

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

BRAD L. KNOWLTON, AN INDIVIDUAL,

Appellant,

vs.

WILLIAM L. LINDER, AS TRUSTEE OF THE
WILLIAM L. LINDER AND MAXINE G. LINDER
TRUST OF 1988; JUEL A. PARKER, AS TRUSTEE OF
THE JUEL A. PARKER FAMILY TRUST; LISA
PARKER, AS TRUSTEE OF THE JUEL A. PARKER
FAMILY TRUST; LISA PARKER, AN INDIVIDUAL;
AND S. BRUCE PARKER, AS TRUSTEE OF THE
STEVEN BRUCE PARKER FAMILY TRUST,
Respondents.

No. 82694

Electronically Filed
Apr 21 2021 11:13 a.m.

Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 11

County Clark Judge Elizabeth Gonzalez

District Ct. Case No. A-20-809612-B

2. Attorney filing this docketing statement:

Attorney Brian C. Whitaker Telephone (702) 433-9696

Firm Erickson & Whitaker PC

Address 1349 Galleria Drive, Suite 200
Henderson, Nevada 89014

Client(s) Appellant Brad L. Knowlton

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Mark E. Ferrario Telephone (702) 792-3773

Firm Greenberg Traurig, LLP

Address 10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89144

Client(s) Respondents

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): <u>Lack of Standing</u> |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

Appellant, Brad L. Knowlton, commenced this lawsuit in District Court on January 31, 2020 after Respondents unlawfully removed Appellant as manager of Valley Ascent, LLC, a Nevada limited liability company. Appellant alleged breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory relief, intentional interference with contractual relations, expulsion as a member, breach of fiduciary duty, receivership, and preliminary injunction.

*See continuation attached as page 12.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Did the District Court err in finding no genuine issue of material fact remained for trial and that summary judgment was proper in this case, such judgment being based upon a Utah trial order and divorce decree that is currently on appeal, that granted judgment on claims not encompassed within the Assignment dated June 19, 2020, and that did not address claims that predated the Assignment?

Did the District Court err in dismissing this case and depriving Appellant of a trial on the merits of the case?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: N/A

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(9).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Feb 25, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Feb 25, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Mar 25, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) allows an appeal to be taken from a "final judgment entered in an action." The District Court's Order entered February 25, 2021 to dismiss this action was a final judgment.

Appellant also appeals the District Court's Order entered November 13, 2020 granting summary judgment to Respondents. Pursuant to NRCP 54(b), that Order was not final in nature because it adjudicated "fewer than all claims . . . of fewer than all the parties." That Order became final upon the District Court's entrance of its February 25, 2021 Order to Dismiss.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff: Brad L. Knowlton

Defendants: Valley Ascent, LLC; William L Lindner, as Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1988; Juel A. Parker, as Trustee of the Juel A. Parker Family Trust; Lisa Parker, as Trustee of the Juel A. Parker Family Trust; Lisa Parker, an individual; and S. Bruce Parker, as Trustee of the Steven Bruce Parker Family Trust

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Valley Ascent, LLC is not a party to this appeal as it was formally dismissed.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

*See continuation attached as page 13.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

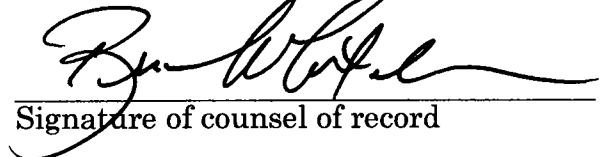
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Brad L. Knowlton
Name of appellant

Apr 21, 2021
Date

Clark County, Nevada
State and county where signed

Brian C. Whitaker, Esq.
Name of counsel of record


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 21st day of April, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Mark E. Ferrario, Esq.
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89144
Attorney for Respondents

The Honorable Carolyn Worrell
4236 Furgerson Ranch Road
Carson City, Nevada 89701
Settlement Judge

Dated this 21st day of April, 2021


Signature

8. Nature of the action, continued.

Respondents filed an Answer and Counterclaim on March 20, 2020, objecting to Appellant's claims and submitting several counterclaims. On June 5, 2020, Appellant was divorced from his wife in the State of Utah (Case No. 174701016). The Decree of Divorce awarded Appellant's ex-wife the marital interest in Valley Ascent, and Appellant assigned his membership interest in Valley Ascent only to his ex-wife in accordance with the Divorce Decree in an Assignment effective June 19, 2020.

On June 15, 2020, Appellant filed a Notice of Appeal, appealing to the Utah Court of Appeals from the Divorce Decree.

Months later, on September 23, 2020, Respondents filed a Motion for Summary Judgment. There, Respondents alleged Appellant lacked standing to commence litigation against them because Appellant's ex-wife had been awarded all right, title, and interest to Appellant's membership interest in Valley Ascent, LLC in a Judgment and Decree of Divorce in the State of Utah.

Despite Appellant's opposition to Respondents' claims, the District Court granted summary judgment on November 13, 2020, finding Appellant failed to demonstrate a right to pursue any of the claims asserted in his Complaint. The District Court subsequently dismissed the case on February 25, 2021 after a Motion from Respondents requesting their counterclaims be dismissed. With the dismissal of the counterclaims the decision of the Court on the Motion for Summary Judgment became final.

23. Give a brief description (3-5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim, continued.

**CLAIMS BY APPELLANT AGAINST LINDNER TRUST, JUEL PARKER TRUST, AND
BRUCE PARKER TRUST**

First Cause of Action: *Breach of Contract – Summary Judgment (11/13/20)*
Second Cause of Action: *Violation of the Implied Covenant of Good Faith and Fair Dealing
– Summary Judgment (11/13/20)*

**CLAIMS BY APPELLANT AGAINST JUEL PARKER TRUST AND BRUCE PARKER
TRUST**

Fifth Cause of Action: *Expulsion as Member – Summary Judgment (11/13/20)*

CLAIMS BY APPELLANT AGAINST ALL RESPONDENTS

Third Cause of Action: *Declaratory Relief – Summary Judgment (11/13/20)*
Fourth Cause of Action: *Intentional Interference with Contractual Relations – Summary
Judgment (11/13/20)*
Sixth Cause of Action: *Breach of Fiduciary Duties – Summary Judgment (11/13/20)*
Seventh Cause of Action: *Receivership – Summary Judgment (11/13/20)*
Eighth Cause of Action: *Preliminary Injunction– Summary Judgment (11/13/20)*

COUNTER-CLAIMS BY RESPONDENTS AGAINST APPELLANT

First Cause of Action: *Breach of Fiduciary Duty/Constructive Trust – Dismissal
(02/25/21)*
Second Cause of Action: *Breach of Contract – Dismissal (02/25/21)*
Third Cause of Action: *Breach of the Covenant of Good Faith and Fair Dealing –
Dismissal (02/25/21)*
Fourth Cause of Action: *Fraudulent Concealment – Dismissal (02/25/21)*
Fifth Cause of Action: *Tortious Breach of Implied Covenant of Good Faith – Dismissal
(02/25/21)*
Sixth Cause of Action: *Intentional Interference with Contractual Relations – Dismissal
(02/25/21)*
Seventh Cause of Action: *Expulsion – Dismissal (02/25/21)*
Eighth Cause of Action: *Accounting – Dismissal (02/25/21)*
Ninth Cause of Action: *Conversion – Dismissal (02/25/21)*
Tenth Cause of Action: *Elder Exploitation – Dismissal (02/25/21)*

27. File-stamped copies attached.



COMPB

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Attorneys for Plaintiff Brad L. Knowlton

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

BRAD L. KNOWLTON, an individual,

Plaintiff,

v.

VALLEY ASCENT, LLC, a Nevada limited liability company, WILLIAM L. LINDNER, as Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1988, JUEL A. PARKER, as Trustee of the Juel A. Parker Family Trust, LISA PARKER, as Trustee of the Juel A. Parker Family Trust, LISA PARKER, an individual, and S. BRUCE PARKER, as Trustee of the Steven Bruce Parker Family Trust,

Defendants.

CASE NO: _____

DEPT. _____

COMPLAINT

**REQUEST FOR BUSINESS COURT
(Claims based upon NRS 78-92A)**

1 **COMPLAINT**

2 Plaintiff, Brad L. Knowlton, by and through his counsel of record Steven W. Beckstrom of
3 the law firm of Snow Christensen & Martineau, P.C., hereby complains and alleges as follows:

4 **PARTIES, JURISDICTION AND VENUE**

5 1. Plaintiff is a resident of the State of Utah and is the holder of a 38.55% membership
6 interest in Valley Ascent, LLC.

7 2. Defendant Valley Ascent, LLC (hereinafter "VA"), is a Nevada limited liability
8 company with its principal place of business located in Clark County, State of Nevada.

9 3. Defendant William L. Lindner is a resident of the State of California, and is the
10 Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1988 (the "Lindner Trust"),
11 which is the holder of a 20% membership interest in VA.

12 4. Defendant Juel A. Parker is a resident of Clark County, State of Nevada, and is a
13 Trustee of the Juel A. Parker Family Trust (the "Juel Parker Trust"), which is the holder of a 36.45%
14 membership interest in VA.

15 5. Based upon information and belief, Defendant Lisa Parker is a resident of Clark
16 County, State of Nevada, and is also a Trustee of the Juel A. Parker Family Trust.

17 6. Defendant S. Bruce Parker is a resident of Clark County, State of Nevada, and is a
18 Trustee of the Steven Bruce Parker Family Trust ("Bruce Parker Trust").

19 7. This Court has both personal jurisdiction and subject matter jurisdiction over the
20 parties and subject matter of this dispute.

21 8. The acts and events giving rise to the Plaintiff's claims are based primarily upon a
22 contract to be performed in Clark County, State of Nevada, and therefore, this Court has original
23 jurisdiction over the matter and venue is proper pursuant to N.R.S. §13.010(1).

24 **GENERAL ALLEGATIONS**

25 9. On August 3, 2004, Valley Ascent, LLC was formed by the Plaintiff as a Nevada
26 limited liability company.

27 10. At the time of its formation, VA was a single member limited liability company with
28 the Plaintiff as its sole member.

1 11. VA was formed for the purposes of becoming the owner of a parcel of real property
2 located in Clark County, Nevada, that would have a convenience store, gas station, and car wash
3 constructed thereon, which would be rented to Fabulous Freddy's Car Wash ("Fabulous Freddy's").

4 12. The Plaintiff and the owner of Fabulous Freddy's had identified several possible
5 locations for the placement of the business based upon properties available in the commercial real
6 property market.

7 13. The Plaintiff and Fabulous Freddy's identified a location at 4309 West Craig Road,
8 North Las Vegas, Nevada (the "Site") as its preferred location for the business operation to be
9 conducted.

10 14. The Site consisted of two separate parcels of real property, with one of the parcels
11 being owned by the Lindner Trust and another owned by the Juel Parker Trust.

12 15. The Plaintiff approached Juel Parker and William Lindner about joining as members
13 of VA, wherein the Juel Parker Trust and Lindner Trust would each contribute their respective real
14 properties in exchange for a membership interest in VA.

15 16. Thereafter, the Plaintiff, Juel Parker, and William Lindner negotiated regarding their
16 respective positions in VA and the nature and scope of the project that would be built for the purpose
17 of housing Fabulous Freddy's as a tenant.

18 17. As part of the negotiations, in April, 2004, Juel Parker and William Lindner were
19 provided a pro forma that described a three percent (3%) administrative fee that was to be paid to the
20 Plaintiff in exchange for his management of the project upon its completion.

21 18. However, shortly after the pro forma was prepared certain changes were made to the
22 project which expanded the scope of the projects and costs associated therewith, and as a result, the
23 Plaintiff, Juel Parker, and William Lindner each agreed that the Plaintiff would be paid an
24 administrative fee, or management fee, of four percent (4%) of the gross receipts received on the
25 project.

26 19. After an agreement was reached on the membership interest to be held between the
27 Plaintiff, Lindner, and Parker, and the four percent (4%) management fee was agreed upon, in
28 February, 2005, an Amended Operating Agreement of Valley Ascent, LLC was prepared and signed

1 between the Plaintiff, the Lindner Trust, the Juel Parker Trust, and the Bruce Parker Trust. A copy
2 of the Amended Operating Agreement is attached hereto as Exhibit 1 and incorporated herein by this
3 reference.

4 20. The Amended Operating Agreement provided the Plaintiff a 38.55% Membership
5 Interest in VA, while providing the Lindner Trust 20%, the Juel Parker Trust 36.45%, and the Bruce
6 Parker Trust 5%.

7 21. Article VII, Section 1 of the Amended Operating Agreement made the Plaintiff the
8 Manager of VA, vesting him with the sole and exclusive right to manage the business of the
9 Company.

10 22. Furthermore, Article VII, Section 6 of the Amended Operating Agreement provides
11 that "[e]ach Manager shall be reimbursed all reasonable expenses incurred in managing the
12 Company and shall be entitled to compensation, in an amount to be determined from time to time by
13 the written consent of the Members."

14 23. By virtue of the agreement reached at the time the Amended Operating Agreement
15 was signed, the Plaintiff was paid a four percent (4%) management fee commencing in
16 approximately January, 2005.

17 24. Pursuant to Article VIII, Section 2.1, the members of VA were entitled to authorize
18 the compensation of the manager by a majority vote of the members.

19 25. At no time since January, 2005 did the members of VA ever take a vote to change the
20 four percent (4%) management fee that had initially been agreed upon by the members.

21 26. Throughout the course of VA's history, it has been a profitable venture, and members
22 have been consistently paid distributions based upon the profits of the Company.

23 27. The distributions have always been paid in accordance with each member's interest in
24 the Company.

25 28. At no time has the Plaintiff ever made any improper distributions or payments to any
26 member of the Company, or to himself.

27 29. In his role as manager, the Plaintiff maintains a strong relationship with the
28 representatives of VA's main tenant, Fabulous Freddy's.

1 30. Over the years since VA was formed and Fabulous Freddy's began leasing the
2 Property, the Plaintiff has undertaken numerous steps to maintain the relationship with Fabulous
3 Freddy's, including but not limited to making improvements and repairs to the Property and
4 negotiating lease modifications during the recession to ensure that the tenant was able to continue
5 leasing the Property without financial difficulty.

6 31. Additionally, at times when some of the minor tenants of the Property vacated, the
7 Plaintiff was responsible for locating and reletting the space to replacement tenants.

8 32. Additionally, the Plaintiff negotiated a very favorable lease extension with Fabulous
9 Freddy's that requires Fabulous Freddy's to continue leasing the Property through 2034, with annual
10 rent increases.

11 33. Furthermore, in addition to paying healthy profit distributions to members of VA, the
12 Plaintiff, in his role as manager, has responsibly set aside cash reserves in the company bank
13 accounts earmarked for capital improvements to the Property which will be required over time.

14 34. Throughout the course of the Company's existence, there have been little, if any,
15 complaints made to the Plaintiff by the members of the Company.

16 35. At no time prior to January 8, 2020 did any of the members of the Company ever
17 make a request for documents or records of the Company that was not satisfied by the Plaintiff.

18 36. At no time prior to January 8, 2020 did any of the members of the Company ever
19 accuse the Plaintiff of not complying with the terms of the Amended Operating Agreement.

20 37. At no time prior to January 8, 2020 did any of the members of the Company ever
21 accuse the Plaintiff of any self-dealing in his role as a member or manager of VA.

22 38. At no time prior to January 8, 2020 did any of the members of the Company ever
23 accuse the Plaintiff of any embezzlement in his role as member or manager of VA.

24 39. At no time prior to January 8, 2020 did any of the members of the Company ever
25 accuse the Plaintiff of any gross negligence conducted in his role as member or manager of the
26 Company.

27 40. However, apparently on December 23, 2019, pursuant to a document entitled
28 "Written Consent of the Members of Valley Ascent, LLC" (the "False Removal Document") the

1 Lindner Trust, Juel Parker Trust, and Bruce Parker Trust voted as members of the Company to
2 remove the Plaintiff as manager of the VA on the grounds that the Plaintiff had allegedly committed
3 “gross negligence and/or engaged in self-dealing in his capacity as manager . . .” A copy of the
4 False Removal Document is attached hereto as Exhibit 2 and incorporated herein by this reference.

5 41. Based upon the False Removal Document, it appears that Defendants Lindner Trust,
6 Juel Parker Trust, and Bruce Parker Trust voted to remove the Plaintiff as manager based upon their
7 collective Membership Interests held in the Company totaling 61.45% of the total outstanding
8 Membership Interests held in the Company.

9 42. While the False Removal Document purports to indicate that it is the written consent
10 of all Members of VA, the Plaintiff was never notified that any vote was taking place on his
11 removal.

12 43. Furthermore, none of the members of VA presented the Plaintiff with any allegations
13 of wrongdoing prior to the vote nor did they allow him due process to present a defense of the
14 allegations which were raised against him.

15 44. In fact, the Plaintiff still does not know what facts the Defendants are alleging that
16 support their blanket, conclusory, and unsupported allegations.

17 45. Instead, Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker Trust voted to
18 remove the Plaintiff as the manager of the Company.

19 46. Rather than notify the Plaintiff on December 23, 2019 that the vote had been taken to
20 purportedly remove him as manager, Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker
21 Trust instead waited until January 8, 2020 to notify him of the vote.

22 47. Pursuant to Article VIII, Section 1.11 of the Amended Operating Agreement, a vote
23 of 70% of the members is required in order to remove a manager for any reason other than gross
24 negligence, self-dealing or embezzlement.

25 48. Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker Trust have no proof
26 that the Plaintiff committed gross negligence.

27 49. Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker Trust have no proof
28 that the Plaintiff committed self-dealing.

1 50. Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker Trust have no proof
2 that the Plaintiff committed embezzlement, nor did they meet the requisite requirements under the
3 Amended Operating Agreement or under Nevada law to remove him as the manager of VA.

4 51. Thus, the False Removal Document was both improper and ineffective in removing
5 the Plaintiff as the manager of the Company.

6 52. Additionally, on December 23, 2019 an additional document entitled "Written
7 Consent of the Members of Valley Ascent, LLC" (the "False Manager Document") was signed by
8 Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker Trust purporting to appoint
9 Defendant Lisa D. Parker as the "interim" manager of VA. A copy of the False Manager Document
10 is attached hereto as Exhibit 3 and incorporated herein by this reference.

