

03-26-2002

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)

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S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Premier Foodservice Distributors of America, Inc.

3-7-02

- Individual(s)
- General Partnership
- Corporation-State
- Other \_\_\_\_\_
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other \_\_\_\_\_
- Merger
- Change of Name

Execution Date: February 1, 2002

2. Name and address of receiving party(ies)

Name: UniPro Foodservice, Inc.

Internal Address: Suite 600

Street Address: 2500 Cumberland Parkway

City: Atlanta State: GA Zip: 30339

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State Delaware
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) [see attached]

B. Trademark Registration No.(s) [see attached]

Additional number(s) attached  Yes  No

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

Name: Elizabeth Ann Morgan, Esq.

Internal Address:

Powell, Goldstein, Frazer & Murphy, LLP

Suite 1600

Street Address: 191 Peachtree Street NE

City: Atlanta State: GA Zip: 30303

6. Total number of applications and registrations involved: 106

7. Total fee (37 CFR 3.41) \$ 2,665.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

501429

DO NOT USE THIS SPACE

9. Signature.

Elizabeth Ann Morgan

Name of Person Signing

*Elizabeth Ann Morgan*  
Signature

Mar 7 2002  
Date

Total number of pages including cover sheet, attachments, and document:

03/26/2002 LNUJELLER 00000045 75929196

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

01 FC:481  
02 FC:482

40.00 DP  
2625.00 DP

TRADEMARK REEL: 002466 FRAME: 0100

**ADDENDUM TO  
RECORDATION FORM COVER SHEET**

**(CONTINUATION OF ITEM NO. 4)**

Conveying Party: Premier Foodservice Distributors of America, Inc.  
Receiving Party: UniPro Foodservice, Inc.

**A. Trademark Applications**

75/929,196	74/599,300
75/928,006	74/562,820
75/330,815	74/347,858
75/707,939	74/242,792
76/345,748	75/149,859
74/736,765	

**B. Trademark Registrations**

205,122	935,246	1,187,018	1,724,866	1,004,918
266,684	962,180	1,196,954	1,776,483	1,032,031
278,452	974,080	1,201,719	1,862,630	1,081,084
758,505	974,938	1,203,781	1,917,093	1,098,259
831,951	975,317	1,217,708	1,922,267	1,098,260
832,553	975,394	1,238,627	1,924,950	1,098,261
835,579	1,001,111	1,251,504	1,963,143	1,098,262
840,639	1,001,560	1,258,736	1,967,851	1,122,811
840,717	1,006,811	1,265,199	1,994,066	1,142,274
841,746	1,027,789	1,265,200	2,070,242	1,143,143
850,859	1,036,317	1,329,870	2,082,151	1,143,144
852,170	1,079,172	1,338,541	2,092,591	1,156,148
852,812	1,087,769	1,483,871	2,133,357	1,161,893
854,417	1,095,618	1,487,700	2,134,348	1,164,409
857,613	1,106,395	1,547,763	2,216,793	1,202,539
857,581	1,106,396	1,595,618	2,290,474	
864,780	1,106,397	1,598,830	2,296,726	
869,074	1,135,842	1,601,182	2,298,725	
869,076	1,140,030	1,694,646	2,314,997	
886,489	1,167,573	1,708,973	2,335,933	

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, 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:

"PREMIER FOODSERVICE DISTRIBUTORS OF AMERICA, INC.", A OREGON CORPORATION,

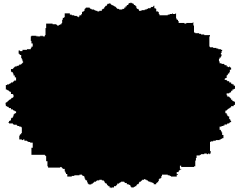
WITH AND INTO "UNIPRO FOODSERVICE, INC." UNDER THE NAME OF "UNIPRO FOODSERVICE, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIRST DAY OF FEBRUARY, A.D. 2002, AT 3:30 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE FIRST DAY OF FEBRUARY, A.D. 2002, AT 5 O'CLOCK P.M.

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

2147567 8100M

020069244



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 1592989

DATE: 02-01-02

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STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 03:30 PM 02/01/2002  
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**CERTIFICATE OF MERGER**

**PREMIER FOODSERVICE DISTRIBUTORS OF AMERICA, INC.,  
WITH AND INTO  
UNIPRO FOODSERVICE, INC.**

Pursuant to Section 258 of the Delaware General Corporation Law, UNIPRO FOODSERVICE, INC., a Delaware corporation (the "Corporation"), adopts the following Certificate of Merger and does hereby certify and state that:

1. The name and state of incorporation of each of the constituent corporations of the Merger (as hereinafter defined) are as follows:

<u>Name</u>	<u>State of Incorporation</u>
UniPro Foodservice, Inc.	Delaware stock corporation
Premier Foodservice Distributors of America, Inc.	Oregon non-stock cooperative corporation

2. An Agreement and Plan of Merger by and between Premier Foodservice Distributors of America, Inc. ("Premier") and the Corporation (the "Merger Agreement") has been approved, adopted, certified, executed and acknowledged by each of the Corporation and Premier in accordance with the requirements of Section 228 of the Delaware General Corporation Law and Section 62.619 of the Oregon Cooperative Corporation Act, respectively.

