

1/08/08

P06000001428

FLORIDA DIVISION OF CORPORATIONS
PUBLIC ACCESS SYSTEM
ELECTRONIC FILING COVER SHEET

10:31 AM

((H07000297204 3))

TO: DIVISION OF CORPORATIONS

FAX #: (850)487-6897

FROM: C T CORPORATION SYSTEM
CONTACT: KATHY KELLERHALS
PHONE: (850)222-1092

ACCT#: FCA000000023

FAX #: (850)878-5926

NAME: FLORIDA EAST COAST INDUSTRIES, INC.

AUDIT NUMBER.....H07000297204

DOC TYPE.....BASIC AMENDMENT

CERT. OF STATUS..0

PAGES..... 8

CERT. COPIES.....1

DEL.METHOD.. FAX

EST.CHARGE.. \$43.75

NOTE: PLEASE PRINT THIS PAGE AND USE IT AS A COVER SHEET. TYPE THE FAX
AUDIT NUMBER ON THE TOP AND BOTTOM OF ALL PAGES OF THE DOCUMENT

** ENTER 'M' FOR MENU. **

ENTER SELECTION AND CR:

FILED
07 DEC 11 PM 2:47
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Amend

12/12

DC/SP

Articles of Amendment
to
Articles of Incorporation
of

FILED
07 DEC 11 PM 2:47
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

FLORIDA EAST COAST INDUSTRIES, INC.

(Name of corporation as currently filed with the Florida Dept. of State)

P06000001428

(Document number of corporation (if known))

Pursuant to the provisions of section 607.1006, Florida Statutes, this *Florida Profit Corporation* adopts the following amendment(s) to its Articles of Incorporation:

NEW CORPORATE NAME (if changing):

(Must contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.")
(A professional corporation must contain the word "chartered", "professional association," or the abbreviation "P.A.")

AMENDMENTS ADOPTED- (OTHER THAN NAME CHANGE) Indicate Article Number(s) and/or Article Title(s) being amended, added or deleted: **(BE SPECIFIC)**

Article IV - Shares is being amended to read in its entirety as set forth on Exhibit A attached hereto.

(Attach additional pages if necessary)

If an amendment provides for exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself: (if not applicable, indicate N/A)

(continued)

The date of each amendment(s) adoption: December 11, 2007

Effective date if applicable: _____
(no more than 90 days after amendment file date)

Adoption of Amendment(s) (CHECK ONE)

The amendment(s) was/were approved by the shareholders. The number of votes cast for the amendment(s) by the shareholders was/were sufficient for approval.

The amendment(s) was/were approved by the shareholders through voting groups. The following statement must be separately provided for each voting group entitled to vote separately on the amendment(s):

"The number of votes cast for the amendment(s) was/were sufficient for approval by _____"
(voting group)

The amendment(s) was/were adopted by the board of directors without shareholder action and shareholder action was not required.

The amendment(s) was/were adopted by the incorporators without shareholder action and shareholder action was not required.

Signature _____

(By a director, president or other officer - if directors or officers have not been selected, by an incorporator - if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

David N. Brooks

(Typed or printed name of person signing)

Secretary

(Title of person signing)

FILING FEE: \$35

**Amendment
to
Articles of Incorporation
of
FLORIDA EAST COAST INDUSTRIES, INC.**

Article IV

The aggregate number of shares of all classes of capital stock which the Corporation shall have authority to issue is six million, (6,000,000), consisting of (i) five million (5,000,000) shares of common stock, par value \$0.01 per share and (ii) one million (1,000,000) shares of preferred stock, par value \$0.01 per share. The designations and the preferences, limitations and relative rights of the preferred stock are as follows:

Section 1. Designation and Authorized Number.

(a) Designation. The designation of this series of preferred stock shall be "*Series A Redeemable Preferred Stock*", par value \$0.01 per share.

(b) Authorized Number. The number of shares constituting the Series A Redeemable Preferred Stock shall be 1,000,000 shares.

Section 2. Dividends.

