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



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original documents or copy thereof.

To the Honorable Commissioner of Patents

1. Name of conveying party(ies): Doehler-Jarvis Technologies, Inc. [] Individual(s) [] Association [] General Partnership [] Limited Partnership [x] Corporation-State Delaware [] Other Additional name(s) of conveying party(ies) attached? [] Yes [x] No

2. Name and address of receiving party(ies) Name: Harvard Industries Risk Management, Inc. Internal Address: Street Address: 3 Werner Way City: Lebanon State: NJ Zip: 08833 [] Individual(s) citizenship [] Association [] General Partnership [] Limited Partnership [x] Corporation-State Delaware [] Other If assignee is not domiciled in the United States, a domestic representative designation is attached: [] Yes [x] No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? [] Yes [x] No

3. Nature of conveyance: [] Assignment [] Merger [] Security Agreement [x] Change of Name [] Other Execution Date: July 9, 1999

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 1,309,637 1,336,270 Additional number(s) attached [] Yes [x] No

6. Total number of applications and registrations involved: 2

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Stanton J. Lovenworth, Esq. Internal Address: Street Address: Dewey Ballantine LLP 1301 Avenue of the Americas City: New York State: NY Zip: 10019

7. Total fee (37 CFR 3.41): \$65.00 [x] Enclosed [] Authorized to be charged to deposit account 8. Deposit account number: N/A (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. Stanton J. Lovenworth Name of Person Signing Signature Date 7/3/01

Total number of pages including cover sheet, attachments, and document: 10

07/12/2001 LINDLER 00000133 1309637

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

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State of Delaware
Office of the Secretary of State PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "DOEHLER-JARVIS TECHNOLOGIES, INC.", CHANGING ITS NAME FROM "DOEHLER-JARVIS TECHNOLOGIES, INC." TO "HARVARD INDUSTRIES RISK MANAGEMENT, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF JULY, A.D. 1999, AT 1 O'CLOCK P.M.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

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AUTHENTICATION: 1217338

010302947

DATE: 06-28-01

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**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
DOEHLER-JARVIS TECHNOLOGIES, INC.**

This Amended and Restated Certificate of Incorporation amends, restates and integrates the original Certificate of Incorporation filed with the Secretary of State of Delaware on March 21, 1994, as amended by a Certificate of Change of Registered Agent filed on January 6, 1997 and a Certificate of Amendment filed on November 19, 1998, of Doehler-Jarvis Technologies, Inc. The name under which the Corporation was originally incorporated is Doehler-Jarvis Technologies, Inc. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of §§245, 242 and 228 of the Delaware General Corporation Law.

ARTICLE 1: NAME

The name of the corporation ("Corporation") shall be Harvard Industries Risk Management, Inc.

ARTICLE 2: REGISTERED OFFICE AND REGISTERED AGENT

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

ARTICLE 3: PURPOSE

The nature of the business or purpose of the Corporation is to (i) fulfill the Corporation's obligations under the Contribution Agreement to be executed within two weeks of the filing of this Amended and Restated Certificate of Incorporation, as the same may be amended from time-to-time (the "Contribution Agreement"); (ii) acquire, hold and administer the assets received by the Corporation pursuant to the Contribution Agreement; (iii) engage in any activities incidental to the matters referred to in clauses (i) and (ii) hereof; (iv) engage in any activities required to maintain the Corporation's existence, franchises and licenses necessary to conduct its business; and (v) engage in any activities required by applicable law.

ARTICLE 4: CAPITALIZATION

1. *Total Stock.* The total number of shares of stock which the Corporation shall have authority to issue is one thousand one hundred seventy seven (1,177) shares, all of which are shares of Common Stock. One thousand (1,000) of such shares are to be designated as the Class A Common Stock of the Corporation, and one hundred seventy seven (177) of such shares

are to be designated as the Class B Common Stock of the Corporation, each with par value of \$0.01 per share. The shares of Class A and Class B Common Stock may be issued from time to time for such consideration and upon such terms as the Board of Directors of the Corporation may determine from time to time. Upon the filing of this Amended and Restated Certificate of Incorporation, each share of Common Stock, \$0.01 par value, of the Corporation shall, without any action by the Corporation or any stockholder, be reclassified and become one Class A Common Share, \$0.01 par value, of the Corporation.

2. *Dividends.* Dividends may be declared at such times and in such amounts as the Board of Directors of the Corporation may, in its sole and absolute discretion, direct to be made, subject to any limitations imposed by Delaware law. When, as and if dividends or other distributions are declared or made by the Board of Directors on the stock of the Corporation out of funds legally available for such purpose, whether payable in cash, in property or in securities of the Corporation, the holders of Class A Common Stock and Class B Common Stock shall be entitled to share ratably, in proportion to the total number of shares of stock held by each holder, in all dividends paid or distributions made with respect to the stock; provided, however, that if dividends or distributions are declared that are payable in shares of, in subscription or other rights to acquire shares of, or securities convertible into or exchangeable for shares of, any particular class of stock of the Corporation, such dividends or distributions shall be payable only to holders of such class of stock.

