

H43827

Document Number Only

C T CORPORATION SYSTEM

Requestor's Name

660 East Jefferson Street

Address

Tallahassee, FL 32301 (850)222-1092

City

State

Zip

Phone

CORPORATION(S) NAME

300003272583-7

-05/31/00--01083--016

*****70.00 *****70.00

Commerce National Corporation

merging into:

Wachovia Corporation

☐ Profit

☐ NonProfit

☐ Limited Liability Company

☐ Foreign

☐ Amendment

☐ Dissolution/Withdrawal

☒ Merger

☐ Mark

☐ Limited Partnership

☐ Reinstatement

☐ Limited Liability Partnership

☐ Certified Copy

☐ Annual Report

☐ Reservation

☐ Photo Copies

☐ Other

☐ Change of R.A.

☐ Fictitious Name

☐ CUS

☐ Call When Ready

☒ Walk In

☐ Mail Out

☐ Call if Problem

☐ Will Wait

☐ After 4:30

☒ Pick Up

EFFECTIVE DATE
6-1-00

Name
Availability

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Acknowledgment

W.P. Verifier

5/31

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CONNIE BRYAN

G. COULLETTE MAY 31 2000

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00 MAY 31 PM 2:19
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

FILED

00 MAY 31 PM 3:12
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

CR2E031 (1-89)

ARTICLES OF MERGER
Merger Sheet

MERGING:

COMMERCE NATIONAL CORPORATION, a Florida corporation, H43827

INTO

WACHOVIA CORPORATION, a North Carolina corporation not qualified in
Florida.

File date: May 31, 2000, effective June 1, 2000

Corporate Specialist: Cheryl Coulliette

ARTICLES OF MERGER
OF
COMMERCE NATIONAL CORPORATION
INTO
WACHOVIA CORPORATION

FILED
00 MAY 31 PM 3:12
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned corporations, COMMERCE NATIONAL CORPORATION and WACHOVIA CORPORATION, file these Articles of Merger and certify that:

1. Commerce National Corporation, a Florida corporation, is hereby merged with and into Wachovia Corporation, a North Carolina corporation, pursuant to the Plan of Merger, a copy of which is attached as Exhibit A, and in accordance with the provisions of the Florida Business Corporation Act and the North Carolina Business Corporation Act.
2. The surviving corporation is Wachovia Corporation.
3. The merger will become effective at 12:01 a.m. on June 1, 2000.
4. The Plan of Merger was approved by the Board of Directors of Commerce National Corporation on March 3, 2000, and by the shareholders of Commerce National Corporation on May 30, 2000.
5. The Plan of Merger was approved by the Board of Directors of Wachovia Corporation on March 2, 2000. Under the North Carolina Business Corporation Act and the rules of the New York Stock Exchange, approval of the merger by the shareholders of Wachovia Corporation was not required.

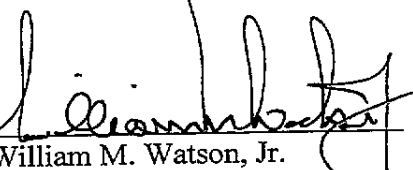
EFFECTIVE DATE
6-01-00

Dated: May 31, 2000.

COMMERCE NATIONAL
CORPORATION

By _____
Alan Scarboro
Secretary

WACHOVIA CORPORATION

By 
William M. Watson, Jr.
Secretary



COMMERCE NATIONAL CORPORATION

NATIONAL BANK OF COMMERCE

ARTICLES OF MERGER OF COMMERCE NATIONAL CORPORATION INTO WACHOVIA CORPORATION

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Dated: May 31, 2000.

COMMERCE NATIONAL
CORPORATION

By Alan Scarboro
Alan Scarboro
Secretary

WACHOVIA CORPORATION

By _____
William M. Watson, Jr.
Secretary

NY12533: 119882.3

FORM OF PLAN OF MERGER

PLAN OF MERGER (this "*Plan*") of Commerce National Corporation, a Florida corporation ("*Commerce*" or the "merged corporation") and Wachovia Corporation, a North Carolina corporation ("*Wachovia*" or the "surviving corporation").

