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## CBG FLORIDA REIT CORP.

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G. Goulette MAY 21 2007

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
CBG FLORIDA REIT CORP.**

**CBG FLORIDA REIT CORP.**, a corporation organized and existing under the laws of the State of Florida (the "*Corporation*"), hereby certifies as follows pursuant to Section 1007 of the Florida Business Corporation Act (as amended from time to time, the "*FBCA*"):

1. The name of the Corporation is *CBG Florida REIT Corp.* The Corporation was originally formed by the filing of its original Articles of Incorporation with the Secretary of State of the State of Florida on March 4, 2002 (as heretofore amended, the "*Original Articles of Incorporation*").

2. These Amended and Restated Articles of Incorporation (the "*Articles of Incorporation*") integrate, amend and restate in their entirety the provisions of the Original Articles of Incorporation, and were duly adopted by the Board of Directors on May 9, 2007 and approved by a number of shares of common stock sufficient for approval on May 10, 2007 in accordance with the provisions of Sections 1003 and 1004 of the FBCA.

3. These Articles of Incorporation shall be effective on May 22, 2007

4. The text of the Original Articles of Incorporation is hereby amended and restated in its entirety to provide as follows:

**ARTICLE I**

**Name**

The name of the corporation (the "*Corporation*") is *CBG Florida REIT Corp.*

**ARTICLE II**

**Principal Office, Registered Office, and Agent**

The post office address of the Corporation's principal office in the State of Florida is 201 East Pine Street, Orlando, Florida 32801 and the name and address of the registered agent of this Corporation in the State of Florida is CT Corporation System, 1200 South Pine Island Road, Plantation, Florida 33324.

**ARTICLE III**

**Purpose**

3.1 The purposes for which the Corporation is formed are:

(a) To engage in the business of a real estate investment trust ("*REIT*") within the meaning of Section 856 of the Internal Revenue Code of 1986, as amended (the "*Code*").

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(b) issuing (i) the Class A Preferred Stock to investors in the Offering, (ii) Common Stock to Colonial Bank or any Affiliate of Colonial Bank, (iii) one or more series of Parity Stock subject to the limitations provided in those Articles of Incorporation and (iv) up to 1,500 shares of Class B Preferred Stock;

(c) acquiring, selling and holding Eligible Assets;

(d) entering into the Participation Agreement and Management Agreement with Colonial Bank, such other Asset Documentation as the Board of Directors from time to time shall determine is consistent with the other provisions of these Articles of Incorporation, and the Joinder Agreement, and making the pledge and other agreements provided therein; and

(e) performing functions necessary or incidental thereto.

The Corporation may not engage in any business or activity that is inconsistent with its purposes.

## **ARTICLE IV**

### **Capitalization**

#### **4.1 CAPITAL STOCK**

Section 4.1.1. **Authority to Issue Stock.** The Board of Directors of the Corporation (the "Board of Directors") is hereby empowered to authorize the issuance from time to time of shares of Capital Stock (as defined in Section 4.2), whether now or hereafter authorized, for such consideration as the Board of Directors may deem advisable, subject to such limitations as may be set forth in these Articles of Incorporation, in the By-Laws of the Corporation as they may be amended from time to time (the "By-Laws") or in the FBCA.

Section 4.1.2. **Shares and Par Value.** The total number of shares of all classes of Capital Stock that the Corporation shall have authority to issue is 1,006,500 shares, consisting of (i) 5,000 shares of common stock having a par value of one cent (\$.01) per share (the "Common Stock"), and (ii) 1,001,500 shares of preferred stock having a par value of five hundred dollars (\$500.00) per share (the "Preferred Stock")

Section 4.1.3. **Preemptive Rights.** No holder of shares of Capital Stock shall, as such holder, have any preemptive or other right to purchase or subscribe for any shares of Capital Stock that the Corporation may issue or sell.

#### **4.2 DEFINITIONS**

Unless the context otherwise requires, the terms defined in this Article IV shall have, for all purposes of these Articles of Incorporation, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Acquire" shall mean the acquisition of Beneficial Ownership of shares of Capital Stock by any means including, without limitation, the exercise of any rights under any option, warrant, convertible security, pledge or other security interest or similar right to acquire

shares, but shall not include the acquisition of any such rights unless, as a result, the acquiror would be considered a Beneficial Owner, as defined below. The term "Acquisition" shall have the correlative meaning.

"Affiliate" shall have the meaning set forth in Rule 405 under the Securities Act.

"Asset Documentation" means the Participation Agreement, the Management Agreement, and any other agreements entered into by the Corporation after the date of consummation of the Offering relating to the conveyance of assets to the Corporation (including in the form of participation interests), the representations and warranties made by the grantor or transferor in connection with any such conveyance, the underwriting and servicing of such assets, and related matters.

"Beneficial Ownership" shall mean ownership of Capital Stock by a Person who is or would be treated as an actual owner of such shares of Capital Stock either directly or constructively through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code (except where expressly provided otherwise). The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

"Business Combination" means any merger, consolidation, statutory share exchange, sale or transfer of all or substantially all of an entity's assets or other form of business combination that is either effected by the Corporation or of which the Corporation is the subject; provided, however, that the term "Business Combination" shall not include any transaction in which the holders of shares of Class A Preferred Stock receive cash or property (other than Substitute Preferred Stock) for their shares.

"Business Day" means any day other than a Saturday, Sunday or any other day on which banks in New York, New York, Orlando, Florida or Montgomery, Alabama are generally required or authorized by law to be closed.

"Capital Stock" shall mean all classes or series of capital stock of the Corporation including, without limitation, Common Stock and Preferred Stock.

"Class A Preferred Stock" shall have the meaning set forth in Section 4.4.1.

"Class B Preferred Stock" shall have the meaning set forth in Section 4.5.1.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Colonial" means The Colonial BancGroup, Inc., a Delaware corporation headquartered in Montgomery, Alabama.

"Colonial Bank" means Colonial Bank, National Association, a national association headquartered in Montgomery, Alabama.

"Colonial Preferred Stock" shall have the meaning set forth in Section 4.4.7(a).

"Common Stock" shall have the meaning set forth in Section 4.1.2.

"Comparable Treasury Issue" means the United States Treasury security selected by the Independent Investment Banker as having a maturity comparable to the term remaining to May 15, 2012 that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of perpetual preferred securities having similar terms as the Class A Preferred Stock with respect to the payment of dividends and distributions of assets upon liquidation, dissolution or winding up of the issuer of such preferred securities.

"Comparable Treasury Price" means, with respect to any redemption date for the Class A Preferred Stock, the average of the Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest of such Reference Treasury Dealer Quotations, or if the Independent Investment Banker obtains fewer than five such Reference treasury Dealer Quotations, the average of all such quotations.

"Conditional Exchange" shall have the meaning set forth in Section 4.4.7(a).

"Consent Dividends" shall have the meaning set forth in Section 4.6.1.

"Depository Company" shall have the meaning set forth in Section 4.4.6(d).

"Dividend Payment Date" shall have the meaning set forth in Section 4.4.3(a).

"Dividend Period" shall have the meaning set forth in Section 4.4.3(a).

"DTC" means The Depository Trust Company, together with its successors and assigns.

"Eligible Assets" means Eligible Mortgage Assets and Permitted Investments.

"Eligible Mortgage Assets" means the mortgage loans or interests therein owned by the Corporation as of March 31, 2007 and other assets from time to time acquired by or contributed to the Corporation:

(i) which are (a) first or second lien closed end home equity loans, (b) open end home equity loans or lines of credit ("Unfunded Eligible Assets"), (c) mortgage loans on single family or multi-family residences, (d) commercial mortgage loans or (e) other real estate assets, in each case, with respect to real estate located in the United States of America;

(ii) which will be serviced and maintained in accordance with the Asset Documentation;

(iii) which are not delinquent as of the applicable cut-off date or transfer date;

(iv) the acquisition, maintenance and servicing of which will not (in itself or in connection with any of the Corporation's other assets):

(a) cause the Corporation to be an "investment company" that is required to register under the Investment Company Act; or

(b) cause the Corporation not to qualify as a REIT under the Code; and

(v) in the case of Unfunded Eligible Assets, as to which at the time of acquisition of such Unfunded Eligible Assets, the Company owns Permitted Investments of the type described in clause (iv) of the definition thereof and has in place lines of credit available to it, at all times, that would provide sufficient borrowings or readily liquid assets to fund at least 10% of the total then outstanding unfunded commitments with respect to all such Unfunded Eligible Assets.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

**"Exchange Event"** means (i) Colonial Bank becoming "undercapitalized" under the then current "prompt corrective action" regulations of a Primary Regulator, (ii) Colonial Bank being placed into conservatorship or receivership or (iii) a Primary Regulator, in its sole discretion, directing such exchange in anticipation of Colonial Bank becoming "undercapitalized" in the near term or taking supervisory action that limits the payment of dividends, as applicable, by Colonial Bank, and in connection therewith, directs such exchange.

