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RESUBMIT

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1/28/2010 11:25:22 AM PAGE 3/030 Fax Server

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January 27, 2010

FIRST SOUTHERN BANCORP, INC.
900 N. FEDERAL HIGHWAY
SUITE 300
BOCA RATON, FL 33432

SUBJECT: FIRST SOUTHERN BANCORP, INC.
REF: P95000026571

RESUBMIT

Please give original
submission date or file date.

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.

It appears all the pages did not come through on the fax. The cover page list page count as 27 but there's only 18 pages.

The amendment must be adopted in one of the following manners:

(1) If an amendment was approved by the shareholders, one of the following statements must be contained in the document.

(a) A statement that the number of votes cast for the amendment by the shareholders was sufficient for approval, -or-

(b) If more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group.

(2) If an amendment was adopted by the incorporators or board of directors without shareholder action.

(a) A statement that the amendment was adopted by either the incorporators or board of directors and that shareholder action was not required.

If the corporation is a PROFIT corporation it must be signed 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.

If the corporation is a NOT FOR PROFIT corporation it must be signed by

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the chairman or vice chairman of the board, president or other officer - if directors have not been selected, by an incorporator - if in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary.

If you have any questions concerning the filing of your document, please call (850) 245-6964.

Irene Albritton
Regulatory Specialist II

FAX Aud. #: H10000018709
Letter Number: 810A00002237

**ARTICLES OF AMENDMENT
TO THE
AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
FIRST SOUTHERN BANCORP, INC.
AUTHORIZING
COMMON EQUIVALENT CONVERTIBLE PARTICIPATING VOTING PREFERRED
STOCK, SERIES C**

(Pursuant to Section 607.0602 of the Florida Business Corporation Act)

First Southern Bancorp, Inc., a corporation organized and existing under the Florida Business Corporation Act (the "Corporation"), hereby certifies that, pursuant to authority granted by Article IV of the Amended and Restated Articles of Incorporation of the Corporation (the "Articles of Incorporation"), and in accordance with the provisions of Section 607.0602 of the Florida Business Corporation Act, which does not require shareholder action, the Board of Directors of the Corporation (the "Board of Directors") has duly adopted the following resolutions, at a meeting duly called and held on January 27, 2010:

RESOLVED, that there is hereby established a series of preferred stock, no par value per share, and the designation and certain terms, powers, preferences and relative, participating and other rights and certain qualifications, limitations and restrictions thereon, are hereby fixed as follows:

Section 1. Designation and Number. The distinctive serial designation of this Series will be "Common Equivalent Convertible Participating Voting Preferred Stock, Series C" (hereinafter called "Series C Preferred Stock"). The number of authorized shares of Series C Preferred Stock will be 35,000; provided, however, that, if the Corporation elects to issue additional shares of Series C Preferred Stock after the Effective Date, the Corporation may increase the number of shares so designated by the number of such additional shares of Series C Preferred Stock. Each share of Series C Preferred Stock will be identical in all respects to every other share of Series C Preferred Stock, except for the issue price and date of issuance. The number of authorized shares of Series C Preferred Stock may be reduced (but not below the number of shares of Series C Preferred Stock then issued and outstanding) by further resolution duly adopted by the Board of Directors; provided, however, that no such reduction will affect the due authorization of any issued and outstanding shares of Series C Preferred Stock. The Series C Preferred Stock is issuable in whole shares only. Shares of Series C Preferred Stock purchased by the Corporation will be canceled and revert to authorized but unissued shares of preferred stock of the Corporation undesignated as to series and available for future issuance.

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Section 2. Ranking. The Series C Preferred Stock will rank, with respect to dividend rights and rights upon the liquidation, dissolution or winding-up of the Corporation:

(a) senior to the Common Shares and any other class or series of the Corporation's Capital Stock that the Corporation may issue in the future the terms of which do not expressly provide that it ranks on a parity with, or senior to, to the Series C Preferred Stock;

(b) equally with any class or series of the Corporation's Capital Stock that the Corporation may issue in the future the terms of which expressly provide that such class or series will rank on a parity with the Series C Preferred Stock ("Parity Preferred Stock");

(c) junior to any class or series of the Corporation's Capital Stock that the Corporation may issue in the future the terms of which expressly provide that such class or series will rank senior to the Series C Preferred Stock;

(d) junior to all of the Corporation's existing and future indebtedness and other liabilities; and

(e) junior to (i) the Fixed Rate Cumulative Perpetual Preferred Stock, Series A, of the Corporation and (ii) the Fixed Rate Cumulative Perpetual Preferred Stock, Series B, of the Corporation.

For the avoidance of doubt, the Corporation may, from time to time, without notice to or consent from the Holders, create and issue additional shares of Series C Preferred Stock, subject to compliance with Section 1, or preferred stock senior to, ranking equally with or junior to the Series C Preferred Stock as to dividend rights and rights upon the liquidation, dissolution or winding-up of the Corporation.

Section 3. Definitions. Unless the context or use indicates another meaning or intent, the following terms will have the following meanings, whether used in the singular or the plural:

"Adjusted Losses" will have the meaning set forth in Section 8(a)(1)(A)(iii).

"Adjustment Calculation" will have the meaning set forth in Section 8(a)(2)(A).

"Adjustment Statement" will have the meaning set forth in Section 8(a)(1)(A).

"Affiliate" means, with respect to a specified person, any person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, such specified person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") when used with respect to a specified person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such specified person, whether through the ownership of voting securities, by contract or otherwise.

"Articles of Amendment" means these Articles of Amendment to the Amended and Restated Articles of Incorporation of First Southern Bancorp, Inc. authorizing Convertible Participating Voting Preferred Stock, Series C, dated January 27, 2010.

"Articles of Incorporation" will have the meaning set forth in the preamble.

"Bank" means First Southern Bank, a subsidiary of the Corporation.

"Bank Board" means the Board of Directors of the Bank.

"Board of Directors" will have the meaning set forth in the preamble.

"Business Day" means any day other than a Saturday, Sunday or any other day on which banking institutions in the State of New York or in the State of Florida generally are authorized or required by law or other governmental action to close.

"Capital Stock" of any person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such person, including any preferred stock, but excluding any debt securities convertible into such equity.

"Common Share Adjustment Event" means any recapitalization, stock split, stock dividend, combination or exchange of Common Shares, or merger, consolidation, reorganization or liquidation, in each case, that does not constitute a Liquidity Event or Qualifying Non-IPO Equity Offering.

"Common Shares" means either of Common Stock or Non-Voting Common Stock, as applicable.

"Common Stock" means shares of the Common Stock, par value \$0.01 per share, of the Corporation.

"Conversion" will have the meaning set forth in Section 8(b).

"Conversion Date" will have the meaning set forth in Section 8(b)(2).

"Conversion Election Notice" will have the meaning set forth in Section 8(b)(2).

"Conversion Price" means \$21.10 per share, subject to adjustment as set forth herein.

"Conversion Price Adjustment Date" means the earliest to occur of (a) the fifth (5th) Business Day after December 31, 2013, (b) immediately prior to a Liquidity Event, (c) immediately prior to a Qualifying Non-IPO Equity Offering and (d) the fifth (5th) Business Day after the date of a Qualifying Regulatory Capital Event.

"Conversion Price Table" will have the meaning set forth in Section 8(a)(2)(A).