ARTICLE I

DEFINITIONS

1.1 *Certain Definitions.* The following terms are used in this Plan with the meanings set forth below:

"*Commerce Board*" means the Board of Directors of Commerce.

"*Commerce Common Stock*" means the common stock, par value \$0.10 per share, of Commerce.

"*Commerce Stock Option*" means each outstanding option to purchase shares of Commerce Common Stock.

"*Effective Date*" means the effective date of the Merger.

"*Effective Time*" means the effective time of the Merger.

"*Exchange Agent*" means an exchange agent appointed by Wachovia.

"*FBCA*" means the Florida Business Corporation Act.

"*Merger*" means the merger of Commerce with and into Wachovia.

"*Merger Agreement*" means the Agreement and Plan of Merger, dated as of March 3, 2000, by and between Commerce and Wachovia.

"*Merger Consideration*" means the consideration to be issued to holders of Commerce Common Stock as provided in this Plan.

"*NCBCA*" means the North Carolina Business Corporation Act.

"*New Certificates*" has the meaning set forth in Section 3.4.

"*NYSE*" means the New York Stock Exchange, Inc.

"*Old Certificates*" has the meaning set forth in Section 3.4.

"*Person*" means any individual, bank, corporation, partnership, association, joint-stock company, business trust or unincorporated organization.

"*Subsidiary*" has the meaning ascribed to it in Rule 1-02 of the Securities and Exchange Commission's Regulation S-X.

"*Surviving Corporation*" means Wachovia, as the surviving corporation of the Merger.

"*Treasury Stock*" shall mean shares of Commerce Stock held by Commerce or any of its Subsidiaries or by Wachovia or any of its Subsidiaries, in each case other than in a fiduciary capacity or as a result of debts previously contracted in good faith.

"*Wachovia Common Stock*" means the common stock, par value \$5.00 per share, of Wachovia.

"*Wachovia Preferred Stock*" means the preferred stock, par value \$5.00 per share, of Wachovia.

"*Wachovia Stock*" means, collectively, Wachovia Common Stock and Wachovia Preferred Stock.

ARTICLE II

THE MERGER

2.1. *The Merger.* (a) At the Effective Time, Commerce shall merge with and into Wachovia, the separate corporate existence of Commerce shall cease and Wachovia shall survive and continue to exist as a North Carolina corporation. Wachovia may at any time prior to the Effective Time change the method of effecting the combination with Commerce (including, without limitation, the provisions of this Article II) if and to the extent it deems such change to be necessary or appropriate; *provided, however*, that no such change shall (i) alter or change the amount or kind of Merger Consideration, (ii) adversely affect the tax treatment of Commerce's stockholders as a result of receiving the Merger Consideration or (iii) materially impede or delay consummation of the transactions contemplated by this Agreement. In the event of such an election, the parties agree to execute an appropriate amendment to this Agreement in order to reflect such election.

(b) Subject to the satisfaction or waiver of the conditions set forth in Article IV, the Merger shall become effective upon the occurrence of the filing in the office of the Secretary of State of the State of Florida of articles of merger in accordance with Section 607.1105 of the FBCA and the filing in the office of the Secretary of State of the State of North Carolina of articles of merger in accordance with Section 55-11-05 of the NCBCA or such later date and time as may be set forth in such certificate and articles. The Merger shall have the effects prescribed in the FBCA and the NCBCA.

(c) *Articles of Incorporation and By-Laws.* The articles of incorporation and by-laws of Wachovia immediately after the Merger shall be those of Wachovia as in effect immediately prior to the Effective Time.

(d) *Directors and Officers of Wachovia.* The directors and officers of Wachovia immediately after the Merger shall be the directors and officers of Wachovia immediately prior to the Effective Time, until such time as their successors shall be duly elected and qualified.

2.2. *Effective Date and Effective Time.* Subject to the satisfaction or waiver of the conditions set forth in Article VII, the parties shall cause the Effective Date to occur on (a) the fifth business day to occur after the last of the conditions set forth in below shall have been satisfied or waived in accordance with the terms of the Merger Agreement (or, at the election of Wachovia, on the last business day of the month in which such day occurs or, if such last business day occurs on one of the last five business days of such month, on the last business day of the succeeding month) or (b) such other date to which the parties may agree in writing.

