

12-20-1999



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RECORDATION FORM COVER SHEET
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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID # _____
- Correction of PTO Error
Reel # _____ Frame # _____
- Corrective Document
Reel # _____ Frame # _____

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
- Merger
Effective Date _____
Month Day Year
- Change of Name
- Other _____

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name Green Mountain Energy Resources L.L.C.

Formerly _____

- Individual General Partnership Limited Partnership Corporation Association

Other Limited Liability Company

Citizenship/State of Incorporation/Organization Delaware

Receiving Party

Mark if additional names of receiving parties attached

Name GreenMountain.com Company

DBA/AKA/TA _____

Composed of _____

Address (line 1) 55 Green Mountain Drive

Address (line 2) P.O. Box 2206

Address (line 3) South Burlington Vermont 05407
City State/Country Zip Code

- Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)
- Corporation Association

Other _____

Citizenship/State of Incorporation/Organization Delaware

12/20/99 ISHAR677 0000161 755463

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Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

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Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text" value="75566635"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

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. Charges to deposit account are authorized, as indicated herein.

Veronica M. Fallon

Name of Person Signing

Veronica M. Fallon

Signature

12/7/99

Date Signed

State of Delaware
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:
"GREEN MOUNTAIN ENERGY RESOURCES L.L.C.", A DELAWARE LIMITED LIABILITY COMPANY,

WITH AND INTO "GREENMOUNTAIN.COM COMPANY" UNDER THE NAME OF "GREENMOUNTAIN.COM COMPANY", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE EIGHTEENTH DAY OF JUNE, A.D. 1999, AT 3:15 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



3011848 8100M
991247614



Edward J. Freel, Secretary of State

AUTHENTICATION:

9914627

DATE:

06-18-99

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AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this "Agreement"), dated as of June 11, 1999, is made by and between Green Mountain Energy Resources L.L.C., a Delaware limited liability company (the "LLC"), and GreenMountain.com Company, a Delaware corporation (the "Corporation").

RECITALS

A. In accordance with the LLC's limited liability company agreement, the management committee of the LLC has duly adopted a resolution approving this Agreement and the Merger, thereby satisfying the applicable approval requirements under Section 18-209 of the Delaware Limited Liability Company Act (the "DLLCA").

B. The board of directors of the Corporation has duly adopted a resolution approving this Agreement and declaring its advisability, thereby satisfying the applicable approval requirements under Section 264 and 251 of the Delaware General Corporation Law (the "DGCL").

C. No shares of stock of the Corporation were issued prior to the adoption by the board of directors of the Corporation of the resolution approving this Agreement and, accordingly, under Sections 264 and 251 of the DGCL no vote of stockholders of the Corporation is necessary to authorize the Merger.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

I. The Merger

1.1 **Merger.** At the Effective Time (as defined below), the LLC shall be merged with and into the Corporation (the "Merger") in accordance with the applicable provisions of the DLLCA and the DGCL, and separate existence of the LLC will thereupon cease. The Corporation shall be the surviving entity in the Merger (as such, the "Surviving Entity") The Merger shall have the effects specified in the DLLCA and the DGCL.

1.2 **Effective Time.** The LLC and the Corporation shall cause this Agreement to be filed with the Secretary of State of the State of Delaware in accordance with Section 18-209 of the DLLCA and Sections 251 and 264 of the DGCL at such time as they shall mutually agree. Upon the completion of the filing, the Merger shall become effective in accordance with the DLLCA and the DGCL. The time and date on which the Merger becomes effective is herein referred to as the "Effective Time."

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1.3 **Governing Documents of the Surviving Entity.** (a) At the Effective Time, the certificate of incorporation of the Corporation as in effect immediately prior to the Effective Time shall be amended and restated in its entirety to read as set forth in Exhibit A hereto. The certificate of incorporation, as so amended and restated, shall be the certificate of incorporation of the Surviving Entity from and after the Effective Time until amended in accordance with its terms and the DGCL.

(b) The bylaws of the Corporation as in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Entity from and after the Effective Time until amended in accordance with their terms and the DGCL.

