

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 III OF III

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12
13 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
14 **IN AND FOR THE COUNTY OF CLARK**

15
16 **BRAD L. KNOWLTON**, an individual,
17 Plaintiff,

18 v.

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

24 Defendants.

25
26 **WILLIAM L. LINDNER**, as Trustee of the
William L. Lindner and Maxine G. Lindner Trust
of 1988, individually and derivatively; **LISA**
27 **PARKER**, as Trustee of the Juel A. Parker
Family Trust, individually and derivatively; **S.**
28 **BRUCE PARKER**, as Trustee of the Steven

CASE NO: A-20-809612-B

DEPT. XI

OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

1 Bruce Parker Family Trust, individually and
derivatively, and JUEL PARKER, individually,

2 Counter-Plaintiffs,

3 v.

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

6 Counter-Defendant,

7 And

8 Nominal party VALLEY ASCENT, LLC, a
9 Nevada limited liability company.

10 **OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

11 Plaintiff, Brad L. Knowlton ("Knowlton"), by and through his counsel of record
12 Steven W. Beckstrom of the law firm of Snow Christensen & Martineau, P.C, respectfully
13 submits the following Opposition to Defendants Motion for Summary Judgment. This
14 Opposition is based upon the papers and pleadings on file herein, the accompanying
15 Memorandum of Points and Authorities, the Declaration of Bradley L. Knowlton, and any
16 argument of counsel as allowed at the hearing of this matter.
17

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 This action centers around the Defendants' improper attempts to remove the Plaintiff as
20 manager of Valley Ascent, LLC ("VA") after he successfully managed the Company for
21 approximately 15 years with over \$4,500,000 in distributions being paid to the Members of the
22 Company between 2006 and 2019. Notwithstanding the vast returns paid to the Members, on
23 December 23, 2019, relying upon false information and without obtaining the proper consent
24 required under the Operating Agreement, the Defendants purported to remove Knowlton as
25 manager of the Company. This purported removal occurred without providing Knowlton any
26 notice that a vote of the members would be taken and without allowing him an opportunity to
27
28

1 present a defense against the false information being used to support the attempt to remove
2 him. Even more troubling, they used this same false information and presented it to this Court,
3 leading this Court to enter an Order appointing Brian Gordon as interim manager of the
4 Company.

5 This wrongful action has caused harm to Knowlton in several respects. First, it has
6 prevented him from being paid the compensation he is entitled to be paid under the Operating
7 Agreement for his services rendered as Manager. Second, between January and June, 2020,
8 Knowlton has not been paid the monthly distributions that are generally required to be paid
9 under the Operating Agreement. As a result of these damages, the Plaintiff has brought forth
10 breach of contract, breach of good faith and fair dealing, and breach of fiduciary claims based
11 upon the Defendants' wrongful conduct in seeking to remove Mr. Knowlton as manager.

12 No doubt, there are numerous material facts that are in dispute related to both the basis
13 and attempts to remove Knowlton as manager of the Company. Apparently recognizing that
14 summary judgment would be inappropriate in light of these disputed facts, the Defendants have
15 instead filed this Motion for Summary Judgment relying solely on the argument that Knowlton
16 lacks standing to assert his claims due to an assignment made by Knowlton, effective June 19,
17 2020, whereby assigning his interest in VA to his ex-wife as required under the terms of a
18 Decree of Divorce entered in a divorce action pending in the State of Utah.

19 As more fully explained below, the Defendants' Motion fails for several reasons. First,
20 the plain language of the Assignment does not assign any claims to his ex-wife, but instead
21 only assigns Knowlton's membership interest in VA. Second, even if the Assignment does
22 assign claims to his ex-wife, the assignment only assigns those claims related to Knowlton's
23 ownership interest in VA without regard to his claims held as a manager of the Company.

Since the overwhelming majority of his claims asserted in this action are related to his position
as manager of the Company, Knowlton maintains those claims, and thus, has standing to assert

1 the same. Third, the Assignment is only effective as of June 19, 2020, and thus, Knowlton
2 maintains the right to assert claims which arise prior to that date, including but not limited to
3 his contractual right held under the Operating Agreement to be paid monthly distributions.
4 Therefore, summary judgment is inappropriate, and the Defendants' Motion must be denied.

5 STATEMENT OF FACTS

6 In response to the Defendants' "Statement of Undisputed Facts", Knowlton does not
7 dispute that he was divorced from his wife, Shondell Swenson, on June 5, 2020 in the State of
8 Utah, or that the Decree of Divorce entered in that action awarded his ex-wife his Membership
9 Interest in VA. Additionally, effective June 19, 2020, as required under the Decree of Divorce,
10 Knowlton did also execute an "Assignment of Membership Interest in Valley Ascent, LLC A
11 Nevada Limited Liability Company." The full and complete language of the Assignment is as
12 follows:

13 Effective June 19, 2020 and pursuant to the Judgment and Decree of
14 Divorce entered on June 5, 2020 by the Court in Utah Civil Case No.
174701016:

15 (1) Bradley L. Knowlton hereby transfers and assigns his interest in
16 Valley Ascent, LLC, a Nevada limited liability company, to Shondell Swenson;
and

17 (2) Bradley L. Knowlton hereby permanently relinquishes, waives,
and/or releases any and all rights, interests, and/or claims related to his
18 ownership interest in Valley Ascent, LLC, all of which have been transferred to
Shondell Swenson by virtue of this Assignment of Interest.

19 (hereinafter the "Assignment"). See Decl. of Brad L. Knowlton ¶ 5, which is attached hereto
20 as Exhibit 1.

21 Defendants' Motion also ignores a number of critical facts which are material and
22 relevant to Knowlton's claims. Those facts are as follows:

23 1. Prior to June 19, 2020, the Membership Interests of the Company were held as
follows:

a. Brad Knowlton 38.55%;

- 1 b. Juel Parker Trust 36.45%;
- 2 c. Bill Lindner Trust 20%; and
- 3 d. Bruce Parker Trust 5%.

4 *See* Knowlton Decl. ¶ 6.

5 2. Under the February, 2005 Amended Operating Agreement (the “Operating
6 Agreement”), signed by all Members of VA, “the Manager shall have the sole and exclusive
7 right to manage the business of the Company. The initial Manager is Brad L. Knowlton.” *See*
8 Operating Agreement, Art. VII, Sect. 1; Knowlton Decl. ¶ 7.

9 3. Additionally, under the Articles of Organization filed for VA, the Company is
10 designated as a manager-managed Company. *See* Knowlton Decl. ¶ 8.

11 4. The Manager of the Company serves until (a) the resignation of the Manager,
12 (b) the removal of the Manager by an affirmative vote of the Members in accordance with
13 Article VIII; or (c) the death dissolution or bankruptcy of such Manager. *See* Operating
14 Agreement, Art. VII, Sect. 2; Knowlton Decl. ¶ 9.

15 5. The Manager of the Company is entitled to compensation for his services
16 rendered. Specifically, the “Manager shall be reimbursed all reasonable expenses incurred in
17 managing the Company and shall be entitled to compensation, in an amount to be determined
18 from time to time by the written consent of the Members.” *See* Operating Agreement, Art. VII,
19 Sect. 6; Knowlton Decl. ¶ 10.

20 6. Prior to the signing of the Operating Agreement, Knowlton, Bill Lindner, and
21 Juel Parker all agreed that Plaintiff would be paid an administrative fee, or management fee, of
22 four percent (4%) of the gross receipts received on the project as compensation for his services
23 to be rendered as Manager of the Company. *See* Knowlton Decl. ¶ 11.

1 7. Pursuant to the agreement reached with respect to the management fee, from the
2 time the Company began to collect rents on the real property it owned, it paid Knowlton a
3 management fee of four percent (4%) or less on a monthly basis. *See* Knowlton Decl. ¶ 12.

4 8. At the time the Operating Agreement was signed, one of the reasons Knowlton
5 desired to serve as Manager of the Company was due to the fact that he was one of two
6 personal guarantors of the Company's loan that was secured in order to construct the
7 improvements on the Property. As of today's date, Knowlton remains as a personal guarantor
8 of VA's loan secured by the Property. *See* Knowlton Decl. ¶ 13.

9 9. The management fees paid to Knowlton were contained in the books and
10 records of the Company, and were also noted on each of the federal tax returns prepared and
11 filed for the Company. *See* Knowlton Decl. ¶ 14.

12 10. At the time each tax return was prepared, the Defendants were provided a K-1
13 for the Company and provided a copy of the Company's federal tax return. *See* Knowlton
14 Decl. ¶ 15.

15 11. Until December, 2019, none of the Members of the Company ever informed
16 Knowlton that the management fee was inappropriate, nor have the Members ever taken any
17 action to change the amount of the management fee. *See* Knowlton Decl. ¶ 16.

18 12. In fact, the Operating Agreement provides that the management fee could be
19 changed at any time by approval of the majority of the Members. *See* Operating Agreement,
20 Art. VIII, Sect. 2.1; Knowlton Decl. ¶ 17.

21 13. Since 2005, Knowlton acted as the sole manager of the Company. In his role as
22 manager, among other tasks performed, he negotiated and prepared leases, arranged and/or
23 performed maintenance on the Company's property, performed accounting services, negotiated
a loan refinance, negotiated with the tenants/subtenants, coordinated with tax preparers for the

1 preparing and filing of tax returns, and determined and set aside reserve funds for the
2 Company. *See* Knowlton Decl. ¶ 18.

3 14. Pursuant to a document entitled “Written Consent of the Members of Valley
4 Ascent, LLC” (the “False Removal Document”), dated December 23, 2019, the Lindner Trust,
5 Juel Parker Trust, and Bruce Parker Trust voted as members of the Company to remove
6 Knowlton as manager of the VA on the grounds that Knowlton had allegedly committed “gross
7 negligence and/or engaged in self-dealing in his capacity as manager . . .” *See* Knowlton Decl.
8 ¶ 19.

9 15. Knowlton was never informed that the other Members of the Company were
10 voting to remove him as Manager until the False Removal Document was provided to him after
11 the vote. *See* Knowlton Decl. ¶ 20.

12 16. None of the Defendants ever asked Knowlton to explain or prepare a defense
13 against the allegations of gross negligence or self-dealing prior to them signing the False
14 Removal Document. *See* Knowlton Decl. ¶ 21.

15 17. Based upon information and belief, the False Removal Document is based
16 largely upon the Defendants’ position that Knowlton was not entitled to payment of a
17 management fee from the Company. *See* Knowlton Decl. ¶ 22.

18 18. Additionally, based upon information and belief, the allegations of wrongdoing
19 were raised due to the fact that Knowlton’s ex-wife made false representations to Lisa Parker
20 and possibly other Defendants. *See* Knowlton Decl. ¶ 23.

21 19. Prior to the False Removal Document, both Juel Parker and William Lindner
22 had previously informed Knowlton that VA was the best investment they had ever made. *See*
23 Knowlton Decl. ¶ 24.

20. Defendants William Lindner and Juel Parker are each over 90 years old, and
Knowlton believes that Lindner and Juel Parker simply don’t remember the agreement that was

1 reached regarding the management fee prior to the signing of the Operating Agreement due to
2 their advanced age. *See* Knowlton Decl. ¶ 25.

3 21. Regardless, the Operating Agreement requires a vote of 70% of the members in
4 order to remove a manager for any reason other than gross negligence, self-dealing or
5 embezzlement. *See* Operating Agreement, Art. VIII, Sect. 1.11; Knowlton Decl. ¶ 26. For
6 gross-negligence, self-dealing or embezzlement, a majority vote of the members is required to
7 remove a Manager. *See* Operating Agreement, Art. VIII, Sect. 2.2; Knowlton Decl. ¶ 27.

