

THIRD RESTATED CERTIFICATE OF INCORPORATION  
OF

AVAILIGENT, INC.

Availigent, Inc. (the "Corporation"), formerly known as Eternal Systems, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "GCL"), does hereby certify:

FIRST: That the name of this Corporation is Availigent, Inc. and the date of filing of the Corporation's original Certificate of Incorporation with the Secretary of State of the State of Delaware was December 19, 2003, the date of filing of the Corporation's First Restated Certificate of Incorporation with the Secretary of State of the State of Delaware was April 6, 2004, the date of filing of the Corporation's Second Restated Certificate of Incorporation with the Secretary of State of the State of Delaware was October 25, 2005 and the date of filing of the Corporation's Certificate of Amendment of the Second Restated Certificate of Incorporation with the Secretary of State of the State of Delaware was December 15, 2005 which Certificate of Amendment changed the name of this Corporation from Eternal Systems, Inc. to Availigent, Inc.

SECOND: That the Board of Directors of the Corporation (the "Board") adopted resolutions dated June 29, 2006 proposing and declaring advisable the amendment and restatement of the Corporation's Second Restated Certificate of Incorporation, as amended, that such amendment and restatement of the Corporation's Second Restated Certificate of Incorporation, as amended, was approved by written consent of the stockholders of the Corporation dated as of June 29, 2006 in accordance with the provisions of Section 228, 242 and 245 of the GCL, and that the amendment and restatement of the Corporation's Second Restated Certificate of Incorporation, as amended, so approved by the Board and the stockholders of the Corporation reads as follows:

FIRST: The name of this corporation is Availigent, Inc. (the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle and its registered agent at such address is CORPORATION SERVICE COMPANY.

THIRD: The purpose of this Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware (the "GCL").

FOURTH: The Corporation is authorized to issue two classes of shares designated "Common Stock" and "Preferred Stock", respectively. The number of shares of Common Stock, par value \$0.001 per share (the "Common Stock"), authorized to be issued is 250,000,000 and the number of shares of Preferred Stock, par value \$0.001 per share (the "Preferred Stock"), authorized to be issued is 205,724,887, consisting of 49,381,172 shares of Series A-1 Preferred Stock, 1,343,715 of Series A-2 Preferred Stock and 155,000,000 of Series B Preferred Stock.

The rights, preferences, privileges and restrictions of the Preferred Stock and the Common Stock, as well as of the holders of such stock, are as set forth below in this Article IV.

1. Definitions. For purposes of this Certificate of Incorporation the following definitions shall apply:

"Board" shall mean the Board of Directors of the Corporation.

"Conversion Price" shall mean with respect to the Series A-1 Preferred Stock, \$0.086945 per share (as adjusted pursuant to Section 5 of Article IV), with respect to the Series A-2 Preferred Stock, \$1.116308 per share (as adjusted pursuant to Section 5 of Article IV) and with respect to the Series B Preferred Stock, \$0.086945 per share (as adjusted pursuant to Section 5 of Article IV).

"Conversion Rights" shall have the meaning set forth in the preamble to Section 5 of this Article IV.

"Convertible Preferred Stock" shall mean the Series A-1 Preferred, Series A-2 Preferred and Series B Preferred, collectively. The Series A-1 Preferred, Series A-2 Preferred and Series B Preferred, collectively, are sometimes herein referred to as the Convertible Preferred Stock.

"Convertible Securities" shall mean evidences of indebtedness, shares of stock or other securities which are at any time directly or indirectly convertible into or exchangeable for Additional Shares of Common Stock.

"Corporation" shall mean this corporation.

"Original Issue Date" shall mean the first date that any shares of Series B Preferred have been issued and sold.

"Original Issue Price" shall mean with respect to the Series A-1 Preferred Stock, \$0.086945 per share, with respect to the Series A-2 Preferred Stock, \$1.116308 per share, and with respect to the Series B Preferred Stock, \$0.086945 per share.

"Series A-1 Preferred" shall mean the Series A-1 Preferred Stock, par value \$0.001 per share, of this Corporation.

"Series A-2 Preferred" shall mean the Series A-2 Preferred Stock, par value \$0.001 per share, of this Corporation.

"Series B Preferred" shall mean the Series B Preferred Stock, par value \$0.001 per share, of this Corporation.