"Converted Common Shares" will have the meaning set forth in Section 9(a)(1).

"Corporation" will have the meaning set forth in the preamble.

"Covered Shares" means all Shares purchased by New Investors pursuant to the Subscription Agreements (regardless of the holder of such Shares as of the Measurement Date), as increased or decreased, or converted into or exchanged for any successor security, as applicable, in each case, as a result of any Common Share Adjustment Events.

"Current Market Price" means, with respect to the Common Shares on any given day, the last reported sale price regular way or, in case no such reported sale takes place on such day, the average of the last closing bid and ask prices regular way, in either case on the principal securities exchange on which the Common Shares are listed or admitted to trading. Current Market Price will be determined without reference to after hours or extended hours trading. If the Common Shares are not listed and traded in a manner such that the quotations referred to above are available for the period required hereunder, the Current Market Price for the Common Shares will be deemed to be the fair market value as determined by an internationally recognized independent investment banking firm retained by the Corporation for this purpose.

"Early Conversion Event" means the first to occur of a Liquidity Event, a Qualifying Non-IPO Equity Offering and a Qualifying Regulatory Capital Event.

"Effective Date" means the date on which shares of the Series C Preferred Stock are first issued.

"Exchange Act" means the U.S. Securities Exchange Act of 1934.

"Exit Event" means a transaction or a combination or series of transactions (other than an Initial Public Offering or Qualifying Non-IPO Equity Offering) resulting in: (a) the sale, transfer or other disposition of all or substantially all of the assets of the Corporation and its subsidiaries, taken as a whole, to one or more persons that are not, immediately prior to such sale, transfer or other disposition, Affiliates of the Corporation; (b) the sale, transfer or disposition of all or substantially all of the Capital Stock and/or assets of the Bank to one or more persons that are not, immediately prior to such sale, transfer or other disposition, Affiliates of the Corporation; or (c) a reorganization, merger, consolidation or other corporate transaction involving the Corporation (a "Transaction"), with respect to which the shareholders of the Corporation immediately prior to such Transaction do not, immediately after the Transaction, own more than fifty percent (50%) of the combined voting power of the Corporation or other corporation resulting from such Transaction.

"Ex-Date" when used with respect to any issuance or distribution, means the first date on which the Common Shares or other securities trade or may be sold and bought without the right to receive the issuance or distribution giving rise to an adjustment to the Conversion Price pursuant to Section 10.

"GAAP" means U.S. generally accepted accounting principles.

"Holder" means, as of any date, the person in whose name the shares of the Series C Preferred Stock are registered as of such date, which may be treated by the Corporation as the absolute owner of the shares of Series C Preferred Stock for the purpose of making payment and settling the related conversions and for all other purposes.

"Initial Public Offering" means the date of issuance of Common Shares or other equity securities of a Registering Entity offered in a public offering or series of public offerings of the Common Shares or other equity securities of a Registering Entity to the general public: (a) through one or more registration statements filed with the Securities and Exchange Commission under the Securities Act; (b) that includes a primary offering or offerings of such Common Shares or other equity securities of such Registering Entity; and (c) following which at least fifteen percent (15%) of such Common Shares or other equity securities of such Registering Entity are publicly held as a result of such primary offering or offerings. For the avoidance of doubt, the registration of any shares of any class or series of securities of a Registering Entity pursuant to the Securities Act or the Exchange Act will not constitute an Initial Public Offering if the requirements of the foregoing sentence are not met.

"Investment Company" means an open-ended investment company registered under the U.S. Investment Company Act of 1940 that has issued redeemable securities that allow such investors to redeem such securities on demand.

"Legacy Loan Portfolio" means loans existing in the Bank's loan portfolio on September 30, 2009, a schedule of which will be maintained at the corporate offices of the Corporation.

"Legacy Loans" means all loans that are part of the Legacy Loan Portfolio.

"Legacy Shareholder" and "Legacy Shareholders" mean the holders of record of the Legacy Shares, including any subsequent transferee of such Legacy Shares.

"Legacy Shareholders Representative" means the person most recently designated as the "Legacy Shareholders Representative" pursuant to the Amended and Restated Bylaws of the Corporation.

"Legacy Shares" means all shares of Common Stock issued and outstanding immediately prior to the Effective Date.

"Liquidity Event" means the first to occur of an Initial Public Offering and an Exit Event.

"Losses" means the sum (without duplication, and which sum, for the avoidance of doubt, may be a negative number) of (a) after-tax charge-offs on Legacy Loans, less all after-tax recoveries, (b) after-tax gains and losses on the sale of any Legacy Loans or OREO obtained in connection with any Legacy Loans and (c) the net after-tax increase or decrease in the fair value of unsold OREO (based on appraisals by a qualified independent appraiser and measured from the time the applicable asset was recorded as OREO by the Bank (or, in the case of personal property, the time such personal property was acquired by the Bank)). The "after-tax" amount of any loss item referred to in this definition will mean the amount of the loss (on a pre-tax basis), reduced by an assumed tax rate equal to the sum of (x) the maximum statutory corporate tax rate for U.S. income taxes and (y) the maximum statutory corporate tax rate for State of Florida income taxes, in each case, determined as of the year to which the applicable Losses relate.

"Measurement Date" means the earliest to occur of (a) December 31, 2013, (b) the third (3rd) Business Day prior to a Liquidity Event, (c) the third (3rd) Business Day prior to a Qualifying Non-IPO Equity Offering and (d) the date of a Qualifying Regulatory Capital Event.

"Measurement Date Covered Share Cash Distributions" means the aggregate cash dividends, other cash distributions or cash consideration and the value of other distributions in property (in each case, including in connection with any Common Share Adjustment Event and other than equity securities), if any, in respect of all Covered Shares declared, paid and/or delivered, as applicable, prior to or as of the Measurement Date (in the case of the value of a distribution in property (other than equity securities), as reasonably determined by the Board of Directors as of the time of such distribution).

"Measurement Date Covered Share Equity Percentage" means, with respect to all Covered Shares in the aggregate as of the Measurement Date, the percentage of total common equity of the Corporation represented by such Covered Shares (in the case of shares of Series C Preferred Stock, determined notionally on the basis of the number of Common Shares into which such shares would be convertible as of the Measurement Date, as determined pursuant to Section 8(a)(1)(A)(ii), without giving effect to actual adjustments to the Conversion Price of such Covered Shares in accordance with Section 8, but giving effect to any adjustments to the Conversion Price of such Covered Shares in accordance with Section 10), assuming that all securities or other instruments convertible into, or exchangeable or exercisable for, common equity of the Corporation, including other outstanding preferred equity, stock options and other stock-based incentive awards, had been so converted, exchanged or exercised. For the avoidance of doubt, the percentage of total common equity of the Corporation represented by such Covered Shares will not include cash, other property or other consideration (other than equity securities) into which all or part of such Covered Shares may have been converted in any Common Share Adjustment Event.

"Measurement Date Enterprise Value" means the value of the Corporation as of the Measurement Date, as determined by the board of directors of the Corporation in good faith with the advice of an independent financial advisor; provided, however, that in the event that the Measurement Date results from a Liquidity Event or Qualifying Non-IPO Equity Offering, the Measurement Date Enterprise Value will be determined by reference to, and will not be less than, the valuation of the Corporation implied by such Liquidity Event or Qualifying Non-IPO Equity Offering (based on the prices of securities or assets sold).