8 22. In addition to the False Removal Document, the Defendants also signed a
9 document entitled “Written Consent of the Members of Valley Ascent, LLC” (the “False
10 Manager Document”), dated December 23, 2019, wherein the Defendants purported to appoint
11 Defendant Lisa D. Parker as the “interim” manager of VA. *See* Knowlton Decl. ¶ 30.

12 23. With respect to the appointment of a Manager, the Operating Agreement
13 provides that a vote of 70% of the outstanding Membership Interest of the Company is required
14 to appoint a new manager. *See* Operating Agreement, Art. VIII, Sect. 1.13; Knowlton Decl. ¶
15 31.

16 24. As the holder of a 38.55% Membership Interest, Knowlton was never requested
17 to vote on appointing Lisa D. Parker as manager of the Company nor did he ever approve of
18 the same. *See* Knowlton Decl. ¶ 32.

19 25. After the signing of the False Manager Document, Lisa Parker presented that
20 document to the Company’s banks. *See* Knowlton Decl. ¶ 33.

21 26. Once Knowlton protested Lisa Parker taking action on the Company bank
22 accounts, the banks froze activity in the accounts and nobody was permitted to access the
23 Companies funds. *See* Knowlton Decl. ¶ 34.

27. As a result, Knowlton has not received a management fee, as required under the
Operating Agreement, since December, 2019. *See* Knowlton Decl. ¶ 35.

1 28. Furthermore, the Defendants have not received their distributions owed for
2 December, 2019, and none of the Members have received any distributions for the period of
3 time between January and June, 2020. *See* Knowlton Decl. ¶ 36.

4 29. On March 19, 2020, this Court entered an order appointing Brian Gordon as the
5 interim manager of the Company. *See* Order Regarding Plaintiff's Motion for Preliminary
6 Injunction on Order Shortening Time and Countermotion to Appoint Interim Manager and
7 Order Compelling Plaintiff to Produce Valley Ascent, LLC's Books and Records (the
8 "Order"). The Order was entered based upon a finding that "Defendants have made a facial
9 showing of financial misconduct by the management fee that was taken by Mr. Knowlton . . ."
10 *See id.*

11 30. After the Order was signed, on April 10, 2020, Brian Gordon reported that VA
12 had \$527,935 in cash on hand. This cash on hand was a direct result of Knowlton's efforts as
13 manager to maintain a healthy reserve account for the Company, and also represents funds on
14 hand that were intended for distributions to Members that would have been paid but for the fact
15 that this dispute arose. *See* Knowlton Decl. ¶ 38.

16 31. Since the Order was signed, Knowlton has made several requests on Brian
17 Gordon to pay distributions to the members of VA. Brian Gordon has refused to pay
18 distributions unless all Members consent. The Defendants have refused to allow Brian Gordon
19 to pay distributions to all of the Members for the period of time between January, 2020 and
20 June, 2020. *See* Knowlton Decl. ¶¶ 39-40.

21 32. At the time Knowlton signed the Assignment, he did not intend to assign,
22 transfer, waive, or release any of his personal claims which have been asserted against the
23 Defendants in this action. Instead, he only intended to assign his Membership Interest in VA
 to his ex-wife, and to waive and release her from any claims he hold against her related to that
 membership/ownership interest. *See* Knowlton Decl. ¶ 37.

1 **ARGUMENT**

2 A Court may only grant summary judgment when there are no genuine issues of
3 material fact and the moving party is entitled to judgment as a matter of law. N.R.C.P. 56(a),
4 *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 292, 774 P.3d 432, 433 (1989). A genuine issue
5 of material fact is one where the evidence is such that a reasonable jury could return a verdict
6 for the non-moving party. *Valley Bank of Nevada v. Marble*, 105 Nev. 366, 367, 775 P.2d
7 1278, 1282 (1989). The substantive law controls which factual disputes are material and will
8 preclude summary judgment. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031
9 (2005). In ruling on a motion for summary judgment, courts are required to construe the
10 pleadings and proof in a light most favorable to the non-moving party. *Hoopes v.*
11 *Hammargren*, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986).

12 **I. NOTWITHSTANDING THE SIGNING OF THE ASSIGNMENT, KNOWLTON**
13 **MAINTAINS STANDING TO ASSERT THE MAJORITY OF HIS CLAIMS**
14 **RAISED AGAINST THE DEFENDANTS IN THIS ACTION.**

15 To have standing “the party seeking relief [must have] a sufficient interest in the
16 litigation’ so as to ensure ‘the litigant will vigorously and effectively present his or her case
17 against an adverse party.’” *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133
18 Nev. 247, 250, 396 P.3d 754, 756 (2017), quoting *Schwartz v. Lopez*, 132 Nev. 732, 743, 382
19 P.3d 886, 894 (2016). While a former shareholder or member generally does not have standing
20 to assert a derivative claim, a former shareholder/member does have standing to seek relief for
21 direct injuries that are independent of any injury suffered by the company. *See Cohen v.*
22 *Mirage Resorts, Inc.*, 119 Nev. 1, 19, 62 P.3d 720, 732 (2003).

23 At the outset, Knowlton recognizes that some, or parts, of his claims are either
derivative in nature, or wholly dependent upon being the current holder of his membership
interest in VA. That includes his claim for intentional interference with contractual relations
(see Compl. Fourth Claim for Relief), expulsion of member (see Compl. Fifth Cause of

1 Action), and receivership (*see* Compl. Seventh Cause of Action). Additionally, Knowlton's
2 breach of fiduciary duty claims were raised both directly by Knowlton and derivatively on
3 behalf of VA. (*See* Compl. ¶¶105-113). To the extent those claims are asserted derivatively,
4 or require a present vesting of membership interest in the Company, Knowlton has not asserted
5 those claims against the Defendants since the June 19, 2020 Assignment was signed, and he
6 consents to the dismissal of each of these claims.

7 However, Knowlton still has standing to assert the remaining claims in the Complaint,
8 including the breach of contract (*see* Compl. First Claim for Relief), violation of implied
9 covenant of good faith and fair dealing (*see* Compl. Second Claim for Relief), declaratory
10 relief (*see* Compl. Third Claim for Relief), and that portion of the breach of fiduciary duties
11 claim asserted directly by Knowlton (*see* Compl. Sixth Claim for Relief). The basis of
12 Knowlton's standing to assert these claims is more fully explained below.

13 A. The Plain Language of the Assignment Makes clear that Knowlton still owns
14 and controls the claims asserted in this Action.

15 When interpreting a contract, the court initially determines whether the "language of
16 the contract is clear and unambiguous; if it is, the contract will be enforced as written."
17 *America First Fed. Credit Union v. Soro*, 131 Nev. Adv. Op. 73, 359 P.3d 105, 106 (2015). As
18 a general rule, unambiguous contracts are construed according to their plain language.
19 *Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 486, 117 P.3d 219, 223 (2005).
20 However, in interpreting a contract, "the court shall effectuate the intent of the parties, which
21 may be determined in light of the surrounding circumstances if not clear from the contract
22 itself." *NGA # 2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997).
23 Likewise, a basic rule of contract interpretation is that every word must be given effect, *Bielar*
v. Washoe Health Sys., Inc., 129 Nev. 459, 465, 306 P.3d 360, 364 (2013), and a court should

1 not interpret a contract so as to make meaningless its provisions. *Musser v. Bank of Am.*, 114
2 Nev. 945, 949, 964 P.2d 51, 54 (1998).

3 The Assignment is an agreement (albeit a court ordered one as a result of the Decree of
4 Divorce) between Knowlton and his ex-wife. This is a document solely applicable to
5 resolution of divorce proceedings, and is not intended to vest rights in the Defendants or any
6 other third-parties. The Defendants are not parties to the Agreement, nor do they have rights to
7 enforce the same. The Assignment is simply a document wherein Knowlton transferred his
8 membership interest in VA to his ex-wife. The second paragraph of the Assignment (which
9 states that Knowlton “hereby permanently relinquishes, waives, and/or releases any and all
10 rights, interests, and/or claims related to his ownership interest in Valley Ascent, LLC, all of
11 which has been transferred to Shondell Swenson by virtue of this Assignment of Interest”)
12 does not, as the Defendants argue, assign Knowlton’s claims in this Action to his ex-wife.
13 Instead, Knowlton only “relinquishes, waives, and/or releases” his claims against his ex-wife
14 related to “his ownership in Valley Ascent, LLC . . .” In other words, along with the transfer
15 of his membership interest, Knowlton also agreed that the dispute with his ex-wife over his VA
16 membership interest that played out in the Utah Divorce proceedings was waived/released such
17 that Knowlton can no longer assert those claims regarding his ownership interest in VA against
18 his ex-wife any further.¹

19 The claims asserted in the pending Action were on file well before the signing of the
20 Assignment. Notwithstanding the fact that the claims were already pending in this Action at
21 the time the Assignment was made, the Assignment makes no mention of those claims, the
22 Action, or the Defendants in the Assignment. If Knowlton intended to assign those claims, or
23

¹ That said, nothing contained in the Assignment, nor this Opposition should be construed as a waiver of Knowlton’s rights asserted in the Appeal that is presently ongoing regarding the Decree of Divorce entered in the Utah divorce proceedings. If successful, the outcome of that appeal could unwind and/or reverse the effect of the Assignment, and re-vest Knowlton with his Membership Interest in VA.

1 his ex-wife desired to receive those claims, then why didn't either of them include language in
2 the Assignment regarding this Action or the claims asserted herein, or even identify the
3 Defendants? No such language was included in the Assignment because neither Knowlton or
4 his ex-wife intended to transfer/receive the claims asserted in this Action.

5 Finally, it would be illogical that the language of the Assignment could be construed as
6 an assignment of any claims at all, especially in light of the fact that the plain language
7 indicates that Knowlton is waiving and releasing claims, not assigning them. While the
8 Defendants' repeatedly cite and draw an emphasis on the language "and/or claims related to his
9 ownership interest in Valley Ascent, LLC", they fail to address the fact that nothing in the
10 language suggests that any assignment or transfer of those claims was being provided to his ex-
11 wife. Instead, the Assignment merely has Knowlton relinquish, waive, and release those
12 claims. It is clear that the only assignment made by Knowlton in the document is to transfer
13 over his ownership interest in VA to his ex-wife.

14 When read in its entirety, the second paragraph states that Knowlton "permanently
15 relinquishes, waives, and/or releases all rights, interests, and/or claims related to his ownership
16 in Valley Ascent, LLC, all of which have been transferred to Shondell Swenson by virtue of
17 this Assignment of Interest." The "transfer" mentioned in the concluding clause does nothing
18 but solidify that all of Knowlton's ownership interest in VA is assigned to his ex-wife under
19 the first paragraph of the Assignment. It does not purport to transfer any claims to his ex-wife.
20 Therefore, Knowlton still retains his rights to assert the claims raised in this Action.

21 B. Even if the Assignment does transfer claims to his ex-wife, the transfer is
22 limited to those related to Knowlton's ownership interest in VA without regard
to those he might hold as the Manager of the Company.

23 While Knowlton's position is that he did not transfer or assign any of the claims
asserted in this Action, even if the Assignment can be construed as a transfer of some claims

1 held by Knowlton against the Defendants, the Assignment limits the scope of the transfer to
2 “claims related to his ownership interest” in VA.

3 Under Nevada law, “if provision is made in the articles of organization, management of
4 the company may be vested in a manager or managers who may but need not be members. The
5 manager . . . shall hold the offices, have the responsibilities and otherwise manage the
6 company as set forth in the operating agreement of the company. . .” NRS 86.291(3).

7 The Articles of Organization for VA make clear that the Company is a manager-
8 managed Company. In fact, the Operating Agreement makes clear that Members “shall not
9 have any right or power to take part in the management or control of the Company or its
10 business and affairs or to act for or bind the Company in any way.” *See* Operating Agreement,
11 Art. VI, Section 1. The Operating Agreement also provides Knowlton with the contractual
12 right to serve as the exclusive manager of the Company, subject only to the right to be removed
13 by either a 70% vote or majority vote of the Members. *See* Operating Agreement, Art. VII,
14 Sections 1 and 2. That contractual right included the ability to be paid compensation for his
15 services rendered. *See* Operating Agreement, Art. VII, Sections 6. The right of removal and
16 compensation are squarely before this Court in relation to Knowlton’s claims asserted in this
17 Action.

