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K07073

December 29, 1998

VIA FEDERAL EXPRESS

Florida Department of State
Division of Corporations
Merger Department
409 East Gaines Street
Tallahassee, Florida 32399

Re: Optimum Nutrition, Inc.

Dear Sir or Madam:

Enclosed please find one (1) executed original of the Articles of Merger (Profit Corporations) and four (4) copies of said Articles of Merger for the merger of Costello's Fitness Outlet Inc., a Florida corporation, Costello's Health and Fitness Distributors, Inc., an Illinois corporation, and Costello's Fitness Distributors of California, Inc., a California corporation, with and into Optimum Nutrition, Inc., a Florida corporation. Please file stamp one (1) of the copies of the Articles of Merger and certify the remaining three (3) copies and return them to me in the enclosed self-addressed envelope.

Also enclosed is a check payable to the Florida Department of State in the amount of One Hundred Eighty-One and 25/100 Dollars (\$181.25) for the filing fee and the fees for the three (3) certified copies of the Articles of Merger that I have requested.

I appreciate your prompt attention to and assistance with this matter. If you should have any questions or require additional information, please do not hesitate to call me.

Very truly yours,

HEROUX, CLINGEN, CALLOW, WOLFE & McLEAN

By:

James Tu

James Tu merger

JAN 11 1999

JT:st
Enclosures

TU

600002726276--9
-12/30/98--01043--007
****181.25 ****131.25

FILED
98 DEC 30 11:10:33
SECRETARY OF STATE
TALLAHASSEE, FL
EFFECTIVE DATE
12-31-98

ARTICLES OF MERGER
Merger Sheet

MERGING:

COSTELLO'S FITNESS OUTLET, INC., a Florida corporation, K60992

COSTELLO'S HEALTH AND FITNESS DISTRIBUTORS, INC., Illinois not
qualified

COSTELLO'S FITNESS DISTRIBUTORS OF CALIFORNIA, INC., a California not
qualified

INTO

OPTIMUM NUTRITION, INC., a Florida corporation, K07073

File date: December 30, 1998, effective December 31, 1998

Corporate Specialist: Thelma Lewis

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.

98 DEC 30 AM 10:33
FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

First: The name and jurisdiction of the surviving corporation is:

<u>Name</u>	<u>Jurisdiction</u>
<u>Optimum Nutrition, Inc.</u>	<u>Florida</u>

Second: The name and jurisdiction of each merging corporation is:

<u>Name</u>	<u>Jurisdiction</u>
<u>Costello's Fitness Outlet, Inc.</u>	<u>Florida</u>
<u>Costello's Health and Fitness Distributors, Inc.</u>	<u>Illinois</u>
<u>Costello's Fitness Distributors of California, Inc.</u>	<u>California</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

EFFECTIVE DATE
12-31-98

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 / 98 (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 December 28, 1998.

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)

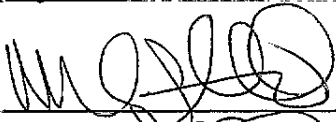
The Plan of Merger was adopted by the shareholders of the merging corporation(s) on December 28, 1998.

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)

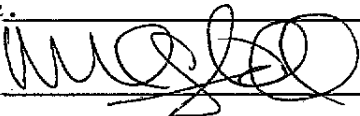
Seventh: SIGNATURES FOR EACH CORPORATION

<u>Name of Corporation</u>	<u>Signature</u>	<u>Typed or Printed Name of Individual & Title</u>
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Optimum Nutrition, Inc.		Michael J. Costello, President
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Costello's Fitness Outlet, Inc.		Michael J. Costello, President
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Costello's Health and Fitness Distributors, Inc.		Anthony P. Costello, President
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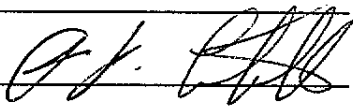
Costello's Fitness Distributors of California, Inc.		Michael J. Costello, President
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Seventh: SIGNATURES FOR EACH CORPORATION

<u>Name of Corporation</u>	<u>Signature</u>	<u>Typed or Printed Name of Individual & Title</u>
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Optimum Nutrition, Inc.		Michael J. Costello, President
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Costello's Fitness Outlet, Inc.		Michael J. Costello, President
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Costello's Health and Fitness Distributors, Inc.		Anthony P. Costello, President
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Costello's Fitness Distributors of California, Inc.		Michael J. Costello, President

PLAN OF MERGER

(Non Subsidiaries)

The following plan of merger is submitted in compliance with section 607.1101, F.S. and in accordance with the laws of any other applicable jurisdiction of incorporation.

