

01-12-2001



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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

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

Name CRUNCH FITNESS INTERNATIONAL, INC. Execution Date
Month Day Year 10172000

Formerly _____

- Individual General Partnership Limited Partnership Corporation Association
- Other _____
- Citizenship/State of Incorporation/Organization NEW YORK

Receiving Party

Mark if additional names of receiving parties attached

Name CRUNCH FITNESS INTERNATIONAL, INC.

DBA/AKA/TA _____

Composed of _____

Address (line 1) 11 EAST 26TH STREET

Address (line 2) _____

Address (line 3) NEW YORK NEW YORK 10010
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

01/11/2001 NTHA11 00000018 75266752

FOR OFFICE USE ONLY

01 FC:481 40.00 OP
02 FC:482 350.00 OP

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. 20531

REEL: 002210 FRAME: 0790

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="75266752"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75081960"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75023273"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="1815978"/>	<input type="text" value="1968967"/>	<input type="text" value="1856269"/>
<input type="text" value="1942852"/>	<input type="text" value="2157073"/>	<input type="text" value="2079601"/>
<input type="text" value="2053516"/>	<input type="text" value="2035571"/>	<input type="text" value="1979705"/>

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.

SONJA KEITH, ESQ.

Name of Person Signing

Signature

DECEMBER 21, 2000

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

Conveying Party

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

Receiving Party

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual General Partnership Limited Partnership

Corporation Association

Other

Citizenship/State of Incorporation/Organization

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 the Assignment.)

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)

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1942705	<input type="text"/>	<input type="text"/>
1809668	<input type="text"/>	<input type="text"/>
1949705	<input type="text"/>	<input type="text"/>
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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 MERGER, WHICH MERGES:

"CRUNCH FITNESS INTERNATIONAL, INC.", A NEW YORK CORPORATION,

WITH AND INTO "CRUNCH FITNESS INTERNATIONAL, INC." UNDER THE NAME OF "CRUNCH FITNESS INTERNATIONAL, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE SEVENTEENTH DAY OF OCTOBER, A.D. 2000, AT 9 O'CLOCK A.M.

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



3124751 8100M

001523131

Edward J. Freel, Secretary of State

AUTHENTICATION: 0740730

DATE: 10-18-00

TRADEMARK
REEL: 002210 FRAME: 0793

**CERTIFICATE OF MERGER
OF
CRUNCH FITNESS INTERNATIONAL, INC.
(a New York corporation)
AND
CRUNCH FITNESS INTERNATIONAL, INC.
(a Delaware corporation)**

It is hereby certified that:

1. The constituent business corporations participating in the merger herein certified are:
 - (i) Crunch Fitness International, Inc., which is incorporated under the laws of the State of Delaware ("Crunch (DE)"); and
 - (ii) Crunch Fitness International, Inc., which is incorporated under the laws of the State of New York ("Crunch (NY)").
2. An Agreement and Plan of Merger (the "Merger Agreement"), dated as of January 1, 2000, among Crunch (DE) and Crunch (NY) has been approved, adopted, certified, executed, and acknowledged by each of the aforesaid constituent corporations in accordance with the provisions of subsection (c) of Section 252 of the General Corporation Law of the State of Delaware.
3. The name of the surviving corporation (the "Surviving Corporation") in the merger herein certified is Crunch Fitness International, Inc. which will continue its existence as the Surviving Corporation under its present name upon the effective date of said merger pursuant to the provisions of the General Corporation Law of the State of Delaware.
4. The Certificate of Incorporation of the Surviving Corporation is hereby amended, effective with the merger. The Certificate of Incorporation of the Surviving Corporation is amended by striking out Article FOURTH thereof and by substituting in lieu of said Article FOURTH the following new Article FOURTH, such amendment having been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware:

"FOURTH: (a) Authorized Shares. The total number of shares of stock which the Corporation shall have authority to issue is 24,000,000, of which 20,000,000 shares shall be designated "Common Stock," having a par value of \$.001 per share, and 4,000,000 shares shall be preferred stock having a par value of \$.001 per share, 3,000,000 shares of which preferred stock shall be designated "Series A Preferred Stock" and 150,000 shares of which preferred stock shall be designated "Series B Preferred Stock. To the extent not otherwise provided for by, and not inconsistent

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with, this Certificate of Incorporation, there is hereby expressly vested in the Board of Directors the authority to fix in the resolution or resolutions providing for the issue of each additional series of such preferred stock, the voting power and the designations, preferences and relative, participating, operational or other rights of each such series, and the qualifications, limitations of restrictions thereof. Shares of preferred stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors, each such series to be distinctly designated.

(b) Relative Rights. The following is a statement of the designations, preferences, limitations and relative rights in respect of the shares of the Common Stock; the Series A Preferred Stock and the Series B Preferred Stock:

A. Common Stock

Subject to the rights of the holders of the preferred stock, the Common Stock shall be entitled to dividends out of funds legally available therefor, when, as and if declared and paid to the holders of Common Stock, and upon liquidation, dissolution or winding up of the Corporation, to share ratably in the assets of the Corporation available for distribution to the holders of Common Stock. Except as otherwise provided herein or by law, the holders of the Common Stock shall have full voting rights and powers and each share of Common Stock shall be entitled to one vote.

