

December 4, 2015, with accompanying calculation, attached as **Exhibit 1**. On the same date, TPM sent a letter to Mr. Yusuf seeking payment or reimbursement for the payment of real estate taxes. *See Exhibit 2*. Pursuant to an email dated December 9, 2015 to TPM's counsel, a copy of which is attached as **Exhibit 3**, TPM's claim that percentage rents were due from the Partnership or United was rejected, but the claim seeking reimbursement for the payment for real estate taxes was approved in full. *See* the second paragraph of the email dated December 9, 2015 (**Exhibit 3**) along with the email from John Gaffney to Judge Edgar Ross dated December 6, 2015, which was included as an attachment to the December 9, 2015 email.

As Yusuf has repeatedly pointed out, "[i]f the Liquidating Partner determines that the Partnership is responsible to Tutu Park, Ltd. for additional rent in the form of taxes or otherwise, the Partnership would be obligated to pay United comparable amounts since the rent for the Plaza Extra-East store was pegged to the rent for the Tutu Park store, as recognized in this Court's Memorandum Opinion and Order entered on April 27, 2015." *See* Liquidating Partner's Fifth Bi-Monthly Report filed on November 30, 2015 at n. 4. *See also*, the Liquidating Partner's Fourth Bi-Monthly Report filed on October 1, 2015 at n. 4. Hamed has never disputed that the rent for the Plaza Extra-East store was pegged by formula to the rent for the Plaza Extra-Tutu Park store. Although TPM's percentage rent claim was initially rejected, after further consultation with the Master, the claim was paid via a check dated December 17, 2015 co-signed by the Master and Yusuf. *See Exhibit 4*. Since the payment was effectively made on behalf of Hamed, a check to Yusuf dated December 17, 2015 in the same amount of

\$41,462.28 was also co-signed by the Master and Yusuf at the same time. *See* Exhibit 4.² Clearly, this matching payment was not a “unilateral withdrawal,” as claimed by Hamed, since it was approved and co-signed by the Master.

Hamed next lauds Yusuf for the prompt payment of the real property taxes for Plaza Extra-Tutu Park for 2012 and 2013 in the amount of \$79,009.87, but then professes outrage because “Yusuf then gave himself (presumably paid to United) a **larger distribution, which totaled \$89,443.92.**” *See* Objection at p. 2 (emphasis in original). In n. 1 to the Objection, Hamed suggests that the \$10,433.05 difference in the “matching” check was completely arbitrary. Yusuf submits that this is an intentional effort to mislead this Court since the exact amount of that difference was reflected in the calculations attached to John Gaffney’s December 6, 2015 email to Judge Ross, which was also provided to counsel for Hamed on December 9, 2015. *See* Exhibit 3. Attached as **Exhibits 5 and 6** are the checks dated December 8, 2015 in the amount of \$79,009.87 payable to TPM and \$89,442.92 payable to United. As usual, these checks were co-signed by the Master and Yusuf.

Hamed next complains about the \$46,990.48 check that was issued to United when TPM was paid \$43,069.36 for 2014 real property taxes. *See* checks dated October 6, 2015 in the amount of \$43,069.36 payable to TPM and in the amount of \$46,990.48 payable to United attached as **Exhibits 7 and 8**. Once again, these checks were co-signed by the Master and Yusuf. Once again, the reason the check to United is for a larger sum than the check to TPM is

² As pointed out in the Fourth, Fifth, and Sixth Bi-Monthly Reports of the Liquidating Partner, pursuant to the express provisions of the Wind Up Order (p. 5), the Plan (§ 8(2)), and the Master’s Order of April 30, 2015 (p. 2), Hamed was obligated to obtain releases of the Partnership and Yusuf from any further leasehold obligations to TPM when Hamed assumed sole ownership and control of the Tutu Park store as of May 1, 2015. Despite repeated demands, Hamed has failed to provide the required releases that are a precondition of the valid transfer of the Tutu Park store. Had those releases been timely provided, TPM no doubt would have sought payment of the percentage rents directly from Hamed.

the simple result of the application of the formula historically used to establish the rent for Plaza Extra-East. Since the revenues for Plaza Extra-East were higher than the revenues for Plaza Extra-Tutu Park in 2014, the percentage rent due United is necessarily higher. The Master clearly understood this formula and agreed that United was entitled to appropriate matching checks when TPM was paid additional rent in the form of real property taxes or percentage rents. There was no unilateral action on the part of Yusuf and certainly no looting, as claimed by Hamed without any evidence whatsoever.