3. The Corporation shall be the surviving corporation of the merger of Premier with and into the Corporation (the "Merger").

4. Upon the effectiveness of the Merger, the Certificate of Incorporation of the Corporation shall be amended and restated in its entirety to read as set forth in Exhibit A hereto.

5. The executed Merger Agreement is on file at the following office of the Corporation:

UniPro Foodservice, Inc.  
2500 Cumberland Parkway  
Suite 600  
Atlanta, Georgia 30339

6. A copy of the executed Merger Agreement will be provided by the Corporation, on request and without cost, to any stockholder of the Corporation or Premier.

7. The Merger shall be effective as of 5:00 p.m. Eastern Time on February 1, 2002.


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POWELL, GOLDSTEIN 18 WEST

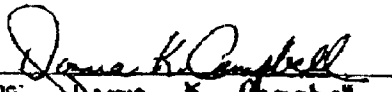
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IN WITNESS WHEREOF, the Corporation has caused the Certificate of Merger to be signed by Roger Toomey, its authorized officer, this 1<sup>st</sup> day of February 2002.

UNIPRO FOODSERVICE, INC.

By:   
Name: Roger Toomey  
Title: Chief Executive Officer

ATTEST:

By:   
Name: Diana K. Campbell  
Title: Assistant Corporate Secretary

[CORPORATE SEAL]

**EXHIBIT A**  
**TO CERTIFICATE OF MERGER**

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
UNIPRO FOODSERVICE, INC.**

**SECOND AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**

**UNIPRO FOODSERVICE, INC.**

(Originally incorporated January 1, 1988  
Under the name ComSource Independent Foodservice Companies, Inc.)

**FIRST:** The name of this Corporation shall be UNIPRO FOODSERVICE, INC. (the "Corporation").

**SECOND:** Its registered office in the State of Delaware is to be located at 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle. The registered agent in charge thereof is CORPORATION SERVICE COMPANY, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

**THIRD:** The nature, objects, and purposes of the business to be transacted, promoted and carried on are to do any and all of the things herein mentioned, as fully and to the same extent as natural person might or could do, and in any part of the world, viz:

1. To purchase, import, export, distribute, warehouse, sell or handle, process, produce, pack, manufacture, ship and advertise, or cause to be packed, processed, manufactured or produced, under the Corporation's labels and trademarks or otherwise, to and for the benefit of Stockholder Members and Associate Members, food commodities and food products of all kinds, whether packaged, canned, fresh, preserved, frozen or in any other state, and supplies, utensils, paper products, plastic products, appliances, equipment, wares and kindred and related merchandise employed by any point of purchase.

2. To otherwise manufacture, purchase, acquire, invest in, hold, own, sell, develop, operate, trade, pledge, encumber, mortgage, convey, assign, transfer or otherwise dispose of, or generally deal in or deal with, any merchandise, products, services, goods, wares or property of any class or description or of any kind whatsoever, whether real, personal, or mixed or intangible.

3. To render services to its Stockholder Members and Associate Members by utilizing their united efforts for the efficient and economical advertising, purchase, distribution, sale and handling of products sold or distributed through their business establishments for the benefit of Stockholder Members and Associate Members and to effect all possible economies with reference thereto.

4. To act as principal or agent in carrying out the above purposes and to engage in any lawful act or activity for which corporations may be organized under the

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General Corporation Law of Delaware, and to have and to exercise all of the powers conferred by the laws of Delaware upon corporations formed under the General Corporate Law of the State of Delaware.

The Corporation is organized and shall be operated as a cooperative within the meaning of Subchapter T (Section 1381 through Section 1388 inclusive) of the Internal Revenue Code of 1986, as amended (the "Code"). All references in this Restated Certificate of Incorporation to sections of the Code shall be considered references to the United States Internal Revenue Code of 1986, as from time to time amended, to the corresponding provisions of any applicable future United States Internal Revenue law, and to all regulations issued under such sections and provisions. The Corporation's patrons shall consist of its Stockholder Members and, as determined by the Board of Directors, persons or groups of persons who are not Stockholder Members but who are designated Associate Members. All rights of patrons who are not Stockholder Members shall be governed by the Bylaws of the Corporation.

