

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

<b>MOHAMMAD HAMED, by his</b>	)	<b>CIVIL NO. SX-12-CV-370</b>
authorized agent WALEED HAMED,	)	
	)	<b>ACTION FOR DAMAGES,</b>
<b>Plaintiff/Counterclaim Defendant,</b>	)	<b>INJUNCTIVE RELIEF</b>
	)	<b>AND DECLARATORY RELIEF</b>
<b>vs.</b>	)	
	)	<b>JURY TRIAL DEMANDED</b>
<b>FATHI YUSUF and UNITED CORPORATION,</b>	)	
	)	
<b>Defendants/Counterclaimants,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>WALEED HAMED, WAHEED HAMED,</b>	)	
<b>MUFEED HAMED, HISHAM HAMED, and</b>	)	
<b>PLESEN ENTERPRISES, INC.,</b>	)	
	)	
<b>Additional Counterclaim Defendants</b>	)	
	)	

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**REPLY TO PLAINTIFF HAMED'S OPPOSITION TO  
MOTION TO RECONSIDER ORDER OF ENCUMBRANCE**

Defendants/counterclaimants Fathi Yusuf and United Corporation (collectively, the “Defendants”), respectfully submits this Reply to “Plaintiff Hamed’s Opposition to United’s Motion to Reconsider Order of Encumbrance As To Shawn Hamed’s Pledge Of Plot No. 100 Eliza’s Retreat” (the “Opposition”) filed on February 26, 2014.

It is undisputed that on February 5, 2014, two days before this Court’s Order of Encumbrance dated February 7, 2014, Hoda Fathi Yusuf Hamed (“Ms. Hamed”) filed a Notice of Lis Pendens against Plot No. 100 Eliza’s Retreat, St. Croix (“Plot 100”), which has not been discharged to date.

Since the filing of the Opposition, Ms. Hamed has filed a Motion to Intervene in this case for the limited purpose of objecting to the posting of Plot 100 to secure the injunction bond in this case. See Motion For Leave To Intervene, without exhibits, attached as **Exhibit 1**.

While the Opposition points out that on February 25, 2014, the Supreme Court dismissed Ms. Hamed's appeal for failure to pay the docketing fee, on that same day, Ms. Hamed file a Motion to Set Aside Order of Dismissal. See Exhibit 2.

On February 28, 2014, Ms. Hamed filed a Reply to Appellee's Opposition to Motion to Set Aside Order of Dismissal, which further explained why the Order of Dismissal should be set aside and Ms. Hamed's interest in Plot 100. See Exhibit 3.

Regardless of whether Ms. Hamed's appeal is reinstated or whether this Court or the Family Court decides to discharge the Notice of Lis Pendens, given Ms. Hamed's claims of interest in and to Plot 100, no reputable title insurer would insure title to Plot 100, without exceptions, under these circumstances. Accordingly, because Ms. Hamed's claims against Plot 100, including the claims evidenced by her undischarged Notice of Lis Pendens, "cause confusion or present uncertainty regarding 'how much . . . money will remain once the . . . proceedings have concluded,' . . . [this] asset[ ] . . . [is] insufficient for the purpose of satisfying an injunction bond." See this Court's order of January 15, 2014 at p. 5 (quoting from Yusuf v. Hamed, Civ. No. 2013-0040, 2013 WL 5429498, at \* 9 (V.I. Sept. 30, 2013)).

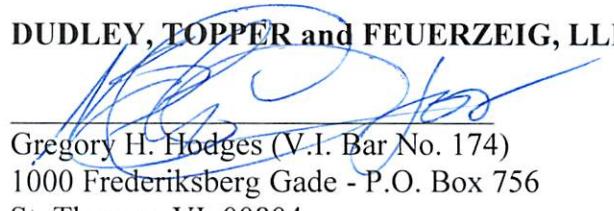
Because the undischarged Notice of Lis Pendens recorded against Plot 100 and Ms. Hamed's asserted claims against Parcel 100 cause such confusion and uncertainty, Defendants respectfully submit that Parcel 100 cannot serve as security for the injunction bond and that

Plaintiff must be required to immediately post cash or other encumbered property determined satisfactory by this Court.

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: March 12, 2014

By:

  
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Attorneys for Fathi Yusuf and United Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of March, 2014, I caused the foregoing **REPLY TO PLAINTIFF HAMED'S OPPOSITION TO MOTION TO RECONSIDER ORDER OF ENCUMBRANCE** to be served upon the following via e-mail:

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

MOHAMMED HAMED, by his authorized  
agent WALEED HAMED,

Plaintiff,

v.

FATHI YUSUF and UNITED  
CORPORATION,

Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,  
INJUNCTIVE AND  
DECLARATORY RELIEF

14 MAR 12 A11:05

JURY TRIAL DEMANDED

HODA FATHI YUSUF HAMED'S MOTION FOR LEAVE TO INTERVENE

COMES NOW Proposed Intervenor Hoda Fathi Yusuf Hamed (hereinafter "Hoda Hamed" or "Mrs. Hamed"), by and through her undersigned counsel, and hereby files this Motion to Intervene for the *limited* purpose of objecting to the posting of Plot 100 Eliza's Retreat to secure the bond requirement issued against the Plaintiff in the above-captioned action. See, *Mountain Top Condominium Assoc. v. Dave Stabber Master Builder, Inc.*, 72 F.3d 361, 368 (3d Cir. 1995)(stating "[p]roposed intervenors need not have an interest in every aspect of the litigation. They are entitled to intervene as to specific issues so long as their interest in those issues is significantly protectable."). Mrs. Hamed contends that she has an interest in Plot 100 as it is marital property subject to distribution by the divorce court and that Plot 100 was posted as a bond in this matter without her knowledge or consent. As such, Mrs. Hamed submits that, as a matter of law, her interest in Plot 100 is sufficient to support intervention as a matter of right under Federal Rule of Civil Procedure 24(a)(2), which is applicable to this Court

  
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EXHIBIT

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through Superior Court Rule 7. See generally, *Anthony v. Independent Insurance Advisors, Inc.*, S.Ct. Civ. No. 2010-0002, 2012 WL 1313413 (V.I. 2012). In the alternative, Mrs. Hamed seeks permissible intervention under Rule 24(b)(1). See, *American Farm Bureau Federation v. U.S. EPA*, 278 F.R.D. 98, 111 (M.D.Pa. 2011)(stating, “[e]ven if the Movants were not entitled to intervene as of right, the court is satisfied that permissive intervention would be warranted . . .”). Mrs. Hamed cites the following points and authorities in support of this motion.

#### **BACKGROUND**

##### ***Mohamed Hamed v. Fathi Yusuf, et. al., SX-12-CV-370***

Plaintiff initiated the current action on September 17, 2012. Exhibit “1”, Docket Sheet. On April 25, 2013, this Court granted Plaintiff’s motion for preliminary injunction and set bond at \$25,000.00, which Defendants ultimately appealed to the Supreme Court.

On December 5, 2013 this Court, acting on remand from the Supreme Court, increased the amount of the bond associated with the preliminary injunction and ordered the Plaintiff to post \$1,200,000.00 less credit for the \$25,000.00 previously posted as security to pay costs and damages sustained by Defendants in the event they are found to have been wrongfully enjoined. Plaintiff attempted to satisfy the revised bond requirement by posting an assignment of cash receivables in ByOrder Investments, LLC, an assignment of interest in Plessen Enterprises, Inc. and other funds outside the control of Plaintiff and this Court. The Defendants successfully challenged Plaintiff’s attempt to satisfy the bond requirement. See, Order dated January 15, 2014.

On January 30, 2014, Plaintiff filed a notice with the Court pledging real property, of which Mrs. Hamed has an interest, to satisfy the bond requirement. See, Notice of Posting Additional Bond dated January 30, 2014. The property is mischaracterized in the notice as "unencumbered Real Property by Hisham M. Hamed, pledging Plot No. 100 Eliza's Retreat." *Id.* The property is not unencumbered as described by the Plaintiff and Hisham Hamed, but rather is marital property of which Mrs. Hamed has an interest and as evidenced by the documents on file with the Recorder of Deeds and the pending divorce action between Hisham and Hoda Hamed.

***Marriage of Hisham and Hoda Hamed***

Hisham Hamed married Hoda Hamed during a formal Islamic ceremony before their Mosque leader on May 7, 1999. Exhibit "2", Affidavit of Hoda Hamed dated June 7, 2013, at ¶3. The marriage was performed in accordance with Islamic law, and a marriage certificate was issued by the Mosque, in its role as part of the Virgin Islands International Islamic Society, Inc. *Id.* The marriage certificate was witnessed by Waleed Hamed and Mohammed Hannun, and signed by Hisham and Hoda Hamed as husband and wife. *Id.*, at ¶ 4. Another ceremony was held on July 18, 1999. *Id.* The second ceremony was attended by the Arabic community and the couple's family and friends. *Id.*

At the signing of the Marriage Certificate in 1999, Hoda Hamed's father, Fathi Yusuf, congratulated Hisham Hamed and informed him that he was now responsible for protecting Hoda Hamed and looking after her welfare. Exhibit "2", at ¶ 6.

The couple had four children and lived together as husband and wife for almost fourteen years until Hisham Hamed moved out of the parties' marital home in

November, 2012. **Exhibit “3”**, Affidavit of Hoda Hamed dated September 30, 2013, at ¶ 4.

***History of Plot 100, Eliza’s Retreat***

Approximately ten years after the couple's marriage ceremony, Hisham Hamed negotiated and executed the purchase of Plots 65 and 100 Eliza's Retreat (hereinafter "marital property") from the Richard L. Davis Trust as evidenced by the Warranty Deeds dated July 12, 2010. **Exhibits “4” and “5”**, respectively. The structure comprising the marital home is located on Plot 65, which is immediately adjacent to the northern boundary of Plot 100. The purchase of the marital property was financed by a mortgage from Banco Popular in the amount of \$860,000.00. **Exhibit “6”**, Mortgage documents regarding Plots 65 and 100 Eliza's Retreat dated July 23, 2010 and recorded with the Recorder of Deeds on July 23, 2010. The mortgage was secured by the marital property and both Hisham and Hoda Hamed are the borrowers. *Id.*, at p. 1. The mortgage required Hisham and Hoda Hamed to occupy both Plots 65 and 100 as their primary residence, which the Hameds did up until November, 2012 when Hisham Hamed moved out of the marital home. *Id.*, at ¶ 6. Hisham Hamed executed the mortgage documents on his behalf and on behalf of Hoda Hamed pursuant to a power of attorney executed by Hoda Hamed in which she states in relevant part that she "appoint my husband, Hisham M. Hamed . . . as my true and lawful attorney in fact, to represent and act for me in my name, place and stead in the matters and affairs described herein." **Exhibit “7”**, Power of Attorney executed by Hoda Hamed dated July 22, 2010 and recorded with the Recorder of Deeds on July 23, 2010. The Power of Attorney executed by Mrs. Hamed allowed for Hisham Hamed to purchase Plots 65 and

100 in his name at the sale price of \$995,000.00 and \$100,000.00 and to use title to both plots to secure the mortgage. *Id.*

Approximately a year later, on or about July 1, 2011, the parents of Hoda Hamed, Fahti and Fawzia Yusuf, gifted Hisham and Hamed \$1.5 million. The gift was made as a result of Hisham Hamed's marriage to Hoda Hamed and the proceeds of the gift were used to pay off the mortgage, which encumbered the marital property and to make renovations to the marital home. The mortgage was paid in full in 2011 and the release of the mortgage was recorded on September 21, 2011. **Exhibit "8"**, Release of mortgage dated September 21, 2011. Although the mortgage, power of attorney, and release were all recorded with the Recorder of Deeds at or near the time they were executed, none of these documents appear in the title report attached to Plaintiff's Notice of Posting Additional Bond nor did Plaintiff or Hisham Hamed disclose the existence of these documents to the Court.