B. Series A Preferred Stock

Each share of Series A Preferred Stock shall be subject to the following provisions:

Section 1. Dividends.

(a) The holders of the Series A Preferred Stock, shall be entitled to accrue cumulative cash dividends, whether or not declared by the Board of Directors of the Corporation, at the dividend rate of 8.175% of the Series A Liquidation Preference per annum (the "Series A Dividend Rate") and no more, on each share of Series A Preferred Stock, which shall accrue semi-annually in arrears, on June 30 and December 31 of each year (a "Series A Dividend Date"), commencing on June 30, 1999 (the "Series A Initial Dividend Date") except that if such Series A Preferred Stock is converted or redeemed on a day other than June 30 or December 31 then the last Series A Dividend Date in respect of the shares of Series A Preferred Stock then being converted or redeemed shall be on such date of conversion or Series A Redemption Date, as the case may be. Such dividends shall be cumulative, so that if at any time dividends per semi-annum at the applicable Series A Dividend Rate, on each share, shall not have been declared and paid, or set apart for payment, for all preceding dividend periods, the deficiency shall be declared and paid before any

dividends shall be declared and paid on the Common Stock of the Corporation.

(b) Holders of Series A Preferred Stock will not receive any dividends other than the preferred dividends provided for in this Section 1, and will not participate with the Common Stock in the payment of dividends. No dividends shall be paid by the Company in respect of any shares of Series A Preferred Stock, until such shares of Series A Preferred Stock are converted pursuant to Section 3(a) below or redeemed.

Section 2. Rights on Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (any such event being hereinafter referred to as a "Liquidation"), before any distribution of assets of the Corporation shall be made to or set apart for the holders of Common Stock, Series B Preferred Stock or any other authorized and issued shares of capital stock of the Corporation, the holders of Series A Preferred Stock shall be entitled to receive payment out of such assets of the corporation in an amount equal to Five Dollars (\$5.00) per share of Series A Preferred Stock (such amount being referred to as the "Series A Liquidation Preference" for the Series A Preferred Stock), plus any accumulated and unpaid dividends thereon (whether or not earned or declared) on the Series A Preferred Stock. If the assets of the Corporation available for distribution to the holders of Series A Preferred Stock shall not be sufficient to make in full the payment herein required, such assets shall be distributed pro-rata among the holders of Series A Preferred Stock based on the aggregate Series A Liquidation Preference of the shares of Series A Preferred Stock held by each such holder. If the assets of the Corporation available for distribution to the holders of Series A Preferred Stock shall exceed the distribution required to be made to the holders of Series A Preferred Stock as herein described, such excess assets shall be distributed as set forth in this Article Fourth(b)(C) and the holders of Series A Preferred Stock shall not participate in any such excess distribution.

Section 3. Conversion. (a) Subject to and upon compliance with the provisions hereof, the holder of any share of Series A Preferred Stock shall have the right, at its option, at any time and on or prior to redemption, to convert any or all of its shares of Series A Preferred Stock, into that number of fully paid and nonassessable shares of Common Stock (calculated as to each conversion to the nearest 1/100th of a share) obtained by dividing the aggregate Series A Liquidation Preference of the shares of Series A Preferred Stock to be converted by the conversion price of \$6.50 subject to adjustment as provided for in Sections 3.(b) and 3.(c) (the "Conversion Price"). If the holder hereof converts any or all of its shares of Series A Preferred Stock under this Section 3.(a), all accumulated and unpaid dividends (whether or not earned or declared) in respect of such converted shares shall be paid immediately upon conversion.

(b) At the Corporation's option and subject to the following terms and conditions, at the time of and in connection with an initial public offering by the Corporation of shares of Common Stock ("IPO"), if the price per share of such Common Stock in the IPO is equal to or greater than \$8.50, the Corporation shall have the right, upon written notice to the holder, to convert all (but not less than all) of the outstanding shares of Series A Preferred Stock into that number of fully paid

and nonassessable shares of Common Stock (calculated as to each conversion to the nearest 1/100th of a share) obtained by dividing the aggregate Series A Liquidation Preference of the shares of Series A Preferred Stock to be converted by the Conversion Price. In the event of any conversion by the Corporation permitted under this Subsection 3.(b), all shares issued as a result of such conversion shall be registered in connection with the IPO. In connection therewith, the Corporation shall be fully responsible for preparation and filing with the Securities and Exchange Commission of the registration statement and all such other documents, including a prospectus, as may be necessary in connection therewith to comply with applicable law. If the Corporation converts the shares of Series A Preferred Stock under this Section 3.(b), all accumulated and unpaid dividends (whether or not earned or declared) in respect of such converted shares shall be paid immediately upon conversion.

(c) Upon any conversion of any share of Series A Preferred Stock, the holder shall surrender such Series A Preferred Stock to the Corporation at its principal office or at such other agency maintained for such purpose by the Corporation, and, in the event of conversion in accordance with Section 3.(a), shall give written notice to the Corporation at such office or agency that the holder elects to convert the shares of Series A Preferred Stock specified in said notice. Such notice shall also state the name or names, together with address or addresses, in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued. The shares of Series A Preferred Stock surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the name in which such shares of Series A Preferred Stock are registered, be accompanied by instruments of transfer, in form satisfactory to the Corporation, duly executed by the holder or his duly authorized attorney. As promptly as practicable after the surrender of such shares of Series A Preferred Stock, as aforesaid, the Corporation shall issue and shall deliver at such office or agency to such holder, or on his written order, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such shares of Series A Preferred Stock in accordance with the provisions of this Section 3, and any fractional interest in respect of a share of Common Stock arising upon such conversion shall be settled as provided in Section 3.(d). Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which such shares of Series A Preferred Stock shall have been surrendered and such notice received by the Corporation as aforesaid, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby at such time and such conversion shall be at the Conversion Price in effect at such time, unless the stock transfer books of the Corporation shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of record at the close of business on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Price in effect on the date upon which such shares of Series A Preferred Stock shall have been surrendered and such Notice received by the Corporation.

