilities, or judgments (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or in any amendment or supplement thereto, or in any state application for qualification, permit, exemption or registration as a broker/dealer, or in any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each such person for any legal or other expenses reasonably incurred by such person in connection with investigating or defending any such action or claim; provided, however, that Whitney shall not be liable, in any such case, to the extent that any such loss, claim, damage, liability, or judgment (or action in respect thereof) arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, or any such amendment or supplement thereto, or in any such state application, or in any amendment or supplement thereto, in reliance upon and in conformity with information furnished to Whitney by or on behalf of any member of Holding's consolidated group or any officer, director or affiliate of any such member for use therein.

(c) Promptly after receipt by an indemnified party under subparagraph (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against Whitney under such subparagraph, notify Whitney in writing of the commencement thereof. In case any such action shall be brought against any indemnified party and it shall notify Whitney of the commencement thereof, Whitney shall be entitled to participate therein and, to the extent that it shall wish, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party, and, after notice from Whitney to such indemnified party of its election so to assume the defense thereof, Whitney shall not be liable to such indemnified party under such subparagraph for any legal expenses of other counsel or any other expenses subsequently incurred by such indemnified party; provided, however, if Whitney elects not to assume such defense or if counsel for the indemnified party advises Whitney in writing that there are material substantive issues which raise conflicts of interest between Whitney or Holding and the indemnified party, such indemnified party may retain counsel satisfactory to it and Whitney shall pay all reasonable fees and expenses of such counsel for the indemnified party promptly as

statements therefor are received. Notwithstanding the foregoing, Whitney shall not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by Whitney in respect of such claim unless in the reasonable judgment of any such indemnified party a conflict of interest exists between such indemnified party and any other of such indemnified parties in respect to such claims.

(d) The provisions of subsection 5.14(b) and (c) are intended for the benefit of, and shall be enforceable by, the parties entitled to indemnification thereunder and each such party's heirs, representatives or successors.

#### **5.15. Application to Regulatory Authorities**

Whitney shall prepare and file, within sixty (60) days from the date this Agreement is signed, all regulatory applications and filings that are required to be made with respect to the Mergers, subject to its right to delay consummation of the Bank Merger in accordance with Section 1.02; provided, however, that if Whitney is unable to prepare and file such applications and filings within the time period specified herein due to the failure of either Holding or the Bank to timely provide Whitney any information necessary to complete such applications and filings, or for any other reason outside of Whitney's control, then Whitney's failure to comply with the provisions of this Section 5.15 shall not be deemed a breach of the Agreement. Whitney shall provide Holding copies of all such regulatory applications and filings at the time of filing with the appropriate regulatory agency.

#### **5.16. Revenue Ruling**

Whitney may elect to prepare (and in that event Holding shall cooperate in the preparation of) a request for a ruling from the Internal Revenue Service with respect to certain tax matters in connection with the transactions contemplated by this Agreement and the Bank Merger Agreement.

#### **5.17. Bond for Lost Certificates**

Upon receipt of notice from any of its shareholders that a certificate representing Holding Common Stock has been lost or destroyed, and prior to issuing a new certificate, Holding shall require such shareholder to post a bond in such amount as is sufficient to support the shareholder's agreement to indemnify Holding against any claim made by the owner of such certificate, unless Whitney agrees to the waiver of such bond requirement.

#### **5.18. Withholding**

Whitney shall be entitled to deduct and withhold from the consideration otherwise payable to any holder of Holding Common Stock after the Effective Time such amounts as Whitney may be required by law to deduct and withhold therefrom. All such deductions and withholdings shall be deemed for all purposes of this Agreement to have been paid to the person with respect to whom such deduction and withholding was made.

#### **5.19. Dissenters.**

Holding shall give Whitney (i) prompt written notice of, and a copy of, any instrument received by Holding with respect to the assertion or perfection of dissenters' rights, and (ii) the opportunity to participate in any and all negotiations and proceedings with respect to dissenters' rights, should Whitney desire to do so.

#### **5.20. Nasdaq Stock Market**

Whitney shall cause the shares of Whitney Common Stock to be issued in the Company Merger to be duly authorized, validly issued, fully paid and nonassessable, free of any preemptive or similar right

and to be approved for quotation in the Nasdaq Stock Market National Market System prior to or at the Effective Time.

**5.21. Continuing Indemnity; Insurance**

Whitney covenants and agrees that:

(a) all rights to indemnification (including, without limitation, rights to mandatory advancement of expenses) and all limitations of liability existing in favor of indemnified parties under Holding's Articles of Incorporation and Bylaws and in the Articles of Incorporation and Bylaws of the Bank (as the case may be) as in effect as of the date of this Agreement with respect to matters occurring prior to or at the Effective Time (an "Indemnified Party") shall survive the Company Merger and shall continue in full force and effect, without any amendment thereto, for a period concurrent with the applicable statute of limitations; provided, however, that all rights to indemnification in respect of any claim asserted or made as to which Whitney is notified in writing within such period shall continue until the final disposition of such claim. Without limiting the foregoing, in any case in which approval is required to effectuate any indemnification, the determination of any such approval shall be made, at the election of the Indemnified Party, by independent counsel mutually agreed upon between Whitney and the Indemnified Party.

