



State of Rhode Island and Providence Plantations

Department of State - Business Services Division

Application for Articles of Merger

DOMESTIC or FOREIGN Business Corporation, Limited Partnership,
Limited Liability Company or Non-Profit Corporation

- Business Corporation Filing Fee: \$100.00
- Limited Liability Company Fee: \$100.00
- Limited Partnership Fee: \$50.00
- Non-Profit Corporation Fee: \$25.00

RECEIVED
R.I. DEPT. OF STATE
BUS. SVCS. DIV.
2020 MAY 22 AM 11:57

Pursuant to the provisions of RIGL 7, the undersigned entities submit the following Articles of
Merger ☒ or Consolidation ☐ for the purpose of merging or consolidating them into one entity:

SECTION I: TO BE COMPLETED BY ALL MERGING OR CONSOLIDATING ENTITIES

a. The name and type (for example, business corporation, non-profit corporation, limited liability company, limited partnership, etc.) of each of the merging or consolidating entities and the state under which each is organized are:

ENTITY ID	NAME OF ENTITY	TYPE OF ENTITY	STATE under which entity is organized
	PCO Buffalo III, L.L.C.	Limited Liability Company	New York
001707337	McKessen RI, LLC	Limited Liability Company	Rhode Island

b. The laws of the state under which each entity is organized permit such merger or consolidation.

c. The full name of the surviving entity is:

McKessen RI, LLC

which is to be governed by the laws of the state of:

Rhode Island

d. The attached Plan of Merger or Consolidation was duly authorized, approved, and executed by each entity in the manner prescribed by the laws of the state under which each entity is organized. A Plan of Merger or Consolidation **MUST** be attached.

e. If the surviving entity's name has been amended via the merger, please state the new name:

f. If the surviving or new entity is to be governed by the laws of a state other than the State of Rhode Island, and such surviving or new entity is not qualified to conduct business in the state of Rhode Island, the entity agrees that it: (i) may be served with process in Rhode Island in any proceeding for the enforcement of any obligation of any domestic entity which is a party to the merger or consolidation; (ii) irrevocably appoints the Secretary of State as its agent to accept service of process in any action, suit, or proceeding; and (iii) the address to which a copy of such process of service shall be mailed to it by the Secretary of State is:

MAIL TO:

Division of Business Services

148 W. River Street, Providence, Rhode Island 02904-2615

Phone: (401) 222-3040

Website: www.sos.ri.gov

FILED

MAY 22 2020

BY JWP GP
A.A. 11:57 A.M.

g. Date when these Articles of Merger or Consolidation will be effective: **CHECK ONE BOX ONLY**

☒ Date received (Upon filing)

☐ Later effective date (see instructions) _____

SECTION II: TO BE COMPLETED ONLY IF ONE OR MORE OF THE MERGING OR CONSOLIDATING ENTITIES IS A BUSINESS CORPORATION PURSUANT TO RIGL 7-1.2.

a. If the surviving or new entity is to be governed by the laws of a state other than the State of Rhode Island, such surviving or new entity hereby agrees that it will promptly pay to the dissenting shareholders of any domestic corporation the amount, if any, to which they shall be entitled under the provisions of RIGL 7-1.2, with respect to dissenting shareholders.

b. Complete the following subparagraphs i and ii only if the merging business corporation is a subsidiary corporation of the surviving corporation.

i) The name of the subsidiary corporation is:

ii) The date a copy of the plan of merger was mailed to shareholders of the subsidiary corporation is (such date shall not be less than 30 days from the date of filing):

c. As required by RIGL 7-1.2-1003, the corporation has paid all fees and taxes.

SECTION III: TO BE COMPLETED ONLY IF ONE OR MORE OF THE MERGING OR CONSOLIDATING ENTITIES IS A NON-PROFIT CORPORATION PURSUANT TO RIGL 7-6.

a. If the members of any merging or consolidating non-profit corporation are entitled to vote thereon, attach a statement for each such non-profit corporation which sets forth the date of the meeting of members at which the Plan of Merger or Consolidation was adopted, that a quorum was present at the meeting, and that the plan received at least a majority of the votes which members present at the meeting or represented by proxy were entitled to cast; OR attach a statement for each such non-profit corporation which states that the plan was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

b. If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such nonprofit corporation attach a statement which states the date of the meeting of the board of directors at which the plan was adopted, and a statement of the fact that the plan received the vote of a majority of the directors in office.

SECTION IV: TO BE COMPLETED ONLY IF ONE OR MORE OF THE MERGING OR CONSOLIDATING ENTITIES IS A LIMITED PARTNERSHIP PURSUANT TO RIGL 7-13.

a. The agreement of merger or consolidation is on file at the place of business of the surviving or resulting domestic limited partnership or other business entity and the address thereof is:

b. A copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited partnership or other business entity, on request and without cost, to any partner of any domestic limited partnership or any person holding an interest in any other business entity which is to merge or consolidate.

SECTION V: TO BE COMPLETED BY ALL MERGING OR CONSOLIDATING ENTITIES

Under penalty of perjury, we declare and affirm that we have examined these Articles of Merger or Consolidation, including any accompanying attachments, and that all statements contained herein are true and correct.

Type or Print Entity Name

PCO Buffalo III, L.L.C.