**FOURTH:** The total number of shares of capital stock which the Corporation shall have authority to issue is One Thousand (1,000), without par value. All such shares are of one class and are designated as Common Stock.

Any and all such shares issued, and for which the full consideration has been paid or delivered, shall be deemed fully paid stock and the holder of such shares shall not be liable for any further call, assessment, or payment thereon.

Shares of Common Stock shall be issued only to those who apply for membership in and are accepted by the Board of Directors and the Stockholder Members of the Corporation for membership in the Corporation ("Stockholder Members"). Only one share of Common Stock shall be issued to each Stockholder Member.

Each Stockholder Member holding a share of Common Stock shall be entitled to voting rights as follows:

A. Each Stockholder Member holding one share of Common Stock of the Corporation shall be entitled to two (2) votes plus the additional votes reflected by the Stockholder Member's participation in the programs and services of the Corporation, measured by annual patronage, purchases of the Corporation's items and services, sales made to or through the Corporation, and other indicia of participation in the programs, services and business of the Corporation, as determined by the Board of Directors, as of the end of the most recent calendar year prior to any vote, in accordance with the following schedule:



Participation (\$)	Additional Votes
0 to 3,499,999	2.0
3,500,000 to 6,399,999	3.0
6,400,000 to 10,999,999	4.0
11,000,000 to 19,999,999	5.0
20,000,000 to 23,999,999	9.0
24,000,000 to 26,499,999	11.0
26,500,000 to 49,999,999	13.0
50,000,000 to 999,999,999	21.0

The Board of Directors of the Corporation is empowered by resolution to adjust annually the number of votes per share and the schedule of additional votes to the extent and only to the extent that assures all of the following:

- (1) Those Stockholder Members having participation in the business and programs of the Corporation, as determined by the Board of Directors, greater than the average participation of all Stockholder Members shall have a majority of votes; and
- (2) No Stockholder Member shall be entitled to five percent (5%) or more of the outstanding votes of the Corporation.

The calculations to be made with respect to participation as outlined above shall disregard the participation of Associate Members who are entitled to participate in the purchasing and other programs of the Corporation, but do not own any Common Stock and do not have any voting rights.

B. Notwithstanding the provisions of paragraph A. of this Article FOURTH, for the eleven month period immediately following the effective date of the filing of the Certificate of Merger (the "Certificate of Merger") evidencing the merger (the "Merger") of Premier Foodservice Distributors of America, Inc. ("Premier") with and into the Corporation pursuant to the Agreement and Plan of Merger by and between Premier and the Corporation, the Board of Directors of the Corporation shall determine the additional votes as reflected in the participation schedule in paragraph A. of this Article FOURTH of Stockholder Members that were formerly voting members of Premier based on such Stockholder Members' annual patronage in Premier, purchases of Premier's items and service, sales made to or through Premier, and other indicia of participation in the programs, services and business of Premier for the 12 months ended December 31, 2001, as determined by the Board of Directors of the Corporation. After such eleven-month period, the votes of Stockholder Members that were formerly voting members of Premier shall be determined in accordance with paragraph A. of

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this Article FOURTH.

C. Notwithstanding the provisions of paragraph A. of this Article FOURTH, the share of Common Stock issued as of the effective date of the filing of the Certificate of Merger to National Equipment and Supply Association Strategic Business Unit (the "NESASBU") as a Stockholder Member of the Corporation shall be entitled to the additional votes as reflected in the participation schedule in paragraph A. of this Article FOURTH measured by the aggregate annual patronage of all Dealer Participants in the NESASBU, aggregate purchases by all Dealer Participants in the NESASBU of the Corporation's items and services, aggregate sales by all Dealer Participants in the NESASBU made to or through the Corporation, and other indicia of participation by all Dealer Participants in the programs, services and business of the Corporation, as determined by the Board of Directors, as of the end of the most recent calendar year prior to any vote, in accordance with the schedule set forth in paragraph A. of this Article FOURTH. Notwithstanding the foregoing, for the eleven month period immediately following the effective date of the filing of the Certificate of Merger, the Board of Directors of the Corporation shall determine the additional votes as reflected in the participation schedule in paragraph A. of this Article FOURTH of NESASBU based on the annual patronage in Premier of all Nugget Equipment and Supply Association members that were formerly voting members of Premier and that become Dealer Participants in the NESASBU after the Merger (the "Former Nugget Members"), purchases of Premier's items and service by the Former Nugget Members, sales made to or through Premier by the Former Nugget Members, and other indicia of participation in the programs, services and business of Premier by the Former Nugget Members for the 12 months ended December 31, 2001, as determined by the Board of Directors of the Corporation. After such eleven-month period, the vote of the NESASBU shall be determined in accordance with the first sentence of this paragraph C.