(b) Promptly after receipt by an Indemnified Party of notice of the commencement of any action, such Indemnified Party shall, if a claim in respect thereof is to be made against Whitney under such subparagraph, notify Whitney in writing of the commencement thereof. In case any such action shall be brought against any Indemnified Party, Whitney shall be entitled to participate therein and, to the extent that it shall wish, to assume the defense thereof, with counsel reasonably satisfactory to such Indemnified Party, and, after notice from Whitney to such Indemnified Party of its election so to assume the defense thereof, Whitney shall not be liable to such Indemnified Party under such subparagraph for any legal expenses of other counsel or any other expenses subsequently incurred by such Indemnified Party; provided, however, if Whitney elects not to assume such defense or if counsel for the Indemnified Party advises Whitney in writing that there are material substantive issues which raise conflicts of interest between Whitney or Holding and the Indemnified Party, such Indemnified Party may retain counsel satisfactory to it, and Whitney shall pay all reasonable fees and expenses of such counsel for the Indemnified Party promptly as statements therefor are received. Notwithstanding the foregoing, Whitney shall not be obligated to pay the fees and expenses of more than one counsel for all Indemnified Parties in respect of such claim unless in the reasonable judgment of an Indemnified Party a conflict of interest exists between an Indemnified Party and any other Indemnified Parties in respect to such claims.

(c) Holding shall cause the persons serving as officers or directors of Holding or the Bank, immediately prior to the Effective Time to be covered for a period of three years from the Effective Time by the directors' and officers' liability insurance policy maintained by Holding and the Bank with respect to acts or omissions occurring prior to or at the respective effective times which were committed by such officers and directors in their capacity as such; provided that the aggregate premium to be paid by Holding and the Bank for such insurance shall not exceed 150% of the most current annual premium paid by Holding and the Bank for its directors and officers liability insurance, without Whitney's prior approval.

(d) If Whitney or any of its successors or assigns (i) shall consolidate with or merge into any corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any

individual, corporation or other entity, then and in each such case, proper provisions shall be made so that the successors and assigns of Whitney shall assume the obligations set forth in this Section 5.21.

(e) The provisions of this Section 5.21 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Party and his or her heirs and representatives.

#### **5.22. Employees and Certain Other Matters**

All employees of Holding and the Bank shall become or remain employees of the Bank upon consummation of the Company Merger, and upon consummation of the Bank Merger all employees of the Bank at the effective time of the Bank Merger shall become employees of WNB. Whitney, the Bank and WNB reserve the right to terminate any such employee, and to modify the job duties, compensation and authority of such employee. At the Effective Time, all such employees shall be eligible for such employee benefits as are generally available to employees of WNB having like tenure, officer status and compensation levels (including without limitation benefits under WNB's Severance Pay Policy as detailed in WNB Human Resource Policies and Procedures No. 4.03) except (i) all executive and senior level management bonuses, stock options, restricted stock and similar benefits shall be at the discretion of Whitney's Compensation Committee and (ii) all such employees shall be given full credit for all prior service as employees of Holding or the Bank provided, however, that all such employees shall be treated as newly hired WNB employees (i.e., prior service credit with Holding and the Bank shall not be considered in determining future benefits under Whitney's or WNB's defined benefit pension plan and post-retirement medical plan) for all purposes of Whitney's or WNB's defined benefit pension plan and post-retirement medical plan.

#### **5.23. Undertaking to File Reports and Cooperate in Rule 144 Transactions**

Whitney covenants to use its best efforts to file in a timely manner all material required to be filed pursuant to Section 13, 14 or 15(d) of the Exchange Act, or the rules and regulations promulgated thereunder, so as to continue the availability of Rule 144 for resales by affiliates of Holding and the Bank of the shares of Whitney Common Stock received by them in the Company Merger. In the event of any proposed sale of such Whitney Common Stock by any such former shareholder of Holding Common Stock who receives shares of Whitney Common Stock by reason of the Company Merger, Whitney covenants to use its best efforts to cooperate with such shareholder so as to enable such sale to be made in accordance with the requirements of Whitney's transfer agents and the reasonable requirements of the broker through which such sale is proposed to be executed. Without limiting the generality of the foregoing, Whitney agrees to furnish, upon request and at its expense, to the extent it is able, with respect to each such sale a written statement certifying that Whitney has filed all reports required to be filed by it under the Exchange Act for a period of at least one year preceding the sale of the proposed sale, and, in addition, has filed the most recent annual report required to be filed by it thereunder. Notwithstanding anything contained in this Section 5.23, Whitney shall not be required to maintain the registration of the Whitney Common Stock under Section 12 of the Exchange Act if it shall at any time be entitled to deregister those shares pursuant to the Exchange Act and the rules and regulations thereunder.

#### **5.24. Whitney Conduct of Business**

From the date hereof through the Closing, without the prior written consent of the chief executive officer of Holding or his duly authorized designee, Whitney shall not take or cause to be taken any action that would disqualify the Mergers as a "reorganization" within the meaning of Section 368(a) of the Code.