Type or Print Name of Person Signing

Michael A. Mammolito

Title of Person Signing

Authorized Party

Signature

 SIGN DOCUMENT HERE

Date

5-7-2020

Type or Print Name of Person Signing

Title of Person of Signing

Signature

SIGN DOCUMENT HERE

Date

Type or Print Entity Name

McKessen RI, LLC

Type or Print Name of Person Signing

Michael A. Mammolito

Title of Person Signing

Authorized Party

Signature

 SIGN DOCUMENT HERE

Date

5-7-2020

Type or Print Name of Person Signing

Title of Person Signing

Signature

SIGN DOCUMENT HERE

Date

AGREEMENT AND PLAN OF MERGER

AMONG

PCO BUFFALO III, L.L.C.

AND

MCKESSEN RI, LLC

Dated as of May 1, 2020

TABLE OF CONTENTS

	<u>Page:</u>
1. INCORPORATION OF RECITALS.....	1
2. MERGER.....	1
3. CONVERTING MEMBERSHIP INTERESTS.....	1
4. TERMS AND CONDITIONS.....	1
5. TERMINATION AND AMENDMENT	2

AGREEMENT AND PLAN OF MERGER

This **AGREEMENT AND PLAN OF MERGER** (this “**Agreement**”) is made and entered as of May 1, 2020 by and among PCO Buffalo III, L.L.C., a New York limited liability company, and McKessen RI, LLC, a Rhode Island limited liability company, pursuant to §1001 *et. seq.* of the New York Limited Liability Company Law (the “**New York Law**”) and §7-16-59 *et. seq.* of the Rhode Island Limited Liability Company Act (the “**Rhode Island Law**”).

RECITALS

WHEREAS, PCO Buffalo III, L.L.C. and McKessen RI, LLC are both owned by 2018 Tuozzolo CPT Trust, Robert J. Congel Revocable Trust, Quarry Enterprises, LLC, a New York limited liability company, and Riesling Associates, a New York general partnership (the “**Members**”);

WHEREAS, PCO Buffalo III, L.L.C. and McKessen RI, LLC are both managed by a board of directors consisting of Michael A. Mammolito, Timothy P. Ahern and James A. Tuozzolo (collectively, the “**Board**”);

WHEREAS, the Board desires to merge PCO Buffalo III, L.L.C. (the “**Merged Entity**”) with and into McKessen RI, LLC (the “**Merger**”) pursuant to the terms set forth below;

WHEREAS, §1001 *et. seq.* of the New York Law and §7-16-59 *et. seq. et. seq.* of the Rhode Island Law authorizes the Merger.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and provisions hereinafter and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Board hereby agrees to following:

1. **Incorporation of Recitals.** The above recitals are hereby incorporated into the body of this Agreement as if they were fully set forth herein.
2. **Merger.** The Merged Entity shall merge with and into McKessen RI, LLC (the “**Surviving Entity**”) and the Surviving Entity shall be the surviving entity, upon the filing of the Certificates of Merger (defined below).
3. **Converting Membership Interests.** All of the Members’ respective membership interest in the Merged Entity as of the effective date of the Merger, and all rights in respect thereof, shall forthwith be changed and converted into membership interest in the Surviving Entity so that following the Merger the Members continue to own 100% of the Surviving Entity.
4. **Terms and Conditions.** The terms and conditions of the Merger are as follows:
 - (a) **Surrender of Membership Interest.** Upon the making of the appropriate filings with the New York State Department of State and Rhode Island Department of State, the Members shall automatically be deemed to surrender its membership interest in the Merged Entity in exchange for membership interest in the Surviving Entity.

(b) *Articles of Organization of the Surviving Entity.* The Articles of Organization of the Surviving Entity, as in effect on the date of the Merger, shall continue in full force and effect as the Articles of Organization of the Surviving Entity after the Merger.

(c) *Operating Agreement of the Surviving Entity.* The Operating Agreement of the Surviving Entity, if any, as in effect on the date of the Merger, shall be the Operating Agreement of the Surviving Entity after the Merger until the same shall be altered, amended or repealed as provided therein.

(d) *Effective Date of the Merger.* The Merger shall become effective upon filing of the *Certificate of Merger of PCO Buffalo III, L.L.C. into McKessen RI, LLC* with the New York State Department of State (the “**NY Certificate of Merger**”) and the *Articles of Merger of PCO Buffalo III, L.L.C. into McKessen RI, LLC* with the Rhode Island Department of State (the “**RI Articles of Merger**”) (collectively, the “**Certificates of Merger**”).

(e) *Transfer of Property, Rights and Privileges.* Upon the Merger becoming effective, all the property, rights, privileges, franchises, patents, trademarks, licenses, registrations, and other assets of every kind and description of the Merged Entity shall be transferred to, vested in and devolve upon the Surviving Entity without further act or deed and all property, rights, and every other interest of the Merged Entity shall be the property of the Surviving Entity. The Merged Entity hereby agrees from time to time, as and when requested by the Surviving Entity or by its successors or assignees, to execute and deliver or cause to be executed and delivered all such deeds and instruments and to take or cause to be taken such further or other action the Surviving Entity may deem necessary or desirable in order to (1) vest in and confirm to the Surviving Entity title to and possession of any property of the Merged Entity and (2) carry out the intent and purposes of this Agreement.

5. Termination and Amendment. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated and abandoned by any party at any time prior to the date of filing the Certificates of Merger. This Agreement may be amended by the unanimous agreement of the parties at any time prior to the date of filing the Certificates of Merger.

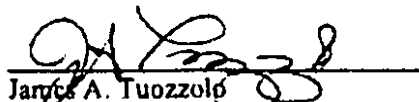
[signature page follows]

IN WITNESS WHEREOF, pursuant to the approval and authority duly given by resolutions adopted by the Board, the undersigned have caused this Agreement to be executed on the date first set forth above.

BOARD OF DIRECTORS:


Michael A. Mammolito


Timothy P. Ahern


James A. Tuozzolo