



# Massachusetts Cannabis Control Commission

## Marijuana Cultivator

### General Information:

License Number: MC283155  
Original Issued Date: 07/22/2021  
Issued Date: 07/22/2021  
Expiration Date: 07/22/2022

## ABOUT THE MARIJUANA ESTABLISHMENT

Business Legal Name: Berkshire Welco Cultivation, LLC

Phone Number: 413-717-5036 Email Address: hr@thepass.co

Business Address 1: 1375 North Main Street Business Address 2:

Business City: Sheffield Business State: MA Business Zip Code: 01257

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: 34 Percentage Of Control: 66.6

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: 0.41 Percentage Of Control: 33.33  
Role: Board Member Other Role:  
First Name: George Last Name: Nichols 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: Pete Last Name: Steimer Suffix:  
Describe the nature of the relationship this person has with the Marijuana Establishment: Directs activity and runs the cultivation facility

CAPITAL RESOURCES - INDIVIDUALS

No records found

CAPITAL RESOURCES - ENTITIES

Entity Contributing Capital 1

Entity Legal Name: Berkshire Welco, LLC Entity DBA:  
Email: hr@thepass.co Phone: 413-717-5036  
Address 1: 490 Main Street Suite 2 Address 2:  
City: Great Barrington State: MA Zip Code: 01230  
Types of Capital: Monetary/Equity Other Type of Capital: Total Value of Capital Provided: \$576115.46 Percentage of Initial Capital: 75  
Capital Attestation: Yes

Entity Contributing Capital 2

Entity Legal Name: Berkshire Welco Retail, LLC Entity DBA:  
Email: hr@thepass.co Phone: 413-717-5036  
Address 1: 490 Main Street Suite 2 Address 2:  
City: Great Barrington State: MA Zip Code: 01230  
Types of Capital: Monetary/Equity Other Type of Capital: Total Value of Capital Provided: \$186438.7 Percentage of Initial Capital: 25  
Capital Attestation: Yes

BUSINESS INTERESTS IN OTHER STATES OR COUNTRIES

No records found

DISCLOSURE OF INDIVIDUAL INTERESTS

Individual 1

First Name: Christopher Last Name: Weld Suffix:  
Marijuana Establishment Name: Berkshire Welco, LLC Business Type: Other

Marijuana Establishment City: Sheffield

Marijuana Establishment State: MA

Individual 2

First Name: George

Last Name: Nichols

Suffix:

Marijuana Establishment Name: Berkshire Welco, LLC

Business Type: Other

Marijuana Establishment City: Sheffield

Marijuana Establishment State: MA

MARIJUANA ESTABLISHMENT PROPERTY DETAILS

Establishment Address 1: 1375 North Main Street

Establishment Address 2:

Establishment City: Sheffield

Establishment Zip Code: 01257

Approximate square footage of the Establishment: 30000

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

Cultivation Tier:

Cultivation Environment:

FEE QUESTIONS

Cultivation Tier: Tier 04: 20,001 to 30,000 sq. ft    Cultivation Environment: Outdoor

HOST COMMUNITY INFORMATION

Host Community Documentation:

Document Category	Document Name	Type	ID	Upload Date
Certification of Host Community Agreement	CCC-Sheffield HCA BerkshireWelco 10-13-20 (1).pdf	pdf	5fa3106da75869080486b442	11/04/2020
Community Outreach Meeting Documentation	Email on approval process to cover HCA Outreach.pdf	pdf	5fa310765b823307b79b60e1	11/04/2020
Certification of Host Community Agreement	HCA - The Pass + Sheffield (1) (1).pdf	pdf	5fe20de1e767d307ceee2663	12/22/2020
Certification of Host Community Agreement	HCA Educational Programming (2).pdf	pdf	5fe23ecb841ecf07f32a92fd	12/22/2020
Community Outreach Meeting Documentation	HCA Public Notice_Abutters.pdf	pdf	600f32629aa497082efbd3ad	01/25/2021
Community Outreach Meeting Documentation	Attachment C Abuttter Notice.pdf	pdf	602c1f2b72b5633675944d98	02/16/2021
Community Outreach Meeting Documentation	Attachment B Community Outreach - Site 1 Outdoor.pdf	pdf	602c1f30fade7a35e9f3023d	02/16/2021
Certification of Host Community Agreement	Community Host Agreement -Site1 Outdoor.pdf	pdf	602c1f3384d16335f022585d	02/16/2021
Community Outreach Meeting Documentation	Attachment A Public Notice Eagle 14 day advertisementt.pdf	pdf	602c221472b5633675944dbe	02/16/2021
Plan to Remain Compliant with Local Zoning	Compliant.pdf	pdf	6035360e7fa14107d40323be	02/23/2021

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
Other	Southern Berkshire Community Health Coalition Parent Education Series for School Year 2020 - 2021 (1).pdf	pdf	5fc6b38bd8789e0780e403a8	12/01/2020
Plan for Positive Impact	BW Cultivation PIP 04_26_2021.pdf	pdf	608706493fd8b2075df9b000	04/26/2021
Other	Goodwill PIP letter.pdf	pdf	608706578ecb05074fe67cec	04/26/2021
Other	Letter from Hinds.pdf	pdf	6087065ad91389075ed37096	04/26/2021
Other	Railroad St letter PIP.pdf	pdf	6087065d247e180786c93635	04/26/2021

### ADDITIONAL INFORMATION NOTIFICATION

Notification:

### INDIVIDUAL BACKGROUND INFORMATION

#### Individual Background Information 1

**Role:** Board Member **Other Role:**  
**First Name:** George **Last Name:** Nichols **Suffix:**  
**RMD Association:** Not associated with an RMD  
**Background Question:** no

#### Individual Background Information 2

**Role:** Director **Other Role:**  
**First Name:** Peter **Last Name:** Steimer **Suffix:**  
**RMD Association:** Not associated with an RMD  
**Background Question:** no

#### Individual Background Information 3

**Role:** Executive / Officer **Other Role:**  
**First Name:** Christopher **Last Name:** Weld **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
Secretary of Commonwealth - Certificate of Good Standing	j.MA.Sec.State.pdf	pdf	5fa316964a2789086108c835	11/04/2020
Articles of Organization	Cert of Org Amended.pdf	pdf	5fa462bddf85ec07dfb88770	11/05/2020
Articles of Organization	Cert of Org.pdf	pdf	5fa462c1bd0d8e081433c574	11/05/2020
Department of Revenue -	2020-12-01_170006.pdf	pdf	5fc6c1ecf867b207bbf0f252	12/01/2020

Certificate of Good standing				
Secretary of Commonwealth - Certificate of Good Standing	DUA Cert of Good standing.pdf	pdf	602c27d472b5633675944df5	02/16/2021
Department of Revenue - Certificate of Good standing	DOR Cert. of Good Standing.pdf	pdf	606b44f1a6d53445a21e2701	04/05/2021
Bylaws	Amended and Restated Operating Agreement of Berkshire Welco LLC - EXECUTED Part 1.pdf	pdf	606b469303415644ba1051b4	04/05/2021
Bylaws	Amended and Restated Operating Agreement of Berkshire Welco LLC - EXECUTED Part 2.pdf	pdf	606b4697bd015444c5502254	04/05/2021
Bylaws	Amended and Restated Operating Agreement of Berkshire Welco LLC - EXECUTED Part 3.pdf	pdf	606b469b49891145972358cf	04/05/2021
Articles of Organization	Cultivation articles of org attestation.pdf	pdf	60953a958ecb05074fe6a67e	05/07/2021

No documents uploaded

Massachusetts Business Identification Number: 001435521

Doing-Business-As Name:

DBA Registration City:

### BUSINESS PLAN

Business Plan Documentation:

Document Category	Document Name	Type	ID	Upload Date
Plan for Liability Insurance	1.Berkshire WELCO Schedule of Insurance (2).pdf	pdf	5fa319993bf49c082a425811	11/04/2020
Business Plan	Addendum Cultivation MCN283155.pdf	pdf	5fbd3fcc925f52079a1f0cb6	11/24/2020
Business Plan	Management report .pdf	pdf	5fbd3fe7aa3b3307861cf257	11/24/2020
Business Plan	Business Plan.pdf	pdf	602c263c4e95aa35cfc244da	02/16/2021
Proposed Timeline	Timeline.pdf	pdf	60353de9e8348307b312c505	02/23/2021
Business Plan	Amended and Restated Operating Agreement of Berkshire Welco LLC - EXECUTED Part 1.pdf	pdf	6036628b59c4f4079dbb3236	02/24/2021
Business Plan	Amended and Restated Operating Agreement of Berkshire Welco LLC - EXECUTED Part 2.pdf	pdf	603663fcc9a47307e6f6fc08	02/24/2021
Business Plan	Amended and Restated Operating Agreement of Berkshire Welco LLC - EXECUTED Part 3.pdf	pdf	603664136ec5ac07fccbfd1a	02/24/2021
Business Plan	Articles of Organization Statement.pdf	pdf	60941f8ae54b280786bb0b62	05/06/2021

### OPERATING POLICIES AND PROCEDURES

Policies and Procedures Documentation:

Document Category	Document Name	Type	ID	Upload Date
Personnel policies including background checks	L.Handbook for The Pass July 2020 (1).pdf	pdf	5fa31b8d75aac308359ac317	11/04/2020
Dispensing procedures	Dispensing plan.pdf	pdf	5fa45c5bdf85ec07dfb88748	11/05/2020

Qualifications and training	Qualifications.pdf	pdf	5fa45c6557d9d707ee4d7cdc	11/05/2020
Record Keeping procedures	Record Keeping.pdf	pdf	5fa45c71dd2d7407bedeb6ac	11/05/2020
Restricting Access to age 21 and older	Age Restriction.pdf	pdf	5fa45ca0dd2d7407bedeb6b2	11/05/2020
Storage of marijuana	Storage Plan.pdf	pdf	5fa45d4b7083620840285a28	11/05/2020
Transportation of marijuana	Transportation Plan2.pdf	pdf	5fa45d6075aac308359ac5d9	11/05/2020
Inventory procedures	Inventory Plan.pdf	pdf	5fa45d745b823307b79b63e0	11/05/2020
Prevention of diversion	Berkshire Welco Diversion Plan.pdf	pdf	5fa45e5408242707d4a77353	11/05/2020
Maintaining of financial records	Financial Controls & Recordkeeping.pdf	pdf	603540497fa14107d40323e4	02/23/2021
Security plan	Security Plan.pdf	pdf	603543144ec46c07be83c0fa	02/23/2021
Energy Compliance Plan	Energy Efficiency.pdf	pdf	6035445effb50c07eaff9ad6	02/23/2021
Quality control and testing	Quality Control and Testing.pdf	pdf	603545f37fa14107d403240b	02/23/2021
Policies and Procedures for cultivating.	Berkshire Welco Outdoor Cultivation Plan.pdf	pdf	603547255aed110812e497c4	02/23/2021
Diversity plan	Berkshire Welco Cultivation Diversity Plan 4_6_2021.pdf	pdf	60704e7403415644ba106194	04/09/2021
Diversity plan	o.Blanco MBE letter.pdf	pdf	60704eb5cefab844e67136b4	04/09/2021

#### 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 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:

#### COMPLIANCE WITH POSITIVE IMPACT PLAN

No records found

#### COMPLIANCE WITH DIVERSITY PLAN

No records found

## HOURS OF OPERATION

<b>Monday From: 8:00 AM</b>	<b>Monday To: 8:00 PM</b>
<b>Tuesday From: 8:00 AM</b>	<b>Tuesday To: 8:00 PM</b>
<b>Wednesday From: 8:00 AM</b>	<b>Wednesday To: 8:00 PM</b>
<b>Thursday From: 8:00 AM</b>	<b>Thursday To: 8:00 PM</b>
<b>Friday From: 8:00 AM</b>	<b>Friday To: 8:00 PM</b>
<b>Saturday From: 8:00 AM</b>	<b>Saturday To: 8:00 PM</b>
<b>Sunday From: 8:00 AM</b>	<b>Sunday To: 8:00 PM</b>



*Town of Sheffield*  
*Office of the Select Board*  
*Town Hall – 21 Depot Square*  
*Sheffield, Massachusetts 01257*

413-229-7000  
Fax: 413-229-7010  
TTY: 800-439-2370

October 13, 2020  
Email: [Commission@CCCMass.Com](mailto:Commission@CCCMass.Com)

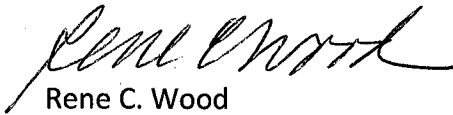
Steven J. Hoffman, Chairman  
MA Cannabis Control Commission  
Union Station  
2 Washington Square  
Worcester, MA 01604

**Re: Host Community Agreement certified for Berkshire Welco, Main Street, Sheffield, MA 01257**

Dear Chairman Hoffman and Commissioners:

On behalf of the Sheffield Select Board, the executive authority for the Town, this letter will serve as certification that a Host Community Agreement (HCA) has been executed between the Town of Sheffield and the applicant and is in place for all currently and sought permitted adult marijuana uses for the facility above referenced. No new HCA is required.

Sincerely,

  
Rene C. Wood  
Chair





Carolann Strickling &lt;carolann@thepass.co&gt;

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**Fwd: Berkshire Welco**

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**Chris Weld** <chris@thepass.co>  
To: Carolann Strickling <carolann@thepass.co>

Wed, Nov 4, 2020 at 10:18 AM

----- Forwarded message -----

From: **Steven Hoffman** <[Steven.Hoffman@cccmass.com](mailto:Steven.Hoffman@cccmass.com)>  
Date: Thu, Oct 1, 2020 at 3:32 PM  
Subject: RE: Berkshire Welco  
To: Chris Weld <[chris@thepass.co](mailto:chris@thepass.co)>

Chris,

I have consulted with my legal staff on your question and they confirmed my opinion. Ultimately, this is up to the municipality in question. Our regulations (based on the underlying statute) require that the municipality certifies that an HCA has been executed between the municipality and the applicant before we can begin considering an application. That is our only role. We don't render judgment on what qualifies as an acceptable HCA. It is up to the municipality to decide whether the original HCA with an addendum is sufficient for them to make such a certification with respect to your new application or if they require a completely new agreement.

Let me know if you have any questions,

Steve

**Steven J. Hoffman****Chairman**

Cannabis Control Commission

[2 Washington Square](#)[Worcester, MA 01604](#)

O: (774) 415-0426 C: (617) 366-7468

[Steven.Hoffman@cccmass.com](mailto:Steven.Hoffman@cccmass.com)Website: [masscannabiscontrol.com](http://masscannabiscontrol.com)

**From:** Chris Weld <[chris@thepass.co](mailto:chris@thepass.co)>  
**Sent:** Tuesday, September 29, 2020 8:58 AM  
**To:** Steven Hoffman <[Steven.Hoffman@cccmass.com](mailto:Steven.Hoffman@cccmass.com)>  
**Subject:** Berkshire Welco

Commissioner Hoffman ,

The dust has settled and we seem to be making progress out here in Western MA . We are now ready to proceed with our application for an outdoor grow at our first site here in Sheffield . As a reminder , we were denied the outdoor portion of our license number MCN281317. I was hoping that we would not need to go through the lengthy process of getting another HCA a new outdoor component as the town has already approved it . I am sure that they would be happy to write an addendum letter stating that would be ok since the physical site has already been approved . Would this be ok , or are we back to square one ?

Many thanks ,

Chris Weld

1-413-429-6280

**Host Community Agreement**  
**Between**  
**Town of Sheffield, Massachusetts**  
**and**  
**Berkshire Welco, LLC**

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This Host Community Agreement ("HCA") is made by and between the Town of Sheffield, a Massachusetts municipal corporation with an address of 21 Depot Square, Sheffield, MA 01257, acting by and through its Board of Selectmen (the "Town"), and Berkshire Welco, LLC, a Massachusetts corporation with a principal place of business of 1375 North Main Street Sheffield, MA 01257 (the "Operator"). The Town and Operator collectively are referred to as the "Parties."

WHEREAS, Operator intends utilize commercial space located at 1375 North Main Street Sheffield, MA 01257 Sheffield, MA (the "Premises") for the purposes of operating as a marijuana retailer, marijuana cultivator and marijuana product manufacturer pursuant to G. L. c. 94G.

WHEREAS, Operator intends to submit applications to the Cannabis Control Commission (the "Commission") for licenses to operate as a marijuana retailer, marijuana cultivator and marijuana product manufacturer at the Premises pursuant to G. L. c. 94G, and the Town acknowledges that it will timely comply with any requests from the Commission in connection with said applications.

WHEREAS, this HCA shall constitute the stipulations of responsibilities between the Town as host community and Operator pursuant to G. L. c. 94G, § 3 for the Premises.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Operator offers and the City accepts this Agreement in accordance with G. L. c. 44, § 53A and G. L. c. 94G, § 3 as follows:

1. Operator shall make annual community impact fees, pursuant to G. L. c. 94G, § 3 to the Town in the amount of three percent (3%) of gross retail sales of Usable Marijuana, as that term is defined by 935 CMR 100, to consumers from the Premises, provided that if the Legislature raises the current three percent maximum amount for community impact fees that a marijuana establishment may pay to a municipality pursuant to G. L. c. 94G, § 3(d), Operator shall pay a community impact fee based on the greatest percentage rate of gross retail sales of Usable Marijuana to consumers from the Premises allowed by the Legislature.
2. Community impact fees shall be paid by Operator quarterly each calendar year on the 1<sup>st</sup> of January, April, July and October beginning on the first of such dates after commencement of retail sales of Usable Marijuana to consumers from the Premises. Said community impact fees shall be tendered pursuant to G. L. c. 44, § 53A and G. L. c. 94G, § 3 for the purpose of

addressing the cost of such direct and secondary impacts of the Company operation within the Town, provided, however, that the Town may use such funds to address appropriate Town needs in its discretion. The Parties agree that the amount of the community impact fees set forth herein are reasonably related to the real tangible and intangible mitigation costs imposed upon the City due to the Operator's activities within the Town.

3. It is expressly agreed by the Parties that in the event Operator executes a Host Community Agreement pursuant to G. L. c. 94G, § 3, with any other municipality that pays to said municipality a percentage rate of gross retail sales of Usable Marijuana to consumers from the Premises greater than the same percentage rate provided in Paragraph 1 of this HCA, Operator shall pay to the Town the same community impact fee provided to said other municipality.
4. Operator shall give hiring preferences to residents of the Town who otherwise meet the qualifications for employment at the Premises.
5. Operator shall coordinate with the Sheffield Police Department in the development and implementation of security measures, as required pursuant to applicable regulations and otherwise, including determining the placement of exterior security cameras. Operator will maintain a cooperative relationship with the Sheffield Police Department, including but not limited to, periodic meetings to review operational concerns and communication to Sheffield Police Department of any suspicious activities on the site.
6. The gross retail sales of Usable Marijuana to consumers from the Premises is expected to be reported to the Commission and the Department of Revenue. Operator shall maintain its books, financial records, and other compilations of data pertaining to the requirements of this Agreement in accordance with standard accounting practices and any applicable regulations or guidelines of the Commission. All records shall be kept for a period of at least seven (7) years. Review of Operator's books, financial records, or other documents may be made upon not less than thirty (30) days prior written notice from the Town and shall occur only during normal business hours at such place where said books, financial records and accounts are maintained. The Town's examination, copying or audit of such records shall be conducted in such manner as not to interfere with Operator's normal business activities.
7. Operator agrees to annually hold no fewer than three (3) educational and/or charitable events for the benefit of the public in the Town in consultation with the Board of Selectmen, Town Administrator, Director of Community Development and Sheffield Police Department.
8. Amendments to the terms of this HCA may be made only by written agreement of the Parties.
9. This HCA is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the Town nor Operator shall assign or transfer any interest in the Agreement without the written consent of the other.
10. Operator agrees to comply with all state and local laws, rules, regulations and orders applicable to the Premises, such provisions being incorporated herein by reference, and shall

be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of renovation or construction of the Premises.

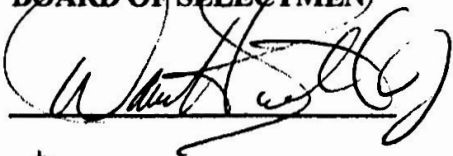
11. Any and all notices, or other communications required or permitted under this HCA, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the Parties ~~at the addresses set forth on Page 1~~ or furnished from time to time in writing hereafter by one party to the other party.

Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

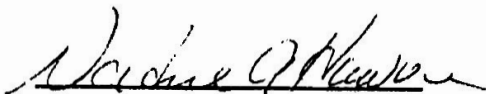
12. Operator shall comply with all state and local laws, rules, regulations and orders applicable to the work provided pursuant to this Agreement, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work.
13. Operator shall indemnify, defend, and hold the Town harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorney's fees, arising out of Operator's breach of this Agreement or the negligence or misconduct of Operator, or Operator's agents or employees.
14. If any term or condition of this HCA or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this HCA shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
15. This HCA shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the parties submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

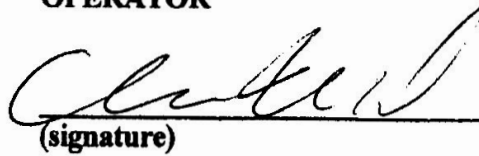
**TOWN OF SHEFFIELD  
BOARD OF SELECTMEN**







Berkshire Welco, LLC  
**OPERATOR**

  
(signature)

Chris Welco - CEO

\_\_\_\_\_  
(name and title)



***Town of Sheffield  
Board of Selectmen  
Town Hall  
21 Depot Square  
Sheffield, Massachusetts 01257***

*Voice: 413-229-7000  
Fax: 413-229-7010  
TTY: 800-439-2370*

November 16, 2020

**MEMORANDUM:**

To: Marijuana Establishments

From: Board of Selectmen

RE: Host Community Agreement – Educational Programming

At their meeting held on November 12, 2020, the Select Board unanimously voted to suspend the requirement listed in each Host Community Agreement regarding providing an educational program to the community. This suspension is effective immediately and will expire on March 31, 2021, at that time the Board will discuss whether or not to extend the suspension.

This decision was reached due to the restrictions regarding gatherings, which would make programming difficult. If you have already scheduled or held a program, please submit that information to the Board, otherwise, we will be in touch at the end of March.

Please contact our office with any questions.

# Berkshire County Classifieds



To advertise call 413-496-6365 or email [classifieds@newenglandnewspapers.com](mailto:classifieds@newenglandnewspapers.com)

The Berkshire Eagle

### Public Notices

Commonwealth of Massachusetts  
The Trial Court  
Probate and Family Court  
Berkshire Probate and Family Court  
44 Bank Row  
Pittsfield, MA 01201  
(413)442-6941

#### CITATION ON PETITION TO CHANGE NAME

Docket No. BE20C0089CA

In the matter of:  
Kyreasia Monay Solomon

A Petition to Change Name of Adult has been filed by **Kyreasia Monay Solomon** of **Pittsfield MA** requesting that the court enter a Decree changing their name to: **Kyreasia Monay McGirt**

#### IMPORTANT NOTICE

Any person may appear for purposes of objecting to the petition by filing an appearance at: **Berkshire Probate and Family Court** before 10:00 a.m. on the return day of 02/10/2021. This is NOT a hearing date, but a deadline by which you must file a written appearance if you object to this proceeding.

WITNESS,  
Hon. Richard A Simons,  
First Justice of this Court.  
Date: January 13, 2021

Anthony P Patella  
Register of Probate

Ad# 54165  
01/21/2021

**GREAT BARRINGTON CONSERVATION COMMISSION**  
The Great Barrington Conservation Commission will hold a virtual on-line remote public meeting on **Wednesday, January 27, 2021 at 6:30 PM** to consider a Request for Determination of Applicability from the Great Barrington Land Conservancy; the property is the Riverwalk trail easement, Map 19 Lot 1238. The proposed work consists of removing a hazardous dead Elm tree on the upper bank of

### Public Notices

Massachusetts Wetlands Protection Act and the Great Barrington Wetlands Protection Bylaw.  
Kate VanOlst, Chairperson.

AD# 54172  
01/21/2021

#### GREAT BARRINGTON CONSERVATION COMMISSION

The Great Barrington Conservation Commission will hold a virtual on-line remote public meeting on **Wednesday, January 27, 2021 at 6:30 PM** to consider a Request for Determination of Applicability from Robert Harris & Ellen McTigue, property at 80 Monument Valley Road, Map 41 Lot 7C. The proposed work consists of removing a 14' x 14' portion of an existing deck. Installing three Techno Post Helical screw/piles, and re-building in the same 14' x 14' footprint an enclosed sunroom. Existing concrete piers under the removed deck will be abandoned and remain undisturbed. **Persons wishing to access this on-line public meeting should consult the posted Agenda for instructions and access codes.** The public meeting will be conducted in accordance with the Massachusetts Wetlands Protection Act and the Great Barrington Wetlands Protection Bylaw.  
Kate VanOlst, Chairperson.

AD# 54169  
01/21/2021

#### GREAT BARRINGTON CONSERVATION COMMISSION

The Great Barrington Conservation Commission will hold a virtual on-line remote public meeting on **Wednesday, January 27, 2021 at 6:30 PM** to consider a Request for Determination of Applicability from SK Design Group on behalf of Joseph Lewis, property at 80 Lewis Avenue, Map 18 Lot 100. The proposed work consists of converting an existing single family house into professional office, establishing 10 paved parking spaces, including +/- 943 sq. ft. of new pavement and installation of underground propane tanks within a buffer zone. **Persons wishing to access this on-line public meeting should consult the posted Agenda**

### Public Notices

#### NOTICE OF COMMUNITY OUTREACH MEETING

Notice is hereby given that Berkshire Welco Lab & Manufacturing, LLC will host a Community Outreach Meeting to discuss the proposed siting of Adult Use Marijuana Lab & Manufacturing and Cultivation Facility located at 34 Home Rd, Sheffield, MA, 01257 in accordance with Massachusetts Cannabis Control Commission's regulation 935 CMR 500.000. This meeting will be covering a full review of our intent to apply for a special cannabis permit at this location

On Friday February 5, 2021  
from 4:00 pm to 5:00 pm  
via Zoom

Topic: Notice of Community Outreach Meeting  
Time: Feb 5, 2021 04:00 PM Eastern Time (US and Canada)

Join Zoom Meeting  
<https://zoom.us/j/94291392321?pwd=ZUhMeFJlbU4xMjhZYTVYcmw4OVAvQT09>  
Meeting ID: 942 9139 2321  
Passcode: 487884  
One tap mobile

+13017158592,,94291392321#,,,,\*487884# US (Washington D.C)  
+13126266799,,94291392321#,,,,\*487884# US (Chicago)

Dial by your location  
+1 301 715 8592 US (Washington D.C)  
+1 312 626 6799 US (Chicago)  
+1 929 205 6099 US (New York)  
+1 253 215 8782 US (Tacoma)  
+1 346 248 7799 US (Houston)  
+1 669 900 6833 US (San Jose)

Topics to be discussed at the meeting include but not limited to:  
- Plans for maintaining a secure facility;  
- Plans to prevent diversion to minors;  
- Plans to be a positive impact of the community; and  
- Plans to ensure the establishment will not constitute a nuisance to

### Public Notices

company representatives about the proposed facility and operations.

AD# 54138  
01/21/2021, 01/28/2021

#### TOWN OF LANESBOROUGH CONSERVATION COMMISSION NOTICE OF PUBLIC HEARING

Notice is hereby given that the Lanesborough Conservation Commission will hold a Public Hearing on **Monday, February 1, 2021 at 6:15 p.m. at the Newton Memorial Town Hall** to act on a Request for Determination of Applicability filed by Phil Bock to install rip rap to prevent further erosion to existing shore line at 23 Sunrise Street. Additional information is available for review at [www.lanesborough-ma.gov](http://www.lanesborough-ma.gov)  
In case of a COVID-19 related Town Hall closure or limited public access, please check [www.lanesborough-ma.gov](http://www.lanesborough-ma.gov) for virtual hearing information. Comments may be mailed to the Lanesborough Conservation Commission at 83 North Main Street, P.O. Box 1492, Lanesborough, MA 01237.

Stacy Parsons, Chairwoman

AD# 54137  
01/21/2021

#### Town of Dalton Conservation Commission Notice of Public Hearing Via Zoom

Pursuant to M.G.L. Chapter 131, section 40, the Wetlands Protection Act, The Dalton Conservation Commission will hold a public hearing on **Tuesday, January 26, 2021, at 7 pm via virtual zoom meeting** to review a Notice of Intent submitted by the City of Pittsfield Department of Public Services and Utilities to construct a new chemical storage building, fire pump building, revised storm water management system, regrading, paving extension and repaving. Regulated impacted areas include a 200 ft. riverfront area within Dalton. Property is located at the existing Ashley WTP

### Public

Notice Berkshii will hos Meeting to our approve for Adu Cultivatir N. Main accorda Cannabi regulatio

On F from 3:C

Topic: N O 1: Sl Time: Fe Easter

<https://www.lanesborough-ma.gov>  
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+1 929

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Fi <https://www.lanesborough-ma.gov>

Topics meeting - Plans f - Plans t - Plans t - Plans t - Plans t



## NOTICE OF COMMUNITY OUTREACH MEETING

Notice is hereby given that Berkshire Welco Cultivation, LLC will host a Community Outreach Meeting to discuss the Amendment to our existing licensing already approved by the Town of Sheffield for Adult Use Marijuana Outdoor Cultivation Facility located at 1375 N. Main St, Sheffield, MA, 01257 in accordance with Massachusetts Cannabis Control Commission's regulation 935 CMR 500.000

On Friday February 5, 2021 from 3:00 pm to 3:30 pm via **Zoom**

Topic: Notice of Community Outreach Meeting - 1375 N. Main St., Sheffield, MA 01257

Time: Feb 5, 2021 03:00 PM Eastern Time (US and Canada)

### Join Zoom Meeting

<https://zoom.us/j/96838543159?pwd=b3hmNjE5N1BHZnViSUxTdVNOS2Rydz09>

Meeting ID: 968 3854 3159

Passcode: 034236

One tap mobile

+19292056099,,96838543159#,,,,\*034236# US (New York)

+13017158592,,96838543159#,,,,\*034236# US (Washington D.C)

### Dial by your location

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington D.C)

+1 312 626 6799 US (Chicago)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)





Meeting ID: 968 3854 3159

Passcode: 034236

Find your local number: <https://zoom.us/j/96838543159>

Topics to be discussed at the meeting include but not limited to:

- Plans for maintaining a secure facility;
- Plans to prevent diversion to minors;
- Plans to be a positive impact of the community; and
- Plans to ensure the establishment will not constitute a nuisance to the community.

Interested members of the community are encouraged to ask questions and receive answers from company representatives about the proposed facility and operations.



## NOTICE OF COMMUNITY OUTREACH MEETING

Notice is hereby given that Berkshire Welco Cultivation, LLC will host a Community Outreach Meeting to discuss the Amendment to our existing licensing already approved by the Town of Sheffield for Adult Use Marijuana Outdoor Cultivation Facility located at 1375 N. Main St, Sheffield, MA, 01257 in accordance with Massachusetts Cannabis Control Commission's regulation 935 CMR 500.000

On Friday February 5, 2021 from 3:00 pm to 3:30 pm via **Zoom**

Topic: Notice of Community Outreach Meeting - 1375 N. Main St., Sheffield, MA 01257

Time: Feb 5, 2021 03:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/96838543159?pwd=b3hmNjE5N1BHZnViSUxTdVNOS2Rydz09>

Meeting ID: 968 3854 3159

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Meeting ID: 968 3854 3159

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- Plans to ensure the establishment will not constitute a nuisance to the community.

Interested members of the community are encouraged to ask questions and receive answers from company representatives about the proposed facility and operations.

# Community Outreach Meeting Attestation Form

## Instructions

Community Outreach Meeting(s) are a requirement of the application to become a Marijuana Establishment (ME) and Medical Marijuana Treatment Center (MTC). 935 CMR 500.101(1), 500.101(2), 501.101(1), and 501.101(2). The applicant must complete each section of this form and attach all required documents as a single PDF document before uploading it into the application. If your application is for a license that will be located at more than one (1) location, and in different municipalities, applicants must complete two (2) attestation forms – one for each municipality. Failure to complete a section will result in the application not being deemed complete. 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(2) and 501.400(2).

## Attestation

I, the below indicated authorized representative of that the applicant, attest that the applicant has complied with the Community Outreach Meeting requirements of 935 CMR 500.101 and/or 935 CMR 501.101 as outlined below:

1. The Community Outreach Meeting was held on the following date(s): 2-5-21
2. At least one (1) meeting was held within the municipality where the ME is proposed to be located.
3. At least one (1) meeting was held after normal business hours (this requirement can be satisfied along with requirement #2 if the meeting was held within the municipality and after normal business hours).



4. A copy of the community outreach notice containing the time, place, and subject matter of the meeting, including the proposed address of the ME or MTC was published in a newspaper of general circulation in the municipality at least 14 calendar days prior to the meeting. A copy of this publication notice is labeled and attached as "Attachment A."

a. Date of publication: 01/21/2021

b. Name of publication: Berkshire Eagle

5. A copy of the community outreach notice containing the time, place, and subject matter of the meeting, including the proposed address of the ME or MTC was filed with clerk of the municipality. A copy of this filed notice is labeled and attached as "Attachment B."

a. Date notice filed: 01/15/2021

6. A copy of the community outreach notice containing the time, place, and subject matter of the meeting, including the proposed address of the ME or MTC was mailed at least seven (7) calendar days prior to the community outreach meeting to abutters of the proposed address, and residents within 300 feet of the property line of the applicant's proposed location as they appear on the most recent applicable tax list, notwithstanding that the land of the abutter or resident is located in another municipality. A copy of this mailed notice is labeled and attached as "Attachment C." Please redact the name of any abutter or resident in this notice.

a. Date notice(s) mailed: 01/15/2021

7. The applicant presented information at the Community Outreach Meeting, which at a minimum included the following:

- a. The type(s) of ME or MTC 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 ME or MTC to prevent diversion to minors;
- d. A plan by the ME or MTC to positively impact the community; and
- e. Information adequate to demonstrate that the location will not constitute a nuisance as defined by law.

8. Community members were permitted to ask questions and receive answers from representatives of the ME or MTC.



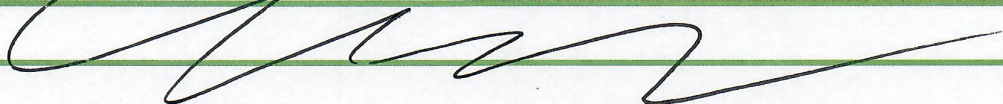
Name of applicant:

Berkshire Welds LLC

Name of applicant's authorized representative:

Chris Weld

Signature of applicant's authorized representative:



1375 N. Main  
Sheffield MA 01257



## Host Community Agreement Certification Form

### Instructions

Certification of a host community agreement is a requirement of the application to become a Marijuana Establishment (ME) and Medical Marijuana Treatment Center (MTC). Applicants must complete items 1-3. The contracting authority for the municipality must complete items 4-8. Failure to complete a section will result in the application not being deemed complete. This form should be completed and uploaded into your application. 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(2) and 501.400(2).

### Certification

The parties listed below do certify that the applicant and municipality have executed a host community agreement on the specified date below pursuant to G.L. c. 94G § 3(d):

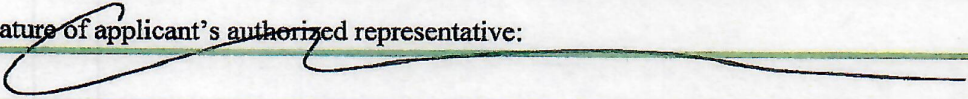
1. Name of applicant:

Berkshire Welco, LLC

2. Name of applicant's authorized representative:

Christopher Weld

3. Signature of applicant's authorized representative:



4. Name of municipality:

Town of Sheffield

5. Name of municipality's contracting authority or authorized representative:

Rene C. Wood



6. Signature of municipality's contracting authority or authorized representative:

*Steve Wood*

7. Email address of contracting authority or authorized representative of the municipality (*this email address may be used to send municipal notices pursuant to 935 CMR 500.102(1) and 501.102(1).*):

*rlabombard@sheffieldma.gov*

8. Host community agreement execution date:

*1/28/21*

*1375 N. Main St.  
Sheffield MA 01257*





# Berkshire County Classifieds

To advertise call 413-496-6365 or email classifieds@newenglandnewspapers.com

### The Berkshire Eagle



Site 1 Outdoor

#### Public Notices

**Commonwealth of Massachusetts**  
The Trial Court  
Probate and Family Court  
Berkshire Probate and Family Court  
44 Bank Row  
Pittsfield, MA 01201  
(413)442-6941

#### CITATION ON PETITION TO CHANGE NAME

Docket No. BE20C0069CA  
In the matter of:  
Kyrasina Monay Solomon

A Petition to Change Name of Adult has been filed by **Kyrasina Monay Solomon** of Pittsfield, MA requesting that the court enter a decree changing their name to **Kyrasina Monay McGirt**

**IMPORTANT NOTICE**  
Any person may appear for purposes of objecting to the petition by filing an appearance at Berkshire Probate and Family Court before 10:00 a.m. on the return day of 02/10/2021. This is NOT a hearing date, but a deadline by which you must file a written appearance if you object to this proceeding.

