

446653

**INTER-OFFICE
COMMUNICATION**

**ROBERT F. MILLIGAN
COMPTROLLER OF FLORIDA**

DATE: October 31, 1997
TO: Louise Fleming, Bureau of Corporations, Secretary of State
FROM: *AAG* Amy A. Groszos, Financial Specialist
Bureau of Financial Institutions, District II, Division of Banking
SUBJECT: TOTALBANK, MIAMI, FLORIDA

Please file the attached amendment to the articles of incorporation for subject bank 10/31/97--01002--036
998002340338--6
****105.00 ****105.000

Please make the following distribution of certified copies:

- Return one (1) copy to : Bureau of Financial Institutions
District II, Division of Banking
The Fletcher Building
101 East Gaines Street, Suite 636
- Mail one (1) copy to: David I. Schlosberg, General Counsel
TotalBank
Post Office Box 450678
Miami, FL 33145-0678
900002340339--8
11/08/97-01002--037
*****87.50 *****87.50
- Mail one (1) copy to: Federal Deposit Insurance Corporation
One Atlantic Center, Suite 1600
1201 West Peachtree Street, N.E.
Atlanta, GA 30309-3449

Also attached are checks which represent payment for filing fees and certified copies. If you have any questions, please contact me at 488-0382.

AAG:jm

Attachments

cc: Area Financial Manager, Miami

Amended & Restated
NFS
11-4-97

FILING 35.00
R. AGENT _____
CERT. COPY 157.50
CUS _____
OVERPAYMENT _____
T. TAL 192.50

FILED
97 NOV -3 PM 1:57
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
TOTALBANK

FILED
97 NOV -3 PM 1:57
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLE I

The name of the corporation (the "Corporation") shall be TOTALBANK and its principal place of business shall be: 2720 Coral Way in the City of Miami, in the County of Dade, and the State of Florida.

ARTICLE II

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

ARTICLE III

The authorized capital stock of the Corporation shall be 500,000 shares with a par value of \$10.00 per share. Upon the filing of these Amended and Restated Articles of Incorporation (such date hereinafter referred to as the "Effective Date"), each 100 shares of the issued and outstanding common stock of the Corporation shall be reclassified into one share of common stock of the Corporation. This reverse split shall affect only issued and outstanding shares and shall not affect the total number of shares authorized. Each record holder of shares of common stock of the Corporation whose aggregate number of shares owned immediately prior to the Effective Date is less than 100 shall be deemed by the Corporation to hold a fractional share of common stock. All such fractional shares of the Corporation's common stock held by a record holder owning in the aggregate less than 100 shares immediately prior to the Effective Date are hereby immediately canceled. The holder of such fractional share shall be entitled to a cash payment in an amount equal to \$284.98 per share of common stock owned immediately prior to the Effective Date upon proper surrender of the holder's certificate or certificates.

Pursuant to action taken by the Board of Directors, and after obtaining the written approval of the Division of Banking and the approval of stockholders holding a majority of the voting stock of the bank evidenced either in writing signed by the stockholders, or by a vote at a stockholders' meeting called for such stated purpose after giving ten days' notice by registered or certified mail: (1) the amount of capital stock may be increased, (2) preferred stock of one or more classes in the amount and with a par value approved by the Division of Banking may be issued, and (3) amendments to these Amended and Restated Articles of Incorporation which may be necessary to accomplish the foregoing may be adopted.

The holders of any capital stock shall not be held individually responsible as such holders for any debts, contracts, or engagements of the Corporation and shall not be liable for assessment.

ARTICLE IV

The term for which the Corporation shall exist shall be perpetual.