#### **5.25. Stock Options**

If and to the extent any Stock Option remains outstanding at the Effective Time, each such option shall cease to represent a right to acquire shares of Holding Common Stock and shall be converted automatically into an option to purchase shares of Whitney Common Stock. Whitney shall assume each such Stock Option in accordance with the applicable terms of the Stock Option Plans and the individual agreement by which it is evidenced, except that from and after the Effective Time, (i) Whitney and its Board of Directors or a duly authorized committee thereof shall be substituted for Holding and the Bank and Holding's Board of Directors or duly authorized committee thereof administering such Stock Option Plans, (ii) the number of shares of Whitney Common Stock subject to each such Stock Option shall be determined by multiplying the ratio of the Price Per Share over the Average Market Price (the "Option Exchange Ratio") by the number of shares of Holding Common Stock subject to such option immediately prior to the Effective Time, provided that any fractional share shall be rounded down to the nearest whole integer, and (iii) the per share exercise price of each such Stock Option shall be adjusted by dividing the per share exercise price of such option immediately prior to the Effective Time by the Option Exchange Ratio, provided that such per share exercise price shall be rounded up to the nearest cent. Notwithstanding the foregoing, each Stock Option which is an "incentive stock option" shall be adjusted as required by Section 424 of the Code, and the regulations promulgated thereunder, so as not to constitute a modification, extension or renewal thereof.

### **Section 6. Conditions of Closing**

#### **6.01. Conditions of All Parties**

The obligations of each of the parties hereto to consummate the Company Merger are subject to the satisfaction of the following conditions at or prior to the Closing:

(a) **Shareholder Approval.** This Agreement and the Company Merger shall have been duly approved by the shareholders of Holding.

(b) **Effective Registration Statement.** The Registration Statement shall have become effective prior to the mailing of the Proxy Statement, no stop order suspending the effectiveness of the Registration Statement shall have been issued, and no proceedings for that purpose shall have been instituted or, to the knowledge of any party, shall be contemplated, and Whitney shall have received all state securities laws permits and authorizations necessary to consummate the transactions contemplated hereby.

(c) **No Restraining Action.** No action or proceeding shall have been threatened or instituted before a court or other governmental body to restrain or prohibit the transactions contemplated by this Agreement or the Bank Merger Agreement or to obtain damages or other relief in connection with the execution of such agreements or the consummation of the transactions contemplated hereby or thereby; and no governmental agency shall have given notice to any party hereto to the effect that consummation of the transactions contemplated by this Agreement or the Bank Merger Agreement would constitute a violation of any law or that it intends to commence proceedings to restrain consummation of the Mergers.

(d) **Statutory Requirements and Regulatory Approval.** All statutory requirements for the valid consummation of the transactions contemplated by this Agreement and the Bank Merger Agreement shall have been fulfilled; all appropriate orders, consents and approvals from all regulatory agencies and other governmental authorities whose order, consent or approval is required by law for the consummation of the transactions contemplated by this Agreement and the Bank Merger Agreement shall have been received; and the terms of all requisite orders, consents and approvals shall then permit the

effectuation of the Mergers without imposing any material conditions with respect thereto except for any such conditions that are acceptable to Whitney, subject to the proviso contained in Section 1.02.

(e) **Tax Opinion.** Whitney and Holding shall have received a written opinion from Alston & Bird LLP in a form reasonably satisfactory to Whitney and Holding (the "Tax Opinion"), dated the date of the Effective Time, substantially to the effect that, (i) the Company Merger will constitute a reorganization within the meaning of Section 368(a) of the Code, (ii) each of Whitney and Holding will be a party to a reorganization within the meaning of Section 368(b) of the Code, (iii) no gain or loss will be recognized by holders of Holding Common Stock who exchange all of their Holding Common Stock solely for Whitney Common Stock pursuant to the Company Merger (except with respect to any cash received in lieu of a fractional share interest in Whitney Common Stock), (iv) the tax basis of the Whitney Common Stock received (including fractional shares deemed received and redeemed) by holders of Holding Common Stock who exchange all of their Holding Common Stock solely for Whitney Common Stock in the Company Merger will be the same as the tax basis of the Holding Common Stock surrendered in exchange for the Whitney Common Stock (reduced by an amount allocable to a fractional share interest in Whitney Common Stock deemed received and redeemed), and (v) the holding period of the Whitney Common Stock received (including fractional shares deemed received and redeemed) by holders who exchange all of their Holding Common Stock solely for Whitney Common Stock in the Company Merger will be the same as the holding period of the Holding Common Stock surrendered in exchange therefor, provided that such Holding Common Stock is held as a capital asset at the Effective Time. In rendering such Tax Opinion, such counsel shall be entitled to rely upon representations of officers of Holding and Whitney reasonably satisfactory in form and substance to such counsel.

#### **6.02. Additional Conditions of Whitney**

The obligations of Whitney to consummate the Company Merger are also subject to the satisfaction of the following additional conditions at or prior to the Closing:

(a) **Representations, Warranties and Covenants.** The representations and warranties of Holding and the Bank contained in this Agreement shall be true and correct, individually and in the aggregate, on and as of the Closing Date, with the same effect as though made on and as of such date, except to the extent of changes permitted by the terms of this Agreement, and each of Holding and the Bank shall have in all material respects performed all obligations and complied with all covenants required by this Agreement and the Bank Merger Agreement to be performed or complied with by it at or prior to the Closing. In addition, each of Holding and the Bank shall have delivered to Whitney and WNB its certificate dated as of the Closing Date and signed by its chief executive officer and chief financial officer (or their functional equivalents) to the foregoing effect and to the effect that, except as specified in such certificate, such persons do not know, and have no reasonable grounds to know, of any material failure or breach of any representation, warranty or covenant made by it in this Agreement.

