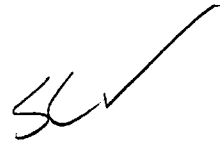


AMORCYTE, INC.



**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

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

A. The name of the Corporation is Amorcyte, Inc., originally incorporated on June 29, 2004.

B. This Amended and Restated Certificate of Incorporation (the "Restated Certificate") was duly adopted by the Corporation's directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the Delaware General Corporation Law (the "DGCL").

C. This Restated Certificate restates, integrates and amends the provisions of the Certificate of Incorporation of this Corporation, as heretofore amended.

D. The text of the Certificate of Incorporation of the Corporation, as heretofore amended, is hereby amended and restated in its entirety to read as follows:

**ARTICLE I**

The name of the Corporation is Amorcyte, Inc.

**ARTICLE II**

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

**ARTICLE III**

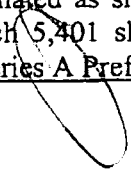
The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, New Castle County, Wilmington, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

**ARTICLE IV**

The Corporation shall have authority to issue 35,500 shares of Capital Stock, of which:

(a) 30,000 shares shall be designated as shares of Common Stock, \$.001 par value per share (the "Common Stock"); and

(b) 5,500 shares shall be designated as shares of Preferred Stock, \$.001 par value per share (the "Preferred Stock"), of which 5,401 shares shall be designated Series A Preferred Stock, \$.001 par value per share (the "Series A Preferred Stock").



The relative rights, preferences, privileges, limitations and restrictions granted to or imposed on the respective classes and series of the shares of capital stock or the holders thereof are as follows:

4.1 *Dividends.* The holders of the Series A Preferred Stock shall be entitled to receive dividends, when, as and if declared by a majority of the Corporation's Board of Directors, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Corporation's Common Stock or any other class or series of stock (payable other than in Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock ("Common Stock Equivalents")) at the rate of \$63.892 per share (as adjusted for any stock dividend, stock split or combination with respect to such share) per annum. The right to receive dividends on shares of Series A Preferred Stock shall not be cumulative, and no right to such dividends shall accrue to holders of Series A Preferred Stock by reason of the fact that dividends on such shares are not declared or paid in any year. Upon conversion of any share of Series A Preferred Stock pursuant to subsection (A) or (B) of Section 4.3, all dividends declared but unpaid on such share at the time of conversion shall be paid in cash or shares of Common Stock at the option of a majority of the Corporation's Board of Directors at the then fair market value as determined in good faith by a majority of the Corporation's Board of Directors. Except as permitted in this Section 4.1, no dividends shall be declared or paid, and no distribution shall be made, on any shares of Common Stock or any other class or series of stock (other than a dividend payable solely in shares of Common Stock) unless (A) a dividend in an amount equal to the dividend described in the first sentence of this Section 4.1, together with any dividends previously declared but unpaid, is paid or set aside for payment on each outstanding share of Series A Preferred Stock and (B) any additional dividends declared or paid in any year are declared or paid among the holders of Series A Preferred Stock and Common Stock then outstanding based on the number of shares of Common Stock held by each such holder (assuming full conversion of the Series A Preferred Stock).

4.2 *Liquidation Preference.*

(A) *Preferred Stock Preference.* In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of each share of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the Corporation's assets or funds to the holders of the Corporation's Common Stock or any other capital stock of the Corporation ranking ~~junior to the~~ Series A Preferred Stock by reason of their ownership thereof, an amount equal to \$1,197.975 per share (as adjusted for any stock dividend, stock split or combination with respect to such share after the date upon which this Amended and Restated Certificate of Incorporation (this "Restated Certificate") is filed with the Secretary of State of the State of Delaware (the "Filing Date")) (the "Liquidation Price") plus an additional amount equal to any dividends declared but unpaid on each such share. If, upon such liquidation, dissolution or winding up, the assets and funds distributed are insufficient to permit the payment to each holder of Series A Preferred Stock of the full aforesaid preferential amount, the entire assets and funds legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock based on the number of shares of Series A Preferred Stock held by each such holder.

