

**OPERATING AGREEMENT**  
**EMERALD FAMILY, LLC**  
**A CALIFORNIA LIMITED LIABILITY COMPANY**  
**EFFECTIVE AS OF SEPTEMBER 1, 2016**

This Operating Agreement (this “**Agreement**”) has been executed by the members whose names appear on Exhibit A annexed hereto (the “**Members**”) for the purpose of setting forth the rights and obligations of the Members in and to Emerald Family, LLC, a California limited liability company (the “**Company**”) formed on February 12, 2016 under the laws of the State of California (entity number 201604710053) pursuant to the provisions of the California Limited Liability Company Act (the “**Act**”).

**ARTICLE ONE**

**THE LIMITED LIABILITY COMPANY**

1.1. **Formation of Limited Liability Company.** The Company was formed pursuant to the provisions of the Act. The rights and liabilities of the Members, the management of the affairs of the Company and the conduct of its business shall be as provided in the Act, except as otherwise expressly provided herein.

1.2. **Name of LLC.** The name of the Company shall be Emerald Family, LLC; provided, however, that the Managers may change the name of the Company pursuant to the Act.

1.3. **LLC Term.** The Company shall commence with the filing of the appropriate formation documents with the California Secretary of State, and shall continue until dissolved by the Members under the provisions of this Agreement.

1.4. **Principal Place of Business.** The Company's principal place of business shall be 130 Flower McNeil Road, Willow Creek, California 95573. The Company shall maintain any other place or places of business agreed upon by the Members in accordance with the voting provisions in this agreement.

1.5. **Articles of Organization.** The Members will execute and cause to be filed Articles of Organization with the California Secretary of State, and Certificates of Amendment of the Articles of Organization whenever required by the Act or this Agreement. The Members will execute and cause to be filed original or amended certificates evidencing the formation and operation of the Company whenever required under the laws of any other states in which the Company determines to do business.

1.6. **Purpose.** The purpose of the Company is to (i) engage in any lawful act or activity for which limited liability companies may be organized under the Act; and (ii) do all things necessary, suitable or proper for the accomplishment of, or in the furtherance of the Company's business (the “**Business**”). The Company's Business may be changed from time to time. As of the date of this Agreement, the Business consists of facilitating and coordinating the means to collectively and cooperatively cultivate, sell, and distribute

medical cannabis and medical cannabis products in a closed-loop fashion amongst those persons and entities authorized to do so under California law (the "Collective"). The Company shall not purchase medical cannabis from, sell to, nor facilitate medical cannabis transactions with persons or entities outside of the Collective. The Company will be operated as a non-profit enterprise, but will not seek tax exempt status from any state or federal taxing authority unless the Company receives an opinion from its legal counsel that any such taxing authority is likely to grant the Company tax exempt status.

1.7. Definitions. Except as otherwise stated in this Agreement, or as the context of this Agreement requires, the terms defined in this Section 1.7, for the purpose of this Agreement, have the meanings specified in this Section 1.7.

(a) "Agreement" means this Operating Agreement, as amended from time to time.

(b) "Members" shall mean each person who (a) is an initial signatory to this Agreement, has been admitted to the Company as a Member in accordance with the Articles of Organization or this Agreement or is an assignee who has become a Member in accordance with Article Eight and (b) has not resigned, withdrawn, been expelled or, if other than an individual, dissolved.

(c) "Membership Interest" shall mean a Member's entire interest in the Company including the Member's economic interest, voting rights, participation in the management the Company, and the right to receive information concerning the business and affairs of the Company.

(d) "Substitute Member" shall mean a person to whom an assignment of a Member's interest in the Company was made, and who has agreed to be bound by the terms of this Agreement, has been approved by the unanimous vote of the Members of the Company, and has complied with all requirements to become a Substitute Member.

(e) "Vote" includes written consent.

## **ARTICLE TWO**

### **MEMBERS, MANAGERS AND OFFICERS OF THE COMPANY**

2.1. Manager(s). The Company will be run by a Manager or Managers.

2.2. Election of Manager(s). By a vote of the Members, the Members shall determine the number of Managers and elect the Managers as they determine, but no fewer than one. The initial Managers of the Company are:

Ryan McIntosh  
Don Hays  
Isaiah O'Donnell  
Patrick Murphy

2.3. Original Members. The name of the original Members are as follows:

Ryan McIntosh  
Don Hays  
Isaiah O'Donnell  
Patrick Murphy

2.4. Admission of Additional Members. Subject to the provisions of Article Eight of this Agreement, governing transfers of a Member's interest, a person may acquire an interest in the Company directly from the Company and be admitted as a Member upon a unanimous vote of the Members.

2.5. Admission of Substitute Member. The assignee of a Member's interest may be admitted as a Substitute Member upon a unanimous vote of the Members.

2.6. Amendment of Company Records. On admission of a Member, the Manager(s) will add the name, address, contribution, and that Member's share in Company profits and losses to the list of Members kept in the principal executive office of the Company.