(d) No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. Instead of any fractional interest in a share of Common Stock which would otherwise be deliverable upon the conversion of any share of Series A Preferred Stock, the Corporation shall make an adjustment therefor to the nearest 1/100th of a share in cash at the current

market price thereof on the day of conversion. If more than one share of Series A Preferred Stock shall be surrendered for conversion at any time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate Series A Liquidation Preference of the shares of Series A Preferred Stock to be converted, so surrendered.

(e) The Conversion Price shall be adjusted from time-to-time as follows:

(i) In case the Corporation shall hereafter (1) pay a dividend or make a distribution on its Common Stock in shares of Common Stock, (2) subdivide its outstanding shares of Common Stock into a greater number of shares, (3) combine its outstanding shares of Common Stock into a smaller number of shares, or (4) issue by reclassification of its Common Stock any shares of capital stock of the Corporation, the Conversion Price in effect immediately prior to such action shall be adjusted so that the holder of any share of Series A Preferred Stock thereafter surrendered for conversion shall be entitled to receive the kind and number of shares of Common Stock or other capital stock of the Corporation which it would have owned immediately following such action had such share of Series A Preferred Stock been converted immediately prior thereto. Any adjustment made pursuant to this subsection (i) shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification. If, as a result of an adjustment made pursuant to this subsection (i), the holder of any share of Series A Preferred Stock thereafter surrendered for conversion shall become entitled to receive shares of two or more classes of capital stock or shares of Common Stock and other capital stock of the Corporation, the Board of Directors shall in good faith determine the allocation of the adjusted Conversion Price between or among shares of such classes of capital stock. Subject to the good faith requirement set forth above, such determination shall be conclusive. All calculations under this Section 3.(e) shall be made to the nearest cent or to the nearest 1/100th of a share, as the case may be. In the event that at any time as a result of an adjustment made pursuant to subsection (i) of this Section 3.(e), the holder of a share of Series A Preferred Stock thereafter surrendered for conversion shall become entitled to receive any shares of the Corporation other than shares of Common Stock, thereafter the Conversion Price of such other shares so receivable upon conversion of a share of Series A Preferred Stock shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this Section 3.

(ii) In case the Corporation has after September 9, 1997 or shall thereafter issue or sell any shares of Common Stock (other than an issuance described in Subsection 3.(e)(i), above), including shares held in the Corporation's treasury and shares of Common Stock issued upon the exercise of any options, rights or warrants, to subscribe for shares of Common Stock and shares of Common Stock issued upon the direct or indirect conversion or exchange of securities for shares of Common Stock, for a price per share less than the then existing Conversion Price, then forthwith upon any such issuance or sale, the Conversion Price shall be reduced to the price (calculated to the nearest full cent) equal to quotient derived by dividing (i) an amount equal to the sum of (1) the total number of shares of Common Stock outstanding immediately prior to the issuance or sale of such shares, multiplied by the Conversion Price in effect immediately prior to such issuance or sale, and

(2) the total number of additional shares of Common Stock so issued, multiplied by the price per share, by (ii) the total number of shares of Common Stock outstanding immediately after such issuance or sale.

For the purposes of any computation to be made in accordance with this Subsection 3.(e)(ii), the following provisions shall be applicable:

(1) In case of the issuance or sale of shares of Common Stock for a consideration part or all of which shall be cash, the price therefor shall be deemed to be the gross price per share for such shares before deducting therefrom any compensation paid or discount allowed in the sale, underwriting or purchase thereof by underwriters or dealers or others performing similar services, or any expenses incurred in connection therewith.

(2) In case of the issuance or sale (otherwise than as set forth in Subsection 3.(e)(i) of shares of Common Stock for a consideration part or all of which shall be other than cash, the amount of the consideration therefor other than cash shall be deemed to be the fair market value of such consideration as determined in good faith by the Board of Directors of the Corporation and shall include any amounts payable to security holders of any affiliates thereof, including without limitation, pursuant to any employment agreement, royalty, consulting agreement, covenant not to compete, earn out or contingent payment right or similar arrangement, agreement or understanding, whether oral or written; all such amounts being valued for the purposes hereof at the aggregate amount payable thereunder, whether such payments are absolute or contingent, and irrespective of the period or uncertainty of payment, the rate of interest, if any, or the contingent nature thereof; provided, however, that if any holder(s) does not agree with such evaluation, a mutually acceptable independent appraiser shall make such evaluation, the cost of which shall be borne by the Corporation.