## 2. Dividends.

(a) In each fiscal year of the Corporation, the holders of shares of Series B Preferred shall be entitled to receive, before any dividends shall be paid or declared and set aside for the Common Stock, Series A-2 Preferred, Series A-1 Preferred or any other class of capital stock, when, as and if declared by the Board, out of funds legally available for that purpose, non-cumulative dividends at a rate of eight percent (8%) of the applicable Original Issue Price (as defined in Section 1 of this Article IV) per share (as adjusted for any stock dividends, combinations, splits or other similar recapitalizations with respect to such shares), payable in cash only.

(b) Subject to the foregoing, in each fiscal year of the Corporation, the holders of shares of Series A-1 Preferred shall be entitled to receive, before any dividends shall be paid or declared and set aside for the Common Stock, Series A-2 Preferred or any other class of capital stock, when, as and if declared by the Board, out of funds legally available for that purpose, non-cumulative dividends at a rate of eight percent (8%) of the applicable Original Issue Price (as defined in Section 1 of this Article IV) per share (as adjusted for any stock dividends,

combinations, splits or other similar recapitalizations with respect to such shares), payable in cash only.

(c) Subject to the foregoing, in each fiscal year of the Corporation, the holders of shares of Series A-2 Preferred shall be entitled to receive, before any dividends shall be paid or declared and set aside for the Common Stock, when, as and if declared by the Board, out of funds legally available for that purpose, non-cumulative dividends at the rate of 8% of the applicable Original Issue Price (as defined in Section 1 of this Article IV) per share (as adjusted for any stock dividends, combinations, splits or similar recapitalizations with respect to such shares), payable in cash only.

(d) No dividend shall be declared or paid to any holders of shares of any other class of capital stock of the Corporation, including without limitation holders of Common Stock or any other series of Preferred Stock, unless and until dividends in the total amount set forth above on the Series B Preferred, Series A-1 Preferred and Series A-2 Preferred shall have been paid or declared and set apart during that fiscal year and any prior period in which dividends were declared and unpaid. After payment of dividends at the annual rates set forth above, any additional dividends declared shall be distributed among all holders of Preferred Stock and Common Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted to Common Stock pursuant to the provisions of Section 5 hereof.

3. Liquidation, Dissolution or Winding Up.

(a) In the event of a voluntary or involuntary liquidation, dissolution or winding up of the Corporation, all assets and funds of the Corporation legally available for distribution shall be distributed to the holders of the Common Stock and the Convertible Preferred Stock in the following order of priority:

(i) First, ratably among the holders of the Series B Preferred until such holders have received the preferential amount of \$0.086945 per share, plus all accrued or declared but unpaid dividends thereon, if any; provided, however, that if the aggregate assets and funds of the Corporation legally available for distribution upon such voluntary or involuntary liquidation, dissolution or winding up of the Corporation total \$35,000,000 or less, then all assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred until such holders have received the preferential amount of \$0.121723 per share, plus all accrued or declared but unpaid dividends thereon, if any; and provided, further, that if the assets and funds thus distributed among the holders of the Series B Preferred are insufficient to permit the payment in full of such preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series B Preferred ratably in proportion to the number of shares of Series B Preferred held by each;

(ii) Second, ratably among the holders of the Series A-1 Preferred until such holders have received the preferential amount of \$0.086945 per share, plus all accrued or declared but unpaid dividends thereon, if any; provided, however, that if the assets and funds thus distributed among the holders of the Series A-1 Preferred are insufficient to permit the payment in full of such preferential amounts, then the entire assets and funds of the Corporation legally available for distribution, after payment to the holders of the Series B Preferred of the amounts set forth in Section 3(a)(i) above, shall be distributed

among the holders of the Series A-1 Preferred ratably in proportion to the number of shares of Series A-1 Preferred held by each;

(iii) Third, ratably among the holders of the Series A-2 Preferred until such holders have received the preferential amount of \$1.116308 per share, plus all accrued or declared but unpaid dividends thereon, if any; provided, however, that if the assets and funds thus distributed among the holders of the Series A-2 Preferred are insufficient to permit the payment in full of such preferential amounts, then the entire assets and funds of the Corporation legally available for distribution, after payment to the holders of the Series B Preferred and Series A-1 Preferred of the amounts set forth in Section 3(a)(i) and Section 3(a)(ii) above, shall be distributed among the holders of the Series A-2 Preferred ratably in proportion to the number of shares of Series A-2 Preferred held by each; and

(iv) Fourth, after payment to the holders of Series B Preferred, Series A-1 Preferred and Series A-2 Preferred of the amounts set forth in Section 3(a)(i), Section 3(a)(ii) and Section 3(a)(iii) above, as applicable, ratably among all holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted to Common Stock pursuant to the provisions of Section 5 hereof).

