

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION**

EMERY SMITH,

CASE NO. 15-CA-001620

Petitioner/Counter-Respondent,

-v-

EMCYTE CORP.,

Respondent/Counter-Petitioner

And

PATRICK PENNIE,

Respondent/Counter-Petitioner.

**EMCYTE CORP.'S MOTION FOR PARTIAL SUMMARY JUDGMENT
ON PETITIONER/COUNTER-RESPONDENT'S COUNT IV CONCERNING
JUDICIAL DISSOLUTION AND APPOINTMENT OF CUSTODIAN OR RECEIVER**

Respondent/Counter-Petitioner, EMCYTE CORP., (“EmCyte”) by and through its undersigned counsel, and pursuant to Rule 1.510, Florida Rules of Civil Procedure, moves this Court for the entry of a partial summary judgment in favor of EmCyte and against Emery Smith (“Smith” or “Petitioner”) on Count IV of Petitioner/Counter-Respondent’s Amended Petition, wherein Petitioner seeks judicial dissolution of EmCyte and appointment of a custodian or a receiver pursuant to § 607.1430, et seq. As grounds for this Motion, EmCyte states that the disputes involved are strictly legal issues only and there are no genuine issues of material fact in dispute as to Count IV. EmCyte is therefore entitled to a partial summary judgment on these issues as a matter of law. In support of its Motion, EmCyte alleges and states as follows:

PROCEDURAL HISTORY

EmCyte previously filed a Motion for Partial Summary Judgment on the Enforceability of the Shareholders’ Agreement (December 31, 2015), a Supplement thereto (August 29, 2016) and a Notice of Filing of Case Law in Support (September 16, 2016). Respondent/Counter-

Petitioner, Patrick Pennie, joined in EmCyte's Motion. Smith filed a Memorandum in Opposition to the Motion and an Affidavit in support on September 14, 2016. On September 19, 2016, this Court conducted a hearing and granted EmCyte's Motion by Order dated October 10, 2016. This Court found that Petitioner ratified the Shareholders' Agreement and that he was estopped or waived his ability to challenge the enforceability of the agreement. This legal conclusion was based on the undisputed fact that Petitioner was aware of the Shareholders' Agreement, accepted its benefits and caused Mr. Pennie to rely on its enforceability. This Court also found that whether or not Petitioner signed the executed Shareholders' Agreement – Smith claimed before this Court that he did not sign the agreement, but then changed his statement to claim that his signature was forged – is irrelevant given his subsequent ratification of the agreement and the acceptance of its benefits.

Thereafter, Petitioner filed a petition for writ of certiorari (the "Writ") with the Second District Court of Appeals ("2D DCA") seeking review of the partial summary judgment awarded to EmCyte. On March 17, 2017, the 2D DCA dismissed Petitioner's Writ, thereby affirming this Court's determination that the Shareholders' Agreement is binding and enforceable between Petitioner, Mr. Pennie and EmCyte.

STATEMENT OF UNDISPUTED FACTS

1. By granting EmCyte's Motion for Partial Summary Judgment against Smith, this Court determined that the terms and conditions of the Shareholders' Agreement dated July 1, 2010 (the "Shareholders' Agreement") were binding and enforceable by and between EmCyte, Patrick Pennie and Smith. The Court also specifically determined that all of Smith's claims, defenses and affirmative defenses that run contrary to the legal determination that the Shareholders' Agreement is enforceable were stricken.

2. As justification for the relief requested by Petitioner in Count IV (Judicial Dissolution of EmCyte and Appointment of a custodian or receiver) of his Amended Petition, Petitioner alleged that ultra vires acts of Mr. Pennie caused material and irreparable injury to EmCyte and that Petitioner and Mr. Pennie were “effectively deadlocked in the management of the corporation.”

3. The acts of Mr. Pennie enumerated by Petitioner as constituting “ultra vires” acts are set forth in Amended Petition paragraph 59(a) through (p). In Amended Petition paragraph 61, Petitioner claimed that the alleged “ultra vires” acts of Mr. Pennie “. . . have damaged the value of Smith’s 50% share in EmCyte Corp., have threatened or greatly diminished Smith’s standing as a shareholder, director, officer and employee of EmCyte Corp., and have harmed the overall value, operations and stature of EmCyte Corp. as a going concern.” (Emphasis Added).

4. The legal arguments relied upon by Petitioner for Count IV are all premised upon satisfying the requirement of § 607.1430, et seq.

5. Petitioner’s Count IV allegations were dependent upon the Shareholders’ Agreement between the parties being found to be a legal nullity. This Court’s determination that the Shareholders’ Agreement is binding and enforceable between the parties means that Petitioner’s Count IV fails to state a cause of action.

6. Petitioner’s Amended Petition allegations fail to state a cause of action for relief under § 607.1430, et seq. because the “ultra vires” acts complained of by Petitioner do not constitute “ultra vires” acts according to the Shareholders’ Agreement. Further, Petitioner failed to plead the facts necessary to sustain a cause of action under § 607.1430, et seq.

A. **Shareholders' Agreement Terms and Conditions**

7. The Shareholders' Agreement establishes that Mr. Pennie owns Fifty-One percent (51%) of the voting stock in EmCyte and Petitioner owns Forty-Nine percent (49%). Mr. Pennie was designated, and remains, EmCyte's Chairman. **See** Exhibit "A."

8. Mr. Pennie, in his capacity as Chairman, was authorized to execute "... any document ... and to take any other action that may be necessary or desirable in order to permit the Corporation to do business (or facilitate the doing of business in any jurisdiction)." **See** §2.6 of Exhibit "A."