The designations and the powers, preferences, rights, and the qualifications, limitations, or restrictions on the Common Stock of the Corporation are as follows:

- i. No dividends shall be declared on the shares of Common Stock issued by the Corporation. No fractional shares shall be issued.
- ii. Patronage dividends will be distributed to the Stockholder Members and other patrons in accordance with and pursuant to the terms and conditions set forth in the Bylaws of the Corporation, including without limitation, any rights of offset as provided therein.
- iii. Ownership of the shares of Common Stock is limited to those having applied for membership in and been accepted for membership in the Corporation according to the terms and conditions set out in the Bylaws of the Corporation. No certificate representing shares of Common Stock shall be pledged, mortgaged, hypothecated, sold, assigned, or transferred except to the Corporation, or as otherwise may be permitted by the Bylaws of the Corporation.
- iv. The Corporation has a first lien upon any shares of its capital stock held

by any stockholder for the amount of any indebtedness owing to the Corporation by the holder thereof.

v. The Corporation is obligated to purchase all shares of Common Stock held by or for a Stockholder Member upon the termination of membership in the Corporation by either the Stockholder Member or by the Corporation. A Stockholder Member, and its successors and assigns, is obligated to sell all shares of Common Stock held by or for it upon termination of the Stockholder Member's membership in the Corporation by either the Stockholder Member or by the Corporation. The price to be paid by the Corporation for Common Stock purchased by it shall be as established in the Bylaws of the Corporation.

vi. No Stockholder Member of the Corporation shall, by reason of holding shares of any capital stock of the Corporation, have any preemptive or preferential right to purchase or subscribe to any shares of capital stock of the Corporation, now or hereafter to be authorized or issued.

**FIFTH:** The property, business and affairs of the Corporation shall be managed by the officers of the Corporation under the direction of a Board of Directors which shall have such obligations, powers and authority as are established by the laws of the State of Delaware, this Certificate of Incorporation and the Bylaws of the Corporation.

The qualifications, terms of office, method of selection and other criteria governing the Board of Directors shall be as set forth in the laws of the State of Delaware and the Bylaws of the Corporation.

No director of this Corporation shall be liable for monetary damages to this Corporation or its Stockholder Members for a breach of fiduciary duty as a director that takes place after the effective date of this Certificate of Incorporation unless it is alleged and proven that such breach of fiduciary duty involved (a) a breach of the director's duty of loyalty to the Corporation or its stockholders, (b) an act or omission not in good faith or which involves intentional misconduct or a knowing violation of law, (c) a violation of Section 174 of the Delaware General Corporation Law relating to unlawful dividends, unlawful stock purchases or redemptions, or (d) a transaction from which a director derived an improper personal benefit.

**SIXTH:** No contract or transaction between the Corporation and one or more of its officers or directors, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of the Corporation's directors or officers, are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board of directors or committee which authorizes the contract or transaction, or solely because such director's or officer's votes are counted for such purpose, if the conditions set out in the General Corporation Law of Delaware are met. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction. Any director of the Corporation may vote upon any contract or other transaction between the Corporation and any subsidiary or affiliated corporation without regard to the fact that he is also a director of such

subsidiary or affiliated Corporation.

**SEVENTH:** The Corporation reserves the right to amend, alter or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by the statutes of Delaware, and all rights and powers conferred on directors and Stockholder Members herein are granted subject to this reservation.

**EIGHTH:** Meetings of Stockholder Members may be held outside the State of Delaware. Elections of directors need not be by written ballot but may be as specified in the Bylaws of the Corporation.

**NINTH:** In the event of dissolution of the Corporation, its assets shall be applied and distributed as follows:

A. All liabilities and obligations of the Corporation and claims against the Corporation shall be paid and discharged, or adequate provision shall be made therefor, in accordance with the General Corporation Law of Delaware;

B. From any remaining distributable assets, patronage dividends shall be paid to patrons of the Corporation based on the earnings and patronage for the most current fiscal year or portion thereof prior to dissolution;

