AUTOBYTEL INC

FORM 10-Q
(Quarterly Report)

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2009

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____to _____.

Commission file number 0-22239

Autobytel Inc.

(Exact name of registrant as specified in its charter)

Delaware **(State or other jurisdiction of incorporation or organization)**	**33-0711569** **(I.R.S. Employer identification number)**
18872 MacArthur Boulevard, Suite 200, Irvine, California **(Address of principal executive offices)**	**92612** **(Zip Code)**

(949) 225-4500
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act of 1934 during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every interactive data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.) Yes ☐ No ☒

As of April 15, 2009, there were 45,219,679 shares of the Registrant's Common Stock outstanding.

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PART I. FINANCIAL INFORMATION

Item 1. ***Unaudited Consolidated Condensed Financial Statements***

AUTOBYTEL INC.

UNAUDITED CONSOLIDATED CONDENSED BALANCE SHEETS
(Amounts in thousands, except share and per-share data)

	March 31, 2009	December 31, 2008
Assets		
Current assets:		
Cash and cash equivalents	$ 25,772	$ 27,393
Accounts receivable, net of allowances for bad debts and customer credits of $1,353 and $1,277, respectively	8,616	10,047
Prepaid expenses and other current assets	1,206	1,378
Total current assets	35,594	38,818
Property and equipment, net	2,005	2,421
Investment and other assets	716	763
Total assets	$ 38,315	$ 42,002
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 3,753	$ 3,579
Accrued expenses and other current liabilities	3,020	6,432
Deferred revenues	1,485	1,835
Total current liabilities	8,258	11,846
Non-current liabilities	166	181
Total liabilities	8,424	12,027
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Preferred stock, $0.001 par value; 11,445,187 shares authorized; none outstanding	—	—
Common stock, $0.001 par value; 200,000,000 shares authorized and 45,219,679 shares issued and outstanding	45	45
Additional paid-in capital	300,988	300,720
Unrealized gain from investment	573	568
Accumulated deficit	(271,715)	(271,358)
Total stockholders' equity	29,891	29,975
Total liabilities and stockholders' equity	$ 38,315	$ 42,002

See accompanying notes.

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AUTOBYTEL INC.
UNAUDITED CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(Amounts in thousands, except per-share data)

	Three Months Ended March 31,	
	2009	2008
Net revenues:		
Lead fees	$12,152	$18,161
Advertising	1,687	2,499
Other revenues	31	37
Total net revenues	13,870	20,697
Cost of revenues (excludes depreciation of $37 in 2009 and $73 in 2008)	8,887	13,825
Gross profit	4,983	6,872
Operating expenses:		
Sales and marketing	2,640	5,195
Technology support	1,461	4,593
General and administrative	4,053	6,349
Patent litigation settlement	(2,667)	(2,667)
Total operating expenses	5,487	13,470
Operating loss	(504)	(6,598)
Interest and other income	147	512
Provision for income taxes	—	—
Loss from continuing operations	(357)	(6,086)
Discontinued operations, net	—	4,136
Net loss	$ (357)	$ (1,950)
Basic and diluted loss per common share:		
Loss from continuing operations	$ (0.01)	$ (0.14)
Discontinued operations, net	—	0.09
Basic and diluted loss per common share	$ (0.01)	$ (0.05)
Comprehensive loss:		
Net loss	$ (357)	$ (1,950)
Unrealized gain from investment	5	33
Comprehensive loss	$ (352)	$ (1,917)

See accompanying notes.

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AUTOBYTEL INC.

UNAUDITED CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS
(Amounts in thousands)

	Three Months Ended March 31,	
	2009	2008
Cash flows from operating activities:		
Net loss	$ (357)	$ (1,950)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	495	1,183
Amortization of discounts on securities	—	(105)
Provision for bad debts	384	352
Provision for customer credits	247	157
Gain on sale of AVV business	—	(4,204)
Share-based compensation	268	910
Changes in assets and liabilities, net of discontinued operations:		
Accounts receivable	800	(1,662)
Prepaid expenses and other current assets	172	145
Investment and other non-current assets	11	44
Accounts payable	174	903
Accrued expenses and other liabilities	(3,412)	(1,378)
Deferred revenues	(350)	(33)
Non-current liabilities	(15)	21
Net cash used in operating activities	(1,583)	(5,617)
Cash flows from investing activities:		
Maturities of short-term investments	—	(13,903)
Purchases of property and equipment	(38)	(508)
Proceeds from sale of AVV business	—	21,396
Net cash (used in) provided by investing activities	(38)	6,985
Cash flows from financing activities:		
Proceeds from exercise of stock options and awards issued under the employee stock purchase plan	—	89
Net cash provided by financing activities	—	89
Net (decrease) increase in cash and cash equivalents	(1,621)	1,457
Cash and cash equivalents, beginning of period	27,393	27,601
Cash and cash equivalents, end of period	$25,772	$ 29,058

See accompanying notes.

AUTOBYTEL INC.
NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

1. Organization and Operations of Autobytel

Autobytel Inc. ("Autobytel" or the "Company") is an automotive marketing services company that assists automotive dealers and manufacturers sell cars. By connecting consumers to automotive dealers and manufacturers through internet lead referral programs and on-line advertising, the Company provides automotive dealers and manufacturers with opportunities to efficiently market their vehicles to potential customers. The Company purchases from third parties and generates from its own websites consumer internet requests for pricing and availability on new and used cars as well as for vehicle financing ("Leads"). The Company sells the Leads primarily to its automotive dealer and manufacturer customers. Leads are purchased from a network of supplier websites, such as Edmunds, AOL, Kelley Blue Book, and Yahoo, ("Network Websites"). These Network Websites provide substantially all of the Company's Leads. Additionally, the Company owns and operates consumer-facing automotive websites, including Autobytel.com ®, Autoweb.com ®, AutoSite.com ®, Car.com sm, CarSmart.com ®, CarTV.com ®, and MyRide.com ® that provide consumers with information and tools to aid them with their automotive purchase decisions. The Company's owned websites provide a small percentage of its Leads and a significant portion of its page views for the advertising component of its advertising business. In addition to its websites, the Company provides advertising opportunities for automotive manufacturers and other automotive advertisers through its marketing network, which includes its AutoReach advertising network ("Ad Network") and co-branded websites, such as ESPN.com.

The Company was incorporated in Delaware on May 17, 1996. Its principal corporate offices are located in Irvine, California. The Company's common stock is listed on The NASDAQ Global Market under the symbol ABTL.

The Company experienced negative cash flow in the first three months of 2009 and throughout 2008, and at March 31, 2009, had an accumulated deficit of $272 million. The Company continues to face many risks and uncertainties related to the general economic conditions and the automotive industry in particular, however, the Company believes current cash and cash equivalents are sufficient to meet anticipated cash needs for working capital and capital expenditures for at least the next 12 months.

2. Basis of Presentation, Unaudited Interim Financial Statements

The unaudited consolidated condensed financial statements of Autobytel, presented herein are presented on the same basis and can be compared to the unaudited consolidated financial statements reported in the Company's prior quarterly information in the Company's 2008 Annual Report on Form 10-K, filed with the SEC. The accompanying consolidated condensed balance sheet as of December 31, 2008 has been derived from the audited consolidated financial statements included in Autobytel's Annual Report on Form 10-K for the year ended December 31, 2008.

Autobytel has made its disclosures in accordance with accounting principles generally accepted in the United States of America as they apply to interim reporting, but condensed or omitted certain information and disclosures normally included in notes to consolidated financial statements in accordance with the Securities and Exchange Commission's rules and regulations. The unaudited consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and the notes thereto in Autobytel's Annual Report on Form 10-K for the year ended December 31, 2008.

In the opinion of Autobytel's management, the accompanying unaudited interim consolidated condensed financial statements contain all adjustments (consisting of normal recurring adjustments) to fairly present Autobytel's consolidated condensed financial position as of March 31, 2009 and the consolidated condensed statements of operations and cash flows for the three months ended March 31, 2009 and 2008, as applicable. The statement of operations and cash flows for the periods ended March 31, 2009 and 2008 are not necessarily indicative of the results of operations or cash flows expected for the year or any other period.

The Company sold certain assets and liabilities of its AVV Inc. ("AVV") business on January 23, 2008 (See Note 7). Accordingly, AVV is presented in the unaudited consolidated condensed financial statements as discontinued operations. As discontinued operations, revenues and expenses are presented on a net basis and stated separately from the respective captions in continuing operations in the Consolidated Condensed Statements of Operations and Comprehensive Loss. Expenses included in discontinued operations are direct costs that will be eliminated from future operations.

AUTOBYTEL INC.
NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

Certain reclassifications have been made to prior period information to conform to the current period presentations.

3. Recent Accounting Pronouncements

SFAS 157: In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standard ("SFAS") 157, "Fair Value Measurements". SFAS 157 establishes a framework for measuring fair value and expands disclosures of fair value measurements. SFAS 157 is effective for financial statements issued for periods beginning after November 15, 2007. In February 2008, the FASB issued FASB Staff Position ("FSP") FAS 157-2 which defers the effective date of SFAS 157 for non-financial assets and liabilities that are not recorded at fair value on a recurring basis until periods beginning after November 15, 2008. The adoption of the non-deferred portion of SFAS 157 on January 1, 2008 and the adoption of the deferred portion of SFAS 157 on January 1, 2009 did not have an impact on the Company's consolidated financial position, results of operations or cash flows.

SFAS 161: In March 2008, the FASB issued SFAS 161, "Disclosures about Derivative Instruments and Hedging Activities – an Amendment of FASB Statement 133." SFAS 161 provides new disclosure requirements for derivative and hedging activities, and is effective for periods beginning after November 15, 2008. The Company adopted SFAS 161 on January 1, 2009 and it did not have a material effect on its consolidated financial statements.

SFAS 160: In December 2007, the FASB issued SFAS 160, "Non-controlling Interests in Consolidated Financial Statements – an amendment of ARB 51." This standard provides new accounting guidance and disclosure requirements for non-controlling interests in a subsidiary. Since the Company does not have non-controlling interests in its subsidiaries, the adoption of SFAS 161 on January 1, 2009 did not have any effect on its consolidated financial statements.

SFAS 141(R): In December 2007, the FASB issued SFAS No. 141R, "Business Combinations." SFAS 141R establishes principles and requirements for how the acquirer of a business recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any non-controlling interest in the acquiree. The statement also provides guidance for recognizing and measuring the goodwill acquired in the business combination and determines what information to disclose to enable users of financial statements to evaluate the nature and financial effects of the business combination. SFAS No. 141R is effective for business combinations occurring after December 31, 2008. The nature and magnitude of the specific effect the adoption of SFAS 141R will have on the Company's consolidated financial statements will depend on the nature, terms, size of acquisitions, if any, it may consummate subsequent to the effective date of January 1, 2009.

4. Computation of Basic and Diluted Net Loss Per Share

Basic net loss per share is computed using the weighted average number of common shares outstanding during the period, excluding any unvested restricted stock. Diluted net loss per share is computed using the weighted average number of common shares, and if dilutive, potential common shares outstanding, as determined under the treasury stock method, during the period. Potential common shares consist of unvested restricted stock and the common shares issuable upon the exercise of stock options.

The following are the share amounts utilized to compute the basic and diluted net loss per share for the three months ended March 31, 2009 and 2008:

	Three Months Ended March 31,	
	2009	2008
Basic and diluted shares:		
Weighted average common shares outstanding	45,219,679	43,817,163
Weighted average unvested restricted stock outstanding	(720,000)	—
Basic and dilutive shares	44,499,679	43,817,163

For the three months ended March 31, 2009 and 2008, 7.0 million and 8.1 million, respectively, anti-dilutive potential shares of common stock have been excluded from the calculation of diluted earnings per share

AUTOBYTEL INC.
NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

5. Share-Based Compensation

Share-based compensation expense is included in costs and expenses in the accompanying Consolidated Condensed Statement of Operations and Comprehensive Loss as follows:

	Three Months Ended March 31,	
	2009	2008
	(in thousands)	
Cost of revenues	$ 6	$ 29
Sales and marketing	84	194
Technology support	22	142
General and administrative *(a)*	156	537
Share-based compensation expense included in continuing operations	268	902
Share-based compensation expense included in discontinued operations	—	8
Total share-based compensation costs	$ 268	$ 910

(a) Approximately $46,000 of accelerated stock compensation expense is included in the three months ended March 31, 2009 amount. This award accelerated vesting in accordance with the original award agreement.

Stock Options

During the three months ended March 31, 2009, the Company granted 200,000 service-based stock options at a weighted average exercise price of $0.48 per share, with a weighted average grant date fair value of $0.25, and for the three months ended March 31, 2008, granted 72,500 service-based stock options, with a weighted average grant date fair value of $1.19. These options vest one-third on the first anniversary of the grant date and ratably over twenty-four months thereafter.

During the three months ended March 31, 2008 the Company granted 216,667 performance based stock options at a weighted average exercise price of $4.60 per share, with a weighted average fair value of $0.81. These awards vest based on attaining certain performance criteria as of March 2009. These awards did not vest as the employees who were granted these awards terminated employment with the Company prior to March 2009.

During the three months ended March 31, 2009, the Company granted 1,072,500 stock options at an exercise price of $0.35 to substantially all employees with a fair market value per option granted of $0.19. One third of these options cliff vest on the first anniversary following the grant date and the remaining two thirds vest ratably over twenty four months thereafter. In addition, the remaining two-thirds of the awards must meet additional conditions in order to be exercisable. One third of the remaining options must also satisfy the condition that the closing price of Autobytel's common stock over any 30 consecutive trading days is at least two times the option exercise price to be exercisable. The final one third of the remaining options must also satisfy the condition that the closing price of Autobytel's common stock over any 30 consecutive trading days is at least three times the option exercise price to be exercisable. Certain of these options will accelerate upon a change in control.

There were no stock option exercises during the three months ended March 31, 2009. The Company issued 62,043 shares of common stock upon exercise of stock options for the three months ended March 31, 2008. The grant date fair value of all options granted in the three months ended March 31, 2009 and 2008 were $0.20 and $0.90, respectively. The grant date fair value of all stock options granted during these periods was estimated using the Black-Scholes option-pricing model using the following weighted average assumptions:

	Three Months Ended March 31,	
	2009	2008
Dividend yield	—	—
Volatility	72%	61%
Risk-free interest rate	1.6%	2.7%
Expected life (years)	4.1	4.1

AUTOBYTEL INC.
NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

Employee Stock Purchase Plan

The Company's Employee Stock Purchase Plan ("ESPP") was suspended by the Company's Board of Directors during the third quarter of 2008. The Company issued 62,043 awards during the three months ended March 31, 2008 under the ESPP, with a weighted-average grant date fair value per award of $0.64.

Stockholder Rights Plan

In July 2004, the Board of Directors approved the adoption of a stockholder rights plan under which all stockholders of record as of August 10, 2004 received rights to purchase shares of Series A Junior Participating Preferred Stock. The rights were distributed as a non-taxable dividend and will expire July 30, 2014.

In January 2009, the stockholder rights plan was amended to allow Coghill Capital Management LLC and certain of its affiliates (collectively "Coghill") to hold up to 8,118,410 shares without becoming an acquiring person under the stockholder rights plan, subject to various conditions set forth in the amendment, including Coghill's execution of and compliance with a standstill agreement.

On April 24, 2009, the stockholder rights plan was further amended to incorporate the following material changes: (i) the purchase price is decreased to $1.40 per right; (ii) the Board of Directors may effect an exchange of the rights at an exchange ratio of one share of Autobytel common stock per right at any time after a person becomes an acquiring person; and (iii) in effecting an exchange, Autobytel may enter into a trust agreement by which it transfers to the trust created by such trust agreement, all shares of Autobytel common stock issued pursuant to the exchange. The trust would hold the shares of the Autobytel common stock for the benefit of stockholders entitled to receive them pursuant to the exchange. Stockholders would receive shares from the trust after complying with the relevant terms of the trust agreement.

The rights will be exercisable only if a person or group acquires 15% or more of the common stock of the Company or announces a tender offer for 15% or more of the common stock. If a person or group acquires 15% or more of the common stock, all rightholders, except the acquirer, will be entitled to acquire at the then exercise price of a right that number of shares of the Company's common stock which at the time will have a market value of two times the exercise price of the right. Under certain circumstances, all rightholders, other than the acquirer, will be entitled to receive at the then exercise price of a right that number of shares of common stock of the acquiring company which at the time will have a market value of two times the exercise price of the right. The initial exercise price of a right is $1.40.

The Board of Directors may terminate the rights plan at any time or redeem the rights prior to the time a person or group acquires more than 15% of the Company's common stock.

6. Selected Balance Sheet Accounts

Investment

Autobytel has an investment in one publicly traded company's equity securities that it categorizes as available-for-sale in accordance with SFAS 115, "Accounting for Certain Investments in Debt and Equity Securities." Investments categorized as available-for-sale are measured at fair value with unrealized gains and losses included in accumulated comprehensive income as a separate component of stockholders' equity. In accordance with SFAS 157, "Fair Value Measurements," the Company records its investments based on "Level 1" inputs, which are quoted market prices in active markets for identical assets or liabilities. As of March 31, 2009 and December 31, 2008, the balance of the investment was $0.6 million, with $0.6 million recorded in accumulated other comprehensive income. As discussed in Note 9, the Company's investment is subject to a legal complaint and is therefore classified as a long term asset.

Property and Equipment

Property and equipment consisted of the following at:

	March 31, 2009	December 31, 2008
	(in thousands)	
Computer software and hardware	$ 9,120	$ 9,138
Furniture and equipment	1,487	1,715
Leasehold improvements	959	1,249
Capitalized internal use software	912	912
	12,478	13,014
Less – Accumulated depreciation and amortization	(10,473)	(10,593)
	$ 2,005	$ 2,421

At March 31, 2009 and December 31, 2008, capitalized internal use software, net of amortization, and development in process were $0.3 million and $0.4 million, respectively.

The Company periodically reviews long-lived assets to determine if there is any impairment of these assets in accordance with SFAS 144,

“Accounting for the Impairment or Disposal of Long-Lived Assets.” The Company assesses the impairment of these assets, or the need to accelerate amortization, whenever events or changes in circumstances indicate that the carrying value may not be recoverable. The Company’s judgments regarding the existence of impairment indicators are based on legal factors, market conditions and operational performance of our long-lived assets. The Company evaluates the assets for impairment based on the estimated future undiscounted cash flows expected to result from the use of the assets and their eventual disposition. Should the carrying amount of an asset exceed its estimated future undiscounted cash flows, an impairment loss is recorded for the excess of the asset’s carrying amount over its fair value. Fair value is generally determined based on a valuation process that provides an estimate of a fair value of these assets using a discounted cash flow model, which includes assumptions and estimates.

Concentration of Credit Risk and Risks Due to Significant Customers

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents, investments and accounts receivable. Cash and cash equivalents are primarily maintained with three financial institutions in the United States. Deposits held by banks may exceed the amount of insurance provided for such deposits. Generally these deposits may be redeemed upon demand. Accounts receivable are primarily derived from fees billed to automotive dealers and automotive manufacturers. The Company generally requires no collateral to support its accounts receivables and maintains an allowance for bad debts for potential credit losses.

AUTOBYTEL INC.
NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

The Company has a concentration of credit risk with its automotive industry related accounts receivable balances, and in particular with the three largest U.S. automobile manufacturers (General Motors, Chrysler LLC, and Ford) ("Big Three"). During the first three months of 2009 approximately 10% of the Company's total revenues were derived from the Big Three, and approximately 11% or $1.1 million of gross accounts receivable relate to the Big Three at March 31, 2009. The Company has not established a specific allowance for doubtful accounts related to the Big Three accounts receivable at March 31, 2009.

Accrued Expenses and Other Current Liabilities

As of March 31, 2009 and 2008, accrued expenses and other current liabilities consisted of the following:

	As of March 31,	
	2009	2008
	(in thousands)	
Compensation and related costs	$1,475	$2,892
Accrued severance	333	78
Professional fees	234	277
Other accrued expenses	199	778
Amounts due to customers	439	1,318
Outstanding checks	147	291
Employee benefits	53	131
State income tax payable	—	397
Other current liabilities	140	270
Total accrued expenses and other current liabilities	$3,020	$6,432

7. Discontinued Operations

On January 23, 2008, the Company completed the sale of certain assets and liabilities of its AVV, Inc. data extraction and customer relationship management software business to Dominion Enterprises ("Dominion") for approximately $22.75 million in cash, plus a working capital payment of approximately $1.0 million. The Company recorded a gain on sale of approximately $4.2 million in connection with the transaction in the three months ended March 31, 2008. The parties also agreed to a $1.9 million escrow in connection with the transaction. Per the escrow agreement, certain contingencies may apply to full recovery of the escrow amount upon the one year anniversary of the sale. Dominion has notified the escrow holder of a claim against the escrowed amount in connection with Dominion's claim for indemnification under the AVV business purchase agreement with respect to the Insweb Patent Litigation described under Note 9 to these Notes to Unaudited Consolidated Condensed Financial Statements-Commitments and Contingencies- *Litigation* .

AUTOBYTEL INC.
NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

For the three months ended March 31, 2009 and 2008, the results of operations of AVV are reported as discontinued operations, net of taxes, as follows:

	Three Months Ended March 31,	
	2009	2008
	(in thousands)	
Total net revenues:	$—	$ 568
Cost of revenues	—	—
Gross profit	—	568
Sales and marketing	—	150
Technology support	—	114
General and administrative	—	53
Total operating costs	—	317
Gain on sale	—	4,204
Provision for income taxes	—	(319)
Discontinued operations, net	$—	$4,136

8. Patent Litigation Settlements

Dealix Patent Litigation Settlement . In 2004, the Company brought a lawsuit for patent infringement against Dealix Corporation ("Dealix"). In December 2006, the Company entered into a settlement agreement with Dealix (the "Settlement Agreement"). The agreement provides that Dealix will pay the Company a total of $20.0 million in settlement payments for a mutual release of claims and a license from the Company to Dealix and its parent company the Cobalt Group, of certain of the Company's patent and patent applications. On March 13, 2007, the Company received the initial $12.0 million settlement payment with the remainder to be paid out in installments of $2.7 million on the next three annual anniversary dates of the initial payment. The Company received the first of three installments of $2.7 in March 2008, and in March 2009, the Company received the second installment $2.7 million pursuant to the agreement. The Company records the payments as patent litigation settlement in the period payment is received, as a reduction to operating expenses. The remaining payment is guaranteed by WP Equity Partners, Inc., a Warburg Pincus affiliate. The Company has been unable to assess with reasonable assurance the collectability of the remaining payment under the Settlement Agreement as the Company does not have financial information to support the credit worthiness of the debtor or guarantor. The Company does not have reasonable assurance that it will receive the remaining payment on its due date or at all and therefore have not recorded any amounts receivable related to the Settlement Agreement as of March 31, 2009 or December 31, 2008.

Texas and California Patent Litigation Settlements . On November 30, 2007, the Company filed a lawsuit ("Autobytel Patent Litigation") in the United States District Court for the Eastern District of Texas against Insweb Corporation ("Insweb"), Leadpoint, Inc. ("Leadpoint"), Internet Brands, Inc. ("Internet Brands") and Auto Internet Marketing, Inc. ("AIM"). In the lawsuit, the Company asserted infringement of the Company's U.S. Patent No. 6,282,517, entitled "Real Time Communication of Purchase Requests," ("Autobytel '517 Patent") against such parties, and sought damages and a permanent injunction.

On March 11, 2008, Insweb filed a lawsuit in the United States District Court for the Southern District of California against the Company, one of the Company's subsidiaries and Dominion Enterprises ("Dominion"), the purchaser of the AVV business ("Insweb Patent Litigation"). In the lawsuit, Insweb asserted infringement of Insweb's U.S. Patent No. 6,898,597, entitled "Event Log" ("Insweb '597 Patent") by marketing and selling the WebControl product of the AVV business and is seeking damages and a permanent injunction. On July 3, 2008, the complaint in the Insweb Patent Litigation was amended to add Leadpoint, Internet Brands and AIM as additional plaintiffs and co-owners of the Insweb '597 Patent and to add Retention Performance Marketing, Inc. ("RPM") and OneCommand, Inc. ("OneCommand"), the purchaser of the RPM business, as additional defendants. In addition to the asserted infringement with respect to the WebControl Product, the amended complaint asserted infringement of the Insweb '597 Patent by marketing and selling the RPM technology. Dominion asserted an indemnity claim under the AVV business purchase agreement and in connection therewith

AUTOBYTEL INC.
NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS – (continued)

had notified the escrow holder of a claim against the $1.9 million amount escrowed under the AVV business purchase agreement with respect to such indemnification claim. The Company was obligated to indemnify Dominion for this claim subject to and in accordance with the terms of the purchase agreement. RPM and OneCommand also asserted an indemnity claim under the purchase agreement relating to the sale of the RPM business. The Company was obligated to indemnify RPM and OneCommand for this claim subject to and in accordance with the terms of the purchase agreement.

On May 14, 2008, Internet Brands filed a Complaint in Interpleader and a Demand for Arbitration/Mediation ("Internet Brands Arbitration") asserting claims for breach of contract, misrepresentation, fraud, breach of implied covenants of good faith and fair dealing, breach of fiduciary duties and declaratory relief, and other causes of action relating to a strategic co-marketing agreement ("Co-Marketing Agreement") between Internet Brands and the Company's subsidiary, Autoweb Inc. ("Autoweb"), entered into prior to the Company's acquisition of Autoweb in August 2001. The Company was informed that prior to the filing of its claims, Internet Brands instructed its share transfer agent to deliver to Internet Brands a certificate representing the shares of Internet Brands' common stock issued to Autoweb pursuant to the Co-Marketing Agreement ("Internet Brands Stock") that were held by the share transfer agent in connection with Internet Brands' initial public offering and which remained in the name of Autoweb as stockholder of record, as confirmed by the share transfer agent. Internet Brands alleged that pursuant to the Co-Marketing Agreement, the Company granted to Internet Brands an implied license to employ the technology which is the subject of the Autobytel '517 Patent and that the Company's filing of the complaint against Internet Brands in the Autobytel Patent Litigation repudiated the Co-Marketing Agreement. Internet Brands sought unspecified compensatory and punitive damages, a declaration that Internet Brands was granted an implied license to employ the technology which is the subject of the Autobytel '517 Patent, and an order that Internet Brands is not obligated to return the Internet Brands stock to Autoweb. The Company filed a cross-complaint against Internet Brands asserting causes of action for, among other things, conversion of the Internet Brands Stock and seeking damages and return of the Internet Brands Stock.