3. *Voting Rights.* The Corporation shall not create, designate, authorize or cause to be issued any class or series of nonvoting stock. For purposes of this Article 4, any class or series of stock, including any series of Preferred Stock, that has only such voting rights as are mandated by the Delaware General Corporation Law, shall be deemed to be nonvoting stock subject to the restrictions of this Article 4. The holders of the Class B Common Stock, voting as a class, shall be entitled to nominate and elect one (1) director of the Corporation, and the holders of the Class A Common Stock, voting as a class, shall be entitled to nominate and elect five (5) directors. Except as expressly set forth in the preceding sentence or elsewhere in this Amended and Restated Certificate of Incorporation, or as otherwise required by applicable law, the holders of Class B Common Stock shall have no voting rights, and all other voting rights with respect to the business, management and affairs of the Corporation shall be vested in the holders of Class A Common Stock.

4. *Consolidation or Merger.* Neither the consolidation or merger of the Corporation, nor the lease or conveyance of all or substantially all of its assets, shall be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this Article.

5. *Dissolution, liquidation, winding up.* In the event of a voluntary or involuntary liquidation, dissolution, or winding up of the corporation, the holders of Class B Common Stock shall be entitled to receive, out of the assets of the Corporation available for distribution to the Corporation's shareholders, whether those assets are capital or surplus of any nature, an amount per share equal to the lesser of (a) 15% of the total amount to be paid or distributed to all holders of Common Stock outstanding on the date of such liquidation, dissolution, or winding up, divided by the total number of shares of Class B Common Stock outstanding on the date of such liquidation, dissolution, or winding up, or (b) the Redemption Value, as determined in

accordance with Article 5 hereof (except that for purposes of this Article 4, "Redemption Date" shall mean the date of such liquidation, dissolution, or winding up); and the holders of Class A Common Stock shall be entitled to receive, ratably, all remaining assets of the Corporation. Except with respect to distributions payable to holders of Class B Common Stock pursuant to this Article 4, Section 5, no holder of Class B Common Stock shall have the right to bring suit against the Corporation, the Board of Directors of the Corporation or any individual director, seeking the payment of a dividend or the making of other distributions by the Corporation, any such right being waived by each holder of Class B Common Stock.

ARTICLE 5: REDEMPTION OF STOCK

1. *Limitation on Redemption of Common Stock.* So long as any shares of Class B Common Stock are issued and outstanding, the Corporation shall not redeem or otherwise acquire any issued and outstanding shares of Class A Common Stock.

2. *Redemption of Class B Common Stock by Corporation.* The Corporation may, to the extent that the Corporation shall have funds legally available for such payment, redeem shares of Class B Common Stock, in whole or in part, at any time or from time to time on or after July 15, 2006 for cash or other immediately available funds, at a price per share equal to 1.05 times the Redemption Value, as defined below (the "Redemption Price"). From and after the date fixed for redemption, all rights in respect of such shares of Class B Common Stock shall cease except the right to receive the Redemption Price and such shares of Class B Common Stock will no longer be outstanding unless, and only to the extent that, the Redemption Price therefor shall not have been paid. If less than all of the outstanding shares of Class B Common Stock are to be redeemed pursuant to any notice of redemption given by the Corporation as set forth in Section 3 of this Article 5, the Corporation shall redeem a portion of the shares of Class B Common Stock of each holder pro rata based on the number of shares of Class B Common Stock held by each holder and the Corporation shall execute and deliver to each such holder a new certificate for the unredeemed shares of Class B Common Stock.

3. *Notice of Redemption by Corporation.* Notice of redemption must be given to the holders of Class B Common Stock at the addresses shown on the books of the Corporation not less than thirty (30) days nor more than sixty (60) days prior to the redemption date. Each such notice shall state: (i) the redemption date; (ii) the total number of shares of Class B Common Stock to be redeemed and, if fewer than all of the issued and outstanding shares of Class B Common Stock are to be redeemed, the number of such shares of Class B Common Stock to be redeemed from each holder; (iii) the Redemption Price per share; and (iv) the place or places where certificates for such shares of Class B Common Stock are to be surrendered for payment of the Redemption Price. In addition, each such notice shall be accompanied by: (i) the Redemption Balance Sheet (as defined below); (ii) copies of actuarial valuations and other information used to prepare the Redemption Balance Sheet; and (iii) copies of all other information used to determine the Redemption Price. Upon surrender of the certificate for any shares of Class B Common Stock so called for redemption (properly endorsed or assigned for transfer, if the Board shall so require and the notice shall so state), such shares shall be redeemed by the Corporation on the date fixed for redemption.

