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(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

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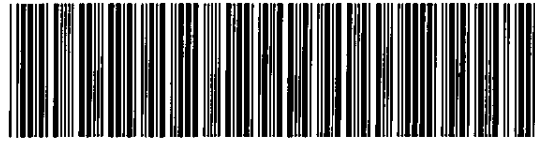
(Business Entity Name)

(Document Number)

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FILED  
08 MAY -8 AM 11:51  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

merger

of 5/8

**INTEROFFICE  
COMMUNICATION**



**OFFICE OF FINANCIAL  
REGULATION**

---

**DATE:** May 8, 2008

**TO:** Karon Beyer, Chief  
Department of State  
Division of Corporations

**FROM:** Bruce Ricca, Office of Financial Regulation

**SUBJECT:** Merger of The Bank Brevard with and into BankFIRST  
and under the title of ~~The Bank Brevard~~ Bank FIRST

---

Please file the attached "Merger Documents" for the above-referenced institutions, using midnight on May 8, 2008, as the effective date for the merger.

Please make the following distribution of certified copies for each merger:

- (1) One copy to: Bruce Ricca  
Office of Financial Regulation  
200 East Gaines Street  
Fletcher Building, Sixth Floor  
Tallahassee, Florida 32399-0371
- (2) One copy to: Mr. John P. Greeley  
Smith Mackinnon, P. A.  
Post Office Box 2254  
Orlando, Florida 32802-2254
- (3) One copy to: Ms. Kathleen Glen  
(uncertified) Federal Deposit Insurance Corporation  
25 Jessie Street at Ecker Square, Suite 2300  
San Francisco, California 94105

Also attached is a check that represents payment of the filing fees, charter tax and certified copies. If you have any questions, please call 410-9528.

**SMITH MACKINNON, PA**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

SUITE 800  
CITRUS CENTER  
255 SOUTH ORANGE AVENUE  
ORLANDO, FLORIDA 32801

POST OFFICE BOX 2254  
ORLANDO, FLORIDA 32802-2254

TELEPHONE (407) 843-7300  
FACSIMILE (407) 843-2448  
E-MAIL: [JPG7300@AOL.COM](mailto:JPG7300@AOL.COM)

JOHN P. GREELEY

May 6, 2008

***Via Federal Express***

Mr. Bruce Ricca  
Florida Office of Financial Regulation  
Division of Banking, Fletcher Building  
200 East Gaines Street  
Tallahassee, FL 32399-0371

RECEIVED  
DEPARTMENT OF  
FINANCIAL SERVICES  
2008 MAY - 7 AM 11:53  
CASHIER'S OFFICE

Re: Merger of The Bank Brevard, Melbourne, Florida with and into BankFIRST, Winter Park, Florida, and with the title of "BankFIRST"

Dear Mr. Ricca:

Enclosed are the following documents in connection with the closing of the merger, transaction:

1. Three manually signed originals of the Restated Articles of Incorporation for BankFIRST (the resulting bank) for filing with the Florida Secretary of State, accompanied by a check in the amount of \$87.50 for the filing fees and the receipt of two certified copies (one for the OFR and one for us).
2. Three manually signed originals of Articles of Merger for the Merger, accompanied by a check in the amount of \$87.50 for the filing fees and the receipt of two certified copies (one for the OFR and one for us).
3. Certification of approval by The Bankshares, Inc. the sole shareholder of the Banks approving the Plan of Merger and Merger Agreement.
4. A manually signed original of the Plan of Merger and Merger Agreement.

As noted in the documents, the parties desire to consummate the transaction at midnight on May 8, 2009.

# OFFICE OF FINANCIAL REGULATION



Having been approved by the Commissioner of the Office of Financial Regulation on April 23, 2008, to merge The Bank Brevard, Melbourne, Brevard County, Florida, and BankFIRST, Winter Park, Orange County, Florida, and being satisfied that the conditions of approval have been met, I hereby approve for filing with the Department of State, the attached "Plan of Merger and Merger Agreement" which contains the Restated Articles of Incorporation of BankFIRST (the resulting bank), so that effective at midnight on May 8, 2008, they shall read as stated herein.

Signed on this 7<sup>TH</sup> day of  
May 2008.