9. Further, §5.1 of the Shareholders Agreement vested **sole** responsibility for EmCyte's management in Mr. Pennie, as Chairman. As Chairman, Mr. Pennie was granted "... the fullest right, power, and authority to manage, direct, and control all of the business affairs of the Corporation, to transact business on its behalf, take any action on behalf of the Corporation believed by the Chairman to be in the best interests of the Corporation, to sign for it or on its behalf and to otherwise secure the Corporation. **See** §5.1 of Exhibit "A."

10. The Chairman was granted the following specific authorities in §5.2:

- i) the amendment of the Articles of Organization of the Corporation, or of this Shareholders Agreement;
- ii) the admission of an additional Shareholder, or any other sale of Stock of the Corporation to another person or entity other than the then-current Shareholders; or the approval of dissociation or withdrawal of any Shareholder;
- iii) the sale, lease, exchange, or other disposal of all, or substantially all, of the assets of the Corporation;
- iv) any borrowing, financing, or refinancing from a third party (or series of expenditures or borrowings), or the incurrence of any indebtedness;
- v) the merger or dissolution of the Corporation;
- vi) the authorization or issuance of additional Stock or the transfer of Stock to a substitute or transferee Shareholder, as contemplated by this Agreement;

- vii) any other decision set forth in this Agreement which requires approval of the Chairman;
- viii) a material change in the character of the business or location of the Corporation as then being conducted;
- ix) any matter that could result in a material change in the amount or character of the Corporation's contributions to capital, except as otherwise provided in this Agreement;
- x) the removal or addition of personnel or entities;
- xi) entering into agreements or contracts of a material nature, which imposes on any Shareholder a material burden inconsistent with the purposes of the Corporation; or
- xii) the making of an assignment for the benefit of creditors; filing a voluntary petition in bankruptcy; filing a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; seeking, consenting to, or acquiescing in the appointment of a trustee, receiver or liquidator of the Corporation or of all or any substantial part of the Corporation's assets.

See attached Exhibit "A."

11. Section 9.3 of the Shareholders' Agreement provides that "[T]he death, retirement, resignation, expulsion, bankruptcy, dissociation, or dissolution of a Shareholders (sic) shall not cause the dissolution of the Corporation."

STANDARD ON MOTION FOR PARTIAL SUMMARY JUDGMENT

12. Rule 1.510(b), Florida Rules of Civil Procedure, provides that a "party against whom a ... claim ... is asserted ... may move for summary judgment in that party's favor as to all or any part thereof at any time with or without supporting affidavits." Fla. R. Civ. P. 1.510(b). Plainly, "summary judgment is appropriate where the material facts are not in dispute and the judgment is based on the legal construction of documents." *Ball v. Florida Podiatrist Trust*, 620 So.2d 1018, 1022 (Fla. 1st DCA 1993); see also *Robobar, Inc. v. Hilton Int'l Co.*, 870 So.2d 864

(Fla. 3d DCA 2004) (affirming summary judgment and trial court's interpretation of contract as a matter of law).

13. Courts agree that construction of a contract is uniquely appropriate for resolution by way of summary judgment. "Where the determination of the issues of their lawsuit depends upon the construction of a written instruments and the legal affect to be drawn therefrom, the question at issue is essentially one of law only and determinable by entry of summary judgment." *See Cox v. CSX Intermodal, Inc.*, 732 So.2d 1092 (Fla. 1st DCA 1999); *Palm Beach County v. Trinity Industries, Inc.*, 661 So.2d 942, 944 (Fla. 4th DCA 1995); *Shafer & Miller v. Miami Heart Institute, Inc.*, 237 So.2d 310, 311 (Fla. 3d DCA 1970).

ARGUMENTS

14. Petitioner's Count IV is wholly dependent upon him establishing the elements required by § 607.1430, et seq. Section 607.1430 contains alternate requirements for a shareholder seeking to dissolve a corporation. Section 607.1430(2) requires a shareholder to establish that:

- (a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or
- (b) The shareholders are deadlocked in voting power and have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors. (Emphasis added)

15. In Paragraph No. 66, Petitioner laundry lists specific acts of Mr. Pennie that Petitioner describes as "ultra vires" [Paragraph No. 59(a) through (p)] and that those particular acts caused "material and irreparable injury" to EmCyte. In Paragraph No. 67, Petitioner alleges that he and Mr. Pennie are "effectively deadlocked in the management of the corporation."

16. The Shareholders' Agreement is conclusive that voting power over EmCyte is controlled by Mr. Pennie (51% to 49% for Petitioner), so Petitioner fails on the § 607.1430(2)(b)

requirement. The Shareholders' Agreement also establishes that as Chairman of EmCyte, Mr. Pennie manages, controls and determines all of EmCyte's corporate affairs. Additionally, Petitioner's laundry list of alleged "ultra vires" acts do not qualify as being "ultra vires" under the Shareholders' Agreement's terms and the only claimed injuries by Petitioner are those that he claims to have suffered personally. Petitioner's allegations wholly fail to meet the minimum threshold of establishing "irreparable injury to the corporation." Petitioner's conclusory allegations are insufficient to establish a claim under § 607.1430(2)(a) and (b).

17. Section 607.1430(3) requires a shareholder seeking a judicial dissolution to establish that:

(a) The corporate assets are being misapplied or wasted, causing material injury to the corporation; or

(b) The directors or those in control of the corporation have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent. (Emphasis Added).

