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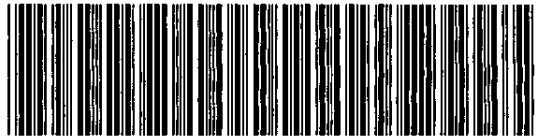
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2008 SEP 30 AM 10:23
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Amended & Restated

TB

10/8/08



CAPITOL BANCORP
LIMITED

Capitol Bancorp Center
200 Washington Square North
Lansing, MI 48933
tel: 517.487.6555
fax: 517.374.2576
www.capitolbancorp.com

September 29, 2008

State of Florida
Division of Corporations
2661 Executive Circle Center
Tallahassee, FL 32301

Re: Amended and Restated Articles of Incorporation of Florida Commerce Bancorp,
Inc.

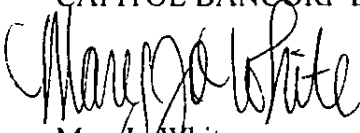
Dear Sir/Madam:

Enclosed please find the Amended and Restated Articles of Incorporation of Florida Commerce Bancorp, Inc. to be filed with the Department of Corporations for the State of Florida. The filing fee of \$35.00 is enclosed.

Please return your letter of acknowledgement in the self addressed stamped envelope. Should you have any questions, do not hesitate to contact me (517)316-0156.

Regards,

CAPITOL BANCORP LTD.


Mary Jo White
Paralegal

**FIRST AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
FLORIDA COMMERCE BANCORP, INC.**

FILED
2008 SEP 30 AM 10:23
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned, for the purpose of amending and restating the Certificate of Incorporation of FLORIDA COMMERCE BANCORP, INC., a Florida corporation (the "*Company*"), hereby certifies that:

ONE: The Company was incorporated under the name FLORIDA COMMERCE BANCORP, INC. pursuant to the original Articles of Incorporation filed with the Secretary of the State of Florida (the "*Florida Secretary*") on October 17, 2007.

TWO: He is the duly elected and acting Chief Executive Officer of the Company.

THREE: The Articles of Incorporation of the Company are hereby amended and restated to read as follows:

**I.
NAME**

The name of the Company is FLORIDA COMMERCE BANCORP, INC.

**II.
ADDRESS**

The address of the registered office of the Company in the State of Florida is located at 1520 Royal Palm Square Boulevard, Fort Myers, Florida 33919 and the name of the registered agent of this Company in the State of Florida at such address is Mark L. Morris.

**III.
PURPOSE**

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

**IV.
CAPITAL STOCK**

A. Upon the filing of these First Amended and Restated Articles of Incorporation (these "*Restated Articles*") with the Florida Secretary, the total number of shares of all classes of capital stock which the Company shall have the authority to issue shall be Forty One Million (41,000,000) shares, consisting solely of: Forty Million (40,000,000) shares of common stock,

par value \$0.001 per share (the "**Common Stock**"), and One Million (1,000,000) shares of preferred stock, par value \$0.001 per share (the "**Preferred Stock**"), Sixty Thousand (60,000) of which are designated as "Series A Preferred Stock" (the "**Series A Preferred**").

B. Subject to any vote expressly required by these Restated Articles, authority is hereby expressly granted to the Company's Board of Directors (the "**Board**") from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation thereof, dividend rights, special voting rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the FBCA. Without limiting the generality of the foregoing, and subject to the rights of any series of preferred stock then outstanding, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law.

C. The rights, preferences, privileges, restrictions and other matters relating to the Preferred Stock are as follows:

1. DIVIDEND RIGHTS.

(a) Series A Dividend. Holders of the Series A Preferred, in preference to the holders of the Common Stock, shall be entitled to receive, sixty (60) months from issuance of the Series A Preferred, a cumulative cash dividend equal to Eight and One-Half percent (8.5%) of the Series A Original Issue Price (as defined below) per annum on each outstanding share of the Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) compounded annually. The "**Series A Original Issue Price**" of the Series A Preferred shall be twenty-five dollars (\$25.00) per share, subject to appropriate adjustment in the event of any Recapitalization Event (as defined below). Such dividend shall be due and payable at the completion of the sixtieth (60th) month from issuance of the Series A Preferred.

(b) Participation in Common Stock Dividends. So long as any shares of the Series A Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any shares of the Common Stock until all dividends (set forth in Subsection 1(a) above) on the Series A Preferred shall have been paid or declared and set apart. In the event dividends are paid on any share of the Common Stock, an additional dividend shall be paid with respect to all outstanding shares of the Series A Preferred in an amount equal per share (on an as-if-converted to shares of the Common Stock basis) to the amount paid or set aside for each share of the Common Stock.