II. Legal and Accounting Fees.

Hamed states that “[o]n December 17, 2015, the Liquidating Partner apparently paid his on personal lawyer, DTF, \$57,605 for work done supposedly for the partnership **since February of 2015** (without any notice or court approval).” *See* Objection at p. 3 (emphasis in original). In fact, Dudley, Topper and Feuerzeig, LLP (“DTF”) was paid by a check co-signed by the Master and Yusuf on December 29, 2015. *See* check attached as **Exhibit 9**. Hamed’s claim that DTF was paid without any notice to him is completely belied by Exhibit 1(B) to the Objection, which is an email from the Master to counsel for Hamed on December 24, 2015 forwarding counsel for Yusuf’s email of the same date requesting that fees totaling \$57,605 be paid to DTF from Partnership funds. Apparently, counsel for Hamed chose to wait approximately one month before first registering his objection to the payment of such fees. *See* Exhibit 1(C) to the Objection consisting of an email from Hamed’s counsel dated January 23, 2016 to the Master.

Hamed next suggests that the parties agreed “that their respective lawyers would not be paid from partnership funds” *See* Objection at p. 3. Nothing Hamed has shown the Court

establishes any such agreement. In his “Comments Re Proposed Winding Up Order” filed on October 21, 2014 and attached as Exhibit 2 to the Objection (the “Comments”), Hamed made the following observations:

The Court’s final Order needs to clarify that Yusuf’s litigation counsel and expert witnesses (such as his accounting firm) cannot not [sic] be paid at all from Plaza Extra funds. Beyond the ethical conflict - which would strictly prohibit this dual representation as counsel already represents the major claimant, United – if additional legal work or accounting work is necessary, it should be dealt with solely by unaligned counsel and accountants responsive to the Master, not to a litigating party. Plaintiff asks that the final Order be very clear in this regard, which he believes Yusuf will agree to based on conversations to date.

See Exhibit 2 to the Objection at p. 9-10 (emphasis in original).

Hamed suggests that Yusuf’s “Response to Hamed’s Comments Concerning the Court’s Proposed Wind-Up Plan” filed on October 28, 2014 (the “Response”), three pages of which are attached as Exhibit 3 to the Objection, reflects Yusuf’s agreement with counsel for Hamed’s comments quoted above. Yusuf’s Response does no such thing. Hamed merely quotes from a single sentence in the fifteen page Response as follows:

The Order needs no clarification because it does not propose that Yusuf’s counsel and accounting experts would be paid with partnership funds.

See Exhibit 3 to the Objection at p. 13. What Hamed fails to point out, however, is that the “Order” is defined in the first paragraph of the Response as “this Court’s Order [Soliciting Comments, Objections and Recommendations] dated October 7, 2014 (the “Order”),” which provided on its first page as follows:

In this presentation, the Court addresses only the portions of the competing plans of Plaintiff and Defendants where those proposed plans differ from each other. All components and terms of the

competing plans were the Parties do agree are not addressed in this proposed plan and should be considered as adopted in their agreed form in this proposed plan and tentatively approved by the Court.

A review of the Order reflects that it contains no provisions relating to § 4 of the Plan dealing with the “powers of the Liquidating Partner,” because that language in the Partners’ competing plans was not controversial and was effectively adopted by the Court. Indeed, § 4 is also not mentioned in this Court’s “Order Adopting Final Wind Up Plan” dated January 7, 2015 (the “Wind Up Order”). Section 4 of the Plan provides, in pertinent part, as follows:

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.

Obviously, the Wind Up Order did not contain the “clarification” urged by Hamed in his Comments. Indeed, in Exhibit 3 to the Objection, Hamed conveniently omits page 14 of Yusuf’s Response. For the Court’s ready reference, the first and last three pages of Yusuf’s Response are attached as **Exhibit 10**. While Hamed seeks to focus this Court’s attention on the first sentence of the last paragraph on page 13 of Yusuf’s Response, Hamed also seeks to divert this Court’s attention from the remaining provisions of that paragraph by omitting page 14 from his Exhibit 3. The language of Yusuf’s Response that Hamed seeks to ignore is the following:

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 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. (Emphasis supplied)³