**WITNESS:**  
Hon. Richard A. Simone,  
First Justice of this Court.  
Date: January 13, 2021

Anthony P. Patallo  
Register of Probate

Ad# 54166  
01/21/2021

#### GREAT BARRINGTON CONSERVATION COMMISSION

The Great Barrington Conservation Commission will hold a virtual on-line remote public meeting on **Wednesday, January 27, 2021 at 6:00 PM** to consider a Request for Determination of Applicability from SR Design Group on behalf of Joseph Lewis, property at 80 Lewis Avenue, Map 18 Lot 101. The proposed work consists of converting an existing large family house into professional office, establishing 15 paved parking spaces, including 7, 94.3 sq ft of new pavement and installation of underground propane tanks within a lot 125B. The proposed work consists of removing a hazardous dead Elm tree on the upper bank of the Housatonic River, leaving the root system in the ground and planting two new riparian native deciduous saplings nearby. Persons wishing to access this on-line public meeting should consult the posted Agenda for instructions and access codes. The public meeting will be conducted in accordance with the

#### Public Notices

**Massachusetts Wetlands Protection Act** and the **Wetland Bankruptcy Protection Bylaw**.  
Kate VanOost, Chairperson.  
Ad# 54172  
01/21/2021

#### GREAT BARRINGTON CONSERVATION COMMISSION

The Great Barrington Conservation Commission will hold a virtual on-line remote public meeting on **Wednesday, January 27, 2021 at 6:00 PM** to consider a Request for Determination of Applicability from Robert Harris & Ellen McType, property at 60 Monahan Valley Road, Map 41 Lot 7. The proposed work consists of removing a 14' x 14' portion of an existing deck, installing three Technic Post Helical screw-piles, and re-building in the same 14' x 14' footprint an enclosed sunroom. Existing concrete piers under the removed deck will be abandoned and remain undisturbed. Persons wishing to access this on-line public meeting should consult the posted Agenda for instructions and access codes. The public meeting will be conducted in accordance with the Massachusetts Wetlands Protection Act and the Great Barrington Wetlands Protection Bylaw. Kate VanOost, Chairperson.

#### On Friday February 5, 2021 from 4:00 pm to 5:00 pm via Zoom

Topic: Notice of Community Outreach Meeting  
Time: Feb 5, 2021 04:00 PM  
(Eastern Time US and Canada)

#### Join Zoom Meeting

https://zoom.us/j/94261362921  
Meeting ID: 942 613 629 21  
Passcode: 94261362921  
One tap mobile

+13017158962, +42919302121, +487844 US (Washington D.C.), +13120069799, +42919302121, +487844 US (Chicago)

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Ad# 54169  
01/21/2021

#### Public Notices

**NOTICE OF COMMUNITY OUTREACH MEETING**  
Ad# 54139  
01/21/2021, 01/28/2021

Notice is hereby given that Berkshire Welco Lab & Manufacturing, LLC will hold a Community Outreach Meeting to discuss the proposed siting of Adult Use Marijuana Lab & Manufacturing and Cultivation Facility located at 94 Home Rd, Sheffield, MA 01257 in accordance with Massachusetts Damodar Control Commission's regulation 95B CMR 509.00. The meeting will be a full review of our permit to apply for a special cannabis permit at this location.

#### On Friday February 5, 2021 from 4:00 pm to 5:00 pm via Zoom

Topic: Notice of Community Outreach Meeting  
Time: Feb 5, 2021 04:00 PM  
(Eastern Time US and Canada)

#### Join Zoom Meeting

https://zoom.us/j/94261362921  
Meeting ID: 942 613 629 21  
Passcode: 94261362921  
One tap mobile

+13017158962, +42919302121, +487844 US (Washington D.C.), +13120069799, +42919302121, +487844 US (Chicago)

#### Town of Dalton Conservation Commission

Notice of Public Hearing  
Pursuant to M.G.L. Chapter 13B section 40, the Dalton Conservation Commission will hold a public hearing on **Tuesday, January 26, 2021, 7 pm** via virtual Zoom meeting to review a Notice of Intent for the City of Dalton's Department of Public Services and Utilities to conduct a new chemical analysis building, two new 1000-gallon revised storm water management system, regarding paving extension and resurfacing. Regulated impacted areas include a 300 ft. riparian buffer zone, a 100 ft. riparian buffer located at the existing Ashley WTP site on the town line, Ashley Way in Dalton, MA and Dalton.

Interested members of the community are encouraged to ask questions and receive answers from the Commission.

Cheryl Rose  
Chairman

Ad# 54137  
01/21/2021

#### Public Notices

**NOTICE OF COMMUNITY OUTREACH MEETING**  
Ad# 54137  
01/21/2021, 01/28/2021

Notice is hereby given that Berkshire Welco Cultivation, LLC will hold a Community Outreach Meeting to discuss the Amendment to our existing license already issued for Adult Use Marijuana Outdoor Cultivation Facility located at 1375 N. Main St, Sheffield, MA 01257 in accordance with Massachusetts Damodar Control Commission's regulation 95B CMR 500.000.

#### On Friday February 5, 2021 from 3:00 pm to 3:30 pm via Zoom

Topic: Notice of Community Outreach Meeting - 1375 N. Main St, Sheffield MA 01257

#### Join Zoom Meeting

https://zoom.us/j/94261362921  
Meeting ID: 942 613 629 21  
Passcode: 94261362921  
One tap mobile

+13017158962, +42919302121, +487844 US (Washington D.C.), +13120069799, +42919302121, +487844 US (Chicago)

#### Town of Dalton Conservation Commission

Notice of Public Hearing  
Pursuant to M.G.L. Chapter 13B section 40, the Dalton Conservation Commission will hold a public hearing on **Tuesday, January 26, 2021, 7 pm** via virtual Zoom meeting to review a Notice of Intent for the City of Dalton's Department of Public Services and Utilities to conduct a new chemical analysis building, two new 1000-gallon revised storm water management system, regarding paving extension and resurfacing. Regulated impacted areas include a 300 ft. riparian buffer zone, a 100 ft. riparian buffer located at the existing Ashley WTP site on the town line, Ashley Way in Dalton, MA and Dalton.

Interested members of the community are encouraged to ask questions and receive answers from the Commission.

Cheryl Rose  
Chairman

Ad# 54137  
01/21/2021

#### Public Notices

**NOTICE OF COMMUNITY OUTREACH MEETING**  
Ad# 54137  
01/21/2021, 01/28/2021

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#### On Friday February 5, 2021 from 3:00 pm to 3:30 pm via Zoom

Topic: Notice of Community Outreach Meeting - 1375 N. Main St, Sheffield MA 01257

#### Join Zoom Meeting

https://zoom.us/j/94261362921  
Meeting ID: 942 613 629 21  
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Interested members of the community are encouraged to ask questions and receive answers from the Commission.

Cheryl Rose  
Chairman

Ad# 54137  
01/21/2021

#### Public Notices

**Commonwealth of Massachusetts**  
The Trial Court  
Probate and Family Court  
CITATION ON PETITION FOR FORMAL ADJUDICATION  
Docket No. BE21P0018A  
Estate of: Harry R Lawton  
Date of Death: 11/24/2020

Beckwith Probate and Family Court  
14 Bank Row  
Pittsfield, MA 01201  
(413) 442-6941

To all interested persons:  
A Petition for Formal Probate of Will with Appointment of Personal Representative has been filed by Brian O. Lawton of Cheshire MA requesting that the Court enter a formal Decree and Order for and for such other relief as requested in the Petition.

The Petitioner requests that Brian O. Lawton of Cheshire MA be appointed as Personal Representative of said estate to serve Without Surety on the bond in an unsupervised administration.

**IMPORTANT NOTICE**  
You have the right to obtain a copy of the Petition from the Petitioner or to object. You have a right to object to this proceeding. To do so, you or your attorney must file a written appearance and objection at the Court before 10:00 a.m. on the return day of 02/08/2021. This is NOT a hearing date, but a deadline by which you must file a written appearance and objection if you object to this proceeding. If you fail to file a timely written appearance and objection followed by an affidavit of objections within thirty (30) days of the return day, action may be taken without further notice to you.

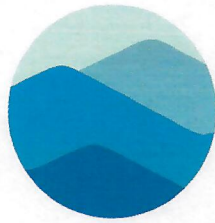
UNSUPervised ADMINISTRATION UNDER THE MASSACHUSETTS UNIFORM PROBATE CODE (MUPC)

A Personal Representative appointed under the MUPC in an unsupervised administration is not required to file an inventory of account accounts with the Court.

Ad# 54137  
01/21/2021, 01/28/2021

### Primetime

	A	B	C	7 PM	7:30	8 PM	8:30	9 PM	9:30	10 PM	10:30	11 PM	11:30
WBZ	3	3	3	IMSD	Jeopardy!	Young Sheldon (N)	Oppenheimer (N)	Mom (N)	Wipeout (N)	The Unicorn (N)	Star Trek: Discovery (N)	60 Minutes (N)	60 Minutes (N)
WSRH	3	6	6	CBS Evening News (N)	Jeopardy!	Family Feud (N)	Surgery (N)	Andi (N)	Supper (N)	Supper (N)	Supper (N)	60 Minutes (N)	60 Minutes (N)
WRBG	6	6	6	CBS Evening News (N)	Jeopardy!	Family Feud (N)	Surgery (N)	Andi (N)	Supper (N)	Supper (N)	Supper (N)	60 Minutes (N)	60 Minutes (N)
WCVB	5	5	5	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
WYEN	10	10	10	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
WNYT	13	13	13	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
WVLA	14	14	14	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
WGBY	12	12	12	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
WCHN	15	15	15	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
WOMH	11	11	11	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
WPX	11	11	11	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
WNYA	4	4	4	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
WXXA	7	7	7	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
A&E	38	38	38	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
AMC	29	29	29	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
BET	79	79	79	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
BRAVO	59	59	59	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
CNBC	48	48	48	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
CNN	46	46	46	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
COMC	36	36	36	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
CSNNE	26	26	26	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
DISC	37	37	37	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
DISN	43	43	43	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
ESPN	24	24	24	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
ESPN2	25	25	25	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
FNC	53	53	53	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
FREQ	112	112	112	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
FX	31	31	31	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
HBO	518	518	518	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
HIST	39	39	39	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
LIFE	30	30	30	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
MAX	533	533	533	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
MSNBC	49	49	49	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
NECN	54	54	54	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
NICK	33	33	33	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
POP	55	55	55	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
PRMT	56	56	56	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
SHOW	551	551	551	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
SPY	61	61	61	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
TCM	58	58	58	News (N)	Chronicle (N)	Celebrity Wheel of Fortune (N)	Oppenheimer (N)	The Chase - I Heard You're Married (N)	The Hustler (N)	Watch Out (N)	60 Minutes (N)	60 Minutes (N)	60 Minutes (N)
TLC	40	40	40	News (N)	Chronicle (N)								



# THE PASS

BERKSHIRES

Retail license application # MRN283967

Start date: 11/06/2020

Business Documentation

### Plan to remain Compliant.

I, Chris Weld, hereby attest that Berkshire Welco, LLC ~~located~~ located at 1375 N. Main Street, Sheffield MA is and plans to remain compliant with all permitting and local ordinances and that we are within proper zoning requirements. Berkshire Welco has applied for special permit with the town of Sheffield in accordance with town bylaws and we stand compliant with Section 7.5 of the Town of Sheffield Bylaws and regulations.

I, Christopher Weld, I affirm that all the information provided within is true and accurate. I further affirm that all required attestations written above have been made voluntarily, and by signing below, certify that I do in fact make these true and accurate attestations.

Signature: \_\_\_\_\_

Name Printed: Christopher Weld

Date: 2-23-21

### AUTHENTICATION BY NOTARY PUBLIC

On this day of 2/23/21, before me, the undersigned notary public, personally appeared Christopher Weld, proved to me through satisfactory evidence of identification to be the person whose name is signed above and that he/she did so voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public Signature

**CAROLANN STRICKLING**  
Notary Public, Commonwealth of Massachusetts  
My Commission Expires March 9, 2023

NOTARY STAMP/SEAL



## **Plan to Positively Impact Areas of Disproportionate Impact**

The Plan below will apply to Berkshire Welco Cultivation LLC located at 1375 North Main Street in Sheffield.

### I. Promoting Parental Education About the Harms of Cannabis Use Among Youth in Pittsfield.

**Goal:** Help support existing programs that provide parental education about the harms of cannabis use at a young age, including information about safe storage and talking to your children about substance use by partnering with Southern Berkshire Community Coalition to fund the development of parental educational materials to be distributed at the point-of-sale at Berkshire Welco Cultivation LLC's dispensary and partner dispensaries in the Pittsfield area.

**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. Berkshire Welco Cultivation LLC will provide funding to Community Coalitions of Northern and Southern Berkshire County to support existing educational programs for parents about the harmful effects of youth cannabis consumption, with specific emphasis on reaching audiences in Pittsfield. These events will be intended for audiences of parents and other adults; anyone under younger than 21 years of age will not be permitted to attend.

Berkshire Welco Cultivation LLC has established a partnership supporting the development of educational materials to be distributed at the point-of-sale at our dispensary as well as our partner dispensaries in Pittsfield. The goal of these educational materials is to reach adult cannabis consumers and provide them with information about safe storage, the risks of underage consumption, and how to talk to your kids about substance use.

Berkshire Welco Cultivation LLC will provide funding for this endeavor with a donation of \$15,000 to the Southern Berkshire Community Coalition.

See attached letter from Senator Hinds.

### **Metrics and Timeframe:**

The plan progress and success will be tracked throughout the year and reported upon annually at the time of renewal.

1. **Number of Educational Seminars:** We have partnered with The Southern Berkshire Community Health Coalition in their Parenting Series and the AHEC. We will support through funding 3 educational seminars per annum.
2. **Limiting Cannabis Use Among Youth in the Berkshires:** Because the ultimate goal is to limit cannabis use among youth, Berkshire Welco Cultivation LLC will support by funding the ongoing tracking of youth substance use in Berkshire county by the Community Coalitions of Northern and Southern Berkshire County.

II. Increase targeted employment opportunities for Massachusetts residents who reside in areas of Disproportionate Impact and those who have past drug convictions or have parents or spouses with 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 (aiming for at least 15%) of Berkshire Welco Cultivation LLC’s workforce.

Program Details: The closest area of disproportionate impact to Berkshire Welco Cultivation LLC’s 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 Berkshire Welco Cultivation LLC 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:

- Berkshire Community College – we plan to participate in in person (as available) and virtual job fairs through Berkshire Community College located in Pittsfield Ma, acknowledging that only individuals 21 years of age or older will be considered for recruitment,
- To ensure that we can attract and target Massachusetts residents with past drug convictions we will also be posting all job openings quarterly on <https://www.jobsforfelonshub.com/jobs-forfelons/>
- All job postings will also include a statement encouraging applicants that are Massachusetts residents who have past drug convictions or have parents or spouses with past drug convictions to apply.
- To the extent we are gaining a critical mass of employees who live in our chosen area of disproportionate impact, we will be working with the BRTA on procuring monthly bus passes (a.k.a. Charlie cards) as needed from Pittsfield in order to ease the commutes of these employees.

Metrics and Timeframe:

The plan progress and success will be tracked throughout the year and reported upon annually at the time of renewal.

1. Job Fairs: When available we expect to work with the Partner Organizations to have 2 job fairs focused on Targeted Employees.

2. Targeted Employee Job Hires: In the first year of operations, we plan for 10% of our employees to be Targeted Employees. In the second year of operations, we plan for 15% of our employees to be Targeted Employees. Both goals are ambitious based on geographic limitations in the Berkshires.

III. Support through donations to human services organizations that serve individuals living in areas of disproportionate impact in the Berkshires.

Goal: Promote wellness in a community in an area of disproportionate impact through donations to and volunteer efforts with human services organizations working in the Pittsfield area.

Program Details: Berkshire Welco Cultivation LLC will provide monetary support to human services organizations that serve the goals of the Positive Impact Plan in the Pittsfield area. This will include monetary donations to organizations such as Goodwill Industries of the Berkshires and Southern Vermont to fund existing programs that serve individuals adversely impacted by the war on drugs. Berkshire Welco Cultivation LLC will also engage in volunteer efforts in conjunction with the City of Pittsfield to give back to the community through service hours in projects such as community clean ups. Organizations will be selected based on how the services provided through the organization align with the Plan's goals of lessening the disproportionate impact the cannabis prohibition has had on communities.

Metrics and Timeframe:

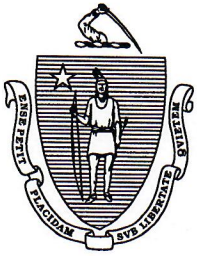
The plan progress and success will be tracked throughout the year and reported upon annually at the time of renewal.

1. Monetary Donations: Berkshire Welco Cultivation LLC will donate \$5,000 to organizations such as Goodwill Industries of the Berkshires and Southern Vermont toward their efforts with Keenan House in Pittsfield.
2. Volunteer Hours: Berkshire Welco Cultivation LLC will commit 40 volunteer man hours per quarter to public service efforts in areas of disproportionate impact, focusing on the city of Pittsfield, through initiatives such as "Green Up" days.

Disclosures:

Berkshire Welco Cultivation LLC 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.

Any actions taken, or programs instituted, by Berkshire Welco Cultivation LLC will not violate the Commission's regulations with respect to limitations on ownership or control or other applicable state laws.



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

William Francis Galvin  
Secretary of the  
Commonwealth

October 8, 2020

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 CULTIVATION, LLC**

in accordance with the provisions of Massachusetts General Laws Chapter 156C on **April 24, 2020.**

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:  
**BERKSHIRE WELCO, LLC**

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

The names of all persons authorized to act with respect to real property listed in the most recent filing are: **BERKSHIRE WELCO, LLC**



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



**The Commonwealth of Massachusetts**  
**William Francis Galvin**

Minimum Fee: \$100.00

Secretary of the Commonwealth, Corporations Division  
 One Ashburton Place, 17th floor  
 Boston, MA 02108-1512  
 Telephone: (617) 727-9640

**Certificate of Amendment**

(General Laws, Chapter )

Identification Number: 001435521

The date of filing of the original certificate of organization: 4/24/2020

1.a. Exact name of the limited liability company: BERKSHIRE WELCO CULTIVATION, LLC

1.b. The exact name of the limited liability company as amended, is: BERKSHIRE WELCO CULTIVATION, LLC

2a. Location of its principal office:

No. and Street: 1345 N MAIN STREET  
 City or Town: SHEFFIELD State: MA Zip: 01257 Country: USA

3. As amended, the general character of business, and if the limited liability company is organized to render professional service, the service to be rendered:

4. The latest date of dissolution, if specified:

5. Name and address of the Resident Agent:

Name: JESSE COOK-DUBIN  
 No. and Street: 28 NORTH STREET, 3RD FLOOR  
 City or Town: PITTSFIELD State: MA Zip: 01201 Country: USA

6. The name and business address of each manager, if any:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
MANAGER	BERKSHIRE WELCO, LLC	1345 N MAIN STREET SHEFFIELD, MA 01257 USA

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

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
SOC SIGNATORY	JESSE COOK-DUBIN	28 NORTH STREET, 3RD FLOOR PITTSFIELD, MA 01201 USA
SOC SIGNATORY	CHRISTOPHER WELD	1345 N MAIN STREET SHEFFIELD, MA 01257 USA

**8. The name and business address of the person(s) authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property:**

<b>Title</b>	<b>Individual Name</b> First, Middle, Last, Suffix	<b>Address</b> (no PO Box) Address, City or Town, State, Zip Code
REAL PROPERTY	BERKSHIRE WELCO, LLC	1345 N MAIN STREET SHEFFIELD, MA 01257 USA

**9. Additional matters:**

**10. State the amendments to the certificate:**

REFLECTS THAT MICHAEL COHEN IS NO LONGER AN AUTHORIZED SOC SIGNATORY

**11. The amendment certificate shall be effective when filed unless a later effective date is specified:**

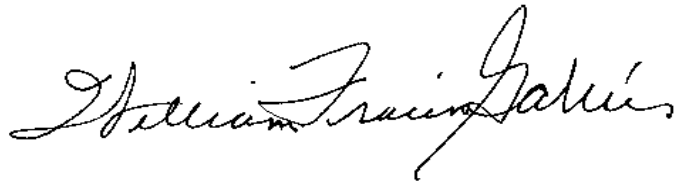
**SIGNED UNDER THE PENALTIES OF PERJURY, this 22 Day of October, 2020,  
CHRISTOPHER WELD , Signature of Authorized Signatory.**



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:

October 22, 2020 10:16 AM

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

WILLIAM FRANCIS GALVIN

*Secretary of the Commonwealth*



**The Commonwealth of Massachusetts**  
**William Francis Galvin**

Minimum Fee: \$500.00

Secretary of the Commonwealth, Corporations Division  
 One Ashburton Place, 17th floor  
 Boston, MA 02108-1512  
 Telephone: (617) 727-9640

**Certificate of Organization**

(General Laws, Chapter )

Identification Number: 001435521

1. The exact name of the limited liability company is: BERKSHIRE WELCO CULTIVATION, LLC

2a. Location of its principal office:

No. and Street: 1345 N MAIN STREET  
 City or Town: SHEFFIELD State: MA Zip: 01257 Country: USA

2b. Street address of the office in the Commonwealth at which the records will be maintained:

No. and Street: 1345 N MAIN STREET  
 City or Town: SHEFFIELD State: MA Zip: 01257 Country: USA

3. The general character of business, and if the limited liability company is organized to render professional service, the service to be rendered:

THE COMPANY IS ORGANIZED FOR THE SOLE PURPOSE OF APPLYING FOR A LICENSE WITH THE CANNABIS CONTROL COMMISSION, OR APPLYING FOR APPROVAL OF THE TRANSFER OF SUCH A LICENSE.

4. The latest date of dissolution, if specified:

5. Name and address of the Resident Agent:

Name: JESSE COOK-DUBIN  
 No. and Street: 28 NORTH STREET, 3RD FLOOR  
 City or Town: PITTSFIELD State: MA Zip: 01201 Country: USA

I, JESSE COOK-DUBIN resident agent of the above limited liability company, consent to my appointment as the resident agent of the above limited liability company pursuant to G. L. Chapter 156C Section 12.

6. The name and business address of each manager, if any:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
MANAGER	BERKSHIRE WELCO, LLC	1345 N MAIN STREET SHEFFIELD, MA 01257 USA

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

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code

SOC SIGNATORY	MICHAEL COHEN	1345 N MAIN STREET SHEFFIELD, MA 01257 USA
SOC SIGNATORY	CHRISTOPHER WELD	1345 N MAIN STREET SHEFFIELD, MA 01257 USA
SOC SIGNATORY	JESSE COOK-DUBIN	28 NORTH STREET, 3RD FLOOR PITTSFIELD, MA 01201 USA

**8. The name and business address of the person(s) authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property:**

<b>Title</b>	<b>Individual Name</b> First, Middle, Last, Suffix	<b>Address</b> (no PO Box) Address, City or Town, State, Zip Code
REAL PROPERTY	BERKSHIRE WELCO, LLC	1345 N MAIN STREET SHEFFIELD, MA 01257 USA

**9. Additional matters:**

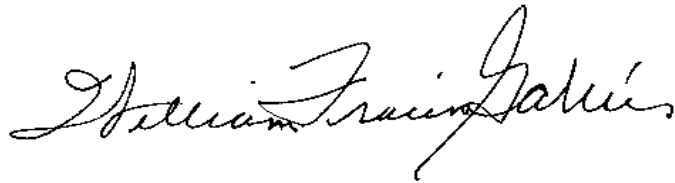
**SIGNED UNDER THE PENALTIES OF PERJURY, this 24 Day of April, 2020,**  
MICHAEL COHEN

*(The certificate must be signed by the person forming the LLC.)*

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:

April 24, 2020 02:55 PM

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

WILLIAM FRANCIS GALVIN

*Secretary of the Commonwealth*



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

Charles D. Baker  
GOVERNOR

Karyn E. Polito  
LT. GOVERNOR



291132069

Rosalin Acosta  
SECRETARY

Richard A. Jeffers  
DIRECTOR

Berkshire Welco Cultivation, LLC  
490 MAIN ST STE 1 ... 4  
GREAT BARRINGTON, MA 01230-2000

EAN: 22166581  
December 01, 2020

Certificate Id:43201

The Department of Unemployment Assistance certifies that as of 12/1/2020 ,Berkshire Welco Cultivation, LLC is current in all its obligations relating to contributions, payments in lieu of contributions, and the employer medical assistance contribution established in G.L.c.149,§189.

This certificate expires in 30 days from the date of issuance.

Richard A. Jeffers, Director

Department of Unemployment Assistance



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

Charles D. Baker  
GOVERNOR

Karyn E. Polito  
LT. GOVERNOR



291132069

Rosalin Acosta  
SECRETARY

Richard A. Jeffers  
DIRECTOR

Berkshire Welco Cultivation, LLC  
490 MAIN ST STE 1 ... 4  
GREAT BARRINGTON, MA 01230-2000

EAN: 22166581  
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This certificate expires in 30 days from the date of issuance.

Richard A. Jeffers, Director

Department of Unemployment Assistance



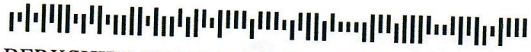
Commonwealth of Massachusetts  
Department of Revenue  
Geoffrey E. Snyder, Commissioner

mass.gov/dor

Letter ID: L1957903936  
Notice Date: October 26, 2020  
Case ID: 0-000-706-677



## CERTIFICATE OF GOOD STANDING AND/OR TAX COMPLIANCE



BERKSHIRE WELCO CULTIVATION, LLC  
1345 N MAIN ST  
SHEFFIELD MA 01257-9580



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

The Commissioner of Revenue certifies that, as of the date of this certificate, BERKSHIRE WELCO CULTIVATION, 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

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

**A Massachusetts Limited Liability Company**

**Dated as of July 9, 2018**



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**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 July 9, 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 \$3,550,000 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:   
Name: Michael Cohen  
Its: Manager

And  
By:   
Name: Christopher Weld  
Its: Manager

**MEMBERS HOLDING COMMON UNITS:**

  
Michael Cohen

  
Christopher Weld

Brian Buckowski

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the “Company”), hereby agrees, effective as of the undersigned’s admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the “Agreement”) as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.

Brian Buckowski

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)


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\_\_\_\_\_  
Jeffrey Grodsky

Print name of Member

\_\_\_\_\_  
  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

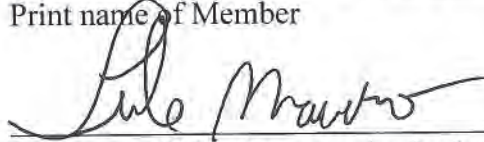
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Luke Mauro

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

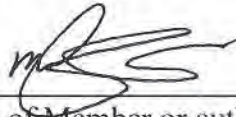
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MARK GOVORA

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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*RANNAPO PARTNERS LLC*

\_\_\_\_\_  
Print name of Member

*[Handwritten Signature]*

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

*SANDRA B. WINNBERG,  
PRINCIPAL*

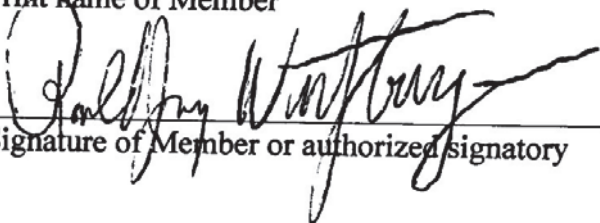
\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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LIMITED LIABILITY COMPANY AGREEMENT OF  
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Ronald Wurtzburger  
\_\_\_\_\_  
Print name of Member

  
\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)



**AMENDED AND RESTATED  
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BERSKHIRE WELCO, LLC**

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*Silent Lamb LLC*

Print name of Member

*Angela Cuddeci*

Signature of Member or authorized signatory

Signature (if joint signatures are required)

*Principal*

Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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Whitney River LLC  
Print name of Member

[Signature]  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

President  
Title of authorized signatory (if Member is an entity)

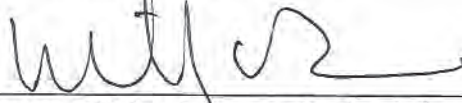
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William O'Brien

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

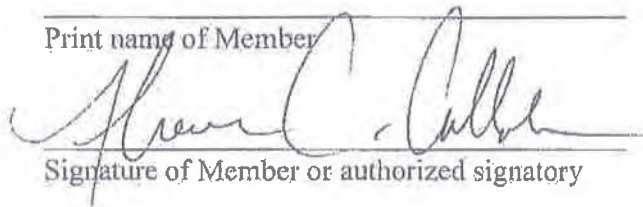
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Thomas C. Callahan

\_\_\_\_\_  
Print name of Member

  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

AMENDED AND RESTATED  
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BERSKHIRE WELCO, LLC

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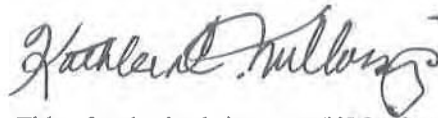
Print name of Member

JOEL C. MILLONZI  
Kathleen C. MILLONZI

Signature of Member or authorized signatory



Signature (if joint signatures are required)



Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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Francis M. Weld

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

<b>TITLE</b>	The Berkshire Welco Joinder (one more time)
<b>FILE NAME</b>	FHBOSTON-#4851243...estor Units).DOCX
<b>DOCUMENT ID</b>	d73a25286d0d52a7b183cafb86235bc00d37d7df
<b>STATUS</b>	● Completed

## Document History



SENT

**07/10/2018**  
14:53:38 UTC

Sent for signature to Francis Weld (fmwmd1@gmail.com) from michael@fndthepass.com  
IP: 24.194.22.218



VIEWED

**07/10/2018**  
16:31:30 UTC

Viewed by Francis Weld (fmwmd1@gmail.com)  
IP: 65.96.70.83



SIGNED

**07/10/2018**  
16:33:03 UTC

Signed by Francis Weld (fmwmd1@gmail.com)  
IP: 65.96.70.83



COMPLETED

**07/10/2018**  
16:33:03 UTC

The document has been completed.

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the "Company"), hereby agrees, effective as of the undersigned's admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the "Agreement") as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.



\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)



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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the “Company”), hereby agrees, effective as of the undersigned’s admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the “Agreement”) as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.

Amy Humes and Bruce Humes

Print name of Member



Signature of Member or authorized signatory



Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)

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

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ROBERT A CASERTA

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

---

<b>TITLE</b>	Joinder Re-Sign
<b>FILE NAME</b>	FHBOSTON-#4851243...estor Units).DOCX
<b>DOCUMENT ID</b>	d923c55ae6fa3fb92098a7ebca858b2b4fb3af76
<b>STATUS</b>	● Completed

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## Document History



SENT

**07/03/2018**

15:40:55 UTC

Sent for signature to Robert Caserta (bobuconn@aol.com) from michael@fndthepass.com

IP: 24.194.22.218



VIEWED

**07/04/2018**

15:13:17 UTC

Viewed by Robert Caserta (bobuconn@aol.com)

IP: 69.126.124.31



SIGNED

**07/04/2018**

15:14:22 UTC

Signed by Robert Caserta (bobuconn@aol.com)

IP: 69.126.124.31



COMPLETED

**07/04/2018**

15:14:22 UTC

The document has been completed.



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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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Thomas Gardner

---

Print name of Member



---

Signature of Member or authorized signatory

---





Signature (if joint signatures are required)

---

Title of authorized signatory (if Member is an entity)

<b>TITLE</b>	Joinder Re-Sign
<b>FILE NAME</b>	FHBOSTON-#4851243...estor Units).DOCX
<b>DOCUMENT ID</b>	3b558fd1d899d972f6f665088f734e664389821c
<b>STATUS</b>	● Completed

## Document History

	<b>07/03/2018</b> 15:35:11 UTC	Sent for signature to Tom Gardner (tjgard@aol.com) from michael@findthepass.com IP: 24.194.22.218
	<b>07/05/2018</b> 11:38:12 UTC	Viewed by Tom Gardner (tjgard@aol.com) IP: 67.246.17.133
	<b>07/05/2018</b> 11:41:08 UTC	Signed by Tom Gardner (tjgard@aol.com) IP: 67.246.17.133
	<b>07/05/2018</b> 11:41:08 UTC	The document has been completed.

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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*ANDREW FRASER.*

\_\_\_\_\_  
Print name of Member

*[Handwritten Signature]*

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

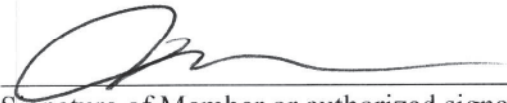
\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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Terry Wang \_\_\_\_\_  
Print name of Member

 \_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)



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

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Stephen Abraham

\_\_\_\_\_  
Print name of Member







\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

<b>TITLE</b>	Joinder Re-Sign
<b>FILE NAME</b>	FHBOSTON-#4851243...estor Units).DOCX
<b>DOCUMENT ID</b>	86f054717a42346817e4cc04fd10f23495e670b9
<b>STATUS</b>	● Completed

## Document History

 SENT	<b>07/03/2018</b> 15:42:07 UTC	Sent for signature to Steve Abraham (sabraham@becketgroup.com) from michael@findthepass.com IP: 24.194.22.218
 VIEWED	<b>07/06/2018</b> 23:50:26 UTC	Viewed by Steve Abraham (sabraham@becketgroup.com) IP: 24.194.6.76
 SIGNED	<b>07/06/2018</b> 23:51:00 UTC	Signed by Steve Abraham (sabraham@becketgroup.com) IP: 24.194.6.76
 COMPLETED	<b>07/06/2018</b> 23:51:00 UTC	The document has been completed.

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)

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

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Michael Cohen

\_\_\_\_\_  
Print name of Member

*michael cohen*

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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Keith Callahan  
Print name of Member

[Handwritten Signature]  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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\_\_\_\_\_  
Print name of Member

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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John C Morris

\_\_\_\_\_  
Print name of Member

  
\_\_\_\_\_  
Signature of Member or authorized signatory

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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Armstrong Holdings Corp LLC  
Print name of Member

Cowan  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

President  
Title of authorized signatory (if Member is an entity)



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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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**Margaret E Finch**

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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*Anne G. Frodericks*

Print name of Member

*Anne G. Frodericks*

Signature of Member or authorized signatory

Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)

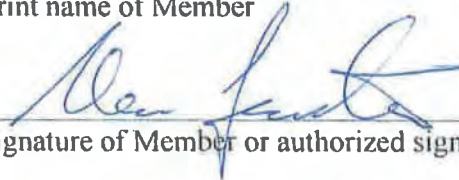
**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERSKIRE WELCO, LLC**

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Marc Fasteau

Print name of Member



Signature of Member or authorized signatory

Signature (if joint signatures are required)


Title of authorized signatory (if Member is an entity)

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

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Eric W. Roberts  
Print name of Member

  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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James Coulter Scala

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)





\_\_\_\_\_  
Title of authorized signatory (if Member is an  
entity)

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<b>TITLE</b>	Joinder Re-Sign
<b>FILE NAME</b>	FHBOSTON-#4851243...estor Units).DOCX
<b>DOCUMENT ID</b>	53f641f2dec194c57b3a954d2e30cf98177001d1
<b>STATUS</b>	● Completed

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## Document History

 SENT	<b>07/03/2018</b> 15:37:52 UTC	Sent for signature to James Coulter Scala (jedscala@gmail.com) from michael@findthepass.com IP: 24.194.22.218
 VIEWED	<b>07/03/2018</b> 18:54:27 UTC	Viewed by James Coulter Scala (jedscala@gmail.com) IP: 72.228.8.207
 SIGNED	<b>07/03/2018</b> 18:55:05 UTC	Signed by James Coulter Scala (jedscala@gmail.com) IP: 72.228.8.207
 COMPLETED	<b>07/03/2018</b> 18:55:05 UTC	The document has been completed.

AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERSKHIRE WELCO, LLC

MEMBER HOLDING SERIES A INVESTOR UNITS  
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Charles Tonleil

Print name of Member

[Handwritten Signature]

Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

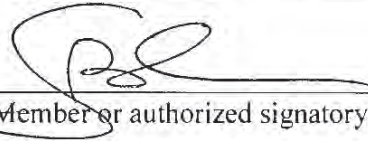
**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERKSHIRE WELCO, LLC**

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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BERKSHIRE WELCO, LLC

Print name of Member



Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

CRAIG BALSAM, MEMBER

Title of authorized signatory (if Member is an entity)



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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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*Jane Larkworthy*

\_\_\_\_\_  
Print name of Member

*Jane Larkworthy*

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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*BERTRAND GARBASSI*

\_\_\_\_\_  
Print name of Member

*BERTRAND GARBASSI*

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

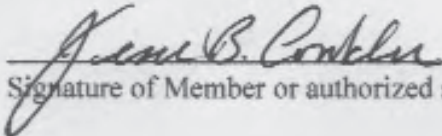
\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
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JESSE CONKLIN \_\_\_\_\_  
Print name of Member

 \_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

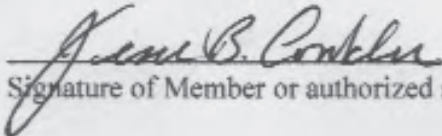
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Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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JESSE CONKLIN \_\_\_\_\_  
Print name of Member

 \_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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BERSKHIRE WELCO, LLC**

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JOSEPH E. MITCHELL / SEAN B. MITCHELL

Print name of Member

Joseph Mitchell /

Signature of Member or authorized signatory

Sean B. Mitchell

Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

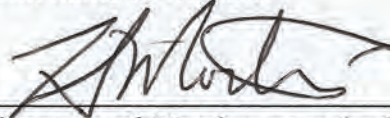
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Kenneth S. Morton

Print name of Member



Signature of Member or authorized signatory

Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)

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

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STEPHEN P. MARSHALL  
Print name of Member

Stephen P Marshall  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
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Touhy LEASING LLC  
Print name of Member

Arthur Gutterman  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

MANAGING DIRECTOR  
Title of authorized signatory (if Member is an entity)



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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the "Company"), hereby agrees, effective as of the undersigned's admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the "Agreement") as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.

WARD CAREY

Print name of Member



Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

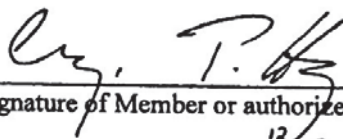
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George Petty

Print name of Member

  
Signature of Member or authorized signatory  
12/10

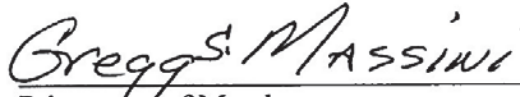
Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)

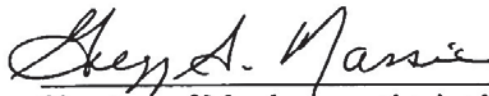
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\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an  
entity)

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

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MARIE MASSINI-REYNOLDS  
Print name of Member

Marie Massini Reynolds  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)


\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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MARK H MASSINI  
Print name of Member

  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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Justin Vaglias  
Print name of Member

[Signature]  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
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Natale Marasco  
Print name of Member

Natale Marasco  
Signature of Member or authorized signatory

-----  
Signature (if joint signatures are required)

-----  
Title of authorized signatory (if Member is an  
entity)

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

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William M Ryan  
Print name of Member

William M Ryan  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)



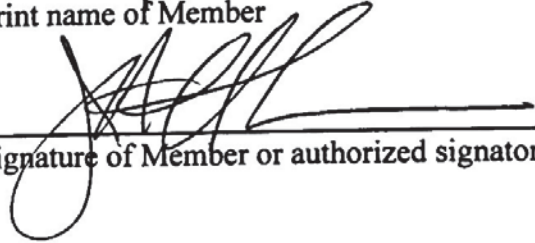
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Joseph Quattracchi

\_\_\_\_\_  
Print name of Member

  
\_\_\_\_\_  
Signature of Member or authorized signatory

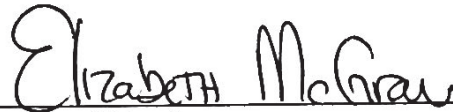
\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
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LISA QUATTROCCHI

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an  
entity)

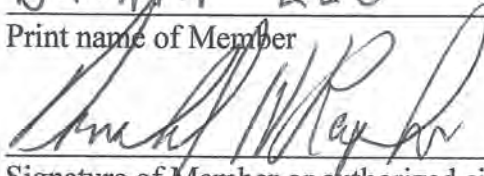
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DROKAP LLC

Print name of Member



Signature of Member or authorized signatory

Signature (if joint signatures are required)

MANAGING MEMBER

Title of authorized signatory (if Member is an entity)

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

**Members**

Date of last revision of this Schedule A: December 31, 2018

<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	10,000	\$250,000
Christopher Weld 1640 Home Rd. Great Barrington MA , 01230	324,000	\$10,000.00	N/A		
Brian Buckowski 512 Lakeland Court Athens, GA 30607				4,000	\$100,000
Jeffrey Grodsky 90 Pendleton Lane Longmeadow, MA 01106				2,000	\$50,000
Luke Mauro 57 Pennsylvania Avenue Massapequa, NY 11758				2,000	\$50,000
Mark Govoni 165 West 66 <sup>th</sup> Street, Apt 82 New York, NY 10023				6,000	\$150,000
Rannapo Partners LLC 16 West 77 <sup>th</sup> Street #10E New York, NY 10024				2,000	\$50,000

<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>
Ronald Wurtzburger 9 Oxford Lane Scarsdale, NY 10583				2,000	\$50,000
Silent Lamb LLC PO Box 444 Sheffield, MA 01257				4,000	\$100,000
Whiting River LLC 240 Campbell Falls Rd Southfield, MA 01259				8,000	\$200,000
William O'Brien 175 West 72 <sup>nd</sup> Street, Apt 9H New York, NY 10023				4,000	\$100,000
Thomas C. Callahan 110 Third Avenue, Apt 4A New York, NY 10003				2,000	\$50,000
Joel C. Millonzi and Kathleen C. Millonzi PO Box 669 Naples, FL 34106				2,000	\$50,000
Francis M. Weld 16 Gardner Street Nantucket, MA 02554				2,000	\$50,000
David D. Goufrey 141 W Canton Street Boston, MA 02118				4,000	\$100,000
Amy Humes and Bruce Humes 11 Lake View Road Great Barrington, MA 01230				2,000	\$50,000
Robert A. Caserta 3215 S Ocean Blvd, Apt. 912 Highland Beach, FL 33487				4,000	\$100,000

Name and Address	Common Units Held	Capital Contribution Made in Respect of Common Units	Threshold Amount In Relation to Any Common Unit that is an Incentive Unit	Series A Investor Units Held	Capital Contribution Made in Respect of Series A Investor Units
Laurence L. Wojcik and Judith M. Wojcik 223 Basil Road Chicopee, MA 01020				2,000	\$50,000
Thomas Gardner 2717 State Road (PO Box 193) Richmond, MA 01254				8,000	\$200,000
Andrew Fraser 17 High Ridge Road Garrison, NY 10524				2,000	\$50,000
Terry Wang 18 Rutledge Road Marlboro, NJ 07746				6,000	\$150,000
Stephen Abraham 250 W. 89 <sup>th</sup> Street New York, NY 10024				2,000	\$50,000
Michael Stanton 1100 West Avenue, Apt 902 Miami Beach, FL 33139				4,000	\$100,000
Keith Callahan 9 Green Lane Sherborn, MA 01770				2,000	\$50,000
Steven Shulman 7 Canterbury Rd Scarsdale, NY 10583				2,000	\$50,000
John C. Morris 15 East 93 <sup>rd</sup> Street New York, NY 10128				10,000	\$250,000
Armstrong Holdings Corp LLC 197 East 76 <sup>th</sup> Street New York, NY 10021				4,000	\$100,000

Name and Address	Common Units Held	Capital Contribution Made in Respect of Common Units	Threshold Amount In Relation to Any Common Unit that is an Incentive Unit	Series A Investor Units Held	Capital Contribution Made in Respect of Series A Investor Units
Margaret E. Finch 3309 E Valley St Seattle, WA 98112				8,000	\$200,000
Anne G. Fredericks 77 Seakonk Cross Road Great Barrington, MA 01230				12,000	\$300,000
Marc Fasteau 77 Seakonk Cross Road Great Barrington, MA 01230				12,000	\$300,000
Eric W. Roberts 23 Charlie Hill Road Millerton, NY 12546				4,000	\$100,000
James Coulter Scala 10 Seekonk Cross Road Great Barrington, MA 01230				4,000	\$100,000
Charles T. O'Neil 14 Old Tree Farm Road PO Box 201 Stockbridge, MA 01262				2,000	\$50,000
Berkshire Bud, LLC 62 Beach St. #2AB New York, NY 10013				4,000	\$100,000
Bertrand Garbassi & Jane Larkworthy 425 E. 51st st. Apt. 2E New York, NY 10022				2,000	\$50,000
Jeff Chwast 135 Willow St. Brooklyn, NY 11201				4,000	\$100,000
Jessie Conklin 398 Weatogue Rd. Ashley Falls, MA 01222				4,000	\$100,000



Name and Address	Common Units Held	Capital Contribution Made in Respect of Common Units	Threshold Amount In Relation to Any Common Unit that is an Incentive Unit	Series A Investor Units Held	Capital Contribution Made in Respect of Series A Investor Units
Joseph & Jean Mitchell 336 Ridgemont Ave. San Antonio, TX 78209-5451				2,000	\$50,000
Ken Morton 25 Treebark Terrace Voorhees, NJ 08043				4,000	\$100,000
Stephen Marshall 7 Townhouse Hill Rd. S. Egremont, MA 01230				2,000	\$50,000
Touhy Leasing LLC 5550 W. Touhy, ste. 200 Skokie, IL 60077				3,000	\$75,000
Ward Carey 152 Elm Ave. Burlingame, CA 94010				2,000	\$50,000
George Petty 15 chemin Louis Dagallier Versoix, Switzerland 1290				2,000	\$50,000
Gregg Massini 24 Hulett Hill Rd. Sheffield, MA 01257				8,000	\$200,000
Marie Massini-Reynolds 115 Pike Rd. W Sheffield, MA 01257				4,000	\$100,000
Mark Massini 199 Ashley Falls Rd. Sheffield, MA 01257				2,000	\$50,000
Justin Vagliano PO Box 526 Norfolk, CT 06058				8,000	\$200,000

Name and Address	Common Units Held	Capital Contribution Made in Respect of Common Units	Threshold Amount In Relation to Any Common Unit that is an Incentive Unit	Series A Investor Units Held	Capital Contribution Made in Respect of Series A Investor Units
Natale Marasco 174 Valley View Rd. PO Box 46 Ashley Falls, MA 01222				3,000	\$75,000
William Ryan 116 Brush Hill Road Great Barrington, MA 01230				2,000	\$50,000
Joseph Quattrocchi 2694 Rte. 199 PO Box 103 Pine Plains, NY 12567				4,000	\$100,000
Elizabeth McGraw PO Box 873 Sheffield, MA 01257				2,000	\$50,000
Lisa Quattrocchi 941 Park Ave., #12A New York, NY 10028				6,000	\$150,000
DROKAP LLC 145 Stonehurst Drive Tenafly, NJ 07670				2,000	\$50,000
<b>Totals:</b>	<b>524,000</b>	<b>\$16,172.84</b>		<b>214,000</b>	<b>\$5,350,000</b>

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

**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.

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**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).

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

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).

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# THE PASS

BERKSHIRES

**Cultivation License application # MCN283155**

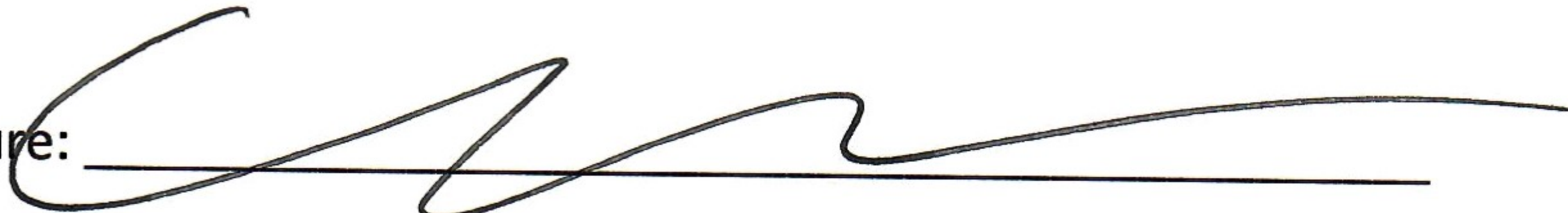
**Date: 5/6/2021**

**Business Documentation**

### Articles of Organization Attestation

I, Chris Weld, herby attest that Berkshire Welco Cultivation, LLC outdoor facility located at 1375 N. Main Street, Sheffield MA is a wholly owned subsidiary of its single member, Berkshire Welco LLC. Accordingly, it does not have its own bylaws or an operating agreement. Under MGL c. 156C, Section 2(9), an LLC operating agreement does not need to be written; under c. 156C, Section 24(a), an LLC is managed by its members unless the operating agreement provides otherwise. For those reasons, member-managed single-member LLCs like Berkshire Welco Cultivation LLC very often do not have written operating agreements. We have provided the operating agreement of the single member, Berkshire Welco LLC, to show how decisions are made by the single member. As such the Operating Agreement for Berkshire Welco, LLC applies to Berkshire Welco Cultivation, LLC.

I, Christopher Weld, I affirm that all the information provided within is true and accurate. I further affirm that all required attestations written above have been made voluntarily, and by signing below, certify that I do in fact make these true and accurate attestations.

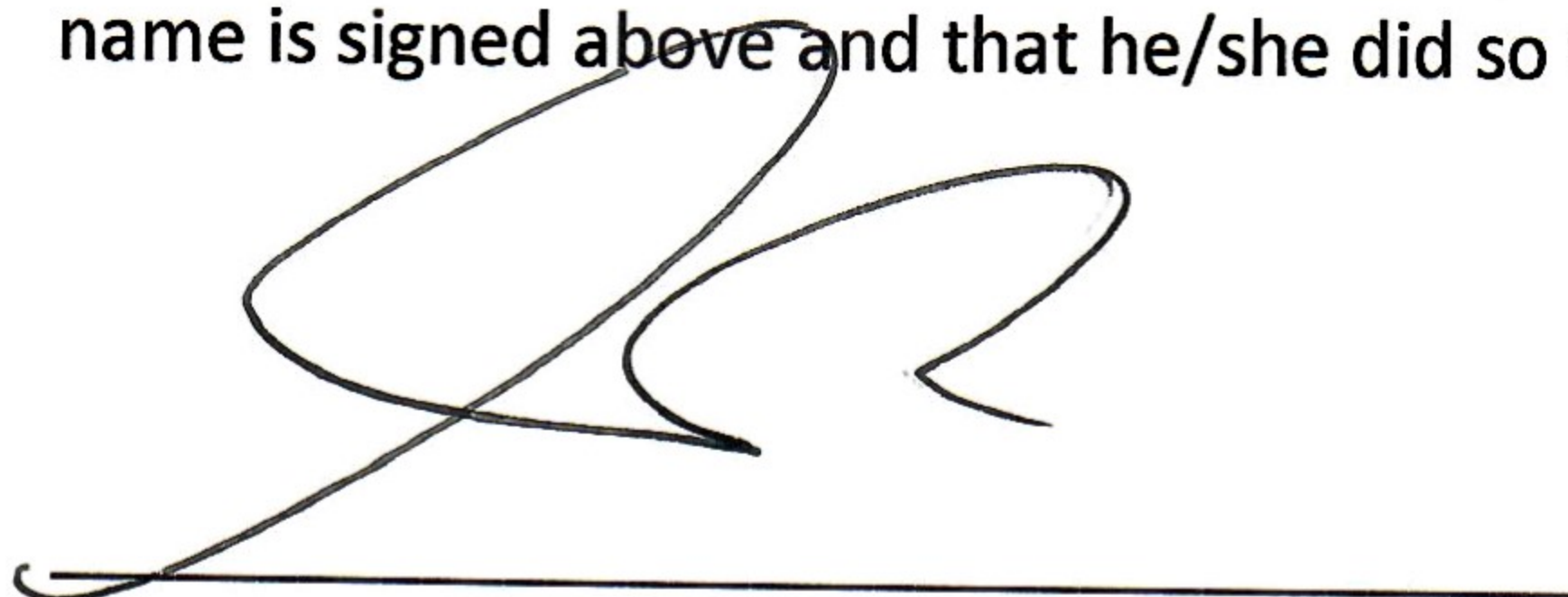
Signature: 

Name Printed: Christopher Weld

Date: 5-7-21

### AUTHENTICATION BY NOTARY PUBLIC

On this day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared Christopher Weld , proved to me through satisfactory evidence of identification to be the person whose name is signed above and that he/she did so voluntarily for its stated purpose.



Notary Public Signature



NOTARY STAMP/SEAL

# Summary of Insurance

Prepared: 3/10/2020  
 Coverages as of: 2/19/2020

For: Berkshire WELCO LLC DBA Find The Pass  
 1345 North Main St.  
 Sheffield, MA 01257

By: Wheeler & Taylor, Inc  
 333 Main St.  
 Great Barrington, MA 01230

Coverage	Company	Policy Number	Eff date	Exp date	Premium
Worker's Comp.	Protective Insurance Company	SS-2306962-02	2/19/2020	2/19/2021	\$3,397.00

## Locations

1 -1375 North Main St Sheffield, MA 01257

## Part 1 – States: MA

Increased Employers Liability Coverage	Limits
Each accident	\$1,000,000
Disease – Policy limit	\$1,000,000
Disease – Each Employee	\$1,000,000

## Payrolls

Location	Class Code	Categories/Duties/Classifications	Estimated Annual Remuneration/Payroll
1	0035	Farming -cultivating	\$75,000.00
1	4825	Drug Manufacturing	\$75,000.00
1	8017	Retail	\$75,000.00
1	8810	Clerical	\$360,000.00

## Individuals Included/Excluded

State	Location	Name	DOB	Title	Ownership %	Inc/Exc	Class Code
MA	1	Chris Weld		Member	100%	I	8810

# Summary of Insurance

Prepared: 3/10/2020  
Coverages as of: 2/19/2020

For: Berkshire WELCO LLC DBA Find  
The Pass  
1345 North Main St.  
Sheffield, MA 01257

By: Wheeler & Taylor, Inc  
333 Main St.  
Great Barrington, MA 01230

Coverage	Company	Policy Number	Eff Date	Exp Date	Premium
Builders Risk	Acadia Insurance	CIM5405307-10	6/21/2019	6/21/2020	

## Type of Coverage:

Builders Risk

## OPEN REPORTING

### Coverage

Limit at any single location \$425,000

Limit per disaster

Limit at temporary location

Transit limit

# Summary of Insurance

Prepared: 3/10/2020  
Coverages as of: 2/19/2020

For: Berkshire WELCO LLC DBA Find  
The Pass  
1345 North Main St.  
Sheffield, MA 01257

By: Wheeler & Taylor, Inc  
333 Main St.  
Great Barrington, MA 01230

Coverage	Company	Policy Number	Eff Date	Exp Date	Premium
Business Auto	Safety Insurance Company	5909007COM00	5/21/2019	5/21/2020	\$3,309.00

## Policy Coverages

Coverage

Symbol(s)

Limit/Deductible

Liability	7 8 9	\$1,000,000	Bl ea accident
Personal injury protection	7	\$8,000	Ea person
Medical payments	7	\$5,000	Ea person
Uninsured motorist	7	\$250,000	Bl ea person
		\$500,000	Bl ea accident
Underinsured motorist	7	\$250,000	Bl ea person
		\$500,000	Bl ea accident

Hired/borrowed liability	Yes	States: MA If any basis: Yes
Non-owned auto liability	Yes	States: MA Employees: 5

COVERED AUTO SYMBOLS		
(1) ANY AUTO	(4) OWNED AUTOS OTHER THAN PRIVATE PASSENGER	(7) AUTOS SPECIFIED ON SCHEDULE
(2) ALL OWNED AUTOS	(5) ALL OWNED AUTOS WHICH REQUIRE NO-FAULT COVERAGE	(8) HIRED AUTOS
(3) OWNED PRIVATE PASSENGER AUTOS	(6) OWNED AUTOS SUBJECT TO COMPULSORY U.M. LAW	(9) NON-OWNED AUTOS

**Vehicle Schedule/Coverages:**

Veh #10      2014 Ram 3500 Pickup Truck      3C63R3AJ9EG137850

**Coverages:**

Liability	included
No fault	included
Medical payments	included
Uninsured motorist	included
Underinsured motorist	included
Comprehensive	\$1,000 deductible Full glass
Collision	\$1,000 deductible

Veh #11      2019 BriMar Trailer      58CB1EE25KC002305

**Coverages:**

Liability	included
No fault	included
Medical payments	included
Uninsured motorist	included
Underinsured motorist	included
Comprehensive	\$1,000 deductible Full glass
Collision	\$1,000 deductible

Veh #12      2017 Nissan NV2002 Van      3N6CM0KN4HK693702

**Coverages:**

Liability	included
No fault	included
Medical payments	included
Uninsured motorist	included
Underinsured motorist	included
Comprehensive	\$1,000 deductible Full glass
Collision	\$1,000 deductible

Veh #13      2015 Ford TCN Van

NM0LS7FX0F1224616

**Coverages:**

Liability	included
No fault	included
Medical payments	included
Uninsured motorist	included
Underinsured motorist	included
Comprehensive	\$1,000 deductible Full glass
Collision	\$1,000 deductible

## Summary of Insurance

Prepared: 3/10/2020

Coverages as of: 2/19/2020

**For:** Berkshire WELCO LLC DBA Find    **By:** Wheeler & Taylor, Inc  
The Pass

1345 North Main St.  
Sheffield, MA 01257

333 Main St.  
Great Barrington, MA 01230

Coverage	Company	Policy Number	Eff date	Exp date	Premium
Commercial General Liability	Topa Insurance Company	CTK-0004163-00	12/13/2019	12/13/2020	\$91,886.00

Loc 2, Building 1  
175 North Main St., Sheffield, MA 01257

**Claims Basis: Occurrence**

**General Aggregate applies per: Policy**

Coverage	Limits
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Damage to Rented Premises (Each Occurrence)	\$100,000
Medical Expense (Any One Person)	\$5,000
Employee Benefits	\$1,000,000

**Other Coverage:**

Property Damage Deductible:  
 Bodily Injury Deductible:  
 Deductible:

**Hazard Schedule**

Loc #	Hazard #	Classification	Class Code	Exposure	Premium Basis
2	1	Sales Retail/Wholesale	15699	18,000,000	Gross Sales - Per
2	2	Payroll		0	\$1,000/Sales Payroll - Per
2	3	Employees when they Open		20	\$1,000/Pay Other

**Forms and Endorsements:**

**Additional Interests:**

**International Liability Exposure Supplement:**

Coverage	Limits
Foreign Sales	Occurrence
	Aggregate
	Excess
Contract cost	Occurrence
	Aggregate
	Excess
Contingent auto	Occurrence
	Excess
Employers liability	Number of foreign owned autos:
	Occurrence
	Excess
Employers responsibility	Medical
Employers medical and AD&D	AD&D
	Number of employees:
	Number of trips:
	Duration (average length of stay):

# Summary of Insurance

Prepared: 3/10/2020  
 Coverages as of: 2/19/2020

<b>For: Berkshire WELCO LLC DBA Find</b> The Pass 1345 North Main St. Sheffield, MA 01257	<b>By: Wheeler &amp; Taylor, Inc</b> 333 Main St. Great Barrington, MA 01230
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Coverage	Company	Policy Number	Eff date	Exp date	Premium
Commercial General Liability	Topa Insurance Company	CTL-0002144-00	12/13/2019	12/13/2020	\$46,688.00

Loc 1, Building 1  
 1345 North Main St., Sheffield, MA 01257

**General Aggregate applies per: Policy**

Coverage	Limits
General Aggregate	\$4,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury Each Occurrence	
Damage to Rented Premises (Each Occurrence)	
Medical Expense (Any One Person)	
Employee Benefits	
PROFESSIONAL LIABILITY SUBLIMI	\$50,000

**Other Coverage:**  
 Property Damage Deductible:  
 Bodily Injury Deductible:  
 Deductible:

**Hazard Schedule**

Loc #	Hazard #	Classification	Class Code	Exposure	Premium Basis
1	1	Mutiple Operations	15699	18000000	Gross Sales - Per \$1,000/Sales

Contract cost	Occurrence Aggregate
Contingent auto	Excess Occurrence Excess
Employers liability	Number of foreign owned autos: Occurrence Excess
Employers responsibility Employers medical and AD&D	

# Summary of Insurance

Prepared: 3/10/2020

Coverages as of: 2/19/2020

For: Berkshire WELCO LLC DBA Find By: Wheeler & Taylor, Inc

The Pass

1345 North Main St.

Sheffield, MA 01257

333 Main St.

Great Barrington, MA 01230

Coverage	Company	Policy Number	Eff date	Exp date	Premium
Cyber Liability	Topa Insurance Company	CTK-0004163-00	12/13/2019	12/13/2020	\$91,886.00



# Summary of Insurance

Prepared: 3/10/2020

Coverages as of: 2/19/2020

**For: Berkshire WELCO LLC DBA Find The Pass**  
**1345 North Main St.**  
**Sheffield, MA 01257**

**By: Wheeler & Taylor, Inc**  
**333 Main St.**  
**Great Barrington, MA 01230**

Coverage	Company	Policy Number	Eff Date	Exp Date	Premium
Property	Topa Insurance Company	CTK-0004163-00	12/13/2019	12/13/2020	\$91,886.00

Loc 1, Building 1

1345 North Main St. Sheffield, MA 01257

Subjects of Insurance	Limits	Valuation
<b>Business Personal Property</b>	\$50,000	Replacement Cost
Cause of Loss	Special (Including theft)	
Coins %	80%	
Deductible	5,000	

Loc 2, Building 1

1375 North Main St. Sheffield, MA 01257

Subjects of Insurance	Limits	Valuation
<b>Business Personal Property</b>	\$500,000	Replacement Cost
Cause of Loss	Special (Including theft)	
Coins %	80%	
Deductible	5,000	
<b>Business Personal Property</b>	\$1,500,000	Replacement Cost
Cause of Loss	Special (Including theft)	
Coins %		
Deductible	5,000	

**Business Income with Extra Expense**                      \$3,000,000

Cause of Loss      Special (Including theft)  
Coins %  
Deductible              5,000

Loc 2, Building 2

1375 North Main St. Sheffield, MA 01257

<b>Subjects of Insurance</b>	<b>Limits</b>	<b>Valuation</b>
<b>Building</b>	\$1,500,000	Replacement Cost

Cause of Loss      Special (Including theft)  
Coins %              80%  
Deductible              5,000

<b>Business Personal Property</b>	\$75,000	Replacement Cost
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Cause of Loss      Special (Including theft)  
Coins %              80%  
Deductible              5,000

<b>Business Personal Property</b>	\$1,500,000	
-----------------------------------	-------------	--

Cause of Loss      Special (Including theft)  
Coins %  
Deductible              5,000

<b>Business Income with Extra Expense</b>	\$2,000,000	
---	-------------	--

Cause of Loss      Special (Including theft)  
Coins %  
Deductible              5,000

<b>Business Personal Property</b>	\$393,600	
-----------------------------------	-----------	--

Cause of Loss      Special (Including theft)  
Coins %  
Deductible              5,000

Loc 2, Building 3

1375 North Main St. Sheffield, MA 01257

<b>Subjects of Insurance</b>	<b>Limits</b>	<b>Valuation</b>
<b>Business Personal Property</b>	\$25,000	Replacement Cost
Cause of Loss	Special (Including theft)	
Coins %	80%	
Deductible	5,000	
<b>Building</b>	\$400,000	Replacement Cost
Cause of Loss	Special (Including theft)	
Coins %	80%	
Deductible	5,000	
<b>Business Income with Extra Expense</b>	\$2,000,000	
Cause of Loss	Special (Including theft)	
Coins %		
Deductible	5,000	
<b>Business Personal Property</b>	\$1,500,000	
Cause of Loss	Special (Including theft)	
Coins %		
Deductible	5,000	
<b>Business Personal Property</b>	\$196,800	
Cause of Loss	Special (Including theft)	
Coins %		
Deductible	5,000	

Loc 3, Building 1

93 Ashley Falls Rd. Sheffield, MA 01257

<b>Subjects of Insurance</b>	<b>Limits</b>	<b>Valuation</b>
------------------------------	---------------	------------------

# Summary of Insurance

Prepared 3/10/2020  
Coverages as of 2/19/2020

For: **Berkshire WELCO LLC DBA Find The  
Pass  
1345 North Main St.  
Sheffield,MA 01257**

By: **Wheeler & Taylor, Inc  
333 Main St.  
Great Barrington, MA 01230**

Coverage	Company	Policy Number	Eff date	Exp date	Premium
Commercial Umbrella	Topa Insurance Company	CTX-0001129-00	12/13/2019	12/13/2020	\$8,500.00

## Named Insured Schedule:

Berkshire WELCO LLC DBA Find The Pass

## Limits of Liability

Each Occurrence \$4,000,000  
Retained Limit

## Employee Benefits Liability

Claims Made Form-- Retro Date

Each Employee  
Aggregate  
Retained Limit

## Underlying Liability Limits

Auto	\$1,000,000	CSL Each Accident BI Each Accident BI Each Person PD Each Accident
General Liability	\$1,000,000 \$2,000,000 \$2,000,000 \$1,000,000 \$300,000 \$15,000	Each Occurrence General Aggregate Prod Comp Ops Aggregate Personal & Adv Injury Damage to Rented Premises Medical Expense
Employers Liability	\$1,000,000 \$1,000,000 \$1,000,000	Each Accident Disease-Policy Limit Disease-Each Employee



# THE PASS

BERKSHIRES

**Cultivation License application # MCN283155**

**Start date: 11/03/2020**

**Business Plan Documentation**

**Addendum to Business Plan.**

I, Chris Weld, hereby attest that this addendum is for the Berkshire Welco, LLC outdoor cultivation facility located at 1375 N. Main Street, Sheffield MA. This will serve as supplemental documentation to our originally submitted and approved Cultivation license request under license #MC281317. All components of the original business plan that was provisionally approved twice included details of the outdoor grow facility. After being provisionally approved two times we were informed that the outdoor facility required a separate license resulting in this application.

In addition to this statement, please find our current Income Statement and Balance sheet for all Berkshire Welco, LLC licenses inclusive of MC281317, MC281949, MP281505 & MR281967.

I, Christopher Weld, I affirm that all the information provided within is true and accurate. I further affirm that all required attestations written above have been made voluntarily, and by signing below, certify that I do in fact make these true and accurate attestations.

Signature: \_\_\_\_\_

Name Printed: Christopher Weld

Date: November 24, 2020

**AUTHENTICATION BY NOTARY PUBLIC**

On this day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared Christopher Weld, proved to me through satisfactory evidence of identification to be the person whose name is signed above and that he/she did so voluntarily for its stated purpose.

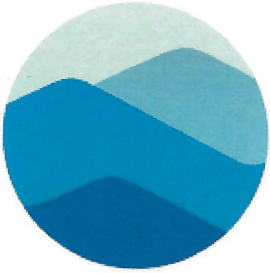
\_\_\_\_\_  
Notary Public Signature

NOTARY STAMP/SEAL

# Management Report

Berkshire Welco, LLC

For the period ended October 31, 2020



**THE PASS**  
BERKSHIRES

Prepared on

**November 23, 2020**

Handwritten marks, including a checkmark and a signature.

