

01-13-2000

WIC-2480

TRADEMARK ONLY



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

MAD 12-27-99

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TRADEMARKS ONLY

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

1. Name of conveying party(ies): Wheaton Industries

- Individual(s) Association
- General Partnership Limited Partnership
- Corporation - State New Jersey
- Other _____

Additional name(s) of conveying party(ies) attached? YES NO

3. Nature of Conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other _____

Execution Date: 12/11/1991

2. Name and address of receiving party(ies):

Name: Wheaton Packaging, Inc.

Internal Address: _____

Street Address: 1101 Wheaton Avenue

City: Millville State: NJ ZIP: 08332-2117

- Individual(s) Citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation - State New Jersey
- Other _____

If Assignee is not domiciled in the United States,

a domestic representative designation is attached: YES NO

(Designation must be a separate document from Assignment)

Additional name(s) & address(es) attached? YES NO

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

If this document is being filed together with a new application, the execution date of the application is: _____

A. Trademark Application Number(s) _____

B. Trademark Registration No.(s) 1,576,171

Additional number(s) attached? YES NO

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

Name: Benjamin E. Leace

Internal Address: Ratner & Prestia

Street Address: Suite 301, One Westlakes, Berwyn,
P.O. Box 980

City: Valley Forge State: PA ZIP: 19482-0980

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41): \$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: **18-0350**

(Attach duplicate copy of this page if paying by deposit account.)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Benjamin E. Leace

Name of Person Signing

Benjamin E. Leace
Signature

12/24/99

Date

Total number of pages including cover sheet, attachments, and document: 27

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks

Box Assignments

Washington, D.C. 20231

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AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

DEC 17 1991

OF

JOAN HABERLE
Secretary of State

WHEATON INDUSTRIES

0739063

WHEATON INDUSTRIES (the "Company"), a corporation organized and existing under and by virtue of the New Jersey Business Corporation Act, DOES HEREBY CERTIFY:

A. The Company was originally incorporated on February 14, 1946, under the name of Wheaton Glass Co. On June 26, 1970, Wheaton Glass Co. merged with Wheaton Plastics Co. and changed its name to Wheaton Industries.

B. This Amended and Restated Certificate of Incorporation restates and integrates and further amends the Restated Certificate of Incorporation, as amended, of the Company.

C. The text of the Restated Certificate of Incorporation, as amended, of the Company is further amended hereby to read as herein set forth in full:

FIRST: The name of the corporation is Wheaton Packaging, Inc. (the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of New Jersey is 1101 Wheaton Avenue, Post Office Box 269, Millville, New Jersey 08332, in the City of Millville, County of Cumberland. The name of its registered agent at such address is James E. Gutknecht.

THIRD: The Corporation may engage in any activity within the purposes for which corporations may be organized under the New Jersey Business Corporation Act.

FOURTH: The aggregate number of shares which the Corporation shall have authority to issue is 110,000,000, to be divided into (a) 50,000,000 shares of Common Stock, par value \$.001 per share, (b) 50,000,000 shares of Class A Common Stock, par value \$.001 per share, and (c) 10,000,000 shares of Preferred Stock, without par value.

FIFTH: The Common Stock and Class A Common Stock shall have the following attributes:

A. With respect to all matters upon which shareholders are entitled to vote or to which shareholders are

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entitled to give consent, every holder of Common Stock shall be entitled to one vote in person or by proxy for each share of Common Stock outstanding in his or her name on the transfer books of the Corporation and every holder of Class A Common Stock shall be entitled to ten votes in person or by proxy for each share of Class A Common Stock outstanding in his or her name on the transfer books of the Corporation.

B. Except as may be required by law, the holders of Common Stock and Class A Common Stock shall vote together as a single class, subject to any voting rights which may be granted to holders of Preferred Stock.

C. Each share of Common Stock and Class A Common shall be equal in respect of rights to dividends and other distributions in stock or other property of the Corporation, including distributions upon liquidation of the Corporation, provided, that notwithstanding the foregoing, any cash dividend declared and paid on the Class A Common Stock (other than upon liquidation of the Corporation) shall not exceed 90% of the amount of the cash dividend declared and paid concurrently on the Common Stock. In the event of a stock dividend or stock split, holders of Common Stock will receive shares of Common Stock and holders of Class A Common Stock will receive shares of Class A Common Stock. Neither the Common Stock nor the Class A Common Stock shall be split, divided or combined unless the other is split, divided or combined equally.

D. Except as otherwise specifically provided in this Amended and Restated Certificate of Incorporation, the Common Stock and the Class A Common Stock shall rank pari passu and shall possess equal rights and privileges on a share-for-share basis, including any rights in liquidation.

E. Upon this Amended and Restated Certificate of Incorporation becoming effective, each share of Common Stock, par value \$.50 per share, of the Corporation then issued, including treasury shares, shall be redesignated, without further action on the part of the Corporation or any shareholder, as one share of Common Stock of the Corporation as designated in this Amended and Restated Certificate of Incorporation. Stock certificates representing shares of Common Stock, par value \$.50 per share, of the Corporation shall continue to represent shares of Common Stock until surrendered for transfer or cancellation.