1.4 **Directors and Officers of the Surviving Entity.** (a) The members of the board of directors of the Corporation immediately prior to the Effective Time shall be the members of the board of directors of the Surviving Entity and shall continue to serve as members of the board of directors of the Surviving Entity until their respective successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation or bylaws of the Surviving Entity.

(b) The officers of the Corporation immediately prior to the Effective Time shall be the officers of the Surviving Entity and shall continue to serve as officers of the Surviving Entity until their respective successors have been appointed and qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Entity.

II. Effect of Merger on Securities

2.1 **Conversion of Units.** At the Effective Time, each common unit in the LLC (each, a "Unit") outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive 3.0 shares of fully paid and nonassessable common stock, par value \$0.01 per share, of the Corporation ("Common Stock") upon surrender of the certificate formerly representing such Unit in accordance with this Agreement.

2.2 **Options to Purchase Units.** At the Effective Time, each then-outstanding option to purchase Units (each, an "Option"), whether or not then exercisable or fully vested, shall be assumed by the Corporation and shall constitute an option to acquire, on substantially the same terms and subject to substantially the same conditions as were applicable under such Option immediately prior to the Effective Time, the number of shares of Common Stock determined by multiplying the number of Units subject to such Option immediately prior to the Effective Time by 3.0 (the "Conversion Factor"), at an exercise price per share of Common Stock (rounded to the nearest whole cent) equal to the exercise price per Unit of Units subject to such Option divided by the Conversion Factor.

2.3 **Warrants to Purchase Units.** From and after the Effective Time, the holder of any warrant to purchase Units outstanding at the Effective Time (each, a "Warrant") shall have the right until the expiration date thereof to exercise such Warrant for the number of shares of

Common Stock receivable pursuant to Section 2.1 hereof by a holder of the number of Units for which such Warrant might have been exercised immediately prior to the Effective Time.

2.4 No Shares of the Corporation Outstanding. There will be no shares of stock of the Corporation outstanding immediately prior to the Effective Time.

III. Exchange of Certificates

3.1 Letters of Transmittal; Surrender of Certificates. The Corporation shall provide to each holder of record of a certificate or certificates that, immediately prior to the Effective Time, evidenced outstanding Units (the "Certificates") a form of letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Corporation, and shall be in such form and have such other provisions as the Corporation may specify), together with related instructions, for use in effecting the surrender of the Certificates in exchange for shares of Common Stock as contemplated by Section 2.1 hereof. Upon surrender of a Certificate for cancellation to the Corporation (or an exchange agent designated by the Corporation), together with a duly executed letter of transmittal and such other customary documents as may be required pursuant to such instructions, the holder of such Certificate shall be entitled to receive in exchange therefor a certificate representing the number of shares of Common Stock that the aggregate number of Units previously represented by such Certificate shall have been converted into the right to receive pursuant to Section 2.1 hereof, and the Certificate so surrendered shall forthwith be canceled.

3.2 Cancellation of Units; No Further Rights. As of the Effective Time, all Units issued and outstanding immediately prior to the Effective Time shall cease to be outstanding, shall automatically be canceled and shall cease to exist, and each holder of a Certificate theretofore representing any such Units shall cease to have any rights with respect thereto, except the right to receive shares of Common Stock upon surrender of such Certificate in accordance with Section 3.1 hereof, and until so surrendered, each such Certificate shall represent for all purposes only the right to receive shares of Common Stock as provided in this Agreement. The shares of Common Stock delivered upon the surrender for exchange of Certificates in accordance with the terms of this Article III shall be deemed to have been delivered in full satisfaction of all rights pertaining to the Units theretofore represented by such Certificates.