(iii) If the Corporation has after September 9, 1997 or shall thereafter issue options, rights, or warrants to subscribe for shares of Common Stock, or issue any securities convertible into or exchangeable for shares of Common Stock (hereinafter, collectively "Rights"), for a total price per share (including both the price per share of any such Rights and the exercise or other conversion price payable per share upon exercise of any such Rights) less than the Conversion Price in effect immediately prior to the issuance of such options, rights, or warrants, or such convertible or exchangeable securities, or without consideration, the Conversion Price in effect immediately prior to the issuance of such Rights shall be reduced to a price equal to the quotient derived by dividing (i) an amount equal to the sum of (1) the total number of shares of Common Stock outstanding immediately prior to the issuance or sale of such Shares, multiplied by the Conversion Price in effect immediately prior to such issuance or sale, and (2) the total number of shares of Common Stock issuable upon exercise of all such Rights, multiplied by the total price per share paid or payable upon sale or issuance and any exercise thereof, by (ii) the total number of shares of Common Stock outstanding assuming all such Rights are exercised in full (whether or not then exercisable). For purposes of this subsection:

(1) The aggregate maximum number of shares of Common Stock issuable under such Rights shall be deemed to be issued and outstanding at the time such Rights or warrants were issued, and for a price equal to the purchase price per share provided for in such Rights at the time of issuance, plus all consideration, if any, received by the Corporation for such Rights upon the issuance thereof.

(2) The aggregate maximum number of shares of Common Stock issuable upon conversion or exchange of any convertible or exchangeable securities shall be deemed to be issued and outstanding at the time of issuance of such Rights, and for a consideration equal to all consideration received by the Corporation for such Rights upon the issuance thereof, plus the consideration, if any, receivable by the Corporation upon the conversion or exchange thereof.

(3) If any change shall occur in the price per share provided for in any of the Rights referred to in this Subsection 3.(e)(iii), or in the price per share at which such Rights are convertible or exchangeable, such Rights shall be deemed to have expired or terminated on the date when such price change became effective in respect of shares not theretofore issued pursuant to the exercise or conversion or exchange thereof, and the Corporation shall be deemed to have issued upon such date new Rights or convertible or exchangeable Rights at the new price in respect of the number of shares issuable upon the exercise of such Rights or the conversion or exchange of such convertible or exchangeable Rights.

The provisions of this Section 3.(e) shall similarly apply in full in the event of successive issuances, sales or other events described herein.

Notwithstanding the above provisions of this Section 3.(e), in the event the Corporation shall at any time propose to issue (an "Issuance") any common stock or other equity securities, or options, rights, warrants or any other instrument convertible into equity capital of the Corporation, with the exception of options, rights warrants of any other instrument convertible into equity capital of the Corporation issued to employees of the Corporation who are not officers or directors of the Corporation, Marlin Capital, L.P. (the "Original Holder") shall have the right of first refusal to purchase the same on terms identical to those offered to or agreed with any third party in connection with such Issuance. The Corporation shall provide the Original Holder prompt notice of the Issuance of any such securities or instruments and copies of any proposals prepared in connection therewith as well as of any and all material terms and conditions thereof. The Original Holder shall have thirty (30) days following its receipt of such notice to exercise its right of first refusal hereunder. If the Original Holder exercises such right of first refusal, the parties shall effect the Issuance on terms and conditions mutually agreed. If the Original Holder fails to exercise its right of first refusal hereunder within the period provided above, the Corporation shall have the right to proceed with the Issuance at its discretion on the same material terms and conditions as previously disclosed to the Original Holder. The Original Holder's right of first refusal hereunder shall similarly apply for any and all successive proposed Issuances.

(f) In case of any consolidation or merger to which the Corporation is a party other than a merger or consolidation in which the Corporation is the continuing corporation, or in case of any sale or conveyance to another corporation of the property of the Corporation as an entirety or substantially as an entirety, or in the case of any statutory exchange of securities with another corporation (including any exchange effected in connection with a merger of a third corporation into the Corporation), there shall be no adjustment under Section 3.(e) above but the holder of shares of Series A Preferred Stock then outstanding shall have the right, at its sole option, thereafter to convert such shares of Series A Preferred Stock into the kind and amount of shares of stock and other securities and property which it would have owned or have been entitled to receive immediately after such consolidation, merger, statutory exchange, sale or conveyance had such shares of Series A Preferred Stock been converted immediately prior to the effective date of such consolidation, merger, statutory exchange, sale or conveyance and in any such case, if necessary, appropriate adjustment shall be made in the application of the provisions set forth in this Section 3 with respect to the rights and interest thereafter of any holders of the shares of Series A Preferred Stock, to the end that the provisions set forth in this Section 3 shall thereafter correspondingly be made applicable, as nearly as may reasonably be, in relation to any shares of stock and other securities and property thereafter deliverable on the conversion of the shares of Series A Preferred Stock. The above provisions of this Section 3.(f) shall similarly apply to successive consolidations, mergers, statutory exchanges, sales or conveyances.

(g) For the purposes of this Section 3, the term "Common Stock" shall include all shares of common stock authorized by the Corporation's Certificate of Incorporation, as from time to time amended, which are not entitled to a fixed sum or percentage of the par value in respect of the right of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution, bankruptcy proceeding or winding up of the Corporation; provided, that the Corporation shall not, without prior written consent of the holder(s) hereof, authorize or issue more than one class or series of such Common Stock.

Section 4. Redemption.