11 53. Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker Trust apparently
12 collectively voted to appoint Defendant Lisa D. Parker as the interim manager based upon their
13 collective Membership Interests held in the Company totaling 61.45% of the total outstanding
14 Membership Interests held in the Company.

15 54. However, under Article VII, Section 10 and Article VIII, Section 1.13 of the
16 Amended Operating Agreement, a new manager may only be appointed through the vote of 70% of
17 the outstanding Membership Interest in the Company.

18 55. As such, Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker Trust do not
19 have sufficient Membership Interest in the Company to appoint a new manager without the vote of
20 the Plaintiff.

21 56. Therefore, the False Manager Document purporting to install Defendant Lisa D.
22 Parker is both improper and invalid, and not effective in appointing her as the "interim" manager.

23 57. The term "interim" manager is not used anywhere in the Amended Operating
24 Agreement and it is not a position authorized thereunder.

25 58. During the fifteen (15) day period between December 23, 2019 and January 8, 2020,
26 Defendants Lindner Trust, Juel Parker Trust, Bruce Parker Trust, and Lisa D. Parker took affirmative
27 measures to interfere with the operation of the Company.
28

1 59. Specifically, Defendants Lindner Trust, Juel Parker Trust, Bruce Parker Trust, and
2 Lisa D. Parker contacted both financial institutions acting as banks/credit unions for VA and
3 informed them that Defendant Lisa D. Parker had been installed as the manager of the company, and
4 that the Plaintiff no longer had authority to act on behalf of the Company.

5 60. Furthermore, in at least one instance, Defendant Lisa D. Parker attempted to convince
6 a banking institution to pay over monies to her that belong to VA under the premise that she was the
7 duly authorized manager of VA.

8 61. Defendants Lindner Trust, Juel Parker Trust, Bruce Parker Trust, and/or Lisa D.
9 Parker also had direct communication with one or more representatives of Fabulous Freddy's and
10 instructed the tenant to pay all rent monies over to Lisa D. Parker.

11 62. Defendants Lindner Trust, Juel Parker Trust, and the Bruce Parker Trust, have
12 usurped their role between the members and managers of VA since the Amended Operating
13 Agreement specifically provides that members shall not have any right or power to take part in the
14 management or control of the Company or its business and affairs, or to act for or bind the Company
15 in any way.

16 63. In essence, Defendants Lindner Trust, Juel Parker Trust, and the Bruce Parker Trust
17 have ignored their roles as members, and instead are seeking to manage the company by making
18 illegitimate, improper, and unfounded allegations of wrongdoing against the Plaintiff.

19 64. Based upon information and belief, Defendant Lisa D. Parker was recently appointed
20 as a Trustee of the Juel Parker trust in order to assert her father, Juel Parker, due to his declining
21 health, and his recent admittance to a care facility due to old age.

22 65. Defendant Lisa D. Parker and her brother, Defendant S. Bruce Parker, in order to
23 fulfill their self-serving desire to take over the management of the company, have worked in concert
24 with one another to convince Defendant Lindner Trust to vote in favor of removing the Plaintiff as a
25 manager of Company.

26 66. Defendants Lisa D. Parker and Defendant S. Bruce Parker desire to take over the
27 management of the Company to support their personal professions as a realtor, property manager,
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1 and lawyer, and to be paid by VA for their services rendered, and without regard to the Plaintiff's
2 rights to continue in his role as Manager.

3 **FIRST CLAIM FOR RELIEF**

4 (Breach of Contract- Defendants Lindner Trust, Juel Parker Trust, Bruce Parker Trust)

5 67. The Plaintiff repeats and realleges each and every allegation contained in
6 Paragraphs 1 through 66 above, as if fully set forth herein, and further alleges as set forth
7 below.

8 68. The Amended Operating Agreement constitutes a valid and binding contract
9 between the parties, as to the subject matter contained therein.

10 69. The Plaintiff has fully performed all of his obligations owed as a member and
11 manager under the Amended Operating Agreement, or other agreements that exist with
12 Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker Trust.

13 70. Notwithstanding the Plaintiff's full performance, as more fully alleged herein,
14 Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker Trust have failed and/or
15 refused to perform their obligations owed to the Plaintiff under the Amended Operating
16 Agreement or other agreements that exist between them.

17 71. As a result, Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker
18 Trust have materially breached the terms of the Amended Operating Agreement and other
19 agreements that exist between them.

20 72. As a result of Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker
21 Trust breach, the Plaintiff has suffered damages in an amount in excess of \$15,000.00, the
22 exact amount of which will be proven at a trial of this matter.

23 73. The Plaintiff has been forced to retain counsel in order to prosecute this
24 matter.

25 74. As permitted under the terms of the applicable agreements, or as otherwise
26 provided under Nevada law, the Plaintiff is entitled to recover his costs and reasonable
27 attorneys fees incurred in this matter.
28

1 **SECOND CLAIM FOR RELIEF**

2 (Violation of the Implied Covenant of Good Faith and Fair Dealing- Defendants Lindner
3 Trust, Juel Parker Trust, and Bruce Parker Trust)

4 75. The Plaintiff repeats and realleges each and every allegation contained in
5 Paragraphs 1 through 74 above, as if fully set forth herein, and further alleges as set forth
6 below.

7 76. Nevada law imposes an implied covenant of good faith and fair dealing into
8 each and every contract entered in the State of Nevada.

9 77. By entering the Amended Operating Agreement, the Plaintiff and Defendants
10 Lindner Trust, Juel Parker Trust, and Bruce Parker Trust entered into a valid contract.

11 78. Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker Trust have
12 taken actions countervailing the spirit and purpose of the aforementioned contract.

13 79. Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker Trust have
14 taken arbitrary, unfair actions that harmed Plaintiff's ability to fulfill his duties, and to enjoy
15 his expected benefits, as set forth in the aforementioned contract.

16 80. As a result of Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker
17 Trust's actions, the Plaintiff has suffered damages in an amount in excess of \$15,000.00, the
18 exact amount of which will be proven at a trial of this matter.

19 81. The Plaintiff has been forced to retain counsel in order to prosecute this
20 matter.

21 82. As permitted under the terms of the applicable agreements, or as otherwise
22 provided under Nevada law, the Plaintiff is entitled to recover his costs and reasonable
23 attorneys fees incurred in this matter.

24 **THIRD CLAIM FOR RELIEF**

25 (Declaratory Relief- All Defendants)

26 83. The Plaintiff repeats and realleges each and every allegation contained in
27 Paragraphs 1 through 82 above, as if fully set forth herein, and further alleges as set forth
28 below.

1 84. The False Removal Document is not proper or effective to remove the
2 Plaintiff as the manager of the Company.

3 85. Furthermore, the False Manager Document is not proper or effective to
4 appoint Defendant Lisa D. Parker as the manager of the Company.

5 86. In light of the fact that Defendants Lindner Trust, Juel Parker Trust, and Bruce
6 Parker are refusing to recognize the Plaintiff as the duly elected and authorized manager of
7 the Company, this Court must declare that the Plaintiff is, in fact, the only authorized
8 manager of the Company.

9 87. Furthermore, in light of the fact that Defendants Lindner Trust, Juel Parker
10 Trust, and Bruce Parker have improperly recognized Defendant Lisa D. Parker as the
11 manager of the Company, and Defendant Lisa D. Parker has falsely and improperly taken
12 specific actions and made representations that she is the duly appointed manager of the
13 Company, this Court must declare that Defendant Lisa D. Parker has no authority to act as
14 manager of the Company nor do any of her purported actions taken represent action taken by
15 VA.

16 88. A justiciable controversy exists between the parties.

17 89. The interests of Plaintiff and Defendants as to their respective rights and
18 duties under the Amended Operating Agreement are adverse.

19 90. Plaintiff has a legal interest in the outcome of the controversy.

20 91. The controversy is ripe for adjudication.

21 92. Plaintiff is entitled to a judicial declaration that he is the only duly authorized
22 manager of the company, and that his purported removal as manager was unjust, improper,
23 and not permitted by the Amended Operating Agreement or Nevada law.

24 93. The Plaintiff has been forced to retain counsel in order to prosecute this
25 matter.

26 94. As permitted under the terms of the applicable agreements, or as otherwise
27 provided under Nevada law, the Plaintiff is entitled to recover his costs and reasonable
28 attorneys fees incurred in this matter.

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95. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 94 above, as if fully set forth herein, and further alleges as set forth below.

97. Defendants Lindner Trust, Juel Parker Trust, Bruce Parker, and Lisa Parker were each aware of VA's contractual relationship with Bank of Utah and Mountain America Credit Union.

99. As a result of that conduct, both Bank of Utah and Mountain America Credit Union have frozen the accounts and suspended their contractual relationship with VA.

101. Plaintiff brings this action for himself, and derivative on behalf of VA.

103. The Plaintiff and VA have suffered damages in an amount in excess of \$15,000.00, the exact amount of which will be proven at a trial of this matter.

1 104. The Plaintiff has been forced to retain counsel in order to prosecute this
2 matter.

3 105. As permitted under the terms of the applicable agreements, or as otherwise
4 provided under Nevada law, the Plaintiff is entitled to recover his costs and reasonable
5 attorneys fees incurred in this matter.

FIFTH CLAIM FOR RELIEF

6 (Expulsion as Member- Defendant Juel Parker Trust and Bruce Parker Trust)

7 106. The Plaintiff repeats and realleges each and every allegation contained in
8 Paragraphs 1 through 105 above, as if fully set forth herein, and further alleges as set forth
9 below.

10 107. Pursuant to Article XIII, Section 1 of the Amended Operating Agreement, a
11 member may be expelled by judicial determination that a member has engaged in wrongful
12 conduct that adversely and materially affected the Company's business, or that it has
13 willfully and persistently committed a material breach of the Amended Operating Agreement
14 owed to the Company or the other members.

15 108. Defendants the Juel Parker Trust and Bruce Parker Trust have engaged in
16 wrongful conduct that adversely and materially affected the Company's business, including
17 but not limited to harming the Company's relationship with its banks, credit unions, tenants,
18 and other service contract providers.

19 109. Furthermore, Defendants the Juel Parker Trust and Bruce Parker Trust have
20 engaged in willful and persistent breaches of the Amended Operating Agreement, and duties
21 owed to the Company.

22 110. As a result, Defendants, the Juel Parker Trust and Bruce Parker Trust should
23 be expelled as members of VA.

24 111. The Plaintiff has been forced to retain counsel in order to prosecute this
25 matter.

26 112. As permitted under the terms of the applicable agreements, or as otherwise
27 provided under Nevada law, the Plaintiff is entitled to recover his costs and reasonable
28 attorneys fees incurred in this matter.

SIXTH CLAIM FOR RELIEF

(Breach of Fiduciary Duties—All Defendants)

113. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 112 above, as if fully set forth herein, and further alleges as set forth below.

114. Defendants Lindner Trust, Juel Parker Trust, and Bruce Parker owe fiduciary duties to the Plaintiff and to VA, specifically including but not limited to a duty of loyalty and duty of care.

115. Furthermore, in the unlikely event that Defendant Lisa D. Parker was properly appointed as a manager of VA, then she owes fiduciary duties to VA, including but not limited to a duty of loyalty and duty of care.

116. The actions of Defendants Lindner Trust, Juel Parker Trust, Bruce Parker, and Lisa Parker have breached their fiduciary duties owed to the Plaintiff and VA.

117. Plaintiff brings this action for himself, and derivative on behalf of VA.

118. The Plaintiff is authorized to bring the action on behalf of VA because any effort to cause the other members to bring the action on behalf of the company would have been futile since those other members are Defendants in this action, and thus, would not have been likely to approve bringing action against themselves.

119. As a result of said Defendants' breach of fiduciary duties, the Plaintiff and VA have suffered damages in an amount in excess of \$15,000.00, the exact amount of which will be proven at a trial of this matter.

120. The Plaintiff has been forced to retain counsel in order to prosecute this matter.

121. As permitted under the terms of the applicable agreements, or as otherwise provided under Nevada law, the Plaintiff is entitled to recover his costs and reasonable attorneys fees incurred in this matter.

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123. While this Court should declare that the Plaintiff is still the duly authorized manager of VA, in the event that the Plaintiff has been properly removed as the manager thereof, then a new manager is not likely to be appointed in light of the fact that the Plaintiff and Defendants are unlikely to agree on a new manager and the requisite vote needed to appoint a new manager is 70% of the members.

125. The Plaintiff has been forced to retain counsel in order to prosecute this matter.

EIGHTH CLAIM FOR RELIEF
(Preliminary Injunction- All Defendants)

128. Each of the Defendants have engaged in wrongdoing designed to remove the Plaintiff as the duly appointed manager of VA so that the Defendants can take over the operation of the same.

130. The Plaintiff and VA will suffer irreparable harm if an injunction is not issued to prevent the Defendants from taking any action as purported managers of the Company, or

1 from taking any other action to interfere with the operation of the Company, including but
2 not limited to contacting tenants and financial institutions doing business with VA.

3 131. The law will not be able to provide the Plaintiff or VA an adequate legal
4 remedy if an injunction is not issued.

5 132. Therefore, this court should enter a preliminary and/or permanent injunction
6 (a) ordering that Plaintiff continue as the manager of the Company during the pendency of
7 this litigation, and beyond; and (b) preventing Defendants from taking any action as
8 purported managers of the Company, or from taking any other action to interfere with the
9 operation of the Company, including but not limited to contacting tenants and financial
10 institutions doing business with VA.

11 133. The Plaintiff has been forced to retain counsel in order to prosecute this
12 matter.

13 134. As permitted under the terms of the applicable agreements, or as otherwise
14 provided under Nevada law, the Plaintiff is entitled to recover his costs and reasonable
15 attorneys fees incurred in this matter.

16 **PRAYER FOR RELIEF**

17 Based upon the above and foregoing, the Plaintiff respectfully prays this Court for
18 relief as follows:

19 A. For general damages in an amount in excess of \$15,000.00, the exact amount
20 of which will be proven at a trial of this matter;

21 B. For declaratory relief whereby affirming that the Plaintiff is the only duly
22 authorized manager of the Company, and setting forth that Defendant Lisa D. Parker is not
23 an authorized manager of the Company;

24 C. For preliminary and permanent injunction against each of the Defendants
25 whereby enjoining them from taking any action as purported managers of the Company, or
26 from taking any other action to interfere with the operation of the Company, including but
27 not limited to contacting tenants and financial institutions doing business with VA, and
28

1 reaffirming that the Plaintiff shall continue as the manager of the Company during the
2 pendency of this action, and beyond;

3 D. For pre-judgment and post-judgment interest on all amounts awarded at a rate
4 of 10% per annum;

5 E. For reasonable attorney's fees and costs, as permitted under the terms of the
6 applicable agreements and other relevant provisions of Nevada law;

7 F. For an award of all costs of this action; and

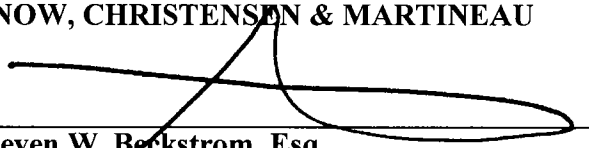
8 G. For such other relief as may be just and proper under the circumstances.

9 DATED this 31st day of January, 2020.

10 **WINNER & SHERROD, LTD.**

11 Andrew D. Smith
12 Nevada Bar No. 8890
13 1117 S. Rancho Dr.
14 Las Vegas, NV 89102
15 Telephone: (702) 243-7000

16 **SNOW, CHRISTENSEN & MARTINEAU**

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23 *Attorneys for Plaintiff Ascent Construction, Inc.*
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AFFIRMATION

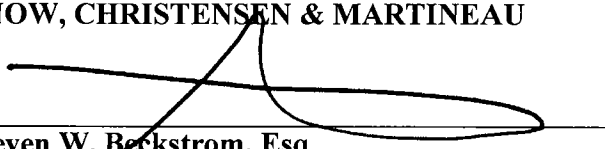
The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 31st day of January, 2020.

WINNER & SHERROD, LTD.

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Attorneys for Plaintiff Ascent Construction, Inc.

4825-2659-2690, v. 1

Exhibit 1

**AMENDED
OPERATING AGREEMENT
OF
VALLEY ASCENT, LLC**

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OPERATING AGREEMENT

OF

VALLEY ASCENT, LLC

This Operating Agreement is made effective as of the _____ day of February, 2005, by the Members as hereinafter set forth.

ARTICLE I FORMATION

1. Formation of Limited Liability Company. A Limited Liability Company has been formed pursuant to the provisions of the Nevada Revised Statutes (the "Act"), the Operating Agreement for which is hereby amended.

2. Agreement, Effect of Inconsistencies with Act. It is the express intention of the Members and Manager that this Operating Agreement shall be the sole agreement of the Members and the Manager, except for a separate written agreement with Manager regarding fees and any other additional responsibilities. To the extent any provision of this Operating Agreement is prohibited or ineffective under the Act, this Operating Agreement shall be considered amended to the smallest degree possible in order to make the agreement effective under the Act.

3. Name. The name of the Company is Valley Ascent, LLC (the "Company").

4. Term. The Company shall exist in perpetuity unless the Company shall be sooner dissolved and its affairs wound up in accordance with the Act or this Operating Agreement.

5. Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles as filed with the Division. The Manager, may, from time to time, change the registered agent or office through appropriate filings with the Division. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Manager shall promptly designate a replacement registered agent or file a notice of change of address as the case may be. If the Manager shall fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement registered agent or file a notice of change of address.

6. Designated Office. The Designated Office of the Company shall be at the location reflected in the Articles as filed with the Division.

ARTICLE II DEFINITIONS

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1. Additional Member. A Member other than an Initial Member or a Substitute Member who has acquired a Membership Interest from the Company.
2. Assignee. A Person to whom a Membership Interest has been transferred who has not been admitted as a Substituted Member.
3. Bankrupt Member. A Member who: (1) has become the subject of an Order for Relief under the United States Bankruptcy Code, (2) has initiated, either in an original Proceeding or by way of answer in any state insolvency or receivership proceeding, an action for liquidation arrangement, composition, readjustment, dissolution, or similar relief.
4. Default Interest Rate. The higher of the legal rate or the then-current prime rate quoted by the largest commercial bank in the jurisdiction of the Principal Office plus three percent.
5. Dissociation. Any action which causes a Person to cease to be Member.
6. Dissociated Member. A Person who has ceased to be Member as a result of Dissociation
7. Immediate Family. A Member's Immediate Family includes the Member's spouse, children (including natural, adopted and stepchildren), grandchildren, and parents.
8. Initial Members. Those persons identified on Exhibit A attached hereto and made a part hereof by this reference who have executed this Operating Agreement.
9. Majority of Managers. A majority by number of all Managers.
10. Majority of the Members. Members having Membership Interests in excess of one-half of the Membership Interests of all the Members entitled to vote on, consent to, or approve a particular matter. Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority. In the case of a Manager who has disposed of that Member's entire Membership Interest to an Assignee, but has not ceased to be a Member as provided below, the Interest of such Assignee shall be considered in determining a Majority of the Members and such Member's vote or consent shall be determined by such Interest.
11. Member. An Initial Member, Substituted Member or Additional Member, including, unless the context expressly indicates to the contrary, a Manager or Assignee.