F. No person or entity holding shares of Class A Common Stock (the "Class A Common Holder") may transfer, and the Corporation shall not register the transfer of, such shares of Class A Common Stock, except to a Permitted Transferee. A "Permitted Transferee" shall mean, with respect to each person or

entity from time to time shown as the record holder of Class A Common Stock, the following:

(i) In the case of a Class A Common Holder who is a natural person:

(a) the spouse of such Class A Common Holder, any lineal descendant of a great-grandparent of either the Class A Common Holder or the spouse of the Class A Common Holder, including adopted children,

(b) the trustee of a trust (whether testamentary, intervivos or a voting trust) principally for the benefit of such Class A Common Holder and/or one or more of his or her Permitted Transferees described in clause (i)(a) above or a guardian or custodian for such Class A Common Holder and/or one or more of his or her Permitted Transferees described in clause (i)(a) above,

(c) the estate of such Class A Common Holder, and

(d) any person or entity who receives the Class A Common Stock by gift;

(ii) In the case of a Class A Common Holder holding the shares of Class A Common Stock in question as trustee pursuant to a trust or as a custodian or guardian:

(a) any person transferring Class A Common Stock to such trustee, custodian or guardian,

(b) any Permitted Transferee pursuant to clause (i)(a) above of any such transferor referred to in clause (ii)(a) above,

(c) any person to whom or for whose benefit principal may be distributed either during or at the end of the term of such trust whether by power of appointment or otherwise or upon termination of such custodianship or guardianship, and

(d) any Permitted Transferee pursuant to clause (i)(a) above of such person described in clause (ii)(c) above;

(iii) In the case of a Class A Common Holder which is a corporation or partnership acquiring record and beneficial ownership of the shares of Class A Common Stock in question upon their initial issuance by the Corporation:

(a) a partner of such partnership or shareholder of such corporation at the time of issuance, and

(b) any Permitted Transferee pursuant to clause (i)(a) above of any such partner or shareholder referred to in clause (iii)(a) above;

(iv) In the case of a Class A Common Holder which is a corporation or partnership (other than a corporation or partnership described in clause (iii) above),

(a) any person transferring such shares of Class A Common Stock to such corporation or partnership, and

(b) any Permitted Transferee pursuant to clause (i)(a) above of any such person referred to in clause (iv)(a) above;

(v) In the case of a Class A Common Holder which is the estate of a deceased Class A Common Holder or which is the estate of a bankrupt or insolvent Class A Common Holder, which holds record and beneficial ownership of the shares of Class A Common Stock in question, any Permitted Transferee of such deceased, bankrupt or insolvent Class A Common Holder as determined pursuant to clause (i), (ii), (iii) or (iv) above, as the case may be.

G. Notwithstanding anything to the contrary set forth herein, any Class A Common Holder may pledge such holder's shares of Class A Common Stock to a pledgee pursuant to a bona fide pledge of such shares as collateral security for indebtedness due to the pledgee, provided that such shares shall remain subject to the provisions of this Article FIFTH. In the event of foreclosure or other similar action by the pledgee, such pledged shares of Class A Common Stock may be transferred only to a Permitted Transferee of the pledgor or converted into shares of Common Stock and transferred to the pledgee or his assigns, as the pledgee may elect.

H. Any transfer of the beneficial ownership of shares of Class A Common Stock to a person or entity other than a Permitted Transferee shall result in the conversion of the shares of Class A Common Stock subject to such transfer into shares of Common Stock, effective as of the date of such transfer, but in no event later than the date on which certificates representing such shares are presented to the Corporation for transfer on the books of the Corporation. The Corporation may, in connection with preparing a list of shareholders entitled to vote at any meeting of shareholders, or entitled to receive dividends or as a condition to the transfer or the registration of shares of Class A Common Stock on the Corporation's books, require the furnishing of such affidavits or other proof as it deems necessary to establish that any person is the beneficial owner of shares of Class A Common Stock or is a Permitted Transferee. Upon failure

to provide such affidavit or other proof requested by the Corporation, such shares of Class A Common Stock shall be deemed converted into shares of Common Stock, effective as of such reasonable time following such request as the Board of Directors shall determine.

I. Each share of Class A Common Stock shall be convertible at any time or from time to time, at the option of the respective holder thereof, at the office of any transfer agent for Common Stock, and at such other place or places, if any, as the Board of Directors may designate, into one fully-paid and nonassessable share of Common Stock. In order to convert Class A Common Stock into Common Stock, the holder thereof shall (i) surrender the certificate or certificates for such Class A Common Stock at the office of said transfer agent (or such other place as provided above), which certificate or certificates shall be duly endorsed to the Corporation or in blank or accompanied by proper instruments of transfer to the Corporation and (ii) give written notice to the Corporation that such holder elects to convert said Class A Common Stock, which notice shall state the name or names in which such holder wishes the certificate or certificates for Common Stock to be issued. The Corporation will issue and deliver at the office of said transfer agent (or such other place as provided above) to the person for whose account such Class A Common Stock was so surrendered, or to his nominee or nominees, a certificate or certificates for the number of full shares of Common Stock to which such holder shall be entitled as soon as practicable after such deposit of such certificate or certificates of Class A Common Stock, accompanied by the requisite written notice. Such conversion shall have been deemed to have been made as of the date of such surrender of the certificate or certificates of Class A Common Stock to be converted; and the persons entitled to receive the Common Stock issuable upon conversion of such Class A Common Stock shall be treated for all purposes as the record holder or holders of such Common Stock on such date.

