

01-10-2002

To the Honorable  
Please receive



101939336

and Trademarks:  
copy thereof.

1.4.02

1. Name of Party(ies) conveying an interest:

Nitro Leisure Products, Inc.

Entity:

Individual(s)  Association

General Partnership  Limited Partnership

Corporation- Delaware

Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached:

yes  no



Name of party(ies) receiving an interest:

Name: Nitro Leisure Products, LLC  
Street Address: 1943 SE Airport Road  
City: Stuart  
State/Zip Code: Florida, 34996

Entity:

Individual(s)  Association

General Partnership  Limited Liability Company - Delaware

Corporation-State/Country \_\_\_\_\_

Other \_\_\_\_\_

Citizenship

If not domiciled in the United States, a domestic representative designation is attached:

yes  no

(The attached document must not be an assignment)

Additional name(s) and addresses attached:

yes  no

3. Description of the interest conveyed:

Nunc Pro Tunc Assignment effective as of 08/31/00  Change of Name  Other

Security Agreement  Merger

Date of execution of attached document August 31, 1998

4. Application number(s) or registration number(s). Additional sheet attached?  yes  no

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,501,459

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

Name: Richard Y. Kim  
FIRM: McDermott, Will & Emery  
Address: 600 13th Street, N.W.  
City/State/Zip: Washington, D.C. 20005-3096

6. Number of applications and registrations involved: 1

7.  The \$\_\_\_\_\_ filing fee is enclosed.

8.  Please charge the \$ 40.00 filing fee to Deposit Account No. 500417. (duplicate copy of this page attached)

9.  Please charge any deficiencies in fees or credit any overpayment to Deposit Account No. 500417.

DO NOT USE THIS SPACE

10. 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.

Richard Y. Kim  
Name of Person Signing

Signature

1/04/02  
Date

Total number of pages comprising coversheet: 1

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## AGREEMENT OF MERGER AND PLAN OF REORGANIZATION

This Agreement and Plan of Merger (this "Agreement"), dated as of August 31, 1998, is made by and among Nitro Leisure Products, Inc. ("Nitro"), a Delaware corporation ("Nitro") and Nitro Leisure Products, LLC, a Delaware limited liability company ("LLC").

**WHEREAS**, Nitro has an authorized capitalization consisting of (i) 15,000,000 shares of common stock, par value \$0.01 per share ("Nitro Common"), of which 10,083,995 shares are issued and outstanding (including without limitation shares issued upon the conversion of all of the convertible subordinated notes ("Convertible Notes") previously issued by Nitro and all previously issued warrants ("Warrants") to acquire Nitro Common), and (ii) 200,000 shares of preferred stock, par value \$0.01 per share, of which no shares are issued and outstanding;

**WHEREAS**, LLC has an authorized capitalization consisting of (i) 10,000,000 common membership units ("LLC Common"), of which 2 units are issued and outstanding, and (ii) 25,000,000 preferred membership units, of which no units are issued and outstanding;

**WHEREAS**, the Board of Directors of Nitro and the Board of Managers of LLC have heretofore approved and executed the merger (the "Merger") of Nitro with and into LLC in accordance with the Delaware Limited Liability Company Act (the "Act") and upon the terms and subject to the conditions set forth herein; and

**NOW, THEREFORE**, in consideration of the foregoing promises and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Nitro and LLC hereby agree as follows:

### ARTICLE I

#### THE MERGER

1.1 **The Merger.** Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the Act, Nitro shall be merged with and into LLC at the Effective Time (as hereinafter defined). Following the Effective Time, the separate corporate existence of Nitro shall cease and LLC shall continue as the surviving entity (in such capacity, the "Surviving Entity"), and the Surviving Entity shall succeed to and assume all the rights and obligations of Nitro in accordance with the Act.

1.2 **Effective Time.** Subject to the provisions of this Agreement, as soon as practicable on or after the date hereof, LLC shall file this Agreement of Merger and Plan of Reorganization with the Secretary of State of the State of Delaware and the Merger shall become effective at the time of such filing (the "Effective Time").

1.3 Effects of the Merger. The Merger shall have the effects set forth in Section 18-209 of the Act.

1.4 Certificate of Formation and Operating Agreement. (a) At the Effective Time, the Certificate of Formation of LLC, as in effect on the date thereof, shall be the Certificate of Formation of the Surviving Entity after the Effective Time, until thereafter changed or amended as provided therein or by the Act.