"Measurement Period" means the period from and including October 1, 2009 to and including the Measurement Date.

"New Investor" means a party to a Subscription Agreement that purchases Shares of the Corporation.

"New Investor Average Notional CAGR" means (a) the sum of (i) (x) the Measurement Date Covered Share Equity Percentage multiplied by (y) the Measurement Date Enterprise Value and (ii) the Measurement Date Covered Share Cash Distributions, divided by (b) the New Investor Capital Amount, expressed as a compound annual growth rate percentage,

as determined by the Board of Directors in good faith with the advice of an independent financial advisor.

“New Investor Capital Amount” means the aggregate amount of all purchase price funds paid by the New Investors to the Corporation pursuant to the Subscription Agreements.

“Non-Voting Common Stock” means shares of the Non-Voting Common Stock, par value \$0.01 per share, of the Corporation.

“OREO” means (a) “other real estate owned” as determined for purposes of the Bank’s Consolidated Reports of Condition and Income published by the Federal Financial Institutions Examination Council and (b) any personal property owned by the Bank that served as collateral or other security for an obligation to the Bank.

“Parity Preferred Stock” will have the meaning set forth in Section 2(b).

“person” will have the meaning given to it in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act.

“Qualifying Non-IPO Equity Offering” means the date of issuance of Common Shares or other equity securities of a Registering Entity offered in an offering or related series of offerings (whether registered or unregistered) of the Common Shares or other equity securities of a Registering Entity in which the Corporation or such Registering Entity issues and sells, for cash, Common Shares or other equity securities of such Registering Entity that, immediately following completion of such offering or related series of offerings, represent at least fifteen percent (15%) of the total Common Shares or other equity securities of such Registering Entity, as applicable; provided, however, that the following will not constitute an offering or series of offerings for purposes of this definition: (x) an Initial Public Offering; and (y) issuances to employees, officers or directors of the Corporation or any of its subsidiaries pursuant to management or employee incentive programs or plans.

“Qualifying Regulatory Capital Event” means the first date on or after the Effective Date on which the Corporation has filed a Form FR Y-9C (or its equivalent) with the Board of Governors of the Federal Reserve System (or successor federal bank regulatory agency having jurisdiction over the Corporation) showing on Schedule HC-R (or a successor schedule, as applicable) that the Corporation’s “Tier 1 risk-based capital ratio” (reported as of the date hereof on line 32 of Schedule HC-R) is less than twelve percent (12%).

“Record Date” will have the meaning set forth in Section 4(d).

“Registering Entity” means (a) the Corporation or (b) such other entity designated by the Board of Directors as the entity undertaking a registered public offering of equity securities or other Qualifying Non-IPO Equity Offering that owns substantially all of the operations held, directly or indirectly, by the Corporation.

“Reorganization Event” will have the meaning set forth in Section 11(b).

“Report of Conversion” will have the meaning set forth in Section 9(a).

"Securities Act" means the U.S. Securities Act of 1933.

"Series C Preferred Stock" will have the meaning set forth in the preamble.

"Shares" means Common Shares and Series C Preferred Stock.

"Stated Value" means \$1,000 per share of Series C Preferred Stock.

"Subscription Agreements" means the Subscription Agreements, dated as of December 11, 2009 and December 15, 2009, by and between the Corporation and the New Investors listed on the signature pages thereto.

"Total Losses" will have the meaning set forth in Section 8(a)(1)(A)(i).

"Trading Day" means, with respect to any security: (a) if the security is not traded on any securities exchange or association or over-the-counter market, a Business Day or (b) if the security is traded on any securities exchange or association or over-the-counter market, a Business Day on which such relevant exchange or quotation system is scheduled to be open for business and on which such security (i) is not suspended from trading on such exchange or association or over-the-counter market for any period or periods aggregating one half hour or longer and (ii) has traded at least once on such securities exchange or association or over-the-counter market that is the primary market for the trading of the security.

"Transaction" will have the meaning given to such term in the definition of Exit Event.

Section 4. Dividends.

(a) From and after the Effective Date, Holders will be entitled to receive, out of funds legally available therefor, non-cumulative dividends in the amount determined as set forth in Section 4(b) and no more.

(b) If the Board of Directors declares and pays a dividend in the form of cash or other assets (other than Common Shares or rights or warrants to subscribe for Common Shares) in respect of any Common Shares, then the Corporation will pay to the Holders a dividend in an amount per share of Series C Preferred Stock equal to the product of (i) the per share dividend declared and paid in respect of each share of Common Shares and (ii) the number of Common Shares into which such share of Series C Preferred Stock would be convertible on an as-if-converted basis as of the applicable Record Date.

(c) Dividends payable on the Series C Preferred Stock pursuant to Section 4(b) will be payable on the same date that dividends are payable to holders of Common Shares, and no dividends will be payable to holders of Common Shares unless the full dividends contemplated by Section 4(b) are paid at the same time in respect of the Series C Preferred Stock.

(d) Each dividend will be payable to Holders of record as they appear in the records of the Corporation at the close of business on the record date (each, a "Record Date"), which, with respect to dividends payable on the Series C Preferred Stock pursuant to Section

4(b), will be the same day as the record date for the payment of the corresponding dividends to the holders of Common Shares.

(e) Dividends payable on the Series C Preferred Stock pursuant to Section 4(b) are non-cumulative. If the Board of Directors does not declare a dividend on the Series C Preferred Stock (and the Corporation is not required to pay a dividend on the Series C Preferred Stock pursuant to Section 4(b)) in respect of any dividend period, the Holders will have no right to receive any dividend for such dividend period, and the Corporation will have no obligation to pay a dividend for such dividend period, whether or not dividends are declared and paid for any future dividend period with respect to the Series C Preferred Stock or any other class or series of the Corporation's preferred stock or Common Shares.

Section 5. Liquidation.

(a) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the Holders will be entitled, before any distribution or payment is made on any date to the holders of the Common Shares or any other Capital Stock of the Corporation ranking junior to the Series C Preferred Stock upon liquidation, to receive in full an amount per share equal to the Stated Value, plus an amount equal to any dividends that have been declared on Series C Preferred Stock but have not been paid. If such payment has been made in full to all Holders of shares of Series C Preferred Stock, the Holders as such will have no right or claim to any of the remaining assets of the Corporation.

(b) If the assets of the Corporation available for distribution to the Holders upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, are insufficient to pay in full all amounts to which such Holders are entitled pursuant to Section 5(a), no such distribution will be made on account of any shares of any other class or series of Capital Stock ranking on parity with or junior to the shares of Series C Preferred Stock upon such liquidation, dissolution or winding up unless, in the case of Capital Stock on a parity with the shares of Series C Preferred Stock, distributive amounts are paid on account of the shares of Series C Preferred Stock ratably in proportion to the full distributable amounts for which holders of all such parity Capital Stock are respectively entitled upon such liquidation, dissolution or winding up.

(c) Neither a consolidation or merger of the Corporation with or into any other entity, nor a consolidation or merger of any other entity with or into the Corporation, nor a sale, lease or other transfer of all or substantially all of the Corporation's assets (which for purposes of these Articles of Amendment will be deemed to include any transaction or event that constitutes, is in connection with or results from an Exit Event), individually or in a series of transactions, will be considered a liquidation, dissolution or winding up of the Corporation.