J. The issuance of certificates for shares of Common Stock upon conversion of shares of Class A Common Stock shall be made without charge for any stamp or other similar tax in respect of such issuance. However, if any such certificate is to be issued in a name other than that of the holder of the share or shares of Class A Common Stock converted, the person or persons requesting the issuance thereof shall pay to the Corporation the amount of any tax which may be payable in respect of any transfer involved in such issuance or shall establish to the satisfaction of the Corporation that such tax has been paid or is not required to be paid.

K. Notwithstanding anything contained in this Article FIFTH to the contrary, all shares of Class A Common Stock shall

be deemed to have been converted and the holders of the Series A Common Stock shall become holders of record of Common Stock upon (i) the affirmative vote of two-thirds of the votes cast by the holders of the then issued and outstanding Class A Common Stock or (ii) a determination by the Board of Directors that such conversion is necessary to preserve the listing or registration of the Common Stock on any national securities exchange or the National Association of Securities Dealers, Inc. Automated Quotations System.

L. Each certificate representing the Class A Common Stock shall note conspicuously the restrictions on the transferability of the Class A Common Stock as set forth in this Article FIFTH.

SIXTH: The Board of Directors is hereby empowered to cause the Preferred Stock to be issued at any time, or from time to time, for such consideration as it may fix; to divide the Preferred Stock into series; to determine the designation and the number of shares of any series; to determine the relative rights, preferences and limitations of the shares of any series and any or all of such divisions and determinations, as designated by the Board of Directors in the resolution providing for the issue of such series. Shares of Preferred Stock of any one series shall be identical in all respects. The Board of Directors may change the designation or number of shares, or the relative rights, preferences and limitations of the shares, of any theretofore established series, provided that no shares of such series have been issued.

SEVENTH: The number of directors constituting the Board of Directors shall be as fixed from time to time by the vote of a majority of the directors then in office, but shall at no time be fewer than three nor more than fifteen; provided, that the number of directors may not be reduced so as to shorten the term of any incumbent directors. The directors of the Corporation shall be divided into three classes, each class to have, as nearly as possible, the same number of directors and to be elected at every third annual meeting of shareholders. Each director shall hold office for the term for which he or she is elected and until his or her successor is elected and qualified. At each annual meeting of shareholders of the Corporation, the successors to the class of directors whose term shall then expire shall be elected to hold office for a three-year term. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional directors of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten

the term of any incumbent director. A director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

The names and addresses of the directors constituting the Corporation's current Board of Directors, seven in number, are:

Elected until the 1992 Annual Meeting of Shareholders and until their successors have been elected and qualified:

<u>Name</u>	<u>Address</u>
George J. Straubmuller, III	Silver Run Road Millville, NJ 08332
Michael T. Zee	620 Quail Drive Millville, NJ 08332
Robert I. Veghte	RD #1 Sunset Drive Salem, NJ 08079

Elected until the 1993 Annual Meeting of Shareholders and until their successors shall have been elected and qualified:

<u>Name</u>	<u>Address</u>
W. Glenn Gies	P.O. Box 328-A Marolboro Rd. RD #3 Bridgeton, NJ 08302
John Thomas Wheaton	Route 1 - Box 40A Roseland, VA 22967
Edward C. Wheaton	600 Glenside Road Millville, NJ 08332
E. Scott Wheaton	1206 Robin Road Millville, NJ 08332

Unless prior to the 1992 Annual Meeting the number of directors is increased, the directors whose terms expire at such meeting shall be elected to three-year terms ending at the 1995 Annual Meeting and two directors whose terms otherwise expire at the 1993 Annual Meeting shall be elected to two-year terms ending at the 1994 Annual Meeting. If prior to the 1992 Annual Meeting the number of directors is increased or decreased, the Board of Directors shall make appropriate provision regarding the

directors' terms to assure that the three classes have, as nearly as possible, the same number of directors following such meeting.

EIGHTH: The following provisions shall govern the management of the business and conduct of the affairs of the Corporation, and define, limit and regulate the powers of the Corporation and of its directors and shareholders:

A. Whenever the holders of shares of Preferred Stock, or any one or more series thereof, issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of shareholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Amended and Restated Certificate of Incorporation or the resolution or resolutions adopted by the Board of Directors pursuant to Article SIXTH hereof, and such directors so elected shall not be divided into classes pursuant to this Article EIGHTH unless expressly provided by such terms.

B. Newly created directorships resulting from any increase in the number of directors or any vacancy on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum, or by a sole remaining director. Any director elected in accordance with this preceding sentence shall hold office until the next succeeding annual meeting of shareholders and until his or her successor shall have been elected and qualified.

C. Elections of directors need not be by written ballot unless required by law.

D. In addition to the powers and authority hereinbefore or by law expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of any law, this Amended and Restated Certificate of Incorporation and any by-laws adopted by the shareholders; provided, however, that no by-laws hereafter adopted by the shareholders shall invalidate any prior act of the directors which would have been valid if such by-laws had not been adopted.

