

P98000044792

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

(Business Entity Name)

(Document Number)

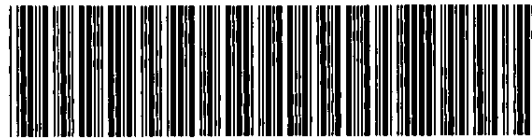
Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

File
2nd

35.2

Office Use Only



200172416862

03/31/10--01001--011 **245.50

RECEIVED
10 MAR 30 PM 3:12
DIVISION OF CORPORATIONS
TELEPHONE 351-1010A

FILED
10 MAR 30 PM 3:22
SECRETARY OF STATE
DIVISION OF CORPORATIONS

Amend
C.COULLETTE

MAR 30 2010

EXAMINER

Igler + Dougherty PA
Requester's Name
2457 Care Dr
Address
Tallahassee FL
City/State/Zip Phone #
Any Questions Call 878-2411
Michelle or Kathy

RECEIVED
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

2010 MAR 30 PM 12:31

NOT INTENDED
TO ACKNOWLEDGE
SUFFICIENCY OF FILING

Office Use Only

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1. Florida Business Bancgroup INC
(Corporation Name) (Document #)
2. _____
(Corporation Name) (Document #)
3. _____
(Corporation Name) (Document #)
4. _____
(Corporation Name) (Document #)

- ☐ Walk in ☐ Pick up time _____ ☐ Certified Copy
☐ Mail out ☐ Will wait ☐ Photocopy ☐ Certificate of Status

NEW FILINGS

- ☐ Profit
☐ Not for Profit
☐ Limited Liability
☐ Domestication
☐ Other

OTHER FILINGS

- ☐ Annual Report
☐ Fictitious Name

AMENDMENTS

- ☒ Amendment
☐ Resignation of R.A., Officer/Director
☐ Change of Registered Agent
☐ Dissolution/Withdrawal
☐ Merger

REGISTRATION/QUALIFICATION

- ☐ Foreign
☐ Limited Partnership
☐ Reinstatement
☐ Trademark
☐ Other

Examiner's Initials

**ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
FLORIDA BUSINESS BANCGROUP, INC.**

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
10 MAR 30 PM 3:22

Pursuant to Section 607.0602, Florida Statutes:

We, Gregory W. Bryant and Marti J. Warren, President and Secretary, respectively, of Florida Business Bancgroup, Inc., a corporation organized under the laws of the State of Florida (hereinafter called the "Corporation"), do hereby certify as follows:

1. On March 29, 2010, the Board of Directors of the Corporation adopted a resolution designating One Million (1,000,000) shares of Preferred Stock (hereinafter referred to as the "Preferred Stock") as Series E Noncumulative Perpetual Preferred Stock
2. No shares of Series E Noncumulative Perpetual Preferred Stock have been issued.
3. Pursuant to the authority conferred upon the Board of Directors by the Articles of Incorporation of the Corporation, the following resolution was duly adopted by the Board of Directors on March 29, 2010, creating the series of Preferred Stock designated as Series E Noncumulative Perpetual Preferred Stock, and no shareholder action was required in connection with the adoption of such amendment:

RESOLVED, that pursuant to the provisions of the Articles of Incorporation of the Corporation and applicable law, a series of Preferred Stock of the Corporation be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series are as follows:

Section 1. Designation.

There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated as the "Series E Noncumulative Perpetual Preferred Stock" (the "Series E Preferred Stock"). The number of shares constituting such series shall be One Million. The Series E Preferred Stock shall have a par value and liquidation preference of \$5.00 per share.

Section 2. Ranking; Dividends and Other Distributions.

Except as set forth herein, the Common Stock and the Series E Preferred Stock shall at all times have the same rights and privileges and shall rank equally, share ratably and be identical in all respects as to all matters, specifically including, but not limited to the following:

- (a) In case the Corporation shall pay or make a dividend or distribution in any form (whether cash, shares of Common Stock or other securities, or other property) with respect to

shares of its Common Stock, then the Corporation shall pay or make the same dividend or distribution with respect to each share of Series E Preferred Stock, except that if the dividend or distribution on Common Stock is made in shares of Common Stock, the corresponding distribution on Series E Preferred Stock shall be in shares of Series E Preferred Stock.