(b) For purposes of this Section 3, a liquidation, dissolution or winding up of this Corporation shall be deemed to include a merger, consolidation, acquisition, stock exchange, stock sale, or other transaction or series of related transactions in which stockholders of the Corporation immediately prior to such transaction or series of related transactions do not own a majority by voting power of the outstanding shares of the surviving or acquiring entity after such transaction or related transactions, or a sale, lease, transfer, exclusive license or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Corporation.

(c) The dollar amounts specified in Section 3(a) shall be equitably adjusted in the event of any stock splits, combinations, stock dividends or similar capital modifications affecting the Common Stock or the Convertible Preferred Stock after the filing of this Certificate of Incorporation. No adjustment to any Conversion Price pursuant to this Certificate of Incorporation shall otherwise alter the above liquidation preference dollar amounts.

(d) Insofar as any distribution pursuant to Section 3(a) consists of property other than cash, the value thereof shall, for purposes of the provisions of Section 3(a), be the fair value at the time of such distribution, as determined in good faith by the Board.

(e) Each holder of Convertible Preferred Stock shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the GCL (to the extent applicable to the Corporation), to distributions made by the Corporation and approved by the Board in connection with the repurchase of shares of Common Stock issued to or held by employees, directors or consultants upon termination of their employment or services pursuant to agreements providing for such right of repurchase between the Corporation and such persons.

#### 4. Voting.

(a) At all meetings of the stockholders of the Corporation and in the case of any actions of stockholders in lieu of a meeting, each share of Common Stock shall be entitled to one vote, and each share of Convertible Preferred Stock shall be entitled to that number of votes equal to the number of whole shares of Common Stock into which such share is then convertible (in

accordance with Section 5 hereof) on the record date set for the meeting or action or, if no record date is set, on the date of such meeting or the date such action is taken. Except as otherwise expressly provided herein or as required by law, the holders of Common Stock and Convertible Preferred Stock shall vote together as a single class in accordance with the preceding sentence, and neither the Common Stock nor any of the Convertible Preferred Stock shall be entitled to vote as a separate class on any matter to be voted on by stockholders of the Corporation.

(b) Protective Provisions – Series A-1 Preferred. The Corporation shall not, without the affirmative vote of the holders of a majority of the then outstanding shares of the Series A-1 Preferred:

(i) Amend, alter or repeal the preferences, privileges, special rights or other powers of the Series A-1 Preferred, as set forth herein, in a manner adverse to the holders thereof.

(c) Protective Provisions – Series A-2 Preferred. The Corporation shall not, without the affirmative vote of the holders of a majority of the then outstanding shares of the Series A-2 Preferred:

(i) Amend, alter or repeal the preferences, privileges, special rights or other powers of the Series A-2 Preferred, as set forth herein, in a manner adverse to the holders thereof.

(d) Protective Provisions – Series B Preferred. The Corporation shall not (whether directly, or by amendment, merger, consolidation, reclassification or otherwise), without the affirmative vote of the holders of a majority of the then outstanding shares of Series B Preferred, voting as a separate class:

(i) effect any dissolution, liquidation or winding up of the Corporation, including any deemed dissolution, liquidation or winding up of the Corporation, as set forth in Section 3(b) of this Article IV;

(ii) create or authorize the creation of any debt or debt security, including any debt secured by the assets of the Corporation, to parties who do not control, are not controlled by or under common control with any stockholder or director of the Corporation, other than debt issued in the ordinary course of business of the Corporation, including without limitation equipment leases and bank lines of credit;

(iii) increase or decrease the size of the Board of Directors of the Corporation;

(iv) acquire another entity or another entity's assets for total consideration (in one or a series of related transactions) exceeding \$500,000; or

(v) increase the authorized number of shares of the Corporation's capital stock.

