

OPERATING AGREEMENT

OF

Bingham Labs LLC
A Colorado Limited Liability Company

OPERATING AGREEMENT
Bingham Labs LLC

This Operating Agreement is made and entered into this ___ day of _____ 2023, by _____ (funder) and between the Members of Smart Bingham labs LLC (“the Company”, or “the LLC”).

RECITALS:

- A. WHEREAS, LLC desires to develop certain technology and selling it to cities, resorts, campuses, office parks and States and
- B. WHEREAS, LLC, intends to use its expertise to develop, market and sell the proposed technology making up the Property; and
- C. WHEREAS, the Capital Members shall provide working capital to the Company for the purpose of funding the development, buying land for testing and sales, and marketing; and
- D. WHEREAS, the Parties desire to enter into an agreement to govern the Company’s technology development and land acquisition that make up the Property, and to determine the rights and obligations of the members, and
- E. WHEREAS, the Articles of Organization for **Bingham Labs LLC** have been filed with the Secretary of State of Colorado, and the Company has otherwise been duly authorized to conduct business in the State of Colorado.

NOW, THEREFORE, in consideration of the premises and the following mutual covenants and agreements, the members agree as follows:

ARTICLE I
FORMATION OF COMPANY

- 1.1 The funder has put up \$50,000 Option Money which shall apply to capital due. This payment was made to **Bingham Labs LLC** account at Chase Bank 1627 S. Havana Aurora, CO. 80012, phone (303) 368- 5134 . This will give the funder the exclusive right to negotiate the fine points of this agreement for two months. When the funder has read and is ready to close this agreement, Goff management will open a new Operating Account at Chase Bank in Aurora, CO. for the \$500,000 initial payment and future phased in capital agreed to in this document. Capital Contributions are covered in more detail in Section VIII page 14.
- 1.2 Formation. The Company is intended to be a joint venture in the form of a Colorado Limited Liability Company where capital owns 50% and management owns 50%.

- 1.3 Formation has been by executing and delivering Articles of Organization to the Colorado Secretary of State in accordance with and pursuant to the Colorado Act will form this new venture.
- 1.3 Name and Registrations. The name of the Company is Bingham Labs LLC.
Bingham Labs IRS Tax ID: _____
Bingham Labs Sec of State Registration # _____
Goff Driver's License # 92.083.7593
Goff Passport #(available at closing)
- 1.4 Principal Place of Business. The principal place of business of the Company within the State of Colorado shall temporarily be 715 S. Alton Way 10-d, Denver Colorado 80247. The Company will locate its places of business and registered office at any other place or places as the Manager or Manager may from time to time deem advisable.
- 1.5 Registered Office and Registered Agent. The name of its initial registered agent at such address shall be Lloyd Goff. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Colorado Secretary of State pursuant to the Colorado Act.
- 1.6 Financial Intermediary. The Company shall engage an International Financial Intermarry to collect, transfer, manage and report on the funds from the investor. Targets that may want to handle our treasury and to position themselves for future funding of our routes are Merrill Lynch or JP Morgan.
- 1.7 Commencement and Term. The Company shall commence upon the payment of the \$500,000 and signing of this agreement (the "Commencement Date") and shall continue for a term of thirty (30) years, unless sooner terminated as hereinafter provided.

ARTICLE II
DEFINITIONS

See page 36

ARTICLE III
BUSINESS OF COMPANY

- 3.1 Permitted Businesses. The business of the Company shall be:
- (a) To develop new water and electrical generating technology called "the Property", and to develop contracts, manage the engineering process, develop approvals and market funding of routes

- (b) To exercise all other powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Colorado Act.
- (c) To engage in all activities necessary, customary, convenient, or incident to any of the foregoing.
- (d) Goff owns, all copyrights, trademarks, trade names, service marks, trade secrets and other intellectual and proprietary property (collectively, "Intellectual Property") which are necessary to conduct its business and commercially develop and market its services or products. Goff is contributing this Intellectual Property to the company for its 50% share of the start up contribution. The company shall become the owner of all the intellectual property rights henceforth from the design, configuration and engineering of the transport technology.

ARTICLE IV
TYPES OF MEMBERS

- 4.1 There shall be two types of members: Capital and Managers The names, addresses and percentage ownership of the Initial Members are as follows:

50% Ownership –Investor member: _____
50% Ownership-Goff Management 715 S. Alton Way 10-d, Denver Colorado 80247

Goff management will add team members to this agreement as they are put under contract after the earnest money payment. These additional members are the founders of Bingham Labs who have worked on the project over the years. Their Membership interest will come from the 50% interest owned by Goff management.

- 4.2 The capital and management members are allowed to expand its type of ownership into multiple membership as shown in 13.1 page 25.

ARTICLE V
RIGHTS AND DUTIES OF MANAGER

- 5.1 Management. The business and affairs of the Company shall be managed by its Manager. The Manager shall direct, manage and control the business of the Company to the best of its ability. Except for situations in which the approval of the Members is expressly required by this Operating Agreement or by non-waivable provisions of applicable law, the Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. The Manager shall consult with the Members from time to time in connection with the management of the Company.

- 5.2 Number, Tenure and Qualifications. The Company shall initially have one Manager who is Lloyd Goff and Associates who shall all be under an employment contract before any payments are made. The number of Managers of the Company shall be fixed from time to time by the unanimous vote of all Members, but in no instance, shall there be less than one Manager. Each Manager shall hold office for 3 years or until the next annual meeting of Members or until his successor shall have been elected and qualified. Manager shall be elected by a unanimous vote of the Members.

The initial Manager of the Company shall serve until its resignation, a new one is elected or removal under this Operating Agreement.

- 5.3 Engineering Leader. The Manager hereby appoints Don Deptowicz as the Engineering Leader for the Company. The Engineering Manager shall manage the technology and negotiations of the Company with 3rd party vendors. The Engineering Leader shall have the right to retain others to assist in performing its duties under this Agreement. It is understood and agreed that the Engineering Leader shall not be required to devote its entire time and attention to the operations of the Company but shall devote such time and energy to the business of the Company as is necessary or appropriate to promote the Company's success. A vote of the Manager shall be required to change the Engineering Leader.

- 5.4 Certain Powers of Manager.

- (a) Without limiting the generality of Section 6.1, the Manager shall have power and authority, on behalf of the Company:
- (i) To acquire, annex, zone, plat and negotiate various development agreements. The fact that a Manager or a Member is directly or indirectly affiliated or connected with any such person shall not prohibit the Manager from dealing with that person.
 - (ii) To borrow money for the Company from banks, other lending institutions, the Manager, Members, or Affiliates of the Manager or Members on such terms as the Manager deems appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums below. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Manager, or to the extent permitted under the Colorado Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Manager; provided that no loan shall be obtained by the Manager which requires the personal guaranty of a Member without such Member's prior written consent, which consent shall not be unreasonably withheld;

- (iii) To purchase liability and other insurance to protect the Company's property and business.
- (iv) To hold and own any Company real and/or personal properties in the name of the Company.
- (v) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments.
- (vi) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds.
- (vii) To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Manager may approve, except agreements that dispose of the assets of the Company, which will require 2/3% approval of the Members.
- (viii) To make loans to any Affiliate of the Company or entity controlled by any of the Manager, provided that at least a majority of the Members has given their written consent to the making of such loan.
- (ix) To pay all bills for development, construction, marketing, and other budgeted items or items that are necessary or appropriate in connection with the development, construction, operation, and marketing of the Units, which amounts may be paid from any source of Company funds, including acquisition and development funds, construction loan funds, working capital funds, Company revenues, other loan funds from loans permitted hereunder, and other Company sources.
- (x) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business. This including maintaining a company library on the web site or the cloud that allows the funder to check on any documents generated by the Manager.