(b) **No Material Adverse Change.** There shall not have occurred any material adverse change from the date of the Latest Balance Sheet to the Closing Date in the financial condition, results of operations, or business of Holding's consolidated group; provided, however, that (i) the incurrence by Holding of reasonable expenses in connection with the Mergers (including fees and expenses of attorneys, accountants or other consultants not to exceed \$200,000 in the aggregate and the payment to Hovde of its fees in accordance with the Hovde Agreement (the "Permitted Expenses")) and (ii) the occurrence of an event specifically permitted under Section 5.07 are expressly deemed not to constitute such a material adverse change.

(c) Accountants' Letters. Whitney shall have received "comfort" letters from Hacker, Johnson & Smith PA dated, respectively, within three (3) days prior to the date of the Proxy Statement and within three (3) days prior to the Closing Date, in customary form for transactions of this sort and in substance satisfactory to Whitney.

(d) Opinion of Counsel. Whitney and WNB shall have received from Igler & Dougherty, P.A., special counsel to Holding, an opinion, dated as of the Closing Date, customary in scope and in form and substance substantially as set forth on Exhibit 6.02(d). In giving such opinions, such counsel may rely as to questions of fact upon certificates of one or more officers of the members of Holding's consolidated group and governmental officials.

(e) Employment Agreement Termination and Business Protection Agreements. Whitney shall have received from Robert B. McGivney and David P. Paetzold signed employment agreement termination and business protection agreements, in form and substance reasonably satisfactory to Whitney, Robert B. McGivney and David P. Paetzold, and Whitney shall have received signed agreements in form and substance satisfactory to Whitney from Robert B. McGivney and David P. Paetzold agreeing to the termination of all employment related agreements listed on Schedule 3.13(a)(ii) of the Schedule of Exceptions to which such person is a party, acknowledging receipt of any and all payments due under such agreements and releasing Holding, the Bank, Whitney and WNB from any and all obligations thereunder.

(f) Director's and Officer's Commitment. Whitney shall have received a Director's and Officer's Commitment in the form specified on Exhibit 5.10(a) hereto (as contemplated by and within the timeframe specified in subsection 5.10(a)) from each person who serves as an executive officer or director of Holding; and Whitney shall have received from each such person a written confirmation dated not earlier than five days prior to the Closing Date to the effect that each representation made in such person's Director's and Officer's Commitment is true and correct as of the date of such confirmation and that such person has complied with all of his or her covenants therein through the date of such confirmation; in each case to the extent necessary to ensure, in the reasonable judgment of Whitney, compliance with Rule 145 under the Securities Act.

(g) Shareholder's Commitment. Whitney shall have received a Shareholder's Commitment in the form specified on Exhibit 5.10(b) hereto (as contemplated by subsection 5.10(b)) from each person (other than director and executive officer) who owns 5% or more of Holding Common Stock outstanding; and Whitney shall have received from each such person a written confirmation dated not earlier than five days prior to the Closing Date to the effect that each representation made in such person's Shareholder's Commitment is true and correct as of the date of such confirmation and that such person has complied with all of his or her covenants therein through the date of such confirmation; in each case to the extent necessary to ensure, in the reasonable judgment of Whitney, compliance with Rule 145 under the Securities Act.

(h) Termination of Stock Options. (i) All outstanding Stock Options shall have either been exercised with the payment to Holding of the cash exercise price therefor in accordance with their terms or terminated by Holding with the written agreement of the holders thereof in exchange for a cash payment by Holding for each option share not in excess of \$29.89 per share less the exercise price per share therefor; (ii) Holding's Board of Directors and shareholders shall have taken all action necessary to terminate the Stock Option Plans effective immediately prior to the Effective Time, (iii) if Holding desires to modify the vesting period for any unvested Stock Options under the Directors Stock Plan, Holding's Board of Directors and shareholders shall have taken all action necessary to cause such

unvested Stock Options to be fully vested and immediately exercisable prior to the Effective Time; (iv) Whitney shall have received from each individual entitled to benefits under the Stock Option Plans a signed letter, in form and substance satisfactory to Whitney, agreeing to and acknowledging the termination of the Stock Option Plans and the satisfaction of any benefits due to such individual thereunder and (v) and the grant of 400 shares of Holding Common Stock to each nonemployee director of Holding as described in subsection 5.07(a) either shall have been approved by the shareholders of Holding or shall have been rescinded with an equivalent (as of the date of grant) cash payment made in lieu thereof.

(i) **Salary Continuation Agreement.** Whitney and Robert B. McGivney shall have come to a mutually satisfactory arrangement to terminate the Salary Continuation Agreement listed on Schedule 3.13 (a)(ii) of the Schedule of Exceptions and to settle the liability due to Robert B. McGivney thereunder.