3.3 Distributions with Respect to Unexchanged Units. No dividends or other distributions with respect to Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Common Stock issuable upon the surrender of such Certificate pursuant to Section 3.1 until the surrender of such Certificate pursuant to Section 3.1. Subject to the effect of applicable escheat or similar laws, following the surrender of any such Certificate pursuant to Section 3.1 there shall be paid to the holder of the certificate representing the shares of Common Stock issued in exchange therefor, without interest, (a) at the time of such surrender, the amount of dividends or other distributions with respect to such shares of Common Stock with a record date after the Effective Time that would have been paid with respect to such shares of Common Stock had those shares been issued and outstanding as of such record date, and (b) at the appropriate payment date, the amount of dividends or other distributions with respect to such shares of Common Stock with a record date

after the Effective Time but prior to such surrender and with a payment date subsequent to such surrender that would have been payable with respect to such shares of Common Stock had those shares been issued and outstanding as of such record date.

IV. Miscellaneous

4.1 Termination. This Agreement may be terminated at any time prior to the Effective Time by mutual agreement of the LLC and the Corporation, notwithstanding any prior approvals.

4.2 Registration Rights Agreement. At or prior to the Effective Time, the Corporation shall execute a Registration Rights Agreement in such form as the Corporation may determine, pursuant to which each holder of record of Certificates, upon such holder's surrender thereof in accordance with Section 3.1, shall be entitled to "piggyback" registration rights with respect to Common Stock.

4.3 Tax Treatment. The Merger is intended to constitute an exchange described in Section 351 of the Internal Revenue Code of 1986, as amended.

4.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties with respect thereto.

4.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

4.6 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

GREEN MOUNTAIN ENERGY
RESOURCES L.L.C.

By: M. David White
M. David White
Chief Executive Officer


GREENMOUNTAIN.COM COMPANY

By: M. David White
M. David White
Chief Executive Officer

CERTIFICATION

As Secretary of the Corporation, I hereby certify that this Agreement was adopted by the board of directors of the Corporation, without a vote of stockholders, pursuant to subsection (f) of Section 251 of the DGCL, and I hereby further certify that no shares of stock of the Corporation were issued prior to the adoption by the board of directors of the Corporation of the resolution approving this Agreement.

GREENMOUNTAIN.COM COMPANY

By: 
Peter H. Zamora
Secretary

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
GREENMOUNTAIN.COM COMPANY**

GreenMountain.com Company, a corporation organized and existing under the laws of the State of Delaware (the "Company"), hereby certifies as follows:

1. The name of the Company is GreenMountain.com Company.
2. The original Certificate of Incorporation of the Company was filed with the Secretary of State of the State of Delaware ("Delaware SOS") on March 3, 1999. A Certificate of Correction to the Company's Certificate of Incorporation was filed with the Delaware SOS on March 16, 1999. A Certificate of Amendment to the Company's Certificate of Incorporation was filed with the Delaware SOS on May 20, 1999.
3. This Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the original Certificate of Incorporation pursuant to resolutions adopted by a majority of the Board of Directors of the Company in accordance with Sections 241 and 245 of the General Corporation Law of the State of Delaware. As of the date hereof, the Company has not received any payment for any of its stock.
4. The text of the Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I

The name of the company is GreenMountain.com Company (the "Company").

ARTICLE II

The address of the Company's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the Company's registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

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ARTICLE IV

Section 1. Authorized Capital Stock. The total number of shares of capital stock that the Company is authorized to issue is 200,000,000 shares, consisting of 150,000,000 shares of Common Stock, par value \$0.01 per share ("Common Stock"), and 50,000,000 shares of Preferred Stock, par value \$0.01 per share ("Preferred Stock").

Section 2. Preferred Stock. The Preferred Stock may be issued in one or more series as may be determined by the Board of Directors of the Company (the "Board"). The Board is authorized to fix the number of shares to be included in any such series and the designation, relative powers, preferences and rights and qualifications, limitations and restrictions of all shares of such series. The authority of the Board with respect to each such series will include, without limiting the generality or effect of the foregoing, the determination of any or all of the following:

- (a) The number of shares of any series and the designation to distinguish the shares of such series from the shares of all other series;
- (b) The voting powers, if any, and whether such voting powers are full or limited in such series;
- (c) The redemption provisions, if any, applicable to such series, including the redemption price or prices to be paid;
- (d) Whether dividends, if any, will be cumulative or noncumulative, the dividend rate of such series and the dates and preferences of dividends on such series;
- (e) The rights of such series upon the voluntary or involuntary dissolution of, or upon any distribution of the assets of, the Company;
- (f) The provisions, if any, pursuant to which the shares of such series are convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes of stock, or any other security, of the Company or any other corporation or other entity, and the price or prices or the rates of exchange applicable thereto;
- (g) The right, if any, to subscribe for or to purchase any securities of the Company or any other corporation or other entity;
- (h) The provisions, if any, of a sinking fund applicable to such series; and
- (i) Any other relative, participating, optional or other special powers, preferences, rights, qualifications, limitations or restrictions thereof.

all as may be determined from time to time by the Board and stated in the resolution or resolutions providing for the issuance of such Preferred Stock (collectively, a "Preferred Stock Designation").

Section 3. Common Stock. Except as may otherwise be provided in a Preferred Stock Designation, the holders of Common Stock will be entitled to one vote on each matter submitted to a vote at a meeting of stockholders for each share of Common Stock held of record by the holder as of the record date for that meeting.

ARTICLE V

The Board may make, amend and repeal the Bylaws of the Company. Any Bylaw made by the Board under the powers conferred hereby may be amended or repealed by the Board (except as specified in any such Bylaw so made or amended) or by the stockholders in the manner provided in the Bylaws of the Company. Notwithstanding the foregoing and anything contained in this Amended and Restated Certificate of Incorporation to the contrary, Bylaws 1, 3, 8, 10, 11, 12, 13, 34 and 40 may not be amended or repealed by the stockholders, and no provision inconsistent therewith may be adopted by the stockholders, without the affirmative vote of the holders of record of at least 80% of the Voting Stock, voting together as a single class. For the purposes of this Amended and Restated Certificate of Incorporation, "Voting Stock" means the capital stock of the Company of any class or series entitled to vote generally in the election of Directors. Notwithstanding anything contained in this Amended and Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of record of at least 80% of the Voting Stock, voting together as a single class, is required to amend or repeal, or to adopt any provision inconsistent with, this Article V.

ARTICLE VI

Subject to the rights of the holders of any series of Preferred Stock:

- (a) any action required or permitted to be taken by the stockholders of the Company must be effected at a duly called annual or special meeting of stockholders of the Company and may not be effected by any consent in writing of the stockholders; and
- (b) special meetings of the stockholders of the Company may be called only by (i) the Chairman of the Board (the "Chairman"), (ii) a Vice Chairman of the Board, (iii) the Secretary of the Company within ten calendar days after receipt of a written request of a majority of the total number of Directors that the Company would have if there were no vacancies (the "Whole Board"), or (iv) as otherwise provided in a Preferred Stock Designation.

At any annual meeting or special meeting of the stockholders of the Company, only such business will be conducted or considered as has been brought before such meeting in the manner provided in the Bylaws of the Company. Notwithstanding anything contained in this Amended and Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of record of at least 80% of the Voting Stock, voting together as a single class, is required to amend or repeal, or to adopt any provision inconsistent with, this Article VI.

ARTICLE VII

Section 1. Number, Election and Terms of Directors. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, the number of the Directors of the Company will not be less than three nor more than 15 and will be fixed from time to time in the manner described in the Bylaws of the Company. The Directors, other than those who may be elected by the holders of any series of Preferred Stock, will be classified with respect to the time for which they severally hold office into three classes, as nearly equal in number as possible, designated Class I, Class II and Class III. The Directors first appointed to Class I will hold office for a term expiring at the annual meeting of stockholders to be held in 2000; the Directors first appointed to Class II will hold office for a term expiring at the annual meeting of stockholders to be held in 2001; and the Directors first appointed to Class III will hold office for a term expiring at the annual meeting of stockholders to be held in 2002. The members of each class will hold office until their successors are elected and qualified or until their earlier resignation or removal. At each succeeding annual meeting of the stockholders of the Company, the successors of the class of Directors whose terms expire at that meeting will be elected by plurality vote of all votes cast at such meeting to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, Directors may be elected by the stockholders only at an annual meeting of stockholders. Election of Directors of the Company need not be by written ballot unless requested by the Chairman or by the holders of a majority of the Voting Stock present in person or represented by proxy at a meeting of the stockholders at which Directors are to be elected.