(e) Super-Majority Protective Provisions – Series B Preferred. The Corporation shall not (whether directly, or by amendment, merger, consolidation, reclassification or otherwise), without the affirmative vote of the holders of at least 80% of the then outstanding shares of Series B Preferred, voting as a separate class:

- (i) amend, alter, or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation in a manner adverse to the Series B Preferred;
- (ii) create or authorize the creation of, or issue any other security convertible into or exercisable for, any equity security having rights, preferences or privileges senior to or on parity with the Series B Preferred;
- (iii) increase the authorized number of shares of Series B Preferred;
- (iv) alter the rights, preferences or privileges of the Series B Preferred; or
- (v) purchase or redeem or pay any dividend on any capital stock prior to the Series B Preferred, other than stock repurchased from former service providers in connection with the cessation of their services, at the lower of fair market value or cost, and other than up to \$2,000,000 in the aggregate used to repurchase stock in connection with contractual rights of first refusal or similar rights of the Corporation in existence as of the date hereof.

5. Conversion. The holders of the Convertible Preferred Stock shall have the following conversion rights (the "Conversion Rights"):

(a) Optional Conversion. Each share of Convertible Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Common Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) with respect to the Series B Preferred, (x) the Original Issue Price of the Series B Preferred, by (y) the Conversion Price in effect for the Series B Preferred at the time of conversion, (ii) with respect to the Series A-1 Preferred, (x) the Original Issue Price of the Series A-1 Preferred, by (y) the Conversion Price in effect for the Series A-1 Preferred at the time of conversion, and (iii) with respect to the Series A-2 Preferred, (x) the Original Issue Price of the Series A-2 Preferred, by (y) the Conversion Price in effect for the Series A-2 Preferred at the time of conversion.

(b) Automatic Conversion. Each share of Convertible Preferred Stock shall automatically be converted into shares of Common Stock without the payment of any additional consideration by the holder thereof or any action taken by the holder thereof, at the office of the Corporation or any transfer agent for the Common Stock, into that number of fully paid and non-assessable shares of Common Stock as is determined by dividing the applicable Original Issue Price for such series, by the Conversion Price for such series in effect at the time of conversion, upon the earlier of (A) upon the closing of a firm commitment underwritten public offering, underwritten by a nationally recognized underwriter, pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of the Corporation's Common Stock resulting in aggregate gross proceeds to the Corporation of at least \$20,000,000 at a price per share not less than five times (5X) the Original Issue Price of the Series B Preferred (subject to adjustment for stock dividends, stock splits, combinations and similar recapitalizations), or (B) upon the approval, by affirmative vote, written consent, or agreement, of holders of at least 80% of the aggregate number of shares of Series B Preferred then outstanding.

(c) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Convertible 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 fair value.

(d) Mechanics of Optional Conversion. Before any holder of Convertible Preferred Stock shall be entitled to convert the same into full shares of Common Stock, such holder shall surrender the certificate or certificates therefor, endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his attorney duly authorized in writing, at the office of the Corporation or of any transfer agent for the Convertible Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Convertible Preferred Stock, or to such holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, together with cash in lieu of any fraction of a share. 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 Convertible Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock at the close of business on such date. From and after such date, all rights of the holder with respect to the Convertible Preferred Stock so converted shall terminate (including the right to receive any accrued but unpaid dividends with respect to such shares), except only the right of such holder to receive certificates for the number of shares of Common Stock issuable upon conversion thereof and cash for fractional shares.

(e) Mechanics of Automatic Conversion. All holders of record of shares of Convertible Preferred Stock will be given written notice of the date of any automatic conversion referenced in Section 5(b). Such notice will be sent by mail, first class, postage prepaid, to each record holder of Convertible Preferred Stock at such holder's address appearing on the stock register. Each holder of shares of Convertible Preferred Stock shall, promptly after receiving such notice, surrender such holder's certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock or other securities to which such holder is entitled. Upon the date of any such automatic conversion, all rights with respect to the Convertible Preferred Stock will terminate (including the right to receive any accrued but unpaid dividends with respect to such shares), except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock or other securities into which such Convertible Preferred Stock has been converted and cash for fractional shares. All certificates evidencing shares of Convertible Preferred Stock which are automatically converted in accordance with the provisions hereof shall, from and after the date of such automatic conversion, be deemed to have been retired and canceled and the shares of Convertible Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates. As soon as practicable after the date of any such automatic conversion and the surrender of the certificate or certificates for Convertible Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered to such holder, or to such holder's written order, a certificate or certificates for the number of full shares of Common Stock or other securities issuable on such conversion in accordance with the provisions hereof and cash as provided in Section 5(c) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(f) Certain Adjustments to Conversion Price for Convertible Preferred Stock.

