



# Massachusetts Cannabis Control Commission

## Public Record Request

### Marijuana Product Manufacturer

#### General Information:

License Number: MP281505

Original Issued Date: 02/04/2020

Issued Date: 02/04/2020

Expiration Date: 02/04/2021

Payment Received: \$10000      Payment Required: \$10000

### ABOUT THE MARIJUANA ESTABLISHMENT

Business Legal Name: Berkshire Welco, LLC

Phone Number: 413-644-6192      Email Address: chris@thepass.co

Business Address 1: 264 Main St.      Business Address 2: 3rd Floor

Business City: Great Barrington      Business State: MA      Business Zip Code: 01230

Mailing Address 1: 490 Main Street      Mailing Address 2:

Mailing City: Great Barrington      Mailing State: MA      Mailing Zip Code: 01230

### CERTIFIED DISADVANTAGED BUSINESS ENTERPRISES (DBES)

Certified Disadvantaged Business Enterprises (DBEs): Not a DBE

### PRIORITY APPLICANT

Priority Applicant: no

Priority Applicant Type: Not a Priority Applicant

Economic Empowerment Applicant Certification Number:

RMD Priority Certification Number:

### RMD INFORMATION

Name of RMD:

Department of Public Health RMD Registration Number:

Operational and Registration Status:

To your knowledge, is the existing RMD certificate of registration in good standing?:

If no, describe the circumstances below:

### PERSONS WITH DIRECT OR INDIRECT AUTHORITY

#### Person with Direct or Indirect Authority 1

Percentage Of Ownership: 35      Percentage Of Control: 50

Role: Executive / Officer      Other Role:

First Name: Christopher      Last Name: Weld      Suffix:

Gender: Male      User Defined Gender:

What is this person's race or ethnicity?: White (German, Irish, English, Italian, Polish, French)

Specify Race or Ethnicity:

#### Person with Direct or Indirect Authority 2

Percentage Of Ownership: 20      Percentage Of Control: 50

Role: Executive / Officer      Other Role:

First Name: Michael      Last Name: Cohen      Suffix:

Gender: Male      User Defined Gender:

What is this person's race or ethnicity?: White (German, Irish, English, Italian, Polish, French)

Specify Race or Ethnicity:

### ENTITIES WITH DIRECT OR INDIRECT AUTHORITY

No records found

### CLOSE ASSOCIATES AND MEMBERS

#### Close Associates or Member 1

First Name: Nial      Last Name: DeMena      Suffix:

Describe the nature of the relationship this person has with the Marijuana Establishment: Chief of Strategy (part-time)

### CAPITAL RESOURCES - INDIVIDUALS

#### Individual Contributing Capital 1

First Name: Michael      Last Name: Cohen      Suffix:

Types of Capital: Monetary/Equity      Other Type of Capital:      Total Value of the Capital Provided: \$1800000      Percentage of Initial Capital: 65.35

Capital Attestation: Yes

### CAPITAL RESOURCES - ENTITIES

No records found

### BUSINESS INTERESTS IN OTHER STATES OR COUNTRIES

No records found

### DISCLOSURE OF INDIVIDUAL INTERESTS

No records found

### MARIJUANA ESTABLISHMENT PROPERTY DETAILS

Establishment Address 1: 1375 Main St.

Establishment Address 2:

Establishment City: Sheffield      Establishment Zip Code: 01257

Approximate square footage of the Establishment: 50000      How many abutters does this property have?: 6

Have all property abutters have been notified of the intent to open a Marijuana Establishment at this address?: Yes

### HOST COMMUNITY INFORMATION

Host Community Documentation:

Document Category	Document Name	Type	ID	Upload Date
Community Outreach Meeting Documentation	BW - Community Outreach Meeting Attestation (1375 Main St.).pdf	pdf	5bbc312b629ac50c1473560d	10/09/2018
Certification of Host Community Agreement	BW - Host Community Certification (1).pdf	pdf	5bbc315da5b0140c1e4b8fa5	10/09/2018
Plan to Remain Compliant with Local Zoning	COMPLIANT ZONING PLAN.pdf	pdf	5bbc31aef70a1a0c28f75c38	10/09/2018

Total amount of financial benefits accruing to the municipality as a result of the host community agreement. If the total amount is zero, please enter zero and provide documentation explaining this number.: \$

### PLAN FOR POSITIVE IMPACT

Plan to Positively Impact Areas of Disproportionate Impact:

Document Category	Document Name	Type	ID	Upload Date
Plan for Positive Impact	Positive Impact Plan w-Letter (REVISED SEPT 2019).pdf	pdf	5da09ce62e767115bf43956c	10/11/2019

### ADDITIONAL INFORMATION NOTIFICATION

Notification: I Understand

### INDIVIDUAL BACKGROUND INFORMATION

#### Individual Background Information 1

Role: Executive / Officer

Other Role:

First Name: Michael

Last Name: Cohen Suffix:

RMD Association: Not associated with an RMD

Background Question: no

#### Individual Background Information 2

Role: Executive / Officer

Other Role:

First Name: Chris

Last Name: Weld Suffix:

RMD Association: Not associated with an RMD

Background Question: no

#### Individual Background Information 3

Role: Executive / Officer

Other Role:

First Name: Nial

Last Name: DeMena Suffix:

RMD Association: Not associated with an RMD

Background Question: no

### ENTITY BACKGROUND CHECK INFORMATION

No records found

### MASSACHUSETTS BUSINESS REGISTRATION

Required Business Documentation:

Document Category	Document Name	Type	ID	Upload Date
Bylaws	Bylaws.pdf	pdf	5bbc3bc64253fa027574ed11	10/09/2018
Articles of Organization	CorpSearchView.PDF	pdf	5bbc3c351cc320027b4b23e5	10/09/2018
Department of Revenue - Certificate of Good standing	Cert of Good Standing.pdf	pdf	5da082ff8d8d0715f6675c9c	10/11/2019
Secretary of Commonwealth - Certificate of Good Standing	scan0002.pdf	pdf	5da083c3bc90861af114d306	10/11/2019

No documents uploaded

Massachusetts Business Identification Number: 001317151

Doing-Business-As Name: The Pass

DBA Registration City: Sheffield

### BUSINESS PLAN

Business Plan Documentation:

Document Category	Document Name	Type	ID	Upload Date
Business Plan	Business Plan MFG.pdf	pdf	5bbf6cd3f747bc02b7d22abf	10/11/2018
Plan for Liability Insurance	LIABILITY INSURANCE OBTAINMENT PLAN.pdf	pdf	5bbf6d392f2ea102ad5b801f	10/11/2018
Proposed Timeline	TIMELINE MFG.pdf	pdf	5da09e77c1702815d521c547	10/11/2019

### OPERATING POLICIES AND PROCEDURES

Policies and Procedures Documentation:

Document Category	Document Name	Type	ID	Upload Date
Method used to produce products	Manufacturing Methods Plan.pdf	pdf	5bbf6eb3658c0f0c3ca7a0f6	10/11/2018
Inventory procedures	(MFG) INVENTORY MGMT Plan.pdf	pdf	5bbf701c658c0f0c3ca7a0fe	10/11/2018
Storage of marijuana	(MFG) STORAGE PLAN.pdf	pdf	5bbf70253fbe330c461d1823	10/11/2018
Quality control and testing	(MFG) QA-QC and CONTAMINENT TESTING P&Ps.pdf	pdf	5bbf70302d28790c50080eed	10/11/2018
Prevention of diversion	[MFG] DIVERSION PREVENTION Plan.pdf	pdf	5bbf7081a5b0140c1e4b932e	10/11/2018
Dispensing procedures	(MFG) DISPENSING PLAN.pdf	pdf	5bbf7104629ac50c14735989	10/11/2018
Sample of unique identifying marks used for branding	(MFG) Branding Samples_Page_1.jpg	jpeg	5bbf75618266760285ba6bf8	10/11/2018
Record Keeping procedures	(MFG) RECORDKEEPING PLAN.pdf	pdf	5bbf762a149957029986951c	10/11/2018
Types of products Manufactured.	AU Products Plan (Revised Sept 2019).pdf	pdf	5d7a86050473c3226f35d14e	09/12/2019
Transportation of marijuana	Transportation Plan - (Revised Sept 2019).pdf	pdf	5d7a8620af9d6f1dd58a344c	09/12/2019
Personnel policies including background checks	(MFG) PERSONNEL POLICIES AND PROCEDURES.pdf	pdf	5da09edcc99740160131e6c3	10/11/2019
Qualifications and training	(MFG) QUALIFICATIONS + TRAINING.pdf	pdf	5da0d61179b12e15e03db1c4	10/11/2019
Restricting Access to age 21 and older	AGE 21+ RESTRICTING PLAN (oct 19).pdf	pdf	5da0d67e79b12e15e03db1ca	10/11/2019
Security plan	(MFG) Security Plan (oct 19).pdf	pdf	5da0d858e87dc81b07001b27	10/11/2019
Maintaining of financial records	FINANCIAL RECORDKEEPING (oct 19) .pdf	pdf	5da0d898c99740160131e833	10/11/2019

### ATTESTATIONS

I certify that no additional entities or individuals meeting the requirement set forth in 935 CMR 500.101(1)(b)(1) or 935 CMR 500.101(2)(c)(1) have been omitted by the applicant from any marijuana establishment application(s) for licensure submitted to the Cannabis Control Commission.: I Agree

I understand that the regulations stated above require an applicant for licensure to list all executives, managers, persons or entities having direct or indirect authority over the management, policies, security operations or cultivation operations of the Marijuana Establishment; close associates and members of the applicant, if any; and a list of all persons or entities contributing 10% or more of the initial capital to operate the Marijuana Establishment including capital that is in the form of land or buildings.: I Agree

I certify that any entities who are required to be listed by the regulations above do not include any omitted individuals, who by themselves, would be required to be listed individually in any marijuana establishment application(s) for licensure submitted to the Cannabis Control Commission.: I Agree

Notification: I Understand

I certify that any changes in ownership or control, location, or name will be made pursuant to a separate process, as required under 935 CMR 500.104(1), and none of those changes have occurred in this application.:

I certify that to the best knowledge of any of the individuals listed within this application, there are no background events that have arisen since the issuance of the establishment's final license that would raise suitability issues in accordance with 935 CMR 500.801.:

I certify that all information contained within this renewal application is complete and true.:

### ADDITIONAL INFORMATION NOTIFICATION

Notification: I Understand

### COMPLIANCE WITH POSITIVE IMPACT PLAN

No records found

### COMPLIANCE WITH DIVERSITY PLAN

No records found

### PRODUCT MANUFACTURER SPECIFIC REQUIREMENTS

No records found

### HOURS OF OPERATION

Monday From: 9:00 AM	Monday To: 6:00 PM
Tuesday From: 9:00 AM	Tuesday To: 6:00 PM
Wednesday From: 9:00 AM	Wednesday To: 6:00 PM
Thursday From: 9:00 AM	Thursday To: 6:00 PM
Friday From: 9:00 AM	Friday To: 6:00 PM
Saturday From: 10:00 AM	Saturday To: 4:00 PM
Sunday From: 10:00 AM	Sunday To: 4:00 PM

## **Summary of The Pass Business Plan: Marijuana Product Manufacturer**

### **Costs to Become Operational**

Conservatively, The Pass will obtain licensure and begin product manufacturing in a 5000 ft<sup>2</sup> location at 1375 Main St in Sheffield, MA in Q3 2019. Therefore, The Pass will need the capital necessary to secure the lease, and complete the total product manufacturing lab buildout, setup, and establish operations for 5000 ft<sup>2</sup> of lab space, as well as sufficient supporting space to produce 66,584 grams of salable cannabis extracts. The manufacturing lab will be divided into three separate cultivation areas (a) preprocessing and intake area consisting of a industrial grinder and visual inspection and storage space; (b) extraction LAAs: two closed-loop ethanol and Co2 National Electric Code rated Class I, Division 1 positively pressured enclosures featuring static- and spark-resistant environment isolated from any open flame or ignition source and equipped with superior airflow, blast-resistant fixtures and is compliant with the National Fire Protection Association Code 33, encompassing a three-stage filtration and ventilation system that is paramount to achieve a spark-free environment at all stages of the solvent extraction process; (c) post-processing areas including the following: (i) short path distillation equipment, (ii) vacuum ovens, (iii) roto-vap, (iiii) hot plates and food grade steel work benches; (d) packaging and storage areas that include -80C freezers, -20C freezer, locked cabinet storage, locked chemical storage cabinets, ingredient storage, packaging and vault storage for final products ready for sale.

The startup cost from licensure to Q3 2019 is broken down by expense:

- Variable Cost of Goods Sold: \$ 106,602
- Fixed General and Administrative Costs (G&A): \$25,300
- Capital Expenditures (CapEx): \$ 698,000
- Wages and Benefits: \$ 704,799
- Lease: \$168,000
- Total Startup Cost: \$ 1,702,701

The lease plus taxes and depreciation equals an estimated \$14,000 per month for the first six years of the lease. Annually, the leasehold is approximately \$168,000.

Total state licensing fees to apply and become operational equal \$5,300.

Site construction such as engineering and architectural costs, backup power, extraction equipment, packaging equipment, sprinklers, HVAC, setup labor and materials are estimated for the site at \$ 698,000

Solvents, ingredients, packaging, and other consumables \$ 106,602

Wages and Benefits for a full time Director of Production, two manufacturing technicians, and two as well as executive wages through the first harvest come to \$ 704,779.

**Figure 1: Itemized Expenses Through First Extraction Run**

Item	Expenses Through First Major Harvest (Q3 2019)
Lease	\$ 168,000

Licensing / Application Fees	\$ 5,300
Site Construction and Buildout	\$ 698,000
Costs of Goods (COGs)	\$ 106,602
Fixed General and Administrative	\$ 20,000
Wages and Benefits	\$ 704,799
<b><u>Total</u></b>	<b>\$ 1,702,701</b>

The Pass is showing a balance from Michael Cohen and from various equity capital investors of \$2,754,378 across two bank accounts that enough to secure and begin operations on 5000 ft<sup>2</sup> of lab and manufacturing space.

**Extraction and Manufacturing Revenue.** The Pass predicts it will begin extraction Q3 2019. The Pass expects a yield 15-18% of dry weight and expects a wholesale price of trim or flower for \$3000/lb as well as expects The Pass Tier V cultivation license to furnish it with input material. The Pass expects to process up to 2,638 lbs. of flower and trim upon first extraction runs for use as concentrates for use in MIPs and for use in vape pens and for \$30/g wholesale. This will net assuming all is sold wholesale of a potential \$5,318,208.

## **Figure 2: Capitalization: To-Date and Projected**

<u>Capital Sources</u>	<u>Capital (\$)</u>
Investor Capital	\$2,754,378
First Extraction Revenue	\$5,318,208
<b>Total Capital: Projected</b>	<b>\$8,072,586</b>

## **Working Capital**

The Pass is showing a balance of \$ \$2,754,378, i.e. “Working Capital below.” That amount is approximately 124% above the total outlay described in the previous subsection and enough to buffer the company against delays or losses. See Figure 3 (below).

## **Figure 3: Working Capital**

<u>Capital Sources</u>	<u>Capital (\$)</u>
Capitalization: To-Date	\$2,754,378
Total Capitalization (Fig. 2)	\$8,072,586
Total Startup Expenses (Fig. 1)	\$1,702,701

<b>Working Capital (Fig. 2 – Fig. 1)</b>	<b>\$ 6,369,885</b>
--	---------------------

### **Three Year Profit and Loss Statement**

Over the period of 2H 2018 through 2021 will be a period of investment and substantial growth for The Pass. We have secured capital of approximately \$2.754 million dollars. That is enough capital to fund the buildout of approximately 5000 ft<sup>2</sup> on 1375 Main St and the processing (“manufacturing”) facility. We expect a profit of \$1,016 per lb. of extract.

**Figure 4: Yearly Production Volume**

	2019	2020	2021
Production (lbs)	4,757	8,053	13,252

**Figure 5: Projected 3YR P&L Breakdown**

	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>
<b>Wholesale Profit:</b>			
Profit	\$4,833,117	8,181,848	13,464,032
<b>Total Profit</b>	<b>\$4,833,117</b>	<b>\$8,181,848</b>	<b>\$13,464,032</b>

### **Timeline: The Pass Marijuana Product Manufacturer License**

ACTIVITIES	Date	Days from Permit
Receive Permit	10-01-2018	
Hold Preconstruction Meeting with Municipality	10-10-2018	9
Construction Documents Approved by Municipality	10-15-2018	14
Commence Site Development Work	10-16-2018	15
Purchase Transport Vehicles	10-16-2018	15
HR Manager Solidify Placement Efforts and Diversity Goals	10-16-2018	15

HR Manager Commence Placement Efforts: Local, Regional, State	10-16-2018	15
Plan Diversity Career Fair	10-16-2018	15
Commence Construction: 1375 Main	10-17-2018	16
Schedule Purchase/Delivery of Cultivation Equipment	10-17-2018	16
Complete Construction: 1375 Main	12-30-2018	90
Obtain Certificate of Occupancy	01-01-2019	91
Modify/Upgrade Transportation Vehicle	01-02-2019	92
Purchase Cultivation Furnitures, Fixtures, and Equipment (FF&E)	01-03-2019	93
Install/Test/Audit Security Equipment, P&Ps, and Alarm Systems	01-04-2019	94
Hold Diversity Career Fair	01-08-2019	98
Install/Test/Audit Waste Disposal Equipment and P&Ps	01-09-2019	99
Complete Hiring of Director of Production Manufacturing Technicians	01-10-2019	100
Complete Training of Manufacturing Technicians	01-15-2019	105
Receipt of Manufacturing FF&E	01-15-2019	105
Install Manufacturing FF&E	01-16-2019	106
Processing/Manufacturing Equipment Calibration	01-17-2019	107
Mock Manufacturing Training	01-18-2019	108
Mock Disposal, Emergency Recall and Safety Training	01-19-2019	109
Final Operational Training	01-21-2019	111
Approved for Operations by Department	01-22-2019	112
Startup Inventory Logged into ETS	01-22-2019	112
Fully Operational	05-01-2019	212
Major First Harvest	07-31-2019	303

### **Staffing Plan**

**Diversity and Career Fair.** In October of 2018, The Pass will organize a diversity employment focused career fair focused on local and regional job candidates for the positions of:

Director of Production

Manufacturing Technician (2x)

HR Manager

Chief Financial Officer

Controller

We expect full employment of each position by January 10, 2019.

The Pass has employed: President, Chief Executive Officer, Chief Strategy Officer.

**Support of Local Advocacy Groups.** Applicant will work to promote National Association for the Advancement of Colored People (NAACP), the Veterans of Foreign Wars (VFW), the Americans Civil Liberties Union (ACLU), the Minority Cannabis Business Association (MCBA), the Cannabis Cultural Association (CCA), Woman Grow and other diversity and cause-based advocacy groups and will extend recruitment efforts through the local chapters of these organization to foster better working relationships and, too, as a means of finding new job candidates and service providers that will assist the organization in reaching its diversity placement goals.

### **Liability Insurance Obtainment Plan**

The Pass is well connected in the industry and has begun formalizing a relationship with the cannabis insurer out of Cleveland, OH call Cannasure.

Cannasure provides liability insurance coverage for cannabis operators and has been a reputable staple of the cannabis industry for the last eight years.

Members of the team know Patrick McManamon the owner of Cannasure personally and are currently overseeing an array of liability coverage options.

Once licensed, The Pass will select a coverage of its choosing and bind the policy to the organization.

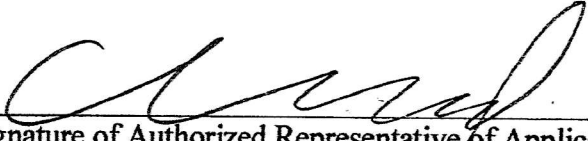
The aforementioned policy will accord with 935 CMR 500.101(2)(e)(6) and 935 CMR 500.105(10) and include (a) general and product liability insurance coverage of no less than \$1 million per occurrence and \$2 million in aggregate annually; (b) the deductible for each policy will be no greater than \$5,000 per occurrence; (c) policy will include director and officer insurance, too.

## Host Community Agreement Certification Form

The applicant and contracting authority for the host community must complete each section of this form before uploading it to the application. Failure to complete a section will result in the application being deemed incomplete. Instructions to the applicant and/or municipality appear in italics. Please note that submission of information that is "misleading, incorrect, false, or fraudulent" is grounds for denial of an application for a license pursuant to 935 CMR 500.400(1).

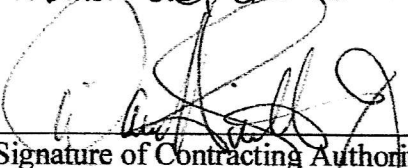
### Applicant

I, Christopher Weld, (*insert name*) certify as an authorized representative of Berkshire Welco LLC (*insert name of applicant*) that the applicant has executed a host community agreement with Sheffield (*insert name of host community*) pursuant to G.L.c. 94G § 3(d) on March 26, 2018 (*insert date*).

  
Signature of Authorized Representative of Applicant

### Host Community

I, David A. Smith, Jr, (*insert name*) certify that I am the contracting authority or have been duly authorized by the contracting authority for Sheffield (*insert name of host community*) to certify that the applicant and Sheffield (*insert name of host community*) has executed a host community agreement pursuant to G.L.c. 94G § 3(d) on March 26, 2018 (*insert date*).

  
Signature of Contracting Authority or  
Authorized Representative of Host Community

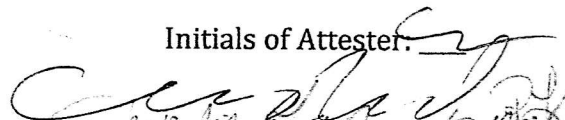
## Community Outreach Meeting Attestation Form

The applicant must complete each section of this form and initial each page before uploading it to the application. Failure to complete a section will result in the application being deemed incomplete. Instructions to the applicant appear in italics. Please note that submission of information that is "misleading, incorrect, false, or fraudulent" is grounds for denial of an application for a license pursuant to 935 CMR 500.400(1).

I, Christopher Welch, (insert name) attest as an authorized representative of Berkshire Welds LLC (insert name of applicant) that the applicant has complied with the requirements of 935 CMR 500 and the guidance for licensed applicants on community outreach, as detailed below.

1. The Community Outreach Meeting was held on March 27, 2018 (insert date).
2. A copy of a notice of the time, place, and subject matter of the meeting, including the proposed address of the Marijuana Establishment, was published in a newspaper of general circulation in the city or town on March 14, 2018 (insert date), which was at least seven calendar days prior to the meeting. A copy of the newspaper notice is attached as Attachment A (*please clearly label the newspaper notice in the upper right hand corner as Attachment A and upload it as part of this document*).
3. A copy of the meeting notice was also filed on March 14, 2018 (insert date) with the city or town clerk, the planning board, the contracting authority for the municipality, and local licensing authority for the adult use of marijuana, if applicable. A copy of the municipal notice is attached as Attachment B (*please clearly label the municipal notice in the upper right-hand corner as Attachment B and upload it as part of this document*).
4. Notice of the time, place and subject matter of the meeting, including the proposed address of the Marijuana Establishment, was mailed on March 12, 2018 (insert date), which was at least seven calendar days prior to the community outreach meeting to abutters of the proposed address of the Marijuana Establishment, and residents within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town. A copy of one of the notices sent to abutters and parties of interest as described in this section is attached as Attachment C (*please clearly label the municipal notice in the upper right hand corner as Attachment C and upload it as part of this document; please only include a copy of one notice and please black out the name and the address of the addressee*).

5. Information was presented at the community outreach meeting including:
  - a. The type(s) of Marijuana Establishment to be located at the proposed address;
  - b. Information adequate to demonstrate that the location will be maintained securely;
  - c. Steps to be taken by the Marijuana Establishment to prevent diversion to minors;
  - d. A plan by the Marijuana Establishment to positively impact the community; and
  - e. Information adequate to demonstrate that the location will not constitute a nuisance as defined by law.
6. Community members were permitted to ask questions and receive answers from representatives of the Marijuana Establishment.





**Berkshire Eagle, The****Attachment B**

Publication Logo  
Unavailable

Publication Name:

**Berkshire Eagle, The**

Publication URL:

**www.berkshireeagle.com/**

Publication City and State:

**Pittsfield, MA**

Publication County:

**Berkshire**

---

Notice Popular Keyword Category:

Notice Keywords:

**Sheffield Berkshire Welco**

Notice Authentication Number:

**201807121536107396784  
1267673597**

Notice URL:

[Back](#)

Notice Publish Date:

Wednesday, March 14, 2018

**Notice Content**

Community Outreach Hearing LEGAL NOTICE In accordance with 935 CMR 500.101.B(2)(e), Berkshire Welco, LLC, will hold a Community Outreach Hearing on MARCH 27th 2018 at 7:00 PM at 21 DEPOT SQUARE, 2ND FL., SHEFFIELD, MA 01257 concerning the proposed operation of a Marijuana Establishment pursuant to G. L. c. 94G and 935 CMR 500, et. seq. The address of the proposed activity is 1375 N. Main St., Sheffield, MA 01257. Interested residents may hear about the proposal and ask questions at the Community Outreach Hearing. CHRIS WELD, CEO MICHAEL COHEN, PRESIDENT 03/14/18

[Back](#)

**Notification to Abutters under the Adult Use of Marijuana Regulations of the  
Cannabis Control Commission, 935 CMR 500**

In accordance with 935 CMR 500.101.B(2)(e), you are hereby notified of the following:

The applicant, Berkshire Welco, LLC, has filed a Notice of Community Outreach Hearing with the City of Sheffield concerning the proposed operation of a Marijuana Establishment pursuant to G. L. c. 94G and 935 CMR 500, *et. seq.* . The address of the proposed activity is:

1375 N. Main St., Sheffield, MA 01257

You are receiving this Notice because you are an abutter of the proposed address of the Marijuana Establishment; owner of land directly opposite on any public or private street or way; or an abutters to the abutters within three hundred feet of the property line of the proposed Marijuana Establishment as they appear on the most recent applicable tax list.

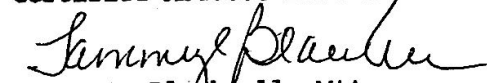
There will be a Community Outreach Hearing at which time interested residents may hear about the proposal and ask questions on MARCH 27<sup>th</sup>, 2018 at 7PM EST on the 2<sup>nd</sup> floor at 21 DEPOT SQUARE, SHEFFIELD, MA 01257

3/9/2018

TOWN OF SHEFFIELD  
CERTIFIED ABUTTER LISTSUBJECT: 1375 NORTH MAIN ST, SHEFFIELD MA  
MAP 32 BLOCK 2 LOT 5.0

Parcel Number	Property Address	Owner Name	Owner Address	Owner State	Owner City	Owner Zip
032-0001-0031-0	1434 N MAIN ST	LAMANNO BARBARA	P O BOX 232	MA	SHEFFIELD	01257
032-0002-0004-0	1347 N MAIN ST	TOMCAT LLC	63 WEST STREET	MA	MOUNT WASHINGTON	01258
032-0002-0006-0	1399 N MAIN ST	SIKORSKY CONSTRUCTION LLC	30 BLUE HILL RD	MA	GT BARRINGTON	01230
032-0002-0007-0	1419 N MAIN ST	GAGE THOMAS A	P O BOX 538	MA	SOUTH EGREMONT	01258
032-0002-0010-0	LIME KILN RD	MA DEPT OF TRANSPORTATION	10 PARK PLAZA	MA	BOSTON	02116
032-0002-0011-0	0 LIME KILN RD	BATACCHI ARTHUR J JR	221 LIME KILN RD	MA	SHEFFIELD	01257

Certified Abutter List in accordance with MGL Chapter 40A, Section 11.



Tammy L. Blackwell, MAA  
Principal Assessor

7017 2400 0000 1683 4506

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**SOUTH EGREMONT, MA 01258**

**OFFICIAL USE**

Certified Mail Fee	\$3.45	0230
\$	\$2.75	07
Extra Services & Fees (check box, add fee as appropriate)		
<input type="checkbox"/> Return Receipt (hardcopy)	\$	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	\$0.00
<input type="checkbox"/> Adult Signature Required	\$	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	\$0.00
Postage	\$0.50	
Total Postage and Fees	\$6.70	
Sent To <i>Thomas A. Gage</i>		
Street and Apt. No., or PO Box No. <i>PO Box 538</i>		
City, State, ZIP+4® <i>South Egremont, MA 01258</i>		

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**SHEFFIELD, MA 01257**

**OFFICIAL USE**

Certified Mail Fee	\$3.45	0230
\$	\$2.75	07
Extra Services & Fees (check box, add fee as appropriate)		
<input type="checkbox"/> Return Receipt (hardcopy)	\$	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	\$0.00
<input type="checkbox"/> Adult Signature Required	\$	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	\$0.00
Postage	\$0.50	
Total Postage and Fees	\$6.70	
Sent To <i>Barbara Lamanno</i>		
Street and Apt. No., or PO Box No. <i>PO Box 232</i>		
City, State, ZIP+4® <i>Sheffield, MA 01257</i>		

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**SOUTH EGREMONT, MA 01258**

**OFFICIAL USE**

Certified Mail Fee	\$3.45	0230
\$	\$2.75	07
Extra Services & Fees (check box, add fee as appropriate)		
<input type="checkbox"/> Return Receipt (hardcopy)	\$	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	\$0.00
<input type="checkbox"/> Adult Signature Required	\$	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	\$0.00
Postage	\$0.50	
Total Postage and Fees	\$6.70	
Sent To <i>Tomcat, LLC</i>		
Street and Apt. No., or PO Box No. <i>63 West St.</i>		
City, State, ZIP+4® <i>Mt. Washington, MA 01258</i>		

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**GREAT BARRINGTON, MA 01230**

**OFFICIAL USE**

Certified Mail Fee	\$3.45	0230
\$	\$2.75	07
Extra Services & Fees (check box, add fee as appropriate)		
<input type="checkbox"/> Return Receipt (hardcopy)	\$	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	\$0.00
<input type="checkbox"/> Adult Signature Required	\$	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	\$0.00
Postage	\$0.50	
Total Postage and Fees	\$6.70	
Sent To <i>Sikorsky Construction, LLC</i>		
Street and Apt. No., or PO Box No. <i>30 Blue Hill Rd.</i>		
City, State, ZIP+4® <i>Great Barrington, MA 01230</i>		

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**BOSTON, MA 02116**

**OFFICIAL USE**

Certified Mail Fee	\$3.45	0230
\$	\$2.75	07
Extra Services & Fees (check box, add fee as appropriate)		
<input type="checkbox"/> Return Receipt (hardcopy)	\$	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	\$0.00
<input type="checkbox"/> Adult Signature Required	\$	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	\$0.00
Postage	\$0.50	
Total Postage and Fees	\$6.70	
Sent To <i>MA Dept. of Transportation</i>		
Street and Apt. No., or PO Box No. <i>10 Park Plaza</i>		
City, State, ZIP+4® <i>Boston, MA 02116</i>		

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**SHEFFIELD, MA 01257**

**OFFICIAL USE**

Certified Mail Fee	\$3.45	0230
\$	\$2.75	07
Extra Services & Fees (check box, add fee as appropriate)		
<input type="checkbox"/> Return Receipt (hardcopy)	\$	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	\$0.00
<input type="checkbox"/> Adult Signature Required	\$	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	\$0.00
Postage	\$0.50	
Total Postage and Fees	\$6.70	
Sent To <i>Arthur Butacchi, Jr.</i>		
Street and Apt. No., or PO Box No. <i>221 Lime Kiln Rd.</i>		
City, State, ZIP+4® <i>Sheffield, MA 01257</i>		

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Attachment C (3/3)

### **Plan to Remain Compliant with Local Zoning**

The Pass will remain compliant at all times with the local zoning requirements set forth in the Town of Sheffield's Zoning By-Laws. 1375 Main Street is in the General Business District, which is "intended to be used for light manufacturing and agricultural purposes." We have confirmed with the Town that The Pass's cultivating activities are allowed as a right under the Zoning Code and the Pass will receive a zoning determination as part of the building permit.

The Pass has already convened a Community Outreach Meeting for its proposed Marijuana Retail, Marijuana Cultivation, and Marijuana Product Manufacturing licenses and has also executed a Host Community Agreement with the Town. The Pass will continue to work cooperatively with various municipal departments, boards, and officials to ensure that the Pass' marijuana establishment remains compliant with all local laws, regulations, rules, and codes with respect to design, construction, operation, and security.

The Pass has also retained the law firm of Foley Hoag LLP to assist with compliance including with zoning requirements.

**D**

**The Commonwealth of Massachusetts**

**William Francis Galvin**

Secretary of the Commonwealth

One Ashburton Place, Room 1717, Boston, Massachusetts 02108-1512

**Limited Liability Company**

**Certificate of Organization**

(General Laws Chapter 156C, Section 12)

Federal Identification No.: \_\_\_\_\_

- (1) The exact name of the limited liability company:

Berkshire Welco, LLC

- (2) The street address of the office in the commonwealth at which its records will be maintained:

264 Main Street, 3rd Floor, Great Barrington, MA 01230

- (3) The general character of the business:

Product sales and any other lawful business.

- (4) Latest date of dissolution, if specified: \_\_\_\_\_

- (5) The name and street address, of the resident agent in the commonwealth:

NAME

ADDRESS

Michael Cohen

264 Main Street, 3rd Floor  
Great Barrington, MA 01230

- (6) The name and business address, if different from office location, of each manager, if any:

NAME

ADDRESS

Michael Cohen

264 Main Street, 3rd Floor  
Great Barrington, MA 01230

Christopher Weld

264 Main Street, 3rd Floor  
Great Barrington, MA 01230

- (7) The name and business address, if different from office location, of each person in addition to manager(s) authorized to execute documents filed with the Corporations Division, and at least one person shall be named if there are no managers:

NAME

ADDRESS

None in addition to the managers.

- (8) The name and business address, if different from office location, of each person authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property recorded with a registry of deeds or district office of the land court:

NAME

ADDRESS

Michael Cohen

264 Main Street, 3rd Floor  
Great Barrington, MA 01230

Christopher Weld

264 Main Street, 3rd Floor  
Great Barrington, MA 01230

- (9) Additional matters:

Signed by (by at least one authorized signatory):



Consent of resident agent:

I Michael Cohen

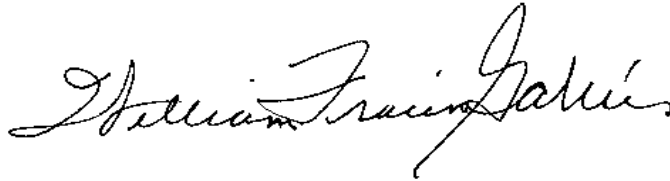
resident agent of the above limited liability company, consent to my appointment as resident agent pursuant to G.L. c 156C § 12\*

\*or attach resident agent's consent hereto.

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

March 12, 2018 11:12 AM

A handwritten signature in black ink, reading "William Francis Galvin". The signature is written in a cursive, flowing style with a large initial 'W' and 'G'.

WILLIAM FRANCIS GALVIN

*Secretary of the Commonwealth*

**AMENDED AND RESTATED**  
**LIMITED LIABILITY COMPANY AGREEMENT**  
**OF**  
**BERKSHIRE WELCO, LLC**

**A Massachusetts Limited Liability Company**

**Dated as of June 14, 2018**

## TABLE OF CONTENTS

Article 1. DEFINED TERMS .....	1
Section 1.1    Definitions.....	1
Article 2. GENERAL PROVISIONS .....	1
Section 2.1    Organization; Continuation of the Company .....	1
Section 2.2    Company Name.....	2
Section 2.3    Principal Place of Business; Agent for Service of Process .....	2
Section 2.4    Qualification in Other Jurisdictions .....	2
Section 2.5    Purposes and Powers of the Company .....	3
Section 2.6    Fiscal Year .....	3
Article 3. TERMS AND CONDITIONS APPLICABLE TO MEMBERS .....	3
Section 3.1    Members.....	3
Section 3.2    Limited Liability Company Interests Generally .....	3
Section 3.3    Voting and Management Rights .....	4
Section 3.4    Liability of Members .....	4
Section 3.5    Powers of Members .....	4
Section 3.6    No Right to Division of Assets .....	5
Section 3.7    Member's Investment .....	5
Section 3.8    Rights to Information .....	5
Section 3.9    Confidential Information.....	7
Article 4. CAPITAL STRUCTURE .....	8
Section 4.1    Units .....	8
Section 4.2    Authorized Capital .....	8
Section 4.3    Incentive Units .....	9
Article 5. MANAGEMENT OF THE COMPANY .....	12
Section 5.1    Managers.....	12
Section 5.2    Powers and Duties of the Managers.....	13
Section 5.3    Reliance by Third Parties .....	15
Section 5.4    Board Voting Rights; Meetings; Quorum .....	15
Section 5.5    Actions of the Board of Managers .....	15
Section 5.6    Reimbursement of Managers .....	16
Section 5.7    Transactions with Interested Persons .....	16
Section 5.8    Limitation of Liability of Managers.....	16
Section 5.9    Other Agents .....	17
Article 6. CAPITAL CONTRIBUTIONS .....	17
Section 6.1    Amount and Payment.....	17
Section 6.2    Interest.....	17
Section 6.3    Withdrawal.....	17
Article 7. CAPITAL ACCOUNTS; ALLOCATIONS; DISTRIBUTIONS.....	18
Section 7.1    Capital Accounts .....	18

Section 7.2	Allocations .....	18
Section 7.3	Distributions .....	18
Section 7.4	Guaranteed Payments .....	19
Section 7.5	Withholding; Tax Documentation .....	19
Article 8.	ISSUANCE OF ADDITIONAL UNITS; ADMISSION OF ADDITIONAL MEMBERS .....	20
Section 8.1	Additional Issuances; Additional Members .....	20
Article 9.	WITHDRAWAL AND RESIGNATION OF MEMBERS; PURCHASE RIGHTS AMONG MAJOR MEMBERS .....	20
Section 9.1	Withdrawal and Resignation .....	20
Section 9.2	Purchase Right in the Event of a Material Disagreement .....	20
Section 9.3	Purchase Price and Process .....	20
Section 9.4	Dispute Resolution between Major Members .....	22
Article 10.	DURATION OF THE COMPANY .....	22
Section 10.1	Duration .....	22
Article 11.	RESTRICTIONS ON TRANSFER; RIGHT OF FIRST REFUSAL; RIGHT OF CO-SALE; DRAG-ALONG RIGHTS; AND PRE-EMPTIVE RIGHTS .....	23
Section 11.1	Prohibited Transfers .....	23
Section 11.2	Effective Date and Requirements of Transfer .....	23
Section 11.3	Right of First Refusal .....	24
Section 11.4	Right of Co-Sale .....	26
Section 11.5	Effect of Failure to Comply .....	27
Section 11.6	Drag-Along Right .....	28
Section 11.7	Preemptive Rights .....	31
Section 11.8	Substitution of Members .....	33
Article 12.	LIQUIDATION OF THE COMPANY .....	33
Section 12.1	General .....	33
Section 12.2	Final Allocations and Distributions .....	34
Article 13.	POWER OF ATTORNEY .....	34
Section 13.1	General .....	34
Article 14.	DUTIES, EXCULPATION AND INDEMNIFICATION .....	35
Section 14.1	Duties of Manager, Tax Matters Person and Liquidating Agent .....	35
Section 14.2	Exculpation; Liability of Covered Persons .....	35
Section 14.3	Indemnification of Covered Persons .....	36
Article 15.	MISCELLANEOUS PROVISIONS .....	37
Section 15.1	Books and Accounts .....	37
Section 15.2	Notices .....	37
Section 15.3	Waivers; Amendments .....	38
Section 15.4	Applicable Law; Jurisdiction .....	38
Section 15.5	Binding Effect .....	39

Section 15.6	Severability .....	39
Section 15.7	Entire Agreement .....	39

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERKSHIRE WELCO, LLC**

This Amended and Restated Limited Liability Company Agreement of Berkshire Welco, LLC (the “Company”) is entered into as of June \_\_, 2018 (the “Effective Date”), by and among the persons identified from time to time as “Members” on Schedule A attached hereto.