First: The name and jurisdiction of the surviving corporation is:

<u>Name</u>	<u>Jurisdiction</u>
Optimum Nutrition, Inc.	Florida

Second: The name and jurisdiction of each merging corporation is:

<u>Name</u>	<u>Jurisdiction</u>
Costello's Fitness Outlet, Inc.	Florida
Costello's Health and Fitness Distributors, Inc.	Illinois
Costello's Fitness Distributors of California, Inc.	California

Third: The terms and conditions of the merger are as follows:

See Attached Agreement and Plan of Merger.

Fourth: The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or, in whole or in part, into cash or other property and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, or other securities of the surviving or any other corporation or, in whole or in part, into cash or other property are as follows:

See Attached Agreement and Plan of Merger

(Attach additional sheets if necessary)

THE FOLLOWING MAY BE SET FORTH IF APPLICABLE:

Amendments to the articles of incorporation of the surviving corporation are indicated below or attached as an exhibit:

N/A

OR

Restated articles are attached:

N/A

Other provisions relating to the merger are as follows:

N/A

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement and Plan") is made and entered into as of December 28, 1998, by and among **OPTIMUM NUTRITION, INC.** ("Optimum Nutrition"), a Florida corporation (Optimum Nutrition being hereinafter sometimes referred to as the "Surviving Corporation"), and **COSTELLO'S FITNESS DISTRIBUTORS OF CALIFORNIA, INC. ("CFDofCA")**, a California corporation, **COSTELLO'S FITNESS OUTLET INC. ("CFO")**, a Florida corporation, and **COSTELLO'S HEALTH AND FITNESS DISTRIBUTORS, INC. ("CH&FD")**, an Illinois corporation (CFDofCA, CFO, and CH&FD being hereinafter sometimes referred to collectively as the "Merging Corporations"), said four (4) corporations being hereinafter sometimes referred to collectively as the "Constituent Corporations:"

WHEREAS, Optimum Nutrition is a corporation duly organized and existing under the laws of the State of Florida, having been incorporated on December 14, 1987 with a capitalization of 1,000 authorized shares of \$1.00 par value common stock, all of which shares are issued and outstanding;

WHEREAS, CFDofCA is a corporation duly organized and existing under the laws of the State of California, having been incorporated on November 8, 1989 with a capitalization of 1,000 authorized shares of no par value common stock, all of which shares are issued and outstanding;

WHEREAS, CFO is a corporation duly organized and existing under the laws of the State of Florida, having been incorporated on January 25, 1989 with a capitalization of 1,000 authorized shares of \$1.00 par value common stock, all of which shares are issued and outstanding;

WHEREAS, CH&FD is a corporation duly organized and existing under the laws of the State of Illinois, having been incorporated on January 28, 1988 with a capitalization of 50,000 authorized shares of no par value common stock, of which 10,000 shares are issued and outstanding; and

WHEREAS, the Board of Directors and Shareholders of each of the Constituent Corporations deem it advisable and in the best interests of the Constituent Corporations that CFDofCA, CFO and CH&FD be merged with and into Optimum Nutrition, with Optimum Nutrition being the Surviving Corporation, under and pursuant to the laws of the State of Florida, the State of California and the State of Illinois and on the terms and conditions set forth herein, in order that the transaction qualify as a "reorganization" within the meaning of Section 368(a)(1)(A) and (D) of the Internal Revenue Code of 1986.

NOW, THEREFORE, in consideration of the mutual covenants, and subject to the terms and conditions hereafter set forth, the Constituent Corporations agree as follows:

ARTICLE I MERGER

Section 1.1 CFDofCA, CFO and CH&FD shall be merged with and into Optimum Nutrition in accordance with the laws of the State of Florida, State of Illinois and State of California. The separate corporate existence of CFDofCA, CFO and CH&FD shall thereby cease, and Optimum Nutrition shall be the Surviving Corporation. Consummation of this Agreement and Plan shall be effected by the simultaneous filing thereof in the State of Florida, State of Illinois and State of California, after satisfaction of the requirements of the applicable laws of said states.