***Hoda Fathi Yusuf Hamed v. Hisham Mohammed Hamed, SX-13-DI-42***

Hisham Hamed moved out of the marital home he shared with his wife and four children in or about November, 2012. **Exhibit "3"**, Affidavit of Hoda Hamed dated September 30, 2013, at ¶ 4. After much back and forth and Mrs. Hamed's repeated attempts to save the couple's marriage, she filed for divorce on March 21, 2013. See, Complaint in *Hamed v. Hamed*, SX-13-DI-42. Mrs. Hamed advised her attorney at the time that the marital home was located on Plot 65, but neglected to inform her counsel that Plot 100 was also part of the marital estate as Hisham Hamed possessed all of the family business records and was charged with executing the purchase of both Plots 65 and 100. **Exhibit "9"**, Affidavit of Hoda Hamed dated February 27, 2014, at ¶ 5. In the

Islamic culture, it is customary for the husband to handle the family's business affairs; therefore, Mrs. Hamed gave Hisham Hamed power of attorney to negotiate the purchase of Plots 65 and 100 and Mr. and Mrs. Fathi Yusuf gifted the funds used to purchase the marital home to Hisham Hamed for the benefit of both Hisham and their daughter. *Id.*, at ¶ 6. As a result of being far removed from the family's business affairs, Mrs. Hamed neglected to list Plot 100 as marital property when she filed her Complaint for divorce as she did not have copies of the warranty deeds, mortgage documents or powers of attorney when she met with her counsel. *Id.* After filing the action for divorce, counsel for Mrs. Hamed recorded a Notice of *Lis Pendens* against Plot 65, but did not, at that time, record a similar notice against Plot 100. **Exhibit "10"**, *Lis Pendens* regarding Plot 65 dated March 22, 2013 and recorded March 22, 2013.

Hisham Hamed responded to the divorce complaint by filing a Motion to Dismiss in which he asserts that the divorce court lacked subject matter jurisdiction because the parties never executed a marriage license and were therefore never married in accordance with Virgin Islands law. See, Motion to Dismiss in *Hamed v. Hamed*, SX-13-DI-42, dated April 18, 2013. Hisham Hamed requested dismissal of the divorce claim and cancellation of the *Lis Pendens* filed against Plot 65. *Id.* Hisham Hamed further requested that the divorce action be allowed to proceed to address matters of child custody only. *Id.* Mrs. Hamed opposed the Motion to Dismiss. See, Opposition to Motion to Dismiss Complaint and Cross Motion for Partial Summary Judgment, in *Hamed v. Hamed*, SX-13-DI-42.

On January 31, 2014, the Family Division granted Hisham Hamed's Motion to Dismiss, but declined to grant the relief requested in his motion. See, Order in *Hamed*

v.. *Hamed*, SX-13-DI-42, dated January 31, 2014. Rather, the Family Court dismissed the divorce action in its entirety thereby allowing the immediate appeal of the dismissal. Mrs. Hamed appealed the dismissal of the divorce action on February 4, 2014. See, Notice of Appeal in *Hamed v. Hamed*, SX-13-DI-42, dated February 4, 2014. On February 25, 2014, Mrs. Hamed learned that the appeal was dismissed for failure to pay the docketing fee. See, Order in *Hamed v. Hamed*, S. Ct. 2014-0008, dated February 25, 2014. Upon realizing that her counsel's courier had not deliver the check for the docketing fee to the Court, Mrs. Hamed immediately filed a Motion to Set Aside the Dismissal Order and delivered a check for the docketing fee, which was accepted by the Court and deposited into its account. Both the motion to set aside the order of dismissal and the payment of the docketing fee occurred within the thirty (30) day period for appealing the lower court's dismissal of the divorce action. The Hameds are now awaiting the Supreme Court's decision on the motion to set aside the appeal.

On or about February 5, 2014, after she had appealed the dismissal of the divorce action, Mrs. Hamed learned of Plaintiff's intent to post Plot 100 as part of the bond in the above-captioned case and immediately recorded a *Lis Pendens* against Plot 100 to alert potential purchasers of Mrs. Hamed's interest in Plot 100. **Exhibit "11"**, *Lis Pendens* dated and recorded February 5, 2014.

Mrs. Hamed now seeks to protect her interest in Plot 100 by filing a Motion to Intervene for the limited purposes of objecting to the posting of a portion of her marital property to satisfy the bond in the matter *sub judice*.

#### **DISCUSSION**

Federal Rule of Civil Procedure 24 governs motions to intervene. A movant may

intervene as of right pursuant to Rule 24(a) or if granted permission under Rule 24(b).

In this instance, Mrs. Hamed is entitled to intervene under either section of Rule 24.

**I. Mrs. Hamed May Intervene As of Right.**

The Supreme Court of the Virgin Islands adopted the Third Circuit's four pronged standard for determining a motion to intervene as of right. *Anthony*, at \*4 (citing *Harris v. Pernsley*, 820 F.2d 592, 596 (3d Cir. 1987)). Mrs. Hamed bears the burden of persuading this Court that: 1) her motion to intervene is timely; 2) she has sufficient interest in the litigation; 3) her interest may be affected or impaired, as a practical matter by the disposition of the action; and 4) her interest is not adequately represented by an existing party in the litigation. *Id.* Mrs. Hamed easily meets all four requirements of the standard. *Mountain Top Condo*, at 366.

**A. The motion to intervene is timely.**

The timeliness of a motion to intervene is determined from all the circumstances. *Mountain Top*, at 396 (citing *In re Fine Paper Antitrust Litig.*, 695 F.2d 494, 500 (3d Cir. 1982)). To determine whether the motion is timely, this Court must consider: 1) the stage of the proceeding; 2) the prejudice that delay may cause; and 3) the reason for the delay. *Id.* The passage of time does not render a motion to intervene untimely. *Anthony*, at \*5. Rather, the Court must look to the stage of the proceeding as it relates to the question of prejudice caused by a delay in intervention. *Id.*, (citing *Mountain Top*, at 370). This Court should be reluctant to deny the motion to intervene solely due to untimeliness given the otherwise important interest a proposed intervenor by right would be denied. *Anthony*, at \*5.

The docket sheet in this matter indicates that this action was initiated on

September 17, 2012 and that the case is in the discovery stage of litigation. The docket sheet also shows that over 300 documents have been filed and/or issued in this matter. While the docket sheet reflects that substantial litigation has already occurred, the Court must remain cognizant of the limited purpose for which Mrs. Hamed seeks to intervene.

In this instance, Mrs. Hamed motion to intervene is timely because it is filed for the limited purpose of objecting to the Plaintiff's posting of her marital property as a bond in this case. The specific issue concerning the posting of Plot 100 just recently became an issue when Plaintiff posted the marital property less than a month ago. In addition, the issues concerning the propriety of using Plot 100 to secure the bond does not require the exchange of discovery as all documents relevant to Mrs. Hamed's interest in Plot 100 is on record with the Recorder of Deeds office and is otherwise attached as exhibits to this motion. The issue raised by Mrs. Hamed's objection is a legal one, which requires limited factual inquiry. Moreover, when considering a motion to intervene, the Court must accept the movant's well-pleaded allegations as true, making no determination as to the merits of the issues in dispute. See, *Oneida Indian Nation of Wisc. v. New York*, 732 F.2d 261, 265 (2d Cir. 1984). Therefore, there has been no delay with the filing of the motion to intervene and Plaintiff does not suffer any prejudice with regards to his underlying claims as a result of Mrs. Hamed's request to intervene. See, *Sackman v. Liggett Group, Inc.*, 167 F.R.D. 6, 20 (E.D.N.Y. 1996)(explaining, "[w]hile the plaintiffs may argue that the putative intervenors may have unnecessarily delayed their efforts to enter this lawsuit, the Court finds that because these Rule 24 motions are for the limited purpose of objecting the Judge Boyle's March 19, 1996 decision (sic), any delay is negligible."); see also, *Swann v. City of Dallas*, 172

F.R.D. 211, 213 (N.D. Tex. 1997)(filing of motion to intervene for purposes of modifying supersedeas bond five months after bond is filed was timely).

**B. Mrs. Hamed has a sufficient interest in the litigation.**

Rule 24(a)(2) generally requires a proposed intervenor to demonstrate "an interest relating to the property . . . that is the subject of the action . . . ." The Third Circuit has held that "proposed intervenors need not have an interest in every aspect of the litigation. They are entitled to intervene as to specific issues so long as their interest in those issues is significantly protectable." *Mountain Top*, 72 F.3d at 368. The interest must be "a legal interest as distinguished from interests of a general and indefinite character". *Donaldson v. United States*, 400 U.S. 517 (1971). Therefore, there must be a "tangible threat to a legally cognizable interest to have the right to intervene." *Id.*; see also, *Mountain Top*, 72 F.3d at 366.

Mrs. Hamed's interest in Plot 100 is a legal one that is significantly protectable. In the Virgin Islands, a "marital homestead" is defined as any homestead in which a husband and wife both reside during the marriage that is owned by one or both of the spouses. V.I. CODE ANN. tit. 33, § 2305(a). Mr. and Mrs. Hamed resided at Plots 65 and 100 as husband and wife during their marriage as evidenced by Mrs. Hamed's sworn statements and the mortgage documents in which they agreed to occupy both Plots 65 and 100 as their principal residence. Exhibit "6", at ¶ 6. Mrs. Hamed is currently seeking to protect her interest in the marital property in the Superior and Supreme Courts of the Virgin Islands.

The issue raised by Hisham Hamed in the divorce court – whether the Hameds' union is recognized as a marriage under law in the absence of a marriage license –

does not diminish Mrs. Hamed's interest in Plot 100 as the property is still subject to distribution in a separate civil action if the Supreme Court finds that the Family Division lacks jurisdiction to distribute the property. *Armstrong v. Armstrong*, 266 F.Supp.2d 385, 393 (D.V.I. 2003); *see also, Fuentes v. Fuentes*, CIV. NO. 089/1995, 1997 WL 889532, at \*4 (Sup. Ct. May 12, 1997)(stating, “[r]eal property owned by the couple, other than the marital homestead is divided by way of a civil partition action.”).

This Court should conclude that Mrs. Hamed has a significantly protectable interest in Plot No. 100.

**C. Mrs. Hamed's interest may be affected by the disposition of the action.**

Mrs. Hamed is further required to show that her interest in Plot 100 might be affected or impaired by the disposition of the current action. FED. R. Civ. P. 24(a)(2); *see also, Mountain top*, at 368.