(B) *Remaining Assets.* Upon the completion of the distribution required by subsection (A) of this Section 4.2, the Corporation's remaining assets or funds available for distribution to stockholders shall be distributed ratably to the holders of Series A Preferred Stock and Common Stock based on the number of shares of Common Stock held by each such holder (assuming full conversion of the Series A Preferred Stock).

(C) (1) Unless otherwise determined by the holders of at least two-thirds (2/3) of the Series A Preferred Stock then outstanding, for the purposes of this Section 4.2, a liquidation, dissolution or winding up of the Corporation shall be deemed to include (X) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any merger, consolidation or other form of reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring entity or its subsidiary) (each, a "Merger Transaction") that results in the transfer or acquisition of at least a majority of the Corporation's voting power, (Y) a Merger Transaction, unless the Corporation's stockholders of record as constituted immediately prior to such Merger Transaction will, immediately after such Merger Transaction hold at least a majority of the voting power of the surviving or acquiring entity in the same relative proportions, or (Z) a sale of all or substantially all of the assets of the Corporation or the exclusive license of all or substantially all of the Corporation's intellectual property by means of any transaction or series of related transactions (collectively, a "Deemed Liquidation").

(2) If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as mutually determined in good faith by a majority of the Corporation's Board of Directors and the holders of at least two-thirds of the shares of Preferred Stock then outstanding; *provided, however*, any publicly-traded securities shall be valued as follows:

(a) If the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then the value of the securities shall be deemed to be to the average of the closing prices of the securities on such exchange or system over the ten (10) trading day period ending five (5) trading days prior to the distribution; and

(b) If the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the distribution.

(3) In the event the requirements of this subsection (C) are not complied with, the Corporation shall forthwith either:

(a) Cause such closing to be postponed until such time as the requirements of this Section 4.2 have been complied with, or

(b) Cancel such transaction, in which event the rights, preferences, privileges and restrictions of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences, privileges and restrictions existing immediately prior to the date of the first notice referred to in subsection (C)(4).

(4) The Corporation shall give each holder of record of Series A Preferred Stock written notice of a transaction described in subsection (C)(1) not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 4.2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; *provided, however*, that such periods may be shortened upon the written consent of the holders of at least two-thirds (2/3) of the shares of Series A Preferred Stock then outstanding.

4.3 *Conversion.* The holders of the Series A Preferred Stock have conversion rights as follows:

(A) *Right to Convert.* Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$798.65, the "Original Issue Price" for the Series A Preferred Stock by the Conversion Price for the Series A Preferred Stock, determined as hereinafter provided, in effect at the time of the conversion (the "Conversion Rate"). The initial "Conversion Price" per share for the Series A Preferred Stock shall be \$798.65. Such initial Conversion Price shall be subject to adjustment as provided in subsection (D) of this Section 4.3.

(B) *Automatic Conversion.* Each share of Series A Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock at its then effective Conversion Rate upon the earlier to occur of (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement on Form S-1 under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale of Common Stock to the public for the account of the Corporation or (ii) the date upon which the holders of at least two-thirds (2/3) of the then outstanding shares of Series A Preferred Stock elect to convert their shares of Series A Preferred Stock pursuant to this Section 4.3.

(C) *Mechanics of Conversion.*

(1) Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such Series A 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 the name or names 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 Series A Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A Preferred Stock to be converted, 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; *provided, however*, that in the event of an automatic conversion pursuant to Section 4.3(B) hereof, the outstanding shares of Series A 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; *provided further, however*, that 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 Series A Preferred Stock are either delivered to the Corporation or its transfer agent as provided above.