18 Particularly with a manager-managed limited liability company, the roles and rights of
19 a manager and member of a company are dramatically different. A manager has contractual
20 and other rights that are separate and independent from the rights held by a member of a
21 company. In the case at bar, the claims asserted by Knowlton concern his contractual rights as
22 the manager of VA, and are separate and independent of Knowlton’s membership interest in
23 the Company. The Operating Agreement of VA clearly distinguishes the rights of Members
from those of the Manager. Knowlton’s claim for breach of contract, violation of the implied
covenant of good faith and fair dealing, and breach of fiduciary duties are almost exclusively

1 founded upon the fact that the Defendants wrongfully removed Knowlton as the manager of
2 the Company, and continued that removal when they obtained permission to appoint Brian
3 Gordon as manager of the Company through order of this Court. As a result of that conduct of
4 the Defendants' that violated the terms of the Operating Agreement, Knowlton has been
5 deprived of the compensation promised to him as Manager of the Company. Knowlton was
6 not a ceremonial Manager of this Company. Instead, he put in a lot of time and effort
7 performing tasks related to the management of the entity while the other Members were merely
8 passive investors, and he is entitled to be compensated for his services rendered. While, there
9 are a number of disputed facts that are related to, and material, to the determination of these
10 claims, it cannot be legitimately disputed that Knowlton is the only person holding these
11 claims. The Assignment does not transfer or assign Knowlton's rights or claims as Manager in
12 any respect. Instead, the Assignment can only be construed as to those related to his ownership
13 interest in VA. Therefore, Knowlton maintains his standing to assert these claims
14 notwithstanding the Assignment.

15 C. Knowlton also maintains his rights as a Member prior to June 19, 2020.

16 The Assignment is only made effective as of June 19, 2020. Therefore, even if the
17 Assignment does assign Knowlton's claims in this Action, that Assignment is only effective as
18 of June 19th, which means that Knowlton maintains the claims that existed prior to that date.

19 The effective date of the Assignment is particularly important in light of the
20 distributions that are due to the Members of the Company. This dispute caused VA's bank
21 accounts to be frozen, and Knowlton was unable to complete distributions to the Defendants in
22 December, 2019, nor have any of the Members of the Company been paid any distributions
23 since January, 2020. Indeed, even after this Court appointed Brian Gordon as interim Manager
in March, 2020, Mr. Gordon has failed and/or refused to pay distributions. This is particularly
troubling in light of the terms of the Operating Agreement which generally requires

distributions to be paid on a monthly basis. The Operating Agreement makes clear that “[t]he 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.” See Operating Agreement, Art. X, Section 2.3.

Between March and June, 2020, Knowlton made repeated requests on Brian Gordon to pay distributions to the members of VA for the period of January through June, 2020. Notwithstanding the language of the Operating Agreement, Mr. Gordon has refused to pay distributions to the Members unless all of the Members consented. Knowlton was informed that the Defendants are refusing to consent to the payment of distributions. From the April 10, 2020 financial report provided by Brian Gordon, it is clear that VA had sufficient funds to pay distributions to the Members yet no distributions have been paid, and Brian Gordon and the Defendants are refusing to pay distributions to the Members. In fact, some of the \$527,935 in cash on hand was previously set aside by Knowlton for the purpose of paying distributions to the Members. Therefore, at a very minimum, Knowlton maintains standing to address his pre-June 19th claims against the Defendants, and Brian Gordon (to the extent the Court retains jurisdiction over Mr. Gordon by virtue of his Court appointment as interim manager), related to distributions that should have been paid by the Company. For that reason, this Court must retain jurisdiction over this case to allow Knowlton to bring these claims before this Court.

CONCLUSION

Based upon the above and foregoing, the Plaintiff respectfully requests this Court Deny the Defendants' Motion for Summary Judgment.

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AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 7th day of October, 2020.

SNOW CHRISTENSEN & MARTINEAU

A handwritten signature in black ink, appearing to read 'Steven W. Beckstrom', is written over a horizontal line.

Steven W. Beckstrom, Esq.
Nevada Bar No. 8372
555 South Bluff Street, Suite 301
St. George, Utah 84770
*Attorneys for Plaintiff Southwest Community Credit
Union, a Division of Chartway Federal Credit Union*

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EXHIBIT 1

1 **DECLARATION OF BRAD L. KNOWLTON IN SUPPORT OF OPPOSITION TO**
2 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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

5 1. I am over the age of twenty-one (21) and competent to testify as to the matters set
6 forth in this Declaration. The statements contained herein are based upon my own personal
7 knowledge regarding the factual matters discussed.

8 2. Valley Ascent, LLC ("VA") is a Nevada limited liability company. Since the
9 time of its formation until June 19, 2020, I was a member of VA. Furthermore, from the time of
10 its formation until March, 2020, I was the only person to act as the Manager of VA.

11 3. In 2017, my then wife, Shondell Knowlton now known as Shondell Swenson,
12 filed for divorce against me in the State of Utah.

13 4. On June 5, 2020 a Decree of Divorce was entered in the divorce action wherein
14 the court awarded my ex-wife my Membership Interest in VA.

15 5. Additionally, effective June 19, 2020, as required under the Decree of Divorce, I
16 did also execute an "Assignment of Membership Interest in Valley Ascent, LLC A Nevada
17 Limited Liability Company." The full and complete language of the Assignment is as follows:

18 Effective June 19, 2020 and pursuant to the Judgment and Decree of
19 Divorce entered on June 5, 2020 by the Court in Utah Civil Case No.
20 174701016:

21 (1) Bradley L. Knowlton hereby transfers and assigns his interest in
22 Valley Ascent, LLC, a Nevada limited liability company, to Shondell Swenson;
23 and

 (2) Bradley L. Knowlton hereby permanently relinquishes, waives,
and/or releases any and all rights, interests, and/or claims related to his
ownership interest in Valley Ascent, LLC, all of which have been transferred to
Shondell Swenson by virtue of this Assignment of Interest.

(hereinafter the "Assignment").

6. Prior to June 19, 2020, the Membership Interests of the Company were held as
follows:

1 a. Brad Knowlton 38.55%;

2 b. Juel Parker Trust 36.45%;

3 c. Bill Lindner Trust 20%; and

4 d. Bruce Parker Trust 5%.

5 7. Under the February, 2005 Amended Operating Agreement (the “Operating

6 Agreement”), signed by all Members of VA, “the Manager shall have the sole and exclusive

7 right to manage the business of the Company. The initial Manager is Brad L. Knowlton.” A

8 copy of the Operating Agreement is attached hereto as Exhibit A and incorporated herein by

9 this reference.

10 8. Additionally, under the Articles of Organization filed for VA, the Company is

11 designated as a manager-managed Company. A copy of the Articles of Organization are

12 attached hereto as Exhibit B and incorporated herein by this reference.

13 9. The Manager of the Company serves until (a) the resignation of the Manager,

14 (b) the removal of the Manager by an affirmative vote of the Members in accordance with

15 Article VIII; or (c) the death dissolution or bankruptcy of such Manager.

16 10. The Manager of the Company is entitled to compensation for his services

17 rendered. Specifically, the “Manager shall be reimbursed all reasonable expenses incurred in

18 managing the Company and shall be entitled to compensation, in an amount to be determined

19 from time to time by the written consent of the Members.”

20 11. Prior to the signing of the Operating Agreement, myself, Bill Lindner, and Juel

21 Parker all agreed that I would be paid an administrative fee, or management fee, of four

22 percent (4%) of the gross receipts received on the project as compensation for my services to

23 be rendered as Manager of the Company.

1 12. Pursuant to the agreement reached with respect to the management fee, from the
2 time the Company began to collect rents on the real property it owned, I was paid a
3 management fee of four percent (4%) or less on a monthly basis.

4 13. At the time the Operating Agreement was signed, one of the reasons I desired to
5 serve as Manager of the Company was due to the fact that I was one of two personal guarantors
6 of the Company's loan that was secured in order to construct the improvements on the
7 Property. As of today's date, I remain as a personal guarantor of VA's loan secured by the
8 Property.

9 14. The management fees paid to us were contained in the books and records of the
10 Company, and were also noted on each of the federal tax returns prepared and filed for the
11 Company. I never hid the amount of management fees that were paid to me for my services
12 rendered as manager.

13 15. At the time each tax return was prepared, the Defendants were provided a K-1
14 for the Company and provided a copy of the Company's federal tax return.

15 16. Until December, 2019, none of the Members of the Company ever informed me
16 that the management fee was inappropriate, nor did any of the Members ever taken any action
17 to change the amount of the management fee.

18 17. In fact, the Operating Agreement provides that the management fee could be
19 changed at any time by approval of the majority of the Members.

20 18. Since 2005, I acted as the sole manager of the Company. In my role as
21 manager, among other tasks performed, I negotiated and prepared leases, arranged and/or
22 performed maintenance on the Company's property, performed accounting services, negotiated
23 a loan refinance, negotiated with the tenants/subtenants, coordinated with tax preparers for the
preparing and filing of tax returns, and determined and set aside reserve funds for the
Company.

1 19. Pursuant to a document entitled “Written Consent of the Members of Valley
2 Ascent, LLC” (the “False Removal Document”), dated December 23, 2019, the Lindner Trust,
3 Juel Parker Trust, and Bruce Parker Trust voted as members of the Company to remove me as
4 manager of the VA on the grounds that I had allegedly committed “gross negligence and/or
5 engaged in self-dealing in his capacity as manager . . .” A copy of the False Removal
6 Document is attached hereto as Exhibit C.

7 20. I was never informed that the other Members of the Company were voting to
8 remove me as Manager until the False Removal Document was provided to me after the vote.

9 21. None of the Defendants ever asked me to explain or prepare a defense against
10 the allegations of gross negligence or self-dealing prior to them signing the False Removal
11 Document.

12 22. Based upon information and belief, the False Removal Document is based
13 largely upon the Defendants’ position that I was not entitled to payment of a management fee
14 from the Company. I dispute their position taken on the management fee, and I believe that
15 both William Lindner and Juel Parker did, in fact, agree to pay a 4% management fee.

16 23. Additionally, based upon information and belief, the allegations of wrongdoing
17 were raised due to the fact that my ex-wife made false representations to Lisa Parker and
18 possibly other Defendants.

19 24. Prior to the False Removal Document, both Juel Parker and William Lindner
20 had previously informed me that VA was the best investment they had ever made.

21 25. Defendants William Lindner and Juel Parker are each over 90 years old, and I
22 believe that Lindner and Juel Parker simply don’t remember the agreement that was reached
23 regarding the management fee prior to the signing of the Operating Agreement due to their
advanced age.

1 26. Regardless, the Operating Agreement requires a vote of 70% of the members in
2 order to remove a manager for any reason other than gross negligence, self-dealing or
3 embezzlement.

4 27. For gross-negligence, self-dealing or embezzlement, a majority vote of the
5 members is required to remove a Manager.

6 28. I have never taken more than a 4% management fee for my services rendered as
7 manager of the company.

8 29. I have not engaged in any conduct which would represent self-dealing, gross
9 negligence, or embezzlement.

10 30. In addition to the False Removal Document, the Defendants also signed a
11 document entitled "Written Consent of the Members of Valley Ascent, LLC" (the "False
12 Manager Document"), dated December 23, 2019, wherein the Defendants purported to appoint
13 Defendant Lisa D. Parker as the "interim" manager of VA. A copy of the False Manager
14 Document is attached hereto as Exhibit D.

15 31. With respect to the appointment of a Manager, the Operating Agreement
16 provides that a vote of 70% of the outstanding Membership Interest of the Company is required
17 to appoint a new manager.