Section 1.2 The name which the Surviving Corporation is to have after the merger shall be "Optimum Nutrition, Inc."

Section 1.3 On the Effective Date (as defined in Section 2.1 below), the separate existence of the Merging Corporations shall cease. Except as herein otherwise specifically set forth, from and after the Effective Date the Surviving Corporation shall possess all of the rights, privileges, immunities and franchises, to the extent consistent with its Articles of Incorporation, of the Constituent Corporations. All the rights, privileges, powers and franchises of the Merging Corporations, of a public as well as of a private nature, and all property, real, personal and mixed of the Merging Corporations, and all debts due on whatever account to it, including all choses in action and all and every other interest of or belonging to it, shall be taken by and deemed to be transferred to and vested in the Surviving Corporation without further act or deed; and all such property, rights, privileges, immunities and franchises, of a public as well as of a private nature, and all and every other interest of the Merging Corporations shall be thereafter as effectually the property of the Surviving Corporation as they were of each of the Merging Corporations.

Section 1.4 From and after the Effective Date, the Surviving Corporation shall be subject to all the duties and liabilities of a corporation organized under the Florida Business Corporation Act and shall be liable and responsible for all the liabilities and obligations of the Constituent Corporations. The rights of the creditors of the Constituent Corporations, or of any person dealing with such corporations, or any liens upon the property of such corporations, shall not be impaired by this merger, and any claim existing or action or proceeding pending by or against either of such corporations may be prosecuted to judgment as if this merger had not taken place, or the Surviving Corporation may be proceeded against or substituted in place any of the Merging Corporations. Except as otherwise specifically provided to the contrary herein, the identity, existence, purposes, powers, franchises, rights immunities and liabilities of the Surviving Corporation shall continue unaffected and unimpaired by the merger.

ARTICLE II TERMS AND CONDITIONS OF THE MERGER

The terms and conditions of the merger shall be as follows:

Section 2.1 The merger shall become effective at 12:00 a.m., on December 31, 1998, or on a date otherwise stated pursuant to Section 607.1105 of the Florida Business Corporation Act.

ARTICLE III
CHARTER AND BY-LAWS; DIRECTORS AND OFFICERS

Section 3.1 The Articles of Incorporation of Optimum Nutrition, as in effect immediately prior to the Effective Date, shall, after the merger, continue to be the Articles of Incorporation of the Surviving Corporation until duly amended in accordance with law, and no change to such Articles of Incorporation shall be effected by the merger.

Section 3.2 The By-laws of Optimum Nutrition, as in effect immediately prior to the Effective Date, shall, after the merger, continue to be the By-laws of the Surviving Corporation until duly amended in accordance with law, and no change to such By-laws shall be effected by the merger.

Section 3.3 The persons who are the Directors and officers of Optimum Nutrition immediately prior to the Effective Date shall, after the merger, continue as the Directors and officers of the Surviving Corporation without change, to serve, subject to the provisions of the By-laws of the Surviving Corporation, until their successors have been duly elected and qualified in accordance with the laws of the State of Florida and the Articles of Incorporation and By-laws of the Surviving Corporation.

Section 3.4 Optimum Nutrition shall make application for Authorization to Transact Business in the State of Illinois and the State of California in the name of Optimum Nutrition, Inc. in accordance with the laws of the State of Illinois and the State of California.

ARTICLE IV
CONVERSION OF SHARES

Section 4.1 The Surviving Corporation presently has issued an outstanding one thousand (1,000) shares of \$1.00 par value common stock ("Optimum Nutrition Stock"), which shares of Optimum Nutrition Stock are the only outstanding shares of the Surviving Corporation.

Section 4.2 The Merging Corporations presently have issued and outstanding shares of stock as set forth below:

<u>Merging Corporations</u>	<u>Issued and Outstanding Shares</u>	<u>Par Value</u>
CFDofCA	1,000	NPV
CFO	1,000	\$1.00
CH&FD	10,000	NPV

Section 4.3 The shares of each of the Constituent Corporations are held by Michael J. Costello and/or Anthony P. Costello. The mode of carrying into effect the merger provided in this Agreement and Plan and the manner and basis of converting the shares of each of the Merging Corporations into shares of Optimum Nutrition Stock is as follows: on the Effective Date, each

Section 11.40 of the Illinois Business Corporation Act and Section 1108 of the California Business Corporation Act. The time and date of such effectiveness is referred to in this Agreement as the "Effective Date."