Clearly, the Wind Up Order and Plan contemplated that some of the duties imposed on the Liquidating Partner would require professional assistance. The Plan expressly authorized the Liquidating Partner to "engage legal, accounting and other professional services . . . ," which should be paid from Partnership funds. Hamed's unsupported assertion that DTF is conflicted because it is purportedly representing Yusuf, United and the Partnership simultaneously is based on a false premise that representing Yusuf, as the Liquidating Partner, is the equivalent of representing the now dissolved Partnership. As Yusuf has explained in his Opposition to Hamed's Motion to Disqualify DTF, which is incorporated by this reference, Hamed's conflict assertion is baseless since DTF does not purport to represent the Partnership. Yusuf also refers this Court to his Opposition to Hamed's Motion to Remove Yusuf as Liquidating Partner, which explains, among other things, that while the disputed parcel of land may have been acquired with Partnership funds, it has not been a Partnership asset since the Partners chose to take title to the property in 2006 in the name of their jointly owned company, Plessen Enterprises, Inc.

Hamed next complains that Yusuf has "abused his position as the Liquidating Partner in paying John Gaffney." *See* Objection at p. 5. While it is true that the Partnership has paid 100% of Mr. Gaffney's salary, Hamed has utterly failed to establish the unfairness of this

³ Contrary to Yusuf's suggestion in his Response, the Plan left intact the Liquidating Partner's obligation to provide a Partnership accounting.

arrangement. Since January of 2015, Mr. Gaffney has easily worked 60- 70 hours per week on Partnership matters. While he may have worked to some extent on non-Partnership matters with respect to Plaza Extra-East, it is also undisputed that he has spent an extensive amount of time meeting with and compiling information for Hamed's accountants. All of the time spent with Hamed's accountants or compiling information in response to their 81 page request for information clearly benefits Hamed, as opposed to the Partnership, yet the Partnership pays for Mr. Gaffney's time in this regard. In any event, since January of 2015, Mr. Gaffney has effectively worked full time for the Partnership and should be paid 100% by the Partnership. Moreover, Hamed overlooks the fact that Mr. Gaffney's transportation expenses are paid by Plaza Extra-East, not the Partnership. Given the extraordinary amount of work that Mr. Gaffney has had to perform singlehandedly on behalf of the Partnership, when much of that work was formerly done by an accounting staff, it is truly remarkable that Hamed begrudges a \$3,000 bonus, which Yusuf, as Liquidating Partner, and the Master obviously thought Mr. Gaffney deserved when they co-signed a check for that amount on December 17, 2015. *See* Exhibit 4.

III. Conclusion

In his first of two "final comments," Hamed suggests that the delivery of voluminous "new accounting records" continues to impair his completion of an "accounting verification." The accounting records Hamed mentions are not "new" but rather simply updated information that Yusuf, as Liquidating Partner, has regularly provided in connection with his bi-monthly reports. While Yusuf argued that Hamed's requested extension of the stipulated deadline of March 3, 2016 for the Partners to submit their competing accounting and distribution plans is

too long, *see* email exchange attached as **Exhibit 11**, the Master has now decided to extend the deadline to May 2, 2016.

In his last “final comment”, Hamed claims Yusuf has “looted” Partnership assets “now identified to be in excess of \$650,000” *See* Objection at p. 6. Of course, Hamed does not bother to explain how he arrived at a figure “in excess of \$650,000.” More importantly, Hamed completely ignores that each and every disbursement about which he complains was approved and co-signed by the Master.

In short, Yusuf has properly performed all of the duties imposed on him as the Liquidating Partner under the Plan and he has properly accounted for all of his actions as the Liquidating Partner in his bi-monthly reports. Accordingly, Yusuf respectfully requests this Court to overrule Hamed’s Objection and to provide such further relief as is just and proper under the circumstances.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: February 24, 2016

By: 

Gregory H. Hodges (N.I. Bar No. 174)
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

Attorneys for Fathi Yusuf, the Liquidating Partner

Hamed v. Yusuf, et al.
Civil No. SX-12-CV-370
Page 10

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2016, I caused the foregoing **Response To Plaintiff's Notice Of Objection To Liquidating Partner's Sixth Bi-Monthly Report** to be served upon the following via e-mail:

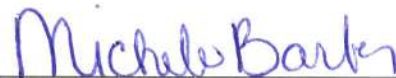
Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI 00820
Email: jeffreymlaw@yahoo.com

The Honorable Edgar A. Ross
Email: edgarrossjudge@hotmail.com



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**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422



December 4, 2015

Mr. Fathi Yusuf
United Corporation s/b/a Plaza Extra
C/O Honorable Edgar J. Ross
St. Croix, USVI

RE: 2014-2015 Percentage Rent Billing

Dear Mr. Yusuf,

In accordance with Section 2.04 of the Lease Agreement dated October 29, 1991, attached please find an invoice for percentage rent due to Tutu Park, Ltd. for the period November 1, 2014 through October 31, 2015. This calculation was prepared based on the Management Statement provided to us for the period November 1, 2014 to April 30, 2015. A separate statement was provided to us for the period May 1, 2015 through October 31, 2015.