WHEREAS, the Company was formed by Michael Cohen and Christopher Weld on March 12, 2018, with such formation being made pursuant to the Massachusetts Limited Liability Company Act, M.G.L. Chapter 156C, as amended from time to time (the “Massachusetts Act”), by filing a Certificate of Organization of the Company with the office of the Secretary of the Commonwealth of The Commonwealth of Massachusetts (as it may be amended at any time and from time to time, the “Certificate of Organization”), and such Members have entered into a Limited Liability Company Agreement, dated May 8, 2018 (the “Prior Agreement”), with the other Members made party thereto;

WHEREAS, pursuant to Section 15.3 of the Prior Agreement, the Prior Agreement may be amended by (i) the approval of each Major Member (as defined in the Prior Agreement) and (ii) Manager Approval (as defined in the Prior Agreement);

WHEREAS, the Company’s Board of Managers has determined that it is in the best interest of the Company and its existing Members to, and has voted to amend and restate the Prior Agreement to set forth the respective rights and obligations of the Members and to provide for the governance and management of the Company and its affairs and for the conduct of the business of the Company; and

WHEREAS, the undersigned parties to this Agreement include each Major Member;

NOW, THEREFORE, in consideration of the premises, representations and warranties and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Prior Agreement is amended and restated in its entirety as of the date hereof to read as follows:

**ARTICLE 1.  
DEFINED TERMS**

**Section 1.1 Definitions.** In addition to the capitalized terms defined above and elsewhere in this Agreement, certain capitalized terms used herein shall have the meanings set forth in Schedule C hereto.

**ARTICLE 2.  
GENERAL PROVISIONS**

**Section 2.1 Organization; Continuation of the Company.**

The Company has been formed by the filing of its Certificate of Organization with the Massachusetts Secretary of the Commonwealth pursuant to the Massachusetts Act. The Certificate of Organization may be amended or restated with respect to the address of the registered office of the Company in Massachusetts, the name and address of its registered agent in Massachusetts or to make corrections as may be required by the Massachusetts Act as provided in the Massachusetts Act. The Members hereby agree to continue the Company as a limited liability company under and pursuant to the provisions of the Massachusetts Act and agree that the rights, duties and liabilities of the Members shall be as provided in the Massachusetts Act, except as otherwise provided herein.

## **Section 2.2 Company Name.**

(a) The name of the Company is “Berkshire Welco, LLC.” All business of the Company shall be conducted under the Company name. The Managers shall promptly execute, file and record such certificates as are required by any applicable limited liability company act, fictitious name act or similar statute.

(b) The Company shall at all times have all rights in and to the Company name. The Company may use the Company name or any portion thereof in connection with any other partnership, limited liability company or business activity entered into by the Company. Upon the dissolution of the Company pursuant to the provisions of Article 12 or otherwise, except as otherwise provided herein or by applicable law, or by Manager Approval, no further business shall be done in the Company name except for the completion of any transactions in process and the taking of such action as shall be necessary for the performance and discharge of the obligations of the Company, the winding up and liquidation of its affairs and the distribution of its assets.

## **Section 2.3 Principal Place of Business; Agent for Service of Process.**

(a) The principal office and place of business of the Company shall initially be 264 Main Street, 3<sup>rd</sup> Floor, Great Barrington, Massachusetts 01230, or such other address as may be determined from time to time by Manager Approval.

(b) The registered office of the Company in The Commonwealth of Massachusetts shall be 264 Main Street, 3<sup>rd</sup> Floor, Great Barrington, Massachusetts 01230, and the registered agent for service of process on the Company pursuant to the Massachusetts Act shall initially be Michael Cohen or, in either case, as may be designated by Manager Approval.

## **Section 2.4 Qualification in Other Jurisdictions.**

The Managers shall cause the Company to be qualified or registered under applicable laws of any jurisdiction in which the Company owns property or engages in activities and shall be authorized to execute, deliver and file any certificates and documents necessary to effect such qualification or registration, including, without limitation, the appointment of agents for service of process in such jurisdictions, if such qualification or registration is necessary or desirable to permit the Company to own property and engage in the Company’s business in such jurisdictions.

## **Section 2.5 Purposes and Powers of the Company.**

The purposes of the Company are to engage in any lawful business, purpose or activity for which limited liability companies may be organized under the Massachusetts Act.

## **Section 2.6 Fiscal Year.**

The fiscal year of the Company shall be the calendar year, or such other fiscal year as may be designated by Manager Approval and permitted by the Code.

# **ARTICLE 3. TERMS AND CONDITIONS APPLICABLE TO MEMBERS**

## **Section 3.1 Members.**

The Members of the Company shall be the Persons identified on Schedule A hereto, as may be amended from time to time, each of whom shall be a “Member” within the meaning of the Massachusetts Act. The name, mailing address, and email address of each Member shall be as listed in Schedule A. Each Member shall promptly notify the Company of any change in the information required to be set forth for such Member on Schedule A. Any Manager may update Schedule A from time to time as necessary to accurately reflect the information therein. Any such revision to Schedule A shall not be deemed an amendment to this Agreement. Any reference in this Agreement to Schedule A shall be deemed a reference to Schedule A as in effect from time to time. The Members shall have only such rights with respect to the Company as specifically provided in this Agreement and as required by the Massachusetts Act (other than waivable provisions of the Massachusetts Act that conflict with the rights expressly granted to such Members under this Agreement). No Person shall be admitted as a new Member of the Company unless and until the Board of Managers has approved the admission of such Person as a new Member and such Person has executed this Agreement or a counterpart hereto and such other documents or agreements as the Board of Managers may request reasonably in connection with such admission.

## **Section 3.2 Limited Liability Company Interests Generally.**

Except as otherwise specifically provided herein, no Member shall (i) be entitled to receive any interest or other return on such Member’s Capital Contributions, (ii) be entitled to withdraw all or any portion of any Capital Contribution or to receive any distribution from the Company, (iii) have the status of a creditor with respect to distributions from the Company, (iv) have the right to demand or receive property other than cash in return for its Capital Contributions, or (v) have any priority over any other Member with respect to the return of Capital Contributions, allocations of profits and losses or distributions. No property of the Company shall be deemed to be owned by any Member individually, but shall be owned by and title thereto shall be vested solely in the Company. The Units shall constitute personal property. The rights and interest of each Member in and to the future profits and income of the Company are limited to those set forth in this Agreement.

### **Section 3.3 Voting and Management Rights.**

(a) No Member, in his, her, or its capacity as such, shall have (i) the right to vote or to participate in the management, operation or control of the business affairs of the Company or to vote to have the Company dissolved and its affairs wound up, except as expressly provided for herein, or (ii) any right, power or authority to transact any business in the name of the Company, to act for or on behalf of the Company or in its name, or to bind the Company.

(b) Except as otherwise expressly provided herein, no action of the Company or the Managers shall require approval by the Members. To the fullest extent permitted by the Massachusetts Act, to the extent that the Massachusetts Act would require a consent or approval by the Members, the consent or approval of the Managers pursuant to the terms of this Agreement shall be sufficient and no consent or approval by the Members shall be required.

(c) Whenever action is required or permitted by this Agreement to be taken by the Members, including any consent or approval thereof, unless otherwise specified herein, such action shall be deemed valid if and only if taken by Member Approval.

(d) Managers shall be elected pursuant to Member Approval, subject to the terms and conditions of Section 5.1(c).

### **Section 3.4 Liability of Members.**

(a) A Member who receives a distribution made in violation of the Massachusetts Act shall be liable to the Company for the amount of such distribution to the extent, and only to the extent, provided by the Massachusetts Act.

(b) Except as provided under the Massachusetts Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member. Without limiting the foregoing, (i) no Member in its capacity as such shall have any liability to restore any negative balance in such Member's Capital Account and (ii) the failure of the Company to observe any formalities or requirements relating to exercise of the Company's powers or management of its business or affairs under this Agreement or the Massachusetts Act shall not be grounds for imposing personal liability on any Member for liabilities of the Company.

### **Section 3.5 Powers of Members.**

Except as otherwise expressly provided herein, no Member shall in his or her capacity as a Member take part in the day-to-day management, operation or control of the business and affairs of the Company or have any right, power or authority to transact any business in the name of the Company or to act for, or on behalf of, or to bind the Company.

### **Section 3.6 No Right to Division of Assets.**

Each Member waives all rights, at law, in equity or otherwise, to require a partition or division into individually owned interests of all or any portion of the assets of the Company.

### **Section 3.7 Member's Investment.**

Each Member hereby represents and warrants to the Company and acknowledges that (a) it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Company and making an informed investment decision with respect thereto, (b) it is able to bear the economic and financial risk of an investment in the Company for an indefinite period of time and understands that, except in connection with a Permitted Transfer in accordance with the applicable terms of this Agreement, it has no right to withdraw and/or have its Units repurchased by the Company, (c) it has acquired or is acquiring Units in the Company for investment only and not with a view to, or for resale in connection with, any distribution to the public or public offering thereof, (d) unless it holds only Incentive Units, it is an "accredited investor" as defined in Rule 501 under the Securities Act, (e) it understands that the Units in the Company have not been registered under the securities laws of any jurisdiction and cannot be disposed of unless they are subsequently registered and/or qualified under applicable securities laws, or in accordance with an applicable exemption therefrom, and the provisions of this Agreement have been complied with, and (f) the execution, delivery and performance of this Agreement does not require it to obtain any consent or approval that has not been obtained and do not contravene or result in a default under any provision of any existing law or regulation applicable to it, any provision of its charter, by-laws or other governing documents (if applicable) or any agreement or instrument to which it is a party or by which it is bound.

### **Section 3.8 Rights to Information.**

(a) The Board of Managers shall deliver or cause the appropriate officer(s) of the Company to deliver to each Major Investor the following information (which shall be deemed, for the avoidance of doubt, to be Confidential Information subject to the terms and conditions of Section 3.9):

(i) as soon as reasonably practicable, but in no event more than one hundred twenty (120) days after the end of each fiscal year of the Company, a report of the activities of the Company (consolidated with any Company subsidiary) for the preceding fiscal year, including a comparison to the amounts budgeted for such fiscal year and a statement of all fees paid and distributions made to the Members during such fiscal year, and unaudited financial statements for such fiscal year of the Company consisting of a balance sheet, a statement of income and a statement of cash flows, which financial statements shall be prepared in accordance with the books and records of the Company and shall fairly present, in all material respects, the Company's financial position and performance in relation to such fiscal year;

(ii) as soon as reasonably practicable, but in any event within thirty (30) days after the end of each of the first three (3) quarters of each fiscal year of the

Company, unaudited statements of income and of cash flows for such fiscal quarter, and an unaudited balance sheet as of the end of such fiscal quarter (consolidated with any Company subsidiaries);

(iii) as soon as reasonably practicable following approval thereof by the Board of Managers, but in no event later than 30 days prior to the commencement of each fiscal year of the Company, the proposed capital and operating budget of the Company and any Company subsidiary for such fiscal year for such fiscal year; and

(iv) such other information relating to the financial condition, business, prospects, or company affairs of the Company as any Major Investor may from time to time reasonably request; provided, however, that the Company shall not be obligated under this Section 3.8(a)(iv) to provide information (A) that the Company reasonably determines in good faith to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in a form acceptable to the Company); or (B) the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

(b) Each Major Investor shall have the right to visit and inspect any of the properties of the Company or any Company subsidiary, and to discuss the affairs, finances and accounts of the Company or any such subsidiary with the Company's officers, and to review such information, in each case as is reasonably requested pursuant to written notice provided not less than one week in advance, during the Company's normal business hours from time to time as may be reasonably requested not more than once during any six-month period; provided, however, that the Company shall not be obligated under this Section 3.8(b) with respect to (i) any person or entity the Board of Managers reasonably determines is a competitor of the Company; (ii) information which the Board of Managers determines, in consultation with the Company's legal counsel, is attorney-client privileged and should not, therefore, be disclosed or (iii) information that could result in disclosure of a trade secret (unless covered by an enforceable confidentiality agreement, in a form acceptable to the Company) or violation of applicable law, in each case as reasonably determined by the Board of Managers.

(c) Notwithstanding anything to the contrary herein, a Member that holds no Units other than Incentive Units shall not be entitled to be provided any information from or about the Company, other than the information required to be reported on such Member's federal Form K-1 and any equivalent state income tax information forms. Each Member that holds no Units other than Incentive Units acknowledges and agrees that the contents of Schedules A and B are confidential and that the Board of Managers shall be entitled, in its sole discretion, to restrict any such Member's access to some or all of such Schedules. The Members hereby acknowledge that, pursuant to Section 10 of the Massachusetts Act, the rights of a Member holding only Incentive Units to obtain information from the Company shall be limited to only those rights provided for in this Section 3.8(c) and that any other rights provided under Section 10 of the Massachusetts Act shall not be available to the Members holding only Incentive Units or applicable to the Company with respect to such Members.

(d) Any information disclosed to any Member pursuant this Section 3.8 shall be subject to the terms and conditions of Section 15.1. The rights of Members under this Section 3.8 shall terminate and be of no further force or effect upon a Sale of the Company.

### **Section 3.9 Confidential Information.**

(a) The Company and each Member shall not use or disclose to third parties any Confidential Information received from the Company or from any other Member (including, without limitation, the status of such other Member as a Member of the Company) for any purpose other than (i) for the benefit of the Company, as determined in good faith by the Board of Managers, (ii) the use of Confidential Information by a Member in connection with such Member's monitoring or exercising its rights with respect to its investment in the Company, (iii) as required by law, legal process, order of court, government authority or arbitrator or in connection with any legal proceedings to which a Member (or any assignee) and the Company are parties, (iv) to legal counsel and accountants for Members or any assignee, and (v) in connection with the enforcement of this Agreement or rights under this Agreement. Notwithstanding the foregoing, a Member that is an entity holding Series A Investor Units may in addition disclose Confidential Information to (I) any former partners, members or others who retain an economic interest in the Member, (II) any current or prospective partners, members or other equity owners or managers, officers or employees of, or lenders to, the Member or any subsequent partnership, fund or other entity under common investment management with such Member, (III) any management company of the Member or any director, officer, manager or employee thereof, and (IV) any employee, officer or representative of the Member or any of the Persons identified in the foregoing clauses (I) through (III) with a bona fide need to know such information in connection with any purpose permitted in the foregoing clauses (i) through (viii) (each of the Persons identified in the foregoing clauses (I) through (IV), a "Permitted Disclosee"); provided that any Permitted Disclosee to whom confidential information is disclosed shall be subject to confidentiality restrictions substantially similar to the restrictions applicable to the Member hereunder.

(b) The restrictions imposed by this Section 3.9 shall continue to apply to a former Member following the date of becoming a former Member, notwithstanding such Member's withdrawal from the Company or transfer of its Units.

(c) Notwithstanding the foregoing:

(i) the restrictions on disclosure set forth in this Section 3.9 shall not apply to any Confidential Information to the extent that such information can be shown to have been: (A) generally available to the public other than as a result of a breach of the provisions of this Agreement; (B) already in the possession of the receiving Person, without any restriction on disclosure, prior to any disclosure of such information to the receiving Person by or on behalf of the Company or any Member pursuant to the terms of this Agreement or otherwise, as evidenced by written records; (C) lawfully disclosed, without any restriction on additional disclosure, to the receiving Person by a third party who is not known by the receiving party to be subject to confidentiality restrictions; (D) independently developed by the receiving Person without use of any Confidential Information, as evidenced by written records; or (E) required by law or government regulation to be disclosed, provided that, the Member shall notify the Company of

any such disclosure requirement as soon as practicable and reasonably cooperate with the Company (at the Company's cost) if the Company seeks a protective order or other remedy in respect of any such disclosure; and furnish only that portion of the Confidential Information which the Member is legally required to disclose; and

(ii) nothing in this Agreement prohibits, or is intended in any manner to prohibit, a report of a possible violation of federal law or regulation to any governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or making other disclosures that are protected under whistleblower provisions of federal law or regulation. No Person subject to the restrictions set forth in this Section 3.9 shall require the prior authorization of anyone at the Company or the Company's legal counsel to make any such reports or disclosures, and no such Person is required to notify the Company that it has made such reports or disclosures. Additionally, nothing in this Agreement is intended to interfere with or restrain the immunity provided under 18 U.S.C. section 1833(b) for confidential disclosures of trade secrets to government officials, or lawyers, solely for the purpose of reporting or investigating a suspected violation of law; or in a sealed filing in court or other proceeding.

## **ARTICLE 4. CAPITAL STRUCTURE**

### **Section 4.1 Units.**

The Members' share of the profits and losses of the Company and their right to receive distributions of the Company's assets, as well as certain other rights of the Members in the Company (which rights, collectively shall be the equivalent of each such Member's "limited liability company interest" in respect of the Company under the Massachusetts Act), shall be represented by "Units" (each, a "Unit" and, collectively, the "Units"). The Units shall be divided into two categories of Units, designated "Common Units" and "Series A Investor Units," which categories of Units each shall have the respective powers, privileges, preferences and rights, and the qualifications, limitations or restrictions thereon, as set forth in this Agreement. Each of the Common Units and the Series A Investor Units shall be referred to herein as a "class" of Units.

### **Section 4.2 Authorized Capital.**

The total number of Units that the Company shall have the authority to issue is 1,000,000, of which:

(a) 680,000 Units are hereby designated as Common Units; and

(b) 320,000 Units are hereby designated as Series A Investor Units, all of which Series A Investor Units may be issued on or after the Effective Date to the Members in amounts specified on Schedule A, in consideration of the Capital Contributions set forth on Schedule A and pursuant to and in accordance with the terms and conditions of one or more Investor Unit Subscription Agreements, dated on or after the Effective Date, by and among the Company and the Members party thereto (each, an "Series A Investor Unit Subscription Agreement"), *provided that*, the Company shall not issue or sell any Series A Investor Units after December 31, 2018.

(c) If the Company at any time after the Effective Date and prior to December 31, 2018 issues additional Series A Investor Units (other than any Price Adjustment Units) in exchange for a per-Unit Capital Contribution less than the per-Unit Capital Contribution last made in respect of any issuance by the Company of Series A Investor Units, then the Company shall concurrently with such issuance issue to each Member holding Series A Investor Units that number of additional Series A Investor Units (such additional Series A Investor Units at the time of their issuance, the “Price Adjustment Units”) which is required in order for such Member’s aggregate Capital Contribution, on a per-Unit basis taking into account (1) all previously issued Series A Investor Units together with (2) all such Price Adjustment Units, to equal the per-Unit Capital Contribution received by the Company for such issue of the additional Series A Investor Units. The total number of Units and Series A Investor Units authorized for issuance by the Company pursuant to Section 4.2 shall each increase automatically, without further action on the part of the Managers or Members, to the extent required to accommodate the issuance pursuant to this Section 4.2(c) of any Price Adjustment Units which otherwise would not be authorized hereunder. In addition, if the Company issues and sells any Series A Investor Units after the date of this Agreement subject to any terms or conditions that are more favorable to the terms and conditions applicable to the Series A Investor Units purchased by Members as of the date of this Agreement (other than price per Unit), the terms and conditions applicable to such Members’ Units shall automatically be modified and amended to reflect such more favorable terms (taking into account any required ownership thresholds and other contingencies which may need to be met).

(d) Subject to the terms and conditions of this Agreement, the Board of Managers may authorize the Company to create and, for such consideration as the Board of Managers may deem appropriate, issue such Units or additional classes or series of Units, having such designations, preferences and relative, participating or other special rights, powers and duties, as the Board of Managers shall determine, including, without limitation: (i) the right of any such class or series of Units to share in distributions from the Company; (ii) the allocation to any such class or series of Units of items of Company income, gains, losses and deductions; (iii) the rights of any such class or series of Units upon dissolution or liquidation of the Company; and (iv) the right of any such class or series of Units to vote on matters relating to the Company and this Agreement. The Members understand and agree that rights afforded to any additional classes or series of Units (including, without limitation, rights to distributions from the Company) may result in a reduction and/or dilution in the rights of then outstanding Units. The Board of Managers may, subject to Article 8 and Section 15.3 of this Agreement, amend any provision of this Agreement, and authorize any Person to execute, swear to, acknowledge, deliver, file and record, if required, such documents, to the extent necessary or desirable to reflect the admission of any additional Member to the Company or the authorization and issuance of such class or series of Units, and the related rights and preferences thereof.

### **Section 4.3 Incentive Units.**

(a) If the Board of Managers intends that the grant of Common Units to a Person providing services to the Company qualify as a “profits interest” for tax purposes (each such Common Unit, an “Incentive Unit”), the Company and each Member agree to treat such Incentive Units as a separate “profits interest” within the meaning of Rev. Proc. 93-27, 1993-2 C.B. 343 or any future Internal Revenue Service guidance or other authority that supplements or

supersedes the foregoing Revenue Procedure, and it is the intention of the Members that distributions to each Incentive Unit under this Agreement, including pursuant to Article 7 and Article 12, shall be limited to the extent necessary so that the Incentive Units of such Member qualify as a “profits interest” under Rev. Proc. 93-27, and this Agreement shall be interpreted accordingly.

(b) Upon the grant of Incentive Units to a Member in connection with the performance of services by such Member, the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross Fair Market Values, as provided in the definition of Gross Asset Value, and the Company’s Profit and Company’s Loss arising from such adjustment shall be allocated to the existing Members in accordance with the Allocation Exhibit. The foregoing is intended to reflect the intent of the parties hereto that such grant (aside from the portion of the new interest acquired in exchange for any Capital Contribution made by such Member) shall be treated as the issuance of a profits interest for United States federal income tax purposes.

(c) In connection with the issuance of any Incentive Unit, the Board of Managers shall set a threshold dollar amount with respect to such Incentive Unit (each, “Threshold Amount”). The Threshold Amount with respect to each Incentive Unit will be determined by the Board of Managers and will be an amount equal to the value of each Common Unit that is not an Incentive Unit as of the grant of such Incentive Unit, determined based upon the amount of distributions that the holders of such a Common Unit would be entitled to receive in a hypothetical liquidation of the Company on the date of issuance of such Incentive Unit in which the Company sold its assets for their Fair Market Value, satisfied its liabilities (excluding any nonrecourse liabilities to the extent the balance of such liabilities exceeds the Fair Market Value of the assets that secure them) and distributed the net proceeds to the holders of Units in liquidation of the Company. The determination of the Board of Managers of the Threshold Amount shall be final, conclusive and binding on all Members.

(d) In accordance with Rev. Proc. 2001-43, 2001-2 CB 191, the Company shall treat a Member holding Incentive Units as the owner of such Incentive Units from the date they are granted, and shall file its Internal Revenue Service Form 1065, and issue appropriate Schedule K-1s to such Member, allocating to such Member his or her distributive share of all items of income, gain, loss, deduction and credit associated with such Incentive Units as if they were fully vested. Each Member agrees to take into account such distributive share in computing his or her United States federal income tax liability for the entire period during which he or she holds any Incentive Units. The Company and each Member agree not to claim a deduction (as wages, compensation or otherwise) for the fair market value of such Incentive Units issued to a Member, either at the time of grant of the Incentive Units or at the time the Incentive Units become substantially vested. The undertakings contained in this paragraph shall be construed in accordance with Section 4 of Rev. Proc. 2001-43.

(e) The Board of Managers shall have the right to amend this Agreement without the approval of any Member upon publication of final regulations in the Federal Register (or other official pronouncement) to (i) direct and authorize the election of a “safe harbor” under Proposed Treasury Regulation Section 1.83-3(l) (or any similar provision) under which the fair market value of a membership interest that is transferred in connection with the performance of services is treated as being equal to the liquidation value of that interest, (ii) to provide for an

agreement by the Company and all of its Members to comply with all the requirements set forth in such regulations and Notice 2005-43 (and any other guidance provided by the Internal Revenue Service with respect to such election) with respect to all interests transferred in connection with the performance of services while the election remains effective, and (iii) to provide for any other related amendments; provided, in any case that (x) such amendment shall not change the relative economic interest of the Members, reduce any Member's share of distributions, or increase any Member's liability hereunder and (y) the Company shall provide a copy of such amendment to the Members at least ten (10) days prior to the effective date of any such amendment.

(f) Without limitation of any other provision herein, no transfer of any Incentive Units in the Company by a Member, to the extent permitted by this Agreement, shall be effective unless prior to such transfer, the transferee, assignee or intended recipient of such Incentive Units shall have agreed in writing to be bound by the provisions of this Agreement relating to Incentive Units, in form satisfactory to the Board of Managers.

(g) The foregoing provisions relating to the grant of Incentive Units, together with any grant document pursuant to which Incentive Units are issued to a Member in such Person's capacity as an employee or service provider of the Company, are intended to qualify as a compensatory benefit plan within the meaning of Rule 701 of the Securities Act and the issuance of Incentive Units pursuant hereto is intended to qualify for the exemption from registration under the Securities Act provided by Rule 701; provided that the foregoing shall not restrict or limit the Company's ability to issue any Incentive Units pursuant to any other exemption from registration under the Securities Act available to the Company and to designate any such issuance as not being subject to Rule 701.

(h) Incentive Units may be issued subject to vesting, forfeiture and repurchase pursuant to separate agreements, the provisions of which may be determined, altered or waived (unless otherwise specified in such agreements) in the sole discretion of the Board of Managers. Any Person holding a Unit subject to a vesting arrangement, including, without limitation, any Incentive Unit, shall make a timely Code Section 83(b) election in accordance with Treasury Regulation 1.83-2 with respect to each such Unit (to the extent applicable).

(i) Distributions pursuant to Article 7 shall be made with respect to all Incentive Units, whether vested or unvested. Any distributions pursuant to Section 7.3 (excluding, for the avoidance of doubt, Tax Distributions that are treated as advances on distributions pursuant to Section 7.3) with respect to unvested Incentive Units shall be held by the Company until such Incentive Units vest, at which time any such retained distributions shall be released to the holder of such then vested Incentive Units. Any retained distributions pursuant to the foregoing sentence that are forfeited as a result of the forfeiture without vesting of the applicable Incentive Units shall thereafter be distributed under Section 7.3.

**ARTICLE 5.**  
**MANAGEMENT OF THE COMPANY**

**Section 5.1   Managers.**

(a)     The business of the Company shall be managed by a Board of Managers (the “Board of Managers”) who may exercise all the powers of the Company, except as otherwise provided by law or by this Agreement, and by any committees that the Board of Managers may from time to time establish. Each member of the Board of Managers shall be a “Manager” for all purposes under the Massachusetts Act. Subject to the terms and conditions of this Agreement, at least a majority of the Board of Managers then in office must vote or consent in favor of an action in order to bind the Company with respect to such action. Subject to Section 5.2(b), each individual Manager shall have any right, power or authority to bind the Company, including to the extent such Manager has been designated as an officer of the Company, such Manager acting in his or her capacity as an officer shall have the authority to bind the Company for limited liability company actions under such officer’s control. A Manager shall be held to the same standards of fiduciary duty with respect to the Company to which a director of a corporation organized under the laws of The Commonwealth of Massachusetts is held with respect to such corporation. Any determination of whether a Manager has breached his or her fiduciary duty to the Company shall be made by reference to whether, under Massachusetts law as it then exists, a director of a Massachusetts corporation would be held to have breached his or her fiduciary duty to such corporation under similar facts. Notwithstanding the foregoing, or any other provision of this Agreement to the contrary (but subject to any particular written agreement between the Company and any Manager), it is expressly understood and agreed that a Manager shall not be required to devote his entire time or attention to the business of the Company.

(b)     The Board of Managers shall consist of one or more Managers. As of the Effective Date, the authorized number of Managers shall be three. In the event of a vacancy in the Board of Managers, the remaining Managers, except as otherwise provided by law, may exercise the powers of the full Board of Managers until the vacancy is filled, provided that in the event of a vacancy in one of the seats appointed pursuant to Section 5.1(c)(i), Section 5.1(c)(ii) or Section 5.1(c)(iii), such seat may only be filled by a Manager designated by the parties entitled pursuant to such Section to designate a Manager to fill such seat.

(c)     From and after the date of this Agreement, each Member shall vote, or cause to be voted, all Units and all other voting securities of the Company presently owned or hereafter acquired by such Member, or over which such Member has voting control, at any meeting of the Members called for the purpose of filling positions on the Board of Managers, or to execute a written consent in lieu of a meeting of the Members, for purpose of filling positions on the Board of Managers and to elect and continue in office as Managers the following:

(i)     for so long as Michael Cohen, together with his Affiliates (if any), holds at least 100,000 Units, one individual designated by Michael Cohen, who shall be Michael Cohen unless otherwise agreed in writing by Michael Cohen and Christopher Weld;

(ii) for so long as Christopher Weld, together with his Affiliates (if any), holds at least 100,000 Units, one individual designated by Christopher Weld, who shall be Christopher Weld unless otherwise agreed in writing by Michael Cohen and Christopher Weld; and

(iii) for so long as there remain outstanding no fewer than 100,000 Series A Investor Units, one individual appointed by holders of a majority of then-outstanding Series A Investor Units and reasonably agreeable to the Company.

(d) In the event that the Member or Members that has or have the right to designate a Manager pursuant to clause Section 5.1(c) requests that the Manager so designated by such Member or Members be removed (with or without cause), by written notice to the other holders of Units, then in such case, such Manager shall be removed and each Member hereby agrees to vote all Units, and all other voting securities of the Company over which such Member has voting control, to effect such removal upon such request. Any Manager may be removed by the affirmative vote or written consent of holders of a majority of the Units then outstanding, provided that no Manager specified in either Section 5.1(c)(i), Section 5.1(c)(ii) or Section 5.1(c)(iii) may be removed without the consent of the Members who have the right pursuant to such Section to designate such Manager, so long as such Members hold such right. Each Member agrees not to vote any Units, or any voting securities over which such Member has voting control, to remove any Manager other than in accordance with this Section 5.1(d).

(e) Except as otherwise provided by law or by this Agreement, Managers shall hold office until their successors are elected and duly qualified or until their earlier death, disability, resignation or removal. Any Manager may resign by delivering his written resignation to the Company. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

## **Section 5.2 Powers and Duties of the Managers.**

(a) Subject to the provisions of Section 5.2(b), the Board of Managers shall have and may exercise on behalf of the Company all of its rights, powers, duties and responsibilities under Section 5.1 or as otherwise provided by law or this Agreement:

(i) to manage the business and affairs of the Company and for this purpose to employ, retain or appoint any officers, employees, consultants, agents, brokers, professionals or other Persons in any capacity with the Company for such compensation and on such terms as the Board of Managers deems necessary or desirable and to delegate to such Persons such of its duties and responsibilities as the Board of Managers shall determine, and to remove such Persons or revoke their delegated authority on such terms or under such conditions as the Board of Managers shall determine;

(ii) to merge or consolidate the Company or any Subsidiary with or into any other entity or otherwise effect the sale of the Company and its business;

(iii) to acquire or invest in other entities or businesses;

(iv) to enter into, execute, deliver, acknowledge, make, modify, supplement or amend any documents or instruments in the name of the Company;

(v) to borrow money or otherwise obtain credit and other financial accommodations on behalf of the Company on a secured or unsecured basis and to perform or cause to be performed all of the Company's obligations in respect of its indebtedness or guarantees and any mortgage, lien or security interest securing such indebtedness; and

(vi) subject to the provisions of Section 5.2(b), to issue additional Units or other rights or other interests in the Company and to designate additional classes of interest in the Company as provided herein.

(b) Notwithstanding the foregoing, the Company shall not take the following actions without having first obtained the consent of the Board of Managers, which consent must include the consent of the Managers elected pursuant to Sections 5.1(c)(i) and (ii):

(i) pledge or grant a security interest in any assets of the Company or any Subsidiary, except in the ordinary course of business when all such pledges or grants in the ordinary course of business (excluding pledges or grants provided for in the Operating Plan) do not secure indebtedness of more than \$50,000 in the aggregate;

(ii) issue any Units;

(iii) enter into any agreements, including but not limited to leases, that obligate the Company or any Subsidiary to make aggregate annual payments in excess of \$50,000, unless provided for in the Board-approved operating plan of the Company;

(iv) establish or amend any employee incentive plan or similar equity compensation plan (except as set forth in this Agreement) or grant any equity compensation;

(v) acquire any asset or assets with a value in excess of \$50,000 in a single transaction or a series of related transactions, unless provided for in the Board-approved operating plan of the Company;

(vi) make any loan or advance to any person, including, any employee or manager, except advances and similar expenditures in the ordinary course of business or under the terms of an employee equity compensation plan approved by the Board of Managers;

(vii) incur any aggregate indebtedness in excess of \$50,000 that is not already included in the operating plan of the Company approved by the Board of Managers, other than trade credit incurred in the ordinary course of business;

(viii) change the principal business of the Company, enter new lines of business, or exit the current line of business; or

(ix) enter into any corporate strategic relationship involving the payment, contribution or assignment by the Company or to the Company of assets greater than \$50,000.

### **Section 5.3 Reliance by Third Parties.**

Any Person dealing with the Company, the Managers or any Member may rely upon a certificate signed by all of the Managers as to: (i) the identity of any Managers or Members; (ii) any factual matters relevant to the affairs of the Company; (iii) the Persons who are authorized to execute and deliver any document on behalf of the Company; or (iv) any action taken or omitted by the Company, the Managers or any Member.

### **Section 5.4 Board Voting Rights; Meetings; Quorum.**

(a) Each Manager shall be entitled to one (1) vote with respect to any matter before the Board of Managers or committee thereof. At any meeting of the Board of Managers, the presence of a majority of the total number of Managers then in office shall constitute a quorum.

(b) Regularly scheduled meetings of the Board of Managers may be held at such time, date and place as a majority of the Managers may from time to time determine. Special meetings of the Board of Managers may be called, orally, in writing or by means of electronic communication, by any Manager, designating the time, date and place thereof.

(c) Notice of the time, date and place of all meetings of the Board of Managers shall be given to each Manager by the appropriate officer of the Company or one of the Managers calling the meeting. Notice shall be given to each Manager in person or by telephone, facsimile or electronic mail sent to his business or home address or email address, as applicable, at least twenty-four (24) hours in advance of the meeting, or by written notice mailed to his business or home address at least seventy-two (72) hours in advance of the meeting. The attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting by such Manager, except where a Manager attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because such meeting is not lawfully called or convened. A notice or waiver of notice of a meeting of the Board of Managers need not specify the purposes of the meeting.

### **Section 5.5 Actions of the Board of Managers.**

(a) Except as provided in this Agreement, or required by law, any vote or approval of a majority of the Managers present at any meeting of the Board of Managers at which a quorum is present shall be the act of the Board of Managers.

(b) Any action required or permitted to be taken at any meeting of the Board of Managers may be taken without a meeting if a written consent thereto is signed (including by means of an authorized electronic, stamped or other facsimile signature or email message) by all of the Managers then in office and filed with the records of the meetings of the Board of Managers. Such consent shall be treated as a vote of the Board of Managers for all purposes.

## **Section 5.6 Reimbursement of Managers.**

The Company shall promptly reimburse in full each Manager who is not an employee of the Company or any Subsidiary for all such Manager's reasonable out-of-pocket expenses incurred in connection with attending any meeting of the Board of Managers or a committee thereof or any Board of Managers or committee thereof of any Subsidiary.