12. Organization. A Person other than a natural person. Organization includes, without limitation, corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, limited liability companies, and unincorporated associations, but the term does not include joint tenancies and tenancies by the entirety.

13. Permitted Transferee. Any member of the Member's Immediate Family, or an Organization controlled by such Member or by members of the Member's Immediate Family.

14. Person. An individual, trust, estate, or any incorporated or unincorporated organization permitted to be a member of a limited liability company under the laws of the State of Nevada.

15. Related Person. A person having a relationship to a Member that is described in section 1.752-4(b) of the Regulations.

16. Substitute Member. An Assignee who has been admitted to all of the rights of membership pursuant to this Operating Agreement.

ARTICLE III NATURE OF BUSINESS

1. Character of Business. The purpose of the Company is to engage in the business of real estate investment and development, ownership and leasing of equipment and personal property, and all related activities and all other lawful activities agreed to by the Members.

ARTICLE IV ACCOUNTING AND RECORDS

1. Records to be Maintained. As required by the Act, the Manager shall maintain the following records at its Designated Office in this State:

1.1 a current list in alphabetical order of the full name and last known business, residence or mailing address of each Member and each Manager;

1.2 a copy of the stamped Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which the Articles or any amendment has been signed;

1.3 a copy of the Company's federal, foreign, state and local income tax returns and reports, if any, for the three most recent years;

1.4 a copy of any financial statements of the Company, if any, for the three most recent years; and

1.5 a copy of the Company's Operating Agreement including all amendments thereto.

2. Reports to Members.

2.1 The Manager shall provide reports at least annually to the Members at such time and in such manner as the Manager may determine reasonable.

2.2 The Manager shall provide all Members and Assignees with those information returns required by the Internal Revenue Code and the laws of any state.

3. Bank Accounts. All funds of the Company shall be deposited in the name of the Company in an account or accounts in such bank or banks as shall be determined by the Manager, and all withdrawals or disbursements from said account or accounts shall be made by check drawn in the Company name upon such account or accounts and signed on behalf of the Company by the Manager or his designee.

4. Company Accounting.

4.1 Books and Records. Books of account of the Company, including capital and income accounts for each Member, shall be kept on a cash and calendar year basis in accordance with generally accepted accounting practices applied in a consistent manner and shall reflect all Company transactions and be appropriate and adequate for Company business. The books of account and other records of the Company shall be maintained at the designated office of the Company or at such other place as may be designated by the Members, and shall be open to inspection by each Member or their duly authorized representatives at all reasonable times during business hours.

4.2 Financial Statements. A balance sheet of the Company at the end of each calendar year, together with a statement of earnings for the twelve (12) months then ended, and copies thereof, as are to be furnished as part of the proposed Federal and Nevada Income Tax Returns for the Company for such year, shall be furnished to each Member within seventy-five (75) days following the end of each such year showing each Member's distributive share of net profits or net losses and additional items of income or deduction for income tax purposes. Not less than once a year, and as soon as possible after completion of the financial report referred to herein, a meeting of all Members shall be held to review such report. The financial statements shall be prepared by a certified public accountant in accordance with usual and customary accounting standards.

5. Title to Property. Title to and ownership of all the assets of the Company shall at all times be vested in and stand in the name of the Company.

ARTICLE V
NAMES AND ADDRESSES OF MEMBERS AND MANAGERS

The names and addresses of the Members and Manager are as reflected on Exhibit A attached hereto and by this reference made a part hereof as if set forth fully herein.

ARTICLE VI
RIGHTS AND DUTIES OF MEMBERS

1. Management. Unless also a Manager, the Members shall not have any right or power to take part in the management or control of the Company or its business and affairs or to act for or bind the Company in any way. All Members who are not Dissociated Members shall be entitled to vote on any matter submitted to a vote of the Members in accordance with Article VIII. Except as otherwise provided in this Operating Agreement, an action submitted to a vote of the Members may be taken without a meeting on the written consent of the Members holding the votes necessary to approve the action if a meeting were held. No meetings are required to be held for actions taken by Members. Any consent or writing may be received by the Company via facsimile so long as the communication provides the Company with a complete copy thereof, including the signature thereto.

2. Liability of Members. No Member shall be liable either as a Member or as a Manager for the liabilities of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Operating Agreement or the Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

3. Representations and Warranties. Each Member, and in the case of an Organization, the person(s) executing this Operating Agreement on behalf of the Organization, hereby represents and warrants to the Company and each other Member that: (a) if that Member is an Organization, that it is duly organized, validly existing, and in good standing under the law of its state of organization and that it has full Organizational power to execute and agree to this Operating Agreement to perform its obligations hereunder; (b) that the Member is acquiring its interest in the Company for the Member's own account as an investment and without an intent to distribute the interest; (c) the Member acknowledges that the interests have not been registered under the Securities Act of 1933 or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements.

4. Conflicts of Interest. The Members and their affiliates may engage for their own account and for the account of others in any business venture, including the purchase of real estate properties, the development, operation, management or syndication of real estate properties, on behalf of other persons, partnerships, joint ventures, corporations, limited liability companies or other entities in which they have an interest, and the Company shall have no right to participate therein. A Member may deal with him or herself, his or her affiliates and their officers, employees and agents, in providing necessary services or goods for the Company,

provided that the Member discloses the relationship and the compensation paid for such services is a reasonable amount which is comparable and competitive with the compensation which would be paid other persons for such services; neither the Company nor any of the Members shall have any right by virtue of this Agreement, to participate in or to claim ownership in such independent ventures or to claim any interest in the income or profits derived therefrom.

ARTICLE VII MANAGER

1. Manager. Subject to the limitations and restrictions set forth in this Operating Agreement, the Manager shall have the sole and exclusive right to manage the business of the Company. The initial Manager is ~~Bad Knowlton~~.
Brad L.

2. Term of Manager. The Manager shall not have any contractual right to such position. The Manager shall serve until the earliest of:

2.1 the resignation of such Manager;

2.2 the removal of the Manager by an affirmative vote of the Members in accordance with Article VIII; or

2.3 the death dissolution or bankruptcy of such Manager.

3. Default Manager. Upon the resignation, removal, dissolution, bankruptcy or death of the Manager, a new Manager shall be appointed by the Members within 60 days. In the event that a new Manager is not appointed during that period of time, F. Scott Johansen is appointed as the Manager until a replacement Manager is appointed by the Members.

4. Authority of Manager and Members. Only the Manager and agents of the Company authorized by the Manager shall have the authority to bind the Company. No Member who is not either a Manager or otherwise authorized as an agent shall take any action to bind the Company, and each Member shall indemnify the Company for any costs or damages incurred by the Company as a result of the unauthorized action of such Member.

5. Management Responsibilities. If there be more than one Manager, each Manager has the power to bind the Company as provided in this Article. Any difference arising as to any matter within the authority of the Manager shall be decided by a Majority of Manager. No act of a Manager in contravention of any limitations of the Manager's authority set forth in the Articles shall bind the Company, and no act of a Manager in contravention of any other limitations of the Manager's authority shall bind the Company to Persons having knowledge of such limitation.

6. Compensation of Manager. Each Manager shall be reimbursed all reasonable expenses incurred in managing the Company and shall be entitled to compensation, in an amount to be determined from time to time by the written consent of the Members.

7. Manager's Standard of Care. Unless otherwise provided in the Articles or this Operating Agreement, a Manager shall not be liable or accountable in damages or otherwise to the Company or the Members for any action taken or failure to act on behalf of the Company unless the act or omission constitutes gross negligence or willful misconduct.

8. Personal Liability of Manager. A Manager will be personally liable to the Company or its Members for damages for any breach of duty in the capacity where a judgment or other final adjudication adverse to the Manager establishes that the Manager's acts or omissions were in bad faith or involved gross negligence or willful misconduct or that the Manager personally gained a financial profit or other advantage to which the Manager was not legally entitled.

9. Removal of Manager. Any Manager may be removed by the affirmative vote of the Members in accordance with Article VIII.

10. Election of Manager. Except for the initial Manager, each Manager shall be appointed by the Members in accordance with Article VIII, and any vacancy occurring in the position of Manager shall be filled in the same manner.

ARTICLE VIII MEMBER VOTING RIGHTS

The following decisions are reserved for the Members and shall be decided by the Members upon the percentage of membership interests indicated:

1. Super Majority of the Member Interests. The following decisions must be approved by a 70% vote of the Member Interests:

1.1 amend the Articles of Organization, except to make ministerial amendments or to change an address;

1.2 amend the Operating Agreement, except to make ministerial amendments or to change an address;

1.3 approve any sale, lease, exchange, or other disposition of all or substantially all of the Company's property other than in the usual and regular course of the Company's business;

1.4 approve any mortgage, pledge, dedication to repay indebtedness, whether with or without recourse, or other encumbering of all or substantially all of the Company's property whether or not in the usual and regular course of business;

1.5 admit an Assignee of a Membership Interest as a Substitute Member;

1.6 admit a person as an Additional Member;

- 1.7 authorize to have the Company dissolved and its affairs wound up;
- 1.8 approve the disposition, in whole or in part, of a Membership Interest;
- 1.9 approve a merger to which the Company is a party to the merger;
- 1.10 authorize the return of any Contribution to the Company;
- 1.11 remove a Manager for any reason other than gross negligence, self dealing or embezzlement;
- 1.12 determine the necessity and amount of any additional contributions beyond the Initial Contributions; and
- 1.13 elect Managers, except for the initial Manager.

2. Majority of the Member Interests. The following decisions must be approved by a Majority of the Member Interests:

- 2.1 authorize the compensation of the Manager;
- 2.2 remove a Manager for gross negligence, self dealing or embezzlement;
- 2.3 decide all other issues submitted to a vote of the Members not requiring more than a majority vote of the Members;
- 2.4 approve the act of a Member personally benefitting from the conduct and winding up of the business or from a use or appropriation by the Member of Company property;
- 2.5 approve a transaction involving the Company and a Member;
- 2.6 elect how to treat a Dissociated Member's Membership Interest; and
- 2.7 approve the purchase price of a Dissociated Member's Membership Interest.

ARTICLE IX CONTRIBUTIONS AND CAPITAL ACCOUNTS

1. Initial Contributions. Each Member shall make the Contribution agreed to by that Member on Exhibit A. If no time for the contribution is specified, the contributions shall be made upon closing and the execution of this Amended Operating Agreement. No interest shall accrue on any contribution and no Member shall have the right to withdraw or be repaid any contribution except as provided in this Operating Agreement. Each Additional Member shall

make the contribution described in the admission agreement with the Additional Member. The amount of the Additional Member's contribution and the time for making such Contribution shall be set forth in the Admission Agreement.

2. Return of Contributions. No Member shall be entitled to demand a return of any contribution to the Company except as approved by the Members in accordance with Article VIII.

3. Capital Accounts. An individual Capital Account shall be determined and maintained for each Member and Assignee throughout the full term of the Company in accordance with The Internal Revenue Code (the "Code") Section 704 and Treasury Regulations Section 1.704-1(b)(2)(iv), and shall consist of the Member's original contribution increased by the Member's (a) additional contributions to capital and (b) share of Company profits, and decreased by the Member's (c) drawings and other distributions and (d) share of Company losses, adjusted as required by the Treasury Regulations.

4. Sale or Exchange of Interest. In the event of a sale or exchange of some or all of a Membership Interest, the Capital Account of the transferring Member shall become the Capital Account of the Assignee, to the extent it relates to the portion of the Membership Interest transferred.

5. Compliance with Section 704(b) of the Code. The provisions of this Article as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of profits, losses, income, gain and credit to have substantial economic effect under the Regulations promulgated under Section 704(b) of the Code, in light of distributions and contributions made. Notwithstanding anything herein to the contrary, this Operating Agreement shall not be construed as creating a deficit restoration obligation or otherwise personally obligate any Member or Assignee to make a Contribution in excess of the Initial Contribution, and Additional Contribution, of the Member or Assignee.

ARTICLE X ALLOCATIONS AND DISTRIBUTIONS

1. Allocations of Net Profits and Net Losses from Operations. Except as may be required by section 704(c) of the Code, net profits, net losses, and other items of income, gain, loss, deduction and credit shall be apportioned among the Members in proportion to their Membership Interests.

2. Profits or Losses.

2.1 Interest in Profits or Losses. The net profits or net losses of the Company, all capital gains or losses and all extraordinary items of gain or loss, other than such gains or losses recognized with regard to Code Section 704(c) property, shall be credited or charged to the Members in the proportions described in Exhibit A as adjusted from time to time. Gains or

losses recognized with regard to Code Section 704(c) property shall be allocated among the Members pursuant to Code Section 704(c) and the Treasury Regulations pertaining thereto.

2.2 Limitation on Liability for Losses Chargeable to Members. No Members shall personally be liable for any of the losses of the Company beyond said Member's capital interest in the Company.

2.3 Distribution of Profits. The earnings of the Company shall be distributed monthly, except that earnings may be retained by the Company as required hereinbelow or if required for the reasonable needs of the business. The Manager shall decide when and in what amounts earnings should be retained by the Company.

3. Interim Distributions. From time to time, the Manager shall determine in Manager's reasonable judgment to what extent, if any, the Company's cash on hand exceeds the current and anticipated needs, including, without limitation, needs for operating expenses, debt service, acquisitions, reserves, and mandatory distributions, if any. To the extent such excess exists, the Manager may make distributions to the Members in accordance with their Membership Interests.

ARTICLE XI TAXES

1. Elections. The Manager may make any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company.

2. Tax Matters Partner. The Manager shall designate one of their number or, if there is no Manager eligible to act as tax matters partner any other Member, as the tax matters partner of the Company pursuant to Section 6231(a)(7) of the Code. Any Member designated as tax matters partner shall take such action as may be necessary to cause each other Member to become a notice partner within the meaning of Section 6223 of the Code. Any Member who is designated tax matter partner may not take any action contemplated by sections 6222 through 6232 of the Code without the written consent of the Manager.

3. Cash Method of Accounting. The records of the Company shall be maintained on a cash receipts and disbursements method of accounting.

ARTICLE XII DISPOSITION OF MEMBERSHIP INTERESTS

1. Disposition. A Membership Interest may not be assigned or transferred, in whole or in part, without the prior written consent of the Members in accordance with Article VIII. Any such assignment or transfer must not violate the provisions of the Securities Act of 1933, as amended, or of any applicable state securities laws or, cause the termination of the Company as a

partnership for Federal income tax purposes, or cause an acceleration of any permanent financing. An assignment must be by a written instrument, the terms of which are not in contravention of any terms of this Agreement, and to be effective, must be received by the other Members.

2. Right of First Refusal.

2.1 If a bona fide cash offer shall be made by a third party to any Member to purchase all or any part of any Member's interest and such Member desires to accept such offer, the Member receiving the offer shall notify the Company and the other Member(s) of the offer in writing and attach a copy of such offer. A sale pursuant to a non-cash offer may not be made unless approved by the Members pursuant to Article VIII. The notification shall name the offer or, shall state the portion of the interest to be sold or transferred and shall describe in detail all of the terms and conditions of the proposed sale or transfer. The giving of the above prescribed Notice by a Member (hereinafter the "Selling Member") of a bona fide offer to purchase all or any part of the Member's interest shall grant to the Company and the other Member(s) (hereinafter the "Other Member(s)") an option to purchase all or part of said interest being sold upon the same terms and conditions and for the same price as the Selling Member proposed to accept from the third party. Any Other Member(s) desiring to exercise such option must give the Selling Member written Notice of the Other Member's intention to do so within sixty (60) days after the effective date of the notice. Notwithstanding the fact that the offer made by the third party may prescribe that the purchase price for the Selling Member's Interest is to be paid on an installment basis, the Other Member(s) may elect to pay the purchase price specified in such offer in cash at the closing (as established pursuant to subsection 2.3 below), which election shall be made contemporaneously with the exercise of the option. By failing to exercise its option within a sixty (60) day period after Notice is received, any Other Member(s) shall be deemed to have consented to the proposed sale and transfer.

2.2 Unless the option to purchase which is available to the Other Member(s) and/or the Company is exercised, or if the option is exercised but the Other Member(s) and/or the Company fails to close the purchase in accordance with the provisions of subsection 2.3 below, the Selling Member shall be free to close the proposed transaction with the third party strictly upon the terms described in the foregoing written notice, so long as: (i) the proposed transferee agrees in writing, within sixty (60) days after the expiration of the thirty (30) day option period or the period specified in subsection 2.3 below, as the case may be, to become a Member pursuant to the terms and provisions of this Agreement and agrees in writing to assume the obligations and liabilities of the Selling Member respecting the Company assuming said third party is approved by the Members to become a substitute Member and if not, the said third party shall remain an Assignee; and (ii) the proposed transaction is closed (and all consideration due at the Closing paid) within such sixty (60) day period.

2.3 If any Other Member(s) timely exercises the option to purchase the interest of the Selling Member, such purchase shall be consummated not later than sixty (60) days after each such Other Member(s) exercises its option to purchase such interest, the precise date, time and place of closing to be specified by the Other Member(s).

2.4 If more than one (1) Other Member exercises the right of first refusal granted by this Section, each such electing Other Member (the "Electing Other Member(s)") shall be entitled to acquire the interest of the Selling Member in the ratio which the Other Member's Percentage Interest bears to the Percentage Interest of all Electing Other Member(s).

2.5 Notwithstanding the foregoing, the right of first refusal herein shall not be triggered in the case of a transfer to a limited liability company, corporation or other entity which is controlled by the respective Member, provided that such transfer shall be subject to the requirements of Section 1 of Article XII. For purposes of this Section, unless otherwise specified, the term "control" means ownership (either directly or indirectly) by the named individuals of more than fifty percent (50%) of the stock or capital interests in the entity involved.