18. Petitioner's allegations only identify purported injuries to him personally. Petitioner wholly failed to identify any of EmCyte's assets that "are being misapplied or wasted, causing material injury to the corporation." Petitioner cannot establish that Mr. Pennie committed "ultra vires" acts because the acts complained of are expressly allowed under the Shareholders' Agreement. But, in any event, Petitioner complained of perceived grievances of his own, not of EmCyte, so he wholly failed to state a claim under § 607.1430(3)(a).

19. Similarly, given the voting control vested in Mr. Pennie and the expansive powers granted to him as EmCyte's Chairman, none of the self-serving claims of Petitioner qualify as being "illegal or fraudulent." Again, the conclusory allegations of Petitioner lack any substance and the terms and conditions of the enforceable Shareholders' Agreement result in a complete failure of Petitioner's Count IV claims.

20. Petitioner's failure to state a claim under § 607.1430 eliminates his Count IV claims under § 607.1431(3) (injunction, receiver or custodian relief), § 607.1432 (appointment of a receiver or custodian), § 607.1433 (judgment of dissolution), or § 607.1434 (alternative remedies). Section 607.1430(2) or (3) contains the threshold requirements for Petitioner and being unable to establish the elements necessary under that section, the rest of Petitioner's claims fail as well.

21. In the event that Petitioner continues to assert claims under § 607.1430, EmCyte requests that this Court award it attorneys' fees and other reasonable expenses pursuant to § 607.1431(4).

WHEREFORE, EmCyte Corp. respectfully requests that this Court grant its Motion for Partial Summary Judgment as to Petitioner's Count IV of his Amended Petition, awarding EmCyte its attorney's fees and costs, and for such other equitable relief as this Court may allow.

Respectfully Submitted,

GUNSTER, YOAKLEY & STEWART, P.A.
401 East Jackson Street
Suite 2500
Tampa, Florida 33602
Phone: (813) 222-6630
Fax: (813) 228-6739

By: s/ Kenneth G. M. Mather

KENNETH G.M. MATHER

Florida Bar #: 619647

Primary Email: KMather@gunster.com

Secondary Email: MWeaver@gunster.com

TKennedy@gunster.com

eservice@gunster.com

***Attorneys for Respondent/Counter-Petitioner,
EmCyte Corp.***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed through the Court's E-portal filing system and furnished by electronic mail to Richard Alvarez, Esq. and Kevin L. Dees, Esq. of Older Lundy & Alvarez, P.A., 1000 West Cass Street, Tampa, Florida 33606 at triallawyers@olalaw.com; Andrew W. Lennox, Esq., and Casey R. Lennox, Esq., of Lennox Law, P.A., 4905 S. Westshore Blvd., Tampa, Florida 33611 at alennox@lennoxlaw.com, clennox@lennoxlaw.com, and eservice@lennoxlaw.com; and Stephen J. Leahu, Esq. and Alejandro J. Fernandez, Esq., of Brinks, Gilson & Lione, 401 E. Jackson Street, Ste. 3500, Tampa, Florida 33602 at sleahu@brinksgilson.com and afernandez@brinksgilson.com on this 23rd day of March, 2017.

By: s/ Kenneth G. M. Mather
KENNETH G.M. MATHER

EMCYTE CORPORATION

SHAREHOLDERS AGREEMENT

This Shareholders Agreement (the "**Shareholders Agreement**" or the "**Agreement**") is entered into effective as of the 1 day of July, 2010, by and among **EMERY SMITH & PATRICK PENNIE** (collectively "**SHAREHOLDERS**") and **EMCYTE CORPORATION** (the "**Corporation**").

WHEREAS, the issued outstanding Equity Stock shares of the Corporation are owned by Patrick Pennie 50 shares and Emery Smith 50 shares

WHEREAS, the Shareholders hereto deem it to be in the best interest of the Corporation to act together concerning the management of the Corporation as well as to make provision for the contingency of the death or disability of any Shareholder and to set forth the manner and method by which a Shareholder may sell his stock during his lifetime.

RECITALS

The Corporation was formed on February 19, 2008, for the purposes set forth herein, and, accordingly, the Shareholders desire to enter into this Shareholders Agreement in order to set forth the terms and conditions of the business and affairs of the Corporation and to determine the rights and obligations of its Shareholders. Any prior Shareholders agreements, or other agreements of any type which are contrary to this Shareholders Agreement are specifically superseded or replaced by this Agreement.

NOW, THEREFORE, the Shareholders, intending to be legally bound by this Shareholders Agreement, hereby agree that the agreement between the Corporation and by and between its Shareholders shall be as follows:

DEFINITION SCHEDULE

The defined terms used in this Agreement will have the meanings specified in the "Definition Schedule" set forth below. Any terms not defined in the Definition Schedule will have the meanings specified in the section of this Agreement in which they first appear.

(a) "Agreement" shall mean this Shareholders Agreement as originally executed and as amended from time to time, and no other writing shall be construed as a Shareholders agreement of the Corporation under the Act.

(b) "Articles" shall mean the Articles of Incorporation of **EMCYTE CORPORATION**, as filed with the Florida Secretary of State, as the same may be amended from time to time.

(c) "Bankruptcy" of a Shareholder shall be deemed to have occurred upon the happening of any of the following: (a) the filing by such Shareholder of an application for, or a consent to, the appointment of a trustee for such Shareholder's assets; (b) the filing by such Shareholder of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing its inability to pay its debts as they come due; (c) the making by the Shareholder of a general assignment for the benefit of creditors under the Laws of the State of Florida, or otherwise; (d) the filing by the Shareholder of an answer admitting the material allegations of, or its consenting to or defaulting in answering, a bankruptcy petition filed against it in any bankruptcy proceeding; or (e) the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating the Shareholder a bankrupt or appointing a trustee of its assets, and such order, judgment or decree continues unstayed and in effect for a period of thirty (30) days.