## **Section 5.7 Transactions with Interested Persons.**

Unless entered into in bad faith, no contract or transaction between the Company or any Subsidiary and one of its or their Managers, officers or Members or Affiliates of the foregoing, or between the Company or any Subsidiary and any other Person or Affiliates of such Person in which one or more of its or any Subsidiary's Managers, officers or Members have a financial interest or are directors, managers, partners, members, stockholders, officers or employees, shall be voidable solely for this reason or solely because said Member, Manager or officer was present or participated in the authorization of such contract or transaction if (i) the material facts as to the relationship or interest of said Person and as to the contract or transaction were disclosed or known to the Board of Managers and the contract or transaction was authorized by a majority of the votes held by disinterested members of the Board of Managers (if any) or (ii) the contract or transaction was entered into on terms and conditions that were fair and reasonable to the Company as of the time it was authorized, approved or ratified. Subject to compliance with the provisions of this Section 5.7, no Member, Manager or officer interested in such contract or transaction, because of such interest, shall be considered to be in breach of this Agreement or liable to the Company, any other Member, Manager or other Person for any loss or expense incurred by reason of such contract or transaction or shall be accountable for any gain or profit realized from such contract or transaction.

## **Section 5.8 Limitation of Liability of Managers.**

No Manager shall be obligated personally for any debt, obligation or liability of the Company or of any Member, whether arising in contract, tort or otherwise, by reason of being or acting as Manager of the Company. A Manager shall be fully protected in relying in good faith upon the Company's records and upon such information, opinions, reports or statements by any of the Company's Members, Managers, employees, consultants, advisors or agents, or by any other Person as to matters such Manager reasonably believes are within such other Person's professional or expert competence and who has been selected in good faith and with reasonable care by such Manager, including, without limitation, information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company. No Manager shall be personally liable to the Company or its Members for any action undertaken or omitted in good faith reliance upon the provisions of this Agreement unless the acts or omissions of the Manager were not in good faith or involved gross negligence or intentional misconduct. Any Person alleging any act or omission as not taken or omitted in good faith shall have the burden of proving by a preponderance of the evidence the absence of good faith.

### **Section 5.9 Other Agents.**

From time to time, the Board of Managers acting by Manager Approval may appoint agents of the Company (who may be designated as officers of the Company), with such powers and duties as shall be specified by such Manager Approval. Such agents (including those designated as officers) may be removed by Manager Approval.

## **ARTICLE 6. CAPITAL CONTRIBUTIONS**

### **Section 6.1 Amount and Payment.**

(a) As of the Effective Date, the Members holding Common Units have made Capital Contributions in the aggregate amount of \$16,172.84, in exchange for such Common Units, as set forth on Schedule A attached hereto; and the Members holding Series A Investor Units have made Capital Contributions in the aggregate amount of \$[REDACTED], as set forth on Schedule A attached hereto.

(b) With Manager Approval, and pursuant to the terms and subject to the conditions of this Agreement, the Company may accept additional Capital Contributions in connection with the issuance of additional Units, including Series A Investor Units, at a price per Unit to be determined pursuant to Manager Approval at the time of the sale and issuance of Units, up to the total number of authorized Units, to existing Members and in connection with the admission of other Persons as additional Members, in each case pursuant to Article 8.

(c) Any Capital Contributions that the Members have made in exchange for their Units and the number of Units held by each Member shall be set forth on Schedule A, which Schedule shall be updated by the Board of Managers from time to time to reflect changes in the information set forth therein made in accordance with the terms of this Agreement and such Series A Investor Unit Subscription Agreement(s) as may be agreed by the Board of Managers pursuant to Manager Approval from time to time. Schedule A shall be held confidentially by the Board of Managers, and may not be disclosed to any Member other than a holder of Series A Investor Units or a Major Member and, in each case, its Affiliates, without the prior consent of the Board of Managers.

### **Section 6.2 Interest.**

The Members shall not be entitled to receive any interest on any Capital Contribution to the Company.

### **Section 6.3 Withdrawal.**

Except as otherwise specifically provided herein, a Member shall not be entitled to withdraw any Capital Contribution or portion thereof or to receive any Guaranteed Payment or distribution from the Company.

**ARTICLE 7.**  
**CAPITAL ACCOUNTS; ALLOCATIONS; DISTRIBUTIONS**

**Section 7.1 Capital Accounts.**

For each Member, the Company shall establish and maintain a separate Capital Account as more fully described in Schedule B.

**Section 7.2 Allocations.**

Allocations of Profit and Loss, and allocations for tax purposes of items of income, gain, loss, deduction and expense and tax credits, shall be made to and among the Members in accordance with Schedule B attached hereto (the “Allocation Exhibit”). Certain other tax matters, including provisions concerning limited liability company interests that change throughout the Fiscal Year and the allocation of tax items, are also governed by the Allocation Exhibit.

**Section 7.3 Distributions.**

(a) To the extent allowed by applicable law, the Company may make distributions of Distributable Cash to the Members pursuant to the terms and subject to the conditions of this Agreement, at such times and in such amounts as may be determined by Manager Approval and subject to any limitations applicable to Profits Interests, including applicable Threshold Amounts. Any such distributions shall be made in the following order and priority:

(i) First, to each Member holding Series A Investor Units, an amount in respect of each such Series A Investor Unit equal to the product of (A) (1) the Daily Annual Investor Distribution Rate *multiplied by* (2) the number of calendar days since the later of the Effective Date or the date of the most recent distribution under this Section 7.3(a)(i), *multiplied by* (B) the amount of the Capital Contribution made in respect of such Series A Investor Unit, which distributions under this Section 7.3(a)(i) shall be due and payable each year out of Distributable Cash, if any, on or about January 15<sup>th</sup> of each calendar year following the Effective Date or, in the event there is insufficient Distributable Cash available on such date to make such distributions under this Section 7.3(a)(i), immediately prior to any distribution under Section 7.3(a)(ii), in each case until such time as the total distributions made in respect of such Series A Investor Unit pursuant to this Section 7.3(a)(i) equals the Capital Contribution made in respect of such Series A Investor Unit, *provided that*, the proceeds of any voluntary or involuntary liquidation, dissolution and winding up of the affairs of the Company or Deemed Liquidation Event shall first be distributed to the Members holding outstanding Series A Investor Units, if any, to the extent of and in proportion to, such Members’ Unreturned Capital Amount determined with respect to the outstanding Series A Investor Units then held by each such Member (distributions made pursuant to this Section 7.3(a)(i), “Preferred Distributions”); and

(ii) Second, following the payment of any Preferred Distributions then due and payable, but not already made, pursuant to Section 7.3(a)(i), 100% to the Members in proportion to the number of Units held by each.

(b) Notwithstanding the foregoing, the Company shall make, with respect to each Fiscal Year of the Company, distributions of Distributable Cash, if any, to the Members in an amount equal to the respective Projected Tax Liability of each Member for such tax year, to enable the Members to pay income taxes on Profit allocated to them with respect to such tax year (any such distribution, a “Tax Distribution”). The amount of the Tax Distributions to which a Member otherwise would be entitled with respect to a Fiscal Year shall be reduced dollar-for-dollar by the amount of any other cash distributions received by such Member (or such Member’s predecessor in interest) for such Fiscal Year (other than any distributions received that are Tax Distributions with respect to a prior Fiscal Year). All Tax Distributions made to a Member shall be treated as advances of distributions to be made to that Member (or that Member’s successor in interest) pursuant to Section 7.3 (including pursuant to Section 12.2) of this Agreement, as applicable, and shall reduce such future distributions dollar for dollar. The aggregate amount of Tax Distributions with respect to any Fiscal Year may be reduced, on a pro rata basis, or not made, if and to the extent the Board of Managers determines that the Company has insufficient Distributable Cash to make such Tax Distributions in full.

#### **Section 7.4    Guaranteed Payments**

Payments may be paid to Members for services performed for the benefit of the Company by such Members at the time of any regular payment of wages to employees of the Company, in accordance with the Company’s payroll methodology, or at such other times as may be determined by Manager Approval in the sole discretion of the Managers, it being understood that the payments made pursuant to this Section 7.4 shall be treated as “guaranteed payments” within the meaning of Section 707(c) of the Code (the “Guaranteed Payments”).

#### **Section 7.5    Withholding; Tax Documentation.**

Notwithstanding anything to the contrary in this Agreement, the Company may withhold from any allocation, distribution or other payment made to any Member any amount required to be withheld under the Code or any other applicable federal, state, local or foreign law. All amounts so withheld with regard to any distribution or payment shall be treated as amounts distributed or paid to such Member. If no distribution or payment is being made to a Member in an amount sufficient to pay the Company’s withholding obligation with respect to such Member, any amount that the Company is obligated to pay shall be deemed an interest-free advance from the Company to such Member, payable by such Member by withholding by the Company from any subsequent distributions or payments to such Member or within ten days after receiving written request for payment from the Company. Each Member agrees to timely complete and deliver to the Managers any form, document or provide such other information reasonably requested by the Company for tax purposes.

**ARTICLE 8.**  
**ISSUANCE OF ADDITIONAL UNITS; ADMISSION OF ADDITIONAL MEMBERS**

**Section 8.1 Additional Issuances; Additional Members.**

(a) A Member may purchase or be granted additional Units in the Company or a Person who is not already a Member of the Company may be admitted as a Member of the Company by Manager Approval.

(b) The Capital Contribution (if any) and other terms with respect to such additional Units or such additional Member shall be determined by Manager Approval.

**ARTICLE 9.**  
**WITHDRAWAL AND RESIGNATION OF MEMBERS; PURCHASE RIGHTS AMONG MAJOR MEMBERS**

**Section 9.1 Withdrawal and Resignation.**

No Member may withdraw or resign from the Company except (i) in the case of Major Members, pursuant to a purchase of its and all of its Affiliates' Units in accordance with the terms of this Article 9 or (ii) pursuant to Manager Approval. Any Member who attempts to resign or withdraw from the Company in violation of the foregoing provision shall cease to be a Member of the Company and shall forfeit any right to distributions or payments from the Company, including, without limitation, any right to any payment pursuant to Section 32 of the Massachusetts Act.

**Section 9.2 Purchase Right in the Event of a Material Disagreement.**

In the event there is a material disagreement between the Managers appointed by the Major Members relating to any matter requiring consent of both such Managers, and such material disagreement is not resolved by the dispute resolution process set forth in Section 9.4, each Major Member shall have the right to elect to purchase all of the Units of the other Major Member in accordance with the buy-out procedure set forth in Section 9.3 below. If each of the Major Members elects to purchase all of the Units of the other Major Member, the Major Members shall agree on random, unbiased means (which may include a coin toss) of determining who shall be the Electing Member for purposes of Section 9.3.

**Section 9.3 Purchase Price and Process.**

(a) The purchase price for Units of a Major Member purchased pursuant to Section 9.2 (the "Buyout Purchase Price") shall be equal to the amount that would be distributed to the selling Major Member if the assets and business of the Company were sold at fair market value and the Company were dissolved immediately prior to sale. Fair market value of the Company's assets and business shall be determined by mutual agreement of the Members (including pursuant to the engagement of such independent third-party valuation firm as the Major Members may mutually agree upon), with such agreement to take place within thirty days after the date (the "Election Date") on which a Major Member (the "Non-Electing Major Member") has received an election to acquire all of its Units from the other Major Member (the

“Electing Major Member”) under Section 9.2. If the Major Members are able to agree with respect to fair market value within thirty days after the Election Date, the purchase and sale of the applicable Units shall take place on the date that is sixty days after the Election Date, or the next Business Day if such date is not a Business Day.

(b) In the event that the Major Members cannot agree on the fair market value of the Company’s assets and business within thirty days after the Election Date, the Electing Major Member shall have the right to serve notice to the Non-Electing Major Member (the “Value Notice”) setting forth the Electing Major Member’s determination as to the fair market value of the Company’s assets and business and each Major Member’s respective share thereof, providing a Buyout Purchase Price for each Major Member’s Units. If the Non-Electing Major Member does not receive the Value Notice within thirty days after the Election Date, the Company shall dissolve in accordance with the terms of this Agreement.

(c) If the Non-Electing Major Member receives the Value Notice within thirty days after the Election Date, the Non-Electing Major Member shall have the right either (i) to sell all of its Units at the Buyout Purchase Price for such Units contained in the Value Notice or (ii) to purchase all of the Electing Major Member’s Units for the applicable Buyout Purchase Price for such Units contained in the Value Notice. To exercise this purchase right, the Non-Electing Major Member must send a written notice to the Electing Major Member within fifteen days after the Non-Electing Major Member’s receipt of the Value Notice. If the Non-Electing Major Member exercises its purchase right within the required time period, the purchase and sale of the applicable Units shall take place on the date that is forty-five days after the Non-Electing Major Member’s receipt of the Value Notice, or the next Business Day if such date is not a Business Day. If the Non-Electing Major Member does not exercise its purchase right within the required time period, the Electing Major Member shall purchase all of the Units of the Non-Electing Major Member on the date that is thirty days after the Non-Electing Major Member’s receipt of the Value Notice, or the next Business Day if such date is not a Business Day.

(d) Any purchase of Units pursuant to this Article 9 shall be evidenced by such assignments, instruments of conveyance, bills of sale or other transfer documents as either of the Major Members may reasonably request. The aggregate Buyout Purchase Price shall be paid on the date specified for such purchase in this Article 9 by delivery of a promissory note in the amount of such aggregate Buyout Purchase Price. The promissory note shall be secured by a security interest in all Units held by the purchasing Major Member, with such security interest to be granted pursuant to documents reasonably satisfactory to the selling Major Member. The principal amount of such promissory note shall bear interest, payable annually, at the lowest rate per annum then required by the Code in order to avoid the imputation of interest, and shall be payable in not more than three equal annual installments. Each note shall provide as follows: that the maker shall have the right to prepay the principal or any portion thereof at any time or times without premium or penalty; that upon default for thirty days in any payment of principal or interest, or in the event of bankruptcy or insolvency of the maker, or if the maker shall make any assignment for the benefit of creditors, the entire balance of principal and interest then remaining unpaid on the note shall become due and payable forthwith at the option of the holder of the note; and that presentment, protest and notice of protest shall be waived.

(e) Notwithstanding any other provision of this Article 9, any purchaser of Units under this Article 9 shall, as a condition to such purchase, (i) assume all of the liabilities, obligations and/or guarantees of the selling Major Member which relate to the business of the Company, (ii) indemnify the selling Major Member for the liabilities, obligations and guarantees so assumed and (iii) obtain the release of all guarantees, letters of credit and documents granting security interests in the Units which the selling Major Member shall have provided in connection with the Company or its business. Such assumption, indemnification and release shall be evidenced by instruments and other documents reasonably satisfactory, in form and substance, to the selling Major Member.

(f) Upon the effectiveness of a purchase pursuant to this Article 9, (i) the selling Major Member shall be deemed to have withdrawn and resigned from the Company and shall cease to be a Member of the Company, (ii) the selling Major Member's Capital Account shall be re-allocated to the purchasing Major Member, (iii) any Managers appointed solely by the selling Major Member shall be deemed to have resigned as Managers as of such date and (iv) the purchasing Major Member shall be deemed substituted for the selling Major Member for the purposes of the appointment of Managers pursuant to Section 5.1(c)(i) or Section 5.1(c)(ii), as applicable.

(g) If the purchase of Units under this Article 9 is not completed by reason of the failure of either Major Member to comply with the terms of this Article 9, then (i) the complying Major Member shall be entitled to specific performance of the purchase and (ii) if the selling Major Member is the non-complying Major Member, upon compliance by the purchasing Major Member with the terms of this Article 9, including the payment of the aggregate Buyout Purchase Price in accordance with Section 9.3, the purchasing Major Member shall be entitled to treat itself for all purposes as, and thereafter shall be, the owner of the Units which were to be purchased under this Article 9.

#### **Section 9.4 Dispute Resolution between Major Members.**

The Major Members will attempt in good faith to resolve any controversy or claim between them and arising out of or relating to this Agreement promptly by negotiations between such Major Members. Should the dispute not be resolved through the aforementioned process, the Major Members agree first to try in good faith to settle the dispute (other than disputes with respect to the fair market value of the Company's assets and business under Article 9) by non-binding mediation administered by the American Arbitration Association under its Commercial Mediation Rules. If the matter has not been resolved within thirty days of submission to non-binding mediation, either Major Member may initiate buy/sell procedures to the extent permitted by Section 9.2 above.

### **ARTICLE 10. DURATION OF THE COMPANY**

#### **Section 10.1 Duration.**

The Company shall continue until it is dissolved and its affairs wound up, which shall occur on the earlier of the happening of any of the following events:

(a) Written Manager Approval and written approval of Members holding a majority of then-outstanding Common Units and a majority of the then-outstanding Series A Investor Units with respect to such dissolution and winding up.

(b) The death, incapacitation, retirement, resignation, expulsion, or bankruptcy of all of the Members or the occurrence of any event which terminates the continued membership of all of the Members in the Company.

(c) The entry of a decree of judicial dissolution under Section 44 of the Massachusetts Act.

## **ARTICLE 11.**

### **RESTRICTIONS ON TRANSFER; RIGHT OF FIRST REFUSAL; RIGHT OF CO-SALE; DRAG-ALONG RIGHTS; AND PRE-EMPTIVE RIGHTS**

#### **Section 11.1 Prohibited Transfers.**

(a) Except as otherwise specifically provided herein, no Member shall, directly or indirectly, sell, exchange, transfer (by gift or otherwise), assign, distribute, pledge, create a security interest, lien or trust with respect to, or otherwise dispose of or encumber any Units owned by such Member or any interest in or option on or based on the value of the Units (any of the foregoing being referred to as a “Transfer”) without first complying with the terms of this ARTICLE XI. Any purported Transfer of Units in violation of the provisions of this ARTICLE XI shall be void and of no force and effect whatsoever, and the Company shall not record any such event on its books or treat any such transferee as the owner of such Units for any purpose. Any Transfer permitted by this Agreement shall be termed a “Permitted Transfer” and the transferee of any Permitted Transfer shall be termed a “Permitted Transferee.”

(b) Notwithstanding anything herein to the contrary, the following Transfers shall be limited only by Section 11.2: (i) a Transfer by any Member to the spouse, children or siblings (and siblings’ children) of such Member (or to the beneficial owners of such Member, if such Member is not a natural person) or to a trust, family limited partnership, family limited liability company or similar family entity for the benefit of any of them; (ii) a Transfer upon the death of any Member, to such Member’s heirs, executors or administrators or to a trust under such Member’s will, or between such Member and such Member’s guardian or conservator; (iii) with respect to any Member that is not a natural person, a Transfer to another Person that is a general or limited partner, retired partner, member, retired member, stockholder or Affiliate of such Member; or (iv) a Transfer by a Member exercising such Member’s rights under Section 11.4.

#### **Section 11.2 Effective Date and Requirements of Transfer.**

(a) Any valid Transfer of a Member’s Units, or part thereof, pursuant to the provisions of this Agreement, shall be effective as of the close of business on the day in which such Transfer occurs (including fulfillment of all conditions and requirements with respect thereto). The Company shall, from the effective date of such Transfer, thereafter make all further distributions, on account of the Units (or part thereof) so assigned to the Permitted Transferee of such interest, or part thereof.

(b) Every Transfer permitted hereunder shall be subject to the following requirements (in addition to any other requirements contained in this Agreement):

(i) If not already a Member, the transferee shall execute a counterpart to this Agreement thereby agreeing to be bound by all the terms and conditions of this Agreement;

(ii) The transferee shall establish that the proposed Transfer will not cause or result in any violation of law, including without limitation, federal or state securities laws, and that the proposed Transfer would not cause or require (A) the Company to be an investment company as defined in the Investment Company Act of 1940, as amended or (B) the registration of the Company's securities under federal securities laws;

(iii) The transferee shall establish to the satisfaction of the Board of Managers that the proposed Transfer would not adversely affect the classification of the Company as a partnership for U.S. federal or any applicable state or local income tax purposes or cause the Company to be treated as a publicly traded partnership under the Code, unless agreed to in writing by Manager Approval;

(iv) The transferee shall not be any entity which, in the determination of the Board of Managers, is a competitor of the Company; and

(v) The transferee shall not be any customer, distributor or supplier of the Company, if the Board of Managers should reasonably determine that such Transfer would result in such customer, distributor or supplier receiving information that would place the Company at a competitive disadvantage with respect to such customer, distributor or supplier.

(c) Any Transfer that the Board of Managers reasonably determines may have a consequence described in Section 11.2(b) shall not be permitted.

(d) Provided that the Board of Managers has reasonably determined that the proposed Transfer will not have a consequence described in Section 11.2(b), any Permitted Transferee who is not admitted as a Member shall be treated as an Assignee hereunder. Permitted Transferees of Units who are not admitted as Members ("Assignees") shall be entitled to distributions and allocations made with respect to the Units Transferred, and an appropriate portion of the Capital Account of the transferor, but shall have no other rights under this Agreement except as specifically set forth herein.

### **Section 11.3 Right of First Refusal.**

(a) If a Member (a "Transferring Member") proposes to Transfer any Units of the Company other than pursuant to a Transfer permitted under Section 11.1(b), the Transferring Member shall promptly give written notice (the "Transfer Notice") of such proposed Transfer to the Company and to the Major Investors other than such Transferring Member (such Major Investors, the "Designated Members"). The Transfer Notice shall describe in reasonable detail the proposed Transfer, including, without limitation, the number and class of Units to be Transferred (the "Transfer Units"), the nature of such Transfer, the cash consideration to be paid per Transfer Unit (which shall be the sole form of consideration) (the "Transfer Purchase Price Per Unit"), the name and address of each prospective purchaser or transferee (each, a "Proposed

Transferee”), and the number of Transfer Units to be Transferred to each Proposed Transferee. The Transferring Member shall enclose with the Transfer Notice a copy of a written offer, letter of intent or other written document signed by the Proposed Transferee(s) setting forth the proposed terms and conditions of the Transfer.

(b) For a period of fifteen (15) days following the date (the “Transfer Notice Date”) on which the Transfer Notice is given by the Transferring Member to the Company and each Designated Member (the “Company Acceptance Period”), the Company shall have the right to purchase all or any portion of the Transfer Units on the same terms and conditions as set forth in the Transfer Notice. If the Company desires to exercise its right to purchase all or any portion of the Transfer Units, it shall give written notice (the “Company Purchase Notice”) to the Transferring Member, no later than the expiration of the Company Acceptance Period.

(c) If the Company does not intend to exercise its right to purchase all of the Transfer Units that are offered by a Transferring Member, the Company must deliver a notice (the “Company Notice”) to the Transferring Member and to each Designated Member, informing them of its decision not to purchase all of the Transfer Units that are offered by such Transferring Member, no later than the expiration of the Company Acceptance Period. For a period of fifteen (15) days following the date (the “Company Notice Date”) on which the Company Notice is given by the Company to each Designated Member (the “Member Acceptance Period”), each Designated Member shall have the right to purchase its pro rata share of the Transfer Units not purchased by the Company (the “Remaining Transfer Units”) on the same terms and conditions as set forth in the Transfer Notice. If a Designated Member desires to exercise its right to purchase all or any portion of its pro rata share of the Remaining Transfer Units, it shall give written notice (the “Member Purchase Notice”) to the Transferring Member, with a copy to the Company, no later than the expiration of the Member Acceptance Period. Each Designated Member’s pro rata share of the Remaining Transfer Units shall be equal to a fraction, the *numerator* of which is the number of Units owned by such Designated Member on the Transfer Notice Date and the *denominator* of which is the total number of outstanding Units owned by all of the Designated Members on the Transfer Notice Date.

(d) Each Designated Member may, in such Designated Member’s Purchase Notice, offer to purchase more than such Designated Member’s pro rata share of the Remaining Transfer Units (any such Designated Member, an “Oversubscribing Member”) at the Transfer Purchase Price Per Unit. If less than all of the Designated Members elect to purchase their pro rata share of the Remaining Transfer Units (the “Unsubscribed Units”), the right to purchase the Unsubscribed Units shall be allocated pro rata among the Oversubscribing Members (based on the number of outstanding Units owned by each Oversubscribing Member) up to the number of Remaining Transfer Units specified in such Oversubscribing Member’s Purchase Notice or on such other basis as such Oversubscribing Members may agree.

(e) If the Company and the Designated Members elect to purchase all or any portion of the Transfer Units, the Transferring Member shall, promptly following the expiration of the Member Acceptance Period, give written notice (the “Closing Notice”) to the Company and each Designated Member that has elected to purchase Transfer Units (such Designated Members, the “ROFR Purchasers”). The Closing Notice shall set forth (i) a date of closing, which date shall not be earlier than five (5) days and not later than fifteen (15) days following the

date on which the Closing Notice is given, (ii) the number of Transfer Units to be purchased by the Company and each ROFR Purchaser, and (iii) the total purchase price payable by the Company and each ROFR Purchaser (which, with respect to a Person, shall be equal to product of the number of Transfer Units that such Person has elected to purchase (including any Unsubscribed Units) and the Transfer Purchase Price Per Unit). At the closing, the Company and each ROFR Purchaser shall purchase the Transfer Units (including any Unsubscribed Units) that the Company or such ROFR Purchaser has elected to purchase by wire transfer of immediately available funds to an account designated by the Transferring Member against delivery of satisfactory evidence from the Company and the Transferring Member of the Transfer of the Transfer Units to the Company or such ROFR Purchaser in accordance with the provisions of this Agreement; provided, however, neither the Company nor any ROFR Purchaser shall have any liability to purchase or pay for more than the number of Transfer Units it has elected to purchase pursuant to these provisions. The Company and the ROFR Purchasers may request waivers of any liens on, and evidence of good title to, the Transfer Units.

(f) The rights of first refusal of any Member under this Section 11.3 may be assigned by a Member to an assignee that (i) is a subsidiary, parent, general partner, limited partner, retired partner, member or retired member of a Member that is a corporation, partnership or limited liability company, (ii) is a Member's family member or trust for the benefit of an individual Member, or (iii) is an Affiliate of such Member.

#### **Section 11.4 Right of Co-Sale.**

(a) If the Company and the Designated Members do not purchase all of the Transfer Units pursuant to Section 11.3, the Transferring Member, within five (5) days after the expiration of the Member Acceptance Period, shall deliver to each Designated Member, with a copy to the Company, a written notice (the "Co-Sale Notice") that each such Designated Member shall have the right (the "Co-Sale Right"), in accordance with the terms and conditions set forth in this Agreement, to participate with the Transferring Member in the Transfer of the Transfer Units not purchased by the Company and the Designated Members pursuant to the provisions of Section 11.3 hereof (the "Available Units") for an amount of consideration in respect of each such Designated Member's Units equal to the Transfer Purchase Price Per Unit (the "Co-Sale Purchase Price") on the terms and conditions set forth in the Transfer Notice described above and in accordance with this Section 11.4. The Co-Sale Notice shall set forth the date of closing of the proposed sale of the Available Units by the Transferring Member to the Proposed Transferee, which date shall not be earlier than ten (10) days and not later than fifteen (15) days following the date on which the Co-Sale Notice is given. To the extent one or more of the Designated Members exercise their Co-Sale Right, the number of Available Units that the Transferring Member may sell to the Proposed Transferee shall be correspondingly reduced.

(b) If a Designated Member desires to exercise its Co-Sale Right, such Designated Member shall give written notice (the "Inclusion Notice") to the Transferring Member, with a copy to the Company, within five (5) days after the Co-Sale Notice is given (the "Co-Sale Election Period"). The Inclusion Notice shall indicate the number of Units such Designated Member wishes to sell under its Co-Sale Right up to the number of Available Units. The maximum number of Units that each Designated Member may sell under its Co-Sale Right shall be equal to the product obtained by multiplying (i) the aggregate number of Available Units

covered by the Co-Sale Notice by (ii) a fraction, the numerator of which is the number of outstanding Units owned by such Designated Member on the Transfer Notice Date and the denominator of which is the total number of outstanding Units owned by the Transferring Member and all Designated Members on the Transfer Notice Date (such Units with respect to each Designated Member, the “Co-Sale Right Units”). Any Designated Member that is covered by an Inclusion Notice delivered by a Designated Member to the Transferring Member, with a copy to the Company, within the Co-Sale Election Period is referred to hereinafter as a “Co-Sale Participant.”

(c) At the closing of the sale of Available Units by the Transferring Member to the Proposed Transferee, each Co-Sale Participant shall deliver to the Proposed Transferee satisfactory evidence from the Company and such Co-Sale Participant in accordance with the provisions of this Agreement of the number of Co-Sale Right Units which such Co-Sale Participant has elected to sell. Upon receipt of such evidence, and concurrently with the purchase of Available Units from the Transferring Member, the Proposed Transferee shall remit to each Co-Sale Participant, by wire transfer of immediately available funds (or other means acceptable to such Co-Sale Participant), the Co-Sale Purchase Price with respect to the Co-Sale Right Units. Each Member shall be entitled to the same form of consideration, payment terms and security in connection with any transaction effected in accordance with this Section 11.4. To the extent that any Proposed Transferee refuses to purchase Co-Sale Right Units from a Co-Sale Participant, the Transferring Member shall not sell to such Proposed Transferee any Available Units unless and until, simultaneously with such sale, such Transferring Member purchases the Co-Sale Right Units from the Co-Sale Participant in accordance with this Section 11.4.

(d) In the event that no Designated Member exercises its Co-Sale Right, then the Transferring Member may Transfer all of the Available Units to the Proposed Transferee on the terms and conditions set forth in the Transfer Notice. Any proposed Transfer that is not completed within forty-five (45) days of the expiration of the Member Acceptance Period or that would be on terms and conditions more favorable to the Proposed Transferee than those described in the Transfer Notice shall again be subject to the rights of first refusal and co-sale described herein and shall again require compliance by a Transferring Member with the procedures described herein in connection therewith.

(e) Neither the Transfer of Available Units by the Transferring Member nor the Transfer of Co-Sale Right Units by a Designated Member shall be effective unless, contemporaneously with such Transfer, the Proposed Transferee executes a counterpart to this Agreement, thereby agreeing to be bound all the terms and conditions of this Agreement.

(f) The covenants set forth in Section 11.3 and this Section 11.4 shall terminate and be of no further force or effect upon a Sale of the Company.

### **Section 11.5 Effect of Failure to Comply.**

(a) Transfer Void; Equitable Relief. Any Transfer not made in compliance with the requirements of this Agreement shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent and shall not be recognized by the Company. Each party hereto acknowledges and agrees that any breach of this Agreement would result in

substantial harm to the other parties hereto for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocably agree that any non-breaching party hereto shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales and other transfers of Transfer Units not made in strict compliance with this Agreement).

(b) Violation of First Refusal Right. If any Transferring Member becomes obligated to sell any Transfer Units to the Company or any Designated Member under this Agreement and fails to deliver such Transfer Units in accordance with the terms of this Agreement, the Company and/or such Designated Member may, at its option, in addition to all other remedies it may have, send to such Transferring Member the purchase price for such Transfer Units as is herein specified and transfer to the name of the Company or such Designated Member (or request that the Company effect such transfer in the name of the Designated Member) on the Company's books the Transfer Units to be sold.

(c) Violation of Co-Sale Right. If any Transferring Member purports to sell any Transfer Units in contravention of the Co-Sale Right (a "Prohibited Transfer"), each Designated Member who desires to exercise its Co-Sale Right under Section 11.4 may, in addition to such remedies as may be available by law, in equity or hereunder, require such Transferring Member to purchase from such Designated Member the type and number of Units that such Designated Member would have been entitled to sell to the Proposed Transferee under Section 11.4 had the Prohibited Transfer been effected pursuant to and in compliance with the terms of Section 11.4. The sale will be made on the same terms and subject to the same conditions as would have applied had the Transferring Member not made the Prohibited Transfer, except that the sale (including, without limitation, the delivery of the purchase price) must be made within ninety (90) days after the Designated Member learns of the Prohibited Transfer, as opposed to the timeframe proscribed in Section 11.4. Such Transferring Member shall also reimburse each Designated Member for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Designated Member's rights under Section 11.4.

## **Section 11.6 Drag-Along Right.**

### **(a) Drag-Along Right.**

(i) Definitions. A "Sale of the Company" shall mean either: (a) a transaction or series of related transactions in which a Person, or a group of related Persons, acquires from the Members Units representing more than fifty percent (50%) of the total outstanding voting power of all outstanding Units of the Company (a "Unit Sale" and the Members proposing any Unit Sale, collectively, the "Selling Members"); or (b) a transaction that qualifies as a Deemed Liquidation Event.

(ii) Actions to be Taken. In the event that (A) the Major Members, (B) the Board of Managers, and (C) the Investor Majority each approve a Sale of the Company in writing, specifying that this Section 11.6(a) shall apply to such transaction (such Sale of the Company, an "Approved Sale"), then each Member hereby agrees:

(A) if such Approved Sale and/or any related transaction requires Member approval, with respect to all Units that such Member owns or over which such Member otherwise exercises voting power, to vote (in person, by proxy or by action by written consent, as applicable) all such Units in favor of the approval of, and adopt, such Approved Sale and such related transaction(s) (together with any related amendment to this Agreement required in order to implement such Sale of the Company) and to vote in opposition to any and all other proposals that could reasonably be expected to delay or impair the ability of the Company to consummate such Sale of the Company;

(B) if such Approved Sale is a Unit Sale, to sell the same proportion of Units beneficially held by such Member as is being sold by the Selling Members to the Person to whom the Selling Members propose to sell their Units in such Approved Sale, and, except as permitted in clause (vi) below, on the same terms and conditions as the Selling Members;

(C) to execute and deliver all related documentation and take such other action in support of such Approved Sale as shall reasonably be requested by the Company or the Selling Members in order to carry out the terms and provision of this Section 11.6(a), including without limitation executing and delivering instruments of conveyance and transfer, and any purchase agreement, merger agreement, indemnity agreement, escrow agreement, consent, waiver, governmental filing, and any similar or related documents (other than any non-competition agreement or covenant that would bind the Member or its Affiliates after consummation of the Approved Sale);

(D) not to deposit, and to cause their Affiliates not to deposit, except as provided in this Agreement, any Units owned by such party or Affiliate in a voting trust or subject any Units to any arrangement or agreement with respect to the voting of such Units, unless specifically requested to do so by the acquirer in connection with such Approved Sale;

(E) to refrain from exercising any dissenters' rights or rights of appraisal under applicable law at any time with respect to such Approved Sale; and

(F) if the consideration to be paid in exchange for the Units pursuant to such Approved Sale under this Section 11.6(a) includes any securities and due receipt thereof by any Member would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities or (y) the provision to any Member of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, the Company may cause to be paid to any such Member in lieu thereof, against surrender of the Units which would have otherwise been sold by such Member, an amount in cash equal to the fair value (as determined in good faith by the Company) of the securities which such Member would otherwise receive as of the date of the issuance of such securities in exchange for the Units.

(iii) In the event of an Approved Sale, the Company shall give written notice to each Member (the "Approved Sale Notice"). The Approved Sale Notice shall set forth

(A) the name and address of the proposed acquirer in the Approved Sale (the “Proposed Acquirer”), (B) the terms and conditions of the Approved Sale, including the price and consideration to be paid by the Proposed Acquirer and the terms and conditions of payment, (C) any other material facts relating to the Approved Sale, and (D) the anticipated date and location of the closing of the Approved Sale. Unless prohibited by contract, the Company shall enclose with the Approved Sale Notice a copy of any term sheet, letter of intent, agreement or other written document with respect to the terms and conditions of the Approved Sale. Subject to the conditions and limitations set forth in this Agreement, each Member will take all actions deemed necessary or appropriate by the Board of Managers and the Selling Members in connection with the Approved Sale.

(iv) Exceptions. Notwithstanding the foregoing, a Member will not be required to comply with Section 11.6(a)(ii) above in connection with any Approved Sale unless:

(A) any representations, warranties, covenants, indemnities and agreements made by such Member shall be made by such Member severally, and not jointly, and such representations and warranties shall be limited to those related to authority, ownership and the ability to convey title to each such Member’s Units, including but not limited to representations and warranties that (A) such Member holds all right, title and interest in and to the Units such Member purports to hold, free and clear of all liens and encumbrances, (B) the obligations of such Member in connection with the Approved Sale have been duly authorized, if applicable, (C) the documents to be entered into by such Member have been duly executed by such Member and delivered to the Proposed Acquirer and are enforceable against such Member in accordance with their respective terms and (D) neither the execution and delivery of documents to be entered into by such Member in connection with the Approved Sale, nor the performance of such Member’s obligations thereunder, will cause a breach or violation by such Member of the terms of any agreement, law or judgment, order or decree of any court or governmental agency;

(B) such Member shall not be liable for the inaccuracy of any representation or warranty made by any other Person in connection with the Approved Sale, other than for the inaccuracy of any representation or warranty made by the Company in connection with the Approved Sale (and except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any Member of any of identical representations, warranties and covenants provided by all Members);

(C) the liability for indemnification, if any, of such Member in the Approved Sale and for the inaccuracy of any representations and warranties made by the Company in connection with such Approved Sale, is several and not joint with any other Person (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any Member of any of identical representations, warranties and covenants provided by all Members), and is pro rata in proportion to the amount of consideration paid to such Member in connection with such Approved Sale;

(D) liability shall be limited to such Member's pro rata share (determined based on the respective proceeds payable to each Member in connection with such Approved Sale in accordance with the provisions of this Agreement) of a negotiated aggregate indemnification amount that applies equally to all Members but that in no event exceeds the amount of consideration actually paid and/or payable to such Member in connection with such Approved Sale, except with respect to claims related to fraud by such Member, the liability for which need not be limited as to such Member;

(E) upon the consummation of the Approved Sale: (A) except as provided in Section 11.6(a)(ii)(F), each holder of each class or series of Units will receive the same form of consideration for their Units of such class or series as is received by other holders in respect of their Units of such same class or series of Units;

(F) except as provided in Section 11.6(a)(ii)(F), the aggregate consideration receivable by all holders of the Series A Preferred Units, Series Seed Preferred Units, Common Units and Incentive Units shall be allocated among such holders of each respective series of Units in accordance with Section 7.3(a) above; and

(G) as part of the Approved Sale, there is no requirement to enter into a non-competition agreement or covenant binding any Investor or its Affiliates following the consummation of the Approved Sale.