2. VOTING RIGHTS. The Preferred Stock has no voting rights.

3. LIQUIDATION, DISSOLUTION OR WINDING UP; CERTAIN MERGERS, CONSOLIDATIONS AND ASSET SALES.

(a) **Preferential Payments to Holders of the Series A Preferred.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of shares of the Series A Preferred then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its shareholders before any payment shall be made to the holders of the Common Stock by reason of their ownership thereof, an amount per share equal to one times the Series A Original Issue Price, plus any dividends accrued but unpaid. If upon any such liquidation, dissolution or winding up of the Company, the assets of the Company available for distribution to its shareholders shall be insufficient to pay the holders of shares of the Series A Preferred the full amount to which they shall be entitled under this Subsection 3(a), the holders of shares of the Series A Preferred shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) **Distribution of Remaining Assets.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, after the payment of all preferential amounts required to be paid to the holders of shares of the Series A Preferred, the remaining assets of the Company available for distribution to its shareholders shall be distributed among the holders of the shares of the Series A Preferred and the Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to shares of the Common Stock pursuant to the terms of these Restated Articles immediately prior to such dissolution, liquidation or winding up of the Company. The aggregate amount which a holder of a share of the Series A Preferred is entitled to receive under Subsections 3(a) and 3(b) is hereinafter referred to as the ***"Series A Liquidation Amount."***

(c) **Deemed Liquidation Events.**

(i) Definition. Each of the following events shall be considered a ***"Deemed Liquidation Event"*** unless the holders of at least sixty-seven percent (67%) of the outstanding shares of the Series A Preferred elect otherwise by written notice sent to the Company at least fifteen (15) days prior to the effective date of any such event:

(A) a merger or consolidation in which the Company is a constituent party or a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Company or a subsidiary in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation, or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Subsection 3(c), all shares of the Common Stock issuable upon exercise of options outstanding immediately prior to such merger or consolidation or upon conversion of convertible securities outstanding immediately prior to such merger or consolidation shall be

deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of the Common Stock are converted or exchanged); or

(B) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

(ii) Effecting a Deemed Liquidation Event.

(A) The Company shall not have the power to effect a Deemed Liquidation Event referred to in this Section 3(c) above unless the definitive agreement for such transaction (the ***“Transaction Agreement”***) provides that the consideration payable to the shareholders of the Company shall be allocated among the holders of capital stock of the Company in accordance with Subsections 3(a) and 3(b) above.

(B) In the event of a Deemed Liquidation Event referred to in Subsection 3(c)(i)(A) or 3(c)(i)(B) above, if the Company does not effect a dissolution of the Company under the FBCA within ninety (90) days after such Deemed Liquidation Event, then (i) the Company shall send a written notice to each holder of the Series A Preferred no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of the Series A Preferred, and (ii) if the holders of at least sixty seven-percent (67%) of the then outstanding shares of the Series A Preferred so request in a written instrument delivered to the Company not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Company shall use the consideration received by the Company for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board) (the ***“Net Proceeds”***), to the extent legally available therefor, on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to redeem all outstanding shares of the Series A Preferred at a price per share equal to the Series A Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of the Series A Preferred, or if the Company does not have sufficient lawfully available funds to effect such redemption, the Company shall redeem a pro rata portion of each holder's shares of the Series A Preferred to the fullest extent of such Net Proceeds or such lawfully available funds, as the case may be, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Company has funds legally available therefor. The provisions of Section 5 below shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of

the Series A Preferred pursuant to this Subsection 3(c)(ii)(B). Prior to the distribution or redemption provided for in this Subsection 3(c)(ii)(B), the Company shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

(iii) Amount Deemed Paid or Distributed. If the amount deemed paid or distributed under this Subsection 3(c)(iii) is made in property other than in cash, the value of such distribution shall be the fair market value of such property, determined as follows:

(1) For securities not subject to investment letters or other similar restrictions on free marketability,

(i) if traded on a securities exchange or the NASDAQ Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the thirty (30) trading day period ending three (3) days prior to the closing of such transaction;

(ii) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the thirty (30) trading day period ending three (3) days prior to the closing of such transaction; or

(iii) if there is no active public market, the value shall be the fair market value thereof, as determined by the Board acting in good faith. In any such case, the Board shall notify each holder of shares of the Series A Preferred of its determination of the fair value or allocation, as the case may be, of such consideration prior to payment or accepting receipt thereof. If, within ten (10) days after receipt of such notice, the holders of not less than sixty-seven percent (67%) of the shares of the Series A Preferred then outstanding shall notify the Board in writing of their objection to such determination, a determination of the fair value of such consideration or allocation, as the case may be, shall be made by a nationally recognized independent investment banking firm acceptable to the Company and the holders of sixty-seven percent (67%) of the shares of the Series A Preferred then outstanding. If the parties are unable to agree on such an investment banking firm, one shall be chosen by two nationally recognized independent investment banking firms, one of which shall be designated by the Company and one of which shall be designated by the holders of sixty-seven percent (67%) of the shares of the Series A Preferred then outstanding. The Company shall bear the entire cost of the fees and expenses borne by the parties in such determination of such fair market value.