(a) Dividend Amount. The holders of the Series A Redeemable Preferred Stock shall be entitled to receive, when, as and if declared by the Board out of funds legally available under the Florida Business Corporation Act (the "*FBCA*") for the purpose, cumulative dividends as provided in this Section 2. Each outstanding share of Series A Redeemable Preferred Stock shall accrue dividends (whether or not earned or declared, whether or not permitted under any agreement and whether or not there are funds legally available under the FBCA therefor) commencing on the date such share of Series A Redeemable Preferred Stock is first issued (the "*Issue Date*"). Dividends on each share of Series A Redeemable Preferred Stock shall accrue on a daily basis at the rate of 15% per annum on the aggregate Senior Preferred Liquidation Amount (as hereinafter defined), compounded and payable in cash in arrears on the last day of each calendar year (or, if not so paid in cash on such date, 15% per annum on the aggregate Senior Preferred Liquidation Amount payable by accretion to the aggregate Senior Preferred Liquidation Amount in arrears on the last day of each calendar year). Dividends are to be calculated on the basis of twelve (12) thirty (30) day months. If the last day of a calendar year is not a business day, any dividend hereunder shall be payable on the next business day.

(b) Priority. With respect to dividend rights, the Series A Redeemable Preferred Stock shall rank senior to any other class or series of equity securities as to payment of dividends (including, without limitation the common stock of the Corporation, par value \$0.01 per share ("*Common Stock*") and securities exercisable for,

convertible into or exchangeable for Common Stock or any other securities of the Corporation, including without limitation, options, warrants and other purchase rights therefor). Any dividends paid on the Series A Redeemable Preferred Stock shall be paid ratably among the holders of Series A Redeemable Preferred Stock outstanding as of the applicable record date. Without the prior written consent of the holders of a majority of the outstanding shares of Series A Redeemable Preferred Stock, at any time when there are shares of Series A Redeemable Preferred Stock outstanding, the Corporation shall not declare, pay or set apart for payment any dividend on any other series or class of capital stock of the Corporation or make any payment on account of, or set apart for payment money for a sinking or other similar fund for, the purchase, redemption or other retirement of, any other series or class of capital stock of the Corporation or any warrants, rights, calls or options exercisable for or convertible into any other such capital stock whether in cash, obligations or shares of the Corporation or other property.

Section 3. Liquidation.

(a) Rank. With respect to the distribution of assets upon any liquidation, dissolution or winding up of the Corporation ("*Liquidation*"), whether voluntary or involuntary, the Series A Redeemable Preferred Stock shall rank senior to any other class or series of equity securities (including, without limitation, the Common Stock and securities exercisable for, convertible into or exchangeable for Common Stock or any other equity securities of the Corporation, including without limitation, options, warrants and other purchase rights therefor).

(b) Liquidation Preference. In the event of any Liquidation, whether voluntary or involuntary, the holders of Series A Redeemable Preferred Stock shall be entitled to receive for each outstanding share of Series A Redeemable Preferred Stock, prior and in preference to any distribution of any of the assets of the Corporation to the holders of any other class or series of equity securities (including, without limitation the Common Stock and securities exercisable for, convertible into or exchangeable for Common Stock or any other membership interests of the Corporation, including without limitation, options, warrants and other purchase rights therefore), an amount per share equal to \$1,000 (as adjusted for subsequent stock dividends, splits, combinations or similar events with respect to the Series A Redeemable Preferred Stock) plus an amount per share equal to all accrued but unpaid cumulative dividends and any other accrued but unpaid dividends on such share (the "*Senior Preferred Liquidation Amount*"). If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Redeemable Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amounts aforesaid, then, all of the assets available for distribution to holders of the Series A Redeemable Preferred Stock shall be distributed among and paid to such holders ratably in proportion to the number of shares of Series A Redeemable Preferred Stock held by such holders. Upon payment of the full preferential amounts set forth above in respect of a share of Series A Redeemable Preferred Stock, such share of Series A Redeemable Preferred Stock shall be immediately surrendered and canceled without any further action on the part of the Corporation or the holder thereof.

Section 4. Redemption.

(a) Subject to the limitations on distributions by the Corporation to the holders of Series A Redeemable Preferred Stock imposed by the FBCA or the terms of any financing, swap or other agreements to which the Corporation is a party, a guarantor or otherwise bound, on December 31, 2012 (the "*Mandatory Redemption Date*"), the Corporation shall redeem for cash all shares of the Series A Redeemable Preferred Stock that are then outstanding at a price per share equal to the Senior Preferred Liquidation Amount.