4. *Redemption of Class B Common Stock Upon Request of Holders.* (a) The Corporation shall, to the extent that the Corporation shall have funds legally available for such payment, redeem shares of Class B Common Stock, at any time or from time to time on or after July 15, 2004 or upon the occurrence of any Exercise Event (as defined in (b) below) for cash or other immediately available funds, at a price per share equal to the Redemption Value, pursuant to a written request for such redemption made by any holder thereof. Such written request must be delivered by such holder to the Corporation not less than thirty (30) days nor more than sixty (60) days prior to the date proposed for redemption. Each such request shall state such proposed

redemption date and the total number of shares of Class B Common Stock to be redeemed. Upon receipt of such written request, the Corporation shall notify said holder, not more than fifteen (15) days thereafter, of the Redemption Value and the place or places where certificates for such shares of Class B Common Stock are to be surrendered for payment of the Redemption Value on the date requested for redemption by such holder. Upon surrender of the certificates for any shares of Class B Common Stock so requested for redemption (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation on the date fixed for redemption. From and after the date fixed for redemption, all rights in respect of such shares of Class B Common Stock shall cease except the right to receive the Redemption Value and such shares of Class B Common Stock will no longer be outstanding unless, and only to the extent that, the Redemption Value therefor shall not have been paid. If less than all of the outstanding shares of Class B Common Stock are to be redeemed pursuant to the written request of a holder, the Corporation shall execute and deliver to such holder a new certificate for the unredeemed shares of Class B Common Stock.

(b) For purposes of this Amended and Restated Certificate of Incorporation, the term "Exercise Event" means any of the following events:

(i) The Corporation (A) applies for, consents to or suffers to exist the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (B) makes a general assignment for the benefit of creditors, (C) commences a voluntary case under the federal bankruptcy laws or the bankruptcy or insolvency laws of any state (as now or hereinafter in effect), (D) is adjudicated bankrupt or insolvent, (E) files a petition seeking to take advantage of any other law providing for the relief of debtors, (F) acquiesces to, or fails to have dismissed, within ninety (90) days, any petition filed against it in any involuntary case under, such bankruptcy laws, or (G) takes any action for the purpose of effecting any of the foregoing.

(ii) A Change in Control occurs. "Change in Control" means that a Person acquires Control of the Corporation or the holder of the Class A Common Shares; provided, however, that it shall not be a Change in Control if the Corporation merges or consolidates with any Person which has, prior to such merger or consolidation, no material liabilities or obligations of any kind or character, and the surviving or resulting Person is a corporation that expressly assumes through its certificate of incorporation or in writing, in form and substance reasonably satisfactory to the holders of the Class B Common Shares, the Corporation's obligations under this Amended and Restated Certificate of Incorporation in respect of the Class B Common Shares.

"Control" means the ownership of, or right to vote, shares of capital stock or other ownership interests, directly or indirectly, of a Person sufficient to elect a majority of such other Person's Board of Directors or other similar governing body. The terms "Controlling" and "Controlled by" shall have a correlative meaning.

"Person" means any individual, corporation, partnership, limited liability company, limited partnership, trust, government, or other entity.

5. **Redemption Value.** The Redemption Value per share shall be equal to (x) 15% of the Net Worth (hereafter defined) of the Corporation, determined from the balance sheet of the Corporation (the "Redemption Balance Sheet") as of the last day of the calendar month immediately preceding the month in which the notice of redemption is sent or received by the Corporation (the "Balance Sheet Date"), divided by (y) the total number of shares of Class B Common Stock of the Corporation outstanding on the Balance Sheet Date; provided, however, in no event shall the Redemption Value per share exceed \$5650.

The term "Net Worth" means total assets as shown on the asset side of the Redemption Balance Sheet, less total liabilities as shown on the liability side of the Redemption Balance Sheet, except that no current or deferred tax asset or liability shall be included in the computation of Net Worth. The Redemption Balance Sheet shall be prepared using the same policies used by Harvard Industries, Inc. ("Harvard") generally, or as otherwise agreed by all of the shareholders of the Corporation, except that in determining the liabilities of the Corporation attributable to the Corporation's assumption of, or indemnification for, certain costs and expenses relating to the discharge of certain workers compensation and post-retirement employee benefits liabilities and obligations of Harvard, the accrual on the balance sheet will reflect the present value of all estimated future costs and expenses as of the Balance Sheet Date, using a discount rate of seven percent. Such estimates shall be prepared in accordance with normal practices, procedures, and conventions used by Harvard generally.