Plaintiff posted Plot 100 as security for the preliminary injunction issued by this Court on April 25, 2013. The purpose of the security is to reimburse the Defendants for costs and damages they may sustain if they were found to have been wrongfully enjoined or restrained. FED. R. Civ. P. 65(c). This Court has already determined that Defendants stand to lose considerable sums in monetary damages, which far exceeds the value of Plot 100. Therefore, the posting of Plot 100 necessarily means that Mrs. Hamed stands to lose her interest in the property as a result of an action to which she is not a party and through no fault of her own.

**D. Mrs. Hamed's interest is not adequately represented by an existing party in the litigation.**

The United States Supreme Court has held that a movant's burden of showing

her interest is not adequately represented by an existing party to this litigation should be treated as minimal. *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972). The Court must look to how the interest of the proposed intervenor compares with the interest of the present parties. 7C WRIGHT, MILLER & KANE, FEDERAL PRACTICE & PROCEDURE § 1909 (cited in *Mountain Top*, at 368-369). If the interest of the proposed intervenor is not represented at all, then she is not adequately represented. *Id.*

Neither of the parties' interests in this litigation is consistent with Mrs. Hamed's interest in protecting and preserving her marital property. As such, the fourth factor weighs in favor of granting Mrs. Hamed leave to intervene in this action.

**II. In the Alternative, Mrs. Hamed Should be Permitted to Intervene.**

Permissive intervention should be allowed when a movant's claim has a question of law or fact in common with the main action. FED. R. CIV. P. 24(b)(2). The Court has a responsibility to ensure that the property being posted to secure the preliminary injunction is sufficient to cover any damages to Defendants if they are later found to have been wrongfully enjoined. In this instance, Mrs. Hamed's interest in her marital property and objection to the posting of any portion of that property to secure the preliminary injunction is consistent with the Court's obligation to make sure the preliminary injunction in the main action is properly secured. Therefore, Mrs. Hamed's claim shares a common question of law or fact with the main action.

**CONCLUSION**

Mrs. Hamed's request to intervene satisfies all four prongs of the intervention of right standard. In the alternative, her claim of interest in Plot 100 shares a common question of law or fact with the main action as the Court has an obligation to ensure that

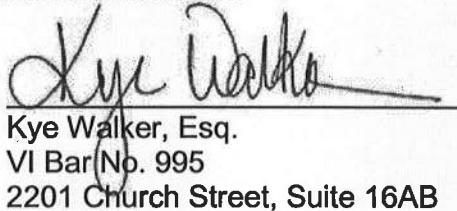
the property posted to secure the preliminary injunction is unencumbered and otherwise sufficient to compensate the Defendants for any damages incurred as a result of being wrongfully enjoined.

WHEREFORE, and for the foregoing reasons, Proposed Intervenor, Hoda Fathi Yusuf Hamed, respectfully requests that her Motion for Leave to Intervene be **GRANTED**.

Respectfully Submitted,

THE WALKER LEGAL GROUP  
*Counsel for Intervenor*

DATED: March 12, 2014

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 12, 2014, a true and correct copy of **HODA FATHI YUSUF HAMED'S MOTION FOR LEAVE TO INTERVENE** was served upon the following parties or their counsel as noted below:

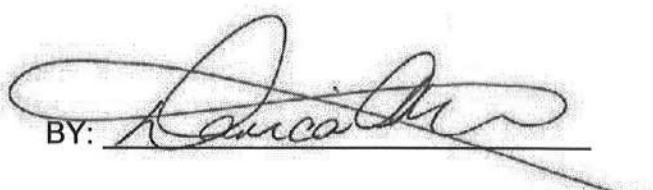
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BY: 

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

HODA FATHI YUSUF HAMED,

Appellant/Plaintiff,

v.

HISHAM MOHAMMED HAMED,

Appellee/Defendant.

St. Ct. No. 2014-0008

Re: Super. Ct. No. SX-13-DI-42

**MOTION TO SET ASIDE ORDER OF DISMISSAL**

**COMES NOW** Appellant, Hoda Fathi Yusuf Hamed, by and through undersigned counsel, and hereby moves to set aside the Order of dismissal pursuant to Supreme Court Rule 35(e). As good cause for this motion, Appellant submits that she was under the impression that she had in fact paid the docketing fee in this matter as she gave her courier the filing fee to be delivered to the Court on February 7, 2014. In support of this motion, Appellant submits the affidavit of her Office Coordinator and cites the following points and authorities in support of this motion.

Supreme Court Rule 35(e) provides:

[w]hen an appellant fails to comply with the Rules of the Supreme Court, the Clerk of the Supreme Court shall issue written notice to counsel or to the appellant who appears pro se that upon the expiration of 14 days after the date of the notice, the appeal may be dismissed for want of prosecution unless appellant remedies the deficiency within that time. If the deficiency is not remedied within this period, the Clerk or a justice is authorized to dismiss the appeal for want of prosecution and issue a certified copy thereof to the Clerk of the Superior Court as the mandate. The appellant shall not be entitled to remedy the deficiency after the appeal is



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**EXHIBIT**

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**MOTION TO SET ASIDE ORDER OF DISMISSAL**  
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dismissed except by order of the Court. A motion to set aside such an order must be justified by the showing of good cause and may not be filed more than 14 days after the date of dismissal.

In this instance, the Appellant filed her Notice of Appeal on February 4, 2013. The Court issued its standard docketing order the same day thereby ordering the Appellant to pay the \$105.00 docketing fee and file a completed transcript purchase order on or before February 18, 2014. On February 7, 2014, counsel for the Appellant issued two checks to pay the docketing fees for the above-captioned case, as well as the docketing fee in *Cianci, et. al. v. Chaput*, Case No. 2014-0007, which was initiated in the Supreme Court around the same time as the current case. See, **Exhibit “1”**, Check stub for payment of docketing fee in the *Hamed* matter dated February 7, 2014; **Exhibit “2”**, Check stub in the *Cianci* matter dated February 7, 2014; and **Exhibit “3”**, Affidavit of Danica Miller, Office Coordinator for the Walker Legal Group. The courier picked up the checks for delivery to the Supreme Court and the undersigned assumed the checks had been delivered. Appellant further complied with the Court’s docketing order by timely filing a completed transcript purchase order on February 18, 2014. The undersigned and her staff did not learn the docketing fees were not delivered to the Supreme Court until she received the orders dismissing the above-captioned case and the *Cianci* appeal at or about 6:45 pm on February 25, 2014. After receiving and reviewing the orders, the undersigned attempted to contact the office courier, but has been unable to reach him as of the filing of this motion.

Hamed v. Hamed, Case No. 2014-0008  
**MOTION TO SET ASIDE ORDER OF DISMISSAL**  
Page 3

The undersigned submits that any failure to pay the docketing fee was inadvertent and not done for purposes of delay or prejudice. The checks for the docketing fees were cut and transmitted to the office courier as evidenced by the exhibits attached to this motion. Upon receiving the orders of dismissal, the undersigned searched the Court's website to determine if the docketing fees could be paid by credit card this evening, but was unable to locate that payment option. As such, she has instructed staff to deliver payment to the Court as soon as it opens for business on Wednesday, February 26, 2014.

**WHEREFORE**, and for the foregoing reasons, Appellant's Motion to Set Aside the Order of Dismissal must be **GRANTED**.

Respectfully Submitted,

THE WALKER LEGAL GROUP  
Attorney for Plaintiff/Appellant

DATED: February 25, 2014

BY: /s/ Kye Walker, Esq.

Kye Walker, Esq.  
VI Bar No. 995  
2201 Church Street, Suite 16AB  
Christiansted, St. Croix  
U.S. Virgin Islands 00820-4611  
Telephone: (340) 773-0601  
Fax: (888) 231-0601  
[kye@thewalkerlegalgroup.com](mailto:kye@thewalkerlegalgroup.com)

02/25/2014

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

Hamed v. Hamed, Case No. 2014-0008  
**MOTION TO SET ASIDE ORDER OF DISMISSAL**  
Page 4

**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that on February 25, 2014, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

**Carol Rich, Esq.**  
Dudley Rich Davis, LLP  
5194 Dronningens Gade, Suite 3  
At Hibiscus Alley  
St. Thomas, VI 00802  
Telephone: (340) 776-7474  
Facsimile: (340) 776-8044  
[crich@dudleylaw.com](mailto:crich@dudleylaw.com)

BY: /s/ Kye Walker, Esq.

The Walker Legal 02/27/2014

Supreme Court of VI

Appeal Filing Fee  
Harned v. Harned

IN THE SUPREME COURT  
OF THE VIRGIN ISLANDS  
**FILED**

02/25/2014

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

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Appeal Filing Fee

OPERATING ACCT

\$105.00

**EXHIBIT 1**

639054 (1/13)

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Rev 3/11

The Walker Legal 02/07/2014

Supreme Court of VI

Appeal Filing Fee  
Ciano v. Chapat

IN THE SUPREME COURT  
OF THE VIRGIN ISLANDS  
**FILED**

02/25/2014

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

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Appeal Filing Fee

OPERATING ACCT

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**EXHIBIT 2**

63854 (3/13)

07251

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02/25/2014

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

HODA FATHI YUSUF HAMED,

Appellant/Plaintiff,

v.

HISHAM MOHAMMED HAMED,

Appellee/Defendant.

St. Ct. No. 2014-0008

Re: Super. Ct. No. SX-13-DI-42

TERRITORY OF THE VIRGIN ISLANDS  
DISTRICT OF ST. CROIX

)  
) SS:  
)

**AFFIDAVIT OF DANICA MILLER**

The undersigned Affiant, Danica Miller, being first duly sworn, do hereby depose and state under penalty of perjury:

1. I am the Office Coordinator for The Walker Legal Group and handle all financial aspects of the office.
2. On February 7, 2014, I gave our courier, Felipe Torres, Jr., an envelope containing two checks from The Walker Legal Group in the amount of \$105.00 each, made payable to the Clerk of the Supreme Court, along with a copy of the Court's Docketing Orders in the instant matter as well as a copy of the Docketing Order in *Cianci, et al. v. Chaput*, Case No. 2014-0007, with instructions for him to take the checks to the Supreme Court for payment of the docketing fees in the above matter as well as the *Cianci* matter. The



The Walker Legal Group  
2201 Church St.  
Suite 16AB  
Christiansted, St. Croix  
USVI 00820-4611  
Tel: 340-773-0601  
Fax: 888-231-0601  
kye@thewalkeralegalgroup.com

**EXHIBIT 3**

02/25/2014

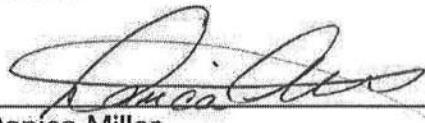
VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

Hamed v. Hamed  
**AFFIDAVIT OF DANICA MILLER**  
Page 2

docketing fee check for the above matter was check number 0995. A copy of the check stub for the above matter is attached as **Exhibit 1**. The check for the *Cianci* matter was check number 0996. A copy of the check stub for the *Cianci* matter is attached as **Exhibit 2**.