**"FBCA"** means the Florida Business Corporation Act, as amended from time to time.

**"Five-Year Date"** means the Dividend Payment Date in May 2012 and the Dividend Payment Date in May of each fifth succeeding year.

**"FFO" or "Funds from Operations"** means net income (computed in accordance with U.S. generally accepted accounting principles), excluding gains (or losses) from sales of property or other assets, plus depreciation and amortization, and after adjustments for unconsolidated partnerships and joint ventures.

**"Independent Investment Banker"** means an independent investment banking institution of national standing appointed by the Corporation.

**"Initial Issue Date"** (i) with respect to any Common Stock, shall mean the date that shares of Common Stock are first issued by the Corporation or (ii) with respect to any series of Preferred Stock, shall mean the date that shares of such series of Preferred Stock are first issued by the Corporation.

**"Investment Company Act"** means the Investment Company Act of 1940, as amended.

**"Investment Company Act Event"** means, with respect to the Class A Preferred Stock, when the Corporation determines, based upon receipt of an opinion of counsel, that there is a significant risk that the Corporation will be considered an "investment company" that is required to be registered under the Investment Company Act, as a result of a change in applicable laws, regulations or related interpretations.

**"Joinder Agreement"** means the Joinder Agreement, dated as of November 30, 2004, between the Corporation and the Federal Home Loan Bank of Atlanta and entered into by the Corporation in connection with the Advances and Security Agreement, as amended as of April 15,

2005, between Colonial Bank and the Federal Home Loan Bank of Atlanta.

*"Junior Stock"* means the Corporation's Common Stock and any other class or series of stock of the Corporation hereafter authorized over which Class A Preferred Stock or Class B Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

*"Liquidation Value"* shall have the meaning set forth in Section 4.3.1.

*"LIBOR Business Day"* means the day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London.

*"LIBOR Determination Date"* means, as to each Dividend Period, the date that is two LIBOR Business Days prior to the first day of such Dividend Period.

*"Management Agreement"* means the Amended and Restated Management Agreement, dated as of May 22, 2007 (and as from time-to-time further amended in accordance with these Articles of Incorporation), by and between Colonial Bank and the Corporation.

*"Offering"* means the offer and sale of the Corporation's Class A Preferred Stock pursuant to the Offering Circular, dated May 15, 2007.

*"Page LIBOR 01"* means the display page of Router's screen designated as LIBOR 01 (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying rates comparable to 3-Month USD LIBOR).

*"Parity Stock"* means any other class or series of stock of the Corporation that ranks on a par with Class A Preferred Stock or Class B Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation and entitles the holders thereof to voting rights that are substantially the same as those set forth in Section 4.4.6 for the Class A Preferred Stock (and, as provided in Section 4.4.6, are shared with the holders of Class A Preferred Stock and other Parity Stock from time-to-time outstanding), but does not include the Class B Preferred Stock.

*"Participation Agreement"* means the Amended and Restated Participation Agreement, dated as of May 22, 2007 (and as from time-to-time further amended in accordance with these Articles of Incorporation), by and between Colonial Bank and the Corporation.

*"Permitted Investments"* means one or more of the obligations or securities listed below:

- (i) obligations of, or guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States of America;
- (ii) repurchase agreements on obligations described in clause (i) of this definition of "Permitted Investments"; *provided* that the unsecured obligations of the party agreeing to repurchase such obligations have, at the time at which the repurchase agreement is entered into, one of the two highest short-term debt ratings of each of the Rating

Agencies; and *provided further* that such repurchaser's unsecured long-term debt has, at the time at which the repurchase agreement is entered into, one of the two highest unsecured long-term debt ratings of each of the Rating Agencies;

(iii) federal funds, certificates of deposit, time deposits and bankers' acceptances of any bank or trust company incorporated under the law of the United States of America or any state; *provided* that the debt obligations of such bank or trust company (or, in the case of the principal bank in a bank holding company system, debt obligations of the bank holding company) at the date of acquisition thereof have one of the two highest short-term debt ratings of each of the Rating Agencies and unsecured long-term debt has one of the two highest unsecured long-term debt ratings of each of the Rating Agencies;

(iv) Federal funds, certificates of deposit, time deposits, demand deposits and bankers' acceptances of Colonial Bank;

(v) obligations of, or obligations guaranteed by, any state of the United States of America or the District of Columbia; *provided* that such obligations at the date of acquisition thereof shall have one of the two highest long-term debt ratings available for such securities from each of the Rating Agencies;

(vi) commercial paper of any corporation incorporated under the laws of the United States of America or any state thereof, which on the date of acquisition has the highest commercial paper rating of each of the Rating Agencies; *provided* that the corporation has unsecured long-term debt that has one of the two highest unsecured long-term debt ratings of each of the Rating Agencies;

(vii) securities (other than stripped bonds or stripped coupons) bearing interest or sold at a discount that are issued by any corporation incorporated under the laws of the United States of America or any state thereof and have one of the two highest long-term unsecured ratings available for such securities from each of the Rating Agencies; and

(viii) any other category of investments that satisfies the Rating Agency Condition and is approved by the Board of Directors;

*provided, however*, that (x) any of the investments listed above will not be Permitted Investments to the extent that investment therein would cause the outstanding principal amount of Permitted Investments that are then held by the Corporation to exceed 20% of the aggregate principal amount of all Eligible Assets and (y) any payments received with respect to any of the investments listed above must not be subject to withholding tax of any jurisdiction assuming compliance with standard tax documentation requirements, unless the Corporation is entitled to a full gross-up (on an after-tax basis) with respect to any such withholding tax. In no event will an instrument be a Permitted Investment if the instrument evidences a right to receive only interest payments with respect to the obligations underlying such instrument or has been purchased at a price greater than the outstanding principal balance of such instrument.

"Person" shall mean an individual, limited liability company, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that



term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

*"Preferred Stock"* shall have the meaning set forth in Section 4.1.2.

*"Primary Regulator"* means the Office of the Comptroller of the Currency or such successor regulator as may become Colonial Bank's primary regulator.

*"Rating Agencies"* means, at any time, Standard & Poor's Rating Services, a Division of the McGraw-Hill Corporation, Inc., Moody's Investors Service, Inc. and Fitch, Inc., but only in the case of each such agency if it is rating the relevant security, including Class A Preferred Stock at the relevant time or, if none of them is providing a rating for the relevant security, including the Class A Preferred Stock at such time, then any "nationally recognized statistical rating organization" as the phrase is defined for purposes of Rule 436(g)(2) under the Securities Act, that is rating such relevant security.

*"Rating Agency Condition"* means written notice from each Rating Agency confirming that the proposed action, change or modification will not result in a reduction of the rating then currently assigned by such Rating Agency to the Class A Preferred Stock.

*"Rating Agency Event"* means when the Corporation reasonably determines that any Rating Agency amends, clarifies or changes the criteria it uses to assign equity credit to securities such as the Class A Preferred Stock, which amendment, clarification or change results in (i) the shortening of the length of time the Class A Preferred Stock is assigned a particular level of equity credit by that Rating Agency as compared to the length of time they would have been assigned that level of equity credit by that Rating Agency or its predecessor on the issue date of the Class A Preferred Stock, or (ii) the lowering of the equity credit (including up to a lesser amount) assigned to the Class A Preferred Stock by that Rating Agency as compared to the equity credit assigned by that rating agency or its predecessor on the issue date of the Class A Preferred Stock.

*"Reference Treasury Dealer"* means each of three primary U.S. government securities dealers (each a *"Primary Treasury Dealer"*), as specified by the Corporation; provided that if any *Primary Treasury Dealer* as specified by the Corporation ceases to be a *Primary Treasury Dealer*, the Corporation will substitute for such *Primary Treasury Dealer* another *Primary Treasury Dealer* and if the Corporation fails to select a substitute within a reasonable period of time, then the substitute will be a *Primary Treasury Dealer* selected by the Independent Investment Banker after consultation with the Corporation.

*"Reference Treasury Dealer Quotations"* means, with respect to the Reference Treasury Dealer and any redemption date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed, in each case, as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 P.M., New York City time, on the third Business Day preceding such redemption date.