On November 27, 2008, the Company and AIM entered into a Settlement Agreement that settled all claims by Autobytel against AIM in the Autobytel Patent Litigation and all claims by AIM against Autobytel in the Insweb Patent Litigation. The Settlement Agreement provided for the payment of $15,000 to Autobytel and future per lead payments based on the number of leads delivered by AIM to its customers. As a condition precedent to this Agreement, AIM divested itself of any and all ownership interest in the Insweb '597 Patent and withdrew as a party plaintiff in the Insweb Patent Litigation.

On April 23, 2009 the Company announced that it entered into a settlement agreement with Insweb, Internet Brands, and Leadpoint settling and dismissing with prejudice the Autobytel Patent Litigation, the Insweb Patent Litigation and the Internet Brands Arbitration. Under the settlement terms, Autobytel granted to Insweb, Internet Brands and Leadpoint, and Insweb, Internet Brands and Leadpoint each granted to Autobytel, a non-exclusive perpetual license to their respective patents, as well as long-term covenants not to sue any of the parties for infringement of current or future patents, and mutual releases of claims. In connection with the settlement, (i) Autobytel and Autodata Solutions, Inc. ("Autodata"), a wholly owned subsidiary of Internet Brands, entered into a Master License and Services Agreement pursuant to which the Company will have the right to publish certain editorial content, images, shopping tools and vehicle data provided by Autodata; and (ii) the Internet Brands Stock will be returned to the Company. In addition, InsWeb and Autobytel entered into a Content License Agreement pursuant to which Autobytel will receive specific auto insurance editorial content, data and interactive tools from InsWeb. The content and tools will contain links to one of InsWeb's insurance websites, and Autobytel and InsWeb will share the revenue associated with consumer activity generated by the links. LeadPoint agreed to pay Autobytel $200,000, $100,000 of which will be paid in connection with the signing of the settlement, to be followed by $50,000 installments payable on or before March 31, 2010 and September 30, 2010, respectively. All claims against Dominion, OneCommand and RPM were also dismissed with prejudice, with Internet Brands, Leadpoint, and Insweb each providing Dominion, OneCommand and RPM covenants not to sue for infringement of the Insweb '597 Patent, and Dominion, OneCommand and RPM each granting to Insweb, Internet Brands and Leadpoint, and Insweb, Internet Brands and Leadpoint each granting to Dominion, OneCommand and RPM long-term mutual releases of claims.

Edmunds Declaratory Relief Action Settlement . On March 13, 2008, Edmunds Holding Company and Edmunds.com filed a lawsuit against the Company in the United States District Court for the District of Delaware relating to the Company's U.S. Patent Number 6,282,517 for lead technology ("517 Patent"). In the lawsuit, Edmunds sought a declaration that its business activities, some of which include generating automotive leads, did not infringe the '517 Patent and that such patent was invalid. On February 20, 2009, this declaratory relief action was dismissed by the court. In March 2009, the Company entered into a settlement resolving the issues presented in Edmunds' declaratory judgment action. Under this settlement, Autobytel granted to Edmunds a limited license to the '517 Patent and other existing Autobytel leads-related

patents in exchange for the right to publish on Autobytel's family of websites a select assortment of Edmunds.com's industry-leading multi-media automotive content, including photos, editorial reviews, and articles. The settlement agreement also provided for mutual releases of claims. This settlement did not have an impact of the Company's financial statements.

9. Commitments and Contingencies

Minimum Guarantee

During the first quarter of 2009, the Company entered into a contract to purchase a minimum number of Leads at a fixed price in the normal course of business effective from March 1, 2009 to May 31, 2009 ("Minimum Guarantee"). The total dollar value of the Minimum Guarantee is approximately $1.4 million. At inception of this contract, the Company paid a portion of the total Minimum Guarantee and classifies this amount as a prepaid expense on its unaudited Consolidated Condensed Balance Sheet.

Litigation

In August 2001, a purported class action lawsuit was filed in the United States District Court for the Southern District of New York against Autobytel and certain of the Company's current and former directors and officers (the "Autobytel Individual Defendants") and underwriters involved in the Company's initial public offering. A Consolidated Amended Complaint, which is now the operative complaint, was filed on April 19, 2002. This action purports to allege violations of the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"). Plaintiffs allege that the underwriter defendants agreed to allocate stock in the Company's initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases of stock in the aftermarket at pre-determined prices. Plaintiffs allege that the prospectus for the Company's initial public offering was false and misleading in violation of the securities laws because it did not disclose these arrangements. The action seeks damages in an unspecified amount. The action is being coordinated with approximately 300 other nearly identical actions filed against other companies. On October 9, 2002, the District Court dismissed the Autobytel Individual Defendants from the case without prejudice. Plaintiffs selected six "focus" cases, which do not include the Company. The Court indicated that its decisions in the six focus cases are intended to provide strong guidance for the parties in the remaining cases. On August 14, 2007, the plaintiffs filed amended complaints in the six focus cases. On September 27, 2007, the plaintiffs moved to certify a class in these six cases. On November 14, 2007, the defendants in the six focus cases filed motions to dismiss the amended complaints. On March 26, 2008, the District Court dismissed the Securities Act claims of those members of the putative classes in the focus cases who sold their securities for a price in excess of the initial offering price and those who purchased outside the previously certified class period. With respect to all other claims, the motions to dismiss were denied. On October 10, 2008, at the request of plaintiffs, plaintiffs' motion for class certification was withdrawn, without prejudice. On April 3, 2009, the plaintiffs submitted to the Court a motion for preliminary approval of a settlement of the approximately 300 coordinated cases, which includes Autobytel, the underwriter defendants in the Autobytel class action lawsuit, and the plaintiff class in the Autobytel class action lawsuit. The insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Autobytel. The settlement is subject to termination by the parties under certain circumstances, and is subject to Court approval. There is no assurance that the settlement will be concluded or that the Court will approve the settlement. Due to the inherent uncertainties of litigation, the Company cannot accurately predict the ultimate outcome of this matter. If the settlement is not concluded or approved and Autobytel is found liable, it is possible that damages could be greater than Autobytel's insurance coverage and the impact on Autobytel's financial statements could be material.

Between April and September 2001, eight separate purported class actions virtually identical to the one filed against Autobytel were filed against Autoweb.com, Inc. ("Autoweb"), certain of Autoweb's former directors and officers (the "Autoweb Individual Defendants") and underwriters involved in Autoweb's initial public offering. A Consolidated Amended Complaint, which is now the operative complaint, was filed on April 19, 2002. It purports to allege violations of the Securities Act and the Exchange Act. Plaintiffs allege that the underwriter defendants agreed to allocate stock in Autoweb's initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases of stock in the aftermarket at pre-determined prices. Plaintiffs also allege that the prospectus for Autoweb's initial public offering was false and misleading in violation of the securities laws because it did not disclose these arrangements. The action seeks damages in an unspecified amount. The action is being coordinated with approximately 300 other nearly identical actions filed against other companies. On October 9, 2002, the District Court

dismissed the Autoweb Individual Defendants from the case without prejudice. At the Court's request, Plaintiffs selected six "focus" cases, which do not include the Company. The Court indicated that its decisions in the six focus cases are intended to provide strong guidance for the parties in the remaining cases. On August 14, 2007, the plaintiffs filed amended complaints in the six focus cases. Defendants in the focus cases filed motions to dismiss the amended complaints against them on November 14, 2007. On September 27, 2007, the plaintiffs moved to certify a class in the six focus cases. On March 26, 2008, the District Court dismissed the Securities Act claims of those members of the putative classes in the focus cases who sold their securities for a price in excess of the initial offering price and those who purchased outside the previously certified class period. With respect to all other claims, the motions to dismiss were denied. On October 10, 2008, at the request of plaintiffs, plaintiff's motion for class certification was withdrawn, without prejudice. On April 3, 2009, the plaintiffs submitted to the Court a motion for preliminary approval of a settlement of the approximately 300 coordinated cases, which includes Autoweb, the underwriter defendants in the Autoweb class action lawsuit, and the plaintiff class in the Autoweb class action lawsuit. The insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Autoweb. The settlement is subject to termination by the parties under certain circumstances, and is subject to Court approval. There is no assurance that the settlement will be concluded or that the Court will approve the settlement.

From time to time, the Company is involved in other litigation matters arising from the normal course of its business activities. The actions filed against the Company and other litigation, even if not meritorious, could result in substantial costs and diversion of resources and management attention, and an adverse outcome in litigation could materially adversely affect its business, results of operations, financial condition and cash flows.

10. Related Party Transaction

On April 3, 2009 the Compensation Committee approved the payment of $70,000 to Maverick Associates LLC for consulting services rendered to the Company by Mr. Jeffrey H. Coats during 2008 in connection with the Company's evaluation of strategic alternatives and development and implementation of cost reduction initiatives. Mr. Coats is the sole member of Maverick Associates.

11. Subsequent Events

On April 20, 2009, Infield Acquisition, Inc., a Delaware corporation ("Infield") and wholly owned subsidiary of Trilogy Enterprises Inc., a Delaware corporation filed an unsolicited tender offer statement with the Securities and Exchange Commission that relates to a tender offer by Infield to purchase all outstanding shares of the Company together with associated stock purchase rights at a net price per share equal to $0.35 in cash upon the terms of Infield's offer to purchase and letter of transmittal.

On April 3, 2009, (the "Grant Date") the Company's President and Chief Executive Officer was granted stock options to purchase 1,000,000 shares of Autobytel common stock, which vest on the first anniversary of the Grant Date. These options have an exercise price of $0.35, which was higher than the closing price of the Company's common stock on the grant date. The shares that are issuable upon exercise of these options are subject to resale restrictions that lapse over time (as to one-third on the first anniversary of the grant date and thereafter will lapse as to the remaining two-thirds of the shares in equal one-twelfth (1/12) installments of the original number of shares subject to the options each quarter until all resale restrictions have lapsed). The vesting of unvested options and the resale restrictions on shares issued upon exercise will accelerate and lapse upon involuntary termination of employment without cause or for good reason. In addition, Mr. Coats employment agreement was amended to extend the term to three years from April 3, 2009, and requires severance payments, and the continuation of certain insurance benefits in the event of termination by the Company without cause or resignation by the employee for good reason.

Item 2. ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

The Securities and Exchange Commission ("SEC") encourages companies to disclose forward-looking information so that investors can better understand a company's future prospects and make informed investment decisions. This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as "anticipate," "estimate," "expects," "projects," "intends," "plans," "believes" and words of similar substance used in connection with any discussion of future operations or financial performance identify forward-looking statements. In particular, statements regarding expectations and opportunities, new product expectations and capabilities, and our outlook regarding our performance and growth are forward-looking statements. This Quarterly Report on Form 10-Q also contains statements regarding plans, goals and objectives. There is no assurance that we will be able to carry out our plans or achieve our goals and objectives or that we will be able to do so successfully on a profitable basis. These forward-looking statements are just predictions and involve risks and uncertainties, many of which are beyond our control, and actual results may differ materially from these statements. Important factors that could cause actual results to differ materially from those reflected in forward-looking statements made in this Quarterly Report on Form 10-Q are set forth under "Item 1A. Risk Factors, herein and as more fully disclosed in Item 1A in our Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Securities and Exchange Commission." Investors are urged not to place undue reliance on forward-looking statements. Forward-looking statements speak only as of the date on which they were made. Except as may be required by law, we do not undertake any obligation, and expressly disclaim any obligation, to update or alter any forward-looking statements, whether as a result of new information, future events or otherwise. All forward-looking statements contained herein are qualified in their entirety by the foregoing cautionary statements.

You should read the following discussion of our results of operations and financial condition in conjunction with our condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q and our consolidated financial statements and the notes thereto in Autobytel's Annual Report on Form 10-K for the year ended December 31, 2008.

Our corporate website is located at *www.autobytel.com* . Information on our website is not incorporated by reference in this Quarterly Report. At or through the Investor Relations section of our website we make available free of charge our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to these reports as soon as practicable after such material is electronically filed with or furnished to the SEC. Our Code of Conduct and Ethics for Employees, Officers and Directors is available at the Corporate Governance link of the Investor Relations section of our website.

Basis of Presentation

We sold certain assets and liabilities of its AVV Inc. ("AVV") business on January 23, 2008. Accordingly, AVV is presented in the unaudited consolidated condensed financial statements as discontinued operations. As discontinued operations, revenues and expenses are presented on a net basis and stated separately from the respective captions in continuing operations in the Consolidated Condensed Statements of Operations and Comprehensive Loss. Expenses included in discontinued operations are direct costs that will be eliminated from future operations.

Overview

We are an automotive marketing services company that assists automotive dealers and manufacturers sell automobiles. By connecting consumers to automotive dealers and manufacturers through internet lead referral programs and on-line advertising, we provide automotive dealers and manufacturers with opportunities to efficiently market their vehicles to potential customers. We purchase from third parties and generate from our own websites consumer internet requests for pricing and availability on new and used cars as well as for vehicle financing ("Leads"). We sell the Leads primarily to our automotive dealer and manufacturer customers. Leads are purchased from a network of supplier websites, such as Edmunds, AOL, Kelley Blue Book, and Yahoo, ("Network Websites"). These Network Websites provide substantially all of our Leads. Additionally, we own and operate consumer-facing automotive websites, including Autobytel.com ®, Autoweb.com ®, AutoSite.com ®, Car.com sm, CarSmart.com ®, CarTV.com ®, and MyRide.com ® that provide consumers with information and tools to aid them with their automotive purchase decisions. Our owned websites provide a small percentage of our Leads but provide a significant portion of our page views for the advertising component of our business. In addition to advertising on our websites, we provide advertising opportunities for automotive manufacturers and other automotive advertisers through our marketing network, which includes our AutoReach advertising network ("Ad Network") and co-branded websites, such as ESPN.com. We conduct our business within the United States and within one business segment which is defined as providing automotive and marketing services.

For the three months ended March 31, 2009 our results of operations were affected and may continue to be affected in the future, by various factors, including, but not limited to, the following:

- General economic conditions and specifically the market conditions in the automotive industry;
- The effects of competition (e.g., the availability and pricing of competing services and products and the resulting effects on sales and pricing of our services and products);
- A decline in Leads delivered to our Dealers;
- Variations in spending by Manufacturers and others for our advertising services;
- The amount of visits (traffic) to our websites;
- The cost of acquiring traffic to our websites;
- The rates attainable from our advertisers;
- The implementation of certain cost reduction initiatives; and
- The change from a media-centric strategy to a core Leads business.

In August 2008, we engaged RBC Capital Markets Corporation (“RBC”), an investment banking firm, to act as a financial advisor and to assist us in exploring and evaluating strategic alternatives to maximize shareholder value, including the possible sale of the Company or certain of its assets. In January 2009, we announced that we had ended our evaluation of a possible sale of the Company and would continue to evaluate other strategic alternatives with RBC. In arriving at its decision, our Board of Directors concluded that shareholder value would not be maximized by a sale of the Company in the current economic environment.

In 2008, the automotive industry entered what is generally considered to be the most challenging environment of the past several decades. North American vehicle sales decreased significantly versus 2007. Dealer consolidations, closings and bankruptcies increased significantly in 2008 and this trend continued during the first quarter of 2009. General Motors (“GM”) and Chrysler were provided with emergency loan funding by the U.S. Federal Government in December 2008 and January 2009, on the condition that they would develop plans to restructure. On March 30, 2009 President Obama announced that the U.S Federal Government would provide limited additional time to determine a restructuring plan that would be acceptable to the U.S. Federal Government to justify continued emergency loan funding requests. As a result, GM and or Chrysler could face possible bankruptcy in the second calendar quarter of 2009. The financial pressure in the automotive industry is not contained to the U.S. automobile manufacturers. Toyota Motor Corporation announced that it is forecasting its first fiscal year operating loss in 70 years. Several foreign governments have also discussed plans to assist their auto manufacturers. Auto sales in the United States are expected to continue to remain at low levels throughout 2009.

One of the factors generally believed to be a contributing factor to the sharp decline in automotive sales has been the lack of available consumer credit to finance vehicle purchases. If credit availability does not improve, the recovery in sales may be further postponed. If automobile sales and the industry in general do not recover, then our business, results of operations and financial condition will be materially and adversely affected.

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Results of Operations

	Three Months Ended March 31,				Change	
	2009	% of Total net revenues	2008	% of Total net revenues	$	%
	($ amounts in thousands)					
Net revenues:						
Lead Fees	$12,152	88%	$18,161	88%	$(6,009)	(33)%
Advertising	1,687	12	2,499	12	(812)	(32)
Other	31	—	37	—	(6)	(16)
Total net revenues	13,870	100	20,697	100	(6,827)	(33)
Cost of revenues (excludes depreciation of $37 in 2009 and $73 in 2008)	8,887	64	13,825	67	(4,938)	(36)
Gross profit	4,983	36	6,872	33	(1,889)	(3)
Sales and marketing	2,640	19	5,195	25	(2,555)	(49)
Technology support	1,461	11	4,593	22	(3,132)	(68)
General and administrative	4,053	29	6,349	31	(2,296)	(36)
Patent litigation settlement	(2,667)	(19)	(2,667)	(13)	—	—
Total operating expenses	5,487	40	13,470	65	(7,983)	(59)
Operating loss	$ (504)	(4)%	$ (6,598)	(32)%	$ 6,094	92%

Three Months Ended March 31, 2009 Compared to the Three Months Ended March 31, 2008

Lead Fees. Lead Fees decreased $6.0 million or 33% in first quarter 2009, compared to first quarter 2008 and was primarily a result of the following:

- a 26% decline in the total volume of new and used car sales Leads delivered, which was due to an approximately 30% net reduction in the number of auto-dealer customers. The decline in our Lead fees is relatively consistent with the overall decline in U.S. light vehicle sales in first quarter 2009 compared to first quarter 2008 of approximately 38% (Source: Automotive News), and
- a 7% decline in our average sales price per Lead, which was due primarily to sales incentives provided to new and existing auto-dealer customers.

Advertising. The $0.8 million or 32% decrease in advertising revenues for first quarter 2009, compared to first quarter 2008. The decrease was due primarily to a decrease in page views as a result of the reduction in search engine marketing of approximately 90%, partially offset by the recognition of $0.2 million of deferred advertising revenue in the first quarter related to advertising campaigns that were closed out with certain advertisers.

Cost of Revenues. Cost of revenues consists of Lead and traffic acquisition costs, and other cost of revenues. Lead and traffic acquisition costs consist of payments made to our Lead providers, including internet portals and on-line automotive information providers. Other cost of revenues consists of search engine marketing and fees paid to third parties for data and content included on our properties, connectivity costs, technology license fees, development and maintenance costs related to our websites, server equipment depreciation and technology amortization and compensation related expense. Search engine marketing (“SEM”), sometimes referred to as paid search marketing, is the practice of bidding on keywords on search engines to drive traffic to a website.

The $4.9 million or 36% decrease in the cost of revenues in first quarter 2009 compared to first quarter 2008 was primarily due to a decrease of $2.2 million in SEM, a $1.3 million decrease in Lead acquisition costs, a decrease in depreciation of $0.6 million, a $0.5 million decrease in other net various expense amounts, and a decrease in hosting and data content of $0.3 million. SEM costs have decreased due to cost containment initiatives and efforts to more efficiently deploy marketing dollars. Depreciation and other website related costs have decreased due to the decision to discontinue the use of the MyRide related software platform in the fourth quarter of 2008. The average cost per purchased Lead increased by approximately 16% in 2009 primarily due to an increase in overall quality of the leads purchased during the period.

Sales and Marketing. Sales and marketing expense includes costs for developing our brand equity, internal personnel costs and other costs associated with dealer sales, website advertising, and dealer support. Sales and marketing expense in first quarter 2009 decreased by $2.6 million or 49% compared to first quarter 2008, due principally to internal cost containment initiatives.

Technology Support. Technology support expense includes personnel costs related to enhancing the features, content and functionality of our Web sites and our Internet-based communications platform, costs associated with our telecommunications and computer infrastructure, and costs related to data and technology development. Technology support expense in first quarter 2009 decreased by $3.1 million or 68% compared to first quarter 2008, due to compensation expense savings resulting from internal cost reduction initiatives.

General and Administrative. General and administrative expense consists of executive, financial and legal personnel expenses and costs related to being a public company. General and administrative expense in first quarter 2009 decreased $2.3 million or 36% compared to first quarter 2008 due to the following:

- a decrease in net personnel and temporary labor expense of $1.1 million (includes the $0.4 million decrease of stock compensation, and the increase of $0.5 million in severance expense),
- a decrease in professional fees of $1.0 million, primarily as a result of cost containment initiatives, and
- a decrease in insurance and other expenses of approximately $0.2 million.

Employees

As of April 15, 2009, we had 109 employees. We also use independent contractors as required. None of our employees are represented by labor unions. We have not experienced any work stoppages and consider our employee relations to be generally good.

Liquidity and Capital Resources

The table below sets forth a summary of our cash flows for the quarters ended March 31, 2009 and 2008:

	Three Months Ended March 31,	
	2009	2008
	(in thousands)	
Net cash used in operating activities	$(1,583)	$(5,617)
Net cash (used in) provided by investing activities	(38)	6,985
Net cash provided by financing activities	—	89

Our principal sources of liquidity are our cash and cash equivalents balances and proceeds from dispositions of non-core businesses and the Dealix patent litigation settlement payments. We continue to have no debt. Our cash and cash equivalents totaled $25.8 million as of March 31, 2009 compared to cash and cash equivalents of $27.4 million as of December 31, 2008.

We entered into a settlement agreement with Dealix, which among other things, provides for settlement payments. We received settlement payments in 2007, 2008 and 2009. We have been unable to assess with reasonable assurance the collectability of the remaining payment due in March 2010 under the settlement agreement as we do not have financial information to support the credit worthiness of the debtor or guarantor. We do not have reasonable assurance that we will receive any remaining payment on their due dates or at all, and therefore, we have not recorded any amounts receivable related to the Settlement Agreement as of March 31, 2009 and cannot rely on these payments as a source of future liquidity.

General Motor (“GM”) and Chrysler were provided with emergency loan funding by the U.S. Federal Government in December 2008 and January 2009, on the condition that they would develop plans to restructure. On March 30, 2009 President Obama announced that the U.S Federal Government would provide limited additional time to determine a restructuring plan that would be acceptable to the U.S. Federal Government to justify continued emergency loan funding requests. As a result, GM and or Chrysler could face possible bankruptcy in the second calendar quarter of 2009. During the first three months of 2009 approximately 7% of the Company’s total revenues were derived from GM and Chrysler, and approximately 5% or $0.5 million of the gross accounts receivable relate to GM and Chrysler at March 31, 2009. If GM or Chrysler file for bankruptcy, then our liquidity could be negatively impacted.

As discussed in Note 8 to the unaudited Consolidated Condensed Financial Statements, Dominion has asserted an indemnity claim under the AVV business purchase agreement related to the $1.9 million amount held in escrow. As a result of the litigation settlements, the Company expects to receive the $1.9 million of escrow that is not recorded on the balance sheet.

Net Cash Used in Operating Activities

Net cash used in operating activities in first quarter 2009 of $1.6 million resulted primarily from a net operating loss of $0.3 million and an increase in cash used to reduce accounts payable and other accrued expenses of $2.8 million primarily related to severance costs that were accrued as of December 31, 2008 and paid in first quarter 2009, partially offset by cash received related to the reduction of our accounts receivable of $0.8 million.

Net cash used in operating activities in first quarter 2008 was $5.6 million consisting of net loss of $2.0 million, adjusted for a gain on sale of our AVV business of $4.2 million, increase in accounts receivable of $1.7 million and a net decrease in accounts payable and accrued liabilities of $1.6 million, offset by depreciation and amortization of $1.2 million and share-based compensation of $0.9 million and decrease in other liabilities of $1.2 million.

Net Cash Provided by Investing Activities

There were no significant investing activities during first quarter 2009. Net cash provided by investing activities in first quarter 2008 of $7.0 million was due to $21.4 million in cash received from the sale of AVV, offset by the purchases of $13.9 million in short-tem investment.

Net Cash Provided by Financing Activities

Our primary source of cash from financing activities is from the exercise of stock options and the issuance of common stock pursuant to the employee stock purchase plan. There were no financing activities in first quarter 2009 and a small amount of activity in first quarter 2008.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements as defined in Item303(a)(4)(ii) of Regulation S-K.

Recent Accounting Pronouncements

SFAS 157: In September 2006, the FASB issued SFAS 157, “Fair Value Measurements”. SFAS 157 establishes a framework for measuring fair value and expands disclosures of fair value measurements. SFAS 157 is effective for financial statements issued for periods beginning after November 15, 2007. In February 2008, the FASB issued FASB Staff Position (“FSP”) FAS 157-2 which defers the effective date of SFAS 157 for non-financial assets and liabilities that are not recorded at fair value on a recurring basis until periods beginning after November 15, 2008. The adoption of the non-deferred portion of SFAS 157 on January 1, 2008 and the adoption of the deferred portion of SFAS 157 on January 1, 2009 did not have an impact on our consolidated financial position, results of operations or cash flows.

SFAS 161: In March 2008, the FASB issued SFAS 161, “Disclosures about Derivative Instruments and Hedging Activities – an Amendment of FASB Statement 133.” SFAS 161 provides new disclosure requirements for derivative and hedging activities, and is effective for periods beginning after November 15, 2008. We adopted SFAS 161 on January 1, 2009 and it did not have a material effect on our consolidated financial statements.

SFAS 160: In December 2007, the FASB issued SFAS 160, “Non-controlling Interests in Consolidated Financial Statements – an amendment of ARB 51.” This standard provides new accounting guidance and disclosure requirements for non-controlling interests in a subsidiary. Since we do not have non-controlling interests in our subsidiaries, the adoption of SFAS 161 on January 1, 2009 did not have any effect on our consolidated financial statements.