(d) "Capital Contribution" shall mean any contribution to the capital of the Corporation in cash or property by a Shareholder whenever made.

(e) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

(f) "Corporation" shall mean **EMCYTE CORPORATION**, a Florida Corporation.

(g) "Losses" means the losses and deductions of the Corporation determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Corporation and as reported separately or in the aggregate, as appropriate, on the tax return of the Corporation filed for federal income tax purposes.

(m) "Net Book Value" shall mean the Book Value of the Corporation's assets, adjusted for depreciation, less the Corporation's liabilities.

(n) "Net Income" shall mean net income before interest, taxes, depreciation and amortization.

(o) "Net Losses" means Losses less Profits.

(p) "Person" shall mean any individual, partnership, corporation, limited liability Corporation, limited liability partnership, unincorporated association, trust or other entity and the heirs, executors, administrators, legal representatives, successors, and assigns of the "Person" when the context so permits.

(q) "Prime Rate" shall mean the prime rate (or base rate) reported in the "Money Rates" column or section of The Wall Street Journal as being the base rate on corporate loans at larger U.S. Money Center banks on the first date on which The Wall Street Journal is published in each month. In the event The Wall Street Journal ceases publication of the Prime Rate, then the "Prime Rate" shall mean the "prime rate" or "base rate" announced by the bank with which the Corporation has its principal banking relationship (whether or not such rate has actually been charged by that bank). In the event that bank discontinues the practice of announcing that rate, Prime Rate shall mean the highest rate charged by that bank on short-term, unsecured loans to its most credit-worthy large corporate borrowers.

(r) "Profits" means the income and gains of the Corporation determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Corporation and as reported separately or in the aggregate, as appropriate, on the tax return of the Corporation filed for federal income tax purposes.

(s) "Treasury Regulations" shall mean proposed, temporary, and final regulations promulgated under the Code, in effect as of the date of filing the Articles, and the corresponding sections of any regulations subsequently issued that amend or supersede those regulations.

(t) "Equity Stock" is the 100 issued and outstanding shares of Corporation's par value Common Stock. All such additional shares of the Stock shall be issued bearing the restrictive endorsement required by this Agreement.

(u) "Voting Stock" is the 100 issued and outstanding shares of Corporation's Voting Stock. All such additional shares of the Stock shall be issued bearing the restrictive endorsement required by this Agreement.

ARTICLE I

Name; Formation;

Registered Agent and Address; and Place of Business

Section 1.1 Name. The name of the Corporation is **EMCYTE CORPORATION.**

Section 1.2 Formation. The Shareholders hereby:

(a) Acknowledge the formation of the Corporation as a Corporation by virtue of the Articles of Incorporation filed with the Florida Department of State; and

(b) Confirm and agree to the status as the Shareholders and the subscription for Interests in the Corporation upon the terms and conditions set forth in this Shareholders Agreement; and

(c) Execute and adopt this Shareholders Agreement as the agreement by and between the Corporation and its Shareholders.

Section 1.3 Registered Agent. The registered office is located at 13881 Plantation Road, Suite #2, Fort Myers, Florida 33912, and its agent at such office is Patrick Pennie.

Section 1.4 Place of Business. The principal office mailing address of the Corporation shall be located at 13881 Plantation Road, Suite #2, Fort Myers, Florida 33912, or at such other place(s) as the Shareholders shall determine from time to time. The Corporation may also have offices at such other places both within and without the State of Florida as the Shareholders may from time to time determine or the business of the Corporation may require.

ARTICLE II
Business, Purposes, Term of Corporation and Meetings

Section 2.1 Business and Purpose of the Corporation. The primary business of the Corporation is any legal business authorized under the laws of the State of Florida. The Corporation shall also engage in any and all other businesses and activities that are permitted and in which the Shareholders desire the Corporation to engage, and the Corporation is specifically authorized to engage in any and all such businesses and activities. If the Corporation qualifies to do business in a foreign jurisdiction, then it may transact all business and activities permitted in that jurisdiction. There is no jurisdictional restriction upon the assets, business, or activity of the Corporation.

Section 2.2 Term of Corporation. The term of the Corporation commenced on February 19, 2008, and the Corporation shall have perpetual existence, unless sooner terminated as provided in either this Shareholders Agreement or the Act.

Section 2.3 Directors and Officers. For the duration and term of this Agreement, the Shareholders will elect and continue in office as Directors of the Corporation as the following: Patrick Pennie and Emery Smith. The Officers of the Corporation shall be: Patrick Pennie – Chairman & Treasurer; Emery Smith – Chief Executive Officer & Secretary

Section 2.4 Voting. All of the issued Voting Stock shares are owned by Patrick Pennie 51 shares and Emery Smith 49 shares. The Shareholders shall have voting rights according to their issued shares.

Section 2.5 Checks. All checks or cash deposits or withdrawals, expenditures, or payments of monies must be approved by the Chairman & Treasurer. Checks and instruments for the payment of monies are to be deposited in the Corporation's bank account. All checks drawn upon such account are to be signed by the Chairman & Treasurer.

Section 2.6 Other Qualifications. The Shareholders hereby authorizes the Chairman to execute on his behalf any document (including, any qualification statement or consent to service of process on behalf of the Corporation, and all amendments thereto) and to take any other action that may be necessary or desirable in order to permit the Corporation to do business (or facilitate the doing of business), in any jurisdiction.

