

IN THE SUPREME COURT OF THE VIRGIN ISLANDS



FATHI YUSUF,)	
)	Appellant,)
)	S. CT. CIV. NO. 2015-0009
v.)	
)	Re: Super. Ct. Civ. No. SX-12-CV-370
)	
MOHAMMAD HAMED, WALEED)	
HAMED, WAHEED HAMED, MUFEED)	
HAMED, HISHAM HAMED, and)	
PLESEN ENTERPRISES, INC.,)	
)	
)	Appellees.)
)	

**REPLY TO APPELLEE MOHAMMAD HAMED'S
OPPOSITION TO EMERGENCY MOTION FOR STAY PENDING APPEAL**

Appellant Fathi Yusuf (“Yusuf”), respectfully submits this Reply to the Opposition to Yusuf’s Emergency Motion for Stay Pending Appeal filed by appellee Mohammad Hamed (“Hamed”) on February 17, 2015 at 4:55 p.m. (the “Opposition”). In the Opposition, like the opposition he filed in the Superior Court, Hamed does not and cannot argue that a stay pending appeal will result in closure of the Plaza Extra-West store. Instead, he simply asserts that this Court’s invalidation of the Lease¹ will result in closure. That conclusory assertion is not only irrelevant to the stay issues, but is patently wrong. Yusuf’s final proposed windup plan, which the Superior Court rejected, was to subdivide and sell the 16 acres on which the Plaza Extra-West store is located, along with the right to operate that store, at a closed auction between the partners. Whichever partner purchased the right to operate that store and the sixteen acres would continue to operate the supermarket.

¹ Capitalized terms not otherwise defined in this Reply shall be defined as provided in Yusuf’s Brief In Support of Emergency Motion For Stay Pending Appeal filed on February 13, 2015 (the “Brief”).

Hamed's entire discussion of the first windup plan proposed by Yusuf (Opposition at p. 5) which would arguably have resulted in closure of the West store, is misleading and irrelevant.

Yusuf withdrew that initial plan and supplanted it with a final plan submitted to the Superior Court on October 28, 2014 that provided for the closed auction of the Plessen land on which Plaza Extra-West is located between Yusuf and Hamed, in which each would submit bids for the inventory, equipment, and the right to continue operating that store, and to acquire the 16 acres of Plessen land on which it is located. *See “Response to Hamed’s Comments Concerning The Court’s Proposed Wind Up Plan” with Exhibits 1-3 (the “Response”) attached as Exhibit A.* Yusuf’s last plan is included as Exhibit 3 to the Response. Yusuf’s final plan is one that maximizes partnership value, keeps the store open, and enables the parties to achieve a complete divorce in the supermarket business, which is the objective of the partnership windup. This appeal challenges the Superior Court’s effective adoption of the disposition of the West store proposed by Hamed in his final plan, instead of the disposition set forth in Yusuf’s final proposed plan.

Before responding to arguments regarding the four factors for granting a stay pending appeal, one comment is in order. Hamed claims that the “partnership has now begun closing its business activities (*See Exhibit 1*), which will allow all claims to then be resolved by the Master once this process is completed.” *See Opposition at p. 5.* Hamed does not provide any explanation of what business activities have “begun closing.” At ¶ 10 of Attorney Joel H. Holt’s declaration, he states, again without any elaboration, that “the partnership began taking the steps to close its business activities, under the supervision of the Master, with Yusuf as the Liquidating Partner.” While Yusuf acknowledges that he has, as Liquidating Partner, taken appropriate steps to implement the Plan by, for example, arranging for an outside firm to conduct

an inventory of the landed costs of the goods and supplies in the three Plaza Extra Stores

aware of no customary business activities of the Partnership that have begun closing.

A. Irreparable Harm to Yusuf

Hamed claims there is no irreparable harm to Yusuf if the right to operate the West store is transferred to Hamed, and the challenged Lease becomes operative, because this transfer is not in the formal sense a transfer of a “property interest.” (Opposition at 2). This makes no sense. The exclusive right to operate the West store at the location built with millions of dollars of Partnership monies² is obviously an important Partnership interest that is being handed to the Hameds in a way that Yusuf contends is unlawful in this appeal. Once that exclusive right is exercised by Hamed, and KAC357, Inc. begins contracting with vendors, employing and paying workers, and paying gross receipts and other taxes, it will be exceedingly difficult for this Court to undo the transfer. Keeping the status quo during the appeal – i.e., continuing to have the Partnership operate the West store and share 50-50 in its profits – is the only way to avoid depriving this Court of the ability to review whether the Superior Court’s disposition of the West store was lawful.

B. Reasonable Likelihood of Success on the Merits

Hamed argues that because Yusuf’s plan to subdivide and sell the 16 acres requires a dissolution of Plessen and appointment of a receiver for the corporation, he does not have a reasonable chance of showing that the Court’s rejection of his plan, and adoption of Hamed’s plan, was erroneous. According to Yusuf, the Court’s denial of a request to appoint a receiver is

²At footnote 7 of the Opposition, Hamed suggests that just like Plaza Extra-West, Plaza Extra-East was built with “millions of dollars” of Partnership funds. Yusuf submits that the fully developed record will reflect that the building and other improvements ultimately occupied by Plaza Extra-East were constructed before the formation of the Partnership in 1986. See p. 10-12 of the Response (Exhibit A) for a further discussion of why the division of the Plaza Extra Stores proposed by Yusuf is proper, but the division proposed by Hamed and approved by the Superior Court is not.

“not properly before the Court” because it was not specifically mentioned in the Notice of Appeal.

Appeal of the Windup Order. (Opposition at 9). This argument hardly merits consideration by this Court. While that issue may not have been specifically mentioned in the Notice of Appeal filed in the captioned proceeding, it was most certainly identified in the Notice of Appeal commencing the related case, S. Ct. Civ. No. 2015-0001, which Yusuf has sought to consolidate with this case. Moreover, the Notice of Appeal in this case seeks reversal of the Windup Order as to Plaza Extra-West, and states that the Superior Court committed legal error in issuing that part of the Windup Order. That is sufficient. A notice of appeal need not make specific reference to each argument to support reversal that the appellant intends to make. Yusuf made the request to appoint a receiver and dissolve Plessen in the Superior Court, and it was well-supported by the strife and dissension that characterize that Yusuf/Hamed corporation no less than the Yusuf/Hamed Partnership, and by the Third Circuit decision in *Moran v. Edson*, 493 F.2d 400 (3d Cir. 1974), the seminal Virgin Islands case on shareholder deadlock as a basis for dissolution and appointment of a receiver. The Court acknowledged “the persistent deadlock between the parties” in its July 22 Opinion, but did not even mention the *Moran* decision in that opinion. See *Hamed v. Yusuf*, 2014 V.I. LEXIS 52, *22 (Super. Ct. July 22, 2014). Besides the shareholders’ deep disagreement over the propriety of the self-dealing Lease, Yusuf presented uncontroverted evidence that two Hamed shareholders of Plessen, one of whom was a director, misappropriated \$460,000 in corporate monies. Yusuf has at the very least a reasonable chance of showing on appeal that the July 22 order denying the request to dissolve Plessen and appoint a receiver was erroneous.³

³At page 13 of the Opposition, Hamed suggests that Yusuf cannot prevail on his argument for the appointment of a receiver for Plessen to sell the premises occupied by Plaza Extra-West at a closed auction because the shareholders of Plessen include Hamed’s sons over whom the Court

Next, Hamed argues that even if a receiver had been appointed, “it is total specula-

believe that the Receiver would “decide” to sell the 16 acres at a closed auction between Hamed and Yusuf. (Opposition at 9). That argument presupposes, erroneously, that the Court could not direct the receiver to dispose of the 16 acres in that fashion. “It is axiomatic that a receiver’s power is derived from and limited by the order of the court appointing him. . . .” *Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 25 (1st Cir. 1990) (citations and internal marks omitted). The Superior Court surely has the equitable power to direct any receiver it appoints to dispose of that corporate asset by closed auction between Hamed and Yusuf.

Finally, Hamed argues that the Yusuf plan is improper because it has the sale proceeds of the 16 acres going to the Partnership, for distribution to the Hamed/Yusuf partners on a 50-50 basis, instead of to Plessen, for distribution to the Hamed/Yusuf shareholders on a 50-50 basis. (Opposition at 9). This is plainly an elevation of form over substance, and is not a meaningful argument for upholding the Superior Court’s Plan as to West.

Regarding the fairness of the Lease to the Yusuf shareholders of Plessen, the Superior Court’s ruling was premised on the view that the Court may only consider the potential beneficial or negative effects on the corporation, and not those effects on the two ownership factions. The Superior Court said, “The Court looks not to the benefit conferred upon the majority directors, but rather on the potential beneficial or negative effects on the corporation.” See *Hamed v. Yusuf*, 2014 V.I. LEXIS 52 at *13-14. Based on this erroneous legal proposition, the Superior Court, therefore, disregarded as irrelevant Yusuf’s arguments regarding “the advantage the Hamed family receives” from the Lease, as compared with the disadvantage that the Lease causes to the Yusuf family, particularly with respect to “winding up the Partnership.”

allegedly has no power. All of Hamed’s sons who are shareholders of Plessen are additional counterclaim defendants in this case over whom the Court clearly has jurisdiction.

Id. at *13. In upholding the validity of the Lease and refusing to enjoin its implementation,

Superior Court specifically said that it was “disregard[ing] any benefit to the [Hameds],” and instead focusing solely on its effects on Plessen. *Id.* at *14. The Superior Court’s failure to examine whether the Lease benefitted the Hamed shareholders at the expense of the Yusuf shareholders was clear error. *See Sinclair Oil Corporation v. Levien*, 280 A.2d 717, 723 (Del. 1971) (the party engaged in the self-dealing transaction “must prove that [it] was intrinsically fair to the minority shareholders”); *Cascella v. GDV, Inc.*, 1979 Del. Ch. LEXIS 486, p. *3 (Del. Ch. 1979) (where one shareholder “stands on both sides of a transaction,” that shareholder “has the burden of demonstrating the ‘intrinsic fairness’ of the transaction insofar as it affects the rights and interests of the minority shareholders”).

C. Irreparable Harm to Hamed

If, as proposed by Yusuf, Plaza Extra-West is co-managed by the Partners pursuant to the terms of the Superior Court’s preliminary injunction pending the disposition of Yusuf’s appeal, Hamed will clearly continue to benefit from half of the net profits of that store. Hamed strains to show why he would be irreparably harmed by the issuance of a stay. He argues that a stay of the Windup Order as to West harms him because Yusuf, as 50-50 partner, “would still have a key management role” in that store. (Opposition at 15). Hamed suggests that Yusuf has an incentive to make Plaza West unsuccessful during the pendency of the appeal because “there is no result on appeal other than the Plaza West store possibly closing.” (Opposition at 15). As discussed above, the premise that West will have to close if Yusuf prevails on appeal is false, and hence any inference that Yusuf would exert his influence as a 50-50 partner to damage West during an appeal is unfounded. Yusuf clearly has an incentive to maintain the profitability of Plaza Extra-West during the pendency of the appeal, especially because he is seeking by this appeal to be

given an equal opportunity with Hamed to bid for the right to operate that store and owner of the land and improvements associated with it.

D. The Public Interest

While the public interest may ultimately be served by market competition as claimed by Hamed, it is best served in this case by maintaining the status quo, which “insures that each party has the opportunity to fully and fairly have its case decided on appeal.” *First American Development Ground/Caribe, LLC v. WestLB AG*, 2012 V.I. Supreme LEXIS 39, *14 (V.I. April 30, 2012).