(a) Redemption. Notwithstanding anything contained herein to the contrary, the Corporation shall redeem, out of funds legally available therefore, all of, the Series A Preferred Stock (unless previously redeemed or converted) and all accumulated and unpaid dividends thereon (whether or not earned or declared) pursuant to the terms of Section 4 herein following notice pursuant to Section 4(b) (ii) hereof given to all holders of Series A Preferred Stock, upon the earlier occurrence of (i) September 9, 2002; or (ii) an Event of Default as described under Section 8 hereof. The Corporation shall effect any such Redemption by paying (the "Series A Redemption Price") in cash for each such share to be redeemed an amount equal to the Series A Liquidation Preference, per share, plus any accumulated and unpaid dividends thereon (whether or not earned or declared) on such shares to the Series A Redemption Date (as defined below).

(b) Redemption Procedures. (i) General. In the event of any redemption pursuant hereto, the Corporation shall effect such redemption as follows. The number of shares

subject to redemption shall be allocated pro rata among the holders of outstanding shares of Series A Preferred Stock based upon the number of shares held by each such holder.

(ii) At least 10 days prior to the date fixed for any redemption of Series A Preferred Stock pursuant to Section 4(a) above (the "Series A Redemption Date"), written notice shall be sent to each holder of record of Series A Preferred Stock to be redeemed, notifying such holder of the redemption to be effected, specifying the Series A Redemption Date, the Series A Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his certificate or certificates representing the shares to be redeemed (the "Series A Redemption Notice"). On or after the Series A Redemption Date, each holder of Series A Preferred Stock to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Series A Redemption Notice, and thereupon the Series A Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(iii) From and after the close of business on the Series A Redemption Date, unless there shall have been a default in payment of the Series A Redemption Price, all rights of the holders of the shares of Series A Preferred Stock designated for redemption as holders of Series A Preferred Stock (except the right to receive the Series A Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

(d) Status of Redeemed or Purchased Shares. Any shares of the Series A Preferred Stock at any time purchased, redeemed or otherwise acquired by the Corporation shall not be reissued and shall be retired.

Section 5. Voting Rights. The holders of the Series A Preferred Stock shall not be entitled to vote except as to matters in respect of which they shall at the time be indefeasibly vested by statute with such right.

Section 6. Protective Provisions. (a) So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 66 2/3% of the then outstanding shares of Series A Preferred Stock:

- (i) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares of such series;
- (ii) the Corporation shall not issue any class or series of Preferred Stock that

ranks Senior to or pari passu with the Series A Preferred Stock with respect to dividend, redemption or liquidation rights; and

(iii) the Corporations shall not create, incur, or assume any Consolidated Indebtedness (as defined below), unless following the creation, incurrence or assumption of such Consolidated Indebtedness, the Company's total Consolidated Indebtedness is less than or equal to \$35,000,000 and (ii) the Company's Consolidated Leverage ratio (as defined below) is less than or equal to 3.50 to 1.00.

(b) For purpose of this Section 6, the following terms shall have the meaning indicated below:

(i) "Consolidated EBITDA" shall mean in respect of the Company, and its subsidiaries on a consolidated basis, earnings before interest, income taxes, depreciation and amortization determined in accordance with generally accepted accounting principles, but adjusted for deferred revenue and rent.

(ii) "Consolidated Indebtedness" shall mean all indebtedness of the Company, and its subsidiaries on a consolidated basis, in respect of money borrowed, including without limitation all capital leases and the deferred purchase price of any property or asset, evidenced by a promissory note, bond, debenture or similar written obligation for the payment of money, as well as, trade and other payables incurred within or outside of the ordinary course of business including, but not limited to all, conditional sales or similar title retention agreements, but excluding any contingent earnout or deferred salary payments arising from acquisitions to be made by any of the Company's subsidiaries to its officers and directors;

(iii) "Consolidated Leverage Ratio" means as of the date of computation thereof, the ratio of (i) Consolidated Indebtedness (as determined as at such date) to (ii) Consolidated EBITDA (for the four-quarter period ending on (or most recently prior to) such date) provided, however, that for each of the first five fiscal quarters ending after the date on which any acquisition or disposition of another business made by the Company is effective, the Consolidated Leverage Ratio shall be calculated through the end of and including such fiscal quarter on a pro forma basis giving effect to such acquisition for the entire four-quarter period being computed

Section 7. Events of Default. Each of the following events shall be an event of default ("Event of Default") for purposes of the Series Preferred Stock:

(a) Failure to redeem the shares of Series A Preferred Stock as provided for and as required pursuant to Section 4 hereof;

(b) The Corporation defaults in the due and punctual performance or observance of any material term contained herein, and such default continues for a period of thirty (30) consecutive days after written notice thereof to the Corporation by the holders of 25% or more of the shares of

Series A Preferred Stock;

(c) The Corporation defaults in any material respect in the due and punctual performance of any covenant or agreement (i) in that certain Agreement effective as of September 9, 1997, as amended, between the Corporation and the Original Holder including, but not limited to, registration of the Conversion Shares, or (ii) in any note, bond, indenture, loan agreement, note agreement, mortgage, security agreement or other instrument evidencing or related to bank indebtedness or any other indebtedness of the Corporation, and such default shall continue for more than the period of notice and/or grace, if any, therein specified and shall not have been waived; or

(d) The Corporation makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or files any answer admitting or fails to deny the material allegations of a petition filed against the Corporation for any such relief, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidation of the Corporation or all or any substantial part of the properties or substantial amount of assets of the Corporation, or the Corporation or its directors or majority stockholders take any action looking to the dissolution or liquidation of the Corporation.