Section 2.2 Prior to the Effective Date, the Constituent Corporations shall take all such action as shall be necessary or appropriate in order to effect the merger. If at any time after the Effective Date, the Surviving Corporation shall determine that any further conveyance, assignment or other documents or any further action is necessary or desirable in order to vest in, or confirm to, the Surviving Corporation full title to all of the property, assets, rights, privileges and franchises of the Merging Corporations, or any of them, the officers and directors of the Merging Corporations shall execute and deliver all such instruments and take all such further actions as the Surviving Corporation may determine to be necessary or desirable in order to vest in and confirm to the Surviving Corporation title to and possession of all such property, assets, rights, privileges, immunities and franchises, and otherwise to carry out the purposes of this Agreement and Plan.

Section 2.3 On and after the Effective Date, Optimum Nutrition agrees that it may be served with process in the State of Florida in any proceeding for enforcement of any obligations of the Merging Corporations, and Optimum Nutrition hereby irrevocably appoints the Secretary of State of Florida as its agent to accept service of process in an action for the enforcement of payment of any such obligation or amount. Optimum Nutrition specifies Michael J. Costello, 21075 N.W. 39th Street, Coral Springs, Florida 33065, as the address to which a copy of such process shall be mailed by the Secretary of State of the State of Florida, unless Optimum Nutrition shall hereafter designate in writing to such Secretary of State a different address for such purpose, in which case a copy of such process shall be mailed to the last address so designated.

On and after the Effective Date, Optimum Nutrition agrees that it may be served with process in the State of Illinois in any proceeding for enforcement of any obligations of the CH&FD, and Optimum Nutrition hereby irrevocably appoints the Secretary of State of Illinois as its agent to accept service of process in an action for the enforcement of payment of any such obligation or amount. Optimum Nutrition specifies Kenneth W. Clingen, 2100 Manchester Road, Suite 1750, Wheaton, Illinois 60187, as the address to which a copy of such process shall be mailed by the Secretary of State of the State of Illinois, unless Optimum Nutrition shall hereafter designate in writing to such Secretary of State a different address for such purpose, in which case a copy of such process shall be mailed to the last address so designated.

On and after the Effective Date, Optimum Nutrition agrees that it may be served with process in the State of California in any proceeding for enforcement of any obligations of the CFDoCA, and Optimum Nutrition specifies Robert Trautschold, 138 Valencia, Unit E, Glendora, California 91740, as the address to which service of process shall be mailed by, unless Optimum Nutrition shall hereafter designate in writing to the Secretary of State of the State of California a different address for such purpose, in which case a copy of such process shall be mailed to the last address so designated.

issued and outstanding share of stock of the Merging Corporations, as set forth in Section 4.2, shall be canceled in consideration of (a) the transfer of the assets of each Merging Corporation to Optimum Nutrition and (b) the assumption of the liabilities and obligations of each of the Merging Corporations by Optimum Nutrition. The shares of Optimum Nutrition Stock as held by its Shareholders immediately prior to the merger contemplated by this Agreement and Plan shall be canceled and Optimum Nutrition shall issue Optimum Nutrition Stock to its Shareholders as follows: (1) four hundred (400) shares to Michael J. Costello, and (2) six hundred (600) shares to Anthony P. Costello.

ARTICLE V MISCELLANEOUS

Section 5.1 Notwithstanding anything herein to the contrary, the Board of Directors of any of the Constituent Corporations may, in their sole discretion and at any time prior to the filing with the Secretary of State of Florida, the Secretary of State of Illinois and the Secretary of State of California of the necessary Articles of Merger giving effect to the merger, by resolution duly adopted, abandon the merger if it shall deem such action necessary, desirable and in the best interests of the respective Constituent Corporations. In the event of such determination and the abandonment of this Agreement and Plan pursuant to the provisions of this Section 5.1, the same shall become null and void and shall have no further effect. Such termination shall not give rise to any liability on the part of any of the Constituent Corporations or its Directors, officers or Shareholders in respect of this Agreement and Plan.