E. Any Bond Amount Should Be Nominal.

Hamed does not dispute that the Lease expressly contemplates that the Partnership will remain in possession of the Plaza Extra-West premises for an indefinite period of time and that KAC357, Inc. will not be obligated to commence paying rent until the Partnership vacates the premises. Accordingly, any profits that KAC357, Inc., a start up company with absolutely no operating history, might make in the future is completely irrelevant to the issue of the bond amount. Moreover, the new declaration of Waleed Hamed attached as Exhibit 5 to the Opposition makes no effort whatsoever to dispute any of the statements contained in John Gaffney’s declaration dated February 10, 2015, attached as Exhibit 5 to Yusuf’s Brief. While Waleed Hamed attaches, without any explanation, the first page of United Corporation’s tax returns for 2006 through 2010, conspicuously absent are the tax returns for 2011 going forward. Clearly, he does not dispute the declining profitability of Plaza Extra-West in 2013 and 2014 as reflected in Mr. Gaffney’s declaration, or that the amounts set forth in Mr. Gaffney’s declaration do not take into consideration the payment of any rent. While the declaration of Waleed Hamed suggests that the declining profitability is the result of the “current management crisis,” he fails

to explain, among other things, the effect of the opening of a nearby competitor, Ca

Carry, in Frederiksted in 2011 or the 2012 closure of HOVENSA. In any event, forecasts about the profitability or lack thereof of KAC357, Inc. simply have no bearing on the amount of a bond.

For all of the foregoing reasons, Yusuf respectfully requests this Court to grant his Emergency Motion For Stay Pending Appeal and provide such further relief as is just and proper under the circumstances.

Respectfully Submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: February 18, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2015, I caused the foregoing **Reply To Appellee Mohammad Hamed's Opposition To Emergency Motion For Stay Pending Appeal** to be electronically filed with the Clerk of the Court using the V.I. Supreme Court e-filing system and that the attorneys listed below, who are Filing Users, will be e-served by the Notice of Electronic Filing:

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

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

FATHI YUSUF'S RESPONSE TO HAMED'S COMMENTS CONCERNING THE
COURT'S PROPOSED WIND-UP PLAN

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully submits the following response to "Hamed's Comments Re Proposed Winding Up Order" ("Hamed Comments"), pursuant to this Court's Order dated October 7, 2014 (the "Order").

The Hamed Comments are very significant insofar as he concedes for the first time that bidding by Hamed and Yusuf is an appropriate method of liquidating the assets of the partnership. See Hamed Comments, p. 8-9 and Exhibit 4 to the Hamed Comments, Section 8(1), (2), (3), and (5). Although the Hamed Comments suggest that the use of bidding as a liquidation tool should be limited to the assets of Plaza Extra-Tutu Park and the Plaza Extra trade name, the logic of this position is that the bidding method of liquidation should be extended to cover all partnership assets, including Plaza Extra-West. Bidding by Hamed and Yusuf offers the best

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means for maximizing partnership value, and also ensures continued operation of the stores (thereby avoiding the economic waste that would be entailed by closure of the stores).

Of course, the bidding option for Plaza Extra-West can only meet the goal of maximizing partnership value on windup if the lease that was created by action of the Board of Directors of Plessen Enterprises, Inc. ("Plessen") on April 30, 2014 (over the objections of the Yusuf faction that also owns 50% of Plessen's shares) is set aside by this Court. Hamed's suggestion that given the disputed lease, only the inventory and equipment of Plaza Extra-West would be subject to bid plainly will not maximize partnership value. The Court denied Yusuf's motion to nullify and void that lease in its July 22, 2014 Opinion and Order. That order is the subject of a pending motion for reconsideration which focuses primarily on the intrinsic fairness to the Yusuf shareholders and to Plessen of a lease that will encumber Plessen's property for 30 years. But as that motion notes, this Court also has power to revisit the order approving the disputed lease as part of its power to approve a plan of liquidation for the Plaza Extra Stores. Yusuf submits that, whatever may be said about any purported benefits to Plessen from the lease, it is clear beyond peradventure that partnership value cannot be maximized by allowing either of these partners to encumber Plessen's property with a 30-year lease, and appropriate the millions of dollars in leasehold improvements paid for with partnership funds. Rather, both the Plaza Extra-West supermarket and the 16 acres on which it sits should be put up for bid by Yusuf and Hamed, so that the value of this partnership asset can be maximized and realized at time of windup.

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Yusuf and Hamed are 50% partners in the Plaza Extra Stores and for all intents and purposes are also the 50% owners of Plessen. They have the power as Plessen shareholders to

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subdivide the 16 acres of land on which that store is situated from the much larger tract owned by Plessen, and to offer that land as part of any bid for that store. And this Court has the power to order this relief in conjunction with the windup of the partnership. Since either Hamed or Yusuf will be the successful bidder, there will be no need for a lease.

Any plan of liquidation that entails a continuing business relationship of any kind by Hamed and Yusuf is a non-starter. The Hamed Plan and the Court's proposed plan (to the extent it leaves the disputed lease in place), does just that. By creating a scenario in which the Yusuf and Hamed families will jointly operate a business (Plessen) for the next 30 years, with a Hamed-controlled corporation as the tenant, the Court's proposed plan would frustrate the very purposes for dissolving the partnership. It must be abundantly clear to this Court that Hamed and Yusuf simply cannot coexist as owners of any business. They must be given the equivalent of a divorce and there must be a clean break. Far from creating any finality to the Hamed and Yusuf divorce, the Hamed Plan and the Court's proposed plan (if it leaves the disputed lease in force) only ensures more strife, more mutual antagonism and ultimately more litigation down the road.

The Hamed Comments suggest that in formulating a plan, this Court should follow the Montana Supreme Court's decision in McCormick v. Brevig, 96 P.3d 697 (Mont. 2004). Hamed Comments at 3. That is a very peculiar suggestion on his part, because the only plan that is consistent with McCormick is the initial Yusuf Plan, filed on April 7, 2014, which contemplated a liquidation sale of all partnership assets to any third party who was interested. McCormick, as described in the Hamed Comments at page 1, note 1, involved a partnership which operated a

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family farm and whose partners were a brother and sister. The Montana Supreme Court reversed an order of the trial court that dissolved the partnership by having the brother purchase his sister's shares on the basis of their appraised value. It construed the Revised Uniform Partnership Act ("RUPA") to require dissolution only by liquidation sale to third parties.¹

Hamed acknowledged that "Yusuf's initial plan essentially followed this 'total' liquidation process" that McCormick held is mandatory under RUPA. Hamed Comments at p. 3. But then he goes on to assert that his proposed plan only "somewhat modified"² Yusuf's Plan

¹Hamed incorrectly suggests that the holding in McCormick was based on the rule against in-kind distributions. See Hamed Comments at p. 2. That rule was not cited by the Montana Supreme Court in its decision and has nothing to do with that Court's holding that the RUPA sections governing dissolution do not permit a buyout. A buyout is plainly not an in-kind distribution of partnership property. What does violate the rule against in-kind distributions is the Hamed Plan's treatment of Plaza Extra-West, which transfers to the Hameds, without payment of any consideration, the building and parking lot paid for with partnership monies.

²Hamed makes the extraordinary claim that his proposed plan submitted on April 30, 2014 only "somewhat modified" Yusuf's initial plan, accepted the "same sort of liquidation [provided in the initial Yusuf plan] yet (1) allowed the West store to remain open . . . because the new tenant at that location, KAC357, Inc., was willing to operate the store by guaranteeing to the Court that it would employ the existing employees and buy the inventory and equipment at their value, and (2) allowed the St. Thomas store to remain open by Hamed agreeing to take on 100% of the leasehold liabilities and paying cash for the stores' assets (inventory and equipment)." See Hamed Comments at p. 4 and n.6 (emphasis in original and combining footnote with text). Not only has Hamed failed to provide any clue how this Court could possibly enforce any such "guaranty" from KAC357, Inc., a non-party, his proposed plan simply does not even come close to providing the same sort of assurances of maximizing partnership value in liquidation as the Yusuf Plan. Rather, as pointed out in Defendants' Response to Surreply Regarding Dissolution Plans filed on June 16, 2014 (the "Response"), the Hamed Plan was premised on the conveyance of substantially all of the assets of the partnership to KAC357, Inc., a start up company incorporated on April 22, 2014 and owned by three of Hamed's sons. The rationale offered for this Court to approve such a patently self-dealing plan providing for the forced buyout of Yusuf was to prevent business closures, save jobs, and protect the Virgin Islands' economy. But there are other fairer ways to accomplish that, even assuming it is a proper criterion under RUPA, and the bidding procedure identified in the new plan attached as Exhibit 3 is the best method.

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and “complie[s] with” and “satisfie[s]” the relevant RUPA provisions, as construed by McCormick. Hamed Comments at p. 3. Hamed’s Plan for Plaza Extra-West, the “lynchpin” of which was the 30-year disputed lease imposed on Plessen against the opposition of the other 50% shareholder,³ is hardly a mere modification of a straight liquidation plan. It essentially gives away the supermarket at West to the Hameds by allowing them to pay for it over a 30-year period and forcing the Yusufs to do business with them as landlords for that entire period of time. And it is impossible to square the Hamed Plan for West with the straight liquidation rule endorsed by the Montana Supreme Court in McCormick, which forbade any result that allowed one partner to continue to operate the business.

McCormick's construction of RUPA has not been cited approvingly by any other court and has been sharply criticized in the scholarly literature. See Note: The Revised Uniform Partnership Act – Breaking Up is Hard to Do: Why the Right to “Liquidation” Does not Guarantee a Forced Sale Upon Dissolution of the Partnership, 31 W. New. Eng. L. Rev. 797 (2009).⁴ As this literature indicates, there are numerous cases decided under UPA, the

³See Hamed v. Yusuf, 2014 V.I. LEXIS 52, *12 (Super. Ct. July 22, 2014) (describing the disputed lease as the “lynchpin” of the Hamed Plan).

⁴Horne v. Aune, 121 P.3d 1227, 1233-34 (Wash. App. 2004) specifically criticizes McCormick's construction of RUPA. Another case decided before McCormick in a RUPA jurisdiction has construed RUPA to permit alternatives to pure liquidation sales to third parties as a means of winding up a partnership. See Creel v. Lilly, 729 A.2d 385, 400 (Md. App. 1999) (finding that under both UPA and RUPA a partnership that dissolves by death of a partner may “continue under the same name or as a successor partnership without all of the assets being liquidated”). In re: Dissolution of Midnight Star Enterprises, L.P., 724 N.W.2d 334 (S.D. 2006) is also instructive. There, the Supreme Court of South Dakota held that “buyouts and other alternatives to forced sales may be utilized to wind up the partnership.” Id. at 340. While that case involved

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predecessor to RUPA, that recognize windup alternatives to selling off assets to third parties, id. at 804-05. Those cases are premised on the reality that liquidation sales will often “result in a loss of [partnership] value. . .” Id. at 806. And there is no indication whatsoever in the language or comments to RUPA that it intended to alter that case law. See id. at 823-24.⁵

While it is clear that only the initial Yusuf Plan would pass muster if this Court adopted McCormick's construction of RUPA, the case is poorly reasoned and should not be followed. At the same time, if the Court is going to deviate from McCormick, it should adopt a plan that maximizes partnership value in a windup and sale. Bidding of the kind Hamed now proposes for Plaza Extra-Tutu Park is the best way to accomplish that, but it should be applied to the West store as well, albeit without the Hamed lease that tilts the tables, hands the Hameds the right to operate the store without paying up front for that right, and results in far less partnership value being realized upon windup.

In summary, returning to the real issue at hand - the Court's proposed plan, not the previously submitted competing plans - Yusuf submits that for Plaza Extra – Tutu Park and Plaza Extra – West, the two stores regarding which the partners cannot agree upon a disposition, the Court should implement the private auction or bidding procedures outlined in Yusuf's Comments, Objections And Recommendations Concerning The Court's Proposed Plan filed on

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the Revised Uniform Limited Partnership Act (codified in the Virgin Islands at V.I. Code Ann. tit. 26, §§321-575 (Supp. 2014)), its dissolution provisions are very similar to those in RUPA. Moreover, the Supreme Court of South Dakota cited RUPA and UPA cases, including Horne, in support of its holding. See id. at 340 (citing to Horne, Maras v. Stilinovich, 268 N.W.2d 541 (Minn. 1978), and Wathen v. Brown, 189 A.2d 900 (Pa. 1963)).