2.7. Additional Members Bound by Agreement. Before any person is admitted to the Company as a Member, that person shall agree in writing to be bound by all the provisions of this Agreement.

2.8. Certificate of Interest. The Membership Interest of a Member may be evidenced by a Certificate of Interest. The certificate will be in the form to be determined by the Members. The assignment and transfer of the interest represented by the certificate; and the admission of transferee of the certificate, will be determined in accordance with Articles Two and Eight of this Agreement.

2.9. Officers. The Company will be operated without formal officers. The Manager(s) shall have the responsibility of maintaining the records of the Company and ensuring filings are made on time.

### **ARTICLE THREE**

#### **MANAGEMENT OF LLC AFFAIRS**

3.1. Control and Management. The Manager(s) shall manage the company as provided for more fully herein. Subject to any limitations expressly set forth in this Agreement, the Manager(s) has (have) the power and authority to take any action from time to time as he, she, or it may deem to be necessary, appropriate, or convenient in connection with the management and conduct of the business and affairs of the Company, including within limitation, the power to do the following:

(a) Acquire property, including real or personal property, for the use of the Company on the terms and conditions as the Members may, from time to time, determine to be advantageous to the Company;

(b) Effectuate the sale, development lease or other disposition of the Company's property, either in the ordinary course of the business of the Company or, from time to time, when the Members deem the disposition to be in the best interests of the Company;

(c) Finance the Company's activities by borrowing money from third parties on the terms and under the conditions as the Member(s) deem appropriate. When money is borrowed for Company purposes, the Member(s) are authorized to pledge, mortgage, encumber, or grant a security interest in Company properties as security for the repayment of those loans;

(d) Employ, retain, or otherwise secure the services of any personnel or firms deemed necessary by the Member(s) for or to facilitate the conduct of Company business affairs, all on the terms and for the consideration as the Member(s) deems advisable; and

(e) In the exercise of their management powers, the Managers are authorized to execute and deliver (i) all contracts, conveyances, assignments leases, sub-leases, franchise agreements, licensing agreements, management contracts and maintenance contracts covering or affecting the Company's assets; (ii) all checks, drafts and other orders for the payment of the Company's funds; (iii) all promissory notes, loans, security agreements and other similar documents; and, (iv) all other instruments of any other kind relating to the Company's affairs, whether like or unlike the foregoing.

(f) Take any and all other action permitted by law that is customary in or reasonably related to the conduct of the Company business affairs.

3.2. Standard of Care of Manager(s). The Manager(s) must exercise ordinary business judgment in managing the affairs of the Company. Unless fraud, deceit, or a wrongful taking is involved, no Manager is liable or obligated to any other Member(s) for any mistake of fact or judgment made by the Manager in operating the business of the Company that results in any loss to the Company or its Member(s).

3.3. Compensation of Manager. The Manager(s) may receive a management fee as determined by a majority of the Members, provided it is reasonably related to the services provided by the Managers.

3.4. Delegation of Duties. The Manager(s) may delegate their management duties to employees of the Company, provided that said Manager(s) supervise the employees to ensure the standard of care set forth in Section 3.2 herein is met.

## **ARTICLE FOUR**

### **FINANCING**

4.1. Initial Capital Contributions From New Members. Each new Member admitted to the Company shall contribute to the capital of the Company an amount determined by a majority vote of the Members.

4.2. Capitalization. The initial capitalization of the Company is reflected in Exhibit A. Additional contributions shall be made in accordance with this Agreement.

4.3. Additional Capital Contributions. No additional contributions of capital shall be required of the Members except as the Members shall determine by a majority vote by the Members.

4.4. Interest on Contributions. No interest shall be paid on the initial contributions to the Company capital.

4.5. Withdrawal and Return of Capital.

(a) No Member may withdraw any portion of the capital of the Company or be entitled to the return of that Member's contribution to the capital of the Company except upon the dissolution of the Company or the withdrawal of that Member from the LLC and that Member's compliance with each of the provisions of Article Eight of the Agreement.

(b) No Member is entitled to demand the distribution of Company property other than cash as part of the return of that Member's capital contribution to the Company.

(c) No Member has a priority over any other Member as to the return of a contribution upon the dissolution of the LLC.

## **ARTICLE FIVE**

### **NONPROFIT OPERATIONS; PROFITS AND LOSSES; TAX STATUS**

5.1. Nonprofit Operations; Profits/Losses. The Company intends to operate as a nonprofit enterprise in compliance with California Health & Safety Code § 11362.765(a) and all relevant state and local laws, and the profits and losses of the Company shall not inure to the private benefit of the Members. The Company may pay reasonable rates in the form of salaries, draws, guaranteed payments, payments to independent contractors, reimbursements to the Members for products or services provided to the Company, or as otherwise determined by the Managers in connection with the Company's Business operations and as may be applicable to the tax status of the Company. If and when the Company is permitted to operate for a profit in the State of California, the Company intends to file for S corporation tax treatment, as described in Section 5.2 below. During the time the Company is operating as a nonprofit enterprise, the Members shall not receive any distributions of cash, property, profits or otherwise from or through the Company.

