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(City/State/Zip/Phone #)

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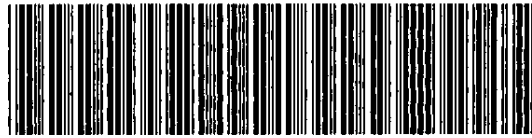
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Effective date  
5-1-10

Merger  
Tew's  
4-29-10

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

2010 APR 29 P 12:45

FILED

**INTEROFFICE  
COMMUNICATION**



**OFFICE OF FINANCIAL  
REGULATION**

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**DATE:** April 28, 2010

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

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

**SUBJECT:** Merger of Prime Bank with and into Florida Bank of  
Commerce and under the title of Florida Bank of Commerce

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Please file the attached "Merger Documents" for the above-referenced institutions, using 12:01 a. m., May 1, 2010, as the effective date for the merger.

Please make the following distribution of certified copies of the merger documents:

- (1) One copy to: Bruce Ricca  
Office of Financial Regulation  
200 East Gaines Street  
Fletcher Building, Sixth Floor  
Tallahassee, Florida 32399-0371
- (2) One copy to: Mr. John P. Greeley  
Smith Mackinnon, P. A.  
Post Office Box 2254  
Orlando, Florida 32802-2254
- (3) One copy to: Mr. David Crumby  
(uncertified) Federal Deposit Insurance Corporation  
10 Tenth Street, N. E.  
Suite 800  
Atlanta, Georgia 30309-3906

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

**SMITH MACKINNON, PA**

ATTORNEYS AT LAW

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

POST OFFICE BOX 2254  
ORLANDO, FLORIDA 32802-2254

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

JOHN P. GREELEY

April 26, 2010

*Via Federal Express*

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

Re: Merger of Prime Bank, Melbourne, Florida with and into Florida Bank of Commerce,  
Orlando, Florida

Dear Mr. Ricca:

In connection with the closing of the merger transaction, enclosed are the following documents;

1. Manually signed original of the Plan of Merger and Merger Agreement.
2. Original Certificate of Sole Shareholder.
3. Three Articles of Merger for filing with the Florida Secretary of State.
4. Original Articles of Incorporation for Florida Bank of Commerce (the surviving bank in the merger transaction).
5. A check in the amount of \$87.50 payable to the Florida Secretary of State for the filing fees.

I would appreciate it if you could have the Articles of Merger filed at your earliest convenience (the Merger Transaction is to become effective at 12:01 a.m. on May 1, 2010). You should receive one certified copy for the OFR and I would appreciate it if you could return to me the remaining certified copy.

If you have any questions regarding the enclosed, please do not hesitate to call me at your convenience. As always, we appreciate your assistance.

Very truly yours,

  
John P. Greeley

JPG:erw  
Copy to:

Mr. R. Van Bogan  
Chairman  
FBC Bancorp, Inc.

Ms. Dana Kilborne  
President and Chief Executive Officer  
Prime Bank

2010 APR 27 AM 10:07  
CASHIER'S OFFICE

TS. Bruce  
4/27/10

**ARTICLES OF MERGER  
OF  
PRIME BANK  
INTO  
FLORIDA BANK OF COMMERCE**

**FILED**

2010 APR 29 P 12:45

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Florida Bank of Commerce and Prime Bank do hereby adopt the following Articles of Merger:

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

**SECOND:** The Plan of Merger is set forth in the Plan of Merger and Merger Agreement dated December 17, 2009, by and among Prime Bank and Florida Bank of Commerce. A copy of the Plan of Merger is attached hereto and made a part hereof by reference as if fully set forth herein.

**THIRD:** The Merger shall become effective at 12:01 a.m., Orlando, Florida time, on May 1, 2010.

**FOURTH:** The Merger Agreement was adopted by the shareholders of Florida Bank of Commerce on December 17, 2009 and by the shareholders of Prime Bank on December 17, 2009.

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

IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of April 19, 2010.