⁵See id. at 805, notes 64, 65 and 66 (citing a number of UPA cases holding that courts may employ alternatives to liquidation such as buyouts).

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October 21, 2014 ("Yusuf Comments"), which bidding process Hamed also supports to the extent it suits his purpose. Yusuf has outlined those bidding procedures in his new plan attached hereto as Exhibit 3.

Yusuf Should Be The Liquidating Partner.

As predicted in the Yusuf Comments, Hamed has recycled his same arguments that he should be the liquidating partner or that Yusuf somehow is statutorily precluded from serving as the liquidating partner. Yusuf has adequately responded to these arguments in the Yusuf Comments at p. 4-6. Hamed's argument that V.I. Code Ann. tit. 26, ¶ 74(e) is not germane to whether Yusuf is conflicted from serving as Liquidating Partner by his interests in United Corporation rings completely hollow. Section 74(e) provides "that a partner does not violate his duty of loyalty or obligation under this chapter . . . merely because the partner's conduct furthers the partner's own interest." Essentially, Hamed argues that the United rent claim and Yusuf's related accounting claim present an irreconcilable conflict beyond the scope of Section 74(e) but utterly fails to explain why that is the case. This argument borders on the absurd, since payment of the undisputed rent claimed by United would do no more than further the legitimate business interest of Yusuf as an owner of United and the disputed rent is specifically left to be determined by the Court as part of the post-liquidation accounting.

Plainly, Yusuf is the only logical person to serve as the liquidating partner because Hamed is incapable of and unqualified for that position, and the Master cannot perform the functions of a liquidating partner without effectively becoming a receiver. Accordingly, Yusuf

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should serve as the liquidating partner under the supervision of the Master as contemplated by the Order or the Master's role should be formally converted to a Receiver by order of the Court.

At page 6 of his comments, Hamed claims that he "has moved for a determination that Fathi Yusuf was a wrongfully dissociating partner, relying on 26 V.I.C. § 171. This issue is still pending." As the record in this case clearly will reflect, no such motion was ever filed or remains pending. Moreover, as pointed out in Defendants' Reply to Plaintiff's Response To Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up Or In The Alternative, To Appoint Receiver To Wind Up Partnership at p. 2-3, the concept of dissociation cannot be applied to a two person partnership. As explained in Corrales v. Corrales, 198 Cal. App. 4th 221 (Cal. Ct. App. 2011), "[t]he purpose of dissociation is to allow the partnership to continue with the remaining partners. When a partner withdraws from a two person partnership, however, the business cannot continue as before. One person cannot carry on a business as a partnership." Id. at 228. As pointed out in the Response at p. 6:

Despite repeatedly being challenged to do so, Hamed has never bothered to explain how the concept of dissociation can be applied to a two person partnership and how Yusuf could possibly be found to have wrongfully dissociated in light of the provisions of V.I. Code Ann. tit. 26, § 122(b), which make crystal clear that the concept of wrongful dissociation does not apply to the circumstances of this case.

Hamed claims that the case of Essay v. Essay, 175 Neb. 689 (Neb. 1963) stands for the proposition that "the absolute denial of the other partner's interest in the partnership is not only a wrongful act, but one that dissociates him from the partnership." See Hamed Comments at p. 6. Essay simply does not say this. Rather, in Essay, the Supreme Court of Nebraska merely agreed with the trial courts' finding that the partnership was dissolved on the date one of the partners

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informed the other that she was not a partner and never had been. *Id.* at 693. The words “wrongful” and “dissociation” do not appear anywhere in the decision.

While Yusuf may have denied the existence of the partnership as alleged by Hamed in his complaint, there is nothing “wrongful” about such denial. Yusuf never denied that there was an agreement with Hamed to carry on the business of the Plaza Extra Stores and to divide the net profits equally.

Hamed claims that “Yusuf tried to convert all of Hamed's partnership interest by seizing all of its assets – including Hamed's approximately \$20,000,000 of \$40,000,000 held in cash by the U.S. Marshal” See Hamed Comments at p. 6 (emphasis in original). As pointed in the Response, “Defendants categorically deny this outlandish claim and note that Hamed has failed to produce any supporting evidence.” See Response at p. 6. Again, Hamed provides no record evidence of this claim or his claim that “it is undisputed that Yusuf used the partnership funds to pay his kids' unrelated income taxes.” See Hamed Comments at p. 6, n. 6.

Finally, Hamed argues that if Yusuf is appointed Liquidating Partner, “all acts of the liquidating partner . . . [must be] subject to prior notification and approval of the Master, not just ‘after the fact’ review.” Indeed, Hamed goes so far as to suggest that Yusuf should not be allowed to unilaterally sign as liquidating partner on any account and that all checks must be signed solely by the Master. Yusuf respectfully submits that this suggestion is both impractical and would effectively convert the Master into a receiver. As the Liquidating Partner, Yusuf would be required to operate within an approved budget under the supervision of the Master. Under Step 2 of the Court's proposed plan, “the Liquidating Partner shall submit to Hamed and

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the Master each month a reconciliation of actual expenditures against the projected expenses set forth in Exhibit A [Wind Up Budget]. Unless the partners agree or the Master orders otherwise, the Liquidating Partner shall not exceed the funds deposited in the Liquidating Expenses Account.”

The Division of the Plaza Extra Stores

Hamed approves of the Court’s proposed disposition of Plaza Extra – East and Plaza Extra – West claiming that “the Court’s proposed liquidation order fully complies with RUPA by liquidating their contents by having each partner buy the equipment and inventory in the physical stores that they each control through other corporate interests.” See Hamed Comments at p. 7. Here, Hamed candidly acknowledges what the Court’s proposed plan effectively glossed over, namely, that the Court’s approval of the disputed lease with KAC357, Inc. provides Hamed not only with the “lynchpin” to his plan but outright “control” of Plaza Extra – West. Importantly, by approving the lease to KAC357, Inc., the Court denies the partnership the value of the leasehold interest in the premises occupied by Plaza Extra-West without any compensation for the value of that leasehold or the improvements that were constructed entirely with partnership funds and represent a significant partnership asset.

Yusuf’s control of Plaza Extra – East, through his ownership and control of United Corporation, has been a fact of life from the inception of the business relationship between Yusuf and Hamed. Although Plaza Extra – East never had a written lease agreement with United, it is undisputed that it was obligated to pay rent for the property owned by United and occupied by the supermarket store. If the landlord/tenant relationship between United and Plaza Extra – East

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ever ended, it was always perfectly clear that United would continue to own and control the premises occupied by Plaza Extra – East.

Plaza Extra – West is an entirely different story. Plaza Extra – West occupies land owned by Plessen, a corporation jointly owned by the Hamed and Yusuf families and entirely capitalized with profits derived by Hamed and Yusuf from the operation of the Plaza Extra Stores. The building and related improvements on that land were constructed by the partnership using funds of the partnership. Plaza Extra – West was opened in 2000 and has never paid any rent to Plessen for the land it occupies. Clearly, Hamed and Yusuf did not contemplate an end to this unusual landlord/tenant relationship and accordingly did not provide for what would happen in the event their partnership dissolved along with the landlord/tenant relationship. As part and parcel of Hamed’s plan for winding up the partnership, Hamed usurped control of Plaza Extra – West by using his disputed control over the board of directors of Plessen to approve a 30 year lease by Plessen to KAC357, Inc. Unfortunately, this Court’s approval of that lease effectively handed Hamed control over Plaza Extra – West and deprived the partnership of the value of its leasehold interest and improvements. If left in place, this lease also will effectively condemn the Hamed and Yusuf families to continue dealing with one other for another 30 years, a solution wholly at odds with the purpose of dissolving the partnership and winding up its affairs. Because the partners never agreed to or even contemplated such Hamed control of Plessen or Plaza Extra - West, Yusuf submits that the only fair way to deal with the assets of this store is to put the parties back in the same position they occupied before the disputed April 30, 2014 special meeting of directors. Then, both partners would have an opportunity to bid on and acquire Plaza

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Extra – West. Hamed clearly agrees that the bidding process with respect to Tutu Park is fair and, if the lease of Plaza Extra – West is undone, a private auction of Plaza Extra – West by competitive bidding between the partners also will be a simple and fair solution for that location.

The “Plaza Extra” trade name

Hamed proposed that the partners agree that the name of any store be transferred with each store, without either partner being able to use it at any other or “new” location. Yusuf is amendable to this.

Otherwise, Yusuf submits that the trade name, like the other available partnership assets, should be the subject of a private auction between the partners and subject to competitive bidding.

The One Acre Addition To the East Store

Yusuf has stated under oath, without contradiction, the following:

4. For reasons discussed in more detail below, there has been only one reconciliation of accounts since our business agreement was formed and it occurred at the end of 1993. The rent payment due from 1986 through December 31, 1993 was paid by means of a setoff on an account that reflected credits and debits between Hamed and me. Specifically, Hamed’s one half portion of the rent was paid by means of a setoff against amounts I owed him by virtue of some large withdrawals I had made in preceding years.

5. In 1992, Plaza Extra – East burned down. As with all tenants in the United Shopping Plaza, the insurance policy on Bay 1 was paid to the property-owner, United. United decided to expand Bay 1 by purchasing an adjacent acre of land for \$250,000. I used \$100,000 of my personal funds and the balance was paid with the insurance proceeds United received as the insured under a policy of insurance, which is required of all tenants of United Shopping Plaza.

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See Declaration of Yusuf dated August 12, 2014, attached as Exhibit 3 to Defendants' Memorandum in Support of Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent. Hamed's sworn testimony is consistent with Yusuf's declaration that the reconciliation occurred at the end of 1993. Hamed testified that the reconciliation took place "sometime after the fire in the store." See page 51-2 of the transcript of Hamed's April 1, 2014 deposition attached as Exhibit 1.

While partnership funds may have been used to pay the insurance premiums for the applicable insurance policy, payment of the insurance premiums by the store has always been one of the terms of the partnership and Hamed has provided this Court with no evidence that Yusuf conceded that the additional acre was purchased with partnership funds. In any event, there is no dispute that the partners' accounts were fully reconciled as of December 31, 1993, that this acre has been titled in United's name for decades, and that rent for this acre was included in the \$5,408,806.74 paid on February 7, 2012 covering rent for the period from May 5, 2004 – December 31, 2011. Under these circumstances, Hamed should be estopped from asserting any legal or equitable title to this 1 acre parcel. In any event, Hamed's vague and unsupported claim should not be allowed to impede the disposition of Plaza Extra – East.

Payment of Yusuf's Counsel and Accounting Experts

The Order needs no clarification because it does not propose that Yusuf's counsel and accounting experts would be paid with partnership funds. It should be pointed out, however, that Section 5 of Hamed's "combined" order attached as Exhibit 3 to the Hamed Comments obligates the Liquidating Partner to "prepare and file all required federal and territorial tax returns . . . [and]

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to] provide a Partnership accounting." Complying with these obligations clearly would require professional assistance, which should be paid from partnership funds. Yusuf submits that the Liquidating Partner should not be obligated to provide a Partnership accounting since Step 6 of the Court's proposed plan requires Hamed and Yusuf to submit to the Master a proposed accounting and distribution plan within 45 days after the Liquidating Partner completes liquidation.

The Balance Sheet attached as Exhibit B to the Competing Plans

Since the Order did not refer to the Balance Sheet attached as Exhibit B to the competing plans, it is unclear why Hamed feels compelled to argue that the Balance Sheet should be deemed preliminary. In any event, an updated Balance Sheet is being prepared; consequently, Yusuf does not object to the previous Balance Sheet being deemed preliminary.