2.6 Notwithstanding any of the above, the Company may exercise its right of first refusal to purchase all or any part of said selling Members Interest within the sixty (60) day period after Notice upon a vote of Members as provided in Article VIII.

3. Allocation of Assignment. In the event of an assignment of a Membership Interest in the Company, the Company's net profits or net losses and each other tax item allocable to the interest assigned for the Taxable Year in which the assignment occurs shall, to the extent permitted by applicable law, be apportioned between the assignor and assignee on the basis of the number of days in such year which fall before and including the date of assignment and the number of days in such year which fall after the assignment, without regard to the actual results of Company operations during the period in which each such party was recognized as a holder of the Company interest concerned and without regard to the date, amount or receipt of any Distribution which may have been made with respect to such Company interest.

4. Dispositions not in Compliance with this Article Void. Any attempted Disposition of a Membership Interest, or any part thereof, not in compliance with this Article, shall be, and is declared to be, null and void ab initio.

5. Exception for Single Member Company. Notwithstanding any other provision of the Agreement, at any time there is only one Member of the Company, all or a portion of that Member's interest may be disposed of in any manner provided by law, and, upon such Disposition, the transferee shall become a Member without further action on the part of the transferee, the Company or the Member.

6. Basis Adjustments. Upon the transfer of all or part of any Member's interest in the Company, the Company may make an election with the Commissioner of Internal Revenue Service, pursuant to Code Section 754, to adjust the basis of the Company property in accordance with Code Section 743.

ARTICLE XIII
EXPULSION AND DISSOCIATION OF A MEMBER

1. **Expulsion.** A Member of the Company may be expelled on application by the Company or another Member, by judicial determination that the Member to be expelled:

1.1 has engaged in wrongful conduct that adversely and materially affected the Company's business;

1.2 has willfully and persistently committed a material breach of the Articles or Operating Agreement or of a duty owed to the Company or to the other Members; or

1.3 has engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on business with the Member.

2. **Dissociation.** A Person shall cease to be a Member upon the happening of any of the following events:

2.1 the Member filing for Bankruptcy;

2.2 in the case of a Member who is a natural person, the death of the Member;

2.3 in the case of a Member who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

2.4 in the case of a Member that is a separate Organization other than a corporation, the dissolution and commencement of winding up of the separate Organization;

2.5 in the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

2.6 in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

3. **Purchase of Dissociated Member's Membership Interest.** Upon the Dissociation of a Member, when the Remaining Members elect to continue the business of the Company, the Members shall, in accordance with Article VIII and subject to the provisions of the Act, elect one of the two following provisions:

3.1 The Disassociated Member's Membership Interest shall be purchased by the Company for a purchase price equal to the aggregate fair market value of the Member's Interest determined according to the provisions of Sections 3 and 4 of this Article. The purchase price of such interest shall be paid by the Company to the Member in cash within 60 days of determination of the aggregate fair market value or, at the Company's option, said debt may be evidenced by a promissory note bearing interest at the Prime Rate, which shall be due and

payable upon the earlier of (i) expiration of five years or (ii) the sale or other disposition of all of the Property; or

3.2 The Dissociated Member, or assignee of Dissociated Member's Interest, shall hold the Dissociated Member's Membership Interest as an Assignee.

4. Purchase Price of Dissociated Member's Membership Interest. The fair market value of a Member's Interest to be purchased by the Company pursuant to Section 3.1 of this Article shall be determined by agreement between the Dissociated Member (or the Assignee of the Dissociated Member's Membership Interest, as the case may be) and the Company, which agreement is subject to approval by the Members in accordance with Article VIII. For this purpose, the fair market value of the Dissociated Member's Membership Interest shall be computed as the amount which could reasonably be expected to be realized by such Member upon the sale of the Company Property in the ordinary course of business at the time of Dissociation. If the Dissociated Member (or the Assignee of the Dissociated Member's Membership Interest, as the case may be) and the Company cannot agree upon the fair market value of such Membership Interest within 30 days, the fair market value thereof shall be determined by appraisal, the Company and the Dissociated Member or assignee of the Dissociated Member's Interest each to choose one appraiser and the two appraisers so chosen to choose a third appraiser. The decision of a majority of the appraisers as to the fair market value of such Membership Interest shall be final and binding and may be enforced by legal proceedings. The Dissociated Member and the Company shall each compensate the appraiser appointed by it and the compensation of the third appraiser shall be borne equally by such parties.

5. Damages. The provision set forth herein shall not effect any claim for damages the Company may have against the Dissociated Member if such Dissociation is in violation of this Operating Agreement. The Company shall have the right to offset any payments due under this Article XIII by any damages that the Company may incur as a result of a Dissociation of a Member in contravention of this Operating Agreement.

6. Exception for Single Member Company. Notwithstanding any other provision of the Agreement, on the Dissociation of the Member at any time there is only one Member of the Company, the Person succeeding to the Member's interest as a result of such Dissociation shall become a Member without further action on the part of the transferee, the Company or the Member.

ARTICLE XIV

ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS

1. Rights of Assignees. The Assignee of a Membership Interest has no right to participate in the management of the business and affairs of the Company or to become a Member. The Assignee is only entitled to receive the Distributions and return of capital, and to be allocated the Net Profits and Net Losses attributable to the Membership Interest.

2. Admission of Substitute Members. An Assignee of a Membership Interest shall be admitted as a Substitute Member and admitted to all the rights of the Member who initially assigned the Membership Interest only upon the written consent, which may be withheld in their sole and absolute discretion, of the Members in accordance with Article VIII and upon the signing of the Operating Agreement by which the Assignee agrees to be bound. If so admitted, the Substitute Member has all the rights and powers and is subject to all the restrictions and liabilities of the Member originally assigning the Membership Interest. The admission of a Substitute Member, without more, shall not release the Member originally assigning the Membership Interest from any liability to Company that may have existed prior to the approval.

3. Admission of Permitted Transferees. Notwithstanding Section 2 hereof, the Membership Interest of any Member shall be transferable without the consent of the Members if (i) the transfer occurs by reason of or incident to the death, dissolution, divorce, liquidation, merger or termination of the transferor Member, and (ii) the transferee is a Permitted Transferee.

4. Admission of Additional Members. A person may be admitted as an Additional Member only upon the written consent of the Members in accordance with Article VIII.

5. Exception for Single Member Company. Notwithstanding any other provision of the Agreement, at any time there is only one Member of the Company, all or a portion of that Member's interest may be disposed of in any manner provided by law, and, upon such disposition, the transferee shall become a Member without further action on the part of the transferee, the Company or the Member.

ARTICLE XV DISSOLUTION AND WINDING UP

1. Dissolution. The Company shall be dissolved and its affairs wound up, upon the first to occur of the following events:

1.1 the expiration of the Term; or

1.2 the written consent of the Members in accordance with Article VIII.

2. Effect of Dissolution. Upon dissolution, the Company shall cease carrying on as distinguished from the winding up of the Company business. The Company is not terminated, but continues until the winding up of the affairs of the Company is completed and the Certificate of Dissolution has been issued by the Division.

3. Distribution of Assets on Dissolution. Upon the winding up of the Company, the Company Property shall be distributed:

3.1 to creditors other than Members, to the extent permitted by law, in satisfaction of Company liabilities;

3.2 to creditors who are Members, to the extent permitted by law, in satisfaction of Company liabilities;

3.3 to Members in accordance with positive Capital Account balances taking into account all Capital Account adjustments for the Company's taxable year in which the liquidation occurs. Liquidation proceeds shall be paid within 60 days of the end of the Company's taxable year or, if later, within 90 days after the date of liquidation. Such distributions shall be in cash or Property (which need not be distributed proportionately) or partly in both, as determined by the Manager.

4. Winding Up and Certificate of Dissolution. The winding up of a limited liability company shall be completed when all debts, liabilities, and obligations of the limited liability company have been paid and discharged or reasonable adequate provision therefor has been made, and all of the remaining property and assets of the limited liability company have been distributed to the members. Upon the completion of winding up of the Company, a certificate of dissolution shall be delivered to the Division for filing. The certificate of dissolution shall set forth the information required by the Act.

5. Persons Authorized to Wind Up. The following persons, in the order of priority indicated, shall have the right to wind up the business of the Company:

5.1 first, the existing Manager; second, an agent designated by the existing Manager; third, the existing Members; and fourth, an agent designated by the existing Members; and

5.2 in any situation not covered by Section 5.1, a person appointed by a court of competent jurisdiction upon application of any interested person.

ARTICLE XVI AMENDMENT

This Operating Agreement may be amended or modified from time to time but only by a written instrument approved and executed by the Members having the membership Interests set forth in Article VIII.

ARTICLE XVII MISCELLANEOUS PROVISIONS

1. Entire Agreement. This Operating Agreement represents the entire agreement among all the Members and between the Members and the Company.

2. No Partnership Intended for Non-tax Purposes. The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership. The Members do not intend to be partners one to another, or partners as to any third party. To the extent any

Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

3. **Rights of Creditors and Third Parties under Operating Agreement.** This Operating Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. This Operating Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Operating Agreement, Admission Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

4. **Applicable Law.** This Agreement, and application or interpretation thereof, shall be governed exclusively by its terms and by the laws of the State of Nevada. Any suit to enforce the terms hereof shall be brought only in the State of Nevada.

5. **Unenforceability.** If any term, provision or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of the Agreement shall remain in full force.

6. **Binding Agreement.** This Agreement shall be binding upon the parties hereto, their successors, heirs, devisees, assigns, legal representatives, executors and administrators.

7. **Captions.** Section titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision thereof.

8. **Pronouns.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require.

9. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

EXHIBIT A

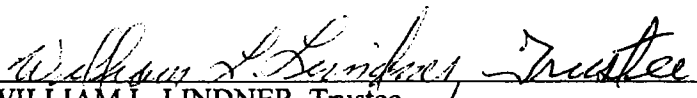
<u>Member</u>	<u>Membership Interest</u>
Brad L. Knowlton 25 South Main, Suite 200 Centerville, UT 84014 SSN: _____	38.55%
William L. Lindner, Trustee William L. Lindner and Maxine G. Lindner Trust of 1988 916 Silver Spur Road Rolling Hills Estates, CA 90274 SSN: _____	20.00%
Juel A. Parker, Trustee Juel A. Parker Family Trust 8712 Red Rio Drive, #104 Las Vegas, NV 89128 SSN: _____	36.45%
S. Bruce Parker, Trustee, Stephen Bruce Parker and Renee Lynn Parker Family Trust 7465 W. Lake Mead Blvd., Suite 100 Las Vegas, NV 89128 SSN: _____	5.00%
Total	100%

IN WITNESS WHEREOF, we have hereunto set our hand and seals effective as of the date set forth above.

MEMBERS:


BRAD L. KNOWLTON

WILLIAM L. LINDNER AND MAXINE G. LINDNER
TRUST OF 1988


WILLIAM L. LINDNER, Trustee

JUEL A. PARKER FAMILY TRUST


JUEL A. PARKER, TRUSTEE

STEPHEN BRUCE PARKER AND RENEE LYNN
PARKER FAMILY TRUST

S. BRUCE PARKER, Trustee

MANAGER:


BRAD L. KNOWLTON

IN WITNESS WHEREOF, we have hereunto set our hand and seals effective as of the date set forth above.

MEMBERS:


BRAD L. KNOWLTON

WILLIAM L. LINDNER AND MAXINE G. LINDNER
TRUST OF 1988

WILLIAM L. LINDNER, Trustee

JUEL A. PARKER FAMILY TRUST

JUEL A. PARKER, TRUSTEE

CBP
-THE STEVEN BRUCE PARKER
FAMILY Trust
Dated 11-1-04

STEVEN
STEPHEN BRUCE PARKER AND RENEE LYNN
PARKER FAMILY TRUST


S. BRUCE PARKER, Trustee

MANAGER:


BRAD L. KNOWLTON

EXHIBIT A

<u>Member</u>	<u>Membership Interest</u>
Brad L. Knowlton 25 South Main, Suite 200 Centerville, UT 84014 SSN: _____	38.55%
William L. Lindner, Trustee William L. Lindner and Maxine G. Lindner Trust of 1988 916 Silver Spur Road Rolling Hills Estates, CA 90274 SSN: _____	20.00%
Juel A. Parker, Trustee Juel A. Parker Family Trust 8712 Red Rio Drive, #104 Las Vegas, NV 89128 SSN: _____	36.45%
SSP STEVEN S. Bruce Parker, Trustee, Stephen Bruce Parker and Renee Lynn Parker Family Trust 7465 W. Lake Mead Blvd., Suite 100 Las Vegas, NV 89128 SSN: _____	5.00%
Total	100%

Exhibit 2

**WRITTEN CONSENT
OF THE MEMBERS OF
VALLEY ASCENT, LLC
(a Nevada Limited Liability Company)**

December 23, 2019

THE UNDERSIGNED, being and constituting the members holding a majority interest (the “**Members**”) of Valley Ascent, LLC, a Nevada limited liability company (the “**Company**”), acting by written consent after holding a telephonic meeting in accordance with the Company’s Amended Operating Agreement, do hereby adopt the following resolutions:

WHEREAS, pursuant to Article VII, Section 9 and Article VIII, Section 2.2 of the Amended Operating Agreement of the Company, the members holding a majority interest may remove a manager for gross negligence, self-dealing or embezzlement;

WHEREAS, based on an investigation of the manager’s conduct and operation of the business and affairs of the Company, including an examination of the Company’s federal tax returns for years ending 2015-2018, the Members have determined, [after consultation with and advice from legal counsel] that Brad Knowlton has committed gross negligence and/or engaged in self-dealing in his capacity as manager, including, but not limited to: (1) by failing to provide annual reports and federal and state tax returns to the members in accordance with Article IV(2) of the Amended Operating Agreement; (2) by paying himself manager’s fees without the written consent of the other members in violation of Article VII(6); and/or (3) by paying a disproportionate share of disbursements to himself, in violation of Article X.

WHEREAS, the Members desire to remove Brad Knowlton as manager of the Company (the “**Removal**”), and the Members have determined that the Removal is in the best interests of the Company.

NOW, THEREFORE, BE IT RESOLVED, that the Members hereby approve the Removal; and be it

RESOLVED, FURTHER, that a signature by facsimile or in electronic format shall be equally as effective as a manually executed signature.

[Signature page to follow]

IN WITNESS WHEREOF, the undersigned, being the Members holding a majority interest, have executed or caused this written consent to be executed as of the date first written above.

Members:

William L. Lindner and Maxine G.
Lindner Trust of 1988

By: William L. Lindner
Name: William L. Lindner
Title: Trustee

Juel A. Parker Family Trust

By: _____
Name: Lisa D. Parker
Title: Trustee

The Steven Bruce Parker Family
Trust dated 11/1/2004

By: _____
Name: S. Bruce Parker
Title: Trustee

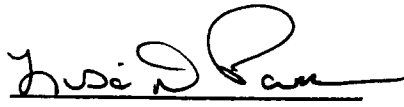
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Members:

William L. Lindner and Maxine G.
Lindner Trust of 1988

By: _____
Name: William L. Lindner
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By: 
Name: Lisa D. Parker
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By: _____
Name: William L. Lindner
Title: Trustee

Juel A. Parker Family Trust

By: _____
Name: Lisa D. Parker
Title: Trustee

The Steven Bruce Parker Family
Trust dated 11/1/2004


By:  _____
Name: S. Bruce Parker
Title: Trustee

Exhibit 3

**WRITTEN CONSENT
OF THE MEMBERS OF
VALLEY ASCENT, LLC
(a Nevada limited liability company)**

December 23, 2019

THE UNDERSIGNED, being and constituting the members holding a majority interest (the "**Members**") of Valley Ascent, LLC, a Nevada limited liability company (the "**Company**"), acting by written consent without a meeting in accordance with the Company's Amended Operating Agreement, do hereby adopt the following resolutions:

WHEREAS, on December 23, 2019, pursuant to Article VII, Section 9 and Article VIII, Section 2.2 of the Amended Operating Agreement of the Company, the Members voted to remove Brad Knowlton as manager of the Company for gross negligence and self-dealing;

WHEREAS, the Members now desire to appoint an Interim Manager of the Company until such time as a Super Majority of the members of the Company elect a new Manager of the Company;

NOW, THEREFORE, BE IT RESOLVED, that the Members hereby approve and appoint Lisa Parker to act as the Interim Manager of the Company and authorize Ms. Parker to:

have access to all Company books and records;

have access to all Company bank accounts;

act on the Company's behalf in relation to its lease with MCSmith, LLC tenant of property located on the corner of Craig Road and Valley Drive, in North Las Vegas, Nevada (the "**Property**") including but not limited to the ability to collect lease/rent payments for the Property; and

to make necessary arrangements for the payment of Company taxes and any related fees;

and be it

RESOLVED, FURTHER, that a signature by facsimile or in electronic format shall be equally as effective as a manually executed signature.

[Signature page to follow]

IN WITNESS WHEREOF, the undersigned, being the Members holding a majority interest, have executed or caused this written consent to be executed as of the date first written above.

Members:

William L. Lindner and Maxine G.
Lindner Trust of 1988

By: William L. Lindner
Name: William L. Lindner
Title: Trustee

Juel A. Parker Family Trust

By: _____
Name: Juel A. Parker
Title: Trustee

The Steven Bruce Parker Family
Trust dated 11/1/2004

By: _____
Name: S. Bruce Parker
Title: Trustee

IN WITNESS WHEREOF, the undersigned, being the Members holding a majority interest, have executed or caused this written consent to be executed as of the date first written above.

Members:

William L. Lindner and Maxine G.
Lindner Trust of 1988

By: _____
Name: William L. Lindner
Title: Trustee

Juel A. Parker Family Trust

By: Juel A. Parker TRUSTEE
Name: Juel A. Parker Lisa D. Parker
Title: Trustee

The Steven Bruce Parker Family
Trust dated 11/1/2004

By: _____
Name: S. Bruce Parker
Title: Trustee

IN WITNESS WHEREOF, the undersigned, being the Members holding a majority interest, have executed or caused this written consent to be executed as of the date first written above.

