Executive Summary

The New York Office of Cannabis Management ("OCM") has announced that it will initially issue up to 40 total cultivation licenses limited to only Tiers 1 and 2—the license classes with the smallest permitted cultivation area. This will be inadequate to serve over 90% of demand, which will hurt retail stores and lead to predictable negative economic and public health consequences. It will also throttle back tax revenue to the $90 million per year range—falling far short of the market's potential to generate tax revenue for New York state if OCM would simply allow cultivators and processors to supply sufficient product to meet demand. In fact, we estimate that 40 Tier 1 and Tier 2 licenses will support about $90.3M in annual tax revenue, <u>foregoing over 92% of potential New York tax revenue and foregoing over a billion dollars of potential tax revenue</u>.[1]

The regulatory uncertainty that OCM has created also prevents groups like ours from deploying capital and creating high-paying jobs.

Background and Contemplated Investment in Duchess County

Our leadership team includes three professional engineers, two attorneys, and a developer with decades of experience developing and managing commercial real estate projects. Many members of our leadership team have been working in the legal cannabis industry ever since Colorado began licensing cannabis businesses in 2010.

We currently operate eleven medical and retail cannabis stores in Colorado and Oregon. We also operate manufacturing facilities in seven states. In short, we have a proven track record of success, job creation and legal compliance, and we intend to operate an exemplary, state of the-art facility in New York.

In terms of our planned New York operations, we have secured an option to purchase a 290,000 sq ft high tech facility in East Fishkill. It will require extensive build out using well-paid union labor. Once the facility is complete and operating at capacity, our fully-integrated cultivation, manufacturing and distribution operations will pay competitive wages to approximately 500 employees.

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[1] *See* detailed calculations set forth at **Appendix A.**

Unfortunately, we do not currently have sufficient regulatory certainty to deploy the amount of capital required to begin executing our business plan in New York because the OCM has announced that it initially plans on only licensing forty total Tier 1 and Tier 2 cultivation operations. Tier 1 and Tier 2 are the smallest classes of operations, and OCM has not announced when, if ever, it plans on opening licensing for higher tiers.

OCM's current position also ensures that New York-licensed cultivators will not be able to satisfy the demand for retail cannabis, forcing New York consumers to look to other states or the illicit market.

40 Tier 1 and Tier 2 Cultivation Licenses Will Only Satisfy About 3% of Demand

New York has a cannabis problem. Specifically, there is not enough legal cannabis being produced to compete with neighboring states, let alone the illicit market within New York State. Ensuring a consistent supply of high quality, competitively priced cannabis products encompassing a wide variety of products and price points is the solution. This will allow New York to capture tax revenue that is currently being lost to neighboring states and the illicit market, and benefit consumers both by saving them money and incentivizing them to purchase licensed products that are tested for safety and correctly labeled. It will also enhance public safety by cutting off cash flow to the illicit market.

Unfortunately, there is no way that forty Tier 1 and Tier 2 cultivation license holders will even come close to satisfying demand. As explained in **Appendix A**, if consumer demand for retail cannabis in New York ends up being similar to Colorado on a proportional basis, then the maximum 350,000 square feet of canopy space available to initial Tier 1 and Tier 2 cultivation licensees will only be adequate to satisfy <u>about 2.5% of total anticipated demand for retail cannabis</u>. To provide another example, the state of Mississippi has a population of approximately three million people, and over two million square feet of licensed canopy space <u>to supply a medical-only program</u>.

In terms of tax revenue, we estimate that the OCM's current policy will allow New York state to generate about $90 million of tax revenue per year. By way of comparison, Colorado generated $423 million in 2021 and $325 million in 2022.[2] About 5.8 million people live in Colorado, versus about 19.8 million people in New York state. Washington State, home to 7.7 million people, generated more than a half billion dollars in tax revenue in fiscal year 2022. The OCM's current policy will forego over a billion dollars in potential annual tax revenue—or, more accurately, cede that potential revenue to the illicit market and neighboring states.[3]

The best solution in terms of ensuring that the supply of legal retail cannabis is sufficient to meet demand would be to process applications for all tiers at the same time and award cultivation licenses to all qualified applicants. Other viable solutions would be to: i) Issue a statement clarifying that OCM will begin accepting and processing applications for higher tiers no later than January 2, 2024; and/or ii) Allow applicants of all sizes to apply for Tier 1 and Tier 2 licenses and then provide a quick and easy way for Tier 1 and 2 license holders to convert to higher tiers if they have the capacity to do so.