18 32. As the holder of a 38.55% Membership Interest, I was never requested to vote
19 on appointing Lisa D. Parker as manager of the Company nor did I ever approve of the same.

20 33. After the signing of the False Manager Document, Lisa Parker presented that
21 document to the Company's banks.

22 34. Once I learned of Lisa Parker's actions, I protested the same to VA's banks. As
23 a result of my protest, the banks froze activity in the bank accounts and nobody was permitted
to access the Company's funds.

1 35. As a result, I have not received a management fee, as required under the
2 Operating Agreement, since December, 2019.

3 36. Furthermore, the Defendants have not received their distributions owed for
4 December, 2019 because the accounts were frozen before I was able to pay those distributions,
5 and none of the Members have received any distributions for the period of time between
6 January and June, 2020.

7 37. On March 19, 2020, this Court entered an order appointing Brian Gordon as the
8 interim manager of the Company. *See Order Regarding Plaintiff's Motion for Preliminary*
9 *Injunction on Order Shortening Time and Countermotion to Appoint Interim Manager and*
10 *Order Compelling Plaintiff to Produce Valley Ascent, LLC's Books and Records (the*
11 *"Order"). The Order was entered based upon a finding that "Defendants have made a facial*
12 *showing of financial misconduct by the management fee that was taken by Mr. Knowlton . . ."*
13 *See id.*

14 38. After the Order was signed, on April 10, 2020, Brian Gordon reported that VA
15 had \$527,935 in cash on hand. This cash on hand was a direct result of my efforts as manager
16 to maintain a healthy reserve account for the Company, and also represents funds on hand that
17 were intended for distributions to Members that would have been paid but for the fact that this
18 dispute arose.

19 39. Since the Order was signed, I have made several requests on Brian Gordon to
20 pay distributions to the members of VA. Brian Gordon has refused to pay distributions unless
21 all Members consent.

22 40. The Defendants have refused to allow Brian Gordon to pay distributions to all
23 of the Members for the period of time between January, 2020 and June, 2020.

 41. At the time I signed the Assignment, I did not intend to assign, transfer, waive,
or release any of my personal claims which have been asserted against the Defendants in this

1 action. Instead, I only intended to assign my Membership Interest in VA to my ex-wife, and to
2 waive and release her from any claims I held against her related to that membership/ownership
3 interest.

4 The undersigned hereby declares under penalty of perjury under the laws of the State of
5 Nevada that the foregoing statements are true and correct.

6 DATED this ____ day of October, 2020.

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Bradley L. Knowlton

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1 **CERTIFICATE OF SERVICE**

2 I certify that on this 7th day of October, 2020, the foregoing **OPPOSITION TO**
3 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** was served on the following by
4 [] Electronic Service pursuant to NEFR 9 [X] Electronic Filing and Service pursuant to NEFR
5 9 [] hand delivery [] overnight delivery [] fax [] fax and mail [] mailing by depositing with
6 the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage
7 prepaid, addressed as follows:

8 Kara Hendricks
9 GREENBERG TRAURIG, LLP
10 10845 Griffith Peak Drive, Suite 600
11 Las Vegas, NV 89135
12 *Attorneys for Defendants*


13
14 
15 An employee of Snow, Christensen & Martineau

Exhibit A

**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

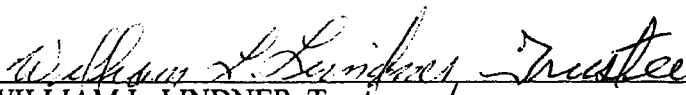
<u>Member</u>	<u>Membership Interest</u>
Brad L. Knowlton 25 South Main, Suite 200 Centerville, UT 84014 SSN: _____	38.55%
William L. Lindner, Trustee William L. Lindner and Maxine G. Lindner Trust of 1988 916 Silver Spur Road Rolling Hills Estates, CA 90274 SSN: _____	20.00%
Juel A. Parker, Trustee 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

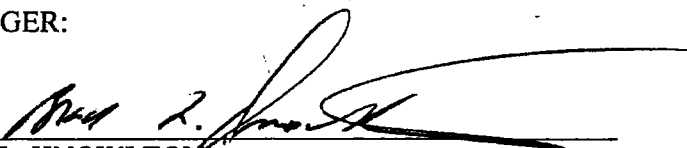
JUEL A. PARKER FAMILY TRUST


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

<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%
SBP STEVEN S. Bruce Parker, Trustee, SBP Stephen Bruce Parker and Renee Lynn Parker Family Trust 7465 W. Lake Mead Blvd., Suite 100 Las Vegas, NV 89128 SSN: [REDACTED]	5.00%
Total	100%

Exhibit B

CONFIDENTIAL



DEAN HELLER
 Secretary of State
 206 North Carson Street
 Carson City, Nevada 89701-4299
 (775) 684 5708
 Website: secretaryofstate.biz

LLC17333-04

FILED # _____

AUG 0 2 2004

IN THE OFFICE OF
 Dean Heller
 DEAN HELLER SECRETARY OF STATE

Articles Of Organization Limited-Liability Company (PURSUANT TO NRS 86)

Important: Read attached instructions before completing form.

ABOVE SPACE IS FOR OFFICE USE ONLY

1. Name of Limited-Liability Company	VALLEY ASCENT, LLC			
2. Resident Agent Name and Street Address: <small>Resident Agent is the person or company that will receive legal notices on behalf of the company.</small>	Craig Carlston Name 3862 West Irvine Avenue Physical Street Address Las Vegas City NEVADA State 89141 Zip Code			
	Additional Mailing Address City State Zip Code			
3. Dissolution Date: <small>Enter date if not perpetual.</small>	Latest date upon which the company is to dissolve (if existence is not perpetual)			
4. Management: <small>Enter date.</small>	Company shall be managed by <input checked="" type="checkbox"/> Manager(s) OR <input type="checkbox"/> Members			
5. Names, Addresses, of Manager(s) or Members: <small>Enter date.</small>	Brad I. Knowlton Name 25 South Main, Suite 200 Address Centerville City UT State 84014 Zip Code Name Address City State Zip Code Name Address City State Zip Code			
6. Names, Addresses and Signatures of Organizers	Brad I. Knowlton Name 25 South Main, Suite 200 Address Centerville City UT State 84014 Zip Code Signature:			
7. Certificate of Acceptance of Appointment of Resident Agent:	I hereby accept appointment as Resident Agent for the above named limited-liability company. See attached Resident Agent Acceptance Authorized Signature of R.A. or On Behalf of R.A. Company _____ Date 6/21/04			

This form must be accompanied by appropriate fees. See attached fee schedule.

CONFIDENTIAL

ARTICLES OF ORGANIZATION

OF

VALLEY ASCENT, LLC.

The undersigned person, desiring to form a limited liability company under Chapter 86 of the Nevada Revised Statutes, adopts the following Articles of Organization for such company and certifies:

ARTICLE I

Name: The name of this company is Valley Ascent, LLC.

ARTICLE II

Duration: This company shall continue perpetually.

ARTICLE III

Purposes: The purpose or purposes for which this company is organized are:

- a. To own and lease certain equipment, real and personal property.
- b. To do each and every thing necessary, suitable or proper for the accomplishment of any of the aforementioned purposes.

ARTICLE IV

Registered Office and Agent: The address of this company's initial registered office is: 3862 West Irvine Avenue, Las Vegas, Nevada 89141. The name of the initial registered agent at such address is Craig Carlston.

ARTICLE V

Management: The management of the company shall be vested in a Manager. The name and address of the initial Manager is:

Manager

Address

Brad L. Knowlton

25 South Main , Suite 200
Centerville, UT 84014

ARTICLE VI

Organizer: The name and address of the organizer of the company is:

Organizer

Address

Brad L. Knowlton

25 South Main , Suite 200
Centerville, UT 84014

WHEREFORE, the undersigned, as organizer of this Limited Liability Company has executed these Articles of Organization, this 21st day of June, 2004.


BRAD L. KNOWLTON, ORGANIZER

CONFIDENTIAL



DEAN HELLER
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684 5708
Website: secretaryofstate.biz

Resident Agent Acceptance

General instructions for this form:

1. Please print legibly or type; Black Ink Only.
2. Complete all fields.
3. Ensure that document is signed in signature field.

ABOVE SPACE IS FOR OFFICE USE ONLY

In the matter of Valley Ascent, LLC

(Name of business entity)

I, Craig Carlston

(Name of resident agent)

hereby state that on 06/21/2004
(Date)

I accepted the appointment as resident agent

for the above named business entity. The street address of the resident agent in this
state is as follows:

3862 West Irvine Avenue
Physical Street Address

Suite number

Las Vegas, NV
City

NEVADA

89141
Zip Code

Optional.

Additional Mailing Address

Suite number

City

State

Zip Code

Signature:

Authorized Signature of R.A. or On Behalf of R.A. Company

6/21/04
Date

Exhibit C

**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 D

**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 Liss 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

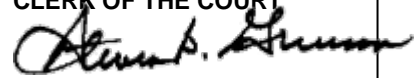
By: _____
Name: William L. Lindner
Title: Trustee

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



RIS
MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
KARA B. HENDRICKS, ESQ.
Nevada Bar No. 7743
ALAYNE M. OPIE, ESQ.
Nevada Bar No. 12623
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Las Vegas, NV 89135
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Facsimile: (702) 792-9002
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hendricksk@gtlaw.com
opiea@gtlaw.com

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

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

BRAD L. KNOWLTON, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO: A-20-809612-B

DEPT. XI

**REPLY IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

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

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

8 Counter-Plaintiffs,

9 v.

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

13 Counter-Defendant,

14 and

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

17 Defendants/Counterclaimants WILLIAM L. LINDNER, as Trustee of the William L. Lindner
18 and Maxine G. Lindner Trust of 1988; JUEL A. PARKER, individually and as Trustee of the Juel A.
19 Parker Family Trust; LISA PARKER, individually and as Trustee of the Juel A. Parker Family Trust;
20 and S. BRUCE PARKER, as Trustee of the Steven Bruce Parker Family Trust (collectively”
21 Defendants” or “Majority Members”), by and through their counsel of record, the law firm of Greenberg
22 Taurig, LLP, hereby file this Reply in Support of Motion for Summary Judgment (“Reply”).

23 This Reply is based upon the pleadings and papers on file in this action, the following
24 Memorandum of Points and Authorities, and any and all oral arguments allowed by this Court at the
25 time of hearing.

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I. INTRODUCTION**

28 Plaintiff, Brad Knowlton, concedes that he does not have standing to assert the fourth, fifth,
and seventh causes of action in the Complaint. Opp. 10-12. Accordingly, Plaintiff’s claims for
intentional interference with contractual relations, expulsion and request for receivership should be
summarily dismissed.

1 In an attempt to salvage his ability to assert the remaining claims in the Complaint, Knowlton
2 reargues issues resolved by the Court when it denied Plaintiff's request for preliminary injunction.
3 Additionally, Plaintiff seeks to create disputed facts by submitting a self-serving declaration with
4 irrelevant and false statements. In so doing, Knowlton attempts to distract the Court from the real
5 issues which are: 1) Plaintiff is not a member of Valley Ascent, LLC; 2) Plaintiff assigned all his
6 rights, interests and claims related to his prior membership in Valley Ascent to Shondell Swenson,
7 who has no desire to pursue this fool-hearted litigation; 3) Plaintiff was removed as manager of Valley
8 Ascent in December of 2019 and has not acted in that capacity for more than ten months; 4) Plaintiff
9 does not have a contractual right to any fees as a former manager of Valley Ascent; and 5) the
10 Complaint does not allege claims arising from Plaintiff's former role as manager of Valley Ascent.