SFAS 141(R): In December 2007, the FASB issued SFAS No. 141R, “Business Combinations.” SFAS 141R establishes principles and requirements for how the acquirer of a business recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any non-controlling interest in the acquiree. The statement also provides guidance for recognizing and measuring the goodwill acquired in the business combination and determines what information to disclose to enable users of financial statements to evaluate the nature and financial effects of the business combination. SFAS No. 141R is effective for business combinations occurring after December 31, 2008. The nature and magnitude of the specific effect the adoption of SFAS 141R will have on our consolidated financial statements will depend on the nature, terms, size of acquisitions, if any, we may consummate subsequent to the effective date of January 1, 2009.

Item 3. ***Quantitative and Qualitative Disclosures About Market Risk***

For the three months ended March 31, 2009 there were no material changes in the information required to be provided under Item 305 of Regulation S-K from the information disclosed in Item 7A of the Company's Annual Report on Form 10-K for the year ended December 31, 2008.

Item 4. ***Controls and Procedures***

As of the end of the period covered by this Quarterly Report on Form 10-Q, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended. Based on the evaluation, our Chief Executive Officer and our Chief Financial Officer believe that, as of the end of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures were effective at ensuring that the information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 is (i) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms or (ii) accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required financial disclosure.

As of the end of the period covered by this Quarterly Report on Form 10-Q, there were no changes in our internal control over financial reporting that have materially affected or were reasonably likely to materially affect, our internal control over financial reporting.

Our management, including our Chief Executive Officer and our Chief Financial Officer, does not expect that our disclosure controls and internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls may be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control.

The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, a control may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Notwithstanding the foregoing limitations on the effectiveness of controls, we have nonetheless reached the conclusions set forth above on our disclosure controls and procedures.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

See discussion at Part I, Item 1, Note 9, "Commitments and Contingencies – *Litigation* ," to the unaudited consolidated condensed financial statements, which is incorporated by reference herein.

Item 1A. Risk Factors

We are particularly affected by general economic conditions and in particular the automotive industry.

The economic strength of the automotive industry significantly impacts the revenues we derive from Dealers, Manufacturers and other customers.

In 2008, the automotive industry entered what is generally considered to be the most challenging environment of the past several decades. North American vehicle sales decreased significantly versus 2007. Dealer consolidations, closings and bankruptcies increased significantly in 2008 and this trend continued during the first quarter of 2009. General Motors ("GM") and Chrysler were provided with emergency loan funding by the U.S. Federal Government in December 2008 and January 2009, on the condition that they would develop plans to restructure. On March 30, 2009 President Obama announced that the U.S Federal Government would provide limited additional time to determine a restructuring plan that would be acceptable to the U.S. Federal Government to justify continued emergency loan funding requests. As a result, GM and or Chrysler could face possible bankruptcy in the second calendar quarter of 2009. The financial pressure in the automotive industry is not contained to the U.S. automobile manufacturers. Toyota Motor Corporation announced that it is forecasting its first fiscal year operating loss in 70 years. Several foreign governments have also discussed plans to assist their auto manufacturers. Auto sales in the United States are expected to continue to remain at low levels throughout 2009.

One of the factors generally believed to be a contributing factor to the sharp decline in automotive sales has been the lack of available consumer credit to finance vehicle purchases. If credit availability does not improve, the recovery in sales may be further postponed. If automobile sales and the industry in general do not recover, then our business, results of operations and financial condition will be materially and adversely affected.

Our certificate of incorporation and bylaws, stockholder rights plan and Delaware law contain provisions that could discourage a third party from acquiring us or limit the price third parties are willing to pay for our stock.

Provisions of our amended and restated certificate of incorporation and bylaws relating to our corporate governance and provisions in our stockholder rights plan could make it difficult for a third party to acquires us, and could discourage a third party from attempting to acquire control of us. These provisions allow us to issue preferred stock with rights senior to those of the common stock without any further vote or action by the stockholders. These provisions provide that the board of directors is divided into three classes, which may have the effect of delaying or preventing changes in control or change in our management because fewer than a majority of the board of directors are up for election at each annual meeting. In addition, these provisions impose various procedural and other requirements which could make it more difficult for stockholders to effect corporate actions such as a merger, asset sale or other change of control of us. Under the stockholder rights plan, if an acquiring person (defined in the stockholder rights plan generally as a person or group that acquires 15% or more of our common stock) triggers the stockholder rights plan, all rights holders, except the acquirer, will be entitled to acquire at the then exercise price of a right that number of shares of our common stock which, at the time, has a market value of two times the exercise price of the right. In addition, under certain circumstances, all right holders, other than the acquirer, will be entitled to receive at the then exercise price of a right that number of shares of common stock of the acquiring company which, at the time, has a market value of two times the exercise price of the right. The initial exercise price of a right is $1.40. These charter and rights provisions could limit the price that some investors might be willing to pay in the future for shares of our common stock and may have the effect of delaying or preventing a change in control. The issuance of preferred stock also could decrease the amount of earnings and assets available for distribution to the holders of common stock or could adversely affect the rights and powers, including voting rights, of the holders of the common stock.

We are also subject to Section 203 of the Delaware General Corporation Law. In general, the statute prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. For purposes of Section 203, a "business combination" includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an "interested stockholder" is a person who, together with affiliates and associates, owns or did own 15% or more of the corporation's voting stock. Section 203 could discourage a third party from attempting to acquire control of us.

Item 5. Other Information

On April 23, 2009, the Board of Directors of Autobytel approved, and the Company has entered into, an Amended and Restated Rights Agreement (the " **Amended Rights Agreement** ") dated as of April 24, 2009, between Autobytel and Computershare Trust Company, N.A., successor-in-interest to U.S. Stock Transfer Corporation, as rights agent.

The Amended Rights Agreement amends and restates that certain Rights Agreement, dated as of July 30, 2004, as amended on January 13, 2009 (the " **Existing Rights Agreement** "), pursuant to which the holders of the Company's outstanding shares of common stock, par value $0.001 per share, hold one preferred share purchase right (each, a " **Right** "), each Right representing the right to purchase one one-hundredth of a share of Series A Junior Participating Preferred Stock, par value $0.001 per share (" **Series A Preferred Stock** "), for each share of Autobytel

common stock held. The Series A Preferred Stock is established pursuant to an Amended Certificate of Designation of Series A Junior Participating Preferred Stock (the " **Certificate of Designation** ") filed with the Secretary of State of Delaware on April 24, 2009, which amends that certain Certificate of Designation of Series A Junior Participating Preferred Stock, filed with the Secretary of State of Delaware on July 30, 2004, to remove voting provisions specific to the Series A Preferred Stock.

The Amended Rights Agreement incorporates the following material changes from the Existing Rights Agreement: (i) the purchase price is decreased to $1.40 per Right; (ii) the Board of Directors may effect an exchange of the Rights at an exchange ratio of one share of Autobytel common stock per Right (an " **Exchange** ") at any time after a person becomes an Acquiring Person (as defined in the Amended Rights Agreement) in accordance with the Amended Rights Agreement; and (iii) in effecting an Exchange, Autobytel may enter into a trust agreement by which it transfers to the trust created by such trust agreement (the " **Trust** "), all shares of Autobytel common stock issued pursuant to the Exchange. The Trust would hold the shares of the Autobytel common stock for the benefit of stockholders entitled to receive them pursuant to the Exchange. Stockholders would receive shares from the Trust after complying with the relevant terms of the trust agreement.

The foregoing descriptions of the Amended Rights Agreement and Certificate of Designation do not purport to be complete and are qualified in their entirety by reference to the full text of the: (i) Amended Rights Agreement, a copy of which is filed herewith as Exhibit 4.1 and incorporated herein by reference; and (ii) Certificate of Designation, a copy of which is filed herewith as Exhibit 3.1 and incorporated herein by reference.

On April 24, 2009, Autobytel announced that it amended and restated the Existing Rights Agreement and issued a press release, a copy of which is filed herewith as Exhibit 99.1 and incorporated herein by reference.

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Item 6. ***Exhibits***

2.1	Asset Purchase Agreement, dated as of January 23, 2008, between the Company, AVV, Inc. and Dominion Enterprises is incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed with the SEC on January 29, 2008
3.1*	Fifth Amended and Restated Certificate of Incorporation of Autobytel Inc. (formerly autobytel.com inc. ("Autobytel" or the "Company")) certified by the Secretary of State of Delaware (filed December 14, 1998), as amended by Certificate of Amendment dated March 1, 1999, Second Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation of Autobytel dated July 22, 1999, Third Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation of Autobytel dated August 14, 2001, and Amended Certificate of Designation of Series A Junior Participating Preferred Stock dated April 24, 2009.
3.2	Amended and Restated Bylaws of Autobytel, as amended by Amendment No. 1 adopted August 14, 2001, Amendment No. 2 adopted April 23, 2002, Amendment No. 3 adopted March 13, 2006, Amendment No. 4 adopted December 5, 2007, Amendment No. 5 adopted December 8, 2008, and Amendment No. 6 adopted December 19, 2008 is incorporated herein by reference to Exhibit 3.2 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed with the SEC on March 13, 2009
4.1	Form of Common Stock Certificate of Autobytel is incorporated herein by reference to Exhibit 4.1 of the September 2001 10-Q
4.2*	Amended and Restated Rights Agreement, dated as of April 24, 2009, between Autobytel and Computershare Trust Company, N.A., successor-in-interest to U.S. Stock Transfer Corporation (which includes the form of Amended Certificate of Designation of the Series A Junior Participating Preferred Stock of Autobytel as Exhibit A, the form of Right Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Shares as Exhibit C)
10.85* **	Description of Jeffrey H. Coats Employment Agreement and Stock Option Grant
31.1*	Chief Executive Officer Section 302 Certification of Periodic Report, dated April 24, 2009.
31.2*	Chief Financial Officer Section 302 Certification of Periodic Report, dated April 24, 2009.
32.1*	Chief Executive Officer and Chief Financial Officer Section 906 Certification of Periodic Report, dated April 24, 2009.
99.1*	Press Release dated April 24, 2009

* Filed herewith

** Management Contract or Compensatory Plan or Arrangement

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AUTOBYTEL INC.

By: /s/ Curtis E. DeWalt

Curtis E. DeWalt
Senior Vice President and Chief Financial Officer
(Duly Authorized Officer and Principal Financial Officer)

Date: April 24, 2009

By: /s/ Wesley Ozima

Wesley Ozima
Vice President and Controller
(Principal Accounting Officer)

EXHIBIT INDEX

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** Management Contract or Compensatory Plan or Arrangement

EXHIBIT 3.1

AUTOBYTEL.COM INC.

FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

Autobytel.com inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies under penalty of perjury under the laws of the State of Delaware as follows:

FIRST: That this Corporation was originally incorporated on May 17, 1996 under the name of Auto-By-Tel Corporation, pursuant to the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law").

SECOND: That pursuant to Section 141 and 242 of the Delaware General Corporation Law, the Board of Directors has duly adopted resolutions proposing to amend and restate the Amended and Restated Certificate of Incorporation filed with the Secretary of State of Delaware on April 16, 1998, as amended on July 22, 1998, declaring said amendment and restatement to be advisable and in the best interests of this Corporation and its stockholders.

THIRD: That pursuant to Section 228 and 242 of the Delaware General Corporation Law, the changes to be effected by this Fifth Amended and Restated Certificate of Incorporation have been duly approved by the holders of the requisite number of shares of this Corporation.

FOURTH: That pursuant to Section 242 and 245 of the General Corporation Law of the State of Delaware, this Fifth Amended and Restated Certificate of Incorporation restates and amends the provisions of this Corporation's Amended and Restated Certificate of Incorporation.

FIFTH: That the text of the Amended and Restated Certificate of Incorporation is hereby restated and amended in its entirety as set forth in Exhibit A attached hereto.

IN WITNESS WHEREOF, this Fifth Amended and Restated Certificate of Incorporation has been signed this 14th day of December, 1998.

AUTOBYTEL.COM INC.

By: /s/ Mark W. Lorimer
Title: President

ATTEST:

By: /s/ Craig S. Frost
Title: Secretary

Exhibit A

FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
AUTOBYTEL.COM INC.
A Delaware Corporation

ARTICLE I

The name of the corporation is autobytel.com inc. (the “Corporation”).

ARTICLE II

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

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE IV

A. Classes of Stock. This Corporation is authorized to issue two classes of stock, to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares that this Corporation is authorized to issue is sixty-one million four hundred forty-five thousand one hundred eighty-seven (61,445,187). The number of shares of Preferred Stock authorized to be issued is eleven million four hundred forty-five thousand one hundred eighty-seven (11,445,187), par value $0.001 per share, one million five hundred thousand (1,500,000) of which have been designated Series A Preferred Stock (the “Series A Preferred Stock”), nine hundred sixty-seven thousand nine hundred fifteen (967,915) of which have been designated Series B Preferred Stock (the “Series B Preferred Stock”), six million nine hundred seventy-seven thousand two hundred seventy-two (6,977,272) of which have been designated Series C Preferred Stock (the “Series C Preferred Stock”) and two million (2,000,000) of which shall be undesignated. The Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall be hereinafter referred to collectively as the "Preferred Stock." The number of shares of Common Stock authorized to be issued is fifty million (50,000,000), par value $0.001 per share.

B. Rights, Preferences and Restrictions of the Preferred Stock.

The undesignated shares of Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the Board). The Board of Directors is further authorized to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and, to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. The Board of Directors, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares in any such series then outstanding) the number of shares of any series subsequent to the issue of shares of that series.

The rights, preferences, privileges, and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B).

Section 1. Dividends.

(a) The holders of outstanding shares of Series C Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors out of funds legally available therefor, payable in preference and priority to any declaration or payment of any dividend on the Series A Preferred Stock, Series B Preferred Stock or Common Stock of the Corporation, dividends in cash at an annual rate of $0.80 per share of Series C Preferred Stock. The holders of outstanding shares of Series A Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors out of funds legally available therefor, payable in preference and priority to any declaration or payment of any dividend on the Series B Preferred Stock or Common Stock of the Corporation, dividends in cash at an annual rate of $0.80 per share of Series A Preferred Stock. The holders of outstanding shares of Series B Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors out of funds legally available therefor, payable in preference and priority to any declaration or payment of any dividend on the Common Stock of the Corporation, dividends in cash at an annual rate of $0.80 per share of Series B Preferred Stock. The right to such dividends shall not be cumulative and no right to such dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on such shares are not declared in any prior year. No dividend or other distribution shall be made with respect to the Series B Preferred Stock in any fiscal year until full dividends at the rate set forth in this Section 1(a) have been paid on the Series C Preferred Stock and Series A Preferred Stock. No dividend or other distribution shall be made with respect to the Series A Preferred Stock in any fiscal year until full dividends at the rate set forth in this Section 1(a) have been paid on the Series C Preferred Stock. No dividend or other distribution shall be made with respect to the Common Stock in any fiscal year until full dividends at the rate set forth in this Section 1(a) have been paid on the Preferred Stock.

(b) Definition of Distribution. For purposes of this Section 1, unless the context otherwise requires, a “distribution” shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, payable other than in Common Stock, or the purchase or redemption of shares of the Corporation (other than repurchases at cost of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase) for cash or property.

Section 2. Liquidation Preference.

(a) In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, the holders of Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series A Preferred Stock, Series B Preferred Stock or Common Stock, an amount equal to $8.80 per share for each share of Series C Preferred Stock then held by them (as adjusted for any stock split, combination, consolidation, or stock distributions or stock dividends effected with respect to such shares after the Original Issue Date) plus all declared but unpaid dividends, if any (the “Series C Liquidation Preference”); provided that upon the occurrence of any event described in Section 2(e) below, the holders of Series C Preferred Stock shall be entitled to receive, at their option, either the Series C Liquidation Preference described above or the consideration, if any, which would be payable to such holders as if they had converted their shares of Series C Preferred Stock into Common Stock immediately prior to such event. If the assets and funds thus distributed among the holders of Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and surplus funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock in proportion to the number of shares of Series C Preferred Stock then held by them.

(b) After payment has been made to the holders of Series C Preferred Stock of the full amounts to which they shall be entitled as set forth in subparagraph (a) of this Section 2, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Series B Preferred Stock or Common Stock, an amount equal to $10.00 per share for each share of Series A Preferred Stock then held by them (as adjusted for any stock split, combination, consolidation, or stock distributions or stock dividends effected with respect to such shares after the Original Issue Date) plus all declared but unpaid dividends, if any (the “Series A Liquidation Preference”); provided that upon the occurrence of any event described in Section 2(e) below, the holders of Series A Preferred Stock shall be entitled to receive, at their option, either the Series A Liquidation Preference described above or the consideration, if any, which would be payable to such holders as if they had converted their shares of Series A Preferred Stock into Common Stock immediately prior to such event.

If the assets and funds thus distributed among the holders of Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and surplus funds of the Corporation legally available for distribution to the holders of Series A Preferred Stock shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the number of shares of Series A Preferred Stock then held by them.

(c) After payment has been made to the holders of Series C Preferred Stock and Series A Preferred Stock of the full amounts to which they shall be entitled as set forth in subparagraphs (a) and (b) of this Section 2, the holders of Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock, an amount equal to $9.35 per share for each share of Series B Preferred Stock then held by them (as adjusted for any stock split, combination, consolidation, or stock distributions or stock dividends effected with respect to such shares after the Original Issue Date) plus all declared but unpaid dividends, if any (the "Series B Liquidation Preference"); provided that upon the occurrence of any event described in Section 2(e) below, the holders of Series B Preferred Stock shall be entitled to receive, at their option, either the Series B Liquidation Preference described above or the consideration, if any, which would be payable to such holders as if they had converted their shares of Series B Preferred Stock into Common Stock immediately prior to such event. If the assets and funds thus distributed among the holders of Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and surplus funds of the Corporation legally available for distribution to the holders of Series B Preferred Stock shall be distributed ratably among the holders of the Series B Preferred Stock in proportion to the number of shares of Series B Preferred Stock then held by them.

(d) After payment has been made to the holders of Preferred Stock of the full amounts to which they shall be entitled as set forth in subparagraphs (a), (b) and (c) of this Section 2, then the entire remaining assets and surplus funds of the Corporation legally available for distribution, if any, shall be distributed ratably among the holders of Common Stock based upon the number of shares of Common Stock then held by them.

(e) A merger or consolidation of the Corporation with or into any other corporation or corporations, or the merger of any other corporation or corporations into the Corporation, in which the stockholders of the Corporation receive distributions in cash or securities of another corporation or corporations as a result of such consolidation or merger and in which the stockholders of the Corporation do not own at least 50% of the voting power of the surviving corporation after the consolidation or merger, or a sale of all or substantially all of the assets of the Corporation, shall be treated as a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 2.

Section 3. Conversion. The holders of the Preferred Stock shall have conversion rights (the "Conversion Rights") as follows:

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing $10.00 in the case of the Series A Preferred Stock, $9.35 in the case of the Series B Preferred Stock, or $8.80 in the case of the Series C Preferred Stock by the Conversion Price, determined as hereinafter provided, in effect for such series of Preferred Stock at the time of conversion. The initial Conversion Price per share shall be $9.00 for the Series A Preferred Stock, $10.36 for the Series B Preferred Stock and $13.20 for the Series C Preferred Stock. The Conversion Price per share of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall be subject to adjustment as hereinafter provided. Upon conversion, all declared and unpaid dividends on the Preferred Stock shall be paid in cash, to the extent legally permitted and in accordance with Section 4(B)(1)(a) hereof.

(b) Automatic Conversion.

(i) Each share of Preferred Stock shall, with notice to the holders thereof delivered promptly thereafter, automatically be converted into shares of Common Stock at the applicable Conversion Price then in effect upon the earlier of (A) the date upon which this Corporation obtains the consent of the holders of two-thirds of the then outstanding shares of Preferred Stock, voting together as a single class, (B) (1) in the case of Series A Preferred Stock, the date on which fewer than 300,000 shares of Series A Preferred Stock (appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the Original Issue Date) remain outstanding, (2) in the case of Series B Preferred Stock, the date on which fewer than 200,000 shares of Series B Preferred Stock (appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the Original Issue Date) remain outstanding, (3) in the case of Series C Preferred Stock, the date on which fewer than 250,000 shares of Series C Preferred Stock (appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the Original Issue Date) remain outstanding, or (C) the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation to the public at a price per share (before deduction of underwriter discounts and commissions and offering expenses) of not less than $13.50 per share (appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the date of the filing of this Certificate of Incorporation) and an aggregate offering price to the public of not less than $30,000,000 (the "Initial Public Offering").

(ii) In the event of the automatic conversion of the Preferred Stock as set forth in Section 3(b)(i)(C) above, the person(s) entitled to receive the Common Stock issuable upon such conversion shall not be deemed to have converted such shares until immediately prior to the closing of such sale of securities.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then current fair value of the Common Stock, as determined in good faith by the Board of Directors. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued; provided, however, that in the event of an automatic conversion pursuant to Section 3(b)(i), the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent. The Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, or in the case of automatic conversion on the record date for such conversion, which shall not be earlier than the date notice of conversion is received by holders, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) Adjustments to Conversion Price for Stock Splits, Distributions and Recapitalizations.

(i) Stock Splits, Subdivisions, Dividends and Distributions. In the event this Corporation should at any time or from time to time after the Original Issue

Date (as defined below), fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price in effect for each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(ii) Combinations. If the number of shares of Common Stock outstanding at any time after the Original Issue Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination (or the date of such combination if no record date is fixed), the Conversion Price in effect for each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(iii) Other Distributions. In the event this Corporation shall at any time or from time to time after the Original Issue Date, fix a record date for the determination of holders of Common Stock entitled to receive a distribution payable in securities of the Corporation or other persons, evidences of indebtedness issued by this Corporation or other persons, assets or options or rights not referred to in Section 3(d)(i), then, in each such case for the purpose of this Section 3(d)(iii), the holders of shares of Preferred Stock shall, as of such record date, be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of such record date.

(iv) Recapitalization. If at any time or from time to time there shall be a recapitalization of the Common Stock whereby the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by reorganization, reclassification or otherwise, (other than a subdivision, dividend, combination or merger or sale of assets transaction provided for elsewhere in this Section 3), provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the shares of Preferred Stock the number of shares of stock or other securities or property of the Corporation which a holder of Common Stock deliverable upon conversion would have been entitled to receive on such recapitalization. In any such case, appropriate adjustment shall be made in the

application of the provisions of this Section 3 with respect to the rights of the holders of Preferred Stock after the recapitalization to the end that the provisions of this Section 3 (including adjustment of the Conversion Price then in effect for each series of Preferred Stock and the number of shares issuable upon conversion of shares of Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(e) Adjustments to Conversion Price. Subject to the terms of Section 6 hereof, the Conversion Price in effect from time to time for each series of Preferred Stock shall be subject to adjustment in certain cases as follows:

(i) Special Definitions. For purposes of this Section 3, the following definitions shall apply:

(A) “Options” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(B) “Original Issue Date” shall mean the date on which the first share of such series of Preferred Stock was first issued.

(C) “Convertible Securities” shall mean any evidences of indebtedness, Preferred Stock or other securities convertible into or exchangeable for Common Stock.

(D) “Additional Shares of Common” shall mean all shares of Common Stock issued (or, pursuant to Section 3(e)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(1) upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;

(2) up to a maximum of 3,333,333 shares (as appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the date of the filing of this Certificate of Incorporation) to officers, directors or employees of, or consultants to, the Corporation (other than Peter Ellis or John Bedrosian) pursuant to a stock grant, stock option plan or stock purchase plan or other stock incentive agreement or arrangement approved by the Board of Directors;

(3) as a dividend or distribution on Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;

(4) in connection with any transaction for which adjustment is made pursuant to Section 3(d) hereof;

(5) upon the exercise of warrants granted incidental to a bona fide commercial transaction (unless the grant of such warrant is opposed by the holders of more than two-thirds of the Preferred Stock, voting together as a single class, following notice from the Corporation to the holders of Preferred Stock to be delivered to such holders at least ten (10) business days prior to such grant; provided further that no notice need be given and the holders of the Preferred Stock shall not have the right to object to the issuance of warrants to purchase up to a maximum of 3,333 shares so long as they are granted incidental to a bona fide commercial transaction and approved by the Board of Directors); and

(6) any shares of Common Stock issued, issuable or, pursuant to Section 3(e)(iii), deemed to be issued, if the holders of a majority of the Series A Preferred Stock and Series B Preferred Stock and Series C Preferred Stock, voting together as a class, agree in writing that such shares shall not constitute Additional Shares of Common.

(ii) No Adjustment of Conversion Price. Subject to the terms of Section 6 hereof, no adjustment in the Conversion Price for each series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price for such series in effect on the date of, and immediately prior to, such issue.

(iii) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number, including provisions designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 3(e)(v) hereof) of such Additional Shares of Common would be less than the Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior to, such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common are deemed to be issued:

(A) no further adjustment in the Conversion Price for a series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time, by reason of antidilution provisions or otherwise, for any change in the consideration payable to the Corporation, or change in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such change becoming effective, be recomputed to reflect an appropriate increase or decrease reflecting such change insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; provided, however, that no such adjustment of the Conversion Price shall affect Common Stock previously issued upon conversion of the Preferred Stock;

(C) upon the expiration or cancellation of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration or cancellation, be recomputed as if:

1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all Convertible Securities which were actually converted or exchanged plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (1) the applicable Conversion Price on the original adjustment date, or (2) the applicable Conversion Price that would have resulted from any issuance of Additional Shares of Common between the original adjustment date and such readjustment date.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 3(e)(iii)) for a consideration per share less than the Conversion Price for a particular series of Preferred Stock in effect on the date of, and immediately prior to, such issue, then and in such event, the Conversion Price of such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and (y) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued; provided, that, for the purposes of this Section 3(e)(iv), all shares of Common Stock issuable upon exercise, conversion or exchange of outstanding Options or Convertible Securities or Preferred Stock shall be deemed to be outstanding; and, further provided, that immediately after any Additional Shares of Common are deemed issued pursuant to Section 3(e)(iii), such Additional Shares of Common shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Section 3(e), the consideration received by the Corporation for the issue of any Additional Shares of Common shall be computed as follows:

(A) Such consideration shall:

1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

2) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith in the exercise of reasonable business judgment by the Board of Directors of the Corporation; and

3) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for

consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors of the Corporation.