Conclusion

The New York market is big enough to support many cultivation facilities at various tiers, which will provide a wide range of product and pricing options to meet the needs of a diverse consumer base. Additionally, ensuring that cannabis cultivation workers are employed at licensed facilities ensures that they will be paid fair wages in compliance with the law. There are also obvious public safety benefits to making sure that New Yorkers are consuming regulated, tested products. Lastly, licensed cannabis businesses can go to court to resolve their disputes, unlike underground operators, which further promotes public safety and decreases crime. The benefits of issuing enough cultivation licenses at high enough tiers to guarantee an adequate supply of licensed cannabis are overwhelming.

The OCM has stated that it expects to eventually license approximately 1,500 retail stores throughout New York state. The currently announced limited Tier 1 and Tier cultivation license rollout will not even come close to meeting demand and will put significant economic strain on already-struggling licensed retail store operators. Throttling

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[2] *Available at*: https://cdor.colorado.gov/data-and-reports/marijuana-data/marijuana-tax-reports (accessed October 21, 2023)

[3] *See* detailed calculations set out in the attached **Appendix A**

production to artificially low levels will perpetuate other predictable negative consequences—insufficient legal supply to meet demand, high prices that hurt consumers, loss of tax revenue to other states, inability to provide a viable legal alternative to the illicit market, and thus, the ultimate inability to address the public health and public safety concerns caused by New York's currently thriving illicit market. For these reasons, we respectfully contend that the OCM should rapidly license cultivation facilities at higher tiers of production.

APPENDIX A—CALCULATIONS AND DATA

OCM Will Forego Hundreds of Millions in Potential Annual Tax Revenue

In order to average outdoor production with one harvest cycle per year, versus multiple harvest cycles for indoor production, we assume that producers will, on average achieve three harvests per year and produce 50 grams of cannabis per square foot per harvest. We also assume 100% utilization of all 350,000 authorized square feet of canopy space—which will not be the case in practice. We assume that each pound will generate $6,000.00 in retail sales of finished products. In aggregate, we believe that these assumptions paint a "middle-of-the-road" estimate for potential tax revenue that is neither overly optimistic nor pessimistic. The arithmetic is as follows:

50 grams/sq ft canopy x 3 harvests/year x 350,000 sq ft authorized canopy = 52,500,000 g / 453.15 g/lb = 115,856 lbs

At $6,000 lb = $695,136,000.00 total gross sales x 13% tax rate =
<u>$90,368,000.00 projected annual NY tax revenue</u>

Comparison with WA and CO Tax Revenue

Washington state generated approximately $500M in 2022 cannabis tax revenue. With population of approximately 7.7M, this equates to $65M in cannabis tax revenue per million residents.

Colorado generated about $325M in 2022 cannabis tax revenue. With a population of 5.8M, this equates to about $56M in tax revenue per million residents.

Even using the lower Colorado numbers, it is clear that New York's cannabis program will fall woefully short of its tax-generating potential. Using Colorado's 2022 tax take of $56M tax revenue per million residents, New York, with a population of approximately 19.8M, should be generating **$1.168 Billion per year in annual tax revenue**. In comparison, we estimate that 40 Tier 1 and Tier 2 licenses will support about $90.3M in annual tax revenue, **foregoing over 92% of potential New York tax revenue and leaving over a billion dollars of potential tax revenue on the table**. The comparison is even less favorable if one uses Washington state's numbers.[4]

Our estimate that New York will reach about 7-8% of potential tax revenue under 40 Tier 1 and Tier 2 licenses is more optimistic that our calculation below that 40 Tier 1 and 2 New York cultivation licenses will only supply about 3% of total consumer demand. Constrained supply will keep prices much higher than Colorado or Washington, which will result in higher tax revenue per pound of cannabis sold to retail customers in New York versus Colorado or Washington. But this is a double-edged sword, high prices also hurt consumers and drive them to purchase lower-proved unregulated cannabis on the illicit market.

By way of additional comparison, total 2023 year-to-date sales of licensed retail cannabis in New York were about $66M. In Montana, a state with about 1.1M residents, sales were $170M. And in Alaska, a state with just under 750,000 residents, sales were $219M.[5] These other states have clearly done a much better job of permitting the legal market to step up and satisfy consumer demand.