ARTICLE III

CONSIDERATION; EXCHANGE PROCEDURES

3.1. *Merger Consideration.* Subject to the provisions of this Plan, at the Effective Time, automatically by virtue of the Merger and without any action on the part of any Person:

(a) *Outstanding Commerce Common Stock.* Each share, excluding Treasury Stock, of Commerce Common Stock, issued and outstanding immediately prior to the Effective Time shall become and be converted into the number of shares of Wachovia Common Stock equal to the Exchange Ratio (as defined in the following sentence). The "*Exchange Ratio*" shall mean the number equal to \$54.00 divided by the Wachovia Average Stock Price (rounded to the nearest one-thousandth) provided that:

(i) if the Wachovia Average Stock Price exceeds \$64.125, the Exchange Ratio shall be .8421; and

(ii) if the Wachovia Average Stock Price is less than \$51.30, the Exchange Ratio shall be 1.0526.

The "*Wachovia Average Stock Price*" shall be the closing price of Wachovia Common Stock, as reported by the NYSE Composite Transaction Reporting System (as reported in *The Wall Street Journal* or, if not reported therein, in another authoritative source), for the 15 NYSE trading days immediately preceding the Effective Date.

(b) *Outstanding Wachovia Stock.* Each share of Wachovia Stock issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding and unaffected by the Merger.

(c) *Treasury Stock.* Each share of Commerce Common Stock held as Treasury Stock immediately prior to the Effective Time shall be canceled and retired at the Effective Time and no consideration shall be issued in exchange therefor.

3.2. *Rights as Stockholders; Stock Transfers.* At the Effective Time, holders of Commerce Common Stock shall cease to be, and shall have no rights as, stockholders of Commerce, other than to receive any dividend or other distribution with respect to such Commerce Common Stock with a record date occurring prior to the Effective Time and the consideration provided under this Article III. After the Effective Time, there shall be no transfers of shares of Commerce Common Stock on the stock transfer books of Commerce or the Surviving Corporation.

3.3. *Fractional Shares.* Notwithstanding any other provision hereof, no fractional shares of Wachovia Common Stock and no certificates or scrip therefor, or other evidence of ownership thereof, will be issued in the Merger; instead, Wachovia shall pay to each holder of Commerce Common Stock who would otherwise be entitled to a fractional share of Wachovia Common Stock (after taking into account all Old Certificates delivered by such holder) an amount in cash (without interest) determined by multiplying such fraction by the closing price of Wachovia Common Stock, as reported by the NYSE Composite Transactions Reporting System (as reported in *The Wall Street Journal* or, if not reported therein, in another authoritative source), for the NYSE trading day immediately preceding the Effective Date.

3.4. *Exchange Procedures.* (a) At or prior to the Effective Time, Wachovia shall deposit, or shall cause to be deposited, with EquiServe Trust Company, N.A. (in such capacity, the "*Exchange Agent*"), for the benefit of the holders of certificates formerly representing shares of Commerce Common Stock ("*Old Certificates*"), for exchange in accordance with this Article III, certificates representing the shares of Wachovia Common Stock ("*New Certificates*") and an estimated amount of cash (such cash and New Certificates, together with any dividends or distributions with a record date occurring after the Effective Date with respect thereto (without any interest on any such cash, dividends or distributions), being hereinafter referred to as the "*Exchange Fund*") to be paid pursuant to this Article III in exchange for outstanding shares of Commerce Common Stock.

(b) As promptly as practicable after the Effective Date, Wachovia shall send or cause to be sent to each former holder of record of shares of Commerce Common Stock immediately prior to the Effective Time transmittal materials for use in exchanging such stockholder's Old Certificates for the consideration set forth in this Article III. Wachovia shall cause the New Certificates into which shares of a stockholder's Commerce Common Stock are converted on the Effective Date and/or any check in respect of any fractional share interests or dividends or distributions which such person shall be entitled to receive to be delivered to such stockholder upon delivery to the Exchange Agent of Old Certificates representing such shares of Commerce Common Stock (or indemnity reasonably satisfactory to Wachovia and the Exchange Agent, if

any of such certificates are lost, stolen or destroyed) owned by such stockholder. No interest will be paid on any such cash to be paid in lieu of fractional share interests or in respect of dividends or distributions that any such person shall be entitled to receive pursuant to this Article III upon such delivery. Old Certificates surrendered for exchange by any Commerce Affiliate shall not be exchanged for New Certificates until Wachovia has received a written agreement from such person as specified in Section 6.07 of the Merger Agreement.