3. On the evening of February 25, 2014, I learned that the appeal in the above-captioned matter, as well as the appeal in the *Cianci* matter had been dismissed for failure to pay the docketing fees. I was surprised by the dismissal orders as I was under the impression the checks for the docketing fees had been delivered to the court.
4. At this time, I do not know whether the checks were in fact delivered as I have been unable to reach the courier as of the date of this filing.

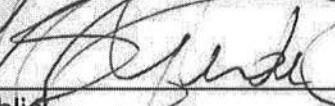
FURTHER AFFIANT SAYETH NAUGHT.



---

Danica Miller

SUBSCRIBED AND SWORN TO  
before me this 85<sup>th</sup> day of  
February, 2014.



Notary Public  
My Commission Expires:



K. Glenda Cameron  
Commission Number LNP 010-09  
Expiration Date: May 26, 2017

K. Charles Gouverneur  
Commissioner of Parole & Probation  
Parole Board Virgin Islands  
P.O. Box 1000  
Charlotte Amalie, VI 00802



**IN THE SUPREME COURT OF THE VIRGIN ISLANDS****DIVISION OF ST. CROIX**

HODA FATHI YUSUF HAMED,

Appellant/Plaintiff,

v.

HISHAM MOHAMMED HAMED,

Appellee/Defendant.

St. Ct. No. 2014-0008

Re: Super. Ct. No. SX-13-DI-42

**APPELLANT'S REPLY TO APPELLEE'S OPPOSITION TO MOTION TO SET ASIDE  
ORDER OF DISMISSAL**

**COMES NOW** Appellant, Hoda Fathi Yusef Hamed, by and through undersigned counsel, and hereby replies to Appellee Hisham Mohammed Hamed's Opposition to Motion to Set Aside Order of Dismissal. Appellee argues that Appellant failed to establish good cause or excusable neglect for her failure to timely file the docketing fee. Taking into account all relevant circumstances, it is clear from the record that good cause exists to set aside the order of dismissal.

"Good cause" and "excusable neglect" are essentially synonyms. *Beachside Assocs., LLC v. Fishman*, 53 VI 700, 713 (VI 2010). This Court has explained that "the determination of excusable neglect, 'is at bottom an equitable one,'" where the court "should take into account 'all relevant circumstances surrounding [the] omission . . . includ[ing] . . . the danger of prejudice [to the opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant



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Fax: 888-231-0601  
kye@thewalkerlegalgroup.com

**EXHIBIT**

3

tables:

*Hamed v. Hamed*, Case No. 2014-0008

Appellant's Reply to Appellee's Opposition to Motion to Set Aside Order of Dismissal  
Page 2

acted in good faith.'" *Fuller v. Browne*, CIV. NO. 2013-0034, 2013 WL 5763073, at \*4 (VI 2013)(citing *Brown v. People*, 49 VI. 378, 383 (VI 2008)). Appellant has clearly satisfied the excusable neglect standard.

**I. Appellant Acted in Good Faith and Appellee Suffers No Prejudice**

In *Fuller*, this Court considered the Superior Court's Appellate Division's dismissal of an appeal for failure to timely file a transcript request form. When deciding whether the Appellant acted in good faith, this Court explained:

Of course, the fact that Fuller complied with all other procedural requirements prior to dismissal – including service and payment of the docketing fee – and filed a compliant transcript request form on September 14, 2011, approximately one week after the Appellate Division issued its September 6, 2011 Order, constitutes strong evidence that he acted in good faith.

*Fuller*, at \*4 (emphasis added). Similarly here, Appellant complied with all other procedural requirements prior to the dismissal, including timely filing the Notice of Appeal within one day of receiving the lower court's order granting Appellee's motion to dismiss and filing a completed Transcript Purchase Order. Moreover, Appellant immediately paid the filing fee the morning after learning that her prior payment of the filing fee had not been delivered to the Court. There simply is no evidence that Appellant acted in bad faith.<sup>1</sup>

Appellee suggests that Appellant acted in bad faith and that he is otherwise prejudiced by Appellant's recording of *lis pendens* to protect her interest in real property that she shares with Appellee. While Appellant submits that Appellee's argument is

---

<sup>1</sup> Appellee, in his Opposition to Appellant's Motion to Set Aside Order of Dismissal, states that no exhibits were attached to Appellant's Motion to Set Aside Order of Dismissal. However, a review of the docket evidences that exhibits were, in fact, included with that filing.

*Hamed v. Hamed*, Case No. 2014-0008

Appellant's Reply to Appellee's Opposition to Motion to Set Aside Order of Dismissal  
Page 3

irrelevant to the good cause analysis, she will address the fallacy of Appellee's argument.

Approximately ten years after the Appellant and Appellee were married, Hisham Hamed negotiated and executed the purchase of Plots 65 and 100 Eliza's Retreat (hereinafter "marital property") from the Richard L. Davis Trust as evidenced by the Warranty Deeds dated July 12, 2010. **Exhibits "1" and "2"**, respectively. The structure comprising the marital home is located on Plot 65, which is immediately adjacent to the northern boundary of Plot 100. The purchase of the marital property was financed by a mortgage from Banco Popular in the amount of \$860,000.00. **Exhibit "3"**, Mortgage documents regarding Plots 65 and 100 Eliza's Retreat dated July 23, 2010 and recorded with the Recorder of Deeds on July 23, 2010. The mortgage was secured by the marital property and both Hisham and Hoda Hamed are the borrowers. *Id.*, at p. 1. The mortgage required Hisham and Hoda Hamed to occupy both Plots 65 and 100 as their primary residence, which the Hameds did up until Hisham Hamed moved out of the marital home. *Id.*, at ¶ 6. Hisham Hamed executed the mortgage documents on his behalf and on behalf of Hoda Hamed pursuant to a power of attorney executed by Hoda Hamed in which she states in relevant part that she "appoint my husband, Hisham M. Hamed . . . as my true and lawful attorney in fact, to represent and act for me in my name, place and stead in the matters and affairs described herein." **Exhibit "4"**, Power of Attorney executed by Hoda Hamed dated July 22, 2010 and recorded with the Recorder of Deeds on July 23, 2010. The Power of Attorney executed by Mrs. Hamed allowed for Hisham Hamed to purchase Plots 65 and 100 in his name at the sale price of \$995,000.00 and \$100,000.00 and to use title to

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Appellant's Reply to Appellee's Opposition to Motion to Set Aside Order of Dismissal  
Page 4

both plots to secure the mortgage. *Id.*

Approximately a year later, on or about July 1, 2011, the parents of Hoda Hamed, Fathi and Fawzia Yusuf, gifted Hisham and Hamed \$1.5 million. **Exhibit "5"**, Affidavit of Hoda Hamed dated February 27, 2014, at ¶ 3. The gift was made as a result of Hisham Hamed's marriage to Hoda Hamed and the proceeds of the gift were used to pay off the mortgage, which encumbered the marital property and to make renovations to the marital home. *Id.*, at ¶ 3. The mortgage was paid in full on September 1, 2011, and the release of the mortgage was recorded on September 21, 2011. **Exhibit "6"**, Release of mortgage dated September 12, 2011.

Hisham Hamed moved out of the marital home he shared with his wife and four children in or about November, 2012. **Exhibit "7"**, Affidavit of Hoda Hamed dated September 30, 2013, at ¶ 4. After much back and forth and Mrs. Hamed's repeated attempts to save the couple's marriage, she filed for divorce on March 21, 2013. See, Complaint in *Hamed v. Hamed*, SX-13-DI-42. Mrs. Hamed advised her attorney at the time that the marital home was located on Plot 65, but neglected to inform her counsel that Plot 100 was also part of the marital estate as Hisham Hamed possessed all of the family business records and was charged with executing the purchase of both Plots 65 and 100. **Exhibit "5"**, at ¶ 5. In the Islamic culture, it is customary for the husband to handle the family's business affairs; therefore, Mrs. Hamed gave Hisham Hamed power of attorney to negotiate the purchase of Plots 65 and 100 and Mr. and Mrs. Fathi Yusuf gifted the funds used to purchase the marital home to Hisham Hamed for the benefit of both Hisham and their daughter. *Id.*, at ¶ 6. As a result of being far removed from the family's business affairs, Mrs. Hamed neglected to list Plot 100 as marital property when

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Appellant's Reply to Appellee's Opposition to Motion to Set Aside Order of Dismissal  
Page 5

she filed her Complaint for divorce as she did not have copies of the warranty deeds, mortgage documents or powers of attorney when she met with her counsel. *Id.*, at ¶ 6. After filing the action for divorce, counsel for Mrs. Hamed recorded a Notice of *Lis Pendens* against Plot 65, but did not, at that time, record a similar notice against Plot 100.

Hisham Hamed responded to the divorce complaint by filing a Motion to Dismiss in which he asserts that the divorce court lacked subject matter jurisdiction because the parties never executed a marriage license and were therefore never married in accordance with Virgin Islands law. See, Motion to Dismiss in *Hamed v. Hamed*, SX-13-DI-42, dated April 18, 2013. Hisham Hamed requested dismissal of the divorce claim and cancellation of the *Lis Pendens* filed against Plot 65. *Id.* Hisham Hamed further requested that the divorce action be allowed to proceed to address matters of child custody only. *Id.* Mrs. Hamed opposed the Motion to Dismiss. See, Opposition to Motion to Dismiss Complaint and Cross Motion for Partial Summary Judgment, in *Hamed v. Hamed*, SX-13-DI-42.

On January 31, 2014, the Family Division granted Hisham Hamed's Motion to Dismiss, but declined to grant the relief requested in his motion. See, Order in *Hamed v. Hamed*, SX-13-DI-42, dated January 31, 2014. Rather, the Family Court dismissed the divorce action in its entirety thereby allowing the immediate appeal of the dismissal. Mrs. Hamed appealed the dismissal of the divorce action on February 4, 2014. See, Notice of Appeal in *Hamed v. Hamed*, SX-13-DI-42, dated February 4, 2014.

On or about February 25, 2014, Mrs. Hamed learned of Appellee's intent to post Plot 100 to secure a preliminary injunction issued in the matter of *Hamed v. Yusuf*, et.

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Appellant's Reply to Appellee's Opposition to Motion to Set Aside Order of Dismissal  
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al., Sup. Crt. No. SX-12-CV-370, and immediately recorded a *Lis Pendens* against Plot 100 to alert potential purchasers of Mrs. Hamed's interest in Plot 100.

Appellee's argument fails to take into account that regardless of whether this Court ultimately finds that a valid marriage exists between the parties, Appellant has an interest in both Plots 65 and 100 that far exceeds Appellee's interest and that she may still claim her interest through a civil action for partition. *Armstrong v. Armstrong*, 266 F.Supp.2d 385, 393 (D.V.I. 2003); see also, *Fuentes v. Fuentes*, CIV. NO. 089/1995, 1997 WL 889532, at \*4 (Sup. Ct. May 12, 1997)(stating, “[r]eal property owned by the couple, other than the marital homestead is divided by way of a civil partition action.”).