*"Regulatory Capital Event"* means, with respect to the Class A Preferred Stock, when the Corporation determines that there is more than an insubstantial risk that the Class A Preferred Stock will no longer be of a type that constitutes Tier 1 capital of (i) Colonial Bank for purposes of the capital adequacy regulations issued by the Primary Regulator applicable to national banks or (ii) Colonial for purposes of the capital adequacy guidelines issued by the Board of Governors of the Federal Reserve System applicable to bank holding companies, in either case as a

result of a change in applicable laws, regulations or related interpretations after issuance of the Class A Preferred Stock.

*"Regulatory Directive"* shall have the meaning set forth in Section 4.4.7(b)

*"Restriction Termination Date"* shall mean the first day on which the Corporation determines pursuant to Section 5.1 of these Articles of Incorporation that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify as a REIT.

*"REIT"* means a real estate investment trust within the meaning of Section 856 under the Code.

*"Securities Act"* means the Securities Act of 1933, as amended.

*"Senior Stock"* means Preferred Stock ranking senior to the Class A Preferred Stock or Class B Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

*"Substitute Preferred Stock"* means a class or series of equity securities of a Successor Entity having the preferences, limitations and relative rights in its articles or certificate of incorporation or other constituent documents that are equivalent in all material respects to those set forth in Article IV of these Articles of Incorporation.

*"Successor Entity"* means a corporation designated by the Board of Directors of the Corporation (i) that is the surviving, resulting or receiving corporation, as applicable, in any Business Combination, (ii) the securities of which are received in a Business Combination by some or all holders of the Corporation voting shares or (iii) that the Board of Directors of the Corporation determines to be an acquirer of the Corporation in a Business Combination.

*"Tax Event"* means the receipt by the Corporation of an opinion of a nationally recognized law or accounting firm experienced in such matters to the effect that, as a result of:

- (i) any amendment to, clarification of, or change (including any announced prospective change) in the laws or treaties (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein affecting taxation;
- (ii) any judicial decision, official administrative pronouncement, ruling, regulatory procedure, notice or announcement (including any official administrative notice or announcement of intent to adopt such procedures or regulations) (*"Administrative Action"*);
- (iii) any amendment to, clarification of, or change in the official position or the interpretation of such Administrative Action or judicial decision or any official interpretation or pronouncement that provides for a position with respect to such Administrative Action or judicial decision that differs from the theretofore generally accepted position, in each

case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification or change is made known, which amendment, clarification or change is effective or such pronouncement or decision is announced on or after the date of issuance of the Class A Preferred Stock; or

- (iv) any inability to continue to qualify as a REIT for U.S. federal income tax purposes,

there is more than an insubstantial risk that (a) dividends paid or to be paid by the Corporation with respect to the Class A Preferred Stock are not, or will not be, fully deductible for U.S. federal income tax purposes or (b) the Corporation is, or will be, subject to more than a *de minimis* amount of other taxes, duties or other governmental charges.

"3-Month USD LIBOR" means, with respect to any Dividend Period, a rate determined on the basis of the offered rates for three-month U.S. dollar deposits of not less than a principal amount equal to that which is representative for a single transaction in such market at such time, commencing on the first day of such Dividend Period, which appears on Page LIBOR 01 as of approximately 11:00 A.M., London time, on the LIBOR Determination Date for such Dividend Period. If on any LIBOR Determination Date no rate appears on Page LIBOR 01 as of approximately 11:00 A.M., London time, the Corporation or another affiliate of Colonial on behalf of the Corporation will on such LIBOR Determination Date request four major reference banks in the London interbank market selected by the Corporation to provide the Corporation with a quotation of the rate at which three-month deposits in U.S. dollars, commencing on the first day of such Dividend Period, are offered by them to prime banks in the London interbank market as of approximately 11:00 A.M., London time, on such LIBOR Determination Date and in a principal amount equal to that which is representative for a single transaction in such market at such time. If at least two such quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations as calculated by the Corporation. If fewer than two quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted as of approximately 11:00 A.M., New York time, on the first day of such Dividend Period by three major banks in New York, New York selected by the Corporation for loans in U.S. dollars to leading European banks, for a three-month period commencing on the first day of such Dividend Period and in a principal amount of not less than \$1,000,000.

"Transfer" shall mean any sale, transfer, gift, assignment, devise or other disposition of Capital Stock or the right to vote or receive dividends on Capital Stock (including the granting of any option or entering into any agreement for the sale, transfer or other disposition of Capital Stock or the right to vote or receive dividends on Capital Stock, whether a voluntary or involuntary, whether of record, constructively or beneficially and whether by operation of law or otherwise.

"Treasury Rate" means the rate per year equal to the quarterly equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date. The Treasury Rate will be calculated on the third Business Day preceding the redemption date.

#### **4.3 DESIGNATION OF CLASSES OR SERIES OF PREFERRED STOCK**

(a) In addition to the Class A Preferred Stock and the Class B Preferred Stock, the preferences, limitations and relative rights of which are set forth in Sections 4.4 and 4.5, respectively, shares of Preferred Stock may be issued in one or more classes or series from time to time by the Board of Directors, and the Board of Directors is expressly authorized to fix by resolution or resolutions the designations and the preferences, limitations and relative rights and the qualifications, limitations and restrictions thereof, of the shares of each class or series of Preferred Stock, in accordance with Section 607.0602 of the FBCA. All shares of each series must have preferences, limitations and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, of those of other series of the same class.

(b) Notwithstanding the foregoing or any other provisions of these Articles of Incorporation, the Board of Directors may create and issue additional classes or series of Preferred Stock only if each such additional class or series is Parity Stock and only if, as to each such additional class or series, (i) after giving effect to the issuance of any such Parity Stock, the *pro forma* net book value of the Corporation's assets (after giving effect to any assets acquired by the Corporation in connection with the issuance of such Parity Stock ("New Assets")) will equal or exceed 1.5 times the sum of the aggregate liquidation preference of the Preferred Stock then outstanding and any such shares of Parity Stock that the Corporation proposes to issue, (ii) after giving effect to such issuance, the Corporation's *pro forma* FFO for the four fiscal quarters beginning with the fiscal quarter in which such Parity Stock is proposed to be issued (calculated (A) assuming that such proposed shares of Parity Stock are issued and that, if outstanding or proposed new shares of Parity Stock bear dividends based on a floating rate, the applicable dividend rate will not change during such four fiscal quarters from the rate in effect on the applicable date of determination and (B) as adjusted to reflect any New Assets) equals or exceeds 150% of the amount that would be required to pay full annual dividends on all the Preferred Stock then outstanding and any such shares of Parity Stock that the Corporation proposes to issue, and (iii) the Corporation is not otherwise in breach of any of its covenants set forth in these Articles of Incorporation.

#### **4.4 FIXED-TO-FLOATING EXCHANGEABLE NON-CUMULATIVE PERPETUAL CLASS A PREFERRED STOCK**

4.4.1. **Designation.** There is hereby created a class and series of Preferred Stock, issued in a single series, designated as the Fixed-to-Floating Rate Perpetual Non-Cumulative Preferred Stock Class A, Series A (hereinafter referred to as the "*Class A Preferred Stock*"). Each share of Class A Preferred Stock shall be identical in all respects to every other share of Class A Preferred Stock. Class A Preferred Stock will rank equally with Class B Preferred Stock and other Parity Stock, if any, and will rank senior to Junior Stock, with respect to the payment of dividends and, except as limited by Section 4.5.4(a), the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

4.4.2. **Number of Shares.** The number of authorized shares of Class A Preferred Stock shall be 300,000. Such number may from time to time be increased (but not in excess of the total number of authorized shares of Preferred Stock) or decreased (but not below the number of shares of Class A Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the

FBCA stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Class A Preferred Stock.