ARTICLE III
Allocation of Profits and Losses; Allocation of Tax Items

Section 3.1 Allocation of Profits and Losses; Allocation of Tax Items. All items of Corporation profits and all items of Corporation income, gain, loss, deduction, and credit from Corporation operations shall be allocated to the Shareholders and all items of Corporation profits and all items of Corporation income, gain, loss, deductions and credits from the sale or dissolution of the Corporation shall be allocated among the Shareholders for Corporation

purposes and for federal, state, and local income tax purposes in proportion to their respective equity shares; provided, however, that all such items shall in all events be allocated in accordance with the Regulations so that all such allocations comport with the economic interest of the Corporation.

Section 3.2 Allocation with Respect to Contributed Property. If, on the formation of the Corporation, or if, at any time during the term of the Corporation, the Shareholders contributes to the Corporation property with an adjusted basis to the contributing Shareholder which is more or less than the agreed fair market value of the contributed property and which is accepted by the Corporation at the time of its contribution, the taxable income, gain, loss, deduction, or credit with respect to such contributed property for tax purposes only shall be shared among the Shareholders so as to take account of the variation between the basis of the property to the Corporation and its agreed fair market value at the time of contribution.

ARTICLE IV Distributions

Section 4.1 Authorization of Distributions. All distributions of cash or property shall be made at such time and in such amounts as determined by a vote of the Shareholders; provided, however, that the Corporation shall distribute annually to the Shareholders that amount the Shareholders reasonably determine to be necessary and appropriate to enable the Shareholders to pay the Federal income taxes incurred as a result of their ownership of Stock in the Corporation.

Section 4.2 Manner of Distributions. All distributions of cash or other property to the Shareholders in their capacity shall be made to the Shareholders in proportion to their equity share providing that the Shareholders determine by vote that it is in the best interest of the Corporation to do so. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Shareholder from the Corporation shall be treated as amounts distributed to the relevant Shareholder pursuant to this Section.

ARTICLE V Management of the Corporation

Section 5.1 General. Subject to the provisions of this Agreement, the Chairman shall be responsible for the management of the Corporation. The Chairman shall have the fullest right, power, and authority to manage, direct, and control all of the business affairs of the Corporation, to transact business on its behalf, take any action on behalf of the Corporation believed by the Chairman to be in the best interests of the Corporation, to sign for it or on its behalf and to otherwise to secure the Corporation. The Chairman may designate from time to time the officers of the Corporation who shall serve at the pleasure of the Corporation and shall have the authority and duties assigned to them by the Chairman. Management by the Chairman shall be under the auspices of the Shareholders and in accordance with this Shareholders Agreement. The Chairman shall conduct the day-to-day business of the Corporation and shall be responsible for the general overall vision of the business and affairs of the Corporation. The

Chairman shall also have the authority to take all actions deemed necessary or desirable by them in the daily operations of the Corporation. The Chairman shall serve until their resignation or until one or more successors are elected by the Shareholders in accordance with this Shareholders Agreement.

Section 5.2 Actions Reserved to the Chairman. Except as otherwise provided in this Agreement, the Chairman may conduct:

(i) the amendment of the Articles of Organization of the Corporation, or of this Shareholders Agreement;

(ii) the admission of an additional Shareholder, or any other sale of Stock of the Corporation to another person or entity other than the then-current Shareholders; or the approval of dissociation or withdrawal of any Shareholder;

(iii) the sale, lease, exchange, or other disposal of all, or substantially all, of the assets of the Corporation;

(iv) any borrowing, financing, or refinancing from a third party (or series of expenditures or borrowings), or the incurrence of any indebtedness.

(v) the merger or dissolution of the Corporation;

(vi) the authorization or issuance of additional Stock or the transfer of Stock to a substitute or transferee Shareholder, as contemplated by this Agreement;

(vii) any other decision set forth in this Agreement which requires approval of the Chairman.

(viii) a material change in the character of the business or location of the Corporation as then being conducted;

(ix) any matter that could result in a material change in the amount or character of the Corporation's contributions to capital, except as otherwise provided in this Agreement;

(x) the removal or addition of personnel or entities;

(xi) entering into agreements or contracts of a material nature, which imposes on any Shareholder a material burden inconsistent with the purposes of the Corporation; or

(xii) the making of an assignment for the benefit of creditors; filing a voluntary petition in bankruptcy; filing a petition or answer seeking

any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; seeking, consenting to, or acquiescing in the appointment of a trustee, receiver or liquidator of the Corporation or of all or any substantial part of the Corporation's assets.

ARTICLE VI

Limitations on Sale of Stock

Section 6.1 Lifetime Sale of Shares. The ownership and sale of stock in the Corporation are substantially restricted. Except as otherwise provided in this Article, no Shareholder may sell, assign, give, hypothecate, pledge, transfer, bequeath, or otherwise dispose of ("Transfer") any or all of his stock, in whole or in part, voluntarily, involuntarily, by operation of law, or otherwise, to any other person or entity except by sale to the Corporation or the other Shareholder.