5.2. Tax Status. The Company intends to file the appropriate paperwork with the IRS to be taxed as a C corporation (IRS Form 8832), and the Managers shall not make distributions (or otherwise pay dividends or other similar forms of payment not tied to reasonable

compensation for services rendered) to the Members during such time as the Company is taxed as a C corporation. The Members acknowledge that, in the future, the Company intends to elect Subchapter S tax treatment (IRS Form 2553), and the Members agree to sign any applicable documents in connection with such filing. If the Company is taxed as an S corporation, the Members agree to independently handle the Members' tax obligations that flow through the Company to the Members.

## **ARTICLE SIX**

### **BOOKS, RECORDS, AND ACCOUNTS**

6.1. **Books.** The Company books shall be kept on an accrual basis. The Company books shall be closed and balanced by a certified public accountant at the end of each fiscal year of the Company. The fiscal year of the Company ends December 31 of each year.

6.2. **Maintenance of Records and Accounts.** At all times, the Manager(s) must maintain or cause to be maintained true and proper books, records, reports, and accounts in which shall be entered fully and accurately all transactions of the Company.

6.3. **Required Records.** The Manager(s) must maintain at the principal executive office of the Company within California all of the following records:

(a) A current list of the full name and last known business or residence address of each Member of the Company, together with the contribution and the share in profits and losses of each Member.

(b) A copy of the Articles of Organization and all amendments, together with any powers of attorney pursuant to which the Articles of Organization or any amendments thereto were executed.

(c) Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six (6) most recent taxable years.

(d) Copies of this Agreement and all amendments to this Agreement.

(e) Financial statements of the Company for the six (6) most recent fiscal years.

(f) The Company's books and records for at least the current and past four (4) fiscal years.

6.4. Delivery of Records to Members. On the request of any Member, or his or her agent or attorney, the Manager(s) will promptly deliver to that Member, or to his or her attorney, at the expense of the requesting Member, a copy of any of the following:

(a) The current list of each Member's name, address, contribution, and share in profits and losses.

(b) The Articles of Organization, as amended, and any powers of attorney pursuant to which any certificate was executed.

(c) This Agreement, as amended.

6.5. Access to Records by Members. Each Member and/or each Member's duly authorized representative, attorney, or attorney-in-fact has the right, on reasonable request, to:

(a) Inspect and copy, during normal business hours, any Company records the Company is required to maintain, pursuant to Section 6.3 of this Agreement.

(b) Obtain from the Manager(s), promptly after becoming available, a copy of the Company's federal, state, and local income tax or information returns for each year.

6.6. Income Tax Data. The Manager(s) will send to each Member, within one-hundred eighty (180) days after the end of each taxable year, such information as is necessary for them to complete their federal and state income tax or information returns.

6.7. Manager(s) to Send Tax Information to Each Member. The Manager(s) will send to each Member a copy of the Company's federal, state, and local income tax or information returns for each taxable year upon request.

6.8. Capital Accounts. An individual capital account must be maintained for each Member. A capital account consists of a Member's contribution to the initial capital of the Company, any additional contributions to the Company capital made by the Member pursuant to this Agreement, and any amounts transferred to the capital account from that Member's income account pursuant to this Agreement.

6.9. Income Accounts. An individual income account will be maintained for each Member. At the close of each fiscal year, each Member's share of the Net Profits or Net Losses of the Company will be credited to or debited from, and that Member's distribution received during each fiscal year will be deducted from, that Member's income account and any resulting balance or deficit shall be transferred to or charged against that Member's capital account.

6.10. Banking. The Manager(s) will open and maintain a separate bank account in the name of the Company with a California bank in which all of the funds of the Company shall be deposited. No other funds may be deposited in the account. The funds in that account must be used solely for the business of the Company, and all withdrawals from that account are to be made only on checks signed by the Managers or such other person or persons as the Members

may from time to time designate. Electronic transactions of the Company and approved as set forth above, is permitted.

## **ARTICLE SEVEN**

### **RIGHTS, POWERS AND DUTIES**

7.1. Voting Rights of Members. Only Members have the right to vote on any issue as provide for herein.

(a) In addition to any other voting rights granted the Members under this Agreement, the Members have the right to vote on the following matters:

- (1) The dissolution and winding up of the Company, pursuant to Section 12.2;
- (2) Transactions in which there is an actual or potential conflict of interest either with the Members or the Company;
- (3) An election to continue the business of the Company when a Member ceases to be a Member and at least one Member remains.

(b) All of the actions specified in Section 7.1(a) of this Agreement may be taken following the approval of a majority of the Members.

