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GUNSTER, YOKLEY

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Account Number : 076117000420  
Phone : (561) 650-0728  
Fax Number : (561) 655-5677

To: Cynthia Blalock  
These Articles were  
originally filed to  
you on  
March 14. I need  
March 14 to be shown  
as the filed date.  
Thanks,  
Charlotte  
Darling

FLORIDA PROFIT CORPORATION OR P.A.  
Total Bancshares Corp.

Certificate of Status	1
Certified Copy	1
Page Count	10
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GUNSTER YOKLEY

P.02/13



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood  
Secretary of State

March 17, 2003

GUNSTER YOKLEY

SUBJECT: TOTAL BANCSHARES CORP.  
REF: W03000007528

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

Written approval and clearance of the terms BANK, BANKER, BANKING, TRUST COMPANY, BANCSHARES, SAVINGS & LOAN ASSOCIATION, SAVINGS BANK, or CREDIT UNION or words of similar import, must be obtained from the Office of Financial Institutions, pursuant to section 655.922(2a), Florida Statutes.

The registered agent must have a Florida street address. A post office box, personal mail box (PMB), or mail drop-box address is not acceptable.

If you have any further questions concerning your document, please call (850) 245-6925.

Cynthia Blalock  
Document Specialist  
New Filings Section

FAX Aud. #: H03000081001  
Letter Number: 203A00016404

*see attached*



DEPARTMENT OF FINANCIAL SERVICES

March 18, 2003

Gregory K. Bader, Esquire  
Gunster, Yoakley & Stewart, P.A.  
Broward Financial Centre, Suite 1400  
500 East Broward Boulevard  
Fort Lauderdale, Florida 33394

Dear Mr. Bader:

Re: Total Bancshares Corp.

Reference is made to your recent letter/fax requesting approval of the above-referenced name which will be a one bank holding company for TotalBank, located in Miami, Florida.

Section 655.922, Florida Statutes, exempts a financial institution, holding company or its subsidiaries from the prohibition of using the word "bank," "banker," "banking," "trust company," "savings and loan association," "savings bank," or "credit union" in its corporate name. Therefore, the Office of Financial Institutions will not object to the use of the above referenced name being registered to transact business in the state of Florida.

Sincerely,

A handwritten signature in cursive script that reads "Linda B. Charity".

Linda B. Charity  
Deputy Director

LBC:ker

cc: Karon Beyer, Chief, Bureau of Commercial Recordings  
Division of Corporations, Secretary of State's Office

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SECRETARY OF STATE  
TALLAHASSEE FLORIDA

**ARTICLES OF INCORPORATION**  
**OF**  
**TOTAL BANCSHARES CORP.**

The undersigned incorporator, for the purpose of forming a corporation under the Florida Business Corporation Act, hereby adopts the following Articles of Incorporation.

**ARTICLE I**

**Name**

The name of the corporation (the "Corporation") is:

Total Bancshares Corp.

**ARTICLE II**

**Principal Office**

The principal place of business and mailing address of the Corporation shall be:

2720 Coral Way  
Miami, Florida 33145

**ARTICLE III**

**Registered Agent**

The name and Florida street address of the initial registered agent are:

David I. Schlosberg, Esq.  
2720 Coral Way  
Miami, Florida 33145

#### **ARTICLE IV**

##### **Purpose**

The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized and incorporated under the Florida Business Corporation Act (the "FBCA").

#### **ARTICLE V**

##### **Capital Stock**

A. The total number of shares of stock which the Corporation shall have authority to issue is Five Million (5,000,000), consisting of Common Stock, par value \$1.00 per share (the "Common Stock").

B. Each share of Common Stock shall be equal to each other share of Common Stock. The holders of shares of Common Stock shall be entitled to one vote for each such share upon all questions presented to the shareholders. Except as may be provided in these Articles of Incorporation, or as may be required by law, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes.

#### **ARTICLE VI**

##### **Shareholder Meetings**

Except as otherwise provided under applicable law, any action required or permitted to be taken by the shareholders of the Corporation shall be effected at a duly called annual or special meeting of shareholders of the Corporation or, in the alternative, may be effected by any consent in writing in lieu of a meeting of such shareholders.

#### **ARTICLE VII**

##### **Number of Directors; Election and Removal**

The number of directors of the Corporation shall consist of not fewer than one (1) individual, and the exact number of directors may be increased or decreased from time to time, in such manner as may be prescribed by the Bylaws of the Corporation. The initial Board of Directors shall be elected at the organizational meeting of the Corporation. Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

## **ARTICLE VIII**

### **Indemnification**

Provided the person proposed to be indemnified satisfies the requisite standard of conduct for permissive indemnification by a corporation as set forth in the applicable provisions of the FBCA (currently Sections 607.0850(1) and (2) of the Florida Statutes), as the same may be amended from time to time, the Corporation shall indemnify its officers and directors, and may indemnify its employees and agents, to the fullest extent permitted by the provisions of the FBCA (subject to any limitations contained in any agreement entered into by such person and the Corporation), from and against any and all of the expenses or liabilities incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding (collectively, "proceeding") (other than in a proceeding (a) initiated by such person (unless authorized by the Board of Directors of the Corporation), or (b) wherein the Corporation and such person are adverse parties, except for proceedings brought derivatively or by any receiver or trustee) or other matters referred to in or covered by said provisions, including advancement of expenses prior to the final disposition of such proceedings and amounts paid in settlement of such proceedings, both as to action in their official capacity and as to action in any other capacity while an officer, director, employee or other agent. Expenses (including attorney's fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative proceeding shall be paid by the Corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article. Such expenses (including attorneys' fees) incurred by other employees and agents shall also be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate. The indemnification and advancement of expenses provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders or directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. Such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs and personal and other legal representatives of such a person. Except as otherwise provided above, an adjudication of liability shall not affect the right to indemnification for those indemnified.