(v) Irrevocable Proxy and Power of Attorney. As security for the performance of the obligations of each Member under this Section 11.6 in connection with an Approved Sale, after the requisite approval of such Approved Sale has been obtained pursuant to Section 11.6 above, each Member hereby grants to the Company, with full power of substitution and resubstitution, an irrevocable proxy to vote all Units then held by such Member at all meetings of the Members held or taken after the date of this Agreement with respect to an Approved Sale or to execute any written consent in lieu thereof, and hereby irrevocably appoints the Company, with full power of substitution and resubstitution, as such Member's attorney-in-fact with authority to sign any documents with respect to any such vote or any actions by written consent of the Members taken after the date of this Agreement with respect to such Approved Sale consistent with the provisions of this Section 11.6. This proxy shall be deemed to be coupled with an interest and shall be irrevocable. This proxy shall terminate upon the consummation of, or termination of, negotiations with respect to, the applicable Approve Sale.

## **Section 11.7 Preemptive Rights.**

(a) Subject to the terms and conditions of this Section 11.7, the Company hereby grants to each Major Investor who is then an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act (any such Member, a "Qualified Member") a right to purchase for cash a portion of the New Securities that the Company may, from time to time, propose to sell and issue after the date hereof. If the Company proposes to issue any New Securities, it shall first have received a bona fide, arms' length written offer to purchase such New Securities from one or more Persons (each, a "Prospective Purchaser"). The Company shall offer to sell to each Qualified Member its pro rata share of the New Securities in accordance with the procedure set forth below.

(b) The Company shall give each Qualified Member a written notice (the “Offer Notice”), which shall describe (i) the number of New Securities for which the Company has received a bona fide, arms’ length written offer and the name(s) of the Prospective Purchaser(s) and (ii) the price and a summary of the terms and conditions upon which the Prospective Purchaser(s) have offered to purchase such New Securities. The Offer Notice shall be accompanied by a copy of the written offer, letter of intent or other written document signed by the Prospective Purchaser(s) setting forth the proposed terms and conditions of the sale. The date on which the Company gives the Offer Notice is hereinafter referred to as the “Notice Date.”

(c) For a period of twenty (20) days following the Notice Date (the “Offer Acceptance Period”), each Qualified Member shall have the right to purchase (the “Purchase Right”), at the price and on the terms and conditions stated in the Offer Notice, up to such Qualified Member’s pro rata share of the New Securities. Any Qualified Member that desires to exercise its Purchase Right shall give written notice (the “Offer Acceptance Notice”) to the Company within the Offer Acceptance Period. The Offer Acceptance Notice shall state that such Qualified Member desires to exercise its Purchase Right and the number of New Securities that such Qualified Member elects to purchase upon exercise of such Purchase Right up to such Qualified Member’s full pro rata share. Failure by a Qualified Member to give the Offer Acceptance Notice within the Offer Acceptance Period shall be deemed, without any further action by the Company or the Qualified Member, the irrevocable waiver of such Qualified Member’s Purchase Right with respect to the New Securities set forth in the Offer Notice and any other securities issuable, directly or indirectly, upon conversion, exercise or exchange of such New Securities. For purposes of this Section 11.7, a Qualified Member’s pro rata share of the New Securities shall equal to the number of New Securities multiplied by the quotient of (x) the number of outstanding Units then held by such Qualified Member plus divided by (y) the total number of Units then outstanding.

(d) Each Qualified Member may, in such Qualified Member’s Offer Acceptance Notice, offer to purchase more than its pro rata share of the New Securities. If less than all of the Qualified Members elect to purchase their pro rata share of the New Securities (the “Unsubscribed New Securities”), the Unsubscribed New Securities shall be allocated pro rata (based on the number of outstanding Units owned by each Qualified Member that offers to oversubscribe) among the Qualified Members that offer to oversubscribe up to the number of New Securities specified in such Qualified Member’s Acceptance Notice or on such other basis as such Qualified Members may agree.

(e) Following the expiration of the Offer Acceptance Period, the Company shall be entitled, during the period of sixty (60) days following the expiration of the Offer Acceptance Period (the “Unrestricted Period”), to sell to the Prospective Purchaser(s) up to the full amount of the New Securities set forth in the Offer Notice on the terms set forth in the Offer Notice, less the number of New Securities, if any, which the Qualified Members have elected to purchase upon exercise of their Purchase Rights in accordance with this Section 11.7 (the “Remainder Securities”). The Company shall give five (5) days’ prior written notice to each Qualified Member that has elected to purchase New Securities of any such sale to a Prospective Purchaser, which sale shall be at the price and upon terms and conditions no more favorable to the Prospective Purchaser(s) than those described in the Offer Notice. At and upon the closing

of the sale of such Remainder Securities to such Prospective Purchaser(s), which shall include full payment to the Company, the Qualified Members shall purchase from the Company, and the Company shall sell to the Qualified Members, the New Securities elected to be purchased pursuant to this Section 11.7 on the terms specified in the Offer Notice.

(f) If the Company does not complete the sale of the Remainder Securities to the Prospective Purchaser(s) within the Unrestricted Period, the Purchase Right provided hereunder shall be deemed to be revived and such Remainder Securities shall not be sold unless the Company shall comply with this Section 11.7 as if the Prospective Purchaser(s) had made a new offer to purchase such New Securities. In the event that the closing of the sale of all of the Remainder Securities to the Prospective Purchaser(s) does not occur during the Restricted Period, each Qualified Member shall have the right, but not the obligation, to purchase the New Securities, if any, such Qualified Member elected to purchase pursuant to this Section 11.7.

(g) The rights of the Qualified Members to purchase New Securities under this Section 11.7 may be modified or waived by the Board of Managers with the consent of the Investor Majority.

(h) The covenants set forth in this Section 11.7 shall terminate and be of no further force or effect upon a Sale of the Company.

**Section 11.8 Substitution of Members.** A transferee of a Unit shall have the right to become a substitute Member only with the consent of the Board of Managers; except that, notwithstanding the foregoing, a Permitted Transferee to whom Units are Transferred by a Member shall, upon the effectiveness of such Transfer in accordance with the terms of this Agreement, be automatically admitted as a substitute Member with respect to the Units so Transferred. The admission of a substitute Member shall not result in the release of the Member who assigned the Unit from any liability that such Member may have to the Company.

## **ARTICLE 12.**

### **LIQUIDATION OF THE COMPANY**

#### **Section 12.1 General.**

(a) Upon the dissolution of the Company, the Company shall be liquidated in an orderly manner in accordance with this Article and the Massachusetts Act. The liquidation shall be conducted and supervised by the Managers or, if none, by the Members, or, if none, by the personal representative (or its nominee or designee) of the last remaining Member (the Managers, Members or such other Person, as applicable, being referred to in this Article as the "Liquidating Agent"). The Liquidating Agent shall have all of the rights, powers, and authority with respect to the assets and liabilities of the Company in connection with the liquidation of the Company that the Members have with respect to the assets and liabilities of the Company during the term of the Company, and the Liquidating Agent is hereby expressly authorized and empowered to execute any and all documents necessary or desirable to effectuate the liquidation of the Company and the transfer of any assets of the Company. The Liquidating Agent shall have the right from time to time, by revocable powers of attorney, to delegate to one or more Persons any or all of such rights and powers and such authority and power to execute documents

and, in connection therewith, to fix the reasonable compensation of each such Person, which compensation shall be charged as an expense of liquidation. The Liquidating Agent is also expressly authorized to distribute Company property to the Members subject to liens.

(b) The Liquidating Agent shall liquidate the Company as promptly as shall be practicable after dissolution. Without limitation of the rights, powers, and authority of the Liquidating Agent as provided in this Article, the Liquidating Agent may, in its discretion, either distribute in kind or sell securities and other non-cash assets. Any securities or other non-cash assets which the Liquidating Agent may sell shall be sold at such prices and on such terms as the Liquidating Agent may, in its good faith judgment, deem appropriate.

## **Section 12.2 Final Allocations and Distributions.**

In settling accounts upon dissolution, winding up and liquidation of the Company, the assets of the Company shall be applied and distributed as expeditiously as possible in the following order:

(a) To pay (or make reasonable provision for the payment of) all creditors of the Company, including, to the extent permitted by law, Members or other Affiliates that are creditors, in satisfaction of liabilities of the Company in the order of priority provided by law, including expenses relating to the dissolution and winding up of the Company, discharging liabilities of the Company, distributing the assets of the Company and terminating the Company as a limited liability company in accordance with this Agreement and the Act); and

(b) To the Members in accordance with Section 7.3(a) (taking into account, for the avoidance of doubt, any distributions previously made under Section 7.3(b) that were treated as advances on distributions under Section 7.3(a)).

## **ARTICLE 13. POWER OF ATTORNEY**

### **Section 13.1 General.**

(a) Each Member irrevocably constitutes and appoints each Manager and the Liquidating Agent the true and lawful attorney-in-fact of such Member to execute, acknowledge, swear to and file any of the following: (i) the Certificate of Organization and all other certificates and other instruments deemed advisable by Manager Approval to carry out the provisions of this Agreement and applicable law or to permit the Company to become or to continue as a limited liability company; (ii) this Agreement and all instruments that the Managers acting by Manager Approval deem appropriate to reflect a change or amendment to or modification of this Agreement made in accordance with this Agreement; (iii) all conveyances and other instruments or papers deemed advisable by Manager Approval or the Liquidating Agent to effect the dissolution and termination of the Company; (iv) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Company; (v) all other certificates, instruments or papers that may be required or permitted by law to be filed on behalf of the Company and any amendment or modification of any certificate or other instrument referred to in this Section 13.1(a); and (vi) any agreement, document, certificate or other instrument that any Member is required to execute and deliver hereunder or pursuant to applicable law that such Member has

failed to execute and deliver within ten days after written request from the Managers pursuant to Manager Approval.

(b) The foregoing power of attorney is (i) coupled with an interest, (ii) irrevocable and durable, (iii) shall not be terminated or otherwise affected by any act or deed of any Member (or by any other Person) or by operation of law, whether by the legal incapacity of a Member or by the occurrence of any other event or events, and (iv) shall survive the transfer by a Member of the whole or any part of such Member's Units, except that, where the transferee of the whole of such Member's Units is to be admitted as a Member, the power of attorney of the transferor shall survive such transfer for the sole purpose of enabling the applicable attorney-in-fact to execute, swear to, acknowledge and file any instrument necessary or appropriate to effect such admission.

(c) Each Member agrees to execute, upon five days' prior written notice from the Managers acting by Manager Approval or any Liquidating Agent, as applicable, a confirmatory or special power of attorney containing the substantive provisions of this Article 13, which shall be in form satisfactory to the Persons or Person providing such notice.

## **ARTICLE 14.**

### **DUTIES, EXCULPATION AND INDEMNIFICATION**

#### **Section 14.1 Duties of Manager, Tax Matters Person and Liquidating Agent.**

Each Manager, Tax Matters Person and Liquidating Agent shall exercise in good faith such Person's judgment in carrying out such Person's functions and, otherwise, shall owe no duties (including fiduciary duties) to the Company or any Member in such capacity. The Members hereby agree that this Section 14.1 and the other provisions of this Agreement, to the extent that they restrict or eliminate duties of any Manager, Tax Matters Person or Liquidating Agent otherwise existing at law or in equity, modify such duties to such extent, as permitted by applicable law.

#### **Section 14.2 Exculpation; Liability of Covered Persons.**

(a) To the fullest extent permitted by applicable law, none of the Managers, Tax Matters Person, Liquidating Agents, or any other Persons who were, at the time of the act or omission in question, a Manager, Tax Matters Person or Liquidating Agent (each, a "Covered Person") shall have any liability to the Company or to any Member for any loss suffered by the Company that arises out of any action or inaction of such Covered Person if such Covered Person, in good faith, determined that such course of conduct was in, or not opposed to, the best interests of the Company and such course of conduct did not constitute gross negligence, fraud or willful misconduct of such Covered Person.

(b) No Covered Person shall have any personal liability for the repayment of the positive balance in the Capital Account of a Member. To the greatest extent permitted by applicable law, no Covered Person shall be liable to any Member by reason of any federal or other income tax laws or the interpretations thereof as they apply to the Company and such Member, or any changes thereto.

(c) The Members hereby agree that this Section 14.2 and the other provisions of this Agreement, to the extent that they restrict or eliminate liabilities of the Covered Persons otherwise existing at law or in equity, modify such liabilities to such extent.

### **Section 14.3 Indemnification of Covered Persons.**

(a) To the maximum extent permitted by applicable law and subject to the other provisions of this Section 14.3, the Company shall indemnify and hold harmless Covered Persons, from and against any claim, loss, expense, liability, action or damage (including, without limitation, any action by a Member or assignee thereof against a Covered Person) due to, arising from or incurred by reason of any action, inaction or decision performed, taken, not taken or made by Covered Persons or any of them in connection with the activities and operations of the Company, or any subsidiary of the Company, as the case may be, provided (i) such action, inaction or decision is within the scope of the authority of such Covered Persons as provided herein, (ii) such Covered Person acted in good faith and in a manner such Covered Person reasonably believed to be in, or not opposed to, the best interests of the Company or any subsidiary of the Company, as the case may be, and (iii) with respect to any criminal proceeding, such Covered Person had no reasonable cause to believe the conduct of such Covered Person was unlawful. The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not, by itself, create a presumption that the Covered Person did not act in good faith and in a manner which the Covered Person reasonably believed to be in, or not opposed to, the best interest of the Company or any subsidiary of the Company, as the case may be, or that the Covered Person had reasonable cause to believe that such Covered Person's conduct was unlawful (unless there shall have been a final adjudication in the proceeding that the Covered Person did not act in good faith and in a manner which such Covered Person reasonably believed to be in, or not opposed to, the best interests of the Company or any subsidiary of the Company, as the case may be, or that the Covered Person did have reasonable cause to believe that such Covered Person's conduct was unlawful). Any Covered Person may consult with independent counsel selected by the Covered Person (which may be counsel for the Company or any Affiliate) and any opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by such Covered Person hereunder in good faith and in accordance with the opinion of such counsel. Any indemnification under this Section 14.3 shall include reasonable attorneys' fees incurred by Covered Persons in connection with the defense of any such action including, to the extent permitted by applicable law, all such liabilities under United States federal and state securities acts. The reasonable expenses incurred by Covered Persons in connection with the defense of any such action shall be paid or reimbursed as incurred, upon receipt by the Company of an undertaking by such Covered Person to repay such expenses if it shall ultimately be determined that such Covered Person is not entitled to be indemnified hereunder, which undertaking may be accepted without reference to the financial ability of such Covered Person to make repayment. Such indemnification shall only be made to the extent that such Persons are not otherwise reimbursed from insurance or other means. Such indemnification shall only be paid from the assets of the Company, and no Member shall have any personal liability on account thereof.

(b) Notwithstanding the provisions of Section 14.3(a), a Covered Person shall not be entitled to be indemnified or held harmless from and against any claim, loss, expense,

liability, action or damage due to or arising from the Covered Person's gross negligence, fraud or willful misconduct.

(c) The provisions of this Section 14.3 shall be in addition to and not in limitation of any other rights of indemnification and reimbursement or limitations of liability to which a Covered Person may be entitled under the charter documents of any subsidiary of the Company or otherwise. The provisions of this Section 14.3 shall apply whether or not at the time of reimbursement the Covered Person entitled to reimbursement is then a Covered Person. Notwithstanding any repeal of this Section 14.3 or other amendment hereof, its provisions shall be binding upon the Company (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 are referable to the period prior to any such repeal or amendment of this Section 14.3.

## **ARTICLE 15. MISCELLANEOUS PROVISIONS**

### **Section 15.1 Books and Accounts.**

(a) Complete and accurate books and accounts shall be kept and maintained for the Company in accordance with generally accepted accounting principles, using such method of accounting as shall be determined by Manager Approval, and shall include separate accounts for each Member. Each Member, at such Member's own expense, shall at reasonable times and upon reasonable prior written notice to the Company have access to such copy of the Agreement and of the Certificate of Organization and such books of account, but only to the extent such books of account reasonably relate to such Member's Units and not the Units of any other Member. The Members hereby acknowledge that the rights of a Member to obtain information from the Company shall be limited to only those rights provided for in this Section 15.1(a), except as otherwise specifically required by the Massachusetts Act.

(b) Within a period of time after the end of each Fiscal Year of the Company as determined by Manager Approval, the Company shall provide to each Member a Form K-1 for such Member with respect to such Fiscal Year.

(c) All funds received by the Company shall be deposited in the name of the Company in such account or accounts, all securities owned by the Company may be deposited with such custodians, and withdrawals therefrom shall be made upon such signature or signatures on behalf of the Company, as may be determined from time to time by Manager Approval.

(d) Each Member agrees to maintain the confidentiality of the Company's records and affairs, including the terms of this Agreement, pursuant to the terms and subject to the conditions of Section 3.9.

### **Section 15.2 Notices.**

All notices, demands, solicitations of consent or approval, and other communications hereunder shall be in writing and shall be sufficiently given if personally delivered or sent by postage prepaid, registered or certified mail, return receipt requested, or by overnight courier, addressed as follows: if intended for the Company or the Managers in their capacity as such, to

the Company's principal place of business determined pursuant to Section 2.3, and if intended for any Member to the address of such Member set forth on Schedule A or at such other address as any Member may designate by written notice. Notices shall be deemed to have been given (i) when personally delivered, (ii) if mailed, on the earlier of (A) three days after the date on which deposited in the mails, and (B) the date on which received, or (iii) if sent by overnight courier, on the date on which received; provided, that notices of a change of address shall not be deemed given until the actual receipt thereof. The provisions of this Section 15.2 shall not prohibit the giving of written notice in any other manner, including facsimile transmission and email; any written notice given in any other manner shall be deemed given only when actually received.

### **Section 15.3 Waivers; Amendments.**

The operation or effect of any provision of this Agreement may only be waived, and this Agreement may only be amended, in accordance with this Section 15.3. The operation or effect of any provision of this Agreement may be waived, and this Agreement may be amended, pursuant to receipt by the Company of each of (i) approval of each Major Member; (ii) approval by the Investor Majority and (iii) Manager Approval, *provided that* (A) this Agreement may be amended by Manager Approval, to the extent required to conform to actions properly taken by the Company, the Managers, or any of the Members in accordance with this Agreement, including, without limitation, amendments to Schedule A to reflect changes made pursuant to the terms of this Agreement, (B) for so long as Michael Cohen holds any Units, any amendment to Section 5.1(c)(i) shall require the approval of Michael Cohen, (C) for so long as Christopher Weld holds any Units, any amendment to Section 5.1(c)(ii) shall require the approval of Christopher Weld, (D) for so long as there remain outstanding not less than 100,000 Series A Investor Units, any amendment to Section 5.1(c)(iii) shall require the approval of the holders of a majority of the then-outstanding Series A Investor Units, (E) until such time as the Unreturned Capital Amount in respect of all outstanding Series A Investor Units is \$0.00, any amendment or waiver of Section 7.3 shall require the approval of a majority of any then-outstanding Series A Investor Units, and (F) except as otherwise set forth herein, no waiver or amendment pursuant to this Section 15.3 shall, without a Member's consent, create personal liability for such Member or require additional capital from such Member.

### **Section 15.4 Applicable Law; Jurisdiction.**

(a) This Agreement is governed by and shall be construed in accordance with the law of The Commonwealth of Massachusetts, exclusive of its conflict-of-laws principles. In the event of a conflict between the provisions of this Agreement and any provision of the Certificate or the Massachusetts Act, the applicable provision of this Agreement shall control, to the extent permitted by law.

(b) The parties to this Agreement hereby consent to the jurisdiction of the courts of The Commonwealth of Massachusetts and agree to litigate any and all claims exclusively in the courts of The Commonwealth of Massachusetts in connection with any matter or dispute arising under this Agreement or between or among them regarding the affairs of the Company.

#### **Section 15.5 Binding Effect.**

This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, successors, and assigns of the parties hereto; provided, that this provision shall not be construed to permit any assignment or transfer which is otherwise prohibited hereby.

#### **Section 15.6 Severability.**

If any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and all other applications thereof shall not in any way be affected or impaired thereby.

#### **Section 15.7 Entire Agreement.**

This Agreement sets forth the entire understanding among the parties relating to the subject matter hereof and supersedes any and all prior contracts or agreements with respect to such subject matter, whether oral or written, including the Prior Agreement. No promises, covenants or representations of any character or nature other than those expressly stated herein have been made to induce any party to enter into this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Limited Liability Company Agreement as of the date first written above.

**THE COMPANY:**

BERKSHIRE WELCO, LLC

By:           *michael cohen*          

Name: Michael Cohen

Its: Manager

And

By:           *chris weld*          

Name: Christopher Weld

Its: Manager

**MEMBERS HOLDING COMMON UNITS:**

          *michael cohen*            
Michael Cohen

          *chris weld*            
Christopher Weld

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Limited Liability Company Agreement as of the date first written above.

**MEMBERS HOLDING  
SERIES A INVESTOR UNITS:**

*[To be added]*

SIGNATURE PAGE TO AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF BERKSHIRE WELCO, LLC

**Schedule A to Amended and Restated Limited Liability Company Agreement  
of Berkshire Welco, LLC**

**Members**

<b>Name and Address</b>	<b>Common Units Held</b>	<b>Capital Contribution Made in Respect of Common Units</b>	<b>Threshold Amount In Relation to Any Common Unit that is an Incentive Unit</b>	<b>Series A Investor Units Held</b>	<b>Capital Contribution Made in Respect of Series A Investor Units</b>
Michael Cohen 24 Benton Ave. Great Barrington, MA 01230	200,000	\$6,172.84	N/A		
Christopher Weld 1640 Home Rd. Great Barrington MA , 01230	324,000	\$10,000.00	N/A		
<i>[Addition of Holders of Approximately 96,000 Incentive Units to be Determined]</i>					
<i>[Series A Investor Unit Holders to be Added]</i>					
<b>Totals:</b>	524,000	\$16,172.84			

(1) Member holds only Common Units that are Incentive Units.

Date of last revision of this Schedule A: June \_\_\_, 2018

**Schedule B to Limited Liability Company Agreement**  
**of Berkshire Welco, LLC**

**Allocation Exhibit**

1. **Definitions.** Each capitalized term used but not otherwise defined in this Allocation Exhibit shall have the meaning set forth in this Section 1 or, if not so defined, in the Agreement.

“**Adjusted Capital Account Balance**” shall mean with respect to any Member, such Member’s Capital Account balance maintained in accordance with this Agreement, as of the end of the relevant fiscal year or other allocation period, after giving effect to the following adjustments:

(a) increase such Capital Account by any amounts that such Member is obligated to restore pursuant to any provision of this Agreement, is treated as obligated to restore pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c), or is deemed obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) decrease such Capital Account by the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4) through (d)(6).

The foregoing definition of Adjusted Capital Account Balance is intended to comply with the provisions of Treasury Regulation Sections 1.704-1(b)(2)(ii)(d) and 1.704-2 and shall be interpreted consistently therewith.

“**Adjusted Taxable Profit**” and “**Adjusted Taxable Loss**” mean, as to any transaction or fiscal period, the taxable income or loss of the Company for United States federal income tax purposes, and each item of income, gain, loss or deduction entering into the computation thereof, with the following adjustments:

(a) Any tax-exempt income or gain of the Company that is not otherwise taken into account in computing Adjusted Taxable Profit or Adjusted Taxable Loss shall be deemed to increase the amount of such taxable income or decrease the amount of such loss;

(b) Any expenditures of the Company described in Section 705(a)(2)(B) of the Internal Revenue Code (or treated as such) and not otherwise taken into account in computing Adjusted Taxable Profit or Adjusted Taxable Loss shall decrease the amount of such taxable income or increase the amount of such loss; and

(c) In the event the Gross Asset Value of any Company asset is adjusted, (i) the amount of such adjustment (including an adjustment resulting from a distribution of such asset but excluding an adjustment resulting from a contribution of such asset) shall be taken into account in the same manner as gain or loss from the disposition of such asset for purposes of computing Adjusted Taxable Profit or Adjusted Taxable Loss, (ii) gain or loss resulting from any disposition of such asset with respect to which gain or loss is recognized for United States

federal income tax purposes shall be computed by reference to the Gross Asset Value of such asset, and (iii) in lieu of the cost recovery or similar deductions taken into account with respect to any asset with a Gross Asset Value which differs from its adjusted basis under the Internal Revenue Code, such deductions shall be an amount equal to the Depreciation with respect to such asset.

“Company Minimum Gain” has the meaning set forth for “partnership minimum gain” in Treasury Regulation Section 1.704-2(d) and (g).

“Depreciation” means, for each fiscal year of the Company or other period, an amount equal to the depreciation, depletion, amortization or other cost recovery deduction allowable under the Internal Revenue Code with respect to an asset for such fiscal year or other period; provided, however, that if the Gross Asset Value of an asset differs from its adjusted basis for United States federal income tax purposes at the beginning of such fiscal year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the United States federal income tax depreciation, amortization or other cost recovery deduction with respect to such asset for such fiscal year or other period bears to such beginning adjusted tax basis; and provided further that if the United States federal income tax depreciation, amortization or other cost recovery deduction for such fiscal year or other period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by Manager Approval.

“Gross Asset Value” means, with respect to any asset, such asset’s adjusted basis for United States federal income tax purposes, except as follows:

(a) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by Manager Approval, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company assets as consideration for a membership interest in the Company, including, without limitation, in connection with the withdrawal of a Member; (iii) the grant of a membership interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by a new or existing Member acting in a Member capacity or in anticipation of becoming a Member; (iv) in connection with the issuance by the Company of a noncompensatory option (other than an option for a de minimis interest); and (v) the liquidation of the Company within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (i) through (iv) of this sentence shall not be made if the Managers, acting by Manager Approval, determine that such adjustments are not necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(b) the Gross Asset Value of any Company asset (other than cash) distributed in kind to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution, as determined by Manager Approval;

(c) the initial Gross Asset Value of any asset contributed to the Company shall be adjusted to equal its gross fair market value at the time of its contribution, as determined by Manager Approval; and

(d) the Gross Asset Value of Company assets shall otherwise be determined or adjusted, in the discretion of the Managers, acting by Manager Approval, as required or permitted for purposes of maintaining Capital Accounts under relevant Treasury Regulations.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraph (a), (c) or (d) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Adjusted Taxable Profit or Adjusted Taxable Loss and as otherwise required by Treasury Regulation Section 1.704-1(b)(2)(iv)(g).

“Member Nonrecourse Debt” has the same meaning as the term “partner nonrecourse debt” set forth in Treasury Regulation Section 1.704-2(b)(4).

“Member Nonrecourse Debt Minimum Gain” means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if the Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulation Section 1.704-2(i).

“Nonrecourse Deductions” shall have the meaning set forth in Treasury Regulation Sections 1.704-2(b)(1) and 1.704-2(c).

“Nonrecourse Liability” shall have the meaning set forth in Treasury Regulation Section 1.704-2(b)(3).

“Treasury Regulations” means the United States income tax regulations, including temporary regulations, promulgated under the Internal Revenue Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

2. Capital Accounts. A capital account shall be maintained for each Member (a “Capital Account”) that shall be:

(a) increased by (i) any Capital Contributions made to the Company by such Member pursuant to this Agreement and (ii) any amounts in the nature of income or gain allocated to the Capital Account of such Member pursuant to this Schedule B based on such Member’s ownership of membership interests;

(b) decreased by (i) the cash and fair market value of other property distributed to the Member and (ii) any amounts in the nature of loss or expense allocated to the Capital Account of such Member pursuant to this Schedule B based on such Member’s ownership of membership interests; and

(c) otherwise adjusted in accordance with this Agreement and for such other matters as the Managers, acting by Manager Approval, may reasonably determine appropriate, in

all events in accordance with applicable provisions of the Internal Revenue Code and Treasury Regulations, including without limitation Treasury Regulation Section 1.704-1(b)(2)(iv).

3. General Allocations.

(a) General Application. The rules set forth below in this Section 3 of this Schedule B shall apply for the purposes of determining each Member's allocable share of the items of income, gain, loss or expense of the Company comprising Adjusted Taxable Profit or Adjusted Taxable Loss for each fiscal year or other period, determining special allocations of other items of income, gain, loss and expense, and adjusting the balance of each Member's Capital Account to reflect these general and special allocations. For each fiscal year or other period, any required special allocations in Section 4 of this Schedule B shall be made immediately prior to the general allocations of Section 3(b) of this Schedule B.

(b) General Allocations. The items of income, expense, gain and loss comprising Adjusted Taxable Profit or Adjusted Taxable Loss for a fiscal year or other period, shall be allocated among the Members during such fiscal year or other period in a manner that will, as nearly as possible, cause the Capital Account balance of each Member at the end of such fiscal year or other period to equal:

(i) the amount of the hypothetical distribution (if any) that such Member would receive if, on the last day of the fiscal year or other period, (A) all Company assets, including cash, were sold for cash equal to their Gross Asset Values, as determined by Manager Approval, taking into account any adjustments thereto for such fiscal year or other period, (B) all Company liabilities were satisfied in cash according to their terms (limited, with respect to each Nonrecourse Liability), to the Gross Asset Value, as determined by Manager Approval, of the assets securing such liability), and (C) the net proceeds thereof (after satisfaction of such liabilities) were distributed in full in accordance with Section 12.2, minus

(ii) the sum of (A) the amount, if any, which such Member is obligated (or deemed obligated) to restore to such Member's Capital Account, (B) such Member's share of the Company Minimum Gain determined pursuant to Treasury Regulations Section 1.704-2(g), and (C) such Member's share of Member Nonrecourse Debt Minimum Gain determined pursuant to Treasury Regulations Section 1.704-2(i)(5), all computed immediately prior to the hypothetical sale described in Section 3(b)(i) of this Schedule B.

(c) The Managers, acting by Manager Approval, may modify the allocations otherwise provided for in this Section 3 of this Schedule B or offset prior allocations provided for in Section 4 of this Schedule B, including by specially allocating items of gross income, gain, deduction, loss or expense among the Members, so that such modifications or offsets will cause the Capital Accounts of the Members to reflect more closely the Members' relative economic interests in the Company.

4. Special Allocations. The following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback. In the event that there is a net decrease during a fiscal year or other period in either Company Minimum Gain or Member Nonrecourse

Debt Minimum Gain, then notwithstanding any other provision of this Schedule B, each Member shall receive such special allocations of items of Company income and gain as are required in order to conform to Treasury Regulation Section 1.704-2.

(b) Qualified Income Offset. Subject to Section 4(a) of this Schedule B, but notwithstanding any provision of this Schedule B to the contrary, items of income and gain shall be specially allocated to the Members in a manner that complies with the “qualified income offset” requirement of Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(3).

(c) Deductions Attributable to Member Nonrecourse Debt. Any item of Company loss or expense that is attributable to Member Nonrecourse Debt shall be specially allocated to the Members in the manner in which they share the economic risk of loss (as defined in Treasury Regulation Section 1.752-2) for such Member Nonrecourse Debt.

(d) Allocation of Nonrecourse Deductions. Each Nonrecourse Deduction of the Company shall be allocated among the Members in accordance with the partners’ interests in the partnership within the meaning of Treasury Regulations Sections 1.704-2(b)(1) and 1.704-1(b)(3).

(e) Loss Limitation. Adjusted Taxable Losses allocated to a Member pursuant to this Schedule B shall not exceed the maximum amount of Adjusted Taxable Losses that can be allocated to such Member without causing such Member to have a negative Adjusted Capital Account Balance at the end of any fiscal year or other allocation period in which any other Member does not have a negative Adjusted Capital Account Balance.

(f) The allocations set forth in Section 4(a) through Section 4(e) of this Schedule B (the “Regulatory Allocations”) are intended to comply with Treasury Regulation Sections 1.704-1(b) and 1.704-2 and shall be interpreted consistently with this intention. Any terms used in such provisions that are not specifically defined in this Agreement shall have the meaning, if any, given such terms in such Treasury Regulations.

(g) If during any taxable year of the Company there is a change in any Member’s membership interest in the Company, allocations of income or loss for such taxable year shall take into account the varying interests of the Members in the Company in a manner consistent with the requirements of Section 706 of the Internal Revenue Code. Any Member that is transferred a membership interest from another Member but not the corresponding portion of such other Member’s Capital Account shall not be entitled to any allocation or distribution arising from Company operations prior to the date of such transfer, unless otherwise determined by Manager Approval or required by the Internal Revenue Code.

## **5. Tax Allocations.**

(a) Section 704(b) Allocations. Subject to Section 5(b) and Section 5(c) of this Schedule B, each item of income, gain, loss, or deduction for United States federal income tax purposes that corresponds to an item of income, gain, loss or expense that is either taken into account in computing Adjusted Taxable Profit or Adjusted Taxable Loss or is specially allocated pursuant to Section 4 of this Schedule B (a “Book Item”) shall be allocated among the Members

in the same proportion as the corresponding Book Item is allocated among them pursuant to Section 3 or Section 4 of this Schedule B.

(b) Section 704(c) Allocations. In the event any property of the Company is credited to the Capital Account of a Member at a value other than its tax basis, then allocations of taxable income, gain, loss and deductions with respect to such property shall be made in a manner which will comply with Sections 704(b) and 704(c) of the Internal Revenue Code. Such allocations also shall be made by the Company to any former Member to the extent applicable, as determined by Manager Approval. The allocation to a Member of items of taxable income, gain, loss, and deduction of the Company also shall be adjusted to reflect any election under Section 754 of the Internal Revenue Code.

(c) Capital Accounts. The tax allocations made pursuant to this Section 5 of this Schedule B shall be solely for tax purposes and shall not affect any Member's Capital Account or share of non-tax allocations or distributions under this Agreement.

6. Tax Matters Partner; Partnership Representative.

(a) For tax years prior to January 1, 2018, the "tax matters partner" (within the meaning of Section 6231(a)(7) of the Internal Revenue Code, as in effect prior to the effective date provided in Section 1101(g)(1) of the Bipartisan Budget Act of 2015 (P.L. 114-74)) of the Company (the "Tax Matters Person") shall be designated by the Managers.

(b) For tax years beginning on or after January 1, 2018, the Tax Matters Person shall be designated the "partnership representative" with the sole authority to act on behalf of the Company with respect to tax matters, with all of the rights, duties and powers provided for the Tax Matters Person by the Internal Revenue Code, including subchapter C of chapter 63 of the Internal Revenue Code, but subject to the restrictions and limitations contained in this Agreement. Each Member hereby consents to such designation and agrees that, upon the request of the Managers, such Member shall execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent. In the event that the Company is responsible for the payment of any "imputed underpayment" in respect of an administrative adjustment pursuant to Section 6225(a) of the Internal Revenue Code, or any similar provision of any state or local tax laws, the Managers shall determine by Manager Approval, in their discretion, the treatment, including the relative obligations of the Members and former Members with respect to any amounts paid by the Company to any taxing authority with respect to such "imputed underpayment" such that the amount of such "imputed underpayment" is borne by the Members and former Members who would have borne the tax liability in the "reviewed year", as defined in Section 6225(d)(1) of the Internal Revenue Code. Each Member and former Member hereby agrees to satisfy in full such obligations as so determined by the Managers.

(c) The Tax Matters Person shall have the sole discretion to determine all matters, and shall be authorized to take any actions necessary, with respect to preparing and filing any tax return of the Company and any audit, examination or investigation (including any judicial or administrative proceeding) of the Company by any taxing authority, whether to elect into the provisions of the Bipartisan Budget Act of 2015 prior to their effective date and whether

to make an election under Section 6226 of the Internal Revenue Code or any similar provision of any state or local tax laws with respect to any audit or other examination of the Company.

(d) Each Member and former Member shall promptly upon request furnish to the Tax Matters Person any information that the Tax Matters Person may reasonably request in connection with (i) preparing or filing any tax returns of the Company, (ii) any tax election of the Company (and the Company's and Member's or former Member's compliance with any such election) or (iii) any audit, examination or investigation (including any judicial or administrative proceeding) of the Company by any taxing authority. No Member shall, without the consent of the Tax Matters Person, (A) file a request for administrative adjustment of Company items, (B) file a petition with respect to any Company item or other tax matters involving the Company, or (C) enter into a settlement agreement with any taxing authority with respect to any Company items.

(e) Without limiting the foregoing, the Tax Matters Person shall represent the Company (at the expense of the Company) in connection with all examinations of the affairs of the Company by any U.S. federal, state, local or foreign tax authorities, including any resulting administrative and judicial proceedings relating to the determination of items of income, deduction, allocation and credit of the Company and the Members, and to expend funds of the Company for professional services and costs associated therewith.

(f) For tax years prior to January 1, 2018, the Tax Matters Person shall be a Member who is permitted to act as a "tax matters partner" pursuant to the Internal Revenue Code. For tax years beginning on or after January 1, 2018, the Tax Matters Person shall be a Person who is permitted to act as a "partnership representative" pursuant to the Internal Revenue Code. The Tax Matters Person may resign at any time by giving written notice to the Company and the Members and complying with any applicable provisions of the Internal Revenue Code and Treasury Regulations relating to such resignation. The Tax Matters Person may be removed at any time by Manager Approval if such complies with any applicable provisions of the Internal Revenue Code and Treasury Regulations relating to such removal. Upon the resignation or removal of the Tax Matters Person, a new Tax Matters Person shall be selected by the Managers. The initial Tax Matters Person shall be Michael Cohen.

7. Tax Elections and Other Tax Decisions. Subject to the provisions of this Schedule B, the Managers, acting by Manager Approval, shall have the authority to make any tax elections and other tax decisions with respect to the Company, to approve any returns regarding any foreign, federal, state or local tax obligations of the Company, and to make all determinations regarding the allocations contemplated by Schedule B.

8. Tax Consequences. The Members are aware of the income tax consequences of the allocations made by this Schedule B and hereby agree to be bound by the provisions of this Schedule B and this Agreement in reporting their shares of the Company's income and loss for income tax purposes.