(c) The Members have the right to vote on the admission of an additional Member. Except as specifically provided in Section 7.1(d) of this Agreement, the admission of an additional Member may be accomplished upon the written consent of the additional Member and the affirmative unanimous vote of the Members.

(d) The Members have the right to vote on any other matters related to the business of the Company that are made subject to the approval or disapproval of the Members by this Agreement. Actions shall be approved by a majority vote, unless otherwise specified in this Agreement.

7.2. Method of Voting by Members. All votes by the Members shall be based on a one vote per Member system, regardless of percentage of ownership of the Company.

7.3. Loans to the Company. Nothing in this Agreement prevents a Member from lending money to the Company on a promissory note or similar evidence of indebtedness for a reasonable rate of interest. Any Member lending money to the Company has the same rights and risks regarding the loan as would any person or entity making the loan who was not a Member of the Company.

7.4. Transaction of Business With the Company. Except as otherwise provided in this Agreement, a Member may, upon the written consent of a majority Members, transact other



business with the Company. If any Member transacts business with the Company, that Member has the same rights and obligations with regard to the Company as a person who is not a Member.

7.5. Members Engaging in Other Business. The Member(s) may engage in, or possess an interest in, any other business ventures of every nature and description independently or with others. Neither the Company nor the Member(s) has (have) any right by virtue of this Agreement in and to any such independent ventures or to the income or profits derived from them.

7.6. No Requirement to Hold Meetings. There is no requirement that any of the business conducted by the Company be conducted by way of meeting, and nothing in this Article Seven should be construed to require the holding of meetings of the Members.

## **ARTICLE EIGHT**

### **TRANSFER OF LLC INTERESTS**

8.1. Transfer and Assignment of Interests. No member shall be entitled to transfer, assign, convey, sell, encumber or in any way alienate all or part of his or her Membership Interest except with the prior written consent of all of the other Members, which consent may be given or withheld, conditioned or delayed (as allowed by this Agreement or the Act), as the other Members may determine in their sole discretion. After the consummation of any transfer of any part of a Membership Interest, the Membership Interest so transferred shall continue to be subject to the terms and provisions of this Agreement and any further transfers shall be required to comply with all the terms and provisions of this Agreement.

8.2. Further Restrictions on Transfer of Interests. In addition to other restrictions found in this Agreement, no Member shall transfer, assign, convey, sell, encumber or in any way alienate all or any part of his or her Membership Interest: (i) without compliance with Article 13, and (ii) if the Membership Interest to be transferred, assigned, sold or exchanged, when added to the total of all other Membership Interests sold or exchanged in the preceding twelve (12) consecutive months prior thereto, would cause the termination of the Company under the Corporations Code, as determined by the Members.

8.3. Substitution of Members. A transferee of a Membership Interest shall have the right to become a Substitute Member only if (i) the requirements of Sections 8.1 and 8.2 relating to unanimous consent to Members, securities and tax requirements hereof are met, (ii) such person executes an instrument satisfactory to the Members accepting and adopting the terms and provisions of this Agreement, and (iii) such person pays any reasonable expenses in connection with his or her admission as a Member. The admission of a Substitute Member shall not result in the release of the Member who assigned the Membership Interest from any liability that such Member may have to the Company.

8.4. Rights of Legal Representatives. If a Member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the Member's person or property, the Member's executor, administrator, guardian, conservator, or other legal

representative may exercise all of the Member's rights for the purpose of settling the Member's estate or administering the Member's property, including any right the Member has under the Articles of Organization or this Agreement to give an assignee the right to become a Member. If a Member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that Member may be exercised by his or her legal representative or successor.

8.5. No Effect to Transfers in Violation of Agreement. Upon any transfer of a Membership Interest in violation of this Article Eight, the transferee shall have no right to vote or participate in the management of the business, property and affairs of the Company or to exercise any rights of a Member. Such transferee shall only be entitled to become an economic interest owner and thereafter shall only receive the share of one or more of the Company's Net Profits, Net Losses and distributions of the Company's assets to which the transferor of such economic interest would otherwise be entitled. Notwithstanding the immediately preceding sentences, if, in the determination of the Members, a transfer in violation of this Article Eight would cause the termination of the Company under the Act, in the sole discretion of the Members, the transfer shall be null and void and the purported transferee shall not become either a Member or an economic interest owner.

8.6. Right of First Refusal. Each time a Member proposes to transfer, assign, convey, sell, encumber or in any way alienate all or any part of his or her Membership Interest (or as required by operation of law or other involuntary transfer to do so), such Member shall first offer such Membership Interest to the Company and the non-transferring Members in accordance with the following provisions:

(a) Such Member shall deliver a written notice to the Company and the other Members stating (i) that such Member's bona fide intention to transfer such Membership Interest, (ii) the name and address of the proposed transferee, (iii) the Membership Interest to be transferred, and (iv) the purchase price in terms of payment for which the Member proposes to transfer such Membership Interest.