C. From any remaining distributable assets, there shall be distributed among Stockholder Members and other patrons of the Corporation amounts equal the retained earnings credited to their respective Member equity accounts on the basis of their patronage and participation in the programs and business of the Corporation, as shown on the books and records of the Corporation to the extent practicable. In the event distributable assets are insufficient to return such equity accounts in full, the assets shall be distributed to the Stockholder Members and other patrons in proportion to the amount of retained earnings credited to their respective equity accounts on the basis of their patronage and participation in the Corporation's programs, items and services, and business;

D. From any remaining distributable assets, there shall be distributed among the Stockholder Members and other Members of the Corporation amounts for the repurchase of their Common Stock and refund of other capital contributions, as determined in accordance with this Certificate and the Bylaws of the Corporation. In the event distributable assets are insufficient to repurchase all such Common Stock and refund such capital, such amounts as is available shall be divided equally among the Stockholder Members; and

E. Any remaining distributable assets shall be distributed among the Stockholder Members and patrons of the Corporation on the basis of their respective participation in the Corporation's programs, items and services, as shown on the books and records of the Corporation to the extent practicable.


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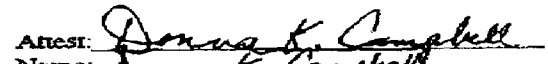
**TENTH:** This Second Amended and Restated Certificate of Incorporation shall be effective upon the effective time of the filing of the Certificate of Merger, which shall be 5:00 p.m. Eastern Time on February 1, 2002.

IN WITNESS WHEREOF, this Second Amended and Restated Certificate of Incorporation, which amends the provisions of the Corporation's Certificate of Incorporation, having been duly adopted by the Board of Directors and the Stockholder Members of the Corporation in accordance with the provisions of Sections 242 and 245 of the General Corporation Laws of the State of Delaware, has been executed this 1<sup>st</sup> day of February, 2002, by Roger Toomey, its authorized officer.

The undersigned officer of the Corporation hereby acknowledges that the foregoing Second Amended and Restated Certificate of Incorporation is his act and deed and the act and deed of the Corporation, and that the facts stated therein are true, on this the 1<sup>st</sup> day of February, 2002.

UNIPRO FOODSERVICE, INC.

By:   
Name: Roger J. Toomey  
Title: CEO

Attest:   
Name: Donald K. Campbell  
Title: Assistant Corporate Secretary  
Date: February 1, 2002

SEAL:

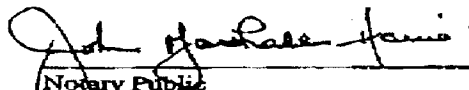
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**CORPORATE ACKNOWLEDGEMENT**

STATE OF GEORGIA        }  
                                  } SS  
COUNTY OF FULTON      }

Be it remembered that on this 15<sup>th</sup> day of February, 2002, personally appeared before me, the subscriber, a Notary Public in and for the County and State aforesaid, Roger Toomey, President of UniPro Foodservice, Inc., a Delaware corporation (the "Corporation"), on whose behalf the foregoing Second Amended and Restated Certificate of Incorporation was executed, known to me personally to be such and acknowledged such instrument to be his act and deed, and the act and deed of said Corporation, and that the facts stated therein are true; and the signature of the said President is in his own proper handwriting; and the seal affixed thereto is the common or corporate seal of the said Corporation.

Given under my hand and seal of office, the day and year aforesaid.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: July 19, 2005

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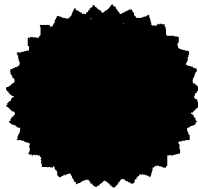
# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "UNIPRO FOODSERVICE, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF FEBRUARY, A.D. 2002, AT 3:30 O'CLOCK P.M.

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



2147567 8100

020069253

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 1592998

DATE: 02-01-02

02/01/02 FRI 15:42 FAX 404 572 5758

POWELL, GOLDSTEIN 18 WEST

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 03:30 PM 02/01/2002  
020069253 - 2147567

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF**

**UNIPRO FOODSERVICE, INC.**

(Originally incorporated January 1, 1988  
Under the name ComSource Independent Foodservice Companies, Inc.)

**FIRST:** The name of this Corporation shall be UNIPRO FOODSERVICE, INC. (the "Corporation").

**SECOND:** Its registered office in the State of Delaware is to be located at 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle. The registered agent in charge thereof is CORPORATION SERVICE COMPANY, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

**THIRD:** The nature, objects, and purposes of the business to be transacted, promoted and carried on are to do any and all of the things herein mentioned, as fully and to the same extent as natural person might or could do, and in any part of the world, viz:

1. To purchase, import, export, distribute, warehouse, sell or handle, process, produce, pack, manufacture, ship and advertise, or cause to be packed, processed, manufactured or produced, under the Corporation's labels and trademarks or otherwise, to and for the benefit of Stockholder Members and Associate Members, food commodities and food products of all kinds, whether packaged, canned, fresh, preserved, frozen or in any other state, and supplies, utensils, paper products, plastic products, appliances, equipment, wares and kindred and related merchandise employed by any point of purchase.