\*\*\*\*\*

**Schedule C to Limited Liability Company Agreement  
of Berkshire Welco, LLC**

**Defined Terms**

Affiliate: means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person.

Agreement: means this Limited Liability Company Agreement, as amended, modified, supplemented or restated from time to time.

Allocation Exhibit: the meaning set forth in Section 7.2.

Approved Sale: the meaning set forth in Section 11.6(a).

Approved Sale Notice: the meaning set forth in Section 11.6(a)(iii).

Assignee: the meaning set forth in Section 11.2(d).

Available Units: the meaning set forth in Section 11.4(a).

Board of Managers or Board: means the Board of Managers described in Section 5.1(a) of this Agreement.

Buyout Purchase Price: the meaning set forth in Section 9.3(a).

Capital Account: the meaning set forth in Section 2 of the Allocation Exhibit.

Capital Contributions: means, with respect to any Member, the aggregate amount of cash or other property contributed to the capital of the Company by such Member.

Certificate of Organization: the meaning set forth in the recitals of this Agreement.

Closing Notice: the meaning set forth in Section 11.3(e).

Code: means the Internal Revenue Code of 1986, as amended from time to time, and any applicable regulations promulgated thereunder by the United States Treasury Department.

Common Units: the meaning set forth in Section 4.1.

Company: the meaning set forth in the first paragraph of this Agreement.

Company Acceptance Period: the meaning set forth in Section 11.3(b).

Company Notice: the meaning set forth in Section 11.3(c).

Company Notice Date: the meaning set forth in Section 11.3(c).

Company Purchase Notice: the meaning set forth in Section 11.3(b).

Confidential Information: means all documents and information, whether written or oral (including, without limitation, confidential and proprietary information with respect to customers, sales, marketing, production, costs, business operations and assets), of the Company.

Covered Person: the meaning set forth in Section 14.2(a).

Co-Sale Election Period: the meaning set forth in Section 11.4(b).

Co-Sale Notice: the meaning set forth in Section 11.4(a).

Co-Sale Participant: the meaning set forth in Section 11.4(b).

Co-Sale Purchase Price: the meaning set forth in Section 11.4(a).

Co-Sale Right: the meaning set forth in Section 11.4(a).

Co-Sale Right Units: the meaning set forth in Section 11.4(b).

Massachusetts Act: the meaning set forth in the recitals of this Agreement.

Daily Annual Investor Distribution Rate: means a percentage equal to fifteen percent (15.0%) *divided by* 365, or 0.000410958%.

Deemed Liquidation Event: shall refer to any of the following events:

(ii) a merger or consolidation in which

(A) the Company is a constituent party or

(B) a subsidiary of the Company is a constituent party and the Company issues Units pursuant to such merger or consolidation,

except for any such merger or consolidation involving the Company or any subsidiary of the Company in which the Units outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for securities that represent, immediately following such merger or consolidation, at least a majority of the voting power of (1) the surviving or resulting company or (2) if the surviving or resulting company is a wholly owned subsidiary of another company immediately following such merger or consolidation, the parent company of such surviving or resulting company; or

(iii) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by

such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

Depreciation: the meaning set forth in Section 1 of the Allocation Exhibit.

Designated Members: the meaning set forth in Section 11.3(a).

Distributable Cash: means the excess of all cash on hand at the beginning of such period plus all cash receipts of the Company in such period from any source whatsoever, including normal operations, sales of assets, proceeds of borrowings, Capital Contributions of the Members, proceeds from any capital transaction, and all other sources minus the sum of the following amounts for the relevant period:

- (a) Ongoing Expenses;
- (b) payments of interest, principal and premium and points and other costs of borrowing under any indebtedness of the Company; and
- (c) amounts set aside as reserves for working capital, budgeted capital expenditures, investments in geographic expansion contemplated or approved by the Board of Managers, other capital or operating investments contemplated or approved by the Board of Managers, contingent liabilities, replacements or any other expenditures deemed by the Board of Managers to be necessary or appropriate in relation to the current and anticipated future needs of the Company.

Effective Date: the meaning set forth in the first paragraph of this Agreement.

Electing Major Member: the meaning set forth in Section 9.3(a).

Election Date: the meaning set forth in Section 9.3(a).

Exempted Securities: means (i) up to 320,000 Series A Investor Units; (ii) any Price Adjustment Units; (iii) up to 130,000 Incentive Units, or such greater number of Incentive Units as may be approved for issuance pursuant to any amendment to this Agreement made in accordance with the terms and conditions hereof; (iv) any equity securities of a Company subsidiary issued to the Company; (v) Units issued by reason of a Unit subdivision or combination, or a distribution of Units made ratably to Members pursuant to Manager Approval; (vi) Common Units actually issued upon the exercise of options or warrants to acquire Common Units or Common Units actually issued upon the conversion or exchange of securities convertible into Common Units, in each case provided such issuance is pursuant to the terms of such option, warrant or convertible security.

Gross Asset Value: the meaning set forth in Section 1 of the Allocation Exhibit.

Guaranteed Payments: the meaning set forth in Section 7.4.

Incentive Unit: the meaning set forth in Section 4.3(a).

Inclusion Notice: the meaning set forth in Section 11.4(b).

Initial Managers: means Michael Cohen and Christopher Weld.

Investor Majority: means Members holding a majority of the Series A Investor Units then outstanding.

Liquidating Agent: the meaning set forth in Section 12.1(a).

Loss: the meaning set forth in Section 1 of Schedule B.

Major Investor: means any Member holding Series A Investor Units that has, together with its Affiliates, made Capital Contributions in respect of such Units of at least \$100,000.

Major Member: means each of (i) Michael Cohen or (ii) Christopher Weld, in each case for so long as such Member holds any Units of the Company.

Manager: means the Initial Managers and each other Person who may be designated or elected from time to time by the Members in accordance with Section 5.1 to serve as a Manager hereunder, in each case, as long as such person shall serve, and in such person's capacity, as a Manager hereunder.

Manager Approval: means approval by a majority of the Managers then in office.

Massachusetts Act: the meaning set forth in the recitals of this Agreement.

Member: means any Person named as a member of the Company on Schedule A hereto and any Person admitted as an additional Member or as a substitute Member pursuant to the terms and subject to the conditions of this Agreement, in such Person's capacity as a member of the Company. For all purposes other than as expressly set forth herein, the Members shall be treated as a single class.

Member Acceptance Period: the meaning set forth in Section 11.3(c).

Member Approval: Means the vote or affirmative written consent of the Members holding a majority of the Units then-outstanding, voting together as a single class.

Member Purchase Notice: the meaning set forth in Section 11.3(c).

New Securities means any equity securities (or securities exercisable for or convertible into equity securities) of any kind or class issued by the Company after the date hereof, other than any Exempted Securities issued after the Effective Date.

Non-Electing Major Member: the meaning set forth in Section 9.3(a).

Notice Date: the meaning set forth in Section 11.7(b).

Offer Acceptance Notice: the meaning set forth in Section 11.7(c).

Offer Acceptance Period: the meaning set forth in Section 11.7(c).

Offer Notice: the meaning set forth in Section 11.7(b).

Ongoing Expenses: means all direct expenses incurred by or on behalf of the Company in connection with administering the Company and carrying on its business, including all legal and accounting fees.

Oversubscribing Member: the meaning set forth in Section 11.3(d).

Permitted Transfer: the meaning set forth in Section 11.1(a).

Permitted Transferee: the meaning set forth in Section 11.1(a).

Person: shall include any corporation, association, joint venture, partnership, limited partnership, limited liability company, business trust, institution, foundation, pool, plan, government or political subdivision thereof, government agency, trust or other entity or organization or a natural person.

Preferred Distributions: the meaning set forth in Section 7.3(a)(i).

Price Adjustment Units: the meaning set forth in Section 4.2(c).

Profit: the meaning set forth in Section 1 of Schedule B.

Prohibited Transfer: the meaning set forth in Section 11.5(c).

Projected Tax Liability: means, with respect to any Member and any tax year of the Company, the amount of taxable income and gain allocated to such Member for federal income tax purposes in the Company's tax return filed or to be filed with respect to such tax year, multiplied by the highest combined marginal rate applicable to income of an individual for federal and Massachusetts income tax purposes, taking into account (i) any nondeductibility for state tax purposes of any item that is deductible for federal tax purposes, and (ii) any deductibility for federal tax purposes of state income taxes.

Proposed Acquirer: the meaning set forth in Section 11.6(a)(iii).

Proposed Transferee: the meaning set forth in Section 11.3(a).

Prospective Purchaser: the meaning set forth in Section 11.7(a).

Purchase Right: the meaning set forth in Section 11.7(c).

Qualified Member: the meaning set forth in Section 11.7(a).

Exhibit. Regulatory Allocations: the meaning set forth in Section 4(f) of the Allocation

Remainder Securities: the meaning set forth in Section 11.7(e).

Remaining Transfer Units: the meaning set forth in Section 11.3(c).

ROFR Purchasers: the meaning set forth in Section 11.3(e).

Sale of the Company: the meaning set forth in Section 11.6(a).

Securities Act: means the United States Securities Act of 1933, as amended.

Selling Members: the meaning set forth in Section 11.6(a).

Series A Investor Units: the meaning set forth in Section 4.1.

Series A Investor Unit Subscription Agreement: the meaning set forth in Section 4.2(b).

Tax Distribution: the meaning set forth in Section 7.3(a).

Tax Matters Person: the meaning set forth in Section 6 of the Allocation Exhibit.

Threshold Amount: the meaning set forth in Section 4.3(c).

Transfer: the meaning set forth in Section 11.1(a).

Transfer Notice: the meaning set forth in Section 11.3(a).

Transfer Notice Date: the meaning set forth in Section 11.3(b).

Transfer Purchase Price Per Unit: the meaning set forth in Section 11.3(a).

Transfer Units: the meaning set forth in Section 11.3(a).

Transferring Member: the meaning set forth in Section 11.3(a).

Treasury Regulations: means the Treasury regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including the corresponding provisions of any future regulations).

Unit: the meaning set forth in Section 4.1.

Unit Sale: the meaning set forth in Section 11.6(a).

Unrestricted Period: the meaning set forth in Section 11.7(e).

Unreturned Capital Amount: means, with respect to any Member holding Series A Investor Units at any time, the excess of (x) such Member's Capital Contributions in respect of such Series A Investor Units over (y) the aggregate amount of Preferred Distributions previously made to such Member in respect of such Series A Investor Units.

Unsubscribed New Securities: the meaning set forth in Section 11.7(d).

Unsubscribed Units: the meaning set forth in Section 11.3(d).

Value Notice: the meaning set forth in Section 9.3(b).

\*\*\*\*\*



Commonwealth of Massachusetts  
Department of Revenue  
Christopher C. Harding, Commissioner

mass.gov/dor

Letter ID: L1051221888  
Notice Date: October 4, 2019  
Case ID: 0-000-673-511



## CERTIFICATE OF GOOD STANDING AND/OR TAX COMPLIANCE



MICHAEL COHEN  
BERKSHIRE WELCO, LLC  
264 MAIN ST STE 3  
GREAT BARRINGTON MA 01230-2248

### *Why did I receive this notice?*

The Commissioner of Revenue certifies that, as of the date of this certificate, BERKSHIRE WELCO, LLC is in compliance with its tax obligations under Chapter 62C of the Massachusetts General Laws.

This certificate doesn't certify that the taxpayer is compliant in taxes such as unemployment insurance administered by agencies other than the Department of Revenue, or taxes under any other provisions of law.

**This is not a waiver of lien issued under Chapter 62C, section 52 of the Massachusetts General Laws.**

### *What if I have questions?*

If you have questions, call us at (617) 887-6400 or toll-free in Massachusetts at (800) 392-6089, Monday through Friday, 8:30 a.m. to 4:30 p.m..

### *Visit us online!*

Visit [mass.gov/dor](http://mass.gov/dor) to learn more about Massachusetts tax laws and DOR policies and procedures, including your Taxpayer Bill of Rights, and MassTaxConnect for easy access to your account:

- Review or update your account
- Contact us using e-message
- Sign up for e-billing to save paper
- Make payments or set up autopay

Edward W. Coyle, Jr., Chief  
Collections Bureau



William Francis Galvin  
Secretary of the  
Commonwealth

*The Commonwealth of Massachusetts*  
*Secretary of the Commonwealth*  
*State House, Boston, Massachusetts 02133*

September 27, 2019

TO WHOM IT MAY CONCERN:

I hereby certify that a certificate of organization of a Limited Liability Company was filed in this office by

**BERKSHIRE WELCO, LLC**

in accordance with the provisions of Massachusetts General Laws Chapter 156C on **March 12, 2018.**

I further certify that said Limited Liability Company has filed all annual reports due and paid all fees with respect to such reports; that said Limited Liability Company has not filed a certificate of cancellation; that there are no proceedings presently pending under the Massachusetts General Laws Chapter 156C, § 70 for said Limited Liability Company's dissolution; and that said Limited Liability Company is in good standing with this office.

I also certify that the names of all managers listed in the most recent filing are:  
**MICHAEL COHEN, CHRISTOPHER WELD**

I further certify, the names of all persons authorized to execute documents filed with this office and listed in the most recent filing are: **MICHAEL COHEN, CHRISTOPHER WELD**

The names of all persons authorized to act with respect to real property listed in the most recent filing are: **MICHAEL COHEN, CHRISTOPHER WELD**

In testimony of which,

I have hereunto affixed the

Great Seal of the Commonwealth

on the date first above written.

*William Francis Galvin*

Secretary of the Commonwealth



## **Dispensing Plan**

The Pass is applying for a Marijuana Product Manufacturer's license for 5000 ft<sup>2</sup> at the 1375 Main St. site in Sheffield, MA. The license does not allow for dispensing to adults or people under the age of 21 – literally, not a single person. Therefore, to ensure safety and compliance with the municipal and state law under 935 CMR 500 and under the regulations promulgated and updated from time-to-time by the regulating state agency the Cannabis Control Commission (CCC), The Pass, it's Executive Management Team (EMT) and it's Security Director will prohibit dispensing of cannabis, cannabis waste, cannabis infusions or organic material likely to have come in contact with cannabis to be diverted, dispensed or sold or directed outside of the strict handling policies and procedures that govern the organization's operations.

The Pass acknowledges that in order to dispense cannabis to adults over the age of 21 in the Commonwealth of Massachusetts, they must first apply and obtain a retail license for doing so, which is a discrete and separate form of licensure wholly apart from the application and licensed operations of a Marijuana Product Manufacturer.

## **Diversity Plan**

The Plan below will apply to both to 'The Pass' cultivating (for which it has a provisional license), manufacturing and retail locations all at the same site in Sheffield:

### ***Introduction***

The Pass (or “the Company”) believes in creating and sustaining a robust policy of inclusivity and diversity and that diversity in the workforce is key to the integrity of a company’s commitment to its community. This plan is designed to promote equity among minorities, women, veterans, people with disabilities, and LGBTQ+ in operations of our business. The Pass will make every effort to employ and advance in employment qualified and diverse people at all levels within the Company. Based in the rural Berkshires, The Pass may have some challenges to achieving workplace diversity, but the Company is nonetheless committed to diversity in all elements of its operations.

### ***Diversity Goals***

The Pass is committed to building a diverse organization that fosters inclusivity. The Pass will develop and maintain a diverse, aware and inclusive working environment through its: 1) targeted recruitment efforts; 2) employee training and development program as well as vendor selection; and 3) the responsible oversight of the Company’s Diversity Committee (“the Committee”). The Company’s long-term goal is to employ a workforce that is at least 50% composed of diverse individuals (minorities, women, people identifying as LGBTQ+, veterans, and persons with disabilities), and to retain and advance those employees within the Company and use 25% of outside vendors that qualify as diverse.

### ***Diversity Programs***

#### **Recruiting a Diverse Workforce**

The Pass’ recruitment efforts are designed to maintain a steady flow of qualified diverse applicants for employment and will include the following steps:

- Developing partnerships with community organizations serving minorities, women, people of LGBTQ+, veterans, and persons with disabilities for employment referrals. These organizations will likely be based throughout the Berkshires, but we will make special efforts in the City of Pittsfield and the City of North Adams. The Company’s initial community partners are identified below;
- Providing quarterly briefings to representatives from recruitment sources concerning current and future job openings;
- Encouraging employees from diverse groups to refer applicants for employment;
- Working with our community partners, participating in career day programs and/or job fairs in Pittsfield and North Adams at least twice a year and encouraging The Pass’ diverse employees to participate whenever possible. Pittsfield and North Adams are cities with a more diverse population than other municipalities in the Berkshires. MassHire Berkshire

Career Center and Berkshire Resources for Integration of Diverse Individuals Through Education, described more below, are two organizations that have agreed to work with the Pass on this effort;

- Establishing recruitment efforts at higher learning institutions including Berkshire Community College; and
- Ensuring that job openings are sent to community partners at least quarterly.

#### Vendor Selection

- Use whenever possible vendors that qualify as diverse.

With respect to community partners, The Pass has already fostered relationships with the following entities, who will work collaboratively with the Company to ensure that the diversity goals expressed in this plan are met or exceeded:

- MassHire Berkshire Career Center - A partnership between Berkshire Training & Employment Program and the Massachusetts Division of Career Services, chartered by the MassHire Berkshire Workforce Board. The Career Center provides quality programs and services to employers, job seekers, and its community partners, and also regularly hosts/organizes job fairs and employment workshops.
- Berkshire Resources for Integration of Diverse Individuals through Education (“BRIDGE”) – A women and minority-run non-profit, grassroots organization dedicated to advancing equity and justice by promoting cultural competence, positive psychology, and mutual understanding and acceptance. BRIDGE’s advocacy efforts have led to the adoption of policies and practices in Berkshire towns and businesses to support equity and justice.

The Pass intends to leverage the vast networks of its community partners to increase visibility of the Company within the diverse communities of the Berkshires and also to better identify diverse individuals for employment at the Company.

The Pass has retained THC Staffing Group as an outside check on the company’s internal policies and attainment of goals. THC Staffing Group is a national staffing organization that does diverse recruiting for the cannabis industry. They will review the following written policies and documentation:

- Hiring
- Training
- Retention
- Workplace Culture
- Ant-Retaliation and Harassment Reporting
- Internal Investigations

- Agreements: NDA, Arbitration, Non-competes
- Pay Equity
- Promotion and Demotion
- Termination and Layoffs

These conclusions will be written in a report and sent to the Executive management team for purposes of auditing and evaluating the plans and their results.

They will also offer suggestions for incorporating diverse workforce into the company's strategic business plans, examining specific company goals and how they can be compatible for the objectives and for ongoing workforce hiring, retention, and development.

### Employee Retention, Training and Development

The Pass' diversity awareness training emphasizes the Company's zero-tolerance commitment against harassment and discrimination, and strict adherence to take corrective action should any issues, concerns, or complaints arise. All employees will be required to complete the diversity awareness training program during employee orientation. Training will begin immediately upon hiring, and all new employees will be required to participate in an orientation program that will introduce and stress the importance of the Diversity Plan.

Upon completion of the orientation program, new hires will be equipped to describe, discuss, and implement the Diversity Plan. Following successful completion of the general orientation program, employees will undergo additional diversity training that will be tailored to the employee's specific job function. All employees will also be required to undergo annual diversity training to ensure knowledge of newly determined best practices and policies and continued familiarity and compliance with the Diversity Plan.

Dissemination of information about the Diversity Plan will include the following:

- Inclusion of zero-tolerance policies against harassment, discrimination, bullying, and other actions;
- Postings in suitable areas for employee communication;
- Annual diversity training programs for all employees;
- Quarterly progress evaluation meetings with appropriate personnel; and
- Formal presentations made to management and employees on diversity initiatives.

### Diversity Committee Oversight

The Pass will establish the Diversity Committee to assist the executive management team and the Human Resources Manager with the implementation, growth and regular review of the Diversity Plan. The initial members of the Committee will be selected by the executive management team based on their diverse status and their personal commitments to diversity. Additional members of the Committee may be added at the discretion of the executive management team.

The Committee will be responsible for:

- Developing statements, policies, programs, and internal and external communication procedures in support of the goals of the Diversity Plan;
- Assisting in the identification of problematic areas for diversity and inclusion, including receiving, reviewing, and resolving any complaints of discrimination or other non-compliance with regards to fair treatment of all employees;
- Assisting management in arriving at effective solutions to problems regarding issues of diversity and inclusion;
- Designing and implementing internal reporting systems that measure the effectiveness of programs designed to support a Company culture that fosters diversity;
- Keeping the Company informed of diversity plan progress through quarterly reports;
- Reviewing the Diversity Plan with management at all levels of the organization to ensure that the Diversity Plan is understood; and
- Auditing internal and external job postings to ensure information is in compliance with the Diversity Plan and other Company diversity policies and procedures.

### ***Diversity Measurement***

The Human Resources Manager will be responsible for auditing the Diversity Plan. The Human Resources manager will develop an annual audit report (“Annual Audit Report”) setting forth the Company’s performance in fulfilling the goals of the Diversity Plan. The Annual Audit Report will contain:

- Employment data, including information on minority, women, disabled, LGBTQ+, and veteran representation in the workforce in all job classifications; average salary ranges; recruitment and training information (all job categories); and retention and outreach efforts;
- The total number and value of all contracts and/or subcontractors awarded for goods and services;
- An identification of each subcontract actually awarded to a member of a diverse group and the actual value of such subcontract;
- A comprehensive description of all efforts made by the Company to monitor and enforce the Diversity Plan;
- Information on diverse group investment, equity ownership, and other ownership or employment opportunities initiated or promoted by the Company;
- Data tracking the Company’s participation at career day programs and/or job fairs in Pittsfield (e.g., identities of Company employees who participated, identities of candidates who expressed interest in employment with the Company through use of a sign-in sheet, documentation of follow-up contacts with interested candidates);
- Other information deemed necessary or desirable to ensure compliance with the rules and regulations governing marijuana establishments in Massachusetts; and
- When available, a workforce utilization report including the following information for each job category:

- The total number of persons employed;
- The total number of men employed;
- The total number of women employed;
- The total number of veterans;
- The total number of individuals identifying as LGBTQ+;
- The total number of service-disabled veterans; and
- The total number of members of each racial minority employed.

The Annual Audit Report will enable the Human Resources Manager to track the Company's progress toward its long-term diversity hiring goal of a workforce at least 50% composed of diverse individuals. The Human Resources Manager, working with the Diversity Committee, will track the Company's progress toward its long-term Diversity Hiring using intermediate diversity hiring targets for years 1-4 of its operation. Those intermediate targets are:

**Commencement of Operations:** minimum 25% diverse individual employment / 5% diverse vendors

**End of Year 1:** minimum 30% diverse individual employment / 10% diverse vendors

**End of Year 2:** minimum 35% diverse individual employment / 15% diverse vendors

**End of Year 3:** minimum 40% diverse individual employment / 20% diverse vendors

**End of Year 4:** minimum 45% diverse individual employment / 25% diverse vendors

These short-term metrics and oversight by the Human Resources Manager will ensure that The Pass is regularly evaluating progress toward its diversity hiring goals and employing corrective actions if targets are not met. The Annual Audit Report will include data and commentary discussing the Company's achievement of its intermediate diversity hiring goals and, if necessary, provide for corrective actions if the Company is falling short of those goals. The Human Resources Manager, with support from the Diversity Committee, would be responsible for implementing any such corrective actions.

### ***Diversity Plan Acknowledgments***

The Pass pledges to adhere to the requirements set forth in 935 CMR 500.105(4)(a) which provides the permitted advertising, branding, marketing and sponsorship practices for all Marijuana Establishments. The Pass likewise pledges not to employ any of the prohibited practices articulated in 935 CMR 500.105(4)(b). Finally, none of the actions taken or programs instituted by The Pass will violate the Commission's regulations with respect to limitations on ownership or control or any other applicable state laws.

## **Financial Recordkeeping**

**Accounting and Bookkeeping.** All accounting and bookkeeping will be performed by CohnReznick in accordance to the Operating Agreement in and in compliance with federal, state, and local tax laws using QuickBooks Online for instant and real-time account updates and management of the Chart of Accounts (CofA). These practices will be reviewed quarterly or upon changes or updates to 935 CMR 500 and will be audited yearly to ensure best practices and ensure our accounting, bookkeeping, auditing and tax compliance is deployed efficiently throughout the business.

**Business Records.** All business records will be the responsibility of the Executive Management Team (EMT) and will be filed and tracked electronically. All physical documents will be kept on file as well as scanned and filed electronically. Electronic records will consist of the following:

Assets and liabilities; current and historical ownership /“cap table”; investor lists; insurance and escrow requirements; licensing fees; monetary transactions; penalties assessed; renewal fees; CCC change fees; monetary transactions; sales records; books of accounts including journals, ledgers, supporting documents, agreements, checks, invoices, vouchers, signed forms, vendor contracts, supplier agreements; employee salaries and wages and compensation; executive compensation; bonus, benefit, or item of value paid to any individual affiliated with The Pass; quantity amount sold over the initial twelve month (12mo.) period and each three month (3mo.) period thereafter; retail projections based on wholesale and retail market rates per inventory on-hand; and any and all other documentation the EMT elects to track and file or deems pertinent.

Business records will be reviewed quarterly by the EMT. They will be used in profit forecasts, P&L statements, and to assess the financial health of the Marijuana Product Manufacturer.

## **PERSONNEL POLICIES AND PROCEDURES**

### **The Pass: Executive Management Team (EMT)**

**Co-Founder and CEO: Chris Weld.** Founder and CEO of Berkshire Mountain Distillers (BMD) Chris Weld brings award-winning commercial horticulture and manufacturing experience to The Pass. Chris will leverage his expertise in botany – 10-plus years of cultivating botanicals for commercial use in BMD spirits, and commercial organic compliant orchard for a decade – systems and process engineering, and rigorous compliance - 2x/mo. federal filing and 1x/mo. MA filing for BMD - to drive consumer value across all products and fulfill the many technical and operational challenges inherent to commercial manufacturing in regulatory-driven industries.

For example, Chris worked in two regulated industries over his lifetime. He has excelled in the highly regulated alcoholic beverage and spirits industry in Massachusetts and nationwide creating craft consumable products for adult use, a skill which he will bring to The Pass. BMD's Greylock Gin named “#1 Craft Gin in the US” by the New York Times and a Gold Medal Winner at SF Spirits Competition. Berkshire Bourbon Whiskey is Gold Medal Winner in Jim Murray's Whiskey Bible. Ragged Mountain Rum is now a Double Gold Medal Winner at SF Spirits Competition. However, before BMD, Chris had a 20-year career in emergency medicine, including a DEA RX number. He was never cited for violations and never had a single infraction. Not only does Chris excel in craft consumer products but he has history of doing so while maintaining strict compliance with changing municipal, state, and federal laws.

Chris's entrepreneurial experience stretches outside of alcohol and spirits. Chris has a design, build, and construction firm with his architect wife Tyler for 15 years and has extensive knowledge of permitting and building codes that will drive The Pass design and buildout. He has a B.A. Biology and Biochem from Skidmore College and a M.A. Emergency Medicine. He lives with his wife and three kids in Great Barrington, MA.

As CEO, Chris is responsible for company operations, including diversity and community impact plans, compliant construction, design and buildout of the manufacturing facilities in Sheffield, profits and losses (P&L), production planning and inventory management (PPIM), equipment and equipment maintenance schedules. company reporting, company compliance, emergency preparedness, and has final accountability on all SOPs and Policies and Procedures. From time to time, he may take on other duties as determined by the EMT.

**Co-Founder and President: Michael S. Cohen.** Michael is an accomplished entrepreneur and investor who will apply his expertise in building connections between ethical brands and consumers to the emerging cannabis industry. As a mid-90's pioneer of the Internet advertising business, Michael helped establish the value of the Internet as a marketing channel. With cannabis and The Pass, communication and education takes on an outsized role, and Michael will be instrumental in supporting the evolution of the nascent market in Massachusetts. Michael will drive a high-integrity adult-only brand strategy and clear communication and educational outreach for The Pass while overseeing the company's daily operations and investor relations.

Michael is a serial entrepreneur and founder. His first venture was as the Founder and President of iballs Internet Media, which sold to Avenue A (Aquantive) a successful company IPO in 2000 and was later acquired by Microsoft \$6.5B in 2009. His vision grew a small startup into an enormous

enterprise value, and will ensure The Pass's ethical adult-use business model maintains integrity while it grows alongside the nascent industry. He looks forward to working with a diverse workforce, enabling access to new generation of young entrepreneurs, and showing how businesses can best grow. His second venture was as founder of East Yoga Center studio in NYC his wife in 2004, which eventually sold 2010. He is also a partner of Modern Green Home (Oza Sabbeth Architecture) in Bridgehampton, NY. Having ethical business leadership in a competitive regulated marketplace is an important quality Michael and The Pass brings to the MA adult-use cannabis landscape.

Michael has overseen brand strategy for such firms as Kodak, IBM, Fila, Mecox Gardens, Weplay, Goodfriend Motors, Edible Communities. As an investor in Merida Capital, he knows what good business fundamentals are in the cannabis space.

Michael has B.A. in English from Tufts University and an MBA in Marketing from Columbia University. He lives in Great Barrington, MA with his wife, three children, five dogs, rabbits, chickens, and horse.

As President, Michael is in charge of the business operations and investor relations. He has dual responsibility for the fiscal health of the company alongside Chris. He is responsible for personnel, HR, accounting and bookkeeping practices, financial recordkeeping, vendor and licensing relationships, compliant and ethical marketing and advertising, and other duties as the EMT may designate from time to time.

**Chief Strategy Officer: Nial C. DeMena.** Nial DeMena is a technically proficient, resourceful, and cross-disciplinary leader of the cannabis industry. His ability to efficiently distill and disseminate new information, and his hands-on approach to product development design, manufacturing, and commercialization will help drive company strategy and execution from pre-seed to post-sale.

As an entrepreneur, Nial is the Founder and CEO Manna Molecular Science, LLC in which time – less than 2 full years of operation – he has expanded his business into over 10-plus legal cannabis states and beyond a \$20M valuation, employing fifteen in the process. Manna Molecular Science is represented on the NCIA Board of Directors by former NCIA President Ean Seeb of Denver Relief Consulting. He has developed at Manna alongside world-class pharmaceutical scientists – inventor of Mylan's Fentanyl patch, MIT Ph.D formulation chemist, tenured Pharmaceuticals professor – a successful industry-leading cannabis-infused transdermal patch using semi-autonomous robotics. He continues to run the company and expand evidence-based cannabis medicines and delivery forms for the national and Massachusetts market while serving as CSO to The Pass.

Nial has worked in the legal MA medical spaces, too, as the former COO of Manna Wellness, Director of Community Development for The Greenway Wellness Foundation, and was one of the original Co-Founders of Temescal Wellness, Massachusetts before leaving for Manna Molecular Science. He has a B.A. English, Colby College and a M.A Rhetoric and Technical Writing from Virginia Tech.

He will bring his extensive network and industry leading entrepreneurial expertise to guide and set the compliance and business strategies for The Pass.

### **Key Personnel**

**Director of Production (DoP).** Director of Production is responsible for the quality, consistency, product types, product variety, extractions, and line of finished marijuana infused products (MIPs) produced with the marijuana manufacturing license as well as compliance and waste remove related thereto. He is responsible for maintenance and recordkeeping relating to calibration and safe operations of equipment and equipment handling. He is the direct supervisor to the manufacturing technicians.

**Manufacturing Technicians (2x).** Manufacturing Technicians are responsible for running extractions according to parameters and SOPs designed by The Pass's DoP, which include but are not limited to MIPs, post-processing of extracts, handling and storage of extracts and MIPs, and waste disposal.

**Security Director.** Security Director is responsible for compliance with CCC regulations and municipal regulations applicable to The Pass's operations. SD will verify and maintain software and technology in place to adequately provide oversight, security, and monitoring in all required areas; advise internal management on the implementation of compliance and security programs; operate compliant waste disposal plan; oversee compliant transportation of usable cannabis as well as manage two transportation agents; monitor compliance systems, policies, and procedures to ensure effectiveness; take responsibility for communications with the CCC and for incident reporting; oversee emergency policies and procedures. SD will regularly patrol facility and cultivation spaces and be a strong physical presence in and an assuring face of The Pass

**Transportation Agents (2x).** Transportation agents are responsible for safe, efficient, and compliant delivery and transportation of usable cannabis between Site 1 and Site 2 and to retail and wholesale partners. TAs will work closely with the SD to ensure safe transport. TAs must also exude The Pass's culture of responsibility and serve as public faces of the organization. Must be cooperative with authority figures and able to comply with complex CCC regulations.

**Chief Financial Officer (CFO).** The Pass's CFO has final authority for all financial reporting, accounting methods, financial recordkeeping and for reporting to the EMT and CEO on a regular basis. CFO institutes all compliant financial and tax recordkeeping at the local, state, and federal level.

**Controller.** The controller assists the EMT and CPA with bookkeeping, accounts payable/receivable, payroll administration, tax preparation and filing, and other financial reportage as required by the Board of Directors, CCC, or other authority.

**Human Resources Manager.** The HR Manager reports to the CEO and President on all matters pertaining to the hiring and staffing policies and procedures, current staffing and training needs, compliance training, CCC personnel regulations and changes thereto. HR Manager has authority of diversity goals and for enacting the organizational and community outreach necessary to meet goals. Individual is charged with day-to-day workplace training and with compliance with federal, state, and municipal law.

### **Personnel Recordkeeping**

HR Manager will be responsible for maintaining and updating personnel records and delegating responsibilities to department managers. Personnel files will be generated at the time of hiring. These will include electronic records of each of the items listed hereunder:

Name, address, contact information, emergency contact information, previous work experience, CV or resume, gender, race, other miscellaneous publicly available information, background check results, fingerprints, benefits summary, interviewer report, name and EID of employee responsible for hiring said employee, EID number of employee, employment history—administrative actions, violations, reports of misconduct, performance history, quarterly performance reviews, and any other relevant employment data; proof and attendance records of training, certification.

### **Personnel Training Program**

All employees hired to work at will be qualified and licensed as a marijuana establishment agent and, additionally, will be properly trained to serve in their respective roles in a manner setting up for success and consistency in regulatory compliance.

All marijuana establishment agents will be 21 years of age or older in compliance with 935 CMR 500.030. Similarly, no marijuana establishment will be hired who has been convicted of a criminal offense in the Commonwealth involving the distribution of controlled substances to minors, or a like violation of the laws of another state, the United States, or foreign jurisdiction, or a military, territorial, or Native American tribal authority.

Additionally, all marijuana establishment agents will meet the requirements of 935 CMR 500.802. In the event that discovers any of its agents become unsuitable for licensure as marijuana establishment

agents, will terminate the agent's employment and notify the Commission within 1 business day that the agent is no longer associated with the establishment.

Pursuant to 935 CMR 500.105(2), and before performing any regulated job activities, each of marijuana establishment agents will complete a -specific training program customized for the roles and responsibilities of the agent's job function. This agent training will, at minimum, include the Responsible Vendor Program to be established by the Commission and at least eight (8) hours of on-going training annually.

On or after July 1, 2019, all of current owners, managers, and employees –regardless of function – will have attended and successfully completed a Responsible Vendor Program operated by an education provider accredited by the Commission to provide the annually required responsible vendor training to marijuana establishment agents. All new, non-administrative employees will complete the Responsible Vendor Program within 90 days of employment. As required, all owners, managers, and employees will subsequently complete the continuing vendor responsibility program courses once every year thereafter.

Records of responsible vendor training program compliance will be maintained for at least four (4) years per Commission regulations.

As part of overall training, marijuana establishment agents will receive training on a variety of topics, including but not limited to the following:

1. Marijuana's physical effect on the human body, including variations in different types of marijuana products and methods of administration, and recognizing the visible signs of impairment;
2. Best practices for diversion prevention and prevention of sales to minors and full training on the components of Diversion Prevention Plan;
3. Compliance with seed-to-sale tracking, storage and inventory management
4. requirements;
5. Training on secondary identification checks, including acceptable forms of
6. identification and recognizing fraudulent documents;
7. All other areas of Responsible Vendor training as determined by the Commission; and
8. Other significant state laws and rules affecting operators, such as:
  - Local and state licensing and enforcement;
  - Incident and notification requirements;
  - Administrative and criminal liability and license sanctions and court sanctions;
  - Waste disposal and health and safety standards;
  - Patrons prohibited from bringing marijuana onto licensed premises;
  - Permitted hours of sale and conduct of establishment;
  - Permitting inspections by state and local licensing and enforcement authorities;
  - Licensee responsibilities for activities occurring within licensed premises;
  - Maintenance of records and privacy issues; and
  - Prohibited purchases and practices.

Our training program is based on the above listed policies and procedures to insure proper and full compliance to the above listed standards. Each employee is to be

trained on schedules, system, communication and staffing requirements. They are to be trained on state CCC regulations, and regarding job qualifications such as listed below:

- Facility Entrance/Egress
- Proper Decorum and Behavior on Premises
- Hygienic Practices
- Badging Requirements
- On Duty Responsibilities
- Cultivation Policies and Procedures (when necessary)
- Storage of Cannabis
- Disposal and Waste Management
- Compliant Packaging
- Incident Reporting and Escalation
- Anti-diversion Methods and How to Detect Diversion
- Accidents, Diversions, Losses, “Reportable Occurrences.”
- State and Municipal Inspection Requirements and Policies
- Emergency Preparedness
- Alarm, Security Procedures
- Workplace Safety
- Real-Time Inventory Management Training
- Electronic Tracking System Training
- Transportation Manifests and Transportation Protocols.

Training records for each employee will be maintained for at least four years. Training will be updated and refreshed annually or more frequently as needed, such as in the event of a CCC approved change in protocol. Compliance with procedure will be monitored on an ongoing basis through internal audits and performance reviews. Training will feature full mock “dry runs” prior to operations. These will be graded on a pass/fail basis by the Security Director or departmental Director.