Section 6. Maturity. The Series C Preferred Stock will be perpetual unless converted in accordance with these Articles of Amendment.

Section 7. Redemption. The Series C Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders will have no right to require redemption of any shares of Series C Preferred Stock.

Section 8. Conversion.

(a) Adjustments.

(1) Adjustment Statement.

(A) Subject to Section 8(a)(3) below, as promptly as practicable following the Measurement Date, the Corporation will prepare a statement (the "Adjustment Statement") setting forth:

(i) the aggregate amount of Losses for the Measurement Period ("Total Losses"); provided, however, that unless the Chief Executive Officer of the Bank and the Legacy Shareholders Representative mutually agree otherwise, Total Losses will be reduced by the amount, if any, of aggregate charge-offs relating to or arising from sales of Legacy Loans in excess of \$1,000,000; and provided, further, that in no event will Total Losses exceed \$42,098,000;

(ii) the New Investor Average Notional CAGR as of the Measurement Date, determined as if adjustments to the Conversion Price as of the Measurement Date pursuant to Section 8.2 were made on the basis of Total Losses (rather than Adjusted Losses), together with reasonable supporting details of such calculation and the summary details of the determination of any financial advisor with respect to such calculation or the components thereof; and

(iii) adjusted Total Losses for the Measurement Period ("Adjusted Losses"), where Adjusted Losses are determined as follows: (a) if New Investor Average Notional CAGR, determined pursuant to the foregoing clause (ii), would be at least 30.0%, then Adjusted Losses will be equal to the product of (x) Total Losses multiplied by (y) 0.7; and (b) otherwise, Adjusted Losses will be equal to Total Losses.

(B) The Adjustment Statement will set forth, consistent with applicable privacy laws, the Legacy Loans having resulted in Losses and reasonable supporting details of such Losses, and, with respect to any charge-offs arising from or relating to the sale of any Legacy Loans in the Measurement Period, the manner or type of sale, including whether such sale was a "short sale" or a sale in connection with the resolution of such Legacy Loan. To the greatest extent possible, the Adjustment Statement will be prepared on the basis of the audited financial statements of the Corporation and the Bank; provided, however, that it is understood that (x) the three (3) month period from and including October 1, 2009 through and including December 31, 2009 and (y) if applicable, any other partial year during the Measurement Period due to an

Early Conversion Event will be prepared on the basis of the unaudited financial statements of the Corporation and the Bank relating to any such period, and there will be no obligation on the part of the Corporation or the Bank to conduct an audit with respect to any such period for purposes of preparing the Adjustment Statement.

(C) Losses will be determined in accordance with applicable bank regulatory requirements, GAAP and the Bank's customary and usual practices in effect as of the Effective Date. The determination of Losses and Total Losses for purposes of these Articles of Amendment will be made in good faith by the Chief Executive Officer of the Bank in consultation with the Legacy Shareholders Representative (including, if reasonably necessary to determine the fair value of OREO as of the Measurement Date, on the basis of updated appraisals thereof by a qualified independent appraiser commissioned by the Corporation or the Bank). Notwithstanding the foregoing, final determinations regarding the management of all loans of the Bank, including the Legacy Loans, will be made by the Chief Executive Officer of the Bank, and all loans of the Bank, including the Legacy Loans, will be administered on the same basis pursuant to the same standards and in accordance with all applicable legal and regulatory requirements and the Bank's customary practices. The Corporation will promptly deliver a copy of the Adjustment Statement to the Legacy Shareholders Representative, and the Legacy Shareholders Representative will have access upon reasonable request to all information used in the determination of Losses, Total Losses and New Investor Average Notional CAGR.

(2) Adjustment Calculation.

(A). Subject to Section 8(a)(3) below, as of the Conversion Price Adjustment Date, and taking into account any other adjustments pursuant to Section 10 prior to or as of such date, the Conversion Price will be adjusted as provided in the table below (the "Conversion Price Table") (it being understood that, for this purpose, any such adjustments pursuant to Section 10 will be applied to the conversion prices shown in the Conversion Price Table to determine the Conversion Price as of the Conversion Price Adjustment Date). For purposes of calculating such adjustment (such calculation, the "Adjustment Calculation"), the "Adjusted Losses" variable on the vertical axis of the Conversion Price Table will correspond to the amount of Adjusted Losses as of the Measurement Date. For the avoidance of doubt, no adjustment to the Conversion Price will be made pursuant to this Section 8 if Adjusted Losses do not exceed \$3,229,000.

(B) To the extent the applicable exact variables are not set forth in the Conversion Price Table, then the exact dollar amount of the adjusted Conversion Price will be determined (x) based on linear interpolation between the closest variables set forth on the Conversion Price Table and (y) by rounding the result of such interpolation upwards or downwards, as the case may be, to the nearest 1/100th of a cent.

Conversion Price Table

Adjusted Losses (\$ Million)	Conversion Price per Share of Series C Preferred Stock	Adjusted Losses (\$ Million)	Conversion Price per Share of Series C Preferred Stock	Adjusted Losses (\$ Million)	Conversion Price per Share of Series C Preferred Stock
\$3.229	\$21.1000	\$16.000	\$3.1724	\$29.000	\$1.0026
\$3.500	\$19.4512	\$16.500	\$3.0267	\$29.500	\$0.9570
\$4.000	\$16.9609	\$17.000	\$2.8894	\$30.000	\$0.9130
\$4.500	\$14.9950	\$17.500	\$2.7598	\$30.500	\$0.8703
\$5.000	\$13.4037	\$18.000	\$2.6374	\$31.000	\$0.8290
\$5.500	\$12.0892	\$18.500	\$2.5215	\$31.500	\$0.7891
\$6.000	\$10.9851	\$19.000	\$2.4116	\$32.000	\$0.7503
\$6.500	\$10.0445	\$19.500	\$2.3072	\$32.500	\$0.7128
\$7.000	\$9.2338	\$20.000	\$2.2080	\$33.000	\$0.6763
\$7.500	\$8.5276	\$20.500	\$2.1136	\$33.500	\$0.6410
\$8.000	\$7.9071	\$21.000	\$2.0237	\$34.000	\$0.6067
\$8.500	\$7.3575	\$21.500	\$1.9379	\$34.500	\$0.5734
\$9.000	\$6.8673	\$22.000	\$1.8559	\$35.000	\$0.5410
\$9.500	\$6.4274	\$22.500	\$1.7775	\$35.500	\$0.5095
\$10.000	\$6.0305	\$23.000	\$1.7025	\$36.000	\$0.4789
\$10.500	\$5.6704	\$23.500	\$1.6307	\$36.500	\$0.4491
\$11.000	\$5.3424	\$24.000	\$1.5618	\$37.000	\$0.4201
\$11.500	\$5.0423	\$24.500	\$1.4957	\$37.500	\$0.3919
\$12.000	\$4.7667	\$25.000	\$1.4323	\$38.000	\$0.3645
\$12.500	\$4.5127	\$25.500	\$1.3713	\$38.500	\$0.3377
\$13.000	\$4.2778	\$26.000	\$1.3126	\$39.000	\$0.3116
\$13.500	\$4.0601	\$26.500	\$1.2561	\$39.500	\$0.2862
\$14.000	\$3.8576	\$27.000	\$1.2017	\$40.000	\$0.2614
\$14.500	\$3.6689	\$27.500	\$1.1492	\$40.500	\$0.2372
\$15.000	\$3.4926	\$28.000	\$1.0986	\$41.000	\$0.2136
\$15.500	\$3.3274	\$28.500	\$1.0498	\$42.098	\$0.1638