By our calculation, there is a total due in the amount of \$41,462.28, a significant decrease from the prior year of \$73,295.06.

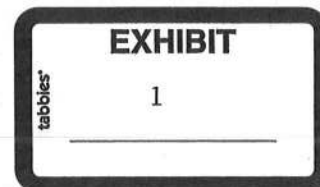
Please let me know what additional information and documentation you may need.

Yours very truly,

A handwritten signature in black ink, appearing to read "Donna Liska", is written over the typed name and title. The signature is fluid and cursive.

Donna Liska
General Manager

DWL/
Enclosure





4-Dec-15

United Corporation d/b/a Plaza Extra
PERCENTAGE RENT INVOICE

Calculated November 1, 2014 to October 31, 2015

	11/14-4/30/15	05/01/15-10/31/15	Total
Reported Sales	14,961,859.81	12,990,628.37	27,952,488.18
Less:			
Credit Card Merchant Fees	(114,963.24)	(73,372.61)	<u>(188,335.85)</u>
			27,764,152.33
Less:			
Sales Exclusion per Lease			<u>(25,000,000.00)</u>
Balance subject to Percentage Rent			2,764,152.33
			1.50%
Percentage Rent due to Tutu Park, Ltd.			<u><u>\$ 41,462.28</u></u>



December 4, 2015

Mr. Fathi Yusuf
United Corporation s/b/a Plaza Extra
C/O Honorable Edgar J. Ross
St. Croix, USVI

RE: Tutu Park Real Estate Taxes

Dear Mr. Yusuf,

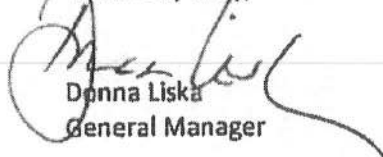
As we have previously advised, Tutu Park, Ltd. ("TPL") has enjoyed an exemption for the assessed value of the property for real estate taxes under their EDC exemption. This benefit has been passed along to our tenants and the real estate taxes paid have been limited to the underlying value of the land. As we communicated to tenants in the 2012 and 2013 Tax Recovery Reconciliations, the EDC exemption for the assessed values expired on December 31, 2011.

In August 2015, Tax Assessor retroactively billed TPL for the assessed value for 2012 and 2013. In November 2015, TPL entered in to an installment agreement with the Office of the Lieutenant Governor for payment of the 2012 and 2013 real estate property tax. TPL paid a down payment of \$147,526.82 on the total outstanding bills of \$590,507.26. The balance of \$442,880.44 is payable over thirty-six (36) months commencing December 15, 2015 at the rate of \$12,302.23 per month. There is not interest or penalty included in the installment agreements.

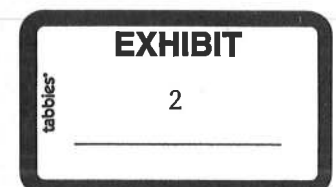
Attached is the calculation of the United Corporation portion of the down payment and the December 2015 installment amount that will be paid by December 15, 2015.

Tutu Park, Ltd. has filed a Tax Appeal with the Tax Assessor's Office and also filed a lawsuit to challenge the assessed values and will be seeking all possible remedies for the benefit of our tenants. We will keep you apprised of our progress and any reduction or refund of real estate taxes will be returned pro-rata to our Tenants. Please let me know what additional information and documentation you may need.

Yours very truly,


Donna Liska
General Manager

DWL/
Enclosure



Tutu Park Mall
2012 and 2013 TAX RECOVERY
TAX BILL

Tenant: PLAZA EXTRA

Billing Date: December 4, 2015

The total demised premises of Tutu Park Mall is 456,601 square feet and the total square footage of Plaza Extra is 61,086 sq. ft. which would allocate 13.38% of the tax billing to Plaza Extra.

