

F93000005434

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MERGER OR SHARE EXCHANGE

BALLY TOTAL FITNESS CORPORATION

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Merger



December 22, 2006

FLORIDA DEPARTMENT OF STATE
Division of Corporations

BALLY TOTAL FITNESS CORPORATION
8700 W BRYN MAWR AVENUE
2ND FLOOR, TAX DEPT
CHICAGO, IL 60631US

SUBJECT: BALLY TOTAL FITNESS CORPORATION
REF: F93000005434

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refile the complete document, including the electronic filing cover sheet.

The first two pages of the merger document are unclear and not suitable for imaging. Please improve the quality before refileing.

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Pamela Smith
Document Specialist

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EFFECTIVE DATE
12-31-06

ARTICLES OF MERGER
(Profit Corporations)

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, F.S.

First: The name and jurisdiction of the surviving corporation:

Name	Jurisdiction	Document Number (if known/ applicable)
<u>Bally Total Fitness Corporation</u>	<u>Delaware</u>	<u>F99000005434</u>

Second: The name and jurisdiction of each merging corporation:

Name	Jurisdiction	Document Number (if known/ applicable)
<u>Bally's Fitness and Racquet Clubs, Inc.</u>	<u>Florida</u>	<u>341879</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Third: The Plan of Merger is attached.

Fourth: The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State.

OR 12/31/06 (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days in the future.)

Fifth: Adoption of Merger by surviving corporation - (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the surviving corporation on 12-21-06

The Plan of Merger was adopted by the board of directors of the surviving corporation on _____ and shareholder approval was not required.

Sixth: Adoption of Merger by merging corporation(s) (COMPLETE ONLY ONE STATEMENT)


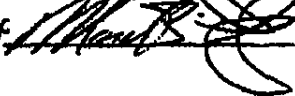
The Plan of Merger was adopted by the shareholders of the merging corporation(s) on 12-21-06

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on _____ and shareholder approval was not required.

(Attach additional sheets if necessary)

FORM - 12/2006 CT System Online

Seventh: SIGNATURES FOR EACH CORPORATION

<u>Name of Corporation</u>	<u>Signature</u>	<u>Typed or Printed Name of Individual & Title</u>
<u>Bally Total Fitness Corporation</u>		<u>Marc D. Bassowitz, Senior Vice President</u>
<u>Bally's Fitness and Racquet Club, Inc.</u>		<u>Marc D. Bassowitz, Senior Vice President</u>
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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement"), dated effective as of the 31st day of December, 2006 (the "Effective Date"), between Bally Total Fitness Corporation, a Delaware corporation (the "Surviving Corporation") and Bally's Fitness and Racquet Clubs, Inc., a Florida corporation (the "Non-Surviving Corporation," together with the Surviving Corporation, are collectively referred to herein as the "Constituent Corporations"), is to evidence the following agreements and understandings:

WITNESSETH:

WHEREAS, the sole Stockholder and all of the members of the Board of Directors of the Surviving Corporation and the sole Shareholder and all of the members of the Board of Directors of the Non-Surviving Corporation have each determined that it is in the best interests of the Constituent Corporations that the Non-Surviving Corporation merge with and into the Surviving Corporation (the "Merger") upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the Surviving Corporation is a corporation duly organized and existing under the laws of the State of Delaware and has adequate corporate power to conduct its business as it is presently conducted. The authorized capital stock of the Surviving Corporation consists of One Thousand (1,000) shares of common stock, with \$1.8750 par value per share ("Surviving Corporation Stock"), of which Eight Hundred (800) shares are currently issued and held by Bally Total Fitness Holding Corporation, a Delaware corporation ("Bally"). There are no other authorized or outstanding shares of capital stock or other equity securities of the Surviving Corporation. All outstanding shares of the Surviving Corporation Stock are duly authorized, validly issued, fully paid and nonassessable;

WHEREAS, the Non-Surviving Corporation is a corporation duly organized and existing under the laws of the State of Florida and has adequate corporate power to conduct its business as it is presently conducted. The authorized capital stock of the Non-Surviving Corporation consists of One Thousand (1,000) shares of common stock with \$1.00 par value per share, of which One Thousand (1,000) shares of common stock are issued and outstanding, all of which shares are owned by the Surviving Corporation (the "Non-Surviving Corporation Stock"). There are no other authorized or outstanding shares of capital stock or other equity securities of the Non-Surviving Corporation. All outstanding shares of the Non-Surviving Corporation Stock are duly authorized, validly issued and outstanding, fully paid and nonassessable;

(SKPK0422133.2)

WHEREAS, the registered office of the Surviving Corporation in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company; and

WHEREAS, the registered office of the Non-Surviving Corporation in the State of Florida is located at 1200 South Pine Island Road, Plantation, Florida 33324 and the name of its registered agent at such address is CT Corporation System.