(2) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(D) *Adjustment of Conversion Price.* Unless otherwise determined by the holders of at least two-thirds (2/3) of the Series A Preferred Stock then outstanding, the Conversion Price for the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(1) (a) If the Corporation shall issue, after the Filing Date, any Additional Stock (as defined in subsection (D)(2)) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Conversion Price in effect immediately prior to each such issuance of Additional Stock shall forthwith (except as otherwise provided in this subsection (D)) be adjusted to a price equal to (calculated to the nearest cent) the product obtained by multiplying the Conversion Price in effect immediately prior to such issuance of Additional Stock by a fraction, the numerator of which is equal to the sum of (x) the total number of shares of Common Stock outstanding (including any shares of Common Stock deemed to be issued pursuant to subsection (D)(1)(e)(i) or (ii) of this Section 4.3) immediately prior to such issuance of Additional Stock plus (y) the number of shares of Common Stock that the aggregate consideration received by this Corporation for such issuance of Additional Stock would purchase at the Conversion Price in effect immediately prior to such issuance of Additional Stock, and the denominator of which is equal to the sum of (x) the total number of shares of Common Stock outstanding (including any shares of Common Stock deemed to be issued pursuant to subsection (D)(1)(e)(i) or (ii) of this Section 4.3) immediately prior to such issuance of Additional Stock plus (y) the number of shares of Additional Stock issued.

(b) No adjustment in the Conversion Price need be made if such adjustment would result in a change in the Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 that is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment that, on a cumulative basis, amounts to an adjustment of \$0.01 or more in the Conversion Price. Except to the limited extent provided for in subsections (D)(1)(e)(iii) or (iv), no adjustment of the Conversion Price pursuant to this subsection (D)(1) shall have the effect of increasing such Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(c) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(d) In the case of the issuance of Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by a majority of the Corporation's Board of Directors (including each of the Preferred Directors (as such term is defined in Section 4.5(C)) irrespective of any accounting treatment.

(e) In the case of the issuance (whether before, on or after the Filing Date) of (i) options to purchase or rights to subscribe for Common Stock, (ii) securities by their terms convertible into or exchangeable for Common Stock or (iii) options to purchase or rights to subscribe for securities by their terms convertible into or exchangeable for Common Stock, the following provisions shall apply for all purposes of subsections (D)(1) and (2):

(i) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections (D)(1)(c) and (D)(1)(d)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(ii) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution

adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections (D)(1)(c) and (D)(1)(d)).

(iii) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(iv) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(v) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections (D)(1)(e)(i) and (ii) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection (D)(1)(e)(iii) or (iv).

(2) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection (D)(1)(e) of this Section 4.3) by the Corporation after the Filing Date other than:

(a) Shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock, or as dividends or distributions on the Series A Preferred Stock; or

(b) Shares of Common Stock issued to the Corporation's employees, officers, directors, consultants, advisors or services providers pursuant to and in accordance with Company's Performance Recognition Plan;

(3) *Subdivision, etc.* In the event the Corporation should at any time or from time to time after the Filing Date, 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 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 shall be proportionately decreased.

(4) *Combination.* If the number of shares of Common Stock outstanding at any time after the Filing Date is decreased by a combination of the outstanding shares of Common Stock, then, on the effective date of such combination, the Conversion Price shall be proportionately increased.

(E) *Other Distributions.* In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection (D)(3) of this Section 4.3, then, in each such case for the purpose of this subsection (E), the holders of Series A Preferred Stock shall 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 respective shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(F) *Recapitalizations.* If, at any time or from time to time after the Filing Date, there shall be a recapitalization of the Corporation's Common Stock (other than (x) a subdivision or combination provided for in subsections (D)(3) or (D)(4) of this Section 4.3 or (y) a Deemed Liquidation as defined in Section 4.2(C)) provision shall be made so that the holders of Series A Preferred Stock shall thereafter be entitled to receive upon conversion of Series A Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion of Series A Preferred Stock would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4.3 with respect to the rights of the holders of the Series A Preferred Stock after the recapitalization to the end that the provisions of this Section 4.3 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred Stock) shall be applicable after that event as nearly equivalent as prior to that event as may be practicable.

(G) *No Impairment.* The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4.3 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock set forth in this Section 4.3 against impairment. Notwithstanding the foregoing, any action taken with the requisite stockholder consent pursuant to the terms of the Certificate of Incorporation or the DGCL shall not be deemed to be an impairment.