Hamed's "Combined" Order Does Not Accurately Set Forth The Agreed Upon Portions Of The Plans.

Yusuf submits that the "combined" plan attached as Exhibit 3 to the Hamed Comments does not accurately set forth the "agreed upon" plan provisions, although it does accurately set forth the plan provisions proposed by this Court, with one minor exception noted.

Section 4. Powers of Liquidating Partner

Exhibit 3 improperly omits the first paragraph of Section 4 of all competing plans.

Section 5. Duties of Liquidating Partner

Exhibit 3 incorrectly strikes out the words "and the Master."

Section 6. Salaries, Withdrawals

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Because there was never any consensus regarding the terms of the competing plans, this section should be deleted except for the first two sentences.

Section 8: Plan of Liquidation Plan and Winding Up

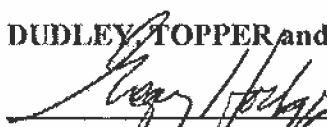
The lead in paragraph to Section 8(B)(1) of the competing plans should be added. Attached as **Exhibit 2** to this Response is the "combined" plan that Yusuf submits accurately sets forth the terms of the competing plans that the parties have not disputed and the provisions proposed by this Court. Yusuf's revised, proposed plan, which incorporates the Yusuf Comments and his foregoing comments in redlined fashion, is attached as **Exhibit 3** to this Response. Yusuf respectfully requests this Court to consider and approve the plan submitted as **Exhibit 3**.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: October 28, 2014

By:


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Attorneys for Fathi Yusuf and United Corporation

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 2014, I caused the foregoing Fathi Yusuf's Response To Hamed's Comments Concerning The Court's Proposed Wind-Up Plan 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**

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

EXHIBIT 1

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

MOHAMMED HAMED by His Authorized)
Agent WALEED HAMED,)
Plaintiff/Counterclaim Defendant,)
vs.) Case No. SX-12-CV-370
FATHI YUSUF and UNITED CORPORATION,) Volume 2
Defendants/Counterclaimants,)
vs.)
WALEED HAMED, WAHEED HAMED, MUFEED)
HAMED, HISHAM HAMED, and PLESSEN)
ENTERPRISES, INC.,)
Additional Counterclaim Defendants.)

THE VIDEOTAPED ORAL DEPOSITION OF MOHAMMAD HAMED
was taken on the 1st day of April, 2014, at the Law Offices
of Adam Hoover, 2006 Eastern Suburb, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
9:12 a.m. and 5:13 p.m. pursuant to Notice and Federal Rules
of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

EXHIBIT

MOHAMMAD HAMED -- DIRECT

1 Mr. Yusuf was on the short side --

2 THE INTERPRETER: No, it's the other way.

3 MR. HODGES: Oh, okay.

4 THE INTERPRETER: In other words --

5 MR. HODGES: Even though the Yusuf family had
6 drawn less than the Hamed family --

7 THE INTERPRETER: I'm sorry.

8 MR. HARTMANN: No, no.

9 THE INTERPRETER: It's the other way.

10 MR. HODGES: Okay.

11 Q. (Mr. Hodges) Mr. Hamed, so I think what you're --
12 you're saying is that sometime after the fire in the store,
13 you -- you came to an understanding with Mr. Yusuf that even
14 though his family had drawn more money out of the
15 partnership, that you were going to call it even anyway?

16 THE INTERPRETER: I told you, these were his
17 words, and God's book is our witness.

18 A. That's what he told me.

19 THE INTERPRETER: That's what he says
20 Mr. Yusuf told him.

21 Q. (Mr. Hodges) And did you agree to it?

22 A. (Speaking in Arabic). He's my brother-in-law. I
23 trust him. And when I go home, vacation, on my vacation --

24 MR. HARTMANN: In Arabic.

25 THE INTERPRETER: He says, I -- I agreed to

MOHAMMAD HAMED -- DIRECT

1 it. I trusted him. I -- I -- I used to ask him to look
2 over my sons when I would travel, if something should happen
3 to me. Uh --

4 Q. (Mr. Hodges) Okay. Now, Mr. Hamed, do you, is it
5 your testimony that you and your family never received any
6 Plaza Extra funds that were not split 50/50?

7 THE INTERPRETER: There was no money other
8 than what was in the store, and what we -- what we requested
9 as withdrawals when we needed it.

10 Q. (Mr. Hodges) But what I'm -- I'm -- I'm asking
11 you, sir, is to tell me, do you agree that it is your
12 position that you never got any funds out of the partnership
13 that either weren't agreed to by Mr. Yusuf or split 50/50?

14 MR. HARTMANN: Object as to form.

15 THE INTERPRETER: There was no agreement
16 other than, when we needed money, we would make withdrawals.
17 And when I purchased my home, I withdrew 40,000. There was
18 a balance of 50,000 that I financed with the -- with the
19 owner, which I paid monthly.

20 Q. (Mr. Hodges) But that's -- that doesn't answer my
21 question, sir.

22 MR. HARTMANN: Wait, wait, wait.

23 Go ahead.

24 Q. (Mr. Hodges) The -- the question is, is it your
25 testimony that neither you nor your family ever withdrew any



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

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

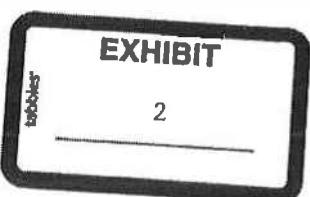
EXHIBIT 2

**PLAZA EXTRA SUPERMARKETS
COMBINED PLAN FOR
WINDING UP PARTNERSHIP**

This Plan provides for the winding up of the Partnership, as defined below. This is a liquidating plan and does not contemplate the continuation of the Partnership's business, except as may be required for the orderly winding up of the Partnership.

Section 1: DEFINITIONS

- 1.1 "Act" means the Uniform Partnership Act, V. I. Code Ann. Tit. 26, §§ 1-274.
- 1.2 "Available Cash" means the aggregate amount of all unencumbered cash and securities held by the Partnership including cash realized from any Litigation Recovery or any Liquidation Proceeds.
- 1.3 "Case" means Civil No. SX-12-CV-370 pending in the Court.
- 1.4 "Claim" means
 - (a) any right to payment from the Partnership whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
 - (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Partnership whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.
- 1.5 "Claimant" means the holder of a Claim.
- 1.6 "Claims Reserve Account" means one or more interest-bearing bank account(s), money market or securities account(s) to be established and held in trust by the Master for the purpose of holding the Available Cash until distributed in accordance with the Plan and any interest, dividends or other income earned upon the investment of such Claims Reserve Account. The Claims Reserve Account will be further funded from time to time by the Liquidating Partner with:
 - (i) any Liquidation Proceeds realized, plus
 - (ii) any Litigation Recovery realized, minus
 - (iii) any amounts necessary to pay Wind Up Expenses.



1.7 "Court" means the Superior Court of the Virgin Islands in which the Case is pending.

1.8 "Criminal Case" means Case No. 1:05-CR-00015-RLF-GWB pending in the District Court.

1.9 "Debt" means liability on a Claim.

1.10 "Disputed Claim" means any Claim or portion of a Claim as to which an objection to the allowance thereof has been interposed, which objection has not been withdrawn or determined by Final Order.

1.11 "District Court" means the District Court of the Virgin Islands, in which the Criminal Case is pending.

1.12 "Effective Date" means ten business days following entry of an Order by the Court approving this Plan.

1.13 "Encumbered Cash" means all of the cash and securities encumbered by a restraining order issued by the District Court in the Criminal Case.

1.14 "Final Order" means an order or judgment of the Court or District Court:

- (i) which has not been reversed, stayed, modified or amended;
- (ii) as to which the time to or the right to appeal or seek reconsideration, review, rehearing or certiorari has expired or has been waived; and
- (iii) as to which no appeal or motion for reconsideration, review, rehearing, or certiorari is pending.

1.15 "Hamed" means Mohammad Hamed.

1.16 "Hamed Sons" means Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed.

1.17 "Liquidating Expenses Account" means one or more checking accounts to be utilized by the Liquidating Partner for Wind Up Expenses based upon the Wind Up Budget and to satisfy Debts of the Partnership.

1.18 "Liquidating Partner" means Yusuf.

1.19 "Liquidation Proceeds" means any cash or other consideration paid to or realized by the Partnership or the Liquidating Partner, as applicable, upon the sale, transfer, assignment or other distribution of the Partnership Assets.



1.20 "Litigation" means the interest of the Partnership or the Liquidating Partner, as applicable, in any and all claims, rights and causes of action that have been or may be commenced by the Partnership or the Liquidating Partner including, without limitation, any action:

- (i) to avoid and recover any transfers of property determined to be avoidable pursuant to VI. Code Ann. tit. 28, §§ 171-212 or other applicable law;
- (ii) for the turnover of property to the Partnership or Liquidating Partner, as applicable;
- (iii) for the recovery of property or payment of money that belongs to or can be asserted by the Partnership or the Liquidating Partner, as applicable; and
- (iv) for compensation for damages incurred by the Partnership.

1.21 "Litigation Recovery" means any cash or other property received by the Partnership or the Liquidating Partner, as applicable, from all or any portion of the Litigation including, but not limited to, awards of damages, attorneys' fees and expenses, interest and punitive damages, whether recovered by way of settlement, execution on judgment or otherwise.

1.22 "Master" means the person or firm appointed by the Court to serve as master in the Case.

1.23. "New Hamed Company" means KAC357, Inc., which was incorporated on April 22, 2014 and is owned by three of the Hamed Sons.

1.24 "Partnership" means the association of Yusuf and Hamed to carry on as co-owners of the business of the Plaza Extra Stores.

1.25 "Partners" means Yusuf and Hamed.

1.26 "Partnership Assets" means any and all property, assets, rights or interest of the Partnership whether tangible or intangible, and any Liquidation Proceeds realized therefrom, including without limitation, all Available Cash, Encumbered Cash, Litigation, and any Litigation Recovery.

1.27 "Plan" means this Plan For Winding Up Partnership proposed by Yusuf and United including exhibits as it may be amended, modified or supplemented from time to time.

1.28 "Plaza Extra – East" means the supermarket located at Sion Farm, St. Croix.

1.29 "Plaza Extra – Tutu Park" means the supermarket located at Tutu Park, St. Thomas.

1.30 "Plaza Extra - West" means the supermarket located at Estate Plessen (Grove Place), St. Croix.

1.31 "Plaza Extra Stores" means Plaza Extra - East, Plaza Extra - Tutu Park, and Plaza Extra - West.

1.32 "Plessen" means Plessen Enterprises, Inc.

1.33 "Tutu Park Lease" means the lease between United and Tutu Park Mall, Ltd. covering the premises occupied by Plaza Extra - Tutu Park.

1.34 "Tutu Park Litigation" means all litigation currently pending between United and Tutu Park Mall, Ltd. including Civil No. 997/1997 and Civil No. 361/2001.

1.35 "Termination Date" means six months following the Effective Date, when the Liquidating Partner contemplates completing the winding up of the Partnership.

1.36 "United" means United Corporation.

1.37 "Wind Up Budget" means the budget established to satisfy the anticipated Wind Up Expenses and to satisfy the Debts set forth in Exhibit A hereto.

1.38 "Wind Up Expenses" means the costs and expenses incurred by the Liquidating Partner for the purpose of:

- (i) operating the Plaza Extra Stores during the period required to liquidate the Partnership Assets;
- (ii) prosecuting or otherwise attempting to collect or realize upon the Litigation;
- (iii) assembling and selling any of the Partnership Assets or otherwise incurred in connection with generating the Liquidation Proceeds;
- (iv) resolving Disputed Claims and effectuating distributions to Creditors under the Plan; or
- (v) otherwise implementing the Plan and winding up the Partnership.