Real Estate Taxes	Down payment
<u>Mall Square Footage</u>	<u>106,585</u>
Kmart	61,086
Plaza Extra	22,400
Western Auto	12,000
Merchant's Bank	3,000
McDonald's	63,500
Office Max Bldg.	177,000
Mall	11,030
My Brother's Workshop	<u>456,601</u>
TOTAL	

13.38 %

	2012 & 2013	Paid Deposit	Due Monthly
	590,507.26	147,626.82	12,302.23
	<u>79,009.87</u>	<u>19,752.47</u>	<u>1,646.04</u>

Plaza Extra Share of deposit
 December 2015 installment

\$ 19,752.47
 1,646.04
\$ 21,398.51

Gregory H. Hodges

From: Gregory H. Hodges
Sent: Wednesday, December 09, 2015 4:11 PM
To: 'Steve Russell'
Cc: 'Edgar Ross'; Joel Holt; Fathi Yusuf; 'Daryl Dodson'
Subject: United Corp - Tutu Park location
Attachments: 2012-2013 prop tax recovery 12-4-15.pdf; 2014-5PercentRentInvoice.pdf; real estate taxes re: United store at Tutu Park Mall; FW: Add'l Rent Adjustment to Plaza East

Steve,

Please allow this email to serve as Mr. Yusuf's and United Corporation's response to your attached letters. As to the letter concerning the percentage rents claimed due, your supporting data clearly shows that as of April 30, 2015 the reported sales were only \$14,961,859, more than \$10M shy of the \$25M threshold before percentage rent becomes due. As you know from the Orders of Judge Brady and Judge Ross previously provided to you, after April 30, 2015, the Hameds and/or KAC357, Inc. have exercised exclusive possession and control of the leased premises. As stated in my attached email of 9/22/15, since 5/1/15, your client has been "leasing the premises formerly occupied by the Partnership to the Hameds or KAC357, Inc." under some occupancy agreement that neither your client nor Joel's clients have seen fit to share with us. In any event, if the sales generated by the Hameds or KAC357, Inc. after April 30, 2015 give rise to any claim of percentage rents due to your client, I submit your client must look to the Hameds or KAC357, Inc. for such additional rent. Mr. Yusuf, as the Liquidating Partner and an officer of United Corporation, rejects your client's claim that any percentage rents are due from the Partnership or United.

As to your attached letter seeking reimbursement for the payment of real estate taxes, as reflected in the attached email from John Gaffney to Judge Ross, Mr. Yusuf has authorized the payment of the entire allocation for 2012 and 2013 taxes (\$79,009.87), instead of paying installments over a 36 month period, since the Partnership wind up needs to be promptly concluded.

Although the failure of your client to deliver the releases required by Judge Brady's Order of 1/7/15, Section 8(2) of his Plan, and Judge Ross' Order of 4/30/15 has been a frequently raised issue, to date, there has been no discernable progress in the resolution of that issue. Would you please explain exactly what is holding up the delivery of the releases so that Mr. Yusuf's actions can be guided accordingly?

Regards,

Greg

Gregory H. Hodges

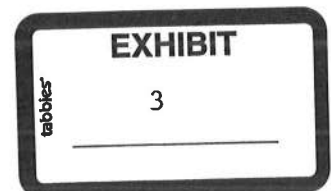
Dudley, Topper and Feuerzeig, LLP

Law House, 1000 Frederiksberg Gade

St. Thomas, VI 00802

Direct: (340) 715-4405

Fax: (340) 715-4400



Web: www.DTFLaw.com <<http://www.dtflaw.com/>>

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From: Steve Russell [<mailto:steve@mdrvi.com> <<mailto:steve@mdrvi.com>>]
Sent: Friday, December 04, 2015 11:02 AM
To: Judge Edgar Ross; Joel Holt; Gregory H. Hodges
Cc: Daryl Dodson
Subject: United Corp - Tutu Park location

Good morning. Attached please find explanatory cover letters and invoices for 2012-2013 property tax charges, and percentage rent due for the period 11/1/14 to 10/31/15. All best, Steve

--
Charles S. Russell, Jr.
Moore Dodson & Russell, P.C.
P.O. Box 310
St. Thomas, VI 00804
Tel: (340) 777 5490
Fax: (340) 777-5498

DISCLAIMER: This email contains confidential and possibly attorney-client privileged materials. If you are not the intended addressee, please delete this email from your systems and notify the sender at steve@mdrvi.com <<mailto:steve@mdrvi.com>> .

