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(Address)

(Address)

(City/State/Zip/Phone #)

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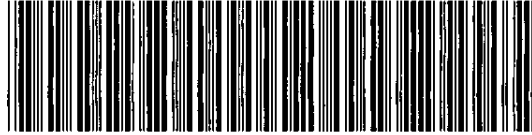
(Business Entity Name)

(Document Number)

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FILED  
08 OCT 20 AM 9:56  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

*Amend*  
C.COULLIETTE  
OCT 24 2008  
EXAMINER



CAPITOL BANCORP  
LIMITED

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

October 15, 2008

State of Florida  
Amendment Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

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

Dear Sir/Madam:

Enclosed please find an Amendment for 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 attached Certificate of Designation should be added as an Exhibit to the Amended and Restated Articles of Incorporation.

A check in the amount of \$43.75 is enclosed to cover the cost of certified copies and the filing fee. Please return the certified copies in the enclosed self-addressed stamped envelope. Should you have any questions, do not hesitate to contact me (517)316-0156.

Regards,

CAPITOL BANCORP LTD.

MaryJo White  
Paralegal

encls.

**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**NAME OF CORPORATION:** Florida Commerce Bancorp, Inc. +

**DOCUMENT NUMBER:** N/A +

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Joseph A. King  
(Name of Contact Person)

Capitol Bancorp Ltd.  
(Firm/ Company)

200 N. Washington Square, Ste. 320  
(Address)

Lansing, MI 48933  
(City/ State and Zip Code)

For further information concerning this matter, please call:

Joseph A. King at ( 517 ) 316-9716  
(Name of Contact Person) (Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount made payable to the Florida Department of State:

- |  |  |  |  |
|--|--|--|--|
| <input type="checkbox"/> \$35 Filing Fee | <input type="checkbox"/> \$43.75 Filing Fee &<br>Certificate of Status | <input checked="" type="checkbox"/> \$43.75 Filing Fee &<br>Certified Copy<br>(Additional copy is<br>enclosed) | <input type="checkbox"/> \$52.50 Filing Fee<br>Certificate of Status<br>Certified Copy<br>(Additional Copy<br>is enclosed) |
|--|--|--|--|

**Mailing Address**  
Amendment Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**Street Address**  
Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**Articles of Amendment  
to  
Articles of Incorporation  
of**

Florida Commerce Bancorp, Inc.

(Name of Corporation as currently filed with the Florida Dept. of State)

\_\_\_\_\_  
(Document Number of Corporation (if known))

Pursuant to the provisions of section 607.1006, Florida Statutes, this **Florida Profit Corporation** adopts the following amendment(s) to its Articles of Incorporation:

**A. If amending name, enter the new name of the corporation:**

*The new name must be distinguishable and contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or the designation "Corp.," "Inc.," or "Co.". A professional corporation name must contain the word "chartered," "professional association," or the abbreviation "P.A."*

**B. Enter new principal office address, if applicable:**

*(Principal office address **MUST BE A STREET ADDRESS**)*

**C. Enter new mailing address, if applicable:**

*(Mailing address **MAY BE A POST OFFICE BOX**)*

FILED  
08 OCT 20 AM 9:56  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**D. If amending the registered agent and/or registered office address in Florida, enter the name of the new registered agent and/or the new registered office address:**

*Name of New Registered Agent:* \_\_\_\_\_

*New Registered Office Address:* \_\_\_\_\_  
(Florida street address)

\_\_\_\_\_, Florida  
(City) (Zip Code)

**New Registered Agent's Signature, if changing Registered Agent:**

*I hereby accept the appointment as registered agent. I am familiar with and accept the obligations of the position.*

\_\_\_\_\_  
*Signature of New Registered Agent, if changing*

**If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:**  
*(Attach additional sheets, if necessary)*

<u>Title</u>	<u>Name</u>	<u>Address</u>	<u>Type of Action</u>
_____	_____	_____	<input type="checkbox"/> Add
		_____	<input type="checkbox"/> Remove
		_____	
_____	_____	_____	<input type="checkbox"/> Add
		_____	<input type="checkbox"/> Remove
		_____	
_____	_____	_____	<input type="checkbox"/> Add
		_____	<input type="checkbox"/> Remove
		_____	

**E. If amending or adding additional Articles, enter change(s) here:**  
*(attach additional sheets, if necessary). (Be specific)*

Exhibit to Amended and Restated Articles of Incorporation. See attached.

**F. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself:**  
*(if not applicable, indicate N/A)*

The date of each amendment(s) adoption: September 29, 2008

Effective date if applicable: September 29, 2008

(no more than 90 days after amendment file date)

Adoption of Amendment(s) (CHECK ONE)

☐ The amendment(s) was/were adopted by the shareholders. The number of votes cast for the amendment(s) by the shareholders was/were sufficient for approval.

☐ The amendment(s) was/were approved by the shareholders through voting groups. *The following statement must be separately provided for each voting group entitled to vote separately on the amendment(s):*

"The number of votes cast for the amendment(s) was/were sufficient for approval

by \_\_\_\_\_."

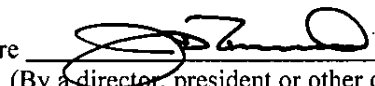
(voting group)

☒ The amendment(s) was/were adopted by the board of directors without shareholder action and shareholder action was not required.

☐ The amendment(s) was/were adopted by the incorporators without shareholder action and shareholder action was not required.