**Training and Performance Evaluation.** Employees will be fully trained and will demonstrate proficiency in performing all on-duty activities prior to being authorized to perform duties without direct supervision. The training will include training on all equipment being utilized. Ongoing training, internal audits, and performance evaluations will ensure that the processes achieve and maintain the highest degree of quality and suitability for maintaining the quality of the useable marijuana for dispensing and the ongoing compliance of the packaged and labeled products.

**Diversity and Placement Records.** The HR Manager will be responsible for the Diversity Plan and the Affirmative Action Plan. All records that entail employee placement records, utilization and workforce analyses, and historical Change Log of diversity programs. DBEs and qualified vendors including amounts will also be recorded in the Diversity Log electronically. All cultural competency and unconscious bias training and official attendance records will be stored in the electronic Diversity Log.

Spending on diversity initiatives, diverse outreach programs, and program efficacy will be recorded by the HR Manager. Recommendations generated at the annual review of Diversity Plan,

Diversity Log, and Affirmative Action Plan will be recorded in the Diversity and Affirmative Action Plans and accounted for in the version history and Change Log.

### **Personnel Policies Including Background Checks**

The Pass will maintain personnel records as a separate category of records due to the sensitivity and importance of information concerning agents, including registration status and background check records. At a minimum, will maintain the following personnel records: 1) job descriptions for each employee and volunteer position, as well as organizational charts consistent with the job descriptions; 2) personnel records for each marijuana establishment agent; 3) a staffing plan that will demonstrate accessible business hours and safe conditions; 4) personnel policies and procedures; and 4) all background check reports obtained in accordance with 935 CMR 500.030. will employ marijuana agents to fill the following job roles for its marijuana cultivation facility in Sheffield:

- Director of Production
- Manufacturing Technician (2x)
- Security Director
- Transportation Agents (2x).
- Chief Financial Officer (CFO)
- Controller.
- Human Resources Manager

**Marijuana Agent Personnel Records.** Personnel records for each marijuana agent (as defined in 935 CMR 500.002) will be maintained for at least twelve (12) months after termination of the agent's affiliation with and will include, at a minimum, the following: 1) all materials submitted to the Commission pursuant to 935 CMR 500.030(2); 2) documentation of verification of references; 3) the job description or employment contract that includes duties, authority, responsibilities, qualifications, and supervision of the marijuana agent; 4) documentation of all required training, including training regarding privacy and confidentiality requirements, and the signed statement of the individual indicating the date, time, and place he or she received said training and the topics discussed, including the name and title of presenters; 5) documentation of periodic performance evaluations; 6) records of any disciplinary actions taken; 7) notice of completed responsible vendor and eight-hour related duty training; 8) results of initial background investigation, including CORI reports; and 9) documentation of all security related events (including violations) and the results of any investigations and description of remedial actions, restrictions, or additional training required as a result of an incident. These personnel records will be kept in a secure location to maintain confidentiality and be only accessible to the agent's manager or members of the executive management team.

**Marijuana Agent Background Checks.** In addition to completing the Commission's agent registration process, all agents hired to work for will undergo a detailed background investigation prior to being granted access to marijuana cultivation facility or beginning work duties. Background checks will be conducted on all agents in their capacity as employees or volunteers for the cultivation facility pursuant to 935 CMR 500.100 and will be used by the Security Director, who will be registered with the Department of Criminal Justice Information Systems pursuant to 803 CMR 2.04: iCORI Registration and the Commission for purposes of determining the suitability of individuals for registration as a marijuana establishment agent with the licensee.

For purposes of determining suitability based on background checks performed in accordance with 935 CMR 500.101(1), will consider: 1) all conditions, offenses, and violations are construed to include Massachusetts law or like or similar law(s) of another state, the United States or foreign jurisdiction, a military, territorial or Native American tribal authority, or any other jurisdiction; 2) all criminal disqualifying conditions, offenses, and violations include the crimes of attempt, accessory, conspiracy, and solicitation. Juvenile dispositions will not be considered as a factor for determining suitability; and 3) where applicable, all look back periods for criminal conditions, offenses, and violations included in 935 CMR 500.802 commence upon the date of disposition; provided, however, that if disposition results in incarceration in any institution, the look back period will commence upon release from incarceration.

The Pass will make employment suitability determinations in accordance with the procedures set forth in 935 CMR 500.800. In addition to the requirements established in 935 CMR 500.800, will: 1) comply with all guidance provided by the Commission and 935 CMR 500.802; 2) consider whether offense(s) or information that would result in a Presumptive Negative Suitability Determination under 935 CMR 500.802. In the event a Presumptive Negative Suitability Determination is made, will consider the following factors:

1. Time since the offense or incident;
2. Age of the subject at the time of the offense or incident;
3. Nature and specific circumstances of the offense or incident;
4. Sentence imposed and length, if any, of incarceration, if criminal;
5. Penalty or discipline imposed, including damages awarded, if civil or  
1. administrative;
6. Relationship of offense or incident to nature of work to be performed;
7. Number of offenses or incidents;
8. Whether offenses or incidents were committed in association with  
dependence on drugs or alcohol from which the subject has since recovered;
9. If criminal, any relevant evidence of rehabilitation or lack thereof, such as information about compliance with conditions of parole or probation, including orders of no contact with victims and witnesses, and the subject's conduct and experience since the time of the offense including, but not limited to, professional or educational certifications obtained; and
10. Any other relevant information, including information submitted by the subject; and
11. Consider appeals of determinations of unsuitability based on claims of erroneous information received as part of the background check during the application process in accordance with 803 CMR 2.17: Requirement to Maintain a Secondary Dissemination Log and 2.18: Adverse Employment Decision Based on CORI or Other Types of Criminal History Information Received from a Source Other than the DCJIS.

Upon adverse determination for a particular applicant, will provide the applicant a copy of their background screening report and a pre-adverse determination letter providing the applicant with a copy of their right to dispute the contents of the report, who to contact to do so and the opportunity to provide a supplemental statement. After 10 business days, if the applicant does not dispute the contents of the report and no applicant-provided statement gives cause to alter the suitability determination, an adverse action letter will be issued providing the applicant information on the final determination made by along with any legal notices required. All suitability

determinations will be documented in compliance with all requirements set forth in 935 CMR 500 et seq. and guidance provided by the Commission.

The will cause its background screening to be conducted by an investigative firm holding the National Association of Professional Background Screeners (NAPBS®) Background Screening Credentialing Council (BSCC) accreditation and capable of performing the searches required by the regulations and guidance provided by the Commission. Any references provided by the marijuana agent will be verified at the time of hire. As deemed necessary, individuals in to be hired for key positions with unique and sensitive access (e.g., members of the executive management team) will undergo additional screening, which may include interviews with prior employers and/or colleagues. As a condition of continued employment, agents, volunteers, contractors, and subcontractors are required to renew their Registration Cards (as that term is defined in 935 CMR 500.002) annually and submit to other background screening as may be required by or the Commission.

### **Staffing Plan and Business Hours**

**Hiring and Recruitment.** Human Resource Manager will engage the executive management team and supervisory staff on a regular basis to determine if vacancies are anticipated and whether specific positions need to be created in response to company needs. The Pass's hiring practices will include but are not limited to the following and apply to all types of working situations including hiring, firing, promotions, harassment, training, wages and benefits:

1. Equal Employment Opportunity Commission (EEOC) Compliance;
2. Diversity Plan;
3. Plan to Positively Impact Areas of Disproportionate Impact;
4. Background Checks and References;
5. Mandatory reporting of criminal convictions (and termination if  
1. necessary);
6. State and Federal Family Leave Act;
7. Workplace Safety Laws;
8. State and Federal Minimum Wage Requirements; and
9. Non-Disclosure and Non-Complete Agreements
2. Standards of Employee Conduct

The Pass's mission is to provide a professional workplace free from harassment and discrimination for employees. has a zero-tolerance policy on harassment or discrimination based on sex, race, color, national origin, age, religion, disability, sexual orientation, gender identity, gender expression, or any other trait or characteristic protected by any applicable federal, state, or local law or ordinance. Harassment or discrimination on the basis of any protected trait or characteristic contravenes Code of Conduct. A broad range of behavior could constitute harassment and/or discrimination. In general, harassment is any verbal or physical conduct that: 1) has the purpose or effect of creating an intimidating, hostile, or offensive working environment; 2) as the purpose or effect of unreasonably interfering with an individual's work performance; or 3) adversely and unjustifiably affects an individual's employment opportunities.

Employees are expected to maintain the highest degree of professional behavior. All harassment or discrimination by employees is strictly prohibited. Furthermore, harassing or discriminatory

behavior of non-employees directed at employees or customers also is condemned and will be promptly addressed.

**Violence and Weapons in the Workplace.** Any and all acts of violence in the workplace will result in immediate dismissal of the employee, customer, or parties involved. The Police Department and other law enforcement authorities, as applicable, will be contacted immediately in the case of a violent event. Weapons are not permitted at facility by employees, customers, or any other parties. Agents (including employees) found carrying weapons at facility will be immediately terminated. Vendors or other visitors to the facility found carrying weapons on the premises will be asked to leave and/or the police will be notified accordingly.

**At-Will Employment.** In the state of Massachusetts, employment is assumed to be at-will unless otherwise stated. At will employment implies that employer and employee alike may terminate the work relationship at any given moment and for any legitimate purpose. Wrongful termination may be more difficult to prove in an at-will arrangement because of the freedom that each party has to end the employment. However, there are still many instances wherein a termination or discharge can be called wrongful, even in an at-will employment.

**Workplace Attire.** The required attire for registered marijuana agents at facility varies based upon required duties. New hire training will define appropriate attire for each role and the Human Resources Manager will be responsible for ensuring compliance with all requirements is met.

**Business Hours.** Operating Hours: M-S – 8 AM – 8 PM

### **Overview of Personnel Policies and Procedures**

**Standard Employment Practices.** The Pass values and thrives off of the contributions of its management and staff positions. intends to be a market leader in workplace satisfaction by offering competitive wage and benefits packages and nurturing a corporate culture that values meaningful work-life balance, complete transparency and accountability and service to the community.

**Advancement.** The organization will be structured hierarchically with promotional opportunities within each department. Participation in training and bi-annual performance evaluations will be critical for any promotions or pay increases. pledges to be an equal opportunity employer and advancer of its employees. See Diversity Plan for greater detail.

**Written Policies.** The Pass's written policies will address, inter alia, the Family and Medical Leave Act (FMLA), the Consolidated Omnibus Budget Reconciliation Act (COBRA), equal employment opportunity, discrimination, harassment, the Employee Retirement Income Security Act (ERISA), disabilities, maintenance of personnel files, privacy, email policy, 935 CMR 500.000 et. seq., holidays, hours, sick time, personal time, overtime, performance reviews, disciplinary procedures, working hours, pay rates, overtime, bonuses, veteran preferences, drug testing, personnel policies, military leaves of absence, bereavement leave, jury duty, CORI checks, smoking, HIPAA, patient confidentiality, and compliance hotline.

**Investigations.** The Pass will develop policies and procedures to investigate any complaints or concerns identified or raised internally or externally in order to stay remain compliant with 935 CMR 500.000 et. seq.

**Designated Outside Counsel.** The Pass may retain counsel specializing in employment law to assist the Human Resources Manager with any issues and questions.

**Job Classifications.** Positions are categorized by rank and by department. The executive management team oversees the overall success toward achieving the company's mission. Founders, and are responsible for implementation of the mission and the greater executive management team is responsible for ensuring that all departments are properly executing their functions and responsibilities. Job classification is comprised of three rank tiers: Executive Management, Directors, Management/Supervisors, and Non-Management Employee Staff.

**Work Schedules.** Work schedules will be either part-time, full-time, or salaried, depending on the specific position. Schedules will be set according to the needs of each department as determined by the applicable department director and the supervising executive manager. It is the department Director's responsibility to develop and implement a work schedule that provides necessary duty and personnel coverage but does not exceed what is required for full implementation of operations. The departmental Director will also ensure that adequate coverage occurs on a daily basis and does not lead to unnecessary utilization of overtime coverage.

**Mandatory Meetings and Community Service Days.** There will be a mandatory reoccurring company-wide meeting on a quarterly basis. All full-time employees will be notified of their required attendance. will also organize and encourage employee participation in community service activities in Sheffield. The Pass pledges to pay employees for up to two community service days per calendar.

**Breaks.** Daily breaks, including lunch breaks, will comply with the laws of the Commonwealth of Massachusetts.

**Performance Reviews.** Performance reviews will be conducted by executive or departmental directors. Reviews will be conducted at three-month intervals for new employees during the first year of employment and at 6-month intervals thereafter. A written review will be provided to, and signed by, the employee under review. Reviews must be retained in each employee's personnel file and treated as a personnel record in accordance with The Pass's Recordkeeping Policies. Performance reviews must take into account positive performance factors and areas requiring improvement. Scoring systems may be utilized to help reflect the employee's overall performance.

**Leave Policies.** The Pass's leave policies will comport with all state and federal law. All full-time employees will receive two 40-hour weeks of paid vacation per annum. Additional leave must be requested at least 2 weeks in advance and approved by the employee's department manager. will determine which holidays will be observed and which departments will not be required to work. will offer paid maternity leave. Additional leave will not be paid and must be approved by the department manager. Internships may either be part-time or full-time depending on the development of internship training program and the company's then-existing staffing needs.

The Pass anticipates observing the following holidays:

- New Year's Day;
- Martin Luther King Day;
- Presidents' Day;

- Memorial Day;
- Independence Day;
- Labor Day;
- Thanksgiving; and
- Christmas Day.

## **Disciplinary Policies**

**Purpose.** The Pass's discipline policy and procedure is designed to provide a structured corrective action process to improve and prevent a recurrence of undesirable behavior and/or performance issues. The steps outlined below have been designed for consistency with organizational values, best practices, and employment laws. The Pass reserves the right to combine or skip steps depending upon facts of each situation and the nature of the offense – each offense will be reviewed and remediated on a case-by-case basis. The level of disciplinary intervention may also vary. The procedure outlined below is intended to provide guidance to the Human Resources Manager and executive management team and not bind them in any given disciplinary scenario. Some of the factors that will be considered depend upon whether the offense is repeated despite coaching, counseling, and/or training; the employee's work record; and the impact the conduct and performance issues have on organization.

### **Procedure.**

**Step 1: Counseling and Verbal Warning.** Step 1 creates an opportunity for the immediate supervisor to schedule a meeting with an employee to bring attention to the existing performance, conduct, or attendance issue. The supervisor should discuss with the employee the nature of the problem or violation of company policies and procedures. The supervisor is expected to clearly outline expectations and steps the employee must take to improve performance or resolve the problem. Within five business days, the supervisor will prepare written documentation of a Step 1 meeting. The employee will be asked to sign the written documentation. The employee's signature is needed to demonstrate the employee's understanding of the issues and the corrective action needed.

**Step 2: Written Warning.** While it is hoped that the performance, conduct, or attendance issues that were identified in Step 1 have been corrected, recognizes that this may not always be the case. A written warning involves a more formal documentation of the performance, conduct, or attendance issues and consequences. During Step 2, the immediate supervisor and a department manager or director will meet with the employee and review any additional incidents or information about the performance, conduct, or attendance issues as well as any prior relevant corrective action plans. Management will outline the consequences for the employee of his or her continued failure to meet performance and/or conduct expectations. A formal performance improvement plan (PIP) requiring the employee's immediate and sustained corrective action will be issued within five business days of a Step 2 meeting. A warning outlining that the employee may be subject to additional discipline up to and including termination if immediate and sustained corrective action is not taken may also be included in the written warning.

**Step 3: Suspension and Final Written Warning.** There may be performance, conduct, or safety incidents so problematic and harmful that the most effective action may be the temporary removal of the employee from the workplace. When immediate action is necessary to ensure the safety of the employee or others, the immediate supervisor may suspend the employee pending the results of an

investigation. Suspensions that are recommended as part of the normal progression of this progressive discipline policy and procedure are subject to approval from a next-level manager and the Human Resources Manager. Depending upon the seriousness of the infraction, the employee may be suspended without pay in full-day increments consistent with federal, state and local wage-and-hour employment laws. Nonexempt/hourly employees may not substitute or use an accrued paid vacation or sick day in lieu of the unpaid suspension. Due to Fair Labor Standards Act (FLSA) compliance issues, unpaid suspension of salaried/exempt employees is reserved for serious workplace safety or conduct issues. The Human Resources Manager will provide guidance so that the discipline is administered without jeopardizing the FLSA exemption status. Pay may be restored to the employee if an investigation of the incident or infraction absolves the employee.

**Step 4: Recommendation for Termination of Employment** The last and most serious step in the progressive discipline procedure is a recommendation to terminate employment. Generally, will endeavor to exercise the progressive nature of this policy by first providing warnings, a final written warning, and/or suspension from the workplace before proceeding to a recommendation to terminate employment. However, reserves the right to combine and skip steps depending upon the circumstances and severity of each situation and the nature of the offense. Furthermore, employees may be terminated without prior notice or disciplinary action. Management's recommendation to terminate employment must be approved by the Human Resources Manager and department manager or designee. Final approval may be required from the CEO or designee. Notwithstanding the foregoing, nothing in this policy provides any contractual rights regarding employee discipline or counseling nor should anything in this policy be read or construed as modifying or altering the employment-at-will relationship between and its employees.

**Appeal Process.** Employees will have the opportunity to present information that may challenge information management has used to issue disciplinary action. The purpose of this process is to provide insight into extenuating circumstances that may have contributed to the employee performance and/or conduct issues while allowing for an equitable solution. If the employee does not present this information during any of the step meetings, he or she will have five business days after that meeting to present information.

**Performance and Conduct Issues Not Subject to Progressive Discipline.** Behavior that is illegal is not subject to progressive discipline and may be reported to the Police Department or other law enforcement authorities. Theft, intoxication at work, fighting and other acts of violence are also not subject to progressive discipline and are grounds for immediate termination.

**Documentation.** The employee will be provided copies of all progressive discipline documentation, including all performance improvement plans. The employee will be asked to sign copies of this documentation attesting to their receipt and understanding of the corrective action outlined in these documents. Copies of these documents will be placed in the employee's official personnel file.

### **Separation of Employment.**

Separation of employment within an organization can occur for several different reasons. Employment may end as a result of resignation, retirement, release (end of season or assignment), reduction in workforce, or termination. When an employee separates from The Pass, his or her supervisor must contact the Human Resources Manager to schedule an exit interview, typically to take place on employee's last workday.

## **Types of Separation.**

### **1. Resignation**

Resignation is a voluntary act initiated by the employee to end employment with The employee must provide a minimum of two (2) weeks' notice prior to resignation. If an employee does not provide advance notice or fails to actually work the remaining two weeks, the employee will be ineligible for rehire and will not receive accrued benefits. The resignation date must not fall on the day after a holiday.

### **2. Retirement**

An employee who wishes to retire is required to notify his or her department director and the Human Resources Manager in writing at least one (1) month before planned retirement date. It is the practice of to give special recognition to valued employees at the time of their retirement.

### **3. Job Abandonment**

An employee who fails to report to work or contact his or her supervisor for two (2) consecutive workdays will be considered to have abandoned the job without notice effective at the end of the employee's normal shift on the second day. The department manager will notify the Human Resources Manager at the expiration of the second workday and initiate the paperwork to terminate the employee. Employees who are separated due to job abandonment are ineligible to receive accrued benefits and are ineligible for rehire.

### **4. Termination**

Employees of are employed on an at-will basis, and the company retains the right to terminate an employee at any time.

### **5. Reduction in Workforce**

An employee may be laid off due to changes in duties, organizational changes, lack of funds, or lack of work. Employees who are laid off may not appeal the layoff decision through the appeal process.

### **6. Release**

Release is the end of temporary or seasonal employment. The Human Resources Manager, in consultation with the department manager, will inform the temporary or seasonal worker of their release according to the terms of the individual's temporary employment.

**Exit Interview.** The separating employee will contact the Human Resources Manager as soon as notice is given to schedule an exit interview. The interview will be on the employee's last day of work or other day, as mutually agreed upon.

**Return of Property.** The separating employee must return all company property at the time of separation, including but not limited to uniforms, cell phones, keys, facility access cards, computers, and identification cards. Failure to return some items may result in deductions from final paycheck. An employee will be required to sign the Wage Deduction Authorization Agreement to deduct the costs of such items from the final paycheck.

**Termination of Benefits.** An employee separating from is eligible to receive benefits as long as the appropriate procedures are followed as stated above. Two weeks' notice must be given, and the employee must work the full two work weeks. Any accrued vacation and/or accrued sick leave will be paid in the last paycheck.

**Health Insurance.** Health insurance terminates on the last day of the month of employment, unless the employee requests immediate termination of benefits. Information about the Consolidated Omnibus Budget Reconciliation Act (COBRA) continued health coverage will be provided. Employees will be required to pay their share of the dependent health and dental premiums through the end of the month.

**Rehire.** Former employees who left in good standing and were classified as eligible for rehire may be considered for reemployment. An application must be submitted to the Human Resources Manager, and the applicant must meet all minimum qualifications and requirements of the position, including any qualifying exam and current registration with the Commission, when required. Department managers must obtain approval from the Human Resources Manager or designee prior to rehiring a former employee. Rehired employees begin benefits just as any other new employee. Previous tenure will not be considered in calculating longevity, leave accruals, or any other benefits. An applicant or employee who is terminated for violating policy or who resigned in lieu of termination from employment due to a policy violation will be ineligible for rehire.

**Compensation.** The Pass believes that it is in the best interests of both the organization and its employees to fairly compensate its workforce for the value of the work provided. intends to use a compensation system that will determine the current market value of a position based on the skills, knowledge, and behaviors required of a fully-competent incumbent. The system used for determining compensation will be objective and non-discriminatory in theory, application and practice. The company has determined that this can best be accomplished by using a professional compensation consultant, as needed, and a system recommended and approved by the executive management team.

### **Selection Criteria.**

1. The compensation system will price positions to market by using local, national, and marijuana-industry specific survey data.
2. The market data will primarily include marijuana-related businesses and will include survey data for more specialized positions and will address significant market differences due to geographical location.
3. The system will evaluate external equity, which is the relative marketplace job worth of

every marijuana-industry job directly comparable to similar jobs at factored for general economic variances, and adjusted to reflect the local economic marketplace.

4. The system will evaluate internal equity, which is the relative worth of each job in the organization when comparing the required level of job competencies, formal training and experience, responsibility and accountability of one job to another, and arranging all jobs in a formal job-grading structure.
5. Professional support and consultation will be available to evaluate the compensation system and provide on-going assistance in the administration of the program.
6. The compensation system must be flexible enough to ensure that the company is able to recruit and retain a highly-qualified workforce, while providing the structure necessary to effectively manage the overall compensation program.

**Responsibilities.** The executive management team will possess final approval authority over compensation system.

1. On an annual basis the executive management team will review and approve, as appropriate, recommended changes to position-range movement as determined through the vendor's market analysis process.
2. As part of the annual budgeting process, the executive management team will review and approve, as appropriate, funds to be allocated for total compensation, which would include base salaries, bonus, variable based or incentive-based pay, and all other related expenses, including benefit plans.

**Management Responsibility.**

1. The CEO, is charged with ensuring that is staffed with highly qualified, fully-competent employees and that all company programs are administered within appropriate guidelines and within the approved budget.
2. The salary budget will include a gross figure for the following budget adjustments, but the individual determinations for each employee's salary adjustment will be the exclusive domain of the CEO: determining the appropriate head count, titles, position levels, merit and promotional increases and compensation consisting of salary, incentive, bonus, and other discretionary pay for all positions.
3. The CEO will ensure that salary ranges are updated at least annually, that all individual jobs are market priced at least once every two years, and that pay equity adjustments are administered in a fair and equitable manner.

## **The Pass: Executive Management Team (EMT)**

**Co-Founder and CEO: Chris Weld.** Founder and CEO of Berkshire Mountain Distillers (BMD) Chris Weld brings award-winning commercial horticulture and manufacturing experience to The Pass. Chris will leverage his expertise in botany – 10-plus years of cultivating botanicals for commercial use in BMD spirits, and commercial organic compliant orchard for a decade – systems and process engineering, and rigorous compliance - 2x/mo. federal filing and 1x/mo. MA filing for BMD - to drive consumer value across all products and fulfill the many technical and operational challenges inherent to commercial cultivation and manufacturing in regulatory-driven industries.

For example, Chris worked in two regulated industries over his lifetime. He has excelled in the highly regulated alcoholic beverage and spirits industry in Massachusetts and nationwide creating craft consumable products for adult use, a skill which he will bring to The Pass. BMD's Greylock Gin named “#1 Craft Gin in the US” by the New York Times and a Gold Medal Winner at SF Spirits Competition. Berkshire Bourbon Whiskey is Gold Medal Winner in Jim Murray's Whiskey Bible. Ragged Mountain Rum is now a Double Gold Medal Winner at SF Spirits Competition. However, before BMD, Chris had a 20-year career in emergency medicine, including a DEA RX number. He was never cited for violations and never had a single infraction. Not only does Chris excel in craft consumer products but he has history of doing so while maintaining strict compliance with changing municipal, state, and federal laws.

Chris's entrepreneurial experience stretches outside of alcohol and spirits. Chris has a design, build, and construction firm with his architect wife Tyler for 15 years and has extensive knowledge of permitting and building codes that will drive The Pass design and buildout. He has a B.A. Biology and Biochem from Skidmore College and a M.A. Emergency Medicine. He lives with his wife and three kids in Great Barrington, MA.

As CEO, Chris is responsible for company operations, including diversity and community impact plans, compliant construction, design and buildout of the cultivation facilities across two sites in Sheffield, profits and losses (P&L), production planning and inventory management (PPIM), equipment and equipment maintenance schedules. company reporting, company compliance, emergency preparedness, and has final accountability on all SOPs and Policies and Procedures. From time to time, he may take on other duties as determined by the EMT.

**Co-Founder and President: Michael S. Cohen.** Michael is an accomplished entrepreneur and investor who will apply his expertise in building connections between ethical brands and consumers to the emerging cannabis industry. As a mid-90's pioneer of the Internet advertising business, Michael helped establish the value of the Internet as a marketing channel. With cannabis and The Pass, communication and education takes on an outsized role, and Michael will be instrumental in supporting the evolution of the nascent market in Massachusetts. Michael will drive a high-integrity adult-only brand strategy and clear communication and educational outreach for The Pass while overseeing the company's daily operations and investor relations.

Michael is a serial entrepreneur and founder. His first venture was as the Founder and President of iballs Internet Media, which sold to Avenue A (Aquavive) a successful company IPO in 2000 and was later acquired by Microsoft \$6.5B in 2009. His vision grew a small startup into an enormous enterprise value, and will ensure The Pass's ethical adult-use business model maintains integrity while it grows alongside the nascent industry. He looks forward to working with a diverse

workforce, enabling access to new generation of young entrepreneurs, and showing how businesses can best grow. His second venture was as founder of East Yoga Center studio in NYC his wife in 2004, which eventually sold 2010. He is also a partner of Modern Green Home (Oza Sabbeth Architecture) in Bridgehampton, NY. Having ethical business leadership in a competitive regulated marketplace is an important quality Michael and The Pass brings to the MA adult-use cannabis landscape.

Michael has overseen brand strategy for such firms as Kodak, IBM, Fila, Mecox Gardens, Weplay, Goodfriend Motors, Edible Communities. As an investor in Merida Capital, he knows what good business fundamentals are in the cannabis space.

Michael has B.A. in English from Tufts University and an MBA in Marketing from Columbia University. He lives in Great Barrington, MA with his wife, three children, five dogs, rabbits, chickens, and horse.

As President, Michael is in charge of the business operations and investor relations. He has dual responsibility for the fiscal health of the company alongside Chris. He is responsible for personnel, HR, accounting and bookkeeping practices, financial recordkeeping, vendor and licensing relationships, compliant and ethical marketing and advertising, and other duties as the EMT may designate from time to time.

**Chief Strategy Officer: Nial C. DeMena.** Nial DeMena is a technically proficient, resourceful, and cross-disciplinary leader of the cannabis industry. His ability to efficiently distill and disseminate new information, and his hands-on approach to product development design, manufacturing, and commercialization will help drive company strategy and execution from pre-seed to post-sale.

As an entrepreneur, Nial is the Founder and CEO Manna Molecular Science, LLC in which time – less than 2 full years of operation – he has expanded his business into over 10-plus legal cannabis states and beyond a \$20M valuation, employing fifteen in the process. Manna Molecular Science is represented on the NCIA Board of Directors by former NCIA President Ean Seeb of Denver Relief Consulting. He has developed at Manna alongside world-class pharmaceutical scientists – inventor of Mylan’s Fentanyl patch, MIT Ph.D formulation chemist, tenured Pharmaceuticals professor – a successful industry-leading cannabis-infused transdermal patch using semi-autonomous robotics. He continues to run the company and expand evidence-based cannabis medicines and delivery forms for the national and Massachusetts market while serving as CSO to The Pass.

Nial has worked in the legal MA medical spaces, too, as the former COO of Manna Wellness, Director of Community Development for The Greenway Wellness Foundation, and was one of the original Co-Founders of Temescal Wellness, Massachusetts before leaving for Manna Molecular Science. He has a B.A. English, Colby College and a M.A Rhetoric and Technical Writing from Virginia Tech.

He will bring his extensive network and industry leading entrepreneurial expertise to guide and set the compliance and business strategies for The Pass.

## **Key Personnel**

**Director of Production:** Director of Production is on-duty lead in all product manufacturing processes and is responsible for the operations, oversight, and compliance of all manufacturing technicians, and all inflows of input materials, e.g. cannabis or cannabis extracts or concentrates obtained from licensed Marijuana Establishments, and outflows of all cannabis products, finished and unfinished MIPs, cannabis waste, batch production records (BPRs) and the master manufacturing record (MMR).

**Manufacturing Technicians (2x).** Cultivation Technicians are responsible for cultivar propagation, cultivation, harvest, curing, and strain development under the direction of the CD. CAs will proactively monitor and record cultivation conditions and oversee individual plant health, identifying, reporting, and correcting anomalies on a daily basis.

**Security Director.** Security Director is responsible for compliance with CCC regulations and municipal regulations applicable to The Pass's operations. SD will verify and maintain software and technology in place to adequately provide oversight, security, and monitoring in all required areas; advise internal management on the implementation of compliance and security programs; operate compliant waste disposal plan; oversee compliant transportation of usable cannabis as well as manage two transportation agents; monitor compliance systems, policies, and procedures to ensure effectiveness; take responsibility for communications with the CCC and for incident reporting; oversee emergency policies and procedures. SD will regularly patrol facility and cultivation spaces and be a strong physical presence in and an assuring face of The Pass

**Transportation Agents (2x).** Transportation agents are responsible for safe, efficient, and compliant delivery and transportation of usable cannabis between Site 1 and Site 2 and to retail and wholesale partners. TAs will work closely with the SD to ensure safe transport. TAs must also exude The Pass's culture of responsibility and serve as public faces of the organization. Must be cooperative with authority figures and able to comply with complex CCC regulations.

**Chief Financial Officer (CFO).** The Pass's CFO has final authority for all financial reporting, accounting methods, financial recordkeeping and for reporting to the EMT and CEO on a regular basis. CFO institutes all compliant financial and tax recordkeeping at the local, state, and federal level.

**Controller.** The controller assists the EMT and CPA with bookkeeping, accounts payable/receivable, payroll administration, tax preparation and filing, and other financial reportage as required by the Board of Directors, CCC, or other authority.

**Human Resources Manager.** The HR Manager reports to the CEO and President on all matters pertaining to the hiring and staffing policies and procedures, current staffing and training needs, compliance training, CCC personnel regulations and changes thereto. HR Manager has authority of diversity goals and for enacting the organizational and community outreach necessary to meet goals. Individual is charged with day-to-day workplace training and with compliance with federal, state, and municipal law.

## **Personnel Training Program**

All employees hired to work at will be qualified and licensed as a marijuana establishment agent and, additionally, will be properly trained to serve in their respective roles in a manner setting up for success and consistency in regulatory compliance.

All marijuana establishment agents will be 21 years of age or older in compliance with 935 CMR 500.030. Similarly, no marijuana establishment will be hired who has been convicted of a criminal offense in the Commonwealth involving the distribution of controlled substances to minors, or a like violation of the laws of another state, the United States, or foreign jurisdiction, or a military, territorial, or Native American tribal authority.

Additionally, all marijuana establishment agents will meet the requirements of 935 CMR 500.802. In the event that discovers any of its agents become unsuitable for licensure as marijuana establishment agents, will terminate the agent's employment and notify the Commission within 1 business day that the agent is no longer associated with the establishment.

Pursuant to 935 CMR 500.105(2), and before performing any regulated job activities, each of marijuana establishment agents will complete a -specific training program customized for the roles and responsibilities of the agent's job function. This agent training will, at minimum, include the Responsible Vendor Program to be established by the Commission and at least eight (8) hours of on-going training annually.

On or after July 1, 2019, all of current owners, managers, and employees –regardless of function – will have attended and successfully completed a Responsible Vendor Program operated by an education provider accredited by the Commission to provide the annually required responsible vendor training to marijuana establishment agents. All new, non-administrative employees will complete the Responsible Vendor Program within 90 days of employment. As required, all owners, managers, and employees will subsequently complete the continuing vendor responsibility program courses once every year thereafter.

Records of responsible vendor training program compliance will be maintained for at least four (4) years per Commission regulations.

As part of overall training, marijuana establishment agents will receive training on a variety of topics, including but not limited to the following:

1. Marijuana's physical effect on the human body, including variations in different types of marijuana products and methods of administration, and recognizing the visible signs of impairment;
2. Best practices for diversion prevention and prevention of sales to minors and full training on the components of Diversion Prevention Plan;
3. Compliance with seed-to-sale tracking, storage and inventory management
4. requirements;
5. Training on secondary identification checks, including acceptable forms of
6. identification and recognizing fraudulent documents;
7. All other areas of Responsible Vendor training as determined by the Commission; and
8. Other significant state laws and rules affecting operators, such as:

- Local and state licensing and enforcement;
- Incident and notification requirements;
- Administrative and criminal liability and license sanctions and court sanctions;
- Waste disposal and health and safety standards;
- Patrons prohibited from bringing marijuana onto licensed premises;
- Permitted hours of sale and conduct of establishment;
- Permitting inspections by state and local licensing and enforcement authorities;
- Licensee responsibilities for activities occurring within licensed premises;
- Maintenance of records and privacy issues; and
- Prohibited purchases and practices.

Our training program is based on the above listed policies and procedures to insure proper and full compliance to the above listed standards. Each employee is to be trained on schedules, system, communication and staffing requirements. They are to be trained on state CCC regulations, and regarding job qualifications such as listed below:

- Facility Entrance/Egress
- Proper Decorum and Behavior on Premises
- Hygienic Practices
- Badging Requirements
- On Duty Responsibilities
- Manufacturing Policies and Procedures (when necessary)
- Storage of Cannabis and Cannabis Products
- Disposal and Waste Management
- Compliant Packaging
- Incident Reporting and Escalation
- Anti-diversion Methods and How to Detect Diversion
- Accidents, Diversions, Losses, “Reportable Occurrences.”
- State and Municipal Inspection Requirements and Policies
- Emergency Preparedness
- Alarm, Security Procedures
- Workplace Safety
- Real-Time Inventory Management Training
- Electronic Tracking System Training
- Transportation Manifests and Transportation Protocols.

Training records for each employee will be maintained for at least four years. Training will be updated and refreshed annually or more frequently as needed, such as in the event of a CCC approved change in protocol. Compliance with procedure will be monitored on an ongoing basis through internal audits and performance reviews. Training will feature full mock “dry runs” prior to operations. These will be graded on a pass/fail basis by the Security Director or departmental Director.

**Training and Performance Evaluation.** Employees will be fully trained and will demonstrate proficiency in performing all on-duty activities prior to being authorized to perform duties without direct supervision. The training will include training on all equipment being utilized. Ongoing training, internal audits, and performance evaluations will ensure that the processes achieve and

maintain the highest degree of quality and suitability for maintaining the quality of the useable marijuana for dispensing and the ongoing compliance of the packaged and labeled products.

## **Quality Control and Quality Assurance Policies and Procedures**

Sanitation and Safety best practices are paramount to the successful long-term operations of a Manufacturer. Among the areas addressed in The Pass Standard Operating Procedures are: contamination prevention, pest prevention, and cannabis handler restrictions. The Pass is committed to providing the highest quality cannabis possible.

The Pass is committed to continuous improvement and will remain at the forefront of technologies and methodologies that contribute positively to growing only the highest quality cannabis.

The Pass has also developed a procedure for maintaining the quality, security, and inventory control of cannabis via use of a specially designed Metro Dispensing Cart. The Pass's standard operating procedures and commitment to the hiring and training of the best employees will support the goal of providing the safest and most sanitary products to the adult-use marketplace.

## **Quality Assurance, Quality Control, and Product Testing.**

Quality assurance, quality control, and product testing in the marijuana industry is crucial to the success not only of the program, but in maintaining the health and safety of the adult use consumers. With no federal oversight, state regulatory agencies are tasked with ensuring this product's safety to their constituents. While official testing will be conducted by the state-licensed 3<sup>rd</sup> party analytical labs like MCR Labs, The Pass plans to implement best practices and testing standards/methods that will supplement the Department's requirements and ensure the highest quality and safety of adult-use (AU) marijuana and adult-use (AU) marijuana products. Together, the testing standards set by The Pass will establish statistical quality control, preserve analyte (the substance whose chemical constituents are being identified and measured) and evidentiary integrity, compile clear results, store those results compliantly, and ensure that the company responds appropriately to results received. The Pass's Quality Assurance and Quality Control program is based upon industry best practices and will ensure its useable adult-use (AU) marijuana and its subsequent products meet and/or exceed Massachusetts's requirements for testing product quality and safety.

