TF-1340

State of Delaware

Office of the Secretary of State

PAGE 1

PLAINTIFF'S EXHIBIT

HW-569

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 AGREEMENT OF MERGER, WHICH MERGES:

"GPI MERGER, INC.", A DELAWARE CORPORATION,

WITH AND INTO "INDRESCO INC." UNDER THE NAME OF "HARBISON-WALKER REFRACTORIES COMPANY", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTY-FIRST DAY OF OCTOBER, A.D. 1995, AT 9:01 O'CLOCK A.M.

EXHIBIT

HW 5013

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

0780176 8100M

010500704

AUTHENTICATION: 1381671

DATE: 10-09-01

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:01 AM 10/31/1995
950252088 - 780176

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER ("Agreement") dated as of October 30, 1995, among Global Industrial Technologies, Inc., a Delaware corporation ("Holding"), GPI Merger, Inc., a Delaware corporation ("Sub") and a wholly owned subsidiary of Holding, and INDRESCO Inc., a Delaware corporation (the "Company").

WHEREAS, the respective Boards of Directors of Holding, Sub and the Company have approved the merger of Sub into the Company (the "Merger"), upon the terms and subject to the conditions set forth in this Agreement, whereby each issued and outstanding share of Common Stock, par value $.25 per share, of the Company ("Company Common Stock") and each authorized share of Company Common Stock issued and owned by the Company will be converted into the right to receive Common Stock, par value $.25 per share, of Holding ("Holding Common Stock"); and

WHEREAS, all of the conditions precedent under Section 251(g) of the Delaware General Corporation Law to the filing of this Agreement have been satisfied and all of the conditions to each party's obligation to effect the Merger under that certain Reorganization Agreement dated as of October 20, 1995, among the parties hereto and certain other related parties have been satisfied, including but not limited to receipt by the Company of an opinion that allows the Board of Directors of the Company to determine that the stockholders of the Company do not recognize gain or loss for United States federal income tax purposes as a result of the Merger.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1
THE MERGER

1.1 <u>The Merger</u>. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Delaware General Corporation Law (the "DGCL"), Sub shall be merged with and into the Company at the Effective Date of the Merger (as defined in Section 1.2). Following the Effective Date of the Merger, the separate corporate existence of Sub shall cease and the Company shall continue as the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all the rights and obligations of Sub in accordance with the DGCL.

1.2 Effective Date. Pursuant to Subsection 251(g) of the DGCL, the parties shall file this Agreement executed in accordance with the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL to effectuate the Merger. The Merger shall become effective as of 8:00 a.m. Eastern Standard time on November 1, 1995 (the time the Merger becomes effective being hereinafter referred to as the "Effective Date of the Merger").

1.3 Effects of the Merger. The Merger shall have the effects set forth in Section 259 of the DGCL.

1.4 Certificate of Incorporation and Bylaws.

A. Certificate of Incorporation of the Surviving Corporation. The certificate of incorporation of the Company, as in effect immediately prior to the Effective Date of the Merger, shall be amended as of the Effective Date of the Merger so that: (i) Article I of such certificate of incorporation reads in its entirety as follows "The name of the Corporation shall be Harbison-Walker Refractories Company.", (ii) Article IV of such certificate of incorporation reads in its entirety as follows: "The total number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of Common Stock each having a par value of $.25 per share.", and (iii) Article XII shall be added to such certificate of incorporation which reads in its entirety as follows: "Vote of Stockholders of Global Industrial Technologies, Inc. Required to Approve Certain Actions. Any act or transaction by or involving the Corporation that requires for its adoption under the Delaware General Corporation Law or this Certificate of Incorporation the approval of the stockholders of the Corporation shall, pursuant to Subsection 251(g) of the Delaware General Corporation Law, require, in addition, the approval of the stockholders of Global Industrial Technologies, Inc. (or any successor by merger), by the same vote as is required by the Delaware General Corporation Law and/or by this Certificate of Incorporation." As so amended, such certificate of incorporation shall be the certificate of incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law. The amended and restated Certificate of Incorporation is attached as Exhibit A.