Members:


William L. Lindner and Maxine G.
Lindner Trust of 1988

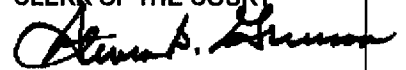
By: _____
Name: William L. Lindner
Title: Trustee

Juel A. Parker Family Trust

By: _____
Name: Juel A. Parker
Title: Trustee

The Steven Bruce Parker Family
Trust dated 11/1/2004

By:  _____
Name: S. Bruce Parker
Title: Trustee



1 ANCC
2 MARK E. FERRARIO, ESQ.
3 Nevada Bar No. 1625
4 KARA B. HENDRICKS, ESQ.
5 Nevada Bar No. 7743
6 ALAYNE M. OPIE, ESQ.
7 Nevada Bar No. 12623
8 **GREENBERG TRAUIG, LLP**
9 10845 Griffith Peak Drive, Suite 600
10 Las Vegas, Nevada 89144
11 Telephone: (702) 792-3773
12 Facsimile: (702) 792-9002
13 Email: ferrariom@gtlaw.com
14 hendricksk@gtlaw.com
15 opiea@gtlaw.com

16 *Attorneys for WILLIAM L. LINDNER as Trustee*
17 *of the William L. Lindner and Maxine G. Lindner*
18 *Trust of 1988; JUEL A. PARKER, individually*
19 *and as Trustee of the Juel A. Parker Family Trust;*
20 *LISA PARKER, individually and as Trustee of the*
21 *Juel A. Parker Family Trust; and S. BRUCE*
22 *PARKER, as Trustee of the Steven Bruce Parker*
23 *Family Trust*

24 **EIGHTH JUDICIAL DISTRICT COURT**

25 **CLARK COUNTY, NEVADA**

26 BRAD L. KNOWLTON, an individual,
27
28 Plaintiff,

v.

29 VALLEY ASCENT, LLC, a Nevada limited liability
30 company, WILLIAM L. LINDNER, as Trustee of
31 the William L. Lindner and Maxine G. Lindner Trust
32 of 1988, JUEL A. PARKER, as Trustee of the Juel
33 A. Parker Family Trust, LISA PARKER, as Trustee
34 of the Juel A. Parker Family Trust, LISA PARKER,
35 an individual, and S. BRUCE PARKER, as Trustee
36 of the Steven Bruce Parker Family Trust,

37 Defendants.

CASE NO: A-20-809612-B

DEPT. XI

ANSWER AND COUNTERCLAIMS

1 WILLIAM L. LINDNER, as Trustee of the William
2 L. Lindner and Maxine G. Lindner Trust of 1988,
3 individually and derivatively; LISA PARKER, as
4 Trustee of the Juel A. Parker Family Trust,
5 individually and derivatively; S. BRUCE PARKER,
6 as Trustee of the Steven Bruce Parker Family Trust,
7 individually and derivatively, and JUEL PARKER,
8 individually,

9 Counter-Plaintiffs,

10 v.

11 BRAD L. KNOWLTON, individually and
12 derivatively; and DOE Individuals I-X and ROE
13 Entities I-X, inclusive,

14 Counter-Defendant,

15 and

16 Nominal party VALLEY ASCENT, LLC, a Nevada
17 limited liability company.

18 COME NOW, Defendants LISA PARKER, an individual; LISA PARKER and JUEL A.
19 PARKER, as Trustees for the JUEL A. PARKER FAMILY TRUST (the "Juel Parker Trust");
20 WILLIAM L. LINDNER, as Trustee for the WILLIAM L. LINDNER and MAXINE G. LINDNER
21 TRUST OF 1988 (the "Lindner Trust"); and S. BRUCE PARKER, as Trustee for the STEVEN BRUCE
22 PARKER FAMILY TRUST (the "Bruce Parker Trust"; collectively, "Defendants"), by and through
23 their counsel of record, the law firm of Greenberg Traurig, LLP, and hereby submit this Answer to
24 Plaintiff's Complaint:

25 **PARTIES, JURISDICTION AND VENUE**

26 1. Answering Paragraph 1, Defendants are without knowledge or information sufficient to
27 form a belief as to Plaintiff's residency, and, therefore deny the same. Defendants admit Plaintiff claims
28 a 38.55% membership interest in Valley Ascent, LLC ("VA").

29 2. Answering Paragraph 2, Defendants admit VA is a Nevada limited liability company
30 with its principal place of business located in Clark County, State of Nevada.

1 3. Answering Paragraph 3, Defendants admit William L. Lindner is a resident of the State
2 of California, and is the Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1988, which
3 holds a 20% membership interest in VA.

4 4. Answering Paragraph 4, Defendants deny Juel A. Parker is trustee of the Juel A. Parker
5 Family Trust. Defendants admit the Juel A. Parker Family Trust holds a 36.45% membership interest
6 in VA and that Juel A. Parker is a resident of Clark County, State of Nevada.

7 5. Answering Paragraph 5, Defendants admit Lisa Parker is a resident of Clark County,
8 State of Nevada, and is also trustee of the Juel A. Parker Family Trust.

9 6. Answering Paragraph 6, Defendants admit S. Bruce Parker is a resident of Clark County,
10 State of Nevada, and is a trustee of the Steven Bruce Parker Family Trust.

11 7. Paragraph 7 calls for a legal conclusion, and on that basis, Defendants deny.

12 8. Paragraph 8 calls for a legal conclusion, and on that basis, Defendants deny.

GENERAL ALLEGATIONS

14 9. Answering Paragraph 9, Defendants admit Nevada Secretary of State reflects the VA
15 entity was formed August 3, 2004. Defendants are without knowledge or information sufficient to deny
16 or admit the remaining allegation.

17 10. Answering Paragraph 10, Defendants are without knowledge or information sufficient to
18 deny or admit the allegation.

19 11. Answering Paragraph 11, Defendants are without knowledge or information sufficient to
20 deny or admit the allegation.

21 12. Answering Paragraph 12, Defendants state it was Bruce Parker who approached the
22 owner of Fabulous Freddy's about the possibility of building a car wash on the property his father
23 owned. Accordingly, Defendants deny.

13. Answering Paragraph 13, Defendants state it was Bruce Parker who approached the owner of Fabulous Freddy's about the possibility of building a car wash on the property his father owned. Accordingly, Defendants deny.

27 |||

28 |||

1 14. Answering Paragraph 14, Defendants admit 4309 West Craig Road, North Las Vegas,
2 consisted of two separate parcels of real property, with one of the parcels owned by the Lindner Trust,
3 and the other owned by the Juel Parker Trust.

4 15. Answering Paragraph 15, Defendants admit the Juel Parker Trust and Lindner Trust
5 contributed their respective real properties in exchange for a membership interest in VA. Defendants
6 deny the remaining allegations.

7 16. Answering Paragraph 16, Defendants admit that Juel Parker and William Lindner
8 discussed their respective positions in VA and the carwash that was to be built. Defendants deny all
9 remaining allegations.

10 17. Answering Paragraph 17, Defendants deny.

11 18. Answering Paragraph 18, Defendants deny.

12 19. Answering Paragraph 19, Defendants admit that Plaintiff, the Lindner Trust, Juel Parker
13 Trust and Bruce Parker Trust entered into an Amended Operating Agreement ("AOA"), and a true and
14 correct copy appears to be attached to the Complaint at Exhibit 1. Defendants expressly deny ever
15 agreeing that Plaintiff should be paid a 4% management fee. Defendants deny all remaining allegations.

16 20. Answering Paragraph 20, Defendants admit the AOA reflects that Plaintiff holds a
17 38.55% membership interest in VA; the Lindner Trust a 20% membership interest; the Juel Parker
18 Family Trust a 36.45% membership interest; and, the Bruce Parker Trust 5%.

19 21. Answering Paragraphs 21, 22, and 24 the terms of the AOA speak for themselves, and
20 on that basis, deny.

21 22. Answering Paragraph 23, Defendants deny Plaintiff was ever authorized to receive a 4%
22 management fee. Defendants admit Plaintiff improperly paid himself a management fee since at least
23 January 2005. Defendants deny all remaining allegations.

24 23. Answering Paragraph 25, Defendants deny ever agreeing to pay Plaintiff a 4%
25 management fee. Accordingly, there was no need to take a vote to change such unauthorized act. On
26 that basis, the Paragraph is denied.

27 24. Answering Paragraph 26, Defendants admit VA has been a profitable venture.
28 Defendants deny being paid consistent distributions.

- 1 25. Answering Paragraph 27, Defendants deny.
- 2 26. Answering Paragraph 28, Defendants deny.
- 3 27. Answering Paragraph 29, upon information and belief, Plaintiff does not maintain a
4 strong relationship with Fabulous Freddy's, and therefore Defendants deny.
- 5 28. Answering Paragraph 30, Defendants admit the property at issue has been repaired and
6 the Fabulous Freddy's lease modified. Defendants are without information or knowledge sufficient to
7 form a belief as to the truth of the remaining allegations, and therefore deny.
- 8 29. Answering Paragraph 31, the terms of the AOA, including the VA's Manager's duties
9 and responsibilities identified therein, speak for themselves, and on that basis, Defendants deny.
- 10 30. Answering Paragraph 32, the referenced lease is through year 2035, and on that basis
11 Defendants deny.
- 12 31. Answering Paragraph 33, Plaintiff has failed to produce books and records, rendering
13 Defendants unable to intelligently respond to the allegation. Accordingly, Defendants are without
14 sufficient knowledge or information, and on that basis deny.
- 15 32. Answering Paragraph 34, Defendants deny.
- 16 33. Answering Paragraph 35, Defendants deny.
- 17 34. Answering Paragraph 36, Defendants deny.
- 18 35. Answering Paragraph 37, Defendants admit Plaintiff concealed his self-dealing;
19 therefore, Defendants had no knowledge of, and did not accuse him of, the same.
- 20 36. Answering Paragraph 38, Defendants admit Plaintiff concealed his embezzlement;
21 therefore, Defendants had no knowledge of, and did not accuse him of, the same.
- 22 37. Answering Paragraph 39, Defendants admit Plaintiff concealed his gross negligence;
23 therefore, Defendants had no knowledge of, and did not accuse him of, the same.
- 24 38. Answering Paragraph 40, Defendants admit that on December 23, 2019, Defendants
25 voted to remove Plaintiff as manager of VA on the grounds that he committed gross negligence and/or
26 engaged in self-dealing. A true and correct copy of the Written Consent of the Members of Valley
27 Ascent, LLC is attached to the Complaint as Exhibit 2.
- 28 ///

1 39. Answering Paragraph 41, Defendants admit that they voted to remove Plaintiff as
2 manager of VA, and that they were successful in removing him. Defendants admit that collectively,
3 they hold 61.45% of the membership interests in VA. Defendants deny the remaining allegations.

4 40. Answering Paragraph 42, Defendants admit they did not notify Plaintiff that they
5 intended to remove him as manager before he was removed as manager. Defendants state the terms of
6 the AOA speak for themselves, and on that basis, deny the remaining allegations.

7 41. Answering Paragraph 43, Defendants deny the notion that they did not present Plaintiff
8 with any allegations of wrongdoing prior to December 23, 2019. As for the remaining allegations, to
9 the extent they call for a legal conclusion, no response is required. Alternatively, Defendants deny.

10 42. Answering Paragraph 44, Plaintiff knows of all his wrongdoings, and on that basis,
11 Defendants deny.

12 43. Answering Paragraph 45, Defendants admit that they voted to remove Plaintiff as
13 manager of VA.

14 44. Answering Paragraph 46, Defendants admit Plaintiff was notified after his removal as
15 manager of VA that said action had been completed. Defendants deny all remaining allegations.

16 45. Answering Paragraph 47, the terms of the AOA speak for themselves, and on that basis,
17 deny.

18 46. Answering Paragraph 48, Defendants deny.

19 47. Answering Paragraph 49, Defendants deny.

20 48. Answering Paragraph 50, Defendants deny.

21 49. Answering Paragraph 51, Defendants deny.

22 50. Answering Paragraph 52, Defendants admit they appointed Lisa Parker as interim
23 manager as reflected in the Written Consent of the Members of Valley Ascent, LLC, a true and correct
24 copy of which is attached to the Complaint at Exhibit 3.

25 51. Answering Paragraph 53, Defendants admit that they appointed Lisa Parker as interim
26 manager. Defendants admit that collectively, they hold 61.45% of the membership interests in VA.

27 52. Answering Paragraphs 54, 55 and 56 the terms of the AOA speak for themselves, and
28 on that basis, deny. Moreover, Defendants deny that they did not have sufficient membership interests

1 in VA to appoint an interim manager, that their actions were in any manner improper, invalid or
2 ineffective.

3 53. Answering Paragraph 57, the terms of the AOA speak for themselves, and on that basis,
4 deny.

5 54. Answering Paragraph 58, Defendants deny ever “interfering” with the operations of the
6 Company in that said term implies wrongdoing, which Defendants expressly deny. On that basis,
7 Defendants deny.

8 55. Answering Paragraph 59, Defendants admit contacting VA’s banking institutions and
9 advising them that Plaintiff was removed as manager, and Lisa Parker appointed interim manager. To
10 the extent Plaintiff infers any wrongdoing on Defendants’ part, Defendants expressly deny.

11 56. Answering Paragraph 60, Defendants admit that Lisa Parker, as interim manager,
12 managed the Company’s finances. Defendants deny all remaining allegations.

13 57. Answering Paragraph 61, Defendants admit that Lisa Parker, as interim manager,
14 managed the Company’s finances. Defendants deny all remaining allegations.

15 58. Answering Paragraph 62, the terms of the AOA speak for themselves, and on that basis,
16 deny. Moreover, Defendants deny “usurping their role between the members and managers of VA.”

17 59. Answering Paragraph 63, Defendants deny.

18 60. Answering Paragraph 64, Defendants admit Lisa Parker was appointed trustee of the Juel
19 A. Parker Family Trust, and that Juel Parker is 93 years of age. Defendants deny all remaining
20 allegations.

21 61. Answering Paragraph 65, Defendants deny.

22 62. Answering Paragraph 66, Defendants deny.

23 **Count I – Breach of Contract**

24 63. Answering Paragraphs 1-67 of the Complaint, Defendants incorporate their responses
25 above as if fully stated here.

26 64. Answering Paragraph 68, Defendants admit that the AOA is a valid and binding contract.

27 65. Answering Paragraphs 69, 70, 71, 72, 73 and 74 Defendants deny.

28 ///

Count II – Breach of Implied Covenant of Good Faith and Fair Dealing

66. Answering Paragraphs 1-75 of the Complaint, Defendants incorporate their responses above as if fully stated here.

67. Answering Paragraph 76, Defendants admit Nevada law imposes an implied duty of good faith and fair dealing in every contract.

68. Answering Paragraph 77, Defendants admit that the AOA is a valid contract.

69. Answering Paragraphs 78, 79, 80, 81 and 82, Defendants deny.

Count III – Declaratory Relief

70. Answering Paragraphs 1-83 of the Complaint, Defendants incorporate their responses above as if fully stated here.

71. Answering Paragraph 84, to the extent the allegations are legal conclusions, no response is required, and therefore Defendants deny. Otherwise, the Paragraph is denied.

72. Answering Paragraph 85, to the extent the allegations are legal conclusions, no response is required, and therefore Defendants deny. Otherwise, the Paragraph is denied.

73. Answering Paragraphs 86, 87, 88, 89, 90, 91, 92, 93 and 94, Defendants deny.

Count IV – Intentional Interference with Contractual Relations

74. Answering Paragraphs 1-95 of the Complaint, Defendants incorporate their responses above as if fully stated here.

75. Answering Paragraph 96, Defendants admit relationships between VA and Bank of Utah, and VA and Mountain American Credit Union. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations, and on that basis, deny.

76. Answering Paragraph 97, Defendants admit relationships between VA and Bank of Utah, and VA and Mountain American Credit Union. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations, and on that basis, deny.

77. Answering Paragraph 98, Defendants deny.

78. Answering Paragraph 99, Defendants admit the banks froze VA accounts. The remaining allegations are denied.

79. Answering Paragraph 100, Defendants deny.

1 80. Answering Paragraph 101, Defendants admit Knowlton is Plaintiff. Defendants deny the
2 action is a proper derivative action.

3 81. Answering Paragraph 102, Defendants deny.

4 82. Answering Paragraph 103, Defendants admit VA has likely suffered damages by account
5 of Plaintiff's actions. Defendants deny the remaining allegations.

6 83. Answering Paragraphs 104 and 105, Defendants deny.

7 **Count V – Expulsion**

8 84. Answering Paragraphs 1-106 of the Complaint, Defendants incorporate their responses
9 above as if fully stated here.

10 85. Answering Paragraph 107, the terms of the AOA speak for themselves, and on that basis,
11 Defendants deny.

12 86. Answering Paragraphs 108, 109, 110, 111, and 112 Defendants deny.

13 **Count VI – Breach of Fiduciary Duty**

14 87. Answering Paragraphs 113 of the Complaint, Defendants incorporate their responses
15 above as if fully stated here.

16 88. Answering Paragraph 114, Defendants admit a fiduciary duty is owed.

17 89. Answering Paragraph 115, Defendants admit a fiduciary duty is owed.

18 90. Answering Paragraph 116, Defendants deny.

19 91. Answering Paragraph 117, Defendants admit Knowlton is Plaintiff. Defendants deny the
20 action is a proper derivative action.

21 92. Answering Paragraphs 118, 119, 120, and 121, Defendants deny.

22 **Count VII - Receivership**

23 93. Answering Paragraph 122 of the Complaint, Defendants incorporate their responses
24 above as if fully stated here.

25 94. Answering Paragraph 123, Defendants deny that Plaintiff is VA's manager. Nonetheless,
26 the allegations are moot as the Court has already appointed a neutral third-party interim manager, and
27 on that basis, Defendants deny.

28 ///

1 95. Answering Paragraph 124, the allegations are moot as the Court has already appointed a
2 neutral third-party interim manager, and on that basis, Defendants deny.

3 96. Answering Paragraphs 125 and 126, Defendants deny.

4 **Count VIII – Preliminary Injunction**

5 97. Answering Paragraph 127 of the Complaint, Defendants incorporate their responses
6 above as if fully stated here.

7 98. Answering Paragraphs 128, 129, 130, 131, 132, 133 and 134, Defendants deny.

8 **Denial**

9 1. To the extent any Paragraph was not specifically addressed, or it is determined that a
10 more specific response was required, Defendants deny the same.