(3) Occurrence of Early Conversion Event. If a Liquidity Event or Qualifying Non-IPO Equity Offering is expected to occur, or a Qualifying Regulatory Capital Event occurs, in each case, prior to December 31, 2013, the Adjustment Statement will be prepared, the Adjustment Calculation will be performed and the Conversion Price will be adjusted as of the Conversion Price Adjustment Date determined by reference to such Early Conversion Event, and any Adjustment Statement based on a Liquidity Event or Qualifying Non-IPO Equity Offering will be prepared by the Corporation and delivered to the Legacy Shareholders Representative at least two (2) Business Days prior to the expected effective date of the Liquidity Event or Qualifying Non-IPO Equity Offering; provided, however, that, notwithstanding the foregoing, if an Adjustment Statement is prepared based on a Liquidity Event or Qualifying Non-IPO Equity Offering that is expected to occur but does not occur, such Adjustment Statement will be of no force or effect, no adjustment to the Conversion Price will occur in

connection with such expected Liquidity Event or Qualifying Non-IPO Equity Offering that did not occur and the Corporation will prepare and deliver a notice to such effect to the Legacy Shareholders Representative promptly thereafter.

(b) Conversion. All shares of Series C Preferred Stock will convert into the number of Common Shares determined in accordance with Section 8(c) only in the following instances (the "Conversion"):

(1) if an Early Conversion Event occurs prior to December 31, 2013, all shares of Series C Preferred Stock will mandatorily convert, and be deemed for all purposes hereunder to have converted, into Common Shares as of the Conversion Price Adjustment Date determined by reference to such Early Conversion Event; and

(2) otherwise, each share of Series C Preferred Stock will convert into Common Shares upon written notice of either the Corporation or the Holder, at its option any time beginning on the sixth (6th) Business Day after December 31, 2013 and from time to time thereafter, to the other electing to convert all shares of Series C Preferred Stock held by such Holder into Common Shares (a "Conversion Election Notice"); provided, however, that neither the Corporation nor any Holder may elect to convert less than all shares of Series C Preferred Stock held by the applicable Holder; and provided, further, that the Corporation may elect to convert shares of Series C Preferred Stock held by any Holder only if the Corporation elects on or about the date of such election to convert all shares of the Series C Preferred Stock held by all Holders (the date of the Conversion pursuant to the foregoing subsection (1) or (2), the "Conversion Date"). For the avoidance of doubt, in the event of any Conversion pursuant to this Section 8(b)(2), the Conversion Price will not be re-adjusted after adjustment as of the Conversion Price Adjustment Date in accordance with Section 8, notwithstanding further Losses, if any, after the Conversion Price Adjustment Date.

(c) Number of Shares upon Conversion. The number of Common Shares into which a share of Series C Preferred Stock will be convertible on the Conversion Date will be determined as follows:

(1) Adjustment. First, the Conversion Price (after giving effect to adjustments thereto, if any, in accordance with Section 10) will be adjusted in accordance with Section 8.

(2) Conversion Calculation. Second, the Stated Value will be divided by the Conversion Price (taking into account the adjustments contemplated by Section 8(c)(1) above, and subject to the conversion procedures of Section 9).

(3) Fractional Shares. Third, based on the calculation contemplated by Section 8(c)(2) above, an amount of cash in lieu of fractional shares will be determined in accordance with Section 13.

Section 9. Conversion Procedures.

(a) As promptly as practicable following the Conversion, the Corporation will provide each Holder and the Legacy Shareholders Representative with a notice (the "Report of Conversion") setting forth, in addition to any information required by applicable law or regulation, the following information:

(1) the total number of Common Shares issued upon conversion of each share of Series C Preferred Stock held of record by such Holder and subject to the Conversion (the "Converted Common Shares"), together with reasonable summary details of the Adjustment Statement supporting the determination of such number;

(2) the respective numbers of shares of Common Stock and Non-Voting Common Stock issued upon conversion of each share of Series C Preferred Stock held of record by such Holder and comprising such Holder's Converted Common Shares, as determined in accordance with Section 9(b); and

(3) the manner in which certificates of Series C Preferred Stock held of record by any Holder are to be surrendered for issuance of certificates representing Common Shares.

(b) Each Holder's Converted Common Shares will be issued in the form of Common Stock unless such Holder would, immediately following the Conversion, either alone or together with any other person or entity that may be affiliated with such Holder, or deemed to be acting in concert with such Holder pursuant to 12 C.F.R. Part 303, Subpart E, or 12 C.F.R. Section 225.2 or 225.41, acquire ownership, control or the power to vote securities of the Corporation in excess of (1) 4.9% of the total voting equity of the Corporation (or, if such Holder is an Investment Company or in any other case as determined by the Corporation in its sole discretion and with the written consent of such Holder, 9.9% of the total voting equity of the Corporation) or (2) 9.9% of any class of voting security of the Corporation, as determined by the Corporation in good faith. Each Holder's Converted Common Shares will be issued in the form of Common Stock to the maximum extent consistent with the foregoing sentence, and any remaining amount of such Holder's Converted Common Shares will be issued in the form of Non-Voting Common Stock.

(c) Effective immediately prior to the close of business on the Conversion Date, and from and after such time, with respect to any share of Series C Preferred Stock, dividends will no longer be declared on any such share of Series C Preferred Stock and such share of Series C Preferred Stock will only represent such number of Common Shares issuable upon conversion thereof and will cease to be outstanding, subject to the right of the Holder to receive any declared and unpaid dividends on such share to the extent provided in Section 4 and any other payments to which such Holder is otherwise entitled pursuant to Section 13.

(d) No allowance or adjustment, except pursuant to Sections 8 and 10, will be made in respect of dividends payable to holders of the Common Shares of record as of any date prior to the close of business on the Conversion Date with respect to any share of Series C

Preferred Stock. Immediately prior to the close of business on the Conversion Date with respect to any share of Series C Preferred Stock, no Common Shares issuable upon conversion thereof will be deemed outstanding for any purpose, and the Holder thereof will have no rights with respect to the Common Shares issuable upon conversion (including voting rights, rights to respond to tender offers for the Common Shares issuable upon conversion and rights to receive any dividends or distributions on the Common Shares issuable upon conversion) by virtue of holding such share of Series C Preferred Stock, other than as expressly provided for herein.

(e) Shares of Series C Preferred Stock converted in accordance with these Articles of Amendment will resume the status of authorized and unissued preferred stock of the Corporation, undesignated as to series and available for future issuance.

(f) The person or persons entitled to receive the Common Shares and/or cash issuable upon conversion of Series C Preferred Stock will be treated for all purposes as the record holder(s) of such Common Shares as of the close of business on the Conversion Date. In the event that a Holder will not by written notice to the Corporation have designated the name in which Common Shares and/or cash (including payments of cash in lieu of fractional shares) to be issued or paid upon conversion of shares of Series C Preferred Stock should be registered or paid or the manner in which such shares should be delivered, the Corporation will be entitled to register and deliver such shares, and make such payment, in the name of the Holder and in the manner shown on the records of the Corporation or pursuant to applicable law.