B. Bylaws of the Surviving Corporation. The bylaws of the Company as in effect at the Effective Date of the Merger shall be the bylaws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

1.5 Directors. The directors of the Company at the Effective Date of the Merger shall be the directors of the Surviving Corporation, 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 the Company at the Effective Date of the Merger shall be the officers of the Surviving Corporation, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

ARTICLE 2
EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS; EXCHANGE OF CERTIFICATES; EFFECT ON RIGHTS

2.1 Effect on Capital Stock. As of the Effective Date of the Merger, by virtue of the Merger and without any action on the part of the holder of any shares of Company Common Stock or any shares of capital stock of Sub or Holding:

A. Capital Stock of Sub. Each issued and outstanding share of capital stock of Sub, including each share of capital stock that is owned by the Company or its subsidiaries, shall be converted into and become one fully paid and nonassessable share of Common Stock, par value $.25 per share, of the Surviving Corporation.

B. Capital Stock of Holding. Each issued and outstanding share of Holding Common Stock that is owned by the Company immediately prior to the Merger shall automatically be canceled and retired and shall cease to exist.

C. Conversion of Company Common Stock. Each issued and outstanding share of Company Common Stock and each share of Company Common Stock owned by the Company shall be converted into the right to receive one fully paid and nonassessable share of Holding Common Stock. As of the Effective Date of the Merger, all such shares of Company Common Stock shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the shares of Holding Common Stock to be issued in consideration therefor upon surrender of such certificate in accordance with Section 2.2, without interest.

2.2 Exchange of Certificates.

A. Stock Certificates. Following the Effective Date of the Merger, each holder of an outstanding certificate or certificates theretofore representing shares of Company Common Stock may, but shall not be required to, surrender the same to The Bank of New York, the transfer agent for Holding's Common Stock, for cancellation or transfer, and each such holder or transferee will be entitled to receive certificates representing the same number of shares of Holding Common Stock as the shares of Company Common Stock previously represented by the stock certificates surrendered. If any certificate representing shares of Holding Common Stock is to be issued in a name other than that in which the certificate theretofore representing

Company Common Stock surrendered is registered, it shall be a condition to such issuance that the certificate surrendered shall be properly endorsed and otherwise in proper form for transfer and that the person requesting such issuance shall either:

(i) pay Holding or its agents any taxes or other governmental charges required by reason of the issuance of certificates representing shares of Holding Common Stock in a name other than that of the registered holder of the certificate so surrendered; or

(ii) establish to the satisfaction of Holding or its agents that such taxes or governmental charges have been paid.

Until so surrendered or presented for transfer each outstanding certificate which, prior to the Effective Date of the Merger, represented Company Common Stock shall be deemed and treated for all corporate purposes to represent the ownership of the same number of shares of Holding Common Stock as though such surrender or transfer and exchange had taken place.

B. No Further Ownership Rights in Company Common Stock. All shares of Holding Common Stock issued upon the surrender for exchange of certificates in accordance with the terms of this Article 2 shall be deemed to have been issued (and paid) in full satisfaction of all rights pertaining to the shares of Company Common Stock theretofore represented by such certificates, subject, however, to the Surviving Corporation's obligation to pay any dividends or make any other distributions with a record date prior to the Effective Date of the Merger which may have been declared or made by the Company on such shares of Company Common Stock in accordance with the terms of this Agreement or prior to the date of this Agreement and which remain unpaid at the Effective Date of the Merger, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Common Stock which were outstanding immediately prior to the Effective Date of the Merger. If, after the Effective Date of the Merger, certificates are presented to the Surviving Corporation they shall be canceled and exchanged as provided in this Article 2, except as otherwise provided by law.

2.3 Effect on Rights. As a result of the share-for-share conversion of Company Common Stock for Holding Common Stock pursuant to the Merger and the adoption by Holding of the Holding Rights Agreement dated as of October 31, 1995 between Holding and The Bank of New York, as Rights Agent, each Company preferred stock purchase right will be converted into an identical preferred stock purchase right of Holding.

ARTICLE 3
TERMINATION, AMENDMENT AND WAIVER

3.1 Termination. Subject to the provisions of Section 3.5, this Agreement may be terminated at any time prior to the Effective Date of the Merger by Holding.

3.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 3.1, this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of Holding, Sub or the Company.

