

**IN THE SUPREME COURT OF
THE STATE OF NEVADA**

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Elizabeth A. Brown
Clerk of Supreme Court

BRAD L. KNOWLTON, an individual,
Appellant,

vs.

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,
Respondents.

District Court Case No. A-20-809612-B
Eighth Judicial District Court, Clark County, Nevada

JOINT APPENDIX
VOLUME I OF III

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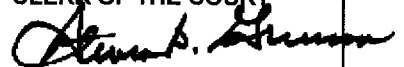
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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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,
28

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

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

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

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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122. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 121 above, as if fully set forth herein, and further alleges as set forth below.

124. As a result, this Court, sitting in equity, should appoint a neutral third-party to act as the receiver for the Company.

126. 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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127. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 126 above, as if fully set forth herein, and further alleges as set forth below.

129. The Plaintiff has a substantial likelihood of success on the merits of his individual claims, and those claims that he brings derivative on behalf of the Company.

-15-

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**

17 **Steven W. Beckstrom, Esq.**
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19 555 South Bluff Street, Suite 301
20 St. George, Utah 84770
21 Telephone: (435) 673-8288

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

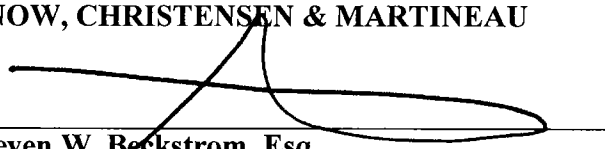
The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 31st day of January, 2020.

WINNER & SHERROD, LTD.

Andrew D. Smith
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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 reasonably 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

Member

Membership Interest

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, SSP
~~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


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: 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: Lisa D. Parker
Title: Trustee

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

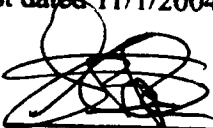
By:  _____
Name: S. Bruce Parker
Title: Trustee

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 TTEE
Name: Juel A. Parker L. S. 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

ACSR

Steven W. Beckstrom
Nevada Bar No. 8372

SNOW, CHRISTENSEN & MARTINEAU

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St. George, Utah 84770
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Andrew D. Smith

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WINNER & SHERROD, LTD.

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Las Vegas, Nevada 89102
Telephone: (702) 243-7000
Facsimile: (702) 243-7059
asmith@winnerfirm.com

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. LINDER, 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

**ACCEPTANCE OF SERVICE OF
SUMMONS AND COMPLAINT**

I, Kara B. Hendricks of the law firm of Greenberg Traurig, LLP, counsel for Defendants William L. Linder, 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; and Lisa Parker, individually, hereby accept service of the Summonses and Complaint

1 on behalf of said Defendants. Said Defendants hereby waive formal service of process of the
2 Summons and copy of the Complaint, and hereby agree that they will file a responsive pleading on or
3 before March 20, 2020.

4 DATED this 21st day of February, 2020.

5
6 GREENBERG TRAURIG, LLP

7 

8 Kara B. Hendricks, Esq.

9 Nevada Bar No. 7743

10 10845 Griffith Peak Drive, Suite 600

11 Las Vegas, Nevada 89135

12 Telephone: (702) 792-3773

13 Facsimile: (702) 792-9002

14 Email: hendricksk@gtlaw.com

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Attorneys for Defendants

4843-2608-6580, v. 1

Steven D. Grierson

MOT

Steven W. Beckstrom
Nevada Bar No. 8372
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St. George, Utah 84770
Telephone: (435) 673-8288
Facsimile: (435) 673-1444
swb@scmlaw.com

Andrew D. Smith
Nevada Bar No. 8890
WINNER & SHERROD, LTD.
1117 South Rancho Drive
Las Vegas, Nevada 89102
Telephone: (702) 243-7000
Facsimile: (702) 243-7059
asmith@winnerfirm.com

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. LINDER, 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

**MOTION FOR PRELIMINARY
INJUNCTION ON ORDER
SHORTENING TIME**

HEARING REQUESTED

*Date: March 9, 2020
Time: 9:00 a.m.*

COMES NOW, Plaintiff Brad L. Knowlton, by and through his counsel of record Steven W. Beckstrom of the law firm of Snow Christensen & Martineau, P.C., and hereby respectfully moves this Court for a Preliminary Injunction. This Motion is based and supported on the Points and

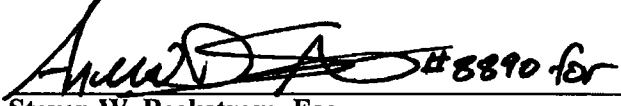
1 Authorities attached hereto, the Affidavit of Brad L. Knowlton, the papers and pleadings on file in this
2 matter, and any additional information that the Court may entertain related to the motion.

3 DATED this 27th day of February, 2020.

4 **WINNER & SHERROD, LTD.**

5 Andrew D. Smith
6 Nevada Bar No. 8890
7 1117 South Rancho Drive
8 Las Vegas, Nevada 89102
9 Telephone: (702) 243-7000

10 **SNOW, CHRISTENSEN & MARTINEAU**

11  #8890 for
12 Steven W. Beckstrom, Esq.
13 Nevada Bar No. 8372
14 555 South Bluff Street, Suite 301
15 St. George, Utah 84770
16 Telephone: (435) 673-8288

17 *Attorneys for Plaintiff*
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ORDER SHORTENING TIME

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

It appearing to the satisfaction of this Court, and good cause appearing therefor, IT IS
HEREBY ORDERED that the foregoing MOTION FOR PRELIMINARY INJUNCTION ON
ORDER SHORTENING TIME will come on for hearing before Department XI of the Eighth Judicial
District Court on the 9 day of Mar, 2020, at 9:00 am/pm or as soon thereafter
as counsel may be heard.

DATED this 28 day of Feb, 2020.


DISTRICT COURT JUDGE 

Respectfully submitted by:

WINNER & SHERROD, LTD.

Andrew D. Smith


Nevada Bar No. 8890

1117 South Rancho Drive

Las Vegas, Nevada 89102

Telephone: (702) 243-7000

SNOW, CHRISTENSEN & MARTINEAU


Steven W. Beckstrom, Esq.

Nevada Bar No. 8372

555 South Bluff Street, Suite 301

St. George, Utah 84770

Telephone: (435) 673-8288

Attorneys for Plaintiff

1 **DECLARATION OF ANDREW D. SMITH IN SUPPORT OF THE MOTION FOR**
2 **PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME**

3 Andrew D. Smith, Esq., hereby declares the following under penalty of perjury of the laws of
4 the State of Nevada:

5 1. I am an attorney licensed to practice law in the State of Nevada, and I am employed
6 with the law firm of Winner & Sherrod.

7 2. The following statements are based and made on my best understanding of the facts.

8 3. This matter involves a dispute between the members of Valley Ascent, LLC, a Nevada
9 limited liability company.

10 4. The Plaintiff is presently the holder of a 38.55% Membership Interest in Valley Ascent,
11 LLC.

12 5. The Amended Operating Agreement for Valley Ascent, LLC provides that the Plaintiff
13 is the manager of the Company.

14 6. Valley Ascent, LLC's primary asset is a parcel of real property located at
15 approximately 4309 West Craig Road, North Las Vegas, Nevada (the "Property").

16 7. Valley Ascent, LLC is the obligor under a loan issued by Mountain America Credit
17 Union that is secured by a mortgage against the Property.

18 8. Valley Ascent, LLC also maintains several bank accounts at Bank of Utah.

19 9. As more fully explained in the Declaration of Brad L. Knowlton, submitted herewith,
20 sometime on or after December 23, 2019, Defendant Lisa Parker began to assert to third-parties that
21 she was the manager of Valley Ascent, LLC, and more specifically, she made that claim to both
22 Mountain America Credit Union and Bank of Utah.

23 10. As a result of Defendant Lisa Parker's demands, both Mountain America Credit Union
24 and Bank of Utah have frozen the Valley Ascent accounts and will not allow any action to be taken
25 on the accounts without the unanimous consent of all members of the Company.

26 11. At the present time, through a consent signed by all members of the Company,
27 Mountain America Credit Union has \$70,000 that can be applied toward the monthly loan payments
28 owed by Valley Ascent.

12. Based upon Plaintiff's estimate, there will be insufficient funds in the Mountain America Credit Union account to pay the loan at the credit union after paying the March 1, 2020 payment due under the loan.

13. Furthermore, Bank of Utah has made a written demand on Valley Ascent, LLC that its account will be closed as a result of this dispute.

14. There is insufficient time for this Motion to be heard in the ordinary course without a risk of harm to Valley Ascent, LLC, and its operation. The Court should hear the Motion on an expedited basis.

15. This request for an order shortening time is made in good faith.

FURTHER THE AFFIANT SAYETH NAUGHT.

DATED the 27th day of February, 2020.

Andrew D. Smith #8890

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS AND BRIEF PROCEDURAL HISTORY**

3 Valley Ascent, LLC ("VA"), is a Nevada limited liability company that was formed by Plaintiff
4 Brad L. Knowlton ("Knowlton") in 2004 for the purpose of owning real property and leasing that
5 property to Fabulous Freddy's Car Wash ("Freddy's"). At the time of its formation, Knowlton was
6 the sole member VA. Knowlton is the only person to ever properly serve as the manager of the
7 Company. This dispute centers around the attempts of the Defendants' improper, wrongful, and
8 invalid attempts to remove Knowlton as a Manager and to appoint Defendant Lisa Parker as the
9 Manager of the Company. As more fully explained herein, each of these actions are in direct violation
10 of the terms of VA's Operating Agreement.

11 Prior to the inception of VA, Knowlton had an ongoing business relationship with the owner
12 of Freddy's. In late 2004 or early 2005, Freddy's identified a location at approximately 4309 West
13 Craig Road, North Las Vegas, Nevada (the "Property"), as its preferred location for a new store, and
14 sought Knowlton's assistance in securing the location and constructing a new Freddy's location. The
15 Property was owned by Defendants Juel A. Parker, as Trustee of the Juel A. Parker Family Trust (the
16 "Parker Trust"), and William L. Lindner. (The Parker Trust and William Lindner actually owned
17 separate adjoining properties that, when combined, constitute the property that was desired for the
18 Freddy's location.)