(b) Within thirty (30) days after receipt of the notice described in Section 8.6(a), each non-transferring Member shall notify the Secretary in writing of his or her desire to purchase a portion of the Membership Interest being so transferred. The failure of any Member to submit such a notice within the applicable period shall constitute an election on the part of that Member not to purchase any of the Membership Interest which may be so transferred. Each Member so electing to purchase shall be entitled to purchase a portion of such Membership Interest in the same proportion that the Membership Interest of such Member bears to the aggregate of the Membership Interests of all of the Members electing to so purchase the Membership Interest being transferred. In the event any Member elects to purchase none or less than all of his or her pro rata share of such Membership Interest, then the other members can elect to purchase more than their pro rata share. If such Members fail to purchase the entire Membership Interest being transferred, the Company may purchase any remaining share of such Membership Interest.

(c) Within ninety (90) days after receipt of the notice described in Section 8.6(b), the Company and the Members electing to purchase such Membership Interest shall have the first right to purchase or obtain such Membership Interest upon the price and terms of

payment designated in such notice. If such notice provides for the payment of non-cash consideration, the Company and such purchasing Members each may elect to pay the consideration in cash equal to the good faith estimate of the present fair market value of the non-cash consideration offered as determined by the Member.

(d) If the Company or the other Members elect not to purchase or obtain all of the Membership Interest designated in such notice, then the transferring Member may transfer the Membership Interest described in the notice to the proposed transferee, providing such transfer (i) is completed within thirty (30) days after the expiration of the Company's and the other Members' right to purchase such Membership Interest, (ii) is made on terms no less favorable to the transferring Member than as designated in the notice, and (iii) the requirements of Sections 8.1, 8.2 and 8.3 relating to unanimous consent of Members, securities and tax requirements hereof are met. If such Membership Interest is not so transferred, the transferring Member must give notice in accordance with this Section 8.6(d) prior to any other or subsequent transfer of such Membership Interest.

8.7 Death, Bankruptcy, or Incompetence of Member. If any Member dies or is adjudged incompetent or bankrupt by the court of competent jurisdiction, the remaining Members have an option to purchase the Membership Interest of that Member by paying to the person legally entitled to that interest, within forty-five (45) days after the date of death or the adjudication of incompetency or bankruptcy, the net book value of that Membership Interest as it appears on the last regular accounting of the Company affairs provided for in this Agreement. Each remaining Member has the right to purchase that proportionate part of the deceased, incompetent, or bankrupt Membership Interest in the Company as the remaining Member's Membership Interest in the profits or capital of the Company bears to the total interest of all profits or capital of the Company. Provided, however, if any remaining Member fails to purchase a proportionate share of the Membership Interest offered by the selling Member, notice of that fact must be given to each Member, and it may be purchased by any one or more of the remaining Members.

## **ARTICLE NINE**

### **LIABILITIES OF MEMBERS AND PROHIBITED TRANSACTIONS**

9.1. Liability of Officers. No person who is deemed a Manager or officer of the Company shall be personally liable under any judgment of a court, or in any other manner, for any debt obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Manager or officer of the Company.

9.2. Liability of Members. The liability of the Member(s) is restricted and limited to the amount of the actual capital contribution that each Member makes or agrees to make to the Company. No Member shall be personally liable under a judgment of a court or for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Member of the Company.

9.3. Specified Acts. During the time of the organization or continuance of Company, the Members specifically promise not to do any of the following actions:

- (a) Use the name of the Company (or any substantially similar name) or any trademark or trade name adopted by the Company, except in the ordinary course of the Company business.
- (b) Disclose to any non-member any of the Company's business practices, trade secrets, or any other information not generally known to the business community.
- (c) Do any other act or deed with the intention of harming the business operations of the Company.
- (d) Do any act contrary to this Agreement, except with the prior express written approval of all Members.
- (e) Do any act that would make it impossible to carry on the intended or ordinary business of the Company.
- (f) Confess a judgment against the Company.
- (g) Abandon or transfer or dispose of Company property, real or personal.

## **ARTICLE TEN**

### **DISSOLUTION OF THE LLC**

10.1. Dissolution and Winding Up. The Company will be dissolved, and its affairs will be wound up on the expiration of the term provided for the existence of the Company in Section 1.3 or on the occurrence of any of the events specified in Sections 10.2 through 10.5, whichever is the first to occur.

10.2. Dissolution Upon Consent. The Company will be dissolved on any date specified in a consent to dissolution signed by a majority in interest of the Members.

10.3. Dissolution Upon Sale or Disposition of Assets. The Company will be dissolved and its affairs wound up when its assets are sold or otherwise disposed of and the only property of the Company consists of Cash Available For Distribution to the Members.

10.4. Dissolution Upon Death, Withdrawal, Etc. of a Member. The Company will be dissolved and its affairs wound up upon the death, withdrawal, resignation, expulsion, bankruptcy, or dissolution of a Member, unless the business of the Company is continued by the unanimous vote of all the remaining members within ninety (90) days of the happening of that event.