Appellant is entitled to protect her interest in property that both parties acquired by virtue of her parents' \$1.5 million contribution to their union. That she has sought to protect her interest can hardly be described as bad faith warranting the denial of her motion to set aside the order of dismissal. Moreover, Appellee is not prejudiced in this appeal by the recording of the *lis pendens* as he will otherwise have to defend against Appellant's claim to the property. Furthermore, Appellee's argument that the lower court's dismissal order has not been stayed is disingenuous at best as Appellee has not sought reconsideration or otherwise appealed the lower court's refusal to vacate the *lis pendens* that was filed against the subject property.

## **II. The Length and Reason for Delay Weighs In Favor of Setting Aside the Dismissal.**

Appellee also argues that counsel for Appellant was negligent in failing to learn that the check for the docketing fee had not been delivered to the Court because the absence of the docketing of the fee should have been noticed and that a review of the

*Hamed v. Hamed*, Case No. 2014-0008  
Appellant's Reply to Appellee's Opposition to Motion to Set Aside Order of Dismissal  
Page 7

undersigned's operating account would have revealed that the check had not been debited within 3-5 business days.

Appellee's argument regarding the debiting of the check for the docketing fee is unavailing as he presumes this Court deposits the docketing fee checks immediately upon receipt. That the debit was not reflected in the undersigned's account within 3-4 business days does not indicate that the check was not delivered to the Court.

In addition, even if the undersigned was negligent in not realizing that her check for the docketing fee had not been delivered, such negligence is not fatal to the motion to set aside the appeal as "excusable neglect is understood to encompass situations in which the failure to comply with the filing deadline is attributable to negligence." *Pioneer Inv. Serv. Co. v. Brunswick Assoc.*, 507 U.S. 380, 394 (1993).

The length of the delay also weighs in favor of setting aside the order of dismissal. In *Fuller*, this Court described that appellant's three-month delay in filing the transcript purchase form as "slight" particularly since a stay was never ordered. In this instance, the filing of the docketing fee was delayed by a week only as it was due on February 18, 2014 and paid on February 26, 2014. Appellee does not assert that the one-week delay in any way prejudices his defense of the appeal. Moreover, the delay was inadvertent as Appellant believed that the check for her docketing fee had been delivered to the Court and immediately cured the deficiency as soon as she learned of it.

### **CONCLUSION**

The issue raised in this appeal is an important one that affects the Appellant, her four children and at least seven other Islamic marriages that have been performed on

*Hamed v. Hamed*, Case No. 2014-0008  
Appellant's Reply to Appellee's Opposition to Motion to Set Aside Order of Dismissal  
Page 8

St. Croix. See Exhibit "8", Affidavit of Amjad Hammoudeh dated May 30, 2013. This appeal should be decided on its merits so that the state of law regarding marriages performed in the absence of a marriage license is well-established. Appellant's desire to pursue this appeal is evident from the immediate filing of a notice of appeal and her efforts to timely comply with this Court's docketing requirements. The failure to timely pay the docketing fee is not due to any intent to disobey the Court's orders, but rather to what appears to be a courier's failure to deliver the check to the Court. Appellant and the undersigned reasonably believed that the docketing fee had been paid when the check for the fee was issued on February 7, 2014 and given to the courier for delivery well ahead of the Court's February 18, 2014 deadline. As such, any neglect is excusable and should not result in the dismissal of this appeal.

Respectfully Submitted,

THE WALKER LEGAL GROUP  
Attorney for Plaintiff/Appellant

DATED: February 28, 2014

BY: /s/ Kye Walker, Esq.  
Kye Walker, Esq.  
VI Bar No. 995  
2201 Church Street, Suite 16AB  
Christiansted, St. Croix  
U.S. Virgin Islands 00820-4611  
Telephone: (340) 773-0601  
Fax: (888) 231-0601  
[kye@thewalkerlegalgroup.com](mailto:kye@thewalkerlegalgroup.com)

02/28/2014

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

*Hamed v. Hamed*, Case No. 2014-0008  
Appellant's Reply to Appellee's Opposition to Motion to Set Aside Order of Dismissal  
Page 9

**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that on February 28, 2014, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

**Carol Rich, Esq.**  
Dudley Rich Davis, LLP  
5194 Dronningens Gade, Suite 3  
At Hibiscus Alley  
St. Thomas, VI 00802  
Telephone: (340) 776-7474  
Facsimile: (340) 776-8044  
[crich@dudleylaw.com](mailto:crich@dudleylaw.com)

BY: /s/ Kye Walker, Esq.

Doc# 2010002864  
Book: 1241  
Pages: 334  
Filed & Recorded  
07/23/2010 3:38PM  
ALTHEA PEDRO  
RECORDER OF DEEDS  
ST CROIX  
RECORDING FEE \$ 1,887.00  
DEED PAGE FEE \$ 4.00  
DEED DOC STAMP \$ 24,875.00

*Attheal Pedro*

*67,899*

*24,875*

**TRUSTEE'S WARRANTY DEED**

Trustee's Warranty Deed made on July 12, 2010, by and between Richard L. Davis, Trustee of The Richard L. Davis Trust u/t/d December 24, 1999, (hereinafter called "Grantor") and Hisham M. Hamed, of PO Box 3649, Kingshill, VI 00851 (hereinafter referred to as "Grantee").

WITNESSETH:

In consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration to him in hand paid, receipt of which is hereby acknowledged, Grantor does hereby grant, sell, and convey unto Grantee the following described real property ("Property") situate in St. Croix, U.S. Virgin Islands:

Plot No. 65, Estate Eliza's Retreat, East End Quarter "A", consisting of 0.833 U.S. acre, more or less, as shown on OLG Drawing No. 4328, dated July 9, 1986, revised May 4, 1989;

TOGETHER WITH all the buildings, improvement, tenements, hereditaments and appurtenances thereunto belonging;

SUBJECT TO the following "Permitted Exceptions":

1. all covenants, conditions, rights of way, easements and restrictions as of record appearing;
2. any condition which an inspection of the property or an accurate survey would disclose;
3. all applicable zoning regulations and ordinances; and
4. real property taxes for the year 2006 and all years thereafter;

TO HAVE AND TO HOLD the said described premises unto Grantee Hisham M. Hamed, his heirs and assigns, in fee simple forever.

Grantor further covenants that Grantor is lawfully seized of the Properties and has full right to convey the Property; that the Property is free and clear of all liens and encumbrances except the Permitted Exceptions; that Grantee shall quietly enjoy the Property; and that Grantor shall forever warrant and defend the right and title to the Property to Grantee against the lawful claims of all persons, except for claims arising under or by virtue of the Permitted Exceptions.

Trustee's Warranty Deed  
Page 2

IN WITNESS WHEREOF, this deed has been duly executed as of the day and year first above written.

Witnesses (two required):

The Richard L. Davis Trust u/t/d  
December 24, 1999

*Richard L. Davis*  
Witness

By: *Richard L. Davis*  
Richard L. Davis, Trustee

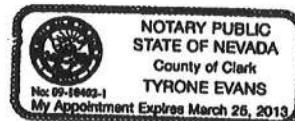
*Joe B. Stotts*  
Witness

ACKNOWLEDGMENT

STATE OF Nevada )  
COUNTY OF Clark )

The foregoing Trustee's Warranty Deed was acknowledged before me on  
July 12, 2010, 2010, by Richard L. Davis, Trustee of The Richard L. Davis  
Trust u/t/d December 24, 1999.

*Tyrone Evans*  
Notary Public  
My Commission Expires: 3/25/13



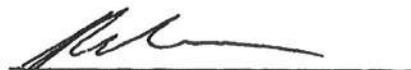
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Trustee's Warranty Deed  
Page 3

CERTIFICATE OF VALUE

It is hereby certified that the value of the property described in the foregoing Deed (Plot 65 Estate Eliza's Retreat), for recording and transfer tax purposes does not exceed the sum of Nine Hundred Ninety-Five Thousand Dollars (\$995,000.00).

For transfer stamp tax purposes only, the assessed value of the subject Property (as per the 2005 real property tax bill) is \$424,389.00.

  
\_\_\_\_\_  
Robert A. Waldman, Attorney at Law

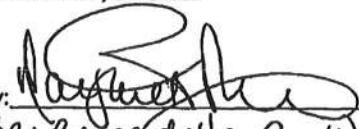
CERTIFICATE OF THE PUBLIC SURVEYOR

IT IS HEREBY CERTIFIED that the description of the Property described in the foregoing Trustee's Warranty Deed has not undergone any change with regard to boundary and area according to the records of the Office of the Public Surveyor.

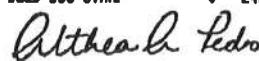
Office of the Public Surveyor  
Christiansted, St. Croix

DATED: JUL 21 2010

FEE: \$ 20<sup>00</sup>

By:   
for: Bernadette C. Williams  
Tax Assessor

Doc# 2010002864  
Book: 1941  
Pages: 264  
Filed & Recorded  
8/7/23/2010 3:30PM  
ALTHEA PEDRO  
RECORDER OF DEEDS  
ST CROIX  
RECORDING FEE \$ 1,007.00  
PER PAGE FEE \$ 4.00  
DEED DOC STAMP \$ 24,875.00

  
Althea Pedro  
Recorder



GOVERNMENT OF  
THE UNITED STATES VIRGIN ISLANDS

**OFFICE OF THE LIEUTENANT GOVERNOR  
DIVISION OF REAL PROPERTY TAX**

1105 King Street • Christiansted, Virgin Islands 00820 • 340.773.4449 • Fax 340.773.0330  
18 Kongens Gade • Charlotte Amalie, Virgin Islands 00802 • 340.774.2991 • Fax 340.774.6984

**REAL PROPERTY TAX CLEARANCE LETTER**

**TO:** Office of the Recorder of Deeds  
**FROM:** Office of the Tax Collector

In accordance with Title 28, Section 121, as amended, this shall certify that there are no outstanding Real Property Tax obligations for the following:

PARCEL NUMBER	2-05000-0280-00
LEGAL DESCRIPTION	65 ELIZAS RETREAT SPYGLASS HILL
OWNER'S NAME	RICHARD L DAVIS

Taxes have been researched up to and including 2005

**CERTIFIED TRUE AND CORRECT BY**

Valencio Jackson  
Tax Collector

A handwritten signature in black ink, appearing to read "Valencio Jackson".

April 13, 2010  
DATE

#48326  
1209193  
DNL46.

67,898

Dock 2010002863  
Book: 1241  
Pages: 330  
Filed & Recorded  
07/23/2010 3:38PM  
ALTHEA PEDRO  
RECORDER OF DEEDS  
ST CROIX  
RECORDING FEE \$ 117.00  
PER PAGE FEE \$ 4.00  
DEED DOC STAMP \$ 2,189.00

*Althea L. Pedro*  
Recorder

Trustee's Warranty Deed made on July 12, 2010, by and between Richard L. Davis, Trustee of The Richard L. Davis Trust w/t/d December 24, 1999, (hereinafter called "Grantor") and Hisham M. Hamed, of PO Box 3649, Kingshill, VI 00851 (hereinafter referred to as "Grantee").