(i) Adjustment for Stock Splits, Stock Dividends and Combinations of Common Stock. In the event the outstanding shares of Common Stock shall, after the filing of this Certificate of Incorporation, be further subdivided (split), or combined (reverse split), by reclassification or otherwise, or in the event of any dividend or other distribution payable on the Common Stock in shares of Common Stock, the Conversion Price in effect immediately prior to such subdivision, combination, dividend or other distribution shall, concurrently with the effectiveness of such subdivision, combination or dividend or other distribution, be proportionately adjusted.

(ii) Adjustment for Merger or Reorganization, Etc. In case of a reclassification, reorganization or exchange transaction or any consolidation or merger of the Corporation with another corporation (other than a merger or other reorganization which is deemed to be a liquidation pursuant to Section 3(b) of this Article IV), each share of Convertible Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Convertible Preferred Stock would have been entitled upon such reclassification, reorganization, exchange, consolidation, merger or conveyance; and, in any such case, appropriate adjustment (as determined by the Board) shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of the Convertible Preferred Stock, to the end that the provisions set forth herein (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Convertible Preferred Stock.

(iii) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the filing of this Certificate of Incorporation makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation, other than shares of Common Stock, then and in each such event provision shall be made so that the holders of Convertible Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their Convertible Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Convertible Preferred Stock.

(g) Sale of Shares Below Conversion Price – Adjustment for Series B Preferred and Series A-1 Preferred. The Conversion Price of the Series B Preferred and Series A-1 Preferred shall be subject to adjustment from time to time as follows:

(i) If at any time or from time to time after the Original Issue Date, the Corporation issues or sells, or is deemed by the express provisions of this subparagraph (g) to have issued or sold, Additional Shares of Common Stock (as defined in clause (v) below), other than upon a subdivision or combination of, or as a dividend or other distribution on, the Common Stock as provided in subparagraph (f) above, for an Effective Price (as defined in clause (vi) below) less than the then existing Conversion Price for the Series B Preferred and/or Series A-1 Preferred, as applicable, in effect immediately prior to the issuance of such Additional Shares of Common Stock (or, if an



adjusted Conversion Price shall be in effect by reason of a previous adjustment, then less than such adjusted Conversion Price), the then-existing Conversion Price for the Series B Preferred and/or Series A-1 Preferred, as applicable, shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the then-existing Conversion Price for such Series B Preferred and/or Series A-1 Preferred, as applicable, by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock outstanding at the close of business on the day next preceding the date of such issue or sale, plus (B) the number of shares of Common Stock that the aggregate consideration received (or by the express provisions hereof deemed to have been received) by the Corporation for the total number of Additional Shares of Common Stock so issued (or deemed issued) would purchase at such Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date of such issue after giving effect to such issue (or deemed issue) of Additional Shares of Common Stock; provided, however, that for the purposes of this Section 5(g)(i), all shares of Common Stock then issuable upon conversion or exercise of then outstanding rights or options to acquire Common Stock or other stocks or securities convertible into Common Stock shall be deemed to be outstanding.

(ii) For the purpose of making any adjustment required under this subparagraph (g), the consideration received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash be computed at the gross amount of cash received by the Corporation before deducting any expenses payable by the Corporation and any underwriting or similar commissions, compensation, or concessions paid or allowed by the Corporation in connection with such issue or sale, (B) to the extent it consists of property, be computed as determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities or rights or options to subscribe for, purchase or otherwise acquire either Additional Shares of Common Stock or Convertible Securities (collectively, "Options") are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Options, as the case may be.

