

P/60000 19759

(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

MAR 03 2016

2016



500282367895

02/24/16--01009--023 **236.25

16 FEB 24 PM 3:15

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS

COVER LETTER

Department of State
New Filing Section
Division of Corporations
P. O. Box 6327
Tallahassee, FL 32314

SUBJECT: BELLNOVA MM, INC.
(PROPOSED CORPORATE NAME - MUST INCLUDE SUFFIX)

Enclosed are an original and one (1) copy of the articles of incorporation and a check for:

☐ \$70.00 ☐ \$78.75
Filing Fee Filing Fee
 & Certificate of Status

<input checked="" type="checkbox"/> \$78.75 Filing Fee & Certified Copy	<input type="checkbox"/> \$87.50 Filing Fee, Certified Copy & Certificate of Status
ADDITIONAL COPY REQUIRED	

FROM: G. Larry Sims
Name (Printed or typed)

1020 W International Speedway Blvd.
Address

Daytona Beach, FL 32114
City, State & Zip

386-253-1111
Daytime Telephone number

aclark@goallaboard.com
E-mail address: (to be used for future annual report notification)

NOTE: Please provide the original and one copy of the articles.

**ARTICLES OF INCORPORATION
FOR
BELLNOVA MM, INC.**

THE UNDERSIGNED INCORPORATOR hereby makes, subscribes to, acknowledges and files these Articles of Incorporation for the purpose of organizing and incorporating a corporation for profit under the laws of the State of Florida.

ARTICLE I: NAME

The name of the corporation shall be: **BELLNOVA MM, INC.**, and it shall hereinafter be referred to as the "corporation".

ARTICLE II: DATE OF EXISTENCE:

The time and date of which corporate existence of this corporation shall begin is upon filing with the Secretary of State for the State of Florida, and this corporation shall have a continuous and perpetual existence thereafter.

ARTICLE III: SHARES

The aggregate number of shares which the corporation shall have authority to issue is: 100. These shares shall consist of one class only, and such class shall be known as "common stock" of the corporation. The shares shall have no par value.

ARTICLE IV: PRINCIPAL ADDRESS

The street address and mailing address of the initial registered office of the corporation shall be: 5111 Ridgewood Avenue, Suite 201, Port Orange, FL 32127. The name and address of the initial registered agent shall be: **D. ANDREW CLARK**. To signify the acceptance of appointment as registered agent, the registered agent named in this Article has signed these Articles as required by law.

ARTICLE V: BOARD OF DIRECTORS

The number of directors who shall constitute the initial Board of Directors of the corporation shall be three (3), however the number of directors may be increased to more than three (3), but not more than five (5). The name and street address of the persons who are to serve as the member of the initial Board of Directors and Officers of the corporation is:

1. **D. ANDREW CLARK** - PRESIDENT/SECRETARY
5111 Ridgewood Avenue, Suite 201
Port Orange, FL 32127.

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
16 FEB 24 PM 3:15

2. **MICHAEL POLITO – VP/TREASURER**

5111 Ridgewood Avenue, Suite 201
Port Orange, FL 32127

3. **C. ANTHONY SHIPPAM**

c/o Stewart Management Company
Farmers Bank Building, Suite 1410
301 North Market Street
Wilmington, Delaware 19801

ARTICLE VI: INCORPORATOR

The name and street address of the incorporator of the corporation is as follows:

D. ANDREW CLARK

5111 Ridgewood Avenue, Suite 201
Port Orange, FL 32127.

ARTICLE VII: PURPOSE

The Corporation's business and purpose shall be solely limited to:

(i) Acquiring a membership interest in and acting as the managing member of **BELLNOVA, LLC**, a Florida limited liability company (the "**LLC**"), which is engaged solely in owning, holding, selling, leasing, transferring, exchanging, operating and managing the real estate project known as 1325 Nova Road, located in Daytona Beach, Volusia County, Florida (the "**Property**"), pursuant to and in accordance with these Articles;

(ii) Causing the LLC to enter into and perform its obligations under a loan ("**Loan**") from Bank of America, N.A. ("**Lender**"), entered into pursuant to a Loan Agreement ("**Loan Agreement**") by and between the LLC and Lender. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement; and

(iii) Transacting any and all lawful business permitted to corporations by the Corporate Laws of the State of Florida as are incidental, necessary or appropriate to the foregoing.

The Corporation hereby expressly acknowledges that Lender is an intended third-party beneficiary of the "special purpose" provisions set forth herein.