NINTH: Subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, any or all of the directors of the Corporation may be removed from office (i) by

the shareholders at any annual or special meeting of shareholders of the Corporation, the notice of which shall state that the removal of a director or directors is among the purposes of the meeting, but only for cause, by the affirmative vote of 80% of the votes cast by the holders of shares entitled to vote thereon or (ii) by the Board of Directors for cause. The Board of Directors has the power to suspend directors pending a final determination that cause exists for removal.

TENTH: In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized to adopt, repeal, alter, amend and rescind the by-laws of the Corporation. Notwithstanding anything contained to the contrary in the by-laws of the Corporation, the affirmative vote of two-thirds of the votes cast by the holders of shares which by their terms may vote on matters submitted to shareholders of the Corporation generally shall be required to repeal, alter, amend or rescind the by-law of the Corporation.

ELEVENTH: No shareholder of the Corporation shall have any preemptive right.

TWELFTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon shareholders herein are granted subject to this reservation. This Amended and Restated Certificate of Incorporation may be amended from time to time by the affirmative vote of a majority of the votes cast by the holders of shares entitled to vote on such amendment, and in addition, if any class or series of shares is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast by such class or series. Notwithstanding anything contained in this Amended and Restated Certificate of Incorporation to the contrary, the affirmative vote of at least two-thirds of the votes cast by the holders of shares entitled to vote on an amendment to this Amended and Restated Certificate of Incorporation shall be required to amend or repeal Articles SEVENTH, EIGHTH, NINTH, TENTH, TWELFTH, THIRTEENTH, FOURTEENTH, FIFTEENTH, SIXTEENTH, SEVENTEENTH, EIGHTEENTH, NINETEENTH or TWENTIETH of this Amended and Restated Certificate of Incorporation or to adopt any provision inconsistent therewith.

THIRTEENTH: At any time at which the Corporation has a class of securities registered under the Securities Exchange Act of 1934, any action required or permitted to be taken at any annual or special meeting of shareholders may only be taken at any annual or special meeting of shareholders duly called or as otherwise provided by law and may not be taken without a meeting of shareholders upon the written consent of the shareholders who

would have been entitled to cast the minimum number of votes which would be necessary to authorize such action at a meeting.

FOURTEENTH: Special meetings of the shareholders of the Corporation for any purpose or purposes may be called at any time by the Board of Directors, the Chairman of the Board of Directors or the President of the Corporation. Unless otherwise prescribed by law, special meetings of the shareholders of the Corporation may not be called by any other person or persons.

FIFTEENTH: A director or officer of the Corporation shall not be personally liable to the Corporation or its shareholders for damages for breach of any duty owed to the Corporation or its shareholders after the date this Amended and Restated Certificate becomes effective, except from liability for any breach of duty based upon an act or omission (i) in breach of such person's duty of loyalty to the Corporation or its shareholders, (ii) not in good faith or involving a knowing violation of law or (iii) resulting in receipt by such person of an improper personal benefit. Nothing herein shall affect the liability of a director or officer of the Corporation for damages for breach of any duty owed to the Corporation or its shareholders prior to the date this Amended and Restated Certificate becomes effective. If the New Jersey Business Corporation Act is hereafter amended to authorize the further elimination or limitation of the liability of directors or officers, then the liability of the directors or officers of the Corporation following the date of such amendment, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended New Jersey Business Corporation Act. Any appeal or modification of this Article FIFTEENTH by the shareholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director or officer of the Corporation existing at the time of such repeal or modification.

SIXTEENTH: A. Each person who is made a party or is threatened to be made a party to or is involved in any pending, threatened or completed civil, criminal, administrative or arbitrative action, suit or proceeding, and any appeal therein and any inquiry or investigation which could lead to such action, suit or proceeding (hereinafter a "Proceeding") by reason of the fact that after the date on which this Amended and Restated Certificate became effective he or she, or a person of whom he or she is or was a legal representative, is or was a corporate agent, as hereinafter defined, of the Corporation shall be indemnified and held harmless by the Corporation against all expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith, provided that no judgment

or other final adjudication adverse to the corporate agent establishes that his or her acts or omissions (a) were in breach of his or her duty of loyalty to the Corporation or its shareholders, as defined in Section 14A:2-7(3) of the New Jersey Business Corporation Act; (b) were not in good faith or involved a knowing violation of law; or (c) resulted in receipt by the corporate agent of an improper personal benefit. Such indemnification shall continue as to a person who has ceased to be a corporate agent and shall inure to the benefit of his or her heirs, executors and administrators. All expenses incurred by a corporate agent in connection with a proceeding as to which the corporate agent may be entitled to indemnification hereunder shall be paid by the Corporation in advance of the final disposition upon receipt of an undertaking by or on behalf of the corporate agent to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified as hereinbefore provided unless the Board of Directors or a committee thereof acting by a majority vote of a quorum consisting of directors who were not parties to or otherwise involved in the Proceeding determines, or, if such quorum is not obtainable, or, even if obtainable and such quorum of the Board of Directors or committee by a majority vote of the disinterested directors so directs, independent legal counsel delivers a written opinion to the effect that, in such counsel's opinion, such person is unlikely to meet the standards for indemnification heretofore provided. The right of indemnification conferred in this Article SIXTEENTH shall be a contract right and shall be enforceable against the Corporation as hereinafter provided. For purposes of this Article SIXTEENTH, a corporate agent shall mean any person who is or was a director, officer, employee or agent of the Corporation or of any constituent corporation absorbed by the Corporation in a consolidation or merger and any person who is or was a director, officer, trustee, employee or agent of any other enterprise, including service with respect to employee benefit plans, serving as such at the request of the Corporation, or of any such constituent corporation, or the legal representative of any such director, officer, trustee, employee or agent.