(c) Notwithstanding the foregoing, neither the Exchange Agent nor any party hereto shall be liable to any former holder of Commerce Stock for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

(d) At the election of Wachovia, no dividends or other distributions with respect to Wachovia Common Stock with a record date occurring after the Effective Time shall be paid to the holder of any unsurrendered Old Certificate representing shares of Commerce Common Stock converted in the Merger into the right to receive shares of such Wachovia Common Stock until the holder thereof shall be entitled to receive New Certificates in exchange therefor in accordance with the procedures set forth in this Section 3.4, and no such shares of Commerce Common Stock shall be eligible to vote until the holder of Old Certificates is entitled to receive New Certificates in accordance with the procedures set forth in this Section 3.4. After becoming so entitled in accordance with this Section 3.4, the record holder thereof also shall be entitled to receive any such dividends or other distributions, without any interest thereon, which theretofore had become payable with respect to shares of Wachovia Common Stock such holder had the right to receive upon surrender of the Old Certificate.

(e) Any portion of the Exchange Fund that remains unclaimed by the stockholders of Commerce for twelve months after the Effective Time shall be paid to Wachovia. Any stockholders of Commerce who have not theretofore complied with this Article III shall thereafter look only to Wachovia for payment of the shares of Wachovia Common Stock, cash in lieu of any fractional shares and unpaid dividends and distributions on Wachovia Common Stock deliverable in respect of each share of Commerce Common Stock such stockholder holds as determined pursuant to this Agreement, in each case, without any interest thereon and Wachovia shall make such payment.

3.5. *Anti-Dilution Provisions.* In the event Wachovia changes (or establishes a record date for changing) the number of shares of Wachovia Common Stock issued and outstanding prior to the Effective Date as a result of a stock split, stock dividend, recapitalization or similar transaction with respect to the outstanding Wachovia Common Stock and the record date therefor shall be prior to the Effective Date, the Exchange Ratio shall be proportionately adjusted.

3.6. *Options.* At the Effective Time, each outstanding Commerce Stock Option, whether vested or unvested, shall be converted into an option to acquire, on the same terms and conditions as were applicable under such Commerce Stock Option, the number of shares of Wachovia Common Stock equal to (a) the number of shares of Commerce Common Stock subject to the Commerce Stock Option, multiplied by (b) the Exchange Ratio (such product rounded down to the nearest whole number) (a "*Replacement Option*"), at an exercise price per

share (rounded up to the nearest whole cent) equal to (y) the aggregate exercise price for the shares of Commerce Common Stock which were purchasable pursuant to such Commerce Stock Option divided by (z) the number of full shares of Wachovia Common Stock subject to such Replacement Option in accordance with the foregoing. Notwithstanding the foregoing, each Commerce Stock Option which is intended to be an "incentive stock option" (as defined in Section 422 of the Code) shall be adjusted in accordance with the requirements of Section 424 of the Code. At or prior to the Effective Time, Commerce shall take all action, if any, necessary with respect to the Commerce Stock Plans to permit the replacement of the outstanding Commerce Stock Options by Wachovia pursuant to this Section. At the Effective Time, Wachovia shall assume the Commerce Stock Plans; provided, that such assumption shall be only in respect of the Replacement Options and that Wachovia shall have no obligation with respect to any awards under the Commerce Stock Plans other than the Replacement Options and shall have no obligation to make any additional grants or awards under such assumed Commerce Stock Plans.

ARTICLE IV

CONDITIONS TO THE MERGER

4.1. Consummation of the Merger is subject to the conditions set forth in Article VII of the Merger Agreement.

ARTICLE V

TERMINATION

5.1. This Plan may be terminated, and the Merger may be abandoned prior to the Effective Time as provided in Article VIII of the Merger Agreement.