2/10.-

WITNESSETH:

In consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration to him in hand paid, receipt of which is hereby acknowledged, Grantor does hereby grant, sell, and convey unto Grantee the following described real property ("Property") situate in St. Croix, U.S. Virgin Islands:

Plot No. 100, Estate Eliza's Retreat, East End Quarter "A", consisting of 0.542 U.S. acre, more or less, as shown on OLG Drawing No. 4328, dated July 9, 1986, revised May 4, 1989;

TOGETHER WITH all the buildings, improvement, tenements, hereditaments and appurtenances thereunto belonging;

SUBJECT TO the following "Permitted Exceptions":

1. all covenants, conditions, rights of way, easements and restrictions as of record appearing;
2. any condition which an inspection of the property or an accurate survey would disclose;
3. all applicable zoning regulations and ordinances; and
4. real property taxes for the year 2006 and all years thereafter;

TO HAVE AND TO HOLD the said described premises unto Grantee Hisham M. Hamed, his heirs and assigns, in fee simple forever.

Grantor further covenants that Grantor is lawfully seized of the Properties and has full right to convey the Property; that the Property is free and clear of all liens and encumbrances except the Permitted Exceptions; that Grantee shall quietly enjoy the Property; and that Grantor shall forever warrant and defend the right and title to the Property to Grantee against the lawful claims of all persons, except for claims arising under or by virtue of the Permitted Exceptions.

02/28/2014

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

Trustee's Warranty Deed  
Page 2

IN WITNESS WHEREOF, this deed has been duly executed as of the day and year first above written.

Witnesses (two required):

The Richard L. Davis Trust u/t/d  
December 24, 1999

Richard L. Davis  
Witness

By: Richard L. Davis,  
Richard L. Davis, Trustee

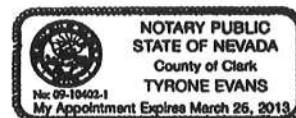
Jeb Stoltz  
Witness

ACKNOWLEDGMENT

STATE OF Nevada )  
COUNTY OF Clark )

July 12, 2010, The foregoing Trustee's Warranty Deed was acknowledged before me on 2010, by Richard L. Davis, Trustee of The Richard L. Davis Trust u/t/d December 24, 1999.

Tyrone Evans  
Notary Public  
My Commission Expires: 3/25/13



Trustee's Warranty Deed  
Page 3

CERTIFICATE OF VALUE

It is hereby certified that the value of the property described in the foregoing Deed (Plot 100 Estate Eliza's Retreat), for recording and transfer tax purposes, does not exceed the sum of One Hundred Five Thousand Dollars (\$105,000.00).

For transfer stamp tax purposes only, the assessed value of the subject Property (as per the 2005 real property tax bill) is \$43,410.00.

  
\_\_\_\_\_  
Robert A. Waldman, Attorney at Law

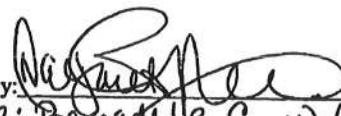
CERTIFICATE OF THE PUBLIC SURVEYOR

IT IS HEREBY CERTIFIED that the description of the Property described in the foregoing Trustee's Warranty Deed has not undergone any change with regard to boundary and area according to the records of the Office of the Public Surveyor.

Office of the Public Surveyor  
Christiansted, St. Croix

DATED: JUL 21 2010

FEE: \$20<sup>00</sup>

By:   
for: Beulah C. Williams  
Tax Assessor

Doc# 2010002863  
Book: 1847  
Pages: 320  
Filed & Recorded  
07/23/2010 3:38PM  
ALTHEA PEDRO  
RECORDER OF DEEDS  
ST CROIX  
RECORDING FEE \$ 117.00  
PER PAGE FEE \$ 4.00  
DEED DQC STAMP \$ 2,100.00

  
Recorder

**GOVERNMENT OF  
THE UNITED STATES VIRGIN ISLANDS****OFFICE OF THE LIEUTENANT GOVERNOR  
DIVISION OF REAL PROPERTY TAX**

1105 King Street • Christiansted, Virgin Islands 00820 • 340.773.6449 • Fax

340.773.0330

18 Kongens Gade • Charlotte Amalie, Virgin Islands 00802 • 340.774.2991 • Fax  
340.774.6953**REAL PROPERTY TAX CLEARANCE LETTER**TO: **Office of the Recorder of Deeds**FROM: **Office of the Tax Collector****In accordance with Title 28, Section 121, as amended, this shall  
certify that there are no outstanding Real Property Tax obligations  
for the following:**

<b>PARCEL NUMBER</b>	<b>2-05000-0200-0G</b>
<b>LEGAL DESCRIPTION</b>	<b>100 ELIZA'S RETREAT</b>
<b>OWNER'S NAME</b>	<b>DAVIS, RICHARD L</b>

Taxes have been researched up to and including 2005.**CERTIFIED TRUE AND CORRECT BY**Valencio Jackson  
Tax Collector

A handwritten signature in black ink, appearing to read "Valencio Jackson".

SIGNATURE

04/09/2010  
Date

Doc# 2010002865

After Recording Return to:  
Samuel T. Grey, Esq.  
Nichols Newman Logan & Grey, P.C.  
1131 King Street  
Christiansted, St. Croix, VI 00820-4971

[Space Above This Line For Recording Data]

## MORTGAGE

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated July 23, 2010, together with all Riders to this document.
- (B) "Borrower" is HISHAM M. HAMED and HODA HAMED. Borrower is the mortgagor under this Security Instrument.
- (C) "Lender" is BANCO POPULAR DE PUERTO RICO, St. Croix, Virgin Islands, which is organized and existing under the laws of the Commonwealth of Puerto Rico. Lender's address is P.O. Box 224350 Christiansted, St. Croix, Virgin Islands 00822. Lender is the mortgagee under this Security Instrument.
- (D) "Note" means the promissory note signed by Hisham M. Hamed and dated July 23, 2010. The Note states that Hisham M. Hamed owes Lender Eight Hundred Sixty-Eight Thousand Dollars and No Cents (U.S. \$868,000.00) plus interest. Hisham M. Hamed has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than August 1, 2040.
- (E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
- (F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
- (G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- Adjustable Rate Rider     Condominium Rider     Second Home Rider  
 Balloon Rider     Planned Unit Development Rider     Other(s) [specify]  
 I-4 Family Rider     Biweekly Payment Rider

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

- (L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverage described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
- (M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
- (N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
- (O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
- (P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the following described property located on:

#### ST. CROIX, TERRITORY OF THE UNITED STATES VIRGIN ISLANDS

Plot Nos. 65 and 100 (comprising 0.833 and 0.542 U.S. acre, respectively), both of Estate Eliza's Retreat, East End Quarter "A", St. Croix, U.S. Virgin Islands, as more particularly shown on OLG Drawing No. 4328, dated July 9, 1986, last revised May 4, 1989,

which currently has the address of Plot Nos. 65 and 100 both of Estate Eliza's Retreat, East End Quarter "A", St. Croix, U.S. Virgin Islands ("Property Description");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

**THIS SECURITY INSTRUMENT** combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

#### UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following

forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payment shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a Lender can require under RESPA. Lender

shall estimate the amount of Funds due on the basis of current data and reasonable estimate of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverage described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under

this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance process, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lenders' satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not the Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave

materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drains water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has – if any – with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment,

precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy, including, without limitation, Lender's acceptance of payments from third person, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument

is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in this case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances; gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and foreclosure and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, but not limited to, reasonable attorneys' fees and costs of court.

**23. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Attorneys' Fees.** As used in this Security Instrument and the Note, attorneys' fees shall include those awarded by any court.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses: (as to both signatures)

Samuel T. Grey  
Hoda Hamed

BORROWER:

Hisham M. Hamed (Seal)  
HISHAM M. HAMED - Borrower  
Hoda Hamed (Seal)  
HODA HAMED - Borrower  
By: Hisham M. Hamed, attorney in fact

[Space Below This Line for Acknowledgment]

TERRITORY OF THE VIRGIN ISLANDS )  
DISTRICT OF ST. CROIX ) ss: Acknowledgment

The foregoing instrument was acknowledged before me this July 23, 2010 by HISHAM M. HAMED, Individually and as duly authorized attorney in fact for HODA HAMED.

c:/server1/STG/Banco Popular Loans/HamedHisham.mrg (fpm)

Samuel T. Grey  
Notary Public

SAMUEL T. GREY  
Notary Public, Territory of the Virgin Islands  
No. LNP-027-09  
Qualified in Judicial District of St. Croix  
Commission Expires 08/16/2013

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ALTHEA PEDRO  
RECORDER OF DEEDS  
ST CROIX  
RECORDING FEE \$ 888.00  
PER PAGE FEE \$ 11.00  
ATTACHMENT FEE \$ 8.50

Althea L. Pedro  
Recorder

**1-4 FAMILY RIDER  
ASSIGNMENT OF RENTS**

Loan No.: 071041911016580

THIS 1-4 FAMILY RIDER is made this July 23, 2010, and is incorporated into and shall be deemed to amend and supplement the Mortgage (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Hisham M. Hamed's Note to BANCO POPULAR DE PUERTO RICO (the "Lender") of the same date and covering the Property described in the Security Instrument and located at Plot Nos. 65 and 100 both of Estate Eliza's Retreat, East End Quarter "A", St. Croix, United States Virgin Islands.

**1-4 FAMILY COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT.** In addition to the Property described in Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

**B. USE OF PROPERTY; COMPLIANCE WITH LAW.** Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

**C. SUBORDINATE LIENS.** Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

**D. RENT LOSS INSURANCE.** Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

**E. "BORROWER'S RIGHT TO REINSTATE" DELETED.** Section 19 is deleted.

**F. BORROWER'S OCCUPANCY.** Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

**G. ASSIGNMENT OF LEASES.** Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G. the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

**H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** Borrower absolutely and unconditionally assigns and transfer to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenants(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bond, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its right under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application or Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. **CROSS-DEFAULT PROVISION.** Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this I-4 Family Rider.

  
HISHAM M. HAMED

  
HODA HAMED  
By: Hisham M. Hamed, attorney in fact

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Book: 1841  
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07/23/2010 3:38PM  
ALTHEA PEDRO  
RECORDER OF DEEDS  
ST CROIX  
RECORDING FEE \$ 0.00  
PER PAGE FEE \$ 11.00  
ATTACHMT FEE \$ 0.50

  
Althea Pedro  
Recorder

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Book: 1841

Pages: 138

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07/23/2010 3:38PM

ALTHEA PEDRO

RECORDER OF DEEDS

ST CROIX

RECORDING FEE \$ 60.00

PER PAGE FEE \$ 11.00

ATTACHMNT FEE \$ 0.50

*Althea L. Pedro*

Recorder

**AFFIDAVIT**

**TERRITORY OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

Before me, the undersigned officer, personally appeared **HISHAM M. HAMED**, who, being first duly sworn, deposed and stated as follows:

1. I am over the age of eighteen (18) years and have personal knowledge of the matters set forth herein.

2. On or about 7/22/10, 2010, **HODA HAMED** appointed me as attorney-in-fact pursuant to a Power of Attorney which is attached to this Affidavit.

3. At the time of execution of this Affidavit, I do not have actual knowledge of termination of the attached Power of Attorney by revocation, by the death, disability or incapacity of **HODA HAMED**, by lapse of time, or by any other manner.

