

EUREKA COUNTY, NV

2019-239173

\$35.00

Total: \$35.00

06/27/2019 03:34 PM

M&M INTERPRISES SUNDOWN

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LODGE



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LISA HOEHNE, CLERK RECORDER

APN # _____

Recording Requested By:

Name _____

Address _____

City/State/Zip _____

ASSUMPTION AGREEMENT
(Title of Document)

COPY

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fees applies)

ASSUMPTION AGREEMENT

SBA Loan No. 706-983-5004

SBA Loan Name: M&M Enterprises Sundown Lodge

Parties

This Agreement, dated for reference February 22, 2019, is between McKay Eureka Enterprises, a Nevada Corporation ("Buyer"), McKay/Minoletti LLC, a Nevada limited liability company ("Borrower") and The Small Business Administration, an Agency of the United States Government ("SBA").

Recitals

- A. SBA is the holder of a Promissory Note executed by Borrower on , in the original principal amount of \$118,000.00 One Hundred Eighteen Thousand Dollars ("Note") and a current outstanding balance of \$98,464.02 Ninety-Eight Thousand, Four Hundred Sixty-Four Dollars and Two Cents. Borrower has also executed an Authorization for Debenture Guarantee Loan Agreement, a Servicing Agent Agreement, Security Instruments and other documents in connection with the loan ("SBA Loan Documents").
- B. Borrower's repayment obligation is secured by a lien(s) and/or security interest(s) upon or in Borrower's real and/or personal property as described in the SBA Loan Documents ("Encumbered Property").
- C. Buyer has purchased or is about to purchase all or part of the Encumbered Property and desires to assume all of Borrower's obligations to SBA.
- D. A transfer of the Encumbered Property without SBA's consent is a default under the terms of the SBA Loan Documents and SBA's consent is conditioned upon Buyer's unconditional assumption of the Borrower's obligations to the SBA.

Agreement Terms

In consideration of the representations, promises and conditions in this agreement, the parties agree as follows:

1. ASSUMPTION OF DEBT AND RELATED OBLIGATIONS - Effective upon transfer of the Encumbered Property and/or Business to Buyer, Buyer assumes all of Borrower's obligations to SBA. Buyer agrees to pay SBA the unpaid principal balance, all interest accrued on the Note, the fees specified in the Servicing Agent Agreement, and all other amounts required by the SBA Loan Documents. Buyer also agrees to perform all of the Borrower's obligations contained in the SBA Loan Documents as if Buyer was the original borrower. SBA gives its one-time consent to the conveyance of the Encumbered Property to Buyer.
2. RATIFICATION OF NOTE - All of the prior acts of Borrower and the guarantor(s), specifically inclusive of, but not limited to, all of the provisions of the Promissory Note and the SBA Loan Documents, are in all respects hereby ratified and approved, and all provisions of the Promissory Note and the SBA Loan Documents are in full force and effect.

3. NO NOVATION - Buyer and Borrower understand that this transaction is not a novation (new obligation). All security instruments now in effect will remain in effect and will bind the Buyer. SBA's rights and remedies under the security instruments will not be limited, changed or impaired by the transfer of the collateral or by anything in this agreement.
4. NO RELEASE - This agreement does not release the Borrower nor any Guarantors from liability to SBA.
5. NO OFFSETTING CLAIMS - Buyer and Borrower acknowledge that none of the Borrower's obligations under the SBA Loan Documents are subject to any right of offset, defense or counterclaim of any kind.
6. NO RELIANCE - Buyer and Borrower have each conducted such investigation and obtained such independent legal or other advice as they have decided is necessary and have not relied upon the SBA, its agents, employees or attorneys in entering into this agreement.
7. LEGAL CAPACITY AND AUTHORITY - Buyer and Borrower warrant to SBA that each has the legal capacity to enter into this agreement and perform the obligations it creates. Buyer and Borrower also warrant that the individuals signing below have the requisite legal authority to execute this agreement on their behalf.
8. FURTHER ASSURANCES AND DOCUMENTATION - Buyer and Borrower will execute all other documents required by SBA and comply with all other conditions SBA imposes. Buyer will be in default under this agreement and under the SBA Loan Documents unless Buyer has delivered (and executed as appropriate) to SBA or its designee, the following:
 - Buyer's Federal Tax I.D. number;
 - Proof of Hazard Insurance in favor of Buyer naming SBA/CDC mortgagee/loss payee;
 - Flood Zone Certification (if applicable);
 - Board/Members Resolution to Borrow/Assume (SBA Form 160 Optional);
 - Secretary of State's Statement of Good Standing;
 - Articles of Incorporation/Organization (Corp./LLC);
 - ByLaws (Corporation);
 - Guaranty (SBA Form 148) of McKay/Minoletti LLC;
 - Proof of payment of past and current real property taxes and assessments due and payable;
 - Life Insurance, if applicable; and
 - Other
9. MODIFICATION - This agreement may not be modified except in writing signed by the parties to be charged. It supersedes all prior written or oral understandings or negotiations concerning the assumption of this loan.
10. NO ASSIGNMENT, TRANSFER OR FUTURE ASSUMPTION - DEFAULT - Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement or under the Note or other SBA Loan Documents without SBA's prior written consent. Per SBA policy, no further assumptions of this loan will be allowed without SBA's written consent. Any attempted assignment or delegation, or transfer by devise, descent or operation of law on the death of the Buyer of any part of the Encumbered Property, without SBA's prior written consent, will be a default giving SBA the right to foreclose its interest in all of the Encumbered Property.