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# Profit and Loss

January - October, 2020

	<b>Total</b>
<b>INCOME</b>	
40000 Income	
40100 Lab/Wholesale Sales	50,603.00
40300 Recreational Marijuana Sales	2,772,961.66
41000 Accessories Sales	64,118.24
<b>Total 40000 Income</b>	<b>2,887,682.90</b>
42000 Intercompany Sales	
42100 Inter company - Lab/Wholesale Sales	516,626.49
42400 Inter company - Cultivation Sales	587,807.93
<b>Total 42000 Intercompany Sales</b>	<b>1,104,434.42</b>
<b>Total Income</b>	<b>3,992,117.32</b>
<b>COST OF GOODS SOLD</b>	
50000 Cost of Goods Sold	0.00
52000 Employee Benefits	49.00
52900 Lab Expenses	341,132.61
Cultivation COGS	509,433.57
Supplies & Materials - COGS	6,411.29
<b>Total Cultivation COGS</b>	<b>515,844.86</b>
<b>Total 50000 Cost of Goods Sold</b>	<b>857,026.47</b>
Admin COGS	
Inventory Tracking Software and Small Supplies - COGS	829.84
Retail Direct Inventory Related - COGS	1,425,418.38
Shipping, Freight & Delivery - COGS	121.29
<b>Total Admin COGS</b>	<b>1,426,369.51</b>
<b>Total Cost of Goods Sold</b>	<b>2,283,395.98</b>
<b>GROSS PROFIT</b>	<b>1,708,721.34</b>
<b>EXPENSES</b>	
60200 Automobile Expense	2,572.08
60320 Furniture and Equipment	15,639.77
62600 Equipment Rental	2,321.56
67900 Sales Tax on Purchases	1,067.40
Divisible Expense	
63300 CPA Divisible Insurance Expense	26,296.72
63310 General Liability Insurance	115,798.59
63312 Dental Insurance	3,210.44
63315 Vision Insurance	467.52
63320 Health Insurance	45,909.62
63350 Inland Marine	2,162.35
63360 Worker's Compensation	21,471.84
63370 Auto Insurance	3,622.82
<b>Total 63300 CPA Divisible Insurance Expense</b>	<b>218,939.90</b>
63400 Interest Expense	73,809.54



	<b>Total</b>
66700 Professional Fees	
66725 Consulting Chief Strategy Officer	3,611.55
66730 Creative Consulting	31,000.00
66735 Cultivation/Manufacturing Consulting Fee	4,800.00
66750 Finance Consulting	142,547.33
66755 Legal Expense	29,405.60
66760 Packaging Consultant	109,632.36
66780 Tech Consulting	11,825.00
68200 Consulting Fees	2,089.00
<b>Total 66700 Professional Fees</b>	<b>5,000.00</b>
<b>67100 Rent Expense</b>	<b>339,910.84</b>
67200 Repairs and Maintenance	76,172.17
63500 Janitorial Expense	42,378.46
67210 Cleaning	815.00
67220 Security Monitoring	8,239.62
<b>Total 67200 Repairs and Maintenance</b>	<b>814.06</b>
<b>67300 Cultivation</b>	<b>52,247.14</b>
67400 R&D	211.90
67500 IT & Communications	740.35
67550 Website Hosting	19,844.21
<b>Total 67500 IT &amp; Communications</b>	<b>49.98</b>
<b>68600 Utilities</b>	<b>19,894.19</b>
68100 Telephone Expense	7,777.24
68610 Electricity	7,010.21
68620 Gas	7,883.86
<b>Total 68600 Utilities</b>	<b>7,232.81</b>
<b>69000 Payroll Expense</b>	<b>29,904.12</b>
69100 FICA	56,502.68
69110 Medicare	494.38
69200 FUTA	2,144.54
69300 Gross Wages	767,095.83
69400 SUTA	14,229.31
69450 PFML	1,181.73
69500 Casual Labor	13,997.50
69700 Group Life/AD&D	107.88
69900 Other State/Local Taxes	439.53
69950 Payroll Processing Fee	10,051.07
Net Pay	224.47
<b>Total 69000 Payroll Expense</b>	<b>866,468.92</b>
69600 Retail Supplies	39,207.35
CPA Divisible - Tax Expense	
68000 Taxes - Excise	1,363.95
<b>Total CPA Divisible - Tax Expense</b>	<b>1,363.95</b>
Hiring & Other Team Expenses	24,636.09

<b>Total Divisible Expense</b>	<b>Total</b>
SG&A Expenses	<b>1,743,506.46</b>
60001 Admin - SGA	
60110 Computer Hardware & Software	30,197.43
60300 Office/General Administrative Expenses	161.39
60310 Office Supplies	22,706.47
60400 Bank Service Charges	8,267.86
61400 Charitable Contributions	3,266.00
62000 Diversity & Positive Impact Expense	6,500.00
62500 Dues and Subscriptions - SGA	17,613.41
64300 Meals and Entertainment	8,088.94
64900 Office Expenses - SGA	3,194.31
65100 Transport Services - Deposits	2,400.00
66500 Postage and Delivery	6,243.44
66710 Accounting - SGA	34,238.52
66800 Licenses & Permit Expense	1,911.00
68400 Travel Expense	24,005.97
68700 Marketing/Advertising	92,576.89
69999 Uncategorized Expense	273.32
Host Agreement - SGA	55,438.25
Merchant Service Charge	9.00
<b>Total 60001 Admin - SGA</b>	<b>317,092.20</b>
Facility - SGA	
Repair & Maintenance - SGA	386.88
<b>Total Facility - SGA</b>	<b>386.88</b>
Labor - SGA	
Hiring & Other Team Expenses - SGA	102.35
<b>Total Labor - SGA</b>	<b>102.35</b>
<b>Total SG&amp;A Expenses</b>	<b>317,581.43</b>
<b>Total Expenses</b>	<b>2,082,688.70</b>
<b>NET OPERATING INCOME</b>	<b>-373,967.36</b>
<b>OTHER INCOME</b>	
70200 Interest Income	2,961.74
Other Income	866.21
<b>Total Other Income</b>	<b>3,827.95</b>
<b>NET OTHER INCOME</b>	<b>3,827.95</b>
<b>NET INCOME</b>	<b>\$ -370,139.41</b>

# Balance Sheet

As of October 31, 2020

ASSETS	Total
<b>Current Assets</b>	
<b>Bank Accounts</b>	
10000 Cash	
10005 Century (CC)	48.13
10010 Century Bank	1,000.00
10015 Century Marijuana Regulation Fund Account	4,953.28
10020 Century Two	1,756.94
10025 Salisbury 2(CC) - 5533	27,771.35
10030 Salisbury Bank - 3170	16,524.34
10035 Salisbury Capital Acct - 4432	342,449.72
10040 Salisbury Retail	63,290.80
10050 Salisbury Lab & Manufacturing	131,593.64
10060 Salisbury Bank Cultivation	5,800.09
<b>Total 10000 Cash</b>	<b>595,188.29</b>
Cash on Hand	165,319.82
In Store ATM	10,360.00
<b>Total Cash on Hand</b>	<b>175,679.82</b>
<b>Total Bank Accounts</b>	<b>770,868.11</b>
<b>Accounts Receivable</b>	
12000 Accounts Receivable (A/R)	13,681.00
<b>Total Accounts Receivable</b>	<b>13,681.00</b>
<b>Other Current Assets</b>	
12500 Employee Cash Advances	1,533.45
13000 Inventory Asset	0.00
13100 Materials & Supplies	353,379.52
13105 Packaging	273,044.42
13110 Flower - Retail	189,154.63
13115 Retail Inventory	160,666.33
13125 Accessories	31,119.56
<b>Total 13100 Materials &amp; Supplies</b>	<b>1,007,364.46</b>
13155 WIP	990,752.01
13200 Lab & Wholesale Finished Goods Produced	36,269.89
13300 Cultivation Product inventory	73,224.15
<b>Total 13000 Inventory Asset</b>	<b>2,107,610.51</b>
14000 Prepaid Expenses	
14100 Licenses	83,351.25
14200 Prepaid Insurance	13,850.00
<b>Total 14000 Prepaid Expenses</b>	<b>97,201.25</b>
<b>Total Other Current Assets</b>	<b>2,206,345.21</b>
<b>Total Current Assets</b>	<b>2,990,894.32</b>
<b>Fixed Assets</b>	

	<b>Total</b>
15000 Fixed Assets	
15050 Soft Costs	
15055 Fencing	103,607.17
15120 Computers and equipment	12,823.04
15130 Furniture and Equipment	40,956.49
15150 Electrical System	1,050,426.72
15175 Cultivation & Mfg Facility	219,483.59
15200 HVAC System	23,062.32
15500 Security System	88,249.02
15550 Building structure and structural components	74,014.62
15600 Cultivation System	24,163.00
15650 Manufacturing System	72,824.48
15700 Vehicles	38,752.56
15750 Building	87,833.25
16000 Construction in Progress	32,412.76
17000 Accumulated Depreciation	3,213,460.58
<b>Total 15000 Fixed Assets</b>	<b>-5,357.48</b>
16100 Leasehold Improvements	5,076,712.12
16200 Signage	5,483.65
16300 Storage Containers	10,044.80
<b>Total Fixed Assets</b>	<b>19,725.00</b>
<b>Other Assets</b>	<b>5,111,965.57</b>
13123 Cultivation Direct Costs	25,051.44
18000 Security Deposits	4,070.00
<b>Total Other Assets</b>	<b>29,121.44</b>
<b>TOTAL ASSETS</b>	<b>\$8,131,981.33</b>

## LIABILITIES AND EQUITY

### Liabilities

#### Current Liabilities

##### Accounts Payable

20000 Accounts Payable (A/P)

-123,955.74

##### Total Accounts Payable

-123,955.74

##### Credit Cards

21000 Credit Card

    21005 Century Bank CC

151.42

    21010 Salisbury Bank Visa

639.16

##### Total 21000 Credit Card

790.58

##### Total Credit Cards

790.58

#### Other Current Liabilities

20300 Payroll Tax Payable

    20305 941

-4,018.25

    20310 FUTA

132.24

    20315 PFML

-1,444.63

    20320 SIT

-804.33

	<b>Total</b>
20325 SUTA	66.08
<b>Total 20300 Payroll Tax Payable</b>	<b>-6,068.89</b>
20600 Michael Cohen Loan	225.00
20700 Deferred Compensation	68,264.04
Commonwealth of Massachusetts Payable	194,870.75
Notes Payable - Christopher Hart	50,000.00
Notes Payable - DClayson	50,000.00
Notes Payable - Jed Scala	250,000.00
Notes Payable - MMacDonald	100,000.00
Notes Payable - TKnightly	100,000.00
Notes Payable -MMullaney	50,000.00
<b>Total Other Current Liabilities</b>	<b>857,290.90</b>
<b>Total Current Liabilities</b>	<b>734,125.74</b>
<b>Total Liabilities</b>	<b>734,125.74</b>
<b>Equity</b>	
30400 Member 1 Equity	9,109,382.84
30600 Member 2 Equity	350,000.00
32000 Retained Earnings	-1,691,387.84
Net Income	-370,139.41
<b>Total Equity</b>	<b>7,397,855.59</b>
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$8,131,981.33</b>

## **Summary of The Pass Business Plan: Retail**

### **Overview**

The Pass expects to open a dispensary in Sheffield, MA at the end of Q1 2019 that will be collocated with our cultivation and manufacturing operations. It will require CapEx of approximately \$686,000 which will be relatively modest, due to its collocation with our other operations. The funds for this dispensary will come from equity funds raised from investors. The dispensary is expected to be cash flow positive from opening.

### **Product**

The dispensary will primarily source products that are grown and produced internally but will also sell some third-party products including hardware and consumables. The costs of the product to be sourced internally is captured within the cultivation and production numbers on the company's P&L and thus those costs will not appear here.

### **Costs to Become Operational**

The startup cost from licensure to opening of the dispensary is broken down by expense:

- Variable Cost of Goods Sold until opening (COGs): \$0
- Fixed General and Administrative Costs (G&A): \$15,000
- Capital Expenditures (CapEx): \$686,000
- Wages and Benefits: \$89,000
- Total Startup Cost: \$790,000

The lease expense is an estimated \$7,500 per month for the first xxx years of the lease. Annually, the leasehold is approximately \$90,000.

Licensing fees for the application for \$3000; annual licensing fees amount to \$5000 (. Total state licensing fees to become operational equal \$53000.

Site buildout including engineering and architectural costs, fixtures, finishes, security costs, site control and POS equipment are estimated for the site at \$615,000.

Legal and application expenses associated with opening the dispensary are estimated at \$72,000.

Wages and Benefits for a full time Dispensary Manager, Assistant Manager, Front Desk, two Customer Consultants and two Delivery People prior to opening are estimated at \$89,000. The business will be overseen by our President and our CEO.

### **Figure 1: Itemized Expenses Until Opening**

Item	Expenses Through Dispensary Opening
Lease	\$22,500
Licensing / Application Fees (Incl. Legal)	\$72,000

Site Buildout	\$465,000
Site Control	\$150,000
Costs of Goods (COGs)	\$0
Fixed General and Administrative	\$15,000
Wages and Benefits	\$89,000
<b><u>Total</u></b>	<b>\$813,500</b>

NEED UPDATED NUMBERS FOR BELOW

The Pass is showing a balance from Michael Cohen and from various equity capital investors of \$2,754,378 across two bank accounts which is enough to secure and begin operations on 5000 ft<sup>2</sup> of retail space at our Sheffield, MA dispensary at 1375 Main St. The Pass plans to secure up to \$8M in equity capital over the next 12mos that will give the entity 100% of the total costs to operate in working capital and to expand.

**Figure 2: Capitalization: To-Date and Projected to First Major Harvest**

<u>Capital Sources</u>	<u>Capital (\$)</u>
Investor Capital	\$2,754,378
Expected Additional Capital	\$4,000,000
<b>Total Capital: Projected</b>	<b>\$6,754,378</b>

**Working Capital**

The Pass is showing a balance of approximately \$1,800,000 i.e. “Working Capital below.” That amount is approximately 3.38x 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
Capitalization: Projected	\$4,000,000
Total Capitalization (Fig. 2)	<b>\$6,754,378</b>
Total Startup Expenses Dispensary (Fig. 1)	\$813,500

<b>Working Capital (Fig. 2 – Fig. 1)</b>	<b>\$5,940,878</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 \$2,754,378 million dollars and expect to raise an additional \$4 million by the end of 2018 (which is ongoing). That is enough capital to fund the buildout of approximately 5000 ft<sup>2</sup> on 1375 Main St of the company’s Sheffield, MA dispensary. After all of this capital spending the company will still retain approximately **\$5,940,878** of working capital capability.

**Figure 4: Dispensary Operating Assumptions (Approx.)**

	(9 Mos.)2019	2020	2021
Avg. Daily Visitors	135	140	165
Avg. Spend (The Pass Products) \$	100	95	90
Avg. Spend (Third Party Products) \$	22.00	21.90	21.80
Total Revenue	\$4,500,000	\$6,000,000	\$6,700,000

We expect that our dispensary in Sheffield, MA will open in March of 2019. We are expecting to have 135 daily visitors in 2019, 140 in 2020 and 165 in 2021 and expect to be open 364 days per year. In 2019, we are expecting visitors to spend \$100 on products sourced from our cultivation and manufacturing operations and \$22 in third party products. In 2020 we expect \$95 in internally sourced products and \$21.90 in third-party products and in 2021 we expect \$90 in internally sourced products and \$21.80 in third-party products. In 2019 we are expecting total revenues of approximately \$4.5 million (for nine months of operations), approximately \$6.0 million in 2020 and approximately \$6.7 million in 2021. We expect the dispensary to be profitable and cash flow positive from opening.

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

	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>
<b>Wholesale revenue:</b>			
Dry flower	2,862,347	3,531,257	3,232,812
Vapor	1,907,753	3,203,450	3,871,220
Shatter/Wax	572,326	800,862	967,805



Oils	572,326	889,847	1,161,366
Merchandise	120,709	171,946	188,433
Wholesale Licensing	330,750	1,543,500	2,674,114
<b>Total Wholesale</b>	<b>6,366,210</b>	<b>10,140,823</b>	<b>12,095,750</b>
<b>Retail revenue:</b>			
Dry flower	2,350,600	5,549,292	5,869,908
Vapor	2,056,775	5,403,258	6,359,067
Shatter/Wax	881,475	2,190,510	2,445,795
Oils	587,650	1,460,340	1,630,530
Merchandise	123,029	301,166	336,459
Retail Licensing	759,500	768,600	905,850
<b>Total Retail</b>	<b>6,759,029</b>	<b>15,673,166</b>	<b>17,547,609</b>
<b>Total Revenue</b>	<b>13,125,239</b>	<b>25,813,988</b>	<b>29,643,359</b>

We expect to begin selling product and open our first dispensary in early 2019 and ramp to more full production by the beginning of 2020. Overall, we expect to generate **\$13,125,239** in revenues in 2019, **\$25,813,988** in 2020 and **\$29,643,359** in 2021.

**Figure 6: 3YR. EBITDA**

Revenue	2019	2020	2021
<b>Wholesale</b>	<b>6,366,210</b>	<b>10,140,823</b>	<b>12,095,750</b>
<b>Retail</b>	<b>6,759,029</b>	<b>15,673,166</b>	<b>17,547,609</b>
<b>Total Revenue</b>	<b>13,125,239</b>	<b>25,813,988</b>	<b>29,643,359</b>
COGS	2,106,366	3,518,097	4,152,652
<b>Gross Profit</b>	<b>11,018,873</b>	<b>22,295,931</b>	<b>25,490,707</b>
Operating Expenses	3,841,517	4,548,006	4,940,456
<b>EBITDA</b>	<b>7,177,356</b>	<b>17,747,885</b>	<b>20,550,250</b>

After losing a modest amount \$345,000 in 2018 during our start-up phase, we expect to be significantly EBITDA positive from 2019-2021, despite assumptions of decreasing pricing due to increased competition.

**2019.** In 2019, we expect to generate **\$13,125,239** in total revenue, spend \$2,106,366 in direct Cost of Goods Sold (COGs), have operating expenses of \$3,841,517 which yields EBITDA of **\$7,177,356**.

**2020.** In 2020, we expect to generate **\$25,813,988** in total revenue, spend \$3,518,097 in direct Cost of Goods Sold (COGs), have operating expenses of \$4,548,006 which yields EBITDA of **\$17,747,885**.

**2021.** In 2021, we expect to generate **\$29,643,359** in total revenue, spend \$4,152,652 in direct Cost of Goods Sold (COGs), have operating expenses of \$4,940,456 which yields EBITDA of **\$20,550,250**.

### **Timeline: The Pass Retail Establishment**

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 Maim	10-17-2018	16
Schedule Purchase/Delivery of Retail 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 Retail 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 Equipment and P&Ps	01-09-2019	99
Complete Hiring of Key Staff	01-10-2019	100
Complete Training of Staff	01-15-2019	105
Receipt of FF&E	01-15-2019	105
Install FF&E	01-16-2019	106
Equipment Calibration	01-17-2019	107
Mock 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

### **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:

Customer Consultant (4x)

Front Desk Greeter

Assistant Manager

Retail Manager

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, and Operations Consultant.

**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.

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

**A Massachusetts Limited Liability Company**

**Dated as of July 9, 2018**

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**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 July 9, 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 \$3,550,000 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:   
Name: Michael Cohen  
Its: Manager

And  
By:   
Name: Christopher Weld  
Its: Manager

**MEMBERS HOLDING COMMON UNITS:**

  
Michael Cohen

  
Christopher Weld

Brian Buckowski

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the “Company”), hereby agrees, effective as of the undersigned’s admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the “Agreement”) as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.

Brian Buckowski

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)




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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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\_\_\_\_\_  
Jeffrey Grodsky

Print name of Member

\_\_\_\_\_  
  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

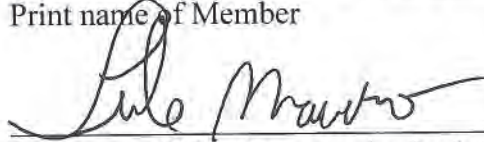
**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERSKHIRE WELCO, LLC**

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Luke Mauro

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

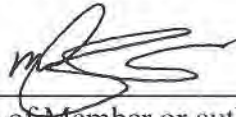
**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERSKHIR WELCO, LLC**

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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MARK GOVORA

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the "Company"), hereby agrees, effective as of the undersigned's admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the "Agreement") as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.

*RANNAPO PARTNERS LLC*

\_\_\_\_\_  
Print name of Member

*[Handwritten Signature]*

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

*SANDRA B. WINBERG,  
PRINCIPAL*

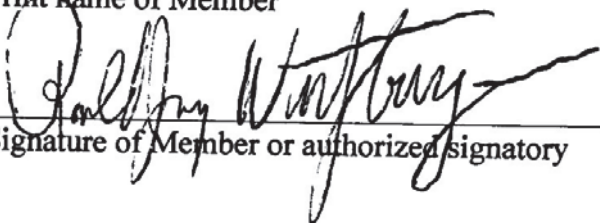
\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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Ronald Wurtzburger  
\_\_\_\_\_  
Print name of Member

  
\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the "Company"), hereby agrees, effective as of the undersigned's admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the "Agreement") as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.

*Silent Lamb LLC*

\_\_\_\_\_  
Print name of Member

*Angela Cardenas*

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

*Principal*

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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Whitney River LLC  
Print name of Member

[Signature]  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

President  
Title of authorized signatory (if Member is an  
entity)

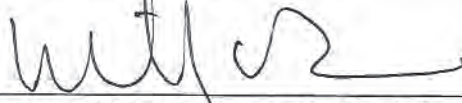
**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERSKHIRE WELCO, LLC**

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the "Company"), hereby agrees, effective as of the undersigned's admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the "Agreement") as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.

William O'Brien

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)



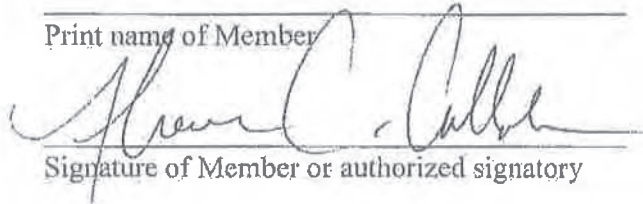
AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERSKHIRE WELCO, LLC

MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE

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Thomas C. Callahan

\_\_\_\_\_  
Print name of Member

  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERSKHIRE WELCO, LLC

MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE

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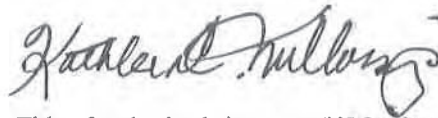
Print name of Member

JOEL C. MILLONZI  
Kathleen C. MILLONZI

Signature of Member or authorized signatory



Signature (if joint signatures are required)



Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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Francis M. Weld

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

<b>TITLE</b>	The Berkshire Welco Joinder (one more time)
<b>FILE NAME</b>	FHBOSTON-#4851243...estor Units).DOCX
<b>DOCUMENT ID</b>	d73a25286d0d52a7b183cafb86235bc00d37d7df
<b>STATUS</b>	● Completed

## Document History



SENT

**07/10/2018**  
14:53:38 UTC

Sent for signature to Francis Weld (fmwmd1@gmail.com) from michael@fndthepass.com  
IP: 24.194.22.218



VIEWED

**07/10/2018**  
16:31:30 UTC

Viewed by Francis Weld (fmwmd1@gmail.com)  
IP: 65.96.70.83



SIGNED

**07/10/2018**  
16:33:03 UTC

Signed by Francis Weld (fmwmd1@gmail.com)  
IP: 65.96.70.83



COMPLETED

**07/10/2018**  
16:33:03 UTC

The document has been completed.

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the "Company"), hereby agrees, effective as of the undersigned's admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the "Agreement") as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.



\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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Amy Humes and Bruce Humes

Print name of Member



Signature of Member or authorized signatory



Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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ROBERT A CASERTA

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

---

<b>TITLE</b>	Joinder Re-Sign
<b>FILE NAME</b>	FHBOSTON-#4851243...estor Units).DOCX
<b>DOCUMENT ID</b>	d923c55ae6fa3fb92098a7ebca858b2b4fb3af76
<b>STATUS</b>	● Completed

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## Document History



SENT

**07/03/2018**

15:40:55 UTC

Sent for signature to Robert Caserta (bobuconn@aol.com) from michael@fndthepass.com

IP: 24.194.22.218



VIEWED

**07/04/2018**

15:13:17 UTC

Viewed by Robert Caserta (bobuconn@aol.com)

IP: 69.126.124.31



SIGNED

**07/04/2018**

15:14:22 UTC

Signed by Robert Caserta (bobuconn@aol.com)

IP: 69.126.124.31



COMPLETED

**07/04/2018**

15:14:22 UTC

The document has been completed.



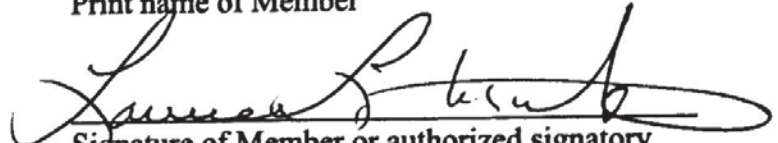
**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERKSHIRE WELCO, LLC**

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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LAURENCE L. WOJCIK

Print name of Member



Signature of Member or authorized signatory

Judith M. Wojcik

Signature (if joint signatures are required)

JUDITH M. WOJCIK

Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the “Company”), hereby agrees, effective as of the undersigned’s admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the “Agreement”) as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.

Thomas Gardner

---

Print name of Member



---

Signature of Member or authorized signatory

---





Signature (if joint signatures are required)

---

Title of authorized signatory (if Member is an entity)

<b>TITLE</b>	Joinder Re-Sign
<b>FILE NAME</b>	FHBOSTON-#4851243...estor Units).DOCX
<b>DOCUMENT ID</b>	3b558fd1d899d972f6f665088f734e664389821c
<b>STATUS</b>	● Completed

## Document History

 SENT	<b>07/03/2018</b> 15:35:11 UTC	Sent for signature to Tom Gardner (tjgard@aol.com) from michael@findthepass.com IP: 24.194.22.218
 VIEWED	<b>07/05/2018</b> 11:38:12 UTC	Viewed by Tom Gardner (tjgard@aol.com) IP: 67.246.17.133
 SIGNED	<b>07/05/2018</b> 11:41:08 UTC	Signed by Tom Gardner (tjgard@aol.com) IP: 67.246.17.133
 COMPLETED	<b>07/05/2018</b> 11:41:08 UTC	The document has been completed.

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the "Company"), hereby agrees, effective as of the undersigned's admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the "Agreement") as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.

*ANDREW FRASER.*

\_\_\_\_\_  
Print name of Member

*[Handwritten Signature]*

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

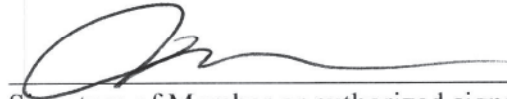
**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERSKHIRE WELCO, LLC**

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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Terry Wang \_\_\_\_\_

Print name of Member



Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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Stephen Abraham

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)





\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

---

<b>TITLE</b>	Joinder Re-Sign
<b>FILE NAME</b>	FHBOSTON-#4851243...estor Units).DOCX
<b>DOCUMENT ID</b>	86f054717a42346817e4cc04fd10f23495e670b9
<b>STATUS</b>	● Completed

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## Document History

 SENT	<b>07/03/2018</b> 15:42:07 UTC	Sent for signature to Steve Abraham (sabraham@becketgroup.com) from michael@findthepass.com IP: 24.194.22.218
 VIEWED	<b>07/06/2018</b> 23:50:26 UTC	Viewed by Steve Abraham (sabraham@becketgroup.com) IP: 24.194.6.76
 SIGNED	<b>07/06/2018</b> 23:51:00 UTC	Signed by Steve Abraham (sabraham@becketgroup.com) IP: 24.194.6.76
 COMPLETED	<b>07/06/2018</b> 23:51:00 UTC	The document has been completed.

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)



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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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Michael Cohen

\_\_\_\_\_  
Print name of Member

*michael cohen*

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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Keith Callahan  
Print name of Member

[Handwritten Signature]  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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\_\_\_\_\_  
Print name of Member

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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John C Morris

\_\_\_\_\_  
Print name of Member

  
\_\_\_\_\_  
Signature of Member or authorized signatory

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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Armstrong Holdings Corp LLC  
Print name of Member

Cowan  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

President  
Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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**Margaret E Finch**

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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*Anne G. Frodericks*

Print name of Member

*Anne G. Frodericks*

Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)

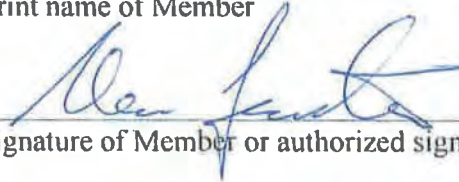
**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERSKIRE WELCO, LLC**

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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Marc Fasteau

Print name of Member



Signature of Member or authorized signatory

Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)



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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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Eric W. Roberts  
Print name of Member

[Handwritten Signature]  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
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James Coulter Scala

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)





\_\_\_\_\_  
Title of authorized signatory (if Member is an  
entity)

---

<b>TITLE</b>	Joinder Re-Sign
<b>FILE NAME</b>	FHBOSTON-#4851243...estor Units).DOCX
<b>DOCUMENT ID</b>	53f641f2dec194c57b3a954d2e30cf98177001d1
<b>STATUS</b>	● Completed

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## Document History

 SENT	<b>07/03/2018</b> 15:37:52 UTC	Sent for signature to James Coulter Scala (jedscala@gmail.com) from michael@findthepass.com IP: 24.194.22.218
 VIEWED	<b>07/03/2018</b> 18:54:27 UTC	Viewed by James Coulter Scala (jedscala@gmail.com) IP: 72.228.8.207
 SIGNED	<b>07/03/2018</b> 18:55:05 UTC	Signed by James Coulter Scala (jedscala@gmail.com) IP: 72.228.8.207
 COMPLETED	<b>07/03/2018</b> 18:55:05 UTC	The document has been completed.

AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERSKHIRE WELCO, LLC

MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the "Company"), hereby agrees, effective as of the undersigned's admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the "Agreement") as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.

Charles Tonleil

Print name of Member

[Handwritten Signature]

Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

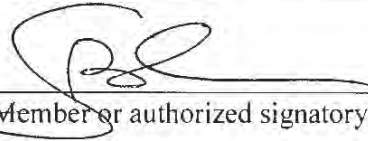
**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
BERKSHIRE WELCO, LLC**

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

The undersigned, desiring to become a member of Berkshire Welco, LLC, a Massachusetts limited liability company (the "Company"), hereby agrees, effective as of the undersigned's admission to the Company as a member, to be bound by all of the provisions of and to be a party to the Amended and Restated Limited Liability Company Agreement of the Company (the "Agreement") as a Member thereunder, and that this counterpart signature page may be attached to the Agreement or any counterpart copy thereof.

BERKSHIRE WELCO, LLC

Print name of Member



Signature of Member or authorized signatory

Signature (if joint signatures are required)

CRAIG BALSAM, MEMBER

Title of authorized signatory (if Member is an entity)

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

**MEMBER HOLDING SERIES A INVESTOR UNITS  
SIGNATURE PAGE**

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*Jane Larkworthy*

\_\_\_\_\_  
Print name of Member

*Jane Larkworthy*

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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*BERTRAND GARBASSI*

\_\_\_\_\_  
Print name of Member

*BERTRAND GARBASSI*

\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

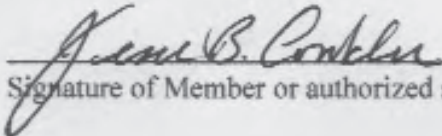
\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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JESSE CONKLIN \_\_\_\_\_  
Print name of Member

 \_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

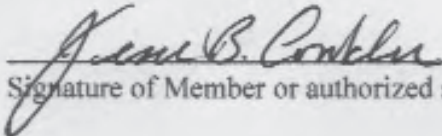


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JESSE CONKLIN \_\_\_\_\_  
Print name of Member

 \_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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JOSEPH E. MITCHELL / SEAN B. MITCHELL

Print name of Member

Joseph Mitchell /

Signature of Member or authorized signatory

Sean B. Mitchell

Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

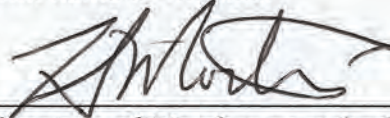
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Kenneth S. Morton

Print name of Member



Signature of Member or authorized signatory

Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)

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

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STEPHEN P. MARSHALL  
Print name of Member

Stephen P Marshall  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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BERSKHIRE WELCO, LLC**

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Touhy LEASING LLC  
Print name of Member

Arthur Gutterman  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

MANAGING DIRECTOR  
Title of authorized signatory (if Member is an entity)

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

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WARD CAREY

\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

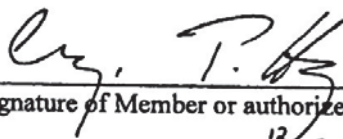
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BERSKIRE WELCO, LLC

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George Petty

Print name of Member

  
Signature of Member or authorized signatory  
12/10

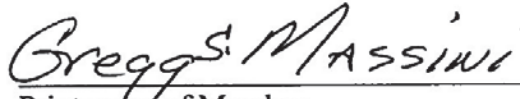
Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)

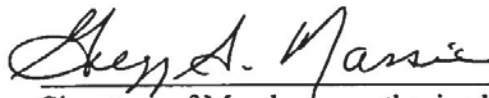
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\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an  
entity)



**AMENDED AND RESTATED  
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MARIE MASSINI-REYNOLDS  
Print name of Member

Marie Massini Reynolds  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)


\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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MARK H MASSINI  
Print name of Member

  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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Justin Vaglias  
Print name of Member

[Signature]  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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Natale Marasco  
Print name of Member

Natale Marasco  
Signature of Member or authorized signatory

-----  
Signature (if joint signatures are required)

-----  
Title of authorized signatory (if Member is an entity)

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

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William M Ryan  
Print name of Member

William M Ryan  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

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

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Joseph Quattracchi

Print name of Member

Signature of Member or authorized signatory

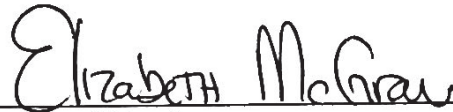
Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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\_\_\_\_\_  
Print name of Member



\_\_\_\_\_  
Signature of Member or authorized signatory

\_\_\_\_\_  
Signature (if joint signatures are required)

\_\_\_\_\_  
Title of authorized signatory (if Member is an entity)

**AMENDED AND RESTATED  
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LISA QUATTROCCHI

Print name of Member



Signature of Member or authorized signatory

Signature (if joint signatures are required)

Title of authorized signatory (if Member is an entity)



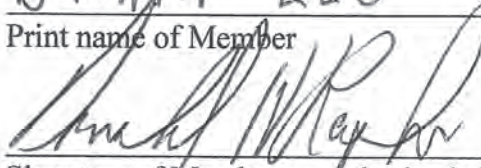
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DROKAP LLC

Print name of Member



Signature of Member or authorized signatory

Signature (if joint signatures are required)

MANAGING MEMBER

Title of authorized signatory (if Member is an entity)

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

**Members**

Date of last revision of this Schedule A: December 31, 2018

<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	10,000	\$250,000
Christopher Weld 1640 Home Rd. Great Barrington MA , 01230	324,000	\$10,000.00	N/A		
Brian Buckowski 512 Lakeland Court Athens, GA 30607				4,000	\$100,000
Jeffrey Grodsky 90 Pendleton Lane Longmeadow, MA 01106				2,000	\$50,000
Luke Mauro 57 Pennsylvania Avenue Massapequa, NY 11758				2,000	\$50,000
Mark Govoni 165 West 66 <sup>th</sup> Street, Apt 82 New York, NY 10023				6,000	\$150,000
Rannapo Partners LLC 16 West 77 <sup>th</sup> Street #10E New York, NY 10024				2,000	\$50,000

<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>
Ronald Wurtzburger 9 Oxford Lane Scarsdale, NY 10583				2,000	\$50,000
Silent Lamb LLC PO Box 444 Sheffield, MA 01257				4,000	\$100,000
Whiting River LLC 240 Campbell Falls Rd Southfield, MA 01259				8,000	\$200,000
William O'Brien 175 West 72 <sup>nd</sup> Street, Apt 9H New York, NY 10023				4,000	\$100,000
Thomas C. Callahan 110 Third Avenue, Apt 4A New York, NY 10003				2,000	\$50,000
Joel C. Millonzi and Kathleen C. Millonzi PO Box 669 Naples, FL 34106				2,000	\$50,000
Francis M. Weld 16 Gardner Street Nantucket, MA 02554				2,000	\$50,000
David D. Goufrey 141 W Canton Street Boston, MA 02118				4,000	\$100,000
Amy Humes and Bruce Humes 11 Lake View Road Great Barrington, MA 01230				2,000	\$50,000
Robert A. Caserta 3215 S Ocean Blvd, Apt. 912 Highland Beach, FL 33487				4,000	\$100,000

Name and Address	Common Units Held	Capital Contribution Made in Respect of Common Units	Threshold Amount In Relation to Any Common Unit that is an Incentive Unit	Series A Investor Units Held	Capital Contribution Made in Respect of Series A Investor Units
Laurence L. Wojcik and Judith M. Wojcik 223 Basil Road Chicopee, MA 01020				2,000	\$50,000
Thomas Gardner 2717 State Road (PO Box 193) Richmond, MA 01254				8,000	\$200,000
Andrew Fraser 17 High Ridge Road Garrison, NY 10524				2,000	\$50,000
Terry Wang 18 Rutledge Road Marlboro, NJ 07746				6,000	\$150,000
Stephen Abraham 250 W. 89 <sup>th</sup> Street New York, NY 10024				2,000	\$50,000
Michael Stanton 1100 West Avenue, Apt 902 Miami Beach, FL 33139				4,000	\$100,000
Keith Callahan 9 Green Lane Sherborn, MA 01770				2,000	\$50,000
Steven Shulman 7 Canterbury Rd Scarsdale, NY 10583				2,000	\$50,000
John C. Morris 15 East 93 <sup>rd</sup> Street New York, NY 10128				10,000	\$250,000
Armstrong Holdings Corp LLC 197 East 76 <sup>th</sup> Street New York, NY 10021				4,000	\$100,000

Name and Address	Common Units Held	Capital Contribution Made in Respect of Common Units	Threshold Amount In Relation to Any Common Unit that is an Incentive Unit	Series A Investor Units Held	Capital Contribution Made in Respect of Series A Investor Units
Margaret E. Finch 3309 E Valley St Seattle, WA 98112				8,000	\$200,000
Anne G. Fredericks 77 Seakonk Cross Road Great Barrington, MA 01230				12,000	\$300,000
Marc Fasteau 77 Seakonk Cross Road Great Barrington, MA 01230				12,000	\$300,000
Eric W. Roberts 23 Charlie Hill Road Millerton, NY 12546				4,000	\$100,000
James Coulter Scala 10 Seekonk Cross Road Great Barrington, MA 01230				4,000	\$100,000
Charles T. O'Neil 14 Old Tree Farm Road PO Box 201 Stockbridge, MA 01262				2,000	\$50,000
Berkshire Bud, LLC 62 Beach St. #2AB New York, NY 10013				4,000	\$100,000
Bertrand Garbassi & Jane Larkworthy 425 E. 51st st. Apt. 2E New York, NY 10022				2,000	\$50,000
Jeff Chwast 135 Willow St. Brooklyn, NY 11201				4,000	\$100,000
Jessie Conklin 398 Weatogue Rd. Ashley Falls, MA 01222				4,000	\$100,000

Name and Address	Common Units Held	Capital Contribution Made in Respect of Common Units	Threshold Amount In Relation to Any Common Unit that is an Incentive Unit	Series A Investor Units Held	Capital Contribution Made in Respect of Series A Investor Units
Joseph & Jean Mitchell 336 Ridgemont Ave. San Antonio, TX 78209-5451				2,000	\$50,000
Ken Morton 25 Trebark Terrace Voorhees, NJ 08043				4,000	\$100,000
Stephen Marshall 7 Townhouse Hill Rd. S. Egremont, MA 01230				2,000	\$50,000
Touhy Leasing LLC 5550 W. Touhy, ste. 200 Skokie, IL 60077				3,000	\$75,000
Ward Carey 152 Elm Ave. Burlingame, CA 94010				2,000	\$50,000
George Petty 15 chemin Louis Dagallier Versoix, Switzerland 1290				2,000	\$50,000
Gregg Massini 24 Hulett Hill Rd. Sheffield, MA 01257				8,000	\$200,000
Marie Massini-Reynolds 115 Pike Rd. W Sheffield, MA 01257				4,000	\$100,000
Mark Massini 199 Ashley Falls Rd. Sheffield, MA 01257				2,000	\$50,000
Justin Vagliano PO Box 526 Norfolk, CT 06058				8,000	\$200,000

Name and Address	Common Units Held	Capital Contribution Made in Respect of Common Units	Threshold Amount In Relation to Any Common Unit that is an Incentive Unit	Series A Investor Units Held	Capital Contribution Made in Respect of Series A Investor Units
Natale Marasco 174 Valley View Rd. PO Box 46 Ashley Falls, MA 01222				3,000	\$75,000
William Ryan 116 Brush Hill Road Great Barrington, MA 01230				2,000	\$50,000
Joseph Quattrocchi 2694 Rte. 199 PO Box 103 Pine Plains, NY 12567				4,000	\$100,000
Elizabeth McGraw PO Box 873 Sheffield, MA 01257				2,000	\$50,000
Lisa Quattrocchi 941 Park Ave., #12A New York, NY 10028				6,000	\$150,000
DROKAP LLC 145 Stonehurst Drive Tenafly, NJ 07670				2,000	\$50,000
<b>Totals:</b>	<b>524,000</b>	<b>\$16,172.84</b>		<b>214,000</b>	<b>\$5,350,000</b>

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

**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.

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**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).