19 Knowlton negotiated with Juel Parker and William Lindner regarding contributing the Property
20 to VA in exchange for a membership interest in the Company. As part of those negotiations, Knowlton
21 presented a pro forma to Juel Parker and Lindner reflecting the relative ownership interest to be held
22 between Knowlton, Juel Parker, and Lindner as well as an administrative fee/management fee of 3%.
23 This served as the backdrop for the Parker Trust and Lindner Trust acquiring an interest in VA.

24 The pro forma called for membership interests in VA to be assigned as follows: Knowlton
25 31.9%, William Lindner 33.3%, and Juel Parker 34.8%, which was conditioned upon a loan being
26 secured. When VA submitted for approval of a loan, the bank required that all members of VA holding
27 more than 20% of the Company act as personal guarantors of the loan. William Lindner refused to
28 act as a personal guarantor of the loan. Knowlton, Juel Parker, and Lindner therefore agreed to adjust

1 the membership interests in VA, with Lindner receiving only a 20% membership interest plus cash
2 from the sale of his property (in lieu of the 33.3% membership interest he was to receive under the pro
3 forma). Around the same time, the size of the project grew, and thus, Knowlton, Juel Parker, and
4 Lindner agreed that the administrative/management fee would be 4% instead of 3%. Juel Parker also
5 requested that his son, Bruce Parker, obtain a membership interest in the Company in lieu of certain
6 real estate commissions that would be owed to Bruce Parker as a result of the sale of the Property.

7 In approximately February, 2005, an Amended Operating Agreement of VA was signed by
8 Knowlton, the Parker Trust, the Lindner Trust, and the Bruce Parker Trust calling for membership
9 interests as follows: Knowlton as 38.55%, Lindner Trust as 20%, Juel Parker Trust as 36.45%, and
10 Bruce Parker Trust as 5%.

11 Under the Amended Operating Agreement, Knowlton continued in his role as manager of the
12 Company. Consistent with the 4% management fee that had been agreed upon between Knowlton,
13 Juel Parker, and Lindner, Article VII, Section 6 of the Amended Operating Agreement indicates that
14 "[e]ach Manager shall be reimbursed all reasonable expenses in managing the Company and shall be
15 entitled to compensation, in an amount to be determined from time to time by the written consent of
16 the Members." No Members ever took any action to change the 4% management fee that was agreed
17 upon between Knowlton, Juel Parker, and Lindner prior to the signing of the Amended Operating
18 Agreement. As a result, Knowlton historically was paid a monthly 4% management fee from the time
19 the Amended Operating Agreement was signed in February 2005 through December, 2019.

20 VA has been a very profitable venture for its Members. Monthly distributions of profits to the
21 Members have been constant throughout the course of the Company's operation. As Manager,
22 Knowlton has taken actions to ensure that VA maintains a low debt load, and that its revenue generated
23 through its lease with Freddy's was favorable to the Company. Presently, through an extension of
24 lease negotiated by Knowlton, Freddy's will remain a tenant at the Property until at least 2035, and it
25 presently pays \$70,000 per month in rent plus annual rent increases.

26 VA has a loan through Mountain America Credit Union ("MACU") which is secured by the
27 Property. VA presently pays \$25,636.00 per month in principal and interest payments to MACU. The
28 loan is personally guaranteed by Knowlton and Juel Parker, although Juel Parker refused to sign the

1 most recent Loan Modification and Reaffirmation Agreement that was signed back in January, 2019.
2 The loan has a maturity date of September 1, 2023, at which time the Company will need to either
3 refinance or extend the loan terms. Juel Parker has informed Knowlton that he will no longer
4 personally guarantee the MACU loan.

5 VA also maintains two bank accounts at Bank of Utah. Presently, VA holds approximately
6 \$394,753.84 in these accounts.

7 Throughout 2019, monthly profit distributions were made to each of the members, and there
8 were no issues with the operation of the Company. The Defendants remained silent partners in the
9 business with Knowlton being the only member actively participating in the operation of the Company.
10 However, without Knowlton's knowledge, the Defendants began taking measures to take control of
11 the Company. Specifically, on December 23, 2019, a "Written Consent of the Members of Valley
12 Ascent, LLC" was signed by Defendants the Juel Parker Trust, Lindner Trust, and Bruce Parker Trust,
13 purporting to remove Knowlton as the manager of the Company (the "Removal Consent").

14 Under the Amended Operating Agreement, the removal of a manager may only occur through
15 a vote of 70% of the Members, except in the event of gross negligence, self-dealing or embezzlement,
16 in which case removal may occur by a vote of a majority of the members. (Am. Op. Agr. Art. XIII,
17 Sections 1.11 and 2.2). The Removal Consent claims that the removal of Knowlton as manager was
18 done based upon "gross negligence and/or . . . self-dealing" by acts committed by Knowlton as
19 manager, and identifies the following acts: (1) failing to provide annual reports and state tax returns
20 to the members; (2) paying himself a manager fee without the written consent of the other members;
21 and (3) paying a disproportionate share of disbursements to himself.

22 On the same date they attempted to remove Knowlton as Manager, Defendants the Juel Parker
23 Trust, Lindner Trust, and Bruce Parker Trust, also signed a "Written Consent of the Members of Valley
24 Ascent, LLC" whereby purporting to appoint Defendant Lisa Parker as the sole "interim" manager of
25 the Company (the "Interim Manager Consent"). The Interim Manager Consent was signed even
26 though the Amended Operating Agreement provides that the election of a manager, except the initial
27 manager, requires a vote of 70% of the members. (Am. Op. Agr. Art. XIII, Section 1.13).

28

1 Even though the Removal Consent and Interim Manager Consent were dated December 23,
2 2019, Knowlton was never notified of these votes taken until January 8, 2020 when he was informed
3 by counsel for the Juel Parker Trust that a vote was taken and inviting him to a member meeting
4 scheduled for January 15, 2020 for the purpose of appointing a new manager. In fact, Knowlton was
5 never even informed that the Defendants intended on taking a vote to remove him as manager and
6 appoint Lisa Parker as interim manager until after the votes occurred. Furthermore, the other members
7 of the Company never invited Knowlton to comment or respond to any allegations of wrongdoing. In
8 fact, as of the date of this filing, beyond the conclusion allegations set forth in the Removal Consent,
9 the Defendants have not accused Knowlton of any specific instances of self-dealing or gross
10 negligence.

11 During the interim period between December 23, 2019, and January 8, 2020 when Knowlton
12 was finally informed of the Interim Manager Consent, one or more of the Defendants had either
13 provided the Interim Manager Consent to MACU and Bank of Utah, or communicated that Lisa Parker
14 was now the manager of VA to these banks. As a result, when Knowlton sought to take action on the
15 VA accounts on MACU and Bank of Utah, he was unable to do so. That prevented him from paying
16 the January, 2020 MACU loan payment before a late fee would be imposed, and also prohibited him
17 from using any of the money in the Bank of Utah accounts for business purposes. It is also believed
18 that one or more of the Defendants communicated with Freddy's and informed the tenant to no longer
19 pay rents to the Company through Knowlton. As it presently stands, MACU is refusing to allow any
20 action to be taken on the VA accounts without unanimous consent of all members of the Company,
21 including but not limited to deposits, withdrawals, or loan payments. Furthermore, Bank of Utah has
22 also restricted the account in the same manner, and it is also demanding that all of the VA accounts be
23 closed.

24 Knowlton has made multiple requests for the Defendants to allow him to continue in his role
25 as manager, and specifically sought to allow him to use the funds in the Bank of Utah account to set
26 up a new bank account so that the MACU loan payments can be made, and to allow Freddy rent
27 payments to be deposited therein. As it presently stands, per a stipulation reached by all members of
28 the Company, MACU has agreed to apply the funds on deposit in the Company's MACU account

1 (totaling \$70,000) toward the loan payment when due, provided however, that there are only sufficient
2 funds in that account to pay the loan payment through March, and thereafter there will be insufficient
3 funds in the account to pay the April, 2020 loan payment unless MACU releases the current restrictions
4 on the MACU accounts and allows Knowlton to deposit funds, including rents, sufficient to cover the
5 loan payment.

6 Finally, on January 15, 2020, the member meeting was held with Knowlton, Lindner, Lisa
7 Parker, Bruce Parker, and counsel for Knowlton and the Juel Parker Trust present. At the meeting, no
8 formal votes were taken because it was apparent the parties could not agree on the person who should
9 be authorized as Manager of the Company.

10 **II. ARGUMENT**

11 **A. THIS COURT MUST ENTER A PRELIMINARY INJUNCTION** 12 **PROHIBITING LISA PARKER FROM ACTING AS THE MANAGER OF THE** 13 **COMPANY AND PROHIBITING THE DEFENDANTS FROM TAKING ANY** 14 **ACTION FROM INTERFERING WITH KNOWLTON'S CONDUCT AS A** 15 **MANAGER DURING THE PENDENCY OF THIS LITIGATION.**

16 Rule 65 of the Nevada Rules of Civil Procedure and NRS 33.010 govern the issuance of
17 injunctions. As the Nevada Supreme Court has explained, injunctions are issued to protect plaintiffs
18 from irreparable injury and to preserve the court's power to render a meaningful decision after a trial
19 on the merits. *See Ottemheimer v. Real Estate Division*, 91 Nev. 338, 342, 535 P.2d 1284, 1285
(1975). A preliminary injunction may be granted

- 20 1. When it appears by the complaint that the plaintiff is entitled to the requested
21 relief, and such relief or any part thereof consists in restraining the commission
22 or continuance of the act complained of, either for a limited period or
23 perpetually.
- 24 2. When it shall appear by the complaint or affidavit that the commission or
25 continuance of some act, during the litigation, would produce great or
26 irreparable injury to the plaintiff.
- 27 3. When it shall appear, during the litigation, that the defendant is doing or
28 threatens, or is about to do, or is procuring or suffering to be done, some act in
violation of the plaintiff's rights respecting the subject of the action, and tending
to render the judgment ineffectual.

NRS 33.010. Generally, "[a] preliminary injunction is available if an applicant can show a likelihood
of success on the merits and a reasonable probability that the non-moving party's conduct, if allowed
to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy."