2. To otherwise manufacture, purchase, acquire, invest in, hold, own, sell, develop, operate, trade, pledge, encumber, mortgage, convey, assign, transfer or otherwise dispose of, or generally deal in or deal with, any merchandise, products, services, goods, wares or property of any class or description or of any kind whatsoever, whether real, personal, or mixed or intangible.

3. To render services to its Stockholder Members and Associate Members by utilizing their united efforts for the efficient and economical advertising, purchase, distribution, sale and handling of products sold or distributed through their business establishments for the benefit of Stockholder Members and Associate Members and to effect all possible economies with reference thereto.

4. To act as principal or agent in carrying out the above purposes and to engage in any lawful act or activity for which corporations may be organized under the



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the General Corporation Law of Delaware, and to have and to exercise all of the powers conferred by the laws of Delaware upon corporations formed under the General Corporate Law of the State of Delaware.

The Corporation is organized and shall be operated as a cooperative within the meaning of Subchapter T (Section 1381 through Section 1388 inclusive) of the Internal Revenue Code of 1986, as amended (the "Code"). All references in this Restated Certificate of Incorporation to sections of the Code shall be considered references to the United States Internal Revenue Code of 1986, as from time to time amended, to the corresponding provisions of any applicable future United States Internal Revenue law, and to all regulations issued under such sections and provisions. The Corporation's patrons shall consist of its Stockholder Members and, as determined by the Board of Directors, persons or groups of persons who are not Stockholder Members but who are designated Associate Members. All rights of patrons who are not Stockholder Members shall be governed by the Bylaws of the Corporation.

**FOURTH:** The total number of shares of capital stock which the Corporation shall have authority to issue is One Thousand (1,000), without par value. All such shares are of one class and are designated as Common Stock.

Any and all such shares issued, and for which the full consideration has been paid or delivered, shall be deemed fully paid stock and the holder of such shares shall not be liable for any further call, assessment, or payment thereon.

Shares of Common Stock shall be issued only to those who apply for membership in and are accepted by the Board of Directors and the Stockholder Members of the Corporation for membership in the Corporation ("Stockholder Members"). Only one share of Common Stock shall be issued to each Stockholder Member.

Each Stockholder Member holding a share of Common Stock shall be entitled to voting rights as follows:

A. Each Stockholder Member holding one share of Common Stock of the Corporation shall be entitled to two (2) votes plus the additional votes reflected by the Stockholder Member's participation in the programs and services of the Corporation, measured by annual patronage, purchases of the Corporation's items and services, sales made to or through the Corporation, and other indicia of participation in the programs, services and business of the Corporation, as determined by the Board of Directors, as of the end of the most recent calendar year prior to any vote, in accordance with the following schedule:

Participation (\$)	Additional Votes
0 to 3,499,999	2.0
3,500,000 to 6,399,999	3.0
6,400,000 to 10,999,999	4.0
11,000,000 to 19,999,999	5.0
20,000,000 to 23,999,999	9.0
24,000,000 to 26,499,999	11.0
26,500,000 to 49,999,999	18.0
50,000,000 to 999,999,999	21.0

The Board of Directors of the Corporation is empowered by resolution to adjust annually the number of votes per share and the schedule of additional votes to the extent and only to the extent that assures all of the following:

(1) Those Stockholder Members having participation in the business and programs of the Corporation, as determined by the Board of Directors, greater than the average participation of all Stockholder Members shall have a majority of votes; and

(2) No Stockholder Member shall be entitled to five percent (5%) or more of the outstanding votes of the Corporation.

The calculations to be made with respect to participation as outlined above shall disregard the participation of Associate Members who are entitled to participate in the purchasing and other programs of the Corporation, but do not own any Common Stock and do not have any voting rights.

B. Notwithstanding the provisions of paragraph A. of this Article FOURTH, for the eleven month period immediately following the effective date of the filing of the Certificate of Merger (the "Certificate of Merger") evidencing the merger (the "Merger") of Premier Foodservice Distributors of America, Inc. ("Premier") with and into the Corporation pursuant to the Agreement and Plan of Merger by and between Premier and the Corporation, the Board of Directors of the Corporation shall determine the additional votes as reflected in the participation schedule in paragraph A. of this Article FOURTH of Stockholder Members that were formerly voting members of Premier based on such Stockholder Members' annual patronage in Premier, purchases of Premier's items and service, sales made to or through Premier, and other indicia of participation in the programs, services and business of Premier for the 12 months ended December 31, 2001, as determined by the Board of Directors of the Corporation. After such eleven-month period, the votes of Stockholder Members that were formerly voting members of Premier shall be

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determined in accordance with paragraph A. of this Article FOURTH.