ARTICLE V

The business and affairs of the Corporation shall be managed and conducted by:

A. A Board of not less than five and not more than 25 directors who shall be elected annually by the stockholders at their annual meeting to be held at its place of business in Miami, Florida, during the first four months of each year. A majority of the full board of directors may, at any time during the year following the annual meeting of shareholders, increase the number of directors within the limits specified above, and appoint persons to fill the resulting vacancies, provided that in any one year not more than two such additional directors shall be appointed pursuant to these provisions;

and

B. A President, who shall be a Director, and one or more Vice Presidents, and a Cashier and such other officers as may be designated in the by-laws of the Corporation, and shall be elected by the Board of Directors at the same place, on the same day, and immediately after said Board of Directors shall be elected by the stockholders; provided that the office(s) of Vice President and Cashier may be combined in one and the same person. Not less than a majority of the directors must, during their whole term of service, be citizens of the United States, and at least 60% of the directors must have resided in this State for at least one year preceding their election, and must be residents therein during their continuance in office. Not less than a majority of the directors must, during their whole term of service, be citizens of the United States,

ARTICLE VI

Until their resignation or disqualification, or the election and qualification of new Directors, the following shall serve as Directors of TOTALBANK:

1. ADRIENNE ARSHT (Chairman)
380 Harbour Drive
Key Biscayne, Florida 33149
2. MYER FELDMAN (Vice Chairman)
380 Harbour Drive
Key Biscayne, Florida 33149

3. WILLIAM J. HEFFERNAN
351 N.E. 105th Street
Miami Shores, Florida 33138
4. GARY EIDELSTEIN
Grand Bay Plaza, #908
2665 South Bayshore Drive
Miami, Florida 33133
5. KEVIN O'CONNOR
2801 Ponce de Leon Blvd.
Coral Gables, Florida 33134
6. BRUCE KELLER
982 N.E. 126th Street
North Miami, Florida 33161
7. PATRICK WARD
2009 North 14th Street, #509
Arlington, Virginia 22201
8. RAQUEL MATAS
The Colonnade, Suite 650
2333 Ponce de Leon Blvd.
Coral Gables, Florida 33134

ARTICLE VII

1. Certain Definitions. For purposes of this Article VII:
 - a. "Affiliate" means, when used in reference to any Person, any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person.
 - b. "Associate" means, when used in reference to any Person, (1) any corporation or organization of which such Person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such Person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity and (3) any relative or spouse of such Person, or any relative of such spouse, who has the same home as such Person.

c. "Capital Stock" means the capital stock of the Corporation.

i. "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

d. "Disqualified Person" means any Person which is not permitted to be a stockholder of a "small business corporation" pursuant to the provisions of 26 U.S.C. §1361(b)(1)(B) or (C), as amended, or by any successor provision.

e. "Disqualifying Transfer" means any transfer (whether by operation of law or otherwise) of any shares of Capital Stock, the result of which would cause the Corporation to have more than the maximum number of stockholders permitted for an S Corporation.

f. "Person" means any natural person, corporation, unincorporated organization, limited liability company, partnership, association, joint stock company, joint venture, trust or government, or any agency or political subdivision of any government, or any other entity.

g. "Redemption Date" means (i) with respect to a redemption of shares of Capital Stock from a Disqualified Person the date immediately prior to the date on which such Person became a Disqualified Person and (ii) with respect to shares of Capital Stock which are the subject of a proposed Disqualifying Transfer, the date fixed by action of the Board of Directors for the redemption of any shares of Capital Stock pursuant to paragraph 7 of this Article VII.

h. "S Corporation" means a corporation which is an "S corporation" (as defined in 26 U.S.C. § 1361(a)(1), as amended, or in any successor provision).

i. "S Election" means the written consent of a stockholder of the Corporation to the Corporation making the election provided for under 26 U.S.C. §1362(a), as amended, or under any successor provision.

2. General. Consistent with 26 U.S.C. § 1361 et. seq., as amended, or any successor provision, and to prevent the loss by the Corporation of its status as an S Corporation, it is the policy of the Corporation that, subject to the provisions of this Article VII, no Person shall be permitted to hold, own, acquire or transfer any shares of Capital Stock if, as a result thereof, the Corporation would fail to qualify as an S Corporation.