Any holder of Class B Common Stock shall have reasonable access at reasonable times to the books and records of the Corporation relating to the liabilities of the Corporation assumed from Harvard including, without limitation, records relating to the estimates of future costs and previously incurred expenses for the settlement and discharge thereof. In addition, prior to any date set for redemption under this Article 5, any holder of Class B Common Stock whose shares are being redeemed shall have reasonable access at reasonable times to the books and records of the Corporation that support the Redemption Balance Sheet. If, prior to the redemption date, holders of a majority of all then outstanding Class B Common Shares send to the Corporation written objection to the value of the assets or liabilities set forth in the Redemption Balance Sheet, then (i) the Net Worth will be determined by an arbitrator either agreed to in writing by the holders of a majority of all then outstanding Class B Common Shares and the Corporation, or, in the absence of such agreement, selected by lot from among the five largest nationally recognized accounting firms at that time (excluding, however, any firm that is then the regular outside accounting firm of the Corporation or any holder of a majority of all then outstanding Class B Common Shares), and (ii) the redemption date shall be delayed until the tenth (10th) business day after the arbitrator sends its determination of Net Worth to the Corporation and each holder of Class B Common Stock. The arbitrator's determination of Net Worth shall be binding on the Corporation and the holders of the Class B Common Shares. The holders of the Class B Common Stock shall pay the cost of such arbitrator except in the event that the arbitrator's determination of Net Worth exceeds by more than five percent (5%) the Corporation's determination of Net Worth, in which event the Corporation shall pay the cost of such arbitrator.

ARTICLE 6: DURATION

The Corporation shall have perpetual existence.

ARTICLE 7: BOARD POWER TO AMEND BYLAWS

In furtherance and not in limitation of the rights, powers, privileges, and discretionary authority granted or conferred by statute or under the Bylaws of the Corporation, the Board of Directors is expressly authorized to make, alter, amend, and rescind the Bylaws of the Corporation.

ARTICLE 8: CONFLICTS OF INTEREST

No contract or other transaction between the Corporation and any other corporation or other person or entity and no act of the Corporation shall in any way be affected or invalidated by the fact that any of the directors of the Corporation are pecuniarily or otherwise interested in, or are directors of, such other corporation.

ARTICLE 9: BOARD OF DIRECTORS

1. The Board of Directors of the Corporation shall consist of 6 directors who shall be divided into two classes. One class shall consist of five directors (the "Class A Directors") and only holders of Class A Common Stock shall be entitled to vote for the election or removal of Class A Directors. The second class of directors shall consist of one director (the "Class B Director") and only holders of Class B Common Stock shall be entitled to vote for the election or removal of the Class B Director. Each Class A Director and the Class B Director shall hold office until the next annual meeting of stockholders and until his successor shall have been elected and shall have qualified or until his earlier resignation or removal. The directors need not be shareholders.

2. Any vacancies on the Board of Directors among the Class A Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled by a majority vote of the remaining Class A Directors then in office, or if there shall be no Class A Directors remaining, by vote of the holders of Class A Common Stock at the next annual or special stockholders meeting. Any vacancy on the Board of Directors of the Class B Director resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled by vote of the holders of Class B Common Stock at the next annual or special stockholders meeting.

ARTICLE 10: LIMITED LIABILITY OF DIRECTORS; INDEMNIFICATION

1. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for

acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of laws, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

2. Each person who was or is made a party or is threatened to be made a party or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (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, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent permitted 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 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, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators: provided, however, that, except as provided in paragraph 3 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 contract 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 his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) 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 agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

3. If a claim under paragraph 2 of this Article 10 is not paid in full by the Corporation within 30 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 standards of conduct which make 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.

4. 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 the Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

5. The Corporation shall 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.

6. Neither the amendment nor repeal of this Article 10, nor the adoption of any provision of the Certificate of Incorporation or the By-laws of the Corporation, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall eliminate or reduce the affect of this Article 10 in respect of any acts or omissions occurring prior to such amendment, repeal, adoption or modification.

ARTICLE 11: AMENDMENT OF CERTIFICATE OF INCORPORATION

No amendment of this Amended and Restated Certificate of Incorporation requiring a vote of the stockholders under the Delaware General Corporation law shall be effected without the approval of holders of seventy-five percent (75%) of the shares of Class A Common Stock and holders of seventy-five percent (75%) of the shares of Class B Common Stock then issued and outstanding.

IN WITNESS WHEREOF, said Doehler-Jarvis Technologies, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by D. Craig Bowman, its Vice President, this 9th day of July, 1999.

DOEHLER-JARVIS TECHNOLOGIES, INC.

By: 

Name: D. Craig Bowman

Title: Vice President