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

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).

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Carolann Strickling &lt;carolann@thepass.co&gt;

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**Berkshire Welco Cultivation LLC**

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**Conroy, Kevin (Partner)** <kconroy@foleyhoag.com>  
To: Anne DiMare <Anne.DiMare@cccmass.com>  
Cc: Carolann Strickling <carolann@thepass.co>

Thu, May 6, 2021 at 10:10 AM

Anne: Carolann Strickling asked me to reach out to you. I represent Berkshire Welco Cultivation LLC concerning regulatory issues. I believe that you have requested bylaws and an operating agreement for Berkshire Welco Cultivation LLC as part of its application for licensure. Berkshire Welco Cultivation LLC is a wholly owned subsidiary of its single member, Berkshire Welco LLC. Accordingly, it does not have its own bylaws or an operating agreement. Under MGL c. 156C, Section 2(9), an LLC operating agreement does not need to be written; under c. 156C, Section 24(a), an LLC is managed by its members unless the operating agreement provides otherwise. For those reasons, member-managed single-member LLCs like Berkshire Welco Cultivation LLC very often do not have written operating agreements. We have provided the operating agreement of the single member, Berkshire Welco LLC, to show how decisions are made by the single member. We feel this should be sufficient for the Commission's purposes. Please let me know if you would like to discuss. Thank you.

**FOLEY  
HOAG** LLP**Kevin Conroy** | Partner

Seaport West  
[155 Seaport Boulevard](#)  
Boston, Massachusetts 02210-2600

617 832 1145 phone  
617 832 7000 fax

[www.foleyhoag.com](http://www.foleyhoag.com)

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5/6/2021

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**THE PASS**  
BERKSHIRES

Employee Guidebook

July 2020



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# Core Policies

## 1.0 Welcome

### 1.1 About This Handbook

This Employee Handbook includes policies that are specific to employees of Berkshire Welco, LLC dba The Pass (the "Company") employ.

We prepared this handbook to help employees find the answers to many questions that employees may have regarding their employment with the Company. Please take the necessary time to read it.

This handbook cannot answer all questions. Onsite managers/supervisors and Human Resource personnel also serve as a major source of information. Human Resources can be contacted toll free at 413-644-6892.

This handbook states only general Company guidelines. It is not a contract. Neither this handbook nor any other verbal or written communication by a management representative is, nor should it be considered to be, an agreement, contract of employment, express or implied, or a promise of treatment in any particular manner in any given situation. The Company adheres to the policy of employment at will, which permits the Company or the employee to end the employment relationship at any time, for any reason, with or without cause or notice

Many matters covered by this handbook, such as benefit plan descriptions, are also described in separate Company documents. These Company documents are always controlling over any statement made in this handbook or by any member of management.

The Company may, at any time, in its sole discretion, adopt new policies, eliminate existing policies, and/or modify or vary from anything stated in this handbook, with or without notice, except for the rights of the parties to end employment at will, which may only be modified by an express written agreement signed by the Company's CEO. Nothing in this handbook is intended to nor should it be interpreted as interfering with your right to engage in concerted protected activity regarding your terms and conditions of employment. If you have any questions regarding what any provision in this handbook means, please ask your manager/supervisor or Human Resources.

If any applicable federal, state or local law differs from the policies described in this Employee Handbook, the Company will comply with the applicable law. Please consult with Human Resources if you have any questions concerning how your state or local workplace requirements may differ from information presented here.

This handbook supersedes all prior handbooks; however, the Company's policies regarding worksite matters, remain in effect and can be requested from your manager/supervisor.

## **1.2 A Welcome Policy**

Welcome! You have just joined a dedicated organization focused and motivated to provide a positive impact on our community, employees and partners with capital & career development. Our team prides ourselves on being responsible stewards of the industry, grounded by the Berkshires' guiding principles of human and agricultural wellness and enlightenment. Together we will be leaders in creating a productive and diverse workforce that will strive to provide experiences to enhance the appreciation of people, nature, and culture and alleviate the symptoms of physical and emotional pain and stress.

We hope that your employment with the Company will be rewarding and challenging. We take pride in our employees' ability to become an integral contributor in providing the best of breed products through a focus on agricultural wellness, manufacturing and process expertise, and diligent crafting.

The Company complies with all federal and state employment laws, and this handbook generally reflects those laws. The Company also complies with any applicable local laws, although there may not be an express written policy regarding those laws contained in the handbook.

The employment policies and/or benefits summaries in this handbook are written for all employees. When questions arise concerning the interpretation of these policies as they relate to employees who are covered by a collective-bargaining agreement, the answers will be determined by reference to the actual union contract, rather than the summaries contained in this handbook.

Please take the time now to read this handbook carefully. Sign the acknowledgment at the end to show that you have read, understood, and agree to the contents of this handbook, which sets out the basic rules and guidelines concerning your employment. This handbook supersedes any previously issued handbooks or policy statements dealing with the subjects discussed herein. The Company reserves the right to interpret, modify, or supplement the provisions of this handbook at any time. Neither this handbook nor any other communication by a management representative or other, whether oral or written, is intended in any way to create a contract of employment. Please understand that no employee handbook can address every situation in the workplace.

If you have questions about your employment or any provisions in this handbook, contact Human Resources.

We wish you success in your employment here at Company!

All the best,

Chris Weld  
Chief Executive Officer

## **1.3 At-Will Employment**

Your employment with the Company is on an "at-will" basis. This means your employment may be terminated at any time, with or without notice and with or without cause. Likewise, we respect your right to leave the Company at any time, with or without notice and with or without cause.

Nothing in this handbook or any other Company document should be understood as creating a contract, guaranteed or continued employment, a right to termination only "for cause," or any other guarantee of continued benefits or employment. Only the CEO has the authority to make promises or negotiate with regard to guaranteed or continued employment, and any such promises are only effective if placed in writing and signed by the CEO.

If a written contract between you and the Company is inconsistent with this handbook, the written contract is controlling.

Nothing in this handbook will be interpreted, applied, or enforced to interfere with, restrain, or coerce employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

## **2.0 Introductory Language and Policies**

### **2.1 Ethics Code**

The Pass welcomes individuals of every race, color, orientation, age, gender, origin, veteran status, and ability into our workplace. We expect that every employee will treat everyone – other employees, vendors, customers, and the general public -- with the utmost respect. We expect every employee to be part of making Welco a welcoming place to work and do business.

We also welcome individuals who have been harmed, directly or indirectly, by prior cannabis prohibition into our workplace. We intend to be a partner to disadvantaged communities and part of the effort to undo the damage caused by cannabis prohibition. We also expect every employee to be part of our efforts to be a good community partner and a positive force in the cannabis industry.

Welco intends to be a company where employees bring their individual identities, differences, and talents together to work as a team, across all our locations and operations. We don't want biases or stereotypes holding either us or you back at any stage of your career with us.

The Company will conduct business honestly and ethically wherever operations are maintained. We strive to improve the quality of our services, products, and operations and will maintain a reputation for honesty, fairness, respect, responsibility, integrity, trust, and sound business judgment. Our managers and employees are expected to adhere to high standards of business and personal integrity as a representation of our business practices, at all times consistent with their duty of loyalty to the Company.

We expect that officers, directors, and employees will not knowingly misrepresent the Company and will not speak on behalf of the Company unless specifically authorized. The confidentiality of trade secrets, proprietary information, and similar confidential commercially-sensitive information (i.e. financial or sales records/reports, marketing or business strategies/plans, product development, customer lists, patents, trademarks, etc.) about the Company or operations, or that of our customers or partners, is to be treated with discretion and only disseminated on a need-to-know basis (see policies relating to privacy).

Violation of the Code of Ethics can result in discipline, up to and including termination of employment. The degree of discipline imposed may be influenced by the existence of voluntary disclosure of any ethical violation and whether or not the violator cooperated in any subsequent investigation.

## **3.0 Hiring and Orientation Policies**

These following policies are neither intended to prohibit seeking out qualified job candidates through personal or familial ties nor intended to prevent The Pass from engaging with community organizations at which employees volunteer or work, outside of their employment with The Pass.

### **3.1 Conflicts of Interest**

The Company is concerned with conflicts of interest that create actual or potential job-related concerns, especially in the areas of confidentiality, customer relations, safety, security, and morale. If there is any actual or potential conflict of interest between you and a competitor, supplier, distributor, or contractor to the Company, you must disclose it to your manager/supervisor. If an actual or potential conflict of interest is determined to exist, the Company will take such steps as it deems necessary to reduce or eliminate this conflict.

### **3.2 Employment of Relatives and Friends**

We will not employ friends or relatives in circumstances where actual or potential conflicts may arise that could compromise supervision, safety, confidentiality, security, and morale at the Company. It is your obligation to inform the Company of any such potential conflict so the Company can determine how best to respond to the particular situation. Under no circumstances will employees or relatives be employed as a subordinate to any manager that falls under Sections 3.1 and 3.2

### **3.3 Job Descriptions**

The Company attempts to maintain a job description for each position. If you do not have a current copy of your job description, you should request one from your manager/supervisor.

Job descriptions prepared by the Company serve as an outline only. Due to business needs, you may be required to perform job duties that are not within your written job description. Furthermore, the Company may have to revise, add to, or delete from your job duties per business needs. On occasion, the Company may need to revise job descriptions with or without advance notice to employees.

If you have any questions regarding your job description or the scope of your duties, please speak with your manager/supervisor or contact Human Resources.

### **3.4 New Hires and Introductory Periods**

The first 90 days of your employment is considered an introductory period. During this period, you will become familiar with the Company and your job responsibilities, and we will have the opportunity to monitor the quality and value of your performance and make any necessary adjustments in your job description or responsibilities. We are committed to our established Diversity and Positive Impact programs, as such, it is imperative that every employee apply the knowledge gained from our training program into their everyday practice, conduct and performance. Your introductory period with the Company can be shortened or lengthened as deemed appropriate by management and Human Resources. Completion of this introductory period does not imply guaranteed or continued employment. Nothing that occurs during or after this period should be construed to change the nature of the "at-will" employment relationship.

### **3.5 Training Program**

In most cases, and for most departments, training employees is done on an individual basis by the department manager. Even if you have had previous experience in the specified functions of your job duties, it is necessary for you to learn our specific procedures, as well as the responsibilities of the specific position. If you ever feel you require additional training, consult your manager/supervisor and/or Human Resources.

### **3.6 Employment Authorization Verification**

New hires will be required to complete Section 1 of federal Form I-9 on the first day of paid employment and must present acceptable documents authorized by the U.S. Citizenship and Immigration Services proving identity and employment authorization no later than the third business day following the start of employment with Company. If you are currently employed and have not complied with this requirement or if your status has changed, inform your manager/supervisor.

If you are authorized to work in this country for a limited period of time, you will be required to submit proof of renewed employment eligibility prior to expiration of that period to remain employed by the Company.

## **4.0 Wage and Hour Policies**

### **4.1 Attendance Policy**

If you know ahead of time that you will be absent or late, provide reasonable advance notice to your manager/supervisor. You may be required to provide documentation of any medical or other excuse for being absent or late where permitted by applicable law.

The Company reserves the right to apply unused vacation, sick time, or other paid time off to unauthorized absences where permitted by applicable law. Absences resulting from approved leave, vacation, or legal requirements are exceptions to the policy.

## **4.2 Business Expenses Policy**

The purpose of this policy is to define approved nontravel business expenses and the authority for incurring and approving such expenses at the Company. Approved business expenses are the reasonable and necessary expenses incurred by employees to achieve legitimate business purposes that are not covered by normal Company procurement processes.

### *Business Meetings (Employer-Sponsored Events and Meetings)*

The Company pays for expenses necessary to achieve a valid business purpose when meetings are held with customers, vendors, or other Company employees. The most senior Company individual present is to pay for and report all expenses.

The Company will make every effort to have a master account set up for Company-wide and large group events. However, if you are at a small meeting or staying by yourself at a hotel, pay individually and submit original receipts for reimbursement accordingly.

### *Entertainment*

The Company pays for entertainment expenses only when they clearly benefit the Company and include customers and are promotional in nature. The most senior individual present is to pay for and report all expenses.

### *Technical and Training Seminars*

The Company pays for expenses associated with attendance at classes and seminars that enhance job-related skills. Prior approval must be obtained by your manager/supervisor.

### *Gifts*

You may present gifts only under exceptional circumstances and with prior approval of the appropriate Company officer. The Company does not reimburse cost over \$25 for business gifts.

### *Other Expenses*

The Company will pay for postage and telephone expenses that are for business purposes.

### *Reimbursements*

Requests for reimbursement must be approved by management and submitted with original receipts accompanied by the company approved reimbursement form. All reimbursements must have a clear business purpose and include a description of the expense, date, place.

### *Reporting*

Report approved expenses on the standard expense report form and include a description of the expense, its business purpose, date, place, and the participants.

## **4.3 Direct Deposit**

The Company encourages all employees to enroll in direct deposit. You are able to enroll in our payroll direct deposit program at the time you complete your new hire documents. If you are already enrolled but need to change your bank, credit union or account information, please log into the Emcentrix Employee Portal, through the "Employee Login," It generally takes up to two (2) pay periods for direct deposit to take effect.

If you have selected the direct deposit payroll service, you may access your itemized wage statement and print by going to Emcentrix Employee Portal, through the "Employee Login," located at the left section of the home page.

#### **4.4 Introduction to Wage and Hour Policies**

At the Company, pay depends on a wide range of factors, including pay scale surveys, individual effort, profits, skills, qualifications and market forces. We strive to ensure that all employees regardless of age, color, gender, gender identity and veteran status are paid fairly and equitably any disparities will be identified during our annual pay equity assessment. If you have any questions about your compensation, including matters such as paid time off, commissions, overtime, benefits, or paycheck deductions, speak with your manager/supervisor and/or Human Resources.

#### **4.5 Job Abandonment**

If you fail to show up for work or fail to call in with an acceptable reason for the absence for a period of three consecutive days, you will be considered to have abandoned your job and voluntarily resigned from the Company.

#### **4.6 Paycheck Deductions**

The Company is required by law to make certain deductions from your pay each pay period. This includes income and unemployment taxes, Federal Insurance Contributions Act (FICA) contributions (Social Security and Medicare), and any other deductions required under law or by court order for wage garnishments. The amount of your tax deductions will depend on your earnings and the number of exemptions you list on your federal Form W-4 and applicable state withholding form. You may also authorize voluntary deductions from your paycheck, including contributions for insurance premiums, retirement plans, spending accounts, or other services. Your deductions will be reflected in your wage statement.

The Company will not make deductions to your pay that are prohibited by federal, state, or local law. If you have any questions about deductions from your pay, contact your manager/supervisor. You will be reimbursed in full for any isolated, inadvertent, or improper deductions, as defined by law. If an error is found, you will receive an immediate adjustment, which will be paid no later than your next regular payday.

#### **4.7 Recording Time**

The Company is required by applicable federal, state, and local laws to keep accurate records of hours worked by certain employees. To ensure that the Company has complete and accurate time records and that employees are paid for all hours worked, nonexempt employees are required to record all working time using Company timecards/time sheets/punch clock/timekeeping application/other. Exempt employees may also be required to track days or time worked. Speak with your manager/supervisor for specific instructions.

You must accurately record all of your time to ensure you are paid for all hours worked and must follow established Company procedures for recording your hours worked. Time must be recorded as follows:

- Immediately before starting your shift.
- Immediately after finishing work, before your meal period.
- Immediately before resuming work, after your meal period.
- Immediately after finishing work.
- Immediately before and after any other time away from work.

If you are required to complete a Time sheet/timecard, they are to be turned in to your manager/supervisor at the end of each week.

If you are required to clock in, you should clock in no more than five minutes ahead of your start time and clock out no later than five minutes after your quitting time.

Notify your manager/supervisor of any pay discrepancies, unrecorded or mis-recorded work hours, or any involuntarily missed meal or break periods.



Falsifying time entries is strictly prohibited. Falsifying time entries includes working "off the clock." If you falsify your own time records, or the time records of co-workers, or if you work off the clock, you will be subject to discipline up to and including termination. Immediately report to Human Resources any employee, supervisor, or manager who falsifies your time entries or encourages or requires you to falsify your time entries or work off the clock.

## **4.8 Travel Expenses**

The purpose of this policy is to define approved business travel expenses and the authority for incurring and approving such expenses at the Company.

Travel expenses are the reasonable and necessary expenses incurred by employees when traveling on approved Company business trips. Travel is limited to business activities for which other means of communication is inadequate and for which prior approval from your manager/supervisor has been received.

### Advances

The Company does not generally provide cash travel advances. Normally, you will be expected to use personal credit cards and/or your own cash and submit approved expenses on the standard Expense Report Form.

### Travel Expenses

The Company pays the actual amounts incurred for appropriate expenses when you are on travel assignments. Examples of typical expenses include the following:

- Airline tickets.
- Meals and lodging.
- Car rental, bus, taxi, parking.
- Telephone and fax.
- Laundry and dry cleaning (trips exceeding one week only, unless emergency).
- Business supplies and services.
- Associated gratuities.
- Other expenses necessary to achieve the business purposes.

### Family Members

The Company will pay the travel expenses of spouses or other family members only when their presence is necessary to the business purpose of the trip and when approved in advance in writing by the Chief Executive Officer.

### Air Travel

Use economy or tourist class fares when traveling on Company business. In addition, private, noncommercial aircraft or chartered aircraft is not to be used, and no more than two Company officers should travel together on the same flight.

Airfares are to be charged to personal credit cards and subsequently submitted for reimbursement on a monthly expense report.

### Hotels

Neither in-room movies nor refreshment bars are approved Company expenses.

### Insurance

The Company does not pay for personal travel insurance for employees.

### Rental Cars

You are to use rental firms having existing relationships with the Company and, where feasible, have negotiated discount rates. Available reasonable transportation is to be used.

### Personal Vehicles

When using your own vehicle for business purposes, you must maintain a valid driver's license, acceptable driving record, and insurance coverage as required by law. An applicant or employee will be considered to have an unsatisfactory driving record if the driving record indicates one (1) or more moving violations. An applicant or employee will be considered to have an unsatisfactory driving record if the Company's and/or the applicant's or employee's insurance carrier(s) refuses to continue to insure the applicant or employee or agrees to continue to insure the applicant or employees only for an increased premium.

Travel between your home and primary office is not considered to be business travel. You may not use your personal vehicle for business travel without authorization. Every attempt should be made to utilize the use of courier and delivery services in order to avoid hazard of liability and the time away from work. You will be reimbursed for vehicle use at the standard IRS mileage rate. The Chief Executive Officer must authorize any deviation from this policy.

### Reporting

Report approved expenses and include a description of the expense, its business purpose, date, place, and the participants.

### Travel Reservations

Airline travel, rental cars, and hotels must be booked through the corporate designated travel agency in order to be reimbursed.

## **4.9 Use of Employer Credit Cards**

All employees in the possession of a credit card issued by Company will adhere to the strictest guidelines of responsibility for the protection and proper use of that card. Credit card purchases related to the Company vehicle use (gas, oil, etc.) under \$100 do not require prior approval. Credit card purchases for vehicle use over \$100 and any other business purchases over \$25 must receive prior approval from your manager/supervisor.

Submit all sales receipts generated by use of the Company credit card to your manager/supervisor. Your Company credit card may not be used for personal reasons. Use of the Company credit card is restricted to approved business-related expenses.

Any unauthorized purchases made with a credit card issued by the Company will be the cardholder's responsibility. You must reimburse any such purchase to the Company within 15 days.

Immediately report lost or stolen Company cards to your manager/supervisor. Failure to follow this policy may result in disciplinary action up to and including discharge.

## **5.0 Performance, Discipline, Layoff, and Termination**

### **5.1 Criminal Activity/Arrests**

The Company will report all criminal activity in accordance with applicable law. Involvement in criminal activity while employed by the Company, whether on or off Company property, may result in disciplinary action including suspension or termination of employment. We are required to report all convicted felonies and any fraudulent behavior that may compromise the employees ability to maintain the agent registration.

## **5.2 Schedule**

You are expected to be on the job, ready to work, when scheduled. Inability to report to work as scheduled may lead to disciplinary action, up to and including termination of employment, for violation of an attendance policy or job abandonment.

## **5.3 Exit Interview**

You may be asked to participate in an exit interview when you leave Company. The purpose of the exit interview is to provide management with greater insight into your decision to leave employment; identify any trends requiring attention or opportunities for improvement; and to assist the Company in developing effective recruitment and retention strategies. Your cooperation in the exit interview process is appreciated.

## **5.4 Open Door/Conflict Resolution Policy**

The Company strives to provide a comfortable, productive, legal, and ethical work environment. To this end, we want you to bring any problems, concerns, or grievances you have about the workplace to the attention of your manager/supervisor and, if necessary, to Human Resources or senior level management. Employees are encouraged and responsible for bringing to the attention to management any concerns reading discrimination or harassment in the workplace whether it imposes direct or indirect impact.

To help manage conflict resolution we have instituted the following problem-solving procedure:

If you believe there is inappropriate conduct or activity on the part of the Company, management, its employees, vendors, customers, or any other persons or entities related to the Company, bring your concerns to the attention of your management, management includes your direct supervisor, anyone on the senior management team, and Human Resources at a time and place that will allow the person to properly listen to your concern.

Most problems can be resolved informally through dialogue between you and your immediate manager/supervisor. If you have already brought this matter to the attention of your manager/supervisor before and do not believe you have received a sufficient response, or if you believe that person is the source of the problem, present your concerns to Human Resources or senior level management.

In preparation for the discussion please outline the information in detail:

- Describe the problem,
- Parties involved in the problem,
- Efforts you have made to resolve the problem,
- Any suggested solution you may have.

## **5.5 Outside Employment**

Outside employment that creates a conflict of interest or that affects the quality or value of your work performance or availability at the Company is prohibited. The Company recognizes that you may seek additional employment during off hours, but in all cases expects that any outside employment will not affect your attendance, job performance, productivity, work hours, or scheduling, or would otherwise adversely affect your ability to effectively perform your duties or in any way create a conflict of interest. Any outside employment that will conflict with your duties and obligations to the Company should be reported to your manager/supervisor. Failure to adhere to this policy may result in discipline up to and including termination.

## **5.6 Performance Improvement**

Company will make efforts to periodically review your work performance. The performance improvement process will take place as business needs dictate. You may specifically request that your manager/supervisor assist you in developing a performance improvement plan at any time.

The performance improvement process is a means for increasing the quality and value of your work performance. Your initiative, effort, attitude, job knowledge, and other factors will be addressed. As stated throughout this document and in line with our commitment to our Diversity programs, your ability to comply with maintaining our diversity program will be included in any performance review process. You must understand that a positive job performance review does not guarantee a pay raise or continued employment. Pay raises and promotions are based on numerous factors, only one of which is job performance.

## **5.7 Disciplinary Process**

Violation of Company policies or procedures may result in disciplinary action including demotion, transfer, leave without pay, or termination of employment. The Company encourages a system of progressive discipline depending on the type of prohibited conduct. However, the Company is not required to engage in progressive discipline and may discipline or terminate employees who violate the rules of conduct, or where the quality or value of their work fails to meet expectations at any time. Again, any attempt at progressive discipline does not imply that your employment is anything other than on an "at-will" basis.

In appropriate circumstances, management will first provide you with a verbal warning, then with one or more written warnings, and if the conduct is not sufficiently altered, eventual demotion, transfer, forced leave, or termination of employment. Your manager/supervisor will make every effort possible to allow you to respond to any disciplinary action taken. Understand that while the Company is concerned with consistent enforcement of our policies, we are not obligated to follow any disciplinary or grievance procedure and that depending on the circumstances, you may be disciplined or terminated without any prior warning or procedure.

## **5.8 Post-Employment References**

The Company policy is to confirm dates of employment and job title only. With written authorization, the Company will confirm compensation. Forward any requests for employment verification to Human Resources.

## **5.9 Promotions**

To match you with the job for which you are best suited and to meet the business needs of Company, you may be transferred from your current job. It is our policy to promote from within only when the most qualified candidate is available. Employees ability to promote and comply with our diversity program will be taken into consideration during the determination process. Promotions are made on an equal opportunity basis according to employees possessing the needed skills, education, experience, and other qualifications that are required for the job.

All employees promoted into new job positions will undergo a 90-day introductory period as described in the New Hires and Introductory Periods policy. Unlike new hires, however, such employees will continue to receive Company benefits for which they are eligible.

## **5.10 Standards of Conduct**

The Company wishes to create a work environment that promotes job satisfaction, respect, responsibility, integrity, and value for all our employees, clients, customers, and other stakeholders. We all share in the responsibility of improving the quality of our work environment. By deciding to work here, you agree to follow our rules.

While it is impossible to list everything that could be considered misconduct in the workplace, what is outlined here is a list of common-sense infractions that could result in discipline, up to and including immediate termination of employment. This policy is not intended to limit our right to discipline or discharge employees for any reason permitted by law.

Examples of inappropriate conduct include:

- Violation of the policies and procedures set forth in this handbook.
- Possessing, using, distributing, selling, or negotiating the sale of illegal drugs or other controlled substances.
- Being under the influence of alcohol during working hours on Company property (including in Company vehicles), or on Company business.
- Inaccurate reporting of the hours worked by you or any other employees.
- Providing knowingly inaccurate, incomplete, or misleading information when speaking on behalf of the Company or in the preparation of any employment-related documents including, but not limited to, job applications, personnel files, employment review documents, intra-company communications, or expense records.
- Taking or destroying Company property.
- Possession of potentially hazardous or dangerous property (where not permitted) such as firearms, weapons, chemicals, etc., without prior authorization.
- Fighting with, or harassment of (as defined in our EEO and non-harassment policy), any fellow employee, vendor, or customer.
- Disclosure of Company trade secrets and proprietary and confidential commercially sensitive information (i.e. financial or sales records/reports, marketing or business strategies/plans, product development information, customer lists, patents, trademarks, etc.) of the Company or its customers, contractors, suppliers, or vendors.
- Negative public conduct that directly or indirectly impacts the public's perception of Berkshire Welco, LLC. Examples include but not limited to the use of racial or sexual slurs, performing non-criminal bias motivated acts in highly public fora such as town meetings, or social media
- Refusal or failure to follow directions or to perform a requested or required job task.
- Refusal or failure to follow safety rules and procedures.
- Excessive tardiness or absences.
- Smoking outside of designated areas.
- Working unauthorized overtime.
- Solicitation of fellow employees on Company premises during working hours.
- Failure to dress according to Company policy.
- Use of obscene or harassing (as defined by our EEO and non-harassment policies) language in the workplace.
- Engaging in outside employment that interferes with your ability to perform your job at this Company.
- Gambling on Company premises.
- Lending keys or keycards to Company property to unauthorized persons.

Nothing in this policy is intended to limit your rights under the National Labor Relations Act, or to modify the at-will employment status where at-will is not prohibited by state law.

## **5.11 Immediate Dismissal**

The following behavior will result in immediate termination and when applicable filing a report with local law enforcement and notification to the (CCC) Cannabis Control Commission.

- Diverted Marijuana, which shall be reported to law enforcement authorities and to the commission.
- Engaged in unsafe practices with regards to operation of the marijuana establishment, which shall be reported to the commission; or
- Been convicted or entered a guilty plea, of nolo contendere, or admission to the sufficient facts of a

felony drug offense involving distribution to a minor in the commonwealth, or a like violation of any other jurisdiction.

## **5.12 Transfers**

The Company may transfer your employment from one position to another with or without notice, as required by production or service needs, or upon request by you and with management approval. Transfers in excess of 90 days may be considered final and your paycheck may be increased or decreased consistent with the pay scale for your new position.

## **5.13 Workforce Reductions (Layoffs)**

If necessary, based upon business needs, Company management may decide to implement a reduction in force (RIF). We acknowledge that RIFs can be a trying experience for all involved, and the Company will make its best effort to make sound business decisions while acknowledging the needs of its workforce

## **5.14 Termination Policy**

Keeping in line with "at-will" policy the employee or employer can end the working relationship with or without notice. For the sake of staffing and avoidance of business interruption we request the consideration of 2 weeks' notice of resignation when possible

# **6.0 General Policies**

## **6.1 Authorization for Use of Personal Vehicle**

All employees required to operate a motor vehicle as part of their employment duties must maintain a valid driver's license, acceptable driving record, and appropriate insurance coverage. An applicant or employee will be considered to have an unsatisfactory driving record if the driving record indicates one (1) or more moving violations. An applicant or employee will be considered to have an unsatisfactory driving record if the Company's and/or the applicant's or employee's insurance carrier(s) refuses to continue to insure the applicant or employee or agrees to continue to insure the applicant or employees only for an increased premium. The Company may run a motor vehicle department check to determine your driving record. It is your responsibility to provide a copy of your current driver's license and insurance coverage for your personnel file. Any changes in your driving record, including, but not limited to, driving infractions or changes to your insurance policy, must be reported to the Company.

If you use your personal vehicle in the course and scope of employment, you may not operate such vehicle while:

1. Under the influence of drugs, alcohol, or any other substance that might impair your judgment or ability to drive; or
2. Texting, emailing, or otherwise using a cell phone or other handheld device without utilizing a hands-free device.

## **6.2 Bulletin Boards**

The Company maintains an official bulletin board at each location for providing employees with official Company notices, including wage and hour laws, changes in policies, and other employment-related notices. At times the Company may also post information of general interest to employees on the bulletin board. You are responsible for being informed about this material by periodically reviewing the bulletin board. Only authorized personnel may add and remove notices from the bulletin board.

## **6.3 Computer Security and Copying of Software**

Software programs purchased and provided by Company are to be used only for creating, researching, and

processing materials for Company use. By using Company hardware, software, and networking systems you assume personal responsibility for their use and agree to comply with this policy and other applicable Company policies, as well as city, state, and federal laws and regulations.

All software acquired for or on behalf of the Company or developed by Company employees or contract personnel on behalf of the Company, is and will be deemed Company property. It is the policy of the Company to respect all computer software rights and to adhere to the terms of all software licenses to which the Company is a party.

You may not illegally duplicate any licensed software or related documentation. Unauthorized duplication of software may subject you and/or the Company to both civil and criminal penalties under the United States Copyright Act. To purchase software, obtain your manager's approval. All software acquired by the Company must be purchased through the Company.

You may not duplicate, copy, or give software to any outsiders including clients, contractors, customers, and others. You may use software on local area networks or on multiple machines only in accordance with applicable license agreements entered into by the Company.

#### **6.4 Driving Record**

All employees required to operate a motor vehicle as part of their employment duties at Company must maintain a valid driver's license and acceptable driving record. An applicant or employee will be considered to have an unsatisfactory driving record if the driving record indicates one (1) or more moving violations. An applicant or employee will be considered to have an unsatisfactory driving record if the Company's and/or the applicant's or employee's insurance carrier(s) refuses to continue to insure the applicant or employee or agrees to continue to insure the applicant or employees only for an increased premium. The Company may run a motor vehicle department check to determine your driving record. It is your responsibility to provide a copy of your current driver's license for your personnel file. Any changes in your driving record, including but not limited to driving infractions, must be reported to the Company.

State law requires all motorists to carry auto liability insurance. It is against the law to drive without insurance. If you use your own vehicle as a part of your employment duties, you must provide management with a current proof of insurance statement or card. New proof of insurance is required every time your policy expires and renews.

## **6.5 Employer Sponsored Social Events**

The Company holds periodic social events for employees. Be advised that your attendance at these events is voluntary and does not constitute part of your work-related duties. Any exceptions to this policy must be in writing and signed by the CEO prior to the event.

Alcoholic beverages may be available at these events. If you choose to drink alcoholic beverages, you must do so in a responsible manner. Do not drink and drive. Instead, please call a taxi or appoint a designated driver.

## **6.6 Employer-Provided Cell Phone/Mobile Device Policy**

The Company may issue certain employees a Company cell phone/mobile device for work-related communications and/or operations. If you drive a vehicle during your employment, you may not use any cell phone/mobile device or other communication device while driving unless the device is equipped or configured with a "hands-free" listening/speaking option, and you in fact utilize the hands-free device.

We understand that you may use the cell phone/mobile device for personal use; however, such personal use should not exceed the plan allowance. When the cell phone/mobile device is used for personal reasons and the activity results in additional cost to the Company, you are responsible for the cost of that usage, including all applicable taxes unless prohibited by law.

The Company owns and remains entitled to all cell phone/mobile devices issued to employees, including all passwords controlling access to them. You may not change those passwords except with permission. At the time of employment termination, all such equipment and passwords must be returned to the Company in operable condition.

Violation of this policy may result in discipline, up to and including termination of employment.

## **6.7 Non solicitation/Non distribution Policy**

To avoid disruption of business operations or disturbance of employees, visitors, and others, Company has implemented a Non solicitation/Non distribution Policy. For purposes of this policy, "solicitation" includes, but is not limited to, selling items or services, requesting contributions, and soliciting or seeking to obtain membership in or support for any organization. Solicitation performed through verbal, written, or electronic means is covered by the Non solicitation/Non distribution Policy.

You are prohibited from soliciting other employees during your assigned working time. For this purpose, working time means time during which either you or the employees who are the object of the solicitation are expected to be actively engaged with assigned work. You may conduct solicitations during your lunch period, coffee breaks, or other authorized nonworking time, so long as you do so when the other employees are also on nonworking time.

To avoid inappropriate litter, clutter, and safety risks, you may not distribute literature or other items that are not work related in working areas at any time. Working areas do not include break/rest areas, lunchrooms, or parking lots. Electronic distribution of materials is prohibited during work time. Literature that violates the company's equal employment opportunity (EEO) and non-harassment policies (including threats of violence), or is knowingly and recklessly false, is never permitted. Non-employees are not permitted to distribute materials on company premises at any time.

This policy is not intended to restrict the statutory rights of employees, including the right to discuss terms and conditions of employment.

Violations of this policy should be reported to your manager/supervisor.

## **6.8 Off-Duty Use of Employer Property or Premises**

You may not use Company property for personal use during working time. You are responsible for returning



Company property in good condition and repairing or replacing any property damaged as the result of personal use or as the result of negligence. This includes use of copy machines, computers, Company products, or office supplies for personal use without prior authorization.

It is Company policy to control off duty and nonworking hour use of Company facilities either for business or personal reasons. You are prohibited from using Company facilities during off duty or nonworking hours without the written consent of your manager/supervisor. If you use Company facilities during your off-duty hours or Company off-hours, you may be required to sign a log-in and log-out sheet maintained by the Company or building manager.

## **6.9 Personal Appearance**

Your personal appearance reflects on the reputation, integrity, and public image of Company. All employees are required to report to work neatly groomed and dressed. You are expected to maintain personal hygiene habits that are generally accepted in the community, including clean clothing, good grooming and personal hygiene, and appropriate attire for the workplace and the work being performed. This may include wearing uniforms or protective safety clothing and equipment, depending upon the job. Use common sense and good judgment in determining what to wear to work.

Fragrant products, including but not limited to perfumes, colognes, and scented body lotions or hair products, should be used in moderation out of concern for others with sensitivities or allergies.

The Company, in accordance with applicable law, will reasonably accommodate employees with disabilities or religious beliefs that make it difficult for them to comply fully with the personal appearance policy unless doing so would impose an undue hardship on the Company. Contact your manager/supervisor to request a reasonable accommodation.

Failure to comply with the personal appearance standards may result in being sent home to groom or change clothes. Frequent violations may result in disciplinary action, up to and including termination of employment.

## **6.10 Personal Cell Phone/Mobile Device Use**

While the Company permits employees to bring personal cell phones and other mobile devices (i.e. smart phones, tablets, laptops) into the workplace, you must not allow the use of such devices to interfere with your job duties or impact workplace safety and health.

Use of personal cell phones and mobile devices at work can be distracting and disruptive and cause a loss of productivity. Thus, you should primarily use such personal devices during nonworking time, such as breaks and meal periods. During this time, use devices in a manner that is courteous to those around you. Outside of nonworking time, use of such devices should be minimal and limited to emergency use only. If you have a device that has a camera and/or audio/video recording capability, you are restricted from using those functions on Company property unless authorized in advance by management or when they are used in a manner consistent with your right to engage in concerted activity under section 7 of the National Labor Relations Act (NLRA).