(b) At the Effective Time, the Operating Agreement of LLC, as in effect on the date thereof, shall be the Operating Agreement of the Surviving Entity after the Effective Time, until thereafter changed or amended as provided therein or by the Act.

1.5 Managers. The managers of LLC immediately prior to the Effective Time shall be the managers of the Surviving Entity and shall serve until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

1.6 Officers. The officers of LLC immediately prior to the Effective Time shall be the officers of the Surviving Entity and shall serve until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

1.7 Further Actions. Prior to and after the Effective Time, Nitro and LLC, respectively, shall take all actions as may be necessary or appropriate in order to effectuate the Merger. In the event that at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Entity with full title to all properties, assets, rights, approvals, immunities and franchises of either of Nitro or LLC, the officers and directors or managers of each such entity as of the Effective Time shall take all such further action.

## ARTICLE II

### EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS; EXCHANGE OF CERTIFICATES

2.1 Effect on Capital Stock and membership Units. (a) As of the Effective Time, by virtue of the Merger and without any action on the part of Nitro or LLC, or any holder of capital stock of Nitro or of membership units of LLC, the following events shall occur:

(i) each share of Nitro Common issued and outstanding immediately prior to the Merger shall be converted into and exchanged for 0.0595002 validly issued, fully paid and nonassessable common membership units of the Surviving Entity ("Surviving Entity Common"); and

(ii) each unit of LLC Common issued and outstanding immediately prior to the Merger shall be cancelled without any consideration being paid therefor.

(b) As of the Effective Time, all shares of Nitro Common issued and outstanding immediately prior to the Effective Time shall no longer be outstanding and shall be automatically cancelled and retired and shall cease to exist, and each holder of a certificate formerly representing shares of Nitro Common (a "Nitro Certificate"), a Convertible Note that has not yet been delivered to Nitro for issuance of the Nitro Common to which the holder is entitled by reason of the conversion of such Convertible Note, or a Warrant certificate that has not yet been delivered to Nitro for issuance of the Nitro Common to which the holder is entitled by reason of the exercise of such Warrant, shall, to the extent that (i) such Nitro Certificate represents such shares and (ii) such Convertible Note or such Warrant represents the right to receive a Nitro Certificate that represents such shares, cease to have any rights with respect thereto, except the right to receive 0.0595002 units of Surviving Entity Common for each share of Nitro Common.

**2.2 Exchange Procedures.** (a) As soon as practicable after the Effective Time, each holder of outstanding shares of Nitro Common shall, upon surrender of the Nitro Certificate representing such shares to Surviving Entity and execution of the operating agreement of Surviving Entity, receive the number of uncertificated units of Surviving Entity Common into which the shares of Nitro Common previously represented by such Nitro Certificate have been converted pursuant to this Agreement. Surviving Entity shall accept such Nitro Certificates upon compliance with such reasonable terms and conditions as it may impose to effect an orderly exchange thereof in accordance with normal exchange practices.

(b) As soon as practicable after the Effective Time, each former holder of a Convertible Note or Warrant who has not previously surrendered his Convertible Note or Warrant certificate in connection with the conversion of the Convertible Note or the exercise of the Warrant shall, upon surrender of such Convertible Note or Warrant, as the case may be, and execution of the operating agreement of Surviving Entity, receive the number of uncertificated units of Surviving Entity Common into which the shares of Nitro Common owned by such holder as a result of the conversion of the Convertible Note or the exercise of the Warrant, as the case may be, have been converted pursuant to this Agreement. Surviving Entity shall accept such Convertible Notes and Warrant certificates upon compliance with such reasonable terms and conditions as it may impose to effect an orderly exchange thereof in accordance with normal exchange practices.

(c) No Surviving Entity Common shall be issued to a person or entity other than the person or entity in whose name the surrendered Nitro Common is registered. **THE SURVIVING ENTITY COMMON HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT COVERING THE TRANSFER OR AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT REGISTRATION UNDER SAID ACT IS NOT REQUIRED.**

(d) Until surrendered and exchanged in accordance with this Section 2.2, each Nitro Certificate, Convertible Note and Warrant certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender and exchange the

uncertificated units of Surviving Entity Common as provided for in this Agreement, without any interest thereon.