11 The futility of Plaintiff's arguments are further demonstrated in the damages he contends he
12 is entitled to collect. Interestingly, Plaintiff now claims he is only seeking to recover "compensation
13 he is entitled to be paid under the Operating Agreement for his services rendered as Manager" and
14 monthly distributions from Valley Ascent for the time period between January 2020 and June 2020.
15 Opp. at 3. However, as detailed below, Plaintiff is not entitled to a management fee under the
16 Operating Agreement. Further, no members of Valley Ascent have received monthly distributions
17 for the time period in question. Additionally, distribution decisions are at the discretion of the Court
18 appointed interim manager of Valley Ascent, not Defendants. Finally, the Complaint does not include
19 claims that could potentially entitle Plaintiff to the relief he is requesting in the Opposition.

20 Simply put, Plaintiff does not have standing as a former member of Valley Ascent or as the
21 former manager of Valley Ascent to assert any of the remaining claims in the Complaint. Summary
22 Judgment is warranted.

23 **II. FACTUAL STATEMENT**

24 Plaintiff does not dispute any of the facts set forth in the Motion. Instead, Knowlton tries to
25 create his own narrative by asserting 32 new "facts", most of which, even if true, have little or no
26 bearing on the issues at hand and are supported only by a self-serving declaration. This is wholly
27 improper. Furthermore, the "facts" presented by Knowlton are a red-herring meant to distract the Court
28 from Plaintiff's lack of standing and such "facts" are not material to the issues the Court must decide.

1 Notwithstanding the foregoing, in order to ensure there is a clear record, several points must be
2 clarified.¹ Defendants do not dispute the existence of the Amended Operating Agreement (“AOA”)
3 attached as Exhibit 1-A to the Opposition. However, contrary to Plaintiff’s assertions, the AOA does
4 not provide a contractual right for fees to be paid to the Manager of Valley Ascent. Instead, the AOA
5 specifies that it provides no contractual rights to the manager and compensation is to be determined by
6 the “written consent of the Members.” Opp., Ex. 1-A, Art VII, ¶¶ 2 and 6. Glaringly absent from the
7 Opposition (or Complaint) is any written consent that entitled Plaintiff to take a 4% management fee.
8 The issue is not addressed by Plaintiff because the required written consent does not exist.²

9 Knowlton was removed as the manager of Valley Ascent on December 23, 2019, after he did
10 not appropriately respond to a books and records demand and the Majority of Members found his
11 conduct as manager constituted gross negligence, self-dealing or embezzlement.³ Removal on such
12 grounds is permitted by Article VII, ¶ 9 of the AOA. See, Opp., Ex. 1-B. Since that time, Mr.
13 Knowlton has not acted as the manager. After the members of Valley Ascent were unable to agree
14 on a new manager, Knowlton filed this action, requested injunctive relief, and asked the Court to
15 reinstate him as manager of Valley Ascent. However, the Court recognized that Knowlton had not
16 been acting in the best interest of Valley Ascent and appointed Brian Gordon as interim manager of
17 the Company by Order filed on March 19, 2020. Because Plaintiff has not performed any duties as
18 a manger of Valley Ascent since January 2020, there is no basis for a management fee to be paid for
19 services rendered.

21 ¹ There are a number of factual errors in the Opposition. Although most are not material to the issue the Court
22 needs to decide, the record should be clarified. For example, Mr. Lindner is a spry 88 years old (not over
23 90) and as his declaration filed in support of the Opposition to Preliminary Injunction indicates, he was not
24 aware that Knowlton was taking a 3% management fee or that Plaintiff later unilaterally increased the
25 management fee to 4%. Additionally, the divorce proceedings in Utah are not “pending”, a final judgment
26 and decree of divorce has been entered. See **Exhibit D** attached hereto. Further, when Knowlton acted as
27 manager for Valley Ascent, he did not provide regular reports or documentation to any of the other members
28 showing he was taking a 4% management fee. See Declarations attached to Defendants’ Opposition to
Preliminary Injunction. And, contrary to Plaintiff’s assertions, he did attend a Valley Ascent meeting in
January of 2020 and was asked to vote on the appointment of a new manager. *Id.* It is clear that Plaintiff
will change the “facts” to suit his needs without regard for their truth.

² The declarations attached to Defendants’ Opposition to Plaintiff’s Motion for Preliminary Injunction
contradict Plaintiff’s assertion that a 4% management fee was ever agreed upon. However, such an issue is
not material to the issues before the Court.

³ See, Opp. Exhibit 1-C.

1 Importantly, Plaintiff does not dispute that, in June of this year, he “permanently
2 relinquish[ed], waiv[ed], and/or release[d] any and all rights, interests, **and/or claims related to his**
3 **ownership interest in Valley Ascent, LLC**, all of which have been transferred to Shondell Swenson
4 by virtue of this Assignment of Interest.” Mot., Ex. B (“Assignment”) (emphasis added). The
5 Assignment was made pursuant to the final judgment and decree of divorce issued by a Utah Court.⁴
6 Although, Mr. Knowlton attempts to minimize the impact of the Assignment and claims it was not
7 his intent to transfer claims from this case to Ms. Swenson, he did not timely contest the Utah Court’s
8 Order regarding the transfer. The effect of the Assignment is that Plaintiff no longer has standing to
9 pursue the claims asserted herein as each claim relates to his prior ownership/membership in Valley
10 Ascent.

11 **III. LEGAL ARGUMENT**

12 **A. Standard.**

13 Plaintiff’s attempt to distract the Court by including non-material facts in his Opposition does
14 not change the standard or alter the action this Court must take. Not only is Plaintiff’s Opposition
15 based entirely on a self-serving declaration⁵, the “facts” presented in the Opposition do not preclude
16 summary judgment, as they are not material and do not affect the outcome of the suit. *See, Wood*
17 *v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026, 1030 (2005). Factual disputes which are irrelevant
18 or unnecessary will not be considered. *Id.* Here, no material facts regarding Plaintiff’s standing are
19 at issue and summary judgment is proper under FRCP 56.

20 **B. Plaintiff Lacks Standing.**

21 As set forth in the Motion, Plaintiff has the burden of demonstrating the right to pursue the
22 claims asserted in the Complaint. *See, Mortgage Elec. Reg. Sys. v. Chong*, 2009 U.S. Dist. LEXIS
23 127500 at *6 (D. Nev. Dec. 4, 2009). He has not done so.

24

25 ⁴ A redacted copy of portions of the Utah Judgment and Decree of Divorce (“Utah Divorce Decree”) entered
26 on June 5, 2020, is attached hereto as **Exhibit D**. As the Utah Divorce Decree includes sensitive financial
27 information about other individuals and entities, only information regarding Valley Ascent is provided.
28 Should the Court desire to see the entire agreement, an unredacted version can be presented for in camera
29 review.

30 ⁵ A self-serving declaration does not defeat summary judgment. *Clauson v. Lloyd*, 103 Nev. 432, 434-35, 743
31 P.2d 631, 633 (1987) (holding that a broad self-serving affidavit was not sufficient to support summary
32 judgment).

1 The Opposition tries to defend Plaintiff's ability to proceed by arguing that the plain language
2 of the Assignment makes clear that Knowlton controls the claims in this action and that the
3 Assignment has limited applicability.⁶ Opp. at 11-12. Plaintiff is wrong. Instead, the Assignment
4 specifically states all his claims related to his ownership in Valley Ascent are released to his ex-wife.⁷
5 Mot., Ex. B. No claims are carved-out or reserved. Further, Plaintiff's strained interpretation of the
6 Assignment would render the second paragraph therein meaningless.

7 In an attempt to reinvent the plain language of the Assignment, the Opposition cites to case
8 law regarding contract interpretation. In so doing, Knowlton argues that, if the Assignment is
9 ambiguous, the Court should look at its intent. Opp. at 11-12. Such arguments are preposterous. As
10 stated above, the Assignment is not ambiguous as it assigned all claims to Ms. Swenson.
11 Furthermore, the Assignment is not a typical contract between two parties. Here, the Assignment
12 was ordered by a Utah Court as part of highly-contested divorce proceedings. In dividing assets and
13 trying to separate ongoing interaction between the parties, the Utah Divorce Court found:

14 ***18. Brad shall sign a document through which he transfers and***
15 ***assigns his interest in Valley Ascent to Shondell and permanently***
16 ***relinquishes, waives, and/or releases any rights, interests, or claims***
related to his ownership interest in Valley Ascent within 14 days of the
date of entry of this Judgment and Decree of Divorce.

17 See, June 4, 2020 Divorce Decree, attached hereto as Exhibit D, at 4. Because the transfer of claims
18 was ordered by the Utah Court, Knowlton's intent is meaningless. Moreover, if there were any
19 questions regarding the scope of what was ordered and/or what had transferred to Ms. Swenson, such
20 issues should have been raised in the Utah Divorce proceedings. Knowlton is represented by counsel

21 ⁶ Defendants acknowledge they are not parties to the Assignment. However, Plaintiff's suggestions that the
22 Assignment is solely applicable to the divorce proceeding and that Defendants have no interest in the
23 Assignment is without merit. Valley Ascent is a legal entity with a Manager and certain assets. Defendants
24 hold a majority interest in Valley Ascent and Ms. Swenson holds the remaining 38.55%. All current
members of Valley Ascent know there is no value in Knowlton's claims and wish to stop spending legal fees
defending the ridiculous claims asserted by Plaintiff.

25 ⁷ The Assignment states:

*Effective June 19, 2020 and pursuant to the Judgment and Decree of Divorce entered on June
5, 2020 by the Court in Utah Civil Case No. 174701016:*

*(1) Bradley L. Knowlton hereby transfers and assigns his interest in Valley Ascent, LLC, a
Nevada limited liability company, to Shondell Swenson; and*

*(2) Bradley L. Knowlton hereby permanently relinquishes, waives, and/or releases any and all
rights, interests, and/or claims related to his ownership interest in Valley Ascent, LLC, all of
which have been transferred to Shondell Swenson by virtue of this Assignment of Interest.*

28 (Mot. Ex.B)

1 in Utah and, if he had questions regarding the scope of the assignment and/or wished to specifically
2 carve-out claims associated with this proceeding, such issues could have and should have been raised
3 therein.⁸

4 **C. Plaintiff did Not Assert Claims in a Manager Capacity and No Such Claims Exist.**

5 Acknowledging the weaknesses in his standing argument, Plaintiff next contends that he still
6 has the ability to pursue claims against the Majority Members to the extent he held such claims as the
7 manager (not a member) of Valley Ascent. Mot. 13-15. As detailed below, there are a number of
8 problems with this theory.

9 First, the Complaint does not distinguish between claims that Knowlton purportedly brought
10 as a member of Valley Ascent versus claims he is asserting in a manager capacity. Moreover, there
11 are no distinctions in the damages he is seeking as a member vs. manager.

12 Second, Knowlton's role as manager of Valley Ascent was derived from his membership
13 interest in the company. But for his membership interest in Valley Ascent, Plaintiff would not have
14 served as the Company's manager. Moreover, as set forth in his declaration, Plaintiff desired to be the
15 manager because he personally guaranteed a loan for the Company. Opp. Ex. 1, ¶ 13. Knowlton
16 prepared the AOA that provides that he was the initial manager. However, the AOA also specifies that
17 Knowlton had no contractual right to the manager position. Opp. Ex. 1-A, AOA Article VII, ¶ 2.

18 Third, the arguments in the Opposition suggesting that Knowlton was deprived of compensation
19 he was due as manager of Valley Ascent are based on a false premise. Notably, the AOA specifies that
20 compensation to a manager can be "determined from time to time by the written consent of the
21 Members." Opp., Ex. A, Art VII, ¶ 6. However, Knowlton has not (and cannot) come forward with
22 written consent that entitles him to any compensation. And, as stated above, the AOA specifies that it
23 does not provide any contractual right to the manager. Opp. Ex. 1-A, AOA Article VII, ¶ 2.