(j) **Divestiture of Subordinated Notes.** Holding shall have divested itself at no less than par of any and all holdings of F.N.B. Corporation subordinated notes and Whitney shall have received from Holding evidence of such divestiture in form and substance acceptable to Whitney.

(k) **Regulatory Action.** No adverse regulatory action shall be pending or threatened against any member of Holding's consolidated group, including (without limitation) any proposed amendment to any existing agreement, memorandum, letter, order or decree, formal or informal, between any regulator and any member of Holding's consolidated group, if such action would or could impose any material liability on Whitney or interfere in any material respect with the conduct of the businesses of Whitney's consolidated group following the Mergers.

(l) **Average Market Price.** The Average Market Price of the Whitney Common Stock as calculated in accordance with Section 2.01 (but without regard to the proviso contained therein) shall not be more than \$51.67 or less than \$31.67. Notwithstanding the foregoing sentence, in the event that Whitney enters into an agreement prior to the Closing to be acquired by any entity and the Average Market Price is more than \$51.67, then the Average Market Price shall be fixed at \$51.67. In the event Whitney enters into an Agreement prior to the Closing to be acquired by an entity and the Average Market Price is less than \$41.67, then the Average Market Price shall be fixed at \$41.67.

#### **6.03. Additional Conditions of Holding**

The obligations of Holding to consummate the Company Merger are also subject to the satisfaction of the following additional conditions at or prior to the Closing:

(a) **Representations, Warranties and Covenants.** The representations and warranties of Whitney and WNB contained in this Agreement shall be true and correct, individually and in the aggregate, on the Closing Date, with the same effect as though made on and as of such date, except to the extent of changes permitted by the terms of this Agreement, and each of Whitney and WNB shall have in all material respects performed all obligations and complied with all covenants required by this Agreement and the Bank Merger Agreement to be performed or complied with by it at or prior to the Closing. In addition, each of Whitney and WNB shall have delivered to Holding and the Bank its certificate dated as of the Closing Date and signed by its chief executive officer and chief financial officer to the foregoing effect and to the effect that, except as specified in such certificate, such persons do not know, and have no reasonable grounds to know, of any material failure or breach of any representation, warranty or covenant made by it in this Agreement.

(b) **Opinion of Counsel.** Holding and the Bank shall have received from Phelps Dunbar, L.L.P., counsel for Whitney and WNB, an opinion, dated as of the Closing Date, customary in scope and in form and substance substantially as set forth on Exhibit 6.03(b). In giving such opinion, such counsel may rely as to questions of fact upon certificates of one or more officers of Whitney or members of Whitney's consolidated group, and governmental officials and as to matters of law other than Louisiana or federal law on the opinions of foreign counsel retained by them or Whitney.

(c) **Fairness Opinion.** Holding shall have received letters from Hovde dated the date of the Proxy Statement and dated the date of the meeting of the shareholders of Holding, in each case in form and substance satisfactory to Holding, confirming such financial advisor's prior opinion to the Board of Directors of Holding to the effect that the consideration to be paid in the Company Merger is fair to its shareholders from a financial point of view.

(d) **No Material Adverse Change.** There shall not have occurred any material adverse change from the date of Whitney's Latest Balance Sheet to the Closing Date in the financial condition, results of operations or business of Whitney's consolidated group taken as a whole.

(e) **Average Market Price.** The Average Market Price of the Whitney Common Stock as calculated in accordance with Section 2.01 (but without regard to the proviso contained therein) shall not be more than \$51.67 or less than \$31.67.

#### **6.04. Waiver of Conditions**

Any condition to a party's obligations hereunder may be waived by that party, other than the conditions specified in subparagraphs (a), (b) and (d) of Section 6.01 hereof and the condition specified in subparagraph (c) of Section 6.03 hereof. The failure to waive any condition hereunder shall not be deemed a breach of Section 5.02 hereof.

### **Section 7. Termination**

#### **7.01. Termination**

This Agreement and the Bank Merger Agreement may be terminated and the Mergers contemplated herein abandoned at any time before the Effective Time, whether before or after approval by the shareholders of Holding as follows:

(a) **Mutual Consent.** By the mutual consent of the Boards of Directors of Whitney and Holding.

(b) **Breach.** By the Board of Directors of either Whitney or Holding in the event of a breach by any member of the consolidated group of the other of them of any representation or warranty contained in this Agreement or of any covenant contained in this Agreement, which in either case cannot be, or has not been, cured within 30 days after written notice of such breach is given to the entity committing such breach, provided that the right to effect such cure shall not extend beyond the date set forth in subparagraph (c) below.

(c) **Abandonment.** By the Board of Directors of either Whitney or Holding if (i) all conditions to Closing required by Section 6 hereof have not been met by or waived by Whitney or Holding by October 15, 2004, or (ii) any such condition cannot be met by October 15, 2004 and has not been waived by each party in whose favor such condition inures, or (iii) if the Company Merger has not

been consummated by October 15, 2004, provided that the failure to consummate the transactions contemplated hereby is not caused by the party electing to terminate pursuant to this clause (iii).