1 *Dangberg Holdings Nevada, LLC v. Douglas County*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999),
2 citing *Pickett v. Comanche Construction, Inc.*, 108 Nev. 422, 436, 836 P.2d 42, 44 (1992). Likewise,
3 a court may properly enter an injunction to restore the status quo and to undue wrongful conditions,
4 *Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Memorial Gardens, Inc.*, 88 Nev. 1, 4, 492 P.2d
5 123, 124 (1972), *Leonard v. Stoebling*, 102 Nev. 543, 550-51, 728 P.2d 1358, 1363 (1986), and the
6 court may also consider the balance of hardships between the parties. *See Clark Cty. Sch. Dist. v.*
7 *Buchanan*, 112 Nev. 1146, 1153, 924 P.2d 716, 721 (1996).

8 1. The Plaintiff has a substantial likelihood of success on the merits.

9 A limited liability company may, but is not required to, adopt an operating agreement. NRS
10 86.286(1). An operating agreement may provide for the rights of any persons, NRS 86.286(4)(a)(1),
11 and may contain any other provision, not inconsistent with law or the articles of organization, which
12 the members elect to set out in their operating agreement for the regulation of the internal affairs of
13 the Company. NRS 86.286(4)(a)(5). An operating agreement must be interpreted and construed to
14 give maximum effect to the principle of freedom of contract and enforceability. NRS 86.286(b). A
15 breach of contract may be shown through a material failure of performance of a duty arising under or
16 imposed by an agreement. *Calloway v. City of Reno*, 116 Nev. 250, 256, 993 P.2d 1259, 1263
17 (2000)(overruled on other grounds).

18 The rights and duties imposed upon a member or manager of a limited liability company may
19 be expanded, restricted or eliminated by provisions in the operating agreement, "except that an
20 operating agreement may not eliminate the implied contractual covenant of good faith and fair
21 dealing." NRS 86.286(5). The covenant of good faith and fair dealing is implied into every commercial
22 contract. *A.C. Shaw Const., Inc. v. Washoe County*, 105 Nev. 913, 914, 784 P.2d 9, 10 (1989). Even
23 though a party technically complies with the terms of a contract, it still may be liable for breach of the
24 implied covenant of good faith and fair dealing when that party deliberately contravenes the intention
25 and spirit of the contract. *Hilton Hotels Corp. v. Butch Lewis Productions, Inc.*, 107 Nev. 226, 232-
26 33, 808 P.2d 919, 922-23 (1991). Likewise, the implied covenant of good faith and fair dealing
27 "essentially forbids arbitrary, unfair acts by one party that disadvantage the other." *Frantz v. Johnson*,
28 116 Nev. 455, 465, 999 P.2d 351, 358 (2000).

1 Knowlton has asserted claims against the Defendants for breach of contract and violation of
2 the implied covenant of good faith and fair dealing. Knowlton has a substantial likelihood of
3 prevailing on the merits of these claims in several respects. First, the plain language of the Operating
4 Agreement makes clear that there is no such position as an "interim" manager, and the appointment
5 of a new manager requires the vote of 70% of the members of the Company. Specifically, Article VII,
6 Section 10 of the Amended Operating Agreement requires a vacancy in the manager position to be
7 filled in accordance with Article VIII, which, in turn, requires a vote of 70% of the members. See
8 Am. Op. Agr. Art. VIII, Section 1.13. Thus, the Defendants are no doubt in breach of the terms of the
9 Amended Operating Agreement by improperly seeking to appoint Lisa Parker as the interim manager
10 of the Company. After all, since the Defendants collectively only hold 61.45% of the outstanding
11 membership interests in the Company, they are not permitted to vote for the appointment of a manager
12 without Knowlton's vote in the affirmative. Knowlton did not approve Defendant Lisa Parker as a
13 manager of the Company. What is even more troubling is that, notwithstanding this very clear
14 language in the Amended Operating Agreement requiring a vote of 70% of the members, they went
15 forward with preparing and signing the Interim Manager Consent and forwarded that document (or
16 verbally relayed the vote) to MACU and Bank of Utah. As a direct result of that conduct, both MACU
17 and Bank of Utah have frozen the accounts and harm has resulted to Knowlton and VA. The bottom
18 line is that the Interim Manager Consent is invalid in all respects as it is not supported by the required
19 vote under the Amended Operating Agreement, and thus, Lisa Parker is not and cannot act as a
20 Manager of the Company. An injunction is required to prevent her from taking any action on behalf
21 of the Company.

22 Second, Defendants attempted removal of Knowlton was also improper and done in violation
23 of the terms of the Amended Operating Agreement. The general rule under the Operating Agreement
24 is that removal of a manager may only be completed by a vote of 70% of the members. The Removal
25 Consent clearly does not contain the required 70% vote of the members because Knowlton did not
26 sign it.

27 The Defendants, knowing that the only exception to the general rule was for "gross negligence,
28 self dealing or embezzlement" elected to move forward with signing the Removal Consent premised

1 upon naked, conclusory, and unsupported allegations of gross negligence and self-dealing. Nevada
2 case law has defined "gross negligence" as "substantially and appreciably higher in magnitude and
3 more culpable than ordinary negligence" and it is "an act or omission respecting legal duty of an
4 aggravated character as distinguished from a mere failure to exercise ordinary care. . ." *Hart v. Kline*,
5 61 Nev. 96, 116 P.2d 672, 674 (1941). The Removal Consent raises no specific acts of conduct or
6 omissions committed by Knowlton which would give rise to satisfying a standard of gross negligence.
7 They raise no such specific acts or omissions because none exist.

8 Likewise, the Defendants have no proof to support any allegation of self-dealing. After all,
9 other courts have defined self-dealing as "[p]articipation in a transaction that benefits oneself instead
10 of another who is owed a fiduciary duty." *Becker v. Knoll*, 239 P.3d 830, 836 (Kansas 2010), *Eagar*
11 *v. Burrows*, 191, P.3d 9, 16 (Utah 2008). The only specific act mentioned in the Removal Consent
12 that could possibly be referable to self-dealing is the management fee. However, the management fee
13 arrangement was already in place, and agreed to by the Defendants as a condition of them acquiring
14 their membership interest in the Company. Furthermore, the Amended Operating Agreement makes
15 clear that the manager "shall be entitled to compensation . . .", and thus, the Defendants have no basis
16 for asserting that Knowlton was not entitled to any management fee. If the Defendants argue that the
17 management fee is excessive, the fee has been paid to Knowlton from the outset of the Defendants
18 acquiring their membership interest, and all members have been provided a copy of VA's tax returns
19 which show the management fee paid to Knowlton. From February 2005 until January 2020, no
20 member ever raised any issue with respect to the monthly management fee that was paid, nor did the
21 members ever ask for a meeting or take a vote to change, alter, or amend the management fee that was
22 agreed upon prior to the Amended Operating Agreement being signed. Therefore, there was nothing
23 improper about the management fee that had been paid to Knowlton over a long period of time without
24 complaint from the other members, and it certainly doesn't constitute self-dealing to take a
25 management fee that is mandated under the parties' written agreement.

26 The Defendants' improper attempts to remove Knowlton and appoint Lisa Parker as the interim
27 manager become even more problematic when considered in the light of the members' duty to act in
28 good faith toward Knowlton. If the Defendants truly believed there was sufficient cause to remove

1 Knowlton on the grounds of gross negligence or self-dealing, they could have petitioned a court for
2 declaratory relief, and presented evidence to a judge to support their allegations. Instead of using this
3 type of good faith efforts, the Defendants elected to proceed with the Removal Consent and the Interim
4 Manager Consent without even informing Knowlton about the nature or fact of the allegations. Indeed,
5 they elected to proceed with a vote without having even notifying Knowlton that a vote was being
6 taken or allowing him an opportunity to respond to the allegations levied against him. Not only did
7 they fail to inform him of the allegations before the vote, notify him of the vote, or allow him to
8 respond to the allegations prior to the vote, they also waited over two (2) weeks before informing
9 Knowlton of the Removal Consent and Interim Manager Consent. During this interim period, they
10 proceeded to take affirmative actions that not only harmed Knowlton, but also harmed the company
11 by causing tenants to be nervous, and causing monies to be frozen in the Company bank accounts.
12 Finally, as further evidence of their bad faith, they failed to even seek independent legal advice of
13 counsel retained by the Company to investigate the allegations.¹ At a minimum, good faith required
14 them to seek a legal opinion from a court or independent legal counsel with no connection to any
15 parties. Without such a determination, the Defendants' purported attempt to remove Knowlton as
16 manager is invalid.

17 2. The Plaintiff will suffer irreparable harm if an injunction is not entered

18 Knowlton is the only properly appointed manager of VA. Knowlton has the primary
19 relationship with Freddy's, and VA's relationship with its tenant will undoubtedly be harmed if
20 Knowlton is not permitted to remain as the manager during the pendency of this action. Furthermore,
21 both Knowlton and VA are at a huge risk of harm if the MACU and Bank of Utah accounts remain
22 frozen due to this dispute. After all, in April, there will be insufficient funds to pay the MACU loan
23 if the members are not able to reach a unanimous agreement on the use of VA's funds, or an injunction
24 is not entered affirming that Knowlton is the proper manager of the Company during the pendency of
25 this litigation, and that Defendant Lisa Parker is not a proper manager of the Company. Finally, if a
26 default occurs under the MACU loan, Knowlton will sustain irreparable harm to his credit because he

27
28 ¹ The Removal Consent indicates that the vote was taken "after consultation with and advice from legal counsel . . ." To Knowlton's knowledge no such legal advice was obtained unless that legal advice was obtained from lawyers retained to represent the interests of the Defendants, rather than the Company.

1 is a personal guarantor under the MACU loan. Therefore, it is vital that this Court provide injunctive
2 relief to restore the status quo by affirming that Knowlton is manager of the Company during the
3 pendency of this action with full rights to operate the rights and duties imposed under the Operating
4 Agreement, specifically including but not limited to full authority to (1) conduct banking needs, (2)
5 pay the MACU loan payments, (3) collect rent payments from Freddy's, and (4) pay for services,
6 maintenance, and repairs at the Property, and (5) all other acts necessary on behalf of the Company.

7 **III. CONCLUSION**

8 Based upon the above and foregoing, Knowlton respectfully requests that this Court enter a
9 preliminary injunction that (1) affirmatively prohibits Defendant Lisa Parker from taking any actions
10 for and in the name of VA, whether as a manager or otherwise, (2) that enjoins the Defendants from
11 taking any action that interferes with Knowlton's operation of the Company, including but not limited
12 to communicating with Freddy's, MACU, or Bank of Utah, and (3) that this Court affirm that
13 Knowlton is the sole manager authorized to act on behalf of the Company and to take the measures
14 authorized under the Amended Operating Agreement, which includes the sole right to manage the
15 Company's banking affairs, including those accounts held at MACU and Bank of Utah, and to
16 communicate and interact with Freddy's.