4. I hereby warrant and certify that the attached Power of Attorney remains in full force and effect and that I remain fully authorized by **HODA HAMED** to exercise any and all powers conferred upon me thereby as attorney-in-fact.

5. I have executed this Affidavit with the intent and knowledge that **BANCO POPULAR DE PUERTO RICO** will rely on my representations set forth herein in advancing a mortgage loan to **HISHAM M. HAMED** to encumber Plot Nos. 65 and 100 both of Estate Eliza's Retreat, East End Quarter "A", St. Croix, U.S. Virgin Islands, and that Chicago Title Insurance Company and V.I. Title And Trust Company will rely on my representations set forth herein in providing title insurance for the mortgage.

FURTHER AFFIANT SAYETH NOT.

*HISHAM M. HAMED*

SUBSCRIBED AND SWORN TO before me  
this July 23, 2010.

*Samuel T. Grey*  
Notary Public SAMUEL T. GREY  
Notary Public, Territory of the Virgin Islands  
No. LNP-027-09  
serveral/STG/Banco Popular Loans/Hamed/Hamed in Judicial District of St. Croix  
Commission Expires 08/18/2013

02/28/2014

VERONICA HANKEY, ESQUIRE  
CLERK OF THE COURT

## POWER OF ATTORNEY

I, Hoda Hamed, of 6H Carlton Gardens, Frederiksted, U.S. Virgin Islands, do hereby constitute and appoint my husband, Hisham M. Hamed, with full power of substitution, as my true and lawful attorney in fact, to represent and act for me in my name, place and stead in the matters and affairs described herein.

This Power of Attorney is executed for the purposes of: (1) expediting the purchase by Hisham M. Hamed of those certain Plots more fully described as Nos. 65 and 100, Estate Eliza's Retreat, East End Quarter "A", St. Croix, U. S. Virgin Islands ("Property") pursuant to the terms of those certain contracts for the purchase and sale of real property between the undersigned, as Purchaser, and The Richard L. Davis Trust, as Seller ("Contract") for the sale price of \$995,000 and \$105,000, respectively; (2) to execute and deliver any and all letters of loan commitment, disclosure documentation, financing documentation, settlement statements, mortgages, authorizations, security agreements, financing statements, and any other document deemed necessary or appropriate by my Attorney-In-Fact relating to a purchase money mortgage loan from Banco Popular de Puerto Rico to Hisham M. Hamed in the original principal amount of Eight Hundred Sixty-Eight Thousand Dollars and 00/100 (\$868,000.00), secured by a mortgage encumbering the Property ("Loan"); and (3) permitting such action in my name and in my behalf with respect to such Loan and Property as fully and effectively as I might do were I present and acting, third persons being relieved of the responsibility to determine my instructions, or to require compliance therewith by my attorney in fact.

In extension and not in limitation of the powers given by other provisions of this instrument, I confer upon my attorney in fact the power to do all things deemed by my attorney in fact to be incidental to or necessary or proper to carry out the provisions and intent of this Power of Attorney and to encumber the Property as necessary for securing the Loan, including but not limited to the power to execute and deliver any and all instruments, mortgages, notes, affidavits, settlement statements, agreements, and amendments or modifications thereof, as may be necessary or advisable to consummate such Loan and purchase. The enumeration of specific powers herein shall not limit the general power and authority of my attorney in fact granted under this instrument. I do hereby ratify and confirm any and all such acts that my attorney in fact should lawfully do or cause to be done in my name, place and stead pursuant to this Power of Attorney. This instrument may be recorded in the Office of the Recorder of Deeds, Christiansted, St. Croix, U. S. Virgin Islands. This Power of Attorney shall remain in full force and effect until it is revoked in writing and such writing is recorded in the aforesaid office. This Power of Attorney shall not be affected by subsequent disability or incapacity of the undersigned, or lapse of time. I hereby agree to release, indemnify, defend and hold my attorney-in-fact harmless for all claims arising by reason of his acts he so performs in accordance with this instrument and the law.

IN WITNESS WHEREOF, I have hereby executed this Power of Attorney this 22<sup>nd</sup> day of July, 2010.

IN WITNESS

Hoda Hamed

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Book: 144  
Page: 38  
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RECORDER OF DEEDS  
ST CROIX  
RECORDING FEE  
PER PAGE FEE  
ATTACHMENT FEE

## ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS )  
JUDICIAL DIVISION OF ST. CROIX )  
ISS

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of July, 2010 by Hoda Hamed.  
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(NOTARY SEAL)

Print Name: Heather C. Lewis  
Notary Serial No. NP 170-07  
Expiration: August 29, 2011

Heather C. Lewis  
Recorder

**POWER OF ATTORNEY**

I, Hoda Hamed, of 6H Carlton Gardens, Frederiksted, U.S. Virgin Islands, do hereby constitute and appoint my husband, Hisham M. Hamed, with full power of substitution, as my true and lawful attorney in fact, to represent and act for me in my name, place and stead in the matters and affairs described herein.

This Power of Attorney is executed for the purposes of: (1) expediting the purchase by Hisham M. Hamed of those certain Plots more fully described as Nos. 65 and 100, Estate Eliza's Retreat, East End Quarter "A", St. Croix, U. S. Virgin Islands ("Property") pursuant to the terms of those certain contracts for the purchase and sale of real property between the undersigned, as Purchaser, and The Richard L. Davis Trust, as Seller ("Contract") for the sale price of \$995,000 and \$105,000, respectively; (2) to execute and deliver any and all letters of loan commitment, disclosure documentation, financing documentation, settlement statements, mortgages, authorizations, security agreements, financing statements, and any other document deemed necessary or appropriate by my Attorney-In-Fact relating to a purchase money mortgage loan from Banco Popular de Puerto Rico to Hisham M. Hamed in the original principal amount of Eight Hundred Sixty-Eight Thousand Dollars and 00/100 (\$868,000.00), secured by a mortgage encumbering the Property ("Loan"); and (3) permitting such action in my name and in my behalf with respect to such Loan and Property as fully and effectively as I might do were I present and acting, third persons being relieved of the responsibility to determine my instructions, or to require compliance therewith by my attorney in fact.

In extension and not in limitation of the powers given by other provisions of this instrument, I confer upon my attorney in fact the power to do all things deemed by my attorney in fact to be incidental to or necessary or proper to carry out the provisions and intent of this Power of Attorney and to encumber the Property as necessary for securing the Loan, including but not limited to the power to execute and deliver any and all instruments, mortgages, notes, affidavits, settlement statements, agreements, and amendments or modifications thereof, as may be necessary or advisable to consummate such Loan and purchase. The enumeration of specific powers herein shall not limit the general power and authority of my attorney in fact granted under this instrument. I do hereby ratify and confirm any and all such acts that my attorney in fact should lawfully do or cause to be done in my name, place and stead pursuant to this Power of Attorney. This instrument may be recorded in the Office of the Recorder of Deeds, Christiansted, St. Croix, U. S. Virgin Islands. This Power of Attorney shall remain in full force and effect until it is revoked in writing and such writing is recorded in the aforesaid office. This Power of Attorney shall not be affected by subsequent disability or incapacity of the undersigned, or lapse of time. I hereby agree to release, indemnify, defend and hold my attorney-in-fact harmless for all claims arising by reason of his acts he so performs in accordance with this instrument and the law.

IN WITNESS WHEREOF, I have hereby executed this Power of Attorney this 22<sup>nd</sup> day of July, 2010.

IN WITNESS

Hoda Hamed  
Hisham Hamed

Hoda Hamed

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REC'D PAGE FEE  
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**ACKNOWLEDGMENT**

TERRITORY OF THE VIRGIN ISLANDS }  
JUDICIAL DIVISION OF ST. CROIX }  
} JSS

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of July, 2010 by Hoda Hamed.  
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(NOTARY SEAL)

Heather C. Lewis  
Print Name: Heather C. Lewis  
Notary Serial No. NP 170-07  
Expiration: August 29, 2011

Attest & File  
Recorder

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

MOHAMMED HAMED, by his authorized  
agent WALEED HAMED,

Plaintiff,

v.

FATHI YUSUF and UNITED  
CORPORATION,

Defendants.

CIVIL NO. SX-12-CV-370

**ACTION FOR DAMAGES,  
INJUNCTIVE AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

**TERRITORY OF THE VIRGIN ISLANDS  
DISTRICT OF ST. CROIX**

)  
) SS:  
)

**AFFIDAVIT OF HODA FATHI YUSUF HAMED**

The undersigned Affiant, Hoda Fathi Yusuf Hamed, being first duly sworn, do hereby depose and state under penalty of perjury:

1. On February 5, 2014, I learned that my husband, Hisham Hamed, posted our property at Plot 100 Eliza's Retreat as security in the above-captioned matter.
2. Hisham Hamed posted Plot 100 without my knowledge or consent
3. On or about July 1, 2011, my parents, Fathi and Fawzia Yusuf, gifted Hisham and I the sum of \$1.5 million. The gift was made as a result of Hisham Hamed's marriage to me, and the proceeds of the gift were used to pay off the mortgage from Banco Popular, which encumbered both Plots 65 and 100 and to make renovations to the marital home.
4. Hisham and I have always treated Plots 65 and 100 as one property and



The Walker Legal Group  
2201 Church St.  
Suite 15AB  
Christiansted, St. Croix  
USVI 00820-4611  
Tel: 340-773-0601  
Fax 888-231-0601  
kyt@thewalkerlegalgroup.com

Hamed v. Yusuf, et al., Civil No. SX-12-CV-370  
**AFFIDAVIT OF HODA FATHI YUSUF HAMED**  
Page 2

were required to occupy both plots as our primary residence as a condition for receiving the loan from Banco Popular.

5. At the time I initially filed for divorce from Hisham Hamed on March 22, 2013, I advised my attorney at the time that the marital home was located on Plot 65, but I neglected to inform my counsel that Plot 100 was also part of the marital estate as Hisham Hamed possessed all of the family business records and was charged with executing the purchase of both Plots 65 and 100.

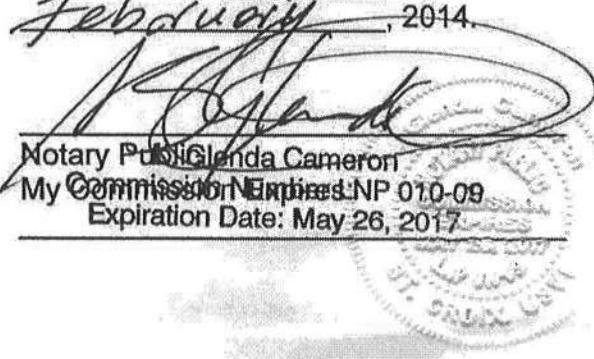
6. In the Islamic culture, it is customary for the husband to handle the family's business affairs. Therefore, I gave Hisham Hamed power of attorney to negotiate the purchase of Plots 65 and 100, and my parents gifted the funds used to purchase the marital home to Hisham Hamed for the benefit of both Hisham and myself. As a result of being far removed from the family's business affairs, I neglected to list Plot 100 as marital property when I filed my Complaint for divorce as I did not have copies of the warranty deeds, mortgage documents, or powers of attorney when I met with my counsel.