3. Effectiveness. The limitations of the rights of holders of shares of Capital Stock provided for in this Article VII shall be effective notwithstanding any other provision of these Articles of Incorporation to the contrary but only for so long as the Corporation (a) is qualified as an S Corporation or (b) if not then qualified as an S Corporation, intends to reinstate its qualification as an S Corporation within a reasonable time after ceasing to be so qualified.

4. Disqualified Persons. A Disqualified Person may not hold shares of Capital Stock. An acquisition or purported acquisition of shares of Capital Stock by a Disqualified Person shall be void ab initio to the fullest extent permitted under applicable law, and the intended transferee of the subject shares of Capital Stock shall be deemed never to have had an interest therein.

In the event that any holder of shares of Capital Stock becomes a Disqualified Person, the shares of Capital Stock held by such Disqualified Person shall cease to be regarded as outstanding and any and all rights attaching to such shares of whatever nature shall cease and terminate and such shares shall thereafter only represent the right to receive the redemption price for such shares pursuant to paragraph 7 of this Article VII.

5. Disqualifying Transfers. If at any time a Disqualifying Transfer shall be proposed, the Board of Directors shall have the right to refuse to transfer any shares of Capital Stock purportedly transferred pursuant to the Disqualifying Transfer for a period not to exceed 90 days following the date on which such shares shall be presented to the Corporation for transfer. During such 90-day period, the Corporation shall use its reasonable best efforts to obtain all necessary approvals, waivers and authorizations of, and to make all necessary filings and registrations with, and notifications to, all applicable governmental authorities to permit the Corporation to redeem such shares of Capital Stock. During such 90-day period, the Corporation shall be permitted to treat the record holder of the shares of Capital Stock, as shown on the record books of the Corporation, as the true owner of such shares for all purposes, and the Board of Directors shall have the right, in its sole discretion, but shall not be required to, redeem the shares which are the subject of the proposed Disqualifying Transfer pursuant to the provisions of paragraph 7 of this Article VII. If any approval, waiver or authorization of any applicable governmental authorities shall not be obtained (other than as a result of the fault of the stockholder who shall have proposed the Disqualifying Transfer or any Affiliate thereof), then the Corporation shall have the right for a period of an additional 90 days from the date on which the Corporation is notified that such approval, waiver or authorization shall not be obtained to use its reasonable best efforts to assign the right of redemption provided for hereunder to a third party whose purchase of such shares of Capital Stock would not result in a Disqualifying Transfer, and shall be permitted to treat the record holder of the shares of Capital Stock, as shown on the record books of the Corporation, as the true owner of such shares for all purposes. If the Corporation shall not exercise its right of redemption, or otherwise cause such shares to be purchased in a manner which would not constitute a Disqualifying Transfer, within such additional 90-day period (other than as a result of the fault of the stockholder who shall have proposed the Disqualifying Transfer or any Affiliate thereof), then the Corporation shall, as promptly thereafter as practicable, permit the transfer of such shares of Capital Stock, and the Disqualifying Transfer shall be deemed to have been effected at the end of such additional 90-day period.

6. Ownership Inquiry.

a. Whenever it is deemed by the Board of Directors, in their sole discretion, to be prudent to prevent the Corporation from failing to qualify or to continue qualification as an S Corporation, the Corporation may by notice in writing (which may be included in the form of proxy or ballot distributed to stockholders of the Corporation in connection with any annual or special meeting of the stockholders of the Corporation, or otherwise) require a Person that is a holder of

record of shares of Capital Stock or that the Corporation knows to have, or has reasonable cause to believe has, beneficial ownership of shares of Capital Stock to certify to the Corporation in such manner as the Corporation shall deem appropriate (including by way of execution of any form of proxy, ballot or affidavit by such person) that, to the knowledge of such person all shares of Capital Stock as to which such person has record ownership or beneficial ownership are owned and controlled only by Persons who are not Disqualified Persons.

