

H 74659

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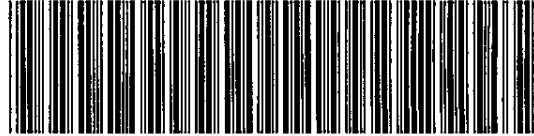
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TALLAHASSEE, FLORIDA

**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**NAME OF CORPORATION:** Pelloni Technology Corporation

**DOCUMENT NUMBER:** H74659

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

Please return all correspondence concerning this matter to the following:

Jennifer Jackson

Name of Contact Person

Pelloni Development Corporation

Firm/ Company

1025 Greenwood Blvd., Suite 121

Address

Lake Mary, Florida 32746

City/ State and Zip Code

jjackson@pelloni.com

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

For further information concerning this matter, please call:

Calvin Harding, Jr. at ( 321 ) 275-5914  
Name of Contact Person Area Code & Daytime Telephone Number

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

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

**Mailing Address**

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

**Street Address**

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

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

**PELLONI TECHNOLOGY CORPORATION**

**Document Number H74659**

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

**AMENDMENTS ADOPTED-** Article IX is hereby deleted in its entirety.

**AMENDMENTS ADOPTED-** The following Article X is added:

**Article X- Mortgage Loan Requirements.**

Notwithstanding anything in these Articles to the contrary, unless and until that certain loan (the "Loan") from Macquarie US Trading LLC, a Delaware limited liability company, d/b/a Principal Commercial Capital (together with its successors and/or assigns) (the "Lender") to the Corporation evidenced and secured by the Loan Documents encumbering the real property commonly known as the Shoppes at Oakmonte located in Seminole County, Florida, together with related personal property (collectively, the "Property"), has been paid in full in accordance with the terms and provisions of the Loan Documents, the following provisions shall apply:

**Section 1. Single Purpose Entity Requirements.** Notwithstanding any other provision contained in these Articles, the Corporation has complied and shall comply with the following single purpose entity requirements ("Single Purpose Entity Requirements") in order to maintain its status as a separate entity and to avoid any confusion or potential consolidation with any Affiliate:

(a) **Limited Purpose.** The sole purpose conducted or promoted by the Corporation since its organization and at least during the term of the Loan is to engage only in the following activities:

- (i) to acquire, own, hold, lease, operate, manage, maintain, develop and improve the Property;
- (ii) to enter into and perform its obligations under the Loan Documents;
- (iii) to sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with the Property to the extent permitted under the Loan Documents; and

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- (iv) to engage in any lawful act or activity and to exercise any powers permitted to corporations organized under the laws of the State of Florida that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes.

(b) Limitations on Indebtedness, Actions. Notwithstanding anything to the contrary in these Articles or in any other document governing the formation, management or operation of the Corporation, the Corporation since its organization has not and shall not:

- (i) guarantee any obligation of any Person, including any Affiliate, or become obligated for the debts of any other Person or hold out its credit as being available to pay the obligations of any other Person;
- (ii) engage, directly or indirectly, in any business other than as required or permitted to be performed under this Section;
- (iii) incur, create or assume any indebtedness or liabilities other than (A) the Loan, (B) unsecured trade payables incurred in the ordinary course of its business that are related to the ownership and operation of the Property, do not exceed two percent (2%) of the outstanding balance of the Loan, are not evidenced by a note and which must be paid within sixty (60) days from the date incurred, and (C) such as are otherwise expressly permitted under the Loan Documents and (D) certain intercompany loans which were made by the Corporation to its Affiliates or made by the Corporation's Affiliates to the Corporation (collectively, the "Intercompany Debt") which (i) existed prior to the date of the Loan and have been previously satisfied in full; or (ii) currently exist and are outstanding, as more particularly listed on the attached Schedule I (the "Existing Intercompany Debt") all of which Existing Intercompany Debt has been paid in full on or before the date of the Loan. No indebtedness, other than the Loan, may be secured by the Property. Without limiting any other provision of this Amendment, the Corporation represents, warrants, and confirms that as of the date of the closing of the Loan, there is no outstanding Intercompany Debt and all Intercompany Debt has been paid in full;
- (iv) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, except that the Corporation may invest in those investments permitted under the Loan Documents other than the Intercompany Debt, all of which has been paid in full on or before the date of the Loan;
- (v) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, sale or other transfer of any of its assets outside the ordinary course of the Corporation's business;

- (vi) buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities) other than the Intercompany Debt, all of which has been paid in full on or before the date of the Loan;
- (vii) form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) or own any equity interest in any other entity;
- (viii) own any asset or property other than the Property and incidental personal property necessary for the ownership or operation of the Property;
- (ix) take any Material Action without the unanimous written approval of all shareholders of the Corporation; or
- (x) amend, modify or otherwise change these Articles with respect to the Single Purpose Entity Requirements in this Section.