B. If a claim under Paragraph (A) of this Article SIXTEENTH (other than a claim for the payment of expenses incurred in advance of the final disposition of a Proceeding) 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 as a whole or in part, the claimant also shall be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such action of conduct that the claimant has not met the standards of conduct which make it permissible hereunder or under the New Jersey Business Corporation Act 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 shareholders) 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 hereunder or under the New Jersey Business Corporation Act, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its shareholders) 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.

C. No action shall be brought to enforce a claim under Paragraph A of this Article SIXTEENTH for expenses incurred in defending any Proceeding in advance of its final disposition unless (i) such action is authorized by the Board of Directors of the Corporation or (ii) the Board of Directors or a committee thereof has failed to determine, or independent legal counsel has failed to deliver a written opinion to the effect that such person is unlikely to meet the standards of conduct for indemnification provided in said Paragraph A within thirty days after a written claim for such expenses has been received by the Corporation. If such action is brought and is successful as a whole or in part, the claimant also shall be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such action that the claimant is not likely to meet the standards of conduct which make it permissible hereunder or under the New Jersey Business Corporation Act for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation.

D. The right to indemnification and the payment of expenses incurred in defending a Proceeding in advance of its final disposition conferred in this Article SIXTEENTH shall not be exclusive of any other right which any person may have or hereafter acquire under any law, the by-laws of the Corporation, any agreement, any vote of shareholders or disinterested directors, or otherwise.

E. Any claim for indemnification with respect to a Proceeding against any corporate agent of, the Corporation, with respect to service prior to the date on which this Amended and Restated Certificate of Incorporation becomes effective shall be governed exclusively by the provisions of Article SIXTH(3) of the Restated Certificate of Incorporation of the Corporation in effect prior to such date.

F. 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 New Jersey Business Corporation Act.

SEVENTEENTH: At an annual meeting of shareholders, only such business shall be conducted, and only such proposals shall be acted upon, as shall have been brought before the annual meeting (a) by, or at the direction of, a majority of the directors, or (b) by any shareholder of the Corporation who complies with the notice procedures set forth in this Article SEVENTEENTH. For a proposal 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 sixty days nor more than ninety days prior to the scheduled annual meeting, regardless of any postponements, deferrals or adjournments of that meeting to a later date; provided, however, that if less than seventy days' notice or prior public disclosure of the date of the scheduled annual meeting is given or made, notice by the shareholder, to be timely, must be so delivered or received not later than the close of business on the tenth day following the earlier of the day on which such notice of the date of the scheduled annual meeting was mailed or the day on which 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 proposal 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 and any other shareholders known by such shareholder to be supporting such proposal, (c) the class and number of shares of the Corporation's stock which are beneficially owned by the shareholder on the date of such shareholder notice and by any other shareholders known by such shareholder to be supporting such proposal on the date of such shareholder notice and (d) any financial interest of the shareholder in such proposal. No business shall be conducted at the annual meeting, except in accordance with the procedures set forth in this Article SEVENTEENTH.

The presiding officer of the annual meeting shall determine and declare at the annual meeting whether the shareholder proposal was made in accordance with the terms of this Article SEVENTEENTH. If the presiding officer determines that a shareholder proposal was not made in accordance with the

terms of this Article SEVENTEENTH, he or she shall so declare at the annual meeting and any such proposal shall not be acted upon at the annual meeting.

This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors and committees of the Board of Directors, but, in connection with such reports, no new business shall be acted upon at such annual meeting unless stated, filed and received as herein provided.

EIGHTEENTH: Subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, only persons who are nominated in accordance with the following procedures shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of shareholders by or at the direction of the Board of Directors by any nominating committee or person appointed by the Board of Directors or by any shareholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Article EIGHTEENTH. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice 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 sixty days nor more than ninety days prior to the scheduled annual meeting, regardless of any postponements, deferrals or adjournments of that meeting to a later date; provided, however, that if less than seventy days' notice or prior public disclosure of the date of the scheduled annual meeting is given or made, notice by the shareholder, to be timely, must be so delivered or received not later than the close of business on the tenth day following the earlier of the day on which such notice of the date of the scheduled annual meeting was mailed or the day on which such public disclosure was made. A shareholder's notice to the Secretary shall set forth (a) as to each person whom the shareholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class and number of shares of capital stock of the Corporation which are beneficially owned by the person and (iv) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to Rule 14a under the Securities Exchange Act of 1934; and (b) as to the shareholder giving the notice (i) the name and address, as they appear on the Corporation's books, of the shareholder and (ii) the class and number of shares of the Corporation's stock which are beneficially owned by the shareholder on the date of such

shareholder notice. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as director of the Corporation. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Article EIGHTEENTH.

The presiding officer of the annual meeting shall determine and declare at the annual meeting whether the nomination was made in accordance with the terms of this Article EIGHTEENTH. If the presiding officer determines that a nomination was not made in accordance with the terms of this Article EIGHTEENTH, he or she shall so declare at the annual meeting and any such defective nomination shall be disregarded.