Section 2. Nomination of Director Candidates. Advance notice of stockholder nominations for the election of Directors must be given in the manner provided in the Bylaws of the Company.

Section 3. Newly Created Directorships and Vacancies. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board resulting from death, resignation, disqualification, removal or other cause will be filled solely by the affirmative vote of a majority of the remaining Directors then in office, even though less than a quorum of the Board, or by a sole remaining Director, or if there is no remaining Director, by the stockholders of the Company. Any Director elected in accordance with the preceding sentence will hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor has been elected and qualified. No decrease in the number of Directors constituting the Board may shorten the term of any incumbent Director.

Section 4. Removal. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional Directors under circumstances specified in a Preferred Stock Designation, any Director may be removed from office by the stockholders only for cause and only in the manner provided in this Section 4. At any annual or special meeting of the stockholders, the notice of which states that the removal of a Director or Directors is among the

purposes of the meeting, the affirmative vote of the holders of at least 80% of the Voting Stock, voting together as a single class, may remove such Director or Directors for cause.

Section 5. ~~Amendment, Repeal, Etc.~~ Notwithstanding anything contained in this Amended and Restated Certificate of Incorporation to the contrary, the affirmative vote of at least 80% of the Voting Stock, voting together as a single class, is required to amend or repeal, or to adopt any provision inconsistent with, this Article VII.

ARTICLE VIII

To the fullest extent permitted by the DGCL or any other applicable law currently or hereafter in effect, no Director of the Company will be personally liable to the Company or its stockholders for or with respect to any acts or omissions in the performance of his or her duties as a Director of the Company. Any repeal or modification of this Article VIII will not adversely affect any right or protection of a Director of the Company in respect of any act or omission occurring in whole or in part prior to such repeal or modification.

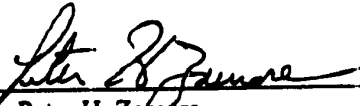
ARTICLE IX

The Company will to the fullest extent permitted by applicable law as then in effect indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether brought by or in the right of the Company or otherwise, by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company and is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding. The right to indemnification shall extend to the heirs, executors, administrators and estate of any such director or officer. The right to indemnification provided in this Article IX: (a) will not be exclusive of any other rights to which any person seeking indemnification may otherwise be entitled, including without limitation, pursuant to any contract approved by a majority of the Whole Board (whether or not the Directors approving such contract are or are to be parties to such contract or similar contracts); and (b) will be applicable to matters otherwise within its scope whether or not such matters arose or arise before or after the adoption of this Article IX. Without limiting the generality or the effect of the foregoing, the Company may adopt Bylaws, or enter into one or more agreements with any person, that provide for indemnification greater or otherwise different than that provided in this Article IX or the DGCL, and any such agreement approved by a majority of the Whole Board will be a valid and binding obligation of the Company regardless of whether one or more members of the Board, or all members of the Board, are parties thereto or to similar agreements. Notwithstanding anything to the contrary in this Article IX, in the event that the Company enters into a contract with any person providing for indemnification of such person, the provisions of that contract will exclusively govern the Company's obligations in respect of indemnification for or advancement of fees or disbursements of that person's counsel or any other professional engaged by that person. Any amendment or repeal of, or adoption of any provision inconsistent with, this Article IX will not adversely affect any right or protection existing hereunder, or arising out of events occurring

or circumstances existing, in whole or in part, prior to such amendment, repeal or adoption, and no such amendment, repeal or adoption will affect the legality, validity or enforceability of any contract entered into or right granted prior to the effective date of such amendment, repeal or adoption.

IN WITNESS WHEREOF, the Company has caused this certificate to be executed by Peter H. Zamore, its Vice President, General Counsel and Secretary, as of June 11, 1999.

GreenMountain.com Company

By: 
Name: Peter H. Zamore
Title: Vice President, General Counsel
and Secretary