(2) The method of valuation of securities subject to investment letters or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall take into account an appropriate discount (as mutually determined by the Board and holders of sixty-seven percent (67%) of the outstanding shares of the Series A Preferred) from the market value as determined pursuant to Clause (1) above so as to reflect the approximate fair market value thereof.

(iv) **Allocation of Escrow.** In the case of a Deemed Liquidation Event pursuant to Subsection 3(c)(i)(A) and Subsection 3(c)(i)(B) above, if any portion of the consideration payable to the shareholders of the Company is placed into escrow and/or is payable to the shareholders of the Company subject to contingencies, the Transaction Agreement shall provide that (1) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the ***"Initial Consideration"***) shall be allocated among the holders of capital stock of the Company in accordance with Subsections 3(a) and 3(b) above as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (2) any additional consideration which becomes payable to the shareholders of the Company upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Company in accordance with Subsections 3(a) and 3(b) above after taking into account the previous payment of the Initial Consideration as part of the same transaction.

4. CONVERSION RIGHTS. The holders of the Series A Preferred shall have the following rights with respect to the conversion of the Series A Preferred into shares of the Common Stock (the ***"Conversion Rights"***):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of the Series A Preferred may, at the option of the holder, at the conclusion of the sixtieth (60th) month be converted into fully-paid and nonassessable shares of the Common Stock, subject to regulatory approval. The number of shares of the Common Stock to which a holder of the Series A Preferred shall be entitled upon conversion shall be five (5) shares of Common Stock for one (1) share of the Series A Preferred (the ***"Series A Preferred Conversion Ratio"***).

(b) **Mechanics of Conversion.** Each holder of the Series A Preferred who desires to convert the same into shares of the Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series A Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of the Series A Preferred being converted. Thereupon, the Company shall promptly (upon receipt of regulatory approval) issue and deliver at such office to such holder a certificate or certificates for the number of shares of the Common Stock to which such holder is entitled. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of the Series A Preferred to be converted, and the person entitled to receive the shares of the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of the Common Stock on such date.

(c) **Reorganizations, Mergers or Consolidations.** If at any time or from time to time after the date that the first share of the Series A Preferred is issued there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than a Deemed Liquidation Event or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization,

provision shall be made so that the holders of the Series A Preferred shall thereafter be entitled to receive upon conversion of the Series A Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of the Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A Preferred after the capital reorganization to the end that the provisions of this Section 4 shall be applicable after that event and be as nearly equivalent as practicable.

(d) Multiple Closing Dates. In the event the Company shall issue on more than one date additional shares of the Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Series A Preferred Conversion Ratio upon the final such issuance, the Series A Preferred Conversion Ratio shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(e) Certificate of Adjustment. In each case of an adjustment or readjustment of the Series A Preferred Conversion Ratio for the number of shares of the Common Stock or other securities issuable upon conversion of the Series A Preferred, if the Series A Preferred is then convertible pursuant to this Section 4, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the Series A Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any additional shares of the Common Stock issued or sold or deemed to have been issued or sold, (ii) the effective price of any such additional shares of the Common Stock, (iii) the Series A Preferred Conversion Ratio at the time in effect, (iv) the number of additional shares of the Common Stock and (v) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred.

(f) Notices of Record Date. Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Deemed Liquidation Event or other capital reorganization of the Company, any recapitalization event, any merger or consolidation of the Company with or into any other corporation, or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of the Series A Preferred at least ten (10) days prior to the record date specified therein a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Deemed Liquidation Event, recapitalization event, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of the Common Stock (or other

securities) shall be entitled to exchange their shares of the Common Stock (or other securities) for securities or other property deliverable upon such Deemed Liquidation Event, recapitalization event, transfer, consolidation, merger, dissolution, liquidation or winding up.

5. Notices. Any notice required by the provisions of this Article IV shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

6. Payment of Taxes. The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of the Common Stock upon conversion of shares of the Series A Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of the Common Stock in a name other than that in which the shares of the Series A Preferred so converted were registered.

7. Call Option. The Company shall retain a call option with regard to the Preferred Stock allowing the Company to purchase any and all of issued and outstanding Preferred Stock at any time. The strike price for the Call Option shall be 2x the shareholder's purchase price.

D. The rights, preferences, privileges, restrictions and other matters relating to the Common Stock are as follows:

1. General. All shares of the Common Stock shall be identical and shall entitle the holders thereof to the same powers, preferences, qualifications, limitations, privileges and other rights.