(H) *Certificate as to Adjustment.* Upon the occurrence of each adjustment or readjustment of the Conversion Rate pursuant to this Section 4.3, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A 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 written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) all such adjustments and readjustments, (ii) the Conversion Rate at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of such holder's shares of Series A Preferred Stock.

(I) *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 (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property or to receive any other right, the Corporation shall mail to each holder of Series A Preferred Stock at least fifteen (15) business days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution or right, and the amount and character of such dividend, distribution or right.

(J) *Reservation of Stock Issuable Upon Conversion.* The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock, the Corporation will take such corporate action as may, based upon advice of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging its best efforts to obtain the requisite stockholder approval for any necessary amendment to this Restated Certificate.

#### 4.4 *Redemption.*

(A) *Right to Redemption.* Upon receipt of a written request from the holders of not less than a majority of the then outstanding shares of Series A Preferred Stock (the "Redemption Request"), at any time after fifth (5<sup>th</sup>) anniversary of the date on which the Corporation first issues shares of its Series A Preferred Stock (the "Series A Original Issue Date") the Corporation shall redeem all of the Preferred Stock then outstanding in three (3) equal annual installments, (each installment or payment date, a "Redemption Date"). The Corporation shall on each such Redemption Date redeem up to the maximum amount the Corporation may lawfully redeem out of funds legally available therefore. The "Redemption Price" shall mean an amount per share equal to the lesser of (i) the Original Issue Price plus an additional amount equal to any dividends declared but unpaid on each such share or (ii) the then current fair market value of such share.

(B) *Redemption Procedure.* Within fifteen (15) days of the receipt by the Corporation of the Redemption Request, the Corporation shall mail, first class postage prepaid, written notice (the "Notice of Redemption") to each holder of record (at the close of business on the business day preceding the day on which notice is given) of Series A Preferred Stock, at the

address last shown on the records of the Corporation for such holder or given by the holder to the Corporation, for the purpose of notifying such holder of the redemption to be effected. The Notice of Redemption shall specify the Redemption Date which shall be between fifteen (15) and thirty (30) days after the mailing of the Notice of Redemption on which the Series A Preferred Stock then outstanding shall be redeemed and the place at which payment shall be made, which shall be the principal offices of the Corporation or such other place as shall be mutually agreeable to the Corporation and holders of at least two-thirds (2/3) of the shares of Series A Preferred Stock then outstanding. The Notice of Redemption shall call upon each holder of Series A Preferred Stock to either (i) surrender to the Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares to be redeemed or (ii) convert such Series A Preferred Stock into Common Stock prior to the Redemption Date in accordance with the provisions of Section 4.3 above. Subject to Section 4.4(C), on the Redemption Date, the Corporation shall pay the Redemption Price in cash or by check to the order of the person whose name appears on the certificate or certificates of the Series A Preferred Stock that (i) shall not have been converted pursuant to Section 4.3 hereof and (ii) shall have been surrendered to the Corporation in the manner and at the place designated in the Notice of Redemption and thereupon each surrendered certificate shall be canceled.

(C) *Effect of Redemption.* From and after each Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of the shares of Series A Preferred Stock to be redeemed on a Redemption Date (except the right to receive their respective Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption on any Redemption Date are insufficient to redeem the total number of shares requested to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Preferred Stock. The shares not redeemed shall remain outstanding and be entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares not redeemed, such funds will immediately be set aside for the redemption of the balance of the shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

(D) *Redemption Default.* In addition to the provisions of Section 4.4(C), if this Corporation fails to redeem the total number of shares of Series A Preferred Stock required to be redeemed on any Redemption Date, or if the funds of this Corporation legally available for redemption of Series A Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock required to be redeemed on such date, then the number of directors constituting the Board of Directors will, at the request of the holders of at least two-thirds (2/3) of the shares of Series A Preferred Stock then outstanding, be increased by one member, and the holders of shares of Series A Preferred Stock will have the special right, voting separately as a single class or series (with each share being entitled to one vote), and to the exclusion of all other classes or series of this Corporation's voting stock, to elect an individual to fill such newly created directorship, to fill any vacancy of such directorship and to remove any individual elected to such directorship. The newly created directorship will constitute a separate class of directors, and the director elected by the holders of Series A