*Linda B. Charity*  
Director, Division of Financial Institutions

**ARTICLES OF MERGER  
OF  
THE BANK BREVARD  
INTO  
BANKFIRST**

**FILED**  
**08 MAY -8 AM 11: 51**  
**SECRETARY OF STATE**  
**TALLAHASSEE, FLORIDA**

The Bank Brevard and BankFIRST do hereby adopt the following Articles of Merger:

**FIRST:** The names of the corporations which are parties to the merger (the "Merger") contemplated by these Articles of Merger are The Bank Brevard and BankFIRST. The surviving corporation in the Merger is BankFIRST, which shall continue to conduct its business following effectiveness of the Merger under the name "BankFIRST."

**SECOND:** The Plan of Merger is set forth in the Plan of Merger and Merger Agreement dated January 22, 2008, by and among BankFIRST and The Bank Brevard. A copy of the Plan of Merger is attached hereto and made a part hereof by reference as if fully set forth herein.

**THIRD:** The Merger shall become effective at Midnight, Winter Park, Florida time, on May 8, 2008.


**FOURTH:** The Merger Agreement was adopted by the sole shareholder of The Bank Brevard on January 22, 2008 and by the sole shareholder of BankFIRST on January 22, 2008.

**FIFTH:** The Restated Articles of Incorporation of BankFIRST shall serve as the Restated Articles of Incorporation of the surviving corporation, until amended thereafter in accordance with applicable law.

IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of April 21, 2008.

THE BANK BREVARD

BANKFIRST

By:   
William T. Brennan  
President and Chief Executive  
Officer

By: \_\_\_\_\_  
Donald J. McGowan  
President and Chief Executive Officer

**ARTICLES OF MERGER  
OF  
THE BANK BREVARD  
INTO  
BANKFIRST**

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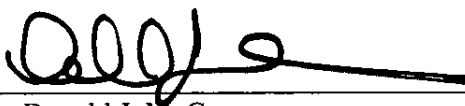
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IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of April 21, 2008.

THE BANK BREVARD

BANKFIRST

By: \_\_\_\_\_  
William T. Brennan  
President and Chief Executive  
Officer

By:  \_\_\_\_\_  
Donald J. McGowan  
President and Chief Executive Officer

## **PLAN OF MERGER AND MERGER AGREEMENT**

**THE BANK BREVARD  
with and into  
BANKFIRST  
under the charter of  
BANKFIRST  
under the title of  
"BANKFIRST"  
("Resulting Bank")**

THIS AGREEMENT made this 22<sup>nd</sup> day of January, 2008, between BANKFIRST (hereinafter referred to as the "Resulting Bank"), a Florida banking corporation organized under the laws of Florida, with its main office located at 1031 West Morse Boulevard, Winter Park, FL 32789, County of Orange, in the State of Florida, with a Capital of \$84,741,425, divided into one share of common stock, each of \$1.00 par value, Surplus and Other Comprehensive Income of \$84,975,404, and Undivided Profits of \$(233,980) as of December 31, 2007, and THE BANK BREVARD (hereinafter referred to as the "Bank"), a Florida banking corporation organized under the laws of Florida, with its main office located at: 300 South Harbor City Blvd., Melbourne, County of Brevard, in the State of Florida, with a Capital of \$48,976,957, divided into one share of common stock of \$5.00 par value, \$48,508,428 Surplus and Other Comprehensive Income of \$471,524 Undivided Profits as of December 31, 2007, and joined in by THE BANKshares, Inc. (hereinafter referred to as the "Company"), a Florida corporation.

WHEREAS, a majority of the entire Board of Directors of the Bank and a majority of the entire Board of Directors of the Resulting Bank have, respectively, approved and made this Agreement and authorized its execution pursuant to the authority given by and in accordance with the provisions of Section 658.40 through 658.45, Florida Statutes, and a majority of the entire Board of Directors of the Company has approved this Agreement, undertaken that the Company shall join in and be bound by it, and authorized the undertakings hereinafter made by the Company.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and agreements herein contained, the parties hereto agree as follows:

### **SECTION 1**

The Bank shall be merged into the Resulting Bank under the charter of the Resulting Bank.

### **SECTION 2**

The name of the Resulting Bank shall be "BANKFIRST." The Resulting Bank will not exercise trust powers.

### SECTION 3

The business of the Resulting Bank shall be that of a state banking corporation. This business shall be conducted by the Resulting Bank at its main office which shall be located at 1031 West Morse Boulevard, Winter Park, Florida 32789.

