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June 28, 1999

FILE THIS SECOND

Division of Corporations
George Firestone Building
409 East Gaines Street
Tallahassee, FL 32301

Via Hand Delivery

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*****52.50 *****52.50

To Whom It May Concern:

Enclosed for filing, please find the **ARTICLES OF AMENDMENT SETTING FORTH THE RIGHTS AND PREFERENCES, OF THE SERIES A CONVERTIBLE PREFERRED STOCK**, along with a check in the amount of \$52.50 for the applicable filing fees and fees to obtain **TWO (2) CERTIFIED COPIES** of the Articles of Amendment for the following entity:

HEMISPHERE INVESTMENTS, INC.

Document Number: P94000035046

Thank you for your assistance in this matter and please call Ann Cotroneo at 222-7717 when the documents are ready.

Very truly yours,

Kelly B. Plante
Kelly B. Plante

KBP/amc
Enclosures
GHRCORP/GHR.148
STIGLITZ/35572-1

C. COULLIETTE JUN 28 1999

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FILED
JUN 28 PM 1:49
RECEIVED
99 JUN 28 AM 11:56
CLERK OF SUPERIOR COURT
TALLAHASSEE, FLORIDA

ARTICLES OF AMENDMENT
SETTING FORTH THE RIGHTS AND PREFERENCES,
OF THE SERIES A CONVERTIBLE PREFERRED STOCK
OF
HEMISPHERE INVESTMENTS, INC.

99 JUN 28 PM 1:19
FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Hemisphere Investments, Inc., a Florida corporation (the "Corporation"), acting pursuant to § 607.0601 and § 607.1006 of the Florida Business Corporation Act, does hereby submit the following Articles of Amendment setting forth the Rights and Preferences of its Series A Convertible Preferred Stock.

ARTICLE FIRST: The name of the Corporation is Hemisphere Investments, Inc.

ARTICLE SECOND: The Articles of Incorporation of the Corporation, as previously amended (the "Articles"), authorize Preferred Stock consisting of Twenty-Five Million (25,000,000) shares, par value \$0.001 per share, issuable from time to time in one or more series.

ARTICLE THIRD: The Board of Directors of the Corporation is authorized to establish and fix the number of shares to be included in any series of Preferred Stock and the designation, rights, preferences, powers, restrictions and limitations of the shares of such series.

ARTICLE FOURTH: By unanimous consent of the Board of Directors of the Corporation, dated as of June 22, 1999, and by written action of the Shareholders of the Corporation, dated as of June 22, 1999, with the number of votes cast being sufficient for approval, the following amendment to Article IV of the Corporation's Articles of Incorporation was duly adopted. Such amendment adds the following language as a new Subsection F of Article IV of the Articles, in order to establish a new series of Convertible Preferred Stock of the Corporation.

1. **Series A Preferred Stock.** The Corporation hereby establishes a new series of Twenty-Two Million (22,000,000) shares of Series A Convertible Preferred Stock (the "Series A Preferred Stock"), to have the designation, rights, preferences, powers, restrictions and limitations set forth as follows:

2. **Liquidation Preference.**

(a) In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of Common Stock by reason of their ownership thereof, an amount equal to \$1.14 (subject to equitable adjustment to reflect stock splits, stock dividends, stock combinations, recapitalizations, and like occurrences) for each outstanding share of Series A Preferred Stock (the "Original Series A Issue Price"). If upon the

occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then, subject to the rights of additional series of Preferred Stock that may from time to time come into existence, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the amount of such stock owned by each such holder.

(b) After the distributions prescribed in subsection (a) above have been paid, subject to the rights of additional series of Preferred Stock which may from time to time come into existence, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed ratably among the holders of Series A Preferred Stock and Common Stock based on the number of shares of Common Stock held by each (assuming full conversion of all such Series A Preferred Stock) until the holders of the Series A Preferred Stock have received an amount equal to \$2.28 per share (including amounts paid pursuant to subparagraph (a) of this Section 2, and subject to equitable adjustment to reflect stock splits, stock dividends, stock combinations, recapitalizations and like occurrences), after which any remaining assets shall be distributed ratably among the holders of Common Stock.