2. Voting Rights. Except as otherwise required by law all rights to vote and all voting power shall be vested exclusively in the holders of the Common Stock and each holder of shares of the Common Stock shall be entitled to one vote for each share of the Common Stock standing in such holder's name on the books of the Company.

3. Dividends. The holders of the Common Stock shall be entitled to receive when, as and if declared by the Board, out of funds legally available therefor, dividends (payable in cash, stock or otherwise) as the Board may from time to time determine, payable to shareholders of record on such date or dates as shall be fixed for such purpose by the Board in accordance with the FBCA.

4. Other. The Common Stock and holders thereof shall have all such other powers and rights as provided by law.

**V.
BOARD OF DIRECTORS**

The Board shall consist of not fewer than one (1) nor more than nine (9) directors. The number of directors within these limits may be increased or decreased from time to time as provided in the Bylaws of the Company.

**VI.
REGISTERED AGENT**

The street address of the registered office of the Company is 1520 Royal Palm Square Blvd., Suite 100, Fort Myers, Florida 33919. The name of the registered agent of the Company at that address is Mark L. Morris.

**VII.
INDEMNIFICATION**

The Company shall indemnify and may advance expenses to, and may purchase and maintain insurance on behalf of, its officers and directors to the fullest extent permitted by law as now or hereafter in effect. Without limiting the generality of the foregoing, the Bylaws of the Company may provide for indemnification and advancement of expenses to officers, directors, employees and agents on such terms and conditions as the Board may from time to time deem appropriate or advisable.

**VIII.
BYLAWS**

The Board shall have the power to adopt, amend or repeal the Bylaws of the Company or any part thereof.

**IX.
LIMITATION OF LIABILITY**

To the fullest extent permitted under the FBCA and other applicable law, no director shall be personally liable to the Company or the holders of shares of capital stock for monetary damages for breach of fiduciary duty as a director. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. If the law of the Company's state of incorporation is hereafter amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent then permitted. No repeal or modification of this Article IX shall adversely effect any right of or protection afforded to a director of the Company existing immediately prior to such repeal or modification.

**X.
MISCELLANEOUS**

A. CALL OF SPECIAL SHAREHOLDERS MEETING.

Except as otherwise required by law, the Company shall not be required to hold a special meeting of shareholders of the Company unless (in addition to any other requirements of law) (a) the holders of not less than fifty percent (50%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the Company's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held; or (b) the meeting is called by (i) the Board pursuant to a resolution approved by a majority of the entire Board, or (ii) the Company's Chairman of the Board or Chief Executive Officer. Only business within the purpose or purposes described in the special meeting notice required by Section 607.0705 of the FBCA may be conducted at a special meeting of the shareholders.

B. RESTRICTIONS ON TRANSFER OF STOCK.

1. Shareholders desiring to transfer their shares of the Common Stock shall first present the shares to the Company for sale. Commencing with receipt of written notice from a shareholder who wishes to transfer his or her Common Stock, the Company shall have a period of thirty (30) days in which to exercise this right of first refusal. If this period of time elapses without exercise of the right of first refusal by the Company, the shareholder shall be free to transfer the shares to the party identified in the written notice to the Company. The Company may notify the shareholder before the end of the thirty (30) day period if it decides it will not be interested in purchasing the shares. Purchase of the shares shall be for cash, unless another payment plan is acceptable to the shareholder.

The price to be paid by the Company for the shares shall be established between the Company and the shareholder not lower than the price per share established by the Board for the purchase and sale of Company stock (see Subsection 2 below) and not higher than the amount offered to the shareholder, if any, (in a valid and currently unexpired bona fide offer) for the shares being presented to the Company for purchase.

2. The Board shall establish from time to time (at least annually) a transfer price which shall be used by the Company for the purchase of the Common Stock offered by existing shareholders. Such price shall be set to reflect a fair current value for the shares being sold or purchased.

3. For purposes of this Article X, Section B, "transfer" means any type of disposition, including but not limited to, a sale, gift, contribution or other action that would result in a change of the record ownership of any share of the Common Stock.


4. Any attempted transfer that is not in compliance with this Article X, Section B will be of no effect and will not be recorded on the stock transfer books of the Company. This restriction will be binding to the fullest extent permitted by law and shall be noted conspicuously on stock certificates issued or transferred.

FOUR: These Restated Articles have been duly approved by the Board.

FIVE: These Restated Articles have been duly adopted in accordance with the provisions of the FBCA by the shareholders of the Company on September 2, 2008.

IN WITNESS WHEREOF, the Company has caused these First Amended and Restated Articles of Incorporation of FLORIDA COMMERCE BANCORP, INC. to be signed by its Chief Executive Officer this 2nd day of September, 2008.

FLORIDA COMMERCE BANCORP, INC.

By: 
Name: Joseph D. Beard
Its: Chief Executive Officer