(d) **Shareholder Vote.** By Whitney if this Agreement or the Company Merger fails to receive the requisite vote at any meeting of the Holding's shareholders called for the purpose of voting thereon.

(e) **Holding Recommendation.** By Whitney if the Board of Directors of Holding (A) shall withdraw, modify or change its recommendation to its shareholders of this Agreement or the Company Merger or shall have resolved to do any of the foregoing or; (B) either (x) shall have recommended to the shareholders of Holding (or in the case of (iii) affirmatively approved) any of the following (being referred to herein as an "Acquisition Transaction"): (i) any merger, consolidation, share exchange, business combination or other similar transaction (other than the transactions contemplated by this Agreement); (ii) any sale, lease, transfer or other disposition of all or substantially all of the assets of any member of Holding's consolidated group; or (iii) any acquisition, by any person or group, of the beneficial ownership of 15% or more of any class of Holding capital stock; or (y) shall have made any announcement of any agreement to do any of the foregoing.

(f) **Acquisition Transaction.** By Holding in the event Holding receives a bona fide written offer with respect to an Acquisition Transaction and the Board of Directors of Holding determines in good faith, after consultation with its financial advisors and counsel, that such Acquisition Transaction is more favorable to Holding's shareholders than the transactions contemplated by this Agreement.

(g) **Dissenting Shareholders.** By Whitney, if the holders of more than 7.5% in the aggregate of the outstanding Holding Common Stock shall have voted such shares against this Agreement or the Company Merger at any meeting called for the purpose of voting thereon and shall have exercised their dissenters' rights in accordance with Sections 1301-1320 of the FBCA.

#### **7.02. Effect of Termination**

Upon termination of this Agreement pursuant to this Section 7, the Bank Merger Agreement shall also terminate and there shall be no liability by reason of this Agreement or the Bank Merger Agreement, or the termination thereof, on the part of any party or their respective directors, officers, employees, agents or shareholders except for any liability of a party hereto arising out of (i) a willful breach of any representation, warranty or covenant in this Agreement prior to the date of termination, except if such breach was required by law or by any bank or bank holding company regulatory authority; (ii) a termination pursuant to subsection 7.01(e) or subsection 7.01(f) causing payment to be made under Section 7.03; or (iii) a breach of any of the following provisions: the second to last sentence of Section 5.01, subsections 5.14(b) and (c). Each party hereby agrees that its sole right and remedy with respect to any nonwillful breach of a representation or warranty or covenant by the other party shall be not to close the transactions described herein if such breach results in the nonsatisfaction of a condition set forth in Section 6 hereof; provided, however, that the foregoing shall not be deemed to be a waiver of any claim for a willful breach of a representation, warranty or covenant or for fraud except if such breach is required by law or by any bank or bank holding company regulatory authority.

#### **7.03. Termination Payment**

If this Agreement is terminated by Whitney or Holding pursuant to subsection 7.01(e) or subsection 7.01(f), then Holding (or its successor) shall pay or cause to be paid to Whitney upon demand a termination payment of \$3,300,000.00 payable in same day funds.

## **Section 8. Miscellaneous**

### **8.01. Notices**

Any notice, communication, request, reply, advice or disclosure (hereinafter severally and collectively "notice") required or permitted to be given or made by any party to another in connection with this Agreement or the Bank Merger Agreement or the transactions herein or therein contemplated must be in writing and may be given or served by depositing the same in the United States mail, postage prepaid and registered or certified with return receipt requested, or by delivering the same to the address of the person or entity to be notified, or by sending the same by a national commercial courier service (such as Airborne Express, Federal Express, Emery Air Freight, Network Courier, Purolator or the like) for next day delivery provided such delivery is confirmed in writing by such courier. Notice deposited in the mail in the manner hereinabove described shall be effective 48 hours after such deposit, and notice delivered in person or by commercial courier shall be effective at the time of delivery. A party delivering notice shall endeavor to obtain a receipt therefor. For purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Whitney or WNB:

Mr. William L. Marks  
Chairman of the Board & CEO  
Whitney Holding Corporation  
228 St. Charles Avenue  
New Orleans, Louisiana 70130

With copies to:

Joseph S. Schwartz, Jr., Esq.  
Whitney National Bank  
Legal Department  
228 St. Charles Avenue, Suite 626  
New Orleans, Louisiana 70130

If to Holding or the Bank:

Robert B. McGivney  
President and Chief Executive Officer  
Madison BancShares, Inc.  
2122 Palm Harbor Boulevard, Unit A  
Palm Harbor, FL 34683

With copies to:

A. George Igler, Esq.  
Igler & Dougherty, P.A.  
Corporate Counsel  
1501 E. Park Avenue  
Tallahassee, FL 32301

### **8.02. Waiver**

The failure by any party to enforce any of its rights hereunder shall not be deemed to be a waiver of such rights, unless such waiver is an express written waiver which has been signed by the waiving party. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

**8.03. Expenses**

Except as otherwise provided herein, regardless of whether the Mergers are consummated, all expenses incurred in connection with this Agreement and the Bank Merger Agreement and the transactions contemplated hereby and thereby shall be borne by the party incurring them.

**8.04. Headings**

The headings in this Agreement have been included solely for reference and shall not be considered in the interpretation or construction of this Agreement.