C. Notwithstanding the provisions of paragraph A. of this Article FOURTH, the share of Common Stock issued as of the effective date of the filing of the Certificate of Merger to National Equipment and Supply Association Strategic Business Unit (the "NESA SBU") as a Stockholder Member of the Corporation shall be entitled to the additional votes as reflected in the participation schedule in paragraph A. of this Article FOURTH measured by the aggregate annual patronage of all Dealer Participants in the NESA SBU, aggregate purchases by all Dealer Participants in the NESA SBU of the Corporation's items and services, aggregate sales by all Dealer Participants in the NESA SBU made to or through the Corporation, and other indicia of participation by all Dealer Participants in the programs, services and business of the Corporation, as determined by the Board of Directors, as of the end of the most recent calendar year prior to any vote, in accordance with the schedule set forth in paragraph A. of this Article FOURTH. Notwithstanding the foregoing, for the eleven month period immediately following the effective date of the filing of the Certificate of Merger, the Board of Directors of the Corporation shall determine the additional votes as reflected in the participation schedule in paragraph A. of this Article FOURTH of NESA SBU based on the annual patronage in Premier of all Nugget Equipment and Supply Association members that were formerly voting members of Premier and that become Dealer Participants in the NESA SBU after the Merger (the "Former Nugget Members"), purchases of Premier's items and service by the Former Nugget Members, sales made to or through Premier by the Former Nugget Members, and other indicia of participation in the programs, services and business of Premier by the Former Nugget Members for the 12 months ended December 31, 2001, as determined by the Board of Directors of the Corporation. After such eleven-month period, the vote of the NESA SBU shall be determined in accordance with the first sentence of this paragraph C.

The designations and the powers, preferences, rights, and the qualifications, limitations, or restrictions on the Common Stock of the Corporation are as follows:

- i. No dividends shall be declared on the shares of Common Stock issued by the Corporation. No fractional shares shall be issued.
- ii. Patronage dividends will be distributed to the Stockholder Members and other patrons in accordance with and pursuant to the terms and conditions set forth in the Bylaws of the Corporation, including without limitation, any rights of offset as provided therein.
- iii. Ownership of the shares of Common Stock is limited to those having applied for membership in and been accepted for membership in the Corporation according to the terms and conditions set out in the Bylaws of the Corporation. No certificate representing shares of Common Stock shall be pledged, mortgaged, hypothecated, sold, assigned, or transferred except to the Corporation, or as otherwise may be permitted by the Bylaws of the Corporation.

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iv. The Corporation has a first lien upon any shares of its capital stock held by any stockholder for the amount of any indebtedness owing to the Corporation by the holder thereof.

v. The Corporation is obligated to purchase all shares of Common Stock held by or for a Stockholder Member upon the termination of membership in the Corporation by either the Stockholder Member or by the Corporation. A Stockholder Member, and its successors and assigns, is obligated to sell all shares of Common Stock held by or for it upon termination of the Stockholder Member's membership in the Corporation by either the Stockholder Member or by the Corporation. The price to be paid by the Corporation for Common Stock purchased by it shall be as established in the Bylaws of the Corporation.

vi. No Stockholder Member of the Corporation shall, by reason of holding shares of any capital stock of the Corporation, have any preemptive or preferential right to purchase or subscribe to any shares of capital stock of the Corporation, now or hereafter to be authorized or issued.

**FIFTH:** The property, business and affairs of the Corporation shall be managed by the officers of the Corporation under the direction of a Board of Directors which shall have such obligations, powers and authority as are established by the laws of the State of Delaware, this Certificate of Incorporation and the Bylaws of the Corporation.

The qualifications, terms of office, method of selection and other criteria governing the Board of Directors shall be as set forth in the laws of the State of Delaware and the Bylaws of the Corporation.

No director of this Corporation shall be liable for monetary damages to this Corporation or its Stockholder Members for a breach of fiduciary duty as a director that takes place after the effective date of this Certificate of Incorporation unless it is alleged and proven that such breach of fiduciary duty involved (a) a breach of the director's duty of loyalty to the Corporation or its stockholders, (b) an act or omission not in good faith or which involves intentional misconduct or a knowing violation of law, (c) a violation of Section 174 of the Delaware General Corporation Law relating to unlawful dividends, unlawful stock purchases or redemptions, or (d) a transaction from which a director derived an improper personal benefit.