Preferred Stock pursuant to this Section 4.4(D) will be entitled to cast a number of votes on each matter considered by the Board of Directors equal to the sum of the number of votes entitled to be cast by all of the other then serving directors plus one (1). This special right of the holders of Series A Preferred Stock to elect a member of the Board of Directors pursuant to this Section 4.4(D) may be exercised at a special meeting called pursuant to this Section 4.4(D), at any annual or any other special meeting of the stockholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a meeting of the stockholders. This special right of the holders of the Series A Preferred Stock shall terminate when all shares of the Series A Preferred Stock have been redeemed and paid in full by the Corporation.

#### 4.5 *Voting.*

(A) *General.* Each holder of outstanding shares of Series A Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are then convertible (as adjusted from time to time pursuant to Section 4.3 hereof) at each meeting of stockholders of the Corporation (and pursuant to written consent of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, by the provisions of this Section 4.5 or by Section 4.6 below or by the provisions establishing any other series of Preferred Stock, holders of Series A Preferred Stock shall vote together with the holders of Common Stock as a single class on all actions to be taken by the stockholders of the Corporation, including, but not limited to actions amending this Restated Certificate to increase the number of authorized shares of Common Stock.

(B) *Adjustment in Authorized Common Stock.* Without limiting the generality of Section 4.5(A), and in accordance with the provisions of Section 242(b)(2) of the DGCL, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares then outstanding) by the affirmative vote of the holders of a majority of Series A Preferred Stock and Common Stock, voting as one class, with each holder of Series A Preferred Stock having that number of votes per share as is equal to the number of shares of Common Stock into which each such share of Series A Preferred Stock held by such holder could be converted on the date for determination of stockholders entitled to vote on such increase or decrease.

#### (C) *Election of Directors.*

(1) The Corporation's Board of Directors shall consist of five (5) directors. The holders of Common Stock, voting as a single class, shall be entitled to elect three (3) members of the Corporation's Board of Directors at each meeting or pursuant to each written consent of the Corporation's holders of Common Stock for the election of directors (the "Common Directors"). The holders of Series A Preferred Stock shall be entitled to elect two (2) members of the Corporation's Board of Directors at each meeting or pursuant to each written consent of the Corporation's holders of Series A Preferred Stock for the election of directors (the "Preferred Directors").

(2) Vacancies in the Corporation's Board of Directors may be filled by a majority of the remaining directors originally elected by the same series, class or classes of shares that elected the member who created the vacancy (or the remaining director so elected if there is but one, or if there is no such director remaining, by the affirmative vote of the holders of a majority of the shares of that class or classes or series). The stockholders entitled to vote upon the election of directors may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors.

(3) Any director who was elected by a specified class or classes of stock or series thereof may be removed during his or her term of office, either for or without cause, by, and only by, the affirmative vote of the holders of at least a majority of the shares of the class or classes of stock or series thereof that initially elected such director. Such vote may be given at a special meeting of such stockholders duly called or by an action by written consent for that purpose.

4.6 *Series A Preferred Stock Protective Provisions.* So long as any shares of Series A Preferred Stock are outstanding, the Corporation may not, without the consent of the holders of at least a majority of the Series A Preferred Stock, voting as a single class and on an as-converted basis, either directly or by amendment, merger, consolidation, or otherwise; do any: (i) amendment to the Corporation's Certificate of Incorporation that materially and adversely affects the rights, preferences or privileges of the Series A Preferred Stock; (ii) additional issuances of equity securities which rank senior or pari passu to the Series A Preferred Stock; (iii) dividends or distributions on, or redemptions of, the Corporation's capital stock (other than as required by the Certificate of Incorporation or pursuant to repurchase rights in favor of the Corporation with respect to stock issued to employees, directors, consultants and advisors); (iv) extraordinary corporate transactions, including the sale or exclusive license of all or substantially all the assets of the Corporation, mergers, consolidations, and liquidations; (v) increase in the number of authorized shares or (vi) increase in the number of directors.