(c) Separateness Covenants. In the conduct of the Corporation's operations since its organization and so long as any obligation under the Loan is outstanding it has observed and will continue to observe the following covenants:

- (i) maintain books and records and bank accounts separate from those of any other Person;
- (ii) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;
- (iii) comply with all organizational formalities necessary to maintain its separate existence;
- (iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;
- (v) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other Person; except that the Corporation's assets may be included in a consolidated financial statement of its Affiliate so long as appropriate notation is made on such consolidated financial statements to indicate the separateness of the Corporation from such Affiliate and to indicate that the Corporation's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person;

- (vi) prepare and file its own tax returns separate from those of any Person to the extent required by applicable law, and pay any taxes required to be paid by applicable law;
- (vii) allocate and charge fairly and reasonably any common employee or overhead shared with Affiliates;
- (viii) not enter into any transaction with Affiliates except on an arm's-length basis on terms which are intrinsically fair and no less favorable than would be available for unaffiliated third parties, and pursuant to written, enforceable agreements;
- (ix) conduct business in its own name, and use separate stationery, invoices and checks;
- (x) not commingle its assets or funds with those of any other Person;
- (xi) not assume, guarantee or pay the debts or obligations of any other Person;
- (xii) correct any known misunderstanding as to its separate identity;
- (xiii) not permit any Affiliate to guarantee or pay its obligations (other than limited guarantees and indemnities set forth in the Loan Documents);
- (xiv) not make loans or advances to any other Person;
- (xv) pay its liabilities and expenses out of and to the extent of its own funds;
- (xvi) maintain a sufficient number of employees in light of its contemplated business purpose and pay the salaries of its own employees, if any, only from its own funds;
- (xvii) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, that the foregoing shall only apply to the extent that there is positive net cash flow at the Property after the payment of all operating expenses and debt service, and shall not require any equity owner to make additional capital contributions to the Corporation; and
- (xviii) cause the managers, officers, employees, agents and other representatives of the Corporation to act at all times with respect to the Corporation consistently and in furtherance of the foregoing and in the best interests of the Corporation.

Failure of the Corporation to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Corporation as a separate legal entity.

**Section 2. Indemnification.** Any obligations of the Corporation to indemnify its officers and directors are hereby fully subordinated to its obligations respecting the Property and shall not constitute a claim against the Corporation in the event that cash flow in excess of amounts required to pay holders of any debt pertaining to the Property is insufficient to pay such obligations.

**Section 3. Conflicting Provisions.** To the extent this **Article X** conflicts with any other provisions of this Agreement or any other organizational or formation document of the Corporation, this **Article X** shall control.

**Section 4. Asset Management Fees to Affiliate.** Concurrently with the closing of the Loan and in consideration for the prior services provided by Pelloni Development Corporation ("PDC"), an Affiliate of the Corporation, for the benefit of the Corporation, Corporation shall pay to PDC the sum of \$2,200,000.00 as an asset management fee. Subsequent to the closing of the Loan and provided that in all instances adequate operating capital is maintained by Corporation, Corporation shall pay to PDC (or such other Affiliate providing the below services for the Corporation), as consideration for PDC's (or the Affiliate's) continuing services for the benefit of the Corporation, an annual asset management fee in the amount of 30% of the Corporation's annual gross income, such asset management fee to be payable quarterly based on the Corporation's good faith estimate of the annual gross income for each quarter (which quarterly estimate shall be provided by the Corporation in writing to the applicable Affiliate) and which asset management fee shall be trued up at the end of each calendar year as necessary based on the Corporation's actual annual gross income. The Corporation acknowledges and agrees that Corporation's obligation to pay the continuing asset management fee to PDC (or any Affiliate) is expressly subordinate to the Corporation's obligations under the Loan Documents, and the continuing asset management fee shall be paid by the Corporation only after all payments due under the Loan Documents have been made and only after payment of all operating expenses for the Property has been made. The Corporation acknowledges and agrees that it shall not pay any portion of the continuing asset management fee to PDC (or any Affiliate) at any time when there is an Event of Default under the Loan Documents. Without limiting the foregoing, the Corporation further acknowledges and agrees that in the Corporation shall not pay the continuing asset management fee if such payment would cause the Corporation to violate any of the special purpose entity covenants of the Corporation set forth in Section 4.2.4 of the Loan Agreement.