Unless authorized to do so by this Operating Agreement or by a Manager or Manager of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

5.5 Restrictions on Authority of the Manager.

- (a) The Manager shall not have the authority to, and covenants and agrees that it shall not, do any of the following acts without the unanimous consent of the Members:
- (i) Cause or permit the Company to engage in any activity that is not consistent with the purposes of the Company as set forth in Section 4.1 hereof.
 - (ii) Knowingly do any act in contravention of this Operating Agreement.
 - (iii) Knowingly do any act which would make it impossible to carry on the ordinary business of the Company, except as otherwise provided in this Operating Agreement.
 - (iv) Possess property, or assign rights in specific property, for other than a Company purpose.
 - (v) Make any payment exceeding \$50,000 from Company funds without a majority consent of the members.
 - (vi) Knowingly perform any act that would cause the Company to conduct business in a state which has neither enacted legislation which permits limited liability companies to organize in such state nor permits the Company to register to do business in such state as a foreign limited liability company;
 - (vii) Cause the Company to voluntarily take any action that would cause a bankruptcy of the Company.
 - (viii) Cause the Company to acquire any equity or debt securities of any Member or any of its Affiliates.
 - (ix) Direct the business and affairs of the Company and exercise the rights and powers granted by Section 6.1 in a manner that is not reasonably consistent with the annual operating plan approved by the Members pursuant to Section 6.16 and Article VIII;
 - (x) Cause a significant change in the nature of the Company's business.
 - (xi) Cause the Company to admit any additional Members other than pursuant to Article XII hereof.

5.6 Liability for Certain Acts. Each Manager shall perform his duties as Manager in good faith, in a manner he reasonably believes to be in the best interests of the Company, and

with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs the duties as Manager shall not have any liability by reason of being or having been a Manager of the Company. The Manager does not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. The Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a wrongful taking by the Manager.

- 5.7 Manager and Members Have No Exclusive Duty to Company. No Manager or Member shall be required to manage the Company as a sole and exclusive function and any Manager and/or Member may have other business interests and real estate interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of any Manager and/or Member or to the income or proceeds derived therefrom. Neither any Manager nor any Member shall incur any liability to the Company or to any of the Members as a result of engaging in any other business or venture.
- 5.8 Bank Accounts. The Manager may from time-to-time open bank accounts in the name of the Company, and the Manager shall be the sole signatories thereon, unless the Members determine otherwise.
- 5.9 Indemnity of the Manager, Employees and Other Agents. The Company shall indemnify the Manager and make advances for expenses to the maximum extent permitted under section § 7-80-410 of the Colorado Act. The Company shall indemnify its employees and other agents who are not Manager to the fullest extent permitted by law.
- 5.10 Resignation. Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a Dissociation of a Member.
- 5.11 Removal. At a meeting called expressly for that purpose, all or any lesser number of Managers may be removed at any time, with or without cause, by a unanimous vote of the Members. A manager may also be removed by majority vote of the members for a violation of a restricted act is paragraph 6.5. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a Dissociation of a Member.

- 5.12 Vacancies. Any vacancy occurring for any reason may be filled by the affirmative vote of a majority of the remaining Members, A Manager elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. The elected Manager shall hold office until the expiration of such term and until his successor is elected and shall qualify or until his earlier death, resignation or removal.
- 5.13 Company Expenses; Reimbursement of Expenses Incurred on Behalf of the Company. The Company shall from time to time, but not less often than monthly, reimburse the Manager for Direct Costs. "Direct Costs" shall mean all actual and necessary direct out-of-pocket expenses paid by the Manager for the benefit of the Company and the property of the Company which are directly attributable to the operations of the Company, including all legal, accounting, engineering, survey, environmental, development, construction, consulting and other incidental expenses. Such expenses shall be accounted for quarterly, by report to the members.
- 5.14 Right to Rely on the Manager.
- (a) Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by any Manager as to:
 - (i) The identity of any Manager or any Member.
 - (ii) The existence or nonexistence of any fact or facts which constitute a condition precedent to acts by any Manager or which are in any other manner germane to the affairs of the Company.
 - (iii) The Persons who are authorized to execute and deliver any instrument or document of the Company; or
 - (iv) Any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member.
- 5.15 Marketing. The manager shall be responsible for marketing of the companies technology for sale to third parties, including, without limitation, the following:
- (a) Price List. LLC shall submit for Members approval a proposed sales price for routes. LLC and Members shall agree upon the sales price for each project. Such sales price shall not be reduced by more than five percent (5%) without the prior written consent of Members, which consent shall not be unreasonably withheld.
 - (b) Sales Contracts. LLC shall draft a Partnership template for as the main Sales contract for each project. The parties agree that the basic profit to the LLC will come from a (or mutually agreed upon) contractors profit paid **from the construction proceeds.**
 - (c) Terms of Sale. Prior to acceptance of any sales contract which (i) is for a sales price less than the sales price approved by Members, or (ii) requires Seller financing, or upon the material modification of an existing sales contract, LLC

shall receive the approval by Members of the term and conditions of the proposed sale for modification.

- (d) Manager will use Virtual Reality and the Internet to initiate marketing with future customers and educate them as to the benefits, routes, financing and legal issues involved with such a project

- 5.16 Sales Management. The Manager shall be responsible for supervision and management of the marketing and sales. Such activities shall include appointing a sales agent and conducting other appropriate sales activities. A marketing and advertising fee in the amount of 1% of the Estimated Sales Price of each project shall be paid to 3rd parties when needed. With the unanimous consent of the Members, the marketing fee may be increased if it is deemed necessary or appropriate to effectively market.
- 5.17 Collaboration with Funder – The funder agrees to be more than a passive investor and shall act as a collaborator with Goff Management on packaging of future funding opportunities.

ARTICLE VI **RIGHTS AND OBLIGATIONS OF MEMBERS**

- 6.1 Budget. LLC has prepared a budget in the business plan, which has been reviewed by the Members. Manager shall be solely responsible for preparation of the budget; provided, however, that Manager shall seek the advice and input of the Members in the preparation of any budget revisions.
- 6.2 Limitation of Liability. Each Member's liability shall be limited as set forth in this Operating Agreement, Colorado statutes, and other applicable law.
- 6.3 Company Debt Liability. A Member will not be personally liable for any debts or losses of the Company beyond his respective Capital Contributions and any obligations contained in Article IX.
- 6.4 List of Members. Upon written request of any Member, the Manager shall provide a list showing the names, addresses and Membership Interests and Economic Interests of all Members and Economic Interest Owners. The initial list is contained in section 6.1.
- 6.5 Company Books. The Manager shall maintain and preserve, during the term of the Company, and for five (5) years thereafter, all accounts, books, and other relevant Company documents. Upon reasonable request, each Member and Economic Interest Owner shall have the right, during ordinary business hours, to inspect and copy such Company documents at the requesting Member's expense. Manager shall provide a quarterly report to the Members to include operating income and expenses, status of approvals and marketing progress. Manager shall provide to Members the Federal and State tax returns, to include the Members' K-1, no later than March 15.