1.39 "Yusuf" means Fathi Yusuf.

1.40 "Yusuf Sons" means Maher Yusuf, Nejeh Yusuf, and Yusuf Yusuf.

Section 2: APPOINTMENT OF MASTER

The Honorable Edgar D. Ross has been appointed Master to oversee and act as the judicial supervision of the wind up efforts of the Liquidating Partner.

Section 3: LIQUIDATING PARTNER

Yusuf shall be the Liquidating Partner with the exclusive right and obligation to wind up the Partnership pursuant to this Plan under the supervision of the Master. No person other than the Liquidating Partner may act on behalf of the Partnership, represent the Partnership in any official capacity or participate in management or control of the Partnership, for purposes of winding up its business or otherwise. The Liquidation Partner's rights and obligations relative to the winding up, subject to the review and supervision of the Master, shall be deemed to have commenced as of April 25, 2013, the date of the issuance of the Preliminary Injunction.

Section 4: POWERS OF LIQUIDATING PARTNER

Pursuant to the Act, the Liquidating Partner shall have authority to wind up the Partnership business, including full power and authority to sell and transfer Partnership Assets, engage legal, accounting and other professional services, sign and submit tax matters, execute and record a statement of dissolution of Partnership, pay and settle Debts, and marshal Partnership Assets for equal distribution to the Partners following payment of all Debts and a full accounting by the Partners, pursuant to agreement of the Partners or by order of the Court.

The Liquidating Partner shall use his best efforts to complete the winding up of the Partnership on or before the Termination Date.

Section 5: DUTIES OF LIQUIDATING PARTNER

The Liquidating Partner shall devote such time as is reasonably necessary to wind up and liquidate the Partnership in the manner provided herein and as required by the Act.

The Liquidating Partner shall be required to report on a bi-monthly basis to Hamed and the Master as to the status of all wind up efforts. In addition, the Liquidating Partner shall prepare and file all required federal and territorial tax returns and shall pay all just Partnership Debts. The Liquidating Partner shall provide a Partnership accounting. Any Liquidation Proceeds and Litigation Recovery shall be placed into the Claim Reserve Account from which all Partnership Debts shall first be paid. Following payment of all Partnership Debts, any remaining funds shall continue to be held in the Claims Reserve Account pending distribution pursuant to agreement of the Partners or order of the Court following a full accounting and reconciliation of the Partners' capital accounts and earlier distributions.

Section 6: SALARIES, WITHDRAWALS

As compensation for serving as Liquidating Partner, Yusuf shall continue to receive the salary Yusuf is currently receiving as shown on the Wind Up Budget. This compensation will be considered an expense of winding up the Partnership's business.

Section 7: CRIMINAL CASE AND ENCUMBERED CASH

There exists a plea agreement ("Plea Agreement") entered by United in the Criminal Case. Nothing in this Plan or the Partnership wind up efforts shall undermine or impair United's Plea Agreement. The President of United shall meet with the U.S. Department of Justice to see what impact, if any, the implementation of the Plan and wind up of the Partnership may have on United's compliance with the Plea Agreement.

The Encumbered Cash shall be deposited into the Claims Reserve Account immediately after it is no longer encumbered by the restraining order entered in the Criminal Case and, thereafter, held for distribution in accordance with this Plan.

Section 8: PLAN OF LIQUIDATION AND WINDING UP

The liquidation process will include the sale of all non-liquid Partnership Assets, payment of outstanding Debts, and deposit of all net Liquidation Proceeds into the Claims Reserve Account under the control of the Master.

1) Plaza Extra – East

Yusuf will purchase from the Partnership the following elements of the existing business operations known as Plaza Extra – East; the inventory at landed cost and the equipment and leasehold improvements at their depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. Upon payment for such inventory, equipment and leasehold improvements, Yusuf will assume full ownership and control and may continue to operate the business Plaza Extra – East without any further involvement of Hamed or the Hamed sons, and free and clear of any claims or interest of Hamed.

2) Plaza Extra – Tutu Park

Yusuf will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra – Tutu Park; the inventory at landed cost and the equipment and leasehold improvements at their depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. Yusuf will reimburse the Partnership for 50% of the reasonable costs and attorneys' fees incurred to date in the Tutu Park litigation. Upon payment for such inventory, equipment, leasehold improvements and attorneys' fees, Yusuf will assume full ownership and control and may continue to operate the business Plaza Extra – Tutu Park without

any further involvement of Hamed or the Hamed sons, and free and clear of any claims or interests of Hamed.

3) Plaza Extra – West

Hamed will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra – West: inventory at landed cost and the equipment and leasehold improvements at their depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. Upon payment for such inventory, equipment and leasehold improvements, Hamed will assume full ownership and control and may continue to operate Plaza Extra – West without any further involvement of Yusuf, Yusuf's sons or United and free and clear of any claims or interests of Yusuf or United.

4) Stock of Associated Grocers

The stock of Associated Grocers held in the name of United shall be split 50/50 between Hamed and Yusuf, with United retaining in its name Yusuf's 50% share, and 50% of such stock reissued in Hamed's name or his designee's name.

5) Plaza Extra Name

Yusuf shall own and have the right to use the trade name "Plaza Extra" in the operation of Yusuf's Plaza Extra stores. Hamed will operate Plaza Extra – West under the trade name "Plaza West."

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Steps to Be Taken for the Orderly Liquidation of the Partnership

STEP 1: Budget for Wind Up Efforts

The Liquidating Partner proposes the Wind Up Budget (Exhibit A) for the Wind Up Expenses. Such expenses include, but are not limited to, those incurred in the liquidating process, costs for continued operations of the Plaza Extra Stores during the wind up, costs for the professional services of the Master, costs relating to pending litigation in which United d/b/a Plaza Extra Stores is named as a party, and the rent to be paid to the landlords of Plaza Extra – East and Plaza Extra – Tutu Park.

STEP 2: Setting Aside Reserves

The sum of Ten Million Five Hundred Thousand Dollars (\$10,500,000) shall be set aside in a Liquidating Expenses Account to cover the Wind Up Expenses as set out in the Wind Up Budget with a small surplus to cover any miscellaneous or extraordinary Wind Up Expenses that may occur at the conclusion of the liquidation process. Such Account shall be held in trust by the Liquidating Partner under the supervision of the Master. The Liquidating Partner shall submit to Hamed and the Master each month a reconciliation of actual expenditures against the

projected expenses set forth in Exhibit A. Unless the Partners agree or the Master orders otherwise, the Liquidating Partner shall not exceed the funds deposited in the Liquidating Expenses Account.

STEP 3: Continued Employment of Employees

Yusuf and Hamed, and their respective successors, shall attempt to keep all employees of the Plaza Extra Stores fully employed. Although approval of this plan should avoid any need to comply with the provisions of the Virgin Islands Plant Closing Act, to the extent necessary, Yusuf and Hamed, and their respective successors, shall comply with the PCA for any affected employees of the Plaza Extra Stores as a result of the winding up and closure of the Partnership business. Any severance payments due to the employees determined in accordance with the PCA shall be paid by the Master out of the Claims Reserve Account.

Step 4: Liquidation of Partnership Assets

The Liquidating Partners shall promptly confer with the Master and Hamed to inventory all non-Plaza Extra Stores Partnership assets, and to agree to and implement a plan to liquidate such assets, which shall result in the maximum recoverable payment for the Partnership.

STEP 5: Other Pending Litigation

The pending litigation against United set forth in Exhibit C arises out of the operation of the Plaza Extra Stores. As a part of the wind up of the Partnership, the Liquidating Partner shall undertake to resolve those claims in Exhibit C, and to the extent any claims arise in the future relating to the operation of a Plaza Extra Store during the liquidation process, within the available insurance coverage for such claims. Any litigation expenses not covered by insurance shall be charged against the Claims Reserve Account.

STEP 6: Distribution Plan

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidating Expenses Account, if any, shall be deposited into the Claims Reserve Account. Within 45 days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution to the Court for its final determination. Nothing herein shall prevent the Partners from agreeing to distribution of Partnership assets between them rather than liquidating assets by sale and distributing proceeds.

STEP 7: Additional Measures to Be Taken

- a) Should the funds deposited into the Liquidating Expense Account prove to be insufficient, the Master shall transfer from the Claims Reserve Account sufficient funds required to complete the wind up and liquidation of the Partnership, determined in the Master's sole discretion.



- b) All funds realized from the sale of the non-cash Partnership Assets shall be deposited into the Claims Reserve Account under the exclusive control of the Master.
- c) All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.
- d) All brokerage and investment accounts set forth in Exhibit D shall be turned over to the Master as a part of the Claims Reserve Account.
- e) Any Partnership Asset remaining after completion of the liquidation process shall be divided equally between Hamed and Yusuf under the supervision of the Master.

Step 8: Use of Available Cash and Encumbered Cash to Purchase Assets

This Plan is conditioned upon the ability of Hamed and Yusuf to use their 50% interest in Available Cash and Encumbered Cash to purchase the non-liquid Partnership Assets. Any such use shall be subject to the approval of the Court and, to the extent necessary, the District Court.

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INDEX OF EXHIBITS

- Exhibit A:** Wind Up Budget
- Exhibit B:** Plaza Extra Supermarkets Balance Sheet
- Exhibit C:** Pending Litigation Against United
- Exhibit D:** List of Brokerage and Investment Accounts



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

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

EXHIBIT 3



**PLAZA EXTRA SUPERMARKETS
COMBINED PLAN FOR
WINDING UP PARTNERSHIP
WITH YUSUF REVISIONS**

This Plan provides for the winding up of the Partnership, as defined below. This is a liquidating plan and does not contemplate the continuation of the Partnership's business, except as may be required for the orderly winding up of the Partnership.

Section 1: DEFINITIONS

- 1.1 "Act" means the Uniform Partnership Act, V. I. Code Ann. Tit. 26, §§ 1-274.
- 1.2 "Available Cash" means the aggregate amount of all unencumbered cash and securities held by the Partnership including cash realized from any Litigation Recovery or any Liquidation Proceeds.
- 1.3 "Case" means Civil No. SX-12-CV-370 pending in the Court.
- 1.4 "Claim" means
 - (a) any right to payment from the Partnership whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
 - (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Partnership whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.
- 1.5 "Claimant" means the holder of a Claim.
- 1.6 "Claims Reserve Account" means one or more interest-bearing bank account(s), money market or securities account(s) to be established and held in trust by the Master for the purpose of holding the Available Cash until distributed in accordance with the Plan and any interest, dividends or other income earned upon the investment of such Claims Reserve Account. The Claims Reserve Account will be further funded from time to time by the Liquidating Partner with:
 - (i) any Liquidation Proceeds realized, plus
 - (ii) any Litigation Recovery realized, minus
 - (iii) any amounts necessary to pay Wind Up Expenses.





1.7 “Court” means the Superior Court of the Virgin Islands in which the Case is pending.

1.8 “Criminal Case” means Case No. 1:05-CR-00015-RLF-GWB pending in the District Court.

1.9 “Debt” means liability on a Claim.

1.10 “Disputed Claim” means any Claim or portion of a Claim as to which an objection to the allowance thereof has been interposed, which objection has not been withdrawn or determined by Final Order.

1.11 “District Court” means the District Court of the Virgin Islands, in which the Criminal Case is pending.

1.12 “Effective Date” means ten business days following entry of an Order by the Court approving this Plan.

1.13 “Encumbered Cash” means all of the cash and securities encumbered by a restraining order issued by the District Court in the Criminal Case.

1.14 “Final Order” means an order or judgment of the Court or District Court:

- (i) which has not been reversed, stayed, modified or amended;
- (ii) as to which the time to or the right to appeal or seek reconsideration, review, rehearing or certiorari has expired or has been waived; and
- (iii) as to which no appeal or motion for reconsideration, review, rehearing, or certiorari is pending.