(B) Options and Convertible Securities.

1) The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to Section 3(e)(iii) shall be the sum of (x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities plus (y) the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration, including any provisions designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

2) The number of Additional Shares of Common deemed to have been issued pursuant to Section 3(e)(iii) hereof shall be the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number, including any provisions designed to protect against dilution) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price in effect for a series of Preferred Stock pursuant to this Section 3, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of shares of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

Section 4. Redemption. The Preferred Stock shall not be redeemable.

Section 5. Voting Rights.

(a) General. Except as otherwise required by law or as set forth herein, each holder of shares of Preferred Stock shall be entitled to vote in all matters for which shareholders are entitled to vote, that number of votes equal to the whole number of shares of the Corporation's Common Stock issued or issuable upon the conversion of such holder's shares of Preferred Stock immediately after the close of business on the record date fixed for a shareholder meeting or the effective date of such written consent.

(b) Board of Directors. The authorized number of directors of the Corporation shall be set forth in the Bylaws of the Corporation and may be increased or decreased by an amendment to such Bylaws in accordance with their provisions. As long as 600,000 or more of the shares (appropriately adjusted for any stock splits, combinations, consolidations, or stock distributions or dividends effected with respect to such shares after the Original Issue Date) of Series A Preferred Stock remain outstanding, the holders of shares of Series A Preferred Stock, voting separately as a class, shall be entitled to elect one (1) director of the Corporation at each annual election of directors (and to fill any vacancies with respect thereto); provided that if the authorized number of directors is increased to greater than five (5) members, the holders of shares of Series A Preferred Stock, voting separately as a class, shall be entitled to elect two (2) directors at each annual election of directors (and to fill any vacancies with respect thereto).

Section 6. Covenants. In addition to any other rights provided by law, so long as at least an aggregate of 600,000 shares of Preferred Stock are outstanding, this Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of two-thirds of the outstanding shares of the Preferred Stock, voting as a single class:

(a) amend or repeal any provision of, or add any provision to, this Corporation's Certificate of Incorporation or Bylaws if such action would alter or change the preferences, rights, privileges, or powers of, or the restrictions provided for the benefit of, any series of Preferred Stock in an adverse manner;

(b) increase the number of directors to greater than ten (10) members;

(c) increase the number of authorized shares of any series of Preferred Stock;

(d) sell any shares for consideration other than cash or the forgiveness of debt;

(e) authorize any new shares or reclassify any Common Stock into shares of any class of stock having any preference or priority as to dividends, redemption rights, liquidation preferences, conversion rights, voting rights or rights otherwise superior to or on a parity with any such preference or priority of any series of outstanding Preferred Stock;

(f) sell or otherwise dispose of all or substantially all of the assets or business of the Corporation;

(g) effect a consolidation, reorganization or merger (including, without limitation, the issuance of any shares of stock, or rights to acquire shares of stock, which would result in the stockholders of the Corporation immediately prior to such issuance owning less than two-thirds of the voting power of the Corporation on a fully diluted basis after such issuance) of the Corporation with or into any other corporation;

(h) declare or pay any dividends, in cash or otherwise, or make any distributions to its shareholders, or purchase, redeem or otherwise acquire any of its outstanding capital stock, or set apart assets for a sinking or other analogous fund for the purchase, redemption, retirement or other acquisition of, any shares of its capital stock;

(i) purchase, acquire or agree to purchase or acquire or invest in the business, property or assets of, or any securities of, any other company or business, except that the Corporation may (A) invest its excess cash in Cash Equivalents and (B) make such purchase, acquisition or investment with respect to a wholly-owned subsidiary of the Corporation to the extent otherwise permitted hereunder;

(j) create, assume, incur, issue, guarantee or otherwise become directly or indirectly liable in respect of any Indebtedness;

(k) sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any properties or assets from, or enter into any contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate other than in the ordinary course of business.

For purposes of this Section 6:

1) the term “Cash Equivalents” means (i) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof having maturities of not more than six months from the date of acquisition, (ii) certificates of deposit or Eurodollar time deposits having maturities of six months or less from the date of acquisition, bankers’ acceptances with maturities not exceeding six months and overnight bank deposits, in each case with any domestic commercial bank having capital and surplus in excess of $500 million and a Keefe Bank Watch Rating of “B” or better, (iii) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (i) and (ii) entered into with any financial institution meeting the qualifications described in clause (ii) above, and (iv) commercial paper of any person that is not a subsidiary or an Affiliate of the Corporation having the highest rating obtainable from Moody's Investors Service, Inc. or Standard & Poor's Ratings Group, and maturing within six months after the date of acquisition;

2) the term “Indebtedness” means, with respect to any person or entity, calculated without duplication, any indebtedness of such person or entity, whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or bankers’ acceptances or representing capital lease obligations or the balance deferred and unpaid of the purchase price of any property, or guarantees of any of the foregoing, except any such balance that constitutes an accrued expense or trade payable to the extent that any such accrued expense or trade payable is not more than 90 days overdue or is otherwise being contested in good faith by appropriate proceedings promptly instituted and diligently conducted; and

3) the term “Affiliate” means, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by or under direct or indirect common control with, such person or entity (for purposes of this definition, “control” (including, with correlative meanings, the terms “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 or policies of a person or entity, whether through the ownership of voting securities, by agreement or otherwise); provided that no holder of Preferred Stock (or Common Stock issued upon conversion thereof) shall be deemed to be an Affiliate.

Notwithstanding the foregoing, the Corporation may undertake an initial public offering unless the initial public offering is opposed in writing by the holders of two-thirds of the Preferred Stock, voting as a single class, following notice to such holders at least 30 days prior to the filing of a registration statement with the Securities and Exchange Commission relating to such initial public offering. In addition, in connection with any such initial public offering, unless the holders of two-thirds of the Preferred Stock shall have opposed such initial public offering as aforesaid, the holders of the Preferred Stock shall not have a separate vote as a single class with respect to amendments to the Certificate of Incorporation in connection with such initial public offering to increase the authorized Common Stock, create a class of undesignated Preferred Stock, or effect a stock split, which amendments are proposed in connection with such initial public offering.

Notwithstanding any other provision herein, the requirement of the approval of the holders of two-thirds of the holders of Preferred Stock in this Section 6 shall not be amended or modified without the unanimous approval of the holders of Preferred Stock.

Section 7. Reacquired Shares. Any shares of Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 8. Status of Converted or Redeemed Stock. In the event any shares of Preferred Stock shall be redeemed or converted, the shares so converted or redeemed shall be canceled and shall not have the status of authorized but unissued shares of Preferred Stock and shall not be issuable by the Corporation and the Certificate of Incorporation of this Corporation shall be amended to effect the corresponding reduction in the Corporation's capital stock.

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

The election of directors need not be by written ballot unless a stockholder demands election by written ballot at a meeting of stockholders and before voting begins or unless the Bylaws of the Corporation shall so provide.

ARTICLE VII

The number of directors which constitute the whole Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation.

ARTICLE VIII

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE IX

(A) No director shall be personally liable to the Corporation or any stockholder for monetary damages for breach of fiduciary duty as a director, except for any matter in respect of which such director (1) shall be liable under Section 174 of the General Corporation Law of the State of Delaware or any amendment thereto or successor provision thereto, or (2) shall be liable by reason that, in addition to any and all other requirements for liability, he:

(i) shall have breached his duty of loyalty to the Corporation or its stockholders;

(ii) shall not have acted in good faith or, in failing to act, shall not have acted in good faith;

(iii) shall have acted in a manner involving intentional misconduct or a knowing violation of law or, in failing to act, shall have acted in a manner involving intentional misconduct or a knowing violation of law; or

(iv) shall have derived an improper personal benefit.

If the Delaware General Corporation Law is amended after the date hereof to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

(B) The Corporation shall indemnify to the fullest extent permitted under and in accordance with the laws of the State of Delaware any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

(C) Expenses incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding shall (in the case of any action, suit or proceeding against a director of the Corporation) or may (in the case of any action, suit or proceeding against an officer, employee or agent) be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the indemnified person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article IX.

(D) The indemnification and other rights set forth in this Article IX shall not be exclusive of any provisions with respect thereto in the By-Laws or any other contract or agreement between the Corporation and any officer, director, employee or agent of the Corporation.

(E) Neither the amendment nor repeal of this Article IX, paragraph (B), (C) or (D), nor the adoption of any provision of this Certificate of Incorporation inconsistent with Article IX, paragraph (B), (C) or (D), shall eliminate or reduce the effect of this Article IX, paragraphs (B), (C) or (D), in respect of any matter occurring before such amendment, repeal or adoption of an inconsistent provision or in respect of any cause of

action, suit or claim relating to any such matter which would have given rise to a right of indemnification or right to receive expenses pursuant to this Article IX, paragraph (B), (C) or (D), if such provision had not been so amended or repealed or if a provision inconsistent therewith had not been so adopted.

ARTICLE X

At the election of directors of the Corporation, each holder of stock of any class or series shall be entitled to one vote for each share held. No stockholder will be permitted to cumulate votes at any election of directors.

ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the laws of the State of Delaware) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE XII

Effective upon the Initial Public Offering (as defined in Article IV Section 3(b)(i) above), the stockholders of the Corporation may not take action by written consent without a meeting but must take such action at a duly called annual or special meeting of stockholders.

ARTICLE XIII

Subject to the limitations set forth herein, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred herein are granted subject to this reservation.”

CERTIFICATE OF AMENDMENT

OF THE

FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

AUTOBYTEL.COM INC.
A Delaware Corporation

Autobytel.com inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the “Corporation”), hereby certifies under penalty of perjury under the laws of the State of Delaware as follows:

FIRST: That this Corporation was originally incorporated on May 17, 1996 under the name of Auto-By-Tel Corporation, pursuant to the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”).

SECOND: That pursuant to Sections 141 and 242 of the Delaware General Corporation Law, the Board of Directors of this Corporation has duly adopted resolutions proposing to amend and restate the Fifth Amended and Restated Certificate of Incorporation filed with the Secretary of State of Delaware on December 14, 1998, declaring said amendment to be advisable and in the best interests of this Corporation and its stockholders.

THIRD: That pursuant to Sections 228 and 242 of the Delaware General Corporation Law, the changes to be effected by this Amendment to the Fifth Amended and Restated Certificate of Incorporation have been duly approved by the holders of the requisite number of shares of this Corporation.

FOURTH: That pursuant to Section 242 and 245 of the General Corporation Law of the State of Delaware, this Amendment to the Fifth Amended and Restated Certificate of Incorporation amends the Fifth Amended and Restated Certificate of Incorporation of the Corporation as follows:

The following sentence shall be added to the end of Section 3(b)(ii) of Article IV, B:

“In addition, immediately prior to the closing of an underwritten public offering as described in Section 3(b)(i)(C) above, all designated but unissued shares of Series C Preferred Stock shall be retired and restored to the status of authorized, undesignated and unissued shares of Preferred Stock.”

Section 8 of Article IV, B shall be deleted and inserted therefor shall be the following provisions:

“Section 8. Status of Converted or Redeemed Preferred Stock. In the event all shares of any class or series of Preferred Stock shall be redeemed or converted including, without limitation, in connection with an underwritten public offering as described in Section 3(b)(i)(C) of Article IV, B hereof, the shares so converted or redeemed shall be deemed to be retired and shall resume the status of authorized, undesignated and unissued shares of Preferred Stock.”

The second sentence of Section 3 of Article IV, B shall be amended and restated to read as follows:

“The initial Conversion Price per share shall be $9.00 for the Series A Preferred Stock, $10.37 for the Series B Preferred Stock and $13.20 for the Series C Preferred Stock.”

Article VII shall be amended by adding the following provisions thereto:

“Effective upon the consummation of an underwritten public offering as described in Section 3(b)(i)(C) of Article IV, B hereof, the terms of office of the Board of Directors will be divided into three classes: the Class I term will expire at the annual meeting of stockholders to be held in 1999; the Class II term will expire at the annual meeting of stockholders to be held in 2000; and the Class III term will expire at the annual meeting of stockholders to be held in 2001. At each annual meeting of stockholders after the initial classification, the successors to directors whose term will then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. The directorships will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors.”

IN WITNESS WHEREOF, this Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation has been signed this 1st day of March, 1999.

AUTOBYTEL.COM INC.

By: /s/ Mark W. Lorimer
Name: Mark W. Lorimer
Title: President and CEO

ATTEST:

By: /s/ Craig S. Frost
Name: Craig S. Frost
Title: Secretary

SECOND CERTIFICATE OF AMENDMENT

OF THE

FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

AUTOBYTEL.COM INC.
A Delaware Corporation

Autobytel.com inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the “Corporation”), hereby certifies under penalty of perjury under the laws of the State of Delaware as follows:

FIRST: That this Corporation was originally incorporated on May 17, 1996 under the name of Auto-By-Tel Corporation, pursuant to the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”).

SECOND: That pursuant to Sections 141 and 242 of the Delaware General Corporation Law, the Board of Directors of this Corporation has duly adopted resolutions proposing to amend and restate the Fifth Amended and Restated Certificate of Incorporation filed with the Secretary of State of Delaware on December 14, 1998, as amended by that Certificate of Amendment dated March 1, 1999, declaring said amendment to be advisable and in the best interests of this Corporation and its stockholders.

THIRD: That pursuant to Section 242 of the Delaware General Corporation Law, the changes to be effected by this Amendment to the Fifth Amended and Restated Certificate of Incorporation have been duly approved by the holders of the requisite number of shares of this Corporation.

FOURTH: That pursuant to Section 242 and 245 of the Delaware General Corporation Law, this Second Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation amends the Fifth Amended and Restated Certificate of Incorporation of the Corporation as follows:

Article IV, Section A shall be amended and restated as follows:

“A. Classes of Stock. This Corporation is authorized to issue two classes of stock, to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares that this Corporation is authorized to issue is two hundred eleven million four hundred forty-five thousand one hundred eighty-seven (211,445,187). The number of shares of Preferred Stock authorized to be issued is eleven million four hundred forty-five thousand one hundred eighty-seven

(11,445,187), par value $0.001 per share. The number of shares of Common Stock authorized to be issued is two hundred million (200,000,000), par value $0.001 per share."

IN WITNESS WHEREOF, this Second Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation has been signed this 22nd day of July, 1999.

AUTOBYTEL.COM INC.

By: /s/ Mark W. Lorimer
Name: Mark W. Lorimer
Title: President and CEO

ATTEST:

By: /s/ Ariel Amir
Name: Ariel Amir
Title: Secretary

THIRD CERTIFICATE OF AMENDMENT

OF THE

FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

AUTOBYTEL.COM INC.

A DELAWARE CORPORATION

Autobytel.com inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies under penalty of perjury under the laws of the State of Delaware as follows:

FIRST: That this Corporation was originally incorporated on May 17, 1996 under the name of Auto-By-Tel Corporation, pursuant to the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law").

SECOND: That pursuant to Section 242 of the Delaware General Corporation Law, this Third Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation amends the Fifth Amended and Restated Certificate of Incorporation of the Corporation as follows:

"Article I.

The name of the corporation is Autobytel Inc. (the "Corporation")."

THIRD: That pursuant to Section 242 of the Delaware General Corporation Law, the foregoing amendment of the Fifth Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Corporation.

FOURTH: That pursuant to Section 242 of the Delaware General Corporation Law, the foregoing amendment of the Fifth Amended and Restated Certificate of Incorporation has been duly approved by the holders of the requisite number of shares of the Corporation.

IN WITNESS WHEREOF, the Corporation has caused this Third Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation to be signed by Mark W. Lorimer, its President and CEO, and Ariel Amir, its Secretary, this 14th day of August, 2001.

By: /s/ Mark W. Lorimer
Mark W. Lorimer
President and CEO

By: /s/ Ariel Amir
Ariel Amir
Secretary

AMENDED CERTIFICATE OF DESIGNATION

OF

SERIES A JUNIOR PARTICIPATING PREFERRED STOCK

(Pursuant to Section 151 of the General Corporation Law of the State of Delaware)

Autobytel Inc. (the "Company"), a corporation organized and existing under the laws of the State of Delaware, hereby certifies under the laws of the State of Delaware as follows:

FIRST: No shares of Series A Junior Participating Preferred Stock have been issued.

SECOND: On April 23, 2009, pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware and the authority conferred upon the Board of Directors of the Company (the "Board of Directors") by Article IV of the Fifth Amended and Restated Certificate of Incorporation of the Company, as amended, the Board of Directors duly and validly adopted the following resolution setting forth the Company's Amended Certificate of Designation of Series A Junior Participating Preferred Stock:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of the Company in accordance with the provisions of the Fifth Amended and Restated Certificate of Incorporation of the Company, as amended, and in accordance with Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors has determined that it is advisable and in the best interests of the Company and its stockholders to amend in its entirety the certificate of designation for the Series A Junior Participating Preferred Stock, $.001 par value per share as follows:

Section 1. Designation and Amount . Two million (2,000,000) shares of Preferred Stock, $0.001 par value, are designated "Series A Junior Participating Preferred Stock" with the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions specified herein (the "Junior Preferred Stock"). Such number of shares may be increased or decreased by resolution of the Board of Directors; *provided* , that no decrease shall reduce the number of shares of Junior Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Company convertible into Junior Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Junior Preferred Stock with respect to dividends, the holders of shares of Junior Preferred Stock, in preference to the holders of

Common Stock, par value $0.001 per share (the “Common Stock”), of the Company, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of April, July, October and January in each year (each such date being referred to herein as a “Quarterly Dividend Payment Date”), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of (a) $1.00 per share or (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Junior Preferred Stock. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Junior Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Company shall declare a dividend or distribution on the Junior Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); *provided* , that in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of $1.00 per share on the Junior Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Junior Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Junior Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Junior Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Junior Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 3. Certain Restrictions.

(A) Whatever quarterly dividends or other dividends or distributions payable on the Junior Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Junior Preferred Stock outstanding shall have been paid in full, the Company shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Preferred Stock, except dividends paid ratably on the Junior Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amount to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock, provided that the Company may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Company ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Junior Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Junior Preferred Stock, or any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Company shall not permit any subsidiary of the Company to purchase or otherwise acquire for consideration any shares of stock of the Company unless the Company could, under paragraph (A) of this Section 3, purchase or otherwise acquire such shares at such time and in such manner.

Section 4. Reacquired Shares . Any shares of Junior Preferred Stock purchased or otherwise acquired by the Company in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Fifth Amended and Restated Certificate of Incorporation of the Company, as amended, or in any other Certificate of Designation creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 5. Liquidation, Dissolution or Winding Up . Upon any liquidation, dissolution or winding up of the Company, no distribution shall be made (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock unless, prior thereto, the holders of shares of Junior Preferred Stock shall have received $100.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Junior Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (2) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Preferred Stock, except distributions made ratably on the Junior Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Junior Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 6. Consolidation, Merger, Etc. In case the Company shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Junior Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Junior Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. No Redemption . The shares of Junior Preferred Stock shall not be redeemable.

Section 8. Rank . The Junior Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Company's Preferred Stock.

I N W ITNESS W HEREOF , the undersigned have executed this Amended Certificate of Designation as of April 24, 2009.

/s/ Glenn E. Fuller
Glenn E. Fuller
Executive Vice President, Chief Legal and
Administrative Officer and Secretary

Exhibit 4.2

AUTOBYTEL INC.

and

COMPUTERSHARE TRUST COMPANY

as Rights Agent

AMENDED AND RESTATED RIGHTS AGREEMENT

Dated as of April 24, 2009

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EXHIBITS

A. Form of Amended Certificate of Designation of Series A Junior Participating Preferred Stock

B. Form of Right Certificate

C. Summary of Rights to Purchase Preferred Shares

AMENDED AND RESTATED
RIGHTS AGREEMENT

THIS AMENDED AND RESTATED RIGHTS AGREEMENT ("Agreement"), dated as of April 24, 2009, between **AUTOBYTEL INC.,** a Delaware corporation (the "Company"), and **COMPUTERSHARE TRUST COMPANY, N.A.,** successor-in-interest to **U.S. STOCK TRANSFER CORPORATION,** a Delaware corporation ("Rights Agent"), amends and restates that certain Rights Agreement, dated as of July 30, 2004, as amended on January 13, 2009 (the "Original Agreement").

WHEREAS , in connection with the adoption of the Original Agreement, the Board of Directors of the Company (the "Board of Directors") authorized and declared a dividend of one preferred share purchase right (a "Right") for each Common Share (as such term is hereinafter defined) outstanding at the close of business on August 10, 2004 (the "Record Date"), each Right representing the right to purchase one one-hundredth of a Preferred Share (as such term is hereinafter defined), and authorized and directed the issuance of one Right with respect to each Common Share that became outstanding between the Record Date and the earliest to occur of the Distribution Date, the Redemption Date and the Final Expiration Date (as such terms are hereinafter defined);

WHEREAS , the Company and the Rights Agent desire to amend and restate the Original Agreement as set forth herein;

WHEREAS , Section 27 of the Original Agreement permits the Company from time to time to supplement and amend the Original Agreement;

WHEREAS , concurrently with the execution hereof, the Company shall file an Amended and Restated Certificate of Designation in the form attached hereto as Exhibit A, which Amended and Restated Certificate of Designation will set forth the rights and preferences of the Preferred Shares; and

WHEREAS , this Agreement amends and restates in all respects the Original Agreement.

NOW, THEREFORE , in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

SECTION 1. CERTAIN DEFINITIONS . For purposes of this Agreement, the following terms have the meanings indicated:

(a) **"Acquiring Person"** shall mean any Person (as such term is hereinafter defined) who or which, together with all Affiliates and Associates (as such terms are hereinafter defined) of such Person, shall be the Beneficial Owner (as such term is hereinafter defined) of *15%* or more of the Common Shares then outstanding; *provided* , *however* , that Coghill Capital Management, L.L.C., an Illinois limited liability company ("Coghill") shall not be deemed an "Acquiring Person" so long as (1) Coghill, together with its Affiliates and Associates, is not the Beneficial Owner of more than 8,121,610 Common Shares (other than pursuant to a transaction authorized in writing in advance by the Board of Directors, including a dividend or distribution paid or made by the Company on the outstanding Common Shares in

Common Shares or pursuant to a split or subdivision of Common Shares), (2) the Standstill Agreement, dated January 13, 2009, between the Company and Coghill (the "Standstill Agreement") continues to be binding on Coghill, (3) Coghill is in substantial compliance (as determined by the Board of Directors in its discretion) with the terms of the Standstill Agreement, as amended from time to time, (4) any and all amendments to the Standstill Agreement have been approved by the Board of Directors and (5) no amendments, if executed after the Distribution Date, cure, or have the effect of curing, any prior breach of the Standstill Agreement or any amendment thereto. Notwithstanding the foregoing, (A) the term Acquiring Person shall not include (i) the Company, (ii) any Subsidiary (as such term is hereinafter defined) of the Company, (iii) any employee benefit or compensation plan of the Company or any Subsidiary of the Company, or (iv) any entity holding Common Shares for or pursuant to the terms of any such employee benefit or compensation plan of the Company or any Subsidiary of the Company, and (B) no Person shall become an "Acquiring Person" either (x) as the result of an acquisition of Common Shares by the Company which, by reducing the number of shares outstanding, increases the proportionate number of shares beneficially owned by such Person to *15%* or more of the Common Shares then outstanding; *provided, however,* that if a Person shall become the Beneficial Owner of *15%* or more of the Common Shares then outstanding by reason of share purchases by the Company and shall, following written notice from, or public disclosure by the Company of such share purchases by the Company, become the Beneficial Owner of any additional Common Shares without the prior consent of the Company and shall then Beneficially Own more than *15%* of the Common Shares then outstanding, then such Person shall be deemed to be an "Acquiring Person," or (y) as the result of the acquisition of Common Shares directly from the Company as long as, prior to any acquisition of Common Shares directly from the Company, the Company has been apprised by any such Person of the number of Common Shares beneficially owned by such Person immediately prior to any such acquisition; *provided, however,* that if a Person shall become the Beneficial Owner of *15%* or more of the Common Shares then outstanding by reason of share purchases directly from the Company and shall, after that date, become the Beneficial Owner of any additional Common Shares without the prior written consent of the Company and shall then Beneficially Own more than 15% of the Common Shares then outstanding, then such Person shall be deemed to be an "Acquiring Person" or (z) if the Board of Directors determines in good faith that a Person who would otherwise be an "Acquiring Person," as defined pursuant to the foregoing provisions of this paragraph (a), has become such inadvertently, and without any intention of changing or influencing control of the Company, and such Person promptly enters into an irrevocable written commitment in favor of the Company to divest, and thereafter divests (without retaining any power, including voting with respect to such Common Shares), as promptly as practicable (as determined in good faith by the Board of Directors), following receipt of written notice from the Company of such event, of Beneficial Ownership of a sufficient number of Common Shares so that such Person would no longer be an Acquiring Person, as defined pursuant to the foregoing provisions of this paragraph (a), then such Person shall not be deemed to be an "Acquiring Person" for any purposes of this Agreement; *provided, however* , that if such Person shall again become the Beneficial Owner of 15% or more of the Common Shares then outstanding (or with respect to Coghill, shall become the Beneficial Owner of more than 8,121,610 Common Shares), such Person shall be deemed an "Acquiring Person," subject to the exceptions set forth in this Section 1(a).

(b) **"Affiliate"** and **"Associate"** shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities

Exchange Act of 1934, as amended (the "Exchange Act"), as in effect on the date of this Agreement; *provided, however*, that the limited partners of a limited partnership shall not be deemed to be Associates of such limited partnership solely by virtue of their limited partnership interests.