10.5. Dissolution Upon Judicial Decree. The Company will be dissolved and its affairs wound up when required by a decree of judicial dissolution entered under Section 17351 of the California Corporations Code.

10.6. Responsibility for Winding Up. Upon dissolution of the 17351, the affairs of the Company will be wound up by those Members who have not wrongfully caused the dissolution. If one or more Members wind up the affairs of the Company, those Members are entitled to reasonable compensation as determined by those Members who have not wrongfully caused the dissolution.

10.7. Liquidation and Distribution. The person(s) responsible for winding up the affairs of the Company pursuant to Section 10.6 will take full account of the Company's assets and liabilities, liquidating the assets of the Company as promptly as is consistent with obtaining the fair value of those assets, and applying and distributing the proceeds in the following order:

(a) To creditors of the Company, including Members who are creditors to the extent permitted by law, in satisfaction of liabilities of the Company other than liabilities for any of the following:

- (i) Distributions owing to Members before their withdrawal from the Company and before the dissolution and winding up of the Company.
- (ii) Distributions owing to Members on their withdrawal from the Company.

(b) Except as otherwise provided in this Agreement, to Members and former Members in satisfaction of liabilities for distributions owing to them before their withdrawal from the Company and before dissolution and winding up of the Company and on their withdrawal from the Company.

(c) To the Members in accordance with the provisions set forth in this Agreement for the distribution of the assets of the Company.

10.8. Filing Certificate of Dissolution. On dissolution of the Company, any of the Members representing a majority in interest of the Members must execute and file in the office of the California Secretary of State a Certificate of Dissolution.

## **ARTICLE ELEVEN**

### **RECORD DATES**

11.1. Automatic Record Date. In the absence of any action setting a record date the record date will be determined as follows:

(a) The record date for determining the Members entitled to notice of, or to vote at, meetings will be at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held.

(b) The record date for determining Members entitled to give consent to the Company action in writing without a meeting is the day on which the first written consent is given.

(c) The record date for determining Members for any other purpose is at the close of business on the day on which the Manager(s) adopt(s) the record date or the sixtieth (60th) day before the date of action relating to that other purpose, whichever is later.

(d) The record date for adjourned meetings is the record date set in determining the Members entitled to notice of, or to vote at, the original meeting; however, the Members who called that meeting may fix a new record date for the adjourned meeting and must fix a new record date if the meeting is adjourned for more than forty-five (45) days from the date set for the original meeting.

## **ARTICLE TWELVE**

### **INDEMNIFICATION AND INSURANCE**

12.1. Indemnification of Agents. The Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a Member, Manager or officer of the Company or that, being or having been such a Member, Manager or officer, he or she is or was serving at the request of the Company as a manager, director, officer, employee or other agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to hereinafter as an "Agent"), to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit. The Members shall be authorized, on behalf of the Company, to enter into indemnity agreements from time to time with any person entitled to be indemnified by the Company hereunder, upon such terms and conditions as the Members deem appropriate in their business judgment.

12.2. Insurance. The Company shall have the power to purchase and maintain insurance on behalf of any person who is or was an Agent of the Company against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as an agent, whether or not the Company would have the power to indemnify such person against such liability under the provisions of Section 12.1 of under applicable law.

## **ARTICLE THIRTEEN**

### **INVESTMENT REPRESENTATIONS**

Each Member hereby represents and warrants to, and agrees with the other Members, and the Company as follows:

13.1. Pre-existing Relationship or Experience.

(a) He, she, or it has a pre-existing personal or business relationship with the Company or one or more of its officers or control persons; or

(b) By reason of his, her, or its business or financial experience, or by reason of the business or financial experience of his, her, or its financial advisor who is unaffiliated with and who is not compensated, directly or indirectly, by the Company or any affiliate or selling agent of the Company, he or she is capable of evaluating the risks and merits of an investment in the Membership Interest and of protecting his, her, or its own interests in connection with this investment.

13.2. No Solicitation For The Sale of Membership Interest. He, she, or it has not seen, received, been presented with, or been solicited by any leaflet, public promotional meeting, newspaper or magazine article or advertisement, radio or television advertisement, or any other form of advertising or general solicitation with respect to the sale of the Membership Interest.

13.3. Investment Intent. He, she, or it is acquiring the Membership Interest for investment purposes for his, her, or its own account only and not with a view to or for sale in connection with any distribution of all or any part of the Membership Interest. No other person will have any direct or indirect beneficial interest in or right to Membership Interest.

13.4. Purpose of Entity. If the Member is a corporation, partnership, limited liability company, trust, or other entity, it was not organized for the specific purpose of acquiring the Membership Interest.

13.5. Economic Risk. He, she, or it is financially able to bear the economic risk of an investment in the Company, including the total loss of their capital contribution.

13.6. No Registration of Membership Interest. He or she acknowledges that the Membership Interest has not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or qualified under the California Corporate Securities Law of 1968, as amended, or any other applicable blue sky laws in reliance, in part, on his, her, or its representations, warranties, and agreements herein.

