

09-16-1999

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To the Honorable Commissioner of Pa.

101127854

attached original documents or copy thereof.

1. Name of conveying party(ies):

Earth's Best, Inc., a Delaware corporation,  
merged with  
Earth's Best, Inc. (Idaho), an Idaho  
corporation, and changed its name to

- Individual(s)
- General Partnership
- Corporation-State see above
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

- Assignment
  - Security Agreement
  - Other
  - Merger
  - Change of Name
- effective November 4, 1996 in Idaho

Execution Date: November 18, 1996

2. Name and address of receiving party(ies):

Name: Earth's Best, Inc.

Internal Address: Suite 510

Street Address: 877 W. Main Street

City: Boise State: ID ZIP: 83702

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Idaho
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark registration No.(s)

1,560,438

2,064,061

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Kathryn Jennison Shultz

Internal Address: Jennison & Shultz, P.C.

Street Address: Crystal Plaza #1, Suite 1102

2001 Jefferson Davis Highway

City: Arlington State: VA ZIP: 22202

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 3.41):..... \$ 185.00 E  
including special handling fee

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

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DO NOT USE THIS SPACE

01 FC:481	40.00	OP
02 FC:482	25.00	OP
03 FC:484	120.00	OP

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Kathryn Jennison Shultz

Name of Person Signing

Signature

September 15, 1999

Date

Total number of Trademark Cover sheet:

1

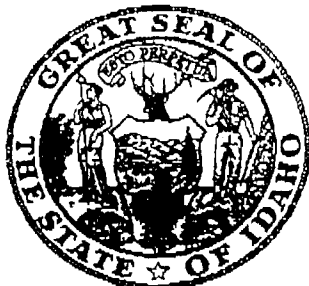
# State of Idaho

## Office of the Secretary of State

I Pete T. Cenarrusa, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation, limited liability company, limited partnership, limited liability partnership, and assumed business name records of this State.

I FURTHER CERTIFY That the annexed is a full, true and complete transcript of articles of merger of EARTH'S BEST, INC., a Delaware corporation, into EARTH'S BEST, INC. (IDAHO), an Idaho corporation, file number C 116555, changing the corporate name to EARTH'S BEST, INC., received and filed on November 18, 1996, under file number C 116555, as appears of record in this office as of this date.

Dated: September 14, 1999



*Pete T. Cenarrusa*  
SECRETARY OF STATE

By *Kenn Krusch*

# State of Idaho

## Office of the Secretary of State

### CERTIFICATE OF MERGER OR CONSOLIDATION

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of merger of EARTH'S BEST, INC., a Delaware corporation into EARTH'S BEST, INC. (IDAHO), an Idaho corporation, file number 116555, changing the corporate name to EARTH'S BEST, INC., an Idaho corporation, duly executed pursuant to the provisions of the Idaho Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this certificate of merger, and attach hereto a duplicate original of the Articles of merger.

Dated: November 18, 1996



*Pete T. Cenarrusa*  
SECRETARY OF STATE

By *[Signature]*  
By *[Signature]*

ARTICLES OF MERGER  
OF DOMESTIC AND FOREIGN CORPORATIONS  
INTO

Nov 18 10 35 AM '96

SECRETARY OF STATE  
STATE OF IDAHO

EARTH'S BEST, INC. (IDAHO)

Pursuant to the provisions of Section 30-1-77 of the Idaho Business Corporation Act, the undersigned domestic and foreign corporations adopt the following Articles of Merger for the purpose of merging them into one of such corporations.

FIRST: The names of the undersigned corporations and the states under the laws of which they are respectively organized are:

<u>Name of Corporation</u>	<u>State</u>
Earth's Best, Inc. (Idaho)	Idaho
Earth's Best, Inc.	Delaware

SECOND: The laws of the state under which such foreign corporation is organized permit such merger.

THIRD: The name of the surviving corporation of the merger is Earth's Best, Inc. (Idaho), which shall herewith be changed to Earth's Best, Inc., an Idaho corporation.

FOURTH: The Agreement and Plan of Merger attached hereto as Annex A and incorporated herein was approved by the shareholders of Earth's Best, Inc. (Idaho) in the manner prescribed by the Idaho Business Corporation Act and was approved by Earth's Best, Inc. in the manner prescribed by the laws of the State of Delaware.