NOW, THEREFORE, the Constituent Corporations, in consideration of the mutual covenants, agreements and provisions hereinafter contained do hereby prescribe the terms and conditions of the Merger and mode of carrying the same into effect as follows:

FIRST: On the Effective Date, the Non-Surviving Corporation shall merge into the Surviving Corporation and the separate corporate existence of the Non-Surviving Corporation will cease, and the Surviving Corporation will continue as the surviving corporation.

SECOND: The name of the Surviving Corporation shall continue to be Bally Total Fitness Corporation.

THIRD: The Restated Certificate of Incorporation of the Surviving Corporation, as amended to date and as in effect on the Effective Date, shall continue in full force and effect as the Restated Certificate of Incorporation of the Surviving Corporation.

FOURTH:

(a) By virtue of the Merger, on the Effective Date, each then issued and outstanding share of the Non-Surviving Corporation Stock owned of record and each share of the Non-Surviving Corporation Stock held in the Non-Surviving Corporation's treasury, will automatically be canceled and retired and all rights with respect thereto will cease to exist; and

(b) By virtue of the Merger, on the Effective Date, each then issued share of the Surviving Corporation Stock shall continue to be an issued share of common stock, of the Surviving Corporation and shall thereafter constitute all of the issued shares of common stock of the Surviving Corporation.

FIFTH: The terms and conditions of the Merger are as follows:

(a) The bylaws of the Surviving Corporation as they shall exist on the Effective Date shall be and remain the bylaws of the Surviving Corporation until the same shall be altered, amended or repealed as therein provided;

(b) The members of the Board of Directors and officers of the Surviving Corporation shall continue in office until the next annual meeting of stockholders and until their successors shall have been elected and qualified;

(c) This Merger shall become effective on the Effective Date; and

(d) On the Effective Date, all property, rights, privileges, franchises, patents, trademarks, licenses, registrations and other assets of every kind and description of the Non-Surviving Corporation shall be transferred to, vested in and devolve upon the Surviving Corporation without further act or deed and all property, rights, and every other interest of the Surviving Corporation and the Non-Surviving Corporation shall be as effectively the property of the Surviving Corporation as they were of the Surviving Corporation and the Non-Surviving Corporation, respectively. The Non-Surviving Corporation hereby agrees from time to time, as and when requested by the Surviving Corporation or by its successors or assigns, to execute and deliver or cause to be executed and delivered all such deeds and instruments and to take or cause to be taken such further or other action as the Surviving Corporation may deem necessary or desirable in order to vest in and confirm to the Surviving Corporation title to and possession of any property of the Non-Surviving Corporation acquired or to be acquired by reason of or as a result of the Merger herein provided for and otherwise to carry out the intent and purposes hereof and the proper officers and directors of the Non-Surviving Corporation and the proper officers and directors of the Surviving Corporation are fully authorized in the name of the Non-Surviving Corporation or otherwise to take any and all such action.

SIXTH: Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated and abandoned by the Board of Directors of either of the Constituent Corporations at any time prior to the time that this Agreement filed with the Secretary of State becomes effective. This Agreement may be amended by the Board of Directors of either of the Constituent Corporations at any time prior to the time that this Agreement filed with the Secretary of State becomes effective, provided that an amendment made subsequent to the adoption of the Agreement by the stockholders or shareholders of either of the Constituent Corporations shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of the Constituent Corporations; (2) alter or change any term of the Restated Certificate of Incorporation of the Surviving Corporation to be effected by the merger; or (3) alter or change any of the terms and conditions of the Agreement if such alteration or change would adversely affect the holders of any class or series thereof of the Surviving Corporation.

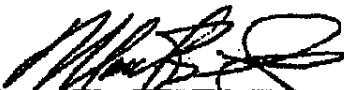
SEVENTH: This Agreement has been duly adopted by Written Consent of the sole Stockholder and members of the Board of Directors of the Surviving Corporation

pursuant to Sections 228 and 141(f), respectively of the Delaware General Corporation Law and by Written Consent of the sole Shareholder and members of the Board of Directors of the Non-Surviving Corporation pursuant to Sections 607.0704 and 607.0821, respectively, of the Florida Business Corporation Act.

EIGHTH: This Agreement is entered into in accordance with the requirements of Section 252 of the Delaware General Corporation Law and this Agreement is governed by the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties to this Agreement, pursuant to the approval and authority duly given by resolutions adopted by the sole Stockholder and members of the Boards of Directors of the Surviving Corporation and the sole Shareholder and members of the Board of Directors of the Non-Surviving Corporation, have caused these presents to be executed by the Senior Vice President, General Counsel and Secretary of each Constituent Corporation as the respective act, deed and agreement of each of the Constituent Corporations on this 21st day of December, 2006.

BALLY TOTAL FITNESS CORPORATION,
a Delaware corporation

By: 

Marc D. Bassewitz, Senior Vice President,
General Counsel and Secretary

BALLY'S FITNESS AND RACQUET CLUBS, INC.,
a Florida corporation

By: 

Marc D. Bassewitz, Senior Vice President,
General Counsel and Secretary