#### **4.4.3. Dividends.**

(a) **Rate.** Holders of Class A Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$1,000 per share of Class A Preferred Stock, and no more, payable (i) semi-annually on May 15 and November 15 of each year, commencing on November 15, 2007 to and including May 15, 2012 and (ii) quarterly thereafter on each February 15, May 15, August 15 and November 15, commencing August 15, 2012, or, if any such day is not a Business Day, the next Business Day (each, "*Dividend Payment Date*"). The period from and including the Initial Issue Date of the Class A Preferred Stock or the immediately preceding Dividend Payment Date, as the case may be, to but excluding the next Dividend Payment Date is a "*Dividend Period*." Dividends accrue in each Dividend Period from the most recent Dividend Payment Date, whether or not dividends are paid with respect to any prior Dividend Period. Dividends on each share of Class A Preferred Stock will accrue on the liquidation preference of \$1,000 per share (i) for each Dividend Period ending prior to or in May 2012 at a rate *per annum* equal to 7.114%, and (ii) thereafter for each related Dividend Period at a rate *per annum* equal to 3-Month USD LIBOR plus 2.02%. The record date for the payment of dividends, if declared, will be the first Business Day of the month in which the relevant dividend payment occurs. Dividends payable on the Class A Preferred Stock for any Dividend Period ending prior to or in May 2012 will be calculated on the basis of a 360-day year consisting of twelve 30-day months, and dividends payable on the Class A Preferred Stock for any subsequent Dividend Period will be computed on the basis of a 360-day year and the number of days actually elapsed. Dividends payable on the Class A Preferred Stock for any period less than a full Dividend Period will be computed on the basis of (i) a 360-day year, twelve 30-day months and the number of days actually elapsed in such Dividend Period for any Dividend Periods ending prior to or in May 2012 and (ii) a 360-day year and the number of days actually elapsed in the relevant Dividend Period for any Dividend Periods thereafter. No interest will be paid on any dividend payment of the Class A Preferred Stock.

(b) **Non-Cumulative Dividends.** Dividends on shares of Class A Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Class A Preferred stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such dividend payment date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of Class A Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Class A Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized Preferred Stock of the Corporation.

(c) **Priority of Dividends.** So long as any share of Class A Preferred Stock remains outstanding, except as hereinafter provided with respect to Consent Dividends (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend

payable solely in Junior Stock, of the same class or series or Junior Stock ranking junior to that class or series; (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, nor shall any monies be paid to or made available for a sinking fund for the redemption of any such securities by the Corporation; and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or a *pro rata* portion, of the Class A Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Class A Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. When dividends are not paid in full upon, or a sum sufficient for such payment is not set apart for, all the shares of Class A Preferred Stock and any Parity Stock, all dividends declared upon shares of Class A Preferred Stock and any Parity Stock shall be declared on a proportional basis so that the amount of dividends declared per share will bear to each other the same ratio that accrued dividends for the then-current Dividend Period per share on Class A Preferred Stock, and accrued dividends, including any accumulations on Parity Stock, bear to each other. No interest will be payable in respect of any dividend payment on shares of Class A Preferred Stock that may be in arrears. If the Board of Directors of the Corporation determines not to pay any dividend or a full dividend on a Dividend Payment Date, the Corporation will provide, or cause to be provided, written notice to the holders of the Class A Preferred Stock prior to such date. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Class A Preferred Stock shall not be entitled to participate in any such dividend.

#### 4.4.4. Liquidation Rights.

(a) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Class A Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Class A Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$1,000 per share, plus any authorized, declared and unpaid dividends, plus accrued and unpaid dividends for the Dividend Period in which the liquidation payment occurs to the date of such payment (whether or not declared). The holder of Class A Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 4.4.4.

(b) Partial Payment. If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any authorized, declared and unpaid dividends to all holders of Class A Preferred Stock, the Class B Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Class A Preferred Stock and to the holders of all Class B Preferred Stock and Parity Stock shall be *pro rata* in accordance with the

respective aggregate liquidation preferences, except as limited by Section 4.3.4(a), plus any authorized, declared and unpaid dividends of Class A Preferred Stock and all Parity Stock and any accrued and unpaid dividends of Class B Preferred Stock.

(c) **Residual Distributions.** If the liquidation preference plus any authorized, declared and unpaid dividends has been paid in full to all holders of Class A Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

(d) **Merger, Consolidation and Sale of Assets not Liquidation.** For purposes of this Section 4.4.4, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, including a merger in which the holders of shares of Class A Preferred Stock receive cash or property for their shares, shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### 4.4.5. **Redemption.**

(a) **Optional Redemption.** If (i) the Corporation had paid all dividends previously declared for payment and (ii) in the event that the redemption date is also a Dividend Payment Date, the Corporation has first declared full dividends on the Class A Preferred Stock then, the Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem the shares of Class A Preferred Stock at the time outstanding:

(i) in whole or in part, on any Five-Year-Date at a cash redemption price equal to \$1,000 per share of Class A Preferred Stock;

(ii) in whole but not in part, at any time prior to May 15, 2012, within 90 days after the occurrence of a Tax Event or a Rating Agency Event, at a cash redemption price equal to the greater of: (A) \$1,000 per share of Class A Preferred Stock, or (B) the sum of the present values of \$1,000 per share of Class A Preferred Stock, discounted from May 15, 2012 to the redemption date, and the present values of all undeclared dividends for each Dividend Period from the redemption date to and including May 15, 2012, discounted from their applicable Dividend Payment Dates to the redemption date, in each case on a quarterly basis, (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate, as calculated by an Independent Investment Banker, plus 0.500%; plus, if the redemption date is not a Dividend Payment Date, accumulated dividends for the period from, and including, the last Dividend Payment Date to, but excluding, the redemption date;

(iii) in whole or in part, at any time prior to May 15, 2012, for any reason other than a Tax Event, a Rating Agency Event, an Investment Company Act Event or a Regulatory Capital Event, at a cash redemption price equal to the greater of:

(A) \$1,000 per share of Class A Preferred Stock, or (B) the sum of the present values of \$1,000 per share of Class A Preferred Stock, discounted from May 15, 2012 to the redemption date, and the present values of all undeclared dividends for each Dividend Period from the redemption date to and including May 15, 2012, discounted from their applicable Dividend Payment Dates to the redemption date, in each case on a quarterly basis, (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate, as calculated by an Independent Investment Banker, *plus* 0.375%; *plus*, if the redemption date is not a Dividend Payment Date, accumulated dividends for the period from, and including, the last Dividend Payment Date to, but excluding, the redemption date;

(iv) in whole but not in part, after May 15, 2012, on any date that is not a Five-Year Date, within 90 days after the occurrence of a Tax Event or a Rating Agency Event, at a cash redemption price of \$1,000 per share of Class A Preferred Stock, *plus*, if the redemption date is not a Dividend Payment Date, accumulated dividends from the period from, and including, the last Dividend Payment Date to, but excluding, the redemption date;

(v) in whole or in part, after May 15, 2012, on any date that is not a Five-Year Date, for any reason other than a Tax Event or a Rating Agency Event, at a cash redemption price equal to the sum of: the greater of: (A) \$1,000 per share of Class A Preferred Stock, or (B) the sum of the present value of \$1,000 per share of Class A Preferred Stock, discounted from the next succeeding Five-Year Date to the redemption date, and the present values of all undeclared dividends for the Dividend Periods from the redemption date to, and including, the next succeeding Five-Year Date, discounted from their applicable Dividend Payment Dates to the redemption date, in each case on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the 3-Month USD LIBOR Rate applicable to the Dividend Period immediately preceding such redemption date (which 3-Month USD LIBOR Rate will also, for purposes of calculating such redemption price, be the rate used in calculating the amount for each such undeclared dividend), as calculated by an Independent Investment Banker; *plus*, if the redemption date is not a Dividend Payment Date, accumulated dividends for the period from, and including, the last Dividend Payment Date to, but excluding, the redemption date;

(vi) in whole but not in part, at any time, within 90 days after the occurrence of an Investment Company Act Event or a Regulatory Capital Event, at a cash redemption price of \$1,000 per share of Class A Preferred Stock, *plus*, if the redemption date is not a Dividend Payment Date, accumulated dividends from the period from, and including, the last Dividend Payment Date to, but excluding, the redemption date;

In each case, without accumulation of any undeclared dividends with respect to Dividend Payment Dates prior to the redemption date.

(b) **Notice of Redemption.** Notice of every redemption of shares of Class A Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Notwithstanding the foregoing, if the Class A



Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC. Any notice mailed as provided in this Section 4.4.6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Class A Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Class A Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Class A Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed by such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date.

(c) Partial Redemption. In case of any redemption of only part of the shares of Class A Preferred Stock at the time outstanding, the shares of Class A Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Class A Preferred Stock in proportion to the number of shares of Class A Preferred Stock held by such

holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 4.4.5, the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Class A Preferred Stock shall be redeemed from time to time.

(d) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "Depositary Company") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such Depositary Company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depositary Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**4.4.6. Voting Rights.** The holders of Class A Preferred Stock will have no voting rights except as expressly provided by law and except the following voting rights.