17 DATED this ____ day of February, 2020.

18 **WINNER & SHERROD, LTD.**

19 Andrew D. Smith

20 Nevada Bar No. 8890

21 **SNOW, CHRISTENSEN & MARTINEAU**

22
23 **Steven W. Beckstrom, Esq.**

24 Nevada Bar No. 8372

25 555 South Bluff Street, Suite 301

26 St. George, Utah 84770

27 *Attorneys for Plaintiff*
28

1 **DECLARATION OF BRAD L. KNOWLTON IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY INJUNCTION**

3 Brad L. Knowlton, hereby declares the following statements are true to my own knowledge to
4 the best of my information and belief, under penalty of perjury:

5 1. Valley Ascent, LLC ("VA"), is a Nevada limited liability company that I formed in
6 2004 for the purpose of owning real property with the intent of leasing that property to Fabulous
7 Freddy's Car Wash ("Freddy's"). At the time of its formation, I was the sole member of VA.
8 Furthermore, I am the only person to ever properly serve as the manager of the Company. Attached
9 hereto as Exhibit 1 is a copy of a print off from the Nevada Secretary of State reflecting that I am still
10 showing as the current manager of VA.

11 2. Prior to the inception of VA, I had an ongoing business relationship with the owner of
12 Freddy's. In late 2004 or early 2005, Freddy's identified a location at approximately 4309 West Craig
13 Road, North Las Vegas, Nevada (the "Property"), as its preferred location for a new store, and sought
14 my assistance in securing the location and constructing a new Freddy's location. At that time, the
15 Property was owned by Defendants Juel A. Parker, as Trustee of the Juel A. Parker Family Trust (the
16 "Parker Trust"), and William L. Lindner. In fact, the Parker Trust and William Lindner owned
17 separate adjoining properties that, when combined, constitute the property that was desired for the
18 Freddy's location.

19 3. For that reason, I engaged in negotiations with Juel Parker and William Lindner
20 regarding the Parker Trust and Lindner contributing the Property to VA in exchange for a membership
21 interest in the Company.

22 4. As part of those negotiations, I presented a pro forma to Juel Parker and Lindner
23 reflecting the relative ownership interest to be held between myself, Juel Parker, and Lindner as well
24 as an administrative fee/management fee of 3%. The pro forma served as the back drop for the Parker
25 Trust and Lindner Trust acquiring an interest in VA. A copy of the pro forma is attached hereto as
26 Exhibit 2 and incorporated herein by this reference.

27 5. The pro forma called for membership interests in VA to be assigned as follows: myself
28 31.9%, William Lindner 33.3%, and Juel Parker 34.8%, which was conditioned upon a loan being

1 secured. When VA submitted for approval of a loan necessary to construct the building and
2 improvements to the Property, the bank required that all members of VA holding more than 20% of
3 the Company act as personal guarantors of the loan. William Lindner refused to act as a personal
4 guarantor of the loan so Juel Parker, Lindner and I agreed to adjust the membership interests in VA,
5 with Lindner receiving only a 20% membership interest plus cash from the sale of his property (in lieu
6 of the 33.3% membership interest he was to receive under the pro forma). Around the same time, the
7 size of the project grew, and thus, Juel Parker, Lindner, and I agreed that the
8 administrative/management fee would be 4%. Juel Parker also requested that his son, Bruce Parker,
9 obtain a membership interest in the Company in lieu of certain real estate commissions that would be
10 owed to Bruce Parker as a result of the sale of the Property.

11 6. Once the agreement had been reached on the respective membership interests to be
12 held, and the management fee was agreed upon, then in approximately February, 2005, an Amended
13 Operating Agreement of VA was signed by myself, the Parker Trust, the Lindner Trust, and the Bruce
14 Parker Trust calling for membership interests as follows: myself as 38.55%, Lindner Trust as 20%,
15 Juel Parker Trust as 36.45%, and Bruce Parker Trust as 5%. A copy of the Amended Operating
16 Agreement is attached hereto as Exhibit 3 and incorporated herein by this reference.

17 7. Under the Amended Operating Agreement, I continued in my role as manager of the
18 Company. Furthermore, consistent with the 4% management fee that had been agreed upon between
19 Juel Parker, Lindner, and I, Article VII, Section 6 of the Amended Operating Agreement indicates that
20 "[e]ach Manager shall be reimbursed all reasonable expenses in managing the Company and shall be
21 entitled to compensation, in an amount to be determined from time to time by the written consent of
22 the Members."

23 8. No Members ever took any action to change the 4% management fee that was agreed
24 upon prior to the signing of the Amended Operating Agreement. As a result, I have been historically
25 paid a monthly 4% management fee from the time the Amended Operating Agreement was signed
26 through December, 2019.

27 9. VA has been a very profitable venture for its Members. Monthly distributions of profits
28 to the Members have been constant throughout the course of the Company's operation. As Manager,

1 I have taken actions to ensure that VA maintains a low debt load, and that its revenue generated
2 through its lease with Freddy's was favorable to the Company. Presently, through an extension of the
3 lease negotiated by myself, Freddy's will remain a tenant at the Property until at least 2035, and it
4 presently pays \$70,000 per month in rent plus annual rent increases through 2030. A copy of the First
5 Amendment to Build to Suit Lease is attached hereto as Exhibit 4 and incorporated herein by this
6 reference.

7 10. Furthermore, with respect to its debt, VA has a loan through Mountain America Credit
8 Union ("MACU") which is secured by the Property. VA presently pays \$25,636.00 per month in
9 principal and interest payments to MACU. The loan is personally guaranteed by myself and Juel
10 Parker, although Juel Parker refused to sign the most recent Loan Modification and Reaffirmation
11 Agreement that was signed back in January, 2019. The loan has a maturity date of September 1, 2023,
12 at which time the Company will need to either refinance or extend the loan terms. A copy of the Loan
13 Modification and Reaffirmation Agreement is attached hereto as Exhibit 5 and incorporated herein by
14 this reference.

15 11. Juel Parker has informed me that he will no longer personally guarantee the MACU
16 loan.

17 12. VA also maintains two bank accounts at Bank of Utah. Presently, VA holds
18 approximately \$394,753.84 in these accounts.

19 13. In 2019, monthly profit distributions were made to each of the members, and there were
20 no issues with the operation of the Company. For all purposes, the Defendants remained silent partners
21 in the business with me being the only member actively participating in the operation of the Company.
22 However, without my knowledge, the Defendants began taking measures to take control of the
23 Company. Specifically, on December 23, 2019, a "Written Consent of the Members of Valley Ascent,
24 LLC" was signed by Defendants the Juel Parker Trust, Lindner Trust, and Bruce Parker Trust,
25 purporting to remove me as the manager of the Company (the "Removal Consent"). A copy of the
26 Removal Consent is attached hereto as Exhibit 6 and incorporated herein by this reference.

27 14. Under the Amended Operating Agreement, the removal of a manager may only occur
28 through a vote of 70% of the Members, except in the event of gross negligence, self-dealing or

1 embezzlement, in which case removal may occur by a vote of a majority of the members. (Am. Op.
2 Agr. Art. XIII, Sections 1.11 and 2.2). The Removal Consent claims that my removal as manager was
3 done based upon "gross negligence and/or . . . self-dealing" by acts committed by me as manager, and
4 identifies the following acts: (1) failing to provide annual reports and state tax returns to the members;
5 (2) paying myself a manager fee without the written consent of the other members; and (3) paying a
6 disproportionate share of disbursements to myself.

7 15. On the same date they attempted to remove me as Manager, Defendants the Juel Parker
8 Trust, Lindner Trust, and Bruce Parker Trust, also signed a "Written Consent of the Members of Valley
9 Ascent, LLC" whereby purporting to appoint Defendant Lisa Parker as the sole "interim" manager of
10 the Company (the "Interim Manager Consent"). A copy of the Interim Manager Consent is attached
11 hereto as Exhibit 7 and incorporated herein by this reference.

12 16. The Interim Manager Consent was signed even though the Amended Operating
13 Agreement provides that the election of a manager, except the initial manager, requires a vote of 70%
14 of the members. (Am. Op. Agr. Art. XIII, Section 1.13).

15 17. Even though the Removal Consent and Interim Manager Consent were dated December
16 23, 2019, I was never notified of these votes taken until January 8, 2020 when I was informed by
17 counsel for the Juel Parker Trust that a vote was taken and inviting me to a member meeting scheduled
18 for January 15, 2020 for the purpose of appointing a new manager. A copy of the email that I received
19 is attached hereto as Exhibit 8 and incorporated herein by this reference.

20 18. In fact, I was never even informed that the Defendants intended on taking a vote to
21 remove me as manager and appoint Lisa Parker as interim manager until after the votes occurred.
22 Furthermore, the other members of the Company never invited me to comment or respond to any
23 allegations of wrongdoing. In fact, as of the date of this filing, beyond the conclusion allegations set
24 forth in the Removal Consent, the Defendants have not presented me with any specific instances of
25 self-dealing or gross negligence. I certainly dispute that I have committed any acts which would
26 constitute self-dealing or gross negligence.

27 19. During the interim period between December 23, 2019, and January 8, 2020 when I
28 was finally informed of the Interim Manager Consent, one or more of the Defendants had either

1 provided the Interim Manager Consent to MACU and Bank of Utah, or communicated that Lisa Parker
2 was now the manager of VA to these banks. As a result, when I sought to take action on the VA
3 accounts at MACU and Bank of Utah, I was unable to do so. As it presently stands, MACU is refusing
4 to allow any action to be taken on the VA accounts without unanimous consent of all members of the
5 Company, including but not limited to deposits, withdrawals, or loan payments. Furthermore, Bank
6 of Utah has also restricted the account in the same manner, and it is also demanding that all of the VA
7 accounts be closed. Attached hereto as Exhibit 9 is a copy of email correspondence between my
8 counsel, counsel for the Defendants, and counsel for MACU identifying the hold that has been placed
9 on the MACU accounts. Additionally, attached hereto as Exhibit 10 is a copy of email correspondence
10 between my counsel, counsel for the Defendants, and counsel for Bank of Utah identifying the hold
11 that has been placed on the Bank of Utah accounts.