Section 8. Remedies on Default. Upon the occurrence of an Event of Default as described under Section 7 above, the Corporation, at the sole option of each of the holders of the shares of shares of Series A Preferred Stock, shall immediately redeem, the shares Series A Preferred Stock pursuant to the terms of Section 4 hereof. The remedies provided herein are in addition to and not in lieu of any other remedies provided or available under applicable law and all such remedies shall be cumulative.

Series B Preferred Stock

Section 1. Dividends.

(a) **General Obligation.** When and as declared by the Corporation's Board of Directors and to the extent permitted under the applicable laws of Delaware, the Corporation shall pay preferential dividends to the holders of the Series B Preferred Stock as provided in this Section 1. Except as otherwise provided herein, dividends on each share of the Series B Preferred Stock (a "Series B Share") shall accrue at the rate of eight percent (8%) per annum, on the Series B Liquidation Value thereof from and including the date of issuance of such Series B Share to and including the date on which the Series B Liquidation Value of such Series B Share along with all accrued and unpaid dividends thereon is paid in full. Such dividends shall accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation

legally available for the payment of dividends. The date on which the Corporation initially issues any Series B Share shall be deemed to be its "date of issuance" regardless of the number of times transfer of such Series B Share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such Series B Share.

(b) Dividend Reference Dates. With respect to the Series B Preferred Stock, to the extent that all accrued dividends on the Series B Preferred Stock are not paid in cash on December 15 of each year beginning December 15, 2000 (the "Series B Dividend Reference Dates"), all dividends which have accrued on each Series Share outstanding during the twelve-month period (or other period in the case of the initial Series B Dividend Reference Date) ending upon such Series B Dividend Reference Date will be accumulated and added to the Series B Liquidation Value of such Series B Share.

(c) Distribution of Partial Dividend Payments. If at any time the Corporation elects to, or is otherwise required to, pay dividends in cash and pays less than the total amount of dividends then accrued but unpaid with respect to the Series B Preferred Stock, such payment will be distributed ratably among the holders of the Series B Preferred Stock based upon the aggregate accrued but unpaid dividends on the Series B Shares held by each such holder, and any amounts of such dividends remaining thereafter shall be added to the Series B Liquidation Value thereof.

Section 2. Liquidation.

(a) Payment of Preference. Upon Liquidation, each holder of Series B Preferred Stock shall be entitled to be paid, after payment is made on the Series A Preferred Stock but before any distribution or payment is made upon any Junior Securities, an amount in cash equal to the aggregate Series B Liquidation Value of all Series B Shares held by such holder along with all accrued and unpaid dividends thereon. If upon any such Liquidation the Corporation's assets to be distributed among the holders of the Series B Preferred Stock, are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid under this Section 2, then the entire assets available to be distributed to the Corporation's stockholders after payment is made on the Series A Preferred Stock shall be distributed pro rata among such holders based upon the aggregate Series B Liquidation Value along with all accrued and unpaid dividends thereon of the Series B Preferred Stock held by each such holder. Not less than thirty (30) days prior to the payment date stated therein, the Corporation shall mail written notice of any such Liquidation to each record holder of Series B Preferred Stock, setting forth in reasonable detail the amount of proceeds to be paid with respect to each Series B Share and each share of Common Stock in connection with such Liquidation.

(d) Change of Control. The occurrence of a Change of Control shall be deemed to be a Liquidation for purposes of this Section 9, and the holders of the Series B Preferred Stock shall be entitled to receive payment from the Corporation of the amounts payable with respect to the Series B Preferred Stock upon a Liquidation under this Section 2 in cancellation of their Series B Shares upon the consummation of any such transaction.

Section 3. Redemptions.

(a) Mandatory Redemptions. Upon the consummation of a Qualified Public Offering, the Corporation shall, to the extent permitted under applicable law, redeem all the outstanding Series B Shares.

(b) Redemption on Request.

(i) On September 9, 2002, at the request of any holder of Series B Preferred Stock, the Corporation shall, to the extent permitted under applicable law, redeem the outstanding Series B Shares then held by such holder; and

(ii) At any time if the Corporation has materially breached its obligations under Article VII of the Purchase Agreement and (i) in the case of a breach of its obligations under Section 7.1(c) of the Purchase Agreement, has failed to cure such breach within 90 days of the Corporation's receipt of written notice of such breach from at least 51% of the holders of Series B Preferred Stock, (ii) in the case of a breach of its obligations under Section 7.1 (other than Section 7.1(c)) of the Purchase Agreement, has failed to cure such breach within 60 days of the Corporation's receipt of written notice of such breach from at least 51% of the holders of Series B Preferred Stock, or (iii) in the case of a breach of its obligations under any other Section of Article VII of the Purchase Agreement, has failed to cure such breach within 45 days of the Corporation's receipt of written notice of such breach from at least 51% of the holders of Series B Preferred Stock, at the request of any holder of Series B Preferred Stock, the Corporation shall redeem the outstanding Series B Shares then held by such holder.