NINETEENTH: The provisions of the New Jersey Shareholders Protection Act, Section 14A:10A-1 et seq. of the New Jersey Business Corporation Act (the "Shareholders Protection Act"), shall apply to the Corporation. In addition, the provisions of the Shareholders Protection Act, as if set forth in full herein, shall apply to any business combination (as defined in the Shareholders Protection Act) (i) with an interested stockholder (as defined in the Shareholders Protection Act) who was such prior to the effective date of this Amended and Restated Certificate of Incorporation if subsequent thereto that interested stockholder increases his or her or its interested stockholder's proportion of the voting power of the Corporation's outstanding voting stock (as defined in the Shareholders Protection Act) to a proportion in excess of the proportion of voting power that interested stockholder held prior to the effective date of this Amended and Restated Certificate of Incorporation, or (ii) with an interested stockholder who was such prior to the effective date of this Amended and Restated Certificate of Incorporation if subsequent thereto that interested stockholder becomes the beneficial owner (as defined in the Shareholders Protection Act) of any shares of voting stock that were not beneficially owned by that interested stockholder as of the effective date of this Amended and Restated Certificate of Incorporation.

TWENTIETH: If at any time at which the Corporation has a class of securities registered under the Securities Exchange Act of 1934 the Shareholders Protection Act, as made applicable to the Corporation by Article NINETEENTH, is amended, altered, changed or repealed so as to remove or diminish the protection afforded shareholders thereby, the vote of the shareholders of the Corporation to approve any Business Combination (as hereinafter defined) shall be as set forth in this Article TWENTIETH.

A. In addition to any affirmative vote required by law, any other provision of this Amended and Restated Certificate of Incorporation, and except as otherwise expressly provided in Paragraph B of this Article TWENTIETH, a Business Combination (as hereinafter defined) with, or proposed by or on behalf of, any Interested Stockholder (as hereinafter defined) or any Affiliate (as hereinafter defined) or Associate (as hereinafter defined) of any Interested Stockholder or any person who after such Business Combination would be an Affiliate or Associate of such Interested Stockholder shall require the affirmative vote of the holders of not less than two-thirds of the votes entitled to be cast by the holders of all of the then outstanding shares of Voting Stock (as hereinafter defined), voting together as a single class, excluding Voting Stock beneficially owned by such Interested Stockholder. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage or separate class vote may be specified, by law, or by any provision of this Amended and Restated Certificate of Incorporation, the by-laws of the Corporation, any agreement with any national securities exchange or otherwise.

B. The provisions of Paragraph A of this Article TWENTIETH shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote, if any, as is required by law, by any other provision of this Amended and Restated Certificate of Incorporation, the by-laws of this Corporation, any agreement with any national securities exchange or otherwise, if the Business Combination (either specifically or as a transaction which is within an approved category of transactions) shall have been approved by a majority of the Continuing Directors (as hereinafter defined).

C. The following definitions shall apply with respect to this Article TWENTIETH:

(1) The term "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified person.

(2) The term "Associate," when used to indicate a relationship with any person, means (1) any corporation or organization of which that person is an officer or partner or is, directly or indirectly, the beneficial owner of 10% or more of any class of Voting Stock, (2) any trust or other estate in which that person has a substantial beneficial interest or as to which that person serves as trustee or in

a similar fiduciary capacity, or (3) any relative or spouse of that person, or any relative of that spouse, who has the same home as that person.

(3) A person shall be a "beneficial owner" of, shall "beneficially own" and shall have "beneficial ownership" of any Capital Stock:

(a) that, individually or with or through any of its Affiliates or Associates, beneficially owns that stock, directly or indirectly;

(b) that, individually or with or through any of its Affiliates or Associates, has (i) the right to acquire that stock (whether that right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding (whether or not in writing), or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the beneficial owner of stock tendered pursuant to a tender or exchange offer made by that person or any of that person's Affiliates or Associates until that tendered stock is accepted for purchase or exchange; or (ii) the right to vote that stock pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however that a person shall not be deemed the beneficial owner of any stock under this subparagraph if the agreement, arrangement or understanding to vote that stock (1) arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Securities Exchange Act of 1934 and (2) is not then reportable on a Schedule 13D under the Securities Exchange Act of 1934 (or any comparable or successor report); or

(c) that has any agreement, arrangement or understanding (whether or not in writing), for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in (b) (2) above, or disposing of that stock with any other person that beneficially owns, or whose Affiliates or Associates beneficially own, directly or indirectly, that stock.

