

Filing Fee ^{50.00} ~~\$30.00~~

985

State of Rhode Island and Providence Plantations

**ARTICLES OF AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF**

AMTROL Inc.

Pursuant to the provisions of Section 7-1.1-56 of the General Laws, 1956, as amended, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the corporation is AMTROL Inc.

SECOND: The shareholders of the corporation on February 26, 1993, in the manner prescribed by Chapter 7-1.1 of the General Laws, 1956, as amended, adopted the following amendment(s) to the Articles of Incorporation:

[Insert Amendment(s)]

See Exhibit A

THIRD: The number of shares of the corporation outstanding at the time of such adoption was 5,380,810; and the number of shares entitled to vote thereon was 5,380,810

FOURTH: The designation and number of outstanding shares of each class entitled to vote thereon as a class were as follows: (if inapplicable, insert "none")

<u>Class</u>	<u>Number of Shares</u>
Common Stock	5,380,810

FIFTH: The number of shares voted for such amendment was 4,005,650; and the number of shares voted against such amendment was 0

SIXTH: The number of shares of each class entitled to vote thereon as a class voted for and against such amendment, respectively, was: (if inapplicable, insert "none")

<u>Class</u>	<u>Number of Shares Voted</u>	
	<u>For</u>	<u>Against</u>
Common Stock	4,005,650	0

SEVENTH: The manner, if not set forth in such amendment, in which any exchange, reclassification, or cancellation of issued shares provided for in the amendment shall be effected, is as follows: (If no change, so state)

No change

EIGHTH: The manner in which such amendment effects a change in the amount of stated capital, and the amount of stated capital as changed by such amendment, are as follows: (If no change, so state)

No change

Dated March 18, 19 93

AMTROL, Inc.

By

Its

President

and

Its

Secretary

STATE OF RHODE ISLAND

COUNTY OF Kent

} Sc.

At West Warwick in said county on this 18 day of
March, 19 93, personally appeared before me Michael J.
Regan, who, being by me first duly sworn, declared that he is the
Secretary of AMTROL Inc.

that he signed the foregoing document as Secretary of the
corporation, and that the statements therein contained are true.

Mary L. Sanderson
Notary Public

(NOTARIAL SEAL)

RECEIVED
SECRETARY OF STATE
COOPERATION DIV.

MAR 22 8 33 AM '93

Handwritten: #911414

Rec'd & Filed MAR 22 1993

EXHIBIT A
TO
ARTICLES OF AMENDMENT
TO THE
AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF AMTROL INC.

SIXTH: Provisions for the regulation of the internal affairs of the Corporation are as follows:

A. Directors.

(i) Except as may be provided pursuant to votes of the Board of Directors, adopted pursuant to the provisions of these Articles of Incorporation, establishing any series or class of Preferred Stock and granting to holders of shares of such series or class of Preferred Stock rights to elect additional directors under specified circumstances, the number of directors of the Corporation shall be determined from time to time in the manner described in the By-laws. In the event that at any time the number of the directors, other than those who may be elected by the holders of one or more series of Preferred Stock voting separately as a class pursuant to such vote or votes, shall be fixed in the manner provided in the By-laws at nine (9) or more (exclusive of directors, if any, to be elected by holders of any one or more series of Preferred Stock voting separately as a class) then, at the next meeting of shareholders at which such directors are to be elected (the "Classification Meeting"), the directors (other than any directors to be elected by holders of one or more series of Preferred Stock voting separately as a class) shall be classified with respect to the time for which they severally hold office into three classes, as nearly equal in number as possible, as shall be provided in the manner specified in the By-laws, one class initially to be elected for a term expiring at the first annual meeting of shareholders to be held after the Classification Meeting, another class initially to be elected for a term expiring at the second annual meeting of shareholders to be held after the Classification Meeting and another class initially to be elected for a term expiring at the third annual meeting of shareholders to be held after the Classification Meeting with the members of each class to hold office until their successors have been elected and qualified. At each annual meeting of shareholders, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of shareholders held in the third year following the year of their election. No director need be a shareholder.

(ii) Except as otherwise provided in a vote of the Board of Directors, adopted pursuant to the provisions of these Articles of Incorporation, establishing a series or class of Preferred Stock and creating in the holders of shares of such series or class rights to elect directors under specified circumstances, newly created directorships resulting from any increase in the number of directors and any vacancies 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 if less than a quorum of the Board of Directors, or by a sole remaining

director. Any director elected in accordance with the preceding sentence shall hold office until the annual meeting of shareholders at which the term of office of the class to which such director has been elected expires, and until such director's successor shall have been duly elected and qualified. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(iii) Subject to the rights of holders of Preferred Stock to elect directors under circumstances specified in a vote of the Board of Directors, adopted pursuant to the provisions of these Articles of Incorporation establishing such series or class, any director may be removed from office only for cause by the affirmative vote of the holders of at least 75% of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class.