- 6.6 Priority and Return of Capital. Except as may be expressly provided in this Agreement, no Member or Economic Interest Owner shall have priority over any other Member or Economic Interest Owner, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.
- 6.7 Liability of a Member to the Company. A Member who receives any distribution is liable to the Company only to the extent now or hereafter provided by the Colorado Act.

ARTICLE VII **MEETINGS OF MEMBERS**

- 7.1 Annual Meetings. Unless otherwise determined by the Manager, the annual meeting of the Members of the Company shall be held at a reasonable hour on the second Tuesday of October each year unless that day is a holiday, in which case said meeting shall be held on the next business day following that day. The annual meeting of the Members shall be held for the purpose of electing Manager and transacting such other business of the Company as may come before the meeting. If the election of Manager shall not be held on the day designated herein for any annual meeting of the Members, or at any adjournment thereof, the Managers shall cause the election to be held at a special meeting of the Members as soon as conveniently and reasonably possible thereafter.
- 7.2 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Manager or by any Member or Members holding at least 10% of the Capital Interests.
- 7.3 Place of Meetings. The Manager may designate any place, either within or outside the State of Colorado, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the Company in the State of Colorado.
- 7.4 Notice of Meetings. Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the Manager or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Company, with postage thereon prepaid.
- 7.5 Meeting of all Members. If all of the Members shall meet at any time and place, either within or outside of the State of Colorado, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

- 7.6 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.
- 7.7 Quorum. A majority of the Members entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Interests in Profits so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. However, if the adjournment is for more than 60 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the Dissociation during such meeting of that number of Capital Interests whose absence would cause less than a quorum.
- 7.8 Manner of Acting. If a quorum is present, a Majority Vote shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Colorado Act or by this Operating Agreement. Unless otherwise expressly provided herein or required under applicable law, Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Interests in Profits, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.
- 7.9 Proxies. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Manager of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.
- 7.10 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Manager of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

- 7.11 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE VIII
CONTRIBUTIONS TO THE COMPANY AND
CAPITAL ACCOUNTS

- 8.1 In consideration of \$5,00000 for a 50% Membership Interest in the Company and investor shall contribute such funding as its share of the Initial Capital Contribution. The names, addresses and percentage ownership of the Members are as follows:

50% Ownership - Investor _____

50% Ownership - Goff management Management 715 s. Alton Way #10-d Denver, CO. 80247

The manager members of Goff management Management shall have a 50% ownership interest in the Company for (a) contribution of the Skyways technology, web site and together with its contribution of expertise and services, budgeting, preliminary business plan, and other activities performed in preparing the Project for development, manufacturing, and marketing, (b) Value of this contribution is \$500,000 contributed by the Manager or its principal member, Lloyd Goff management. In return for the Manager's membership contributions to the Company, at the start of the venture shall own fifty percent (50%) of the Membership Interests in the Company and distributions shall be made pursuant to Article X below shall be made in proportion to such Interests.

- 8.2 Board of Directors Goff management Management and Investor shall each have one seat on the board. Management shall give 3 recommendations for a second seat to someone from outside the company that can make a significant contribution. After new members are added, the board will be expanded to at least five members.

- 8.3 Investment Phases – Investor

If Earnest Money has been paid, then at closing the funder will transfer \$4,950,000 in 4 stages to a Merrill Lynch or J.P. Morgan account established for the purpose of managing the Treasury. As needed, these funds will be transferred to Bank of America in four installments, to the account of Bingham Labs LLC and used according the budget in the Business Plan.

1st Phase – \$500,000 to Start Up Operations of the company and decide on the legal Issue of a Special Project Vehicles vs A single research company. The funder agrees to the following mission for Phase I. This will cover the costs for up to six (6) months to mobilize the company by building a professional team, finding suitable research space and keeping reserves to cover any unexpected later costs.

2nd Phase -The Business Plan allocates \$2 million to research the components of the Oasis Machine with focus on the Electrolyzers. Then build a demonstration machine that delivers the highest performance for extracting water vapor from the air and using Electrolyzers to provide the cleanest hydrogen to run a motor that generates electricity. This demonstration will also show the optimum costs and best durability. This Phase is expected to last 12 months, but some refinements may last for the duration of the \$5 million.

3rd Phase - \$1 Million. Within 30 months of startup a \$1 million allocation will explore how the company can add CO2 filtration to the Oasis Machine to generate carbon removal with a goal of 1000 tones per year to qualify for the Elon Musk \$100 Million Competition Prize

4th Phase -. Within 42 months of startup work will begin on a \$500,000 allocation that focuses on finding a manufacturing partner or raising the funding to do it ourselves. Since this takes time to be effective it will begin before the final \$1,000,000 allocation on researching the best ways to utilize the extracted carbon.

8.4 Additional Capital. Additional capital will be required after the LLC has completed developing s demonstration Machine and before selecting a manufacturer to build. This is covered more fully in section13.1

8.5 Non-Recourse . Lloyd Goff management and The Goff Management Team will have no liability to provide any capital and no liability except for fraud, gross negligence or the incurring of debt not approved by Funder

8.6 No Obligation to Fund More. After the \$5.0 million is invested, the funder is not obligated to provide any additional capital. It is expected that each future project will be marketed as a syndication of funding that stands on its own.

8.7 Capital Accounts.

(a)This Special Allocation is agreed to by the members: The funders will be paid all the Net Operating Cash Flow of the company as a return on their principal each year starting after the first 12 months or changes by mutual agreement. Thereafter any Net Profits will go first to payoff the funders principal. When the funder is repaid his investment, Net Profits will be split 50/50% between Capital member and the Management members. This does not apply to management bringing in new members purchasing some of its shares unless agreed to later.

(b) The manner in which Capital Accounts are to be maintained pursuant to this Section 9.5 is intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section, should be modified in order to comply with Section 704(b) of the Code and the Treasury Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this Section, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of

maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members

(c) Upon liquidation of the Company (or any Member's Interest liquidating distributions will be made in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds will be paid in accordance with Section 13.3 (b). The Company may offset damages for breach of this Operating Agreement by a Member whose interest is liquidated (either upon the Dissociation of the Member or the liquidation of the Company) against the amount otherwise distributable to such Member.

(d) Except as otherwise required in the Colorado Act, no Member shall have any liability to restore all or any portion of a deficit balance in such Member's Capital Account.

8.8 Withdrawal or Reduction of Members' Contributions to Capital.

- (a) A Member shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.
- (b) A Member, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

ARTICLE IX **SPINOFF OPPORTUNITIES**

- 9.1 The parties agree to use a small portion of the funding to explore several spins off opportunities which include [SmartSkyways](#), Oasis Villages and Virtual Reality. Any spin-off company will not require any further funding by the LLC investors. The LLC will participate in any spinoff by providing the management. New capital will be required.
- 9.2 The first spinoff will be manufacturing depending on whether Bingham Labs remains a pure research company Since this is the largest project, we see and already has a plan and a potential customer, the parties agree to offer this as a Joint Venture. The LLC will contribute the technology it is spending \$5. million on, as its contribution to this new Joint Venture and will seek additional funding from a new capital source. This will take the legal form of a Public Benefit Corporation (PBC).
- 9.3 A possible spin off: A real estate arm will become important later. Potential for Neighborhood development is illustrated at www.LloydGoff.com as Oasis Villages. This

has a large market potential. It is not known what role if any, Bingham Labs LLC will have in the formation of this company. The parties agree to study it.