(b) Subject to the limitations on distributions by the Corporation to the holders of Series A Redeemable Preferred Stock imposed by the terms of any financing, swap or other agreements to which the Corporation is a party, a guarantor or otherwise bound, the Corporation may at any time and from time to time (to the extent it may lawfully do so), at the option of the Board, redeem in whole or in part the Series A Redeemable Preferred Stock by paying in cash therefor a sum equal to the Senior Preferred Liquidation Amount for each share redeemed. The terms of any redemption pursuant to this Section 4(b) shall be specified in the Corporation Redemption Notice (as defined below). Any partial redemption effected pursuant to this Section 4(b) shall be made on a pro rata basis among the holders of the Series A Redeemable Preferred Stock in proportion to the number of shares of Series A Redeemable Preferred Stock then held by them.

(c) As used herein, the term "*Redemption Date*" shall refer to the date designated by the Corporation in the Corporation Redemption Notice (as defined below) upon which a redemption is to be effected. With respect to any redemption pursuant to Section 4(b), the Redemption Date shall be no later than sixty (60) days after the date of the Corporation Redemption Notice. With respect to a redemption pursuant to Section 4(a), the Redemption Date shall be no later than the Mandatory Redemption Date.

(d) The Corporation shall give written notice to each holder of record (as of the close of business on the business day next preceding the day on which notice is given), at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected and specifying the number of shares to be redeemed from such holder, the Redemption Date (which may be the date of the notice if payment of the Senior Preferred Liquidation Amount is made on such date), the Senior Preferred Liquidation Amount, the place at which payment may be obtained and, to the extent applicable, calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his certificate or certificates representing the shares to be redeemed (the "*Corporation Redemption Notice*"). If the funds of the Corporation legally available under the FBCA for redemption of shares of Series A Redeemable Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series A Redeemable Preferred Stock to be redeemed on such date, those funds which are legally available under the FBCA will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series A Redeemable Preferred Stock. The shares of Series A Redeemable Preferred Stock not redeemed shall remain outstanding and

entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available under the FBCA for the redemption of shares of Series A Redeemable Preferred Stock such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any such Redemption Date but which it has not redeemed.

(e) On or prior to a Redemption Date, each holder of shares of Series A Redeemable Preferred Stock to be redeemed on such date shall, to the extent applicable, surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Corporation Redemption Notice, and thereupon the Senior Preferred Liquidation Amount of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(f) From and after payment of the Senior Preferred Liquidation Amount, all rights of the holders of the shares of Series A Redeemable Preferred Stock so redeemed, as holders of such shares of Series A Redeemable Preferred Stock, shall cease with respect to such redeemed shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

Section 5. General Voting Rights.

Except as otherwise provided herein or as required by law, the holders of shares of the Series A Redeemable Preferred Stock shall not have the right to vote on any matters. To the extent a right to vote exists, each holder of shares of Series A Redeemable Preferred Stock shall be entitled to one vote per share of Series A Redeemable Preferred Stock.

Section 6. Miscellaneous.

(a) Redeemed or Otherwise Acquired Shares. Shares of Series A Redeemable Preferred Stock issued and redeemed or otherwise reacquired by the Corporation shall be retired and canceled promptly after the reacquisition.

(b) Enforcement. Any holder of shares of Series A Redeemable Preferred Stock may proceed to protect and enforce its rights by any available remedy by proceeding at law or in equity to protect and enforce any such rights, whether for the specific enforcement of any provision in this Articles of Amendment or in aid of the exercise of any power or approval right granted herein, or to enforce any other proper remedy.

(c) Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of preferred stock. Upon the surrender of any certificate representing shares of Series A Redeemable Preferred Stock, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's

expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Series A Redeemable Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Series A Redeemable Preferred Stock represented by the surrendered certificate.

(d) Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series A Redeemable Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity from the holder reasonably satisfactory to the Corporation (it being understood that no bond shall be required), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Series A Redeemable Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

(e) Amendment and Waiver. No amendment, modification or waiver (whether by merger, consolidation or otherwise) shall be binding or effective with respect to any provision of this Articles of Amendment without the prior written approval of the holders of at least a majority of the outstanding shares of the Series A Redeemable Preferred Stock.