(c) The merger, consolidation or acquisition of the Corporation with or into another corporation which results in the exchange of outstanding shares of the Corporation for securities or other consideration issued or paid or caused to be issued or paid by such other corporation or an affiliate thereof (except if such merger, consolidation or acquisition does not result in the transfer of more than 50 percent of the voting securities of the Corporation) or the sale of all or substantially all the assets of the Corporation (any of the foregoing, a "Corporate Transaction") shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this section. The amount deemed distributed to the holders of Series A Preferred Stock upon any such merger or consolidation shall be the cash or the value of the property, rights and/or securities distributed to such holders by the acquiring person, firm or other entity. The value of such property, rights or other securities shall be determined in good faith by the Board of Directors of the Corporation. The Corporation shall give each holder of record of Series A Preferred Stock written notice of such impending liquidation, dissolution or winding up of this Corporation not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein.

3. Conversion. The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) the Original Series A Issue Price by (ii) the conversion price applicable to such share, determined as hereinafter provided, in effect on the date that the certificate is surrendered for conversion. The initial conversion price per share for shares of Series A Preferred Stock shall be the Original Series A Issue Price; provided, however, that the conversion price for the Series A Preferred Stock shall be subject to adjustment as set forth in subsection 3(d).

(b) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the conversion price at the time in effect for such Series A Preferred Stock, immediately upon the earlier to occur of (i) subject to subsection 3(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended, and in which this Corporation receives or is to receive aggregate cash proceeds in excess of \$25,000,000 (prior to deduction of underwriters' commissions and expenses) and the public offering price of which is not less than \$5.50 per share (adjusted to reflect subsequent stock dividends, stock splits or recapitalizations) (a "Qualified Public Offering"), or (ii) the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Series A Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of this Corporation or of any transfer agent for the Series A Preferred Stock, and shall give written notice to this Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. Upon conversion of only a portion of the number of shares covered by a certificate representing shares of Series A Preferred Stock surrendered for conversion, the Corporation shall issue and deliver to or upon the written order of the holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Series A Preferred Stock representing the unconverted portion of the certificate so surrendered. This Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a cash amount in respect of any fractional interest in a share of Common Stock as provided in paragraph (h) below. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, the conversion may, at the option of any holder tendering Series A Preferred Stock for conversion, be conditioned

upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon such conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The conversion price of the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If the Corporation shall issue, after the date upon which any shares of Series A Preferred Stock were first issued (the "Original Issue Date" with respect to such series), any Additional Stock (as defined below) without consideration or for consideration per share less than the conversion price in effect immediately prior to the issuance of such Additional Stock, the conversion price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such conversion price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such conversion price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of such Additional Stock.

(B) No adjustment of the conversion price for the Series A Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be taken into account in any subsequent adjustment made prior to 3 years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of 3 years from the date of the event giving rise to the adjustment being carried forward. No adjustment of such conversion price pursuant to this subsection 3(d)(i) shall have the effect of increasing the conversion price above the conversion price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Additional Stock for consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors with the consent of a majority of the holders of the outstanding Series A Preferred Stock irrespective of any accounting treatment.

(E) In the case of the issuance (whether before, on or after the applicable purchase date) of options to purchase or rights to subscribe for

Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 3(d)(i) and subsection 3(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (to the extent then exercisable) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for consideration equal to the consideration (determined in the manner provided in subsections 3(d)(i)(C) and (d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (to the extent then convertible or exchangeable) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 3(d)(i)(C) and (d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the conversion price of the Series A Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the conversion price of the Series A Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities

or upon the exercise of the options or rights related to such securities and the consideration actually received with respect thereto.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 3(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 3(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 3(d)(i)(E)) by this Corporation after the Original Issue Date other than:

(A) Common Stock issued pursuant to a transaction described in subsection 3(d)(iii) hereof,

(B) up to 4,003,989 shares of Common Stock issuable or issued to employees, consultants, or directors of this Corporation either directly, or pursuant to a stock option plan or restricted stock plan, where such issuance is approved by the Board of Directors of this Corporation at any time,

(C) shares of Common Stock issued or issuable (I) in a Qualified Public Offering before or in connection with which all outstanding shares of Series A Preferred Stock will be converted to Common Stock or (II) upon exercise of warrants or rights granted to underwriters in connection with such a public offering, or

(D) shares of Common Stock issuable or issued upon conversion of the Series A Preferred Stock.