- 9.4 Not a Spin off. - The LLC plans to add the Oasis Machine technology to our configuration of multiple services. One of our partners Kent Bingham (deceased) did the Research and Development of this machine. Before he died, he left it on the Internet as “Open Source” meaning anyone can have it. Goff Management is most aware of it potential and problems.

ARTICLE X
ALLOCATIONS, INCOME TAX, DISTRIBUTIONS,
ELECTIONS AND REPORTS

- 10.1 Allocations of Profits and Losses from Operations. The Net Profits and Net Losses of the Company for each fiscal year will be allocated as follows:

- (a) Recapture. All recapture of federal income tax deductions and credits resulting from the sale or other disposition of any Company property, including but not limited to, recapture of depreciation and investment tax credit, shall be allocated to the Members for accounting and tax purposes in the same proportion as the related deduction or credit so recaptured was allocated to the Members.
- (b) Allocations of Net Income. After giving effect to the special allocations set forth in this Article (if applicable), the remaining Net Income for any fiscal year shall be allocated to the Members as of the last day of such fiscal year.
- (c) Allocations of Net Loss. After giving effect to the special allocations set forth in this Article (if applicable), the remaining Net Loss for any fiscal year shall be allocated to the Members as of the last day of such fiscal year.

- 10.2 Distributions. **After all Initial Capital Contributions, have been repaid** to the Members, then all distributions of Distributable Cash shall be made to the Members ratably in proportion to the amount of each Members Capital Interests.

All distributions of Distributable Cash and property shall be made at such time as determined by the Manager. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section 10.2.

- 10.3 Limitation on Distributions. No distribution shall be declared and paid unless, after the distribution is made, the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their contributions.

- 10.4 Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis using the cash basis or accrual basis, whichever the Manager shall select, in accordance with the accounting methods followed by the Company for federal income tax purposes. It is intended that the Company will elect those accounting methods which provide the Company with the greatest tax benefits.
- 10.5 Interest on and Return of Capital Contributions. No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.
- 10.6 Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 10.7 Accounting Period. The Company's accounting period shall be the calendar year.
- 10.8 Records, Audits and Reports. At the expense of the Company, the Manager shall maintain records and accounts of all operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business the following records:
- (a) A current list of the full name and last known business, residence, or mailing address of each Member, Economic Interest Owner and Manager, both past and present.
 - (b) A copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed.
 - (c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the four most recent years.
 - (d) Copies of the Company's currently effective written Operating Agreement, copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property or services, and copies of any financial statements of the Company for the three most recent years;
 - (e) Minutes of every annual, special meeting and court-ordered meeting.
 - (f) Any written consents obtained from Members for actions taken by Members without a meeting.
- 10.9 Returns and Other Elections. The Manager shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other

tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year.

All elections permitted to be made by the Company under United States Federal and/or the State of Colorado laws shall be made by the Manager in its sole discretion.

ARTICLE XI **TRANSFERABILITY**

11.1 General. Except as otherwise specifically provided in section 13.2 this Article XI neither a Member nor an Economic Interest Owner shall have the right to:

- (a) sell, assign, transfer, exchange or otherwise transfer for consideration, (collectively, "sell" or sale),
- (b) gift, bequeath or otherwise transfer for no consideration whether or not by operation of law, except in the case of bankruptcy (collectively "gift"), all or any part of its Membership Interest or Economic Interest. Each Member and Economic Interest Owner hereby acknowledges the reasonableness of the restrictions on sale and gift of Membership Interests and Economic Interests imposed by this Operating Agreement in view of the Company purposes and the relationship of the Members and Economic Interest Owners. Accordingly, the restrictions on sale and gift contained herein shall be specifically enforceable. In the event that any Member or Economic Interest Owner pledges or otherwise encumbers any of its Membership Interest or Economic Interest as security for repayment of a liability, any such pledge or hypothecation shall be made pursuant to a pledge or hypothecation agreement that requires the pledgee or secured party to be bound by all the terms and conditions of this Article XI.

11.2 Right of First Refusal.

- (a) A Selling Member, who desires to sell any or all portion of its Membership Interest or Economic Interest in the Company to a third-party purchaser shall obtain from such third party purchaser a bona fide written offer to purchase such interest. The offer must state the terms and conditions upon which the purchase is to be made and all considerations offered thereof.
- (b) The Selling Member must notify the remaining Members, by certified mail or personal delivery, of its intention to so transfer such interest, furnishing to the remaining Members a copy of the aforesaid written offer to purchase such interest.

- (c) The remaining Members, and each of them shall, on a basis pro rata to their Capital Interests have the right to exercise a right of first refusal to purchase all (but not less than all) of the interest proposed to be sold by the Selling Member upon the same terms and conditions as stated in the aforesaid written offer to purchase by giving written notification to the Selling Member, by certified mail or personal delivery, of their intention to do so within fourteen (14) days after receiving written notice from the Selling Member. The failure of all the remaining Members (or any one or more of them) to so notify the Selling Member of their desire to exercise this right of first refusal within said fourteen (14) day period shall result in the termination of the right of first refusal and the Selling Member shall be entitled to consummate the sale of its interest in the Company, or such portion of its interest, if any, with respect to which the right of first refusal has not been exercised, to such third-party purchaser.

In the event the remaining Members (or any one or more of the remaining Members) give written notice to the Selling Member of their desire to exercise this right of first refusal and to purchase all of the Selling Member's interest in the Company which the Selling Member desires to sell upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within thirty (30) days after receipt of written notification from the Selling Member of the third party offer to purchase.

- (c) In the event of either the purchase of the Selling Member's interest in the Company by a third party purchaser or the gift of an interest in the Company (including an Economic Interest), and as a condition to recognizing one or more of the effectiveness and binding nature of any such sale or gift and (subject to Section 11.3, below) substitution of a new Member as against the Company or otherwise, the remaining Members may require the Selling Member or Gifting Member and the proposed purchaser, donee or successor-in-interest, as the case may be to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Members may deem necessary or desirable to:
- (i) constitute such purchaser, as a Member, donee or successor-in-interest as such.
 - (ii) confirm that the person desiring to acquire an interest or interests in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Operating Agreement, as the same may have been further amended (whether such Person is to be admitted as a new Member or will merely be an Economic Interest Owner);

- (iii) preserve the Company after the completion of such sale, transfer, assignment, or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business.
 - (iv) maintain the status of the Company as a partnership for federal tax purposes; and
 - (v) assure compliance with any applicable state and federal laws including securities laws and regulations.
- (d) Any sale or gift of a Membership Interest or Economic Interest or admission of a Member in compliance with this Article XI shall be deemed effective as of the last day of the calendar month in which the remaining Members' consent thereto was given, or, if no such consent was required pursuant to Section 11.2(e), then on such date that the donee or successor in interest complies with Section 11.2(c). The Transferring Member agrees, upon request of the remaining Members, to execute such certificates or other documents and perform such other acts as may be reasonably requested by the remaining Members from time to time in connection with such sale, transfer, assignment, or substitution. The Transferring Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article X.
- (e) Subject to Section 11.3, a Gifting Member may gift all or any portion of its Membership Interest and Economic Interest (without regard to Section 11.2(a) and (b)), provided, however, that the donee or other successor-in-interest (collectively, "donee") complies with Section 11.2(c) and further provided that the donee is either the Gifting Member's spouse, former spouse, or lineal descendent (including adopted children). In the event of the gift of all or any portion of a Gifting Member's Membership Interest or Economic Interest to one or more donees who are under 25 years of age, one or more trusts shall be established to hold the gifted interest (s) for the benefit of such donee(s) until all of the donee(s) reach the age of at least 25 years.