1.15 “Hamed” means Mohammad Hamed.

1.16 “Hamed Sons” means Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed.

1.17 “Liquidating Expenses Account” means one or more checking accounts to be utilized by the Liquidating Partner for Wind Up Expenses based upon the Wind Up Budget and to satisfy Debts of the Partnership.

1.18 “Liquidating Partner” means Yusuf.

1.19 “Liquidation Proceeds” means any cash or other consideration paid to or realized by the Partnership or the Liquidating Partner, as applicable, upon the sale, transfer, assignment or other distribution of the Partnership Assets.



1.20 “Litigation” means the interest of the Partnership or the Liquidating Partner, as applicable, in any and all claims, rights and causes of action that have been or may be commenced by the Partnership or the Liquidating Partner including, without limitation, any action:

- (i) to avoid and recover any transfers of property determined to be avoidable pursuant to VI. Code Ann. tit. 28, §§ 171-212 or other applicable law;
- (ii) for the turnover of property to the Partnership or Liquidating Partner, as applicable;
- (iii) for the recovery of property or payment of money that belongs to or can be asserted by the Partnership or the Liquidating Partner, as applicable; and
- (iv) for compensation for damages incurred by the Partnership.

1.21 “Litigation Recovery” means any cash or other property received by the Partnership or the Liquidating Partner, as applicable, from all or any portion of the Litigation including, but not limited to, awards of damages, attorneys’ fees and expenses, interest and punitive damages, whether recovered by way of settlement, execution on judgment or otherwise.

| 1.22 “Master” means the Honorable Edgar D. Ross, the person or firm appointed by the Court to serve as master in the Case.

1.23. “New Hamed Company” means KAC357, Inc., which was incorporated on April 22, 2014 and is owned by three of the Hamed Sons.

1.24 “Partnership” means the association of Yusuf and Hamed to carry on as co-owners the business of the Plaza Extra Stores.

1.25 “Partners” means Yusuf and Hamed.

1.26 “Partnership Assets” means any and all property, assets, rights or interest of the Partnership whether tangible or intangible, and any Liquidation Proceeds realized therefrom, including without limitation, all Available Cash, Encumbered Cash, Litigation, and any Litigation Recovery.

1.27 “Plan” means this Plan For Winding Up Partnership proposed by Yusuf and United including exhibits as it may be amended, modified or supplemented from time to time.

1.28 “Plaza Extra – East” means the supermarket located at Sion Farm, St. Croix.

1.29 “Plaza Extra – Tutu Park” means the supermarket located at Tutu Park, St. Thomas.



1.30 “Plaza Extra – West” means the supermarket located at Estate Plessen (Grove Place), St. Croix.

1.31 “Plaza Extra Stores” means Plaza Extra – East, Plaza Extra – Tutu Park, and Plaza Extra – West.

1.32 “Plessen” means Plessen Enterprises, Inc.

1.33 “Tutu Park Lease” means the lease between United and Tutu Park Mall, Ltd. covering the premises occupied by Plaza Extra – Tutu Park.

1.34 “Tutu Park Litigation” means all litigation currently pending between United and Tutu Park Mall, Ltd. including Civil No. 997/1997 and Civil No. 361/2001.

1.35 “Termination Date” means six months following the Effective Date, when the Liquidating Partner contemplates completing the winding up of the Partnership.

1.36 “United” means United Corporation.

1.37 “Wind Up Budget” means the budget established to satisfy the anticipated Wind Up Expenses and to satisfy the Debts set forth in Exhibit A hereto.

1.38 “Wind Up Expenses” means the costs and expenses incurred by the Liquidating Partner for the purpose of:

- (i) operating the Plaza Extra Stores during the period required to liquidate the Partnership Assets;
- (ii) prosecuting or otherwise attempting to collect or realize upon the Litigation;
- (iii) assembling and selling any of the Partnership Assets or otherwise incurred in connection with generating the Liquidation Proceeds;
- (iv) resolving Disputed Claims and effectuating distributions to Creditors under the Plan; or
- (v) otherwise implementing the Plan and winding up the Partnership.

1.39 “Yusuf” means Fathi Yusuf.

1.40 “Yusuf Sons” means Maher Yusuf, Nejeh Yusuf, and Yusuf Yusuf.



Section 2: APPOINTMENT OF MASTER

The Honorable Edgar D. Ross has been appointed Master to oversee and act as the judicial supervision of the wind up efforts of the Liquidating Partner.

Section 3: LIQUIDATING PARTNER

Yusuf shall be the Liquidating Partner with the exclusive right and obligation to wind up the Partnership, pursuant to this Plan and the provisions of V.I. Code Ann. tit. 26, § 173(c), under the supervision of the Master. No person other than the Liquidating Partner may act on behalf of the Partnership, represent the Partnership in any official capacity or participate in management or control of the Partnership, for purposes of winding up its business or otherwise. ~~The Liquidation Partner's rights and obligations relative to the winding up, subject to the review and supervision of the Master, shall be deemed to have commenced as of April 25, 2013, the date of the issuance of the Preliminary Injunction.~~

Section 4: POWERS OF LIQUIDATING PARTNER

Pursuant to the Act, the Liquidating Partner shall have authority to wind up the Partnership business, including full power and authority to sell and transfer Partnership Assets, engage legal, accounting and other professional services, sign and submit tax matters, execute and record a statement of dissolution of Partnership, pay and settle Debts, and marshal Partnership Assets for equal distribution to the Partners following payment of all Debts and a full accounting by the Partners, pursuant to agreement of the Partners or by order of the Court.

The Liquidating Partner shall use his best efforts to complete the winding up of the Partnership on or before the Termination Date.

Section 5: DUTIES OF LIQUIDATING PARTNER

The Liquidating Partner shall devote such time as is reasonably necessary to wind up and liquidate the Partnership in the manner provided herein and as required by the Act.

The Liquidating Partner shall be required to report on a bi-monthly basis to Hamed and the Master as to the status of all wind up efforts. In addition, the Liquidating Partner shall prepare and file all required federal and territorial tax returns and shall pay all just Partnership Debts. ~~The Liquidating Partner shall provide a Partnership accounting. Any Liquidation Proceeds and Litigation Recovery shall be placed into the Claim Reserve Account from which all Partnership Debts shall first be paid. Following payment of all Partnership Debts, any remaining funds shall continue to be held in the Claims Reserve Account pending distribution pursuant to agreement of the Partners or order of the Court following a full accounting and reconciliation of the Partners' capital accounts and earlier distributions.~~



Section 6: SALARIES, WITHDRAWALS

As compensation for serving as Liquidating Partner, Yusuf shall continue to receive the salary Yusuf is currently receiving as shown on the Wind Up Budget. This compensation will be considered an expense of winding up the Partnership's business.

Section 7: CRIMINAL CASE AND ENCUMBERED CASH

There exists a plea agreement ("Plea Agreement") entered by United in the Criminal Case. Nothing in this Plan or the Partnership wind up efforts shall undermine or impair United's Plea Agreement. The President of United shall meet with the U.S. Department of Justice to see what impact, if any, the implementation of the Plan and wind up of the Partnership may have on United's compliance with the Plea Agreement.

The Encumbered Cash shall be deposited into the Claims Reserve Account immediately after it is no longer encumbered by the restraining order entered in the Criminal Case and, thereafter, held for distribution in accordance with this Plan.

Section 8: PLAN OF LIQUIDATION AND WINDING UP

The liquidation process will include the sale of all non-liquid Partnership Assets, payment of outstanding Debts, and deposit of all net Liquidation Proceeds into the Claims Reserve Account under the control of the Master.

1) Plaza Extra – East

Yusuf will purchase from the Partnership the following elements of the existing business operations known as Plaza Extra – East: the inventory at landed cost and the equipment and leasehold improvements at their depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. If the Partners do not agree with the foregoing manner of disposition, the Partners shall bid for such inventory, equipment, and leasehold improvements at a private auction between the Partners to be supervised by the Master. Upon payment for such ~~inventory, equipment and leasehold improvements, assets,~~ Yusuf will assume full ownership and control and may continue to operate the business Plaza Extra – East without any further involvement of Hamed or the Hamed sons, and free and clear of any claims or interest of Hamed.

2) Plaza Extra – Tutu Park

~~Yusuf will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra – Tutu Park: the inventory at landed cost and the equipment and leasehold improvements at their depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. Yusuf will reimburse the Partnership for 50% of the reasonable costs and attorneys' fees incurred to date in the Tutu Park litigation. The Partners shall bid for the Tutu Park Lease, inventory, equipment, leasehold improvements, and Tutu Park Litigation at~~

a private auction between the Partners to be supervised by the Master. Upon payment for such assets, inventory, equipment, leasehold improvements and attorneys' fees, Yusuf the purchasing Partner will assume full ownership and control and may continue to operate the business Plaza Extra – Tutu Park without any further involvement of Hamed or the Hamed sons the other Partner or his family or affiliated companies, and free and clear of any claims or interests of Hamed the non-purchasing Partner.

3) Plaza Extra – West

Hamed will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra – West: inventory at landed cost and the equipment and leasehold improvements at their depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. The lease from Plessen to the New Hamed Company shall be vacated and discharged of record. The approximately 16 acre tract shown on the July 13, 2012 preliminary surveys attached as Exhibit E (the "Plaza West Parcel") shall be subdivided from the larger tract owned by Plessen. The Partners shall bid for the Plaza West Parcel inclusive of all improvements, equipment, and inventory located on such premises at a private auction between the Partners to be supervised by the Master. Upon payment for such inventory, equipment and leasehold improvements, Hamed assets, the purchasing Partner will assume full ownership and control and may continue to operate Plaza Extra – West without any further involvement of Yusuf, Yusuf's sons or United the other Partner or his family or affiliated companies and free and clear of any claims or interests of Yusuf or United the non-purchasing Partner. The purchasing Partner shall be entitled to a recordable easement for the existing sewage line servicing Plaza Extra - West provided that Plessen shall also have the right to tap into such sewer line.

4) Stock of Associated Grocers

The stock of Associated Grocers held in the name of United shall be split 50/50 between Hamed and Yusuf, with United retaining in its name Yusuf's 50% share, and 50% of such stock reissued in Hamed's name or his designee's name.

5) Plaza Extra Name

Yusuf shall own and have the right to use the trade name "Plaza Extra" in the operation of Yusuf's Plaza Extra stores. Hamed will operate Plaza Extra – West under the trade name "Plaza West."

Unless the Partners agree in writing that the name used for each store will remain with each store but without either Partner being able to use such name at any other location, The Partners shall bid for the trade name "Plaza Extra" at a private auction between the Partners to be supervised by the Master. Upon payment for such trade name, the purchasing Partner will assume full ownership and control of such trade name and the exclusive right to use such name in the operation of any businesses, including the Plaza Extra Stores.

Steps to Be Taken for the Orderly Liquidation of the Partnership



STEP 1: Budget for Wind Up Efforts

The Liquidating Partner proposes the Wind Up Budget (Exhibit A) for the Wind Up Expenses. Such expenses include, but are not limited to, those incurred in the liquidating process, costs for continued operations of the Plaza Extra Stores during the wind up, costs for the professional services of the Master, costs relating to pending litigation in which United d/b/a Plaza Extra Stores is named as a party, and the rent to be paid to the landlords of Plaza Extra – East and Plaza Extra – Tutu Park.

STEP 2: Setting Aside Reserves

The sum of Ten Million Five Hundred Thousand Dollars (\$10,500,000) shall be set aside in a Liquidating Expenses Account to cover the Wind Up Expenses as set out in the Wind Up Budget with a small surplus to cover any miscellaneous or extraordinary Wind Up Expenses that may occur at the conclusion of the liquidation process. Such Account shall be held in trust by the Liquidating Partner under the supervision of the Master. The Liquidating Partner shall submit to Hamed and the Master each month a reconciliation of actual expenditures against the projected expenses set forth in Exhibit A. Unless the Partners agree or the Master orders otherwise, the Liquidating Partner shall not exceed the funds deposited in the Liquidating Expenses Account.