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[4] $65M tax revenue/million WA residents x 19.8M NY population = $1.287 Billion - $90.3M estimated NY tax revenue = $1.2 Billion in foregone tax revenue. $90.3M / $1.287 Billion = 7% of potential NY cannabis tax revenue realized under announced OCM licenses.

[5] Samantha Christmann, "How do New York's Legal Cannabis Numbers Stack Up? Not Well." The Buffalo News (Oct. 21, 2023) available at: https://buffalonews.com/news/local/business/how-do-new-yorks-legal-cannabis-market-numbers-stack-up-not-well/article_58b18576-683d-11ee-98dd-7f879c774b92.html (accessed October 24, 2023).

40 Tier 1 and Tier 2 Licenses Will Satisfy Less Than 3% of Demand

Analyzing data from states with mature retail markets provides useful context for examining the New York market. For instance, as of December 2020, Colorado had 700 licensed retail cultivation facilities.[6] They collectively produced 1,833,143 pounds of retail cannabis from 3,677,105 million individual cannabis plants in calendar year 2020.[7]

About 5.8 million people live in Colorado, versus about 19.8 million people who live in New York state. If the demand for legal cannabis in New York ends up being comparable to the demand in Colorado, this would imply that New York will require about **6,120,000 pounds** of legally-produced cannabis harvested from about **12,580,000 individual cannabis plants** to supply the retail market in New York state (1,800,000 lbs x 3.4; 3,700,000 plants x 3.4).

OCM has estimated that it will initially issue 20 Tier 1 licenses and 20 Tier 2 licenses. It has not published a specific schedule for accepting higher-tier license applications. Tier 1 producers may use up to 5,000 square feet of canopy space, and Tier 2 producers up to 12,500 square feet. Thus, if every one of these initial licensees were to use their maximum allowed canopy space (they won't)—the *absolute maximum* initial licensed canopy space would be 350,000 square feet, which will not even come close to meeting demand.

The size of mature cannabis plants depends greatly on strain selection and cultivation techniques, but an average mature cannabis plant grown indoors will require between three to six square feet of canopy space. The average life cycle for an indoor cannabis plant in Colorado is 126 days.[8] Outdoor plants typically are bigger and take longer to harvest but yield more—requiring approximately six to ten square feet of space per plant.

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[6] Colorado Marijuana Enforcement Division 2020 Annual Report at page 3.
Available at: https://sbg.colorado.gov/med/updates (accessed October 3, 2023).
Note that these figures do not include medical licenses and that 2020 is the most current complete annual report posted on the Colorado MED's web page.

[7] *Id.* at pp. 8-9. Of this total production, 816,596 pounds was bud/flower, with the remaining amounts being shake/trim and wet whole plant cannabis.

[8] *Id.* at page 5.

As noted above, approximately 12,580,000 cannabis plants will likely be required to supply New York's retail market, and Colorado producers typically achieve about three to four indoor cultivation cycles per year. This implies that between 12,580,000 square feet (at 3 ft sq/plant) and 25,160,000 (at 6 ft sq/plant) square feet of total indoor canopy space will be required to supply New York's retail market. The actual number is likely to be much closer to the high end of this estimate because in practice it is impossible to utilize 100% of authorized cannabis space (workers need room to move plants around and care for them, no business is 100% efficient) and outdoor plants take up much more space and can typically only be harvested once a year.

Assuming three grow cycles per year, 350,000 square feet of indoor canopy space would be sufficient to support cultivation of between 175,000 (at 6 ft sq/plant) to 350,000 (at 3 ft sq/plant) mature cannabis plants per year, or roughly **1.3%-2.8% of the anticipated total demand**.

The most recent quarterly data from Colorado, covering Q2 2023,[9] provides a useful cross-check for these calculations. That data set breaks out the number of plants under cultivation by month, and shows that in June 2023 there were 956,724 plants in production in Colorado, of which 767,127 were produced for the retail market. If one starts with 800,000 retail plants multiplied by 3.4 (the ratio of NY to CO population), multiplied by 4.5 ft sq/plant (middle of the 3-6 sq ft range for indoor plants) this demonstrates that, at any given time, **New York will need about 15 million square feet of canopy space in production**. 350,000 ft sq would supply about 2.3% of the total required, which is consistent with the calculations set out above based on data from Colorado. Note that this assumes that every one of the Tier 1 and 2 licensees max out their canopy space in any given month, which will not happen in practice.

[9] Available at: https://public.tableau.com/app/profile/cu.business.research.division/viz/ColoradoMEDDashboard/Overview (accessed October 4, 2023).