

245840

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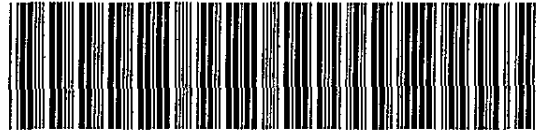
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FILED  
04 MAY 26 AM 11:49  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

*Handwritten:*  
Amend  
6/1/04

**Law Offices  
of  
EVAN R. MARBIN & ASSOCIATES, P.A.**

48 East Flagler Street, Penthouse 104  
Miami, Florida 33131

EVAN R. MARBIN •  
DANIEL S. MOSKOVITZ

Tel: (305) 371-2248  
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• Also Admitted in Texas

May 21, 2004

**VIA CERTIFIED MAIL**

Department of State  
Division of Corporations  
Corporate Filings  
409 E. Gaines Street  
Tallahassee, Florida 32399

RE: **The Denison Corp.**  
**Our Client File No. OU-264.89**

Dear Sir or Madam:

Enclosed please find an original and a copy of Articles of Amendment to The Articles Of Incorporation of The Denison Corp. We also enclosed a check in the amount of \$43.75 made payable to Secretary of State for filing said Articles of Amendment. After filing same, please forward a certified copy to the undersigned in the envelope provided.

If you should have any questions, please feel free to call me.

Thank you.

Sincerely,

EVAN R. MARBIN & ASSOCIATES, P.A.



Evan R. Marbin, Esq.

IN ORDER TO AVOID DELAY,  
THIS WAS SIGNED IN  
MR. MARBIN'S ABSENCE

ERM/sla

encls.

cc Nick Daniels, Esq. (via telefax)  
W. John Park, Esq. (via telefax)  
Mr. Robert Quittner (via telefax)

Articles of Amendment to  
Articles of Incorporation of

FILED  
04 MAY 26 AM 11:49  
SECRETARY OF STATE  
ALLAHASSEE, FLORIDA

THE DENISON CORP.

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

245840

(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:

**NEW CORPORATE NAME (if changing):**

(must contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.")

**AMENDMENTS ADOPTED** – Indicate Article Number(s) and/or Article Title(s) being amended, added or deleted: **(BE SPECIFIC)**

Article VII is hereby added to the Amended and Restated Articles of Incorporation of the Corporation which was filed on September 18, 1998 (see the attached 5 pages)

(Attach additional pages if necessary)

If an amendment provides for 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)

N/A

(continued)

The date of each amendment(s) adoption: MAY 17 2004

Effective date, if applicable: MAY 17 2004  
(no more than 90 days after amendment file date)

**Adoption of Amendment(s) (CHECK ONE)**

The amendment(s) was/were approved 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 Class A shareholders."

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.

Signed this 17<sup>th</sup> day of MAY, 2004.

Signature

Robert Michael Quittner  
(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)

Robert Michael Quittner

(Typed or printed name of person signing)

President

(Title of person signing)

**FILING FEE: \$35**

**The following ARTICLE VII is hereby added to the Amended and Restated Articles of Incorporation of The Denison Corp. (the “Company”):**

## **ARTICLE VII**

### **SPECIAL PURPOSE ENTITY PROVISIONS**

Notwithstanding anything to the contrary contained above, for as long as the Company has a mortgage loan (the “Loan”) with UBS Real Estate Investments Inc., its successors or assigns (the “Lender”), the following terms and conditions shall govern the Company:

A. Limited Purpose. The nature of the business and of the purposes to be conducted and promoted by the Company is to engage solely in the following activities:

1. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with certain parcels of real property, together with all improvements located thereon, located at 536-560 Lincoln Road, in the City of Miami, County of Dade, State of Florida (the “Property”); and

2. To exercise all powers enumerated in the corporate laws of the State of Florida necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