## **ARTICLE IX**

### **Limitation of Director Liability**

A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the Corporation or its shareholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 607.0834 of the FBCA (or

any successor to such provision), or (4) for any transaction from which the director derived an improper personal benefit.

## **ARTICLE X**

### **Subchapter S Election**

**A. Certain Definitions.** For purposes of this Article:

1. "Affiliate" means, when used in reference to any Person, any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person.

2. "Associate" means, when used in reference to any Person, (i) any corporation or organization of which such Person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (ii) any trust or other estate in which such Person has a substantial beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of such Person, or any relative of such spouse, who has the same home as such Person.

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

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

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

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

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

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

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

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

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

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

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



Capital Stock would not result in a Disqualifying Transfer, and shall be permitted to treat the record holder of the shares of Capital Stock, as shown on the record books of the Corporation, as the true owner of such shares for all purposes. If the Corporation shall not exercise its right of redemption, or otherwise cause such shares to be purchased in a manner which would not constitute a Disqualifying Transfer, within such additional 90-day period (other than as a result of the fault of the shareholder who shall have proposed the Disqualifying Transfer or any Affiliate thereof), then the Corporation shall as promptly thereafter as practicable, permit the transfer of such shares of Capital Stock, and the Disqualifying Transfer shall be deemed to have been effected at the end of such additional 90-day period.

**F. Ownership Inquiry.**

1. Whenever it is deemed by the Board of Directors, in their sole discretion, to be prudent to prevent the corporation from failing to qualify or to continue qualification as an S Corporation, the Corporation may by notice in writing (which may be included in the form of proxy or ballot distributed to shareholders of the Corporation in connection with any annual or special meeting of the shareholders of the Corporation, or otherwise) require a Person that is a holder of record of shares of Capital Stock or that the Corporation knows to have, or has reasonable cause to believe has, beneficial ownership of shares of Capital Stock to certify to the Corporation in such manner as the Corporation shall deem appropriate (including by way of execution of any form of proxy, ballot or affidavit by such person) that, to the knowledge of such person all shares of Capital Stock as to which such person has record ownership or beneficial ownership are owned and controlled only by Persons who are not Disqualified Persons.

2. With respect to any Capital Stock identified by such person in response to subsection 1 of this paragraph F, the Corporation may require such person to provide such further information as the Corporation may reasonably require to implement the provisions of this Article X.

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

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

**G. Redemption; Governmental Authorization.** Notwithstanding any other provision of these Articles of Incorporation to the contrary, the Corporation may redeem those shares of Capital Stock from a Disqualified Person pursuant to paragraph D of this Article X or which are the subject of a proposed Disqualifying Transfer, to the extent determined by the Board of Directors, in its sole discretion, to be necessary to preserve

the Corporation's status as an S Corporation. The terms and conditions of such redemption shall be as follows:

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

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

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

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

I. Bylaws. The Bylaws of the Corporation may make appropriate provisions to effectuate the requirements of this Article X.

J. Factual Determinations. The Board of Directors shall have the power to construe and apply the provisions of this Article X and to make all determinations necessary or desirable to implement such provisions, including but not limited to whether (i) the number of shares of voting stock that are beneficially owned by any Person; (ii) whether a Person is an Affiliate or Associate of another person; (iii) whether

a Person has an agreement, arrangement or understanding with another Person as to matters bearing on beneficial ownership; (iv) whether a Person is a Disqualified Person; (v) whether a transfer is a Disqualifying Transfer; (vi) the application of any other definition of these Articles of Corporation to a given fact; (vii) the book value of the share of Capital Stock; and (viii) any other matter relating to the applicability or effect of this Article X.

K. Restrictive Legend. In furtherance of the foregoing provisions of this Article X, the Corporation shall be entitled to place on every certificate representing shares of Capital Stock a legend which shall state that such shares are restricted as to transfer.

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

## **ARTICLE XI**

### **Amendment**

Except as may be expressly provided in these Articles of Incorporation, the Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in these Articles of Incorporation and any other provisions authorized by the laws of the State of Florida at the time in force may be added or inserted, in the manner now or hereafter prescribed herein or by applicable law, and all rights, preferences and privileges of whatsoever nature conferred upon shareholders, directors or any other persons whomsoever by and pursuant to these Articles of Incorporation in their present form or as hereafter amended are granted subject to the right reserved in this Article XI; provided, however, that any amendment or repeal of Article VIII or Article IX shall not adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such amendment or repeal.

## **ARTICLE XII**

### **Bylaws**

The Bylaws may be adopted, altered, amended, or repealed by either the shareholders or the Board of Directors, but the Board of Directors may not amend or repeal any Bylaw adopted by shareholders if the shareholders specifically provide such Bylaw is not subject to amendment or repeal by the directors.

**ARTICLE XIII**

**Incorporator**

The name and mailing address of the incorporator is:

Gregory K. Bader  
Broward Financial Centre  
500 East Broward Boulevard, Suite 1400  
Ft. Lauderdale, FL 33394

Date: March 14, 2003

  
Gregory K. Bader, Incorporator

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**ACCEPTANCE OF APPOINTMENT AS REGISTERED AGENT**

Having been named as registered agent and to accept service of process of the above stated corporation at the place designated in its Articles of Incorporation, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as described in Chapter 607 of the Florida Statutes.

Date: March 14, 2003

  
David I. Schlosberg

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