12 20. These holds prevented me from paying the January, 2020 MACU loan payment before
13 a late fee would be imposed, and also prohibited me from using any of the money in the Bank of Utah
14 accounts for business purposes.

15 21. I believe that one or more of the Defendants communicated with Freddy's and informed
16 the tenant to no longer pay rents to the Company through Knowlton. In fact, I learned on February
17 20, 2020 that one of the Defendants informed Freddy's to mail rent checks to MACU even though that
18 account has been frozen due to the Defendants' actions.

19 22. I have made multiple requests for the Defendants to allow me to continue in my role as
20 manager, and specifically sought to allow me to use the funds in the Bank of Utah account to set up a
21 new bank account so that the MACU loan payments can be made, and to allow Freddy's rent payments
22 to be deposited therein.

23 23. As it presently stands, per a stipulation reached by all members of the Company,
24 MACU has agreed to apply the funds on deposit in the Company's MACU account (totaling \$70,000)
25 toward the loan payment when due, provided however, that there are only sufficient funds in that
26 account to pay the loan payment through March, and thereafter there will be insufficient funds in the
27 account to pay the April, 2020 loan payment unless MACU releases the current restrictions on the
28 MACU accounts and allows Knowlton to deposit funds, including rents, sufficient to cover the loan

1 payment. A copy of that stipulation is attached hereto as Exhibit 11 and incorporated herein by this
2 reference.

3 24. Finally, on January 15, 2020, the member meeting was held with Knowlton, Lindner,
4 Lisa Parker, Bruce Parker, and counsel for Knowlton and the Juel Parker Trust present. At the
5 meeting, no formal votes were taken because it was apparent the parties could not agree on the person
6 who should be authorized as Manager of the Company.

7 FURTHER THE AFFIANT SAYETH NAUGHT.

8 DATED the ____ day of February, 2020.

9
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11 
12 Brad L. Knowlton
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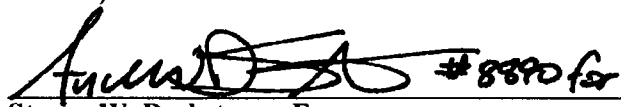
AFFIRMATION

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

DATED this 27th day of February, 2020.

WINNER & SHERROD, LTD.
Andrew D. Smith
Nevada Bar No. 8890

SNOW, CHRISTENSEN & MARTINEAU


Steven W. Beckstrom, Esq.
Nevada Bar No. 8372
555 South Bluff Street, Suite 301
St. George, Utah 84770
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on this 2 day of March 2020, the foregoing **MOTION FOR PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME** was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☒ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

Kara Hendricks
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135
Attorneys for Defendants

/s/ Amanda Hanson
An Employee of WINNER & SHERROD

4823-4300-8438, v. 1

Exhibit 1

ENTITY INFORMATION**ENTITY INFORMATION****Entity Name:**

VALLEY ASCENT, LLC

Entity Number:

LLC17323-2004

Entity Type:

Domestic Limited-Liability Company (86)

Entity Status:

Active

Formation Date:

08/03/2004

NV Business ID:

NV20041175403

Termination Date:

8/3/2504

Annual Report Due Date:

8/31/2020

Series LLC:☐**Restricted LLC:**☐**REGISTERED AGENT INFORMATION****Name of Individual or Legal Entity:**

C T CORPORATION SYSTEM**Status:**

Active

CRA Agent Entity Type:**Registered Agent Type:**

Commercial Registered Agent

NV Business ID:

NV20191497453

Office or Position:**Jurisdiction:**

DELAWARE

Street Address:

701 S CARSON ST STE 200, Carson City, NV, 89701, USA

Mailing Address:**Individual with Authority to Act:**

MATTHEW TAYLOR

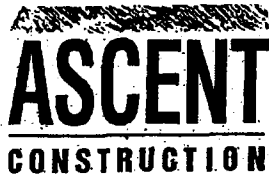
Fictitious Website or Domain Name:**OFFICER INFORMATION**☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Manager	BRAD L KNOWLTON	310 WEST PARK LANE, FARMINGTON, UT, 84025, USA	08/31/2018	Active

Page 1 of 1, records 1 to 1 of 1

[Filing History](#)[Name History](#)[Mergers/Conversions](#)[Return to Search](#)[Return to Results](#)

Exhibit 2



April 22, 2004

ASCENT CONSTRUCTION

Proposed: **Fabulous Freddy's
Craig and Valley View**

Total Project, Land, Soft Cost \$5,500,000.00

10% Cap **	\$550,000.00 / Annual	\$45,833.00 / Month
NNN Lease	Administrative @3%	\$1,375.00 / Month
		<hr/>
		\$44,458.00 / Month

Equify Contribution			Ownership %:
Bill Lindner	\$486,250.00	Land Value	33.3%
		(\$866,250-\$380,000 Pay Off)	
Juel Parker	\$508,750.00	Land Value 37%	34.8%
Brad Knowlton	\$465,000.00		31.9%
	<hr/>		
	\$1,460,000.00		100.0%

Loan \$4,040,000.00 5 3/4% / 20 years (Fixed for 10 years)

Monthly Payment	\$19,358.00	Interest
	\$9,005.84	Principle (Initial Gain)
	<hr/>	
	\$28,364.00	/ Month

Positive Cash \$16,094.00 / Month

1st Year	<u>Cash</u>	\$193,128.00	= 13.23%
	Cash	\$1,460,000.00	

1st year ROE	$\frac{\$193,128.00 + \$109,958.00}{\$1,460,000.00}$	= 20.76%
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** Needs to be 4% over actual interest of money at lock-in

Exhibit 3

**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 reasonably 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

CSF
THE STEVEN BRUCE PARKER
FAMILY Trust
Dated 11-1-04
STEVEN
~~STEPHEN BRUCE PARKER AND RENEE LYNN~~
~~PARKER FAMILY TRUST~~

S. Bruce Parker - Trustee
S. BRUCE PARKER, Trustee

MANAGER:


BRAD L. KNOWLTON

EXHIBIT A

Member

Membership Interest

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%

38P
STEVEN
S. Bruce Parker, Trustee, S.B.P.
~~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 4

*Valley Ascent
Original*

FIRST AMENDMENT TO BUILD TO SUIT LEASE

THIS FIRST AMENDMENT TO BUILD TO SUIT LEASE ("Amendment"), is made and entered into this 30 day of July, 2012, by and between VALLEY ASCENT, L.L.C. ("Landlord") and MCSMITH, LLC ("Tenant"). Landlord and Tenant are sometimes collectively referred to herein as the "Parties".

Recitals

A. Landlord and Tenant entered into that certain Build To Suit Lease dated as of September ____, 2004 (the "Lease") pertaining to certain real property and improvements located on the corner of Craig Road and Valley Drive, North Las Vegas, Nevada (the "Premises"). Capitalized terms used herein shall have the same meaning as in the Lease, unless a different meaning is clearly stated in this Amendment.

B. The Parties desire to amend, modify or clarify certain terms of the Lease as set forth herein.

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual covenants set forth herein, the Parties agree as follows:

1. Effective as of August 1, 2012, Article 5(a). BASE RENT of the Lease is hereby amended and superseded in its entirety as follows:

a. Notwithstanding anything in the Lease to the contrary, Base Rent for the remaining initial Term of the Lease shall be as follows:

<u>Year</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
August- December 2012	\$285,000	\$57,000
2013	\$720,000	\$60,000
2014	\$734,400	\$61,200
2015	\$752,400	\$62,700
2016	\$766,800	\$63,900
2017	\$787,200	\$65,600
2018	\$804,000	\$67,000
2019	\$823,200	\$68,600
2020	\$840,000	\$70,000
2021	\$877,248	\$73,104
2022	\$879,600	\$73,300
2023	\$900,000	\$75,000
2024	\$919,200	\$76,600
2025	\$940,800	\$78,400

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b. Notwithstanding anything in the Lease to the contrary, Base Rent for the First Extension Term, which Tenant hereby exercises (extending the aggregate term of Lease to 2035), shall be as follows:

		<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
i.	2026-2030	\$968,400	\$80,700
ii.	2031-2035	\$720,000*	\$60,000*

c. Notwithstanding anything in the Lease to the contrary, Base Rent for the Second (2036-2045), Third (2046-2055) and Fourth (2056-2065) Extension Terms shall be adjusted to a "Market Rate" at the commencement of each of such Extension Terms, which Base Rent shall remain in effect without adjustment during such Extension Term. Market Rent shall be determined for each of the Second, Third and Fourth Extension Terms by the procedure set forth in the "Market Rent Rider" attached hereto and incorporated herein by this reference. Market Rent shall also be calculated for the period 2031-2035, and shall be the Base Rent for such time period if such amount is greater than the amount set forth in 1(b)(ii) above.

2. Notwithstanding Tenant's exercise of the First Extension Term as set forth in paragraph 1 above, in the event that in the six months immediately prior to 2026, or the six months immediately prior to 2031, Landlord receives a valid and binding arms-length bona fide offer to lease the Premises for a greater effective Base Rent than that specified in paragraph 1(b) above, Landlord may give notice to Tenant of such offer to lease together with a copy thereof, and if Tenant does not agree to match such offered effective Base Rent within thirty (30) days thereafter, Landlord may, upon fifteen (15) days written notice to Landlord, revoke Tenant's right to the applicable Extension Term and any subsequent Extension Terms otherwise provided for in the Lease, and the Parties shall have no further rights with or against each other regarding Extension Terms.

3. Landlord and Tenant each waive, release and discharge any and all claims that each has against the other as of the effective date of this Amendment, relating to any time period prior to the date of this Amendment, including specifically but without limitation, any claims of Landlord or assertions of default by Landlord against Tenant asserting nonpayment or underpayment of any Base Rent, Additional Rent, late charges, interest, attorneys' fees or other monetary amounts payable under the Lease, and any claims or assertions of default by Tenant against Landlord asserting overpayment of Base Rent or any other amounts under the Lease.

4. The Parties acknowledge that as of the date hereof pursuant to this Amendment, Base Rent is and shall remain \$57,000 per month through 2012. The foregoing agreement by the Parties with respect to Base Rent shall not affect or reduce Tenant's other monetary obligations under the Lease, including, but not limited to, with respect to payment of Additional Rent, if any, Taxes, Insurance, Utilities and Maintenance.

5. The Parties clarify and acknowledge that Landlord is in fact a limited liability company rather than a limited partnership.