13.7. Membership Interest is a Restricted Security. He, she, or it understands that the Membership Interest is a "restricted security" under the Securities Act in that the Membership Interest will be acquired from the Company in a transaction not involving a public offering, and that the Membership Interest may be resold without registration under the Securities Act only in certain limited circumstances and that otherwise the Membership Interest must be held indefinitely. In this connection, he, she, or it understands the resale limitations imposed by the Securities Act and is familiar with SEC Rule 144, as presently in effect, and the conditions which must be met in order for that Rule to be available for resale of "restricted securities," including

the requirement that the securities must be held for at least two years after purchase thereof from the Company prior to resale (three years in the absence of publicly available information about the Company) and the condition that there be available to the public current information about the Company under certain circumstances. He, she, or it understands that the Company has not made such information available to the public and has no present plans to do so.

13.8. No Obligation to Register. He, she, or it represents, warrants, and agrees that the Company and its managing agents are under no obligation to register or qualify the Membership Interest under the Securities Act or under any state securities law, or to assist him, her, or it in complying with any exemption from registration and qualification.

13.9. No Disposition in Violation of Law. Without limiting the representations set forth above, and without limiting Article Seven of this Agreement, he, she, or it will not make any disposition of all or any part of the Membership Interest which will result in the violation by him, her, or it or by the Company of the Securities Act, the California Corporate Securities Law of 1968, or any other applicable securities laws. Without limiting the foregoing, he, she, or it agrees not to make any disposition of all or any part of the Membership Interest unless and until:

(a) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement and any applicable requirements of state securities laws; or

(b) He, she, or it has notified the Company of the proposed disposition and has furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (ii) if reasonably requested by the Secretary, he, she, or it has furnished the Company with a written opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of any securities under the Securities Act or the consent of or a permit from appropriate authorities under any applicable state securities law.

In the case of any disposition of all or any part of the Membership Interest pursuant to SEC Rule 144, in addition to the matters set forth in Section 13.11(b), he, she, or it shall promptly forward to the Company a copy of any Form 144 filed with the SEC with respect to such disposition and a letter from the executing broker satisfactory to the Company evidencing compliance with SEC Rule 144. If SEC Rule 144 is amended or if the SEC's interpretations thereof in effect at the time of any such disposition have changed from its present interpretations thereof, he or she shall provide the Company with such additional documents as the Managers may reasonably require.

13.10. Legends. He, she, or it understands that the certificates (if any) evidencing the Membership Interest may bear one or all of the following legends:

(a) "THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER



APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS, AND CONDITIONS WHICH ARE SET FORTH."

(b) Any legend required by applicable state securities laws.

13.11. Investment Risk. He, she, or it acknowledges that the Membership Interest is a speculative investment which involves a substantial degree of risk of loss by him, her, or it of his, her, or its entire investment in the Company, that he or she understands and takes full cognizance of the risk factors related to the purchase of the Membership Interest, and that the Company is newly organized and has no financial or operating history.

13.12. Investment Experience. He, she, or it is an experienced investor in unregistered and restricted securities of limited liability companies or limited partnerships.

13.13. Restrictions on Transferability. He, she, or it acknowledges that there are substantial restrictions on the transferability of the Membership Interest pursuant to this Agreement, that there is no public market for the Membership Interest and none is expected to develop, and that, accordingly, it may not be possible for him, her, or it to liquidate his, her, or its investment in the Company.

13.14. Information Reviewed for Purchase of a Membership Interest. He, she, or it has received and reviewed all information he or she considers necessary or appropriate for deciding whether or not to purchase the Membership Interest. He, she, or it has had an opportunity to ask questions and receive answers from the Company and its officers and employees regarding the terms and conditions of purchase of the Membership Interest and regarding the business, financial affairs, and other aspects of the Company and has further had the opportunity to obtain all information (to the extent the Company possesses or can acquire such information without unreasonable effort or expense) which he, she, or it deems necessary to evaluate the investment and to verify the accuracy of information otherwise provided to him, her, or it.

13.15. No Representations by Company. Neither any agent nor employee of the Company, nor any other person has at any time expressly or implicitly represented, guaranteed, or warranted to him, her, or it that he, she, or it may freely transfer the Membership Interest, that a percentage of profit and/or amount or type of consideration will be realized as a result of an investment in the Membership Interest, that past performance or experience on the part of the managing agents or their affiliates or any other person in any way indicates the predictable results of the ownership of the Membership Interest or of the overall Company business, that and cash distributions from Company operations or otherwise will be made to the Members by any specific date or will be made at all, or that any specific tax benefits will accrue as a result of an investment in the Company.

13.16. Consultation with Attorney. He or she has been advised to consult with his, her, or its own attorney regarding all legal matters concerning an investment in the Company and the

tax consequences of participating in the Company, and has done so, to the extent he or she considers necessary.