11 **AFFIRMATIVE DEFENSES**

12 Defendants, without altering the burdens of proof the parties must bear, assert the following
13 affirmative defenses to Plaintiff's Complaint and the claims asserted therein. Defendants specifically
14 incorporate into the affirmative defenses their answers to the preceding paragraphs of Plaintiff's
15 Complaint as if fully set forth herein.

16 1. Plaintiff's Complaint, all the claims for relief alleged therein, and all requests for
17 damages, fail to state a claim against Defendants upon which relief can be granted.

18 2. Plaintiff has not been damaged directly, indirectly, proximately or in any manner
19 whatsoever by any conduct of Defendants.

20 3. Plaintiff failed to mitigate his damages, if any.

21 4. The allegations contained in the Complaint, and the resulting damages, if any, to Plaintiff
22 was proximately caused or contributed to by Plaintiff's own conduct, and such improper conduct was
23 greater than the improper conduct, if any, of Defendants.

24 5. Any harm or injury or claim of damage of Plaintiff, or cause of action of Plaintiff, as
25 alleged or stated in the Complaint, is barred by the doctrine of estoppel, laches, fraud and unclean
26 hands.

27 6. Plaintiff's damages, if any, must be reduced or outright eliminated to reflect Plaintiff's
28 proportionate share of fault.

- 1 7. Defendants acted in good faith, with innocent intent and with due care.
- 2 8. Plaintiff has engaged in conduct, acts, deeds, activities and/or omissions sufficient to
- 3 constitute waiver of any alleged breach of duty or other conduct, if any, as set forth in the Complaint.
- 4 9. Plaintiff was the first to breach any contractual obligation between the parties, and
- 5 therefore, cannot pursue recovery against Defendants.
- 6 10. Plaintiff lacks standing to bring one or more causes of action delineated in the Complaint.
- 7 11. Plaintiff's Complaint is not properly verified.
- 8 12. Plaintiff's claims are frivolous, without merit, and asserted in bad faith for an ulterior
- 9 purpose and they are barred accordingly.
- 10 13. Plaintiff's claims against Defendants are barred in whole or in part because Defendants'
- 11 liability, if any, is limited by the AOA and Nevada law, including NRS 86.
- 12 14. Plaintiff's claims against Defendants are barred in whole or in part because Defendants'
- 13 actions are authorized by and comport with the AOA and Nevada law.
- 14 15. Pursuant to NRCP 8, all possible affirmative defenses may not have been alleged herein
- 15 insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants'
- 16 Answer and, therefore, Defendants reserve the right to amend their Answer to allege additional
- 17 affirmative defenses if subsequent investigation warrants.

18 **WHEREFORE**, Defendants pray for judgment as follows:

- 19 1. That Plaintiff takes nothing by way of his Complaint, and the same be dismissed with
- 20 prejudice;
- 21 2. That Defendants be awarded their attorneys' fees and costs incurred in the defense of this
- 22 action; and

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

3. For such other and further relief as the Court may deem just and proper.

DATED this 20th day of March, 2020.

GREENBURG TRAURIG, LLP

/s/ Kara B. Hendricks

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

KARA B. HENDRICKS, ESQ.

Nevada Bar No. 7743

ALAYNE M. OPIE, ESQ.

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10845 Griffith Peak Drive, Suite 600

Las Vegas, Nevada 89144

*Attorneys for WILLIAM L. LINDNER as Trustee of
the William L. Lindner and Maxine G. Lindner Trust
of 1988; JUEL A. PARKER, individually and as
Trustee of the Juel A. Parker Family Trust; LISA
PARKER, individually and as Trustee of the Juel A.
Parker Family Trust; and S. BRUCE PARKER, as
Trustee of the Steven Bruce Parker Family Trust*

COUNTERCLAIMS

COME NOW, Counter-Plaintiffs WILLIAM L. LINDNER, as Trustee for the WILLIAM L. LINDNER and MAXINE G. LINDNER TRUST OF 1988 (the "Lindner Trust"), LISA PARKER, as Trustee of the JUEL A. PARKER FAMILY TRUST ("Juel Trust"), S. BRUCE PARKER, as Trustee of the STEVEN BRUCE PARKER FAMILY TRUST ("Parker Trust"), each individually and derivatively on behalf of VALLEY ASCENT, LLC ("Counter-Plaintiffs"), and JUEL PARKER, individually, by and through their counsel, the law firm of Greenberg Traurig, LLP, and hereby allege as follows:

THE PARTIES

1. Nominal party Valley Ascent, LLC ("VA" and "Company") is a Nevada limited liability company, with its principal place of business in Las Vegas, Nevada.

2. William L. Lindner is a resident of the State of California and Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1988, which holds a 20% membership interest in VA.

///

3. Lisa Parker is a resident of Clark County, Nevada and a Trustee of the Juel A. Parker Family Trust, which holds a 36.45% membership interest in VA.

4. S. Bruce Parker is a resident of Clark County, Nevada and Trustee of the Steven Bruce Parker Family Trust, which holds a 5% membership interest in VA.

5. At all relevant times described herein, Juel Parker is an elderly person over the age of 60 years old, and a resident of Clark County, Nevada.

6. Upon information and belief, Counter-Defendant Brad Knowlton ("Knowlton") is a resident of the State of Utah and claims a 38.55% membership interest in VA.

7. The true names and capacities of DOES and ROES I through X are not currently known to Counter-Plaintiffs and as such cannot yet be named herein. Therefore, Counter-Plaintiffs sue said Counter-Defendants by such fictitious names. Counter-Plaintiffs are informed and believe, and on such basis allege, that each of the Counter-Defendants designated as DOES I through X and ROE Corporations and Limited Liability Companies I through X is responsible in some manner for the events and occurrences referred to in this Counterclaim, and/or may be affiliated with one of the other Counter-Defendants, and/or is the alter-ego of the Counter-Defendants. Counter-Plaintiffs will seek leave of this Court to amend this Counterclaim and insert the true names and capacities of DOES I through X and ROE Corporations and Limited Liability Companies I through X, when the same have been ascertained and to join said Counter-Defendants in this action.

VENUE AND JURISDICTION

8. Pursuant to NRS 13.040, Clark County, Nevada is the proper venue for resolution of the claims contained herein.

9. Section XVII (4) of VA's Amended Operating Agreement ("AOA") provides that any suit or action regarding the AOA shall be instituted in a court of competent jurisdiction in the State of Nevada.

GENERAL ALLEGATIONS

The Company and Amended Operating Agreement

10. The Company is a limited liability company, established for the purposes of engaging in the business of real estate investment and development, ownership and leasing of equipment and personal property, and all related activities and other lawful activities agreed to by its Members.

11. On or about February 18, 2005, Counter-Plaintiffs and Counter-Defendant (collectively, Counter-Plaintiffs and Counter-Defendant are the "Parties") adopted the AOA, which, along with Nevada law, governs the operations of VA.

12. In exchange for a 36.45% membership interest in the Company, the Juel Trust conveyed a parcel of real property (the "Juel Parcel") to the Company and additionally contributed Thirty-Five Thousand Dollars (\$35,000.00).

13. In exchange for a 20% membership interest in the Company and additional monetary compensation from Knowlton, the Lindner Trust transferred a parcel of property (the "Lindner Parcel") to the Company.

14. Bruce Parker agreed to provide real estate services to the Company, and in lieu of a real estate commission or broker fee, the Parker Trust received a 5% membership interest in the Company.

15. Knowlton's claimed 38.55% membership interest in the Company purportedly came from the sweat equity he promised to provide by acting as the general contractor to build a car wash on the Juel Parcel and Lindner Parcel (collectively the Juel Parcel and Lindner Parcel are referred to as the "Property") as well as monetary compensation he provided to Lindner to increase his membership interest.

16. Among other provisions, the AOA provides that:

- a. It is the sole agreement of the Members and Managers, except for a separate written agreement with the Manager regarding fees and any other additional responsibilities (Art. I, Sec. 2; Art. XVII, Sec. 1), and with respect to a Manager's compensation, the amount was to be determined by the written consent of all Members (Art. VII, Sec. 6);
- b. The Manager is required to maintain the Company's books and records in the State of Nevada, including but not limited to tax returns, financial statements, and governing documents (Art. IV, Sec. 1), and provide reports regarding the Company's books and records to Members at least annually (Art. IV, Sect. 2; Sec. 4);
- c. Additionally, the Company's books and records are to be kept in accordance with generally accepted accounting practices applied in a consistent manner, must reflect all Company transactions and be appropriate and adequate for Company business, and open for inspection by all Members (Art. IV, Sec. 4);
- d. Furthermore, with little exception, the Manager is tasked with distributing profits monthly (Art. X, Sec. 2 & 3);

///

e. A Manager lacks any contractual right to such position and is subject to removal by an affirmative vote of the Members (Art. VII, Sec. 2). When a Manager is grossly negligent, self-deals, or embezzles, said Manager is removed upon affirmative vote of 50% of the membership interests (Art. X, Sec. 2);

f. A Manager is personally liable to the Company or its Members for damages for any breach of duty in the capacity where a judgment or other final adjudication adverse to the Manager establishes that the Manger's acts or omissions were in bad faith or involved gross negligence or willful misconduct or that the Manager personally gained a financial profit or other advantage to which the Manger was not legally entitled (Art. VII, Sec. 8)

17. Knowlton was appointed Manager in or around the time the AOA was executed.

The Project

18. In or around 2004, Bruce Parker approached the owner of Fabulous Freddy's about the possibility of building a car wash on the Property (the "Project").

19. The Project would consist of a one-story convenience food store with gas pumps, car wash and car service facilities, among other improvements.

20. In connection with the Project and Property, on or about September 4, 2004, Fabulous Freddy's, by and through the entity MCSmith, LLC, entered into a Build to Suit Lease with the Company ("Fabulous Freddy's Lease").

21. In 2005, the build out of the Project was financed by the Company through a construction loan granted by Mountain American Federal Credit Union ("MACU"), ("MACU Construction Loan").

22. The MACU Construction Loan was later modified in 2013, at which time the interest rate was, upon information and belief, reduced.

Knowlton's Bad Acts Are Uncovered

23. On or about November 2018, Lisa Parker was appointed trustee of the Juel Trust, as her father, Juel Parker, a 93-year old elderly person, was aging and unable to see well enough to handle financial matters.

24. Prior to, Knowlton, in his capacity as Manager, had very little, oversight.

25. To their detriment, Juel Parker, William Lindner and Bruce Parker trusted Knowlton, and allowed him to manage the Company with full faith that he would comply with the terms of the AOA and do right by the Members.

///

1 26. Time has proven that Juel Parker's, William Lindner's and Bruce Parker's trust and faith
2 was misplaced.

3 27. In her role as trustee of the Juel Trust, Lisa Parker began looking at available Company
4 books and records.

5 28. Her investigation uncovered facts and circumstances which, from Counter-Plaintiffs'
6 perspective, led to the conclusion that Knowlton had engaged in self-dealing, embezzlement, gross
7 negligence and/or exploitation of an older person.

8 29. The full extent of Knowlton's bad acts has not yet been uncovered as he has failed to
9 produce pertinent books and records that he, as Manager, was required to maintain.

10 30. On October 2, 2019, Counter-Plaintiffs served Knowlton with a demand for books and
11 records in accordance with NRS 86.

12 31. Weeks after the expiration of time for compliance with NRS 86.241, Knowlton produced
13 limited documents, claiming to have produced everything within the Company's possession at that time.

14 32. The documents were woefully deficient and did not include, among other things:

- 15 a. A list of payments to affiliates of the Company or its manager and the
16 purpose/nature and method of calculation such as, for example, management fees,
17 license fees, etc. and agreements separate from the Company's Operating
18 Agreement that govern services provided by such affiliates;
- 19 b. The Company's Bank of Utah account records;
- 20 c. Account statements for the MACU checking account in the Company's name;
- 21 d. Accounting records in an electronic format, such as QuickBooks or its equivalent,
22 for the relevant period, including the version of QuickBooks used and applicable
23 user ID and passwords;
- 24 e. Check images (or copies of the same) to support all disbursements made by the
25 Company from January 2018- present; or
- 26 f. Loan documents and guaranty documents evidencing any outstanding loans
27 and/or loan modifications to which the Company is a party and any documents
28 evidencing personal guaranty agreements related to the same.

29 33. Upon information and belief, Knowlton has intentionally concealed and/or destroyed the
30 Company's books and records in an attempt to keep Counter-Plaintiffs from discovering the full extent
31 of Knowlton's self-dealing, embezzlement, gross negligence, fraud and/or exploitation of an older
32 person.

34. Based upon information currently available, Counter-Plaintiffs have unveiled the following of Knowlton's bad acts, which run afoul of the express terms of the AOA, spirit and intent of the AOA, Counter-Plaintiffs' trust and faith, and Nevada law:

- a. Without authorization or written consent required by the AOA, Knowlton took a "management fee" equal to 4% or more of the Company's gross income. Upon information and belief, Knowlton has been taking a "management fee" since January 2005 and has since absconded with an amount in excess of \$430,000.
- b. Knowlton paid a monthly fee of \$300 to his daughter, Valerie Knowlton, for "bookkeeping services," in addition to the large monthly "management fee" Knowlton took for himself. Based upon books and records currently available, this monthly "bookkeeping services" fee was paid January 2016 through November 2016 and January 2017 through September 2017. Counter-Plaintiffs did not authorize said "bookkeeping services" fee and, given the state of the Company's books and records, said fee was not paid in exchange for legitimate bookkeeping services.
- c. The Company's available 2016 financials indicate that Knowlton created an \$802,000 personal note and recorded it as a tax entry. Counter-Plaintiffs have not been provided a copy of the note, nor did they authorize Knowlton to enter this onto the Company's books.
- d. Upon information and belief, in 2013, Knowlton paid himself a \$48,050.49 "guarantor fee" in connection with the Company refinancing the MACU Construction Loan. Counter-Plaintiffs neither authorized, nor consented to said "guarantor fee."
- e. What is more, Knowlton, in instructing Juel Parker to sign documents in connection with refinancing the MACU Construction Loan, incorrectly advised that Juel Parker's Guaranty only applied to the Parker Trust's pro-rata share of the Company's debt. Upon information and belief, Knowlton intentionally concealed the fact that Juel Parker was purportedly guaranteeing the entire Company debt and led Juel Parker to believe that the loan was significantly less than \$4.5 million.
- f. Upon information and belief, Knowlton siphoned an additional \$50,000 when the MACU Construction Loan was refinanced, as loan documents show said fee being paid to Ascent Construction, a corporation owned by Knowlton.
- g. Company bank records indicate that Knowlton paid himself additional distributions, which were neither authorized, nor consented to, in February 2016 (\$13,800) and April 2016 (\$13,800).
- h. Throughout years 2015, 2016, 2017, 2018, and 2019, Knowlton paid himself a disproportionate amount of distributions, exceeding the membership interest he claims in the Company, and shorting Counter-Plaintiffs. Upon information and belief, excess payments to Knowlton exceed \$80,000.

35. In addition to the aforementioned bad acts discovered upon receipt of limited Company books and records, Knowlton has committed other bad acts, thereby breaching the express terms of the

1 AOA and spirit and intent of the AOA, and in violation of Counter-Plaintiffs' trust and faith, and Nevada
2 Law.

3 36. Specifically, throughout the years, Knowlton failed to make timely monthly distributions
4 to the Lindner Trust and Juel Trust.

5 37. For one, Knowlton failed to pay the Lindner Trust monthly distributions for November
6 2016, September 2018, January 2019 and November 2019. The Lindner Trust's attempts to resolve the
7 non-payment have been ignored by Knowlton.

8 38. Moreover, Knowlton failed to pay the Juel Trust a distribution for December 2016. In
9 January 2019, Knowlton acknowledged the \$12,220 debt owed to the Juel Trust but stated he would not
10 pay it unless Juel Parker signed an affidavit which Knowlton later submitted in Knowlton's divorce
11 proceeding. Despite this acknowledgement and promise to pay, the debt remains.

12 39. Critically, Knowlton failed to produce original MACU Construction Loan documents.

13 40. Despite the Company having purportedly paid the MACU Construction Loan for
14 approximately eight years, in 2013, the principal balance owed was still \$4.5 million, begging the
15 question, where did the funds go?

16 41. Through discovery, Counter-Plaintiffs expect to find that Knowlton paid himself or one
17 of his businesses a significant amount of money by and through the MACU Construction Loan, for
18 materials and construction of the Project.

19 42. Because Knowlton's membership interest was purportedly earned by and through sweat
20 equity he promised to contribute to the Project, in the event it is proven that Knowlton paid himself or
21 one of his businesses for materials and construction of the Project, the purported consideration he
22 provided in exchange for his membership interest fails.

23 43. Should Knowlton's membership interest fail for lack of consideration, every dollar he
24 has received from the Company was taken under false pretenses and must be repaid.

25 44. Throughout the years, Knowlton failed to provide Counter-Plaintiffs with required
26 annual financial statements.

27 45. Upon information and belief, Knowlton intentionally concealed the Company's financial
28 records in furtherance of his plan to continue to siphon Company money.

1 46. Finally, through discovery, Counter-Plaintiffs expect to confirm that Knowlton co-
2 mingled funds and/or used Company bank accounts and funds to pay for his personal endeavors.

3 47. For example, the Company's Bank of Utah account statements showed available funds
4 on January 31, 2019 in excess of \$1 million. On January 22, 2020 however, the same account had a
5 balance less than \$200,000. Company expenses and distributions throughout that same timeframe are
6 nowhere near \$800,000.

7 48. By way of another example, on February 4, 2019, \$150,000 was transferred out of the
8 Company's Bank of Utah account, with the description "TRANSFER TO Market Place 0406 per Brad."
9 Brad Knowlton is the only "Brad" within the Company with access to Company bank accounts.

10 **Knowlton Is Removed as Manager, Yet, Continues to**
11 **Wreak Havoc on Counter-Plaintiffs and the Company**

12 49. In an effort to mitigate Counter-Plaintiffs' and the Company's damages, on or about
13 December 23, 2019, Counter-Plaintiffs voted to, and successfully removed Knowlton as Manager.

14 50. In Knowlton's place, Counter-Plaintiffs appointed Lisa Parker as interim Manager,
15 authorized to access all Company books and records, bank accounts, make arrangements to pay
16 Company taxes, facilitate receiving and depositing Fabulous Freddy's rent check, payment of the
17 MACU Construction Loan, etc.

18 51. Fabulous Freddy's, MACU and Bank of Utah were notified of the Company's actions.

