

460217

(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:

Office Use Only



800261800858

06/30/14--01047--001 \*\*43.75

14 JUN 30 PM 3:02  
FBI

JUL 17 2014  
C. CARROTHER

**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**NAME OF CORPORATION:** MGT of America, Inc.

**DOCUMENT NUMBER:** 460217

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

Please return all correspondence concerning this matter to the following:

Steve Manders

Name of Contact Person

MGT of America, Inc.

Firm/ Company

3800 Esplanade Way Suite 210

Address

Tallahassee, FL 32311

City/ State and Zip Code

smanders@mgtamer.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Steve Manders

Name of Contact Person

at ( 850 ) 386-3191

Area Code & Daytime Telephone Number

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

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

**Mailing Address**

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

**Street Address**

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

Articles of Amendment  
to  
Articles of Incorporation  
of

MGT OF AMERICA, INC.

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

460217

(Document Number of Corporation (if known))

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

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

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

**B. Enter new principal office address, if applicable:**  
(Principal office address MUST BE A STREET ADDRESS)

3800 Esplanade Way

Suite 210

Tallahassee, FL 32311

**C. Enter new mailing address, if applicable:**  
(Mailing address MAY BE A POST OFFICE BOX)

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

Name of New Registered Agent

3800 Esplanade Way, Suite 210

(Florida street address)

New Registered Office Address:

Tallahassee

(City)

Florida 32311

(Zip Code)

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

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

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

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:

(Attach additional sheets, if necessary)

Please note the officer/director title by the first letter of the office title:

P = President; V= Vice President; T= Treasurer; S= Secretary; D= Director; TR= Trustee; C = Chairman or Clerk; CEO = Chief Executive Officer; CFO = Chief Financial Officer. If an officer/director holds more than one title, list the first letter of each office held. President, Treasurer, Director would be PTD.

Changes should be noted in the following manner. Currently John Doe is listed as the PST and Mike Jones is listed as the V. There is a change. Mike Jones leaves the corporation, Sally Smith is named the V and S. These should be noted as John Doe, PT as a Change, Mike Jones, V as Remove, and Sally Smith, SV as an Add.

**Example:**

☒ Change                      PT      John Doe

☒ Remove                      V      Mike Jones

☒ Add                      SV      Sally Smith

Type of Action (Check One)	Title	Name	Address
1) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
2) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
3) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
4) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
5) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
6) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____

**E. If amending or adding additional Articles, enter change(s) here:**

*(Attach additional sheets, if necessary). (Be specific)*

Amendment to Article III, as shown on the attached Exhibit "A." Amendment is done  
in legislative format [strike-through and underline].

**F. If an amendment provides for an exchange, reclassification, or cancellation of issued shares,  
provisions for implementing the amendment if not contained in the amendment itself:**

*(if not applicable, indicate N/A)*

The date of each amendment(s) adoption: May 29, 2014, if other than the date this document was signed.

Effective date if applicable: May 29, 2014  
(no more than 90 days after amendment file date)

Adoption of Amendment(s) (CHECK ONE)

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

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

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

by \_\_\_\_\_."  
(voting group)

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

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

Dated May 29, 2014

Signature \_\_\_\_\_

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

Mark Charland

(Typed or printed name of person signing)

President and CEO

(Title of person signing)

## **EXHIBIT A TO ARTICLES OF AMENDMENT**

**MGT OF AMERICA, INC.**

### **ARTICLES OF INCORPORATION – AMENDMENT to ARTICLE III**

**ADOPTED May 29, 2014**

#### **Article III**

There shall be three classes of common stock and ~~one~~ three classes of preferred stock authorized for this corporation. All shares in the corporation, regardless of class, shall have a no par value of ~~one dollar (\$1.00)~~ per share. The classes of stock are described as follows:

**CLASS A COMMON:** Class A Common shares shall be voting shares with unlimited voting rights, and with all other rights and privileges previously established by the Board of Directors for Class A Common shares pursuant to these Articles. All Class A Common shares issued and outstanding as of the date of this amendment shall remain outstanding. The maximum authorized number of Class A Common shares that may be issued and outstanding at any time is five hundred thousand (500,000) shares. ~~Class A Common shares may be owned only by individuals who have been designated or admitted as Partners in accordance with that~~ That certain Management Agreement originally dated March 25, 1995, as subsequently modified and amended September 23, 2004, and May 22, 2014 (“Management Agreement”). ~~The Management Agreement further~~ establishes certain rights, obligations, and privileges of Class A Common shareholders.

**CLASS B COMMON:** Class B Common shares shall have all the rights and privileges of Class A Common shares except that Class B Common shareholders shall have no voting rights. All shares of Class B Common stock issued and outstanding as of the date of this amendment shall remain outstanding. The maximum authorized number of Class B Common shares that may be outstanding at any time is fifty thousand (50,000) shares. Class B Common shares may be owned only by individuals who are employed by this corporation. The rights, obligations, and privileges of Class B Common shareholders are further established by that certain Class B Stockholders Agreement among the holders of Class B Common Shares.