(g) As promptly as possible following delivery of the Report of Conversion, with respect to any share of Series C Preferred Stock as to which the Conversion will have occurred, certificates representing applicable shares of Converted Common Shares will be issued and delivered to the Holder thereof or such Holder's designee upon presentation and surrender of the certificate evidencing such Series C Preferred Stock to the Corporation and, if required, the furnishing of appropriate endorsements and transfer documents and the payment of all transfer and similar taxes.

Section 10. Anti-Dilution Adjustments.

(a) In addition to adjustments in accordance with Section 8, the Conversion Price will be subject to the following adjustments.

(1) **Stock Dividends and Distributions.** If the Corporation pays dividends or other distributions on the Common Shares in Common Shares, then the Conversion Price in effect immediately prior to the Ex-Date for such dividend or distribution will be multiplied by the following fraction:

$$\frac{OS_0}{OS_1}$$

Where,

OS_0 = the number of Common Shares outstanding immediately prior to the Ex-Date for such dividend or distribution.

OS_1 = the sum of the number of Common Shares outstanding immediately prior to the Ex-Date for such dividend or distribution plus the total number of Common Shares constituting such dividend or distribution.

For the purposes of this clause (1), the number of Common Shares at the time outstanding will not include shares acquired by the Corporation. If any dividend or distribution described in this clause (1) is declared but not so paid or made, the Conversion Price will be readjusted, effective as of the date the Board of Directors publicly announces its decision not to make such dividend or distribution, to such Conversion Price that would be in effect if such dividend or distribution had not been declared.

(2) Subdivisions, Splits and Combination of the Common Shares. If the Corporation subdivides, splits or combines the Common Shares, then the Conversion Price in effect immediately prior to the effective date of such share subdivision, split or combination will be multiplied by the following fraction:

$$\frac{OS_0}{OS_1}$$

Where,

OS_0 = the number of Common Shares outstanding immediately prior to the effective date of such share subdivision, split or combination.

OS_1 = the number of Common Shares outstanding immediately after the opening of business on the effective date of such share subdivision, split or combination.

For the purposes of this clause (2), the number of Common Shares at the time outstanding will not include shares acquired by the Corporation. If any subdivision, split or combination described in this clause (2) is announced but the outstanding Common Shares are not subdivided, split or combined, the Conversion Price will be readjusted, effective as of the date the Board of Directors publicly announces its decision not to subdivide, split or combine the outstanding Common Shares, to such Conversion Price that would be in effect if such subdivision, split or combination had not been announced.

(3) Issuance of Stock Purchase Rights. If the Corporation issues to all holders of the Common Shares (and does not make the equivalent issuance to the Holders) rights or warrants (other than rights or warrants issued pursuant to a dividend reinvestment plan or share purchase plan or other similar plans) entitling them, for a period of up to 180 days (or any shorter period) from the date of issuance of such rights or warrants, to subscribe for or purchase Common Shares at less than the Current Market Price on the date fixed for the determination of shareholders entitled to receive such rights or warrants, then the Conversion Price in effect immediately prior to the Ex-Date for such distribution will be multiplied by the following fraction:

$$\frac{OS_0 + Y}{OS_0 + X}$$

$$OS_0 + X$$

Where,

OS_0 = the number of Common Shares outstanding immediately prior to the Ex-Date for such distribution.

X = the total number of Common Shares issuable pursuant to such rights or warrants.

Y = the number of Common Shares equal to the aggregate price payable to exercise such rights or warrants divided by the Current Market Price on the date fixed for the determination of shareholders entitled to receive such rights or warrants.

For the purposes of this clause (3), the number of Common Shares at the time outstanding will not include shares acquired by the Corporation. The Corporation will not issue any such rights or warrants in respect of shares of the Common Shares acquired by the Corporation. In the event that such rights or warrants described in this clause (3) are not so issued, the Conversion Price will be readjusted, effective as of the date the Board of Directors publicly announces its decision not to issue such rights or warrants, to the Conversion Price that would then be in effect if such issuance had not been declared. To the extent that such rights or warrants are not exercised prior to their expiration or Common Shares are otherwise not delivered pursuant to such rights or warrants upon the exercise of such rights or warrants, the Conversion Price will be readjusted to such Conversion Price that would then be in effect had the adjustment made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of Common Shares actually delivered. In determining the aggregate offering price payable for such Common Shares, there will be taken into account any consideration received for such rights or warrants and the value of such consideration (if other than cash, to be determined by the Board of Directors).

(4) Self Tender Offers and Exchange Offers. If the Corporation or any of its subsidiaries successfully completes a tender or exchange offer for the Common Shares (and does not make the equivalent offer to the Holders) where the cash and the value of any other consideration included in the payment per share of the Common Shares exceeds the Current Market Price per share of the Common Shares on the Trading Day immediately succeeding the expiration of the tender or exchange offer, then the Conversion Price in effect at the close of business on such immediately succeeding Trading Day will be multiplied by the following fraction:

$$\frac{OS_0 \times SP_0}{AC + (SP_0 \times OS_1)}$$

Where,

SP_0 = the Current Market Price per share of Common Shares on the Trading Day immediately succeeding the expiration of the tender or exchange offer.

OS_0 = the number of Common Shares outstanding immediately prior to the expiration of the tender or exchange offer, including any shares validly tendered and not withdrawn.

OS_1 = the number of Common Shares outstanding immediately after the expiration of the tender or exchange offer and after taking into account the shares purchased pursuant thereto.

AC = the aggregate cash and fair market value of the other consideration payable in the tender or exchange offer, as determined by the Board of Directors.

In the event that the Corporation, or one of its subsidiaries, is obligated to purchase Common Shares pursuant to any such tender offer or exchange offer, but the Corporation, or such subsidiary, is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Price will be readjusted to be such Conversion Price that would then be in effect if such tender offer or exchange offer had not been made.

(5) Rights Plans. To the extent that the Corporation has a shareholder rights plan in effect with respect to the Common Shares on the Conversion Date, upon conversion of any shares of the Series C Preferred Stock, Holders will receive, in addition to the Common Shares, the rights under the shareholder rights plan, unless, prior to the Conversion Date, the rights have separated from the Common Shares, in which case the Conversion Price will be adjusted at the time of separation as if the Corporation had made a distribution to all holders of the Common Shares as described in clause (3) above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

(b) All adjustments to the Conversion Price will be calculated to the nearest 1/100th of a cent. When any adjustment is to be made in respect of a distribution of Common Shares or rights or warrants to purchase Common Shares, such adjustment will also be made for any securities convertible, exchangeable or exercisable for Common Shares.

(c) No adjustment to the Conversion Price will be made if Holders may participate in the transaction that would otherwise give rise to an adjustment, as a result of holding the Series C Preferred Stock (including pursuant to Section 4(b)), without having to convert the Series C Preferred Stock, as if they held the full number of Common Shares into which a share of the Series C Preferred Stock would then be convertible on an as-if-converted basis.