(iv) Notwithstanding anything contained in these Articles of Incorporation to the contrary, the affirmative vote of the holders of at least 75% of the voting power of the Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provision inconsistent with, any provision of this Section A of Article SIXTH.

B. Elimination of Directors' Liability. A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of the director's duty as a director, except for (i) liability for any breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) liability for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) liability imposed pursuant to the provisions of Section 43 of the Rhode Island Business Corporation Act, as amended, or (iv) liability for any transaction from which the director derived an improper personal benefit (unless said transaction is permitted by Section 37.1 of the Rhode Island Business Corporation Act, as amended). If the Rhode Island Business Corporation Act is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Rhode Island Business Corporation Act. Any repeal or modification of this Section B of Article SIXTH by the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

C. Indemnification.

(i) **By-law and Indemnity Agreements: Statutory Provisions.** The Board of Directors of the Corporation may include provisions in its By-laws, or may authorize agreements to be entered into with each director, officer, employee or other agent of the Corporation (an "Indemnified Person") for the purpose of indemnifying an Indemnified Person in the manner and to the extent permitted by Section 4.1 of the Rhode Island Business Corporation Act, as amended.

(ii) **By-law and Indemnity Agreements: Other Provisions.** In addition to the authority conferred upon the Board of Directors of the Corporation by Paragraph C(i) hereof, the Board of Directors of the Corporation may include provisions in its By-laws, or may authorize agreements to be entered into with each Indemnified Person, for

the purpose of indemnifying such person in the manner and to the extent provided herein:

(a) The By-law provisions or agreements authorized hereby may provide that the Corporation shall, subject to the provisions of this Section C of Article SIXTH, pay, on behalf of an Indemnified Person any Loss or Expenses arising from any claim or claims which are made against the Indemnified Person (whether individually or jointly with other Indemnified Persons) by reason of any Covered Act of the Indemnified Person.

(b) For the purposes of this Section C of Article SIXTH, when used herein:

(1) "Loss" means any amount which an Indemnified Person is legally obligated to pay for any claim for Covered Acts and shall include, without being limited to, damages, settlements, fines, penalties or, with respect to employee benefit plans, excise taxes;

(2) "Expenses" means any expenses incurred in connection with the defense against any claim for Covered Acts, including, without being limited to, legal, accounting or investigative fees and expenses; and

(3) "Covered Act" means any act or omission of an Indemnified Person in the Indemnified Person's capacity as a official capacity with the Corporation.

(c) The By-law provisions or agreements authorized hereby may cover Loss or Expenses arising from any claims made against a retired Indemnified Person, the estate, heirs or legal representative of a deceased Indemnified Person or the legal representative of an incompetent, insolvent or bankrupt Indemnified Person, where the Indemnified Person was an Indemnified Person at the time the Covered Act upon which such claims are based occurred.

(d) Any By-law provisions or agreements authorized hereby may provide for the advancement of Expenses to an Indemnified Person prior to the final disposition of any action, suit or proceeding, or any appeal therefrom, involving such Indemnified Person and based on the alleged commission by such Indemnified Person of a Covered Act, subject to an undertaking by or on behalf of such Indemnified Person to repay the same to the Corporation if the Covered Act involves a claim for which indemnification is not permitted under clause (e), below, and the final disposition of such action, suit, proceeding or appeal results in an adjudication adverse to such director or officer.

(e) The By-law provisions or agreements authorized hereby may not indemnify an Indemnified Person from and against any Loss, and the Corporation shall not reimburse for any Expenses, in connection with any claim or claims made against an Indemnified Person: (1) any breach of the Indemnified Person's duty of loyalty to the Corporation or its shareholders; (2) acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law; (3) action contravening Section 43 of the Rhode Island Business Corporation Act as amended; (4) the realization by the Indemnified Person of profits subject to the provisions of Section 16(b) of the Securities Exchange Act of 1934; or (5) a transaction from which the person seeking indemnification derived improper personal benefit (unless the transaction is permitted by Section 37.1 of the Rhode Island Business Corporation Act, as amended).

(f) The By-law provisions or agreements authorized hereby may contain such other terms and conditions as the Board of directors, in its sole discretion, determines to be consistent with the provisions of this Article.

D. Approval of Business Combinations.

(i) In addition to any vote required under the Rhode Island Business Corporation Act, the affirmative vote of the holders of at least 75% of the outstanding shares of Common Stock entitled to vote thereon (not including shares deemed beneficially owned by a Related Person [as hereinafter defined]) shall be required in order to authorize and/or approve a Business Combination (as hereinafter defined). Such affirmative vote shall be required notwithstanding any other provision of these Articles, any provision of law, or any agreement with any regulatory agency or national securities exchange which might otherwise permit a lesser vote or no vote.