**CLASS C COMMON:** Class C Common shares shall have all the rights and privileges of Class A Common shares except that Class C Common shareholders shall have only limited voting rights. Class C Common shareholders are authorized to vote only with

respect to the following matters: (1) any amendment to the share valuation formula established by the Management Agreement; and (2) any proposed sale of this corporation to a third party as defined in the Management Agreement. Class C Common shares may be issued only to Class A Common shareholders upon their death or permanent disability, or upon their retirement, resignation or other termination of employment by this corporation, and, further, may be issued only in accordance with the Management Agreement. The maximum authorized number of Class A Common shares that may be outstanding at any time shall be five hundred thousand (500,000) shares, less the number of Class A Common shares outstanding at the same time. The Management Agreement further establishes certain rights, obligations, and privileges of Class C Common shareholders.

**CLASS A PRIME PLUS 3 PERCENT PREFERRED:** The Board of Directors may authorize the issuance of up to one hundred thousand (100,000) shares of stock designated as "Class A Prime Plus 3 Percent Preferred Stock." The Class A Prime Plus 3 Percent Preferred Stock shall pay a dividend measured by the prime interest rate plus three percent per annum, payable monthly, which shall be cumulative and payable before any dividends shall be paid with respect to the Corporation's common stock. For this purpose the prime rate shall be as published in the *Wall Street Journal*, and shall be adjusted monthly. Class A Prime Plus 3 Percent Preferred Stock shall have a preference ahead of all classes of common stock in the distribution of the corporation's assets in connection with the liquidation of the company, or in the event of a sale or public offering of the company as defined in the Management Agreement. Class A Prime Plus 3 Percent Preferred Stock shall have no voting rights. Class A Prime Plus 3 Percent Preferred Stock may be offered as authorized by the Board of Directors to any owner of the corporation's common stock of any class, provided such common shareholder also holds any outstanding promissory note issued by the corporation. The issue price shall be one thousand dollars (\$1,000.00) per share, and the Board may authorize the issuance of Class A Prime Plus 3 Percent Preferred Stock in such numbers, including fractional shares, as necessary to secure the cancellation and surrender to the corporation of such promissory note(s). Class A Prime Plus 3 Percent Preferred Stock shall be redeemable by the corporation at the issue price plus any accrued but unpaid dividends, at any time, and in any number of shares, upon notice to the holder of such shares. The corporation's right of redemption and the non-voting nature of Class A Prime Plus 3 Percent Preferred Stock shall be noted conspicuously, and the other rights and preferences of such shares shall be summarized by reference to these Articles, on each certificate evidencing such shares.

**CLASS B FIVE PERCENT CONVERTIBLE PREFERRED:** The Board of Directors may authorize the issuance of up to sixty-five thousand three hundred eighty-four (65,384) shares of stock designated as "Class B Five Percent Convertible Preferred Stock." Class B Five Percent Convertible Preferred Stock may be issued in fractional shares, and shall have the following characteristics: (1) no par value, (2) issue price



of \$12.00 per share, susceptible to being issued in fractional shares, (3) annual cash dividend equal to five percent of Agreed Value, cumulative, payable monthly, with dividend priority equal to that of existing Class A Prime Plus 3 Percent Preferred shares, (4) Agreed Value, only as between Holders and MGT and for no other purpose, equal to the issue price plus a four percent annual increase in value, compounded annually after being issued, on each anniversary date of issue, (5) no voting rights except as provided below in Conversion Right, and (6) priority in liquidation equal to that of outstanding Class A Prime Plus Three Percent Preferred shares, with the Holders' only claim against the assets of MGT, with respect to Class B Five Percent Convertible Preferred shares, being the Agreed Value of such shares that remain outstanding at the time of MGT's insolvency or liquidation, whichever occurs first, plus any accrued but unpaid dividends. Holders of Class C Five Percent Convertible Preferred shares shall have no other right to receive the Agreed Value except in accordance with Paragraph 4 of the Purchase and Sale Agreement dated as of May 1, 2014, among the Corporation and Kenneth and Jean Boutwell, Kent and Flora Caruthers, and Stephen and Joyce Humphrey ("Purchase and Sale Agreement"). In the event MGT fails to pay in full the monthly dividend with respect to the Class B Five Percent Convertible Preferred stock within 15 days of the due date, MGT shall pay, in addition to the monthly dividend, a late fee of 10 percent of the unpaid amount of such monthly dividend. **Conversion Right.** Upon any default by MGT in payment of any two cumulative monthly dividends with respect to Class B Five Percent Convertible Preferred, or upon default by MGT in payment of any two cumulative monthly payments of the cash purchase price as provided in Section 2(c) of the Purchase and Sale Agreement, Holders shall have the option, exercisable upon delivery of written notice to MGT signed by owners of a majority in interest of the then-outstanding Class B Five Percent Convertible Preferred shares, to convert such shares into Voting Class B Five Percent Convertible Preferred shares. Upon such default and exercise of this conversion option by Holders, each outstanding share of Class B Convertible Five Percent Preferred stock shall thereafter be afforded the same voting rights as three shares of Class A Common stock. All other rights, obligations, and privileges of such shares, including without limitation the right to receive dividends and MGT's right to redeem such shares, shall remain in effect. The corporation's right of redemption and the convertible nature of Class B Five Percent Convertible Preferred Stock shall be noted conspicuously, and the other rights and preferences of such shares shall be summarized by reference to the Articles creating the shares, on each certificate evidencing such shares. The holders of Class B Five Percent Convertible Preferred Stock shall be entitled to notice, in the same manner as holders of Class A Common shares, of all shareholder meetings or written consents with respect to which they would, after exercise of their conversion rights, be entitled to vote.