(b) In case the Corporation shall subdivide or split (including without limitation a split in the nature of a dividend) its outstanding shares of Common Stock into a greater number of shares then the Corporation shall similarly subdivide or split its outstanding shares of Series E Preferred Stock.

(c) In case the Corporation shall combine or conduct a reverse split of its outstanding shares of Common Stock into a smaller number of shares of Common Stock then the Corporation shall similarly combine or conduct a reverse split of its outstanding shares of Series E Preferred Stock.

(d) In case the Corporation shall issue or exchange, on account of its Common Stock, any securities, or other property or assets by reclassification, recapitalization, capital reorganization or other similar transaction, then the Corporation shall make the same issuance or exchange, on the same terms, for shares of Series E Preferred Stock.

(e) The Series E Preferred Stock shall rank junior to the Corporation's existing Series A, Series B, Series C and Series D preferred shares, and all future issuances of preferred stock the terms of which do not expressly provide that it ranks on a parity with or junior to the Series E Preferred Stock as to dividend rights and rights on liquidation, winding-up or dissolution of the Corporation.

(f) In the event any third party pays or exchanges pursuant to a Change of Control (as defined below) any securities, cash or property for the outstanding shares of Common Stock, each share of Series E Preferred Stock shall be entitled to receive the same type and amount of consideration as each share of Common Stock.

At no time shall the Corporation modify the terms, rights, privileges or classifications of its Common Stock favorably without making a corresponding favorable modification to the terms, rights, privileges and classifications of the Series E Preferred Stock.

Section 3. Definitions.

The following initially capitalized terms shall have the following meanings, whether used in the singular or the plural:

- (a) "Business Day" means any day other than a Saturday, Sunday, or a day on which banks are authorized or required to be closed for business in Tampa, Florida.
- (b) "Articles Amendment" means these Articles of Amendment.

- (c) "Common Stock" means the Corporation's shares of common stock or any class of voting capital security into which the Corporation's common stock is hereafter converted or exchanged.
- (d) "Corporation" means Florida Business Bancgroup, Inc., a Florida corporation.
- (e) "Holder" means the Person in whose name the shares of the Series E Preferred Stock are registered, which may be treated by the Corporation as the absolute owner of the shares of Series E Preferred Stock for the purpose of making payment and for all other purposes.
- (f) "Liquidation Preference" means, as to the Series E Preferred Stock, \$5.00 per share (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Series E Preferred Stock pursuant to Section 4(d)).
- (g) "Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company or trust.
- (h) "Series E Preferred Stock" has the meaning set forth in Section 1.

Section 4. Liquidation.

- (a) In the event the Corporation voluntarily or involuntarily liquidates, dissolves or winds up, the Holders at the time shall be entitled to receive liquidating distributions per share of Series E Preferred Stock in an amount equal to the Liquidation Preference. After payment of the full amount of such liquidating distribution, the Holders shall not be entitled to any further participation in any distribution of assets by the Corporation.
- (b) In the event the assets of the Corporation available for distribution to shareholders upon any liquidation, dissolution or winding-up of the affairs of the Corporation, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series E Preferred Stock, Holders shall share ratably in any distribution of assets of the Corporation in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.
- (c) The Corporation's consolidation or merger with or into any other entity, the consolidation or merger of any other entity with or into the Corporation, or the sale of all or substantially all of the Corporation's property or business will not constitute its liquidation, dissolution or winding up.
- (d) Whenever the number of shares of Series E Preferred Stock is adjusted as required under Section 2, the then current Liquidation Preference shall be adjusted

by multiplying the Liquidation Preference immediately prior to the adjustment by a fraction, the numerator of which shall be the number of shares of Series E Preferred Stock outstanding immediately prior to such adjustment, and the denominator of which shall be the number of shares of Series E Preferred Stock outstanding immediately after such adjustment.