(iii) For the purpose of the adjustment required under this subparagraph (g), if the Corporation issues or sells any Options or Convertible Securities and if the Effective Price of the Additional Shares of Common Stock underlying such Options or Convertible Securities is less than the then applicable Conversion Price in effect for such series of Convertible Preferred Stock, then the Corporation shall be deemed to have issued at the time of the issuance of such Options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such Options or Convertible Securities, plus, in the case of such Options, the minimum amount of consideration, if any, payable to the Corporation upon the exercise of such Options, plus, in the case of Convertible Securities, the minimum amount of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof. No further adjustment of the Conversion Price for such series of Convertible Preferred Stock, adjusted upon the issuance of such Options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such Options or the conversion of any such Convertible Securities. If any such Options or the conversion privilege represented by any such Convertible Securities

shall expire without having been exercised, the Conversion Price for such series of Convertible Preferred Stock, adjusted upon the issuance of such Options or Convertible Securities shall be readjusted to the applicable Conversion Price that would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such Options or conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such Options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities.

(iv) For the purpose of the adjustment required under this subparagraph (g), if the Corporation issues or sells any Options for the purchase of Convertible Securities and if the Effective Price of the Additional Shares of Common Stock underlying such Convertible Securities is less than the then-applicable Conversion Price in effect for such series of Convertible Preferred Stock, the Corporation shall be deemed to have issued at the time of the issuance of such Options the maximum number of Additional Shares of Common Stock issuable upon conversion of the total amount of Convertible Securities covered by such Options and to have received as consideration for the issuance of such Additional Shares of Common Stock an amount equal to the amount of consideration, if any, received by the Corporation for the issuance of such Options, plus the minimum amount of consideration, if any, payable to the Corporation upon the exercise of such Options and plus the minimum amount of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion of such Convertible Securities. No further adjustment of the Conversion Price for such series of Convertible Preferred Stock, adjusted upon the issuance of such Options, shall be made as a result of the actual issuance of the Convertible Securities upon the exercise of such Options or upon the actual issuance of Additional Shares of Common Stock upon the conversion of such Convertible Securities. The provisions of clause (iii) above for the readjustment of the Conversion Price of the Convertible Preferred Stock upon the expiration of Options or the rights of conversion of Convertible Securities shall apply, with the necessary changes having been made, to the Options and Convertible Securities referred to in this clause (iv).

(v) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation (or deemed issued pursuant to this Section 5(g)) after the Original Issue Date of the Series B Preferred, whether or not subsequently reacquired or retired by the Corporation, other than shares of Common Stock issued or issuable: (A) upon conversion of shares of Convertible Preferred Stock; (B) pursuant to a stock dividend or any subdivision or split up of the outstanding shares of Common Stock; (C) pursuant to grants of shares of Common Stock in connection with the exercise of stock options granted to officers, directors, employees and consultants of the Corporation pursuant to any plan or arrangement approved by the Board (including Board members designated by the Preferred Stock) as long as such shares do not exceed in aggregate 35,160,482 shares (or such greater number of shares as is hereafter approved by holders of at least 80% of the Corporation's Series B Preferred Stock then outstanding) (as adjusted for subdivisions (splits), combinations (reverse splits) and other similar capital

modifications after the Original Issue Date) (including for such purpose any Common Stock or options issued prior to Original Issue Date); (D) upon exercise or conversion of options, warrants, convertible notes or other convertible securities outstanding as of the Original Issue Date of the Series B Preferred; (E) as a dividend or distribution on the Convertible Preferred Stock; or (F) otherwise as approved by holders of at least 80% of the Corporation's Series B Preferred Stock then outstanding.

(vi) The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this subparagraph (g), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this subparagraph (g), for such Additional Shares of Common Stock.

(h) Duration of Adjusted Conversion Price. Following each computation or readjustment of an adjusted Conversion Price as provided above in this Section 5, the new adjusted Conversion Price shall remain in effect until a further computation or readjustment thereof is required by this Section 5.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of a Conversion Price of any of the Convertible Preferred Stock pursuant to this Section 5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such Convertible 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 any Convertible Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth: (i) such adjustments and readjustments; (ii) the applicable Conversion Price of such Convertible Preferred Stock 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 such Convertible Preferred Stock.

(j) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any capital reorganization of the Corporation, any reclassification or recapitalization of the Corporation's capital stock, any consolidation or merger with or into another corporation, any transfer of all or substantially all of the assets of the Corporation or any dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Convertible Preferred Stock at least twenty (20) days prior to the date specified for the taking of a record, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or other such event.