FIFTH: As to each of the undersigned corporations, the number of shares outstanding, and the designation and number of outstanding shares of each class entitled to vote as a class on such Plan, are as follows:

IDAHO SECRETARY OF STATE  
 DATE 11/18/1996 0900 40024  
 3  
 Q1 #: 13300463 CUST# 13940  
 MERGER  
 1 @ 30.00 = 30.00  
 EXHIBIT C 19 20.00 = 20.00  
 # 1

Name of Corporation	No. of Shares Outstanding	Entitled to Vote as a Class	
		Designation of Class	Number of Shares
Earth's Best, Inc. (Idaho)	1,000	N/A	1,000
Earth's Best, Inc.	1,000	N/A	1,000

SIXTH: As to each of the undersigned corporations, the total number of shares voted for and against such Plan, respectively, and, as to each class entitled to vote thereon as a class, the number of shares of such class voted for and against such Plan, respectively, are as follows:

Name of Corporation	Number of Shares				
	Total Voted For	Total Voted Against	Entitled to Vote as a Class		
			Class	Voted For	Voted Against
Earth's Best, Inc. (Idaho)	1,000	0	N/A	1,000	0
Earth's Best, Inc.	1,000	0	N/A	1,000	0

Dated: November 4, 1996

EARTH'S BEST, INC. (IDAHO)

By Kaye S. Woods  
 Kaye S. Woods  
 Secretary

By Eric S. Nielsen  
 Eric S. Nielsen  
 President

EARTH'S BEST, INC.

By Karyl A. Davis  
Karyl A. Davis  
Assistant Secretary

By William C. Springer  
William C. Springer  
Chairman

3

USA 1278-1-48573

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5

STATE OF IDAHO )  
 ) SS:  
COUNTY OF ADA )

I, Melodie L. Jones, a notary public, do hereby certify that on this 14<sup>th</sup> day of November, 1998, personally appeared before me Eric S. Nielsen, who, being by me first duly sworn, declared that he is President of Earth's Best, Inc. (Idaho), that he signed the foregoing document as President of the corporation, and that the statements therein contained are true.

Melodie L. Jones  
Notary Public  
My Commission Expires:  
1/20/99

STATE OF IDAHO )  
 ) SS:  
COUNTY OF ADA )

I, Melodie L. Jones, a notary public, do hereby certify that on this 14<sup>th</sup> day of November, 1998, personally appeared before me Kaye S. Woods, who, being by me first duly sworn, declared that she is Secretary of Earth's Best, Inc. (Idaho), that she signed the foregoing document as Secretary of the corporation, and that the statements therein contained are true.

Melodie L. Jones  
Notary Public  
My Commission Expires:  
1/20/99

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss:  
 COUNTY OF ALLEGHENY )

I, Bonnie L. Pastorius, a notary public, do hereby certify that on this 4th day of NOVEMBER, 1998, personally appeared before me William C. Springer, who, being by me first duly sworn, declared that he is Chairman of Earth's Best, Inc., that he signed the foregoing document as Chairman of the corporation, and that the statements therein contained are true.

Bonnie L. Pastorius  
 Notary Public

Notarial Seal  
 Bonnie L. Pastorius, Notary Public  
 Pittsburgh, Allegheny County  
 My Commission Expires May 9, 2000  
 Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss:  
 COUNTY OF ALLEGHENY )

I, Bonnie L. Pastorius, a notary public, do hereby certify that on this 4th day of NOVEMBER, 1998, personally appeared before me Karyll A. Davis, who, being by me first duly sworn, declared that she is Assistant Secretary of Earth's Best, Inc., that she signed the foregoing document as Assistant Secretary of the corporation, and that the statements therein contained are true.

Bonnie L. Pastorius  
 Notary Public

Notarial Seal  
 Bonnie L. Pastorius, Notary Public  
 Pittsburgh, Allegheny County  
 My Commission Expires May 9, 2000  
 Member, Pennsylvania Association of Notaries



**AGREEMENT AND PLAN OF MERGER**

Between

**EARTH'S BEST, INC. (IDAHO)**

and

**EARTH'S BEST, INC.**

AGREEMENT AND PLAN OF MERGER, dated NOVEMBER 4, 1998, between Earth's Best, Inc. (Idaho), an Idaho corporation (hereinafter referred to as "Earth's Best (Idaho)" and sometimes referred to as the "Surviving Corporation") and Earth's Best, Inc., a Delaware corporation (hereinafter referred to as the "Merging Corporation"), which two corporations are hereinafter sometimes referred to as the "Constituent Corporations".

**FIRST****RECITALS**

Earth's Best (Idaho) is validly organized, existing and in good standing under the laws of the State of Idaho. The Merging Corporation is validly organized, existing and in good standing under the laws of the State of Delaware.

Earth's Best (Idaho) has an authorized capital of 1,000 shares of Common Stock with a par value of \$1.00 each, of which 1,000 shares are issued and outstanding.

The Merging Corporation has an authorized capital of 1,000 shares of Common Stock with a par value of \$1.00 each, of which 1,000 shares are issued and outstanding.