Section 6.2 Offer. In the event a Shareholder desires to dispose of his stock in the Corporation, he shall offer by certified mail, return receipt requested, all of his shares to the Corporation and the other Shareholder at the Buy Out Value set forth herein. The Corporation shall have the first option to purchase as many of the shares as it can legally purchase. If the Corporation cannot legally purchase all of the stock or fails to indicate acceptance of the offer by certified mail, return receipt requested, within twenty (20) days from the receipt of the offer, then the remaining Shareholder shall have the option to purchase all or the remaining balance of said shares. The remaining Shareholder, if he desires to purchase the stock as offered, shall indicate his acceptance by certified mail, return receipt requested, to the seller and to the other Shareholder, within thirty (30) days after the receipt of the original offer. Closing shall be held no later than ten (10) days after the purchase price is determined. At closing the selling Shareholder shall deliver to the purchaser, his shares of stock duly endorsed for transfer, with the appropriate transfer tax stamps affixed thereon, together with his resignation as an Officer and Director of the Corporation and an instrument stating that he is terminating any employment agreement with the Corporation. At closing the selling Shareholder shall have the option to purchase any and all life insurance policies owned by the Corporation or the other Shareholder, on his life, at a price equal to the then cash surrender value of such policies or the sum of Ten Dollars (\$10.00), whichever is greater.

Section 6.3 Action in Violation Of This Agreement. In the event the shares of any Shareholder are transferred or disposed of in any manner without complying with the provisions of this Agreement, or if such shares are taken in execution or sold in any voluntary or involuntary legal proceeding, execution sale, bankruptcy, insolvency or in any other manner, the Corporation and the Shareholder shall, upon actual notice thereof, in addition to their rights and remedies under this Agreement, be entitled to purchase such shares from the transferee thereof, under the same terms and conditions set forth in this Agreement as if the transferee had offered to sell such shares, but in no event shall the purchase price exceed the amount paid for the said shares by the transferee if such shares were acquired by the transferee for consideration. The Corporation may, at its option, refuse to transfer on its books and records any shares transferred in violation of this Agreement. Any Shareholder who shall petition any Court for the dissolution of the Corporation, other than pursuant to the specific right to cause the Corporation to be

liquidated and dissolved as provided in this Agreement, shall be deemed to have offered his shares for sale under the same terms and conditions as set forth in this Agreement.

Section 6.4 Illegality. If any provision of this Agreement shall be determined by the arbitrators or any Court having jurisdiction, to be invalid, illegal or unenforceable, the remainder of this Agreement shall not be affected thereby, but shall continue in full force and effect as though such invalid, illegal or unenforceable provision or provisions were not originally a part hereof.

Section 6.5 Waiver. No waiver or modification of any of the provisions of this Agreement or any of the rights or remedies of the parties hereto shall be valid unless such change is in writing, signed by the party to be charged therewith. No waiver of any of the provisions of this Agreement shall be deemed a waiver of any other provision.

Section 6.6 Restrictive Covenant. Upon the termination of this Agreement, for any reason whatsoever, neither party shall, for a period of Three (3) years after the termination of this Agreement, work for, own an interest in, operate, join, control, participate in or be connected, either directly or indirectly, as an officer, employee, agent, independent contractor, shareholder or principal of any of the Principals of the Corporation represented by the Corporation during the preceding Two (2) years of this Agreement. Notwithstanding the foregoing, neither party shall, for a period of Three (3) years after termination of this Agreement, undertake, plan or organize with other employees or sales associates of the Corporation, or former employees or sales associates of the Corporation, any business which competes, either directly or indirectly, with the business of the Corporation, and neither party will induce or influence any person who is engaged by the Corporation as an employee or sales associate to terminate his or her employment or to engage or otherwise participate in any business or activity which directly or indirectly competes with the Corporation.

Section 6.7 Leave of Absence. A Shareholder may take a leave of absence upon the terms and conditions set forth herein:

(a) **30 Days.** A Shareholder may take a leave of absence without consequence to salary or participation in profits for a period not to exceed thirty (30) days in any given 12 month period.

(b) **30 to 90 Days.** In the event that a Shareholder takes a leave of absence which exceeds thirty days but is less than 90 days in any given 12 month period, such Shareholder shall forfeit the right to receive any salary after the 90th day, but shall retain the right to share in profits.

(c) **Leave of Absence in Excess of 90 days.** In the event that a Shareholder takes a leave of absence in excess of 90 days in any given 12 month period, then the remaining Shareholder may elect to purchase the absent Shareholder's interest for a price equal to Buy Out Value using a Multiplier of One (1), which is to be paid out in monthly installments over a (36) thirty six month period. Alternatively, the remaining Shareholder may elect to not buy out the absent Shareholder. The absent Shareholder shall not be paid any salary and forfeits his rights in the Corporation after the 90th day,

but shall retain the right to his pro rata share of net profits if the buyout provision set forth herein is not exercised by the remaining Shareholder.

Section 6.8 Automatic Offer to Sell.

(a) Any Shareholder who is a United States citizen not residing in the United States who ceases for any reason to be a United States citizen, and any Shareholder who is not a United States citizen who ceases to be a resident of the United States, shall be deemed automatically to have offered to sell all of his shares in the stock to the Corporation for the purchase price stated in Section 6.10. Corporation shall be deemed automatically to have accepted such offer and such shares shall be canceled and shall become Treasury stock of Corporation. Such cancellation shall be effective on the date immediately before the date of such Shareholder's change in citizenship or residency.

(b) Any filing by or on behalf of the Shareholder of a voluntary petition in bankruptcy or the filing against the Shareholder of an involuntary petition in bankruptcy, under applicable federal or state law, or the Shareholder's attempted use of any provision of federal or state bankruptcy acts, or the attempted assignment of the Shareholder's assets for the benefit of creditors, shall constitute such Shareholder's automatic offer to sell all of his shares to Corporation for the purchase price stated in Section 6.10. Corporation shall be deemed automatically to have accepted such offer, and such shares shall be canceled and shall become Treasury stock in Corporation. Such cancellation shall be effective on the date immediately before the date on which such petition was filed or such Transfer was attempted.