(d) Notwithstanding anything contained herein, the Conversion Price will not be adjusted:

(1) upon the issuance of any Common Shares pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Corporation's securities and the investment of additional optional amounts in Common Shares under any plan;

(2) upon the issuance of any Common Shares or rights or warrants to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Corporation or any of its subsidiaries;

(3) upon the issuance of any Common Shares pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date shares of the Series C Preferred Stock were first issued and not substantially amended thereafter;

(4) the issuance of any Common Shares or option, warrant, right or exercisable, exchangeable or convertible security issued in connection with acquisitions of assets or securities of another person (other than issuances to persons that were Affiliates of the Corporation at the time that the agreement with respect to such issuance was entered into);

(5) for a change in the par value or no par value of Common Shares;

(6) for accrued and unpaid dividends on the Series C Preferred Stock;

(7) the issuance of the rights pursuant to any shareholders rights plan of the Corporation;

(8) the distribution of separate certificates representing the rights under a shareholders rights plan;

(9) the exercise or redemption of such rights in accordance with any rights agreement under a shareholders rights plan; or

(10) the termination or invalidation of the rights under a shareholders rights plan.

(e) No adjustment in the Conversion Price need be made unless the adjustment would require an increase or decrease of more than one percent (1%) of the Conversion Price; provided, however, that, if the adjustment is not made because the adjustment does not change the Conversion Price by more than one percent (1%), such adjustment that is not made will be carried forward and taken into account in any future adjustment; and provided, further, that any adjustment of less than one percent (1%) that has not been made as of a Conversion will be made effective upon a Conversion.

(f) The Corporation will not decrease the Conversion Price pursuant to any adjustment beyond the maximum level permitted by the continued listing standards of any national securities exchange on which the Corporation's Common Shares are then listed; provided, however, that, if the Corporation enters into any transaction described in clauses (a)(1) through (a)(4) of this Section 10 that would result in an increase in the Conversion Price that would result in the Series C Preferred Stock, in the aggregate, becoming convertible into Common Shares in excess of permitted listing standards under continued listing standards of such exchange, the Corporation will, if so required by such listing standards, either (at the Corporation's election) (i) prior to entering in such transaction, obtain shareholder approval of such issuances in excess of such limitations or (ii) after entering into such transaction, if the Corporation has not obtained shareholder approval of such issuances in excess of such limitations, deliver cash in lieu of any Common Shares otherwise deliverable upon a conversion in excess of such limitations, based on the Current Market Price on the Trading Day immediately prior to the date when such shares otherwise would be required to be delivered to converting Holders.

(g) Whenever the Conversion Price is to be adjusted in accordance with Section 10(a), the Corporation will: (1) compute the Conversion Price in accordance with Section 10(a); (2) as soon as practicable following the occurrence of an event that requires an adjustment to the Conversion Price pursuant to Section 10(a) (or if the Corporation is not aware of such occurrence, as soon as practicable after becoming so aware), provide, or cause to be provided, a written notice to the Holders and the Legacy Shareholders Representative of the occurrence of such event; and (3) as soon as practicable following the determination of the revised Conversion Price in accordance with Section 10(a), provide, or cause to be provided, a written notice to the Holders and the Legacy Shareholders Representative setting forth in reasonable detail the method by which the adjustment to the Conversion Price was determined and setting forth the revised Conversion Price.

Section 11. Merger, Consolidation, Etc.; Reorganization Events.

(a) Notwithstanding anything to the contrary in this Section 11 or otherwise in these Articles of Amendment, the Corporation will not, directly or indirectly, consolidate or merge with or into another person or sell, assign, transfer, convey or otherwise dispose of all or substantially all of the Corporation's properties or assets (determined on a consolidated basis for the Corporation and its subsidiaries) in one or more related transactions to another person, unless (i) such transaction constitutes a Liquidity Event or Qualifying Non-IPO Equity Offering, (ii) the Series C Preferred Stock remains outstanding following such transaction or (iii) in the case of any merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, the Series C Preferred Stock is converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, that is an entity organized and existing under the laws of the United States of America, any state thereof or the District of Columbia, and such preference securities have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the Holders thereof than the rights, preferences, privileges and voting powers of the Series C Preferred Stock, taken as a whole. For the avoidance of doubt, nothing herein will prohibit the Corporation from entering into or consummating a transaction described in the preceding sentence provided that the Series C Preferred Stock is treated as set forth in the preceding sentence.

(b) Without limiting Section 11(a), in the event of:

(1) any consolidation or merger of the Corporation with or into another person, in each case pursuant to which the Common Shares will be converted into cash, securities or other property of the Corporation or another person,

(2) any sale, transfer, lease, or conveyance to another person of all or substantially all of the property and assets of the Corporation, in each case pursuant to which the Common Shares will be converted into cash, securities, or other property,

(3) any reclassification of the Common Shares into securities, including securities other than the Common Shares or

(4) any statutory exchange of the Corporation's securities with another person (other than in connection with a merger or acquisition),

in each case, that does not constitute a Liquidity Event or Qualifying Non-IPO Equity Offering (any such event specified in this Section 11(b), a "Reorganization Event"), each share of Series C Preferred Stock outstanding immediately prior to such Reorganization Event will, without the consent of Holders, become convertible, when, if and as such share of Series C Preferred Stock may convert, into the kind of securities, cash and/or other property receivable in such Reorganization Event by a holder of Common Shares that was not the counterparty to the Reorganization Event or an affiliate of such other party.

Section 12. Voting Rights.

(a) Holders will not have any voting rights, including the right to elect any directors, except (i) voting rights, if any, required by law, and (ii) voting rights, if any, described in this Section 12.

(b) The Holders of the Series C Preferred Stock will vote together with the holders of Common Stock (and not as a single class) on all matters upon which the holders of Common Stock are entitled to vote. Each share of Series C Preferred Stock will be entitled to such number of votes as the number of shares of Common Stock into which such share of Series C Preferred Stock would be convertible on an as-if-converted basis as of the time of the record date for any such vote.

(c) So long as any shares of Series C Preferred Stock are outstanding, the vote or consent of the Holders of a majority of the shares of Series C Preferred Stock at the time outstanding, voting as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be necessary for effecting or validating any of the following actions, whether or not such approval is required by Florida law:

(1) any amendment, alteration or repeal of any provision of the Articles of Incorporation, these Articles of Amendment, or the Corporation's bylaws (whether by merger, consolidation, business combination or otherwise, other than, for the avoidance of doubt, any Liquidity Event or Qualifying Non-IPO Equity Offering) that

would alter or change the voting powers, preferences or special rights of the Series C Preferred Stock so as to affect them adversely; or

(2) the consummation of a binding share exchange or reclassification involving the Series C Preferred Stock or a merger or consolidation of the Corporation with another entity (other than, for the avoidance of doubt, the consummation of any Liquidity Event or Qualifying Non-IPO Equity Offering), except that Holders will have no separate right to vote under this Section 12(c)(2) if the Corporation will have complied with Section 11;

provided, however, that to the maximum extent permitted by Florida law, (x) any increase in the amount of the authorized preferred stock of the Corporation or any securities convertible into preferred stock of the Corporation or the creation and issuance, or an increase in the authorized or issued amount, of any series of preferred stock of the Corporation or any securities convertible into preferred stock of the Corporation, whether ranking senior to, equally with and/or junior to the Series C Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon the Corporation's liquidation, dissolution or winding up will not, in and of itself, be deemed to adversely affect the voting powers, preferences or special rights of the Series C Preferred Stock and Holders will have no right to vote solely by reason of such an increase, creation or issuance, and (y) if an amendment, alteration, repeal, share exchange, reclassification, merger or consolidation described above would adversely affect one or more but not all series of preferred stock of the Corporation with like voting rights (including the Series C Preferred Stock for this purpose), then only the series affected and entitled to vote will vote as a class in lieu of all such series of preferred stock. Each Holder will have one (1) vote per share on any matter on which Holders are entitled to vote pursuant to this Section 12(c), including any action by written consent.