3.3 Amendment. Subject to the provisions of Section 3.5, this Agreement may be amended by the parties at any time; provided, however, that this Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

3.4 Waiver. Subject to the provisions of Section 3.5, at any time prior to the Effective Date of the Merger, the parties may waive compliance by the other parties with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a party to any such waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

3.5 Procedure for Termination, Amendment, Extension or Waiver. A termination of this Agreement pursuant to Section 3.1, an amendment of this Agreement pursuant to Section 3.3 or a waiver pursuant to Section 3.4 shall, in order to be effective, require in the case of Holding, Sub or the Company, action by its Board of Directors or the duly authorized designee of its Board of Directors.

ARTICLE 4
GENERAL PROVISIONS

4.1 Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed given if delivered personally, telecopied (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

A. **If to Holding or Sub,**

Global Industrial Technologies, Inc.
c/o INDRESCO Inc.
2121 San Jacinto, Suite 2500
L.B. 31
Dallas, Texas 75201

Attention: Secretary

B. If to the Company, to

INDRESCO Inc.
2121 San Jacinto, Suite 2500
L.B. 31
Dallas, Texas 75201

Attention: Secretary

4.2 Entire Agreement; No Third-Party Beneficiaries. This Agreement (including the documents and instruments referred to herein) constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement and except for the provisions of Article 2, are not intended to confer upon any person other than the parties any rights or remedies.

4.3 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Holding, Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

Global Industrial Technologies, Inc.

By: ______________________

Name: Donald C Mielke

Title: President

GPI Merger, Inc.

By: ______________________

Name: Graham L. Adelman

Title: President

INDRESCO Inc.

By: ______________________

Name: Donald C Mielke

Title: Senior Vice President

SECRETARY'S CERTIFICATE

I, Stephen G. Barnett, Secretary of INDRESCO Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certify, as such Secretary, that the Agreement and Plan of Merger to which this Certificate is attached, after having been first duly signed on behalf of said corporation and having been signed on behalf of GPI Merger, Inc., a corporation of the State of Delaware, and Global Industrial Technologies, Inc. a corporation of the State of Delaware, was duly adopted pursuant to Subsection (g) of Section 251 of the Delaware General Corporation Law and the conditions specified in the first sentence of such Subsection have been satisfied; and that the Agreement and Plan of Merger was thereby adopted by action of the Board of Directors of INDRESCO Inc., and is the duly adopted agreement and act of said corporation.

WITNESS my hand on this 30th day of October, 1995.

Steve Barnett

Stephen G. Barnett, Secretary

SECRETARY'S CERTIFICATE

I, Stephen G. Barnett, Secretary of Global Industrial Technologies, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certify, as such Secretary, that the Agreement and Plan of Merger to which this Certificate is attached, after having been first duly signed on behalf of said corporation and having been signed on behalf of GPI Merger, Inc., a corporation of the State of Delaware, and INDRESCO Inc., a corporation of the State of Delaware, was duly adopted pursuant to Subsection (g) of Section 251 of the Delaware General Corporation Law and the conditions specified in the first sentence of such Subsection have been satisfied; and that the Agreement and Plan of Merger was thereby adopted by action of the Board of Directors of Global Industrial Technologies, Inc. and is the duly adopted agreement and act of said corporation.

WITNESS my hand on this 30th day of October, 1995.

Stephen G. Barnett, Secretary

SECRETARY'S CERTIFICATE

I, Stephen G. Barnett, Secretary of GPI Merger, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certify, as such Secretary, that the Agreement and Plan of Merger to which this Certificate is attached, after having been first duly signed on behalf of said corporation and having been signed on behalf of Global Industrial Technologies, Inc., a corporation of the State of Delaware, and INDRESCO Inc., a corporation of the State of Delaware, was duly adopted pursuant to Subsection (g) of Section 251 of the Delaware General Corporation Law and the conditions specified in the first sentence of such Subsection have been satisfied; and that the Agreement and Plan of Merger was thereby adopted by action of the Board of Directors of GPI Merger, Inc., and is the duly adopted agreement and act of said corporation.

WITNESS my hand on this 30th day of October, 1995.

Steve Barnett

Stephen G. Barnett, Secretary

EXHIBIT A

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

HARBISON-WALKER REFRACTORIES COMPANY

-oooooooo-

Harbison-Walker Refractories Company, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows.