(iii) At any time if the Corporation has defaulted or breached any material obligation under any material agreement to which the Corporation is a party or by which its assets are bound, and all applicable cure periods have expired, and as a result thereof, such event could reasonably be expected to have a material adverse effect on the Corporation, then the Corporation shall provide written notice thereof to the holders of Series B Preferred Stock within 15 days thereof, and upon written notice from any such holder of Series B Preferred Stock to the Corporation requesting redemption of the Series B Preferred Stock held by such holder, the Corporation shall redeem the outstanding Series B Shares then held by such holder.

(c) Optional Redemptions. The Corporation may at any time redeem (without penalty or premium) all or any portion of the Series B Preferred Stock then outstanding; provided, that all partial optional redemptions of Series B Preferred Stock pursuant to this Section 3(c) shall be made pro rata among the holders of Series B Preferred Stock on the basis of the aggregate Series B Liquidation Value (plus all accrued and unpaid dividends thereon) of the Series B Shares held by each such holder.

(d) Redemption Payments. For each Series B Share which is to be redeemed hereunder, the Corporation shall be obligated, on the applicable date upon which such Series B Shares

are to be redeemed, to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such Series B Share), out of funds legally available therefor, an amount in cash in immediately available funds equal to the Series B Liquidation Value of such Series B Share along with all accrued and unpaid dividends thereon. If the funds of the Corporation legally available for redemption of Series B Shares on any such date are insufficient to redeem the total number of Series B Shares to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of Series B Shares pro rata among the holders of the Series B Shares to be redeemed based upon the aggregate Series B Liquidation Value (plus all accrued and unpaid dividends thereon) of the Series B Shares held by each such holder. At any time thereafter when additional funds of the Corporation are legally available for the redemption of Series B Shares, such funds shall immediately be used to redeem the balance of the Series B Shares which the Corporation has become obligated to redeem, but which it has not redeemed.

(e) Notice of Redemption. Each holder of Series B Preferred Stock shall give written notice of its election to exercise its redemption rights under paragraph 3(b) above to the Corporation not more than thirty (30) nor less than ten (10) days prior to the date on which such redemption is to be made. In case fewer than the total number of Series B Shares represented by any certificate are redeemed, a new certificate representing the number of unredeemed Series B Shares shall be issued to the holder thereof without cost to such holder within five (5) Business Days after surrender of the certificate representing the redeemed Series B Shares.

(f) Dividends After Redemption Date. No Series B Share shall be entitled to any dividends accruing after the date on which the Series B Liquidation Value of such Series B Share along with any accrued and unpaid dividends thereon is paid to the holder of such Series B Share. On such date, all rights of the holder of such Series B Share shall cease, and such Series B Share shall no longer be deemed to be issued and outstanding.

(g) Redeemed or Otherwise Acquired Shares. Any Series B Shares which are redeemed or otherwise acquired by the Corporation shall be canceled and retired to authorized but unissued shares of Series B Preferred Stock and shall not be reissued or sold as shares of Series B Preferred Stock or transferred.

(h) Other Redemptions or Acquisitions. The Corporation shall not, nor shall it permit any Subsidiary to, redeem or otherwise acquire any shares of Series B Preferred Stock, except pursuant to and in accordance with the terms hereof. The Corporation shall not, nor shall it permit any Subsidiary to, declare or pay dividends or other distributions with respect to any Junior Securities without the written consent of holders of a majority of the Series B Shares. Nothing contained in this Section 3 shall restrict the Corporation from effecting the Restructuring.

(i) Consequences of Breach. Upon a breach by the Corporation of any of its payment obligations hereunder, including, but not limited to, the failure to make any required dividend payments or the failure to redeem Series B Shares in accordance with the terms hereof, the

holders of Series B Preferred Stock shall have the absolute right automatically and without any further action to appoint a majority of the board of directors of the Corporation.

Section 4. Priority of Series B Preferred Stock. So long as any Series B Preferred Stock remains outstanding, neither the Corporation nor any Subsidiary shall declare or pay any dividends on any Common Stock (other than dividends declared in connection with any stock splits, stock dividends, share combinations, share exchanges, or other recapitalizations in which such dividends are made in the form of Common Stock).

Section 5. Voting Rights. (a) Except as otherwise provided by applicable law and in addition to any voting rights provided by law, the holders of Series B Preferred Stock:

(1) shall be entitled to vote together with the holders of the Common Stock as a single class on all matters submitted for a vote of holders of Common Stock; and

(2) shall be entitled to receive notice of any stockholders' meeting in accordance with the Certificate of Incorporation and By-laws of the Corporation.

Each share of Series B Preferred Stock shall entitle the holder thereof to cast one vote for each whole vote that such holder would be entitled to cast had such holder exercised any rights held by it to purchase Common Stock of the Corporation pursuant to the Stock Purchase Warrant dated May 31, 2000, as such may hereafter be amended, restated or replaced, as of the date immediately prior to the record date for determining the stockholders of the Corporation eligible to vote on any such matter.

Section 6. Registration of Transfer.

The Corporation shall keep at its principal office a register for the registration of Series B Preferred Stock. Upon the surrender of any certificate representing Series B Preferred Stock at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of Series B Shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of Series B Shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Series B Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Series B Preferred Stock represented by the surrendered certificate.

Section 7. Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Series B Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided, that if the holder is a financial institution or other institutional investor its own

agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Series B Shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Series B Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

Section 8. Definitions.