**8.05. Annexes, Exhibits and Schedules**

The annexes, exhibits and schedules to this Agreement are incorporated herein by this reference and expressly made a part hereof.

**8.06. Integrated Agreement**

This Agreement, the Bank Merger Agreement, the confidentiality agreements between Whitney and Holding dated December 9, 2003, March 10, 2004 and March 19, 2004, the exhibits and schedules hereto and all other documents and instruments delivered in accordance with the terms hereof constitute the entire understanding and agreement among the parties hereto with respect to the subject matter hereof, and there are no agreements, understanding, restrictions, representations or warranties among the parties other than those set forth herein or therein, all prior agreements and understandings being superseded hereby.

**8.07. Choice of Law**

The validity of this Agreement and the Bank Merger Agreement, the construction of their terms and the determination of the rights and duties of the parties hereto in accordance therewith shall be governed by and construed in accordance with the laws of the United States and those of the State of Louisiana applicable to contracts made and to be performed wholly within such State. Matters concerning the effectiveness and validity of the Company Merger under Florida law shall be governed by and construed in accordance with the FBCA. The parties hereto mutually consent and submit to the personal jurisdiction of the state and federal courts located in the State of Florida and agree that any action, suit or proceeding concerning or related to this Agreement must be brought exclusively in the federal courts located in Hillsborough County, Florida to the extent federal courts will accept jurisdiction over such matters, or exclusively in the Florida state courts located in Hillsborough County in the event federal courts do not accept jurisdiction over the subject matter. The parties mutually acknowledge and agree that they will not raise, in connection with any such suit, action or proceeding brought in any federal or state court located in the State of Florida, any defense or objections based upon lack of personal jurisdiction, improper venue, inconvenience of forum or the like.

**8.08. Parties in Interest**

This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns, except that this Agreement may not be transferred or assigned by any member of either consolidated group without the prior written consent of the other parties hereto, including any transfer or assignment by operation of law. Nothing in this Agreement or the Bank Merger Agreement is intended or shall be construed to confer upon or to give any person other than the parties hereto any rights or remedies under or by reason of this Agreement or the Bank Merger Agreement, except as expressly provided for herein and therein.

**8.09. Amendment**

The parties may, by mutual agreement of their respective Boards of Directors, amend, modify or supplement this Agreement, the Bank Merger Agreement, or any exhibit or schedule of any of them, in such manner as may be agreed upon by the parties in writing, at any time before or after approval of this Agreement and the Bank Merger Agreement and the transactions contemplated hereby and thereby by the shareholders of the parties hereto. This Agreement and any exhibit or schedule to this Agreement may be amended at any time and, as amended, restated by the chief executive officers of the respective parties (or their respective designees) without the necessity for approval by their respective Boards of Directors or shareholders, to correct typographical errors or to change erroneous references or cross references, or in any other manner which is not material to the substance of the transactions contemplated hereby.

**8.10. Counterparts**

This Agreement may be executed by the parties in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same document.

**8.11. NonSurvival of Representations and Warranties; Covenants**

None of the representations and warranties in this Agreement or in any instrument delivered pursuant hereto shall survive the Effective Time. The covenants of the parties set forth herein shall survive the Effective Time in accordance with their terms and, in the absence of a specified survival term, for the applicable statute of limitations.

(THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.)

IN WITNESS WHEREOF, the parties and a majority of the Board of Directors of Whitney have executed this Agreement on the date first above written.

WHITNEY HOLDING CORPORATION

BY: \_\_\_\_\_

R. King Milling

ITS: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Teresa Z. Lygate

Senior Assistant Corporate Secretary

MADISON BANCSHARES, INC.

BY: \_\_\_\_\_

Robert B. McGivney

ITS: \_\_\_\_\_

President and CEO

Attest: \_\_\_\_\_

Arlene Phillips

Assistant Secretary

WHITNEY NATIONAL BANK

BY: \_\_\_\_\_

R. King Milling

ITS: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Teresa Z. Lygate

Senior Assistant Corporate Secretary

MADISON BANK

BY: \_\_\_\_\_

Robert B. McGivney

ITS: \_\_\_\_\_

President and CEO

Attest: \_\_\_\_\_

Arlene Phillips

Assistant Secretary

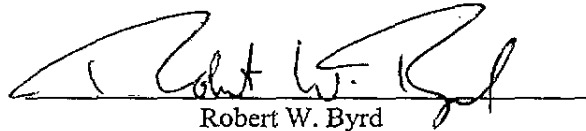
FOR THE BOARD OF DIRECTORS OF WHITNEY HOLDING CORPORATION:

<i>E. Hall</i>	<i>W. M. ...</i>
<i>Philip ...</i>	<i>Samuel ...</i>
<i>Walter ...</i>	
<i>John ...</i>	
<i>Harry ...</i>	
<i>George ...</i>	
<i>Charles ...</i>	
<i>William ...</i>	
<i>Thomas ...</i>	

**CERTIFICATE OF SECRETARY  
OF  
MADISON BANCSHARES, INC.**

I hereby certify that I am the duly elected Secretary of Madison Bancshares, Inc., a Florida corporation, currently serving in such capacity and that the foregoing Agreement and Plan of Merger was, in the manner required by law, duly approved, without alteration or amendment, by the shareholders of Madison Bancshares, Inc. on August 17, 2004.