ARTICLE I

The name of the Corporation shall be "Harbison-Walker Refractories Company"

ARTICLE II

The registered office of the Corporation shall be in the City of Dover, County of Kent, Delaware, and the name of the Registered Agent in charge thereof is The Prentice-Hall Corporation System, Inc., whose address is 32 Loockerman Square, Suite L-100, City of Dover 19901, County of Kent, State of Delaware.

ARTICLE III

The nature of the business and purposes to be conducted or promoted by the Corporation is any lawful act or activity, including but not limited to manufacturing, for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

A. Authorized Shares and Classes of Stock.

The total number of shares of all classes of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of Common Stock each having a par value of $.25 per share.

B. Limitations, Relative Rights and Powers in Respect of Shares of Common Stock.

1. The holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

2. In the event of the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Common Stock shall be entitled to receive all the remaining assets of the Corporation of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

3. Except as may be otherwise required by law or by this Certificate of Incorporation, each holder of Common Stock shall have one vote in respect of each share of stock held by him on all matters voted upon by the stockholders.

ARTICLE V

In furtherance and not in limitation of the powers conferred under the corporation laws of Delaware, the Board of Directors of the Corporation is expressly authorized to make by-laws not inconsistent with law or with its certificate of incorporation, relating to the business of the Corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees, and to alter, amend or repeal same from time to time.

ARTICLE VI

A. Vote Required for Certain Business Combinations.

1. Higher Vote for Certain Business Combinations. In addition to any affirmative vote required by law or this Certificate of Incorporation and except as otherwise expressly provided in Section B of this Article VI:

(a) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or

(b) any sale, lease, exchange, mortgage, pledge, transfer, dividend or distribution (other than on a pro rata basis to all stockholders) or other disposition (in one transaction or a series of transactions) to, with or from any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value of $100 million or more; or

(c) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of $100 million or more; or

(d) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of any Interested Stockholder or any Affiliate of any Interested Stockholder; or

(e) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries, or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) which in any such case has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of Equity Security (as hereinafter defined) of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder or any Affiliate of any Interested Stockholder; or

(f) any series or combination of transactions directly or indirectly having the same effect as any of the foregoing;

shall require the affirmative vote of the holders of at least 70 percent of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (hereinafter referred to in this Article VI as "Voting Stock"), voting together as a single class (it being understood that, for purposes of this Article VI, each share of the Voting Stock shall have the number of votes granted to it pursuant to Article IV of this Certificate of Incorporation). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified by law or in any agreement with any national securities exchange or otherwise, but such affirmative vote shall be required in addition to any affirmative vote of the holders of any particular class or series of the Voting Stock required by law or pursuant to Article IV of this Certificate of Incorporation.

2. Definition of "Business Combination". The term "Business Combination" as used in this Article VI shall mean any transaction which is referred to in any one or more of Clauses (a) through (f) of Paragraph 1 of Section A of this Article VI.

B. When Higher Vote is Not Required. The provisions of Section A of this Article VI shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Certificate of Incorporation, as amended, if the conditions specified in either of the following Paragraphs 1 and 2 are met:

1. Approval by Disinterested Directors. The Business Combination shall have been approved by a majority of the Disinterested Directors (as hereinafter defined), it

being understood that this condition shall not be capable of satisfaction unless there is at least one Disinterested Director.

2. Price and Procedure Requirements. All of the six conditions specified in Clauses (a) through (f) shall have been met:

(a) The aggregate of (i) the cash and (ii) the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination, of consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be at least equal to the higher of the following (it being intended that the requirements of this Paragraph 2 shall be required to be met with respect to all shares of Common Stock outstanding whether or not the Interested Stockholder has previously acquired any shares of Common Stock):

(1) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder in order to acquire any shares of Common Stock acquired by it (i) within the two-year period immediately prior to the date of the first public announcement of the proposal of the Business Combination (the "Announcement Date"), or (ii) in the transaction in which it became an Interested Stockholder, whichever is higher; and

(2) the Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested Stockholder became an Interested Stockholder (such latter date is referred to in this Article VI as the "Determination Date"), whichever is higher.