11. GOVERNING LAW - This agreement shall be interpreted and enforced in accordance with federal law.
12. ENVIRONMENTAL WARRANTY - Borrower and Buyer represent and warrant that they and any tenant of the Encumbered Property have complied and will continue to comply with all laws, rules, and regulations related to land use, zoning, or environmental protection. Buyer agrees that it shall not cause or permit to exist, intentionally or unintentionally, any unlawful leaking, pumping, emitting, pouring, emptying or dumping of a toxic material, hazardous substance or hazardous waste into air or waters or onto or beneath lands. The Buyer and Borrower must notify SBA of any risk of contamination of the Encumbered Property by any hazardous substance, hazardous wastes, or toxic material.
13. ENVIRONMENTAL INDEMNITY - SBA is relying upon the warranties in this agreement in consenting to the assumption. Borrower and Buyer agree, jointly and severally, to hold SBA/CDC harmless from any loss, including but not limited to penalties, fines, claims, costs (including clean-up costs) and other expenses, including consultants or experts' expenses, which arise as a result of any inaccuracy or any breach of the warranties and promises in this agreement. This environmental indemnity will survive the term of this agreement and will not terminate by virtue of payment in full, foreclosure or acceptance of a deed in lieu of foreclosure.
14. SEVERABILITY – If any of the provisions of this document are deemed invalid, all remaining provisions will nonetheless remain in force.
15. RIGHTS, NOTICES, AND DEFENSES WAIVED - Borrower and Buyer agree if, by operation of law or otherwise, one or both of them become a surety, that they (a) grant to SBA full power, in its uncontrolled discretion and without notice, to deal in any manner with the liabilities and collateral for the Note and (b) waive all of the following rights, notices and defenses to the extent permitted by law:
- The Right to:
 - Require presentment, protest, or demand;
 - Redeem any Collateral before or after SBA disposes of it;
 - Have any disposition of Collateral advertised; and
 - Require a valuation of Collateral before or after SBA disposes of it.
 - Notice of:
 - Any default under the Note or under any SBA Loan Document;
 - Presentment, dishonor, protest, or demand;
 - Execution of any SBA Loan Document;
 - Any action or inaction on the Note or Collateral, such as disbursements, payment, nonpayment, acceleration, intent to accelerate, assignment, collection activity, and incurring enforcement expenses;
 - Any change in the financial condition or business operations of any person or entity related to the SBA Loan;
 - Any changes in the terms of the Note or other Loan Documents, except increases in the amounts due under the Note; and
 - The time or place of any sale or other disposition of Collateral.
 - Defenses based upon any claim that:

- SBA or its agent failed to obtain any guarantee;
- SBA or its agent failed to obtain, perfect, or maintain a security interest in any property offered or taken as Collateral;
- SBA or its agent or others improperly valued or inspected the Collateral;
- The Collateral changed in value, or was neglected, lost, destroyed, or underinsured;
- SBA or its agent impaired the Collateral;
- SBA or its agent did not dispose of any of the Collateral;
- SBA or its agent did not conduct a commercially reasonable sale;
- SBA or its agent did not obtain the fair market value of the Collateral;
- SBA or its agent did not make or perfect a claim upon the death or disability of any person;
- The financial condition of any person or entity was overstated or has adversely changed;
- SBA or its agent made errors or omissions in Loan Documents or administration of the Loan;
- SBA or its agent did not seek payment from any other person or entity, or any Collateral before demanding payment from Surety;
- SBA or its agent impaired Surety's suretyship rights;
- SBA or its agent modified the Note terms, other than to increase amounts due under the Note;
- If SBA or its agent modifies the Note to increase the amounts due under the Note without Surety's consent, Surety will not be liable for the increased amounts and related interest and expenses, but remains liable for all other amounts;
- Borrower has avoided liability on the Note;
- SBA or its agent has taken an action allowed under the Note, this agreement, or other Loan Documents; or
- All rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Surety's rights of subrogation and reimbursement against the principal by the operation of law or otherwise.

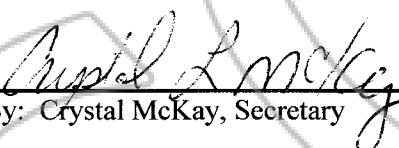
16. COUNTERPART EXECUTION - This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart.