ARTICLE VIII: INDEPENDENT DIRECTOR

(a) At all times there shall be at least one (1) Independent Director and no vote requiring the unanimous consent of the Corporation's Board of Directors may be taken unless at the time of such vote there shall be at least one (1) Independent Director. "Independent Director" means an individual who has prior experience as an independent director, independent manager or independent member with at least three (3) years of employment experience and who

is provided by, and is in good standing with, CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional Independent Directors or is not acceptable to the rating agencies, another nationally-recognized company reasonably approved by Lender and, if required by Lender or the rating agencies, in each case that is not an Affiliate of the LLC or the Corporation and that provides professional Independent Directors and other corporate services in the ordinary course of its business, and which individual is duly appointed as a member of the Corporation and is not, and has never been, and will not while serving as Independent Director be, any of the following: (i) a member (other than a springing member), equity holder, manager, officer or employee of the LLC or the Corporation, or any of their respective equity holders or Affiliates (other than as an Independent Director of the LLC, the Corporation or any Affiliate of the LLC or the Corporation that is not in the direct chain of ownership of the LLC or the Corporation and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such Independent Director is employed by a company that routinely provides professional Independent Directors or managers in the ordinary course of business); (ii) a customer, creditor, supplier or service provider (including provider of professional services) to the LLC or the Corporation or any of their respective equity holders or Affiliates (other than a nationally-recognized company that routinely provides professional Independent Directors and other corporate services to the LLC or the Corporation or any of their respective equity holders or Affiliates in the ordinary course of business); (iii) a family member of any such member, equity holder, manager, officer, employee, creditor, supplier or service provider; or (iv) a person or entity that controls (whether directly, indirectly or otherwise) any of (i), (ii) or (iii) above. A natural person who otherwise satisfies the foregoing definition other than subparagraph (i) by reason of being the Independent Director of a "special purpose entity" affiliated with the LLC or the Corporation that is not in the direct chain of ownership of the LLC or the Corporation shall not be disqualified from serving as an Independent Director, provided that the fees that such individual earns from serving as Independent Directors of such Affiliates in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

(b) The Independent Director may be removed only for Cause. No resignation or removal of an Independent Director shall be effective until (1) the Corporation has provided Lender with not less than five (5) business days' prior written notice of such resignation or removal, and (2) a successor Independent Director is appointed and such successor shall have accepted his or her appointment as an Independent Director. "Cause" means, with respect to an Independent Director, (i) acts or omissions by such Independent Director that constitute willful disregard of such Independent Director's duties under these Articles, (ii) that such Independent Director has engaged in or has been charged with, or has been convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Director, (iii) that such Independent Director is unable to perform his or her duties as Independent Director due to death, disability or incapacity, or (iv) that such Independent Director no longer meets the definition of Independent Director.

(c) Notwithstanding any other provision of these Articles and any provision of law that otherwise empowers so the Company on its own behalf and on behalf of the LLC, the Corporation's Board of Directors or any other Person, so long as the Loan is outstanding, neither the Corporation's Board of Directors nor any other Person shall be authorized or empowered to,

nor shall they permit the Corporation or the LLC to, and neither the Corporation nor the LLC shall, without the prior unanimous written consent of the Corporation's Board of Directors and the Independent Director, take any of the following actions on behalf of the Corporation or the LLC ("**Material Action**"):

(1) Filing a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of the Corporation or the LLC of their respective debts under any federal or state law relating to bankruptcy, insolvency, relief from debts or the protection of debtors;

(2) Seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or the LLC of their respective properties;

(3) Making any assignment for the benefit of the Corporation's or the LLC's creditors;

(4) Admitting in writing to any person other than the Lender the Corporation's or the LLC's inability to pay its debts generally as they become due; or

(5) Taking any action in furtherance of any of the foregoing;

provided, however, that so long as the Loan is outstanding, Corporation's Board of Directors shall not authorize the taking of any Material Action by the Corporation or the LLC, unless there is at least one Independent Director then serving in such capacity, and such Material Action is consented to by such Independent Director.

For purposes of these Articles, "Person" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(d) To the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, the Corporation's directors shall consider only the interests of the LLC and the Corporation, as more particularly set forth in these Articles, including their respective creditors, in taking any Material Action. Except for duties to the LLC and the Corporation as set forth in the immediately preceding sentence, which duties shall extend to constituent equity owners of the Corporation solely to the extent of their respective direct economic interests in the LLC and the Corporation but shall exclude all other interests of such constituent owners, the interests of other Affiliates of the LLC and the Corporation, and the interests of any group of Affiliates of which the LLC and the Corporation is a part, the Independent Director shall not have any fiduciary duties to such constituent equity owners, any officer or any other person bound by these Articles or any other document governing the formation, management or operation of the LLC or the Corporation; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

ARTICLE IX: SEPARATENESS/OPERATIONS MATTERS

Notwithstanding anything to the contrary in these Articles or in any other document governing the formation, management or operation of the Corporation, the Corporation has not and will not:

(i) engage in any business or activity other than acquiring a membership interest in and acting as the managing member of the LLC;

(ii) acquire or own any assets other than its interest in the LLC;

(iii) merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(iv) (A) fail to observe all organizational formalities necessary to maintain its separate existence, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable laws of the jurisdiction of its organization or formation, or (B) amend, modify, terminate or fail to comply with the provisions of its organizational documents, in each case without the prior written consent of Lender;

(v) own any subsidiary, or make any investment in, any other Person (other than its investment in the LLC);

(vi) commingle its assets with the assets of any other Person, or permit any Affiliate or constituent party independent access to its bank accounts;

(vii) incur any debt secured or unsecured, direct or contingent (including guaranteeing any obligation);

(viii) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person; except that the Corporation's financial position, assets, liabilities, net worth and operating results may be included in the consolidated financial statements of an Affiliate, provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separate identity of the Corporation from such Affiliate and that the Corporation's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (B) the Corporation's assets, liabilities and net worth shall also be listed on the Corporation's own separate balance sheet;

(ix) except for capital contributions or capital distributions permitted under the terms and conditions of its organizational documents and properly reflected on its books and records, enter into any transaction, contract or agreement with any shareholder, principal or guarantor of the obligations of the Corporation, or any Affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

(x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xi) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets to secure the obligations of any other Person or hold out its credit or assets as being available to satisfy the obligations of any other Person;

(xii) make any loans or advances to any Person (other than its investment in the LLC or own any stock or securities of any Person, or buy or hold evidence of indebtedness issued by any Person;

(xiii) fail to (A) file its own tax returns separate from those of any other Person, except to the extent that the Corporation is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law, and (B) pay any taxes required to be paid under applicable law; provided, however, that the Corporation shall not have any obligation to reimburse its shareholders or their Affiliates for any taxes that such shareholders or their Affiliates may incur as a result of any profits or losses of the Corporation;

(xiv) fail to (A) hold itself out to the public as a legal entity separate and distinct from any other Person, (B) conduct its business solely in its own name, or (C) correct any known misunderstanding regarding its separate identity;

(xv) fail to intend to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Corporation's shareholders to make additional capital contributions to the Corporation;

(xvi) fail to fairly and reasonably allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an Affiliate) among the Persons sharing such expenses;

(xvii) fail to intend to remain solvent or pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds; provided, however, that the foregoing shall not require the Corporation's shareholders to make additional capital contributions to the Corporation;

(xviii) acquire obligations or securities of its shareholders or other Affiliates;

(xix) fail to maintain a sufficient number of employees in light of its contemplated business operations;

(xx) fail to maintain and use separate stationery, invoices and checks bearing its own name;

(xxi) have any of its obligations guaranteed by an Affiliate, except as otherwise expressly contemplated by the Loan Documents;

(xxii) identify itself as a department or division of any other Person; or

(xxiii) fail to conduct its business so that each of the assumptions made about it and each of the facts stated about it in the non-consolidation opinion letter dated the date of closing delivered in connection with the Loan are true.

The Corporation shall also cause the LLC to comply with all of Lender's requirements regarding its status as a special purpose entity.


ARTICLE X: PROHIBITION ON AMENDMENT OF ORGANIZATIONAL DOCUMENTS

Notwithstanding anything to the contrary in these Articles or any other document governing the formation, management or operation of the Corporation, the Corporation shall not amend the separateness provisions or other special purpose provisions set forth herein without the consent of the Lender, and, after the securitization of the Loan, without confirmation from each of the rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities.

ARTICLE XI: SUBORDINATION OF INDEMNIFICATION OBLIGATIONS

Notwithstanding anything to the contrary in these Articles or any other document governing the formation, management or operation of the Corporation, the Corporation's obligation, if any, to indemnify its directors or officers shall be fully subordinated to the Loan and the Loan Documents and shall not constitute a claim against it in the event that cash flow in excess of amounts necessary to pay holders of the Loan is insufficient to pay such obligations.

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION, AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY AGREE TO ACT IN THIS CAPACITY AND I FURTHER AGREE COMPLY WITH THE PROVISION OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES AS REGISTERED AGENT FOR SAID CORPORATION



**D. ANDREW CLARK, INCORPORATOR,
AND REGISTERED AGENT**

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Articles of Incorporation of BELLNOVA MM, INC., were acknowledged before me by D. ANDREW CLARK, (☒) personally known to me or (☐) who has produced a Florida driver's license, to be the Incorporator and Director this 22 day of February, 2016.

Karen Mead

Notary Public

Typed, printed or stamped name of Notary Public

My Commission Expires: 12/16/18



KAREN MEAD
MY COMMISSION # FF 183780
EXPIRES: December 16, 2018
Bonded Thru Budget Notary Services