6. Tenant agrees, within fifteen (15) days of Landlord's written request to Tenant, to provide Landlord with true and correct copies of Landlord's most recently prepared operating and financial statements for MCSmith LLC, periodically and that Landlord will receive such a report on a yearly basis.

7. Except as expressly set forth above in this Amendment, the Lease, as modified by this Amendment, remains in full force and effect.

8. Each party hereto represents and warrants to the other party hereto that execution and delivery of this Amendment have been duly authorized by all necessary action.

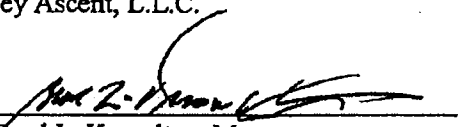
Executed on the date set forth above.

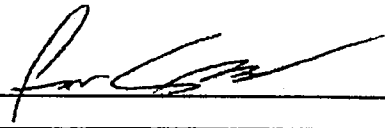
"Landlord"

"Tenant"

Valley Ascent, L.L.C.

MCSmith, LLC

By: 
Brad L. Knowlton, Manager

By: 
Its: _____

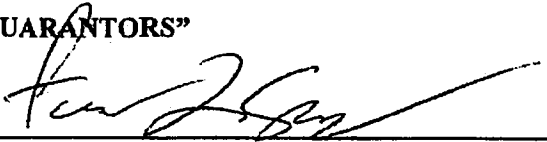
AFFIRMATION OF GUARANTEE

Section 34 of the foregoing Lease attached hereto is Guarantee of Freddy Lloyd Smith, individually; F.L. Smith, LLC; HM Smith, LLC; Fabulous, LLC; and AC Smith, LLC, collectively referred to as "Guarantors", jointly and severally.

Guarantors' and Guarantor hereby acknowledge to Landlord that Guarantor acknowledges that the Lease (attached hereto), as modified by the foregoing Amendment (collectively "Lease"), remains in full force and effect in accordance with its terms, and that the Guarantee represents the continued, valid, enforceable and collectible obligation of Guarantors and that Guarantor waives, releases and discharges any and all claims or defenses that Guarantor has against Landlord in any way relating to the Lease or Guarantee. Guarantors affirm Guarantor's Guarantee of the Lease and represent and warrant to Landlord that execution and delivery of this Affirmation of Guarantee has been duly authorized by all necessary action.


Executed and effective on the date set forth above.

"GUARANTORS"



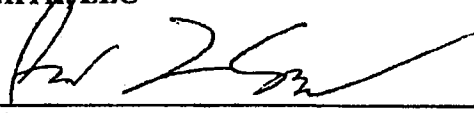
Freddy Lloyd Smith, Individually

F.L. SMITH, LLC

By: 

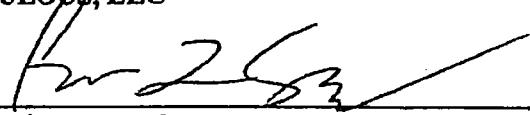
Fred L. Smith, Owner

HM SMITH, LLC

By: 


Fred L. Smith, Owner

FABULOUS, LLC

By: 

Fred L. Smith, Owner

AC SMITH, LLC

By: 

Fred L. Smith, Owner

STATE OF NEVADA)
 : SS.
COUNTY OF CLARK)

Before me, the undersigned Notary Public in and for said County and State, this
10 day of August, 2012, personally appeared FREDDY LLOYD SMITH,
and acknowledged the execution of the above and foregoing instrument.



Tamara Brandley
NOTARY PUBLIC
Residing at: Las Vegas, NV

My Commission Expires: June 14, 2014

STATE OF NEVADA)
 : SS.
COUNTY OF CLARK)

Before me, the undersigned Notary Public in and for said County and State, this
10 day of August, 2012, personally appeared FRED L. SMITH, known to
me (or proved to me), to be the Owner of F.L. Smith, LLC, and acknowledged to me that he
executed the above and foregoing for and on behalf of the Company.



Tamara Brandley
NOTARY PUBLIC
Residing at: Las Vegas, Nevada

My Commission Expires:

STATE OF NEVADA)
 : SS.
COUNTY OF CLARK)

Before me, the undersigned Notary Public in and for said County and State, this
10 day of August, 2012, personally appeared FRED L. SMITH, known to
me (or proved to me), to be the Owner of HM Smith, LLC, and acknowledged to me that he
executed the above and foregoing for and on behalf of the Company.



Tamara Brandley
NOTARY PUBLIC
Residing at: Las Vegas, Nevada

My Commission Expires:

Exhibit 5

LOAN MODIFICATION AND REAFFIRMATION AGREEMENT

For Account Number: xxx2800- L91

Loan Modification and Reaffirmation Agreement (the "Modification Agreement") dated as of _____, 2019 between and among: (i) MOUNTAIN AMERICA FEDERAL CREDIT UNION ("MAFCU"), (ii) VALLEY ASCENT, LLC ("Borrower") a Nevada limited liability company, and (iii) the following (collectively, "Guarantors" or, individually, a "Guarantor") BRAD L. KNOWLTON, JUEL A. PARKER, THE JUEL A. PARKER FAMILY TRUST dated 02/15/1984. Borrower, MAFCU, and the Guarantors are sometimes hereinafter referred to collectively as the "Parties" or, individually, as a "Party."

RECITALS

On or about August 8, 2013, MAFCU extended, to Borrower, a certain loan (the "Loan"). In connection with the Loan, MAFCU and Borrower executed and delivered a number of documents including, but not limited to, a Non-Revolver Promissory Note (the "Note") in the principal amount of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00), a Trust Deed with Assignment of Rents (the "Trust Deed"), Loan and Security Agreement (the "Loan Agreement"), and certain other documents (the Note, the Trust Deed, the Loan Agreement, and all other documents executed and delivered in connection with the establishment of the Loan are sometimes hereinafter collectively referred to as the "Initial Loan Documents," and the Initial Loan Documents and this Modification Agreement are sometimes hereinafter referred to collectively as the "Loan Documents"). As an inducement for MAFCU to extend the Loan to Borrower, Guarantor executed and delivered to MAFCU a personal and unconditional Continuing Guaranty (the "Guaranty"). Subject to the terms, and subject to the conditions, set forth herein, MAFCU and Borrower have agreed to reduce the "Current Interest Rate" applicable to the Loan and to confirm all unmodified portions of the Loan Documents.

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing Recitals are incorporated herein by this reference.
2. Modification to Loan. The Loan and the Initial Loan Documents are hereby modified and amended as follows (unless otherwise defined herein, all defined terms shall have the same meanings as set forth in the Initial Loan Documents):

A. The interest rate with respect to the Note and the Loan is hereby reduced from its current level of five and 85/100 percent (5.85%) per annum (the "Current Interest Rate") to a rate of four and 79/100 percent (4.79%) per annum (the "Reduced Rate").

B. The maturity date with respect to the Loan and the Note is not extended and remains September 1, 2023. The Parties further acknowledge and agree that the current principal balance (the "Current Principal Balance") of the Loan and the Note is Three Million Nine Hundred Thirteen Thousand Seven Hundred Eighty-Two and 70/100 dollars (\$3,913,782.70).

C. The Current Principal Balance, together with interest from the date hereof at the Reduced Rate (as such term is above defined), shall be paid as follows:

Twenty-Five Thousand Six Hundred Thirty-Six and 00/100 Dollars (\$25,636.00) on the first day of January 2019, and the same amount on the first day of each succeeding month until September 1, 2023, when the entire then unpaid balance of principal, together with all amounts of then accrued and unpaid interest, shall be due and payable in full.

The Parties herewith acknowledge and agree that the Loan has been re-amortized to reflect the modification of the interest rate. Consequently, the foregoing monthly payments are not in the same amount as the monthly payments set forth in the Note.

D. *All of the terms and conditions set forth in the Initial Loan Documents that are not modified by this Modification Agreement are hereby expressly reaffirmed.* Such terms and conditions include, but are not limited to: (i) all requirements relating to Borrower's obligation to repay the Loan, (ii) the continuing effectiveness of the Trust Deed, and all other requirements relating to collateral with respect to the Loan, (iii) all of the covenants of Borrower that are set forth in the Initial Loan Documents, and (iv) all of the rights and remedies of MAFCU in the event of a breach, default, or Event of Default upon the part of Borrower.

E. The failure by Borrower to timely and fully comply with any of Borrower's obligations hereunder or under any of the other Loan Documents shall constitute a breach, default, and Event of Default under this Modification Agreement and under all of the other Loan Documents. In such event, Borrower expressly acknowledges and agrees that MAFCU shall be entitled to exercise all rights and remedies granted to MAFCU under this Modification Agreement, under any of the other Loan Documents, under any written agreement between the Parties, at law, or in equity.

3. *Continued Validity and Priority of Initial Loan Documents.* Borrower hereby expressly agrees and reaffirms that this Modification Agreement is being executed merely to effect a modification of the Initial Loan Documents on the terms specified herein, and that this Modification Agreement does not constitute or in any way operate as a release or discharge of the indebtedness or other obligations, or any part thereof, of Borrower to MAFCU in connection with the Loan or the Loan Documents. Except as specifically set forth herein, this Modification Agreement shall not affect, or be construed to affect, any of the terms and conditions of any of the Initial Loan Documents, nor impair the validity or priority of any of the Initial Loan Documents or any rights or powers which MAFCU now or hereafter may have there under for the recovery of the debt evidenced thereby in case of a breach, default, or Event of Default under the terms of this Modification Agreement or any of the other Loan Documents. Borrower expressly acknowledges and agrees that Borrower will be required to comply with all of Borrower's obligations and responsibilities under the Initial Loan Documents, as modified herein, and that all of the obligations, rights, and responsibilities of MAFCU under the Initial Loan Documents, as modified herein, remain in full force and effect as set forth therein.

4. *Loan Modification Fees.* A loan modification fee (the "Loan Modification Fee") of Nine Thousand Seven Hundred Eighty-Four and 00/100 dollars (\$9,784.00), which amount is approximately a quarter of one percent (0.250%) of the current principal Loan balance of Three Million Nine Hundred Thirteen Thousand Seven Hundred Eighty-Two and 70/100 dollars (\$3,913,782.70) shall be paid by Borrower to MAFCU simultaneously herewith. Borrower shall also pay a processing fee (the "Processing Fee") of Three Hundred Fifty and 00/100 dollars (\$350.00). It is a condition precedent to the effectiveness of this Modification Agreement, the modifications to the Loan described herein, and the obligations of MAFCU hereunder that the Loan Modification Fee and Processing Fee be paid by Borrower as described above.