You are expected to comply with Company policies regarding the protection of confidential and proprietary information when using personal devices.

While operating a vehicle on work time, the Company requires that the driver's personal cell phone/mobile device be turned off. If you need to make or receive a phone call while driving, pull off the road to a safe location unless you have the correct hands-free equipment for the device that is in compliance with applicable state laws.

You may not connect your personal device to the Company network or to Company equipment (computers, printers, etc.).

You may have the opportunity to use your personal devices for work purposes. Before using a personal

device for work-related purposes, you must obtain written authorization from Human Resources or the CEO. The use of personal devices is limited to certain employees and may be limited based on compatibility of technology.

Nothing in this policy is intended to prevent employees from engaging in protected concerted activity under the NLRA.

You will be subject to disciplinary action up to and including termination of employment for violation of this policy.

### **6.11 Personal Data Changes**

It is your obligation to provide Berkshire Welco, LLC with your current contact information, including current mailing address and telephone number. Inform the Company of any changes to your marital or tax withholding status. Failure to do so may result in loss of benefits or delayed receipt of W-2 and other mailings. To make changes to this information, contact Human Resources.

### **6.12 Security**

All employees are responsible for helping to make Company a secure work environment. Upon leaving work, lock all desks, lockers, and doors protecting valuable or sensitive material in your work area and report any lost or stolen keys, passes, or similar devices to your manager/supervisor immediately. Refrain from discussing specifics regarding Company security systems, alarms, passwords, etc. with those outside of the Company.

Immediately advise your manager/supervisor of any known or potential security risks and/or suspicious conduct of employees, customers, or guests of the Company. Safety and security is the responsibility of all employees and we rely on you to help us keep our premises secure.

### **6.13 Social Media Policy**

At the Company, we recognize the Internet provides unique opportunities to participate in interactive discussions and share information using a wide variety of social media. However, use of social media also presents certain risks and carries with it certain responsibilities. To minimize risks to the Company, you are expected to follow our guidelines for appropriate use of social media.

This policy applies to all employees who work for the Company.

#### Guidelines

For purposes of this policy, **social media** includes all means of communicating or posting information or content of any sort on the Internet, including to your own or someone else's web log or blog, journal or diary, personal website, social networking or affinity website, web bulletin board or a chat room, whether associated or affiliated with the Company, as well as any other form of electronic communication.

The Company principles, guidelines, and policies apply to online activities just as they apply to other areas of work. Ultimately, you are solely responsible for what you communicate in social media. You may be personally responsible for any litigation that may arise should you make unlawful defamatory, slanderous, or libelous statements against any customer, manager, owner, or employees of the Company.

#### Know and Follow the Rules

Ensure your postings are consistent with these guidelines. Postings that include unlawful discriminatory remarks, harassment, and threats of violence or other unlawful conduct will not be tolerated and may subject you to disciplinary action up to and including termination.

## Be Respectful

The Company cannot force or mandate respectful and courteous activity by employees on social media during nonworking time. If you decide to post complaints or criticism, avoid using statements, photographs, video, or audio that reasonably could be viewed as unlawful, slanderous, threatening, or that might constitute unlawful harassment. Employees found using racial or sexual slurs to intimidate or harass people or engaging in cyberbullying on any social media network open to the general public, such as Twitter, Facebook, or Instagram, may be subject to discipline, including termination.

Examples of such conduct include defamatory or slanderous posts meant to harm someone's reputation or posts that could contribute to a hostile work environment on the basis of race, sex, disability, age, national origin, religion, veteran status, or any other status or class protected by law or Company policy. Your personal posts and social media activity should not reflect upon or refer to the Company.

## Maintain Accuracy and Confidentiality

When posting information:

- Maintain the confidentiality of trade secrets, intellectual property, and confidential commercially-sensitive information (i.e. financial or sales records/reports, marketing or business strategies/plans, product development, customer lists, patents, trademarks, etc.) related to the Company.
- Do not create a link from your personal blog, website, or other social networking site to a Company website that identifies you as speaking on behalf of the Company.
- Never represent yourself as a spokesperson for the Company. If the Company is a subject of the content you are creating, do not represent yourself as speaking on behalf of the Company. Make it clear in your social media activity that you are speaking on your own behalf.
- Respect copyright, trademark, third-party rights, and similar laws and use such protected information in compliance with applicable legal standards.

## Using Social Media at Work

Do not use social media while on your work time, unless it is work related as authorized by your manager or consistent with policies that cover equipment owned by the Company.

## Media Contacts

If you are not authorized to speak on behalf of the Company, do not speak to the media on behalf of the Company. Direct all media inquiries for official Company responses to Human Resources.

## Retaliation and Your Rights

Retaliation or any other negative action is prohibited against anyone who, based on a reasonable belief, reports a possible deviation from this policy or cooperates in an investigation. Those who retaliate against others for reporting a possible deviation from this policy or for cooperating in an investigation will be subject to disciplinary action, up to and including termination.

Nothing in this policy is designed to interfere with, restrain, or prevent employees from communications regarding wages, hours, or other terms and conditions of employment, or to restrain employees in exercising any other right protected by law. All employees have the right to engage in or refrain from such activities.

## **6.14 Third Party Disclosures**

From time to time, the Company may become involved in news stories or potential or actual legal proceedings of various kinds. When that happens, lawyers, former employees, newspapers, law enforcement agencies, and other outside persons may contact our employees to obtain information about the incident or the actual or potential lawsuit.

If you receive such a contact, you should not speak on behalf of the Company and should refer any call requesting the position of the Company to Human Resources. If you have any questions about this policy or are not certain what to do when such a contact is made, contact Human Resources.

## **6.15 Use of Company Technology**

This policy is intended to provide Company employees with the guidelines associated with the use of the Company information technology (IT) resources and communications systems.

This policy governs the use of all IT resources and communications systems owned by or available at the Company, and all use of such resources and systems when accessed using your own devices, including but not limited to:

- Email systems and accounts.
- Internet and intranet access.
- Telephones and voicemail systems, including wired and mobile phones, smartphones, and pagers.
- Printers, photocopiers, and scanners.
- Fax machines, e-fax systems, and modems.
- All other associated computer, network, and communications systems, hardware, peripherals, and software, including network key fobs and other devices.
- Closed-circuit television (CCTV) and all other physical security systems and devices, including access key cards and fobs.

### General Provisions

Company IT resources and communications systems are to be used for business purposes only unless otherwise permitted under applicable law.

All content maintained in Company IT resources and communications systems are the property of the Company. Therefore, employees should have no expectation of privacy in any message, file, data, document, facsimile, telephone conversation, social media post, conversation, or any other kind or form of information or communication transmitted to, received, or printed from, or stored or recorded on Company electronic information and communications systems.

The Company reserves the right to monitor, intercept, and/or review all data transmitted, received, or downloaded over Company IT resources and communications systems in accordance with applicable law. Any individual who is given access to the system is hereby given notice that the Company will exercise this right periodically, without prior notice and without prior consent.

The interests of the Company in monitoring and intercepting data include, but are not limited to: protection of Company trade secrets, proprietary information, and similar confidential commercially-sensitive information (i.e. financial or sales records/reports, marketing or business strategies/plans, product development, customer lists, patents, trademarks, etc.); managing the use of the computer system; and/or assisting employees in the management of electronic data during periods of absence.

You should not interpret the use of password protection as creating a right or expectation of privacy, nor should you have a right or expectation of privacy regarding the receipt, transmission, or storage of data on Company IT resources and communications systems.

Do not use Company IT resources and communications systems for any matter that you would like to be kept private or confidential.

### Violations

If you violate this policy, you will be subject to corrective action, up to and including termination of employment. If necessary, the Company will also advise law enforcement officials of any illegal conduct.

## **6.16 Use of Employer Vehicles**

Company vehicles are to be used for Company business only. Unless the use of the vehicle has been approved for personal use, personal or outside business use is strictly prohibited.

If you drive a Company vehicle, all infractions or violations while driving the vehicle and all restrictions, suspensions, or revocations against your driver's license must be immediately reported to your manager/supervisor.

When a Company vehicle cannot be operated, is unsafe for use, or has been damaged, notify your manager/supervisor immediately.

As the driver of a Company vehicle, you are responsible for the vehicle while in your charge and must not permit unauthorized persons to drive it. You are also responsible for the daily housekeeping of the vehicle; it is to remain clean and uncluttered.

You may not operate a motor vehicle while under the influence of alcohol or a chemical substance or other substance that can impair judgment. You may not operate a motor vehicle while texting, emailing, or otherwise using a cell phone or other handheld device without utilizing a hands-free device.

Multiple driving moving violations that appear on the annual state department of motor vehicle check will result in suspension of rights to drive a Company vehicle or drive a personal vehicle on Company business. Suspension of rights will continue until one year has passed with no infractions. If there are persistent and ongoing problems with driving infractions, and driving a vehicle is a part of successful execution of job responsibilities, you may be terminated.

## **6.17 Workplace Privacy and Right to Inspect**

Company property, including but not limited to lockers, phones, computers, tablets, desks, work place areas, vehicles, or machinery, remains under the control of the Company and is subject to inspection at any time, without notice to any employees, and without their presence.

You should have no expectation of privacy in any of these areas. We assume no responsibility for the loss of, or damage to, your property maintained on Company premises including that kept in lockers and desks.

## **7.0 Benefits**

### **7.1 Benefits Overview**

The Company currently offers medical benefits to eligible employees at 50% of the premium deducted biweekly from the employees' paycheck. All eligible employees will have the option to procure at their expense ancillary benefits. These benefits currently include Dental, Vision & Life Insurance. All benefits are subject to change based on the business needs and resources. Eligible employees will have completed a minimum of 90 days full time employment. All benefit deductions will be subject to a pre-tax benefit as a result of our Section 125 POP. Please refer to the applicable plan documents and summary plan descriptions. The details contained in the official plan documents govern the precise benefits, terms, conditions, exclusions and restrictions that apply to coverage under the plans. The plan documents govern in the event of any conflict or inconsistency with the details listed in this handbook.

The Company reserves the maximum discretion permitted by law to administer, interpret, enhance, modify, discontinue or otherwise change any benefit plan, practice, or procedure. If you have any questions, please contact a Human Resources.

## **7.2 Exempt Personnel**

If you are classified as exempt at the time of your hiring, you are not eligible for overtime pay as otherwise required by federal, state, or local laws. If you have a question regarding whether you are exempt or nonexempt, contact your manager/supervisor for clarification.

## **7.3 Holidays**

Full-time employees will be paid for the holidays that the Company designates each year.

When holidays are celebrated on a regular work day, eligible full-time employees will receive one (1) day's pay at their regular straight-time rate. If a holiday falls on a day that is typically a non-working day, such as a Saturday or Sunday, the Company will designate an alternate day such as the preceding Friday or the following Monday as the paid holiday.

Due to the nature of our business we are open 7 days per week including most holidays. Employees required to work on the designated holidays will be eligible for pay at a rate of time and half.

To qualify for a paid holiday, you must work your scheduled day before and scheduled day after the holiday unless the holiday falls during paid time off.

Paid holidays off are not counted as hours worked for purposes of calculating overtime.

Berkshire Welco, LLC recognizes the following Holidays:

- New Years day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day
- Columbus/Indigenous People Day
- Martin Luther King Day
- Veterans Day

You will be compensated for holidays in accordance with federal and state law.

## **7.4 Regular Full-Time Personnel**

Regular full-time employees are those who have completed their introductory period and are regularly scheduled to work 30 or more hours per week. Unless stated otherwise or specifically permitted by law, all the benefits provided to employees at the Company are for regular full-time employees only. This includes vacation, holiday pay, health insurance, and other benefits coverage.

## **7.5 Regular Part-Time Personnel**

All employees who work fewer than 30 hours per week are considered part time. Part-time employees are not eligible for Company benefits unless specified otherwise in this handbook, in the benefit plan summaries, or specifically permitted by law.

## **7.6 Temporary Personnel**

Temporary employees are hired for a specific period or specific work project, usually involving fewer than 180 days. The Company reserves the right to extend the duration of temporary employment where necessary. Temporary employees are not eligible for benefits unless specified otherwise in this handbook or in the benefit plan summaries, or specifically permitted by law.

## **7.7 Unemployment Compensation Insurance Policy**

Unemployment compensation insurance is paid for by the Company and provides temporary income for employees who have lost their job under certain circumstances. Your eligibility for unemployment compensation will, in part, be determined by the reasons for your separation from the Company.

## **7.8 Workers' Compensation Insurance Policy**

Workers' compensation is a no-fault system designed to provide benefits to all employees for work-related injuries. Workers' compensation insurance coverage is paid for by employers and governed by state law. The workers' compensation system provides for coverage of medical treatment and expenses, occupational disability leave, and rehabilitation services, as well as payment for lost wages due to work related injuries. If you are injured on the job while working at the Company, no matter how slightly, you are to report the incident immediately to your manager/supervisor. Consistent with applicable state law, failure to report an injury within a reasonable period of time could jeopardize your claim for benefits.

To receive workers' compensation benefits, notify your manager/supervisor immediately of your claim. If your injury is the result of an on-the-job accident, you must fill out an accident report. You will be required to submit a medical release before you can return to work.

All employees must assist and cooperate with the Company and the human resource department in its attempts to return the employee to work after sustaining any work-related injury or illness that requires the employee to miss work.

You should be aware that workers' compensation insurance does not cover the payment of workers' compensation benefits for any injury that arises out of your voluntary participation in any off-duty recreational, social, or athletic activity that is not a part of your work-related duties. If the state allows a waiver, then your participation in such recreational activities constitutes your understanding of this policy and your voluntary waiver of workers' compensation coverage for any injuries you might sustain because of these events. Prior to participating in such recreational activities, employees should consult with their manager/supervisor or Human Resource to see if a waiver is required and, if so, to secure the proper form. You can contact Human Resource Department at 413-644-6892 or [carolann@thepass.co](mailto:carolann@thepass.co).

All employees must assist and cooperate with the Company and the Human Resource Department in its attempts to return the employee to work after sustaining any work-related injury or illness that requires the employee to miss work.

This is solely a monetary benefit and not a leave of absence entitlement. Leaves of absence are provided according to law and company policy.

## **7.9 COBRA**

The Consolidated Omnibus Budget Reconciliation Act (COBRA) provides the opportunity for eligible the Company employees and their beneficiaries to continue health insurance coverage under the Company health plan when a "qualifying event" could result in the loss of eligibility. Qualifying events include resignation, termination of employment, death of an employee, reduction in hours, a leave of absence, divorce or legal separation, entitlement to Medicare, childbirth or where a dependent child no longer meets eligibility requirements.

Contact Human Resources to learn more about your COBRA rights.

## **7.10 Family and Medical Leave (FMLA) Policy**

In accordance with the Family and Medical Leave Act of 1993 (FMLA), the Company provides up to 12 or 26 weeks of unpaid, job-protected leave in a 12-month period to covered employees in certain circumstances.

## Eligibility

To qualify for FMLA leave, you must:

1. Have worked for the Company for at least 12 months, although it need not be consecutive;
2. Worked at least 1,250 hours in the last 12 months; and
3. Be employed at a worksite that has 50 or more employees within 75 miles.

## Leave Entitlement

You may take up to 12 weeks of unpaid FMLA leave in a 12-month period for any of the following reasons:

- The birth of a child and in order to care for that child (leave must be completed within one year of the child's birth);
- The placement of a child with you for adoption or foster care and in order to care for the newly placed child (leave must be completed within one year of the child's placement);
- To care for a spouse, child, or parent with a serious health condition;
- To care for your own serious health condition, which makes you unable to perform any of the essential functions of your position; or
- A qualifying exigency of a spouse, child, or parent who is a military member on covered active duty or called to covered active duty status (or has been notified of an impending call or order to covered active duty).

The 12-month period is measured backward from the date an employee uses any FMLA leave. Under the "rolling" 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

You may take up to 26 weeks of unpaid FMLA leave in a single 12-month period, beginning on the first day that you take FMLA leave to care for a spouse, child, or next of kin who is a covered service member and who has a serious injury or illness related to active duty service.

As used in the policy:

- **Spouse** means a husband or wife as recognized under state law for the purposes of marriage in the state or other territory or country where the marriage took place.
- **Child** means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability at the time FMLA leave is to commence. A child for the purposes of military exigency or military care leave can be of any age.
- **Parent** means a biological, adoptive, step, or foster parent or any other individual who stood in loco parentis to you when you were a child.
- **Next of kin** for the purposes of military care leave is a blood relative other than a spouse, parent, or child in the following order: brothers and sisters, grandparents, aunts and uncles, and first cousins. If a military service member designates in writing another blood relative as his or her caregiver, that individual will be the only next of kin. In appropriate circumstances, you may be required to provide documentation of next of kin status.
- **Serious health condition** means an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider. Ordinarily, unless complications arise, cosmetic treatments and minor conditions such as the cold, flu, ear aches, upset stomach, minor ulcers, headaches (other than migraines), and routine dental problems are examples of conditions that are not serious health conditions under this policy. If you have any questions about the types of conditions that may qualify, contact Human Resources.
- **Health care provider** means a medical doctor or doctor of osteopathy, physician assistant, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, clinical social worker, or Christian Science practitioner licensed by the First Church of Christ. Under limited circumstances, a chiropractor or other provider recognized by our group health plan for the purposes of certifying a claim for benefits may also be considered a health care provider.



- **Qualifying exigencies** for military exigency leave include:
  - Short-notice call-ups/deployments of seven days or less (**Note:** Leave for this exigency is available for up to seven days beginning the date of call-up notice);
  - Attending official ceremonies, programs, or military events;
  - Special childcare needs created by a military call-up including making alternative child care arrangements, handling urgent and nonroutine child care situations, arranging for school transfers, or attending school or daycare meetings;
  - Making financial and legal arrangements;
  - Attending counseling sessions for yourself, the military service member, or the military service members' son or daughter who is under 18 years of age or is 18 or older but incapable of self-care because of a mental or physical disability;
  - Rest and recuperation (**Note:** Fifteen days of leave is available for this exigency per event);
  - Post-deployment activities such as arrival ceremonies, re-integration briefings, and other official ceremonies sponsored by the military (**Note:** Leave for these events are available for 90 days following the termination of active duty status). This type of leave may also be taken to address circumstances arising from the death of a covered military member while on active duty;
  - Parental care when the military family member is needed to care for a parent who is incapable of self-care (such as arranging for alternative care or transfer to a care facility); and
  - Other exigencies that arise that are agreed to by both the Company and you.
- A **serious injury/illness** incurred by a service member in the line of active duty or that is exacerbated by active duty is any injury or illness that renders the service member unfit to perform the duties of his or her office, grade, rank, or rating.

#### Notice and Leave Request Process

If the need for leave is foreseeable because of an expected birth/adoption or planned medical treatment, you must give at least 30 days' notice. If 30 days' notice is not possible, give notice as soon as practicable (within one or two business days of learning of your need for leave). Failure to provide appropriate notice may result in the delay or denial of leave.

In addition, if you are seeking intermittent or reduced schedule leave that is foreseeable due to planned medical treatment or a series of treatments for yourself, a family member, or covered service member, you must consult with the Company first regarding the dates of this treatment to work out a schedule that best suits your needs or the needs of the covered military member, if applicable, and the Company.

If the need for leave is unforeseeable, provide notice as soon as possible. Normal call-in procedures apply to all absences from work, including those for which leave under this policy may be requested. Failure to provide appropriate notice may result in the delay or denial of leave.

#### Certification of Need for Leave

If you are requesting leave because of your own or a covered relative's serious health condition, you and the relevant health care provider must supply appropriate medical certification. You may obtain Medical Certification forms from Human Resources. When you request leave, the Company will notify you of the requirement for medical certification and when it is due (at least 15 days after you request leave). If you provide at least 30 days' notice of medical leave, you should also provide the medical certification before leave begins. Failure to provide requested medical certification in a timely manner may result in denial of FMLA-covered leave until it is provided.

At our expense, the Company may require an examination by a second health care provider designated by us. If the second health care provider's opinion conflicts with the original medical certification, we, at our expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion. Subsequent medical recertification may also be required. Failure to provide requested certification within 15 days, when practicable, may result in delay of further leave until it is provided.

The Company also reserves the right to require certification from a covered military member's health care provider if you are requesting military caregiver leave and certification in connection with military exigency leave.

### Call-In Procedures

In all instances of absence, the call-in procedures and standards established for giving notice of absence from work must be followed.

### Leave Increments

#### Intermittent Leave

If medically necessary, FMLA leave for a serious health condition may be taken intermittently (in separate blocks of time due to a serious health condition) or on a reduced leave schedule (reducing the usual number of hours you work per workweek or workday). FMLA leave may also be taken intermittently or on a reduced leave schedule for a qualifying exigency relating to covered military service.

As FMLA leave is unpaid, the Company will reduce your salary based on the amount of time actually worked. In addition, while you are on an intermittent or reduced schedule leave that is foreseeable due to planned medical treatments, the Company may temporarily transfer you to an available alternative position that better accommodates your leave schedule and has equivalent pay and benefits.

#### Parental Leave

Leave for the birth or placement of a child must be taken in a single block and cannot be taken on an intermittent or reduced schedule basis. Parental leave must be completed within 12 months of the birth or placement of the child; however, you may use parental leave before the placement of an adopted or foster child to consult with attorneys, appear in court, attend counseling sessions, etc.

#### Family Care, Personal Medical, Military Exigency, and Military Care Leave

Leave taken for these reasons may be taken in a block or blocks of time. In addition, if a health care provider deems it necessary or if the nature of a qualifying exigency requires, leave for these reasons can be taken on an intermittent or reduced-schedule basis.

#### Paid Leave Utilization During FMLA Leave

FMLA leave is unpaid. If you are taking parental, family care, military exigency, and/or military care leave, you must utilize available vacation/PTO, personal days, and/or family illness days during this leave. If you are taking personal medical leave, you must utilize available sick, personal, and vacation/PTO days during this leave. If you are receiving short- or long-term disability or workers' compensation benefits during a personal medical leave, you will not be required to utilize these benefits. However, you may elect to utilize accrued benefits to supplement these benefits.

#### Fitness for Duty Requirements

If you take leave because of your own serious health condition (except if you are taking intermittent leave), you are required, as are all employees returning from other types of medical leave, to provide medical certification that you are fit to resume work. You will not be permitted to resume work until it is provided.

#### Health Insurance

Your health insurance coverage will be maintained by the Company during leave on the same basis as if you were still working. You must continue to make timely payments of your share of the premiums for such coverage. Failure to pay premiums within 30 days of when they are due may result in a lapse of coverage. If this occurs, you will be notified 15 days before the date coverage will lapse that coverage will terminate

unless payments are promptly made.

Alternatively, at our option, the Company may pay your share of the premiums during the leave and recover the costs of this insurance upon your return to work. Coverage that lapses due to nonpayment of premiums will be reinstated immediately upon return to work without a waiting period. Under most circumstances, if you do not return to work at the end of leave, the Company may require reimbursement for the health insurance premiums paid during the leave.

#### Reinstatement

Upon returning to work at the end of leave, you will generally be placed in your original job or an equivalent job with equivalent pay and benefits. You will not lose any benefits that accrued before leave was taken.

#### Spouse Aggregation

If you and your spouse are both employed by the Company, the total number of weeks to which you are both entitled in the aggregate because of the birth or placement of a child or to care for a parent with a serious health condition will be limited to 12 weeks per leave year. Similarly, spouses employed by the Company will be limited to a combined total of 26 weeks of leave to care for a military service member. This 26-week leave period will be reduced, however, by the amount of leave taken for other qualifying FMLA events. This type of leave aggregation does not apply to leave needed for your own serious health condition, to care for a spouse or child with a serious health condition, or because of a qualifying exigency.

#### Failure to Return

If you fail to return to work or fail to make a request for an extension of leave prior to the expiration of the leave, you will be deemed to have voluntarily terminated your employment. The Company is not required to grant requests for open-ended leaves with no reasonable return date under these policies or as disability accommodations.

#### Alternative Employment

While on leave of absence, you may not work or be gainfully employed either for yourself or others unless express, written permission to perform such outside work has been granted by the Company. If you are on a leave of absence and are found to be working elsewhere without permission, you will be subject to disciplinary action up to and including termination.

#### Interaction with State and Local Laws

Where state or local family and medical leave laws offer more protections or benefits to employees, the protections or benefits that are more favorable to the employee, as provided by these laws, will apply.

#### Abuse of Leave

If you are found to have provided a false reason for a leave, you will be subject to disciplinary action up to and including termination.

#### Designation of Leave

If the Company becomes aware of any qualifying reason for FMLA leave, the Company will designate it as such. An employee may not refuse FMLA designation under this policy.

#### Retaliation

The Company will not retaliate against employees who request or take leave in accordance with this policy.

## 7.11 Military Leave (USERRA)

The Company complies with applicable federal and state law regarding military leave and re-employment rights. Unpaid military leave of absence will be granted to members of the uniformed services in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA; with amendments) and all applicable state law. You must submit documentation of the need for leave to Human Resources. When returning from military leave of absence, you will be reinstated to your previous position or a similar position, in accordance with state and federal law. You must notify your manager/supervisor of your intent to return to employment based on requirements of the law. For more information regarding status, compensation, benefits, and reinstatement upon return from military leave, contact Human Resources.

## 8.0 Safety and Loss Prevention

### 8.1 Drug and Alcohol Policy

The Company is committed to providing a safe, healthy, and productive work environment. Consistent with this commitment, it is the intent of the Company to maintain a drug and alcohol-free workplace. Being under the influence of alcohol, illegal drugs (as classified under federal, state, or local laws), or other impairing substances while on the job may pose a serious health and safety risk to others, and will not be tolerated.

#### Prohibited Conduct

The Company expressly prohibits employees from engaging in the following activities when they are on duty or conducting Company business or on Company premises (whether or not they are working):

- The use, abuse, or being under the influence of alcohol, illegal drugs, or other impairing substances.
- The possession, sale, purchase, transfer, or transit of any illegal or unauthorized drug, including prescription medication that is not prescribed to the individual, or drug-related paraphernalia.
- The illegal use or abuse of prescription drugs.

For purposes of this policy as it relates to the use or possession, other than "Work Required Possession," the term "Work Required Possession" means the possession for work purposes only, of Cannabis and any of its component or chemical parts, required to perform an employee's job at a duly licensed Company facility engaged in the Cannabis industry.

While the use of marijuana has been legalized under some state laws for medicinal and/or recreational uses, it remains an illegal drug under federal law. The Company does not discriminate against employees solely on the basis of their lawful off-duty use of marijuana. You may not consume or be under the influence of marijuana while on duty or at work. If you have a valid prescription for medical marijuana, refer to the Company Disability Accommodation policy for additional information.

Nothing in this policy is meant to prohibit your appropriate use of over-the-counter medication or other medication that can legally be prescribed under both federal and state law, if it does not impair your job performance or safety or the safety of others. If you take over-the-counter medication or other medication that can legally be prescribed under both federal and state law to treat a disability, inform your manager/supervisor or Human Resource if you believe the medication may impair your job performance, safety, or the safety of others or if you believe you need a reasonable accommodation before reporting to work while under the influence of that medication.

#### Employer-Sponsored Events

From time to time, the Company may sponsor social or business-related events where alcohol may be served. This policy does not prohibit the use or consumption of alcohol at these events. However, if you choose to consume alcohol at such events, you must always do so responsibly and maintain your

obligation to conduct yourself properly and professionally.

#### Treatment and/or Rehabilitation

The Company may assist you in seeking treatment or rehabilitation for drug or alcohol dependency. In such cases, the Company may consider your continued employment as long as concerns regarding safety, health, production, communication, or other work-related matters are adequately addressed. The Company may also require you to obtain a medical clearance and agree to random testing and a "one-strike" rule as a condition of continued employment.

#### Violations

Violation of this policy may result in disciplinary action, up to and including termination of employment.

## **8.2 General Safety Policy**

It is the responsibility of all Company employees to maintain a healthy and safe work environment. Report all safety hazards and occupational illnesses or injuries to your manager/supervisor as soon as reasonably possible and complete an occupational illness or injury form as needed. Failure to follow the Company health and safety rules may result in disciplinary action, up to and including termination of employment.

## **8.3 Policy Against Workplace Violence**

As the safety and security of our employees, vendors, contractors, and the general public is in the best interests of the Company, we are committed to working with our employees to provide a work environment free from violence, intimidation, and other disruptive behavior.

#### Zero Tolerance Policy

The Company has a zero-tolerance policy regarding workplace violence and will not tolerate acts or threats of violence, harassment, intimidation, and other disruptive behavior, either physical or verbal, that occurs in the workplace or other areas. This applies to management, co-workers, employees and non-employees such as contractors, customers, and visitors.

Workplace violence can include oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical harm, damage to property, or any intentional behavior that may cause a person to feel threatened.

#### Prohibited Conduct

Prohibited conduct includes, but is not limited to:

- Physically injuring another person.
- Threatening to injure a person or damage property by any means, including verbal, written, direct, indirect, or electronic means.
- Taking any action to place a person in reasonable fear of imminent harm or offensive contact.
- Possessing, brandishing, or using a firearm on Company property or while performing Company business except as permitted by state law.
- Violating a restraining order, order of protection, injunction against harassment, or other court order.

#### Reporting Incidents of Violence

Report to your manager/supervisor, in accordance with this policy, any behavior that compromises our ability to maintain a safe work environment. All reports will be investigated immediately and kept confidential, except where there is a legitimate need to know. You are expected to cooperate in any investigation of workplace violence.

## Violations

Violating this policy may subject you to criminal charges as well as discipline up to and including immediate termination of employment.

## Retaliation

Victims and witnesses of workplace violence will not be retaliated against in any manner. In addition, you will not be subject to discipline for, based on a reasonable belief, reporting a threat or for cooperating in an investigation.

If you initiate, participate, are involved in retaliation, or obstruct an investigation into conduct prohibited by this policy, you will be subject to discipline up to and including termination.

If you believe you have been wrongfully retaliated against, immediately report the matter to Human Resources.

## **9.0 Trade Secrets and Inventions**

### **9.1 Confidentiality and Nondisclosure of Trade Secrets**

As a condition of employment, Company employees are required to protect the confidentiality of Company trade secrets, proprietary information, and confidential commercially sensitive information (i.e. financial or sales records/reports, marketing or business strategies/plans, product development, customer lists, patents, trademarks, etc.) related to the Company. Access to this information should be limited to a "need to know" basis and should not be used for personal benefit, disclosed, or released without prior authorization from management.

If you have information that leads you to suspect that employees are sharing such information in violation of this policy and/or competitors are obtaining such information, you are required to inform your manager/supervisor or Human Resources.

Violation of this policy may result in disciplinary action up to and including termination and may subject the violator to civil liability.

## **10.0 Hiring and Orientation Policies**

### **10.1 Disability Accommodation**

The Company complies with the Americans with Disabilities Act (ADA), the Pregnancy Discrimination Act, and all applicable state and local fair employment practices laws, and is committed to providing equal employment opportunities to qualified individuals with disabilities, including pregnancy, childbirth, and related medical conditions, such as lactation or the need to express milk for a nursing child. Consistent with this commitment, the Company is committed to providing access, equal opportunity and reasonable accommodation for qualified individuals with disabilities in all areas of its work and operations. We will provide reasonable accommodation to otherwise qualified individuals where appropriate to allow the individual to perform the essential functions of the job, unless doing so would create an undue hardship on the business.

Where an individual is suffering from a pregnancy-related disability or condition, reasonable accommodation may include, but is not limited to:

- More frequent or longer paid or unpaid breaks;
- Time off to attend to a pregnancy complication or recover from childbirth with or without pay;
- Acquisition or modification of equipment or seating;
- Temporary transfer to a less strenuous or hazardous position;

- Job restructuring;
- Light duty;
- Private non-bathroom space for expressing breast milk;
- Assistance with manual labor; or
- A modified work schedule.

If you require an accommodation because of your disability, it is your responsibility to notify your manager/supervisor. You may be asked to include relevant information such as:

- A description of the proposed accommodation.
- The reason you need an accommodation.
- How the accommodation will help you perform the essential functions of your job.

After receiving your request, the Company will engage in an interactive dialogue with you to determine the precise limitations of your disability and explore potential reasonable accommodations that could overcome those limitations. Where appropriate, we may need your permission to obtain additional information from your medical provider. All medical information received by the Company in connection with a request for accommodation will be treated as confidential.

The Company encourages you to suggest specific reasonable accommodations that you believe would allow you to perform your job. However, the Company is not required to make the specific accommodation requested by you and may provide an alternative accommodation, to the extent any reasonable accommodation can be made without imposing an undue hardship on the Company.

If leave is provided as a reasonable accommodation, such leave may run concurrently with leave under the federal Family and Medical Leave Act and/or any other leave where permitted by state and federal law.

The Company will not discriminate or retaliate against employees for requesting an accommodation.

## **10.2 EEO Statement and Non-harassment Policy**

### *Equal Opportunity Statement*

Berkshire Welco, d/b/a The Pass, welcomes individuals of every race, color, orientation, age, gender, origin, veteran status, and those harmed from directly and indirectly by prior cannabis prohibition. We hire smart, talented workers from all walks of life and all experience levels for our vertically integrated MA cannabis business. We embrace all LGBTQ+, Minorities, Women & Veterans and other equity applicants throughout our community. Welco intends to be a company where employees bring their individual identities, differences, and talents together to work as a team, across all our locations and operations. In short: we don't want biases or stereotypes holding either us or you back.

The Company is committed to the principles of equal employment. We are committed to complying with all federal, state, and local laws providing equal employment opportunities, and all other employment laws and regulations. It is our intent to maintain a work environment that is free of harassment, discrimination, or retaliation because of sex (including pregnancy, childbirth, and related medical conditions), race, religion, color, national origin, ancestry, physical or mental disability, genetic information, marital status, age (40 and older), sexual orientation, gender identity, AIDS/HIV status, arrest and conviction information, status as a registered qualifying medical marijuana patient or registered primary caregiver, admission to a mental facility, military service, veteran status, or any other status protected by federal, state, or local laws. The Company is dedicated to the fulfillment of this policy in regard to all aspects of employment, including but not limited to recruiting, hiring, placement, transfer, training, promotion, rates of pay, and other compensation, termination, and all other terms, conditions, and privileges of employment.

The Company will conduct a prompt and thorough investigation of all allegations of discrimination, harassment, or retaliation, or any violation of the Equal Employment Opportunity Policy in a confidential manner. The Company will take appropriate corrective action, if and where warranted. The Company prohibits retaliation against employees who provide information about, complain about, or assist in the investigation of any complaint of discrimination or violation of the Equal Employment Opportunity Policy. We are all responsible for upholding this policy. You may discuss questions regarding equal employment

opportunity with your manager/supervisor or any other designated member of management.

### Policy Against Workplace Harassment

The Company has a strict policy against all types of workplace harassment, including sexual harassment and other forms of workplace harassment based upon an individual's sex (including pregnancy, childbirth, and related medical conditions), race, religion, color, national origin, ancestry, physical or mental disability, genetic information, marital status, age (40 and older), sexual orientation, gender identity, AIDS/HIV status, arrest and conviction information, status as a registered qualifying medical marijuana patient or registered primary caregiver, admission to a mental facility, military service, veteran status, or any other status protected by federal, state, or local laws. All forms of harassment of, or by, employees, vendors, visitors, customers, and clients are strictly prohibited and will not be tolerated.

### Sexual Harassment

**Sexual harassment** means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such advances, requests, or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or
- Such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment.

While it is not possible to identify every act that constitutes or may constitute sexual harassment, the following are some examples of sexual harassment:

- Unwelcome requests for sexual favors;
- Lewd or derogatory comments or jokes;
- Comments regarding sexual behavior or the body of another;
- Sexual innuendo and other vocal activity such as catcalls or whistles;
- Obscene letters, notes, emails, invitations, photographs, cartoons, articles, or other written or pictorial materials of a sexual nature;
- Repeated requests for dates after being informed that interest is unwelcome;
- Retaliating against another for refusing a sexual advance or reporting an incident of possible sexual harassment to the Company or any government agency;
- Offering or providing favors or employment benefits such as promotions, favorable evaluations, favorable assigned duties or shifts, etc., in exchange for sexual favors; and
- Any unwanted physical touching or assaults, or blocking or impeding movements.

### Other Harassment

Other workplace harassment is verbal or physical conduct that insults or shows hostility or aversion towards an individual because of the individual's sex (including pregnancy, childbirth, and related medical conditions), race, religion, color, national origin, ancestry, physical or mental disability, genetic information, marital status, age (40 and older), sexual orientation, gender identity, AIDS/HIV status, arrest and conviction information, status as a registered qualifying medical marijuana patient or registered primary caregiver, admission to a mental facility, military service, veteran status, or any other status protected by federal, state, or local laws.