24 Fourth, per the Opposition, the only damages Plaintiff is seeking as a manager are manager
25 fees. However, the Complaint does not assert a claim to recover manager fees. Furthermore, the
26 AOA is specific in indicating that compensation to the manager (agreed upon by written consent) is

27 _____
28 ⁸ Plaintiff did not timely contest the June 2020 Utah Court's order regarding the transfer of Valley Ascent
claims to Ms. Swenson. The pending appeals are unrelated to the Valley Ascent transfer.

1 for reimbursement of reasonable expenses incurred and is specifically related to operations performed
2 while acting as manager. Opp., Ex. A, Art VII, ¶ 6. Here, Plaintiff acknowledges he has not acted
3 as the manager of Valley Ascent since January of 2020. Opp. at 7. As such there is no basis for fees.

4 Fifth, contrary to Plaintiff's assertion, the role of manager of Valley Ascent does have
5 limitations. Indeed, the manager is limited and restricted by the terms of the AOA. Further, the
6 Majority of Members, per Article VIII of the AOA have the ability to remove the manager for gross
7 negligence, self-dealing or embezzlement. Opp., Ex. A, Art VIII, ¶ 2.2. This issue was previously
8 addressed by the Court when it denied Plaintiff's request for a preliminary injunction and found that
9 Defendants "made a facial showing of financial misconduct by the management fee that was taken
10 by Mr. Knowlton and the failure to provide books and [sic] requested by other members." See Order
11 filed March 19, 2020, on file herein. Not only did the Court recognize Knowlton's bad conduct, the
12 Court also appointed a neutral party to serve as the interim manager of Valley Ascent. This further
13 negates Knowlton's claim to a management fee or related damages.

14 **D. Plaintiff's Contention that He has Claims for a Six-Month Period are a Farce.**

15 In a last ditch effort to continue this charade, Plaintiff argues that he has the right to pursue
16 claims against Defendants until the effective date of the Assignment or June 19, 2020. The
17 Opposition goes on to argue that Plaintiff's purported damages for the time period in question are
18 monthly distributions that were not paid. However, no members of Valley Ascent have received
19 distributions for the time period in question, due in large part to the tenant of Valley Ascent failing
20 to pay rent due to the COVID-19 crisis. However, this is not the only problem with Plaintiff's
21 argument. The Assignment does not specify that Knowlton retained claims prior to June 19, 2020
22 and instead expressly indicates that Knowlton "permanently relinquishes, waives, and/or releases any
23 and all rights interests, and/or claims related to his ownership interest in Valley Ascent." If the Utah
24 Court intended that Knowlton retain claims prior to June 19, 2020, it could have specified as such in
25 its ruling. However, no such language is included in the Utah Order. See, Ex. D attached hereto.

26 Importantly, even if Knowlton was entitled to distributions for this time period (a fact which
27 is disputed by Ms. Swenson), this is not a claim that can be properly asserted against the Majority
28 Members.

1 **E. Plaintiff does Not Address Requisite Elements of the Remaining Claims and**
2 **Summary Judgment is Warranted.**

3 Glaringly absent from the Opposition is any meaningful attempt by Plaintiff to address the
4 elements of the remaining claims asserted in the Complaint.

5 As stated in the Motion, the first and second claim for relief in the Complaint relate to
6 purported contractual disputes arising *exclusively* from the AOA and Knowlton's purported rights in
7 connection with Valley Ascent's operations. *See* Complaint at ¶¶ 68, 70, 77. Knowlton is not a
8 member of Valley Ascent and no longer has any rights under the AOA. Thus Plaintiff's claims for
9 breach of contract and breach of the covenant of good faith and fair dealing must be dismissed due
10 to his lack of standing.

11 It is baffling how Knowlton can maintain that the third claim for declaratory relief remains
12 viable. Importantly, although not agreeing to dismiss his claim for declaratory relief, Knowlton
13 makes no attempt in the Opposition to justify the same. This is tantamount to failing to oppose
14 summary judgment on this issue which can be construed as an admission that the motion is
15 meritorious and consent to granting the same. EDCR 2.20 (e), *see, also, Nye County v. Washoe*
16 *Medical Center*, 108 Nev. 896, 899–900, 839 P.2d 1312, 1314–15 (1992) (affirming district court's
17 decision granting plaintiff's unopposed motion for summary judgment); *see also Walls v. Brewster*,
18 112 Nev. 175, 178, 912 P.2d 261, 263 (1996) (district court acted properly in construing plaintiff's
19 failure to respond to motion to dismiss as admission that motion was meritorious). Additionally,
20 Plaintiff's declaratory relief claim is premised on the contention that Knowlton had rights under the
21 AOA. It seeks a declaration from the Court that Knowlton "is entitled to a judicial declaration that
22 he is the only duly authorized manager of the company." Complaint at ¶¶ 89 and 92. However, the
23 Court previously denied Knowlton's request for preliminary injunction in which he requested almost
24 identical relief. *See* March 19, 2020 Order. Further, Plaintiff assigned his rights under the AOA to
25 Ms. Swenson. Because he is not a member of Valley Ascent, Knowlton does not have standing to
26 seek a declaration that he is the duly authorized manager of the Company.

27 It is also unclear on what basis Plaintiff believes he can maintain a claim for breach of fiduciary
28 duties as set forth in his sixth claim for relief. The Opposition argues that this claim was raised both

1 directly and derivatively by Knowlton and that Knowlton has not asserted breach of fiduciary duty
2 claims since the June 19, 2020 Assignment. Opp. p. 11. However, Plaintiff has not explained what
3 remains of his “direct” fiduciary duty claim and/or what damages he could potentially be entitled to
4 from the Managing Members. Review of the Complaint only raises more questions. Indeed, the
5 Complaint alleges that Defendants breached unspecified duties to Plaintiff and Valley Ascent. The
6 Complaint also does not identify any damages associated with the same. Complaint at ¶¶ 115-119. As
7 a former member of Valley Ascent, Plaintiff has no such rights and there is no basis for damages.

8 **IV. CONCLUSION**

9 Summary Judgment is warranted in Defendants’ favor on all affirmative claims asserted by
10 Knowlton. As a former member of Valley Ascent, he lacks standing to pursue the claims asserted
11 that were premised on his membership. Moreover, there is no basis alleged in the Complaint for
12 separate claims based on Knowlton’s former role as manager of the Company and no factual or legal
13 bases exists to assert the same.

14 WHEREFORE, Defendants respectfully request their Motion for Summary Judgment be
15 GRANTED in its entirety.

16 DATED this 26th day of October, 2020.

17 **GREENBERG TRAURIG, LLP**

18
19 /s/ Kara B. Hendricks
20 MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
21 KARA B. HENDRICKS, ESQ.
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23 10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89144

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

CERTIFICATE OF SERVICE

I certify that on this 26th day of October, 2020, I caused a true and correct copy of the forgoing **REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** to be e-served on the parties by causing it to be transmitted via Odyssey, the Court's e-service/e-filing system.

The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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

EXHIBIT “D”

EXHIBIT “D”

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Attorneys for Petitioner

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
COUNTY OF DAVIS, STATE OF UTAH

SHONDELL SWENSON,

Petitioner,

v.

BRADLEY LEWIS KNOWLTON,

Respondent.

**JUDGMENT AND
DECREE OF DIVORCE**

Civil No. 174701016

Judge: David M. Connors

The trial of this matter was conducted between May 29, 2019 and January 20, 2020. The Court entered its Trial Ruling on April 17, 2020. The Court, being fully advised of the premises

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. Valley Ascent, LLC (“Valley Ascent”)

16. The value of the marital interest in Valley Ascent, LLC is \$970,000.

17. The marital interest in Valley Ascent is awarded to Shondell.

18. Brad shall sign a document through which he transfers and assigns his interest in Valley Ascent to Shondell and permanently relinquishes, waives, and/or releases any rights, interests, or claims related to his ownership interest in Valley Ascent within 14 days of the date of entry of this Judgment and Decree of Divorce.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FURTHER ACTS NECESSARY TO EFFECTUATE THE COURT'S ORDERS

117. The parties shall cooperate with each other and execute such additional documents or instruments and perform such further acts as may be reasonably necessary to fully implement the division of assets, awards of property, and other orders set forth in this Judgment and Decree of Divorce.

INCORPORATION OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

118. This Judgment and Decree of Divorce incorporates by reference the Court's Findings of Fact and Conclusions of Law entered by the Court contemporaneously with this Judgment and Decree of Divorce.

IT IS SO ORDERED.

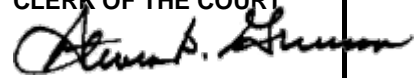
Dated this 5th day of June, 2020.

BY THE COURT

David M. Connors

David M. Connors
District Court Judge

END OF ORDER



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

BRAD KNOWLTON,

Plaintiff,

vs.

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

Defendants.

AND RELATED PARTIES

CASE NO. A-20-809612-B
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

MONDAY, NOVEMBER 2, 2020

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

FOR THE PLAINTIFF: STEVEN W. BECKSTROM, ESQ.

FOR THE DEFENDANTS: MARK E. FERRARIO, ESQ.
KARA B. HENDRICKS, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 LAS VEGAS, CLARK COUNTY, NEVADA, NOVEMBER 2, 2020, 9:27 A.M.

2 * * * * *

3 MR. FERRARIO: Hello?

4 THE COURT: Yes.

5 UNIDENTIFIED SPEAKER: Mr. Ferrario.

6 THE COURT: Mr. Ferrario, how are you feeling today?

7 MR. FERRARIO: I'm doing just fine.

8 THE COURT: All right.

9 MR. FERRARIO: How are you?

10 THE COURT: Just delightful. Thank you.

11 MR. FERRARIO: Good. You did call Knowlton; right?

12 I --

13 THE COURT: I did. I'm waiting for anybody else to
14 say they're there besides you.

15 MR. BECKSTROM: Steven Beckstrom on behalf of
16 Mr. Knowlton, Your Honor.

17 THE COURT: All right. Mr. Ferrario, it's your
18 motion.

19 MR. FERRARIO: And, Your Honor, Ms. Hendricks --
20 Ms. Hendricks is also on the phone as well.

21 THE COURT: And is Ms. Hendricks going to take the
22 laboring oar or are you?

23 MR. FERRARIO: No, I'm going to labor today.

24 THE COURT: All right. Go.

25 MR. FERRARIO: She'll be here for anything you may

1 want to ask her.

2 I really think this motion boils down to this Court's
3 interpretation or not even interpretation just reading the
4 assignment that we have highlighted in our motion that was
5 contained in the divorce proceeding in Utah. As, Your Honor,
6 knows you've been with this case and you know the history, I'm
7 not going to go through that, but the Court's interpretation
8 that the -- Mr. Knowlton employed -- and I would call your
9 attention to pages 10, 11 and 12 of his opposition because that
10 tells you everything you need to know.

11 He -- he says it's called to this document that we're
12 relying on in assignment, on one line on page 12, and then the
13 very next line he called it anything but an assignment. He
14 starts to write things into the document that are not there
15 like language about his claims against his ex-wife; that's not
16 in the assignment. If you step back and you look at this in
17 context, Your Honor, what happened in Utah makes sense, and it
18 supports our view of the scope of the assignment. Why on earth
19 would the -- I don't know what's happening someone's
20 (indiscernible), but --

21 UNIDENTIFIED SPEAKER: Yeah, someone's typing.

22 MR. FERRARIO: -- and why on earth would his ex-wife
23 take an interest in the company and then allow him to sue the
24 company and take money from the company that she's now
25 acquiring? That absolutely makes no sense, and that's the

1 position that he's advocating that he would have given his
2 ex-wife the interest in the company even if relinquished all
3 claims, release all claims -- that'll hurt, here you can have
4 interest, and oh by the way, I'm going to continue to sue the
5 company and diminish the interest I've just given you. To
6 state the proposition is to show its absurdity.