5. *No Setoffs, Claims, or Defenses.* Borrower hereby acknowledges and agrees that Borrower has no claims, setoffs, or demands against MAFCU, that the amounts provided to be paid pursuant to the Note, this Modification Agreement, and the other Loan Documents are validly due and owing, and that Borrower has no defenses to MAFCU's rights and remedies for enforcement of the Loan Documents.

6. *Effectiveness Contingent Upon Certain Signatures.* Notwithstanding anything herein contained to the contrary, this Modification Agreement shall not become effective and binding upon the Parties until such time as it has been executed by all of the Parties. In the event that less than all of the required signatures are obtained, this Modification Agreement shall be ineffective and the terms and conditions of the unmodified Initial Loan Documents shall remain in full force and effect.

7. General.

A. This Agreement constitutes the entire agreement of the Parties hereto with respect to the matters discussed herein and cannot be altered by prior oral representations or prior negotiations, all of which are deemed to have been merged into this Agreement. This Agreement may not be changed or modified except by a writing signed by all of the Parties hereto.

B. The terms and conditions of this Agreement shall be binding upon the respective heirs, legal representatives, successors, and assigns of the Parties hereto.

C. This Agreement shall be governed by, and construed in accordance with, the laws of the state of Utah. The Parties expressly agree and consent that the courts of Salt Lake County, Utah shall have exclusive jurisdiction over all actions arising from, out of, or with respect to this Agreement.

D. If any provision of this Agreement is held to be invalid or unenforceable, this Agreement shall be considered divisible as to such provision and such provision shall thereupon be inoperative and shall not be part of the consideration moving between the Parties. The remaining provisions of this Agreement shall, however, continue to be valid and binding and have like effect as though such provision was not included herein.

E. In the event of a breach by one of the Parties hereunder (the "breaching Party") of such Party's warranties, representations, obligations, or responsibilities herein, such breaching Party shall pay to the other Party (the "non-breaching Party") enforcement and collection costs, including reasonable attorneys' fees and legal expenses, regardless of whether the breach is ultimately cured, and regardless of whether formal legal proceedings are commenced. The non-breaching Party may pay a third party to assist in enforcing its rights hereunder, and the breaching Party shall pay the costs and expenses of such enforcement. Costs and expenses shall include, but not be limited to: (i) the non-breaching Party's reasonable attorneys' fees and legal expenses, whether or not such expenses are incurred by a salaried employee of the non-breaching Party, (ii) reasonable attorneys' fees and legal expenses for bankruptcy proceedings including, but not limited to, efforts to modify or vacate any automatic stay or injunction, (iii) appeals to higher courts arising out of legal proceedings to enforce the breaching Party's obligations hereunder, and (iv) any anticipated post-judgment collection services.

F. All notices by any signatory to this Agreement shall, except as otherwise provided herein, be in writing and be sent by overnight mail or by certified or registered mail, return receipt requested. Notices shall be deemed received three (3) days after being deposited in a United States post office box, postage prepaid, properly addressed to the Parties at the addresses set forth in this Modification Agreement, or to such other addresses as such Parties may from time to time specify in writing. Any notice so addressed and otherwise delivered shall be deemed to be given when actually received by the addressee.

G. This Agreement shall supersede any and all outstanding agreements between and among the Parties.

H. The Parties agree to perform all further actions and to execute all further agreements, certificates, and other documents necessary or desirable to carry out the purposes of this Agreement and the transactions contemplated hereunder.

I. No delay or omission in the exercise or pursuance by any Party of any right, power, or remedy shall impair any such right, power, or remedy or shall be construed to be a waiver thereof.

J. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of date first above written.

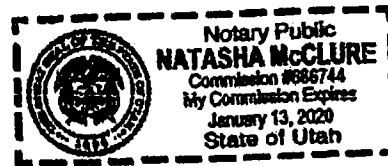
VALLEY ASCENT, LLC, a Nevada limited liability company

By: [Signature]
BRAD L. KNOWLTON, Manager

STATE OF Utah
COUNTY OF Davis : ss.

On this 29 day of Jan, 2019, the foregoing instrument was acknowledged before me by BRAD L. KNOWLTON, the Manager of VALLEY ASCENT, LLC, a Nevada limited liability company.

Natasha McClure
NOTARY PUBLIC



MOUNTAIN AMERICA FEDERAL CREDIT UNION

By: _____
DAVID L. POULSON, VP

STATE OF _____
COUNTY OF _____ : ss.

On this _____ day of _____, 2019, the foregoing instrument was acknowledged before me by DAVID L. POULSON, a Vice President of MOUNTAIN AMERICA FEDERAL CREDIT UNION.

NOTARY PUBLIC

Exhibit 6

**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


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: 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: Lisa D. Parker
Title: Trustee

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

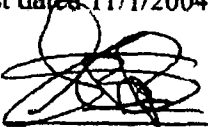
By:  _____
Name: S. Bruce Parker
Title: Trustee

Exhibit 7

**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

Exhibit 8

Shauna R. Beatty

From: Ryan Rudd Esq. <ryan@ruddfirm.com>
Sent: Thursday, January 9, 2020 10:24 AM
To: Steven W. Beckstrom
Subject: Fwd: Juel A. Parker Family Trust's and Valley Ascent, LLC
Attachments: 47973886_v 1_20191223 Written Consent of the Members of Valley Ascent (to remove Brad Knowlton as Manager)(fully executed).pdf; 47973884_v 1_20191223 Written Consent of the Members of Valley Ascent (to appoint Lisa Parker as Interim Manager) (fully executed).pdf

Begin forwarded message:

From: <hendricksk@gtlaw.com>
Subject: RE: Juel A. Parker Family Trust's and Valley Ascent, LLC
Date: January 8, 2020 at 12:34:16 PM MST
To: <nnielsen@ruddfirm.com>
Cc: <ryan@ruddfirm.com>, <ccooper@ruddfirm.com>, <Bradk@aascentconstruction.com>

Nick,

Please be advised that the majority of members of Valley Ascent LLC have removed Mr. Knowlton as manager of Valley Ascent. A copy of the written consent is attached hereto for your records. A member meeting has also been scheduled for January 15, 2020 at my office at 10:00 am. My office is located at:

Greenberg Traurig, LLP
10845 Griffith Peak Drive
Suite 600 | Las Vegas, NV 89135

The purpose of the meeting is to appoint a new Manager. If Mr. Knowlton would like to appear telephonically please let me know and I will provide a call in number. Lisa Parker was appointed the interim manager of the company until a replacement manager is appointed.

Best,
Kara

Kara Hendricks
Shareholder

T 702.938.6856

From: Nick Nielsen [mailto:nnielsen@ruddfirm.com]
Sent: Monday, October 21, 2019 11:55 AM
To: Hendricks, Kara (Shld-LV-LT) <hendricksk@gtlaw.com>
Cc: Ryan Rudd Esq. <ryan@ruddfirm.com>; Courtney Cooper <ccooper@ruddfirm.com>
Subject: Juel A. Parker Family Trust's and Valley Ascent, LLC

EXTERNAL TO GT

Dear Kara Hendricks,

Our firm is in receipt of a letter sent to our client, Bradley Knowlton, regarding the Juel A. Parker Family Trust and Valley Ascent, LLC. Our client has been in trial and out of town for the last two weeks but is working on collecting the documentation that has been requested in the letter. We anticipate that we will have the documents ready shortly.

Regards,

Nick Nielsen

--

Nick Nielsen, Esq.
The Rudd Firm
10150 S. Centennial Pkwy
Suite 150
Sandy, Utah 84070
801-676-5337 - Office
801-532-8400 - Fax
nnielsen@ruddfirm.com



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Ryan Rudd, Esq.
The Rudd Firm
10150 S. Centennial Pkwy
Suite 150
Sandy, Utah 84070
801-676-5337 - Office
801-532-8400 - Fax
ryan@ruddfirm.com



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**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


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.

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

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

The Steven Bruce Parker Family
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Title: Trustee

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

December 23, 2019

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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]

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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.

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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

Exhibit 9

Shauna R. Beatty

From: Jonathan Rupp <jrupp@macu.com>
Sent: Friday, January 17, 2020 3:47 PM
To: Steven W. Beckstrom; hendricksk@gtlaw.com
Cc: Don Youngberg; Dave Hillyard
Subject: RE: Valley Ascent Mountain America Accounts
Attachments: MACU Wiring Instructions.pdf

Steven and Kara,

This email is a follow-up to our telephone conference this morning regarding Valley Ascent.

First, this will confirm that the January loan payment is overdue. The payment amount is as follows:

Regular payment: \$25,636.00
Late fee: \$1,281.80
Total payment: \$26,917.80

Second, we discussed the possibility of MACU applying funds from Valley Ascent's frozen checking account at MACU make January's payment. Please respond and confirm that your clients are in agreement. If so, I will have the funds applied to the payment. If not, please advise as to how and when payment will be made.

Additionally, you asked for wiring instructions that can be used to make payment on the loan in the event that Valley Ascent desires to make payment from another financial institution. Per your request, wiring instructions are attached.

Please respond and let me know if you would like MACU to apply funds from the checking account to make the payment.

Sincerely—
--Jonathan

From: Steven W. Beckstrom <SWB@scmlaw.com>
Sent: Thursday, January 16, 2020 9:53 PM
To: Jonathan Rupp <jrupp@macu.com>; hendricksk@gtlaw.com
Subject: RE: Valley Ascent Mountain America Accounts

I might be able to make 11:30 work. Will that work for you Jon? Or does our meeting need to be completed by 11:30 am? Unfortunately, I cannot make any time after 1:30 pm work.

Let me know.

**SNOW
CHRISTENSEN
MARTINEAU**

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

From: Jonathan Rupp <jrupp@macu.com>
Sent: Thursday, January 16, 2020 5:45 PM
To: hendricksk@gtlaw.com
Cc: Steven W. Beckstrom <SWB@scmlaw.com>
Subject: RE: Valley Ascent Mountain America Accounts

Kara and Steve,

12:00 does not work for me. I could do any time prior to 11:30 or after 1:30 mountain time. Is there a time in that timeframe that works for both of you?