Section 6.9 Death of a Shareholder. On the death of any Stockholder, his Personal Representative will immediately be deemed to have offered to sell to the other Stockholder all of the deceased Stockholder's shares of Stock at the Agreement Price at Death and upon the Agreement Terms at Death. The other Stockholder shall be deemed to have accepted such offer and agreed to buy that portion of the Offered Stock which may be fully paid for under the terms hereof by the insurance proceeds receivable as a result of the deceased Shareholder's death under any policy or policies maintained by the other Shareholder pursuant to the terms of this Agreement. The other Shareholder shall then have the option of purchasing the remainder of the Offered Stock for the Agreement Price at Death and on the Agreement Terms at Death and to the extent the other Stockholder shall not accept such offer and agree to buy the remainder of the Offered Stock, the Corporation shall be deemed to have accepted such offer and agreed to purchase such remaining Offered Stock for such price and on such terms.

Section 6.10 Purchase Price. Except as otherwise provided in this Agreement, the price payable in purchase of the Offered Stock shall be determined in accordance with the accounting method regularly followed by the Corporation for financial reporting purposes, but subject to the following provisions:

(a) All accounts payable shall be taken into account at face amount less discounts deductible there from and all accounts receivable shall be taken at face amount and unbilled work shall be accrued, less discount, less a reasonable reserve for bad debts;

(b) All tangible personal property shall be taken into account at the value thereof on the books of the Corporation;

(c) All real property shall be taken into account at the value thereof on the books of the Corporation;

(d) All securities owned by the Corporation shall be taken:

(i) if traded on a national securities exchange, at the closing price thereof on the last market day of such quarter;

(ii) If traded over the counter, at the average bid price thereof on the last day of such quarter, as reported in the National Daily Quotation Service or other similar service, or if none is reported for such day, then as reported on the next succeeding day on which bids were reported; and

(iii) if neither traded on a national securities exchange nor over the counter, at net worth per share as shown on the financial statement of the organization in question at the time closest to the last day of such quarter.

Section 6.11 How Computed. The Agreement Price payable upon the death of a Stockholder will be the fair market value of the shares of the Offered Stock. This valuation shall be determined under the same methods as would be used for determining the estate tax value of the Offered Stock if the Offering Stockholder had died on the date the offer was made.

Section 6.12 Payment of Redemption or Purchase Price. The Purchase Price which is paid in connection with any sale or redemption of a Shareholder's Interests pursuant to this Article, shall be paid by the Corporation as follows:

(a) **Cash.** All or any part of the Purchase Price may be paid in cash.

(b) **Promissory Note.** For purposes of this Agreement, the term "Note" shall mean a promissory note delivered by the Corporation to the selling Shareholder, or to his or her legal representative, successor or assign which provides for equal monthly installments of principal and interest over a period to be determined by the Remaining Shareholder using their best discretion as to what is in the best interest of the Corporation, but such term shall not exceed 12 months. Any and all payments of principal or interest may be prepaid without penalty or premium.

(c) **Closing.** The closing of the purchase and sale shall take place within ninety (90) days following the date of the actual (or deemed) triggering event, or as soon as reasonably possible thereafter. The Closing shall take place at the principal office of the Corporation at such reasonable time as designated by the Corporation or at such other time and place as agreed to by the Corporation and the shareholder selling his stock.

ARTICLE VII
Amendment of Agreement

Section 7.1 Amendment. Any amendment or supplement to this Agreement shall require the approval of the Shareholders. Any amendment or supplement to this Agreement shall be effective only if in writing and signed by the Shareholders.

ARTICLE VIII
Limitation Of Liability; Indemnification

Section 8.1 Limited Liability. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Corporation, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Corporation, and the Shareholders shall not be obligated personally for any such debt, obligation or liability of the Corporation solely by reason of being a Shareholder. The failure of the Corporation to observe any formalities or requirements relating to the exercise of its powers or the management of its business or affairs under this Shareholders Agreement or the Act shall not be grounds for imposing personal liability on the Shareholders for any debts, liabilities or obligations of the Corporation. Except as otherwise expressly required by law, the Shareholders, in such capacity as such, shall have no liability in excess of (a) the amount of such individual net Capital Contributions, (b) such individual's share of any assets and undistributed profits of the Corporation, and (c) the amount of any distributions required to be returned pursuant to Section 607 of the Act.

Section 8.2 Indemnification. The Corporation (including any receiver or trustee of the Corporation) shall, to the fullest extent provided or allowed by law, indemnify, save harmless and pay all judgments and claims against the Shareholders and each of the agents, affiliates, heirs, legal representatives, successors and assigns (each, an "Indemnified Party") from, against and in respect of any and all liability, loss, damage and expense incurred or sustained by the Indemnified Party in connection with the business of the Corporation or by reason of any act performed or omitted to be performed in connection with the activities of the Corporation or in dealing with third parties on behalf of the Corporation, including costs and attorneys' fees before and at trial and at all appellate levels, whether or not suit is instituted (which attorneys' fees may be paid as incurred), and any amounts expended in the settlement of any claims of liability, loss or damage, provided-that the act or omission of the Indemnified Party does not constitute fraud or willful misconduct by such Indemnified Party. The Corporation shall not pay for any insurance covering liability of the Shareholders or the agents, affiliates, heirs, legal representatives, successors and assigns for actions or omissions for which indemnification is not permitted hereunder; provided, however, that nothing contained herein shall preclude the Corporation from purchasing and paying for such types of insurance, including extended coverage liability and casualty and worker's compensation, as would be customary for any Person owning, managing and/or Shareholders comparable property and engaged in a similar business or from naming the Shareholders and any of the agents, affiliates, heirs, legal representatives, successors or assigns or any Indemnified Party as additional insured parties thereunder.