(c) A Person shall be deemed the **"Beneficial Owner"** or to have **"Beneficial Ownership"** of and shall be deemed to "beneficially own" any securities:

(i) which such Person or any of such Person's Affiliates or Associates is deemed to beneficially own, within the meaning of Rule 13d-3 of the General Rules and Regulations under the Exchange Act as in effect on the date of this Agreement;

(ii) which such Person or any of such Person's Affiliates or Associates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) other than agreements between the Company and any Person pursuant to which the right to purchase securities is conditioned upon the achievement of milestones which have not yet been achieved or upon the exercise of conversion rights, exchange rights, rights (other than the Rights), warrants or options, or otherwise; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange; or (B) the right to vote pursuant to any agreement, arrangement or understanding; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or

(iii) which are beneficially owned, directly or indirectly, by any other Person with which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to Section 1(c)(ii)(B) hereof) or disposing of any securities of the Company; *provided, however*, that an agreement, arrangement or understanding for purposes of this Section 1(c)(iii) shall not be deemed to include actions, including any agreement, arrangement or understanding, or statements by (A) any member of the Board of Directors, as comprised on the date of this Agreement (the "Existing Directors"), (B) any subsequent directors of the Company who have been nominated by a majority of the Existing Directors (the "Successor Directors"), or (C) any subsequent member of the Board of Directors who is elected by a majority of the Existing Directors and/or Successor Directors, nominating as a group.

Notwithstanding anything in this definition of Beneficial Ownership to the contrary, the phrase, "then outstanding," when used with reference to a Person's Beneficial Ownership of

securities of the Company, shall mean the number of such securities then issued and outstanding together with the number of such securities not then actually issued and outstanding which such Person would be deemed the Beneficial Owner hereunder.

(d) **"Business Day"** shall mean any day other than a Saturday, a Sunday, or a day on which banking institutions in the Commonwealth of Massachusetts are authorized or obligated by law or executive order to close.

(e) **"Close of Business"** on any given date shall mean 5:00 p.m., Eastern Standard Time, on such date; *provided, however*, that if such date is not a Business Day it shall mean 5:00 p.m., Eastern Standard Time, on the next succeeding Business Day.

(f) **"Common Shares"** shall mean the shares of common stock, par value $0.00l per share, of the Company; *provided, however*, that, "Common Shares," when used in this Agreement in connection with a specific reference to any Person other than the Company, shall mean the capital stock (or equity interest) with the greatest voting power of such other Person or, if such other Person is a Subsidiary of another Person, the Person or Persons which ultimately control such first-mentioned Person.

(g) **"Distribution Date"** shall have the meaning set forth in Section 3 hereof.

(h) " **Equivalent Preferred Shares** " shall have the meaning set forth in Section 11(b) hereof.

(i) **"Final Expiration Date"** shall have the meaning set forth in Section 7(a) hereof.

(j) **"Interested Stockholder"** shall mean any Acquiring Person or any Affiliate or Associate of an Acquiring Person or any other Person in which any such Acquiring Person, Affiliate or Associate has an interest, or any other Person acting directly or indirectly on behalf of or in concert with any such Acquiring Person, Affiliate or Associate.

(k) **"Person"** shall mean any individual, firm, corporation, partnership, limited liability company, joint venture, trust, association, unincorporated organization, group or other entity, and shall include any successor (by merger or otherwise) of such entity.

(l) **"Preferred Shares"** shall mean shares of Series A Junior Participating Preferred Stock, par value $.001 per share, of the Company having the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions set forth in the Form of Certificate of Designation attached to this Agreement as Exhibit A.

(m) **"Principal Party"** shall have the meaning set forth in Section 13(b) hereof.

(n) **"Purchase Price"** shall have the meaning set forth in Section 7(b) hereof.

(o) **"Redemption Date"** shall have the meaning set forth in Section 7(a) hereof.

(p) **"Shares Acquisition Date"** shall mean the first date of public announcement by the Company that an Acquiring Person exists, or by an Acquiring Person that such Person has become an Acquiring Person; *provided, however* that, if such Person is determined not to have become an Acquiring Person pursuant to clause (z) of Subsection 1(a)(B) hereof, then no Shares Acquisition Date shall be deemed to have occurred.

(q) **"Subsidiary"** of any Person shall mean any corporation or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such Person.

(r) **"Trading Day"** shall mean a day on which the principal national securities exchange on which the Security is listed or admitted to trading is open for the transaction of business or, if the Security is not listed or admitted to trading on any national securities exchange, a Business Day.

(s) **"Transaction"** shall mean any merger, consolidation or sale of assets described in Section 13(a) hereof or any acquisition of Common Shares which would result in a Person becoming an Acquiring Person or a Principal Party.

(t) **"Transaction Person"** with respect to a Transaction shall mean (i) any Person who (x) is or will become an Acquiring Person or a Principal Party (as such term is hereinafter defined) if the Transaction were to be consummated and (y) directly or indirectly proposed or nominated a director of the Company which director is in office at the time of consideration of the Transaction, or (ii) an Affiliate or Associate of such a Person.

(u) **"Trust"** shall have the meaning set forth in Section 24(a).

(v) " **Trust Agreement** " shall have the meaning set forth in Section 24(a).

SECTION 2. APPOINTMENT OF RIGHTS AGENT . The Company hereby appoints the Rights Agent to act as agent for the Company in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such co-Rights Agents as it may deem necessary or desirable upon ten (10) days prior written notice to the Rights Agent. The Rights Agent shall have no duty to supervise, and in no event shall be liable for, the acts or omissions of any such co-Rights Agent.

SECTION 3. ISSUE OF RIGHT CERTIFICATES .

(a) Until the earlier of the Close of Business on (i) the Shares Acquisition Date or (ii) the tenth (10 th) Business Day (or such later date as may be determined by action of the Board of Directors prior to such time as any Person becomes an Acquiring Person) after the date of the commencement (determined in accordance with Rule 14d-2 under the Exchange Act) by any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company or any entity

holding Common Shares for or pursuant to the terms of any such plan) of, or of the first public announcement of the intention of any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company or any entity holding Common Shares for or pursuant to the terms of any such plan) to commence, a tender or exchange offer (which intention to commence remains in effect for five Business Days after such announcement), the consummation of which would result in any Person becoming an Acquiring Person (including any such date which is after the date of this Agreement and prior to the issuance of the Rights, the earlier of such dates being herein referred to as the "Distribution Date"), (x) the Rights will be evidenced by the certificates for Common Shares registered in the names of the holders thereof (which certificates shall also be deemed to be Right Certificates) or, for Common Shares held in book-entry accounts through the direct registration service of the Company's transfer agent, by such book-entry accounts (together with a direct registration transaction advice with respect to such shares), and not by separate Right Certificates, and (y) the Rights (and the right to receive Right Certificates therefor) will be transferable only in connection with the transfer of Common Shares. As soon as practicable after the Distribution Date, the Company shall promptly notify the Rights Agent of the occurrence thereof and, if the Rights Agent is not then also the transfer agent and registrar for the Common Stock, provide the Rights Agent with the names and addresses of all record holders of Common Stock, and the Company will prepare and execute, the Rights Agent will countersign, and the Company will (i) send or cause to be sent (and the Rights Agent will, if requested, and provided with all necessary information, send) by first-class, insured, postage-prepaid mail, to each record holder of Common Shares as of the Close of Business on the Distribution Date, at the address of such holder shown on the records of the Company, a Right Certificate, in substantially the form of Exhibit B hereto (a "Right Certificate"), evidencing one Right for each Common Share so held, subject to the adjustment provisions of Section 11 hereof, or (ii) credit the book-entry account of such holder with such Rights and send a direct registration transaction advice with respect to such Rights to such holder. As of the Distribution Date, the Rights will be evidenced solely by such Right Certificates or such book-entry credits and related direct registration transaction advices. In the event the Company elects to distribute any Rights by crediting book-entry accounts, the provisions of this Agreement that reference Rights Certificates shall be interpreted to reflect that the Rights are credits to the book-entry accounts, that separate Rights Certificates are not issued with respect to some or all of the Rights, and that any legend required on a Rights Certificate may be placed on the direct registration transaction advice with respect to such Rights.

(b) On the Record Date, or as soon as practicable thereafter, the Company will send (directly or through the Rights Agent or its transfer agent) a copy of a Summary of Rights to Purchase Preferred Shares, in substantially the form of Exhibit C hereto (the "Summary of Rights"), by first-class, postage-prepaid mail, to each record holder of Common Shares as of the Close of Business on the Record Date, at the address of such holder shown on the records of the Company. Until the Distribution Date (or, if earlier, the Redemption Date or the Final Expiration Date), the Rights associated with the (i) the Common Shares represented by such certificates shall be evidenced by such certificates alone, and (ii) the Common Shares held in book-entry accounts shall be held in book-entry accounts and represented by the related transaction advice, and in either case the registered holders of the Common Shares shall also be registered holders of the associated Rights. The surrender for transfer of any certificate for Common Shares outstanding shall also constitute the transfer of the Rights associated with the Common Shares represented thereby (whether or not such certificates have impressed on, printed, written on or otherwise affixed to them the legend set forth in Section 3(c)).

(c) Certificates for Common Shares which become outstanding (including, without limitation, reacquired Common Shares referred to in the last sentence of this paragraph (c)) after the Record Date but prior to the earliest of the Distribution Date, the Redemption Date or the Final Expiration Date shall have impressed on, printed on, written on or otherwise affixed to them substantially in the form of the following legend:

This certificate also evidences and entitles the holder hereof to certain rights as set forth in an Agreement between Autobytel Inc. (the "Company ") and U.S. Stock Transfer Corporation, as Rights Agent (the "Rights Agent'), dated as of July 30, 2004, as amended from time to time (the "Agreement"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of the Company. Under certain circumstances, as set forth in the Agreement, such Rights will be evidenced by separate certificates and will no longer be evidenced by this certificate. The Company will mail to the holder of this certificate a copy of the Agreement without charge after receipt of a written request therefor. As described in the Agreement, Rights issued to any Person who becomes an Acquiring Person or an Affiliate or Associate thereof (as defined in the Agreement) and certain related persons, whether currently held by or on behalf of such Person or by any subsequent holder, shall become null and void.

Each book-entry account for such Common Shares that shall so become outstanding or shall be transferred or exchanged after the Record Date but prior to the earlier of the Distribution Date, the Redemption Date or the Final Expiration Date shall also be deemed to include the associated Rights, and the direct registration transaction advice with respect to such shall bear a legend in substantially the following form:

Each security covered by this Advice evidences and entitles the holder hereof to certain rights as set forth in an Agreement between Autobytel Inc. (the "Company ") and U.S. Stock Transfer Corporation, as Rights Agent (the "Rights Agent'), dated as of July 30, 2004, as amended from time to time (the "Agreement"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of the Company. Under certain circumstances, as set forth in the Agreement, such Rights will be evidenced by separate certificates or be covered by separate book-entry credits and will no longer be evidenced by this Advice. The Company will mail to the holder of this certificate a copy of the Agreement without charge after receipt of a written request therefor. As described in the Agreement, Rights issued to any Person who becomes an Acquiring Person or an Affiliate or Associate thereof (as defined in the Agreement) and certain related persons, whether currently held by or on behalf of such Person or by any subsequent holder, shall become null and void.

With respect to Common Shares described in this Section 3, until the Distribution Date (or, if earlier, the earlier of the Redemption Date or the Final Expiration Date), the Rights associated with the Common Shares represented by such certificates or held in such book-entry accounts, shall be evidenced by such certificates or such book-entry accounts (together with the direct registration transaction advice with respect to such shares) alone, and the surrender for transfer of any such certificate, whether by transfer of physical certificates or book-entry transfer, shall also constitute the transfer of the Rights associated with the Common Shares represented thereby. In the event that the Company purchases or acquires any Common Shares after the Record Date but prior to the Distribution Date, any Rights associated with such Common Shares shall be deemed canceled and retired so that the Company shall not be entitled to exercise any Rights associated with the Common Shares which are no longer outstanding. Notwithstanding this Section 3(c), the omission of a legend shall not affect the enforceability of any part of this Agreement or the rights of any holder of the Rights.

SECTION 4. FORM OF RIGHT CERTIFICATES .

(a) The Right Certificates (and the form of election to purchase Preferred Shares, the form of assignment and the form of certification to be printed on the reverse thereof) shall be substantially the same as Exhibit B hereto and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate (provided that such marks, legends, summaries and endorsements do not affect the rights, duties or responsibilities of the Rights Agent) and are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or quotation system on which the Rights may from time to time be listed, or to conform to usage. Subject to the provisions of Sections 7, 11 and 22 hereof the Right Certificates shall entitle the holders thereof to purchase such number of one one-hundredths of a Preferred Share as shall be set forth therein at the Purchase Price (as defined in Section 7(b)), but the number of such one one-hundredths of a Preferred Share and the Purchase Price shall be subject to adjustment as provided herein.

(b) Any Right Certificate issued pursuant to Section 3(a) or Section 22 hereof that represents Rights which are null and void pursuant to Section 11(a)(ii) hereof and any Right Certificate issued pursuant to Section 6 or Section 11 hereof upon transfer, exchange, replacement or adjustment of any other Right Certificate referred to in this sentence, shall contain (to the extent the Rights Agent has notice thereof and to the extent feasible) the following legend:

The Rights represented by this Right Certificate are or were beneficially owned by a Person who was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined in the Agreement). Accordingly, this Right Certificate and the Rights represented hereby are null and void.

The provisions of Section 11(a)(ii) hereof shall be operative whether or not the foregoing legend is contained on any such Right Certificate.

SECTION 5. COUNTERSIGNATURE AND REGISTRATION . The Right Certificates shall be executed on behalf of the Company by its Chairman of the Board, its Chief Executive Officer, its President, its Vice Chairman of the Board, its Chief Financial Officer, or any of its Executive Vice Presidents, either manually or by facsimile signature, shall have affixed thereto the Company's seal or a facsimile thereof if the Company has a seal, and shall be attested by the Secretary or an Assistant Secretary of the Company, either manually or by facsimile signature. The Right Certificates shall be countersigned by the Rights Agent, either manually or by facsimile signature, and shall not be valid for any purpose unless countersigned. In case any officer of the Company who shall have signed any of the Right Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Right Certificates, nevertheless, may be countersigned by the Rights Agent either manually or by facsimile signature and issued and delivered by the Company with the same force and effect as though the person who signed such Right Certificates had not ceased to be such officer of the Company; and any Right Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Right Certificate, shall be a proper officer of the Company to sign such Right Certificate, although at the date of the execution of this Agreement any such person was not such an officer.

Following the Distribution Date, and receipt by the Rights Agent of written notice to that effect and all other relevant information referred to in Section 3(a) hereof, the Rights Agent will keep or cause to be kept, at its office designated for such purpose, books for registration and transfer of the Right Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Right Certificates, the number of Rights evidenced on its face by each of the Right Certificates and the date of each of the Right Certificates.

SECTION 6. TRANSFER, SPLIT UP, COMBINATION AND EXCHANGE OF RIGHT CERTIFICATES; MUTILATED, DESTROYED, LOST OR STOLEN RIGHT CERTIFICATES . Subject to the provisions of Section 11(a)(ii), Section 14 and Section 24 hereof, at any time after the Close of Business on the Distribution Date, and at or prior to the Close of Business on the earlier of the Redemption Date or the Final Expiration Date, any Right Certificate or Right Certificates may be transferred, split up, combined or exchanged for another Right Certificate or Right Certificates, entitling the registered holder to purchase a like number of one one-hundredth of a Preferred Share as the Right Certificate or Right Certificates surrendered then entitled such holder to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Right Certificate or Right Certificates shall make such request in writing delivered to the Rights Agent, and shall surrender the Right Certificate or Right Certificates to be transferred, split up, combined or exchanged at the office of the Rights Agent designated for such purpose. Neither the Rights Agent nor the Company shall be obligated to take any action whatsoever with respect to the transfer of any such surrendered Right Certificate until the registered holder shall have properly completed and signed the certificate contained in the form of assignment on the reverse side of such Right Certificate and shall have provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company or the Rights Agent shall request. Thereupon the Rights Agent shall, subject to Section 11(a)(ii), Section 14 and Section 24 hereof,

countersign and deliver to the person entitled thereto a Right Certificate or Right Certificates, as the case may be, as so requested. The Company may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of Right Certificates. The Rights Agent shall have no duty or obligation under this Section 6 or any other similar provision of this Agreement unless and until it is reasonably satisfied that all such taxes and/or governmental charges have been paid in full.

Upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Right Certificate, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and, at the Company's request, reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Right Certificate if mutilated, the Company will issue, execute and deliver a new Right Certificate of like tenor to the Rights Agent for countersignature and delivery to the registered holder in lieu of the Right Certificate so lost, stolen, destroyed or mutilated.

Notwithstanding any other provisions hereof, the Company and the Rights Agent may amend this Agreement to provide for uncertificated Rights in addition to or in place of Rights evidenced by Rights Certificates.

SECTION 7. EXERCISE OF RIGHTS; PURCHASE PRICE; EXPIRATION DATE OF RIGHTS .

(a) The registered holder of any Right Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein) in whole or in part at any time after the Distribution Date upon surrender of the Right Certificate, with the form of election to purchase on the reverse side thereof duly executed, to the Rights Agent at the office of the Rights Agent designated for such purpose, together with payment of the Purchase Price for each one one-hundredth of a Preferred Share (or such other number of shares or other securities) as to which the Rights are exercised, at or prior to the earliest of (i) the Close of Business on July 30, 2014 (the "Final Expiration Date"), (ii) the time at which the Rights are redeemed as provided in Section 23 hereof (the "Redemption Date"), or (iii) the time at which such Rights are exchanged as provided in Section 24 hereof.

(b) The purchase price for each one one-hundredth of a Preferred Share pursuant to the exercise of a Right shall initially be $1.40 (the "Purchase Price") and shall be subject to adjustment from time to time as provided in Sections 11 and 13 hereof and shall be payable in lawful money of the United States of America in accordance with paragraph (c) below.

(c) Upon receipt of a Right Certificate representing exercisable Rights, with the form of election to purchase duly executed, accompanied by payment of the Purchase Price for the shares to be purchased and an amount equal to any applicable transfer tax required to be paid by the holder of such Right Certificate in accordance with Section 9 hereof by certified check, cashier's check, bank draft or money order payable to the order of the Company, the Rights Agent shall thereupon promptly (i) (A) requisition from any transfer agent for the Preferred Shares certificates for the number of Preferred Shares to be purchased and the

Company hereby irrevocably authorizes its transfer agent to comply with all such requests, or (B) if the Company, in its sole discretion, shall have elected to deposit the Preferred Shares issuable upon exercise of the Rights hereunder into a depository, requisition from the depositary agent depositary receipts representing such number of one one-hundredths of a Preferred Share as are to be purchased (in which case certificates for the Preferred Shares represented by such receipts shall be deposited by the transfer agent with the depositary agent) and the Company hereby directs the depositary agent to comply with such request, (ii) when appropriate, requisition from the Company the amount of cash to be paid in lieu of issuance of fractional shares in accordance with Section 14 hereof, (iii) after receipt of such certificates or depositary receipts, cause the same to be delivered to or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated by such holder and (iv) when appropriate, after receipt, deliver such cash to or upon the order of the registered holder of such Right Certificate. In the event that the Company is obligated to issue securities of the Company other than Preferred Shares (including Common Shares) of the Company pursuant to Section 11(a) hereof, the Company will make all arrangements necessary so that such other securities are available for distribution by the Rights Agent, if and when appropriate.

In addition, in the case of an exercise of the Rights by a holder pursuant to Section 11(a)(ii) hereof, the Rights Agent shall return such Right Certificate to the registered holder thereof after imprinting, stamping or otherwise indicating thereon that the rights represented by such Right Certificate no longer include the rights provided by Section 11(a)(ii) hereof, and, if fewer than all the Rights represented by such Right Certificate were so exercised, the Rights Agent shall indicate on the Right Certificate the number of Rights represented thereby which continue to include the rights provided by Section 11(a)(ii) hereof. Neither the Company nor the Rights Agent shall have any liability to any holder of Rights Certificates or to any other Person as a result of the Company's failure to make any determinations with respect to an Acquiring Person or such Acquiring Person's Affiliates, Associates or transferees hereunder.

(d) In case the registered holder of any Right Certificate shall exercise fewer than all the Rights evidenced thereby (other than a partial exercise of Rights pursuant to Section 11(a)(ii) as described in Section 7(c) hereof), a new Right Certificate evidencing Rights equivalent to the Rights remaining unexercised shall be issued by the Rights Agent to the registered holder of such Right Certificate or to his duly authorized assigns, subject to the provisions of Section 14 hereof.

(e) The Company covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued Preferred Shares or any Preferred Shares held in its treasury, the number of Preferred Shares that will be sufficient to permit the exercise in full of all outstanding Rights in accordance with this Section 7.

(f) Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder upon the occurrence of any purported exercise as set forth in this Section 7 unless such registered holder shall have (i) properly completed and signed the certification following the form of election to purchase set forth on the reverse side of the Rights Certificate surrendered for such exercise, (ii) tendered the Purchase Price (and an amount equal to any applicable transfer tax required to be paid by the holder of such Right Certificate in

accordance with Section 9 hereof) to the Company in the manner set forth in Section 7(c) hereof, and (iii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company or the Rights Agent shall reasonably request.

SECTION 8. CANCELLATION AND DESTRUCTION OF RIGHT CERTIFICATES . All Right Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or to any of its agents, be delivered to the Rights Agent for cancellation or in canceled form, or, if delivered or surrendered to the Rights Agent, shall be canceled by it, and no Right Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Right Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent shall deliver all canceled Right Certificates to the Company approximately one and one-half years after the cancellation date, or shall, at the written request of the Company, destroy such canceled Right Certificates, and in such case shall deliver a certificate of destruction thereof to the Company.

SECTION 9. AVAILABILITY OF PREFERRED SHARES . The Company agrees that so long as the Preferred Shares (and, after the time a person becomes an Acquiring Person, Common Shares or any other securities) issuable upon the exercise of the Rights may be listed on any national securities exchange or quotation system, the Company shall use its best efforts to cause, from and after such time as the Rights become exercisable, all shares reserved for such issuance to be listed on such exchange or quotation system upon official notice of issuance upon such exercise.

The Company agrees that it will take all such action as may be necessary to ensure that all Preferred Shares (or Common Shares and other securities, as the case may be) delivered upon exercise of Rights shall, at the time of delivery of the certificates for such Preferred Shares (subject to payment of the Purchase Price), be duly and validly authorized and issued and fully paid and nonassessable shares or other securities.

The Company further agrees that it will pay when due and payable any and all federal and state transfer taxes and charges which may be payable in respect of the issuance or delivery of the Right Certificates or of any Preferred Shares upon the exercise of Rights. The Company shall not, *however*, be required to pay any transfer tax which may be payable in respect of any transfer or delivery of Right Certificates to a Person other than, or the issuance or delivery of certificates or depositary receipts for the Preferred Shares in a name other than that of, the registered holder of the Right Certificate evidencing Rights surrendered for exercise or to issue or to deliver any certificates or depositary receipts for Preferred Shares upon the exercise of any Rights until any such tax shall have been paid (any such tax being payable by the holder of such Right Certificate at the time of surrender) or until it has been established to the Company's reasonable satisfaction that no such tax is due.

As soon as practicable after the Distribution Date, the Company shall use its best efforts to:

(i) prepare and file a registration statement under the Securities Act of 1933, as amended (the "Act"), with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, will use its best efforts to cause such registration statement to become effective as soon as practicable after such filing and will use its best efforts to cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Act) until the Final Expiration Date; and

(ii) use its best efforts to qualify or register the Rights and the securities purchasable upon exercise of the Rights under the blue sky laws of such jurisdictions as may be necessary or appropriate.

SECTION 10. PREFERRED SHARES RECORD DATE . Each Person in whose name any certificate for Preferred Shares or other securities is issued (or in whose name a book-entry account for such securities is held) upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of the Preferred Shares or other securities represented thereby on, and such certificate (or, in the case of securities held in book-entry form, the related direct transaction registration advice) shall be dated, the date upon which the Right Certificate evidencing such Rights was duly surrendered with the forms of election and certification duly executed (or the transfer of the book-entry accounts effected) and payment of the Purchase Price (and any applicable transfer taxes) was made; *provided, however,* that if the date of such surrender (or transfer in book-entry form) and payment is a date upon which the Preferred Shares or other securities transfer books of the Company are closed, such person shall be deemed to have become the record holder of such shares on, and such certificate (or, in the case of securities held in book-entry form, the related direct registration transaction advice) shall be dated , the next succeeding Business Day on which the Preferred Shares or other securities transfer books of the Company are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Right Certificate (or book entry-account), as such, shall not be entitled to any rights of a holder of Preferred Shares for which the Rights shall be exercisable, including, without limitation, the right to receive dividends or other distributions, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

SECTION 11. ADJUSTMENT OF PURCHASE PRICE, NUMBER OF SHARES OR NUMBER OF RIGHTS . The Purchase Price, the number of Preferred Shares covered by each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

(a) (i) In the event the Company shall at any time after the date of this Agreement (A) declare a dividend on the Preferred Shares payable in Preferred Shares, (B) subdivide the outstanding Preferred Shares, (C) combine the outstanding Preferred Shares into a smaller number of Preferred Shares or (D) issue any shares of its capital stock in a reclassification of the Preferred Shares (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11(a), the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, and the number and kind of shares of capital stock issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled

to receive the aggregate number and kind of shares of capital stock which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Shares transfer books of the Company were open, such holder would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification; *provided, however,* that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. If an event occurs which would require an adjustment under both Section 11(a)(i) and Section 11(a)(ii) hereof, the adjustment provided for in this Section 11(a)(i) shall be in addition to, and shall be made prior to any adjustment required pursuant to Section 11(a)(ii) hereof.

(ii) Subject to Section 24 hereof and the provisions of the next paragraph of this Section 11(a)(ii), in the event any Person shall become an Acquiring Person, each holder of a Right shall, for a period of 60 days after the later of such time that any Person becomes an Acquiring Person or the effective date of an appropriate registration statement filed under the Act pursuant to Section 9 hereof (provided, however that, if at any time prior to the expiration or termination of the Rights there shall be a temporary restraining order, a preliminary injunction, an injunction, or temporary suspension by the Board of Directors, or similar obstacle to exercise of the Rights (the "Injunction") which prevents exercise of the Rights, a new 60-day period shall commence on the date the Injunction is removed), have a right to receive, upon exercise thereof at a price equal to the then current Purchase Price multiplied by the number of one one-hundredths of a Preferred Share for which a Right is then exercisable, in accordance with the terms of this Agreement and in lieu of Preferred Shares, such number of Common Shares as shall equal the result obtained by (A) multiplying the then current Purchase Price by the number of one one-hundredths of a Preferred Share for which a Right is then exercisable and dividing that product by (B) *50%* of the then current per share market price of the Common Shares (determined pursuant to Section 11(d) hereof) on the date such Person became an Acquiring Person; *provided, however,* that if the transaction that would otherwise give rise to the foregoing adjustment is also subject to the provisions of Section 13 hereof, then only the provisions of Section 13 hereof shall apply and no adjustment shall be made pursuant to this Section 11(a)(ii). In the event that any Person shall become an Acquiring Person and the Rights shall then be outstanding, the Company shall not take any action which would eliminate or diminish the benefits intended to be afforded by the Rights.