B. Certain Prohibited Activities. The Company shall only incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien (the “First Mortgage”) in favor of Lender exists on any portion of the Property, the Company shall not incur, assume, or guaranty any other indebtedness. For so long as the First Mortgage exists on any portion of the Property, the Company shall not dissolve or liquidate. For so long as any mortgage lien exists on any portion of the Property, the Company shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Company) formed or surviving such consolidation or merger or that acquires by conveyance or transfer the properties and assets of the Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article VII Section B and in Article VII Section D, and (c) shall expressly assume the due and punctual performance of the Company’s obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this Company and be continuing. For so long as the First Mortgage exists on any portion of the Property, the Company will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the board of directors of the Company. For so long as the First Mortgage exists on any portion of the

Property, no material amendment to this certificate of incorporation or to the Company's by-laws may be made without first obtaining approval of the mortgagee holding the First Mortgage on any portion of the Property, or, after the securitization of the Loan, only if the Company receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage.

Except as specifically permitted by the First Mortgage, no transfer of any direct or indirect ownership interest in the Company may be made such that the transferee owns, in the aggregate with the ownership interests of its affiliates and family members in the Company, more than a 49% interest in the Company, unless such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the holder of the First Mortgage and to any applicable rating agency concerning, as applicable, the Company, the new transferee and/or their respective owners.

C. Indemnification. Any indemnification of the Company's directors and officers shall be fully subordinated to any obligations respecting the Property (including, without limitation, the First Mortgage) and such indemnification shall not constitute a claim against the Company in the event that cash flow necessary to pay holders of such obligations is insufficient to pay such obligations.

D. Separateness Covenants. For so long as the First Mortgage exists on any portion of the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of amendment to certificate of incorporation, the Company shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate(s) or, if it shares office space with its parent or any affiliate(s), it shall allocate fairly and reasonably any overhead and expense for shared office space.

2. It shall not own and will not own any asset or property other than (i) the Property and (ii) incidental personal property necessary for the ownership or operation of the Property, provided that this restriction shall not prevent the Company from holding cash reserves of excess cash from operations or from advancing excess cash flow from operations to affiliates of the Company which affiliates have the same constituent or beneficial owners as the Company and which advances shall be on terms and conditions which are substantially similar to those that would be available on an arms-length basis with unrelated third-parties.

3. It will not engage, directly or indirectly, in any business other than the ownership, management and operation of the Property and it will conduct and operate its business as presently conducted and operated.

4. Its Board of Directors shall hold appropriate meetings or act by unanimous consent to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities.

5. It will not enter into any contract or agreement with its parent, any affiliate of the Company or any constituent party of the Company except upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arms-length basis with unrelated third parties.

6. It has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the indebtedness secured by the mortgage lien and (ii) trade payables or accrued expenses incurred in the ordinary course of the business of operating the property with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the indebtedness secured by the mortgage lien may be secured (subordinate or pari passu) by the Property.

7. Except as provided in paragraph D2 above, It shall not acquire obligations or securities of its affiliate(s).

8. It is and will remain solvent and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

9. It has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and it will not amend, modify or otherwise change the certificate of incorporation or the by-laws without the prior written consent of the mortgage lien holder or, after the securitization of the Loan, only if the Company receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal, or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage.

10. It will maintain all of its books, records, financial statements and bank accounts separate from those of its parent, its affiliate(s) and any constituent party and the Company will file its own separate tax returns. It shall maintain its books, records, resolutions and agreements as official records.

11. It will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including its parent, any affiliate or any constituent party of the Company), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct and operate its business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

12. It will 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.

13. Neither the Company nor any constituent party will seek or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Company, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any other person or entity.

14. It will not commingle the funds and other assets of the Company with those of its parent, any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

15. It has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual asset or assets, as the case may be, from those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

16. It shall not pledge its assets and does not and will not hold itself out to be responsible for the debts or obligations of any other person.

17. It shall pay any liabilities out of its own funds, including salaries of any employees.

18. The Company shall maintain a sufficient number of employees in light of its contemplated business operations.

19. The Company shall not guarantee or become obligated for the debts of any other entity or person.

For purpose of this Article VII, the following terms shall have the following meanings:

“affiliate” means any person controlling or controlled by or under common control with the Company, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Company, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from the Company, its parent or any affiliate. For purposes of this definition, “control” when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.



“parent” means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the corporation.

“person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

END OF ARTICLE VII