(b) The aggregate amount of (i) the cash and (ii) the Fair Market Value, as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of shares of any class of outstanding Voting Stock other than Common Stock shall be at least equal to the highest of the following (it being intended that the requirements of this Paragraph 2(b) shall be required to be met with respect to every class or series of outstanding Voting Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class of Voting Stock):

(1) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder in order to acquire any shares of such class or series of Voting Stock acquired by it (i) within the two-year period immediately prior to the Announcement Date, or (ii) in the transaction in which it became an Interested Stockholder, whichever is higher; and

(2) (if applicable) the highest preferential amount per share to which the holders of shares of such class or series of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation; and

(3) the Fair Market Value per share of such class or series of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher.

(c) The consideration to be received by holders of shares of a particular class of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of such class of Voting Stock. If the Interested Stockholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration to be received per share by holders of shares of such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by the Interested Stockholder. The price determined in accordance with Paragraphs 2(a) and 2(b) of this Section B shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination of shares or similar event.

(d) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (1) except as approved by a majority of the Disinterested Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on the outstanding stock having a preference over the Common Stock as to dividends or upon liquidation; (2) there shall have been (i) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Disinterested Directors, and (ii) an increase in such annual rate of dividends (as necessary to prevent any such reduction) in the event any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Disinterested Directors; and (3) such Interested Stockholder shall have not become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder.

(e) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately, solely in such Interested

Stockholder's capacity as a stockholder of the Corporation), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise.

(f) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to all public stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).

C. Certain Definitions. For the purpose of this Article VI:

1. A "person" shall mean any individual, firm, group, corporation, partnership, or other entity.

2. "Interested Stockholder" shall mean any person (other than the Corporation or any Subsidiary) who or which:

(a) is the beneficial owner, directly or indirectly, of 10 percent or more of the voting power of the then outstanding Voting Stock; or

(b) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10 percent or more of the voting power of the then outstanding Voting Stock; or

(c) is an assignee of or has otherwise succeeded to beneficial ownership of any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

3. A person shall be a "beneficial owner" of any Voting Stock:

(a) which such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly; or

(b) which such person or any of its Affiliates or Associates has (1) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (2) the right to vote, or to direct the voting of, pursuant to any agreement, arrangement or understanding or otherwise; or

(c) which is beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.

4. For the purposes of determining whether a person is an Interested Stockholder pursuant to Paragraph 2 of this Section C, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned by such person through application of Paragraph 3 of this Section C, but shall not include any other shares of Voting Stock which may be issuable to other persons pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

5. "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on January 1, 1985.

6. "Subsidiary" means any corporation of which a majority of any class of Equity Security is owned, directly or indirectly, by the Corporation; provided, however, that for the purpose of the definition of Interested Stockholder set forth in Paragraph 2 of this Section C, the term "Subsidiary" shall mean only a corporation of which a majority of each class of Equity Security is owned, directly or indirectly, by the Corporation.

7. "Disinterested Director" means any member of the Board of Directors who is unaffiliated with, and not a nominee of, any Interested Stockholder and was a member of the Board of Directors immediately prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Disinterested Director who is unaffiliated with and not a nominee of, any Interested Stockholder and who is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board of Directors.

8. "Fair Market Value" means: (a) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing sale price

or bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the Fair Market Value on the date in question of a share of such stock as determined by a majority of the Board of Directors in good faith; and (b) in the case of stock of any class or series that is not traded on any securities exchange or in the over-the-counter market or in the case of property other than cash or stock, the Fair Market Value of such stock or property, as the case may be, on the date in question as determined by a majority of the Board of Directors in good faith.

9. In the event of any Business Combination in which the Corporation survives, the phrase "consideration other than cash to be received" as used in Paragraphs 2(a) and 2(b) of Section B of this Article VI shall include the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

10. "Equity Security" shall have the meaning ascribed to such term in Section 3(a)(11) of the Securities Exchange Act of 1934 as in effect on January 1, 1985.

D. Powers of the Board of Directors. A majority of the Directors shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article VI, including, without limitation, (i) whether a person is an Interested Stockholder, (ii) the number of shares of Voting Stock beneficially owned by any person, (iii) whether a person is an Affiliate or Associate of another person, (iv) whether the requirements of Paragraph 2 of Section B of this Article VI have been met with respect to any Business Combination, and (v) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of $100 million or more.