Certificate dated August 17, 2004.

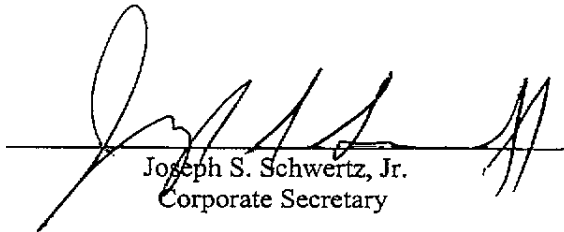


Robert W. Byrd  
Secretary

**CERTIFICATE OF SECRETARY  
OF  
WHITNEY HOLDING CORPORATION**

I hereby certify that I am the duly elected Corporate Secretary of Whitney Holding Corporation, a Louisiana corporation, presently serving in such capacity and that, in accordance with Section 112(E) of the Louisiana Business Corporation Law, the foregoing Agreement and Plan of Merger was not required to be submitted to the shareholders of Whitney Holding Corporation.

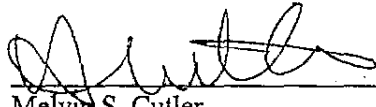
Certificate dated August 16, 2004.

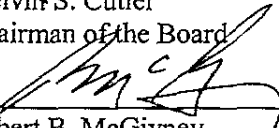
  
\_\_\_\_\_  
Joseph S. Schwertz, Jr.  
Corporate Secretary

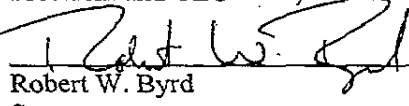
## EXECUTION BY CORPORATIONS

Considering the approval of this Agreement by the shareholders of the parties hereto, as certified above, this Agreement is executed by such parties, acting through their respective Presidents and other officers, on the dates hereinafter set forth.

MADISON BANCSHARES, INC.

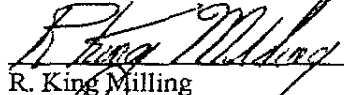
By:   
Melvin S. Cutler  
Chairman of the Board

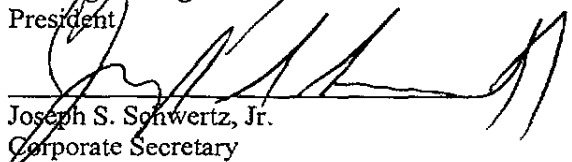
By:   
Robert B. McGivney  
President and CEO

Attest:   
Robert W. Byrd  
Secretary

Date: August 17, 2004

WHITNEY HOLDING CORPORATION

By:   
R. King Milling  
President

Attest:   
Joseph S. Schwertz, Jr.  
Corporate Secretary

Date: August 16, 2004

**ACKNOWLEDGMENT AS TO  
MADISON BANCSHARES, INC.**

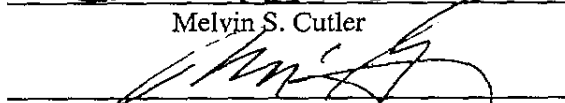
**STATE OF FLORIDA**

**COUNTY OF PINELLAS**

**BEFORE ME**, the undersigned authority, personally came and appeared Melvin S. Cutler and Robert B. McGivney, who, being duly sworn, declared and acknowledged before me that they are, respectively, the Chairman of the Board and the President and Chief Executive Officer of Madison Bancshares, Inc. and that in such capacities they were duly authorized to and did execute the foregoing Agreement on behalf of such corporation, for the purposes therein expressed and as their and such corporation's free act and deed.



Melvin S. Cutler



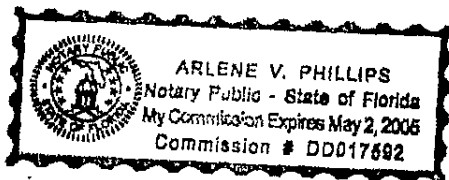
Robert B. McGivney

Sworn to and subscribed before me  
this 17th day of August, 2004



Notary Public  
State of Florida at Large

(SEAL)

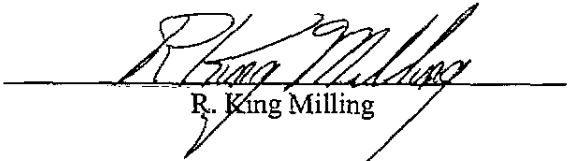


**ACKNOWLEDGMENT AS TO WHITNEY HOLDING CORPORATION**

**STATE OF LOUISIANA**

**PARISH OF ORLEANS**

**BEFORE ME**, the undersigned authority, personally came and appeared R. King Milling, who, being duly sworn, declared and acknowledged before me that he is the President of Whitney Holding Corporation and that in such capacity he was duly authorized to and did execute the foregoing Agreement on behalf of such corporation, for the purposes therein expressed and as his and such corporation's free act and deed.

  
R. King Milling

Sworn to and subscribed before me  
this 16th day of August, 2004.



Teresa Z. Lygate, Notary Public

Notary Number 34565

My commission expires at death

(SEAL)