The Boards of Directors of the Constituent Corporations deem it advisable and in the best interests of their respective corporations and stockholders that the Merging Corporation merge with and into Earth's Best (Idaho) in accordance with the provisions of applicable statutes of both the State of Idaho and the State of Delaware, and have entered into this Agreement in connection with the merger.

ANNEX A

The merger shall be effected pursuant to Sections 368(a)(1)(A) and 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended, (the "Code"), for the purpose of changing the place of organization of the Merging Corporation.

## SECOND

### AGREEMENT OF MERGER

NOW, THEREFORE, the Constituent Corporations agree, each with the other, to merge into a single corporation which shall be Earth's Best (Idaho), pursuant to the laws of both the State of Idaho and the State of Delaware, and agree upon and prescribe the terms and conditions of the statutory merger, the mode of carrying it into effect and the manner and basis of converting the shares of the Merging Corporation into shares of the Surviving Corporation, as herein set forth:

On the effective date of the merger, the Merging Corporation shall be merged with and into Earth's Best (Idaho) and the separate existence of the Merging Corporation shall cease; the Constituent Corporations shall become a single corporation named "Earth's Best, Inc.", an Idaho corporation, which shall be the Surviving Corporation.

## THIRD

### ARTICLES OF INCORPORATION OF SURVIVING CORPORATION

The Articles of Incorporation of Earth's Best, Inc., (Idaho), which are set forth in Exhibit A to this Agreement, shall be amended in the following particulars:

The name of Earth's Best, Inc. (Idaho), as it is set forth in Article First, shall be changed to Earth's Best, Inc., an Idaho corporation.

Said amended Articles of Incorporation shall continue to be the Articles of Incorporation of the Surviving Corporation until further amended in accordance with the Corporation Law of the State of Idaho.

Such Amended Articles of Incorporation, as thus set forth, may be certified separately from this Agreement as the Amended Articles of Incorporation of this Surviving Corporation.

FOURTHBY-LAWS OF SURVIVING CORPORATION

The By-Laws of Earth's Best (Idaho) in effect immediately prior to the effective date of the merger shall continue to be the By-Laws of the Surviving Corporation, until altered or repealed in the manner provided by law and such By-Laws.

FIFTHDIRECTORS AND OFFICERS OF SURVIVING CORPORATION

The Directors and Officers of Earth's Best (Idaho) immediately prior to the effective date of the merger shall continue to be the Directors of the Surviving Corporation, to hold office for the terms specified in the By-Laws of the Surviving Corporation and until their respective successors are duly elected and qualified.

SIXTHMANNER AND BASIS OF CONVERSION OF SHARES

The treatment of the shares of Earth's Best (Idaho) and the manner of converting the shares of the Merging Corporation into shares of common stock of the Surviving Corporation shall be as follows:

1. Each share of Common Stock of Earth's Best (Idaho) which is issued and outstanding or in its treasury immediately prior to the effective date of the merger shall, by virtue of the merger, be converted into and become, without any action on the part of the holder thereof, .5 fully-paid and non-assessable shares of the Surviving Corporation's Common Stock.
2. Each share of the Merging Corporation's Common Stock which is issued and outstanding immediately prior to the effective date of the merger shall, by virtue of the merger, be converted into and become, without any action on the part of the holder thereof, .5 fully-paid and non-assessable shares of the Surviving Corporation's Common Stock.

**SEVENTH****EFFECT OF MERGER**

On the effective date of the merger, the Surviving Corporation shall possess all the rights, privileges, powers, and franchises of a public as well as a private nature of each of the Constituent Corporations, and shall become subject to all the restrictions, disabilities and duties of each of the Constituent Corporations and all of the singular rights, privileges, powers and franchises of each of the Constituent Corporations. All property, real, personal and mixed, and debts due to each of the Constituent Corporations on whatever account, including stock subscriptions as well as all other things in action or belonging to each of the Constituent Corporations, shall be vested in the Surviving Corporation; and all property, assets, rights, privileges, powers, franchises and immunities, and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the respective Constituent Corporations, and the title to any real estate vested by deed or otherwise, in either of the Constituent Corporations, shall not revert or be in any way impaired by reason of the merger; provided, however, that all of the creditors and liens upon any property of either of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities, obligations and duties of the respective Constituent Corporations shall thenceforth attach to the Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities, obligations and duties had been incurred or contracted by it.

If at any time after the merger becomes effective it shall appear to the Surviving Corporation that any further assignments or assurances are necessary or desirable to evidence the vesting in the Surviving Corporation of the title to any of the property or rights of the Merging Corporation, those persons who were proper officers and directors of the Merging Corporation as of the effective date of the merger shall execute, acknowledge and deliver such assignments or other instruments and do such acts as may be necessary or appropriate to evidence the vesting of title to such property or rights in the Surviving Corporation. For such purposes, the capacity and authority of the Merging Corporation and its officers shall be deemed to be continuing.