Again, while it is not possible to list all the circumstances that may constitute other forms of workplace harassment, the following are some examples of conduct that may constitute workplace harassment:

- The use of disparaging or abusive words or phrases, slurs, negative stereotyping, or threatening, intimidating, or hostile acts that relate to the above protected categories;
- Written or graphic material that insults, stereotypes, or shows aversion or hostility towards an individual or group because of one of the above protected categories and that is placed on walls, bulletin boards, email, voicemail, or elsewhere on our premises, or circulated in the workplace; and
- A display of symbols, slogans, or items that are associated with hate or intolerance towards any



select group.

### Reporting Discrimination and Harassment

If you feel that you have witnessed or have been subjected to any form of discrimination or harassment, immediately to a senior management personnel or Human Resources.

The Company prohibits retaliation against employees who, based on a reasonable belief, provide information about, complain, or assist in the investigation of any complaint of harassment or discrimination.

We will promptly and thoroughly investigate any claim and take appropriate action where we find a claim has merit. To the extent possible, we will retain the confidentiality of those who report suspected or alleged violations of the harassment policy.

Discipline for violation of this policy may include, but is not limited to, reprimand, suspension, demotion, transfer, and discharge. If the Company determines that harassment or discrimination occurred, corrective action will be taken to effectively end the harassment. As necessary, the Company may monitor any incident of harassment or discrimination to assure the inappropriate behavior has stopped. In all cases, the Company will follow up as necessary to ensure that no individual is retaliated against for making a complaint or cooperating with an investigation.

### State and Federal Remedies

In addition to the Company reporting process, if you believe you have been subjected to harassment, you may file a formal complaint with either or both of the government agencies listed here. Using the Company complaint process does not prohibit you from filing a complaint with these agencies. Note that claims must be filed with the Equal Employment Opportunity Commission (EEOC) and the Massachusetts Commission Against Discrimination (MCAD) within 300 days.

**EEOC Boston Office** Address: John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203 Phone: 800-669-4000 Fax: 617-565-3196 TTY: 800-669-6820 ASL Video Phone: 844-234-5122 Website: <https://publicportal.eeoc.gov/portal/>

**MCAD** Address: 1 Ashburton Place, Suite 601, Boston, MA 02108 Phone: 617-994-6000 TTY: 617-994-6196 Alternative Languages: 617-994-6196 Email: [mcad@mass.gov](mailto:mcad@mass.gov) Fax: 617-994-6024

## **10.3 Pregnant Workers Fairness Act Notice**

***Applies to employers with 6 or more employees.***

The Massachusetts Pregnant Workers Fairness Act prohibits discrimination against employees due to pregnancy or conditions related to pregnancy. The law also requires employers to provide reasonable accommodations to employees who are pregnant or have a condition related to pregnancy. Conditions related to pregnancy include, but are not limited to, morning sickness, lactation, or the need to express breast milk.

The procedures for requesting an accommodation are described in the Massachusetts Disability Accommodation policy.

## **10.4 Religious Accommodation**

The Company is dedicated to treating its employees equally and with respect and recognizes the diversity of their religious beliefs. All employees may request an accommodation when their religious beliefs cause a deviation from the Company dress code or the individual's schedule, basic job duties, or other aspects of employment. The Company will consider the request but reserves the right to offer its own accommodation to the extent permitted by law. Some, but not all, of the factors that will be considered are cost, the effect that an accommodation will have on current established policies, and the burden on operations — including other employees — when determining a reasonable accommodation. At no time will the Company question

the validity of a person's belief.

If you request an absence to observe a holy day, you must provide the Company with at least 10 days' notice. The Company may require you to make up the time lost or use paid time off.

If you require a religious accommodation, speak with Human Resources or your manager/supervisor.

## **11.0 Wage and Hour Policies**

### **11.1 Accommodations for Nursing Mothers**

The Company will provide nursing mothers reasonable paid/unpaid break time to express milk for their nursing child(ren).

If you are nursing, the Company will provide you a private room, other than a restroom, to express milk. The room will be clearly designated and either have a lock or a sign on the door to indicate when the room is in use.

Expressed milk can be stored in company refrigerators, refrigerators provided in the lactation room or other location, in a personal cooler. Sufficiently mark or label your milk to avoid confusion for other employees who may share the refrigerator.

You are encouraged to discuss the length and frequency of these breaks with your manager/supervisor.

### **11.2 Meal and Rest Periods**

The Company strives to provide a safe and healthy work environment and complies with all federal and state regulations regarding meal and rest periods. Check with your manager/supervisor regarding procedures and schedules for rest and meal breaks. All non-exempt employees scheduled to work 6 or more hours are required to take an uninterrupted meal break. The Company requests that employees accurately observe and record meal and rest periods. If you know in advance that you may not be able to take your scheduled break or meal period, let your manager/supervisor know; in addition, notify your manager/supervisor as soon as possible if you were unable to or prohibited from taking a meal or rest period. Waivers from lunch break are available and may be obtained from the Human Resource office and may be modified anytime by the employee. All worked hours will be paid in accordance with Wage and Hour Law.

### **11.3 Overtime**

If you are nonexempt, you may qualify for overtime pay. All overtime must be approved in advance, in writing, by your manager/supervisor.

At certain times Company may require you to work overtime. We will attempt to give as much notice as possible in this instance. However, advance notice may not always be possible. Failure to work overtime when requested or working unauthorized overtime may result in discipline, up to and including discharge.

Unless otherwise required or exempted by law, overtime pay of one and one-half times your regular rate of pay is paid for any hours worked in excess of 40 hours in a workweek. Holidays, vacation days, and sick leave days do not count as time worked for computing overtime.

## **11.4 Pay Period**

At the Company, the standard pay period is biweekly for all employees. Pay dates are currently alternate Fridays. If a pay date falls on a holiday, you will be paid on the preceding workday. Special provisions may be required from time to time if holidays fall on pay dates. Check with your manager/supervisor if this type of date arises.

If you are paid by commission, refer to your commission agreement.

Review your paycheck for accuracy. If you find an issue, report it to your manager/supervisor immediately.

## **11.5 Reporting Time Pay**

The Company provides reporting time pay to nonexempt employees in accordance with applicable law. If you are scheduled to work three or more hours, you will be paid for at least three hours of work each day you report to work on time but are given no work or less than three hours of work. You will be paid your regular rate for the hours worked, plus payment at the minimum wage for applicable reporting time pay, not to exceed three hours.

Speak with your manager/supervisor for more information regarding reporting time pay.

## **11.6 Travel Time Pay**

Some nonexempt positions within Company require travel. The Company pays nonexempt employees for travel time as follows:

### *Home to Work Travel*

Ordinary travel between home and work is not compensable working time. However, if you regularly work at a fixed location and are required, for the convenience of the Company, to report to a location other than your regular work site, you will be compensated for all travel time in excess of your ordinary travel time between home and work with allowance for associated transportation expenses.

### *Travel That Is All in a Day's Work*

If you are required or directed to travel from one place to another after the beginning of or before the close of the work day, you will be compensated for all travel time and will be reimbursed for all transportation expenses.

### *Travel Away from Home Community*

Travel that keeps you away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across your workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. The Company will not consider as work time that time spent in travel away from home outside of your regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

### *Calculating and Reporting Travel Time*

You are responsible for accurately tracking, calculating, and reporting your travel time. Travel time should be calculated by rounding up to the nearest quarter hour.

## **12.0 Employment Records**

### **12.1 Access to Personnel and Medical Records Files**

The Company maintains separate medical records files and personnel files for all employees. Files containing medical records are stored separate and apart from any business-related records in a safe, locked, inaccessible location. The medical file is the repository for sensitive and confidential information related to an individual's health, health benefits, health-related leave and/or accommodations, and benefits selections and coverage. Medical records are kept confidential in compliance with applicable laws and access is on a "need-to-know" basis only.

Supervisors and others in management may have access to your personnel file for possible employment-related decisions. Upon written request, the Company will provide you the opportunity to review your personnel file or will provide you with a copy of your personnel file. Inspection must occur in the presence of a Company representative during normal working hours.

All requests by an outside party for information contained in your personnel file will be directed to Human Resources, which is the only department authorized to give out such information.

## **13.0 Benefits**

### **13.1 Crime Victim and Witness Leave**

Occasionally, employees may be the victim of a crime or legally compelled to attend a judicial proceeding as a witness. In these circumstances, employees may take unpaid leave to:

- Respond to a subpoena to appear as a witness in any criminal proceeding;
- Attend a court proceeding or participate in a police investigation related to a criminal case in which they are a witness or a crime victim (or a deceased family member was a victim);
- Attend or participate in a court proceeding related to a civil case in which they are a victim of family violence; or
- Obtain a restraining or protective order on their own behalf.

If you need to take leave under this policy, notify your manager/supervisor as soon as possible. You may be required to provide documentation supporting such leave.

This policy does not apply to employees who have committed or are alleged to have committed a crime.

The Company will not retaliate against employees who request or take leave in accordance with this policy.

### **13.2 Domestic Violence Leave Policy**

Should we meet the policy criteria as listed above The Company provides up to 15 days of paid/unpaid leave per rolling 12-month period to victims of abusive behavior, domestic violence, sexual assault, kidnapping, and/or stalking, and certain family members, for purposes directly related to the abusive behavior. These purposes may include seeking legal or medical services, counseling, or victim's services; securing housing; obtaining a protective order; appearing in court or before a grand jury; or addressing other issues directly related to the abusive behavior against the victim or family member of the victim.

You may take domestic violence leave if you are a victim of abusive behavior, or due to the abuse of a covered family member, including your spouse/partner, parent, child, sibling, grandparent or grandchild, or persons in a guardian relationship. Perpetrators or accused perpetrators of abuse are not entitled to domestic violence leave.

Before taking domestic violence leave, you must exhaust all of your accrued paid time off, including but not limited to sick time, vacation days, and personal time. You must provide advance notice of your need for

leave whenever possible; however, this requirement does not apply if you or a covered family member faces imminent danger to you or your family member's health or safety. Should you be unable to provide advance notice based on a risk of imminent danger, you must notify Human Resources or your manager/supervisor within three business days that the time off was related to domestic violence. Should you be unable to notify the Company, a family member, counselor, clergy, or assisting professional may do so on your behalf.

The Company may require documentation supporting your claim for domestic violence leave. Such documentation can consist of a protective order or other court document, police report, police witness statement, documents reflecting the perpetrator's conviction or admission of guilt, documentation of medical treatment, and/or a victim advocate, counselor, social worker, health care worker, member of the clergy, or other assisting professional's sworn statement. In lieu of these documents, you may also submit your own sworn signed statement. Any documentation supporting the need for domestic violence leave must be submitted within 30 days of your last date of absence.

While the leave may not be paid, you are entitled to return to the same or a substantially equivalent position once your leave has ended. You will not be terminated, retaliated against, or receive a reduction in benefits based on your use of domestic violence leave. All information related to the leave will be kept in the strictest confidence.

### **13.3 Jury Duty Leave**

The Company encourages employees to fulfill their civic duties related to jury duty. If you are summoned for jury duty, notify your manager/supervisor as soon as possible to make scheduling arrangements.

You will be paid your regular wages for the first three days of juror service or any part thereof. For any additional days, time spent on jury duty will be unpaid. You may opt to use PTO/vacation in place of unpaid leave.

The Company reserves the right to require employees to provide proof of jury duty service to the extent authorized by law.

The Company will not retaliate against employees who request or take leave in accordance with this policy.

### **13.4 Paid Sick Leave - (Accrual Method)**

The Company provides eligible employees with up to 40 hours of paid sick leave per year.

#### Eligibility

All employees whose primary place of employment is Massachusetts are eligible for paid sick leave.

#### Reasons for Leave

You may use up to 40 hours of paid sick leave per calendar year for any of the following reasons:

- To care for yourself or your child, spouse, parent, or spouse's parent suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care.
- To attend medical appointments for yourself or your child, spouse, parent, or spouse's parent.
- To address the physical, legal, or psychological effects of domestic violence inflicted on you or your child.

#### Accrual and Use

You will begin accruing paid sick leave on your start date. Sick leave accrues at the rate of one hour for every 30 hours worked per benefit year, up to a maximum of 40 hours. For purposes of this policy, the benefit year is the consecutive twelve (12) month period beginning on the employee first day of

employment. If you are classified as exempt, you are presumed to work 40 hours per week, unless you are normally scheduled to work fewer than 40 hours, in which case sick leave accrues based on your normal schedule.

You may begin using sick leave on your 90th calendar day of employment. The smallest amount of sick leave you may take is one hour. You may carry over up to 40 hours of unused sick leave to the following benefit year based on your employment dates.

### Notice

If your need for leave is foreseeable, you must make a good faith effort to provide the Company with advance notice. If the need for leave is not foreseeable, notify your manager/supervisor as soon as practicable.

### Certification

The Company may require you to submit documentation to support your use of sick leave if your absence:

- Exceeds 24 consecutively scheduled work hours or three consecutive days on which you are scheduled to work;
- Occurs within two weeks prior to your final scheduled day of work (except in the case of temporary employees); or
- Occurs after four unforeseeable and undocumented absences within a three-month period.

Any reasonable documentation signed by a health care provider indicating the need for paid sick leave for personal illness, the illness of a family member, or a routine medical examination for you or your family member will be acceptable.

Required documentation must be submitted within seven days of the absence. Additional time will be allowed for good cause shown.

### Payout of Sick Time

You will not be paid for accrued unused sick leave at termination.

### Interaction with Other Leave

Where applicable, paid sick leave will run concurrently with other federal and state leaves (FMLA, parental leave, domestic violence leave, small necessities leave, etc.).

You may choose to use, or the Company may require you to use, paid sick leave to receive pay when taking other statutorily-authorized leave that would otherwise be unpaid.

### Retaliation

The Company will not retaliate against employees who request or take leave in accordance with this policy.

## **13.5 Paid Time Off (PTO) Policy**

Paid time off (PTO) provides you with the flexibility to use your time off to meet your personal needs, while recognizing your individual responsibility to manage your paid time off. We currently offer up to one week (40 hours) of paid time off to all fulltime eligible employees upon completion of 6 months of employment. Upon completing 6 months of employment employees will begin to accrue 3.07 hours each biweekly pay cycle capping off at 80 hours per year. Unused vacation time will not roll over in the following year.

You will accumulate PTO each pay period worked and it is up to you to allocate how you will use it — for vacation, illness, caring for children, school activities, medical/dental appointments, personal business, or emergencies. Company may require you to use any unused PTO during disability or family medical leave, or any other leave of absence, when permissible according to state and federal law. The amount of PTO

earned will depend on your length of service with the Company.

PTO does not replace our holiday schedule. We will continue to have designated paid holidays each year.

### Termination

You will be paid for all accrued and unused PTO when you leave the Company, pursuant to Massachusetts law.

### Notice and Scheduling

You are required to provide your manager/supervisor with reasonable advance notice and obtain approval prior to using PTO. This allows for you and your manager/supervisor to prepare for your time off and assure that all staffing needs are met. Requests for paid time off will be reviewed by management and may be denied based on operational and business needs. There may be occasions, such as sudden illness, when you cannot provide advance notice. In those situations, inform your manager/supervisor of your circumstances as soon as possible.

Paid time off does not count as hours worked for purposes of calculating overtime.

## **13.6 Parental Leave Policy**

The Company provides up to eight weeks of unpaid leave in a 12-month period to employees for the birth or adoption of a child. You must work full time and have three consecutive months of employment with the Company to qualify for this leave.

You must provide at least two weeks' notice of the anticipated date of departure and the date you intend to return or provide notice as soon as practicable if there are reasons beyond your control.

You will be placed in your original job or an equivalent job with equivalent pay and benefits upon return from leave. You will not lose any benefits that accrued before leave was taken.

Federal FMLA leave and Massachusetts parental leave run concurrently and cannot be used consecutively if leave is covered under both laws. The Company will not retaliate against employees who request or take leave in accordance with this policy.

## **13.7 Small Necessities Leave Policy**

Pursuant to the Massachusetts Small Necessities Leave Act, the Company will provide eligible employees with up to 24 hours of unpaid leave during any 12-month period for the following reasons:

- To participate in school, Head Start, and day care activities directly related to the educational advancement of your child, including parent-teacher conferences or interviewing for a new school.
- To accompany your child to routine medical or dental appointments, including check-ups or vaccinations.
- To accompany your elderly relative to routine medical or dental appointments or appointments for other professional services related to the elder's care, including interviewing at nursing or group homes.

Leave may be taken intermittently or on a reduced leave schedule.

You are eligible for small necessities leave if you have worked for the Company for 12 months, either consecutively or nonconsecutively, and worked at least 1,250 hours in the previous 12-month period.

If the need for leave is foreseeable, you must provide seven days' notice. Otherwise, provide notice as soon as possible. You may also be required to submit certification verifying the reason for the leave. You may elect to use PTO/vacation in place of unpaid leave.

The Company will not retaliate against employees who request or take leave in accordance with this policy.

### **13.8 Voting Leave**

If your work schedule prevents you from voting on Election Day, the Company will allow you a reasonable time off to vote. The time when you can go to vote will be at the discretion of your manager/supervisor, consistent with applicable legal requirements.

## **14.0 Safety and Loss Prevention**

### **14.1 Nonsmoking Policy**

The Company is concerned about the effect that smoking and secondhand smoke inhalation can have on its employees and clients. Smoking in the office, client areas, and restrooms is prohibited.

## **15.0 Trade Secrets and Inventions**

### **Inventions**

Any invention created, in whole or in part, during your work hours, or from the use of equipment or facilities belonging to the Company, is a "work for hire" and is the property of the Company.

If you intend to develop and maintain property rights to any invention that relates in any way to products or services of the Company, you are required to obtain a written waiver of this policy, signed by both you and the CEO.

## **16.0 Closing Statement**

Thank you for reading our handbook. We hope it has provided you with an understanding of our mission, history, and structure as well as our current policies and guidelines. We look forward to working with you to create a successful the Company and a safe, productive, and pleasant workplace.



## Acknowledgment of Receipt and Review

By signing below, I acknowledge that I have received a copy of the Company Employee Handbook (handbook) and that I have read it, understand it, and agree to comply with it. I understand that the Company has the maximum discretion permitted by law to interpret, administer, change, modify, or delete the rules, regulations, procedures, and benefits contained in the handbook at any time with or without notice. No statement or representation by a supervisor, manager, or any other employee, whether oral or written, can supplement or modify this handbook. Changes can only be made if approved in writing by the Chief Executive Officer of the Company. I also understand that any delay or failure by the Company to enforce any rule, regulation, or procedure contained in the handbook does not constitute a waiver on behalf of the Company or affect the right of the Company to enforce such rule, regulation, or procedure in the future.

I understand that neither this handbook nor any other communication by a management representative or other, whether oral or written, is intended in any way to create a contract of employment. I further understand that, unless I have a written employment agreement signed by an authorized Company representative, I am employed "at-will" (to the extent permitted by law) and this handbook does not modify my "at-will" employment status.

If I am covered by a written employment agreement (signed by an authorized Company representative) or a collective-bargaining agreement that conflicts with the terms of this handbook, I understand that the terms of the employment agreement or collective-bargaining agreement will control.

This handbook is not intended to preclude or dissuade employees from engaging in legally protected activities under the National Labor Relations Act (NLRA).

This handbook supersedes any previous handbook or policy statements, whether written or oral, issued by Company.

If I have any questions about the content or interpretation of this handbook, I will contact Human Resources.

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Signature

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Date

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Print Name

## **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 (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.

## Key Personnel

**Cultivation Director: Peter Steimer.** After earning a B.S. in Plant Science from the University of Delaware in 2012, Peter immediately began a career in the pesticide industry upon graduation. Working for DuPont Crop Protection, he gained valuable experience in experimental design, product evaluations in terms of safety and efficacy, as well as being responsible for growing over fifty species of problematic weeds and agricultural crops in both a greenhouse and open field setting. In addition, time spent with DuPont helped to reinforce the importance to strictly adhere to all state and federal regulations pertaining to waste removal, plant tracking, and overall safety standards in the workplace.

After nearly six years in the pesticide industry, Peter recognized the rising need to provide people access to medicinal cannabis and moved to Bridgton, Maine to pursue work in the cannabis industry. His horticultural skills and work experience was aligned with the long term goals of the industry in Maine.

Currently, Peter works as the Assistant Manager of Cultivation for Canuvo, one of Maine's eight licensed medical cannabis companies. For the past eighteen months and for the time being, Peter is leading a team of four to eight Cultivation Associates to ensure high quality, clean cannabis is harvested on a predictable and timely schedule.

The Pass believes Peter has the skill set to take over a larger cultivation and production budget as well as manage a team of Cultivation Technician's as the company's full time Cultivation Director.

Cultivation Director is responsible for inventory management and storage, Cultivation Technician's production schedules, hygienic cultivation best practices, integrated pest management, compliant use of pesticides, compliant reporting, quality assurance/quality control, equipment hygiene and routine equipment cleaning and maintenance, and all cultivation personnel.

**Cultivation Technicians (4x).** 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 requirements;
4. Training on secondary identification checks, including acceptable forms of identification and recognizing fraudulent documents;
5. All other areas of Responsible Vendor training as determined by the Commission; and
6. 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.

## **Berkshire Welco Cultivation Record Keeping**

### **1. Record Keeping**

1. General Record Keeping - Records of Berkshire Welco shall be available for inspection by the Commission, upon request. The records of Berkshire Welco shall be maintained in accordance with generally accepted accounting principles. Written records that are required and are subject to inspection include, but are not necessarily limited to, all records required in any section of 935 CMR 500.000, in addition to the following:
  - a. Written operating procedures as required by 935 CMR 500.105(1);
  - b. Inventory records as required by 935 CMR 500.105(8);
    - i. Real-time inventory shall be maintained as specified by the Commission and in 935 CMR 500.105(8)(c) and (d), including, at a minimum, an inventory of marijuana plants; marijuana plant-seeds and clones in any phase of development such as propagation, vegetation, and flowering; marijuana ready for dispensing; all marijuana products; and all damaged, defective, expired, or contaminated marijuana and marijuana products awaiting disposal.
    - ii. Berkshire Welco shall:
      1. Establish, utilize, and maintain inventory control systems and procedures for the conduct of inventory reviews, and comprehensive inventories of marijuana products in the process of cultivation, and finished, stored marijuana;
      2. Conduct a monthly inventory of marijuana in the process of cultivation and finished, stored marijuana;
      3. Conduct a comprehensive annual inventory at least once every year after the date of the previous comprehensive inventory; and
      4. Promptly transcribe inventories if taken by use of an oral recording device.
    - iii. The record of each inventory shall include, at a minimum, the date of the inventory, a summary of the inventory findings, and the names, signatures, and titles of the individuals who conducted the inventory.
    - iv. Berkshire Welco shall tag and track all marijuana seeds, clones, plants, and marijuana products, using a seed-to-sale methodology in a form and manner to be approved by the Commission.
    - v. No marijuana product, including marijuana, may be sold or otherwise marketed for adult use that is not capable of being tested



by Independent Testing Laboratories, except as allowed under 935 CMR 500.000.

- c. Seed-to-sale tracking records for all marijuana products as required by 935 CMR 500.105(8)(e);
- d. The following personnel records:
  - i. Job descriptions for each employee and volunteer position, as well as organizational charts consistent with the job descriptions;
  - ii. A personnel record for each Berkshire Welco agent. Such records shall be maintained for at least 12 months after termination of the individual's affiliation with Berkshire Welco and shall include, at a minimum, the following:
    - 1. all materials submitted to the Commission pursuant to 935 CMR 500.030(2);
    - 2. employment agreement, if any;
    - 3. Documentation relating to compensation, including a statement of graduated compensation by date and pay rate;
    - 4. Documents relating to background investigation, including CORI reports;
    - 5. documentation of verification of references;
    - 6. the job description or employment contract that includes duties, authority, responsibilities, qualifications, and supervision
    - 7. 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;
    - 8. documentation of periodic performance evaluations;
    - 9. a record of any disciplinary action taken; and
    - 10. notice of completed responsible vendor and eight-hour related duty training.
  - iii. A staffing plan that will demonstrate accessible business hours and safe cultivation conditions;
  - iv. Personnel policies and procedures; and
  - v. All background check reports obtained in accordance with 935 CMR 500.030.
  - vi. Personnel records shall be kept in a secure location to maintain confidentiality and be accessible only to the CEO or designees, all of whom shall be members of the executive management team.
- e. Business records, which shall include manual or computerized records of:

- i. Assets and liabilities;
    - ii. Monetary transactions;
    - iii. Books of accounts, which shall include journals, ledgers, and supporting documents, agreements, checks, invoices, and vouchers;
    - iv. Sales records including the quantity, form, and cost of marijuana products; and
    - v. Salary and wages paid to each employee, stipend paid to each board member, and any executive compensation, bonus, benefit, or item of value paid to any individual affiliated with Berkshire Welco, including members of the nonprofit corporation, if any.
  - f. Waste disposal records as required under 935 CMR 500.105(12); and
  - g. Following the closure of Berkshire Welco for any reason, all records shall be kept for at least two years at the expense of Berkshire Welco and in a form and location acceptable to the Commission.
2. Inventory Record Keeping
- a. The Security Director is responsible for the implementation and enforcement of all inventory management policies and procedures. The Department Directors in coordination with Security Director shall conduct monthly inventory reviews and an annual comprehensive inventory and reconciliation of all cannabis on the premises against current ETS Inventory Log.
  - b. Each Department Director shall maintain the Inventory Log on the networked ETS to record:
    - i. The date of an inventory process;
    - ii. A summary of the inventory findings;
    - iii. The names, signatures, and titles of the individuals who conducted the inventory;
    - iv. A signed attestation that the review was conducted, and no discrepancies were found.
  - c. The Department Director and Security Director must review any discrepancies and approve all inventory management system adjustments;
  - d. Discrepancies identified during inventory (diversion, theft, adverse loss, and any criminal action involving an employee or visitor) shall be reported to the Security Director and the CCC;
  - e. All counts shall be recorded in the Inventory Log and entered into the ETS immediately.

- f. The Department Directors, in coordination with Security Director, shall conduct monthly inventory reviews. Inventory controls and procedures have been established for conducting:
    - i. Monthly inventory reviews;
    - ii. Annual comprehensive inventories of all cannabis at the facility
    - iii. Written and electronic records of inventories. Written and electronic records include:
      - 1. Date of the inventory;
      - 2. Summary of the inventory findings;
      - 3. Employee identification numbers and titles;
      - 4. Positions of the individuals who conducted the inventory.
3. Transfer between Marijuana Establishments Recordkeeping
- a. A manifest shall be filled out in triplicate, with the original manifest remaining with Berkshire Welco, a second copy provided to the destination Marijuana Establishment upon arrival, and a copy to be kept with the licensed Berkshire Welco agent during transportation and returned to Berkshire Welco or upon completion of the transportation.
  - b. Prior to transport, the manifest shall be securely transmitted to the destination Marijuana Establishment by facsimile or email.
  - c. Upon arrival at the destination Marijuana Establishment, a marijuana establishment agent at the destination Marijuana Establishment shall compare the manifest produced by the agents who transported the marijuana products to the copy transmitted by facsimile or email. This manifest shall, at a minimum, include:
    - i. the originating Marijuana Establishment name, address, and registration number;
    - ii. the names and registration numbers of the agents who transported the marijuana products;
    - iii. the name and registration number of the marijuana establishment agent who prepared the manifest;
    - iv. the destination Marijuana Establishment name, address, and registration number;
    - v. a description of the marijuana products being transported, including the weight and form or type of product;
    - vi. the mileage of the transporting vehicle at departure from Berkshire Welco and mileage upon arrival at destination Marijuana Establishment, as well as mileage upon return to Berkshire Welco;
    - vii. the date and time of departure from Berkshire Welco and arrival at destination Marijuana Establishment for each transportation;

- viii. a signature line for the marijuana establishment agent who receives the marijuana products;
  - ix. the weight and inventory before departure and upon receipt;
  - x. the date and time that the transported products were re-weighed and re-inventoried;
  - xi. the name of the marijuana establishment agent at the destination Marijuana Establishment who re-weighed and re-inventoried products;
  - xii. the vehicle make, model, and license plate number.
- d. The manifest shall be maintained within the vehicle during the entire transportation process, until the delivery is completed.
  - e. Berkshire Welco shall retain all transportation manifests for no less than one year and make them available to the Commission upon request.
4. Financial Record Keeping
- a. Accounting and Bookkeeping - All accounting and bookkeeping will be performed in accordance to the Operating Agreement 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.
  - b. 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:
    - i. Assets and liabilities; current and historical ownership /“cap table”; investor lists; insurance and escrow requirements; licensing fees, penalties assessed, renewal fees, CCC change fees; 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 Berkshire Welco; 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.

- c. 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 business.
- 5. Additional Record Keeping
  - a. All pesticide application records held in a Pesticide Log
  - b. Visitor Logs
  - c. Returned Product Log
  - d. Waste Disposal Log
  - e. Adverse Event Log

## **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, it's Executive Management Team (EMT) and it's 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 experience 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 exists 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.





**THE PASS**  
BERKSHIRES

## **Accounting/Financial Controls**

### **Financial Recordkeeping Accounting and Bookkeeping.**

All accounting and bookkeeping will be performed by AAFCPA's in accordance to the Operating Agreement in and in compliance with federal, state, and local tax laws using QuickBooks 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 Cultivation facility.

### **Segregation of Duties:**

#### **Purchasing/Bill pay Policy**

Purchase orders (P.O.'s) are entered into the SOS Inventory Management System (SOS IMS) by the division purchasing agent, wholesale director or division head. They are responsible for sourcing at minimum 3 vendors when applicable to determine the best vendor price, lead time & terms within the allotted budgetary confines. Approval authority and policy structure is outlined in Schedule B of this document.

Upon notification of the P.O. to accounting, the accounting purchasing agent will reach out to the vendor directly to place the order.

Upon receipt of the product/s purchased the designated receiver of the package will validate the contents of the shipment against the PO and enter it into inventory in the SOS IMS.

Accounting purchasing agent will validate the entry to ensure correctness and enter the invoice for payment based on terms of contract or purchasing agreement.

Bills payments are processed weekly the accounts payable team based on vendor terms upon review and approval by the VP of Finance.

#### **Daily Receipts**



### **Cash Management**

A Master Cash Ledger shall be maintained on a daily basis that shall record all of the daily activities of all of the cash in the store.

### **Cash Drawer Management**

There are (6) cash drawers specific to the (6) point-of-sale stations in the retail space. The cash drawers are labeled 1 through 6. For instance, Cash Drawer 1 belongs ONLY to POS 1. The cash drawer shall total \$300.00 in mixed bills and coins at opening and closing.

The recommended breakdown is the following:

- Twenty Dollar Bills - 4x (\$80.00)
- Ten Dollar Bills - 8x (\$80.00)
- Five Dollar Bills - 20x (\$100.00)
- One Dollar Bills - 22x (\$22.00)
- Quarters - 42x (\$10.50)
- Dimes - 50x (\$5.00)
- Nickels - 40x (\$2.00)
- Pennies - 50x (\$0.50)

The (6) cash drawers totaling \$1,800.00 shall be kept overnight in the safe, located in the secure Retail Vault. The cash drawer cart shall be housed in the Retail Vault. It shall be used to move the cash drawers throughout the facility.

### **Petty Cash Management**

The petty cash is a set amount of money used to exchange larger bills and coins into smaller denominations. The petty cash lockbox shall be housed in the safe located in the Retail Vault. A petty cash ledger shall be kept to record each transaction. A petty cash audit shall be performed by a Berkshire Welco manager or supervisor at regularly timed intervals, not exceeding more than seven (7) days between audits. A record of these audits shall be kept in the petty cash ledger and Master Cash Ledger. The petty cash shall be equal to the contents of two (2) full drawers with the same denominations as typical, except the number shall be doubled. The petty cash shall be reconciled every Monday and Thursday to ensure that it is fully stocked.

### **Counting Area**

The counting area is a designated space within the Retail Vault designed to count bills and coins for deposits, making change, end of day reconciliation, and other cash handling procedures. The counting table shall be in full view of security cameras.

### **Opening Procedures**

Prior to opening, the Manager-on-Duty (MOD) shall remove cash drawers from the safe and place it on the cash cart. The MOD shall roll the cash cart to the POS stations, unlock the drawers and place the removable till within. Sales Associates shall sign into their assigned POS. Sales Associates shall count cash drawers. Sales Associates shall record the bill and coin breakdown on the daily Cash Drawer worksheet. If a cash drawer equals \$300.00, that POS station is ready for operation.

In the event the cash drawer does not equal \$300.00, the variance is recorded by the MOD on the Daily Sales Report. The MOD shall withdraw or deposit money from/into petty cash to balance the cash drawer to \$300.00. The transaction shall be recorded in the petty cash ledger. Once the cash drawer equals \$300.00, that POS station is ready for operation.

### **Mid-Day Drop Procedures**



A “mid-day drop” is the process of removing bills or coins from a cash drawer between opening and closing because the cash drawer has exceeded its limit in total value or quantity of money. Each POS station value limit is \$2,000.00. When a POS exceeds \$2,000.00 in value, the MOD will receive a notification to conduct a mid-day drop.

A Sales Associate, Supervisor, or MOD may also initiate a mid-day drop as needed. A Sales Associate and MOD shall communicate (through POS messaging or verbally) that a mid-day drop shall be conducted before the next transaction. MOD shall bring corresponding money pouch to POS station. MOD shall unlock the cash drawer and remove a determined amount of bills. MOD shall place the bills in the money pouch and bring it immediately to the counting room.

The money pouch shall be placed in a designated basket that shall indicate, the money has NOT been counted, The corresponding cash drawer has not been reduced in the POS system to accurately reflect total value. A log shall be kept that includes the bag number, the amount held in the bag and the number of the till that it came from. A receipt with the amount that has been removed, which shall also indicate the bag number on it, shall be left inside the till and initialed by both the sales associate and the manager withdrawing the funds. A second supervisor will join the MOD while the mid-day drop is counted. The MOD shall count the money and record the bill breakdown on the Daily Sales Report.

The total amount shall be noted along with the POS number and the Date and Time. The printed receipt and bills are rubber banded together. The corresponding cash drawer is then adjusted from the counting room computer remotely. The mid-day drop is recorded on the Daily Sales Report. The money/receipt bundle shall then be securely deposited in the safe located in the Retail Vault.

### **Closing Procedures**

Sales Associates shall sign out of their POS terminal. The MOD shall unlock cash drawers and bring them to the counting room using the cash cart. A second supervisor will join MOD in the counting room. Total sales for each POS station shall be accessed through POS software and noted on Daily Sales Report. The MOD shall count \$300.00 in bills and coins and place in cash drawer (to equal the distribution of denominations above). The remaining bills/coins are the final deposit for that POS. Money is counted in the same manner as the mid-day deposit. Deposit is recorded on the Daily Sales Report. The mid-day drops are removed from the safe. The MOD calculates total daily deposit for each POS by tallying the final deposit plus all mid-day drops on the Daily Sales Report. The MOD compares total deposit to total sales. If a variance is detected, the amount is written on the Daily Sales Report and the MOD shall investigate further.

### **Daily Accounting procedures**

Accounting with a department manager performs a final cash is count and validates that the appropriate measures have been taken to comply with Banking requirements as listed on **Schedule A**.

Accounting pulls and audits daily Point of Sale and Metric activity reports. Upon completion of the validating the accuracy of the data a formal reconciliation is performed between the POS sales and the METRC inventory. Data is then entered or imported into the SOS IMS and a daily invoice will be created for each POS.

After invoice is created payments are applied in accordance with the cash receipts reports received from onsite manager. All sales tax is to be validated to ensure the appropriate tax code is applied to the appropriate items. There are two tax codes one that applies to merchandise only at 6.25% and one that is a combined value that will include sales, local & MJ tax amounting to 20%.

VP of Finance or designated person will apply the deposit into the accounting system.



### **ATM Procedures**

The MOD shall be responsible for assuring that the ATM remains stocked with cash throughout the day. Upon receiving notification that the ATM has dropped below \$1,000.00, the MOD shall withdraw funds in the appropriate denominations to refill the ATM while under the observation of an additional authorized employee.

The funds shall be taken from the designated ATM cash bag located in the main safe in the Retail Vault. The ATM cash bag shall retain an amount of \$15,000.00 which shall be reconciled on a daily basis as part of the daily closing procedures.

There shall be an ATM log that shall be maintained and kept with the ATM cash bag in the safe with the petty cash log.