Dated October 14, 2008

Signature



(By a director, president or other officer – if directors or officers have not been selected, by an incorporator – if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

Joseph D. Reid

(Typed or printed name of person signing)

Chairman and CEO

(Title of person signing)

**CERTIFICATE OF POWERS, DESIGNATIONS, PREFERENCES AND RIGHTS  
OF THE  
SERIES B PREFERRED STOCK  
OF  
FLORIDA COMMERCE BANCORP, INC.**

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THE UNDERSIGNED, being the Secretary of FLORIDA COMMERCE BANCORP, INC., a Florida corporation (the "**Corporation**"), does hereby certify that the following resolutions were duly adopted by the Board of Directors of the Corporation (the "**Board**") and, pursuant to authority conferred upon the Board by the provisions of the First Amended and Restated Articles of Incorporation of the Corporation (the "**Articles of Incorporation**"), the Board adopted resolutions fixing the designation and the relative powers, preferences, rights, qualifications, limitations and restrictions of the Corporation's Series B Preferred Stock (this "**Certificate of Designations**"). These composite resolutions are as follows:

"RESOLVED, that pursuant to the authority expressly granted to and vested in the Board by the provisions of the Articles of Incorporation, the issuance of a series of preferred stock, \$0.001 par value per share, which shall consist of 60,000 shares of preferred stock which the Corporation now has authority to issue, be, and the same hereby is, authorized and designated as "Series B Preferred Stock" (the "**Series B Preferred Stock**"). Shares of the Series B Preferred Stock shall have the powers, designations, preferences and the qualifications, limitations and restrictions thereof as follows:

**1. DIVIDEND RIGHTS.**

(a) **Series B Dividends.** Holders of shares of the Series B Preferred Stock, in preference to holders of the Corporation's shares of common stock, \$0.001 par value per share (the "**Common Stock**"), shall be entitled to receive a cumulative dividend in an equal to eight percent (8%) annually (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like). Such dividends shall be cumulative for a period of 60 months and be compounded annually.

(b) **Participation in Common Stock Dividends.** If the Board shall declare a dividend payable upon the then outstanding shares of the Common Stock (other than a dividend payable entirely in shares of the Common Stock of the Corporation), in addition to any dividend payable pursuant to Section 1(a) hereof, the Board shall declare at the same time a dividend upon the then outstanding shares of the Series B Preferred Stock, payable at the same time as the dividend paid on the Common Stock, in an amount equal to the amount of dividends per share of the Series B Preferred Stock as would have been payable on the largest number of whole shares of the Common Stock into which each share of the Series B Preferred Stock held by each holder thereof if such shares of the Series B Preferred Stock had been converted to the Common Stock pursuant to the provisions of Section 5 hereof as of the record date for the determination of holders of the Common Stock entitled to receive such dividends.

## **2. VOTING RIGHTS.**

(a) **General Rights.** Except as set forth in Subsection 2(b) below, the Series B Preferred Stock is non-voting.

(b) **Separate Vote of Series B Preferred Stock.** For so long as any of the authorized shares of the Series B Preferred Stock remain outstanding, the vote or written consent of the holders of at least sixty-seven percent (67%) of the outstanding shares of the Series B Preferred Stock, shall be necessary for authorizing, effecting or validating the following actions:

(i) Amend, alter or repeal any provision of this Certificate of Designations, the Articles of Incorporation or the Bylaws in a manner materially adverse to holders of shares of the Series B Preferred Stock;

(ii) Any voluntary dissolution, liquidation or winding up of the Corporation; or

(iii) Any transaction involving, or any agreement by the Corporation or its stockholders regarding (A) the consolidation or merger of the Corporation or any subsidiary of the Corporation into or with any other entity or entities or any other form of corporate reorganization or change of control transaction, including (without limitation) an Acquisition (as hereinafter defined), or (B) the sale, lease, abandonment, transfer or other disposition of all or substantially all of the Corporation's assets, including (without limitation) an Asset Transfer (as hereinafter defined).

## **3. LIQUIDATION RIGHTS.**

(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 B 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 B 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 B 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 B 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 set forth in



Section 5 below immediately prior to such dissolution, liquidation or winding up of the Company. The aggregate amount which a holder of a share of the Series B Preferred is entitled to receive under Subsections 3(a) and 3(b) is hereinafter referred to as the ***"Series B 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 B 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 B Preferred no later than the ninetieth (90<sup>th</sup>) 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 B Preferred, and (ii) if the holders of at least sixty seven-percent (67%) of the then outstanding shares of the Series B 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 (150<sup>th</sup>) day after such Deemed Liquidation Event, to redeem all outstanding shares of the Series B Preferred at a price per share equal to the Series B 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 B 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 B 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(g) below shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series B 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 B 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 B 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 B 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 B 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 B 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. **CALL RIGHT.** At the conclusion of the 60<sup>th</sup> month from issuance of the Series B Preferred, the Corporation shall have an unrestricted "call right" with respect to the Series B Preferred Stock which may be paid in cash or Common Stock.

(a) If paid in cash, the strike price shall be calculated in accordance with the following formula:

$$\text{Price Per Share (\$30.00/Share)} + \text{Dividend Due} = \text{Strike Price}$$

(b) If paid in Common Stock, the strike price shall be calculated as follows:

(i) Shares exchanged for the Series B Preferred Shares shall be at a price not greater than the tangible book value per share of each share of common stock of the issuer.


(ii) The tangible book value of the commons shares shall be reduced further by any dilution to its tangible book value as a consequence of the anticipated share exchange.

(iii) The value of the Series B Preferred Shares shall include any cumulative dividends.

(iv) The share exchange shall be subject to any and all necessary regulatory approval.

IN WITNESS WHEREOF, this Certificate of Powers, Designations, Preferences and Rights of the Series B Preferred Stock has been executed by a duly authorized officer of the Corporation this 29<sup>th</sup> day of September, 2008.

**FLORIDA COMMERCE BANCORP, INC.**

By:   
Name: Michael L. Kasten  
Title: Secretary