Gregory H. Hodges

From: Gregory H. Hodges
Sent: Monday, December 07, 2015 5:36 PM
To: Gregory H. Hodges
Subject: FW: Add'l Rent Adjustment to Plaza East
Attachments: 2015-1205 Analysis of Rent - East.pdf

From: John Gaffney [mailto:johngaffney@tampabay.rr.com]
Sent: Sunday, December 06, 2015 2:36 PM
To: Edgar Ross (edgarrossjudge@hotmail.com)
Cc: 'fathiyusuf@yahoo.com'; 'Mike Yusuf'
Subject: Add'l Rent Adjustment to Plaza East

Dear Judge Ross:

Mr. Yusuf requested that I send this file to you.

As you know the Tutu Park Mall invoiced United Corporation for their portion of real estate taxes attributable to years 2012 and 2013. Total taxes are \$590,507.26 of which the Mall paid \$147,626.82 up front. They entered into an installment loan agreement payable over a period of 36 months for the remainder of \$442,880.44.

The total allocation to United Corporation for 2012 and 2013 is \$79,009.87. St. Thomas revenues for the same period totaled \$61,696,473. Therefore the percentage of real estate taxes to revenues is 12.8%. Since Plaza East rent is based upon St. Thomas rents, the total due to United Corp for 2012 and 2013 is \$89,442.92.

Calculation details are included in the attached file. Since payment by United Corporation over the next 36 months is impractical, we propose to pay the entire amounts due.

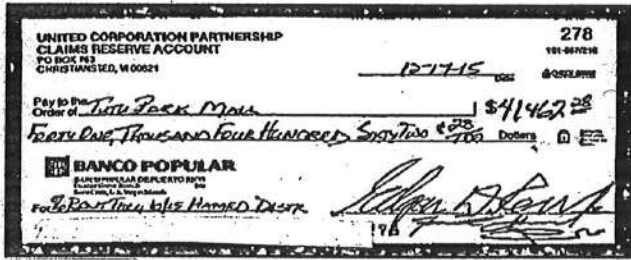
Regards,

John Gaffney

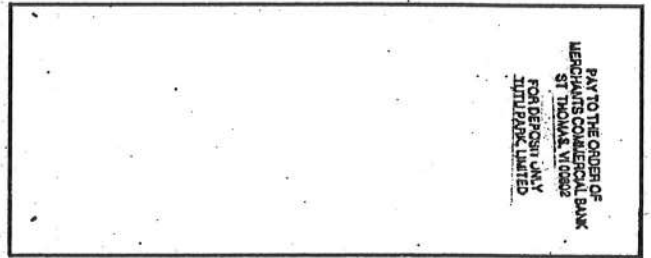
UNITED CORPORATION
 ANALYSIS OF RENT - PLAZA EAST
 12/5/2015

	<u>Total</u>	<u>Ratio</u>	<u>Allocation</u>
Tutu Park Mall:			
2012 & 2013 R/E Taxes	<u>590,507.26</u>	13.38%	<u>79,009.87</u>
Plaza Extra St. Thomas:			
2012 Revenue	31,255,905.36		
2013 Revenue	<u>30,440,567.77</u>		
	<u>61,696,473.13</u>	0.128%	<u>79,009.87</u>
Plaza Extra East:			
2012 Revenue	35,502,694.18		
2013 Revenue	<u>34,340,636.50</u>		
	<u>69,843,330.68</u>	0.128%	<u>89,442.92</u>

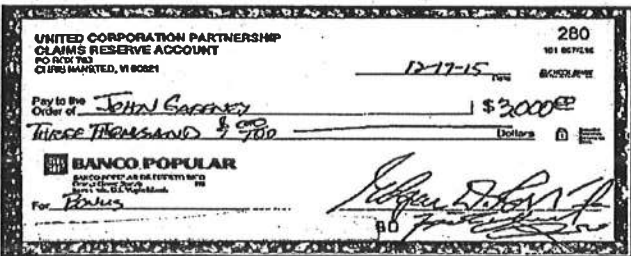
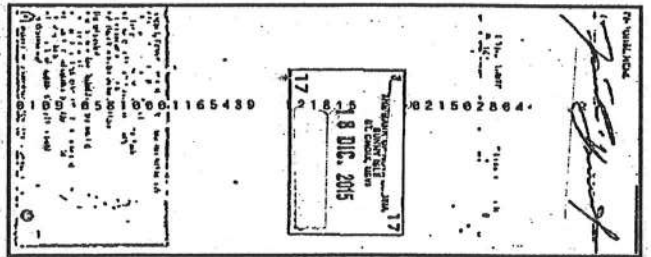
We certify that these are true copies of your checks and other items paid during this statement.