Section 5.2 The Shareholders of any of the Constituent Corporations dissenting to the Agreement and Plan shall be entitled, pursuant to Sections 607.1302 and 607.1320 of the Florida Business Corporation Act, Sections 11.65 and 11.70 of the Illinois Business Corporation Act and Sections 1200 et seq. and 1300 et seq. of the California Business Corporation Act, to be paid the fair value of their shares upon compliance with such statutory sections.

Section 5.3 The first annual meeting of the Shareholders after the Effective Date shall be the next annual meeting as provided for in the By-laws of Optimum Nutrition.

Section 5.4 This Agreement and Plan shall be signed by the President of Optimum Nutrition and attested by the Secretary under the corporate seal of Optimum Nutrition, by the President of CFDofCA and attested by the Secretary under the corporate seal of CFDofCA, by the President of CFO and attested by the Secretary under the corporate seal of CFO, and by the President of CH&FD and attested by the Secretary under the corporate seal of CH&FD.

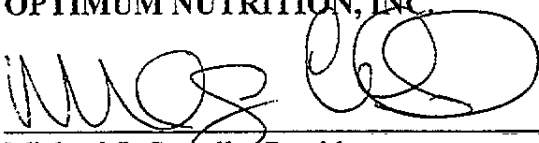
Section 5.5 The Merging Corporations agree that from time to time, as and when requested by Optimum Nutrition or by its successors or assigns, each of the Merging Corporations will execute and deliver, or cause to be executed and delivered, all such deeds and other instruments, and will take or cause to be taken such further or other action, as Optimum Nutrition may deem necessary or desirable, in order to more fully vest in and confirm to Optimum Nutrition title to and possession of all said property, rights, privileges, powers and franchises and otherwise to carry out the intent and purposes of this Agreement and Plan.

Section 5.6 This Agreement and Plan embodies the entire agreement between the parties hereto and there are no agreements, understandings, restrictions or warranties between the parties hereto other than those set forth herein or herein provided for.

Section 5.7 This Agreement and Plan may be executed by two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

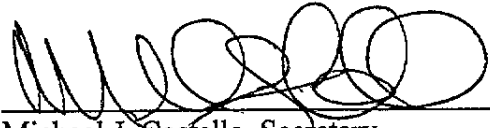
IN WITNESS WHEREOF, this Agreement and Plan has been signed by the duly authorized officers of the Constituent Corporations pursuant to the authorization by the Board of Directors and Shareholders of the Constituent Corporations, all as of the day and year first above written.

OPTIMUM NUTRITION, INC.

By: 

Michael J. Costello, President

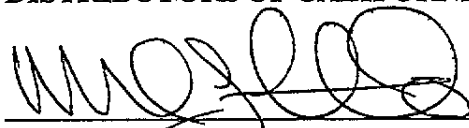
ATTEST:

By: 

Michael J. Costello, Secretary

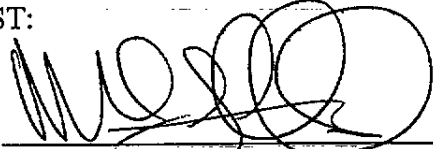
(CORPORATE SEAL)

**COSTELLO'S HEALTH AND FITNESS
DISTRIBUTORS OF CALIFORNIA, INC.**

By: 

Michael J. Costello, President

ATTEST:

By: 

Michael J. Costello, Secretary

(CORPORATE SEAL)

COSTELLO'S FITNESS OUTLET INC.

By: _____

Michael J. Costello, President

ATTEST:

By: _____

Michael J. Costello, Secretary

(CORPORATE SEAL)

**COSTELLO'S HEALTH AND FITNESS
DISTRIBUTORS, INC.**

By: _____

Anthony P. Costello, President

ATTEST:

By: _____

Anthony P. Costello, Secretary

(CORPORATE SEAL)

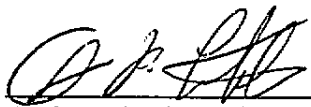
COSTELLO'S FITNESS OUTLET INC.

By: _____
Michael J. Costello, President

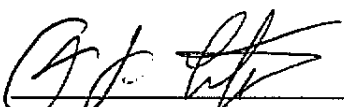
ATTEST:

By: _____ (CORPORATE SEAL)
Michael J. Costello, Secretary

**COSTELLO'S HEALTH AND FITNESS
DISTRIBUTORS, INC.**

By: _____
Anthony P. Costello, President

ATTEST:

By: _____
Anthony P. Costello, Secretary (CORPORATE SEAL)