E. No Effect on Fiduciary Obligations of Interested Stockholders. Nothing contained in this Article VI shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

F. Amendments. In addition to any requirement of law and any other provisions of this Certificate of Incorporation (and notwithstanding the fact that a lesser percentage may be specified by law, this Certificate of Incorporation, the By-Laws or any such resolution or resolutions), the affirmative vote of the holders of 70 percent or more of the combined voting power of the then outstanding shares of Voting Stock voting together as a single class, shall be required to amend, alter or repeal, or adopt any provisions inconsistent with, this Article VI or any provisions thereof.

ARTICLE VII

A. Vote Required for Prevention of "Greenmail". Any direct or indirect purchase or other acquisition by the Corporation of any shares of any Voting Stock (as hereinafter defined) of the Corporation from any Selling Securityholder (as hereinafter defined) who has beneficially owned any of such shares of Voting Stock for less than two years prior to the date of such purchase or other acquisition or any agreement in respect thereof, shall, except as hereinafter expressly provided in Section B of this Article VII, require the affirmative vote of the holders of not less than a majority of the voting power of the then outstanding shares of Voting Stock, excluding Voting Stock beneficially owned by such Selling Securityholder, voting together as a single class (it being understood that for the purposes of this Article VII, each share of the Voting Stock not beneficially owned by such Selling Securityholder shall have the number of votes granted to it pursuant to Article IV of this Certificate of Incorporation). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or any agreement with any national securities exchange, or otherwise.

B. When Vote in Section A is Not Required. The provisions of Section A of this Article VII shall not be applicable to any purchase or other acquisition by the Corporation from a Selling Securityholder of shares of Voting Stock owned by said Selling Securityholder which purchase or acquisition is made as part of a tender or exchange offer by the Corporation to purchase Voting Stock of the same class made on the same terms to all holders of such Voting

Stock and complying with the applicable requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations), or for the purchase from any Selling Securityholder of shares of Voting Stock by the Corporation at the Fair Market Value thereof, as hereinafter defined, but any such purchase or acquisition shall require only such affirmative vote as may be required by law or any other provision of this Certificate of Incorporation, or otherwise.

C. Certain Definitions. For the purpose of this Article VII:

1. A "person" shall mean any individual, firm, partnership, corporation or other entity.

2. "Selling Securityholder" shall mean any person (other than the Corporation or any corporation of which a majority of any class of Voting Stock is owned, directly or indirectly, by the Corporation) who or which:

(a) is the beneficial owner, directly or indirectly, of 5 percent or more of the class of Voting Stock to be acquired; or

(b) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 5 percent or more of the class of Voting Stock to be acquired; or

(c) is an assignee or has otherwise succeeded to any shares of the class of Voting Stock to be acquired which were at any time within the two-year period immediately prior to the date in question beneficially owned by a Selling Securityholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

3. A person shall be a "beneficial owner" of any Voting Stock of any class of the Corporation:

(a) which such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly; or

(b) which such person or any of its Affiliates or Associates has (1) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (2) any right to vote or direct the voting of pursuant to any agreement, arrangement or understanding; or

(c) which is beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any Voting Stock of any class of the Corporation.

4. For the purpose of determining whether a person is a Selling Securityholder pursuant to Paragraph 2 of this Section C, the relevant class of Voting Stock outstanding shall be deemed to comprise all shares of Voting Stock deemed owned through application of Paragraph 3 of this Section C, but shall not include other shares of Voting Stock of such class which may be issuable to other persons pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

5. "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on January 1, 1985.

6. "Voting Stock" shall mean capital stock of the Corporation entitled to vote generally in the election of Directors of the Corporation.

7. "Fair Market Value" as used in Section B of this Article VII means the highest closing sale price during the 30-day period immediately preceding the date in

question of a share of such Voting Stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such Voting Stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such Voting Stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such Voting Stock is listed, or, if such Voting Stock is not listed on any such exchange the highest closing bid quotations with respect to a share of such Voting Stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the Fair Market Value on the date in question of a share of such Voting Stock as determined by a majority of the Board of Directors of the Corporation in good faith.