STEP 3: Continued Employment of Employees

Yusuf and Hamed, and their respective successors, shall attempt to keep all employees of the Plaza Extra Stores fully employed. Although approval of this plan should avoid any need to comply with the provisions of the Virgin Islands Plant Closing Act, to the extent necessary, Yusuf and Hamed, and their respective successors, shall comply with the PCA for any affected employees of the Plaza Extra Stores as a result of the winding up and closure of the Partnership business. Any severance payments due to the employees determined in accordance with the PCA shall be paid by the Master out of the Claims Reserve Account.

Step 4: Liquidation of Partnership Assets

The Liquidating Partner shall promptly confer with the Master and ~~Hamed~~ to inventory all non-Plaza Extra Stores Partnership assets, and to agree to and implement a plan to liquidate such assets, which shall result in the maximum recoverable payment for the Partnership.

STEP 5: Other Pending Litigation

The pending litigation against United set forth in Exhibit C arises out of the operation of the Plaza Extra Stores. As a part of the wind up of the Partnership, the Liquidating Partner shall undertake to resolve those claims in Exhibit C, and to the extent any claims arise in the future relating to the operation of a Plaza Extra Store during the liquidation process, within the available insurance coverage for such claims. Any litigation expenses not covered by insurance shall be charged against the Claims Reserve Account.



STEP 6: Distribution Plan

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidating Expenses Account, if any, shall be deposited into the Claims Reserve Account. Within 45 days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution to the Court for its final determination. Nothing herein shall prevent the Partners from agreeing to distribution of Partnership assets between them rather than liquidating assets by sale and distributing proceeds.

STEP 7: Additional Measures to Be Taken

- a) Should the funds deposited into the Liquidating Expense Account prove to be insufficient, the Master shall transfer from the Claims Reserve Account sufficient funds required to complete the wind up and liquidation of the Partnership, determined in the Master's sole discretion.
- b) All funds realized from the sale of the non-cash Partnership Assets shall be deposited into the Claims Reserve Account under the exclusive control of the Master.
- c) All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.
- d) All brokerage and investment accounts set forth in Exhibit D shall be turned over to the Master as a part of the Claims Reserve Account.
- e) Any Partnership Asset remaining after completion of the liquidation process shall be divided equally between Hamed and Yusuf under the supervision of the Master.

Step 8: Use of Available Cash and Encumbered Cash to Purchase Assets

This Plan is conditioned upon the ability of Hamed and Yusuf to use their 50% interest in Available Cash and Encumbered Cash to purchase the non-liquid Partnership Assets. Any such use shall be subject to the approval of the Court and, to the extent necessary, the District Court.



INDEX OF EXHIBITS

Exhibit A: Wind Up Budget

Exhibit B: Plaza Extra Supermarkets Balance Sheet

Exhibit C: Pending Litigation Against United

Exhibit D: List of Brokerage and Investment Accounts

Exhibit E: Preliminary Surveys dated July 13, 2012 of Plaza West Parcel

ENTREPRENEURIAL
GROWTH STRATEGY
SUSTAINABILITY
INNOVATION

MATTHEW J. GOLDBECK
JEREMY D. KELLY

EXHIBIT A

Plaza Extra Supermarkets
Liquidation Budget

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Operating Expenses						
Advertising & Promotion	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	0.00
Auto Expenses	250.00	250.00	250.00	200.00	200.00	0.00
Bad Debts Expense	0.00	0.00	0.00	0.00	0.00	10,000.00
Bank Charges	5,000.00	5,000.00	5,000.00	4,000.00	3,000.00	2,000.00
Cash Short (Over)	1,000.00	800.00	600.00	400.00	200.00	0.00
Charitable Contributions	500.00	0.00	0.00	0.00	0.00	0.00
Computer Supplies & Expense	3,000.00	2,500.00	2,000.00	1,500.00	1,000.00	0.00
Contract Labor Expense	5,000.00	3,000.00	2,000.00	1,000.00	500.00	500.00
Depreciation Expense	18,500.00	18,500.00	18,500.00	18,500.00	18,500.00	18,500.00
Insurance - Emp Health	23,000.00	23,000.00	23,000.00	23,000.00	20,000.00	15,000.00
Insurance - Gen Liability	27,000.00	27,000.00	27,000.00	27,000.00	27,000.00	27,000.00
Insurance - Property	17,000.00	17,000.00	17,000.00	17,000.00	17,000.00	17,000.00
Insurance - Workers Comp	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	0.00
Professional Fees	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00
Merchant Fees - MC/Visa/Amex	65,000.00	50,000.00	40,000.00	30,000.00	30,000.00	5,000.00
Merchant Fees - Telecheck	2,000.00	2,000.00	1,000.00	750.00	500.00	0.00
NFS Checks Expense	500.00	500.00	500.00	500.00	0.00	0.00
Office Supplies & Expense	5,000.00	4,000.00	3,000.00	2,000.00	1,000.00	0.00
Postage & Overnight Delivery	500.00	500.00	500.00	500.00	500.00	500.00
Rent Expense - Tutu Park	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00
Rent Expense - Sian Farm *	59,000.00	59,000.00	59,000.00	59,000.00	59,000.00	59,000.00
Repairs & Maintenance Expense	40,000.00	30,000.00	20,000.00	10,000.00	2,000.00	0.00
Security Expense	6,000.00	5,000.00	4,000.00	3,000.00	2,000.00	0.00
Court Appointed Master	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00
Taxes - Gross Receipts	367,000.00	245,000.00	163,000.00	82,000.00	41,000.00	0.00
Taxes - Emp RI/CA & Medicare	78,000.00	65,000.00	55,000.00	45,000.00	34,000.00	5,000.00
Taxes - Emp RUTA Expense	6,000.00	5,000.00	4,000.00	3,000.00	2,000.00	1,000.00
Taxes - Emp VI Unemp	10,500.00	9,000.00	8,000.00	6,000.00	4,000.00	1,000.00
Taxes - Licenses	500.00	500.00	500.00	500.00	0.00	0.00
Taxes - Property	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	0.30
Telephone Expense	4,500.00	4,000.00	4,000.00	3,000.00	2,000.00	0.00
Trash Removal	7,000.00	7,000.00	7,000.00	5,000.00	5,000.00	3,000.00
Travel & Hotels Expense	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
Utilities - Electric	425,000.00	425,000.00	425,000.00	425,000.00	375,000.00	300,000.00
Utilities - Gas & Diesel	2,500.00	2,500.00	1,000.00	500.00	500.00	500.00
Utilities - Water	3,000.00	3,000.00	2,000.00	1,000.00	500.00	500.00
Wages - Liquidating Partner	27,500.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00
Wages - Officer Salaries	27,500.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00
Wages - Managers	185,000.00	176,000.00	176,000.00	150,000.00	150,000.00	150,000.00
Wages - Other	831,000.00	665,000.00	600,000.00	300,000.00	50,000.00	0.00
Total Operating Expenses	2,367,250.00	2,023,550.00	1,842,350.00	1,540,600.00	1,256,650.00	793,000.00
Cumulative Total	2,367,250.00	4,390,800.00	6,234,650.00	7,775,250.00	9,331,900.00	9,324,900.00

*This proposed budget is without prejudice to United Corporation's claim for increased rent
effective January 1, 2012.

Forecast

ENTREPRENEURSHIP
GROWTH AND INNOVATION
IN THE 21ST CENTURY

MITIGATING RISK
IN THE MARKET

EXHIBIT B

Plaza Extra Supermarkets
Balance Sheet
As of January 31, 2014 and Last Year End

		<u>Current Period</u>	<u>Last Year End</u>
ASSETS			
Current Assets			
10000	Cash - Petty	\$ 31,726.00	\$ 31,726.00
10100	Cash - Registers	33,870.00	33,870.00
10200	Cash - Safe	146,520.20	168,220.20
10300	Cash in Bank - Operating	(2,212,795.52)	(970,814.23)
10350	Cash in Bank - Payroll	15,712.17	15,693.98
10400	Cash in Bank - CC Deposit	1,096,301.95	932,533.54
10500	Cash in Bank - Telecheck	7,967,789.80	7,703,852.94
10900	Cash Clearing - Transfers	0.00	106,910.23
11000	Accounts Receivable - Trade	57,323.37	43,129.55
12000	Inventory	9,553,982.57	9,553,982.57
13100	Prepaid Insurance	226,946.88	278,216.83
13300	Due from Cashiers - Shortages	0.00	(2,719.72)
13400	Due from Employees - Loans	60,638.60	73,497.47
14000	Due from (to) Yusuf	(117,644.33)	(117,644.33)
14100	Due from (to) Plaza East	(458,954.70)	(550,471.77)
14300	Due from (to) Plaza West	405,655.79	476,080.46
14400	Due from (to) Plaza STT	53,298.91	53,298.91
14500	Due from (to) Shopping Ctr	67,251.73	65,688.31
15100	Marketable Securities - BPPR	37,767,429.03	37,767,429.03
15150	Unrealized (Gain) Loss - BPPR	(2,324,369.86)	(2,324,369.86)
15200	Marketable Securities - ML	<u>336,378.45</u>	<u>336,378.45</u>
Total Current Assets		52,707,061.04	53,674,488.56
Property and Equipment			
16000	Buildings	3,478,103.00	3,478,103.00
16100	Leasehold Improvements	4,214,919.00	4,214,919.00
16200	Fixtures & Store Equipment	7,377,032.21	7,377,032.21
16400	Security Equipment	304,241.60	304,241.60
16500	Vehicles & Transport Equipment	57,050.50	57,050.50
16900	Accum Depreciation	<u>(10,695,527.03)</u>	<u>(10,677,827.03)</u>
Total Property and Equipment		4,735,819.28	4,753,519.28
Other Assets			
17000	Land	330,000.00	330,000.00
19000	Deposits	57,963.40	57,963.40
19200	Due from (to) Peter's Farm	1,527,708.00	1,527,708.00
19300	Due from (to) Plessen	5,109,018.00	5,109,018.00
19400	Due from (to) Sixteen Plus	<u>87,004.26</u>	<u>87,004.26</u>
Total Other Assets		7,111,693.66	7,111,693.66
Total Assets		\$ 64,554,573.98	\$ 65,539,701.50

Unaudited - For Management Purposes Only

Plaza Extra Supermarkets
Balance Sheet
As of January 31, 2014 and Last Year End

		<u>Current Period</u>	<u>Last Year End</u>
LIABILITIES AND CAPITAL			
Current Liabilities			
20000	Accounts Payable - Trade	\$ 3,269,786.86	\$ 5,026,839.62
21000	VI Income Tax W/H & Payable	24,521.07	47,944.73
21100	FICA / Medicare Payable	20,449.67	29,520.57
21200	Accrued FUTA Payable	2,765.34	3,544.84
21300	Accrued VI Unemp Tax Payable	7,989.20	40,429.11
21500	Garnishments W/H & Payable	1,174.50	541.98
21700	AFLAC W/H & Payable	2,489.84	2,489.84
21800	CIGNA W/H & Payable	21,715.29	(73,907.68)
21900	MASA W/H & Payable	694.41	1,205.41
23000	Accrued Expenses Due United	5,442,894.19	5,383,894.19
23100	Accrued Gross Repts Tx Payable	411,786.49	303,485.32
25000	Deferred Income	0.00	(804.56)
	Total Current Liabilities	9,206,266.86	10,765,183.37
Long-Term Liabilities			
	Total Long-Term Liabilities	0.00	0.00
	Total Liabilities	9,206,266.86	10,765,183.37
Capital			
33000	Dividend Distrib's (Ptr Draws)	0.00	(8,486,132.00)
39000	Retained Earnings	\$4,774,518.13	61,840,197.87
	Net Income	<u>\$73,788.99</u>	<u>1,420,452.26</u>
	Total Capital	55,348,307.12	54,774,518.13
	Total Liabilities & Capital	\$ 64,554,573.98	\$ 65,539,701.50