(a) So long as any Parity Stock of any series are outstanding, the Corporation will not, except with the consent or affirmative vote of the holders of at least two-thirds of all series of the Class A Preferred Stock and any other Parity Stock, voting together as a single class (*provided* that for the purpose of such approval, any Parity Stock that are directly or indirectly held or beneficially owned by any affiliate of Colonial will be treated as if they were not outstanding) (i) amend these Articles of Incorporation in a manner that materially and adversely affects the terms of any series of Parity Stock; *provided, however*, that, if such amendment affects only one series of Parity Stock issued by the Corporation, such amendment will require only the class vote of such series (voting separately and not as a single class with the other class) and, if such amendment affects more than one series but affects them differently, then such amendment will require a class vote of each series of Parity Stock, each voting separately; (ii) effect a consolidation, merger or share exchange with or into another entity *provided* that the Corporation may consolidate or merge with or into, or enter into a share exchange with, another entity without the consent of the holders of the Parity Stock if (A) the other entity is controlled by, or under common control with, Colonial, (B) the resulting entity is not required to register as an investment company under the Investment Company Act, (C) the Corporation's status as a REIT under the Code has not been impaired, (D) the other entity expressly assumes all of the Corporation's obligations and commitments pursuant to the consolidation, merger, or share exchange, (E) the outstanding Parity Stock are exchanged for or converted into shares of the surviving entity having preferences, limitations, and relative voting and other rights substantially identical to those of the Parity Stock, including limitations on personal liability of the holders of the Parity Stock, (F) after giving effect to the merger, consolidation, or share exchange, no breach, or event which, with the giving of notice or passage of time or both, could become a breach, by the Corporation of obligations under these Articles of Incorporation shall have occurred and be continuing, and (G) the Corporation has received written confirmation that the Rating Agency Condition has been satisfied; (iii) issue any Senior Stock; (iv) incur or permit to be outstanding any indebtedness in an aggregate amount exceeding 20% of its shareholders' equity (excluding, for the avoidance of doubt, the Corporation's obligation pursuant to the Joinder Agreement); (v) pay dividends on the Junior Stock (including the Common Stock) unless the Corporation's FFO for the four prior fiscal quarters equals or exceeds 150% of the amount that would be required to pay full annual dividends on all series of Parity Stock and the Class B Preferred Stock then outstanding (except, for the avoidance of doubt, Consent Dividends); (vi) pay interest or principal on any indebtedness owing to Colonial or any of its affiliates unless the Corporation's FFO for the four prior fiscal quarters equals or exceeds 150% of the amount that would be required to pay full annual dividends on all series of Parity Stock and all Series B Preferred Stock then outstanding; (vii) amend or otherwise change its policy of reinvesting the proceeds of its assets in other interest-earning assets such that the Corporation's FFO for any period of four fiscal quarters will equal or exceed 150% of the amount that would be required to pay full annual dividends on all series of Parity Stock and the Class B Preferred Stock; (viii) issue any additional Common Stock to any Person, other than a Colonial affiliate; (ix) terminate, amend or otherwise change the terms of any Asset Documentation in a manner that is materially adverse of the Corporation or the holders of any series of Parity Stock; *provided, however*, that, if any amendment or change affects less than all of the outstanding series of Parity Stock, the amendment or change will require only the class vote of the holders of at least two-thirds of the affected series (voting separately and not as a single class with any other class) and, if the amendment or change affects more than one series but affects them differently, then the amendment will require a class vote of each affected series of Parity Stock, each voting separately; or (x) take any action that could

reasonably be expected to cause a Tax Event, an Investment Company Act Event, a Rating Agency Event or a Regulatory Capital Event.

As a condition to effecting any consolidation, merger or share exchange described above, the Corporation will mail to the holders of record of the Parity Stock a notice of such consolidation, merger or share exchange. The notice will be mailed at least 15 days prior to such transaction becoming effective and will contain a description of such transaction together with a certificate of one of the Corporation's officers stating that such transaction complies with the requirements set forth in these Articles of Incorporation and that all conditions precedent provided therein relating to such transaction have been fulfilled.

#### 4.4.7. Conditional Exchange.

(a) Subject to the terms and conditions of Section 4.4.7, each share of Class A Preferred Stock will be exchanged automatically (the "Conditional Exchange") for one share of Fixed-to-Floating Rate Perpetual Non-Cumulative Preferred Stock, Series A ("Colonial Preferred Stock") of The Colonial BancGroup, Inc. having the terms set forth in the Certificate of Designations of The Colonial BancGroup, Inc. dated as of May 18, 2007.

(b) The Conditional Exchange will occur only if the Primary Regulator of Colonial Bank directs the Corporation in writing (a "Regulatory Directive") to exchange the shares of Class A Preferred Stock for shares of Colonial Preferred Stock due to the occurrence of an Exchange Event.

(c) Upon receipt by the Corporation of a Regulatory Directive, each holder of Class A Preferred Stock shall be unconditionally obligated to surrender to Colonial the certificates representing each share of Class A Preferred Stock and Colonial shall be unconditionally obligated to issue to such holder in exchange for each such share of Class A Preferred Stock a certificate representing one share of Colonial Preferred Stock.

(d) The Conditional Exchange shall occur as of 8:00 A.M., New York time, on the date for such exchange set forth in the Regulatory Directive, or, if such date is not set forth in the Regulatory Directive, as of 8:00 A.M., New York time, on the earliest possible date such exchange could occur consistent with the Regulatory Directive, as evidenced by the issuance by The Colonial BancGroup, Inc. of a press release prior to such time. As of such time, all of the shares of Class A Preferred Stock required to be exchanged will be deemed canceled without any further action by the Corporation, all rights of the holders of Class A Preferred Stock shall cease, and such Persons shall thereupon and thereafter be deemed to be and shall be for all purposes holders of Colonial Preferred Stock. Notice of the occurrence of the Exchange Event shall be given by first-class mail, postage prepaid, mailed within thirty (30) days of such event, to each holder of record of Class A Preferred Stock, at such holder's address as the same appears on the share register of the Corporation. Each such notice shall indicate the place or places where certificates for the shares of Class A Preferred Stock are to be surrendered by the holders thereof, and The Colonial BancGroup, Inc. shall deliver to each such holder certificates for shares of Colonial Preferred Stock upon surrender of certificates for the shares of Class A Preferred Stock.

(e) Any shares of Class A Preferred Stock purchased, redeemed in

accordance with Section 4.4.5 hereof or otherwise acquired by the Corporation prior to the time of the Conditional Exchange shall not be deemed outstanding and shall not be subject to the Conditional Exchange. In the event of the Conditional Exchange, any accumulated and unpaid dividends on the Class A Preferred Stock as of the time of Conditional Exchange for the then current Dividend Period shall be deemed to be accumulated and unpaid dividends on the Colonial Preferred Stock.

4.4.8. Conversion. The holders of Class A Preferred Stock shall not have any rights to convert such Class A Preferred Stock into shares of any other class of capital stock of the Corporation.

4.4.9. Rank. Notwithstanding anything set forth in these Articles of Incorporation to the contrary, the Board of Directors of the Corporation or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Class A Preferred Stock, may authorize and issue additional shares of Junior Stock, subject to the limitations set forth in Section 4.3(b), Parity Stock or, subject to the voting rights granted in Section 4.4.6(b), any class of securities ranking senior to the Class A Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

4.4.10. Repurchase. Subject to the limitations imposed herein, the Corporation may purchase and sell Class A Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; *provided, however*, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

4.4.11. Unissued or Recaptured Shares. Shares of Class A Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

4.4.12. No Sinking Fund. Shares of Class A Preferred Stock are not subject to the operation of a sinking fund.

4.4.13. Permitted Business Combinations. The Corporation, without the consent of the holders of two thirds of the Class A Preferred Stock then outstanding voting as a separate class pursuant to Section 4.4.6, (but subject to the limitations in that Section) may enter into any Business Combination if the following conditions are met:

- (a) the Successor Entity is incorporated or organized under the laws of the United States or any State thereof
- (b) if the Successor Entity is not the Corporation, the shares of Class A Preferred Stock will become shares of Substitute Preferred Stock issued by the Successor Entity upon the consummation of such Business Combination; and
- (c) the Corporation delivers to the transfer agent for the Class A Preferred Stock a certificate of the Corporation signed by two authorized officers and a written opinion of from legal counsel acceptable to such transfer agent, each to the

effect that such transaction complies with these Articles of Incorporation.