(4) The term "Business Combination" when used in reference to the Corporation and any Interested Stockholder shall mean:

(a) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) of the Corporation with (A) that Interested Stockholder or (B)

any other corporation (whether or not it is an Interested Stockholder of the Corporation) which is, or after such merger or consolidation would be, an Affiliate or Associate of an Interested Stockholder;

(b) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with that Interested Stockholder or any Affiliate or Associate of that Interested Stockholder of assets of the Corporation or any Subsidiary of the Corporation (i) having an aggregate market value equal to 10% or more of the aggregate market value of all the assets, determined on a consolidated basis, of the Corporation, (ii) having an aggregate market value equal to 10% or more of the aggregate market value of all the outstanding stock of the Corporation, or (iii) representing 10% or more of the earning power or income, determined on a consolidated basis, of the Corporation;

(c) the issuance or transfer by the Corporation or any Subsidiary of the Corporation (in one transaction or a series of transactions) of any stock of the Corporation or any Subsidiary of the Corporation which has an aggregate Market Value equal to 5% or more of the aggregate Market Value of all the outstanding stock of the Corporation to that Interested Stockholder or any Affiliate or Associate of that Interested Stockholder, except pursuant to the exercise of warrants or rights to purchase stock offered, or a dividend or distribution paid or made, pro rata to all shareholders of the Corporation;

(d) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by, on behalf of or pursuant to any agreement, arrangement or understanding (whether or not in writing) with that Interested Stockholder or any Affiliate or Associate of that Interested Stockholder;

(e) any reclassification of securities (including, without limitation, any stock split, stock dividend, or other distribution of stock in respect of stock, or any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any Subsidiary of the Corporation, or any other transaction (whether or not with, or into, or otherwise involving that Interested Stockholder), proposed by, on behalf of or pursuant to any agreement, arrangement or understanding (whether or not in writing) with that Interested Stockholder or any affiliate or associate of that Interested Stockholder, which has the effect, directly or indirectly, of increasing the proportionate share of the

outstanding shares of any class or series of stock or securities convertible into Voting Stock of the Corporation or any Subsidiary of the Corporation which is directly or indirectly owned by that Interested Stockholder, or any Affiliate or Associate of that Interested Stockholder, except as a result of immaterial changes due to fractional share adjustments; or

(f) any receipt by that Interested Stockholder or any Affiliate or Associate of that Interested Stockholder of the benefit, directly or indirectly (except proportionately as a shareholder of the Corporation) of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by or through the Corporation; provided, however, that the term "Business Combination" shall not be deemed to include the receipt of any of the foregoing benefits by the Corporation or any of the Corporation's Affiliates arising from transactions (such as intercompany loans or tax sharing arrangements) between the Corporation and its Affiliates in the ordinary course of business.

(5) The term "Capital Stock" shall mean all capital stock of the Corporation authorized to be issued from time to time under Article FOURTH of this Amended and Restated Certificate of Incorporation, and the term "Voting Stock" shall mean all Capital Stock which by its terms may be voted on all matters submitted to shareholders of the Corporation generally.

(6) The term "Continuing Director," with respect to any particular Business Combination with, or proposed by or on behalf of, any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder or any person who thereafter would be an Affiliate or Associate of any Interested Stockholder, means any member of the Board of Directors of the Corporation (the "Board of Directors"), while such person is a member of the Board of Directors, who is not an Affiliate, Associate or representative of such Interested Stockholder and was a member of the Board of Directors prior to the time that such Interested Stockholder became an Interested Stockholder, and any successor of a Continuing Director while such successor is a member of the Board of Directors, who is not an Affiliate or Associate or representative of such Interested Stockholder and is recommended or elected to succeed the Continuing Director by a majority of Continuing Directors.

(7) The terms "control," "controlling," "controlled by" and "under common control with" means the possession, directly or indirectly, of the power to direct

or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person's beneficial ownership of 10% or more of the voting power of a corporation's outstanding voting stock shall create a presumption that the person has control of that corporation. Notwithstanding the foregoing in this subsection, a person shall not be deemed to have control of a corporation if that person holds voting power, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group have control of that corporation.

(8) The term "Interested Stockholder," when used in reference to the Corporation, means any person (other than the Corporation or any Subsidiary of the Corporation that:

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

(b) is an Affiliate or Associate of the Corporation and at any time within the five-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10% or more of the Voting Stock of the Corporation. For the purpose of determining whether a person is an Interested Stockholder, the number of shares of Voting Stock of the Corporation deemed to be outstanding shall include shares deemed to be beneficially owned by a beneficial owner but shall not include any other unissued shares of Voting Stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(9) The term "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 that stock on the composite tape for New York Stock Exchange-listed stocks, or, if that stock is not quoted on that composite tape or if that stock is not listed on that exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which that stock is listed, or, if that stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of that 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 that resident domestic stock as determined by a majority of the Continuing Directors of the Corporation in good faith; and

(b) in the case of property other than cash or stock, the fair market value of that property on the date in question as determined by the Continuing Directors of the Corporation in good faith.

(10) The term "person" means any individual, firm, company or other entity and shall include any group comprised of any person and any other person with whom such person or any Affiliate or Associate of such person has any agreement, arrangement or understanding, directly or indirectly, for the purpose of acquiring, holding, voting or disposing of Capital Stock.

(11) The term "Subsidiary" means any other corporation of which voting stock having a majority of the votes entitled to be cast is owned, directly or indirectly, by the Corporation.

(12) The term "Voting Stock" means any capital stock of the Corporation authorized to be issued from time to time under Article FOURTH of this Amended and Restated Certificate of Incorporation, which by its terms may be voted on all matters submitted to shareholders of the Corporation.