b. With respect to any Capital Stock identified by such person in response to subsection (a) of this paragraph 6, the Corporation may require such person to provide such further information as the Corporation may reasonably require to implement the provisions of this Article VII.

c. For purposes of applying the provisions of this Article VII with respect to any shares of Capital Stock, in the event of the failure of any Person to provide the certificate or other information to which the Corporation is entitled pursuant to this paragraph 6, the Corporation may presume that the shares of Capital Stock in question are beneficially owned or controlled by Disqualified Persons.

d. The Board of Directors shall have the right, but shall not be required, to refuse to transfer any shares of Capital Stock purportedly transferred if a statement or affidavit requested pursuant to this paragraph 6 of this Article VII has not been received.

7. Redemption; Governmental Authorization. Notwithstanding any other provision of these Articles of Incorporation to the contrary, the Corporation may redeem those shares of Capital Stock from a Disqualified Person pursuant to paragraph 4 of this Article VII or which are the subject of a proposed Disqualifying Transfer, to the extent determined by the Board of Directors, in its sole discretion, to be necessary to preserve the Corporation's status as an S Corporation. The terms and conditions of such redemption shall be as follows:

a. The redemption price of the shares to be redeemed pursuant to this Article VII shall be equal to the lower of (i) the book value of the shares to be redeemed, to be determined on a fully diluted basis and calculated based upon the last monthly financial statement of Totalbank reflecting total shareholders' equity filed with the Division of Banking or, (ii) if applicable, the sales price offered to the stockholder in the proposed Disqualifying Transfer, provided such offer is made in good faith, in an arm's length, non-collusive manner by a Person who is not related to or an Affiliate or Associate of the offeree stockholder.

b. From and after the Redemption Date, shares to be redeemed shall cease to be regarded as outstanding and any and all rights attaching to such shares of whatever nature (including without limitation any rights to vote or participate in dividends or other distributions declared on stock of the same class or series as such shares) shall cease and terminate, and the holders thereof thenceforth shall be entitled only to receive the cash payable upon redemption.

The foregoing notwithstanding, the Corporation shall be permitted to redeem shares of Capital Stock pursuant to the provisions of this paragraph 7 only if all necessary approvals, waivers and

authorizations of, filings and registrations with, and notifications to, all applicable governmental authorities shall have been obtained or made and shall be in full force and effect and all applicable waiting periods shall have expired. In the event that any such approval, waiver or authorization shall not have been obtained, the Corporation shall have the right to assign the right of redemption provided for in this paragraph 7 to any Person or Persons who in its reasonable judgment are not Disqualified Persons, and such Person shall thereafter have the right to acquire such shares of Capital Stock on the same terms as the Corporation, provided that the transfer of such shares to such assignee would not result in a Disqualifying Transfer.

8. S Elections. Notwithstanding anything in these Articles of Incorporation to the contrary, the Board of Directors shall have the right, but shall not be required, to refuse to transfer any shares of Capital Stock purportedly transferred if the proposed transferee shall refuse to deliver to the Corporation a duly and validly executed consent to be bound by the restrictions on transfer of Capital Stock set forth in these Articles of Incorporation, as amended from time to time.

9. Bylaws. The Bylaws of the Corporation may make appropriate provisions to effectuate the requirements of this Article VII.

10. Factual Determinations. The Board of Directors shall have the power to construe and apply the provisions of this Article VII and to make all determinations necessary or desirable to implement such provisions, including but not limited to whether (a) the number of shares of voting stock that are beneficially owned by any Person; (b) whether a Person is an Affiliate or Associate of another Person; (c) whether a Person has an agreement, arrangement or understanding with another Person as to matters bearing on beneficial ownership; (d) whether a Person is a Disqualified Person; (e) whether a transfer is a Disqualifying Transfer; (f) the application of any other definition of these Articles of Incorporation to a given fact; (g) the book value of the shares of Capital Stock; and (h) any other matter relating to the applicability or effect of this Article VII.