4.4.14 Legend. Each certificate of Class A Preferred Stock shall bear the following legend:

THIS SECURITY IS ONE OF THE FIXED-TO-FLOATING RATE EXCHANGEABLE NON-CUMULATIVE PERPETUAL PREFERRED STOCK, CLASS A, SERIES A ("SECURITIES" OR "SECURITY") ISSUED BY CBG FLORIDA REIT CORP. (THE "ISSUER"). THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND NEITHER THIS SECURITY NOR ANY BENEFICIAL INTERESTS HEREIN MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO A PERSON WHO IS A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT ("QUALIFIED INSTITUTIONAL BUYER") ACQUIRING FOR ITS OWN ACCOUNT OR THE ACCOUNT OF A PERSON WHO IS A QUALIFIED INSTITUTIONAL BUYER WITH RESPECT TO WHICH IT EXERCISES SOLE INVESTMENT DISCRETION (AN "ELIGIBLE PURCHASER") AND EACH SUCH PERSON AND ACCOUNT FOR WHICH SUCH PERSON IS PURCHASING WILL PROVIDE TO EACH PERSON TO WHOM IT TRANSFERS SECURITIES NOTICES OF ANY RESTRICTIONS ON TRANSFER OF SUCH SECURITIES. EACH PURCHASER OF THIS SECURITY OR ANY BENEFICIAL INTERESTS HEREIN WILL BE DEEMED TO REPRESENT THAT IT AGREES TO COMPLY WITH THE TRANSFER RESTRICTIONS SET FORTH HEREIN AND WILL NOT TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN EXCEPT TO AN ELIGIBLE PURCHASER WHO CAN MAKE THE SAME REPRESENTATIONS AND AGREEMENTS ON BEHALF OF ITSELF AND EACH ACCOUNT FOR WHICH IT IS PURCHASING. ANY PURPORTED TRANSFER OF THIS SECURITY OR ANY BENEFICIAL INTERESTS THEREIN THAT IS IN BREACH, AT THE TIME MADE, OF ANY TRANSFER RESTRICTIONS SET FORTH HEREIN OR IN THE ISSUER'S AMENDED AND RESTATED ARTICLES OF INCORPORATION WILL BE VOID *AB INITIO*. IF AT ANY TIME THE ISSUER DETERMINES IN GOOD FAITH THAT A HOLDER OR BENEFICIAL OWNER OF THIS SECURITY OR BENEFICIAL INTERESTS HEREIN IS IN BREACH, AT THE TIME GIVEN, OF ANY OF THE TRANSFER RESTRICTIONS SET FORTH HEREIN, THE ISSUER WILL CONSIDER THE ACQUISITION OF THIS SECURITY OR SUCH BENEFICIAL INTERESTS VOID, OF NO FORCE AND EFFECT AND WILL NOT, AT THE DISCRETION OF THE ISSUER, OPERATE TO TRANSFER ANY RIGHTS TO THE TRANSFEREE NOTWITHSTANDING ANY INSTRUCTIONS TO THE CONTRARY TO THE ISSUER, ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT (THE "TRANSFER AGENT"), OR ANY OTHER INTERMEDIARY. IN ADDITION, THE ISSUER OR THE TRANSFER AGENT MAY REQUIRE SUCH ACQUIRER OR BENEFICIAL OWNER TO SELL THIS SECURITY OR SUCH BENEFICIAL INTERESTS TO AN ELIGIBLE PURCHASER. NO SECURITY MAY BE PURCHASED OR TRANSFERRED TO: (I) AN

"EMPLOYEE BENEFIT PLAN" AS DEFINED IN SECTION 3(3) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), THAT IS SUBJECT TO TITLE I OF ERISA (II) A PLAN, ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR (III) ANY ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" OF ANY OF THE FOREGOING BY REASON OF INVESTMENT BY AN EMPLOYEE BENEFIT PLAN OR OTHER PLAN IN SUCH ENTITY (EACH OF THE FOREGOING, A "BENEFIT PLAN INVESTOR"), EXCEPT FOR AN INSURANCE COMPANY GENERAL ACCOUNT THAT REPRESENTS, WARRANTS AND COVENANTS THAT, AT THE TIME OF ACQUISITION AND THROUGHOUT THE PERIOD IT HOLDS THE SECURITIES, (I) IT IS ELIGIBLE FOR AND MEETS THE REQUIREMENTS OF DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION 95-60, (II) LESS THAN 25% OF THE ASSETS OF SUCH GENERAL ACCOUNT ARE (OR REPRESENT) ASSETS OF A BENEFIT PLAN INVESTOR AND (III) IT IS NOT A PERSON WHO HAS DISCRETIONARY AUTHORITY OR CONTROL WITH RESPECT TO THE ASSETS OF THE ISSUER OR ANY PERSON WHO PROVIDES INVESTMENT ADVICE FOR A FEE (DIRECT OR INDIRECT) WITH RESPECT TO SUCH ASSETS, OR ANY AFFILIATE OF SUCH A PERSON AND WOULD NOT OTHERWISE BE EXCLUDED UNDER 29 C.F.R. § 2510.3-101(F)(1). IN ADDITION, EACH PURCHASER OR TRANSFEREE OF THIS SECURITY WILL BE REQUIRED TO REPRESENT AND WARRANT (OR, IN CERTAIN CIRCUMSTANCES, WILL BE DEEMED TO REPRESENT AND WARRANT) THAT, FROM THE DATE OF ACQUISITION AND THROUGHOUT THE PERIOD OF HOLDING THIS SECURITY, EITHER (A) IT IS NOT A GOVERNMENTAL PLAN, FOREIGN PLAN, CHURCH PLAN OR OTHER PLAN SUBJECT TO LAW THAT IS SUBSTANTIALLY SIMILAR TO THE SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE ("SIMILAR LAW") OR (B) ITS PURCHASE AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT VIOLATION OF SIMILAR LAW.

#### **4.5 10.0% CLASS B CUMULATIVE NON-VOTING PREFERRED STOCK**

**4.5.1 Designation.** The designation of the class of preferred stock shall be 10.0% Class B Cumulative Non-Voting Preferred Stock (hereinafter referred to as the "*Class B Preferred Stock*"). Each share of Class B Preferred Stock shall be identical in all respects to every other share of Class B Preferred Stock. Class B Preferred Stock will rank equally with Class A Preferred Stock and the Parity Stock, if any, and will rank senior to Junior Stock with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**4.5.2. Number of Shares.** The number of authorized shares of Class B Preferred Stock shall be 1,500.

#### **4.5.3. Dividends.**

(a) **Rate.** Holders of Class B Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, cumulative cash dividends on the liquidation preference of \$500 per share of Class B Preferred Stock, and no more, payable annually in arrears on each December 30; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (without any interest or other payment in respect of such delay) (each such day on which dividends are payable a "Class B Dividend Payment Date"). The period from and including the Initial Issue Date of a share of the Class B Preferred Stock or any Dividend Payment Date to but excluding the next dividend payment date is a "Class B Dividend Period." Dividends on each share of Class B Preferred Stock will accrue on the liquidation preference of \$500 per share at the rate of 10.0% per annum of the total of \$500.00 plus all accumulated and unpaid dividends thereon. Such dividends shall accrue on a daily basis and be cumulative from the Initial Issue Date of such share of Class B Preferred Stock. Any dividend payable on the Class B Preferred Stock for any partial Dividend Period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the share records of the Corporation at the close of business on the applicable record date. Any dividend payment made on Shares of the Class B Preferred Stock shall first be credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable. Holders of the Class B Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or shares, in excess of full cumulative dividends on the Class B Preferred Stock as provided in this Section 4.5.3(a).

(b) **Restrictions on Declaration of Dividends, Accumulation of Dividends.** No dividends on shares of Class B Preferred Stock shall be declared by the Corporation or paid or set apart for payment by the Corporation at such time as the terms and provisions of any written agreement between the Corporation and any party that is not an Affiliate of the Corporation, including any agreement relating to its preferred stock or its indebtedness, prohibit such declaration, payment or setting apart for payment or provide that such declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law. Notwithstanding the foregoing, dividends on the Class B Preferred Stock shall accrue whether or not the terms and provisions set forth in this Section 4.5.3(b) hereof at any time prohibit the current payment of dividends, whether or not the Corporation has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are authorized or declared. Furthermore, dividends will be declared and paid when due in all events to the fullest extent permitted by law and except as provided in this Section 4.5.3(b). Accrued but unpaid dividends on the Class B Preferred Stock will accumulate as of the Dividend Payment Date on which they first become payable.

(c) **Priority of Dividends.** So long as any share of Class B Preferred Stock remains outstanding, except as hereinafter provided with respect to Consent Dividends (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired

for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such securities by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or a *pro rata* portion, of the Class B Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Class B Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. When dividends are not paid in full upon the shares of Class B Preferred stock and any Parity Stock, all dividends declared upon shares of Class B Preferred Stock and any Parity Stock shall be declared on a proportional basis so that the amount of dividends declared per share will bear to each other the same ratio that accrued dividends for the then-current Dividend Period per share on Class B Preferred Stock, and accrued dividends, including any accumulations on Parity Stock, bear to each other. If the Board of Directors of the Corporation determines not to pay any dividend or a full dividend on a Dividend Payment Date, the Corporation will provide, or cause to be provided, written notice to the holders of the Class B Preferred Stock prior to such date. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Class B Preferred Stock shall not be entitled to participate in any such dividend.