(k) Common Stock Reserved. The Corporation shall reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect the full conversion of all outstanding Convertible Preferred Stock.

(l) Payment of Taxes. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Convertible Preferred Stock, other than any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Convertible Preferred Stock so converted were registered.

6. Directors.

(a) The business and affairs of the Corporation shall be managed by and under the direction of the Board. At all times, one (1) member of the Corporation's Board shall be designated and elected by the holders of at least a majority of the then outstanding Common Stock, voting together as a separate class; three (3) members of the Corporation's Board shall be designated and elected by the holders of at least a majority of the then outstanding Series A-1 Preferred, voting together as a separate class; and any additional member(s) of the Board shall be designated and elected by the holders of at least a majority of the then outstanding Common Stock and Preferred Stock, voting together as if a single class and in the case of the Preferred Stock on an as-converted to Common Stock basis.

(b) Each director shall hold office until the annual meeting of stockholders and shall serve until the next annual or special meeting to elect directors and until his successor is elected and qualified, or until his or her earlier resignation or removal. Each director may be removed during his/her term of office, either with or without cause, by the affirmative vote of the holders of the outstanding shares of capital stock of the class or series electing such director given at a special meeting of such holders duly called for such purpose. Any vacancies on the Board resulting from death, resignation, disqualification, removal or other cause shall be filled by a vote of the class or series originally electing the vacating director. Notwithstanding the election of directors as provided in this Section 6, each director shall have equal rights and duties with all other directors.

7. Reissuance of Preferred Stock. No shares of Convertible Preferred Stock which are redeemed, purchased or acquired by the Corporation or converted into Common Stock shall be reissued, and all such shares shall be canceled and eliminated from the shares which the Corporation shall be authorized to issue.

FIFTH: In furtherance and not in limitation of the powers conferred by law, the Board is expressly authorized and empowered (except as limited by the GCL and the other provisions of this Certificate of Incorporation):

(a) to make, alter and repeal the Bylaws of the Corporation by a majority vote at any regular or special meeting of the Board or by written consent, subject to the power of the stockholders of the Corporation to alter or repeal any Bylaws made by the Board;

(b) from time to time, to set apart out of any funds or assets of the Corporation available for dividends an amount or amounts to be reserved as working capital or for any other lawful purpose and to abolish any reserve so created and to determine whether any and, if any, what part, of the surplus of the Corporation or its net profits applicable to dividends shall be declared in dividends and paid to its stockholders, and all rights of the holders of stock of the Corporation in respect of dividends shall be subject to the power of the Board;

(c) from time to time to sell, lease or otherwise dispose of any part or parts of the properties of the Corporation and to cease to conduct the business connected therewith or again to resume the same, as it may seem best; and

(d) in addition to the powers and authorities hereinbefore and by the laws of the State of Delaware conferred upon the Board, to execute all such powers and to do all acts and things as may be exercised or done by the Corporation; subject, nevertheless, to the express provision of said laws, of this Certificate of Incorporation of the Corporation and its Bylaws.

**SIXTH:** A director of this Corporation shall, to the fullest extent permitted by the GCL as it now exists or as it may hereafter be amended, not be personally liable to this Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to this Corporation or its stockholders, (b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the GCL or (d) for any transaction from which the director derived any improper personal benefit. If the GCL is amended, after approval by the stockholders of this Article VI, to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of this Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended.

Any amendment, repeal or modification of this Article VI, or the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VI, by the stockholders of this Corporation shall not apply to or adversely affect any right or protection of a director of this Corporation existing at the time of such amendment, repeal, modification or adoption.

**SEVENTH:** To the fullest extent permitted by applicable law, this Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this Corporation (and any other persons to which GCL permits this Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the GCL, subject only to limits created by applicable GCL (statutory or non statutory), with respect to actions for breach of duty to this Corporation, its stockholders and others.

Any amendment, repeal or modification of the foregoing provisions of this Article VII shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of this Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

IN WITNESS WHEREOF, the Corporation has caused this Third Restated Certificate of Incorporation to be signed by Harold K. "Bud" Michael, its President and Chief Executive Officer.

Dated: June 29, 2006

By:   
Harold K. "Bud" Michael  
President and Chief Executive Officer