**CLASS C FIVE PERCENT CONVERTIBLE PREFERRED:** The Board of Directors may authorize the issuance of up to ten thousand (10,000) shares of stock designated as "Class C Five Percent Convertible Preferred Stock." Class C Five Percent Convertible Preferred Stock may be issued in fractional shares, and shall have the following characteristics: (1) no par value, (2) issue price of \$12.00 per share, susceptible to being issued in fractional shares, (3) annual cash dividend equal to five percent of Agreed Value, cumulative, payable monthly, with dividend priority equal to that of all other classes of Preferred shares, (4) Agreed Value, only as between Holders and MGT and for no other purpose, equal to the issue price plus a four percent annual increase in value, compounded annually after being issued, on each anniversary date of

issue, (5) no voting rights except as provided below in Conversion Right, and (6) priority in liquidation equal to that of all other classes of Preferred shares, with the Holders' only claim against the assets of MGT, with respect to Class C Five Percent Preferred shares, being the Agreed Value of such shares that remain outstanding at the time of MGT's insolvency or liquidation, whichever occurs first, plus any accrued but unpaid dividends. Holders of Class C Five Percent Preferred shares shall have no other right to receive the Agreed Value. In the event MGT fails to pay in full the monthly dividend with respect to the Class C Five Percent Convertible Preferred stock within 15 days of the due date, MGT shall pay, in addition to the monthly dividend, a late fee of 10 percent of the unpaid amount of such monthly dividend. **Conversion Right.** Upon any default by MGT in payment of any two cumulative monthly dividends with respect to Class C Five Percent Convertible Preferred stock, the Holders of Class C Five Percent Convertible Preferred shares shall have the option, exercisable upon delivery of written notice to MGT signed by owners of a majority in interest of the then-outstanding Class C Five Percent Convertible Preferred shares, to convert such shares into Voting Class C Five Percent Convertible Preferred shares. Upon such default and exercise of this conversion option by Holders, each outstanding share of Class C Convertible Five Percent Preferred stock shall thereafter be afforded the same voting rights as three shares of Class A Common stock. All other rights, obligations, and privileges of such shares, including without limitation the right to receive dividends and MGT's right to redeem such shares, shall remain in effect. The corporation's right of redemption and the convertible nature of Class C Five Percent Convertible Preferred Stock shall be noted conspicuously, and the other rights and preferences of such shares shall be summarized by reference to the Articles creating the shares, on each certificate evidencing such shares. The holders of Class C Five Percent Convertible Preferred Stock shall be entitled to notice, in the same manner as holders of Class A Common shares, of all shareholder meetings or written consents with respect to which they would, after exercise of their conversion rights, be entitled to vote.

All Classes of Preferred Stock shall have equal priority in liquidation and in the payment of dividends, which shall be paid when due under the terms thereof and these Articles, subject only to the provisions of Section 607.0641, Florida Statutes.

This corporation is authorized to issue common shares of any class, as compensation to employees or as dividends to shareholders, upon such terms and the Board of Directors may determine consistently with these Articles; provided (1) that the maximum, authorized numbers of common shares of each class as established in these Articles is not exceeded, and (2) the number of common shares of all classes issued for this purpose during any fiscal year of this corporation shall not exceed two percent of the total number of common shares issued and outstanding as of the first day of such fiscal year.

Approval by the Shareholders entitled to vote shall be required before the Corporation may issue shares, in a single transaction or in a series of related transactions, that would constitute a controlling interest in the Corporation. To the extent permitted by law, the Board of Directors may determine the rights, obligations, privileges, preferences, limitations, and relative rights of any class of stock, or of any series within a class, not in conflict with these Articles of Incorporation. The Board of Directors has ratified the Management Agreement and the Class B Shareholders' Agreement.

On each matter to be submitted to a vote of the shareholders, voting of the shareholders entitled to vote on such matter shall be per capita; provided, however, that any shareholder entitled to vote may, at any time before the adjournment of such meeting, request that a vote on such matter be taken on the basis that each outstanding share entitled to vote shall be entitled to one vote.