19 52. Later, on January 15, 2020, the parties met to elect a new permanent Manager, among
20 other reasons.

21 53. Knowlton refused to appoint any Manager but himself.

22 54. Upon information and belief, subsequent to the January 15, 2020 meeting, Knowlton
23 contacted MACU and Bank of Utah, contested his removal and Lisa Parker's appointment, and
24 threatened them with legal action.

25 55. In response, MACU and Bank of Utah froze the Company's accounts, rendering the
26 Company unable to deposit Fabulous Freddy's rent check, pay the MACU Construction Loan, pay an
27 accountant to prepare and file Company taxes, make distributions, etc.

28 ///

SECOND CAUSE OF ACTION

Breach of Contract

66. Counter-Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs and reassert those allegations as though fully set forth herein.

67. The Amended Operating Agreement is a valid and enforceable contract.

68. Counter-Plaintiffs performed their obligations under the Operating Agreement.

69. Knowlton breached his obligations under the AOA.

70. Counter-Plaintiffs and the Company have suffered injury in excess of \$15,000 as a result of Knowlton's breaches.

71. Counter-Plaintiffs are authorized to bring this action derivatively without the consent of Knowlton because any effort to cause Knowlton to bring the action on behalf of the Company would have been futile since Knowlton is a Counter-Defendant in this action, and thus, would not have been likely to approve bringing action against himself.

72. Counter-Plaintiffs and the Company are entitled to an accounting of all Company funds.

73. Counter-Plaintiffs have retained the services of Greenberg Traurig, LLP to prosecute this action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

74. The breaches of contract were committed with specific, malicious and willful intent to injure Counter-Plaintiffs and the Company, and to benefit Knowlton, thereby entitling Counter-Plaintiffs and the Company to compensatory and punitive damages in an amount to be determined.

THIRD CAUSE OF ACTION

Breach of the Covenant of Good Faith and Fair Dealing

75. Counter-Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs and reassert those allegations as though fully set forth herein.

76. The Amended Operating Agreement is a valid and enforceable contract.

77. The AOA contains an implied covenant of good faith and fair dealing.

78. Knowlton performed his obligations with respect to such contract in a manner that is contrary to the intention and spirit of the contract.

///

1 79. Counter-Plaintiffs' and the Company's justified expectations from the contract have been
2 denied as a result of Knowlton's conduct.

3 80. Counter-Plaintiffs and the Company have suffered damages in excess of \$15,000 as a
4 result of Knowlton's conduct.

5 81. Counter-Plaintiffs are authorized to bring this action derivatively without the consent of
6 Knowlton because any effort to cause Knowlton to bring the action on behalf of the Company would
7 have been futile since Knowlton is a Counter-Defendant in this action, and thus, would not have been
8 likely to approve bringing action against himself.

9 82. Counter-Plaintiffs have retained the services of Greenberg Traurig, LLP to prosecute this
10 action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

11 83. Knowlton's breaches were committed with specific, malicious and willful intent to injure
12 Counter-Plaintiffs and the Company, and to benefit Knowlton, thereby entitling Counter-Plaintiffs and
13 the Company to compensatory and punitive damages in an amount to be determined.

14 **FOURTH CAUSE OF ACTION**

15 **Fraudulent Concealment**

16 84. Counter-Plaintiffs incorporate by reference all allegations contained in the preceding
17 paragraphs and reassert those allegations as though fully set forth herein.

18 85. Knowlton concealed and/or suppressed numerous material facts, as demonstrated herein,
19 which he was under a duty to disclose to Counter-Plaintiffs and the Company.

20 86. Knowlton intentionally concealed and/or suppressed these facts with the intention of
21 defrauding Counter-Plaintiffs and the Company.

22 87. Counter-Plaintiffs and the Company were unaware of the material facts wrongfully
23 withheld by Knowlton and would have acted differently and consistent with their rights under the AOA
24 had they known.

25 88. Counter-Plaintiffs and the Company have suffered injury in excess of \$15,000 as a result
26 of Knowlton's concealment.

27 89. Counter-Plaintiffs and the Company are entitled to an accounting of all Company funds.

28 ///

5 91. Counter-Plaintiffs have retained the services of Greenberg Traurig, LLP to prosecute this
6 action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

7 92. The fraudulent concealment was committed with specific, malicious and willful intent to
8 injure Counter-Plaintiffs and the Company and to benefit Counter-Defendants, thereby entitling
9 Counter-Plaintiffs to compensatory and punitive damages in an amount to be determined.

10 **FIFTH CAUSE OF ACTION**

11 Tortious Breach of Implied Covenant of Good Faith

12 93. Counter-Plaintiffs incorporate by reference all allegations contained in the preceding
13 paragraphs and reassert those allegations as though fully set forth herein.

14 94. Counter-Plaintiffs and Knowlton entered into certain contracts, namely the Amended
15 Operating Agreement.

16 95. Implied in every agreement under Nevada law is the obligation of good faith and fair
17 dealing.

18 96. A special relationship, confidential and fiduciary in nature, exists between Counter-
19 Plaintiffs, Knowlton and the Company.

20 97. Counter-Plaintiffs and the Company were required to rely upon and trust Knowlton to
21 carry out his duties and obligations under the AOA in good faith.

22 98. In light of Knowlton's superior knowledge relating to the Company due to Knowlton's
23 concealment of information, and limitations on Counter-Plaintiffs' and the Company's access to certain
24 information relating to the same, Counter-Plaintiffs and the Company were required to hold Knowlton
25 in an entrusted position as part of the business relationship constituting a special relationship.

26 99. Knowlton tortiously breached the implied covenant of good faith and fair dealing by,
27 among other things, engaging in misconduct relating to the AOA and his obligations thereunder.

28 |||

3 101. Counter-Plaintiffs and the Company are entitled to an accounting of all Company funds.

102. Counter-Plaintiffs are authorized to bring this action derivatively without the consent of Knowlton because any effort to cause Knowlton to bring the action on behalf of the Company would have been futile since Knowlton is a Counter-Defendant in this action, and thus, would not have been likely to approve bringing action against himself.

103. Counter-Plaintiffs have retained the services of Greenberg Traurig, LLP to prosecute this
action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

10 104. Knowlton's breaches were committed with specific, malicious and willful intent to injure
11 Counter-Plaintiffs and the Company, and to benefit Knowlton, thereby entitling Counter-Plaintiffs to
12 compensatory and punitive damages in an amount to be determined.

SIXTH CAUSE OF ACTION

Intentional Interference with Contractual Relations

15 105. Counter-Plaintiffs incorporate by reference all allegations contained in the preceding
16 paragraphs and reassert those allegations as though fully set forth herein.

17 106. The Company had valid and enforceable agreements with the Bank of Utah.

18 107. Knowlton was aware of the Company's contractual relationship with Bank of Utah.

19 108. Knowlton took specific measures to interfere with the Company's contractual
20 relationship with Bank of Utah, causing Company's funds to be frozen.

21 109. As a result of Knowlton's actions, Bank of Utah has directed the Company to close its
22 accounts.

110. Counter-Plaintiffs are authorized to bring this action derivatively without the consent of Knowlton because any effort to cause Knowlton to bring the action on behalf of the Company would have been futile since Knowlton is a Counter-Defendant in this action, and thus, would not have been likely to approve bringing action against himself.

111. Counter-Plaintiffs have retained the services of Greenberg Traurig, LLP to prosecute this action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

112. Knowlton's actions were committed with specific, malicious and willful intent to injure Counter-Plaintiffs and the Company, and to benefit Knowlton, thereby entitling Counter-Plaintiffs to compensatory and punitive damages in an amount to be determined.

SEVENTH CAUSE OF ACTION

Expulsion

113. Counter-Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs and reassert those allegations as though fully set forth herein.

114. Under the AOA, a Member may be expelled by judicial determination that a Member has engaged in wrongful conduct that adversely and materially affected the Company's business; that it has willfully and persistently committed a material breach of the AOA or of a duty owed to the Company or the other Members; or has engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on business with the Member.

115. Knowlton has engaged in wrongful conduct that adversely and materially affected the Company's business.

116. Knowlton has willfully and persistently committed material breaches of the AOA.

117. Knowlton has willfully and persistently breached duties owed to the Company and Counter-Plaintiffs.

118. Knowlton has engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on business with Knowlton.

119. Accordingly, Knowlton should be expelled as a Member of the Company.

120. Counter-Plaintiffs are authorized to bring this action derivatively without the consent of Knowlton because any effort to cause Knowlton to bring the action on behalf of the Company would have been futile since Knowlton is a Counter-Defendant in this action, and thus, would not have been likely to approve bringing action against himself.

121. Counter-Plaintiffs have retained the services of Greenberg Traurig, LLP to prosecute this action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

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///

EIGHTH CLAIM FOR RELIEF

Accounting

122. Counter-Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs and reassert those allegations as though fully set forth herein.

123. Knowlton has maintained and retained all of the corporate and business books, records, and documents relating to the Company's operations and finances without providing full and complete access to Counter-Plaintiffs and without providing a full and complete general ledger, accounting, reconciliation, and/or audit of the Company's financial records.

124. Upon information and belief, Knowlton has intentionally concealed and/or destroyed the Company's books and records in an attempt to keep Counter-Plaintiffs from discovering the full extent of Knowlton's self-dealing, embezzlement, gross negligence, fraud and/or abuse and exploitation of an older and vulnerable person.

125. As a result, Counter-Plaintiffs are entitled to a full and complete accounting regarding all of the Company's assets, liabilities, revenues and expenses.

126. Counter-Plaintiffs are authorized to bring this action derivatively without the consent of Knowlton because any effort to cause Knowlton to bring the action on behalf of the Company would have been futile since Knowlton is a Counter-Defendant in this action, and thus, would not have been likely to approve bringing action against himself.

127. Counter-Plaintiffs have retained the services of Greenberg Traurig, LLP to prosecute this action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

NINTH CLAIM FOR RELIEF

Conversion

128. Counter-Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs and reassert those allegations as though fully set forth herein.

129. Knowlton wrongfully and intentionally exercised dominion over monies that were paid to the Company.

130. Knowlton's conduct effectuated a denial of the Company's and Counter-Plaintiffs' use and enjoyment of those monies

1 131. Knowlton's conduct was committed in derogation, exclusion, or defiance of the
2 Company's and Counter-Plaintiffs' rights or title in those monies.

3 132. Counter-Plaintiffs and the Company have suffered injury in excess of \$15,000 as a result
4 of Knowlton's actions.

5 133. Counter-Plaintiffs and the Company are entitled to an accounting of all Company funds.

6 134. Counter-Plaintiffs are authorized to bring this action derivatively without the consent of
7 Knowlton because any effort to cause Knowlton to bring the action on behalf of the Company would
8 have been futile since Knowlton is a Counter-Defendant in this action, and thus, would not have been
9 likely to approve bringing action against himself.

10 135. Counter-Plaintiffs have retained the services of Greenberg Traurig, LLP to prosecute this
11 action and are entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

12 136. Knowlton's actions were committed with specific, malicious and willful intent to injure
13 Counter-Plaintiffs and the Company, and to benefit Knowlton, thereby entitling Counter-Plaintiffs to
14 compensatory and punitive damages in an amount to be determined.

15 **TENTH CLAIM FOR RELIEF**

16 **Elder Exploitation – NRS 41.1395**

17 137. Counter-Plaintiffs incorporate by reference all allegations contained in the preceding
18 paragraphs and reassert those allegations as though fully set forth herein.

19 138. At all relevant times described herein, Juel Parker and William Lindner were over the
20 age of 60.

21 139. Knowlton knew Juel Parker and William Lindner were over the age of 60.

22 140. Knowlton, as Manager of the Company, was in a position of trust and confidence.

23 141. Nonetheless, Knowlton deceived, intimidated, and/or unduly influenced Juel Parker and
24 William Lindner in order to obtain control over his money, assets and property.

25 142. Knowlton acted with the intention of permanently depriving Juel Parker and William
26 Lindner of ownership, use, benefit and possession of his money, assets and property.

27 143. Juel Parker and William Lindner have suffered injury in excess of \$15,000 as a result of
28 Knowlton's actions.

1 144. Juel Parker and William Lindner have retained the services of Greenberg Traurig, LLP to
2 prosecute this action and is entitled to recover reasonable attorneys' fees and costs of suit incurred herein.

3 145. Knowlton's actions were committed with specific, malicious and willful intent to injure
4 Juel Parker and William Lindner, and to benefit Knowlton, thereby entitling Juel Parker and William
5 Lindner to compensatory and punitive damages in an amount to be determined.

6 146. Knowlton is liable to Juel Parker and William Lindner for two times actual damages
7 incurred due to the exploitation.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Counter-Plaintiffs and the Company pray for judgment against Knowlton as
10 follows:

- 11 1. For general damages and loss in an amount of at least \$15,000, to be proven at trial;
12 2. For compensatory, consequential, incidental and special damages resulting from Knowlton's
13 actions, and pre- and post-judgment interest, in an amount of at least \$15,000, to be proven at trial;
14 3. An award of attorneys' fees and costs incurred in prosecuting this action; and
15 4. For such other and further relief as the Court may deem just and proper.

16 DATED this 20th day of March, 2020.

17 **GREENBURG TRAURIG, LLP**

18
19 /s/ Kara B. Hendricks
20 MARK E. FERRARIO, ESQ.
21 Nevada Bar No. 1625
22 KARA B. HENDRICKS, ESQ.
23 Nevada Bar No. 7743
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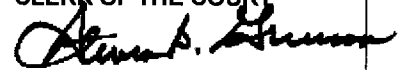
28 *Attorneys for WILLIAM L. LINDNER as Trustee of
the William L. Lindner and Maxine G. Lindner Trust
of 1988; JUEL A. PARKER, individually and as
Trustee of the Juel A. Parker Family Trust; LISA
PARKER, individually and as Trustee of the Juel A.
Parker Family Trust; and S. BRUCE PARKER, as
Trustee of the Steven Bruce Parker Family Trust*

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2020, a true and correct copy of the foregoing **ANSWER AND COUNTERCLAIMS** was served by electronically filing with the Clerk of the Court using the Odyssey eFileNV Electronic Filing system and serving all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

/s/ Andrea Flintz
An employee of Greenberg Traurig, LLP



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16 *Attorneys for WILLIAM L. LINDNER as Trustee of*
17 *the William L. Lindner and Maxine G. Lindner*
18 *Trust of 1988; JUEL A. PARKER, individually and*
19 *as Trustee of the Juel A. Parker Family Trust; LISA*
20 *PARKER, individually and as Trustee of the Juel A.*
21 *Parker Family Trust; and S. BRUCE PARKER, as*
22 *Trustee of the Steven Bruce Parker Family Trust*

23 **EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 BRAD L. KNOWLTON, an individual,
26
27 Plaintiff,

28 v.

29 VALLEY ASCENT, LLC, a Nevada limited liability
30 company, WILLIAM L. LINDNER, as Trustee of
31 the William L. Lindner and Maxine G. Lindner Trust
32 of 1988, JUEL A. PARKER, as Trustee of the Juel
33 A. Parker Family Trust, LISA PARKER, as Trustee
34 of the Juel A. Parker Family Trust, LISA PARKER,
35 an individual, and S. BRUCE PARKER, as Trustee
36 of the Steven Bruce Parker Family Trust,

37 Defendants.

38 WILLIAM L. LINDNER, as Trustee of the William
39 L. Lindner and Maxine G. Lindner Trust of 1988,
40 individually and derivatively; LISA PARKER, as
41 Trustee of the Juel A. Parker Family Trust,
42 individually and derivatively; S. BRUCE PARKER,
43 as Trustee of the Steven Bruce Parker Family Trust,

CASE NO: A-20-809612-B

DEPT. XI

NOTICE OF ENTRY OF ORDER

1 individually and derivatively, and JUEL PARKER,
2 individually,

3 Counter-Plaintiffs

4 v.

5 BRAD L. KNOWLTON, individually and
6 derivatively; and DOE Individuals I-X and ROE
7 Entities I-X, inclusive,

8 Counter-Defendant,

9 and

10 Nominal party VALLEY ASCENT, LLC, a Nevada
11 limited liability company.

12 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

13 YOU, AND EACH OF YOU, will please take notice that, on November 13, 2020, the Court
14 entered an Order Granting Defendants' Motion for Summary Judgment, a copy of which is attached
15 hereto as Exhibit "A."

16 DATED this 13th day of November, 2020.

17 **GREENBURG TRAURIG, LLP**

18 /s/ Kara B. Hendricks

19 MARK E. FERRARIO, ESQ.

20 Nevada Bar No. 1625

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26 Las Vegas, Nevada 89144

27 *Attorneys for WILLIAM L. LINDNER as Trustee of*
28 *the William L. Lindner and Maxine G. Lindner Trust*
of 1988; JUEL A. PARKER, individually and as
Trustee of the Juel A. Parker Family Trust; LISA
PARKER, individually and as Trustee of the Juel A.
Parker Family Trust; and S. BRUCE PARKER, as
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the Odyssey eFileNV Electronic Filing system and serving all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

/s/ Andrea Flintz
An employee of Greenberg Traurig, LLP

EXHIBIT “A”

EXHIBIT “A”



ORDR

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

KARA B. HENDRICKS, ESQ.

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the William L. Lindner and Maxine G. Lindner Trust
of 1988; JUEL A. PARKER, individually and as
Trustee of the Juel A. Parker Family Trust; LISA
PARKER, individually and as Trustee of the Juel A.
Parker Family Trust; and S. BRUCE PARKER, as
Trustee of the Steven Bruce Parker Family Trust*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BRAD L. KNOWLTON, an individual,

Plaintiff,

v.

VALLEY ASCENT, LLC, a Nevada limited
liability company, WILLIAM L. LINDNER, as
Trustee of the William L. Lindner and Maxine G.
Lindner Trust of 1988, JUEL A. PARKER, as
Trustee of the Juel A. Parker Family Trust, LISA
PARKER, as Trustee of the Juel A. Parker Family
Trust, LISA PARKER, an individual, and S.
BRUCE PARKER, as Trustee of the Steven Bruce
Parker Family Trust,

Defendants.

CASE NO: A-20-809612-B

DEPT. XI

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

**Date of Hearing November 2, 2020
Time: 9:00 am**

1 WILLIAM L. LINDNER, as Trustee of the William
2 L. Lindner and Maxine G. Lindner Trust of 1988,
3 indiviudally and derivatively; LISA PARKER, as
4 Trustee of the Juel A. Parker Family Trust,
5 indiviudally and derivatively; S. BRUCE PARKER,
as Trustee of the Steven Bruce Parker Family Trust,
6 indiviudally and derivatively, and JUEL PARKER,
7 individually,

8 Counter-Plaintiffs,

9 v.