**Function of Quality Assurance and Quality Control (QA / QC).** Although Quality Assurance ("QA") and Quality Control ("QC") are independent, both are interrelated functions. QA is process oriented, encompassing the entire production process from cultivation through packaging of manufactured goods, and ends when the product leaves the cultivation/manufacturing facility and is sent to, and enters, the dispensing facility. The ultimate goal of QA is to ensure consumer safety. Conversely, QC is product oriented, comprised of in-process testing and testing of the final product. The role of QC is to develop testing methods, establish product specifications (e.g., the acceptable values for product quality standards), and perform the testing for every batch cultivated or manufactured.

The Director of Production will develop a process for each product manufactured, validate the process (e.g., repeat the process multiple times to demonstrate that the process always yields a product with the same quality standards), and establish narrow "target" ranges and wider "acceptable" ranges for every process parameter. If deviations happen outside of the narrower range, but within the wider range, QA will accept that the product is safe though not optimal. If the

deviations happen outside of the wider range, QA will reject the batch, or may require additional data to support the release of the product.

For example, The Director of Production would establish as part of the validated lozenge production process that the temperature at which the sugar/water base is to be held during the first stage of this process is 100° Fahrenheit  $\pm$  5° (a 5% tolerance) to ensure no microbial contamination takes place. Such ranges will be set for every relevant process parameter (e.g., holding temperatures at each stage in the process, the amount of each input that is to be added during the production process, the time at which the inputs are to be added, and environmental controls such as humidity) based on process characterization data showing that the product is safe or stable within the wider range of these parameters.

In the event instances of nonconformance or deviations occur, the Director of Production will conduct an investigation using a root cause analysis method. The procedure will follow a Failure Mode Effects Analysis (“FMEA”). Each potential “failure mode” will be logged and an effect analysis, e.g. reasons for failure, will be correspondingly logged and rank prioritized based on severity and frequency. The goal is to limit the number of failure modes and to prevent the severity of these as well as the frequency over time by studying the effect or reason and consequences of such failure, which could range from misshapen lozenges to recalls. It is used in a number of industries to address process inefficiencies and improve QA/QC functionality in-house. Therefore, when deviations or nonconformities occur, “failure modes,” the QA team will then review the investigation and make appropriate changes and validate the process to ensure compliance with regulations.

Another way to view the roles of QA and QC is when there is deviation in the QC process (e.g., a test was performed by QC outside of *its* validated processes). In such a case, the QC team would conduct the investigation into what went wrong, while the QA team would review that investigation for compliance.

**Quality Assurance Policy, Goal, and Objective.** It is The Pass’s policy to efficiently operate and maintain its facilities and products in accordance with best operating practices following all applicable local and state requirements and regulations. The Pass is committed to collecting all necessary data to demonstrate that its operations and handling of adult-use (AU) marijuana are contaminate free and in compliance with state standards. The Pass will maintain and utilize an appropriate tracking, labeling, and record keeping system to ensure batch quality and consumer safety.

The Pass is also committed to ensuring that all environmental control systems are operating within acceptable limits and that adult-use (AU) marijuana is processed in a safe and sanitary manner and contaminate free. The Pass will implement a sanitation and handling plan to ensure adult-use (AU) marijuana is properly handled and free of foreign matters. The Pass will enact a testing protocol to ensure adult-use (AU) marijuana is free of mold, rot and other fungal and bacterial diseases and other potential contaminants.

**Quality Control Activities and Testing.** QC activities are designed and performed to ensure that operations are monitored and products are adequate, appropriate, and contaminate free. Application of these activities is broad in range, from establishing sanitary measures to data handling and reporting procedures. QC activities rely upon qualified and well-trained staff.

A complete set of Standard Operating Procedures with protocols for maintaining a safe and sanitary environment will be established, and all staff/personnel appropriately trained in these procedures and methods in an ongoing basis.

The section below includes many of the steps to be implemented to account for product variability and to establish testing standards. A complete list will be produced along with the SOPs.

### **Sampling Methods and Recordkeeping.**

The Pass will maintain a quality control and assurance program that will follow the trace the production of adult-use (AU) marijuana products from seed to the point they are dispensed to adult use consumers. The manufacturing process will be paired with a thorough recordkeeping system. Each ingredient and production batch will carry a unique identifier that indicates the source, grade, and date of each raw material, used to create each lot of products, and this set of identifiers will be accompanied with a Batch Production Record (“BPR”). Furthermore, each production batch, and unique product, will be created according to a master manufacturing record (“MMR”) to streamline the production process and guarantee product uniformity for dispensed medications.

All batches will be reviewed by a qualified QC employee before being released as a finished product. They will review all analytical test results, along with the written BPRs that accompany each batch. The Director of Production will direct Manufacturing Technicians in all operations related to product review and product dispensing. The Director of Production will ensure that technicians and quality assurance specialists adhere to all state regulations. They will investigate and report dispensing errors in a manner consistent with state regulations. For purchased materials, The Pass will review test results before purchasing from selected vendors.

All test results and corresponding batch records will be stored and tracked electronically to ensure full data integrity and product traceability. Laboratory testing results will be released to adult use consumers, caretakers, and practitioners who have certified qualifying adult use consumers. All final approved products will be permitted to enter the dispensary.

An electronic system will be utilized to store and retrieve consumer information, or any records related to the cultivation, production, or packaging of all products. These systems will exist independently of one another. One system will contain all consumer records stored in a compliant manner in order ensure confidentiality of all adult use consumers. The second system, the Electronic Inventory Tracking System (ETS) will contain all the information necessary to ensure full traceability of all processed adult-use (AU) marijuana products.

The Director of Production will conduct an initial (and subsequent, weekly) inventory in conjunction with the tracking of all unprocessed, in process, and post processed adult-use (AU) marijuana materials via the electronic tracking system. All batches will be managed using this system, to provide traceability of the adult-use (AU) marijuana material as it moves through the processes within the facility. These records will have an online and offline back up; they will be maintained for a period of at least two years.

Adult-use (AU) marijuana product batches that have had samples submitted to the 3<sup>rd</sup> party licensed analytical lab will be retained and delegated to specific compartments or storage areas until the given

batch has passed all mandatory third-party testing. Finished products will not be released for sale until all testing has been completed, passed, and product specifications have been met. Quality control personnel will review these documents and release the appropriate products into the dispensing product stream.

### **Lot Expiration Date and Reworks**

All products formulated by The Pass may be reworked if they fall outside the products specifications and the product format makes this possible. The Director of Production will review the analysis and determine which ingredients (adult-use (AU) marijuana or inactive) and their volumes needed to rework products, so they meet specifications. The Director of Production will then create a BPR outlining the direction employees shall take to complete production based on each product's SOP. Once products have been reworked they will once again have samples taken for testing. The reworked or reprocessed lot will be resampled and retested by The Pass per SOPs. Once a lot has been reworked, a random, homogenized sampling will occur before final packaging. Sampling will be based on batch/lot size. Appropriate paperwork and revisions will accompany the reworked batches and lots.

All lots and batches will be traced using an electronic tracking system so that employees may conduct routine inventory management. A comprehensive, weekly inventory audit will allow for accurate inventory appraisal along with routine examination of lot expiration dates, and any damage or contamination of products.

### **Distribution and Document Control**

The Pass's QA/QC plan will be reviewed monthly during year one, semi-annually thereafter, and any changes and revisions will be forwarded to all appropriate parties. In the event a major revision to the QA/QC Plan is required, each copy will be reissued to all appropriate persons. All revisions to the Plan will be clearly marked. When modifications to the QA/QC Plan become necessary, The Pass is responsible for ensuring that current revisions are included in the QA/QC Plan, and that distribution of the revised Plan is made to all appropriate parties. If The Pass is approved for licensing, a copy of the QA/QC Plan can be provided for review. For a QA/QC plan to function properly, provisions must be made for effective communication of the results from QA/QC activities to all affected parties. The Pass will establish clear channels of communication and outline the given party's responsibilities.

Product testing in the marijuana industry is crucial to consumer safety, and The Pass will follow all required Department testing protocols, implement internal testing standards and methods that supplement Department testing, and utilize independent testing laboratories (if there are Department-approved laboratories by the time The Pass is operational) to ensure the quality and safety of adult-use (AU) marijuana and adult-use (AU) marijuana products it produces. Together, the testing standards set by The Pass will establish statistical quality control, preserve analyte and evidentiary integrity, allowing The Pass to compile clear results, store those results compliantly, and ensure that the company responds appropriately to results received. These standards and methods are based upon industry best practices and will ensure that The Pass's adult-use (AU) marijuana and adult-use (AU) marijuana products go above and beyond the Department's requirements for testing product quality and safety.

### **Labelling.**

All products will be labeled with graphics and required text in 935 CMR 500.105(5) according to grams, of sodium, sugar, carbohydrates and total fat per serving, number of servings, doses per serving, net weight, net quantity of usable marijuana in ounces, solvents and processes used in the creation of the edibles, directions for use, and whether or not the product needs to be refrigerated or contains known allergens.

### **Compliance**

The Pass shall maintain its facilities in a sanitary condition to limit the potential for contamination or adulteration of the cannabis grown, stored or transported in/from the facilities. Below is a comprehensive list of QA/QC activities in which the The Pass will engage:

- Ensure that trash is removed properly and at regular intervals to guard against pest infestation.
- Floors, walls, and ceilings shall be kept in good condition and good repair.
- Use an integrated pest management (IPM) approach to protect against pests.
- Toxic materials will be labeled and stored so as to prevent the contamination of cannabis and in accordance with applicable laws and regulations.
- Ensure that all employees working directly with cannabis conform to sanitary practices while on duty including:
  - Maintaining adequate personal hygiene.
  - Washing hands thoroughly in adequate hand washing facilities before starting work and at any other times when their hands may have become soiled or contaminated and at all times before handling cannabis.
- The Pass will provide its employees and visitors with adequate and convenient hand-washing facilities furnished with running water at a temperature suitable for sanitizing hands:
  - Hand washing facilities will be located where good sanitary practices require employees to wash and sanitize their hands.
  - Effective nontoxic sanitizing cleansers and sanitary towel service.
- The Pass will provide its employees and visitors with adequate, readily accessible lavatories that are maintained in a sanitary condition and in good repair.
- The Pass's facilities shall comply with all other applicable State and local building code requirements.

**Contamination Prevention through Sanitary Facility Accommodations.** Cannabis will be grown in an enclosed and secure facility as well as in a fence outdoor enclosure. The building and facilities have been designed to accommodate sanitation and cleaning efforts that will ensure a suitable environment for clean sanitary cannabis.

**Contamination Prevention through Controlled Environment.** Transportation and storage of cannabis at The Pass's Manufacturing facility, including all sites therein, will be accomplished via the Metro Dispensary Cart and specialized TruckVault. A cart and vault are specifically designed to meet all of the needs of dispensing medicine in a secure and sanitary manner. The design specifications include drawers with "egg crate" adjustable dividers, a Seal Lock Bar which allows a

seal to be put on each drawer after being filled and inspected, and a Lock Alert Keyless Touchpad with programmable codes for transportation agents and supervisors which can be changed daily.

The cart will be inspected and stocked then sealed and locked for transportation. Each morning the cart will be loaded with cannabis from the grow facilities and then transported to the MA licensed Marijuana Establishment. When the transportation agent dispenses cannabis the drawer seal will be broken by utilization of the key code. The drawers will then be closed and locked. This procedure will be repeated throughout the day as deliveries are made to licensed Marijuana Establishment(s). At the end of business, the cart will be transported back to the grow facility for inspection, inventory management, restocking, and sanitation.

**Contamination Prevention through Sanitation Safeguards.** All necessary precautions must be taken during the dispensing of cannabis to prevent contamination of cannabis and its packaging materials. These safeguards include, but are not limited to:

- Cleaning and sanitizing all equipment, containers, and other contact surfaces on a schedule that proactively prevents contamination.
- Controlling all potential vectors of contamination through documented procedures (SOPs), engineering controls (facility / equipment design), and routine maintenance (cleaning and replacement of consumable contamination prevention materials).
- Using sanitary handling procedures as per The Pass SOPs.
- Providing sanitary facilities with clean water appropriate for attending to the personal hygiene efforts of staff and visitors.
- Storing packaged cannabis products appropriately to prevent contamination and adulteration through the use of engineering controls that maintain the appropriate temperature, light, and moisture of the environment that cannabis products are stored in.
- Preventing cross-contamination and mix-ups between contaminated or adulterated marijuana and clean marijuana by having a designated storage cart for storing waste cannabis products such as damaged or recalled product.

**Personal Hygiene and Cannabis Handler Restrictions.** Pre-employment training will be provided to ensure that proper hygienic practices are employed by all staff in the facility. Employees will be required to maintain adequate personal cleanliness, including the practice of thorough hand washing for a minimum of 30 seconds before entering the facility for the work day and returning from a break, as well as after the use of the bathroom or any situation in which they expose themselves to an environment that may be a source of contamination. Frequent handwashing is the best means of controlling and containing contamination of hand contact with soiled or contaminated surfaces.

Antibacterial liquid soap or liquid detergent designed to remove contaminants, bacteria, and pathogens from the skin will be provided at all handwashing facilities and bathroom facilities. Single use towels or sanitary drying methods will be employed to sufficiently dry hands before returning to work. This a personal hygiene good practice and hand drying should never be done with common use towels or physical means that is not of a sanitary nature. Adequate supplies of both soap and hand towels will be maintained through regular inspections of bathroom and handwashing facilities.

**Handwashing.** The facility is built to provide adequate and readily-accessible toilet facilities for all employees and visitors. Handwashing facilities will be located in all areas that require good sanitary

practices for employees to maintain clean and sanitary hand conditions. Plumbing has been adequately designed to ensure proper operations and consumer product safety. The potable water system both meets and exceeds the EPA's primary drinking water regulations of 40 CFR 141. The potable water system is under continuous pressure, preventing possibility of contamination. Running water will be supplied at a suitable temperature to aid in the cleansing of soiled and contaminated hands to ensure sanitary conditions after handwashing. All drains are adequately designed for the amount of water flowing through them and are directly connected to the sewer with air-break or mechanical seal to prevent backflow.

As part of operations, periodic maintenance and regular cleaning will be scheduled in accordance with any and all CCC regulations. This will include a checklist for date, time, and initials for twice daily checks of all bathroom areas, verifying sanitary conditions exist, and are adequately stocked with toilet paper, soap, and single use paper towels or operational hand-drying devices.

**Physical Barriers.** Professional hygiene and attire will be utilized by all authorized employees dispensing cannabis medicine on behalf of The Pass. Employees will practice suitable personal hygiene and wear Tyvek or disposable suits, booties, and hairnets consistent with the sanitary practice according to The Pass SOPs governing personal hygiene and dress.

Employees will be required to immediately seek first aid in the event a cut or breakage of the skin occurs. At no time will an employee be allowed to handle products while an open wound exists in an area of the body that poses a risk to contamination. Employees will immediately remove themselves from dispensing areas and notify management if an incident occurs that risks contamination of products due to cuts or lacerations of the skin.

**Massachusetts Food Handler Restrictions.** In accordance with food handlers restrictions, employees will be restricted from food handling under the following conditions or ailments until they are resolved. A person suffering from Amebiasis until the etiologic organism is eradicated as proven by two consecutive negative stool specimens, obtained at least 24 hours apart, as verified by a physician. If antiparasitic treatment has been given, the specimens may not be collected sooner than 48 hours after treatment was completed. A person suffering from enterohemorrhagic E. coli until the etiologic organism is eradicated as proven by two consecutive negative stool specimens, obtained at least 24 hours apart, as verified by a physician. If antibacterial treatment has been given, the specimens may not be collected sooner than 48 hours after treatment was completed. A person suffering from shigellosis until the etiologic organism is eradicated as proven by two consecutive negative stool specimens, obtained at least 24 hours apart, as verified by a physician. If antibacterial treatment has been given, the specimens may not be collected sooner than 48 hours after treatment was completed. A person suffering from typhoid fever or paratyphoid fever until the etiologic organism has been eradicated as proven by three negative successive stool specimens collected at intervals of at least 24 hours nor earlier than 48 hours after receiving the last dose of a chemotherapeutic drug effective against Salmonella typhi or paratyphi, and no earlier than 1 month after onset. A person suffering from Hepatitis A, viral hepatitis, or jaundice of unspecified etiology until 1 week following the onset of jaundice, or 2 weeks following symptom onset or IgM antibody positivity if jaundice is not present, as verified by a physician. A person suffering from persistent diarrhea until resolved or judged to be noninfective by a physician.

**Operation, Cleaning, and Maintenance of Equipment.**

1. All equipment involved in the transportation or storage of cannabis shall have Operation, Cleaning, and Maintenance outlined within its own Associated Document. It shall include precautions and protective equipment required for operation.
2. Each piece of equipment shall have a fully developed step-by-step guide to its operation.
3. Maintenance instructions shall be documented in a step-by-step guide within the Associated Document.
4. Maintenance schedules and descriptions of the maintenance shall be documented within the assigned equipment logbook.

### **Waste Management**

All waste will be removed on a schedule that prevents infestation of pests. This schedule requires that waste be removed from the facilities at least once per day, more if necessary, and be disposed of properly.

**Non-Hazardous Waste.** All non-hazardous waste generated by The Pass will be stored, collected, and destroyed or removed from property.

**Hazardous Waste.** Any hazardous waste will be managed in accordance with all Federal and State laws, rules, and regulations related to hazardous waste. This includes sections 3001-3024 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6921-6939g), the Solid Waste Management Act (35 P.S. §§ 6018.101-6018.1003) and regulations promulgated thereunder.

**Cannabis Waste.** Cannabis waste will be disposed of in one of three ways:

- 1) Incineration in a commercial or municipal waste combustor in Massachusetts holding a valid permit issued by the Department of Environmental Protection (DEP). No fewer than two Cultivation Technicians or agents must witness and document destruction; or
- 2) Disposal in a landfill holding a valid permit issued by the DEP or by the appropriate state agency in the state in which the facility is located. No fewer than two Cultivation Technicians must witness and document disposal in the landfill; or
- 3) Grinding and incorporating the waste with solid wastes such that the resulting mixture renders the cannabis waste unusable. Once such waste has been rendered unusable, it may be (1) Disposed of in a solid waste management facility that holds a valid permit issued by the DEP or by the appropriate state agency in the state in which the facility is located; or (2) If the material mixed with the cannabis waste is organic material, the mixture may be composted.

The Pass intends to use option 3. All cannabis waste, municipal waste, and treated “pickup ready” waste that meets the “unusable and unrecognizable” internal standards as well as has undergone the compliant processing method will be kept in one of three dumpsters—two 4-yard dumpsters for municipal and cannabis waste and one 10-yard dumpster for “pickup ready” waste—in an enclosed, locked, LAA accessible to only the Cultivation Director, and Cultivation Technicians, Security Director, and escorted, authorized waste disposal vendors.

Bags will be color coded: **clear is cannabis waste; black is municipal and general facility waste; and white is treated “pickup ready” waste.** The amount of waste expected on a weekly basis is approximately 8.8 cubic yards.

Signage will be posted on the door in block letters that read “WASTE DISPOSAL AREA” and “Do Not Enter—Limited Access Area—Access Limited to Authorized Personnel and Escorted Visitors.”

The room will be kept at ambient temperature and will be kept under negative pressure to ensure that no disease vectors or contaminants from disposed materials or that result from the grinding or shredding process leave the area.

Equipment to be stored in the waste disposal area includes the commercial scale 100HP bulk dump feed material grinder with a 4-cubic yard capacity hopper; two 4-yard dumpsters; one 10-yard dumpster.

Regular cleaning and maintenance will occur on the date of pickup and removal and according to a weekly pickup frequency. Walls, surfaces, equipment, fixtures, and interiors will be wiped and cleaned with permitted sanitizing agents hydrogen peroxide, peroxyacetic acid, or a solution composed of the two. This will maintain a sanitary and pest-free waste disposal storage area. The separate and dedicated limited access area will otherwise be kept in an orderly and organized condition. Secured bags will be stored in their designated dumpsters as indicated by their color coding. Pick-ups will be scheduled with a weekly frequency such that no overflow shall occur.

**Cannabis Waste Storage.** Temporary disposal storage of cannabis, cannabis extracts or oils, or product that are expired, damaged, deteriorated, mislabeled, contaminated, recalled, or whose original packaging has been tampered with, breached, or otherwise compromised will be kept in an enclosed, locked, monitored, temperature and humidity controlled, ventilated limited access area (“LAA”) accessible to only the Cultivation Director, and Cultivation Technicians, Security Director.

Signage will be posted on the door in block letters that read “WASTE DISPOSAL AREA” and “Do Not Enter—Limited Access Area—Access Limited to Authorized Personnel and Escorted Visitors.”

Surveillance cameras will be posted inside and outside of the sole door for entrance and will be posted on the interior and exterior of the secured sally port. Cameras will have an unobstructed view and will be capable of high-definition face capture photographs.

All organic and biological material harvested from plants or the spent byproducts of the cultivation harvest cycle—including but not limited to spent growing media, plant roots, undesirable plant materials, damaged or compromised product—will be handled by employees wearing PPE and placed into clear 55-gallon trash bags that will be tied, secured, and transported into the locked waste disposal area. All sealed bags will be placed into a dumpster that will be labeled “Cannabis Waste” so as to be obvious and distinguishable from the municipal waste disposal bin.

**Municipal Waste Storage.** All non-marijuana waste collected throughout the facility will be placed into black 55-gallon trash bags and will subsequently be secured, tied, and transported to the waste disposal room by employees wearing PPE and complying with the restrictions on food-handlers. All

sealed bags will be placed into a 4-yard dumpster in the secured LAA that will be labeled “Municipal Waste” so as to be distinguishable from the “Cannabis Waste” 4-yard locking dumpster. Both dumpsters, their labels, and the bags—clear or black—will be obvious and distinguishable features that demark cannabis waste from municipal waste and from “pickup ready” waste.

**Treatment of Stored Waste.** Per internal SOPs, all cannabis waste must meet the “unusable and unrecognizable” standard before being designated for disposal at a permitted municipal waste landfill, or processed at a permitted resource recovery facility or incinerator. Therefore, The Pass must have a third type of storage for waste that has been rendered “unusable and unrecognizable” called “pickup-ready” waste.

“Pickup-Ready” waste is the internal designation for waste that has met these standards. It entails that the method of rendering waste has met internal standards. Compliant methods of rendering waste unusable include shredding, grinding, or tearing. Applicant will follow waste treatment SOPs provided to all authorized employees. It will follow the shredding and grinding methodology for pre-treatment and complexation of waste prior to removal.

A Cultivation Director, and Cultivation Technicians, or Security Director wearing PPE will dump the contents of municipal and cannabis waste taken from each of the designated dumpsters at a ratio of 3:1 or greater (cannabis-to-municipal) into a commercial scale dump feed bulk material grinder. The grinder will be operated according to instructions. Material will be ground and shredded to a homogeneous particle size and fed into 55-gallon white trash bags. A visual inspection will be performed to ensure waste has met the standard and a record in the ETS will be kept. Cultivation Director, and Cultivation Technicians, Security Director will log: (i) employee ID numbers, (ii) time and date, (iii) type of waste, (iv) harvest lot or batch ID, (v) quantity or weight of waste processed, and (vi) a visual inspection attestation will be signed by both participating employees verifying that the “unrecognizable and unusable” standard was met and agreed upon by both.

**“Pickup-Ready” Waste Storage.** Secured, tied, white bags containing “pickup-ready” waste will be placed into a 10-yard dumpster labeled “Pickup-Ready Waste” to await pick up from permitted waste disposal vendor. Vendor will transport to a permitted municipal waste landfill or taken to be incinerated at a permitted waste incineration facility. This will occur on an as-needed basis.

**Recalled Cannabis Storage.** In the event of a recall, the disposal will be directed under the supervision of the Cultivation Director, or Security Director with the approval of the CCC. The applicant shall partition one of the regular 4-yard dumpster available in the designed waste disposal area in a smaller locked area within the LAA. This area will be marked by signage that reads “Quarantine Storage.” It will be accessible only to the recall coordinator who is to be the Security Director. All known recalled, quarantined, or suspected or known contamination hazards or contaminated products will be placed in red waste bags by the Security Director and will be recorded into the ETS in the adverse event log. Bags will be secured, tied, and placed into the designated dumpster. They will stay there until the CCC is able to direct and coordinate the disposal of recalled product. Recalled product will not undergo grinding or shredding or treatment of any kind unless authorized by the CCC.

Any agent must report the unauthorized destruction of marijuana to the EMT, which must report any verifiable incident to the CCC and law enforcement in accordance with The Pass’s

Recordkeeping, Reporting, and Notifications policies. Following these strict policies will ensure that any marijuana that is disposed of is unusable and not at risk for diversion; The Pass's proposed Tier V facility was specifically developed to maximize security of every business activity and includes a secure internal loading bay for the loading of waste products.

### **Packaging and Labeling Narrative**

**Regulatory Compliance.** In accordance with CCC 935 CMR 500.150, The Pass will package and label at its facility each form of marijuana products prepared for sale. The original seal of a package may not be broken, except for quality control testing at an approved laboratory, for adverse loss investigations conducted by the CCC or by a dispensary that purchased the marijuana product.

The Pass will package the marijuana in a package that minimizes exposure to oxygen. The package will possess child resistant features so as to protect the contents from unauthorized access by minors. Each package will be sealed with tamper-proof or tamper-evident tape such that any breach of the packaging will be obvious and unmistakable. The packaging will be opaque so as to protect the contents from exposure to light to protect and preserve the quality and efficacy of the active ingredients of the product. The packaging will be resealable so as to provide convenient access and storage to the consumer while protecting the integrity of the product.

The packaging selected is suitable for minimizing the exposure of the product contained to moisture, light, and oxygen. Each package of marijuana will contain a unique identifier indicating the specific lot of processed cannabis – batch production records (BPRs) that is contained in the packaging.

The packaging and labeling has been designed so as to not appear to resemble the trademarked, characteristic or product-specialized packaging of any commercially available food or beverage products.

The packaging and labeling has been designed so as to not contain any statement, artwork, or design that could reasonably lead an individual to believe that the package contains anything other than marijuana.

The packaging and labeling has been designed so as to not contain any seal, flag, crest, coat of arms, or other insignia that could reasonably mislead an individual to believe that the product has been endorsed, manufactured, or approved for use by any state, county, or municipality or any agency thereof.

The packaging and labeling has been designed so as to not contain any cartoon, color scheme, image, graphic, or feature that might make the package attractive to children.

The packing will be labeled according to grams, of sodium, sugar, carbohydrates and total fat per serving, number of servings, doses per serving, net weight, net quantity of usable marijuana in ounces, solvents and processes used in the creation of the edibles, directions for use, and whether or not the product needs to be refrigerated or contains known allergens.

Prior to packaging the first marijuana product The Pass will obtain written approval of the content of the labeling for packaged marijuana products for dispensing. A representative sample package and

label for each type and form of marijuana will be provided to an internal review/audit team and receive approval prior to transportation to a retail marijuana establishment for sale.

Each label will be easily readable with blank print on a white background using a font that is suitably large and clear for ease of reading.

Each label will be made of weather-resistant and tamper-resistant materials.

Each label will be conspicuously located on each package of marijuana. The label will contain the name, address, and permit of the growing/processing facility that the marijuana was cultivated and processed in. The label will list the form, quantity, and weight in ounces of marijuana included in the package. The label will list the amount of individual doses contained within the package and the species and percentage of cannabinoids such as THC and CBD.

Labels will contain an identifier that is unique to a particular harvest batch of marijuana, including the number assigned to each harvest lot or process lot in the harvest batch. The label will include the date the marijuana was packaged.

The label will state the employee identification number of the agent responsible for preparing the package and packaging the marijuana. The label will also contain the employee identification number of the employee shipping the package, if different than the employee who packaged the marijuana.

The label will have the name and address of the dispensary to which the package will be sold. The label will list the expiration date of the marijuana contained within the package. The label will include instructions for proper storage of the marijuana within the package, known allergens, refrigeration instructions (when applicable), and directions for use (when applicable).

Each package label will contain warnings as indicated in 935 CMR 500.105(5) including;

“The impairment effects of edible products may be delayed by two hours or more. This product has not been analyzed or approved by the FDA. There is limited information on the side effects of using this product, and there may be associated health risks. Marijuana use during pregnancy and breast-feeding may pose potential harms. It is against the law to drive or operate machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN”

And

*THC Warning Graphic*

And

*Not Safe For Kids Warning Graphic*

The Pass will inspect each label to ensure that the label is easily readable and text is no less than 1/16 inches in size, is conspicuously placed on the package, includes the name, address and permit number of the Manufacturing facility, lists the form and quantity (ounces.) of marijuana, and contains the following warning – “The impairment effects of edible products may be delayed by two hours or more. This product has not been analyzed or approved by the FDA. There is limited information on the side effects of using this product, and there may be associated health risks. Marijuana use during pregnancy and breast-feeding may pose potential harms. It is against the law to drive or operate

machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN” – lists the amount of individual doses contained within the package (if package contains multiple servings), and the species and percentage of cannabinoids such THC and CBD, contains the warning – “The marijuana in this package should be kept in the original container in which it was dispensed.” – the name and address of the dispensary, lists a use by or expiration date, lists the packaging date, includes instructions for proper storage of the marijuana in the package, contains any other information regarding refrigeration, nuts or other allergens, and any instructions for safe use, and, if an extract or oil use of the word “concentrate” or “extract” and any processing solvents or techniques were used. The inspection step will include a checklist and verification confirmation in the form of the initials of the agent responsible for the verification step in addition to their agent registration number.

The Pass will inspect each label to ensure that the label and package to ensure that they do not bear; any resemblance to the trademarked, characteristic or product-specialized packaging of any commercially available for or beverage product, any statement, artwork, or design that could reasonably lead an individual to believe that the package contains anything other than marijuana, any seal, flag, crest, coat of arms, or other insignia that could reasonably mislead an individual to believe that the product has been endorsed, manufactured, or approved for use by any state, county, or municipality or agency thereof, any cartoon, color scheme, image, graphic, or feature that might make the package attractive to children. The inspection step will include a checklist and verification confirmation in the form of the initials of the The Pass agent responsible for the verification step in addition to their agent registration number.

**The Pass Commitment to Quality.** The Pass is committed to the quality of the products that it produces at its proposed Manufacturing facility at 1375 Main St. Sheffield, MA. The Pass recognizes that product package plays an integral role in ensuring the consistency, purity, and efficacy of the marijuana products and extracts. The Pass further understands the vital importance that packaging plays in the compliance of marijuana products in the state of Massachusetts and the importance to patient experience in terms of ease of use with consideration given to practical needs such as accurate dosing, accessibility, protection from unauthorized access, and storage. As such The Pass will apply the most rigorous approach to ensuring the quality of its packaging of marijuana products.

**Raw Materials and Equipment.** The quality assurance of packaging begins with the design specification of the packaging materials, labels, and equipment. To avoid quality or production disruptions each product will be packaged in enclosure systems bearing labels that meet design specifications identified to protect against quality and production problems. The next step in the sourcing of packaging materials, labels, and packaging equipment is to verify the suitability of the supplier through The Pass’s **responsible vendor program**. The responsible vendor program is designed to assure the appropriate selection of vendors as well as the ongoing suitability of vendors.

**Method.** The Pass employs standard operating procedures (SOPs) governing all aspects of the packaging and labeling process. SOPs which impact the packaging and labeling process cover the purchase, receipt, storage, and handling of raw materials and packaged materials, the maintenance, calibration, and sanitation of the equipment used in packaging, the procedure for generating labels,

the procedure for packaging and labeling of packages of medical marijuana for dispensing, the sanitation of the environment in which packaging will be performed, and the quality control and quality assurance procedures associated with the packaging and labeling process such as verifying compliance of the packaged and labeled medicine.

An overview of the label generation and verification process follows; Labels will be generated via the ETS. The ETS will contain all of the details for each process lot of material such as strain, weights, potency, form, expiration date, manufacturing details including methods and solvents used, and all other data required by 105(5)-(7). The potency data will be linked from the Department approved analytical laboratory provided data. The weights and counts will be input in real time to the ETS at the time of packaging. Dispensary details will be input at the time of labeling based on demand. Labels will be placed conspicuously upon the packaged product and verified by a second employee. The verification will be logged in the ETS with the verifier's identification number. Labeled packages will be stored in accordance with The Pass's MMJ storage SOP.

**Personnel.** The Pass will hire the most qualified and dependable agents available consistent with its hiring practices SOP and will train and authorize employees prior to allowing them to package and label medical marijuana products for dispensing. The training will occur on an ongoing basis to ensure that agents involved in packaging and labeling are completely qualified to perform the duties associated with the packaging and labeling of medical marijuana products for dispensing and that these agents remain qualified. See Qualifications and Training Plan for more details. The training will be ongoing and updated as processes evolve. Changes to the process will be kept in the Master Manufacturing Record, and are subject to EMT approval, SOP revisions, and demonstration of proficiency and authorization prior to agents performing packaging and labeling using the updated packaging and or labeling processes. Any new package and label products will be validated by providing an example to EMT and internal audit team.

**Environment.** The environment that medical marijuana is packaged and labeled in is critical to maintaining the quality of the medicine. Sanitation of the equipment, workbenches, and room where packaging and labeling is done will be performed prior to the start of each shift, at the conclusion of each shift, and prior to processing distinct batches of material. Environmental controls will ensure proper lighting, temperature, humidity, and protection from pests and environmental contamination. Agents will be required to follow strict personal hygiene practices in addition to adherence to contamination minimization protocols regarding dress, entrance/exit procedures, and materials transfer procedures.

**Vendor Assurance Program.** The supplier of packaging and labeling products to The Pass will be evaluated based on two internal guidance programs. The first guidance program is the diversity plan. The diversity plan will ensure The Pass engages vendors who are local and representative of the diversity of the community. The second guidance program is the vendor assurance program. The vendor assurance program is designed to ensure the supply, quality, and suitability of suppliers to The Pass.

Several qualified suppliers will be selected from the evaluation so as to provide redundancy of supply of packaging and labeling materials ensuring that operations will not be interrupted by supply chain interruptions. Each supplier selected to be an approved vendor will be validated in accordance with The Pass's vendor assurance program.

The vendor assurance program ensures the suitability of a supplier through various quality control measures. The program calls for an initial audit of a supplier which verifies that the supplier's quality program and management is sufficient to ensure the reliability and availability of the products The Pass will source from these providers.

As packaging and labeling is integral to providing safe, convenient, and compliant marijuana the packaging quality will receive the highest degree of scrutiny. As part of the vendor assessment the vendor's quality system will be evaluated as it pertains to process, equipment, personnel, and facilities as appropriate where such factors will have an impact on The Pass's packaging and labeling operations.

The Pass will verify that the supplier of packaging and labeling materials has received the appropriate certification of their quality system in accordance with the standards organization or other industry related agency that directly apply to their scope of operations. These certifications will be kept on file by The Pass and updated as appropriate as part of The Pass's quality assurance program.

The Pass will perform an initial vendor assessment using a combination of the following; a questionnaire, phone conversations, email communications, and/or on-site audits. Vendor assessments will be performed on a schedule determined by the quality assurance department in concert with the procurement department such as to ensure the ongoing quality and supply of packaging and labeling products to suit The Pass's needs.

The packaging and labeling material once obtained will be inspected to ensure suitability for intended use. This inspection will include visual, chemical, dimensional, physical, microbial, and performance characteristics in comparison to specification and will be used to ensure the ongoing quality of packaging and labeling supplies and suitability of supplier performance.

**Packaging Environment and Storage Considerations.** The packaging and labeling material will be stored in such a way as to ensure the integrity of the packaging and labeling throughout the life of its intended use including receipt, storage, processing, shipping, and the duration of the shelf life of the contained marijuana products.

The storage environment will take into consideration any and all potential threats to the integrity, functionality, and quality of the packaging and labeling material including light, temperature, moisture, pests, environmental and microbiological contamination. This will be accomplished through the use of engineering controls to manage and monitor temperature, humidity, and air quality in the packaging and labeling environment as well as procedural practices governing the personal hygiene of agents and the cleaning and sanitation of the work environment.

The packaging and labeling material will be handled and processed carefully with care being given to protect the integrity of the packaging and labeling throughout its life cycle.

The equipment used in the packaging process will be maintained so as to ensure that it will provide consistent quality of packaging, labeling, and the product contained within. This includes routine preventative maintenance in accordance with The Pass's maintenance program as well as periodic calibration of analytical balances and other machinery which depends on accurate measurement in accordance with The Pass's metrology program.

**Packaging Process.** The process of packaging and labeling medicinal cannabis will be carefully controlled to ensure accuracy of content, integrity of medicine contained therein, uniform consistency from package to package, and compliance with the CCC's regulations outlined in 935 CMR 500.105. The packaging and labeling processes will be governed by The Pass's SOP for packaging and labeling of marijuana for dispensing.

Packaging and labeling will be suitable for the medical marijuana products being dispensed;

- Transdermal patches will be packaged in Assurpack's child resistant and tamper evident Assurpouch™
- Capsules will be packaged in Assurpack's child resistant and tamper evident Assurpouch™
- Vaporization Pens will be packaged in Assurpack's child resistant Assurcard®
- Vaporization Pen Cartridges will be packaged in Assurpack's child resistant Securslide™
- Infused Cooking Oils will be packaged in O.Berk's 16 ounce amber glass bottles 28020058 secured with O.Berk's tamper evident, child resistant cap 1006342
- Tinctures will be packaged in 1 ounce amber glass bottles 430301 equipped with child resistant droppers CR
- Balms will be packaged in O.Berk's 0.75 ounce polypropylene plastic resin wide mouth containers 1002990 secured with O.Berk's white pictorial child resistant cap 1006327

Careful measurement of volumes, weights, counts, and identities will be employed in the packaging and labeling of marijuana products. These processes will be performed and verified by authorized agents under carefully controlled conditions. This process will be fully integrated with the electronic inventory management system which will combine batch information – Batch Production Records (BPRs) with laboratory data and packaging information such that the label is representative of the contents of each package.