D. For the purpose of this Article TWENTIETH, a majority of the Continuing Directors shall have the power and duty to determine in good faith, on the basis of information known to them after reasonable inquiry, all questions arising under this Article TWENTIETH, including, without limitation, (1) whether a person is an Interested Stockholder, (2) the number of shares of Capital Stock beneficially owned by any person, (3) whether a person is an Affiliate or Associate of another and (4) whether a Business Combination or any proposal to amend, repeal or adopt any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article TWENTIETH (collectively, a "Proposed Action") is with, or proposed by or on behalf of, an Interested Stockholder or an Affiliate or Associate of an Interested Stockholder of a person who thereafter would be an Interested Stockholder or an Affiliate or Associate of an Interested Stockholder; except that a majority of the entire Board of Directors shall have the power and duty to determine in good faith, on the basis of information known to them after reasonable investigation,

whether a director is a "Continuing Director" as defined in subparagraph (6) of Paragraph C of this Article TWENTIETH. Any such determination made in good faith shall be binding and conclusive on all parties.

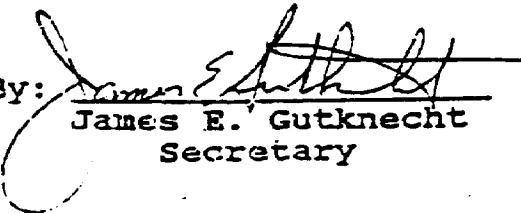
E. Nothing contained in this Article TWENTIETH shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

The fact that any Business Combination complies with the provisions of Paragraph B of this Article TWENTIETH shall not be construed to impose any fiduciary duty, obligation or responsibility on the Board of Directors, or any member thereof, to approve such Business Combination or recommend its adoption or approval to the shareholders of the Corporation, nor shall such compliance limit, prohibit or otherwise restrict in any manner the Board of Directors, or any member thereof, with respect to evaluations of or actions and responses taken with respect to such Business Combination.

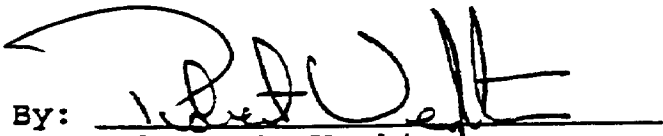
F. Notwithstanding any other provisions of this Amended and Restated Certificate of Incorporation or the by-laws of the Corporation (and notwithstanding the fact that a lesser percentage or separate class vote may be specified by law, this Amended and Restated Certificate of Incorporation or the by-laws of the Corporation), any proposal to amend, repeal or adopt any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article TWENTIETH which is proposed by or on behalf of an Interested Stockholder or an Affiliate or Associate of an Interested Stockholder or any person who would thereafter be an Interested Stockholder or Affiliate or Associate of an Interested Stockholder shall require the affirmative vote of the holders of not less than two-thirds of the votes entitled to be cast by the holders of all of the then outstanding shares of Voting Stock, voting together as a single class, excluding Voting Stock beneficially owned by such Interested Stockholder, unless such amendment, repeal or adoption is declared advisable by the affirmative vote of (a) two-thirds of the entire Board of Directors and (b) a majority of the Continuing Directors.

IN WITNESS WHEREOF, WHEATON INDUSTRIES has caused this Amended and Restated Certificate of Incorporation to be signed by Robert I. Veghte, its President and Chief Executive Officer, and attested by James E. Gutknecht, its Secretary, this 11 day of December, 1991.

ATTEST:

By: 
James E. Gutknecht
Secretary

WHEATON INDUSTRIES

By: 
Robert I. Veghte
President and Chief
Executive Officer

CERTIFICATE REQUIRED TO BE FILED WITH THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
WHEATON INDUSTRIES

Pursuant to the provisions of Section 14A:9-5(5) of the New Jersey Business Corporation Act, the undersigned corporation hereby executes the following certificate:

1. The name of the corporation is Wheaton Industries.

2. The attached Amended and Restated Certificate of Incorporation was approved by the directors and thereafter duly adopted by the holders of shares of Common Stock, par value \$.50 per share ("Common Stock"), of Wheaton Industries on November 21, 1991, the date fixed by the Board of Directors for the determination of shareholders entitled to consent to the adoption of the Amended and Restated Certificate of Incorporation, without a meeting pursuant to the written consents of shareholders tabulated on December 6, 1991, the date fixed by the Board of Directors for tabulation of such consents. Only holders of shares of Common Stock were entitled to consent to the adoption of the Amended and Restated Certificate.

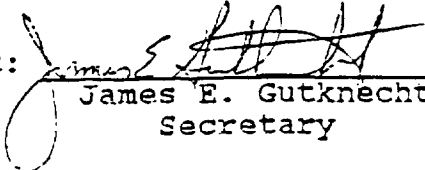
3. The number of shares of Common Stock entitled to vote thereon was 5,057,290.

4. Holders of 3,566,430 shares consented in writing to the adoption of the Amended and Restated Certificate of Incorporation.

5. The shares of Common Stock outstanding on the date the Amended and Restated Certificate of Incorporation becomes effective shall be automatically converted into shares of Common Stock, par value \$.001 per share, and no further action on the part of Wheaton Industries or the shareholders will be required.

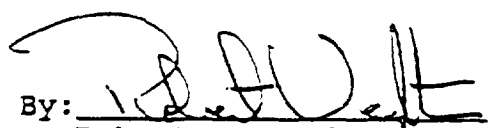
Dated: December 11, 1991

Attest:


James E. Gutknecht
Secretary

WHEATON INDUSTRIES

By:


Robert I. Veghte
President and Chief
Executive Officer