Unaudited - For Management Purposes Only

ENTREPRENEURIAL
GROWTH STRATEGY
IN THE
INDUSTRY

MANAGEMENT AND
MARKETING

EXHIBIT C

EXHIBIT C**PENDING LITIGATION AGAINST UNITED**

MATTER	STATUS/CASE NUMBER
1. Carol Daniel v. United Corporation d/b/a Plaza Extra	No suit filed
2. Edwards, Sonia v. United Corporation d/b/a Extra	No suit filed
3. Fell, Isaline v. United Corporation d/b/a Plaza Extra	
4. Harley, George v. United Corporation d/b/a Plaza Extra	No suit filed
5. Harris v. United Corporation d/b/a Plaza Extra	No suit filed
6. Hartzog, Amanda individually and as Next of Friend of Jahmil Perez, a minor v. United Corporation d/b/a Plaza Extra	Case No. 95/2004 Superior Court of the Virgin Islands Division of St. Croix
7. Issac, Laverne v. United Corporation d/b/a Plaza Extra	Superior Court of the Virgin Islands Division of St. Thomas and St. John
8. Javois, Kyshama and Ferdinand Javois as parents of Kai Javois, a minor v. United Corporation	No suit filed
9. Melendez, Carlos, Jr. v. V.I. Asphalt Products Corporation (VIAPCO) and Mike Yusuf	
10. Philip, Nelda P. v. United Corporation d/b/a Plaza Extra	
11. Samuel, Velma v. United Corporation d/b/a Plaza Extra	Case No. ST-12-CV-457 Superior Court of the Virgin Islands Division of St. Thomas and St. John
12. Santiago, Jacqueline v. United Corporation d/b/a Plaza Extra	Superior Court of the Virgin Islands Division of St. Croix

MATTER	STATUS/CASE NUMBER
13. Santiago, Jacqueline v. United Corporation d/b/a Plaza Extra (DOL Appeal Case)	Superior Court of the Virgin Islands Division of St. Croix
14. United Corporation d/b/a Plaza Extra v. Tutu Park Limited (Light Poles)	Civil No. 97/1997 District Court of the St. Thomas and St. John
15. United Corporation d/b/a Plaza Extra v. Tutu Park Limited and P.I.D. Inc.	Civil No. 361/2001 Superior Court of the Virgin Island Division of St. Thomas and St. John
16. Williams, Edith v. United Corporation d/b/a Plaza Extra	Case No. 478/2000 Territorial Court, Division of St. Croix

ENTREPRENEURIAL
GROWTH STRATEGY
FOR THE
FUTURE

MATTHEW GOLDBECK
JEREMY COOPER

EXHIBIT D



Exhibit D

LIST OF BROKERAGE AND INVESTMENT ACCOUNTS

1. Popular Securities Accounts United Corp. d/b/a Plaza Extra
(Denoted on Exhibit B - Balance Sheet as #15100)

Value as of 12/31/13: \$37,767,429.06

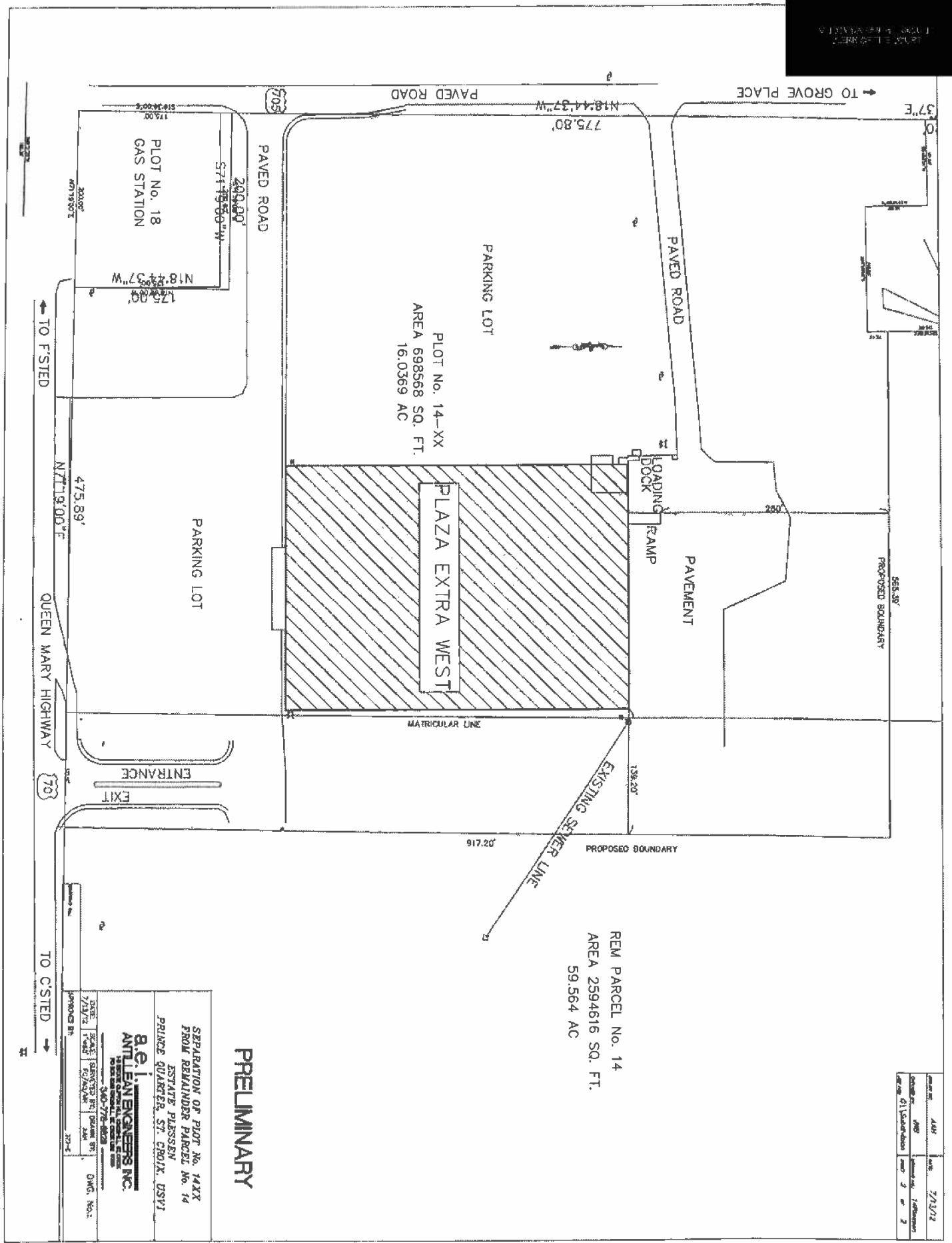
2. Merrill Lynch Cash Reserve Account
(Denoted on Exhibit B - Balance Sheet as #15200)

Value as of 12/31/13: \$336,378.45

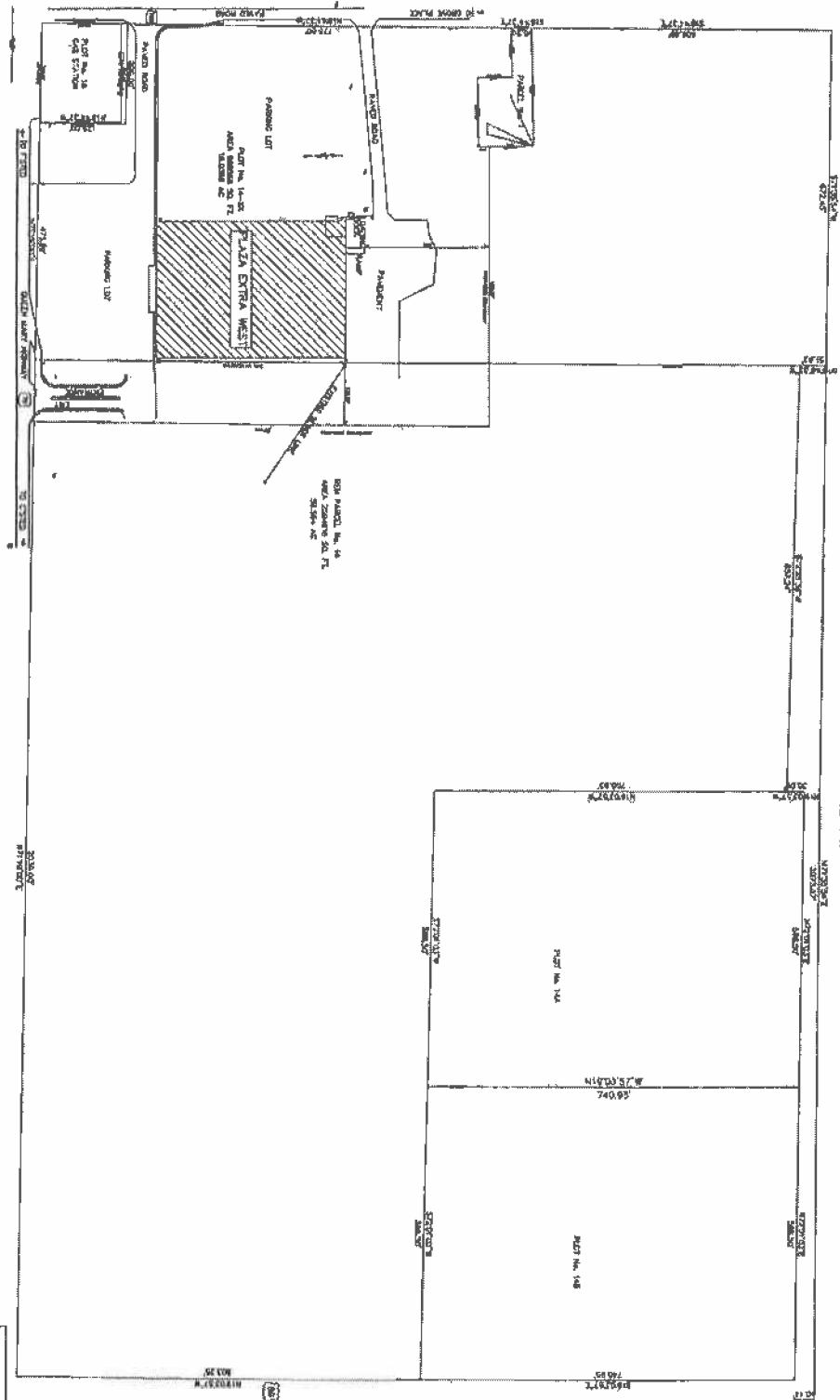
ESTATE PLANNING
GOALS AND NEEDS
STATEMENT OF ASSETS
ASSETS AND LIABILITIES

STATEMENT OF GOALS
GOALS AND NEEDS

EXHIBIT E



• JOURNAL OF CLIMATE



PRELIMINARY

**SEPARATION OF PLOT No. 14XX
FROM REMAINDER PARCEL No. 14**

**a.e.
ANTLEAAN ENGINEERS INC.**

1975-76
JANUARY
1976

SEPARATION OF PLOT No. 14XX FROM REMAINDER PARCEL No. 14			
ESTATE PLESSEN PRAINE QUARTER, ST. CROIX, USVI			
a.e.i. ANTILLEAN ENGINEERS INC.			
Professional Engineers and Surveyors For Residential, Commercial and Industrial Projects			
Plotting No.:	Date:	Scale: 1" = <input type="text"/> ft	Surveyed by: <input type="text"/>
	7/27/73	1" = <input type="text"/> m	Drawn by: <input type="text"/>
Approved By:	Dwg. No.:		
	342-778-5828		