**Training and Performance Evaluation.** Agents responsible for packaging and labeling will be fully trained and will demonstrate proficiency in performing packaging and labeling activities prior to being authorized to package and label marijuana for dispensing. The training will include training on all equipment being utilized. Ongoing training, internal audits, and performance evaluations will ensure that the packaging and labeling processes achieves and maintains the highest degree of quality and suitability for maintaining the quality of the packaged and labeled marijuana for dispensing and the ongoing compliance of the packaged and labeled cannabis products.

**Quality Assurance.** Internal audits of the packaging and labeling process will be conducted on a schedule which assures the consistency and quality of the packaging and labeling process and its impact on the consistency and quality of the marijuana contained in the packaging.

Internal audits will verify The Pass's ongoing commitment to quality and will include; verification of the status of the packaging and label material suppliers ongoing compliance with The Pass's vendor assurance program, verification that machines used in the packaging and labeling process are properly maintained and calibrated, that the environment that packaging and labeling is performed is maintained in accordance with SOPs, that agents performing packaging and labeling duties are current in the training and authorization to perform packaging and labeling, that agents are following the prescribed procedures as documented in the SOP, that the packaged and labeled product meets all quality specifications set forth by The Pass's quality assurance program, and that the packaging is in compliance with CCC regulations.

Quality assurance will also be responsible for the design and execution of stability studies conducted to ensure the ongoing integrity of marijuana products throughout its shelf life. These studies will determine the appropriate storage conditions and expiry dates associated with each marijuana dosage form dispensed. The stability studies will be ongoing and the results will be shared with the PeCCC upon request.

**Quality Control.** Quality control will encompass tests of raw materials, packaged materials for dispensing, and labels on packaged materials. These tests will include visual inspection, chemical analysis, dimensional analysis, physical tests, microbial tests, and performance measurements. These tests will apply to raw materials, verification of packaging and labeling equipment performance against standard, effectiveness in protecting the quality of the packaged medicine, effectiveness of tamper-resistant/tamper-evident seals, the suitability and ruggedness of labels, the accuracy of labels, and consistency and uniformity of the packaged medicine, and the adherence and compliance of packaging and labeling to CCC regulations.

**Product Defects / Customer Complaints / Product Returns.** Quality assurance and quality control are jointly responsible for investigation of any and all cases of defect, product returns, or customer complaints including those that are associated with packaging and labeling. An investigation will be conducted in each case and the results and responses will be maintained by the quality control department in the form of corrective action / preventative action reports as governed by The Pass SOPs. Any non-conformances will be monitored and recorded by the quality assurance department, headed by Director of Production and The Pass EMT.

**Ongoing Commitment.** The Pass is committed to providing ongoing excellence in the production of the highest quality marijuana products. The procurement team in concert with quality assurance will continuously look for and develop improved packaging and labeling solutions. In each instance new or improved materials or methodologies become available The Pass will validate the suitability of the new process or material.

## **Introduction**

The Pass is a Manufacturing license candidate applying at 1375 Main St. in Sheffield, MA. The Pass's Recordkeeping Plan describes procedures for ensuring the maintenance of real-time records that will be available for inspection by the CCC upon request. The Pass's Executive Management Team (EMT) is assigned responsibility for recordkeeping and will maintain a current organizational chart and job descriptions for each employee position.

## **Compliance**

The Pass will utilize a real-time seed to sale electronic tracking system (ETS) approved by the CCC, i.e. METRC. Furthermore, The Pass will log, verify, and monitor:

- Receipt of cannabis product and amount delivered to licensed Marijuana Establishment(s).
- The validity of an identification card presented by visitors, vendors, employees, and agents.
- The disposal of cannabis waste.
- The recall of defective cannabis.

The Pass will maintain a log of dispensary hours of operation.

The Pass will maintain records in accordance with policies and procedures. Measures are established herein for the maintenance of records relevant to operating procedures, including each of the following areas:

- Inventory Records
- Sanitation and Safety Records
- Adverse Event Records
- Materials Records
- Security and Security Inspection Records
- Transportation Records
- Diversity and Placement Records
- Personnel Records
- MMJ Waste and Waste Disposal Records
- Visitor Records
- Business Records
- Quality Control Records
- CCC Reporting Records
- CCC Records

The Pass will make available to the CCC and its agents all books, records, papers, documents, data, or other physical or electronic information that relates to The Pass's business, including financial data, sales data, shipping data, pricing data, and employee data. The Pass will provide copies of these records to the CCC and its agents as needed per request.

The Pass will keep records sufficient to provide reports to the CCC:

- The amount of cannabis purchased by each licensed Marijuana Establishment(s) during the period for which the report is being submitted.
- The per-dose price of an amount of cannabis purchased by licensed Marijuana Establishment(s).

The Pass will maintain data and records on an ongoing basis in support of being able to submit ongoing, up to date, accurate reporting of operational, financial, or any other reporting information that the CCC deems necessary to carry out its responsibilities

### **Responsibility, Maintenance, Review of Records and Recordkeeping**

The Director of Production is responsible for all day-to-day recordkeeping requirements and the proper integration of those requirements into policies and procedures. The Pass shall maintain current versions and version history of all operating procedures herein:

- Real-time ETS inventory records;
- Real-time materials records: pesticides, solvents, chemicals, etc.;
- Employee Qualification and Training Plan;
- Diversity and Affirmative Action Plans;
- Workplace Safety Plan;
- Waste Disposal Plan;
- Personnel Records: background check, fingerprints, photo ID, JDs, responsibilities, admin. actions, training history, compensation, performance reviews, termination records;
- Business records: assets and liabilities; insurance and escrow requirements; monetary transactions; chart of accounts including journals, ledgers, supporting documents, agreements, checks, invoices, vouchers, signed forms, vendor contracts, supplier agreements, employee compensation, executive compensation, bonus, benefit, or item of value paid to any individual affiliated with applicant;
- Adverse Event records: workplace injuries, contamination, quarantine, recalls, adverse loss, failure mode analysis records, workplace accidents, reports of misconduct, OSHA violations, or CCC actions taken against any employee or against the organization;
- Visitor Records;
- CCC Reporting Records: annual report, quarterly reports, amounts sold, per-dose price.

The EMT will perform an annual comprehensive review of all facility records in coordination with the Director of Production and Security Director. New policies, procedures, or operating plans will be recorded in the version history. Change logs will document all changes, amendments, modifications, or CCC guidelines.

All records will be kept electronically and will have backups saved offsite on a physical memory storage device or on a cloud-based secure webserver. All or any part of these records will be made available to the CCC upon request within two (2) business days. All records will be stored for at least four (4) years.

### **Recordkeeping and Maintenance of Logs.**

**Inventory Records.** The Director of Production will be responsible for all inventory records. The Pass shall maintain the following records in its electronic tracking system:

- Cannabis harvest batch and lot numbers
- Cannabis plant IDs and location in the facility or in storage
- Damaged, defective, expired, or contaminated cannabis awaiting return to grower or awaiting disposal

The Pass will conduct monthly inventory reviews and annual comprehensive inventories of cannabis and cannabis plants at its facility in accordance with the inventory controls and procedures in The Pass's inventory management SOP. An electronic record of each inventory shall be created and maintained for each monthly and annual inventory performed which includes;

- The date of the inventory
- A summary of the inventory findings
- The identification numbers and titles of the individuals conducting the inventory

**Sanitation and Safety Records.** The Pass will comply with internal sanitation SOPs by ensuring that trash is properly removed in a timely fashion. A record of trash removal will be maintained in the cleaning log along with other routine scheduled cleaning. Floors, walls, and ceilings shall be inspected weekly and maintained in good repair. A record of the inspection and any maintenance activity will be maintained in the maintenance log. Integrated pest management practices will be employed by The Pass and a record of inspections and actions taken to ensure against pest infestation will be maintained in the pest management log. Employees working in direct contact with cannabis are subject to the restrictions on food handlers and a record of their training and continued authorization to work in this capacity will be maintained by The Pass. Lavatories will be cleaned weekly or more frequently if necessary to maintain sanitary conditions. A record of the cleaning and maintenance of lavatories will be kept in the cleaning log and will be available for inspection by the CCC or its authorized agents upon request.

Cleaning and sanitization procedures shall be of the frequency such that it is necessary to protect against contamination. All facility areas will be kept in a clean and orderly condition and free from infestation of pests. Cleaning and sanitation procedures will be performed on a quarterly basis and entered into the ETS log. The on-duty Security Director or EMT will determine any maintenance schedule or inspection schedule changes should they be deemed necessary to maintain compliance. Any changes will be kept in the change log. Any changes made to the procedures will be noted in the version history. Any adverse events will be kept in log and will be added to the adverse event records.

The Director of Production will determine any maintenance schedule or inspection schedule changes should they be deemed necessary to maintain compliance. Any changes will be kept in the change log. Any changes made to the procedures will be noted in the version history. Any adverse events will be kept in log and will be added to the adverse event records.

The EMT will be responsible for maintaining all workplace safety records. These include emergency reporting and response protocols, OSHA guidelines, material handling protocols consistent with the toxicity and hazard posed by the materials stored onsite, verification of proper handling and storage

of materials, safety checks, records of all employee safety training and related documentation, and a documented history of any reports or violations of safety protocols or procedures or any failed safety checks of any kind—whether they be related to the operation or malfunctioning of equipment or visual spot checks.

**Adverse Event Records.** Maintenance of the adverse event log will be the duty of the Security Director. Such events include but are not limited to: workplace injuries, contamination, quarantine, recalls, adverse loss, failure mode analysis records, workplace accidents, reports of employee misconduct, OSHA violations, or CCC actions taken against any employee or against the organization, or any adulteration or unapproved changes to the logs or records.

**Materials Records.** An electronic material record will be kept and maintained by the EMT. On duty managers are responsible for maintaining CCC material logs that will be compiled in real-time in the ETS record and will compose the material log. CCC material logs will include the following records;

- Sanitizing agents
- Solvents
- Excipients
- Ingredients
- Any other inventory of materials used in the maintenance and sanitation of the facility

The Cultivation Technicians or agents will at the time of receiving new materials, enter the new material into the ETS record and notify the Director of Production that (i) a new material has entered the facility and (ii) the new material has been recorded into the corresponding ETS log.

It is sole responsibility of the Director of Production to maintain compliance with all materials and all material logs and corresponding safety, sanitation, and storage measures they require.

**Security and Security Inspection Records.** The Security Director alongside approved members of the The Pass's EMT will have sole access to all security records. All records and recordings will be kept at the facility in the dedicated security Limited Access Area (LAA) accessible to only the security manager so as to prevent adulteration, tampering, or unauthorized use of security apparatuses.

Security records and recordings held in the dedicated security LAA will be stored securely inside of a locked cabinet to protect from theft, adulteration, or loss. These will be kept for a minimum of four (4) years or, in the instance of notice of an official investigation, held until the investigation is resolved or notice of resolution is sent and recorded.

The Security Director will be responsible for the ongoing compliance and maintenance of all security systems such as alarms, cameras, surveillance equipment, electronic surveillance monitoring, notification systems and equipment. All records pertaining to the inspection, servicing, alteration, and upgrade of the security system will be logged and maintained and kept on file for four (4) years. These records will be available to the CCC and its agents within two (2) business days following a request.

Within two (2) business days following a request, The Pass will provide up to four screen captures of an unaltered copy of a video surveillance recording to the CCC, its authorized agents, law enforcement, or other Federal, State, or local government officials if necessary to perform the government officials' functions and duties. If The Pass has been notified in writing by the CCC or its authorized agents, law enforcement, or other Federal, State or local government officials of a pending criminal or administrative investigation for which a recording may contain relevant information, The Pass shall retain an unaltered copy of the recording for four (4) years or until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the dispensary that it is not necessary to retain the recording, whichever is longer.

The Pass will maintain a current list of authorized employees and service employees or contractors who have access to any security and surveillance areas. This list will be made available to the CCC or its authorized agents upon request.

All records and HD face-capture photographs will be available upon request and delivered to the CCC in no more than two (2) days. All records will have both an electronic and physical backup system.

The Security Director will be responsible for all security and security inspections and logs. Content of logs is listed below:

Cannabis handling or storage areas; areas where cannabis waste is handled; entrances and exits both inside and outside vantage points; all LAAs; rooms with exterior windows, exterior walls, roof hatches, or skylights, storage rooms and safes.

Alarm logs will include any instance, length, date/time, and location of events below:

Triggered duress alarm; triggered panic alarm; triggered smoke or fire alarm; triggered holdup alarm; triggered security alarm; triggered silent security alarm.

Security notification logs will include any failure notifications or notifications sent by 24/7 monitoring company.

Records of security inspections and equipment testing, and inspections will be logged in the ETS by the Security Director at the conclusion of the following required testing and maintenance:

Comprehensive annual test and inspection of all security systems, devices, motion detectors, alarms, notification systems and apparatuses by a CCC approved third-party alarm and security system vendors. Monthly maintenance inspections of all equipment to ensure all security apparatuses are functioning normally and are up-to-date.

Any failure of inspections—monthly or annual—will be recorded into the security inspection log as well as the adverse event log.

**Transportation Records and Transport Manifests.** The two designated delivery employees will be responsible for all recordkeeping on all deliveries. All driver IDs and color copies of IDs as well as current registration, proof of insurance, and inspection stickers will be kept on or inside the vehicle at all times. Records of all daily electronic notification sent to CCC via the onboard Wi-Fi

system that include delivery routes, stops, and schedule will be kept and stored in the electronic transport log, and on both an electronic record system backup and physical backup.

Transport vehicle will be equipped with high-capacity memory storage and video surveillance Pro-Vision system that cover six (6) angles—four water- and weatherproof night-vision enabled cameras covering a complete 360° view of the vehicle and two cameras that cover the entirety of the interior of the vehicle front and back—and that start recording triggered by the firing of the ignition. It has a four-hundred and thirty hour (430 hr.) onboard solid state removable memory. Should the onboard event alarm go off, a separate file will be created that will entail fifteen minutes prior to- and immediately following said alarm event. Video event alarms or streaming recorded video can generate a high-fidelity JPEG still image at any one point. Image will contain a GPS marker on a map of where the vehicle was at the time the image was taken. Such events will be automatically logged in the removable locked storage onboard. Electronic erratic driving sensors and excessive speed sensors (adjustable preset not to exceed mph) will log erratic driving events or excessive speeds automatically alongside GPS locations on the systems onboard memory. Accidents, diversion, losses or other reportable events will be automatically recorded and logged replete with a GPS location of when and where the event took place.

All video is high-definition and can be live-streamed and recorded by the surveillance equipment at the grower/processor dedicated security LAA and on the high-capacity storage onboard memory for playback on or off site or by one of the vehicle operators not driving the vehicle. The video surveillance equipment will be accessible only to the security director and will be kept onboard behind a locking cage inaccessible to transportation employees to eliminate tampering of video. Software will also prevent file deletion by employees.

Each of the two delivery employees will wear a Pro-Vision BodyCam body camera. These have a 33GB internal non-removable memory capacity good for 12 hours of continuous recording. It can record mp3 audio, has night-vision, and can generate still images up to 1296p definition. It has a 150° field of vision. It will record continuously for the duration of the daily transport shift for both employees. Videos are time and date stamped. At the end of the day, these will be downloaded to the dispensary's onsite memory storage, labeled by time/date and by employee identification number and kept for four years or more. This will ensure cannabis will never leave the sight of the vehicle or of the employees or of the Security Director.

The Pass shall generate a transport manifest that accompanies every transport vehicle and contains:

- Name, address of each licensed Marijuana Establishment;
- Name and contact information of the licensed Marijuana Establishment employee who has direct knowledge of the transport;
- Name, address, and permit number licensed Marijuana Establishment including the contact information of the employee of the delivery recipient who has direct knowledge of the delivery;
- The quantity, by weight of each harvest batch and harvest lot contained in the transport, along with the identification number for each harvest batch and harvest lot;
- The date/time of departure;
- The date/time of arrival;
- Make, model, and license plate number of the transport vehicle;

- The identification number of each member of the delivery team accompanying the transport;
- When a delivery team delivers cannabis to multiple licensed Marijuana Establishments, the transport manifest will correctly reflect the specific cannabis for each in transit. Each recipient shall provide the dispensary with a receipt for the cannabis received;
- The Pass will provide a copy of the transport manifest to the recipient receiving the product described in the transport manifest. In the event of multiple deliveries, a separate manifest for each recipient will be prepared to maintain confidentiality;
- Records of each transport manifest and any receipts for transport will be maintained and filed so as to be able to provide a copy to the CCC, its authorized agents, law enforcement, or other Federal, State or local government officials if necessary to perform the government officials' functions or duties.

Additionally, the manifests must match the cannabis in transit. A receipt will be printed and a duplicate copy recorded and stored in the electronic transport log and ETS. Individual manifests that match each of the receiving parties' distinct manifest will be printed and a duplicate electronic copy will be stored in the electronic transport log and ETS. Due to the onboard Wi-Fi of the transport vehicle, inventory can be tracked electronically in real-time regardless of vehicle location and deliveries can be validated and recorded at the grower/processor origin facility at the time of delivery.

If The Pass discovers a discrepancy in the transport manifest upon delivery or suspects or uncovers evidence of theft or diversion of product, The Pass will halt delivery and immediately report to the Security Director, and, upon Security Director's request and reconciliation, to the appropriate law enforcement authorities and CCC. A record of all such instances will be made and archived by The Pass and will include all pertinent details including communication of the event to the CCC and or law enforcement.

If the dispensary discovers a discrepancy in the transport manifest it will conduct an investigation. Amend the standard plan of operation, if necessary, to prevent future discrepancies between quantity and/or description of inventory delivered and the delivery manifest. Written records of all preliminary investigative reports will be sent to the CCC within seven (7) days of the adverse event and an electronic copy of the written final findings of the investigation report will be sent to the CCC within thirty (30) days and will be stored in the adverse event log and security log as well as CCC Report Log. The Security Director will be responsible for investigating, reporting, and recording into the corresponding logs all notices and communications regarding transport or adverse transport events.

**Diversity and Placement Records.** The EMT and Human Resource Manager will be responsible for the Diversity Plan and the Affirmative Action Plan and all records that entail employee placement records, utilization analyses, workforce analyses, and historical change log of diversity programs. DBEs and qualified vendors including the amounts spent on said vendors will also be recorded in real-time in the Diversity Log. These will be kept electronically. All mandatory cultural competency and unconscious bias training by designated EMT and management and proof of completion of training as well as official attendance records will be stored in the electronic Diversity Log.

Spending on diversity initiatives and diverse outreach programs as well as the resulting efficacy of those programs will be recorded by the EMT or Human Resource Manager as necessary. Recommendations and perceived programmatic weaknesses generated at the annual review of Diversity Plan, Diversity Log, and Affirmative Action Plan as well as corrective action decided upon by the EMT will be recorded in the Diversity and Affirmative Action Plans and accounted for in the version history can change logs.

**Personnel Records.** The Security Director in coordination with EMT will be responsible for day-to-day activities including maintaining and updating personnel records and delegation of responsibilities to CCC managers. Personnel files will be generated at the time of hiring. These will include electronic records of each of the items listed hereunder:

Name, address, contact information, emergency contact information, previous work experience, CV or resume, gender, race, other miscellaneous publicly available information, background check results, fingerprints, benefits summary, interviewer report, name and EID of employee responsible for hiring said employee, EID number of employee, employment history—administrative actions, violations, reports of misconduct, performance history, quarterly performance reviews, and any other relevant employment data;

**Cannabis Waste and Waste Disposal Records.** The Director of Production will be responsible for overseeing Waste and Waste Disposal and Storage Plans. Director of Production will be one of two employees responsible for complexing cannabis waste. All waste will be tracked and recorded in the electronic waste disposal log and the waste storage log and in the ETS. Quantity, amount, types of waste, and signed affirmation of having met the unusable and unrecognizable visual standard for “pickup ready” waste prior to removal at permitted municipal landfill or for incineration will be logged and recorded electronically.

The Security Director will be the designated recall coordinator. Recalled or quarantined or contaminated product will be described, identified, weighed, and secured in red bags inside the waste disposal LAA inside the marked quarantine storage area. All entry into the quarantine storage will be restricted to the recall coordinator (Security Director). Waste entered into storage for disposal will be entered into the quarantine log. The EID number of the storing employee will be logged as well as a description of the reasons for entry and reasons for recall, contamination, or quarantine—whether voluntary or mandatory. All notices sent to and from the CCC regarding recalled waste disposal or quarantined waste will be entered into the quarantine log and waste storage log and in the ETS. Duplicate electronic records of correspondences will be kept in CCC reporting log. All logs and changes to logs will be kept for at least four years (4 yrs.).

**Visitor Records.** The Pass shall require visitors, including vendors and contractors requiring access to a limited access area in the dispensary facility to present government-issued identification, sign a visitor log, and wear a visitor identification badge that is visible to others at all times while in a limited access area. The visitor log will be signed upon entering and exiting limited access areas. A copy of the government-issued identification will be made and stored with the visitor log. The Pass will maintain a record of the log and the identification for four (4) years and will make them available for inspection at the request of the CCC and law enforcement, local law enforcement, and any other State or local government officials upon request if necessary to perform the government officials’ functions and duties. The log will include:

- The full name of each visitor
- The visitor identification badge number
- The time of arrival
- The time of departure
- The purpose of the visit
- Each area visited
- The name of each employee visited

**Quality Control Records.** Quality Control (“QC”) records will be maintained by the EMT (primary) and by the Director of Production (secondary). It will include the Quality Control Plan, Packaging and Labeling Plan as well as a change log and version history of both plans. QC records will be stored electronically and will contain:

Cannabis packaging date; EID of packaging employee; unique harvest batch or lot number; quality control process flow chart; weight, amount of cannabis; any instances of noncompliant packaging; visual examples of non-compliant packaging or labeling; visual examples of cannabis that are expired, damaged, deteriorated, mislabeled, contaminated, recalled, or whose containers or packaging have been opened or breached; any recorded instances of cannabis that are found to be expired, damaged, deteriorated, mislabeled, contaminated, recalled, or whose containers or packaging have been opened or breached; any instances of safety violations; any instances of employee misconduct or error.

In the event of a recall—whether initiated voluntarily or by the CCC—the applicant will follow a Recall Plan established by the recall coordinator, i.e. Security Director. Protocols will stress the maximal recall of cannabis and minimal public health risk. Records will be kept in the recall log and, when applicable, CCC records log, the latter of which is the internal repository for all official CCC communications and directives. Any press releases or media regarding the recall will be logged into the recall log by recall coordinator. ETS entries will encompass the following items:

The total amount of recalled cannabis, including harvest batches, harvest lots, and IDs; the recall coordinators names and EID numbers; from whom the recalled cannabis was received; the means of transport of recalled cannabis; the reason for the recall; the number of recalled samples or test samples, harvest batches or harvest lots sent to approved laboratories, and the names and addresses of approved laboratories, the dates of testing and results by sample or test sample; the manner of disposal of recalled cannabis, including the name of the individual providing oversight of the disposal; the name of the disposal company (when applicable); the method of disposal; the date of disposal; the amount disposed including harvest batches and harvest lots, plant IDs; and all other information required by the CCC.

QC protocols and the Quality Control Plan will be annually reviewed by the EMT. Procedures will be analyzed and evaluated by ongoing performance metrics and adjusted based on newly available technologies or other contributing factors.

**CCC Records.** The Security Director in coordination with the EM will be responsible for logging in the CCC a record of all official correspondences with the CCC. Log will be composed of the following:

Permit granting, renewal, suspension, or denials of permits or permit renewals; any program updates released online; diversity evaluations or recommendations from CCC; any program expansions in regions, number of permits granted; all applications and permits on file with the CCC or issued by the CCC to the applicant; any mandates regarding action pertaining to recalls or quarantine issues by CCC; all reports sent by The Pass to CCC as to changes in fact or circumstance with respect to changes in control, ownership, site location, facilities changes, equipment changes, changes in operations, application, or activities; any and all notices of discontinuance; inspection and investigation notices, results, actions, recommendations or penalties; CCC reporting on the financial and operational facts on the program; any changes in advertising or marketing restrictions.

## **Age 21+ Restricting Plan**

### **No Dispensing to Anyone Under 21 Years of Age**

The CCC does allow for dispensing to adults or people, but only for those **over** the age of 21. Therefore, to ensure safety and compliance with the municipal and state law under 935 CMR 500 and under the regulations promulgated and updated from time-to-time by the regulating state agency the Cannabis Control Commission (CCC), The Pass, its Executive Management Team (EMT) and its Security Director will limit all activities to dispensing of cannabis.

The Pass acknowledges that in order to dispense cannabis to adults over the age of 21 in the Commonwealth of Massachusetts, they must first apply and obtain a retail license for doing so, which is a discrete and separate form of licensure.

All employees and registered agents must be 21 years of age or older. *935 CMR 500.029 or 500.030*

All visitors must be 21 years of age or older. *935 CMR 500.002.*

## **Security**

The Pass will hire an experienced Security Director to oversee anti-diversion and security policies as well as age-restricting enforcement. To ensure the Security Director has the ability to cover all the personnel within the facility as well as all corners of the facility, the facility will be equipped with myriad security features.

Security features of the facility's premises will include:

- High definition (1080-p) outdoor pan-tilt-zoom cameras and supplemental outdoor security lighting, designed and installed in an overlapping layout with no blind spots;
- Primary and backup motion and seismic alarm sensors with battery backups enabling at least 12 hours of operation in the event of power outage;
- Prominent signs, posted every twenty feet around the facility, reading: "No Unauthorized Access. Alarm System Armed. You Are Under Video Surveillance";
- No large bushes, trees or objects that could provide concealment or unauthorized access will be allowed closer than fifty feet from the facility's perimeter;
- All entrances and exits to the facility will be equipped with motion and seismic alarm sensors and heavy-duty steel doors that automatically close and securely lock;
- The personnel entrance is only accessible using RFID key codes or through escorted access;
- Entrance will have a trained employee who will restrict access to the service area;
- All rooms having windows are to be protected by fixed 1080p Cameras;
- The roof will be equipped with pan-tilt-zoom security cameras, motion sensors, supplemental security.

Applicant's operations zone will feature a secure storage limited access areas (LAAs). It shares no exterior walls and is accessible only by the Retail Manager, Security Director and authorized

personnel. Signage will be posted in block letters that read “MARIJUANA PRODUCT STORAGE” and “Do Not Enter—Limited Access Area—Access Limited to Authorized Personnel and Escorted Visitors”. These zones will be biometrically locked and require pin pad entry and RFID card to open.

Security features of the facility’s outdoor premises will include:

- High definition (1080-p) outdoor pan–tilt–zoom cameras and supplemental outdoor security lighting, designed and installed in an overlapping layout with no blind spots;
- Primary and backup motion and seismic alarm sensors with battery backups enabling at least 12 hours of operation in the event of power outage;
- Prominent signs, posted every twenty feet around the facility, reading: “No Unauthorized Access. Alarm System Armed. You Are Under Video Surveillance”;
- No large bushes, trees or objects that could provide concealment or unauthorized access will be allowed closer than fifty feet from the facility’s perimeter;
- All entrances and exists to the will be equipped with motion sensors and heavy-duty 12’ tall steel fencing with heavy gauge bolt locks.
- IR laser detection systems at the height of the fencing to send alerts to the Security Director should an unauthorized person(s) attempt to climb the fence.
- Posted operational hours during which time only authorized agents are allowed inside of locked perimeter fencing.

Perimeter fencing and season security when the outdoor cultivation is operational will ensure no one under the age of 21+ or no one person period diverts or procures cannabis from the retail establishment off hours.

## **Deterrence**

The main engine of The Pass’s plan to restrict access to those age 21+ is to deter the events from occurring in the first place. Employees, outside vendors, customers, or visitors should be able to see signs posted on the premises indicating the threat of surveillance and the threat of reporting suspicious behavior. Moreover, secured Limited Access Areas (LAAs), biometric locks, hidden cameras, training, clear and vigilant incident reporting, onsite presence of Security Director, and cooperation with local Sheffield PD, the electronic tracking system (ETS), as well as 360-degree pan-tilt cameras that can take HD images and time-stamped footage over all areas where cannabis is handled, evidence to the potential diversion threats, such an activity will inevitably be caught and prosecuted, likely while it is happening or shortly thereafter. Building in a culture of security is important to preventing diversion and The Pass will integrate that mindset in the following ways:

- Spot check security compliance training led by Security Director.
- Random screening of employees and visitors.
- ID/Age Verification
- Adherence to policies and procedures.
- Mock drills to ensure employees are trained and act according to plan.

- Hidden cameras to ensure all those in facility are behaving when “unwatched.”
- Training on the alarm systems, and on when and how to use them.
- Regular semi-annual audits of Security Policies and Procedures.
- Regular audits of Inventory Logs and ETS.
- Regular audits of Security and Surveillance Systems.
- Regular audits of Alarm Systems.
- Regular audits of POS software to ensure no tampering

Training and deterrence as well as comprehensive security plans enabled by a knowledge of the parameters of the scope of our retail establishment license will ensure no one under the age of 21 handles, procures, or diverts cannabis nor are they allowed into the facility.

## **Plan to Positively Impact Areas of Disproportionate Impact**

The Plan below will apply to both to 'The Pass' cultivating (for which it has a provisional license), manufacturing and retail locations all at the same site in Sheffield:

### **I. Promoting Education About the Harms of Cannabis Use Among Youth**

**Goal:** Establish a Program in Berkshire County with a Specific Emphasis on Pittsfield and North Adams to Educate Children About the Harms of Cannabis Use before the Age of 21.

**Program Details:** Although still inconclusive, scientific studies have shown that cannabis use among those 21 and under can harm brain function and development. What Pot Really Does to the Teen Brain?, *Scientific American*, December 1, 2017. In addition, children are more likely than adults to undertake reckless behaviors while using cannabis such as driving under the influence. In order to promote education about the harmful effects of youth cannabis consumption, The Pass has been working with the Berkshire legislative delegation, Cannabis Control Commissioner Flanagan and certain school officials to establish a program to educate children about the dangers of cannabis use. See attached letter from Senator Hinds.

The Pass plans to establish a non-profit – All Berkshire Benefit, LLC filed on May 10, 2019 - to manage the education efforts, to develop the curriculum, and to hire facilitators to undertake the education within the schools. Due to the importance of this effort, The Pass has also been working with other cannabis businesses in the Berkshires to raise funds for the effort. Currently, The Pass expects that at least nine cannabis businesses including The Pass will fund the effort. Those businesses are: Theory Wellness (Great Barrington), Berkshire Roots (Pittsfield), Mass Yield (Pittsfield), Climb Cannabis (Pittsfield), Herbal Pathways (Pittsfield), Slang LLC (Pittsfield), Berkshire Welco (Sheffield), BCWC LLC (Sheffield), Ten - Ten LLC (Sheffield). Each will pledge to give \$3,000 a year once they begun sales. The Pass will make its donation after its first month of sales and is asking the other cannabis businesses to make their donations after their first month of sales. The plan is to initially focus the education on high schools and then move to middle schools.

The Pass plans that at least half the youth seminars on cannabis education take place in North Adams and Pittsfield, two areas of disproportionate impact. The Pass has already reached out to education officials in North Adams and Pittsfield to discuss this effort. That said, the non-profit should provide at least 2 educational seminars in the high schools in the first year and at least 5 educational seminars in the high schools in the second year.

The Pass will create a Public Service Announcement (PSA) and will use the All Berkshire Benefit entity to create a website to host the PSA and other educational content. The Pass in the effort to engage the community will commit to 100,000 paid impressions within Berkshire County aimed at parents in the prevention of underage cannabis use and abuse. We expect that this will enable a matching organic 100,000 impressions for the market segments. Using the webhosting data, we will collect and monitor these figures. In the future, we can use the data analytics and even more targeted marketing to hit specific regional areas or update the content to boost engagement with the educational material.

#### Metrics and Timeframe:

Because the ultimate goal is limit cannabis use among youth, The Pass believes that the All Berkshire Benefit will undertake an initial base line survey to determine cannabis use among students in high school in the Berkshires during the first two years of the program. Thereafter, the non-profit will survey students in high school every year thereafter to determine if cannabis use among this group has decreased. The survey results will also be used by the non-profit to make changes in the education in order to be more effective. This data will be used in crafting content and targeted messaging and paid impressions in subsequent iterations of the PSA and website.

## II. Increase Job Employment Opportunities for Those Who Reside in Areas of Disproportionate Impact and Those Who Have Past Drug Convictions or are Spouses or Children have those who have Drug Convictions

Goal: To make those who reside in areas of disproportionate impact, Massachusetts residents who have past drug convictions or whose parents or spouses have drug convictions (“Targeted Employees”) a sizable portion of The Pass’ workforce. In the first year of operations, we plan for 10% of our employees to be Targeted Employees, 5% who have had past drug convictions and 5% whose parents or spouses have drug convictions. In the second year of operations, we plan for 15% of our employees to be Targeted Employees, 7.5% who have had past drug convictions and 7.5% whose parents or spouses have drug convictions. Both goals are ambitious based on geographic limitations in the Berkshires.

Program Details: The closest area of disproportionate impact to The Pass’ operations in Sheffield is Pittsfield. Pittsfield is approximately 19 miles away from our facilities and is approximately a 40 minute drive with no public transportation operations. In addition, a number of potential marijuana establishments have targeted Pittsfield for their locations, which means those who live in Pittsfield may be more likely to work at the facilities in that city rather than in Sheffield. Our ability to positively impact Pittsfield may be challenged because of the great distance between Sheffield and Pittsfield, but The Pass is excited about the plan discussed herein.

First, we plan to work with following social engagement organizations (“Partner Organizations”) in order to find Targeted Employees:

- MassHire Berkshire Career Center - A partnership between Berkshire Training & Employment Program and the Massachusetts Division of Career Services, chartered by the MassHire Berkshire Workforce Board. The Career Center provides quality programs and services to employers, job seekers, and its community partners, and also regularly hosts/organizes job fairs and employment workshops.

We will work with these organizations to organize job fairs and to search for suitable Targeted Employees while supporting their other efforts. We expect to work with the Partner Organizations to have ten job fairs focused on Targeted Employees prior to the Pass opening.

To the extent we are gaining a critical mass of employees who live in an area of disproportionate impact, we will consider instituting an employee shuttle from that area in order to ease the commutes of these employees.

The Pass has retained THC Staffing Group as an outside check on the company’s internal policies and attainment of goals. THC Staffing Group is a national staffing organization that does diverse recruiting for the cannabis industry. They will review the following written policies and documentation:

- Hiring
- Training
- Retention
- Workplace Culture
- Ant-Retaliation and Harassment Reporting
- Internal Investigations
- Agreements: NDA, Arbitration, Non-competes
- Pay Equity
- Promotion and Demotion
- Termination and Layoffs

These conclusions will be written in a report and sent to the Executive management team for purposes of auditing and evaluating the plans and their results.

They will also offer suggestions for incorporating diverse workforce into the company's strategic business plans, examining specific company goals and how they can be compatible for the objectives and for ongoing workforce hiring, retention, and development.

THC Staffing Group will concurrently write a Community Engagement Assessment which will include hiring-related community outreach policies and goals and how those can be better met in relation to the stated goals and objectives described herein.

Metrics and Timeframe: In each year of operations, The Pass will determine the number of employees hired who have drug convictions and the number of employees whose parents or spouses have drug convictions.

### III. Required Acknowledgements:

- 1) The organizations and entities named herein have been contacted and can receive donations from the organizations described herein or have agreed to work with The Pass to further the goals described herein.
- 2) The Pass will adhere to the requirements set forth in 935 CMR 500.105(4) which provides the permitted and prohibited advertising, branding, marketing, and sponsorship practices of every Marijuana Establishment.
- 3) Any actions taken, or programs instituted, by The Pass will not violate the Cannabis Control Commission's regulations with respect to limitations on ownership or control or applicable state laws.



The Commonwealth of Massachusetts  
MASSACHUSETTS SENATE

**SENATOR ADAM G. HINDS**

*Berkshire, Hampshire, Franklin  
and Hampden District*

STATE HOUSE, ROOM 309  
BOSTON, MA 02133-1053

TEL. (617) 722-1625

FAX. (617) 722-1523

ADAM.HINDS@MASENATE.GOV

WWW.MASENATE.GOV

*Chairman*

JOINT COMMITTEE ON TOURISM,  
ARTS AND CULTURAL DEVELOPMENT

*Vice Chairman*

JOINT COMMITTEE ON  
ECONOMIC DEVELOPMENT  
AND EMERGING TECHNOLOGIES

September 11, 2018

Mr. Shawn Collins, Executive Director  
Cannabis Control Commission  
101 Federal Street, 13<sup>th</sup> Floor  
Boston, MA 02110

***Re: Berkshire Welco***

Dear Mr. Collins:

I write to register my support for the application submitted by Berkshire Welco now under consideration by the Commission. I believe this proposal to be strong, and I hope it will be rated favorably.

Berkshire Welco's \$8 million proposal is expected to support 20 employees in Sheffield, a rural community in southern Berkshire County. I am pleased with the company's proactive educational program which utilizes local schools and physicians and believe their plan for full vertical integration will enable Berkshire Welco to quickly hit the ground running with cultivation, processing, and retail sales.

I believe the company has identified an ideal location for their business which allows them to cater to customers in the Berkshire market, as well as visitors from nearby New York and Connecticut. Research shows that out-of-state visitors comprise half of the marijuana sales in Denver. This new economic sector may thrive in southern Berkshire County, which already hosts many seasonal visitors and tourist attractions.

I urge you to give Berkshire Welco's application strong consideration. Thank you in advance for your attention to this matter. Please do not hesitate to contact my office if I can provide any additional information or assistance.

Sincerely,

A handwritten signature in blue ink that reads "Adam Hinds".

**ADAM G. HINDS**, State Senator

*Berkshire, Hampshire, Franklin & Hampden District*