Notwithstanding anything in this Agreement to the contrary, from and after the time any Person becomes an Acquiring Person, any Rights beneficially owned by (i) such Acquiring Person or an Associate or Affiliate of such Acquiring Person, (ii) a transferee of such Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee after the Acquiring Person became such, or (iii) a transferee of such Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee prior to or concurrently with the Acquiring Person's becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person to holders of equity interests in such Acquiring Person or to any Person with whom the Acquiring Person has any continuing agreement, arrangement or understanding regarding the transferred Rights or (B) a transfer which the Board of Directors has determined is part of a plan, arrangement or understanding which has as a primary purpose or effect the avoidance of this Section 11(a)(ii), shall become null and void without any further action and no holder of such Rights shall have any rights whatsoever with respect to such Rights,

whether under any provision of this Agreement or otherwise. The Company shall use all reasonable efforts to insure that the provisions of this Section 11(a)(ii) and Section 4(b) hereof are complied with, but neither the Company nor the Rights Agent shall have any liability to any holder of Right Certificates or other Person as a result of the Company's failure to make any determinations with respect to an Acquiring Person or its Affiliates, Associates or transferees hereunder. No Right Certificate shall be issued at any time upon the transfer of any Rights to an Acquiring Person whose Rights would be null and void pursuant to the first sentence of this paragraph or any Associate or Affiliate thereof or to any nominee of such Acquiring Person, Associate or Affiliate; and any Right Certificate delivered to the Rights Agent for transfer to an Acquiring Person whose Rights would be null and void pursuant to the first sentence of this paragraph shall be canceled.

(iii) In lieu of issuing Common Shares in accordance with Section 11(a)(ii) hereof, the Company may, if a majority of the Board of Directors then in office determines that such action is necessary or appropriate and not contrary to the interests of holders of Rights, elect to (and, in the event that the Board of Directors has not exercised the exchange right contained in Section 24(c) hereof and there are not sufficient treasury shares and authorized but unissued Common Shares to permit the exercise in full of the Rights in accordance with the foregoing subparagraph (ii), the Company shall) take all such action as may be necessary to authorize, issue or pay, upon the exercise of the Rights, cash (including by way of a reduction of the Purchase Price), property, Common Shares, other securities or any combination thereof having an aggregate value equal to the value of the Common Shares which otherwise would have been issuable pursuant to Section 11(a)(ii) hereof which aggregate value shall be determined by a nationally recognized investment banking firm selected by a majority of the Board of Directors then in office. For purposes of the preceding sentence, the value of the Common Shares shall be determined pursuant to Section 11(d) hereof. Any such election by the Board of Directors must be made within 60 days following the date on which the event described in Section 11 (a)(ii) hereof shall have occurred. Following the occurrence of the event described in Section 11(a)(ii) hereof, a majority of the Board of Directors then in office may suspend the exercisability of the Rights for a period of up to 60 days following the date on which the event described in Section 11(a)(ii) hereof shall have occurred to the extent that such directors have not determined whether to exercise their rights of election under this Section 11(a)(iii). In the event of any such suspension, the Company shall promptly notify the Rights Agent in writing of such suspension and shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended.

(b) In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of Preferred Shares entitling them (for a period expiring within *45* calendar days after such record date) to subscribe for or purchase Preferred Shares (or shares having the same designations and the powers, preferences and rights, and the qualifications, limitations and restrictions as the Preferred Shares ("Equivalent Preferred Shares")) or securities convertible into Preferred Shares or Equivalent Preferred Shares at a price per Preferred Share or equivalent preferred share (or having a conversion price per share, if a security convertible into Preferred Shares or Equivalent Preferred Shares) less than the then current per share market price of the Preferred Shares (as such term is hereinafter defined) on such record date, the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the

numerator of which shall be the number of Preferred Shares outstanding on such record date plus the number of Preferred Shares which the aggregate offering price of the total number of Preferred Shares and/or Equivalent Preferred Shares so to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such current market price and the denominator of which shall be the number of Preferred Shares outstanding on such record date plus the number of additional Preferred Shares and/or Equivalent Preferred Shares to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible); *provided, however*, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. In case such subscription price may be paid as consideration, part or all of which shall be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board of Directors, whose determination shall be described in a reasonably detailed statement filed with the Rights Agent. Preferred Shares owned by or held for the account of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustment shall be made successively whenever such a record date is fixed; and in the event that such rights, options or warrants are not so issued, the Purchase Price shall be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(c) In case the Company shall fix a record date for the making of a distribution to all holders of the Preferred Shares (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing or surviving corporation) of evidences of indebtedness or assets (other than a regular quarterly cash dividend or a dividend payable in Preferred Shares) or subscription rights or warrants (excluding those referred to in Section 11(b) hereof), the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the then current per share market price of the Preferred Shares on such record date, less the fair market value (as determined in good faith by the Board of Directors, whose determination shall be described in a reasonably detailed statement filed with the Rights Agent) of the portion of the assets or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to one Preferred Share and the denominator of which shall be such current per share market price of the Preferred Shares; *provided, however*, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company to be issued upon exercise of one Right. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such distribution is not so made, the Purchase Price shall again be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(d) (i) For the purpose of any computation hereunder, the “current per share market price” of any security (a “Security” for the purpose of this Section 11(d)(i)) on any date shall be deemed to be the average of the daily closing prices per share of such Security for the 30 consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date; *provided, however* , that in the event that the current per share market price of the Security is determined during a period following the announcement by the issuer of such Security of (A) a dividend or distribution on such Security payable in shares of such Security or securities convertible into such shares, or (B) any subdivision, combination or reclassification of

such Security or securities convertible into such shares, or (C) any subdivision, combination or reclassification of such Security and prior to the expiration of 30 Trading Days after the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, then, and in each such case, the current per share market price shall be appropriately adjusted to reflect the current market price per share equivalent of such Security. The closing price for each day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange, The NASDAQ Stock Market, or, if the Security is not listed or admitted to trading on the New York Stock Exchange or The NASDAQ Stock Market, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Security is listed or admitted to trading or, if the Security is not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by an automated quotation system or such other system then in use, or, if on any such date the Security is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Security selected by the Board of Directors or, if on any such date no professional market maker is making a market in the Security, the price as determined in good faith by the Board of Directors.

(ii) For the purpose of any computation hereunder, the “current per share market price” of the Preferred Shares shall be determined in accordance with the method set forth in Section 11(d)(i) hereof. If the Preferred Shares are not publicly traded, the “current per share market price” of the Preferred Shares shall be conclusively deemed to be the current per share market price of the Common Shares as determined pursuant to Section 11(d)(i) hereof (appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof) multiplied by one hundred. If neither the Common Shares nor the Preferred Shares are publicly held or so listed or traded, “current per share market price” shall mean the fair value per share as determined in good faith by the Board of Directors, whose determination shall be described in a reasonably detailed statement filed with the Rights Agent.

(e) No adjustment in the Purchase Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Purchase Price; *provided, however*, that any adjustments which by reason of this Section 11(e) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest one one-hundredth of a Preferred Share or one ten-thousandth of any other share or security as the case may be. Notwithstanding the first sentence of this Section 11(e), any adjustment required by this Section 11 shall be made no later than the earlier of (i) three years from the date of the transaction which requires such adjustment or (ii) the date of the expiration of the right to exercise any Rights.

(f) If as a result of an adjustment made pursuant to Section 11(a) hereof, the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock of the Company other than Preferred Shares, thereafter the number of such other shares so receivable upon exercise of any Right shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the

Preferred Shares contained in Sections 11(a) through 11(c) hereof, inclusive, and the provisions of Sections 7, 9, 10, 13 and 14 hereof with respect to the Preferred Shares shall apply on like terms to any such other shares.

(g) All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of one one-hundredths of a Preferred Share purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Unless the Company shall have exercised its election as provided in Section 11(i) hereof, upon each adjustment of the Purchase Price as a result of the calculations made in Section 11(b) and Section 11(c) hereof, each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Purchase Price, that number of one one-hundredths of a Preferred Share (calculated to the nearest one one- millionth of a Preferred Share) obtained by (i) multiplying (x) the number of one one-hundredths of a Preferred Share covered by a Right immediately prior to this adjustment by (y) the Purchase Price in effect immediately prior to such adjustment of the Purchase Price and (ii) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment of the Purchase Price.

(i) The Company may elect on or after the date of any adjustment of the Purchase Price to adjust the number of Rights, in substitution for any adjustment in the number of one one-hundredths of a Preferred Share purchasable upon the exercise of a Right. Each of the Rights outstanding after such adjustment of the number of Rights shall be exercisable for the number of one one-hundredths of a Preferred Share for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest one ten-thousandth) obtained by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of the Purchase Price. The Company shall promptly notify the Rights Agent in writing of such election and shall make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Right Certificates have been issued, shall be at least 10 days later than the date of the public announcement. If Right Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11(i), the Company shall, as promptly as practicable, cause to be distributed to holders of record of Right Certificates on such record date Right Certificates evidencing, subject to Section 14 hereof, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Right Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Right Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Right Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein and shall be registered in the names of the holders of record of Right Certificates on the record date specified in the public announcement.

(j) Irrespective of any adjustment or change in the Purchase Price or the number of one one-hundredths of a Preferred Share issuable upon the exercise of the Rights, the Right Certificates theretofore and thereafter issued may continue to express the Purchase Price and the number of one one-hundredths of a Preferred Share which were expressed in the initial Right Certificates issued hereunder.

(k) Before taking any action that would cause an adjustment reducing the Purchase Price below one one-hundredth of the then par value, if any, of the Preferred Shares issuable upon exercise of the Rights, the Company shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable Preferred Shares at such adjusted Purchase Price.

(l) In any case in which this Section 11 shall require that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer (with prompt written notice thereof to the Rights Agent) until the occurrence of such event the issuing to the holder of any Right exercised after such record date of the Preferred Shares and other capital stock or securities of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; provided, however, that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares upon the occurrence of the event requiring such adjustment.

(m) The Company covenants and agrees that, after the Distribution Date, it will not, except as permitted by Section 23 or Section 27 hereof take (or permit any Subsidiary to take) any action the purpose of which is to, or if at the time such action is taken it is reasonably foreseeable that the effect of such action is to, materially diminish or eliminate the benefits intended to be afforded by the Rights. Any such action taken by the Company during any period after any Person becomes an Acquiring Person but prior to the Distribution Date shall be null and void unless such action could be taken under this Section 11(m) from and after the Distribution Date.

(n) Anything in this Section 11 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that it in its sole discretion shall determine to be advisable in order that any consolidation or subdivision of the Preferred Shares, issuance wholly for cash of any Preferred Shares at less than the current market price, issuance wholly for cash of Preferred Shares or securities which by their terms are convertible into or exchangeable for Preferred Shares, dividends on Preferred Shares payable in Preferred Shares or issuance of rights, options or warrants referred to hereinabove in Section 11(b), hereafter made by the Company to holders of its Preferred Shares shall not be taxable to such stockholders.

(o) In the event that at any time after the date of this Agreement and prior to the Distribution Date, the Company shall (i) declare or pay any dividend on the Common Shares payable in Common Shares or (ii) effect a subdivision, combination or consolidation of the Common Shares (by reclassification or otherwise than by payment of dividends in Common Shares) into a greater or lesser number of Common Shares, then in any such case (A) the number

of one one-hundredths of a Preferred Share purchasable after such event upon proper exercise of each Right shall be determined by multiplying the number of one one-hundredths of a Preferred Share so purchasable immediately prior to such event by a fraction, the numerator of which is the number of Common Shares outstanding immediately before such event and the denominator of which is the number of Common Shares outstanding immediately after such event, and (B) each Common Share outstanding immediately after such event shall have issued with respect to it that number of Rights which each Common Share outstanding immediately prior to such event had issued with respect to it. The adjustments provided for in this Section 11(o) shall be made successively whenever such a dividend is declared or paid or such a subdivision, combination or consolidation is effected.

(p) The exercise of Rights under Section 11(a)(ii) hereof shall only result in the loss of rights under Section 11(a)(ii) hereof to the extent so exercised and shall not otherwise affect the rights represented by the Rights under this Agreement, including the rights represented by Section 13 hereof.

SECTION 12. CERTIFICATE OF ADJUSTED PURCHASE PRICE OR NUMBER OF SHARES . Whenever an adjustment is made as provided in Sections 11 and 13 hereof, the Company shall promptly (a) prepare a certificate setting forth such adjustment, and a brief, reasonably detailed statement of the facts, computations and methodology accounting for such adjustment, (b) file with the Rights Agent and with each transfer agent for the Common Shares or the Preferred Shares a copy of such certificate and (c) mail a brief summary thereof to each holder of a Right Certificate in accordance with Section 25 hereof. The Rights Agent shall be fully protected in relying on any such certificate and on any adjustment therein contained, and shall have no duty or liability with respect to, and shall not be deemed to have knowledge of any adjustment unless and until it shall have received such certificate.

SECTION 13. CONSOLIDATION, MERGER OR SALE OR TRANSFER OF ASSETS OR EARNING POWER .

(a) In the event that, following the Shares Acquisition Date or, if a Transaction is proposed, the Distribution Date, directly or indirectly (x) the Company shall consolidate with, or merge with and into, any Interested Stockholder, or if in such merger or consolidation all holders of Common Shares are not treated alike, any other Person, (y) any Interested Stockholder, or if in such merger or consolidation all holders of Common Shares are not treated alike, any other Person shall, consolidate with the Company, or merge with and into the Company, and the Company shall be the continuing or surviving corporation of such merger (other than, in the case of either transaction described in (x) or (y), a merger or consolidation which would result in all of the voting power represented by the securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into securities of the surviving entity) all of the voting power represented by the securities of the Company or such surviving entity outstanding immediately after such merger or consolidation and the holders of such securities not having changed as a result of such merger or consolidation), or (z) the Company shall sell, mortgage or otherwise transfer (or one or more of its Subsidiaries shall sell, mortgage or otherwise transfer), in one or more transactions, assets or earning power aggregating more than 50% of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any Interested Stockholder or Stockholders,

or if in such transaction all holders of Common Shares are not treated alike, any other Person, (other than the Company or any Subsidiary of the Company in one or more transactions each of which individually and the aggregate does not violate Section 13(d) hereof) then, and in each such case, proper provision shall be made so that (i) each holder of a Right, subject to Section 11(a)(ii) hereof, shall have the right to receive, upon the exercise thereof at a price equal to the then current Purchase Price multiplied by the number of one one-hundredths of a Preferred Share for which a Right is then exercisable in accordance with the terms of this Agreement and in lieu of Preferred Shares, such number of freely tradable Common Shares of the Principal Party (as such term is hereinafter defined), free and clear of liens, rights of call or first refusal, encumbrances or other adverse claims, as shall be equal to the result obtained by (A) multiplying the then current Purchase Price by the number of one one-hundredths of a Preferred Share for which a Right is then exercisable (without taking into account any adjustment previously made pursuant to Section 11(a)(ii) hereof) and dividing that product by (B) *50%* of the then current per share market price of the Common Shares of such Principal Party (determined pursuant to Section 11(d) hereof) on the date of consummation of such consolidation, merger, sale or transfer; (ii) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such consolidation, merger, sale or transfer, all the obligations and duties of the Company pursuant to this Agreement; (iii) the term "Company" shall thereafter be deemed to refer to such Principal Party, it being specifically intended that the provisions of Section 11 hereof shall apply to such Principal Party; and (iv) such Principal Party shall take such steps (including, but not limited to, the reservation of a sufficient number of shares of its Common Shares in accordance with Section 9 hereof) in connection with such consummation as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to its Common Shares thereafter deliverable upon the exercise of the Rights.

(b) "Principal Party" shall mean:

(i) in the case of any transaction described in clause (x) or (y) of the first sentence of Section 13(a) hereof, the Person that is the issuer of any securities into which Common Shares are converted in such merger or consolidation, and if no securities are so issued, the Person that is the other party to the merger or consolidation (or, if applicable, the Company, if it is the surviving corporation); and

(ii) in the case of any transaction described in clause (z) of Section 13(a) hereof, the Person that is the party receiving the greatest portion of the assets or earning power transferred pursuant to such transaction or transactions;

provided, however, that in any case, (1) if the Common Shares of such Person are not at such time and have not been continuously over the preceding 12-month period registered under Section 12 of the Exchange Act, and such Person is a direct or indirect Subsidiary or Affiliate of another Person the Common Shares of which are and have been so registered, "Principal Party" shall refer to such other Person; (2) if such Person is a Subsidiary, directly or indirectly, or Affiliate of more than one Person, the Common Shares of two or more of which are and have been so registered, "Principal Party" shall refer to whichever of such Persons is the issuer of the Common Shares having the greatest aggregate market value; and (3) if such Person is owned, directly or indirectly, by a joint venture formed by two or more Persons that are not owned, directly or indirectly, by the same Person, the rules set forth in (1) and (2) above shall apply to

each of the chains of ownership having an interest in such joint venture as if such party were a “Subsidiary” of both or all of such joint ventures and the Principal Parties in each such chain shall bear the obligations set forth in this Section 13 in the same ratio as their direct or indirect interests in such Person bear to the total of such interests.

(c) The Company shall not consummate any such consolidation, merger, sale or transfer unless the Principal Party shall have a sufficient number of authorized Common Shares that have not been issued or reserved for issuance to permit the exercise in full of the Rights in accordance with this Section 13 and unless prior thereto the Company and each Principal Party and each other Person who may become a Principal Party as a result of such consolidation, merger, sale or transfer shall have (i) executed and delivered to the Rights Agent a supplemental agreement providing for the terms set forth in paragraphs (a) and (b) of this Section 13 and (ii) prepared, filed and had declared and remain effective a registration statement under the Act on the appropriate form with respect to the Rights and the securities exercisable upon exercise of the Rights and further providing that, as soon as practicable after the date of any consolidation, merger, sale or transfer of assets mentioned in paragraph (a) of this Section 13, the Principal Party at its own expense will:

(i) cause the registration statement under the Act with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form to remain effective (with a prospectus at all times meeting the requirements of the Act) until the Final Expiration Date;

(ii) use its best efforts to qualify or register the Rights and the securities purchasable upon exercise of the Rights under the blue sky laws of such jurisdictions as may be necessary or appropriate;

(iii) list the Rights and the securities purchasable upon exercise of the Rights on each national securities exchange on which the Common Shares were listed prior to the consummation of such consolidation, merger, sale or transfer of assets or, if the Common Shares were not listed on a national securities exchange prior to the consummation of such consolidation, merger, sale or transfer of assets, on a national securities exchange; and

(iv) deliver to holders of the Rights historical financial statements for the Principal Party and each of its Affiliates which comply in all material respects with the requirements for registration on Form 10 under the Exchange Act.

The provisions of this Section 13 shall similarly apply to successive mergers or consolidations or sales or other transfers.

(d) After the Distribution Date, the Company covenants and agrees that it shall not (i) consolidate with, (ii) merge with or into, or (iii) sell or transfer to, in one or more transactions, assets or earning power aggregating more than *50%* of the assets or earning power of the Company and its Subsidiaries taken as a whole, any other Person (other than a Subsidiary of the Company in a transaction which does not violate Section 11(m) hereof), if (x) at the time of or after such consolidation, merger or sale there are any charter or bylaw provisions or any rights, warrants or other instruments or securities outstanding, agreements in

effect or any other action taken which would diminish or otherwise eliminate the benefits intended to be afforded by the Rights or (y) prior to, simultaneously with or immediately after such consolidation, merger or sale, the stockholders of the Person who constitutes, or would constitute, the "Principal Party" for purposes of Section 13(a) hereof shall have received a distribution of Rights previously owned by such Person or any of its Affiliates and Associates. The Company shall not consummate any such consolidation, merger, sale or transfer unless prior thereto the Company and such other Person shall have executed and delivered to the Rights Agent a supplemental agreement evidencing compliance with this Section 13(d).

SECTION 14 . FRACTIONAL RIGHTS AND FRACTIONAL SHARES .

(a) The Company shall not be required to issue fractions of Rights or to distribute Right Certificates which evidence fractional Rights. In lieu of such fractional Rights, there shall be paid to the registered holders of the Right Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash equal to the same fraction of the current market value of a whole Right. For the purposes of this Section 14(a), the current market value of a whole Right shall be the closing price of the Rights for the Trading Day immediately prior to, but not including, the date on which such fractional Rights would have been otherwise issuable. The closing price for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange, The NASDAQ Stock Market, or, if the Rights are not listed or admitted to trading on the New York Stock Exchange or The NASDAQ Stock Market, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading or, if the Rights are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by an automated quotation system or such other system then in use, or, if on any such date the Rights are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights selected by the Board of Directors. If on any such date no such market maker is making a market in the Rights, the fair value of the Rights on such date as determined in good faith by the Board of Directors shall be used.

(b) The Company shall not be required to issue fractions of Preferred Shares (other than fractions which are integral multiples of one one-hundredth of a Preferred Share) upon exercise of the Rights or to distribute certificates which evidence fractional Preferred Shares (other than fractions which are integral multiples of one one-hundredth of a Preferred Share). Fractions of Preferred Shares in integral multiples of one one-hundredth of a Preferred Share may, at the election of the Company, be evidenced by depositary receipts; *provided, however*, that holders of such depositary receipts shall have all of the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions to which they are entitled as beneficial owners of the Preferred Shares represented by such depositary receipts. In lieu of fractional Preferred Shares that are not integral multiples of one one-hundredth of a Preferred Share, the Company shall pay to the registered holders of Right Certificates at the time such Rights are exercised as herein provided an amount in cash equal to

the same fraction of the current market value of one Preferred Share. For the purposes of this Section 14(b), the current market value of a Preferred Share shall be the current per share market price of the Preferred Shares (as determined pursuant to the second sentence of Section 11 (d)(i) hereof) for the Trading Day immediately prior to, but not including, the date of such exercise (or, if not publicly traded, in accordance with Section 11(d)(ii) hereof).

(c) Following the occurrence of one of the transactions or events specified in Section 11 hereof giving rise to the right to receive Common Shares, capital stock equivalents (other than Preferred Shares) or other securities upon the exercise of a Right, the Company shall not be required to issue fractions of Common Shares or units of such Common Shares, capital stock equivalents or other securities upon exercise of the Rights or to distribute certificates which evidence fractional Common Shares, capital stock equivalents or other securities. In lieu of fractional Common Shares, capital stock equivalents or other securities, the Company shall pay to the registered holders of Right Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the current market value of one Common Share or unit of such Common Shares, capital stock equivalents or other securities. For purposes of this Section 14(c), the current market value shall be the current per share market price (as determined pursuant to Section 11(d)(i) hereof) for the Trading Day immediately prior to, but not including, the date of such exercise and, if such capital stock equivalent is not traded, each such capital stock equivalent shall have the value of one one-hundredth of a Preferred Share.

(d) The holder of a Right by the acceptance of the Right expressly waives his right to receive any fractional Rights or any fractional shares upon exercise of a Right (except as provided above); and

(e) Whenever a payment for fractional Rights or fractional shares is to be made by the Rights Agent, the Company shall (i) promptly prepare and deliver to the Rights Agent a certificate setting forth in reasonable detail the facts related to such payment and the prices and/or formulas utilized in calculating such payments, and (ii) provide sufficient monies to the Rights Agent in the form of fully collected funds to make such payments. The Rights Agent shall be fully protected in relying upon such a certificate and shall have no duty with respect to, and shall not be deemed to have knowledge of any payment for fractional Rights or fractional shares under any Section of this Agreement relating to the payment of fractional Rights or fractional shares unless and until the Rights Agent shall have received such a certificate and sufficient monies.

SECTION 15 . RIGHTS OF ACTION . All rights of action in respect of this Agreement, excepting the rights of action given to the Rights Agent under Sections 18 and 20 hereof, are vested in the respective registered holders of the Right Certificates (and, prior to the Distribution Date, the registered holders of the Common Shares) and any registered holder of any Right Certificate (or, prior to the Distribution Date, of the Common Shares), without the consent of the Rights Agent or of the holder of any other Right Certificate (or, prior to the Distribution Date, of the Common Shares), may, in his, her or its own behalf and for his, her or its own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, his, her or its right to exercise the Rights evidenced by such Right Certificate in the manner provided in such Right Certificate and in this

Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and will be entitled to specific performance of the obligations under, and injunctive relief against actual or threatened violations of the obligations of any Person subject to, this Agreement. Holders of Rights shall be entitled to recover the reasonable costs and expenses, including attorneys fees, incurred by them in any action to enforce the provisions of this Agreement.

SECTION 16 . AGREEMENT OF RIGHT HOLDERS . Every holder of a Right, by accepting the same, consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will be transferable only in connection with the transfer of the Common Shares;

(b) after the Distribution Date, the Right Certificates are transferable (subject to the provisions of this Agreement) only on the registry books of the Rights Agent if surrendered at the office of the Rights Agent designated for such purpose, duly endorsed or accompanied by a proper instrument of transfer; and

(c) the Company and the Rights Agent may deem and treat the Person in whose name the Right Certificate (or, prior to the Distribution Date, the associated Common Shares certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Right Certificates or the associated Common Shares certificate made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent shall be affected by any notice to the contrary; and

(d) notwithstanding anything in this Agreement to the contrary, neither the Company nor the Rights Agent shall have any liability to any holder of a Right or other Person as a result of its inability to perform any of its obligations under this Agreement by reason of any preliminary or permanent injunction or other order, decree, judgment or ruling (whether interlocutory or final) issued by a court of competent jurisdiction or by a governmental, regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation; *provided* , *however* , that the Company must use its reasonable best efforts to have any such order, decree, judgment or ruling lifted or otherwise overturned as soon as possible.