13.17. Tax Consequences. He, she, or it acknowledges that the tax consequences to his, her, or its investing in the Company will depend on his, her, or its particular circumstances, and the Company, Members, officers or consultants will not be responsible or liable for the tax consequences of an investment in the Company. He, she, or it will look solely to, and rely upon, his, her, or its own advisers with respect to the tax consequences of this investment.

13.18. No Assurance of Tax Benefits. He, she, or it acknowledges that there can be no assurance that the Internal Revenue Code or Treasury Regulations will not be amended or interpreted in the future in such a manner so as to deprive the Company and the Members of some or all of the tax benefits they might now receive, nor that some of the deductions claimed by the Company or the allocations of items of income, gain, loss, deduction, or credit among the Members may not be challenged by the Internal Revenue Service.

13.19. Indemnity. He or she shall indemnify and hold harmless the Company, each and every Manager, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, agents, attorneys, registered representatives, and control persons of any such entity who was or is a party or is threatened to be made a party to any threatened, pending, or complete action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of or arising from any misrepresentation or misstatement of facts or omission to represent or state facts made by him, her, or it including, without limitation, the information in this Agreement, against losses, liabilities, and expenses of the Company, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, attorneys, accountants, agents, registered representatives, and control persons of any such person (including attorneys' fees, judgments, fines, and amounts paid in settlement, payable as incurred) incurred by such Member in connection with such action, suit, proceeding, or the like.

## **ARTICLE FOURTEEN**

### **MISCELLANEOUS PROVISIONS**

14.1. Entire Agreement. This Agreement contains the entire understanding among the Members and supersedes any prior written or oral agreements between them regarding the subject matter contained in this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the Members relating to the subject matter of this Agreement that are not fully expressed in this Agreement.

14.2. Amendments. The provisions of this Agreement may be amended by the vote of a majority in interest of the Members. Any amendment of this Agreement must be in writing, dated, and executed by all Members. If any conflict arises between the provisions of any amendment and the original Agreement as previously amended, the most recent provisions control. No amendment shall, without the unanimous consent of all Members, modify the Membership Interests of the Members or the allocation of profits or losses or distributions or amend this Section 14.2.

14.3. Attorneys' Fees. If any action at law or in equity, including an action for declaratory or injunctive relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party is entitled to reasonable attorneys' fees.

14.4. Governing Law. All questions with regard to the construction of this Agreement and the rights and liabilities of the parties will be governed by the laws of the State of California.

14.5. Notices. All notices must be in writing and sent by first class United States mail. All notices to the Members must be sent to them at the addresses shown for them in the records of the Company. All notices to the Company must be sent to it at its principal executive office in California. Notices will be deemed to have been delivered when deposited in the United States mail.

14.6. Successors. Subject to the restrictions against assignment of Membership Interests contained in this Agreement, this Agreement inures to the benefit of and is binding on the assigns, successors in interest, personal representatives, estates, heirs, and legatees of each of the parties.

14.7. Severability. If any provisions of this Agreement are declared by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions continue in full force and effect.

14.8. Election of Adjusted Basis. In the event of a transfer of all or part of the interest of a Member, the Company may elect to adjust the basis of the Company property pursuant to Section 754 of the Internal Revenue Code. All other elections required or permitted to be made by the Company under the Internal Revenue Code must be made by the Secretary in such manner as will, in its opinion, be most advantageous to a majority in interest of the Members.

14.9. Counterparts. This Agreement may be executed in several counterparts and all counterparts so executed constitute one agreement that is binding on all of the parties, notwithstanding that all of the parties are not signatories to the original or the same counterpart.

14.10. Headings. The headings preceding the paragraphs of this Agreement are for convenience of reference only, are not a part of this Agreement, and are to be disregarded in the interpretation of any portion of this Agreement.

14.11. Other Instruments. The parties to this Agreement covenant and agree that they shall execute all other instruments and documents that are or may become necessary or convenient to effectuate and carry out the Company created by this Agreement.

*Signature page to follow*

**IN WITNESS WHEREOF**, the undersigned Members have caused this counterpart signature page to this Operating Agreement of Emerald Family, LLC to be duly executed.

**MEMBERS:**

  
Patrick Murphy

  
Don Hays

  
Isaiah O'Donnell

  
Ryan McIntosh

**EXHIBIT A**  
**TO OPERATING AGREEMENT OF**  
**EMERALD FAMILY, LLC**  
**CAPITAL CONTRIBUTIONS OF MEMBERS**

<b>MEMBER:</b>	<b>% INTEREST:</b>	<b>CAPITAL CONTRIBUTION:</b>
Ryan McIntosh	15%	\$ _____
Don Hays	28.33%	\$ _____
Isaiah O'Donnell	28.33%	\$ _____
Patrick Murphy	28.33%	\$ _____

**MANAGERS:**

Ryan McIntosh  
Don Hays  
Isaiah O'Donnell  
Patrick Murphy