11.3 Transferee Not Member in Absence of Consent.

- (a) If the transferee or donee is not a Member holding at least one-percent of the capital accounts and the Members do not approve by the written consent of a majority of the Members of the proposed sale or gift of the Transferring Member's Membership Interest or Economic Interest to a transferee or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member. Such transferee or donee shall be merely an Economic Interest Owner. No transfer of a Member's interest in the

Company (including any transfer of the Economic Interest or any other transfer which has not been approved, as provided herein) shall be effective unless and until written notice (including the name and address of the proposed, transferee or donee and the date of such transfer) has been provided to the Company and the non-transferring Member(s).

- (b) Upon and contemporaneously with any sale or gift of a Transferring Member's Economic Interest in the Company which does not at the same time transfer the balance of the rights associated with the Economic Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), the Company shall purchase from the Transferring Member, and the Transferring Member shall sell to the Company for a purchase price of \$100.00, all remaining rights and interests retained by the Transferring Member which immediately prior to such sale or gift were associated with the transferred Economic Interest.
- (c) The restrictions on transfer contained in this Section 11.3 are intended to comply (and shall be interpreted consistently) with the restrictions on transfer set forth in the Code and/or the Colorado Act.

11.4 Approved Transfers. Notwithstanding the foregoing, any changes or additions of Members pursuant to Article XI shall be deemed to be approved by the Members.

ARTICLE XII

BUY – SELL BETWEEN MEMBERS

12.1 Disagreement in Management. In the event that the Members and the Manager cannot agree upon the management, development, construction, and sale of the Property, and such disagreement becomes impassible, or, if one of the Members desires to terminate and or dissolve this Agreement (the “Disassociating Member”), this Section XII shall control. The Selling Member shall give to the other Member as purchaser a bona fide written offer to sell to the other or to buy from the other such interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered therefore. The remaining Member shall have the right to purchase all (but not less than all) of the interest proposed to be sold by the Selling Member upon the same terms and conditions as stated in the aforesaid written offer to purchase or shall have the right to sell the same interest to the Selling Member by giving written notification to the Selling Member, by certified mail or personal delivery, of their intention to do so within sixty (60) days after receiving written notice from the Selling Member. The failure of the other Member to so notify the Selling Member of their desire to exercise this right of purchase

or sale within said sixty (60) day period shall result in the termination of the right to purchase.

In the event the other Member gives written notice to the Selling Member of their desire to exercise this right to purchase all of the Selling Member's interest in the Company or to sell upon the same terms and conditions its interest in the Company as are stated in the aforesaid written offer to purchase, the remaining Member, that will then own the Company outright, shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within sixty days after receipt of written notification from the Selling Member or the other Member informing the other party of its election.

12.2 Documentation of Sale. In the event of either the purchase of the Selling Member's interest in the Company or the sale of the other Member's interest in the Company to the Selling Member, and as a condition to recognizing one or more of the effectiveness and binding nature of any such sale or purchase, the remaining Member that will own the Company may require the selling Member to execute, acknowledge and deliver to the remaining Member such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Member may deem necessary or desirable to:

- (i) constitute such purchaser, as a Member or successor-in-interest as such.
- (ii) preserve the Company after the completion of such sale, transfer, assignment or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business.
- (iii) maintain the status of the Company as a partnership for federal tax purposes; and
- (iv) assure compliance with any applicable state and federal laws including securities laws and regulations.

12.3 Date of Effectiveness of Transfer. Any sale or purchase with this Article XII shall be deemed effective as of the day of the transfer. The selling Member agrees, upon request of the remaining Member, to execute such certificates or other documents and perform such other acts as may be reasonably requested by the remaining Member from time to time in connection with such sale, transfer, assignment or substitution. The selling Member hereby indemnifies the Company and the remaining Member against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article Twelve.

ARTICLE XIII

ADDITIONAL MEMBERS

- 13.1 Consortium_ On or before one year, a plan for additional capital will be submitted to the members for ratification. Upon approval, the LLC will market a plan that provides enough funding (say \$250 Million) to build an initial 10-mile route plus return of initial \$25.3 million capital and any profit taking to be split 50/50% between management and capital. These funds are planned to come within 3 years from selling a 50% ownership to 5 or more larger industrial companies leaving the funder with 25% and management with 25% ownership. It is the intention of the management to add such companies that provide a supporting service needed for building and operating routes. It is the intension of the management to someday turn over the day to day management to this consortium. A financial example: at \$5 million per 1% ownership would raise \$250 Million. This will provide \$200 million to build an operating system. This new fund plan will include an amount for repayment of the funder(s) \$25 Million initial capital. A possible split thereafter could be split \$12,500,000 to funder(s) and \$12,500,000 to management. If we have a signed Partnership with a State or Country by then, the company expects this consortium buying 50% may pay more.
- 13.2 From the date of the formation of the Company, any Person/Company acceptable to the Members may become a Member in this Company with the issuance by the Company of Membership Interests. Such consideration as the Membership requires the written consent of the majority of the Members.
- 13.3 No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Manager or Manager(s) may, at his or their option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Treasury Regulations promulgated thereunder.

ARTICLE XIV **DISSOLUTION AND TERMINATION**

- 14.1 Dissolution.
- (a) The Company shall be dissolved upon the occurrence of any of the following events:
- (i) by the unanimous written agreement of all Members; or

- (ii) upon the Dissociation of a Member, unless the business of the Company is continued by the consent of a Majority in Interest of the Remaining Members within 90 days after the Dissociation, at which time the Remaining Members may admit one or more additional Members by a unanimous vote of the Remaining Members.

Each of the Members hereby agrees that within the 60 days after the Dissociation other than the bankruptcy of any Member (and provided that there are then at least two remaining Members of the Company), they will promptly consent, in writing, to continue the business of the Company. Each of the Members further agrees promptly to consent, in writing, to continue the business of the Company upon a sale or gift either of a Member's entire Economic Interest to which all of the remaining Members do not consent within 45 days after the occurrence of such a sale or gift or upon a sale or gift of a Transferring Member's entire Membership Interest. Such consents shall be mailed or hand delivered to the principal place of business of the Company set forth in Section 2.3 hereof (or to such other address designated by the Manager) no later than 50 days after each Dissociation or transfer by Member of its entire Economic Interest or Membership Interest). The sole remedy for breach of a Member's obligation to consent to continue the business of the Company under this Section shall be money damages (and not specific performance).