Buyer:
McKay Eureka Enterprises, a Nevada Corporation

Borrower:
McKay/Minoletti LLC, a Nevada Limited Liability Company



By: Richard McKay, President


By: Richard McKay, Manger


By: Crystal McKay, Secretary


By: Giovanni Minoletti, Manager

U.S. SMALL BUSINESS ADMINISTRATION, an Agency of the U. S. Government

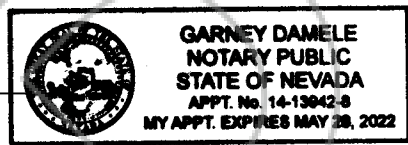
By: _____ 2-22-2019 (Date) 

Commercial Loan Servicing Center
2719 North Air Fresno Drive, Suite 107, Fresno, California 93727
www.sba.gov

State of Nevada
County of Eureka

On March 26, 2019 before me, Garney Damele, a Notary Public, personally appeared Doris Minoletti, Manager of G&D Minoletti LLC, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

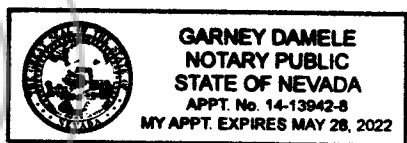
Signature Garney Damele



State of Nevada
County of Eureka

On March 26, 2019 before me, Garney Damele, a Notary Public, personally appeared Giovani Minoletti, Manager of G&D Minoletti LLC, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

Signature Garney Damele



State of Nevada
County of Eureka

On March 21, 2019 before me, Kathy Bacon-Bowling, a Notary Public, personally appeared Richard McKay, Manager of McKay/Minoletti LLC, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

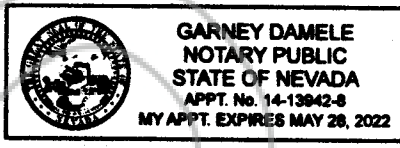
Signature Kathy Bacon-Bowling
R. McKay



State of Nevada
County of EUREKA

On MARCH 26, 2019 before me, Garney Damele, a Notary Public, personally appeared Giovani Minoletti, Manager of McKay/Minoletti LLC, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

Signature Garney Damele



State of California
County of Fresno

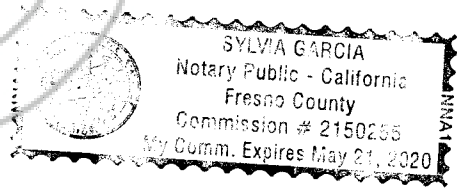
On FEB 22 2019 before me, Sylvia Garcia, notary public, personally

appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sylvia Garcia



U.S. SMALL BUSINESS ADMINISTRATION, an Agency of the U. S. Government

Signed in counter part

By: [Signature]
(Date)

Commercial Loan Servicing Center
2719 North Air Fresno Drive, Suite 107, Fresno, California 93727
www.sba.gov

State of Nevada
County of Eureka

On March 21, 2019 before me, Kathy Bacon-Bowling, a Notary Public, personally appeared Richard McKay, President of McKay Eureka Enterprises, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

Signature [Signature] KBB



State of Nevada
County of Eureka

On March 21, 2019 before me, Kathy Bacon-Bowling, a Notary Public, personally appeared Crystal McKay, Secretary of McKay Eureka Enterprises, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

Signature [Signature] KBB
Kathy Bacon-Bowling



JOINDER AND CONSENT OF GUARANTORS

McKay/Minoletti Enterprises, Inc., a Nevada Corporation

Richard McKay
By: Richard McKay, President

Doris Minoletti
By: Doris Minoletti, Secretary

Richard McKay
Richard McKay
By: Richard McKay

Crystal McKay
Crystal McKay
By: Crystal McKay

Giovani Mioletti
Giovani Mioletti
By: Giovani Mioletti

Doris Mioletti
Doris Mioletti
By: Doris Mioletti

State of Nevada
County of Eureka

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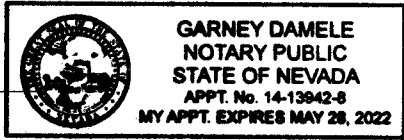
Signature *Kathy Bacon-Bowling*



State of Nevada
County of Eureka

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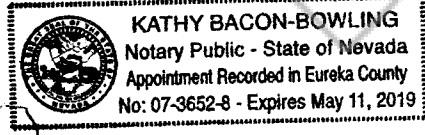
Signature *Garney Damele*



State of Nevada
County of Eureka

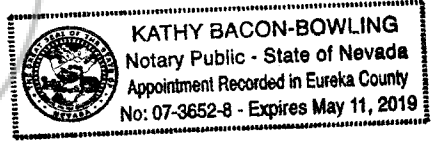
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Signature *R A McKay* ^(KBB) *Kathy Bacon-Bowling*



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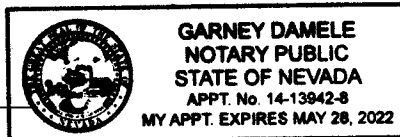
Signature *Crystal McKay* ^(KBB) *Kathy Bacon-Bowling*



State of Nevada
County of Eureka

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Signature Garney Damele



State of Nevada
County of Eureka

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Signature Garney Damele