Section 5. 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 described in subsection (b) of this Section.
- (b) So long as any shares of Series E Preferred Stock are outstanding, the vote or consent of the Holders of a majority of the shares of Series E 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:
 - (i) any amendment, alteration or repeal (including by means of a merger, consolidation or otherwise) of any provision of the Corporation's Articles of Incorporation (including these Articles of Amendment) or the Corporation's bylaws that would alter or change the rights, preferences or privileges of the Series E Preferred Stock so as to affect them adversely; or
 - (ii) the consummation of a binding share exchange or reclassification involving the Series E Preferred Stock or a merger or consolidation of the Corporation with another entity.

Section 6. Replacement Certificates.

If any shares of Series E Preferred Stock are certificated, the Corporation shall replace any mutilated certificate at the Holder's expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates 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.

Section 7. Conditional Conversion of Series E Preferred Stock Upon Certain Future Events.

(a) Right to Convert. Each Holder shall have conversion rights as follows (the "Conversion Rights"):

(1) Conversion Terms. In the event that either (A) the number of shares of outstanding Common Stock increases hereafter, or (B) the Corporation files a registration

statement under the Securities Act of 1933, as amended, for a public offering of its Common Stock, or (C) a "Change of Control" (as defined below) occurs, then in any such event each share of Series E Preferred Stock shall be convertible, at the option of the Holder thereof, and without the payment of additional consideration by the Holder thereof, into one share of fully paid and nonassessable share of Common Stock (the "Series E Conversion Ratio") at the option of the Holder by written notice to the Corporation, at such time or times as Holder may designate in its written notice of conversion, but only to the extent that, either (I) at the time of such conversion, taking into account the increase in number of shares of Common Stock or any class of voting security resulting from the Common Stock, the total number of shares of Common Stock or other voting securities resulting from the Common Stock held by the Holder as a result of the conversion shall not exceed 9.9% of the outstanding shares of Common Stock or other class of voting security resulting from the Common Stock; or (II) the Corporation consents to the conversion and either (i) such conversion is permitted under applicable federal and state banking laws and regulations without any filing with or issuance of any approval or non-objection by any federal or state banking regulatory agency, or (ii) if any filings with or any approvals or non-objections by any federal or state banking regulatory agency is required, all such filings shall have been made and all such approvals or non-objections shall have been given.

(2) Conversion Ratio. The initial Series E Conversion Ratio shall be subject to adjustment as provided in Section 8 below, and, once adjusted, may be subject to further adjustment in a similar manner thereafter. The Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series E Conversion Ratio.

(3) Change of Control Defined. For purposes of this Section 7, "Change of Control" shall mean (a) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than a trustee or other fiduciary holding securities of the Corporation under an employee benefit plan of the Corporation, becomes the "beneficial owner" (as defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Corporation representing 50% or more of (A) the outstanding shares of common stock of the Corporation or (B) the combined voting power of the Corporation's then outstanding securities; (b) the Corporation is party to a merger or consolidation which results in the voting securities of the Corporation outstanding immediately prior thereto failing to continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving or another entity) at least fifty (50%) percent of the combined voting power of the voting securities of the Corporation or such surviving or other entity outstanding immediately after such merger or consolidation; (c) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation 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 Corporation.

(4) Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the Holders of Series E Preferred Stock.

(5) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series E Preferred Stock. In lieu of any fractional shares to which the Holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series E Preferred Stock the Holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(b) Mechanics of Conversion.

(1) Notice of Conversion; Conversion Time. In order for a Holder to convert shares of Series E Preferred Stock into shares of Common Stock, such Holder shall surrender the certificate or certificates for such shares of Series E Preferred Stock (or, if such registered Holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit), at the office of the transfer agent for the Series E Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such Holder elects to convert all or any number of the shares of the Series E Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such Holder's name or the names of the nominees in which such Holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered Holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice (or, if applicable, such later time as may be specified by the Holder in the notice of conversion) shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of the Conversion Time. The Corporation shall, as soon as practicable after the Conversion Time, (i) issue and deliver to such Holder or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series E Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in paragraph (a)(5) of this Section in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Series E Preferred Stock converted.