ARTICLE VIII

A. Elimination of Certain Liability of Directors.

No Director shall be personally liable to the Corporation or any stockholder for monetary damages for breach of fiduciary duty by such Director as a Director, except for any matter in respect of which such Director shall be liable under Section 174 of the Delaware General Corporation Law or any amendment thereto or successor provision thereof or shall be liable by reason that, in addition to any and all other requirements for such liability, he (i) shall have breached his duty of loyalty to the Corporation or its stockholders, (ii) in acting or in failing to act, shall not have acted in good faith or shall have acted in a manner involving intentional misconduct or a knowing violation of law or (iii) shall have derived an improper personal benefit from the transaction in respect of which such breach of fiduciary duty occurred. Neither the amendment nor repeal of Section A of this Article VIII shall eliminate or reduce the effect of Section A of this Article VIII in respect of any matter occurring, or any cause of action, suit or claim that, but for Section A of this Article VIII would accrue or arise, prior to such amendment or repeal. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article VIII to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended from time to time.

B. Indemnification and Insurance.

1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans maintained or sponsored by the Corporation (hereinafter, "Corporate Agent"),

whether the basis of such proceeding is alleged action in an official capacity as a Director or officer of the Corporation or Corporate Agent or in any other capacity while serving as a Director, officer, or Corporate Agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said Law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes pursuant to the Employee Retirement Income Security Act of 1974 or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a Director, officer, or Corporate Agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in Paragraph 2 hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Section shall be a contractual right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the Delaware General Corporation Law requires, the payment of such expenses incurred by a Director or officer in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Director or officer, to repay all amounts so advanced if it shall ultimately be determined that such Director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and other agents of the Corporation with the same scope and effect as the foregoing indemnification of Directors, officers and Corporate Agents.

2. Right of Claimant to Bring Suit. If a claim under Paragraph 1 of this Section B is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standard of conduct which makes it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set

forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

3. Non-Exclusivity of Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, By-law, agreement, vote of stockholders or disinterested Directors, or otherwise.

4. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

ARTICLE IX

A. Number of Directors. The number of directors constituting the entire Board of Directors of the Corporation shall be not less than three nor more than 15 as fixed from time to time by vote of a majority of the entire Board; provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the entire Board shall be seven until otherwise fixed by a majority of the entire Board.

B. Classes of Directors. The Board of Directors shall be divided into three classes, as nearly equal in numbers as the then total number of directors constituting the entire Board permits with the term of office of one class expiring each year. At a meeting of stockholders in 1992, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class shall be elected to hold office for a term expiring at the second succeeding annual meeting, and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any directorships resulting from any increase in the number of directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next election of the class for which such directors shall have been chosen and until their successors shall be elected and qualified. Subject to the foregoing, at each annual meeting of stockholders the successors to the class of directors whose term shall then expire shall be elected to hold office for a term expiring at the third succeeding annual meeting.

C. Removal of Directors. Notwithstanding any other provisions of this Certificate of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Certificate of Incorporation or the By-Laws of the Corporation), any director or the entire Board may be removed at any time, but only for cause.

ARTICLE X

No Shareholder Action By Written Consent. No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of the stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

ARTICLE XI

Advance Notice of Shareholder Business. At an annual meeting of the shareholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (c) otherwise properly brought before the meeting by a shareholder. For business to be properly brought before an annual meeting by a shareholder, the shareholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a shareholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than 50 days prior to the meeting; provided, however, that in the event that less than 50 days' notice or prior public disclosure of the date of the meeting is given or made to shareholders, notice by the shareholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. A shareholder's notice to the Secretary shall set forth as to each matter the shareholder proposes to bring before the annual meeting (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (b) the name and address, as they appear on the Corporation's books, of the shareholder proposing such business, (c) the class and number of shares of the Corporation which are beneficially owned by the shareholder, and (d) any material interest of the shareholder in such business. Notwithstanding anything in this Certificate of Incorporation to the contrary, no business shall be conducted at the annual meeting except in accordance with the procedures set forth in this Article XI. The Chairman of the annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of this Article XI, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

ARTICLE XII

Vote of Stockholders of Global Industrial Technologies, Inc. Required to Approve Certain Actions. Any act or transaction by or involving the Corporation that requires for its adoption under the Delaware General Corporation Law or this Certificate of Incorporation the approval of the stockholders of the Corporation shall, pursuant to Subsection 251(g) of the Delaware General Corporation Law require, in addition, the approval of the stockholders of Global Industrial Technologies, Inc. (or any successor by merger), by the same vote as is required by the Delaware General Corporation Law and/or by this Certificate of Incorporation.