10 BRAD L. KNOWLTON, individually and
11 derivatively; and DOE Individuals I-X and ROE
12 Entities I-X, inclusive,

13 Counter-Defendant,

14 and

15 Nominal party VALLEY ASCENT, LLC, a Nevada
16 limited liability company.

17 On November 2, 2020, the Court heard oral argument on the Motion for Summary Judgment
18 (“Motion”) filed by Defendants/Counterclaimants WILLIAM L. LINDNER, as Trustee of the
19 William L. Lindner and Maxine G. Lindner Trust of 1988; JUEL A. PARKER, individually and as
20 Trustee of the Juel A. Parker Family Trust; LISA PARKER, individually and as Trustee of the Juel
21 A. Parker Family Trust; and S. BRUCE PARKER, as Trustee of the Steven Bruce Parker Family
22 Trust (collectively “Defendants”). The Court, having considered the Motion, the Opposition to the
23 Motion filed by Brad L. Knowlton, Defendants’ Reply in Support of the Motion, and all the
24 arguments of counsel for all parties present at the hearing for this matter held on November 2, 2020,
25 finds and orders as follows:

26 **FINDINGS OF FACT**

27 1. Defendants moved the Court for an order granting summary judgment on the claims
28 asserted by Plaintiff Brad L. Knowlton (“Knowlton”) contending that Knowlton lacked standing to
proceed on the claims pled in the Complaint.

///

///

2. Prior to June 19, 2020, Defendants and Mr. Knowlton had membership interests in Valley Ascent, LLC ("Valley Ascent") as follows: Mr. Knowlton 38.55%; Juel Parker Trust 36.45%; Lindner Trust 20%; and S. Bruce Parker Trust 5%.

3. On or about June 27, 2017, Shondell Swenson filed for divorce against Brad L. Knowlton, said proceeding bearing Utah Civil Case No. 174701016.

4. After battling with highly-contentious divorce proceedings for nearly three years, the Court in Utah divided the marital assets and liabilities, and entered a Judgment and Decree of Divorce on June 5, 2020.

5. In connection therewith, Ms. Swenson was awarded all rights, title and interest to Mr. Knowlton's 38.55% membership interest in Valley Ascent.

6. On or about June 19, 2020, Mr. Knowlton executed an Assignment of Membership Interest in Valley Ascent ("Assignment").

7. Therein, Mr. Knowlton "transfer[ed] and assign[ed] his interest in Valley Ascent, LLC, a Nevada Limited Liability Company, to Shondell Swenson; and...permanently relinquish[ed], waiv[ed], and/or release[d] any and all rights, interests, and/or claims related to his ownership interest in Valley Ascent, LLC, all of which have been transferred to Shondell Swenson by virtue of this Assignment of Interest."

8. Said Assignment was filed in this action on August 10, 2020.

9. By way of the Assignment, all of Mr. Knowlton's claims pled in the instant action were transferred to Ms. Swenson.

10. If any finding of fact is properly a conclusion of law, it shall be treated as if it was appropriately identified and designated.

CONCLUSIONS OF LAW

A. STANDARD OF REVIEW.

1. Summary judgment under Rule 56 is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law." *See* NRCP 56(c), *Tucker v. Action Equip. and Scaffold Co.*, 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997).

1 The Nevada Supreme Court has defined a *genuine issue* as “evidence such that a rational trier of
2 fact could return a verdict for the nonmoving party.” *Id.* (citing *Matsushita Electric Industrial Co.*
3 *v. Zenith Radio*, 475 U.S. 574, 586 (1986)). As to materiality, only disputes over facts that might
4 affect the outcome of the suit under the governing law will preclude the entry of summary judgment.
5 *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026, 1030 (2005). Factual disputes which are
6 irrelevant or unnecessary will not be considered. *Id.* Summary judgment is appropriate if the
7 nonmoving party fails to set forth facts demonstrating the existence of a genuine issue. *Bulbman,*
8 *Inc. v. Nevada Bell*, 108 Nev. 105, 110, 825 P.2d 588, 592 (1992).

9 2. Here, there are no issues of material or genuine fact that prevent granting summary
10 judgment.

11 **B. KNOWLTON LACKS STANDING TO PURSUE THE CLAIMS ASSERTED IN THE**
12 **COMPLAINT.**

13 1. Under Nevada law, an action must be commenced by the real party-in-interest – “one
14 who possesses the right to enforce the claim and has a significant interest in the litigation.” *Szilagyi*
15 *v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983); *see* NRCP 17(a). Due to this limitation, a party
16 generally has standing to assert only its own rights and cannot raise the claims of a third party not
17 before the court. *See Deal v. 999 Lakeshore Association*, 94 Nev. 301, 304, 579 P.2d 775, 777 (1978).
18 The burden of demonstrating the right to pursue a claim is properly placed upon the claimant.
19 *Mortgage Elec. Reg. Sys. v. Chong*, 2009 U.S. Dist. LEXIS 127500 at *6 (D. Nev. Dec. 4, 2009).

20 2. Mr. Knowlton failed to demonstrate a right to pursue any of the claims asserted in the
21 Complaint after transferring and assigning his interest in Valley Ascent to Ms. Swenson and
22 permanently relinquishing, waiving, and/or releasing any and all rights, interests, and/or claims
23 related to his ownership interest in Valley Ascent, as set forth in the Assignment.

24 3. The Assignment resolves all currently pled claims because all are intricately
25 intertwined with the ownership of Valley Ascent.

26 4. Accordingly, Defendants are entitled to summary judgment in their favor on all of
27 Mr. Knowlton’s claims, including (1) breach of contract, (2) breach of the implied covenant of good
28 faith and fair dealing, (3) declaratory relief, (4) intentional interference with contractual relations,

(5) expulsion as a member, (6) breach of fiduciary duties, (7) receivership and (8) preliminary injunction.

ORDER

Based on the foregoing, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants/Counterclaimants' Motion for Summary Judgment is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is rendered in Defendants/Counterclaimants' favor on all claims asserted in the Complaint, specifically, Mr. Knowlton's claims for (1) breach of contract, (2) breach of the implied covenant of good faith and fair dealing, (3) declaratory relief, (4) intentional interference with contractual relations, (5) expulsion as a member, (6) breach of fiduciary duties, (7) receivership and (8) preliminary injunction.

IT IS SO ORDERED.

DATED this 12th day of November, 2020.


DISTRICT COURT JUDGE

Respectfully Submitted by:

GREENBURG TRAURIG, LLP

/s/ Kara B. Hendricks

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

KARA B. HENDRICKS, ESQ.

Nevada Bar No. 7743

ALAYNE M. OPIE, ESQ.

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10845 Griffith Peak Drive, Suite 600

Las Vegas, Nevada 89144

Attorneys for Defendants/Counterclaimants

1 Approved as to form by:

2 **SNOW, CHRISTENSEN & MARTINEAU**

3
4 /s/ Steven W. Beckstrom

5 STEVEN W. BECKSTROM, ESQ.

Nevada Bar No. 8372

6 555 South Bluff Street, Suite 301

7 St. George, Utah 84770

and

8 ANDREW D. SMITH, ESQ.

Nevada Bar No. 8890

9 **WINNER & SHERROD, LTD.**

1117 South Rancho Drive

10 Las Vegas, Nevada 89102

11 *Attorneys for Plaintiff Brad L. Knowlton*

From: Steven W. Beckstrom
To: Hendricks, Kara (Shld-LV-LT)
Subject: Re: Knowlton v. Juel Order re: MSJ
Date: Thursday, November 12, 2020 9:00:40 AM
Attachments: image001.png

This looks fine. You may affix my electronic signature to the document and file it with the Court.

From: hendricksk@gtlaw.com <hendricksk@gtlaw.com>
Sent: Thursday, November 12, 2020 9:53 AM
To: Steven W. Beckstrom <SWB@scmlaw.com>
Cc: flintza@gtlaw.com <flintza@gtlaw.com>
Subject: RE: Knowlton v. Juel Order re: MSJ

Thank you Steven. We have accepted your revisions. I also found a typo in the last paragraph which has been corrected. (The change is highlighted in the attached.)

Please confirm we have authorization to submit to the court with your e-signature.

Best,
Kara

Kara Hendricks
Shareholder

T 702.938.6856

From: Steven W. Beckstrom <SWB@scmlaw.com>
Sent: Monday, November 9, 2020 12:45 PM
To: Hendricks, Kara (Shld-LV-LT) <hendricksk@gtlaw.com>
Subject: Re: Knowlton v. Juel Order re: MSJ

EXTERNAL TO GT

Kara- Attached are some revisions to the proposed orders that you prepared. My revisions are minor and are found in redline format. If these revisions are acceptable, please let me know. Thanks!

From: hendricksk@gtlaw.com <hendricksk@gtlaw.com>
Sent: Thursday, November 5, 2020 2:18 PM
To: Steven W. Beckstrom <SWB@scmlaw.com>
Subject: Knowlton v. Juel Order re: MSJ



1 **NEO**
2 MARK E. FERRARIO, ESQ.
3 Nevada Bar No. 1625
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16 *Attorneys for WILLIAM L. LINDNER as Trustee of*
17 *the William L. Lindner and Maxine G. Lindner*
18 *Trust of 1988; JUEL A. PARKER, individually and*
19 *as Trustee of the Juel A. Parker Family Trust; LISA*
20 *PARKER, individually and as Trustee of the Juel A.*
21 *Parker Family Trust; and S. BRUCE PARKER, as*
22 *Trustee of the Steven Bruce Parker Family Trust*

23 **EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 BRAD L. KNOWLTON, an individual,
26
27 Plaintiff,

28 v.

29 VALLEY ASCENT, LLC, a Nevada limited liability
30 company, WILLIAM L. LINDNER, as Trustee of
31 the William L. Lindner and Maxine G. Lindner Trust
32 of 1988, JUEL A. PARKER, as Trustee of the Juel
33 A. Parker Family Trust, LISA PARKER, as Trustee
34 of the Juel A. Parker Family Trust, LISA PARKER,
35 an individual, and S. BRUCE PARKER, as Trustee
36 of the Steven Bruce Parker Family Trust,

37 Defendants.

38 WILLIAM L. LINDNER, as Trustee of the William
39 L. Lindner and Maxine G. Lindner Trust of 1988,
40 indiuidally and derivatively; LISA PARKER, as
41 Trustee of the Juel A. Parker Family Trust,
42 indiuidally and derivatively; S. BRUCE PARKER,
43 as Trustee of the Steven Bruce Parker Family Trust,

CASE NO: A-20-809612-B

DEPT. XI

NOTICE OF ENTRY OF ORDER

1 individually and derivatively, and JUEL PARKER,
2 individually,

3 Counter-Plaintiffs

4 v.

5 BRAD L. KNOWLTON, individually and
6 derivatively; and DOE Individuals I-X and ROE
7 Entities I-X, inclusive,

8 Counter-Defendant,

9 and

10 Nominal party VALLEY ASCENT, LLC, a Nevada
11 limited liability company.

12 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

13 YOU, AND EACH OF YOU, will please take notice that, on February 25, 2021, the Court
14 entered an Order Granting Counterclaimants' Motion to Dismiss Counterclaims, a copy of which is
15 attached hereto as Exhibit "A."

16 DATED this 25th day of February, 2021.

17 GREENBURG TRAURIG, LLP

18 /s/ Kara B. Hendricks

19 MARK E. FERRARIO, ESQ.

20 Nevada Bar No. 1625

21 KARA B. HENDRICKS, ESQ.

22 Nevada Bar No. 7743

23 ALAYNE M. OPIE, ESQ.

24 Nevada Bar No. 12623

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27 *Attorneys for WILLIAM L. LINDNER as Trustee of*
28 *the William L. Lindner and Maxine G. Lindner Trust*
of 1988; JUEL A. PARKER, individually and as
Trustee of the Juel A. Parker Family Trust; LISA
PARKER, individually and as Trustee of the Juel A.
Parker Family Trust; and S. BRUCE PARKER, as
Trustee of the Steven Bruce Parker Family Trust

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Facsimile: (702) 792-9002

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the Odyssey eFileNV Electronic Filing system and serving all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

/s/ Andrea Flintz
An employee of Greenberg Traurig, LLP

EXHIBIT “A”

EXHIBIT “A”



1 **ORDR**

2 MARK E. FERRARIO, ESQ.

3 Nevada Bar No. 1625

4 KARA B. HENDRICKS, ESQ.

5 Nevada Bar No. 7743

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16 *Attorneys for WILLIAM L. LINDNER as Trustee of*
17 *the William L. Lindner and Maxine G. Lindner Trust*
18 *of 1988; JUEL A. PARKER, individually and as*
19 *Trustee of the Juel A. Parker Family Trust; LISA*
20 *PARKER, individually and as Trustee of the Juel A.*
21 *Parker Family Trust; and S. BRUCE PARKER, as*
22 *Trustee of the Steven Bruce Parker Family Trust*

23 **EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 BRAD L. KNOWLTON, an individual,

26 Plaintiff,

27 v.

28 VALLEY ASCENT, LLC, a Nevada limited
liability company, WILLIAM L. LINDNER, as
Trustee of the William L. Lindner and Maxine G.
Lindner Trust of 1988, JUEL A. PARKER, as
Trustee of the Juel A. Parker Family Trust, LISA
PARKER, as Trustee of the Juel A. Parker Family
Trust, LISA PARKER, an individual, and S.
BRUCE PARKER, as Trustee of the Steven Bruce
Parker Family Trust,

Defendants.

CASE NO: A-20-809612-B

DEPT. XI

**ORDER GRANTING
COUNTERCLAIMANTS' MOTION TO
DISMISS COUNTERCLAIMS**

1 WILLIAM L. LINDNER, as Trustee of the William
2 L. Lindner and Maxine G. Lindner Trust of 1988,
3 indiviudally and derivatively; LISA PARKER, as
4 Trustee of the Juel A. Parker Family Trust,
5 indiviudally and derivatively; S. BRUCE PARKER,
as Trustee of the Steven Bruce Parker Family Trust,
6 indiviudally and derivatively, and JUEL PARKER,
7 indiviudally,

8 Counter-Plaintiffs,

9 v.

10 BRAD L. KNOWLTON, individually and
11 derivatively; and DOE Individuals I-X and ROE
12 Entities I-X, inclusive,

13 Counter-Defendant,

14 and

15 Nominal party VALLEY ASCENT, LLC, a Nevada
16 limited liability company.

17 Defendants/Counterclaimants WILLIAM L. LINDNER, as Trustee of the William L. Lindner
18 and Maxine G. Lindner Trust of 1988; JUEL A. PARKER, individually and as Trustee of the Juel A.
19 Parker Family Trust; LISA PARKER, individually and as Trustee of the Juel A. Parker Family Trust;
20 and S. BRUCE PARKER, as Trustee of the Steven Bruce Parker Family Trust (collectively
21 "Counterdefendants" or "Majority Members") filed a Motion to Dismiss Counterclaims on February 5,
22 2021 ("Motion").

23 On February 19, 2021, Plaintiff Brad L. Knowlton ("Knowlton") filed his Statement of Non-
24 Opposition to Conterclaimants' Motion to Dismiss Counterclaims.

25 The Court, having considered the Motion filed by the Majority Members and the Non-
26 Opposition to the Motion filed by Brad L. Knowlton, and good cause existing therefore finds and
27 orders as follows:

28 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Counterclaimants'
Motion to Dismiss Counterclaims is **GRANTED** and the counterclaims asserted by the Marjority
Members are dismissed with prejudice with each side to bear their own attorneys's fees and costs.

///

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Las Vegas, Nevada 89135
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this matter will be
2 closed by the Clerk of the Court.

3 IT IS SO ORDERED.

4 DATED this 25th day of February, 2021.

6 
7 DISTRICT COURT JUDGE

8 Respectfully Submitted by:

9 GREENBURG TRAURIG, LLP

10
11 /s/ Kara B. Hendricks

12 MARK E. FERRARIO, ESQ.

13 Nevada Bar No. 1625

14 KARA B. HENDRICKS, ESQ.

15 Nevada Bar No. 7743

16 ALAYNE M. OPIE, ESQ.

17 Nevada Bar No. 12623

18 10845 Griffith Peak Drive, Suite 600

19 Las Vegas, Nevada 89144

20 *Attorneys for Defendants/Counterclaimants*

21 Approved as to Form by:

22 SNOW, CHRISTENSEN & MARTINEAU

23 /s/ Steven W. Beckstrom

24 STEVEN W. BECKSTROM, ESQ.

25 Nevada Bar No. 8372

26 555 South Bluff Street, Suite 301

27 St. George, Utah 84770

28 and

ANDREW D. SMITH, ESQ.

Nevada Bar No. 8890

WINNER & SHERROD, LTD.

1117 South Rancho Drive

Las Vegas, Nevada 89102

Attorneys for Plaintiff Brad L. Knowlton

From: [Steven W. Beckstrom](#)
To: [Hendricks, Kara \(Shld-LV-LT\)](#)
Subject: RE: Order Granting Motion to Dismiss Counterclaims.DOCX
Date: Wednesday, February 24, 2021 3:37:58 PM
Attachments: [image002.png](#)
[image003.png](#)

EXTERNAL TO GT

Kara- This Order looks fine to me. You may file it with the Court with my electronic signature affixed.

Thanks,

SNOW
CHRISTENSEN
& MARTINEAU

Steven W. Beckstrom | Lawyer
555 South Bluff Street, #301 | St. George, Utah 84770
Direct: [435.215.2309](tel:435.215.2309) | Main: [435.673.8288](tel:435.673.8288) | www.scmlaw.com

From: hendricksk@gtlaw.com <hendricksk@gtlaw.com>
Sent: Monday, February 22, 2021 3:22 PM
To: Steven W. Beckstrom <SWB@scmlaw.com>
Subject: Order Granting Motion to Dismiss Counterclaims.DOCX

Steven,

Attached is a draft order relating to the motion to dismiss counterclaims. Given that a non-opposition was filed, I would like to submit this (with your consent and e-signature) to the court and request that the hearing be vacated.

Please let us know if you approve.

Kara

Kara Hendricks
Shareholder

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