(2) Reservation of Shares. The Corporation shall at all times when the Series E Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Series E Preferred

Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series E Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series E Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to the Articles of Incorporation.

(3) Effect of Conversion. All shares of Series E Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the Holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in paragraph (a)(5) of this Section and to receive payment of any dividends declared but unpaid thereon. Any shares of Series E Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for shareholder action) as may be necessary to reduce the authorized number of shares of Series E Preferred Stock accordingly.

(4) No Further Adjustment. Upon any such conversion, no adjustment to the Series E Conversion Ratio shall be made for any declared but unpaid dividends on the Series E Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(5) Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series E Preferred Stock. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series E Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

Section 8. Anti-Dilution.

In the event that the Corporation issues additional shares of Common Stock or Series E Preferred Stock (or securities convertible into common stock) ("Additional Shares") following the date of issuance of Series E Preferred Shares to a Holder ("Additional Shares" shall exclude shares of Common Stock issued (i) pursuant to "Plan Issuances," which shall mean issuances of such securities to employees, officers, director, and consultants of the Corporation, pursuant to Corporation's currently existing warrant, stock option, stock appreciation rights and restricted stock plans, if any ("Incentive Plans"), or (ii) as a dividend on the Common Stock or as a result of a stock split of the Common Stock), each Holder shall have the right to purchase directly from the Corporation (subject to compliance with applicable law or regulations and any required

precondition of approval or non-objection of applicable government regulatory authorities, additional shares of Series E Preferred Stock in an amount necessary to maintain its ownership of Series E Preferred Stock as a percentage of the Corporation's Common Stock and Series E Preferred Stock outstanding (treating each share of Series E Preferred Stock as if it were one (1) shares of Common Stock (the "Share Ratio")) at the same level as it was immediately upon issuance of the Series E Preferred Stock to the Holder, at the same price and on the same terms as the Additional Shares are issued (but adjusting any purchase price for Common Stock by applying a ratio equal to the inverse of the Share Ratio) ("Purchaser Additional Shares Purchase Right").

Section 9. Miscellaneous.

- (a) All notices referred to herein shall be in writing, and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given upon the earlier of receipt thereof or three Business Days after the mailing thereof if sent by registered or certified mail (unless first-class mail shall be specifically permitted for such notice under the terms of these Articles of Amendment) with postage prepaid, addressed: (i) if to the Corporation, at 4301 West Boy Scout Boulevard, Suite 150, Tampa, Florida 33607, or (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, shall have designated by notice similarly given.
- (b) The Corporation shall pay any and all stock transfer and documentary stamp taxes that may be payable in respect of any issuance or delivery of shares of Series E Preferred Stock or shares of Common Stock or other securities issued on account of Series E Preferred Stock pursuant hereto or certificates representing such shares or securities. The Corporation shall not, however, be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Series E Preferred Stock or Common Stock or other securities in a name other than that in which the shares of Series E Preferred Stock with respect to which such shares or other securities are issued or delivered were registered, or in respect of any payment to any Person other than a payment to the registered Holder thereof, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid or is not payable.
- (c) All payments on the shares of Series E Preferred Stock shall be subject to withholding and backup withholding of tax to the extent required by applicable law, subject to applicable exemptions, and amounts withheld, if any, shall be treated as received by the Holders thereof.
- (d) No share of Series E Preferred Stock shall have any rights of preemption whatsoever under these Articles of Amendment 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.


- (e) The shares of Series E Preferred Stock shall not have any voting powers, preferences or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Articles of Incorporation or as provided by applicable law.

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 they hereby are, ratified and approved.

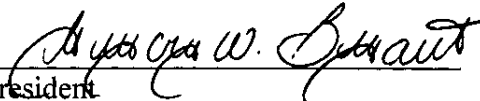
IN WITNESS WHEREOF, the undersigned have caused these Articles of Amendment to be executed March 29, 2010.

Attest: [Corporate Seal]

FLORIDA BUSINESS BANCGROUP,
INC.


Secretary

Print Name: Marti J. Warren


President

Print Name: Gregory W. Bryant