7 And I think, Judge, all you need to know about how
8 frivolous this position is, begin to read pages -- it really
9 starts at page 10 and goes through page 13 of their opposition
10 to see how many different ways they tie themselves in knots to
11 avoid what happened in the Utah divorce proceeding.

12 So at this point in time, Mr. Knowlton has no
13 standing to assert these claims, not under the operating
14 agreement, really not under anything because he's relinquished
15 everything to his ex-wife, and for that we think summary
16 judgment should be granted and this case should end.

17 THE COURT: Thank you, Mr. Ferrario.

18 Mr. Beckstrom.

19 MR. BECKSTROM: Thank you, Your Honor. I think
20 looking at the plain language of the assignment, there is no
21 assignment of any claim that already divides the defendants in
22 their motion for summary judgment. The assignment which is a
23 court order document that was assigned by Mr. Knowlton does two
24 things, actually has two paragraphs that breaks down exactly
25 what's happening.

1 First of all, there's an assignment transfer of
2 his -- I'm sorry, Your Honor, that wasn't me. I don't know who
3 that is, but pardon me.

4 But it is an assignment and transfer of the value
5 affects interest to his ex-wife. And secondly, he waived,
6 relinquishes and releases his claims related to the ownership,
7 the ownership interest in (indiscernible). That does not have
8 to do with any third parties such as the defendant; that waiver
9 releases his ex-wife from any -- any claims he might have
10 regarding the ownership of this company.

11 Oh, and counsel in argument just a moment ago
12 indicated why -- why -- why he would be allowed to continue to
13 sue the company even on a claim that Mr. Knowlton is asserting
14 against the company, per se, there are claims against the
15 defendant and the company related to management be that
16 happened and were accrued before she became an owner. So we
17 are not staking a claim to anything after Ms. Knowlton became
18 the owner of this interest. And so there's a very good reason
19 why our claim should survive.

20 So those two things happened and gave -- the claim
21 was pending at the time the assignment was granted to the -- to
22 my client's ex-wife; yet, there is no mention of it, and the
23 ex-wife didn't require it to be in the assignment that these
24 claims are being assigned over. None of that language is
25 there. And so I think that tells you that she didn't intend to

1 receive these claims as part of the assignment.

2 That can't -- even if -- even if the assignment
3 language is correctly argued by the defendants in this case, it
4 only it releases claims related to his ownership interest in
5 the company. And as the Court is well aware, there are very
6 different roles between a member and manager, particularly in a
7 manager managed LLC, and this company is just that.

8 Mr. Knowlton was appointed as the manager of this company, and
9 he was entitled to be compensated for his services to the
10 company. And that's at the heart of what happened here.

11 Our obligation in the complaint and as set forth in
12 Mr. Knowlton's declaration on file and his motion, is that he
13 was wrongfully removed. He wasn't given notice of a meeting
14 that took place. They removed him without even giving -- being
15 given an opportunity to respond to the allegations. Those --
16 those claims found in breach of contract, breach of the
17 operating agreement and implied covenant of good faith and fair
18 dealing.

19 And so it's not just a matter of, oh, you don't have
20 an ownership interest; he still has rights as a manager. There
21 was a very good reason why Mr. Knowlton was put in as the
22 manager of the company. He was one of the two primary
23 guarantors of the loan that allowed the company to acquire the
24 property that they currently own. He's still a personal
25 guarantor of that loan so he has a very strong vested interest

1 in ensuring that he was the manager of the company and that he
2 had rights to continue as the manager subject to being removed
3 for wrongdoing. Now, sure there's allegations of wrongdoing
4 being alleged in this case, and those -- there's a lot of issue
5 of the facts and -- but we have to get to those first.

6 Lastly, Your Honor, the assignment is only effective
7 as of January -- as of January 19th, 2020, and so even if the
8 Court were to find that, yes, these claims were assigned to his
9 ex-wife, and no, you don't have claim as a manager, then it's
10 only effective as of June 19. And there's a particular
11 interest in distributions that has not been paid for year 2020.
12 We know from at least out of April of 2020 there was a
13 significant sum of money sitting in the company's bank account,
14 and we -- and we did not have a opportunity to pay distribution
15 even though the operating agreement makes clear that the
16 distribution is (inaudible) subject to only a few exceptions.

17 And so that's still before this Court, Your Honor,
18 and their inner manager that was appointed by this Court has
19 reviewed the pay distribution except if all members agree, and
20 we've approached the defendant, and asked for their consent to
21 pay distributions and they refused. So again that's another
22 issue of good faith and fair dealing and breach of the
23 operating agreement.

24 And so, Your Honor, I think I may have actually
25 misspoke there. The assignment is effective as of June 19th,

1 2020; I think I said January and my apology there.

2 And so for that reason, Your Honor, I think this
3 motion needs to be denied. Mr. Knowlton clearly has standing
4 at a minimum to assert his management claim or his claim up
5 through June 19, 2020.

6 And lastly, Your Honor, I think if there's any
7 question about what this assignment language should mean, we
8 should defer ruling on this and allow Mr. Knowlton to go back
9 to the Utah divorce court and ask the Utah divorce court for
10 clarification on the issue. With that --

11 THE COURT: Thank you.

12 MR. BECKSTROM: -- I'll submit, Your Honor.

13 THE COURT: There are no genuine issues of material
14 fact here. The assignment resolves all of the currently pled
15 claims because they are all intricately intertwined with the
16 ownership issues in this member managed LLC. And for that
17 reason I am granting the motion for summary judgment.

18 Mr. Ferrario, please provide the findings of fact,
19 conclusions of law to Mr. Beckstrom so it can be approved.
20 Thank you.

21 MR. BECKSTROM: Thank you.

22 (Proceedings concluded at 9:38 a.m.)

23 / / /

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25 / / /

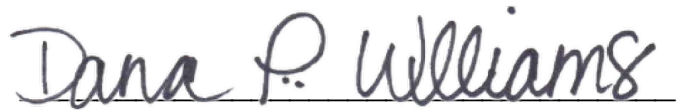
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink that reads "Dana L. Williams". The signature is written in a cursive style and is positioned above a horizontal line.

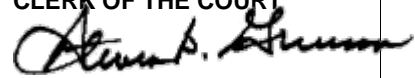
DANA L. WILLIAMS, TRANSCRIBER

11/05/2020

DATE

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L labor [1] 2/23 laboring [1] 2/22 language [5] 3/15 4/20 5/24 6/3 8/7 LAS [2] 2/1 9/12 lastly [2] 7/6 8/6 law [1] 8/19 least [1] 7/12 like [1] 3/15 LINDNER [2] 1/9 1/9 line [2] 3/12 3/13 LLC [2] 6/7 8/16 loan [2] 6/23 6/25 look [1] 3/16 looking [1] 4/20 lot [1] 7/4	O oar [1] 2/22 obligation [1] 6/11 oh [3] 4/4 5/11 6/19 on [11] one [2] 3/12 6/22 only [4] 6/4 7/6 7/10 7/16 operating [4] 4/13 6/17 7/15 7/23 opportunity [2] 6/15 7/14 opposition [2] 3/9 4/9 or [5] 2/22 3/3 8/4 9/10 9/10 order [1] 4/23 our [4] 3/4 3/18 5/19 6/11 out [1] 7/12 over [1] 5/24 own [1] 6/24 owner [2] 5/16 5/18 ownership [6] 5/6 5/7 5/10 6/4 6/20 8/16	R read [1] 4/8 reading [1] 3/3 really [3] 3/2 4/8 4/14 reason [4] 5/18 6/21 8/2 8/17 receive [1] 6/1 RECORDED [1] 1/24 RECORDER [1] 1/24 RECORDING [1] 9/4 refused [1] 7/21 regarding [1] 5/10 related [4] 1/12 5/6 5/15 6/4 release [1] 4/3 releases [3] 5/6 5/9 6/4 relinquished [2] 4/2 4/14 relinquishes [1] 5/6 relying [1] 3/12 removed [3] 6/13 6/14 7/2 REPORTING [1] 1/25 require [1] 5/23 resolves [1] 8/14 respond [1] 6/15 reviewed [1] 7/19 right [4] 2/8 2/11 2/17 2/24 rights [2] 6/20 7/2 roles [1] 6/6 ruling [1] 8/8	U under [2] 4/13 4/14 up [1] 8/4	W waiting [1] 2/13 waived [1] 5/5 waiver [1] 5/8 want [1] 3/1 was [13] wasn't [2] 5/2 6/13 way [1] 4/4 ways [1] 4/10 we [8] 3/4 4/15 5/16 7/5 7/12 7/14 7/14 8/7 we're [1] 3/11 we've [1] 7/20 well [2] 2/20 6/5 were [3] 5/16 7/8 7/8 what [4] 3/17 4/11 6/10 8/7 what's [2] 3/19 4/25 which [1] 4/22 who [1] 5/2 why [7] 3/18 3/22 5/12 5/12 5/12 5/19 6/21 wife [9] 3/15 3/22 4/2 4/15 5/5 5/9 5/22 5/23 7/9 WILLIAM [1] 1/9 WILLIAMS [2] 9/12 9/16 without [1] 6/14 would [5] 3/8 3/19 3/22 4/1 5/12 write [1] 3/14 wrongdoing [2] 7/3 7/3 wrongfully [1] 6/13
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				451



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

23 **EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

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

28 v.

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

37 Defendants.

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

CASE NO: A-20-809612-B

DEPT. XI

NOTICE OF ENTRY OF ORDER

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

3 Counter-Plaintiffs

4 v.

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

8 Counter-Defendant,

9 and

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

12 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

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

16 DATED this 13th day of November, 2020.

17 **GREENBURG TRAURIG, LLP**

18 /s/ Kara B. Hendricks

19 MARK E. FERRARIO, ESQ.

20 Nevada Bar No. 1625

21 KARA B. HENDRICKS, ESQ.

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

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CERTIFICATE OF SERVICE

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

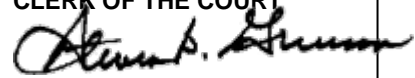
The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

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

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EXHIBIT “A”

EXHIBIT “A”



ORDR

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BRAD L. KNOWLTON, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO: A-20-809612-B

DEPT. XI

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

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

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

6 Counter-Plaintiffs,

7 v.

8 BRAD L. KNOWLTON, individually and
9 derivatively; and DOE Individuals I-X and ROE
Entities I-X, inclusive,

10 Counter-Defendant,

11 and

12 Nominal party VALLEY ASCENT, LLC, a Nevada
13 limited liability company.

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

23 **FINDINGS OF FACT**

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

27 ///

28 ///

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

A. STANDARD OF REVIEW.

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

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

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

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

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

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

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

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

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

ORDER

Based on the foregoing, and good cause appearing therefor:

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

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

IT IS SO ORDERED.

DATED this 12th day of November, 2020.


DISTRICT COURT JUDGE

Respectfully Submitted by:

GREENBURG TRAURIG, LLP

/s/ Kara B. Hendricks
MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
KARA B. HENDRICKS, ESQ.
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Attorneys for Defendants/Counterclaimants

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Approved as to form by:

SNOW, CHRISTENSEN & MARTINEAU

 /s/ Steven W. Beckstrom
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and
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Attorneys for Plaintiff Brad L. Knowlton

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

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

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

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

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

Best,
Kara

Kara Hendricks
Shareholder

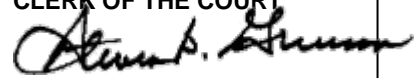
T 702.938.6856

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

EXTERNAL TO GT

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

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



MOT
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PARKER, individually and as Trustee of the Juel A.
Parker Family Trust; and S. BRUCE PARKER, as
Trustee of the Steven Bruce Parker Family Trust*

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

BRAD L. KNOWLTON, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO: A-20-809612-B

DEPT. XI

[HEARING REQUESTED]

**COUNTERCLAIMANTS' MOTION
TO DISMISS COUNTERCLAIMS**

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

8 Counter-Plaintiffs,

9 v.