"Business Day" means any day other than a Saturday, a Sunday or a day on which banks in New York City are authorized or obligated by law or executive order to close.

"Change of Control" means (a) any sale, transfer or issuance or series of sales, transfers and/or issuances of Common Stock by the Corporation or any holders thereof which results in any Person or group of Persons (as the term "group" is used under the Securities Exchange Act of 1934), other than the holders of Series B Preferred Stock as of the date of issuance of such Series B Shares, beneficially owning (as such term is used in the Securities Exchange Act of 1934) more than 50% of the Common Stock outstanding at the time of such sale, transfer or issuance or series of sales, transfers and/or issuances, (b) any sale or transfer of all or substantially all of the assets of the Corporation and its Subsidiaries on a consolidated basis (measured either by book value in accordance with generally accepted accounting principles consistently applied or by fair market value determined in the reasonable good faith judgment of the Corporation's Board of Directors) in any transaction or series of transactions (other than sales in the ordinary course of business) and (c) any merger or consolidation to which the Corporation is a party, except for a merger in which the Corporation is the surviving corporation, the terms of the Series B Preferred Stock are not changed and the Series B Preferred Stock is not exchanged for cash, securities or other property, and after giving effect to such merger, the holders of the Corporation's outstanding capital stock possessing a majority of the voting power (under ordinary circumstances) to elect a majority of the Corporation's Board of Directors immediately prior to the merger shall continue to own the Corporation's outstanding capital stock possessing the voting power (under ordinary circumstances) to elect a majority of the Corporation's Board of Directors.

"Common Stock", for purposes of this Article Fourth(b)(C) means, collectively, the Corporation's Common Stock, \$.001 par value per share, and any capital stock of any class of the Corporation hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Corporation.

"Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Series A Preferred Stock and the Series B Preferred Stock.

"Series B Liquidation Value" of any Series B Share as of any particular date shall be equal to \$100.00, plus any and all accumulated and unpaid dividends which are added to the Liquidation Value pursuant to this Certificate of Amendment of the Certificate of Incorporation.

"Person" means an individual, a partnership, a corporation, a limited liability company, a limited liability partnership, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Qualified Public Offering" has the meaning ascribed to such term in the Stockholders Agreement, dated as of May 31, 2000, by and among the Corporation and its stockholders.

"Restructuring" shall have the meaning set forth in the Securities Purchase Agreement, dated as of May 31, 2000, between the Corporation and Marlin Associates, L.P. (the "Purchase Agreement").

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing general partner of such limited liability company, partnership, association or other business entity.

Section 9. Redemption Exception. Notwithstanding anything herein to the contrary, the Corporation shall be permitted to take the actions permitted under Section 7.4 of the Securities Purchase Agreement dated as of May 31, 2000 between the Corporation and the Purchaser party thereto.

Section 10. [Intentionally Omitted]

Section 11. Amendment and Waiver.

No amendment, modification or waiver shall be binding or effective with respect to any provision of Article Fourth(b)(C) Sections 1 to 10 hereof without the prior written consent of the holders of at least a majority of the Series B Preferred Stock outstanding at the time such action is taken; provided, that no such action shall change (a) the rate at which or the manner in which

dividends on the Series B Preferred Stock accrue or the times at which such dividends become payable or the amount payable on redemption of the Series B Preferred Stock or the times at which redemption of Series B Preferred Stock is to occur, without the prior written consent of the holders of 51% of the Series B Preferred Stock then outstanding, (b) the Series B Liquidation Value, without the prior written consent of the holders of 51% of the Series B Preferred Stock then outstanding, or (c) the percentage required to approve any change described in clauses (a) and (b) above, without the prior written consent of the holders of 51% of the Series B Preferred Stock then outstanding; and provided further, that no change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of the applicable percentage of the Series B Preferred Stock then outstanding.

Section 12. Notices. Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be (i) delivered in person, (ii) transmitted by telecopy, (iii) sent by registered or certified mail, postage prepaid with return receipt requested, or (iv) sent by reputable overnight courier service, fees prepaid, to (x) the Corporation at its principal executive offices and (y) to any stockholder, at such stockholder's address or telecopy as it appears in the records of the Corporation (unless otherwise indicated in writing by any such stockholder). Notices shall be deemed given upon personal delivery, upon receipt of return receipt in the case of delivery by mail, upon acknowledgment by the receiving telecopier or one day following deposit with an overnight courier service.

5. The executed Merger Agreement between the aforesaid constituent corporations is on file at the principal place of business of the Surviving Corporation, the address of which is as follows:

Crunch Fitness International, Inc.
11 East 26th Street - 5th Floor
New York, New York 10010

6. A copy of the Merger Agreement will be furnished by the Surviving Corporation, on request, and without costs, to any stockholder of each of the aforesaid constituent corporations.


7. The authorized share structure of Crunch (NY), a constituent corporation which is not a corporation under the General Corporation Law of the State of Delaware, is as follows:

Total number of authorized shares of all classes:
12,000,000.

Number and par value of authorized shares of each class:
10,000,000 shares of Common Stock, each share par value of \$.001.
2,000,000 shares of Preferred Stock, each share par value of \$.001.

Dated: As of October 10, 2000.

Crunch Fitness International, Inc.
(a Delaware corporation)

By: 

Douglas Levine
President

#698112

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