- (b) Notwithstanding anything to the contrary in this Operating Agreement, if a Member or Members owning Capital Interests which in the aggregate constitute not less than two-thirds of the Interests in Profits vote to dissolve the Company at a meeting of the Company, then all of the Members shall agree in writing to dissolve the Company as soon as possible (but in any event not more than 10 days) thereafter.
- (c) As soon as possible following the occurrence of any of the events specified in this Section 14.3 effecting the dissolution of the Company, the appropriate representative of the Company shall execute a statement of intent to dissolve in such form as shall be prescribed by the Colorado Secretary of State and file same with the Colorado Secretary of State's office.
- (d) If a Member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the Member's executor, administrator, guardian, conservator, or other legal representative ("Successor") may exercise all of the Member's rights for the purpose of settling his estate or administering his property, provided, however, that for purposes of Article XIII and Section 14.1(a) (iii), the Successor shall not be considered a Member and shall have no right to vote, approve or consent to any matter pursuant to such provisions.

- (e) Except as expressly permitted in this Operating Agreement, a Member shall not voluntarily resign or take any other voluntary action which directly causes a Dissociation. Unless otherwise approved by Members owning a Majority Interest, A Member who resigns (a "Resigning Member") or whose Membership Interest is otherwise terminated by virtue of a Dissociation, regardless of whether such Dissociation was the result of a voluntary act by such Resigning Member, shall be entitled to receive only those distributions to which such Resigning Member would have been entitled had such Resigning Member remained a Member (and only at such times as such distribution would have been made had such Resigning Member remained a Member). Except as otherwise expressly provided herein, a Resigning Member shall become an Economic Interest Owner. Damages for breach of this Section 14.1(e) shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by the Company to which the Resigning Member would otherwise be entitled.

14.2 Effect of Filing of Dissolving Statement. Upon the filing by the Colorado Secretary of State of a statement of intent to dissolve, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until a certificate of dissolution has been issued by the Secretary of State or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

14.3 Winding Up, Liquidation and Distribution of Assets.

- (a) Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Manager shall immediately proceed to wind up the affairs of the Company.
- (b) If the Company is dissolved and its affairs are to be wound up, the Manager shall:
 - (i) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Manager may determine to distribute any assets to the Members in kind),
 - (ii) Allocate any Net Profit or Net Loss resulting from such sales to the Members' and Economic Interest Owners' Capital Accounts in accordance with Article X hereof,
 - (iii) Discharge all liabilities of the Company, including liabilities to Members and Economic Interest Owners who are also creditors, to the extent otherwise permitted by law, other than liabilities to Members and Economic Interest Owners for distributions and the return of capital, and establish such Reserves as may be reasonably necessary to provide for

contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Economic Interest Owners, the amounts of such Reserves shall be deemed to be an expense of the Company),

(iv) Distribute the remaining assets in the following order:

(1) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members and Economic Interest Owners shall be adjusted pursuant to the provisions of Article X and Section 9.3 of this Operating Agreement to reflect such deemed sale.

(2) The positive balance (if any) of each Member's and Economic Interest Owners' Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs) shall be distributed to the Members, either in cash or in kind, as determined by the Manager, with any assets distributed in kind being valued for this purpose at their fair market value. Any such distributions to the Members in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b) (2) (ii) (b) (2) of the Treasury Regulations.

- (c) Notwithstanding anything to the contrary in this Operating Agreement, upon a liquidation within the meaning of Section 1.704-1(b) (2) (ii) (g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.
- (d) Upon completion of the liquidation and distribution of the assets, the Company shall be deemed terminated.
- (e) The Manager shall comply with any applicable requirements of applicable law pertaining to the completion of the affairs of the Company and the final distribution of its assets.

14.4 Articles of Dissolution. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining

property and assets have been distributed to the Members, articles of dissolution shall be executed in duplicate and verified by the person signing the articles, which articles shall set forth the information required by the Colorado Act. Duplicate originals of such articles of dissolution shall be delivered to the Colorado Secretary of State.

- 14.5 Certificate of Dissolution. Upon the issuance of the certificate of dissolution, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Colorado Act. The Manager shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.
- 14.6 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Operating Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Member or Members shall have no recourse against any other Member.

ARTICLE XV

MISCELLANEOUS PROVISIONS

- 15.1 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Operating Agreement. Except as otherwise provided herein, any such notice shall be deemed to be given three business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.
- 15.2 Books of Account and Records. Proper and complete records and books of account shall be kept or shall be caused to be kept by the Manager in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained. The books and records shall be at all times be maintained at the principal executive office of the Company and shall be open to the reasonable inspection and examination of the Members or their duly authorized representatives during reasonable business hours.
- 15.3 Application of Colorado Law. This Operating Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Colorado, and specifically the Colorado Act. All United States Federal Law shall supersede any state law and remain in full force and effect.

- 15.4 Waiver of Action for Partition. Each Member and Economic Interest Owner irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 15.5 Amendments. This Operating Agreement may not be amended except by the unanimous written agreement of all of the Members.
- 15.6 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.
- 15.7 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.
- 15.8 Headings and Pronouns. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof. All pronouns and only variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural as the identity of the Person or Persons may require.
- 15.9 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
- 15.10 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or wavier the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
- 15.11 Severability. If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application there of shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 15.12 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.
- 15.13 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

- 15.14 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
- 15.15 Rule Against Perpetuities. The parties hereto intend that the Rule Against Perpetuities (and any similar rule of law) not be applicable to any provisions of this Operating Agreement. However, notwithstanding anything to the contrary in this Operating Agreement, if any provision in this Operating Agreement would be invalid or unenforceable because of the Rule Against Perpetuities or any similar rule of law but for this Section 13.15, the parties hereto hereby agree that any future interest which is created pursuant to said provision shall cease if it is not vested within twenty-one years after the death of the survivor of the group composed of all who are currently Members and their issue who are living on the date of this Operating Agreement and their issue, if any, who are living on the effective date of this Operating Agreement.
- 15.16 Investment Representations. The undersigned Members and Economic Interest Owners, if any, understand (1) that the Membership Interests and Economic Interests evidenced by this Operating Agreement have not been registered under the Securities Act of 1933, the Colorado Securities Act or any other state securities laws (the "Securities Acts") because the Company is issuing these Membership Interests and Economic Interests in reliance upon the exemptions from the registrations requirements of the Securities Acts providing for issuance of securities not involving a public offering, (2) that the Company has relied upon the fact that the Membership Interests and Economic Interests are to be held by each Member for investment, and (3) that exemption from registrations under the Securities Acts would not be available if the Membership Interests and Economic Interests were acquired by a Member with a view to distribution.

Accordingly, each Member and Economic Interest Owner hereby confirms to the Company that such Member and Economic Interest Owner is acquiring the Membership Interests and Economic Interests for such own Member's account, for investment and not with a view to the resale or distribution thereof. Each Member and Economic Interest Owner agrees not to transfer, sell or offer for sale any of portion of the Membership Interests or Economic Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of Membership Interests or Economic Interests delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such transfer, offer or sale. Each Member and Economic Interest Owner understands that the Company is under no obligation to register the Membership Interests or Economic Interests or to assist such Member or Economic Interest Owner in complying with any exemption from registration under the Acts if such Member or Economic Interest Owner should at a later date, wish to dispose of the Membership Interest or Economic Interest. Furthermore, each Member realizes that the Membership Interests and Economic Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Member is not

an "affiliate" of the Company and the Membership Interest or Economic Interest has been beneficially owned and fully paid for by such Member or Economic Interest Owner for at least three years.