The provisions of this Section 4.6 shall be in addition to any rights which any holder of Series A Preferred Stock may have under the DGCL.

4.7 *Status of Redeemed or Converted Stock.* In the event any shares of Series A Preferred Stock are converted pursuant to Section 4.3 or redeemed pursuant to Section 4.4, the Corporation shall never again issue the shares so converted or redeemed and all such shares so converted or redeemed shall, upon such conversion or redemption, cease to be a part of the Corporation's authorized or outstanding stock. The Corporation's Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized stock.

4.8 *Notices.* Any notice required by the provisions of Sections 4.2, 4.3 and 4.4 to be given to the holders of shares of Series A Preferred Stock shall be in writing and shall be delivered personally by hand or by courier, mailed by United States first-class mail, postage prepaid, sent by facsimile directed to each holder of record at such holder's address, facsimile number appearing on the Corporation's books, or, if to an overseas address, via a recognized overseas air courier service. Any such notice shall be effective or deemed given on the date of

delivery, mailing, or confirmed facsimile transfer (or if overseas, two (2) business days after delivery to a recognized overseas air courier service).

4.9 *Drag-Along Rights.* In the event one or more of the holders of Series A Preferred Stock receives an offer to purchase all of the capital stock (whether by merger, exchange offer, tender offer or otherwise) of the Corporation or all or substantially all of the assets of the Corporation from one or more third parties pursuant to a bona fide offer, and holders of greater than fifty percent (50%) of the Series A Preferred Stock wish to sell the capital stock or assets of the Corporation pursuant to such bona fide offer, such holders of the Series A Preferred Stock shall have the right to require the remaining holders of capital stock of the Corporation to vote their capital stock in favor of, and to participate in the sale of the capital stock or assets of the Corporation pursuant to such bona fide offer at the same price offered for such Series A Preferred Stock on an as converted basis.

4.10 *Common Stock.*

(A) *Dividend Rights.* Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive noncumulative dividends, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefor.

(B) *Liquidation Rights.* Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Article IV Section 4.2 hereof.

(C) *Voting Rights.* The holder of each share of Common Stock shall have the right to one (1) vote, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law, and as provided in Article IV Section 4.5 hereof.

(D) *Redemption.* The holders of shares of Common Stock shall not have the right to require the redemption of such shares by the Corporation.

## ARTICLE V

Except as may otherwise be provided in this Restated Certificate, in furtherance and not in limitation of the powers conferred by the laws of the state of Delaware, the Corporation's Board of Directors is expressly authorized to make, alter, amend or repeal the Corporation's Bylaws.

## ARTICLE VI

Elections of directors need not be by written ballot unless the Corporation's Bylaws shall so provide.

## **ARTICLE VII**

7.1 *Limitation of Director's Liability.* To the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended, a director of this Corporation shall not be personally liable to this Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

7.2 *Indemnification of Directors and Officers.* To the fullest extent permitted by applicable law, this Corporation is authorized to provide indemnification of, and advancement of expenses to, directors, officers, employees and other agents of this Corporation and any other persons to which the DGCL permits this Corporation to provide indemnification.

7.3 *Repeal or Modification.* Any repeal or modification of this ARTICLE VII, by amendment of this ARTICLE VII or by operation of law, shall not adversely affect any right or protection of a director, officer, employee or other agent of this Corporation existing at the time of, or increase the liability of any such person with respect to any acts or omissions in their capacity as a director, officer, employee, or other agent of the Corporation occurring prior to, such repeal or modification.

## **ARTICLE VIII**


Subject to Section 4.6 of ARTICLE IV, 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 statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

\* \* \* \* \*

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its Chairman of the Board of Directors and Interim Chief Executive Officer on May 19, 2006.

AMORCYTE, INC.

By:

  
Name: Andrew L. Picora, M.D.  
Title: Chairman & Interim CEO