SECTION 17 . RIGHT CERTIFICATE HOLDER NOT DEEMED A STOCKHOLDER . No holder, as such, of any Right Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the Preferred Shares or any other securities of the Company which may at any time be issuable on the exercise of the Rights represented thereby, nor shall anything contained herein or in any Right Certificate be construed to confer upon the holder of any Right Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to

receive notice of meetings or other actions affecting stockholders (except as provided in Section *25* hereof), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Right Certificate shall have been exercised in accordance with the provisions hereof.

SECTION 18. CONCERNING THE RIGHTS AGENT . The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and other disbursements incurred in the preparation, delivery, administration, execution and amendment of this Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense, incurred without gross negligence, bad faith or willful misconduct on the part of the Rights Agent, for any action taken, suffered or omitted by the Rights Agent in connection with the acceptance, administration and execution of this Agreement or the exercise and performance of its duties hereunder, including, without limitation, the costs and expenses of defending against any claim of liability in the premises. The provisions of this Section 18 and Section 20 below (including, but not limited to, the indemnity provided herein) shall survive the exercise or expiration of the Rights, the termination of this Agreement and the resignation or removal of the Rights Agent. The costs and expenses incurred in enforcing this right of indemnification shall be paid by the Company.

The Rights Agent shall be protected and shall incur no liability for, or in respect of any action taken, suffered or omitted by it in connection with, the acceptance and administration of this Agreement in reliance upon any Right Certificate or certificate for the Preferred Shares or Common Shares or for other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement, or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper person or persons, or otherwise upon the advice of counsel as set forth in Section 20 hereof. The Rights Agent shall not be deemed to have any duty or notice unless and until the Company has provided the Rights Agent with actual written notice. Anything in this Agreement to the contrary notwithstanding, in no event shall the Rights Agent be liable for special, punitive, indirect, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, lost profits), even if the Rights Agent has been advised of the possibility of such loss or damage. Any liability of the Rights Agent under this Agreement shall be limited to the amount of fees paid by the Company to the Rights Agent.

SECTION 19. MERGER OR CONSOLIDATION OR CHANGE OF NAME OF RIGHTS AGENT . Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any Person succeeding to the shareholder services or corporate trust business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such Person would be eligible for appointment as a successor Rights Agent under the provisions of Section 21 hereof. In case at the time such successor Rights Agent shall succeed to the agency created by this Agreement and at such time any of the Right Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the

countersignature of the predecessor Rights Agent and deliver such Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, any successor Rights Agent may countersign such Right Certificates either in the name of the predecessor Rights Agent or in the name of the successor Rights Agent; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

In case at any time the name of the Rights Agent shall be changed and at such time any of the Right Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, the Rights Agent may countersign such Right Certificates either in its prior name or in its changed name; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

SECTION 20. DUTIES OF RIGHTS AGENT . The Rights Agent undertakes the duties and obligations expressly imposed by this Agreement (and no implied duties or obligations shall be read against the Rights Agent) upon the following terms and conditions, by all of which the Company and the holders of Right Certificates, by their acceptance thereof, shall be bound:

(a) The Rights Agent may consult with legal counsel of its choice (who may be legal counsel for the Company), and the advice or opinion of such counsel shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken or omitted by it in accordance with such advice or opinion.

(b) Whenever in the performance of its duties under this Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering (or omitting to take) any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by any one of the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Executive Vice President, the Treasurer or the Secretary of the Company and delivered to the Rights Agent; and such certificate shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered omitted in good faith by it under the provisions of this Agreement in reliance upon such certificate.

(c) The Rights Agent shall be liable hereunder to the Company and any other Person only for its own gross negligence, bad faith or willful misconduct.

(d) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Right Certificates (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

(e) The Rights Agent shall not have any liability nor be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Right Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Right Certificate; nor shall it be responsible for any change in the exercisability of the Rights (including the Rights becoming null and void pursuant to Section 11(a)(ii) hereof) or any adjustment in the terms of the Rights (including the manner, method or amount thereof) provided for in Sections 3, 11, 13, 23 or 24 hereof, or the ascertaining of the existence of facts that would require any such change or adjustment (except with respect to the exercise of Rights evidenced by Right Certificates after receipt of a certificate pursuant to Section 12 hereof describing such change or adjustment); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Preferred Shares to be issued pursuant to this Agreement or any Right Certificate or as to whether any Preferred Shares will, when issued, be validly authorized and issued, fully paid and nonassessable.

(f) The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(g) The Rights Agent is hereby authorized and directed to accept advice or instructions with respect to the performance of its duties hereunder from any one of the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Executive Vice President, the Secretary or the Treasurer of the Company, and to apply to such officers for advice or instructions in connection with its duties, and such advice or instructions shall be full authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered or omitted by it in good faith in accordance with the advice or instructions of any such officer or for any delay in acting while waiting for those instructions. Any application by the Rights Agent for written instructions from the Company may, at the option of the Rights Agent, set forth in writing any action proposed to be taken or omitted by the Rights Agent with respect to its duties or obligations under this Agreement and the date on and/or after which such action shall be taken or omitted and the Rights Agent shall not be liable for any action taken, suffered or omitted in accordance with a proposal included in any such application on or after the date specified therein (which date shall not be less than three Business Days after the date indicated in such application unless any such officer shall have consented in writing to an earlier date) unless, prior to taking, suffering or omitting any such action, the Rights Agent has received written instructions in response to such application specifying the action to be taken, suffered or omitted.

(h) The Rights Agent and any stockholder, affiliate, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not a Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent from acting in any other capacity for the Company or for any other Person.

(i) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company resulting from any such act, default, neglect or misconduct, absent gross negligence, willful misconduct or bad faith.

(j) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of its rights if it believes that repayment of such funds or adequate indemnification against such risk or liability is not assured to it.

(k) If, with respect to any Right Certificate surrendered to the Rights Agent for exercise or transfer, the certificate attached to the form of assignment or form of election to purchase, as the case may be, has not been executed, the Rights Agent shall not take any further action with respect to such requested exercise of transfer without first consulting with the Company.

SECTION 21. CHANGE OF RIGHTS AGENT . The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Agreement upon 30 days' notice in writing mailed to the Company and to each transfer agent for the Common Shares or Preferred Shares by registered or certified mail. In the event the transfer agency relationship in effect between the Company and the Rights Agent terminates, the Rights Agent will be deemed to have resigned automatically and be discharged from its duties under this Agreement as of the effective date of such termination, and the Company shall be responsible for sending any required notice. The Company may remove the Rights Agent or any successor Rights Agent upon 30 days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent for the Common Shares or Preferred Shares by registered or certified mail, and to the holders of the Right Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Rights Agent. If the Company shall fail to make such appointment within a period of 30 days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Right Certificate (who shall, with such notice, submit his Right Certificate for inspection by the Company), then the registered holder of any Right Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be either (a) a Person organized and doing business under the laws of the United States or of any State of the United States which is authorized under such laws to conduct shareholder services business and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Rights Agent a combined capital and surplus of at least $10 million or (b) an Affiliate of such Person. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment the Company shall file notice

thereof in writing with the predecessor Rights Agent and each transfer agent for the Common Shares or Preferred Shares, and mail a notice thereof in writing to the registered holders of the Right Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

SECTION 22. ISSUANCE OF NEW RIGHT CERTIFICATES . Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Right Certificates evidencing Rights in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Right Certificates made in accordance with the provisions of this Agreement. In addition, in connection with the issuance or sale of Common Shares following the Distribution Date and prior to the earlier of the Redemption Date and the Final Expiration Date, the Company (a) shall with respect to Common Shares so issued or sold pursuant to the exercise of stock options or under any employee plan or arrangement in existence prior to the Distribution Date, or upon the exercise, conversion or exchange of securities, notes or debentures issued by the Company and in existence prior to the Distribution Date, and (b) may, in any other case, if deemed necessary or appropriate by the Board of Directors, issue Right Certificates representing the appropriate number of Rights in connection with such issuance or sale; *provided, however*, that (i) the Company shall not be obligated to issue any such Right Certificates if, and to the extent that, the Company shall be advised by counsel that such issuance would create a significant risk of material adverse tax consequences to the Company or the Person to whom such Right Certificate would be issued, and (ii) no Right Certificate shall be issued if, and to the extent that, appropriate adjustment shall otherwise have been made in lieu of the issuance thereof.

SECTION 23. REDEMPTION.

(a) The Rights may be redeemed by action of the Board of Directors pursuant to Section 23(b) hereof and shall not be redeemed in any other manner.

(b) (i) The Board of Directors may, at its option, at any time prior to the earlier of (A) such time as any Person becoming an Acquiring Person, or (B) the Final Expiration Date, redeem all but not less than all of the then outstanding Rights at a redemption price of $0.001 per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such redemption price being hereinafter referred to as the “Redemption Price”), and the Company may, at its option, pay the Redemption Price in Common Shares (based on the “current per-share market price,” as such term is defined in Section 11(d) hereof, of the Common Shares at the time of redemption), cash or any other form of consideration deemed appropriate by the Board of Directors. The redemption of the Rights by the Board of Directors may be made effective at such time, on such basis and subject to such conditions as the Board of Directors in its sole discretion may establish. Notwithstanding anything contained in this Agreement to the contrary, the Rights shall not be exercisable pursuant to Section 11(a)(ii) hereof prior to the expiration or termination of the Company’s right of redemption under this Section 23(b)(i).

(ii) In addition, the Board of Directors may, at its option, at any time after the time a Person becomes an Acquiring Person and after the expiration of any period during which the holder of Rights may exercise the rights under Section 11(a)(ii) hereof but prior to any event described in clause (x), (y) or (z) of the first sentence of Section 13 hereof, redeem all but not less than all of the then outstanding Rights at the Redemption Price (x) in connection with any merger, consolidation or sale or other transfer (in one transaction or in a series of related transactions) of assets or earning power aggregating *50%* or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) in which all holders of Common Shares are treated alike and not involving (other than as a holder of Common Shares being treated like all other such holders) an Interested Stockholder or a Transaction Person or (y)(A) if and for so long as the Acquiring Person is not thereafter the Beneficial Owner of *15%* or more of the then outstanding Common Shares, and (B) at the time of redemption no other Persons are Acquiring Persons.

(c) Immediately upon the action of the Board of Directors ordering the redemption of the Rights pursuant to Section 23(b) hereof, and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price. The Company shall promptly notify the Rights Agent in writing of such redemption and shall promptly give public notice of any such redemption; *provided, however,* that the failure to give, or any defect in, any such notice shall not affect the validity of such redemption. Within 10 days after such action of the Board of Directors ordering the redemption of the Rights pursuant to Section 23(b) hereof, the Company shall mail a notice of redemption to all the holders of the then outstanding Rights at their last addresses as they appear upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Shares, *provided, however,* that failure to give, or any defect in, any such notice shall not affect the validity of such redemption. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption will state the method by which the payment of the Redemption Price will be made. Neither the Company nor any of its Affiliates or Associates may redeem, acquire or purchase for value any Rights at any time in any manner other than that specifically set forth in this Section 23 or in Section 24 hereof, and other than in connection with the purchase of Common Shares prior to the Distribution Date.

(d) The Company may, at its option, discharge all of its obligations with respect to any redemption of the Rights by (i) issuing a press release announcing the manner of redemption of the Rights and (ii) mailing payment of the Redemption Price to the registered holders of the Rights at their last addresses as they appear on the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Shares, and upon such action, all outstanding Right Certificates shall be null and void without any further action by the Company. In the event the Company elects to discharge all of its obligations with respect to any redemption of Rights by mailing payment of the Redemption Price to the registered holders of the Rights as set forth in the preceding sentence, the dollar amount sent to each such registered holder representing the full Redemption Price to which such registered holder shall be entitled shall be rounded up to the nearest whole cent.

SECTION 24. EXCHANGE .

(a) The Board of Directors may, at its option, at any time after any Person becomes an Acquiring Person, exchange all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become null and void pursuant to the provisions of Section 11 (a)(ii) hereof) for Common Shares at an exchange ratio of one Common Share per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring in respect of the Common Shares after the date hereof (such amount per Right being hereinafter referred to as the "Exchange Ratio"). From and after the occurrence of an event specified in Section 13(a) hereof, any Rights that theretofore have not been exchanged pursuant to this Section 24(a) shall thereafter be exercisable only in accordance with Section 13 and may not be exchanged pursuant to this Section 24(a). The exchange of the Rights by the Board of Directors of the Company may be made effective at such time, on such basis and with such conditions as the Board of Directors of the Company in its sole discretion may establish. Prior to effecting an exchange pursuant to this Section 24, the Board of Directors may direct the Company to enter into a Trust Agreement in such form and with such terms as the Board of Directors shall then approve (the "Trust Agreement"). If the Board of Directors so directs, the Company shall enter into the Trust Agreement and shall issue to the trust created by such agreement (the "Trust") all of the Common Shares issuable pursuant to the exchange, and all Persons entitled to receive shares pursuant to the exchange shall be entitled to receive such shares (and any dividends or distributions made thereon after the date on which such shares are deposited in the Trust) only from the Trust and solely upon compliance with the relevant terms and provisions of the Trust Agreement.

(b) Immediately upon the effectiveness of the action of the Board of Directors ordering the exchange of any Rights pursuant to Section 24(a) hereof and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive that number of Common Shares equal to the number of such Rights held by such holder multiplied by the Exchange Ratio. The Company shall promptly give public notice of any such exchange; *provided, however*, that the failure to give, or any defect in, such notice shall not affect the validity of such exchange. The Company promptly shall mail a notice of any such exchange to the Rights Agent and to all of the holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange will state the method by which the exchange of the Common Shares for Rights will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange shall be effected pro rata based on the number of Rights (other than Rights which have become null and void pursuant to the provisions of Section 11(a)(ii) hereof) held by each holder of Rights.

(c) In lieu of issuing Common Shares in accordance with Section 24(a) hereof, the Company may, if a majority of the Board of Directors then in office determines that such action is necessary or appropriate and not contrary to the interests of the holders of Rights, elect to (and, in the event that there are not sufficient treasury shares and authorized but unissued Common Shares to permit any exchange of the Rights in accordance with Section 24(a) hereof, the Company shall) take all such action as may be necessary to authorize, issue or pay,

upon the exchange of the Rights, cash (including by way of a reduction of the Purchase Price), property, Common Shares, other securities or any combination thereof having an aggregate value equal to the value of the Common Shares which otherwise would have been issuable pursuant to Section 24(a) hereof, which aggregate value shall be determined by a nationally recognized investment banking firm selected by a majority of the Board of Directors then in office. For purposes of the preceding sentence, the value of the Common Shares shall be determined pursuant to Section 11(d) hereof. Any election pursuant to this Section 24(c) by the Board of Directors must be made by resolution within 60 days following the date on which the event described in Section 11(a)(ii) hereof shall have occurred. Following the occurrence of the event described in Section 11(a)(ii) hereof, a majority of the Board of Directors then in office may suspend the exercisability of the Rights for a period of up to 60 days following the date on which the event described in Section 11(a)(ii) hereof shall have occurred to the extent that such directors have not determined whether to exercise their rights of exchange under this Section 24(c). In the event of any such suspension, the Company shall promptly notify the Rights Agent in writing of such suspension and shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended.

(d) The Company shall not be required to issue fractions of Common Shares or to distribute certificates which evidence fractional Common Shares. In lieu of such fractional Common Shares, the Company shall pay to the registered holders of the Right Certificates with regard to which such fractional Common Shares would otherwise be issuable an amount in cash equal to the same fraction of the current market value of a whole Common Share. For the purposes of this Section 24(d), the current market value of a whole Common Share shall be the closing price of a Common Share (as determined pursuant to the second sentence of Section 11(d)(i) hereof) for the Trading Day immediately after the date of the first public announcement by the Company that an exchange is to be effected pursuant to this Section 24.

(e) The Company shall not be required to issue fractions of Preferred Shares (other than fractions which are integral multiples of one one-hundredth of a Preferred Share) upon exchange of the Rights or to distribute certificates which evidence fractional Preferred Shares (other than fractions which are integral multiples of one one-hundredth of a Preferred Share). Fractions of Preferred Shares in integral multiples of one one-hundredth of a Preferred Share may, at the election of the Company, be evidenced by depositary receipts; provided, however, that holders of such depositary receipts shall have all of the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions to which they are entitled as beneficial owners of the Preferred Shares represented by such depositary receipts. In lieu of fractional Preferred Shares that are not integral multiples of one one-hundredth of a Preferred Share, the Company shall pay to the registered holders of Right Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the current market value of one Preferred Share. For the purposes of this Section 24(e), the current market value of a Preferred Share shall be 100 times the closing price of a Common Share (as determined pursuant to the second sentence of Section 11(d)(i) hereof) for the Trading Day immediately after the date of the first public announcement by the Company that an exchange is to be effected pursuant to this Section 24.

SECTION 25. NOTICE OF CERTAIN EVENTS .

(a) In case the Company shall propose (i) to pay any dividend payable in stock of any class to the holders of its Preferred Shares or to make any other distribution to the holders of its Preferred Shares (other than a regular quarterly cash dividend), (ii) to offer to the holders of its Preferred Shares rights or warrants to subscribe for or to purchase any additional Preferred Shares or shares of stock of any class or any other securities, rights or options, (iii) to effect any reclassification of its Preferred Shares (other than a reclassification involving only the subdivision of outstanding Preferred Shares), (iv) to effect any consolidation or merger into or with, or to effect any sale or other transfer (or to permit one or more of its Subsidiaries to effect any sale or other transfer), in one or more transactions, of 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole), to any other Person, (v) to effect the liquidation, dissolution or winding up of the Company, or (vi) to declare or pay any dividend on the Common Shares payable in Common Shares or to effect a subdivision, combination or consolidation of the Common Shares (by reclassification or otherwise than by payment of dividends in Common Shares), then, in each such case, the Company shall give to each holder of a Right Certificate, in accordance with Section 26 hereof, a notice of such proposed action, which shall specify the record date for the purpose of such stock dividend, or distribution of rights or warrants, or the date on which such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution, or winding up is to take place and the date of participation therein by the holders of the Common Shares and/or the Preferred Shares, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (i) or (ii) above at least 10 days prior to the record date for determining holders of the Preferred Shares for purposes of such action, and in the case of any such other action, at least 10 days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the Common Shares and/or the Preferred Shares, whichever shall be the earlier.

(b) In case the event set forth in Section 11(a)(ii) hereof shall occur, then the Company shall as soon as practicable thereafter give to each holder of a Right Certificate, in accordance with Section 26 hereof, a notice of the occurrence of such event, which notice shall describe the event and the consequences of the event to holders of Rights under Section 11(a)(ii) hereof.

SECTION 26. NOTICES . Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Right Certificate to or on the Company shall be sufficiently given or made if sent by courier, via a nationally recognized overnight delivery service or by U.S. mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

Autobytel Inc.
18872 MacArthur Boulevard
Irvine, CA 92612
Attn: General Counsel
Facsimile: (949) 862-1323

with a copy to: Paul, Hastings, Janofsky & Walker LLP
4747 Executive Drive, 12th Floor
San Diego, CA 92121
Attn: Carl Sanchez, Esq.
Deyan Spiridonov, Esq.
Facsimile: (858) 458-3005

Subject to the provisions of Section 21 hereof, any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Right Certificate to or on the Rights Agent shall be sufficiently given or made if sent by courier, via a nationally recognized overnight delivery service or by U.S. mail, postage prepaid, addressed (until another address is filed in writing with the Company) as follows:

Computershare Trust Company, N.A.
250 Royall Street
Canton, MA 02021
Attn: Client Services

SECTION 27. SUPPLEMENTS AND AMENDMENTS . Prior to the Distribution Date, the Company and the Rights Agent shall, if the Company so directs, supplement or amend any provision of this Agreement without the approval of any holders of the Rights. From and after the Distribution Date, the Company and the Rights Agent shall, if the Company so directs, from time to time supplement or amend any provision of this Agreement without the approval of any holders of Right Certificates in order to (i) cure any ambiguity, (ii) correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein, or (iii) change any other provisions with respect to the Rights which the Company may deem necessary or desirable; *provided, however,* that no such supplement or amendment shall be made which would adversely affect the interests of the holders of Rights (other than the interests of an Acquiring Person or its Affiliates or Associates). Any supplement or amendment adopted during any period after any Person has become an Acquiring Person but prior to the Distribution Date shall become null and void unless such supplement or amendment could have been adopted by the Company from and after the Distribution Date. Any such supplement or amendment shall be evidenced by a writing signed by the Company and the Rights Agent. Upon delivery of a certificate from an appropriate officer of the Company which states that the proposed supplement or amendment is in compliance with the terms of this Section 27, the Rights Agent shall execute such supplement or amendment unless the Rights Agent shall have determined that such supplement or amendment would adversely change or increase its rights, duties, obligations or liabilities under this Agreement. Prior to the Distribution Date, the interests of the holders of Rights shall be deemed coincident with the interests of the holders of Common Shares.

SECTION 28. DETERMINATION AND ACTIONS BY THE BOARD OF DIRECTORS, ETC . For all purposes of this Agreement, any calculation of the number of Common Shares outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding Common Shares or any other securities of which any Person is the Beneficial Owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(l)(i) of the General Rules and Regulations under the Exchange Act as in effect on the date of this Agreement. The Board of Directors shall have the exclusive power and authority to administer this Agreement and to exercise all rights and powers specifically granted to the Board

of Directors, or the Company, or as may be necessary or advisable in the administration of this Agreement, including without limitation, the right and power to (i) interpret the provisions of this Agreement, and (ii) make all determinations deemed necessary or advisable for the administration of this Agreement (including a determination to redeem or not redeem the Rights or to amend this Agreement). All such actions, calculations, interpretations and determinations which are done or made by the Board of Directors in good faith, shall be final, conclusive and binding on the Rights Agent and the holders of the Rights. The Rights Agent shall always be entitled to assume that the Company's Board of Directors acted in good faith and shall be fully protected and incur no liability in reliance thereon.

SECTION 29. SUCCESSORS . All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

SECTION 30. BENEFITS OF THIS AGREEMENT . Nothing in this Agreement shall be construed to give to any Person other than the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Shares) any legal or equitable right, remedy or claim under this Agreement. This Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Shares).

SECTION 31. SEVERABILITY . If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 32. GOVERNING LAW. This Agreement and each Right Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts to be made and performed entirely within such State.

SECTION 33. COUNTERPARTS . This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 34. DESCRIPTIVE HEADINGS . Descriptive headings of the several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

SECTION 35. FORCE MAJEURE . Notwithstanding anything to the contrary contained herein, the Rights Agent shall not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

IN WITNESS WHEREOF, parties whereto have caused this Agreement to be duly executed, all as of the day and year first above written.

AUTOBYTEL INC.

By: /s/ Glenn E. Fuller
Name: Glenn E. Fuller
Title: Executive Vice President, Chief Legal and Administrative Officer and Secretary

COMPUTERSHARE TRUST COMPANY, N.A.

By: /s/ Ian Yewer
Name: Ian Yewer
Title: Branch President

(EXHIBIT A TO RIGHTS AGREEMENT)

FORM OF AMENDED

CERTIFICATE OF DESIGNATION

OF

SERIES A JUNIOR PARTICIPATING PREFERRED STOCK

(Pursuant to Section 151 of the General Corporation Law of the State of Delaware)

Autobytel Inc. (the "Company"), a corporation organized and existing under the laws of the State of Delaware hereby certifies under the laws of the State of Delaware as follows:

FIRST: No shares of Series A Junior Participating Preferred Stock have been issued.

SECOND: On April 23, 2009, pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware and the authority conferred upon the Board of Directors of the Company (the "Board of Directors") by Article IV of the Fifth Amended and Restated Certificate of Incorporation of the Company, as amended, the Board of Directors duly and validly adopted the following resolution setting forth the Company's Amended Certificate of Designation of Series A Junior Participating Preferred Stock:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of the Company in accordance with the provisions of the Fifth Amended and Restated Certificate of Incorporation of the Company, as amended, and in accordance with Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors has determined that it is advisable and in the best interests of the Company and its stockholders to amend in its entirety the certificate of designation for the Series A Junior Participating Preferred Stock, $.001 par value per share as follows:

Section 2. Designation and Amount . Two million (2,000,000) shares of Preferred Stock, $0.001 par value, are designated "Series A Junior Participating Preferred Stock" with the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions specified herein (the "Junior Preferred Stock"). Such number of shares may be increased or decreased by resolution of the Board of Directors; *provided* , that no decrease shall reduce the number of shares of Junior Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Company convertible into Junior Preferred Stock.

Section 3. Dividends and Distributions .

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Junior Preferred Stock with respect to dividends, the holders of shares of Junior Preferred Stock, in preference to the holders of Common Stock, par value $0.001 per share (the "Common Stock"), of the Company, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of April, July, October and January in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of (a) $1.00 per share or (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Junior Preferred Stock. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Junior Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Company shall declare a dividend or distribution on the Junior Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); *provided* , that in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of $1.00 per share on the Junior Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Junior Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Junior Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear

interest. Dividends paid on the shares of Junior Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Junior Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 4. Certain Restrictions .

(A) Whatever quarterly dividends or other dividends or distributions payable on the Junior Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Junior Preferred Stock outstanding shall have been paid in full, the Company shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Preferred Stock, except dividends paid ratably on the Junior Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amount to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock, provided that the Company may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Company ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Junior Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Junior Preferred Stock, or any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Company shall not permit any subsidiary of the Company to purchase or otherwise acquire for consideration any shares of stock of the Company unless the Company could, under paragraph (A) of this Section 3, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares . Any shares of Junior Preferred Stock purchased or otherwise acquired by the Company in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become

authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Fifth Amended and Restated Certificate of Incorporation of the Company, as amended, or in any other Certificate of Designation creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up . Upon any liquidation, dissolution or winding up of the Company, no distribution shall be made (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock unless, prior thereto, the holders of shares of Junior Preferred Stock shall have received $100.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Junior Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (2) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Preferred Stock, except distributions made ratably on the Junior Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Junior Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, Etc . In case the Company shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Junior Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Company shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Junior Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption . The shares of Junior Preferred Stock shall not be redeemable.

Section 9. Rank . The Junior Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Company's Preferred Stock.