--Jonathan

From: hendricksk@gtlaw.com <hendricksk@gtlaw.com>
Sent: Thursday, January 16, 2020 4:37 PM
To: Jonathan Rupp <jrupp@macu.com>
Cc: SWB@scmlaw.com
Subject: Valley Ascent Mountain America Accounts

Jonathan,

In follow-up to the various discussions had today regarding Valley Ascent accounts at Mountain America, we would like to propose a call tomorrow at 12(Mountain) to discuss what is needed to put a mechanism in place to ensure that timely payments are made to Mountain American on the pending loan. Steve Beckstrom, counsel for Mr. Knowlton, is copied on this email and available for the call.

A call in number is also provide below:

1-888-439-7617
Pc 456 330

Best,
Kara

Kara Hendricks
Shareholder

Greenberg Traurig, LLP
10845 Griffith Peak Drive
Suite 600 | Las Vegas, NV 89135
T 702.938.6856
hendricksk@gtlaw.com | www.gtlaw.com | [View GT Biography](#)



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Jonathan Rupp
VP General Counsel, Legal Team
+1 801-325-1939 tel
jrupp@macu.com
<https://www.macu.com/>

Guiding You Forward

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Jonathan Rupp
VP General Counsel, Legal Team
+1 801-325-1939 tel
jrupp@macu.com
<https://www.macu.com/>



WIRE INSTRUCTIONS

9800 South Monroe Street
Phone - 801-325-6435

Sandy, Utah 84070
Fax - 801-321-5868

RECEIVING BANK ABA#: 324079555

**RECEIVING BANK NAME: MOUNTAIN AMERICA CREDIT UNION
9800 SOUTH MONROE STREET
SANDY, UTAH 84070**

CREDIT ACCOUNT #: ACCT# 7792288 S01

**CREDIT NAME: MOUNTAIN AMERICA CREDIT UNION
9800 SOUTH MONROE STREET
SANDY, UTAH 84070**

ATTENTION*: Dave Hillyard x86435

REFERENCE: Valley Ascent Loan Payment

*** Please include the attention and reference comments above in the wire comments. Wires that do not contain these comments may be remitted to sender and may cause a delay in processing.**

Exhibit 10

Shauna R. Beatty

From: Tufts, David W. <DTufts@djplaw.com>
Sent: Tuesday, January 21, 2020 1:38 PM
To: Steven W. Beckstrom; hendricksk@gtlaw.com
Subject: Valley Ascent, LLC

Steven, Kara,

After speaking with each of you over the weekend, I spoke with my client Bank of Utah this morning. The Bank requests the following:

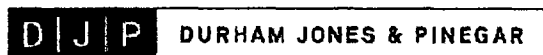
1. With regard to the payment that is due, the two of you should work out the language of a stipulation that instructs Bank of Utah where to wire the payment (including financial institution name, wiring information, loan number reference), how much, and which account or accounts from which to take the payment. To be acceptable to the bank, your instructions should be signed by all of the members of Valley Ascent, LLC and it should include a representation that there are no other members except those who are the signers of the instructions. Once you have the language of the instructions worked out between you, please send it to me so that the bank can review it, and approve it, before your clients execute the instructions.
2. With regard to the remaining balance in the accounts, the bank previously gave notice to Valley Ascent, LLC that it is going to close the accounts and the money had to be moved out by the end of January. I understand from speaking with each of you that there is or soon will be litigation commenced to resolve the control dispute between your clients. The bank stands by its position that the accounts need to be closed by the end of January. As such, the two of you and your clients should work out a stipulation that will allow the bank to interplead the remaining balance with the court before the end of January so that the funds can be held by the court, and distributed by the court as the court deems appropriate.

Please discuss these items between yourselves and get back to me at your convenience.

Regards,

David Tufts

David W. Tufts | Attorney at Law
Durham Jones & Pinegar, P.C.
111 S. Main Street, Suite 2400 | Salt Lake City, UT 84111
Phone: 801.415.3000 | Fax: 801.415.3500
www.djplaw.com | DTufts@djplaw.com



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[SALT LAKE CITY](#) | [LEHI](#) | [OGDEN](#) | [ST. GEORGE](#)

Exhibit 11

UNANIMOUS WRITTEN CONSENT
OF ALL MEMBERS OF
VALLEY ASCENT, LLC

January 22, 2020

The undersigned, representing all of the outstanding Members of Valley Ascent, LLC, a Nevada limited liability company (the "*Company*"), in accordance with the Amended Operating Agreement of Valley Ascent, LLC (the "*LLC Agreement*") and the Nevada Limited Liability Company Act, do hereby adopt the following resolution by this unanimous written consent which resolution shall be effective as of the date set forth above:

RESOLVED, that the Company maintains several accounts at the Bank of Utah, specifically including the accounts ending with numbers xxxx0158 and xxxx0067 (collectively the "Bank of Utah Accounts").

RESOLVED, that the Company also maintains several accounts at Mountain America Credit Union, including a checking account ending in number xxxx2800 and a loan account related thereto (collectively the "MACU Accounts"). A sum of \$70,000.00 is presently held in the MACU checking account. The loan account is based upon a loan obtained by the Company secured by the real property owned by the Company (the "Loan").

RESOLVED, that, at the present time, a dispute has arisen amongst the Members of the Company regarding the person authorized to act as the manager of the Company, and more than one party has submitted a claim/demand to Bank of Utah asserting the authority to act as the manager of the Company. As a result of these demands, Bank of Utah has frozen all of the Company's Bank of Utah Accounts, and has demanded that all members consent to any use of the funds contained therein. This Unanimous Written Consent of all Members of Valley Ascent, LLC (the "Consent"), is provided to authorize the limited use of the funds in the Bank of Utah Accounts and MACU Accounts for the purposes set forth below. This Consent is made as a vote of the Members under Article VI, Section 1 of the LLC Agreement.

RESOLVED, that the Members hereby authorize and direct Bank of Utah to wire a sum of \$26,917.80 from the Bank of Utah Account with numbers ending xxxx0158 to Mountain America Credit Union using the wire transfer instructions which are attached hereto as Exhibit 1 and incorporated herein by this reference.

RESOLVED, that, the Members further authorize and direct Mountain American Credit Union to use the funds contained in the MACU Accounts up to the \$70,000.00 presently contained in the MACU checking account to pay the Loan payments as they become due and owing.

RESOLVED, that this consent may be executed in multiple counterparts, all of which shall be considered one and the same consent and shall become effective when signed by all of the Members.

RESOLVED, that this consent may be executed by facsimile or other electronic means, and such execution shall be considered valid, binding and effective for all purposes.

RESOLVED, that, each of the undersigned acknowledge and agree that they represent all of the outstanding Members of the Company, and represent that they are unaware of any other persons/entities which may own a Membership Interest in the Company.

IN WITNESS WHEREOF, the undersigned Members have executed this Unanimous Written Consent effective as of the date first set forth above.

Date:

1/23/20

By:

Brad L. Knowlton

38.55% Membership Interest Holder

Date:

By:

Lisa D. Parker

Trustee of the Juel A. Parker Family Trust

36.45% Membership Interest Holder

Date:

By:

S. Bruce Parker

Trustee of the Steven Bruce Parker Family Trust

dated 11/1/2004

5% Membership Interest Holder

Date:

By:

William L. Lindner

Trustee of the William L. Lindner and Maxine G.

Lindner Trust of 1988

20% Membership Interest Holder

RESOLVED, that this consent may be executed by facsimile or other electronic means, and such execution shall be considered valid, binding and effective for all purposes.

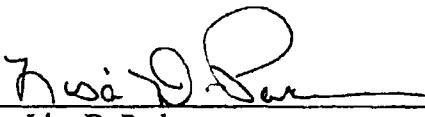
RESOLVED, that, each of the undersigned acknowledge and agree that they represent all of the outstanding Members of the Company, and represent that they are unaware of any other persons/entities which may own a Membership Interest in the Company.

IN WITNESS WHEREOF, the undersigned Members have executed this Unanimous Written Consent effective as of the date first set forth above.

Date: _____

By: _____
Name: Brad L. Knowlton
38.55% Membership Interest Holder

Date: 1/22/2020

By: 
Name: Lisa D. Parker
Trustee of the Juel A. Parker Family Trust
36.45% Membership Interest Holder

Date: _____

By: _____
Name: S. Bruce Parker
Trustee of the Steven Bruce Parker Family Trust
dated 11/1/2004
5% Membership Interest Holder

Date: _____

By: _____
Name: William L. Lindner
Trustee of the William L. Lindner and Maxine G.
Lindner Trust of 1988
20% Membership Interest Holder

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IN WITNESS WHEREOF, the undersigned Members have executed this Unanimous Written Consent effective as of the date first set forth above.


Date: _____

By: _____
Name: Brad L. Knowlton
38.55% Membership Interest Holder

Date: _____

By: _____
Name: Lisa D. Parker
Trustee of the Juel A. Parker Family Trust
36.45% Membership Interest Holder

Date: 1/22/2020

By:  _____
Name: S. Bruce Parker
Trustee of the Steven Bruce Parker Family Trust
dated 11/1/2004
5% Membership Interest Holder

Date: _____

By: _____
Name: William L. Lindner
Trustee of the William L. Lindner and Maxine G.
Lindner Trust of 1988
20% Membership Interest Holder

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IN WITNESS WHEREOF, the undersigned Members have executed this Unanimous Written Consent effective as of the date first set forth above.

Date: _____

By: _____

Name: Brad L. Knowlton
38.55% Membership Interest Holder

Date: _____

By: _____

Name: Lisa D. Parker
Trustee of the Juel A. Parker Family Trust
36.45% Membership Interest Holder

Date: _____

By: _____

Name: S. Bruce Parker
Trustee of the Steven Bruce Parker Family Trust
dated 11/1/2004
5% Membership Interest Holder

Date: JAN. 23, 2020

By: William L. Lindner

Name: William L. Lindner
Trustee of the William L. Lindner and Maxine G.
Lindner Trust of 1988
20% Membership Interest Holder

Exhibit 1
(Wiring Instructions)

[Handwritten signature]



WIRE INSTRUCTIONS

9800 South Monroe Street
Phone - 801-325-6435

Sandy, Utah 84070
Fax - 801-321-5868

RECEIVING BANK ABA#: 324079555

**RECEIVING BANK NAME: MOUNTAIN AMERICA CREDIT UNION
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ATTENTION*: Dave Hillyard x86435

REFERENCE: Valley Ascent Loan Payment

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