#### 4.5.4. Liquidation Rights.

(a) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, each holder of the Class B Preferred Stock shall not be entitled to receive in cash out of the assets of the Corporation, whether from capital or earnings, any amounts in connection with any liquidation, dissolution or winding up of the Corporation until the fair market value of the Corporation's net assets decreases to \$10,000,000 or less. Upon the occurrence of such event, the holders of Class B Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Class B Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of (i) \$500 per share, plus (ii) all accrued and unpaid dividends thereon through and including the date of payment. The holders of Class B Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 4.5.4.

(b) Partial Payment. If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any accrued and unpaid dividends to all holders of Class B Preferred Stock, Class A Preferred Stock and any Parity Stock, the amounts paid to the holders of Class B Preferred Stock, Class A Preferred Stock and all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, except as



limited by Section 4.5.4(a), plus any accrued and unpaid dividends of Class B Preferred Stock and any authorized, declared and unpaid dividends of Class A Preferred Stock and all Parity Stock.

(c) **Residual Distributions.** If the liquidation preference plus any accrued and unpaid dividends has been paid in full to all holders of Class B Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

(d) **Merger, Consolidation and Sale of Assets not Liquidation.** For purposes of this Section 4.5.4, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation; provided, however that any such transaction which results in an amendment, restatement or replacement of these Articles of Incorporation that has a material adverse effect on the rights and preferences of the Class B Preferred Stock, or that increases the number of authorized or issued shares of Class B Preferred Stock, shall be deemed a liquidation of the Corporation for purposes of determining whether the liquidation preference is payable unless the right to receive payment is waived by holders of a majority of the outstanding shares of Class B Preferred Stock voting as a separate class.

#### **4.5.5. Redemption.**

(a) **Optional Redemption.** Shares of the Class B Preferred Stock shall be redeemable by the holder thereof at any time after March 31, 2007. The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem shares of the Class B Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price equal to \$500.00 per share plus all accrued and unpaid dividends thereon to and including the date fixed for redemption (except as provided in Section 4.5.5(d) below). If less than all of the outstanding Class B Preferred Stock are to be redeemed, the shares of Class B Preferred Stock to be redeemed may be selected by any equitable method determined by the Corporation including but not limited to redemption of any shares at any time such shares are not owned by the Corporation or any parent or affiliate thereof or a director, officer or employee of the Corporation or a parent or an affiliate thereof, provided that such method does not result in the creation of fractional shares.

(b) **Mandatory Redemption.** The Class B Preferred Stock is subject to mandatory redemption, in whole but not in part, at the redemption price set forth in Section 4.5.5(a) (except as provided in Section 4.5.5(d) below), subject to the prior approval of such redemption by the Primary Regulator of Colonial Bank, on the date that shares of Colonial Preferred Stock are issued to the holders of Class A Preferred Stock in connection with a Conditional Exchange. Upon such Conditional Exchange, the Corporation shall be unconditionally obligated to purchase and the holders of Class B Preferred Stock shall be unconditionally obligated to sell all of the outstanding shares of Class B Preferred Stock.

(c) Limitations on Redemption. Unless full cumulative dividends on all shares of Class B Preferred Stock shall have been, or contemporaneously are, declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods, no shares of Class B Preferred Stock shall be redeemed unless all outstanding shares of Class B Preferred Stock are simultaneously redeemed, and the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of any Junior Stock of the Corporation (except by exchange for shares of Junior Stock).

(d) Rights to Dividends on Shares Called for Redemption. Immediately prior to or upon any redemption of Class B Preferred Stock, the Corporation shall pay, in cash, any accumulated and unpaid dividends to and including the redemption date, unless a redemption date falls after the applicable record date and prior to the corresponding Dividend Payment Date, in which case each holder of Class B Preferred Stock at the close of business on such record date shall be entitled to the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the redemption of such shares before such Dividend Payment Date.

(e) Notice of Redemption. Upon the Corporation's provision of written notice as to the effective date of the redemption, accompanied by a check in the amount of the full redemption price to which each record holder of Class B Preferred Stock is entitled, the Class B Preferred Stock shall be redeemed and shall no longer be deemed outstanding shares of the Corporation and all rights of the holders of such shares will terminate. Such notice shall be given by first class mail, postage pre-paid, to each record holder of the Class B Preferred Stock at the respective mailing addresses of such holders as the same shall appear on the share transfer records of the Corporation. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Class A Preferred Stock except as to the holder to whom notice was defective or not given.

(f) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with the Depositary Company in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such Depositary Company at any time after the redemption date from the funds so deposited, without interest. If the Corporation shall so require and the notice shall so state, holders of Class B Preferred Stock to be redeemed shall surrender the certificates evidencing such Class B Preferred Stock, to the extent that such shares are certificated, at the place designated in such notice and, upon surrender in accordance with said notice of the certificates for shares of Class B Preferred Stock so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such shares of Class B Preferred Stock shall be redeemed by the Corporation at the redemption price. In case less than all of the shares of Class B Preferred Stock evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed shares

of Class B Preferred Stock without cost to the holder thereof. In the event that the shares of Class B Preferred Stock to be redeemed are uncertificated, such shares shall be redeemed in accordance with the notice and no further action on the part of the holders of such shares shall be required. The Corporation shall be entitled to receive, from time to time, from the Depositary Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**4.5.6. Voting Rights.** The holders of Class B Preferred Stock will have no voting rights except as expressly provided by law and except that the consent of the holders of a majority of the outstanding shares of Class B Preferred Stock, voting as a separate class, shall be required for (i) any amendment to these Articles of Incorporation which has a material adverse effect on the rights and preferences of the Class B Preferred Stock, or (ii) any reclassification of the Class B Preferred Stock.

**4.5.7. Conversion.** The holders of Class B Preferred Stock shall not have any rights to convert such Class B Preferred Stock into shares of any other class of capital stock of the Corporation.

**4.5.8. Rank.** Notwithstanding anything set forth in these Articles of Incorporation to the contrary, the Board of Directors of the Corporation or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Class B Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or, subject to applicable law, any class of securities ranking senior to the Class B Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**4.5.9. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Class B Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; *provided, however*, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**4.5.10. Unissued or Reacquired Shares.** Shares of Class B Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of Preferred Stock without designation as to series.

**4.5.11. No Sinking Fund.** Shares of Class B Preferred Stock are not subject to the operation of a sinking fund.

## **4.6 COMMON STOCK**

**4.6.1. Dividends.** Subject to the preferential rights of any class or series within any such class of Capital Stock ranking senior as to dividends to the Common Stock, the record holder of shares of Common Stock shall be entitled to receive, out of the assets of the Corporation which are legally available therefor, such dividends as from time to time may be declared by the Board of Directors. All such holders shall share ratably, in accordance with the number of shares of Common Stock held by each such holder, in all dividends paid on the Common Stock. Except as otherwise provided in this Section 4.6.1, the Corporation will not pay dividends on its Common Stock unless (i) cumulative dividends on all classes or series of Preferred Stock which bear dividends on a cumulative basis for past Dividend Periods have been paid in full, (ii) dividends for the current Dividend Period have been paid in full or sufficient funds for such payment have been set apart, and (iii) payment of the dividends on the Common Stock does not impair the Corporation's ability to pay future dividends on Preferred Stock and the liquidation preference. Subject to the foregoing, until the Restriction Termination Date, unless prevented from declaring dividends on the Common Stock, the Board of Directors will declare and pay dividends in and for each taxable year at least in an amount sufficient to satisfy the distribution requirements of Code Sections 857(a) and 4981. In the event of non-payment of cash dividends by the Corporation in an amount sufficient to satisfy such distribution requirements, the Corporation will declare consent dividends ("Consent Dividends"), as may be necessary to maintain the Corporation's status as a REIT, to the extent permitted by Code Sections 565 and 562(c). Each holder of the Common Stock shall be deemed to have covenanted to consent to Consent Dividends if and when necessary to maintain the Corporation's status as a REIT.

**4.6.2. Distribution Upon Liquidation, Dissolution or Winding Up.** In the event of any dissolution, liquidation or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and subject to the preferential rights of any class of Capital Stock ranking senior to the Common Stock as to preferences for distributions of assets upon liquidation, dissolution or winding up of the Corporation and subject to the provisions of this Article IV and Article V (including all classes or series of Preferred Stock), the holders of shares of Common Stock shall be entitled to receive, ratably with each other holder of shares of Common Stock, a portion of the assets of the Corporation available for distribution to the holders of Common Stock calculated by dividing the number of shares of Common Stock held by such holder by the total number of shares of Common Stock then outstanding.