**Definitions [as applicable]**

"Acceptable Delaware LLC" shall mean a limited liability company formed under Delaware law which (i) has at least one springing member, which, upon the dissolution of all of the members or the withdrawal or the disassociation of all of the members from such limited liability company, shall immediately become the sole member of such limited liability company, and (ii) otherwise meets the Rating Agency criteria then applicable to such entities.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

"Approved Independent Director Provider" shall mean each of CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, National Corporate Resources Ltd., United Corporate Services, Inc., Independent Member Services LLC and Lord Securities Corporation; provided, that, (a) the foregoing shall only be deemed Approved Independent Director Providers to the extent acceptable to the Rating Agencies and (b) additional national providers of professional Independent Director may be deemed added to the foregoing hereunder to the extent approved in writing by Lender and the Rating Agencies.

"Control" (including the terms "Controlling" and "Controlled") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise.

"Independent Director/Manager" shall mean a natural person(s) that (i) is/are engaged by the Corporation from an Approved Independent Director Provider, (ii) who is/are, and continue(s) to be during the term of engagement by the Corporation, as an Independent Director/Manager employed by and in good standing with such Approved Independent Director Provider (iii) who has at least three (3) years' experience as an Independent Manager employed by, and in good standing with, an Approved Independent Director Provider, and (iv) who is not at the time of initial appointment as Independent Director/Manager and has not been at any time during the five (5) years preceding such initial appointment and shall not be at any time while serving as Independent Director of the Corporation:

- (a) a stockholder, director, manager (with the exception of serving as an Independent Director/Manager of the Corporation or any other special purpose entity Affiliate of the Corporation, officer, trustee, employee, partner, member, attorney or counsel of the Corporation, or any Affiliate of either of them;
- (b) a creditor, customer, supplier, or other Person who derives any of its purchases or revenues from its activities with the Corporation or any Affiliate (other than fees and expenses paid for acting as Independent Director/Manager] of the Corporation or any other special purpose entity Affiliate of the Corporation);
- (c) a Person Controlling or under common Control with any Person excluded from serving as Independent Director/Manager under (a) or (b); or
- (d) a member of the immediate family by blood or marriage of any Person excluded from serving as Independent Director/Manager under (a) or (b).

provided, however an Independent Director/Manager may not simultaneously serve as Independent Director/Manager of the Corporation and independent manager or director of a



special purpose entity that owns a direct or indirect equity interest in the Corporation (other than the SPE Party's interest in the Corporation, such as in a mezzanine debt structure.

For purposes of this paragraph, a "single purpose entity" is an entity whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity's separateness that are substantially similar to the special purpose provisions of this Agreement.

"Material Action" means to file any insolvency or reorganization case or proceeding, to institute proceedings to have the Corporation be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against the Corporation, to file a petition seeking, or consent to, reorganization or relief with respect to the Corporation under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for the Corporation or a substantial part of its property, to make any assignment for the benefit of creditors of the Corporation, to admit in writing the Corporation's inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

"Loan" means that certain first lien mortgage loan in the original principal amount of \$13,350,000.00 made by Lender to Corporation.

"Loan Documents" shall mean the Loan Agreement, Promissory Note, Mortgage, Guaranty, Environmental Indemnity Agreement, Assignment of Management Agreement, Cash Management Agreement, Deposit Account Control Agreement and Florida Tax Indemnity.

"Person" means any individual, corporation, partnership, joint venture, joint stock association, business or other trust, unincorporated organization, governmental authority or any other form of entity.

"Property" means that certain parcel of real estate including improvements thereon and known as The Shoppes at Oakmonte, located at 1210 S. International Parkway, in the city of Lake Mary, state of Florida.

"Rating Agency" or "Rating Agencies" shall mean each of Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., Moody's Investor Service, Inc., Fitch, Inc. and DBRS, Inc., or any successor thereto or any other nationally-recognized statistical rating agency which has been approved by Lender.

SCHEDULE I  
EXISTING INTERCOMPANY DEBT TO BE PAID ON OR BEFORE THE CLOSING OF  
THE LOAN

Corporation payables to be paid at closing include:

- Pelloni Property Management: \$14,267.00
- VHP Investments: \$121,000.00
- Shareholder: James Pelloni: \$156,998.86
- Pelloni Condominium Corp.: \$5,000.00

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

Effective date if applicable: \_\_\_\_\_  
(no more than 90 days after amendment file date)

**Note:** If the date inserted in this block does not meet the applicable statutory filing requirements, this date will not be listed as the document's effective date on the Department of State's records.

**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.

June 28, 2016  
Dated \_\_\_\_\_

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)

James E. Pelloni

\_\_\_\_\_  
(Typed or printed name of person signing)

President

\_\_\_\_\_  
(Title of person signing)