### SECTION 4

Immediately upon the merger becoming effective, (i) the amount of capital stock of the Resulting Bank shall be \$2.00, divided into two shares of common stock, each of \$1.00 par value, and at the time the Merger shall become effective, the Resulting Bank shall have a Surplus and Other Comprehensive Income of \$133,483,836, and Undivided Profits of \$237,544, which when combined with the capital and surplus will be equal to the combined capital structures of all of the merging or constituent banks as stated in the preamble of this Agreement, adjusted, however, for normal earnings and expenses between December 31, 2007 and the effective time of the Merger. Preferred stock shall not be issued by the Resulting Bank.

### SECTION 5

All assets of the Bank and the Resulting Bank, as they exist at the effective time of the Merger shall pass to and vest in the Resulting Bank without any conveyance or other transfer; and the Resulting Bank shall be considered the same business and corporate entity as each constituent bank with all the rights, powers and duties of each constituent bank and the Resulting Bank shall be responsible for all the liabilities of every kind and description, of each of the Bank and the Resulting Bank existing as of the effective time of the Merger.

### SECTION 6

The Bank shall contribute to the Resulting Bank acceptable net assets of at least \$48,979,957, and having an estimated fair value as shown on the books of the financial institution, over and above its liability to its creditors, of at least \$48,979,957, adjusted, however, for normal earnings and expenses between December 31, 2007 and the effective time of the Merger, and for allowance of cash payments permitted under this Agreement.

At the effective time of the Merger, the Resulting Bank shall have on hand acceptable net assets of at least \$84,741,425, and having an estimated fair value, over and above its liability to its creditors, of at least \$84,741,425, adjusted, however, for normal earnings and expenses of the Bank and the Resulting Bank between December 31, 2007 and the effective time of the Merger.



## SECTION 7

At the effective time of the Merger, each outstanding share of common stock of the Bank, \$5.00 par value, in exchange for the assets contributed by the Bank to the Resulting Bank, shall be converted into one share of common stock of the Resulting Bank.

Outstanding certificates representing shares of the common stock of the Bank shall, at the effective time of the Merger, represent shares of the common stock of the Resulting Bank, and such certificates shall be exchanged by the holder thereof, after the Merger becomes effective, for new certificates for the appropriate number of shares bearing the name of the Resulting Bank.

## SECTION 8

Upon the Merger becoming effective, the then outstanding shares of the Company's Common Stock and the Bank's Common Stock shall continue to remain outstanding shares of the Company and the Bank, respectively.

## SECTION 9

The following named persons shall serve as the Board of Directors and executive officers of the Resulting Bank until the next annual meeting of shareholders or until such time as their Successors have been elected and have qualified:

A. Directors:

Name

James T. Barnes

William T. Brennan

Dale A. Dettmer

Allan E. Keen

Donald J. McGowan

Ralph V. Hadley, III

Robert Goldstein

Mark G. Merlo

Angela Abbott Smith

Joseph Flammio

James Katehakis

Michael W. Poole

Craig M. McAllaster

George Kanistras

Jacqueline L. Bradley

Richard O. Baldwin, Jr.

Warren O. Griffin

Hubert Normile Jr.

B. Executive Officers:

<u>Name</u>	<u>Position</u>
James T. Barnes, Jr.	Chairman of the Board
William T. Brennan	Vice Chairman of the Board
Dale A. Dettmer	Vice Chairman of the Board
Allan E. Keen	Vice Chairman of the Board
Donald J. McGowan	President and Chief Executive Officer
Thomas P. Abelman	Executive Vice President, Chief Operating Officer, and Chief Financial Officer
Anne K. Fray	Executive Vice President and Senior Lender
David A. Felker	Executive Vice President/Area President
J. William Arrowsmith	Executive Vice President/Area President

SECTION 10

In the event that:

(a) The number of outstanding shares of Common Stock of the Bank voting against the Merger, or in respect of which written notice is given purporting to dissent from the Merger, makes consummation of the Merger inadvisable in the opinion of either the Board of Directors of the Bank or the Board of Directors of the Resulting Bank; or

(b) Any action, suit, proceeding or claim has been instituted, made or threatened relating to the proposed Merger which shall make consummation of the Merger inadvisable in the opinion of either the Board of Directors of the Bank or the Board of Directors of the Resulting Bank; or

(c) Any action, consent, or approval, governmental or otherwise, which is, or in the opinion of counsel for the Bank may be, necessary to permit or enable the Resulting Bank, upon and after the Merger, to conduct all or any part of the business activities being conducted by the Bank as of the time of the Merger, in the manner in which such activities and business are then conducted, shall not have been obtained; or