FURTHER AFFIANT SAYETH NAUGHT.

Hoda Fathi Yusuf Hamed

SUBSCRIBED AND SWORN TO  
before me this 27<sup>th</sup> day of  
February, 2014.

Notary Public Glenda Cameron  
My Commission Expires: NP 010-09  
Expiration Date: May 26, 2017



ON THE OTHER HAND, AS IN "GOD'S  
LAW AND THE BOOK OF THE LAW"

220 JOURNAL

02/28/2014

VERONICA HANDY, ESQ.

the most common cause of non-accidental death.

...and the same kind of people who I consider as the best players in the world. I am not going to say anything about the other guys, but I think that the best players in the world are the ones that I have mentioned.

...001 page 01 01011 did not receive an edit message yet.

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... the road to Llwyd, o' m' a' myndid i' mynd i' lexiemorff. Llechiol caledigion o' y'w si  
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1047403-105110

THOUGHTS OF A MATURED SOUL



02/28/2014

VERONICA NAVY, ESQUIRE  
CLERK OF THE COURT#53007  
164842-1  
H. Hamed

Mtg. Orig. Amt. \$868,000.00  
Mtg. Loan # 191-1016580  
Requested By: Mrs. Maria Hennemann, AVP  
Paid 09-01-2011  
Releasing Fee: \$24.50

Doc# 2011003596  
Book: 1284  
Pages: 33  
Filed & Recorded  
09/21/2011 12:47PM  
ALTHEA PEDRO  
RECORDER OF DEEDS  
ST CROIX  
REL MTG REC \$ 217.50  
Recorder

**BANCO POPULAR DE PUERTO RICO  
CHARLOTTE AMALIE BRANCH  
RELEASE OF MORTGAGE**

KNOW ALL MEN BY THESE PRESENTS, that **BANCO POPULAR DE PUERTO RICO** the ("Lender") in the Mortgage given between **HISHAM M. HAMED and HODA HAMED**, ("Borrower") dated the 23<sup>RD</sup> day of JULY 2010, on the following described Real Property:

**PLOT NOS. 65 AND 100 (COMPRISING 0.833 AND 0.542 U. S. ACRE  
RESPECTIVELY), BOTH OF ESTATE ELIZA'S RETREAT,  
EAST END QUARTER "A"  
ST. CROIX, U.S. VIRGIN ISLANDS  
AS MORE PARTICULARLY SHOWN ON OLG DRAWING  
NO. 4328 DATED JULY 9, 1986, LAST REVISED MAY 4, 1989.**

Recorded and entered in the Recorder's Book for the District of St. Croix, Virgin Islands, U.S.A. in Book 1241, Page 338, Doc No. 201002865 and noted in the Real Property Register  , Page  , on JULY 23, 2010

does hereby acknowledge that it has received from **HISHAM M. HAMED and HODA HAMED**, "Mortagor"(s) name in said Mortgage, full payment and satisfaction of the same; and in consideration thereof, it does hereby cancel, release and discharge said mortgage.

WITNESS WHEREOF this Release has been executed this 12<sup>TH</sup> day of SEPTEMBER 2011.

**WITNESSES:**

Amelia Basy  
Shermaine Martin-Jones

**BANCO POPULAR DE PUERTO RICO**

BY: Jacquette Bass  
JACQUETTE BASS, ASSISTANT VICE-PRESIDENT

ATTEST: Lawrence Turnbull  
LAWRENCE TURNBULL, LENDING OFFICER

**TERRITORY OF THE VIRGIN ISLANDS )  
JUDICIAL DISTRICT OF ST. CROIX ) ss:  
)**

On this 12<sup>th</sup> day of September, 2011, before me appeared JACQUETTE BASS, known to me (or satisfactory proven) to be the person whose name is subscribed to the within instrument, and acknowledged the she executed the same as ASSISTANT VICE-PRESIDENT of **BANCO POPULAR DE PUERTO RICO**, for the purpose therein contained.

WITNESS WHEREOF, I have hereunto set my hand and official seal.

Verna M. Phillip  
NOTARY PUBLIC

Name: Verna M. Phillip  
My Commission Exp. June 22, 2015  
NP Commission # NP-044-11  
St. Thomas/St. John, USVI District

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

**HODA FATHI YUSUF HAMED,**

**Plaintiff,**

**v.**

**HISHAM MOHAMMED HAMED,**

**Defendant.**

**CASE. NO. SX-13-DI-42**

**ACTION FOR DIVORCE**

**TERRITORY OF THE VIRGIN ISLANDS**

)  
) SS:  
)

**DISTRICT OF ST. CROIX**

**AFFIDAVIT OF HODA FATHI YUSUF HAMED**

The undersigned Affiant, Hoda Fathi Yusuf Hamed, being first duly sworn, do hereby depose and state under penalty of perjury:

1. When Mr. Hamed asked my father for my hand in marriage, he told me to drop out of University. He said he would be the breadwinner and I would take care of the home and children. I reluctantly agreed to drop out of college. However, as our marriage progressed, I asked Mr. Hamed on numerous occasions if I could return to college, and he always refused me. He would just say that my place was in the home.
2. At the time Mr. Hamed asked me to marry him and I agreed, his parents flew to Jordan to pick me up and accompany me to St. Croix, U.S. Virgin Islands.
3. When we applied for the marriage license, I was not told, nor did I read anything about a three-month requirement to have the marriage solemnized. Mr. Hamed is the one that picked up the marriage license

Hamed v. Hamed, Fam. No. SX-13-DI-42  
**AFFIDAVIT OF HODA FATHI YUSUF HAMED**  
Page 2

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

from the Court and would have been privileged to that information.

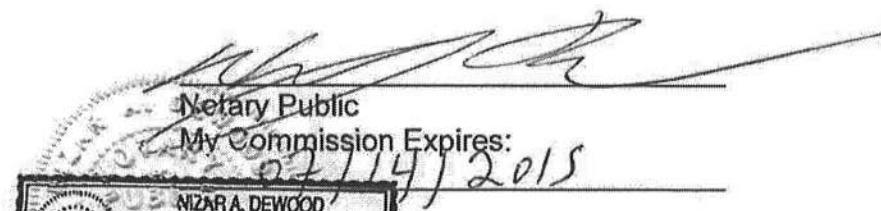
4. When Mr. Hamed left the family home in November 2012, he did not regularly visit our children. It was only after I filed for divorce did Mr. Hamed start visiting the children and staying with them for longer periods of time. However, I am still the primary caregiver and custodian of our minor children.
5. Our children have had no negative effects as a result of their father's absence from the home. They do well in school, they maintain high grades, and they suffer from no physical ailments related to stress.
6. Even before I filed for divorce, Mr. Hamed refused to talk to me about a reasonable resolution of our dispute, despite my numerous requests. He told me after I filed for divorce, "I am going to dump you by your mother's house like how I took you. Without any kids and without any money."
7. I never told Mr. Hamed that I wanted the house and all of his money.

FURTHER AFFIANT SAYETH NAUGHT.



Hoda Fathi Yusuf Hamed

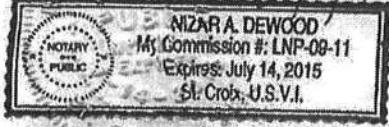
SUBSCRIBED AND SWORN TO  
before me this 30<sup>th</sup> day of  
Sept., 2013.



Notary Public

My Commission Expires:

07/14/2015



02/28/2014

**VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT**

bioRxiv preprint doi: <https://doi.org/10.1101/2023.09.21.553700>; this version posted September 21, 2023. The copyright holder for this preprint (which was not certified by peer review) is the author/funder, who has granted bioRxiv a license to display the preprint in perpetuity. It is made available under aCC-BY-NC-ND 4.0 International license.

All these factors have to be considered in order to make the right choice.

Finally, we can see that the particle has enabled our optimality hole because

Electrolytic reduction methods for the synthesis of carbon nanotubes

#### ANSWER

La nostra linea di prodotti è ancora un tutt'uno e non file può

İşte böyle ve böyle bir gün çok yarlı - eninde eninde gizlice

10. *Leptodora* has been used as a propylene and Lepidoceras.

Algunas de las mejores marcas que lo quieren y adoran.

“The first time I saw a peregrine falcon it was like being hit by a lightning bolt.”

"In the end, I think the whole thing is kind of... how does one say... kind of..."

Journal of Health Politics, Policy and Law, Vol. 34, No. 4, December 2009  
DOI 10.1215/03616878-34-4 © 2009 by The University of Chicago

Digitized by srujanika@gmail.com

#### REFERENCES AND NOTES

OR UNKNOWN ORIGIN - 100%

1976) — *Journal of the American Statistical Association*, 71, 352-358.

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**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

HODA FATHI YUSUF HAMED, )  
Plaintiff, ) SX-13-DI-42  
v. ) ACTION FOR DIVORCE  
HISHAM MOHAMMED HAMED, )  
Defendant. )  
\_\_\_\_\_

**AFFIDAVIT**

I, Amjad Hammoudeh, being first duly sworn, do hereby make the following statements:

1. I make the following statements based upon personal knowledge.
2. I have been an Imam in the Muslim faith for over 20 years.
3. I am currently the Imam (the equivalent of a priest) at the Virgin Islands International Islamic Society, Inc., and have acted in that capacity for the last three years.
4. Mr. Hamed came to me to seek a divorce as much as a year ago. I counseled him to seek counseling and to try to work matters out with his wife. He returned more than once to discuss divorce. He asked what the conditions were of divorce, he wanted to know if the Islamic divorce law was for him or against him. Although it is easy for him to obtain an Islamic divorce, I explained to him his obligations under Islamic law, caring for the wife and children and providing housing. He did not seem to like my explanation, and said he would think about it. I also counseled him he should not divorce her, as she did not appear to have fault.

5. In Islamic culture the men are solely responsible for arranging the marriage and making certain the marriage is properly performed. Men alone deal with

**EXHIBIT 8****EXHIBIT**

23

02/28/2014

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT  
Page 2

AFFIDAVIT

*Hoda Fathi Yusuf Hamed v. Hisham Mohammed Hamed*  
Superior Court; SX-13-DI-42

the legalities of the marriage. It was Mr. Hamed's responsibility to make certain the marriage met all legal requisites.

6. Unfortunately, my predecessor was not aware of the requirement of the marriage license imposed by the Government of the Virgin Islands. As a result, marriages were performed without the participants' understanding that the Government had additional requirements beyond the marriage ceremony and execution of the Marriage Certificate by the Imam, the parties, and witnesses.

7. During my tenure as the Imam on St. Croix, I corrected the practice related to licensing. All marriages performed by me have been appropriately performed with the requisite licensing.

8. I have reviewed the records and it appears that there are at least eight (8) couples on St. Croix who had marriage ceremonies performed on St. Croix by the former Imam without being informed of the licensing requirement. They are likely to be similarly situated to the Hameds.

FURTHER AFFIANT SAYETH NAUGHT.



ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS )  
DISTRICT OF ST. CROIX . ) ss.

On this the 30 day of May, 2013 before me the undersigned officer, personally appeared Amjad Rhee, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and who further declared to me that the said document was freely and voluntarily executed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereto set my hand and official seal.