Prior to acquiring the Membership Interests and Economic Interests, each Member and Economic Interest Owner has made an investigation of the Company and its business and the Company shall have made available to each such Member and Economic Interest Owner all information with respect thereto which such Member needed to make an informed decision to acquire the Membership Interest or Economic Interest. Each Member and Economic Interest Owner considers himself or itself to be a person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Member's or Economic Interest Owner's investment in the Membership Interest or Economic Interest.

15.17 Representations and Warranties.

- (a) In General. As of the date hereof, each of the Members hereby makes each of the representations and warranties applicable to such Members as set forth herein, and such warranties and representations shall survive the execution of this Operating Agreement.
- (b) Representations and Warranties. Each Corporate Member hereby represents and warrants that:
 - (i) Due Incorporation or Formation; Authorization of Agreement. Such Member is a corporation duly organized or a partnership or limited liability company duly formed, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation and has the corporate, partnership or limited liability company power and authority to own its property and carry on its business as owned and carried on at the date hereof and as contemplated hereby. Such Member is duly licensed or qualified to do business and in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder. Such Member has the corporate, partnership or limited liability company power and authority to execute and deliver this Operating Agreement and to perform its obligations hereunder and the execution, delivery, and performance of this Operating Agreement has been duly authorized by all necessary corporate, partnership or limited liability company action. This Operating Agreement constitutes the legal, valid, and binding obligation of such Member.
 - (ii) No Conflict with Restrictions; No Default. Neither the execution, delivery, and performance of this Operating Agreement nor the consummation by such Member of the transactions contemplated hereby (1) will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of any law, regulation, order, writ, injunction, decree, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator, applicable to such Member or any of its Affiliates, (2) will conflict with, violate, result in a breach of, or

constitute a default under any of the terms, conditions, or provisions of the articles of incorporation, bylaws, partnership agreement or operating agreement of such Member or any of its Affiliates or of any material agreement or instrument to which such Member or any of its Affiliates is a party or by which such member, or any of its Affiliates is or may be bound or to which any of its material properties or assets is subject, (3) will conflict with, violate, result in a breach of, constitute a default under (whether with notice or lapse of time or both), accelerate or permit the acceleration of the performance required by, give to others any material interests or rights, or require any consent, authorization, or approval under any indenture, mortgage, lease agreement, or instrument to which such Member or any of its Affiliates is a party or by which such member or any of its Affiliates is or may be bound, or (4) will result in the creation or imposition of any lien upon any of the material properties or assets of such Member or any of its Affiliates.

- (iii) Government Authorizations. Any registration, declaration, or filing with, or consent, approval, license, permit, or other authorization or order by, any government or regulatory authority, domestic or foreign, that is required in connection with the valid execution, delivery, acceptance, and performance by such Member under this Operating Agreement or the consummation by such Member of any transaction contemplated hereby has been completed, made, or obtained on or before the effective date of this Operating Agreement.
- (iv) Litigation. There are no actions, suits, proceedings, or investigations pending or, to the knowledge of such Member or any of its Affiliates, threatened against or affecting such Member or any of its Affiliates or any of their properties, assets, or businesses in any court or before or by any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator which could, if adversely determined (or, in the case of an investigation could lead to any action, suit, or proceeding, which if adversely determined could) reasonably be expected to materially impair such Member's ability to perform its obligations under this Operating Agreement or to have a material adverse effect on the consolidated financial condition of such Member; and such Member or any of its Affiliates has not received any currently effective notice of any default, and such Member or any of its Affiliates is not in default, under any applicable order, writ, injunction, decree, permit, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator which could reasonably be expected to materially impair such Member's ability to perform its obligations under this Operating Agreement or to have a material adverse effect on the consolidated financial condition of such Member.
- (v) Investment Company Act; Public Utility Holding Company Act. Neither such Member nor any of its Affiliates is, nor will the Company as a result of such Member holding an Interest be, an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940. Neither such Member nor any of its Affiliates is, nor will the Company as a result of such Member holding an Interest be, a "holding company," "an affiliate of a holding company," or a "subsidiary of a holding company,"

as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

- (v) Confidentiality. Except as contemplated hereby or required by a court of competent authority, each member shall keep confidential and shall not disclose or use in any manner outside of the normal operating business to others and shall use its reasonable efforts to prevent its Affiliates and any of its, or its Affiliates', present or former employees, agents, and representatives from disclosing to others without the prior written consent of the Manager(s) any information which (1) pertains to this Operating Agreement, any negotiations pertaining thereto, any of the transactions contemplated hereby, or the business of the Company, or (2) pertains to confidential or proprietary information of any Member or the Company or which any Member has labeled in writing as confidential or proprietary; provided that any Company may disclose to its Affiliates' employees, agents, and representatives any information made available to such Member. No Member shall use, and each Member shall use its best efforts to prevent any Affiliate of such Member from using, any information and or protected intellectual property which (1) pertains to this Operating Agreement, any negotiations pertaining hereto, any of the transactions contemplated hereby, or the business of the Company, or (2) pertains to the confidential or proprietary information of any Member or the Company or which any Member has labeled in writing as confidential or proprietary, except in connection with the transactions contemplated hereby.

THE UNDERSIGNED hereby agree, acknowledge and certify that the foregoing constitutes the Operating Agreement of the Company and each of the Manager and Members have executed this Operating Agreement on the dates set forth opposite their respective signatures below or the dates indicated on signature pages or counterparts hereto, to be effective as of the commencement of the Company. Further, by execution hereof, the Manager affirms, under the penalties of perjury, that the facts stated herein are true to the best of their knowledge. Signature Page for Operating Agreement of Bingham Labs LLC.

MEMBER/MANAGER:

Goff Management

Date _____ -- ` _____
Goff Management by Lloyd Goff

MEMBER/FUNDER

Date: _____

EXHIBIT 1

DEFINITIONS

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

- (a) "Articles of Organization" means the Articles of Organization of the Company as filed with the Secretary of State of Colorado, as the same may be amended from time to time.
- (b) "Affiliate" means, with respect to any person or entity, (i) any person or entity directly or indirectly controlling, controlled by, or under common control with such person or entity, (ii) any person or entity owning or controlling ten percent (10%) or more of the outstanding voting interests of such person or entity, (iii) any officer, director, or general partner of such person or entity, or (iv) any person or entity who is an officer, director, general partner, trustee, or holder of ten percent (10%) or more of the voting interests of any person or entity described in clauses (i) through (iii) of this sentence. For purposes of this definition, the term "controls," "is controlled by," or "is under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.
- (c) "Capital Account" as of any given date means the Capital Contribution to the Company by a Member, as adjusted up to the date in question pursuant to Article IX.
- (d) "Capital Contribution" means any contribution to the capital of the Company in cash or property by a Member whenever made. "Initial Capital Contribution" shall mean the initial contribution to the capital of the Company pursuant to this Operating Agreement.
- (e) "Capital Interest" means the proportion that a Member's positive Capital Account bears to the aggregate positive Capital Accounts of all Members whose Capital Accounts have positive balances as may be adjusted from time to time.