(d) The Merger has not been consummated by September 30, 2008 (unless extended by the mutual consent of the parties hereto); or

(e) For any other reason consummation of the Merger is inadvisable in the opinion of the Board of Directors of both the Bank and the Resulting Bank, then this Agreement may be terminated at any time before the Merger becomes effective by written notice by either the Bank or the Resulting Bank to the other of them, authorized or approved by resolution adopted by the Board of Directors of the one of them giving such notice. Upon termination by written notice as provided in this Section, this Agreement shall be void and of no further effect, and there shall be no liability by reason of this Agreement or the termination thereof on the part of either the Bank, the Resulting Bank, the Company or the directors, officers, employees, agents or shareholders of any of them.

#### SECTION 11

This Agreement shall be ratified and confirmed by the affirmative vote of the shareholders of each of the constituent banks owning at least a majority of its capital stock outstanding, at a meeting to be held on the call of the Directors or as otherwise provided by the bylaws, and the Merger shall become effective at the time specified in a Certificate to be issued by the Florida Office of Financial Regulation, pursuant to Section 658.45, Florida Statutes, under the seal of his office, approving the Merger.

#### SECTION 12

This Agreement is also subject to the following terms and conditions:

(a) The Florida Office of Financial Regulation and the Federal Deposit Insurance Corporation shall have approved this Agreement and the Merger and shall have issued all other necessary authorizations and approvals for the Merger, including a Certificate of Merger, and any statutory waiting period shall have expired.

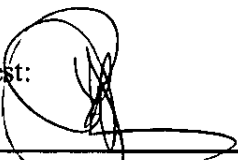
#### SECTION 13

Each of the Bank and the Resulting Bank hereby invites and authorizes the Florida Office of Financial Regulation to examine each of such bank's records in connection with the Merger.

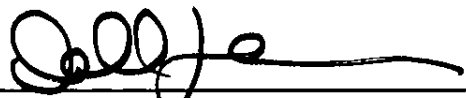
#### SECTION 14

Effective as of the time this Merger shall become effective as specified in the "Certificate of Merger" to be issued by the Florida Office of Financial Regulation, the Articles of Incorporation of the Resulting Bank shall consist of the Articles of Incorporation of the Resulting Bank as in effect immediately prior to the time this Merger shall become effective.

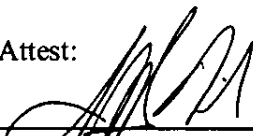
IN WITNESS WHEREOF, the undersigned have signed this Plan of Merger and Merger Agreement effective as of the date and year first set forth above.


Attest:   
\_\_\_\_\_  
Thomas Abelman  
Executive Vice President

**BANKFIRST**

By:   
\_\_\_\_\_  
Donald J. McGowan  
President and Chief Executive Officer

**THE BANK BREVARD**

Attest:   
\_\_\_\_\_  
Jeffrey S. Dick  
Executive Vice President

By:   
\_\_\_\_\_  
William T. Brennan  
President and Chief Executive Officer

**RESTATED**  
**ARTICLES OF INCORPORATION**  
**OF**  
**BANKFIRST**

BankFIRST, whose original Articles of Incorporation were filed by the Florida Department of State on October 27, 1988 and amended on June 16, 1989, November 6, 1997 and August 26, 1999, does hereby amend and restate its Articles of Incorporation by filing the following Restated Articles of Incorporation, pursuant to Section 607.1007, of the Florida Business Corporation Act (the "Act").

**ARTICLE I**

**Name**

The name of the Corporation is BankFIRST.

**ARTICLE II**

**Duration**

The Corporation shall exist perpetually, commencing October 27, 1988.

**ARTICLE III**

**Purpose**

The general nature of the business to be transacted by this Corporation shall be that of a general commercial banking business with all the rights, powers, and privileges granted and conferred by the Florida Financial Institutions Codes, regulating the organization, powers, and management of banking corporations.

**ARTICLE IV**

**Capital Stock**

A. **Number and Class of Shares Authorized; Par Value**

The Corporation shall have the authority to issue only one class of stock which shall consist of 3,000,000 shares of common stock having a par value of \$1.00 per share and shall be designated as "Common Stock."

B. No Preemptive Rights

No holder of shares of any class of the capital stock of the Corporation shall have as a matter of right any preemptive or preferential right to subscribe for, purchase, receive, or otherwise acquire any part of any new or additional issue of stock of any class, whether now or hereafter authorized, or any bonds, debentures, notes, or other securities of the Corporation, whether or not convertible into shares of stock of the Corporation.