(ii) For the purposes of this Section D of Article SIXTH the following definitions apply:

(a) The term "Related Person" shall mean and include (1) any "person" as such term is used in Section 13(d) and Section 14(d) of the Securities Exchange Act of 1934, as in effect on the date of the filing of these Articles of Amendment (the "1934 Act") (other than any trustees or other fiduciary holding securities under an employee benefit plan of the Corporation, or any corporation owned, directly or indirectly, by the shareholders of the Corporation in the same proportions as their ownership of shares of Common Stock of the Corporation) which, together with its "affiliates" (as that term is defined in Rule 12b-2 of the General Rules and Regulations under the 1934 Act, as in effect on the date of filing of this Amendment to the Articles or as subsequently amended, including any successor regulation [the "1934 Act Regulations"]) "beneficially owns" (as that term is defined in Rule 13d-3 of the 1934 Act Regulations) in the aggregate 5% or more of the outstanding shares of the Common Stock of the Corporation; and (2) any "affiliate" (as that term is defined in Rule 12b-2 of the 1934 Act Regulations) of any such person; provided that the term "Related Person" shall not include any person who (x) beneficially owned shares of Common Stock in excess of the five percent (5%) limitation set forth herein as of March 1, 1993 or (y) acquired the shares from a person described in (x) above by gift, inheritance or in a transaction in which no consideration was exchanged. Without limitation, any shares of the Common Stock of the Corporation which any Related Person has the right to acquire pursuant to any agreement, or upon exercise or conversion rights, warrants or options, or otherwise, shall be deemed "beneficially owned" by such Related Person.

(b) The term "Business Combination" as used in this Section D of Article SIXTH shall mean any of the following:

(1) any merger or consolidation of the Corporation or a subsidiary of the Corporation which constitutes a Substantial Part (as hereinafter defined) of the assets of the Corporation with another

corporation, other than a merger or consolidation which would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Corporation or such surviving entity outstanding immediately after such merger or consolidation;

(2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition of all or any Substantial Part of the assets of the Corporation (including without limitation any voting securities of a subsidiary);

(3) any reclassification of the Common Stock of the Corporation, or any recapitalization involving the Common Stock of the Corporation, other than a recapitalization of the Corporation in which no Related Person acquires more than 20% of the combined voting power of the Corporation's then outstanding securities;

(4) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation; and

(5) any agreement, contract or other arrangement providing for any of the transactions described in this subparagraph (ii) of Section D of Article SIXTH.

(c) The term "Substantial Part" shall mean more than 50% of the total assets of the Corporation, as of the end of its most recent fiscal year ending prior to the time the determination is made.

(iii) Notwithstanding anything contained in the Articles of Incorporation to the contrary, the affirmative vote of the holders of at least 75% of the voting power of the Common Stock shall be required to amend or repeal, or adopt any provision inconsistent with, any provision of this Section D of Article SIXTH.

E. Meetings of Shareholders. Except as required by law and subject to the rights of the holders of any series of Preferred Stock established pursuant to the provisions of these Articles of Incorporation, special meetings of shareholders may be called only by the Board of Directors or the President pursuant to a resolution approved by a majority of the entire Board of Directors of the Corporation (as determined in accordance with the By-laws). Notwithstanding anything contained in these Articles of Incorporation to the contrary, the affirmative vote of the holders of at least 75% of the voting power of the Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provision inconsistent with, any provision of this Section E of Article SIXTH.

F. Distribution of Capital Surplus. The Board of Directors shall have the authority to make distributions to shareholder from the capital surplus of the corporation without the approval of the holders of shares of any class.

G. Amendment of By-laws. The Board of Directors may from time to time make, amend, supplement or repeal the By-laws; provided, however, that the shareholders may change or repeal any By-law adopted by the Board of Directors; and provided, further, that no amendment or supplement to the By-laws adopted by the Board of Directors shall vary or conflict with any amendment or supplement adopted by the shareholders. Notwithstanding the foregoing and anything contained in these Articles of Incorporation to the contrary, Section 3 ("Special Meetings") of Article II ("Meetings of Shareholders") of the Bylaws, Section 2 ("Number, Election and Terms") or Section 10 ("Removal of Directors") of Article III ("Directors") of the By-laws, or the final sentence of Article XII ("Amendments") of the By-laws shall not be amended or repealed, and no provision inconsistent with any thereof shall be adopted, without the affirmative vote of the holders of at least 75% of the voting power of the Voting Stock, voting together as a single class. Notwithstanding anything contained in these Articles of Incorporation to the contrary, the affirmative vote of the holders of at least 75% of the voting power of the Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provision inconsistent with, any provision of this Section G of Article SIXTH.

H. Amendment of Articles of Incorporation. The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon shareholders herein are granted subject to this reservation.

WP:Farrell:C0092000 .FP6