The Surviving Corporation agrees that it may be served with process in the State of Delaware and irrevocably appoints the Secretary of the State of Delaware as its agent to accept service of process, in any proceeding for the enforcement of any obligation of the Merging Corporation arising in the State of Delaware prior to the effective date of the merger, and in any proceeding for the enforcement of the rights of a dissenting shareholder of the Merging Corporation against the Surviving Corporation.

EIGHTHACCOUNTING AND STATED CAPITAL

When the merger becomes effective, subject to such changes, adjustments or eliminations as may be made in accordance with generally accepted accounting principles, (a) the assets and liabilities of the Constituent Corporations shall be recorded in the accounting records of the Surviving Corporation at the amounts at which they shall be carried at that time in the accounting records of the Constituent Corporations and (b) the amount of stated capital with which the Surviving Corporation shall begin business immediately after the effective date of the merger is \$1,000.

NINTHEFFECTIVE DATE

The effective date of the merger provided for by this Plan and Agreement of Merger shall be the date on which the last act prior to recording required to complete the merger under the respective laws of the State of Idaho and the State of Delaware is performed.

IN WITNESS WHEREOF, the undersigned officers have signed their names hereto and have caused the respective corporate seals of the Constituent Corporations to be affixed hereto the 4<sup>th</sup> day of November, 1996.

EARTH'S BEST, INC. (IDAHO)

By

Kay S. Woods  
Kay S. Woods  
Secretary

By

Eric S. Nielsen  
Eric S. Nielsen  
President

(SEAL)

EARTH'S BEST, INC.

By *Karyl A. Davis*  
Karyl A. Davis  
Assistant Secretary

By *William C. Springer*  
William C. Springer  
Chairman

(SEAL)

**ASSISTANT SECRETARY'S CERTIFICATE**

I, Theodore N. Bobby, Assistant Secretary of Earth's Best, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certify as such Assistant Secretary that the Agreement and Plan of Merger to which this Certificate is attached, after having been first duly signed on behalf of the said corporation and having been signed on behalf of Earth's Best, Inc. (Idaho), a corporation of the State of Idaho, was duly adopted pursuant to Section 228 of the General Corporation Law of Delaware by the unanimous written consent of the stockholders holding 1,000 shares of the capital stock of the corporation, same being all of the shares issued and outstanding having voting power, which Agreement and Plan of Merger was thereby adopted as the act of the stockholders of said Earth's Best, Inc. and the duly adopted agreement and act of the said corporation.

WITNESS my hand on this 4<sup>th</sup> day of November, 1986.

  
Assistant Secretary

STATE OF IDAHO )  
 ) ss:  
 COUNTY OF ADA )

On this 4<sup>th</sup> day of November, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared Eric S. Nielsen, known to me to be the President of Earth's Best, Inc. (Idaho), an Idaho corporation, said corporation being one of the corporations that executed the above and foregoing instrument, and acknowledged to me that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and that Eric S. Nielsen acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Thomas G. Jordan  
 Notary Public  
 My Commission Expires 1/20/99



STATE OF IDAHO )  
 ) ss:  
 COUNTY OF ADA )

On this 14th day of November, 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared Kaye S. Woods, known to me to be the Secretary of Earth's Best, Inc. (Idaho), an Idaho corporation, said corporation being one of the corporations that executed the above and foregoing instrument, and acknowledged to me that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and that Kaye S. Woods acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

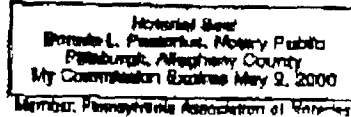
Melodie L. Jones  
 Notary Public  
 My Commission Expires  
1/20/99

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss:  
 COUNTY OF ALLEGHENY )

On this 4<sup>th</sup> day of NOVEMBER, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared William C. Springer, known to me to be the Chairman of Earth's Best, Inc., a Delaware corporation, said corporation being one of the corporations that executed the above and foregoing instrument, and acknowledged to me that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and that William C. Springer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Bonnie L. Pastorek  
 Notary Public



COMMONWEALTH OF PENNSYLVANIA )  
 ) ss:  
 COUNTY OF ALLEGHENY )

On this 4<sup>th</sup> day of NOVEMBER, 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared Karyll A. Davis, known to me to be the Assistant Secretary of Earth's Best, Inc., a Delaware corporation, said corporation being one of the corporations that executed the above and foregoing instrument, and acknowledged to me that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and that Karyll A. Davis acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seals the day and year in this certificate first above written.

*Bonnie L. Pastorek*  
 Notary Public