C. Common Stock Voting Rights.

Each record holder of Common Stock shall be entitled to one vote for each share held. Holders of Common Stock shall have no cumulative voting rights in any election of directors of the Corporation.

ARTICLE V

Registered Office and Agent; Principal Place of Business

The street address of the registered office of the Corporation shall be 1031 West Morse Boulevard, Winter Park, Florida 32789, and the registered agent of the Corporation at such address shall be Thomas P. Abelmann. The principal place of business and the mailing address of the Corporation shall be 1031 West Morse Boulevard, Winter Park, Florida 32789. The Corporation may change its registered agent, the location of its registered office, its principal place of business, or its mailing address, or any of the foregoing, from time to time without amendment of these Restated Articles of Incorporation.

ARTICLE VI

Directors

The number of Directors of this Corporation shall be the number from time to time fixed by the shareholders or by the Directors, in accordance with the provisions of the bylaws of the Corporation, but at no time shall the number of Directors be less than five. 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 of this Corporation by not more than two and appoint persons to fill the resulting vacancies.

ARTICLE VII

Bylaws

The power to adopt, alter, amend or repeal bylaws shall be vested in the Board of Directors.

ARTICLE VIII

Amendment of Restated Articles of Incorporation

These Restated Articles of Incorporation may be amended in the manner from time to time provided by law and any right conferred upon the shareholders by any provision of these Restated Articles of Incorporation is hereby made subject to this reservation.

CERTIFICATE

The foregoing Restated Articles of Incorporation were duly adopted by the Board of Directors of the Corporation in accordance with the Act on April 21, 2008 and by the holders of the shares of Common Stock, being the sole shares entitled to vote thereon, in accordance with the Act, on April 21, 2008, and the number of votes cast for the foregoing Restated Articles of Incorporation was sufficient for approval by such holders of Common Stock.

IN WITNESS WHEREOF, the undersigned President and Chief Executive Officer of this Corporation has executed these Restated Articles of Incorporation on the 21<sup>st</sup> day of April, 2008.

BANKFIRST

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

Donald J. McGowan

President and Chief Executive Officer

STATE OF FLORIDA       )  
COUNTY OF ORANGE    )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of April, 2008, by Donald J. McGowan, President and Chief Executive Officer, of BankFIRST, a Florida corporation, on behalf of the corporation.

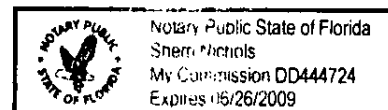
\_\_\_\_\_  
Sherri Nichols

Printed Name:

Notary Public, State of Florida

Personally Known ☒ or Produced Identification ☐

Type of Identification Produced \_\_\_\_\_



## CERTIFICATE OF SOLE SHAREHOLDER

The undersigned, as the sole shareholder of BankFIRST and The Bank Brevard, does hereby authorize, adopt and approve the Plan of Merger and Merger Agreement dated as of January 22, 2008 between BankFIRST and The Bank Brevard, and the merger of The Bank Brevard with and into BankFIRST thereunder.

IN WITNESS WHEREOF, this Certificate of Sole Shareholder is signed as of January 22, 2008.

THE BANKSHARES, INC.

By: 

Name: THOMAS P. ABELMAN

Title: CEO & TREASURER



**WRITTEN CONSENT OF THE BANKSHARES, INC.  
AS THE SOLE SHAREHOLDER OF BANKFIRST**

The undersigned, The Bankshares, Inc., as the sole shareholder of BankFIRST (the "Bank"), does hereby adopt the following resolutions as the actions of the sole shareholder without a meeting and pursuant to the applicable provisions of Delaware law:

**I.**

**APPROVAL OF RESTATED ARTICLES OF INCORPORATION**

BE IT RESOLVED, that the Restated Articles of Incorporation of the Bank in the form of that attached to this Written Consent is hereby authorized, adopted and approved.

**II.**

**OMNIBUS RESOLUTION**

BE IT RESOLVED, that the officers of the Bank are hereby authorized to take any and all other action that may be necessary in order to fulfill the intent of the foregoing resolutions.

This Written Consent has been signed as of April 21, 2008.

THE BANKSHARES, INC.

By: 

THOMAS P. ABDELMASS  
As Its: CFO & TREASURER