(d) Notwithstanding the foregoing, Holders will not have any voting rights pursuant to Section 12(c) if, at or prior to the effective time of the act with respect to which such vote would otherwise be required, all outstanding shares of Series C Preferred Stock will have been converted into Common Shares.

Section 13. Fractional Shares.

(a) No fractional Common Shares will be issued as a result of any conversion of shares of Series C Preferred Stock.

(b) In lieu of any fractional share of Common Shares otherwise issuable in respect of any Conversion, the Corporation will pay an amount in cash (computed to the nearest cent) equal to the same fraction of the Current Market Price of the Common Shares determined as of the second Trading Day immediately preceding the Conversion Date.

(c) If more than one share of the Series C Preferred Stock is surrendered for conversion at one time by or for the same Holder, the number of full Common Shares issuable

upon conversion thereof will be computed on the basis of the aggregate number of shares of the Series C Preferred Stock so surrendered.

Section 14. Reservation of Common Shares.

(a) The Corporation will at all times reserve and keep available out of its authorized and unissued Common Shares or shares acquired by the Corporation, solely for issuance upon the conversion of shares of Series C Preferred Stock as provided in these Articles of Amendment, free from any preemptive or other similar rights, such number of Common Shares as will from time to time be issuable upon the conversion of all such shares of Series C Preferred Stock then outstanding. The Corporation will be entitled to rely upon the Adjustment Calculation prepared in accordance herewith to determine the number of Common Shares reservable pursuant to the foregoing sentence.

(b) Notwithstanding the foregoing, the Corporation will be entitled to deliver upon conversion of shares of Series C Preferred Stock, as herein provided, Common Shares acquired by the Corporation (in lieu of the issuance of authorized and unissued Common Shares), so long as any such acquired shares are free and clear of all liens, charges, security interests or encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(c) All Common Shares delivered upon conversion of the Series C Preferred Stock will be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(d) Prior to the delivery of any securities that the Corporation will be obligated to deliver upon conversion of the Series C Preferred Stock, the Corporation will use its reasonable best efforts to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority (or applicable exemptions therefrom), and if notwithstanding such efforts the Common Shares cannot be delivered in compliance with such laws and regulations, then the Corporation will not be required to so deliver until it can deliver in compliance with such laws and regulations.

(e) The Corporation hereby covenants and agrees that, if at any time the Common Shares will be listed on any national securities exchange or automated quotation system, the Corporation will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, subject to official notice of issuance, so long as the Common Shares will be so listed on such exchange or automated quotation system, all the Common Shares issuable upon conversion of the Series C Preferred Stock; provided, however, that if the rules of such exchange or automated quotation system permit the Corporation to defer the listing of such Common Shares until the conversion of Series C Preferred Stock into Common Shares in accordance with the provisions hereof, the Corporation covenants to list such Common Shares issuable upon conversion of the Series C Preferred Stock in accordance with the requirements of such exchange or automated quotation system at such time.

Section 15. Replacement Certificates.

(a) The Corporation will replace any mutilated certificate representing Series C Preferred Stock at the Holder's expense upon surrender of that certificate to the Corporation. The Corporation will replace certificates representing Series C Preferred Stock that become destroyed, stolen or lost at the Holder's expense upon delivery to the Corporation of satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be required by the Corporation.

(b) The Corporation will not be required to issue any certificates representing the Series C Preferred Stock on or after the Conversion Date.

Section 16. Miscellaneous.

(a) All notices referred to herein will be in writing, and, unless otherwise specified herein, all notices hereunder will be deemed to have been given upon the earlier of receipt thereof or five (5) Business Days after the mailing thereof if sent by registered or certified mail (unless first-class mail will be specifically permitted for such notice under the terms of these Articles of Amendment) with postage prepaid, addressed: (i) if to the Corporation, to its office at 900 North Federal Highway, Boca Raton, Florida 33432, Attn: Chief Financial Officer, Telephone: (954) 633-1656, Fax: (561) 338-6445; (ii) if to any Holder, to such Holder at the address of such Holder as listed in the stock record books of the Corporation; or (iii) to such other address as the Corporation or any such Holder, as the case may be, will have designated by notice similarly given.

(b) No share of Series C Preferred Stock will have any rights of preemption whatever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted, except for such rights as may be expressly set forth in the Articles of Incorporation.

(c) Any amendment, alteration or repeal of any provision of these Articles of Amendment that would (i) alter or change the rights of the Legacy Shareholders Representative under these Articles of Amendment (including rights to receive information) or (ii) have an adverse effect on any right of or benefit that inures to the Legacy Shareholders hereunder will require the written consent of the Legacy Shareholders Representative. The Legacy Shareholders Representative will have the right to enforce the provisions of these Articles of Amendment giving any right or benefit inuring to the Legacy Shareholders. Each Legacy Shareholder will be a third-party beneficiary of the provisions of these Articles of Amendment providing for such rights. For the avoidance of doubt, this Section 16(c) will not affect any rights a holder of Common Shares may have under the Florida law.

(d) Subject to the limitations imposed herein, the Corporation may purchase and sell shares of Series C Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation will not use any of its funds

for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

(e) Except as otherwise provided herein, any determination and/or calculation that the Corporation or the Board of Directors must make pursuant to these Articles of Amendment is and will be conclusive, absent manifest error; provided, however, that if the Legacy Shareholders Representative believes in good faith that any such determination and/or calculation is erroneous, the Legacy Shareholders Representative will have the right to challenge such determination and/or calculation as adverse to the Legacy Shareholders consistent with the provisions of Section 16(c).

(f) Wherever required by the context of these Articles of Amendment, the singular will include the plural and vice versa, and the masculine gender will include the feminine and neuter genders and vice versa, and references to any agreement, document or instrument will be deemed to refer to such agreement, document or instrument as amended, supplemented or modified from time to time. Except as expressly stated in these Articles of Amendment, all references to any statute, rule, regulation or form (including in the definition thereof) are to such statute, rule, regulation or form as amended, modified, supplemented or replaced from time to time (and, in the case of any statute, include any rules and regulations promulgated under such statute), and all references to any section of any statute, rule, regulation or form include any successor to such section. All article, section, paragraph or clause references not attributed to a particular document will be references to such parts of these Articles of Amendment, and all exhibit, annex and schedule references not attributed to a particular document will be references to such exhibits, annexes and schedules to these Articles of Amendment. The words "including," "includes," "included" and "include" are deemed to be followed by the words "without limitation." Whenever the words "own," "owns," "owner" and "ownership" are used as a verb, the ownership referred to thereby will be deemed to include holding, controlling or having the power to vote.

RESOLVED, that all actions taken by the officers and directors of the Corporation or any of them in connection with the foregoing resolutions through the date hereof be, and hereby are, ratified and approved.

[Signature Page Follows]

IN WITNESS WHEREOF, First Southern Bancorp, Inc. has caused these Articles of Amendment to be signed by Donald Kafka, its Executive Vice President and Chief Financial Officer, on the 27th day of January, 2010.

FIRST SOUTHERN BANCORP, INC.

By: 

Name: Donald Kafka

Title: Executive Vice President and
Chief Financial Officer