### **Bank Deposit Procedures**

The MOD shall reconcile the Daily Sales Report and Daily Cash Ledger to determine the daily bank deposit. The money in all money pouches shall be consolidated and counted one final time. This information shall be recorded in the Daily Cash Ledger. The money is then placed in the courier bag in accordance to the bank Cash Shipment Policy as outlined on Schedule A. The bank deposit slip is prepared and placed in the courier bag. The courier bag and all cash drawers are transferred to the vault via cart. The courier bag and cash drawers are secured in the safe. The timing of couriers and deposits shall be coordinated with the bank to ensure the bank has proper staff to receive the cash.

### **Courier Guidelines & Procedures**

A courier (Vendor Selection in Process) shall pick up the deposit as deemed necessary to limit the available cash on hand. Optimally, a courier shall pick up the deposit on a daily basis.

Prior to Pick-Up Armored Courier shall provide the name and picture(s) of the individual(s) who are authorized to pick up deposits at the dispensary, plus any information that the bank requires.

At Time of Pick-Up Courier shall check in at secure entrance with a Berkshire Welco agent at the retail vestibule. Courier shall show identification and sign into visitor's log. Courier shall be given a badge identifying him/her as a visitor. Courier shall be accompanied by a dispensary agent at all times. Courier shall be given access to the vault and be accompanied by a dispensary agent at all times. Courier shall not touch safe, or money, or any other products or property belonging to Berkshire Welco. The MOD shall open the safe and hand the deposit to the courier. Courier shall then secure the deposit under the best security practices guidelines set by the Courier Company. Courier shall return to the retail vestibule. Courier shall return their visitor's badge and sign out on the visitor's log. The information of the pickup shall be noted in the Master Cash Ledger and shall include the date, time, amount of the deposit, the name of the courier, and the courier company.

### **End-of-Day To Do List**

Hardcopy Daily Sales Report is filed away.

Petty cash is checked to determine if there are enough denominations for next day.

All variances are recorded in the Variance Report. It is created to keep a track record of all shortages, overages, cash discrepancies, and resolutions.

### **Spot-Check Procedures**

A "spot-check" is the unannounced count of a cash-drawer, which is then checked against the running total sales to ensure a Sales Associate is cash compliant. The MOD shall remove cash drawer from POS station and bring it to the Retail Vault. Current total sales amount is noted. Cash drawer is counted. Spot check findings are recorded on the Daily Sales Report. If a



variance is detected, MOD shall investigate and may file a complaint or take disciplinary action if deemed necessary. This shall also be noted in the Master Cash Ledger.

### **Money Storage Procedures**

All cash shall always be stored in the main safe (housed in the vault) during off-business hours. This includes, but is not limited to Cash drawers for each point-of-sale station, and Petty cash

### **Daily Deposits**

During regular business hours, cash will be secured in the main safe (located in Retail Vault). Cash drawers at point of sale stations must always be locked and shall only be accessible during the course of a regular transaction.

### **Money Transport Guidelines**

Two dispensary agents must be present while money is transported throughout the dispensary. This includes but is not limited to from vault to point-of-sale stations and from point-of-sale stations to manager's office.

### **From manager's office to vault**

Quantities of money shall be moved throughout the facility in pouches. Quantities of money shall be moved in plain view of security cameras.

### **Authorized Personnel for Money Management**

Only retail managers and CFO/VP of Finance shall have access to the main safe combination. Only authorized personnel shall have access to the Retail Vault. Only authorized agents shall have access to the manager's office. Only authorized agents shall be responsible for counting and securing money. Those agents handling money shall undergo cash management training.

### **Cash Handling Best Practices**

When a customer hands a Sales Associate money, the money should be counted in a fashion where the bills have some visible separation and can be seen by the customer, the Sales Associate, and overhead cameras. Cash must be count out loud. This works as a double check for yourself, but also provides transparency to the customer.

When giving change back to the customer always double check the amount of change to be given back. Count the change out loud as you are handing it to the customer. Hand the customer the coinage first and then the bills.

### **Reconciliations/Monthly Close**

Daily bank feeds are reviewed by the business bookkeeper. The bookkeeper is responsible for validating each transaction to ensure the appropriate back up paperwork is attached, the account allocation is accurate and whether or not it should be matched to an existing transaction or added as a new transaction.

Trial Balance is reconciled weekly until we are producing revenue at which point this process is completed twice per week by Bookkeeper. Any and all discrepancies are reviewed, investigated, and documented prior to making any adjustments in the accounting system. All adjustments must be approved by the VP of Finance.

Bank and credit card statements are reconciled by the VP of Finance no later than the 10<sup>th</sup> of the following month. At this time all transactions will be reviewed to ensure that account allocation and transactional history is accurately being recorded.



Sales tax liability report is completed and reviewed. VP of Finance or designated person/s will process the payment on the MTC website. This is to be processed no later than 10 days after the month close, deposit (payment) will be set for the due date of the 20<sup>th</sup> of the following month.

Accounts payable is to be reconciled monthly, all items over 60 days must be reviewed and validated. If there is an issue with the charge, transaction bookkeeper must reach out to the appropriate person who authorized the transaction. Although it is preferred that the authorizing party be the point of contact the bookkeeper can and should reach out the vendor directly to clarify any issues that stand in the way of payment.

After all items are reconciled the VP of Finance will then proceed with running a variety of financial reports including a budget to actual, cash flow statement, P & L & Balance sheet by division. Commentary will be made on any outliers, anomalies, and any items in excess of 5% variance from budget.

Upon final review of reports the month is locked down in the accounting system to avoid any changes after closing procedures are complete.

Reports are sent to Owners and any other authorized party that ensures

#### **Application Access Controls**

The accounting system is only assessable by authorized members of the accounting and the CPA. Depending on each person's role will determine the level of access is required.

The bookkeeper is able to access the current month data within the accounting system to enter any/all accounts payable transactions, run reports, reconcile bank accounts, write checks up to \$25K and make wire transfers at the direct approval of Senior management as outline on Schedule B. (Senior Management team includes VP of Finance, CEO and/or President)

The bookkeeper also has full access to create and process Purchase orders, and sync the data to the accounting system in the IMS

CPA has ability to run reports for tax/audit purposes, process journal entries in accordance with yearend functions.

CFO and/or VP of Finance has full access to all levels of the accounting system including locking down the system monthly, adding items to the Chart of accounts, assigning account allocations, setting up user access, creating items and lists.

Metric is the state chosen inventory system for the cannabis industry, access to this system is controlled by the Director of Operations. Each division requires specific access based on role. The accounting purchasing agent and the VP of Finance will have full access to run reports for daily audits and physical inventory reviews.

Flow hub is the designated POS access is granted to cashiers, managers, VP of Finance & Bookkeeper for reporting, random audits and daily sales/deposit processing.

#### **Physical Audit of Assets**

Weekly audit will be completed on all cannabis related products. This will be done electronically. Physical audits will be conducted monthly on these products by accounting team. Full inventory counts will be conducted quarterly via electronic and physical mediums for each division.



Daily audits will be completed for all daily sales, cash transactions and deposits by the appropriate accounting team member.

Furniture, fixtures, equipment, collateral etc, will be inventoried annually at a minimum

Any and all adjustments to inventory must be reviewed by each department head (DH), explained and signed off on prior to making the adjustment in the IMS. Bookkeeper and/or VP of Finance will be responsible for making any journal entries required as a result of the audit per approval by VP.

### **Standardized Financial Statements**

All financial Statements will be produced and reviewed by the CFO and./or the VP of Finance and submitted to the CEO & President of the company.

Weekly reports to be prepared by the VP of Finance include accounts payable reports, Balance sheet, YTD Income Statement, budget to actuals & general ledger. These reports will be entered into the Cash flow analysis workbook no later than Friday EOD to prepare for weekly leadership meeting & cash prep meetings.

Monthly reports are to be sent no later than the 10<sup>th</sup> of the following month and should include, Balance sheet, Income Statement, Budget v Actual, General Ledger & month over month and year of year comparisons.

Formal Purchase orders must be created using our electronic IMS, packing slips must accompany any/all invoices and PO's for processing payments.

Invoices will be generated from QBO our accounting system in conjunction with our IMS for Wholesale sales and the POS from retail sales.

We have a formal travel and Expense policy as outlined in Section 4 of the company handbook and added in Schedule C within this document. Adherence to policy and the submission of a completed and approved expense report is required.

Any/all incidents involving cash, asset, or inventory over/under, theft, diversion must be reported using the appropriate incident report as attached in Scheduled D.

### **Authorized Approval Structure**

Designated approvals are as follows, the Bookkeeper can approve purchase orders & check signing up to \$10K\*, the VP of Finance can process and approve any transaction up to \$100K in value\*\*, the CEO and/or President must approve anything over \$100K.

\*The CEO and President can provide written approval for signing authority on any amount in excess of the designated amount listed within this policy.

\*\*Any preapproved purchase orders can be processed without expressed written authority as the purchasing procedure includes a preapproval based on budget and cash flow expectations.



## Schedule A

### Cash Shipment Standards

Salisbury Bank business customers that are depositing large pre-packaged amounts of cash being delivered to the branch and being shipped to the Federal Reserve with no branch interaction will be required to follow the Federal Reserve's standard for currency deposits. Salisbury Bank will provide these large-cash depositors with an approved currency stamp, a date stamp, tamper resistant plastic bags, and ABA approved currency straps.

Denominations for shipping are as follows:

Currency: (each strap requires a date stamp, currency stamp, and the initials of two people)

100's – \$10,000  
50's - \$5,000  
20's – \$20,000  
10's – \$10,000  
5's – \$5,000  
2's – \$2,000  
1's – \$1,000

Currency Shipping Standards are as follows:

1. All straps must contain 100 notes of the same denomination and must only have one band around them.
2. A full bag may not contain more than 16 bundles.
3. All paper clips, staples and/or rubber bands must be removed.
4. All bands must have the sealed part of the band (the white section) on the back of the bill.
5. For all denominations, bands must be arranged within the bundle so that all of your stamps within the bundle are facing in one direction. For \$50 and \$100 denominations your stamp must be placed on the back outside of the band.
6. The following information must be stamped on the white part of the strap:

Salisbury Bank  
ABA 011102612  
Branch # 00##  
Date  
Preparer's Initials and Verifier's Initials

7. The Preparer's Initials and the Verifier's Initials must be in blue or black ink only.
8. All like currency straps must be bundled together (in accordance with the shipping guidelines) neatly with one rubber band on each end.
9. Bundles should be placed in a clear, tamper resistant plastic bag.
10. If using a large-capacity currency bag for a small deposit, please be sure to cinch or seal the bag in such a way to prevent tearing of the straps or breaking the bundles in transit.

Once the deposit has been prepared, cash will be delivered to the branch by the customer or representative for deposit.





1. The business customer will prepare a deposit ticket
2. The teller will inspect and verify by bundle counting the currency through the plastic bag **(Do NOT open the plastic bag)** and entering the denominations into the Insight cash count screen.
3. The teller will verify the amount received to the amount listed on the deposit ticket.
4. If the amounts do not match, verify the cash again. If there is a true discrepancy, follow the Cash Adjustment procedure.
5. Complete the transaction processing and be sure to select the appropriate Transacting Person.
6. The pre-packaged currency should be sold to the vault and stored until the scheduled cash delivery day.



## Schedule B

### Purchasing Policy & Procedures

**Purpose:** The purpose of this policy is set internal controls over the purchasing & accounting process for buying equipment, materials & supplies, and services. This process will be subject to change upon determining an appropriate inventory management or procurement system.

1. **Determine Need** – The needs of the product/service are analyzed, and the availability is checked before creating a request for purchase. Has it been budgeted or is this an unexpected request?
2. **Preferred Vendor:** If applicable, decide what vendor we will be using. It is best to review at least three (3) vendors for price quality and lead time before making this determination. If applicable, negotiate & send executed (signed) contract to [accounting@thepass.co](mailto:accounting@thepass.co)
  - a. **Selection of Suppliers** – If no preferred vendors exist, Once the budget has verified and/or approved, accounting will request quotes from vendors with the intention to receive and compare bids. Repetitive orders may have a designated supplier.
  - b. When selecting a vendor, it is vital to utilize a diverse mix of MBE, DBE & WBE\* vendors whenever possible to ensure that we meet and or exceed our diversity goals and the current year requirement of 5% of all purchasing.
  - c. Accounting will always attempt to get establish terms via credit application with all new vendors. To avoid any delays in processing PO's, accounting will NOT hold up any orders while processing credit applications.
3. **Purchase Order (PO)** – Complete the purchase order form in full, including but not limited to a full description of the purchased, quantity and lead time (when products or services should be delivered or expected)
  - a. Be sure to include all preferred vendor information to ensure we have appropriate contact for credit application and payment processing. Submit it to [accounting@thepass.co](mailto:accounting@thepass.co) for authorization and processing.
4. **PO Processing** – Before the order is placed, the purchase order is reviewed by the accounting department to verify budget and/or appropriate approval levels as listed below. This will expedite the payment process to avoid any vendor delays.
  - a. Designated approvals are as follows:
    - i. Bookkeeper up to \$10K
    - ii. VP of Finance up to \$100K
    - iii. CEO and/or President must approve anything over \$100K
  - b. Rejected requests are sent back with a reason for rejection.
5. **Submission of Purchase Order** – The order will be sent to the vendor via email or vendor preferred method. The purchase order will identify the items be procured, the quantity required, the cost and payment terms. It will also identify the delivery address and any additional terms and conditions that relate to the order.



- a. If payment is due at or before the time of order accounting will reach out to the vendor directly to make payment arrangements.
6. **Fulfillment** – The products or services will be delivered within the timeline. After receiving the order, the items are examined and the vendor is notified if there are any issues with the order received (shortages, breakages).
  - a. If there are discrepancies notify accounting immediately with the details of the discrepancy and the next steps i.e. will you be contacting the vendor directly or will accounting reach out.
    - i. Major discrepancies in product inventory will not be accepted in accordance with CCC regulations.
  - b. If the order is complete please send the packing slip or copies of the manifest to [accounting@thepass.co](mailto:accounting@thepass.co) for payment processing if applicable.
7. **Document Reconciliation** – The purchase order, packaging slip (manifest), and vendor invoice if available are to be reviewed and reconciled by the receiving department to ensure accuracy. At request Accounting will address the vendor if there are any discrepancies discovered. Once reconciled all documents will be submitted to the accounting department ([accounting@thepass.co](mailto:accounting@thepass.co)) for payment and/or filing.
8. **Invoice Approval Payment** – The invoices are received at the accounting department and paid, usually within 10 days or according to the terms on the invoice.
9. **Record keeping** – Once payment is issued, the paperwork will be filed in the vendor file located at the administrative office.

\*MBE – Minority Owned Business Entities, DBE - Disadvantaged Business Entities,  
WBE – Women Owned Business Entities

#### **Schedule C**

#### **4.2 Business Expenses Policy**

The purpose of this policy is to define approved nontravel business expenses and the authority for incurring and approving such expenses at the Company.

Approved business expenses are the reasonable and necessary expenses incurred by employees to achieve legitimate business purposes that are not covered by normal Company procurement processes.

##### *Business Meetings (Employer-Sponsored Events and Meetings)*

The Company pays for expenses necessary to achieve a valid business purpose when meetings are held with customers, vendors, or other Company employees. The most senior Company individual present is to pay for and report all expenses.

The Company will make every effort to have a master account set up for Company-wide and large group events. However, if you are at a small meeting or staying by yourself at a hotel, pay individually and submit original receipts for reimbursement accordingly.



### *Entertainment*

The Company pays for entertainment expenses only when they clearly benefit the Company and include customers and are promotional in nature. The most senior individual present is to pay for and report all expenses.

### *Technical and Training Seminars*

The Company pays for expenses associated with attendance at classes and seminars that enhance job-related skills. Prior approval must be obtained by your manager/supervisor.

### *Gifts*

You may present gifts only under exceptional circumstances and with prior approval of the appropriate Company officer. The Company does not reimburse cost over \$25 for business gifts.

### *Other Expenses*

The Company will pay for postage and telephone expenses that are for business purposes.

### *Reimbursements*

Requests for reimbursement must be approved by management and submitted with original receipts accompanied by the company approved reimbursement form. All reimbursements must have a clear business purpose and include a description of the expense, date, place.

### *Reporting*

Report approved expenses on the standard expense report form and include a description of the expense, its business purpose, date, place, and the participants.

## **4.8 Travel Expenses**

The purpose of this policy is to define approved business travel expenses and the authority for incurring and approving such expenses at the Company.

Travel expenses are the reasonable and necessary expenses incurred by employees when traveling on approved Company business trips. Travel is limited to business activities for which other means of communication is inadequate and for which prior approval from your manager/supervisor has been received.

### *Advances*

The Company does not generally provide cash travel advances. Normally, you will be expected to use personal credit cards and/or your own cash and submit approved expenses on the standard Expense Report Form.

### *Travel Expenses*



The Company pays the actual amounts incurred for appropriate expenses when you are on travel assignments. Examples of typical expenses include the following:

- Airline tickets.
- Meals and lodging.
- Car rental, bus, taxi, parking.
- Telephone and fax.
- Laundry and dry cleaning (trips exceeding one week only, unless emergency).
- Business supplies and services.
- Associated gratuities.
- Other expenses necessary to achieve the business purposes.

#### Family Members

The Company will pay the travel expenses of spouses or other family members only when their presence is necessary to the business purpose of the trip and when approved in advance in writing by the Chief Executive Officer.

#### Air Travel

Use economy or tourist class fares when traveling on Company business. In addition, private, noncommercial aircraft or chartered aircraft is not to be used, and no more than two Company officers should travel together on the same flight.

Airfares are to be charged to personal credit cards and subsequently submitted for reimbursement on a monthly expense report.

#### Hotels

Neither in-room movies nor refreshment bars are approved Company expenses.

#### Insurance

The Company does not pay for personal travel insurance for employees.

#### Rental Cars

You are to use rental firms having existing relationships with the Company and, where feasible, have negotiated discount rates. Available reasonable transportation is to be used.

#### Personal Vehicles

When using your own vehicle for business purposes, you must maintain a valid driver's license, acceptable driving record, and insurance coverage as required by law. An applicant or employee will be considered to have an unsatisfactory driving record if the driving record indicates one (1) or more moving violations. An applicant or employee will be considered to have an unsatisfactory driving record if the Company's and/or the applicant's or employee's insurance carrier(s) refuses to continue to insure the applicant or employee or agrees to continue to insure the applicant or employees only for an increased premium.

Travel between your home and primary office is not considered to be business travel. You may not use your personal vehicle for business travel without authorization. Every attempt should be made to utilize the use of courier and delivery services in order to avoid hazard of liability and the time away from work. You will be reimbursed for vehicle use at the standard IRS mileage rate. The Chief Executive Officer must authorize any deviation from this policy. Reporting

Report approved expenses and include a description of the expense, its business purpose, date, place, and the participants.

#### Travel Reservations



Airline travel, rental cars, and hotels must be booked through the corporate designated travel agency in order to be reimbursed.

#### **4.9 Use of Employer Credit Cards**

All employees in the possession of a credit card issued by Company will adhere to the strictest guidelines of responsibility for the protection and proper use of that card. Credit card purchases related to the Company vehicle use (gas, oil, etc.) under \$100 do not require prior approval. Credit card purchases for vehicle use over \$100 and any other business purchases over \$25 must receive prior approval from your manager/supervisor.

Submit all sales receipts generated by use of the Company credit card to your manager/supervisor. Your Company credit card may not be used for personal reasons. Use of the Company credit card is restricted to approved business-related expenses.

Any unauthorized purchases made with a credit card issued by the Company will be the cardholder's responsibility. You must reimburse any such purchase to the Company within 15 days.

Immediately report lost or stolen Company cards to your manager/supervisor. Failure to follow this policy may result in disciplinary action up to and including discharge.



**THE PASS**  
BERKSHIRES

## Incident Report

REPORTED BY: \_\_\_\_\_

DATE OF REPORT: \_\_\_\_\_

TITLE / ROLE: \_\_\_\_\_

TIME OF REPORT : \_\_\_\_\_

### WORKPLACE INCIDENT INFORMATION

DATE OF INCIDENT: \_\_\_\_\_

TIME OF INCIDENT: \_\_\_\_\_

NAME OF PERSON INVOLVED: \_\_\_\_\_

NAME OF THOSE AFFECTED: \_\_\_\_\_

LOCATION: \_\_\_\_\_

SPECIFIC AREA OF LOCATION: \_\_\_\_\_

ADDITIONAL  
PERSON(S) INVOLVED: \_\_\_\_\_

WITNESSES: \_\_\_\_\_

INCIDENT DESCRIPTION INCLUDING ANY EVENTS LEADING TO OR IMMEDIATELY FOLLOWING THE INCIDENT:

NAMES OF SUPERVISORY STAFF INVOLVED ALONG WITH THEIR RESPONSE TO THE INCIDENT:

RESULTING ACTION EXECUTED, PLANNED, OR RECOMMENDED:

POLICE REPORT FILED? \_\_\_\_\_

PRECINCT: \_\_\_\_\_

REPORTING OFFICER: \_\_\_\_\_

PHONE: \_\_\_\_\_

POLICE ACTION TAKEN: \_\_\_\_\_



**THE PASS**  
BERKSHIRES

**REPORTING  
STAFF NAME:** \_\_\_\_\_

**REPORTING STAFF  
SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**SUPERVISOR  
NAME:** \_\_\_\_\_

**SUPERVISOR  
SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_



14. **Environmental and Energy Consumption Impact - 935 CRM 500.101(1)**
- a. Berkshire Welco, LLC will ensure that the environmental impact of cannabis cultivation is minimized through the implementation of precision agriculture techniques and structures.
    - i. The site will be used for outdoor cultivation. This will drastically reduce the electrical load required to cultivate high-quality cannabis.
      - 1. 30,000 ft<sup>2</sup> site will be used solely for outdoor cultivation.
      - 2. Outdoor cultivation will require a few pumps and security panels but other than that, most energy consumed will be provided by the natural growing environment.
    - ii. Plants will be grown in pots to avoid the need to till and plow the site annually.
      - 1. This will help to reduce compaction and improve soil tilth over time.
      - 2. Growing in pots also ensures complete control over the quality of the growing media being used.
    - iii. Water usage will be carefully monitored and adjusted to avoid excess runoff.
      - 1. Source water is provided through an on-site well and a flow meter will be used to track annual usage.
    - iv. Plants in pots will be equipped with drip irrigation emitters for precision irrigation techniques.
      - 1. Pots that are planted will each be given several drip emitters and monitored daily.
      - 2. Duration and frequency of irrigation events will be checked and adjusted daily to ensure the ideal amount of water is being used.
    - v. All nutrients used have been evaluated and proven to be ideal for plant growth. Salt based nutrients are used for ease of mixing and to reduce the chance of spilling a liquid based nutrient line.
      - 1. When excessive amounts of a nutrient solution are applied to a soil, the fertilizer can leach into the soil and groundwater polluting the system. Berkshire Welco, LLC puts a strong emphasis on our environmental footprint and will always practice techniques that will not add to this ever-growing issue with the cultivation of all crops, not just cannabis.
    - vi. Berkshire Welco, LLC will continually monitor and adjust our growing techniques to ensure minimal inputs are used while maintaining a high level of quality of products produced.
  - b. Path Forward on Energy Reduction – 935 CMR 500.105 (15)

- i. Berkshire Welco, LLC will be carefully monitoring the energy consumption of this site.
  - ii. The outdoor cultivation will be using natural lighting only. With no supplemental lighting used for outdoor cultivation, the Light Power Density requirement is not applicable.
  - iii. We will be collecting data to analyze consumption and establish a baseline for any additional equipment needs.
  - iv. Berkshire Welco will consult with the electric company periodically to determine best practice for ongoing energy efficiency programs.
  - v. Plants that are grown in pots as opposed to beds will initially use drip irrigation for watering events. These will be upgraded over time to Blu-Mat sprinkler hoses that will apply the same principles used in raised beds to containers. Tensiometers will be used to monitor and irrigate with maximum efficiency and reduce even further the amount of water being consumed at this facility.
    - 1. The tensiometers will sense the moisture level in the soil and only irrigate when the moisture level drops below the set threshold.
    - 2. This type of irrigation will ensure runoff is minimal, if any, and overapplication of nutrients to the land is never an issue.
- c. Renewable Energy – 935 CMR 500.105 (15)
- i. Berkshire Welco, LLC fully acknowledges the benefit of renewable energy sources. Solar options were considered but the space required for such a system was far beyond what is available at Berkshire Welco, LLC. We have a site that allows us to maintain our requested canopy tier but no extra land to be able to install enough panels to help reduce our energy burden.
  - ii. Additionally, Berkshire Welco, LLC is renting the land used for this facility and is restricted to what the land can be used for and how much of the land is available for building on.
    - 1. Adding to this, Berkshire Welco, LLC is in an area where the grading is essential for proper rainwater runoff from the site. Therefore, the outdoor growing area would not be a suitable location for the installation of renewable energy sources.
  - iii. As technology advances and the footprint required for such a system is minimized, Berkshire Welco, LLC will absolutely revisit the options and potential of implementing renewable energy sources.
  - iv. No energy efficiency programs were pursued by Berkshire Welco, LLC during the build out of this facility. These options and programs in the Commonwealth will be revisited as the site comes online and begins cultivating. Berkshire Welco, LLC recognizes what heavy energy load the

cannabis industry has and will do everything to monitor and continue to develop practices to reduce our footprint. Moving forward, Berkshire Welco, LLC will pursue energy rebate programs in the Commonwealth when applicable to the cultivation style being used.

## 1. Quality Control & Testing Procedures

### Handling of Marijuana

- a. Berkshire Welco shall process marijuana in a safe and sanitary manner as specified in 935 CMR 500.105(3).
  - i. Only the leaves and flowers of the female marijuana plant shall be processed.
  - ii. The leaves and flowers of the female marijuana plant being processed shall meet all of the following requirements:
    1. Well cured and generally free of seeds and stems;
    2. Free of dirt, sand, debris, and other foreign matter;
    3. Free of contamination by mold, rot, other fungus, and bacterial diseases;
    4. Prepared and handled on food-grade stainless steel tables;
    5. Packaged in a secure area.
- b. Berkshire Welco shall comply with the following sanitary requirements:
  - i. Any Berkshire Welco agent whose job includes contact with marijuana or non-edible marijuana products, including cultivation, production, or packaging, is subject to the requirements for food handlers specified in 105 CMR 300.000: Reportable Diseases, Surveillance, and Isolation and Quarantine Requirements.
  - ii. Any Berkshire Welco agent working in direct contact with preparation of marijuana or non-edible marijuana products shall conform to sanitary practices while on duty, including:
    1. Maintaining adequate personal cleanliness; and
    2. Washing hands thoroughly in an adequate hand-washing area before starting work, and at any other time when hands may have become soiled or contaminated.
  - iii. Hand-washing facilities shall be adequate and convenient and shall be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in Berkshire Welco production areas and where good sanitary practices require employees to wash and sanitize their hands and shall provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices.
  - iv. There shall be sufficient space for placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations.
  - v. Litter and waste shall be properly removed, disposed of so as to minimize the development of odor and minimize the potential for the waste attracting and harboring pests. The operating systems for

waste disposal shall be maintained in an adequate manner pursuant to 935 CMR 500.105(12).

- vi. Floors, walls, and ceilings shall be constructed in such a manner that they may be adequately kept clean and in good repair.
- vii. There shall be adequate safety lighting in all processing and storage areas, as well as areas where equipment or utensils are cleaned.
- viii. Buildings, fixtures, and other physical facilities shall be maintained in a sanitary condition.
- ix. All contact surfaces, including utensils and equipment, shall be maintained in a clean and sanitary condition. Such surfaces shall be cleaned and sanitized as frequently as necessary to protect against contamination, using a sanitizing agent registered by the US Environmental Protection Agency (EPA), in accordance with labeled instructions. Equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable.
- x. All toxic items shall be identified, held, and stored in a manner that protects against contamination of marijuana products.
- xi. Berkshire Welco's water supply shall be sufficient for necessary operations. Any private water source shall be capable of providing a safe, potable, and adequate supply of water to meet Berkshire Welco's needs.
- xii. Plumbing shall be of adequate size and design, and adequately installed and maintained to carry sufficient quantities of water to required locations throughout Berkshire Welco. Plumbing shall properly convey sewage and liquid disposable waste from Berkshire Welco. There shall be no cross-connections between the potable and wastewater lines.
- xiii. Berkshire Welco shall provide its employees with adequate, readily accessible toilet facilities that are maintained in a sanitary condition and in good repair.
- xiv. Products that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.
- xv. Storage and transportation of finished products shall be under conditions that will protect them against physical, chemical, and microbial contamination as well as against deterioration of finished products or their containers.

- xvi. All vehicles and transportation equipment used in the transportation of marijuana products or edibles requiring temperature control for safety must be designed, maintained, and equipped as necessary to provide adequate temperature control to prevent the marijuana products or edibles from becoming unsafe during transportation, consistent with applicable requirements pursuant to 21 CFR 1.908(c).
- c. Berkshire Welco shall comply with sanitary requirements. All edible products shall be prepared, handled, and stored in compliance with the sanitation requirements in 105 CMR 590.000: Minimum Sanitation Standards for Food Establishments.

## 2. Storage of Cannabis

- i. Berkshire Welco shall provide adequate lighting, ventilation, temperature, humidity, space, and equipment, in accordance with applicable provisions of 935 CMR 500.105 and 500.110.
- ii. All storage areas with cannabis shall be clear, orderly, and free from infestation by insects, rodents, birds, and other pests
- iii. Berkshire Welco storage areas shall be maintained in accordance with the security requirements of 935 CMR 500.110.
- iv. Berkshire Welco shall have separate areas for storage of marijuana that is curing, being held prior to trimming, being trimmed or packaged, or stored after packaging. Plants undergoing batch processing must be labeled and inventoried in the ETS in real-time. The following workflow will be followed to complete one cultivation cycle:
  - 1. Plants are harvested and hung to dry in a climate controlled shipping container within the cultivation area which is only accessible by Cultivation or Retail management, Cultivation Technicians, and the Security Director.
    - a. Plant material will be weighed upon harvest (wet weight) and prior to being put in totes for the creation of METRC packages (dry weight);
    - b. Once drying plants reached the optimal moisture level, they will be broken down and flower will be placed in plastic, food-grade bins for curing until the batch is transferred.
  - 2. The climate controlled shipping container will serve as an area to store dried cannabis flower, broken down in food grade plastic bins, until ready to be moved to the Trimming Area for processing. This will be within the cultivation

building which is only accessible by Cultivation or Retail management, Cultivation Technicians, and the Security Director.

3. When new material is needed for processing, a member of the cultivation team or Berkshire Welco management will move selected bins with broken down flower from the shipping container to the Trimming Area.
  - a. Material will be kept only in the Trimming Area immediately prior to or while undergoing the trimming process; This area is contained on the Berkshire Welco Manufacturing license and batches are transferred prior to processing.
  - b. This area will be limited to access by trimming employees, management, and the Security Director;
  - c. Material will be trimmed to the established standard, weighed and packaged to ensure reproducible products and sizes, and then placed in a sealed, air-tight food-grade plastic container to be immediately transferred to the Retail Manager for final product processing (labels, stickers, etc.);
  - d. All containers will be logged into the ETS, stored, and locked up in a LAA vault.
- v. Berkshire Welco will shall store all cannabis in a safe and sanitary manner as specified in 935 CMR 500.105(3). See above section, Handling of Marijuana, for all practices.
- vi. In accordance with 935 CMR 500.160 (2) Berkshire Welco shall notify the Commission within 72 hours of any laboratory testing results indicating contamination if contamination cannot be remediated and disposal of the production batch is necessary.

## **Berkshire Welco Cultivation LLC Diversity Plan**

The Plan below will apply to Berkshire Welco Cultivation LLC located at 1375 N. Main St. in Sheffield.

### ***Introduction***

Berkshire Welco Cultivation LLC (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+ individuals in operations of our business. Berkshire Welco Cultivation LLC 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, Berkshire Welco Cultivation LLC may have some challenges to achieving workplace diversity, but the Company is nonetheless committed to diversity in all elements of its operations.

### ***Diversity Goals***

Berkshire Welco Cultivation LLC is committed to building a diverse organization that fosters inclusivity and provides equal opportunity for all of its employees to advance and improve their careers within the Company. Berkshire Welco Cultivation LLC will develop and maintain a diverse, aware and inclusive working environment through its: 1) targeted recruitment efforts; 2) employee training and development program; 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.

Berkshire Welco Cultivation LLC shall hire the following:

- 50% Women;
- 35% Minorities;
- 5% LGBTQ+;
- 5% Veterans; and
- 5% persons with disabilities

Additionally, Berkshire Welco Cultivation LLC will utilize local, minority-owned businesses for various supplies and services, such as G.A. Blanco and Sons, Inc. which will provide COVID-19 sanitation and safety supplies. See attached letter from G.A. Blanco and Sons, Inc.

### ***Diversity Programs***

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



Berkshire Welco Cultivation LLC is dedicated to creating a diverse culture with a commitment to equitable employment for all individuals. Berkshire Welco Cultivation LLC's 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, LGBTQ+ individuals, 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. The Company's initial community partners are identified below;
- Providing 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 at least twice per year in each municipality and encouraging Berkshire Welco Cultivation LLC's diverse employees to participate whenever possible;
- Establishing recruitment efforts, such as participation in job fairs, at higher learning institutions including Berkshire Community College, acknowledging that only individuals 21 years of age or older will be considered for recruitment; and
- Ensuring that job openings are sent to community partners quarterly.

With respect to community partners, Berkshire Welco Cultivation LLC 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:

- 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.
- MA LGBT Chamber of Commerce  
– The Massachusetts LGBT Chamber of Commerce is a small, lean non-profit powered by hundreds of brilliant LGBT-owned businesses and the Commonwealth's largest, most innovative, and profitable corporations. We have one goal: cultivate inclusive relationships to drive economic impact.

Berkshire Welco Cultivation LLC 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.

Berkshire Welco Cultivation LLC 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
- Anti-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

Berkshire Welco Cultivation LLC will offer promotions, career counseling, and training to provide all employees with opportunities for growth and to decrease turnover. Berkshire Welco Cultivation LLC will ensure that all employees are given equitable opportunities for promotion by communicating opportunities, training programs, and clearly defined job descriptions. Berkshire Welco Cultivation LLC will instruct managers and supervisors to refer employees seeking career counseling to the Human Resources Manager.

Berkshire Welco Cultivation LLC's 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

Berkshire Welco Cultivation LLC 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 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 equal opportunity 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 25% 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 10% diverse individual employment.

**End of Year 1:** minimum 15% diverse individual employment.

**End of Year 2:** minimum 20% diverse individual employment.

**End of Year 3:** minimum 25% diverse individual employment.

**End of Year 4:** minimum 25% diverse individual employment.

These short-term metrics and oversight by the Human Resources Manager will ensure that Berkshire Welco Cultivation LLC 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. Berkshire Welco Cultivation LLC acknowledges that the progress or success of The Plan must be documented upon license renewal.

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

Berkshire Welco Cultivation LLC 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. Berkshire Welco Cultivation LLC 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 Berkshire Welco Cultivation LLC will violate the Commission's regulations with respect to limitations on ownership or control or any other applicable state laws.



October 14, 2020

Carolann Strickling  
Vice President, Accounting and Finance  
The Pass  
490 Main Street, Suite 1  
Great Barrington, MA 01230

To whom it may concern,

I am writing this letter on behalf of Berkshire Welco, LLC dba The Pass. G. A. Blanco and Sons, Inc. is a Commonwealth of Massachusetts SDO Certified MBE office supplies business serving the greater New England region as well as the Delaware Valley region. We are currently engaged in selling office supplies, office furnishings, as well as PPE supplies to The Pass located in Great Barrington and Sheffield, Massachusetts. To date we have in place blanket orders that have us procuring PPE supplies such as nitrile gloves, disinfectant wipes and disinfectant spray and delivering them to their plant in Sheffield on a weekly and monthly basis. They are also purchasing miscellaneous office supplies and equipment. For the calendar year 2020 to date, they have purchased over \$13,000.00 from G. A. Blanco and Sons, Inc. They are a great customer in good standing, very professional to work with, and we are looking forward to continuing our mutually beneficial business relationship.

Please feel free to contact me at any time if you should need any further information regarding G. A. Blanco and Sons, Inc. or The Pass.

Sincerely,

A handwritten signature in blue ink that reads "Edward L. Blanco".

Edward L. Blanco, President  
G. A. Blanco and Sons, Inc.  
1-800-628-5086 x111  
[eblanco@gablanco.com](mailto:eblanco@gablanco.com)