(iii) In the event the Corporation should at any time or from time to time after the Original Issue Date fix a record date for effecting of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the conversion price of the Series A Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 3(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination or reverse stock split of

the outstanding shares of Common Stock, then, following the record date of such combination, the conversion price of the Series A Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such Series A Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 3(d)(iii), then, in each such case for the purpose of this subsection 3(e), the holders of the Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock into which their shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in Section 2 or this Section 3), provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In the event of any capital reorganization of the Corporation, any reclassification of the stock of the Corporation (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or any consolidation or merger of the Corporation (other than a consolidation or merger in which the Corporation is the continuing corporation and which does not result in any change in the Common Stock), each share of Series A Preferred Stock shall after such reorganization, reclassification, consolidation or merger (unless, in the case of a consolidation or merger, payment shall have been made to the holders of Series A Preferred Stock of the full amount to which they shall have been entitled pursuant to Section 2(d)) be convertible into the kind and number of shares of stock or other securities or property of the Corporation or of the corporation resulting from such consolidation or surviving such merger to which the holder of the number of shares of Common Stock deliverable (immediately prior to the time of such reorganization, reclassification, consolidation or merger) upon conversion of such share of Series A Preferred Stock would have been entitled upon such reorganization, reclassification, consolidation or merger. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3 with respect to the rights of the holders of the Series A Preferred Stock after any such reorganization, reclassification, consolidation, merger or recapitalization to the end that the provisions of this Section 3 (including adjustment of the conversion price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) No Impairment. This Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock against impairment.

(h) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon conversion of any share or shares of the Series A Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the conversion price of Series A Preferred Stock pursuant to this Section 3, this Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the conversion price for the Series A Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A Preferred Stock.

(i) Notices of Record Date. In the event of any taking by this Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series A Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) Reservation of Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A

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 A Preferred Stock, in addition to such other remedies as shall be available to the holder of the shares of Series A Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, 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 stockholder approval of any necessary amendment to this certificate.

(k) Notices. Any notice required by the provisions of this Section 3 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this Corporation.

4. Voting Rights. The holder of each share of Series A Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series A Preferred Stock could then be converted, and, with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the by-laws of this Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote or which otherwise is submitted to stockholders. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

5. Protective Provisions. For as long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, unless it has obtained the vote or written consent of at least a majority of the holders of outstanding shares of Series A Preferred Stock;

(a) authorize or issue any equity security senior to or on parity with the Series A Preferred Stock as to dividend rights, redemption rights, or liquidation preferences (other than existing authorized shares of Series A Preferred Stock);

(b) amend its Articles of Incorporation or Bylaws in a manner that would alter or change the rights, preferences or privileges of the Series A Preferred Stock; or

(c) take any action that results in the redemption or repurchase of any shares of the Company's capital stock (other than pursuant to the Corporation's exercise of its rights, upon or after termination of employment, to repurchase Common Stock or options granted to employees);

(d) increase or decrease the authorized size of the Corporation's Board of Directors or set the number of directors of the Corporation's Board of Directors at a number greater than eight; or

(e) pay or declare a cash dividend on any shares of Common Stock.

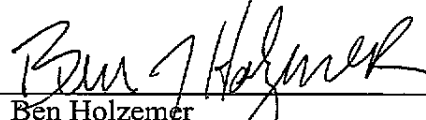
6. Status of Converted Stock. In the event any shares of Series A Preferred Stock shall be converted pursuant to Section 3 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation, and the Corporation may take such appropriate corporate action as may be necessary to reduce the number of authorized shares of the Corporation's capital stock.

7. Amendment. This Articles of Amendment constitutes an agreement between the Corporation and the holders of the Series A Preferred Stock. Except as otherwise set forth herein, it may be amended by vote of the Board of Directors of the Corporation and the holders of a majority of the outstanding shares of Series A Preferred Stock.

IN WITNESS WHEREOF, the Corporation has caused Articles of Amendment to be executed by its Chief Executive Officer this 22 day of June, 1999.

Hemisphere Investments, Inc.

By:


Ben Holzemer
Chief Executive Officer