**FLORIDA BANK OF COMMERCE**

**PRIME BANK**

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

R. Van Bogan  
Chairman

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

Dana Kilborne  
President and Chief Executive Officer

**ARTICLES OF MERGER  
OF  
PRIME BANK  
INTO  
FLORIDA BANK OF COMMERCE**

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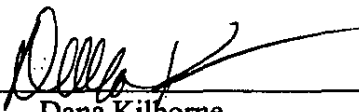
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**FLORIDA BANK OF COMMERCE**

**PRIME BANK**

By: \_\_\_\_\_  
R. Van Bogan  
Chairman

By:  \_\_\_\_\_  
Dana Kilborne  
President and Chief Executive Officer

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

**For the merger of  
PRIME BANK  
with and into  
FLORIDA BANK OF COMMERCE  
under the charter of  
FLORIDA BANK OF COMMERCE  
under the title of  
"FLORIDA BANK OF COMMERCE"  
("Resulting Bank")**

THIS PLAN OF MERGER AND MERGER AGREEMENT (the "Agreement") is made this 17<sup>th</sup> day of December, 2009, between Florida Bank of Commerce (hereinafter referred to as Florida Bank of Commerce and the "Resulting Bank"), a Florida banking corporation, with its main office located at 105 East Robinson Street, Orlando, Florida 32801 and Prime Bank (hereinafter referred to as "Prime Bank"), a Florida banking corporation, with its main office located at 5770 North Wickham Road, Melbourne, Florida 32940-7335.

WHEREAS, a majority of the entire Boards of Directors of each of Florida Bank of Commerce and Prime Bank (collectively, the "Banks") have, respectively, approved and made this Agreement and authorized its execution pursuant to the authority given by and in accordance with the provisions of Section 658.40 through 658.45, Florida Statutes.

WHEREAS, each of the Banks is entering this Agreement to provide for the merger of Prime Bank with and into Florida Bank of Commerce, with Florida Bank of Commerce being the surviving corporation of such merger transaction.

WHEREAS, each of the Banks is a wholly owned subsidiary of FBC Bancorp, Inc. ("BHC"), which has authorized, adopted and approved this Agreement as the sole shareholder of each of the Banks.

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

### SECTION 1

Prime Bank shall be simultaneously merged with and into Florida Bank of Commerce, with Florida Bank of Commerce thereby becoming the Resulting Bank, under the charter of the Resulting Bank (the "Merger").

RECEIVED  
DIVISION OF  
FINANCIAL SERVICES  
20 APR 27 AM 10:07  
CASHIER'S OFFICE

## SECTION 2

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

## SECTION 3

The business of the Resulting Bank shall be that of a state banking corporation. This business shall be conducted by the Resulting Bank at its main office which shall be located at 105 East Robinson Street., Orlando, Florida 32801, as well as its branch offices and all of the banking offices of Prime Bank (which such banking offices shall continue to conduct operations after the closing of the Merger as branch offices of Florida Bank of Commerce).

## SECTION 4

Immediately upon the Merger becoming effective, (i) the amount of capital stock of the Resulting Bank shall be the amount outstanding upon the Merger becoming effective, and (ii) the Resulting Bank shall have a Surplus and Undivided Profits equal to its Surplus and Undivided Profits plus the Surplus and Undivided Profits of all of the merging or constituent banks at the time the Merger becomes effective. Preferred stock shall not be issued by the Resulting Bank.

## SECTION 5

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

## SECTION 6

Prime Bank shall transfer to the Resulting Bank in the Merger acceptable assets having a book value, over and above its liability to its creditors, in such amounts as set forth on the books of Prime Bank at the time the Merger becomes effective.

## SECTION 7

At the effective time of the Merger, each outstanding share of common stock of Prime Bank in exchange for the assets transferred by Prime Bank in the Merger, to the Resulting Bank, shall be cancelled.

Outstanding certificates representing shares of the common stock of Prime Bank shall, at the effective time of the Merger, be cancelled.

#### SECTION 8

Upon the Merger becoming effective, the then outstanding shares of the Florida Bank of Commerce's Common Stock shall continue to remain outstanding shares of Florida Bank of Commerce, all of which shall continue to be owned by BHC.