**4.6.3. Voting Rights.** Except as otherwise provided in these Articles of Incorporation or required by applicable law, each holder of shares of Common Stock shall be entitled to notice of, and the right to vote at, any meeting of the stockholders of Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share of Common Stock held by such holder. Without limiting the foregoing, the holders of record of shares of Common Stock shall be entitled to vote, together with any other class or series of Capital Stock entitled to vote, then outstanding, on any resolution presented by the Board of Directors pursuant to Section 5.1.

**4.6.4. Exclusion of Other Rights.** Except as may otherwise be required by law, the shares of Common Stock shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth in these Articles of Incorporation.

**ARTICLE V**  
**General REIT Provisions**

5.1. **Termination of REIT Status.** The Board of Directors shall take no action to terminate the Corporation's status as a REIT until such time as (a) the Board of Directors adopts a resolution recommending that the Corporation terminate its status as a REIT, (b) the Board of Directors presents the resolution at an annual or special meeting of the stockholders and (c) such resolution is approved by the vote of a majority of the shares entitled to be cast on the resolution.

5.2. **Severability.** If any provision of this Article V or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

5.3. **Waiver.** The Corporation shall have authority at any time to waive any requirements that the Corporation repurchase shares of Common Stock if the Corporation determines, based on an opinion of nationally recognized tax counsel, that the waiver of any such repurchase would not jeopardize the status of the Corporation as a REIT for federal income tax purposes.

5.4. **Stock Ownership and Transfer Limitations.** At all times from the Initial Issue Date until the Restriction Termination Date, no Person shall Acquire, Beneficially Own or Transfer shares of Capital Stock to the extent that such Acquisition, Beneficial Ownership or Transfer of Capital Stock would result in (i) the Corporation being "closely held" within the meaning of Section 856(b) of the Code, (ii) shares of Capital Stock being Beneficially Owned by fewer than 100 persons, (iii) any Person having Beneficial Ownership of more than 9.9% of any series of the Preferred Stock, or (iv) the Corporation otherwise failing to qualify as a REIT, and any such Acquisition, Beneficial Ownership or Transfer shall be void *ab initio* and the intended transferee shall acquire no rights in such shares of Capital Stock.

5.5. **Owners Required to Provide Information.** At all times prior to the Restriction Termination Date:

(a) Every Beneficial Owner of more than (i) .5% if there are 200 or less stockholders of record, (ii) 1% if there are more than 200 and less than 2,000 stockholders of record, and (iii) 5% if there are more than 2,000 stockholders of record, of the outstanding Capital Stock of the Corporation shall, within 30 days after December 31 of each year, give written notice to the Corporation stating the name and address of such Beneficial Owner, the number of shares of the Capital Stock of the Corporation Beneficially Owned, and a description of the manner in which such shares are held. Each such Beneficial Owner shall provide to the Corporation such additional information as the Corporation may request in order to determine the effect, if any, of such Beneficial Ownership on the Corporation's status as a REIT and to ensure compliance with the Capital Stock ownership limit set forth in Section 5.4. above; and

(b) Each Person who is a Beneficial Owner of Capital Stock and each Person (including the stockholder of record) who is holding Capital Stock for a Beneficial Owner shall provide to the Corporation such information that the Corporation may request, in good faith, in order to determine the Corporation's status as a REIT and to comply with requirements of any taxing authority or governmental authority or to determine such

compliance.

5.6. Remedies Not Limited. Subject to Section 5.1, nothing contained in this Article V shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its stockholders in preserving the Corporation's status as a REIT.

5.7. Ambiguity. In the case of an ambiguity in the application of any of the provisions of Article V, or any definition contained in Section 4.2, the Board of Directors shall have the power to determine the application of the provisions of Article V with respect to any situation based on the facts known to it. In the event Article V requires an action by the Board of Directors and these Articles of Incorporation fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Article V.

5.8. Legend. Each certificate for Capital Stock may bear the following legend:

"The shares represented by this certificate are subject to restrictions on Beneficial Ownership and Transfer for the purpose of the Corporation's maintenance of its status as a Real Estate Investment Trust under the Internal Revenue Code of 1986, as amended (the "Code"). Subject to certain further restrictions and except as expressly provided in the Articles of Incorporation, no person may (i) Beneficially Own shares of Capital Stock that would result in the Corporation being "closely held" under Section 856(h) of the Code or otherwise cause the Corporation to fail to qualify as a REIT; or (ii) Transfer or Acquire shares of Capital Stock if such Transfer or Acquisition would result in the Capital Stock of the Corporation being owned by fewer than 100 persons. Any person who Beneficially Owns or attempts to Beneficially Own shares of Capital Stock which cause or will cause a person to Beneficially Own shares of Capital Stock in violation of the above restrictions must immediately notify the Corporation. The Corporation may repurchase shares upon the terms and conditions specified by the Board of Directors in its sole discretion if the Board of Directors determines that ownership or a Transfer or other event may violate the restrictions described above. In addition, upon the occurrence of certain events, attempted Transfers in violation of the restrictions set forth in the Articles of Incorporation shall be void *ab initio*. The Corporation will furnish to the holder hereof upon request and without charge a complete written statement of the terms and conditions of each class of Capital Stock. All capitalized terms in this legend have the meanings defined in the Articles of Incorporation, as the same may be amended from time to time, a copy of which, including the restrictions on transfer, will be sent without charge to each holder of Capital Stock who so requests."

#### **ARTICLE VI** **Board of Directors**

Section 6.1. Management. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors.

Section 6.2. Number. The number of directors which will constitute the entire Board of

Directors shall be fixed by, or in the manner provided in, the By-laws but shall in no event be less than three. There are currently three directors in office whose names are as follows:

Arthur S. Barksdale, III  
Harlan Parriah  
Michael Sleaford

Section 6.3. Removal. The stockholders may remove the directors in accordance with and subject to the provisions of the By-Laws of the Corporation.

Section 6.4. By-laws. Except as otherwise provided in the FBCA, the Board of Directors shall have power to adopt, amend, alter, change and repeal any By-laws of the Corporation by vote of the majority of the Board of Directors then in office. Any adoption, amendment, alteration, change or repeal of any By-laws by the stockholders of the Corporation shall require the affirmative vote of a majority of the aggregate number of votes then entitled to be cast generally in the election of directors.

Section 6.5. Powers. The enumeration and definition of particular powers of the Board of Directors included elsewhere in these Articles of Incorporation shall in no way be limited or restricted by reference to or inference from the terms of any other clause or provision of these Articles of Incorporation, or construed as excluding or limiting, or deemed by inference or otherwise in any manner to exclude or limit, the powers conferred upon the Board of Directors under the FBCA as now or hereafter in force. For the avoidance of doubt, the Board of Directors has the power to take any action necessary against holders of the Corporation's outstanding securities to ensure that the Corporation is not required to register as an investment company, within the meaning of the Investment Company Act, including but not limited to, forcing a sale or redemption by a security holder who is not a "qualified purchaser" (within the meaning of the Investment Company Act) and a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act), where applicable, or refusing to honor the transfer of a security to any person who does not satisfy these requirements.

#### ARTICLE VII Liability

To the fullest extent permitted by Florida law, as applicable from time to time, no person who at any time was or is a director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for money damages. No amendment of these Articles of Incorporation of the Corporation or repeal of any of its provisions shall limit or eliminate any of the benefits provided to directors and officers under this Article VII in respect of any act or omission that occurred prior to such amendment or repeal.

#### ARTICLE VIII Existence

The Corporation is to have a perpetual existence.

**ARTICLE X**  
**Sole Incorporator**

The name and mailing address of the sole incorporator are as follows:

| <b><u>NAME</u></b>           | <b><u>MAILING ADDRESS</u></b>                       |
|------------------------------|---|
| The Colonial BancGroup, Inc. | 100 Colonial Bank Boulevard<br>Montgomery, AL 36117 |

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I, David Reimer, Vice President of the Corporation, for the purpose of amending and restating the Corporation's Articles of Incorporation pursuant to the Business Corporation Act of the State of Florida, do make this certificate, hereby declaring and certifying that this is my act and deed on behalf of the Corporation, and the facts herein stated are true, and accordingly hereunto set my hand this 15<sup>th</sup> day of May 2007.

**CBG FLORIDA REIT CORP.**

  
\_\_\_\_\_  
**David Reimer**  
**Vice President**