**SIXTH:** No contract or transaction between the Corporation and one or more of its officers or directors, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of the Corporation's directors or officers, are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board of directors or committee which authorizes the contract or transaction, or solely because such director's or officer's votes are counted for such purpose, if the conditions set out in the General Corporation Law of Delaware are met. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or

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transaction. Any director of the Corporation may vote upon any contract or other transaction between the Corporation and any subsidiary or affiliated corporation without regard to the fact that he is also a director of such subsidiary or affiliated Corporation.

**SEVENTH:** The Corporation reserves the right to amend, alter or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by the statutes of Delaware, and all rights and powers conferred on directors and Stockholder Members herein are granted subject to this reservation.

**EIGHTH:** Meetings of Stockholder Members may be held outside the State of Delaware. Elections of directors need not be by written ballot but may be as specified in the Bylaws of the Corporation.

**NINTH:** In the event of dissolution of the Corporation, its assets shall be applied and distributed as follows:

A. All liabilities and obligations of the Corporation and claims against the Corporation shall be paid and discharged, or adequate provision shall be made therefor, in accordance with the General Corporation Law of Delaware;

B. From any remaining distributable assets, patronage dividends shall be paid to patrons of the Corporation based on the earnings and patronage for the most current fiscal year or portion thereof prior to dissolution;

C. From any remaining distributable assets, there shall be distributed among Stockholder Members and other patrons of the Corporation amounts equal the retained earnings credited to their respective Member equity accounts on the basis of their patronage and participation in the programs and business of the Corporation, as shown on the books and records of the Corporation to the extent practicable. In the event distributable assets are insufficient to return such equity accounts in full, the assets shall be distributed to the Stockholder Members and other patrons in proportion to the amount of retained earnings credited to their respective equity accounts on the basis of their patronage and participation in the Corporation's programs, items and services, and business;

D. From any remaining distributable assets, there shall be distributed among the Stockholder Members and other Members of the Corporation amounts for the repurchase of their Common Stock and refund of other capital contributions, as determined in accordance with this Certificate and the Bylaws of the Corporation. In the event distributable assets are insufficient to repurchase all such Common Stock and refund such capital, such amounts as is available shall be divided equally among the Stockholder Members; and

E. Any remaining distributable assets shall be distributed among the Stockholder Members and patrons of the Corporation on the basis of their respective participation in the Corporation's programs, items and services, as shown on the books and records of the Corporation to the extent practicable.

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**TENTH:** This Second Amended and Restated Certificate of Incorporation shall be effective upon the effective time of the filing of the Certificate of Merger, which shall be 5:00 p.m. Eastern Time on February 1, 2002.

IN WITNESS WHEREOF, this Second Amended and Restated Certificate of Incorporation, which amends the provisions of the Corporation's Certificate of Incorporation, having been duly adopted by the Board of Directors and the Stockholder Members of the Corporation in accordance with the provisions of Sections 242 and 245 of the General Corporation Laws of the State of Delaware, has been executed this 1<sup>st</sup> day of February, 2002, by Roger Toomey, its authorized officer.

The undersigned officer of the Corporation hereby acknowledges that the foregoing Second Amended and Restated Certificate of Incorporation is his act and deed and the act and deed of the Corporation, and that the facts stated therein are true, on this the 1<sup>st</sup> day of February, 2002.

UNIPRO FOODSERVICE, INC.

By: [Signature]  
Name: Wesley J. Toomey  
Title: PLA CEO

SEAL:

Attest: [Signature]  
Name: James K. Campbell  
Title: United Capital Secretary  
Date: February 1, 2002

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**CORPORATE ACKNOWLEDGEMENT**

STATE OF GEORGIA        }  
                                  } SS  
COUNTY OF FULTON        }

Be it remembered that on this 1<sup>ST</sup> day of February, 2002, personally appeared before me, the subscriber, a Notary Public in and for the County and State aforesaid, Roger Toomey, President of UniPro Foodservice, Inc., a Delaware corporation (the "Corporation"), on whose behalf the foregoing Second Amended and Restated Certificate of Incorporation was executed, known to me personally to be such and acknowledged such instrument to be his act and deed, and the act and deed of said Corporation, and that the facts stated therein are true; and the signature of the said President is in his own proper handwriting; and the seal affixed thereto is the common or corporate seal of the said Corporation.

Given under my hand and seal of office, the day and year aforesaid.



Notary Public

My Commission Expires: July 19, 2005

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