2.3 Distributions with Respect to Unexchanged Shares. No dividends or other distributions with a record date prior to the Effective Time shall be paid with respect to any shares of Nitro Common to the holder of any unsurrendered Nitro Certificate, Convertible Note or Warrant certificate, as the case may be, until the surrender of such Nitro Certificate, Convertible Note or Warrant certificate, as the case may be, in accordance with this Article II. No dividends or other distributions with a record date after the Effective Time shall be paid with respect to any units of Surviving Entity Common to the holder of any unsurrendered Nitro Certificate, Convertible Note or Warrant certificate, as the case may be, until the surrender of such Nitro Certificate, Convertible Note or Warrant certificate, as the case may be, in accordance with this Article II.

2.4 Fractional Units. No fractional units of Surviving Entity Common shall be issued pursuant to this Agreement. In lieu of any fractional units of Surviving Entity Common, each stockholder of Nitro that would otherwise have been entitled to receive such a fractional unit shall receive payment in cash at the per unit price of \$0.83333.

2.5 Closing of Nitro's Transfer Books. After the date on which the Effective Time occurs, there shall be no further transfer on the books of Nitro or its transfer agent of any Nitro Common, and if (a) any Nitro Certificate is presented to the Surviving Entity or its transfer agent for transfer, (b) any Convertible Note made by Nitro is presented to the Surviving Entity or its transfer agent for issuance of the Nitro Common to which the holder is entitled by reason of the conversion of such Convertible Note or for transfer of such Nitro Common, or (c) any Warrant issued by Nitro is presented to the Surviving Entity or its transfer agent for issuance of the Nitro Common to which the holder is entitled by reason of the exercise of such Warrant or for transfer of such Nitro Common, such Nitro Certificate, Convertible Note or Warrant shall be canceled and exchanged for uncertificated units of Surviving Entity Common in accordance with this Agreement.

### ARTICLE III

#### AMENDMENT AND TERMINATION

3.1 Amendments and Waiver. No amendment, modification, restatement or supplement of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party against whom that waiver is sought to be enforced. No failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder and no course of dealing between or among any of the parties shall operate as a waiver of any right, power or privilege hereunder. No single or partial exercise of any right, power or privilege hereunder

shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. No notice to or demand on any party hereto in any case shall entitle such party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any party hereto to any other or further action in any circumstances without notice or demand.

3.2 Termination. At any time prior to Effective Time, this Agreement may be terminated and abandoned by the parties. In the event of any termination of this Agreement, this Agreement shall forthwith become void and there shall be no liability on the part of any of the parties hereto or their respective officers or directors.

#### ARTICLE IV MISCELLANEOUS

4.1 Benefit and Burden. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and permitted assigns.

4.2 No Third Party Rights. Nothing in this Agreement shall be deemed to create any right in any creditor or other person or entity, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party.

4.3 Assignments. Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any of the parties hereto and any attempt to do so shall be null and void.

4.4 Counterparts. This Agreement may be executed by the different parties hereto in separate counterparts, each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart signed by the party to be charged thereby.

4.5 Severability. Should any clause, sentence, paragraph, subsection, Section or Article of this Agreement be judicially declared to be invalid, unenforceable or void, such decision will not have the effect of invalidating or voiding the remainder of this Agreement, and the part or parts of this Agreement so held to be invalid, unenforceable or void will be deemed to have been stricken here from by the parties hereto, and the remainder will have the same force and effectiveness as if such stricken part or parts had never been included herein.

4.6 Applicable Law. This agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the state of Delaware, without giving effect to the conflict of law principles thereof.

4.7 **Entire Agreement.** This Agreement sets forth all of the promises, agreements, conditions, understandings, warranties and representations among the parties hereto with respect to the transactions contemplated hereby, and supersedes all prior agreements, arrangements and understandings among the parties hereto, whether written, oral or otherwise. There are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, among the parties hereto concerning the subject matter hereof except as set forth herein.

(END OF PAGE)

[SIGNATURE PAGE OF MERGER AGREEMENT]

IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the date first above written.

ATTEST:

NITRO LEISURE PRODUCTS, INC.

*Paul Lamb*

By: *ACK*  
Amin C. Khoury  
President

ATTEST:

NITRO LEISURE PRODUCTS, LLC

*Paul Lamb*

By: *ACK*  
Amin C. Khoury  
President