11. Restrictive Legend. In furtherance of the foregoing provisions of this Article VII, the Corporation shall be entitled to place on every certificate representing shares of Capital Stock a legend which shall state that such shares are restricted as to transfer and shall set forth or fairly summarize such restrictions upon the certificates or shall state that the Corporation will furnish to any stockholder upon request and without charge a full statement of such restrictions.

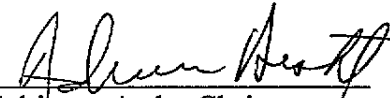
12. Severability. If any paragraph or provision of this Article VII is determined to be invalid, void, illegal or unenforceable to any extent, then the remainder of such paragraph or provision and the remaining sections and provisions of this Article VII shall continue to be valid and enforceable and shall in no way be affected, impaired or invalidated by such invalidity, voidness, illegality or unenforceability.

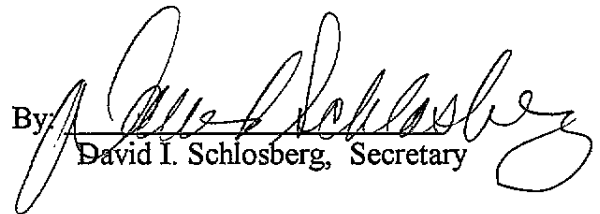
ARTICLE VIII

This corporation shall indemnify any officer or director of the Corporation to the fullest extent permitted by law.

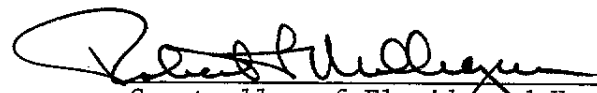
IN WITNESS WHEREOF, the undersigned Chairman of the Board and Secretary of the Corporation each has executed these Amended and Restated Articles of Incorporation in their respective capacities as such this 25 day of September, 1997.

TOTALBANK

By: 
Adrienne Arsht, Chairman

By: 
David I. Schlosberg, Secretary

The foregoing amendment is hereby approved this 29th day of October, 1997.


Comptroller of Florida and Head of
the Department of Banking and Finance

SECRETARY'S CERTIFICATION OF SHAREHOLDER CONSENT
TO AMENDED AND RE-STATED ARTICLES OF INCORPORATION

I HEREBY CERTIFY as follows:

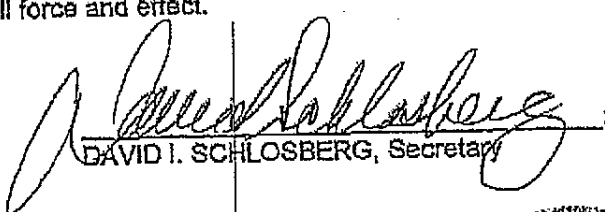
1. That I am the duly elected and qualified Secretary of TOTALBANK.
2. That there are presently issued and outstanding 181,388.25 shares of common voting stock in Totalbank, which is the only class of stock authorized and issued.
3. That shareholders representing 181,295.25 shares (approximately 99% of the issued and outstanding shares) have consented and approved the Amended and Restated Articles of Incorporation which were approved by the Board of Directors on September 25, 1997, and said shareholders resolved as follows:

That the amendments to the Articles of Incorporation of Totalbank as set forth in the Amended and Restated Articles of Incorporation of Totalbank, a copy of which is attached as Exhibit A (the "Restated Articles") and made a part hereof, are hereby approved and adopted in all respects, and that the officers of Totalbank be, and each of them hereby is, authorized, empowered and directed to execute and file the Restated Articles with the Secretary of State of Florida in order to carry out fully the purpose and intent of this resolution.

4. The consents of the requisite number of shareholders necessary to authorize the action was received on October 21, 1997.

5. The undersigned secretary further certifies that said action of the shareholders of Totalbank has not been rescinded and is in full force and effect.

Dated October 21st, 1997


DAVID I. SCHLOSBERG, Secretary