- (f) "Code" means the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.
- (g) "Colorado Act" means the Colorado Limited Liability Company Act as amended to the date of this agreement and as amended from time to time.
- (h) "Company" means SmartSkyways LLC.
- (i) "Deficit Capital Account" means with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the taxable year, after giving effect to the following adjustments:
 - (i) credit to such Capital Account any amount which such Member is obligated to restore under Section 1.704-1(b) (2) (ii) (c) of the Treasury Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g) (1) and (i) (5) of the Treasury Regulations, after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with Section 1.704-2(d) of the Treasury Regulations) and in the minimum gain attributable to any partner nonrecourse debt (as determined under Section 1.704-2(i) (3) of the Treasury Regulations) and
 - (ii) debit to such Capital Account the items described in Sections 1.704-1(b) (2) (ii) (d) (4), (5) and (6) of the Treasury Regulations.

This definition of Deficit Capital Account is intended to comply with the provision of Treasury Regulations Section 1.704-1(b) (2) (ii) (d) and 1.704-2 and will be interpreted consistently with those provisions.

- (j) "Depreciation" means, for each fiscal year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such fiscal year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such fiscal year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such fiscal year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such fiscal year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager(s).
- (k) "Dissociating Member" means a Member who is undergoing a Dissociation. Note that the progressive tense is used here as opposed to "who has undergone" to identify only the member who is in the process of dissociating to make clear that

the Dissociating Member is only the one whose Dissociation is threatening dissolution, rather than all of the Members who have ever dissociated.

- (l) "Dissociation" means the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or occurrence of any other event which terminates the continued membership of a Member in the Company.
- (m) "Distributable Cash" means all cash, revenues and funds received by the Company, less the sum of the following to the extent paid or set aside by the Company for (i) repayment of Capital Contributions made to the Company by the Members not previously repaid, (ii) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (iii) all budgeted and other cash expenditures incurred incident to the normal operation of the Company's business; and (iv) such Reserves as the Manager deems reasonably necessary for the proper operation of the Company's business.
- (n) "Economic Interest" shall mean a Member's or Economic Interest Owner's share of one or more of the Company's Net Profits, Net Losses and distributions of the Company's assets pursuant to this Operating Agreement and the Colorado Act, but shall not include any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Manager.
- (o) "Economic Interest Owner" shall mean the owner of an Economic Interest who is not a Member.
- (p) "Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.
- (q) "Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year. [In general, the tax year of the LLC is determined with reference to the tax years of the members. See I.R.C. Sections 706(b) and 444.]
- (r) "Gifting Member" shall mean any Member who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest.
- (s) "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:
 - (i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Manager(s), provided that the initial Gross Asset Values of the assets contributed to the Company pursuant to

Section 9.1 hereof shall be as set forth in Exhibit 9.1, and provided further that, if the contributing Member is a Manager, the determination of the fair market value of any other contributed asset shall require the consent of the other Members owning a Majority Interest (determined without regard to the Capital Account of such contributing Member);

- (ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager(s) as of the following times: (a) the acquisition of an additional interest by any new or existing Member in exchange for more than a de minimis contribution of property (including money); (b) the distribution by the Company to a Member of more than a de minimis amount of property as consideration for a Membership Interest or Economic Interest; and (c) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b) (2) (ii) (g): provided, however, that adjustments pursuant to clauses (a) and (b) above shall be made only if the Manager(s) reasonably determine (s) that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;
- (iii) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Manager(s), provided that, if the distributee is a Manager, the determination of the fair market value of the distributed asset shall require the consent of the other Members owning a Majority Interest (determined without regard to the Capital Account of the distributee Member); and
- (iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b) (2) (iv) (m) and Section 8.3 and subparagraph (iv) under the definition of Net Profits and Net Losses; provided, however, that Gross Asset Values shall not be adjusted pursuant to this definition to the extent the Manager(s) determine (s) that an adjustment pursuant to subparagraph (ii) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (i), (ii) or (iv) of this definition, then such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

- (t) "Majority Vote" means the affirmative vote or consent of the Members holding a majority of the Interests.
- (u) "Majority in Interest of the Remaining Members" means Members (other than the Dissociating Member) holding a majority of the Capital Interests (determined, however, by disregarding the Capital Interest of the Dissociating Member) and a majority of the profits allocated (determined, however, by disregarding the profits allocable to the Dissociating Member) based on any reasonable estimate of profits from the date of the dissociation of the Dissociating Member to the projected termination of the Company, taking into account present and future allocations of profits under this operating agreement as in effect at that time. This is intended to reflect the definition set forth in Rev. Proc. 94-46. Normally, this definition should only be used in connection with the avoidance of dissolution.
- (v) "Manager" shall mean one or more Managers. Specifically, "Manager" shall mean Goff management Management, of 715 S. Alton Way # 10-d Denver, CO. 80247 or any other persons that succeed in that capacity. References to a Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.
- (w) "Member" shall mean each of the parties who execute a counterpart of this Operating Agreement as a Member, and each of the parties who may hereafter become Members. To the extent a Manager has purchased Membership Interests in the Company, he will have all the rights of a Member with respect to such Membership Interests, and the term "Member" as used herein shall include a Manager to the extent he has purchased such Membership Interests in the Company. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Economic Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Economic Interest, as the case may be.
- (x) "Membership Interest" shall mean a Member's entire interest in the Company including such Member's Economic Interest and such other rights and privileges that the Member may enjoy by being a Member.
- (y) "Net Profits" and "Net Losses" shall mean for each taxable year of the Company an amount equal to the Company's net taxable income or loss for such year as determined for federal income tax purposes (including separately stated items) in accordance with the accounting method and rules used by the Company and in accordance with Section 703 of the Code with the following adjustments:
 - (i) Any items of income, gain, loss and deduction allocated to Members pursuant to Section 10.2 shall not be taken into account in computing Net Profits or Net Losses of this Operating Agreement;

- (ii) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits and Net Losses (pursuant to this definition) shall be added to such taxable income or loss;
 - (iii) Any expenditure of the Company described in Section 705(a) (2) (B) of the Code and not otherwise taken into account in computing Net Profits and Net Losses (pursuant to this definition) shall be subtracted from such taxable income or loss; and
 - (iv) In the event the Gross Asset Value of any Company asset is adjusted pursuant to clause (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits and Net Losses;
 - (v) Gain or loss resulting from any disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed with reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;
 - (vi) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year; and
 - (vii) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required pursuant to Section 1. 704-1(b) (2) (iv) (m) (4) of the Treasury Regulations to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Membership Interest or Economic Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses.
- (z) "Non-Manager Member" shall mean all Members, except those Members who are also Manager (to the extent the interest of such party (ie) as a Member is derived solely as a result of their status as a Manager). All other members shall referred to as Members.
- (aa) "Operating Agreement" shall mean this Operating Agreement as originally executed and as amended from time to time.

- (bb) "Person" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.
- (cc) "Reserves" shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Manager for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.
- (dd) "Selling Member" shall mean any Member or Economic Interest Owner which sells, assigns, or otherwise transfers for consideration all or any portion of its Membership Interest or Economic Interest.
- (ee) "Transferring Member" shall collectively mean a Selling Member and a Gifting Member.
- (ff) "Treasury Regulations" shall include proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles of Organization and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.