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

13 Counter-Defendant,

14 and

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

17 Defendants/Counterclaimants WILLIAM L. LINDNER, as Trustee of the William L. Lindner
18 and Maxine G. Lindner Trust of 1988; JUEL A. PARKER, individually and as Trustee of the Juel A.
19 Parker Family Trust; LISA PARKER, individually and as Trustee of the Juel A. Parker Family Trust;
20 and S. BRUCE PARKER, as Trustee of the Steven Bruce Parker Family Trust (collectively”
Counterdefendants” or “Majority Members”), by and through their counsel of record, the law firm of
Greenberg Traurig, LLP, hereby file this Motion to Dismiss the Counterclaims they asserted
 (“Motion”).

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1 This Motion is based upon the pleadings and papers on file in this action, and any and all oral
2 arguments allowed by this Court at the time of hearing.

3 DATED this 5th day of February, 2021

4 **GREENBURG TRAURIG, LLP**

5
6 /s/ Kara B. Hendricks

7 MARK E. FERRARIO, ESQ.

8 Nevada Bar No. 1625

9 KARA B. HENDRICKS, ESQ.

10 Nevada Bar No. 7743

11 ALAYNE M. OPIE, ESQ.

12 Nevada Bar No. 12623

13 10845 Griffith Peak Drive, Suite 600

14 Las Vegas, Nevada 89144

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

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I. INTRODUCTION**

25 This case emanates from a dispute between members of a Nevada Limited Liability Company,
26 Valley Ascent, LLC (“Valley Ascent”). Former member Brad A. Knowlton (“Knowlton”) instituted
27 this lawsuit after Defendants, who are also the Majority Members of Valley Ascent, removed
28 Knowlton as manager of the company for self-dealing. Pursuant to an order issued by the Court on
November 13, 2020, judgment was entered in the Majority Members’ favor on all claims asserted by
Knowlton. *See*, November 13, 2020 Order on file herein. Thus, the only remaining claims in this
action are those asserted by the Majority Members by way of their counterclaims.

Although the Majority Members believe strongly in their counterclaims, due to the cost and
expense of litigation and concerns regarding the collectability of any judgment they obtain against

Knowlton, this Motion seeks Court approval to dismiss the counterclaims with each side to bear responsibility for their own fees and costs.

II. RELEVANT FACTS

The instant action was initiated by Knowlton on January 31, 2020 after he was removed as the Manager of Valley Ascent by the Majority Members for self-dealing. Shortly after filing the Complaint, Knowlton sought a preliminary injunction seeking to be reinstated as the manager of Valley Ascent, seeking to enjoin the Majority Members from interfering with his ability to act as manager, and seeking to prohibit Lisa Parker from acting as the interim manager of the LLC as voted by the Majority Members. The relief requested by Knowlton was denied, and instead, an order was entered compelling Knowlton to produce business records and appointing a third party, Brian Gordon, as the interim manager of Valley Ascent. Subsequently, the Majority Members filed an answer to the Complaint, along with a counterclaim which asserted ten claims for relief based on Knowlton's wrongful conduct.

Prior to filing the instant action, Knowlton was involved in highly-contentious divorce proceedings in Utah. In June of 2020, the Utah Court entered an order in connection therewith, and Knowlton's former wife, Shondell Swenson, was awarded all rights, title and interest to Mr. Knowlton's 38.55% membership interest in Valley Ascent. As a result of the same, on or about June 19, 2020, Knowlton executed an Assignment of Membership Interest in Valley Ascent, LLC, a Nevada Limited Liability Company ("Assignment"),¹ by which he "transfer[ed] and assign[ed] his interest in Valley Ascent, LLC, a Nevada Limited Liability Company, to Shondell Swenson; and...permanently relinquish[ed], waiv[ed], and/or release[d] any and all rights, interests, and/or claims related to his ownership interest in Valley Ascent, LLC, all of which have been transferred to Shondell Swenson by virtue of this Assignment of Interest."²

Thereafter, the Majority Members moved for summary judgment on all claims asserted by Knowlton. The Majority Members prevailed on their motion and an order was issued by the Court

¹ A true and correct copy of the assignment was filed with the Court in connection with the summary judgment motion filed by the Majority Members.

² A copy of the assignment is included with the briefing filed in relation to the summary judgment motion filed by the Majority Members (Exhibit B).

1 on November 13, 2020 entering judgment against Knowlton and in favor of the Majority Members
2 on all claims asserted by Knowlton. *See*, November 13, 2020 Order on file herein.

3 After much contemplation, the Majority Members desire to dismiss the counterclaims asserted
4 herein. As referenced above, the Majority Members believe strongly in their counterclaims, however,
5 due to the cost and expense of litigation, including further written discovery and depositions, as well
6 as trial expenses and concerns regarding the collectability of any judgment they obtain against
7 Knowlton, Counterdefendants believe dismissal is in the best interest of all parties.

8 In an attempt to reach a stipulation regarding the same that would provide for each side to
9 bear their own attorney's fees and costs, counsel for Knowlton was contacted. However, as of the
10 date of this filing, Knowlton has not responded to the request, thus necessitating the instant motion.

11 **III. LEGAL ARGUMENT**

12 Nevada Rule of Civil Procedure 41(c) allows for the voluntary dismissal of counterclaims.
13 However, because Knowlton has filed a response to the same, approval by the Court is necessary
14 pursuant to NRCP 41(a)(2).

15 Here, good cause exists to effectuate a dismissal, as the bulk of expenses to date have been
16 spent in relation to the claims initially asserted by Knowlton that have now been dismissed. The cost
17 and expense of litigation has taken a toll on Counterdefendants, who also have concerns regarding
18 the collectability of any judgement due to the numerous other claims and cases that have been filed
19 against Knowlton based on his wrongful acts. Knowlton is no longer a member of Valley Ascent and
20 the Majority Members desire a fresh start and are willing to leave the differences between the parties
21 in the past. As such, the counterclaims should be dismissed with prejudice.

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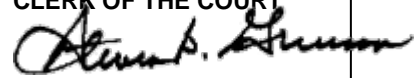
28 ///

CERTIFICATE OF SERVICE

I certify that on this 5th day of February, 2021, I caused a true and correct copy of the forgoing **COUNTERCLAIMANTS' MOTION TO DISMISS COUNTERCLAIMS** to be e-served on the parties by causing it to be transmitted via Odyssey, the Court's e-service/e-filing system.

The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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



NONO
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Attorneys for Plaintiff Brad L. Knowlton

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

BRAD L. KNOWLTON, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO: A-20-809612-B

DEPT. XI

**STATEMENT OF NON-OPPOSITION
TO COUNTERCLAIMANT'S
MOTION TO DISMISS
COUNTERCLAIMS**

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

derivatively, and JUEL PARKER, individually,

Counter-Plaintiffs,

v.

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

Counter-Defendant,

And

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

STATEMENT OF NON-OPPOSITION

Plaintiff Brad L. Knowlton ("Knowlton"), by and through his counsel of record Steven W. Beckstrom of the law firm of Snow Christensen & Martineau, P.C, respectfully submits the following Statement of Non-Opposition to Counterclaimants' Motion to Dismiss Counterclaims. Knowlton has no objection to the Counterclaimants' dismissing their counterclaims with prejudice, as requested in their Motion. Therefore, Knowlton respectfully requests that this Court grant the Counterclaimants' Motion, and that the Counterclaims be dismissed with prejudice. Knowlton does so without waiving any of its claims or defenses in this action, all of which are expressly reserved.

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 19th day of February, 2021.

SNOW CHRISTENSEN & MARTINEAU



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

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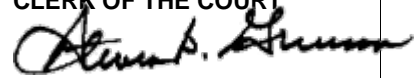
CERTIFICATE OF SERVICE

I certify that on this 19th day of February, 2021, the foregoing **STATEMENT OF NON-OPPOSITION TO COUNTERCLAIMANTS' MOTION TO DISMISS COUNTERCLAIM** was served on the following by ☐ Electronic Service pursuant to NEFR ☒ Electronic Filing and Service pursuant to NEFR ☐ 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



An employee of Snow, Christensen & Martineau



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

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

23 **EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

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

28 v.

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

37 Defendants.

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

CASE NO: A-20-809612-B

DEPT. XI

NOTICE OF ENTRY OF ORDER

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

3
4 Counter-Plaintiffs

5 v.

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

9 Counter-Defendant,

10 and

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

13 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

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

17 DATED this 25th day of February, 2021.

18
19 **GREENBURG TRAURIG, LLP**

20 /s/ Kara B. Hendricks

21 MARK E. FERRARIO, ESQ.

22 Nevada Bar No. 1625

23 KARA B. HENDRICKS, ESQ.

24 Nevada Bar No. 7743

25 ALAYNE M. OPIE, ESQ.

26 Nevada Bar No. 12623

27 10845 Griffith Peak Drive, Suite 600

28 Las Vegas, Nevada 89144

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

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CERTIFICATE OF SERVICE

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

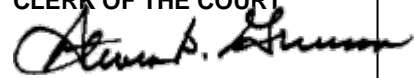
The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

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

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

EXHIBIT “A”

EXHIBIT “A”



ORDR

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

KARA B. HENDRICKS, ESQ.

Nevada Bar No. 7743

ALAYNE M. OPIE, ESQ.

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BRAD L. KNOWLTON, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO: A-20-809612-B

DEPT. XI

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

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

Counter-Plaintiffs,

v.

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

Counter-Defendant,

and

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

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

On February 19, 2021, Plaintiff Brad L. Knowlton (“Knowlton”) filed his Statement of Non-Opposition to Counterclaimants’ Motion to Dismiss Counterclaims.

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

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

///


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

EXTERNAL TO GT

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

Thanks,

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

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

Steven,

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

Please let us know if you approve.

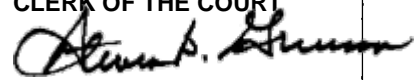
Kara

Kara Hendricks
Shareholder

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8 Telephone: 702-433-9696
9 Facsimile: 702-434-0615
10 *Attorneys for Plaintiff/Counterdefendant*
11 *Brad L. Knowlton*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 BRAD L. KNOWLTON, an individual,
10
11 Plaintiff,

CASE NO. A-20-809612-B
DEPT. NO. XI

12 v.

NOTICE OF APPEAL

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

21 Defendants.

22 WILLIAM L. LINDNER, as Trustee of the William
23 L. Lindner and Maxine G. Lindner Trust of 1988,
24 individually and derivatively; LISA PARKER, as
25 Trustee of the Juel A. Parker Family Trust,
26 individually and derivatively; S. BRUCE PARKER,
27 as Trustee of the Steven Bruce Parker Family Trust,
28 individually and derivatively; and JUEL PARKER,
individually,

Counterclaimants,


v.

BRAD L. KNOWLTON, individually and
derivatively; and DOE Individuals I – X and ROE
Entities I – X, inclusive,

Counterdefendants

and

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

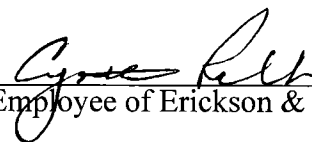
BY 
BRIAN C. WHITAKER, ESQ.
Nevada Bar No. 2329
1349 Galleria Drive, Suite 200
Henderson, NV 89014
Attorney for Plaintiff/Counterdefendant
Brad L. Knowlton

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CERTIFICATE OF SERVICE

I certify that I am an employee of Erickson & Whitaker PC, and that on the 25th day of March, 2021 I submitted the within NOTICE OF APPEAL to Odyssey eFileNV for filing and service through the District Court's electronic filing system to the following counsel of record:

Mark E. Ferrario; ferrariom@gtlaw.com
Kara B. Hendricks; hendricksk@gtlaw.com
Alayne M. Opie; opiea@gtlaw.com
Attorneys for Defendants/Counterclaimants


Employee of Erickson & Whitaker PC