Section 8.3 Non-Exclusive Right. The provisions of this Article VIII shall be in addition to and not in limitation of any other rights of indemnification and reimbursement or limitations of liability to which an Indemnified Party may be entitled under the Act, common law, or otherwise. Notwithstanding any repeal of this Article VIII or other amendment hereof, its provisions shall be binding upon the Corporation (subject only to the exceptions above set forth) as to any claim, loss, expense, liability, action or damage due to or arising out of matters which occur during or relate to the period prior to any such repeal or amendment of this Article VIII.

ARTICLE IX DISSOLUTION AND TERMINATION

Section 9.1 Events Causing Dissolution. Except as otherwise agreed upon in this Agreement, the Corporation will be dissolved upon the first to occur of the following events:

(a) **Other Events under the Act.** Any other event causing a dissolution of the Corporation under the provisions of the Act. However, in the event a Shareholder seeks a judicial dissolution of the Corporation ("Dissolving Shareholder") pursuant to the Act, the Shareholder may purchase such Dissolving Shareholder's interest in exchange for a complete redemption of such Dissolving Shareholder's interest for the Purchase Price in accordance with Section 6.10.

Section 9.2 Cash Distributions Upon Dissolution. Upon the dissolution of the Corporation as a result of the occurrence of any of the events set forth in Section 9.1, the Shareholders shall proceed to liquidate the Corporation and the liquidation proceeds will be applied and distributed in the following order of priority:

(a) **Debts and Liabilities.** First, to the payment of debts and liabilities of the Corporation in the order of priority as provided by law (other than any loans or advances that may have been made by the Shareholders to the Corporation) and the expenses of liquidation.

(b) **Reserve.** Second, to the establishment of any reserve that the Shareholder may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Corporation. This reserve may be paid over by the Shareholder to any attorney at law, or other party acceptable to a Majority in Interest, as escrow agent to be held for disbursement in payment of any of the aforementioned liabilities and, at the expiration of such period as is deemed advisable by the Shareholders, for distribution of the balance, in the manner hereafter provided.

(d) **Loans.** Fourth, to the repayment of any loans or advances that may have been made by the Shareholders to the Corporation, but if the amount available for that repayment is insufficient, then pro rata on account thereof.

(e) **Remaining Amounts.** Finally, if any amount remains to be distributed for any reason, to the Shareholders in accordance with their pro rata ownership interest.

Section 9.3 Non-Dissolution Events. The death, retirement, resignation, expulsion, bankruptcy, dissociation, or dissolution of a Shareholders shall not cause the dissolution of the Corporation.

ARTICLE X Miscellaneous

Section 10.1 Binding Effect. This Shareholders Agreement shall be binding upon and inure to the benefit of the undersigned, its legal representatives, heirs, successors and assigns.

Section 10.2 Applicable Laws. This Shareholders Agreement and the rights and duties of the Shareholders hereunder shall be governed by, and interpreted and construed in accordance with, the laws of the State of Florida and all rights and remedies will be governed by such laws without regard to principles of conflict of laws.

Section 10.3 Headings. The article and section headings in this Shareholders Agreement are inserted as a matter of convenience and are for reference only and shall not be construed to define, limit, extend or describe the scope of this Shareholders Agreement or the intent of any provision.

Section 10.4 Number and Gender. Whenever required by the context hereof, the singular shall include the plural, and vice versa and the masculine gender shall include the feminine and neuter genders, and vice versa.

Section 10.5 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts will be construed together and will constitute one instrument.

Section 10.6 Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 10.7 Legal Representation. Each of the Shareholders expressly acknowledges that Akerman Senterfitt, legal counsel to the Corporation (“Legal Counsel”), prepared this Agreement on behalf of and in the course of said Legal Counsel’s representation of the Corporation.

Section 10.8 Notices. All notices, consents and other communications permitted or required to be given hereunder (i) shall be in writing, (ii) shall be sent by registered or certified mail, return receipt requested, postage prepaid, by hand delivery, by facsimile transmission or by overnight courier, and (iii) shall be deemed given when received by either (x) if intended for the Corporation, the Corporation at its principal place of business, or (y) if intended for a Shareholders, the Shareholders at the address of such

Shareholders set forth on the signature pages hereof or otherwise as designated by notice by such Shareholders in the manner provided above.

Section 10.9 Further Assurances. The Shareholders will execute and deliver such further documents and take such further action as may be required to carry out the intent of this Agreement.

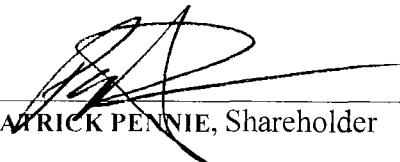
Section 10.10 Assignment; Binding Effect. Except as otherwise provided, the rights and obligations of a Shareholders may not be assigned without the prior written consent of the other Shareholders, and this Agreement shall be binding upon and shall inure to the benefit of the respective legal representatives and permitted successors and assigns of the parties hereto.

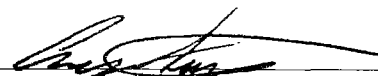
IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement the day and year first above written, but which shall be deemed to be effective as of July 1, 2010.

CORPORATION:

EMCYTE CORPORATION

a Florida Corporation

By: 
PATRICK PENNIE, Shareholder

By: 
EMERY SMITH, Shareholder