#### SECTION 9

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

A. Directors:

<u>Name</u>	<u>Street Address</u>
Richard Beagley	105 East Robinson Street, Orlando, Florida 32801
R. Van Bogan	105 East Robinson Street, Orlando, Florida 32801
Michael Coleman	105 East Robinson Street, Orlando, Florida 32801
Randolph D. Davis	105 East Robinson Street, Orlando, Florida 32801
Bjornar Hermansen	105 East Robinson Street, Orlando, Florida 32801
Tom Hermansen	105 East Robinson Street, Orlando, Florida 32801
C.T. Hsu	105 East Robinson Street, Orlando, Florida 32801
John Kancilia	105 East Robinson Street, Orlando, Florida 32801
Dana S. Kilborne	105 East Robinson Street, Orlando, Florida 32801
Malcolm Kirschenbaum	105 East Robinson Street, Orlando, Florida 32801
Frederick W. Leonhardt	105 East Robinson Street, Orlando, Florida 32801
Sal A. (Joe) Nunziata	105 East Robinson Street, Orlando, Florida 32801
William S. Orosz	105 East Robinson Street, Orlando, Florida 32801
Eugene M. Pascarella	105 East Robinson Street, Orlando, Florida 32801
Craig E. Polejes	105 East Robinson Street, Orlando, Florida 32801
John C. Reich	105 East Robinson Street, Orlando, Florida 32801
Joan H. Schirm	105 East Robinson Street, Orlando, Florida 32801



<u>Name</u>	<u>Street Address</u>
James T. Swann	105 East Robinson Street, Orlando, Florida 32801
Ernest J. Wilding	105 East Robinson Street, Orlando, Florida 32801
Judy Rockwell Willeke	105 East Robinson Street, Orlando, Florida 32801
Wayne C. Wolfson	105 East Robinson Street, Orlando, Florida 32801

B. Executive Officers:

<u>Name</u>	<u>Position</u>	<u>Address</u>
R. Van Bogan	Director, Chairman	105 East Robinson Street, Orlando, Florida 32801
Dana Kilborne	Director, Chief Executive Officer	105 East Robinson Street, Orlando, Florida 32801
Craig E. Polejes	Director, President	105 East Robinson Street, Orlando, Florida 32801
Ian C. Donkin	Executive Vice President and Chief Financial Officer	105 East Robinson Street, Orlando, Florida 32801

## SECTION 10

In the event that:

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

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

(c) The Merger has not been consummated by December 31, 2010 (unless extended by the mutual consent of the parties hereto); or

(d) For any other reason consummation of the Merger is inadvisable in the opinion of the Board of Directors of any of the Banks, then this Agreement may be terminated at any time before the Merger becomes effective by written notice by any of the Banks to the other of them, authorized or approved by resolution adopted by the Board of Directors of the one of them giving such notice. Upon termination by written notice as provided in this Section, this Agreement shall be void and of

no further effect, and there shall be no liability by reason of this Agreement or the termination thereof on the part of any of the Banks, BHC or the directors, officers, employees, agents or shareholders of any of them.

#### SECTION 11

This Agreement has been approved by BHC, which owns all of the outstanding shares of each of the Banks, and the Merger shall become effective at the time specified in a Certificate to be issued by the Florida Office of Financial Regulation, pursuant to Section 658.45, Florida Statutes, under the seal of such office, approving the Merger.

#### SECTION 12

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

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

#### SECTION 13

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

#### SECTION 14

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

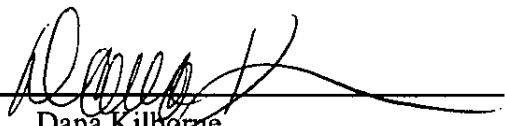
IN WITNESS WHEREOF, the undersigned have signed this Plan of Merger and Merger Agreement effective as of the date and year first set forth above.

**FLORIDA BANK OF COMMERCE**

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


Craig E. Polejes  
President and Chief Executive Officer

**PRIME BANK**

By:   
Dana Kilborne  
President and Chief Executive Officer

**APPROVAL**

Approved by the Florida Office of Financial Regulation this 22<sup>ND</sup> day of  
August, 2005, Tallahassee, Florida.

  
\_\_\_\_\_  
Linda B. Charity, Director  
Division of Financial Institutions

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
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