IN WITNESS WHEREOF , the undersigned has executed this Amended Certificate of Designation as of April 24, 2009.

Glenn E. Fuller, Executive Vice President,
Chief Legal and Administrative Officer
and Secretary

(EXHIBIT B TO RIGHTS AGREEMENT)

FORM OF RIGHT CERTIFICATE

Certificate No. R- _____ **_____Rights**

Certificate No. R- Rights

NOT EXERCISABLE AFTER JULY 30, 2014 OR EARLIER IF REDEMPTION OR EXCHANGE OCCURS. THE RIGHTS ARE SUBJECT TO REDEMPTION AT $0.001 PER RIGHT AND TO EXCHANGE ON THE TERMS SET FORTH IN THE RIGHTS AGREEMENT.

RIGHT CERTIFICATE
AUTOBYTEL INC.

This certifies that or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Amended and Restated Rights Agreement, dated as of April 24, 2009 (the "Agreement"), between Autobytel Inc., a Delaware corporation (the "Company"), and Computershare Trust Company, N.A. (the "Rights Agent"), to purchase from the Company at any time after the Distribution Date (as such term is defined in the Agreement) and prior to 5:00 p.m., Eastern Standard Time, on July 30, 2014 at the office of the Rights Agent designated for such purpose, or at the office of its successor as Rights Agent, one one-hundredth of a fully paid non-assessable share of Series A Junior Participating Preferred Stock, par value $0.001 per share (the "Preferred Shares"), of the Company, at a purchase price of $1.40, subject to adjustment, per one one-hundredth of a Preferred Share (the "Purchase Price"), upon presentation and surrender of this Right Certificate with the Form of Election to Purchase duly executed. The number of Rights evidenced by this Right Certificate (and the number of one one-hundredths of a Preferred Share which may be purchased upon exercise hereof) set forth above, and the Purchase Price set forth above, are the number and Purchase Price as of , , based on the Preferred Shares as constituted at such date.

From and after the time any Person becomes an Acquiring Person, (as such terms are defined in the Agreement), if the Rights evidenced by this Right Certificate are beneficially owned by (i) an Acquiring Person or an Affiliate or Associate of any such Acquiring Person (as such terms are defined in the Agreement), (ii) a transferee of any such Acquiring Person, Associate or Affiliate who becomes a transferee after the Acquiring Person becomes such, or (iii) under certain circumstances specified in the Agreement, a transferee of any such Acquiring Person, Associate or Affiliate who becomes a transferee prior to or concurrently with the Acquiring Person becoming such, such Rights shall become null and void without any further action and no holder hereof shall have any right with respect to such Rights from and after the time any Person becomes an Acquiring Person.

As provided in the Agreement, the Purchase Price and the number of one one-hundredths of a Preferred Share which may be purchased upon the exercise of the Rights evidenced by this Right Certificate are subject to modification and adjustment upon the happening of certain events.

This Right Certificate is subject to all of the terms, provisions and conditions of the Agreement, as amended from time to time, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Right Certificates. Copies of the Agreement are on file at the principal executive offices of the Company and the above-mentioned offices of the Rights Agent.

This Right Certificate, with or without other Right Certificates, upon surrender at the office of the Rights Agent designated for such purpose, may be exchanged for another Right Certificate or Right Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of Preferred Shares as the Rights evidenced by the Right Certificate or Right Certificates surrendered shall have entitled such holder to purchase. If this Right Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Right Certificate or Right Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Agreement, the Rights evidenced by this Certificate (i) may be redeemed by the Company at a redemption price of $0.001 per Right or (ii) may be exchanged in whole or in part for shares of the Company's Common Stock, par value $0.001 per share, or, upon circumstances set forth in the Agreement, cash, property or other securities of the Company, including fractions of a share of Preferred Stock.

No fractional Preferred Shares will be issued upon the exercise of any Right or Rights evidenced hereby (other than fractions which are integral multiples of one one-hundredth of a Preferred Share, which may, at the election of the Company, be evidenced by depositary receipts) but in lieu thereof a cash payment will be made, as provided in the Agreement.

No holder of this Right Certificate shall be entitled to vote or receive dividends or be deemed for any purpose the holder of the Preferred Shares or of any other securities of the Company which may at any time be issuable on the exercise hereof, nor shall anything contained in the Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in the Agreement), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Right Certificate shall have been exercised as provided in the Agreement.

This Right Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Company and its corporate seal. Dated as of .

ATTEST:

AUTOBYTEL INC.

COUNTERSIGNED:

as Rights Agent

By:
Name:
Title:

Form of Reverse Side of Right Certificate

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Right Certificate.)

FOR VALUE RECEIVED _____hereby sells, assigns and transfers unto

_____

(Please print name and address of transferee)

_____ this Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint Attorney, to transfer the within Right Certificate on the books of the within-named Company, with full power of substitution.

Dated: _____

_____
Signature

SIGNATURE GUARANTEED:

Signatures must be guaranteed by an “eligible guarantor institution” as defined in Rule 1 7Ad-15 promulgated under the Securities Exchange Act of 1934, as amended.

The undersigned hereby certifies that (1) the Rights evidenced by this Right Certificate are not being sold, assigned or transferred by or on behalf of a Person who is or was an Acquiring Person, an Interested Stockholder or an Affiliate or Associate thereof (as such terms are defined in the Agreement); and (2) after due inquiry and to the best of the knowledge of the undersigned, the undersigned did not acquire the Rights evidenced by this Right Certificate from any Person who is or was an Acquiring Person, an Interested Stockholder, or an Affiliate or Associate thereof.

_____

Signature

FORM OF ELECTION TO PURCHASE

(To be executed if holder desires to exercise Rights represented by the Right Certificate.)

To Computershare Trust Company **:**

The undersigned hereby irrevocably elects to exercise Rights represented by this Right Certificate to purchase the Preferred Shares issuable upon the exercise of such Rights and requests that certificates for such Preferred Shares be issued in the name of:

Please insert social security or other identifying number: _____

_____

_____

(Please print name and address)

If such number of Rights shall not be all the Rights evidenced by this Right Certificate, a new Right Certificate for the balance remaining of such Rights shall be registered in the name of and delivered to:

Please insert social security or other identifying number: _____

_____

_____

(Please print name and address)

Dated: _____

_____
Signature

SIGNATURE GUARANTEED:

Signatures must be guaranteed by an “eligible guarantor institution” as defined in Rule l7Ad-15 promulgated under the Securities Exchange Act of 1934, as amended.

The undersigned hereby certifies that (1) the Rights evidenced by this Right Certificate are not beneficially owned by nor are they being exercised on behalf of an Acquiring Person, an Interested Stockholder or an Affiliate or Associate thereof (as such terms are defined in the Agreement); and (2) after due inquiry and to the best of the knowledge of the undersigned, the undersigned did not acquire the Rights evidenced by this Right Certificate from any Person who is or was an Acquiring Person, an Interested Stockholder, or an Affiliate or Associate thereof.

_____

Signature

NOTICE

The signature in the Form of Assignment or Form of Election to Purchase, as the case may be, must conform to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

In the event the certification set forth above in the Form of Assignment or the Form of Election to Purchase, as the case may be, is not completed, the Company and the Rights Agent will deem the beneficial owner of the Rights evidenced by this Right Certificate to be an Acquiring Person or an Affiliate or Associate thereof (as defined in the Agreement) and such Assignment or Election to Purchase will not be honored.

(EXHIBIT C TO RIGHTS PLAN)

AUTOBYTEL INC.

SUMMARY OF RIGHTS TO PURCHASE

PREFERRED SHARES

On July 30, 2004, the Board of Directors of AUTOBYTEL INC. (the "Company") declared a dividend of one preferred share purchase right (a "Right") for each outstanding share of common stock, par value $0.001 per share (the "Common Shares"), of the Company. The dividend was effective as of August 10, 2004 (the "Record Date") with respect to the stockholders of record on that date. The Rights will also attach to new Common Shares issued after the Record Date. Each Right entitles the registered holder to purchase from the Company one one-hundredth of a share of Series A Junior Participating Preferred Stock, par value $0.001 per share (the "Preferred Shares"), of the Company at a price of $1.40 per one one-hundredth of a Preferred Share (the "Purchase Price"), subject to adjustment. Each Preferred Share is designed to be the economic equivalent of 100 Common Shares. The description and terms of the Rights are set forth in an Amended and Restated Rights Agreement dated as of April 24, 2009, as the same may be amended from time to time (the "Agreement"), between the Company and Computershare Trust Company, N.A. (the "Rights Agent").

DETACHMENT AND TRANSFER OF RIGHTS

Initially, the Rights will be evidenced by the stock certificates representing Common Shares then outstanding, or, for Common Shares held in book-entry accounts through direct registration services of the Company's transfer agent, shall be held in book-entry accounts and represented by the related transaction advice, and no separate Right Certificates will be distributed. Until the earlier to occur of (i) a public announcement that a person or group of affiliated or associated persons, has become an "Acquiring Person" (as such term is defined in the Agreement) or (ii) 10 business days (or such later date as the Board may determine) following the commencement of, or announcement of an intention to make, a tender offer or exchange offer which would result in the beneficial ownership by an Acquiring Person of 15% or more of the outstanding Common Shares (the earlier of such dates being called the "Distribution Date"), the Rights will be evidenced, with respect to any of the Common Share certificates outstanding as of the Record Date, by such Common Share certificate (or, for Common Shares held in book-entry accounts through the direct registration services of the Company's transfer agent, by such book entry-accounts, together with a direct registration transaction advice with respect to such shares). In general, an "Acquiring Person" is a person, the affiliates or associates of such person, or a group, which has acquired beneficial ownership of 15% or more of the outstanding Common Shares.

The Agreement provides that, until the Distribution Date (or earlier redemption or expiration of the Rights), the Rights will be transferable with and only with the Common Shares. Until the Distribution Date (or earlier redemption or expiration of the Rights), new Common Share certificates issued after the Record Date upon transfer or new issuance of Common Shares will contain a notation incorporating the Agreement by reference (or, for Common Shares held in

book-entry accounts through the direct registration services of the Company's transfer agent, a legend on the direct registration transaction advice with respect to such shares). Until the Distribution Date (or earlier redemption or expiration of the Rights) the surrender or transfer of any certificates for Common Shares outstanding as of the Record Date, even without such notation or a copy of this Summary of Rights being attached thereto, will also constitute the transfer of the Rights associated with the Common Shares represented by such certificate. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights ("Right Certificates") will be mailed to holders of record of the Common Shares as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights. In the event the Company elects to distribute any Rights by crediting book-entry accounts, the provisions in this summary that reference Right Certificates shall be interpreted to reflect that the Rights are credits to the book-entry accounts, that separate Right Certificates are not issued with respect to some or all of the Rights, and that any legend required on a Right Certificate may be placed on the direct registration transaction advice with respect to such Rights.

EXERCISABILITY OF RIGHTS

The Rights are not exercisable until the Distribution Date. The Rights will expire on July 30, 2014 (the "Final Expiration Date"), unless the Final Expiration Date is extended or unless the Rights are earlier redeemed or exchanged by the Company, in each case as described below. Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company, including, without limitation, the right to vote or to receive dividends.

The Purchase Price payable, and the number of Preferred Shares or other securities or property issuable or payable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution. The number of outstanding Rights and the number of one one- hundredths of a Preferred Share issuable upon exercise of each Right are also subject to adjustment in the event of a stock split of the Common Shares or a stock dividend on the Common Shares payable in Common Shares, or subdivisions, consolidations or combinations of the Common Shares occurring, in any such case, prior to the Distribution Date. With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price. No fractional Preferred Shares will be issued (other than fractions which are integral multiples of one one-hundredth of a Preferred Share, which may, at the election of the Company, be evidenced by depositary receipts) and in lieu thereof, an adjustment in cash will be made based on the market price of the Preferred Shares on the last trading day prior to the date of exercise.

TERMS OF PREFERRED SHARES

Preferred Shares purchasable upon exercise of the Rights will not be redeemable. Each Preferred Share will be entitled to a minimum preferential quarterly dividend payment of $1 per share but will be entitled to an aggregate dividend of 100 times the dividend declared per Common Share. In the event of liquidation, the holders of the Preferred Shares will be entitled to a minimum preferential liquidation payment of $100 per share but will be entitled to an aggregate payment of 100 times the payment made per Common Share. Finally, in the event of

any merger, consolidation or other transaction in which Common Shares are exchanged, each Preferred Share will be entitled to receive 100 times the amount received per Common Share. These rights are protected by customary anti-dilution provisions. Because of the nature of the Preferred Shares' dividend and liquidation rights, the value of the one one-hundredth interest in a Preferred Share purchasable upon exercise of each Right should approximate the value of one Common Share. The Preferred Shares would rank junior to any other series of the Company's preferred stock.

TRIGGER OF FLIP-IN AND FLIP-OVER RIGHTS

In the event that any person or group of affiliated or associated persons becomes an Acquiring Person, proper provision shall be made so that each holder of a Right, other than Rights beneficially owned by the Acquiring Person or any Affiliate or Associate thereof (which will thereafter be void), will thereafter have the right to receive upon exercise that number of Common Shares having a market value of two times the exercise price of the Right. This right will commence on the date of public announcement that a person has become an Acquiring Person (or the effective date of a registration statement relating to distribution of the Rights, if later) and terminate 60 days later (subject to adjustment in the event exercise of the Rights is enjoined).

In the event that the Company is acquired in a merger or other business combination transaction or *50%* or more of its consolidated assets or earning power are sold to an Acquiring Person, its Affiliates or Associates or certain other persons in which such persons have an interest, proper provision will be made so that each such holder of a Right will thereafter have the right to receive, upon the exercise thereof at the then current exercise price of the Right, that number of shares of common stock of the acquiring company which at the time of such transaction will have a market value of two times the exercise price of the Right.

REDEMPTION AND EXCHANGE OF RIGHTS

At any time prior to the earliest of (i) the close of business on the day of the first public announcement that a person has become an Acquiring Person, or (ii) the Final Expiration Date, the Board of Directors of the Company may redeem the Rights in whole, but not in part, at a price of $0.00l per Right (the "Redemption Price"). In general, the redemption of the Rights may be made effective at such time on such basis with such conditions as the Board of Directors in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

At any time after any Person becomes an Acquiring Person, the Board of Directors of the Company may exchange the Rights (other than Rights owned by such person or group which will have become void), in whole or in part, at an exchange ratio of one Common Share, or, under circumstances set forth in the Agreement, cash, property or other securities of the Company, including fractions of a Preferred Share (or of a share of a class or series of the Company's preferred stock having equivalent designations and the powers, preferences and rights, and the qualifications, limitations and restrictions), per Right (with value equal to such Common Shares). In effecting an exchange, the Company may enter into a trust agreement by

which it transfers to a trust all Common Shares issued pursuant to the exchange. The trust would hold the Common Shares for the benefit of stockholders entitled to receive them pursuant to the exchange.

AMENDMENT OF RIGHTS

The terms of the Rights generally may be amended by the Board of Directors of the Company without the consent of the holders of the Rights, except that from and after such time as the Rights are distributed no such amendment may adversely affect the interests of the holders of the Rights (excluding the interest of any Acquiring Person).

ADDITIONAL INFORMATION

A copy of the Agreement has been filed with the Securities and Exchange Commission as an Exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2009. A copy of the Agreement is available from the Company by writing to: Attn: Investor Relations, Autobytel Inc., 18872 MacArthur Boulevard, Irvine, CA 92612. This summary description of the Rights is not intended to be complete and is qualified in its entirety by reference to the Agreement, which is hereby incorporated herein by reference.

Exhibit 10.85

Description of Jeffrey H. Coats Employment Agreement and Stock Option Grant

In connection with the appointment of Mr. Coats as the Company's President and Chief Executive Officer in December 2008, the Company and Mr. Coats entered into an Employment Agreement as of December 11, 2008. On April 3, 2009, the Compensation Committee of the Board of Directors of Autobytel Inc., a Delaware corporation (" **Company** "), approved amendments to Mr. Coats' employment agreement and approved the grant of stock options to Mr. Coats. Mr. Coats' initial employment agreement, as amended by the Compensation Committee on April 3, 2009, is referred to in the Current Report on Form 8-K as the " **Coats Employment Agreement** ").

The Coats Employment Agreement is for a term of three years commencing April 3, 2009. Mr. Coats is entitled to an annual base salary of $420,000 during the term of the Coats Employment Agreement (which base salary is unchanged from Mr. Coats' initial employment agreement). Mr. Coats is also eligible to receive an annual incentive bonus opportunity targeted at 80% of his annual base salary based upon annual performance goals and the achievement of those goals, as established and determined by the Compensation Committee. The Compensation Committee has established that at least 50% of Mr. Coats' target annual incentive bonus will be based upon the Company meeting its operating plan for 2009.

Mr. Coats is entitled to all customary benefits afforded generally to executive officers of Autobytel, including any qualified or non-qualified pension, profit sharing and savings plans, any death benefit and disability benefit plans, life insurance coverages, any medical, dental, health and welfare plans or insurance coverages and any stock purchase programs that are approved in writing by the Board. Autobytel will pay or reimburse Mr. Coats for all reasonable business expenses incurred by Mr. Coats while employed by the Company.

In connection with his employment by the Company, Mr. Coats relocated to Irvine, California. The Compensation Committee approved the payment or reimbursement of reasonable and customary relocation expenses directly related to Mr. Coats' relocation, including sales commission and closing costs for his prior residence in New Jersey (or broker commission for renting that residence), shipping one automobile, and other reasonable and customary miscellaneous moving expenses, which other miscellaneous expenses should not exceed $30,000. Relocation costs must be repaid to the Company if Mr. Coats terminates his employment with the Company voluntarily without good reason or is terminated for cause by the Company within two years of April 3, 2009. The Company will make additional payments to Mr. Coats to compensate for his additional tax obligations incurred by reason the Company's payment or reimbursement of Mr. Coats' relocation expenses.

If Mr. Coats' employment is terminated by the Company without "cause" (as defined in the Coats Employment Agreement) during the term of the Coats Employment Agreement or if Mr. Coats terminates his employment with "good reason" (as defined in the Coats Employment Agreement) during the term of the Coats Employment Agreement, Mr. Coats is entitled to a lump sum payment equal to his annual base salary, as well reimbursement or payment of the premiums for continuation of his medical, dental and vision insurance benefits under COBRA (Consolidated Omnibus Budget Reconciliation Act) for a period of twelve months after the employment termination date. In the event of a termination of Mr. Coat's employment in connection with, or within eighteen months following, a change in control of the Company that occurs during the term of Mr. Coats's employment, Mr. Coats is entitled to a lump sum payment equal to 1.3 times his annual base salary. Mr. Coats will also provide consulting services to the Company or its successor for a period of one year after the date of the change of control and will receive compensation equal to fifty percent of his base annual salary for such consulting services. The Company is not obligated to make additional payments to Mr. Coats to compensate for his additional tax obligations if Mr. Coats'compensation is deemed to be excess parachute payments under the Internal Revenue Code. Payment of the severance benefits under the Coats Employment Agreement is conditioned on Mr. Coats' execution of a general release of claims in favor of Autobytel.

On April 3, 2009 (" **Coats Options Grant Date** "), Mr. Coats was granted stock options to purchase 1,000,000 shares of Autobytel common stock (" **Coats Employment Options** "), which shall all vest on the first anniversary of the Coats Options Grant Date. The options have a term of ten years from the Coats Options Grant Date. The Coats Employment Options have an exercise price of $.35 per share (" **Coats Options Exercise Price** "), which was higher than the closing price of the Company's common stock on the NASDAQ Global Market on the Coats Options Grant Date. The shares issuable upon exercise of the Coats Employment Options will be subject to resale restrictions that lapse as to one-third of the shares on the first anniversary of the Coats Options Grant Date and thereafter will lapse as to the remaining two-thirds of the shares in equal one-twelfth (1/12) installments of the original number of shares subject to the options each quarter until all resale

restrictions have lapsed. (“ **Resale Restrictions** ”). In the event of a termination of Mr. Coats’ employment by the Company without “cause” or by Mr. Coats for “good reason,” all options unvested at the time of termination will vest, the Resale Restrictions on shares issued upon exercise of the Coats Employment Options will accelerate and lapse, and Mr. Coats will have until the earlier of two years from the termination date or the original expiration date of the options to exercise any previously unexercised options. In the event Mr. Coatsresigns without “good reason,” he will only have one day after his resignation to exercise any options that had vested prior to the date of resignation, and any unexercised options will expire. Any shares issued to Mr. Coats upon exercise of option prior to, or within one day after, the date of Mr. Coats’ resignation will remain subject to the Resale Restrictions. Should the Company terminate Mr. Coats’ employment for “cause,” all options that are unvested or that are vested and unexercised at the time of termination will expire, any shares that have been issued upon exercise of the options prior to the date of termination remain subject to the Resale Restrictions and are subject to a Company right (but not an obligation) to repurchase the shares at the Coats Options Exercise Price (“ **Company Repurchase Rights** ”). Upon a termination of Mr. Coats’ employment by reason of his death or disability, the Coats Employment Options will be subject to the same terms and conditions as would apply if Mr. Coats’ employment had been terminated by the Company without cause, except (i) the vesting of any unvested options will not accelerate; and (ii) the post-termination exercise period for any options vested prior to the termination date will be twelve months in the case of a termination by reason of death and six months in the case of a termination by reason of disability. The Coats Employment Options are subject to a “double trigger” in the event of a change in control of the Company, which provides that unless otherwise provided for in the applicable transaction documents resulting in a change in control or Mr. Coats’ employment is terminated in connection with the change in control, the occurrence of a change in control of the Company does not itself accelerate the vesting of the Coats Employment Options or the lapse of the Resale Restrictions or terminate the Company Repurchase Rights, and all terms and conditions of the Coats Employment Options will survive the change in control and remain applicable to the options or any successor options.

The foregoing is a brief description of amendments to Mr. Coats’ employment agreement and the grant of stock options approved by the Compensation Committee and does not purport to be complete. The Company and Mr. Coats have not yet executed definitive agreements embodying the amendments and option grant.

Exhibit 31.1

CERTIFICATION

I, Jeffrey H. Coats, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Autobytel Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's independent registered accountants and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 24, 2009

/s/ Jeffrey H. Coats
Jeffrey H. Coats
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Curtis E. DeWalt, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Autobytel Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's independent registered accountants and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 24, 2009

/s/ Curtis E. DeWalt

Curtis E. DeWalt,
Senior Vice President and
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Autobytel Inc. (the " *Company* ") on Form 10-Q for the period ended March 31, 2009 (the " *Report* "), we, Jeffrey H. Coats, President and Chief Executive Officer of the Company, and Curtis E. DeWalt, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Jeffrey H. Coats
Jeffrey H. Coats
President and Chief Executive Officer
April 24, 2009

/s/ Curtis E. DeWalt
Curtis E. DeWalt
Senior Vice President and
Chief Financial Officer
April 24, 2009

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signatures that appear in typed form within the electronic version of this written statement required by Section 906, has been provided to Autobytel Inc. and will be retained by Autobytel Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 99.1

Autobytel Amends Stockholder Rights Plan

Irvine, CA – April 24, 2009 – Autobytel Inc. (NASDAQ: ABTL), a leading automotive marketing services company, today announced that its Board of Directors has amended and restated its existing stockholder rights plan to adjust the plan to reflect changes both in market practices relating to stockholder rights plans and in the stock price for the Company's common stock since the adoption of the stockholder rights plan. Among other changes, the amended plan decreases the exercise price of the preferred share purchase rights to $1.40 from $65.00. The reduced exercise price will allow all rightsholders, other than a hostile acquiror, to buy $2.80 worth of the Company's common stock for $1.40 upon certain triggering events described in the stockholder rights plan. In addition, the exchange provision has been amended to give the Board of Directors the option after a person becomes an acquiring person under the stockholder rights plan to exchange at any time each right held by stockholders other than the acquiring person for one share of common stock. In effecting an exchange, the amended plan will also allow Autobytel to enter into a trust agreement in order to facilitate an orderly exchange of the rights for common stock.

For details on these amendments, including a copy of the amended and restated stockholder rights plan, please see Autobytel's Quarterly Report on Form 10-Q for the quarter ended March 31, 2009 regarding this matter.

About Autobytel Inc.

Autobytel Inc. (Nasdaq:ABTL) is an Internet automotive marketing services company that helps dealers and manufacturers sell cars and related products and services. The company owns and operates several consumer-facing automotive websites, including Autobytel.com ®, AutoSite.com ®, Autoweb.com ®, Car.com sm, CarSmart.com ® CarTV.com ® and MyRide.com ®. By providing a convenient and comprehensive automotive consumer experience across the purchase and ownership lifecycle, Autobytel seeks to provide dealerships with opportunities to connect with a steady, diverse stream of motivated, serious shoppers, while providing manufacturers with precision-targeted brand and product advertising opportunities. In addition to its websites, the company generates leads and advertising opportunities for dealers and automakers through its marketing network, which includes the AutoReach ad network, co-brands, such as ESPN.com, and marketing affiliates such as AOL, Edmunds and Kelly Blue Book.

Forward-Looking Statement Disclaimer

The statements contained in this press release that are not historical facts are forward-looking statements under the federal securities laws. These forward-looking statements are not guarantees of future performance and involve certain assumptions and certain risks and uncertainties that are difficult to predict. Actual outcomes and results may differ materially from what is expressed in, or implied by, such forward-looking statements. Autobytel undertakes no obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise. Among the important factors that could cause actual results to differ materially from those expressed in, or implied by, the forward-looking statements are changes in general economic conditions, the financial condition of

automobile manufacturers and dealers, the economic impact of terrorist attacks or military actions, increased dealer attrition, pressure on dealer fees, increased or unexpected competition, the failure of new products and services to meet expectations, failure to retain key employees or attract and integrate new employees, that actual costs and expenses exceed the charges taken by Autobytel, changes in laws and regulations, costs of legal matters, including, defending lawsuits and undertaking investigations and related matters, and other matters disclosed in Autobytel's filings with the Securities and Exchange Commission. Investors are strongly encouraged to review our Annual Report on Form 10-K for the year ended December 31, 2008 and other filings with the Securities and Exchange Commission for a discussion of risks and uncertainties that could affect operating results and the market price of our stock.

# # #

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