12/24/15 41,462.28



12/21/15 41,462.28



12/21/15 3,000.00

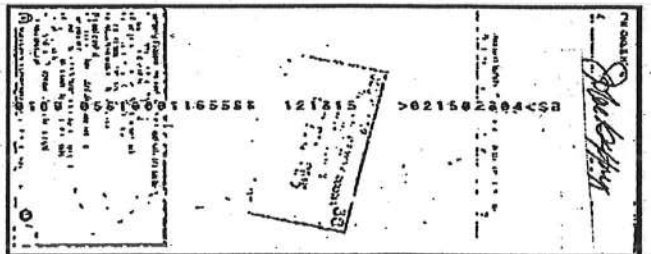


EXHIBIT
tabbles
4

We certify that these are true copies of your checks and other items paid during this statement.

UNITED CORPORATION PARTNERSHIP
CLAIMS RESERVE ACCOUNT
PO BOX 793
Capestansted, WI 80221

270
101-947218
12-8-15
2015

Pay to the Order of Tutu Park Mall \$ 79,009.87
SEVENTY NINE THOUSAND NINE HUNDRED AND 87/100

BANCO POPULAR
BANCO POPULAR, S.A. DE CREDITO Y CAJAS DE PENSIONES
Banco Popular de Puerto Rico, S.A.
Banco Popular de Puerto Rico, S.A. de C.A. de C.V.
Banco Popular de Puerto Rico, S.A. de C.V. de C.A. de C.V.

For Full Year 2012 & 2013 R/L TA

[Signature]

12/14/15 79,009.87

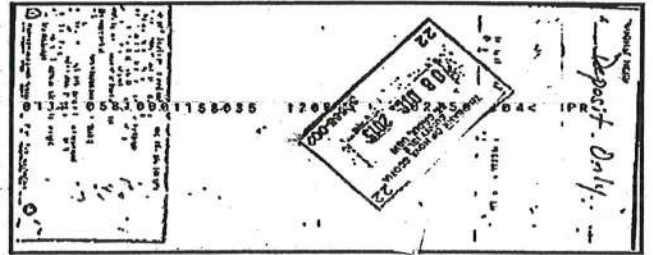
FOR THE OFFICE OF
MERIDIAN COMMERCIAL BANK
ST. THOMAS, VI 00802
FOR DEPOSIT ONLY
TUTU PARK LIMITED

EXHIBIT
5
tabbles

We certify that these are true copies of your checks and other items paid during this statement.



12/09/15 89,442.92





UNITED CORPORATION PARTNERSHIP

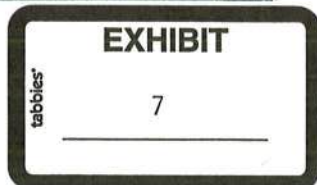
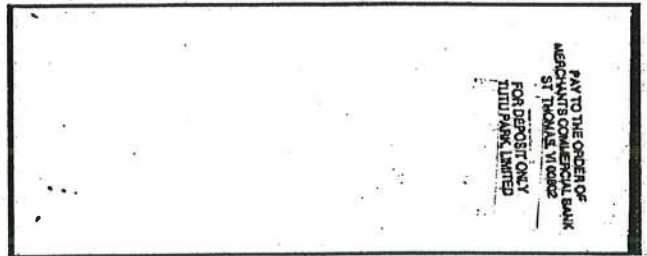
PAGE 4

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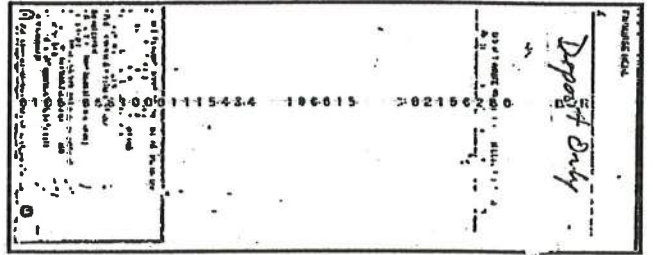
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10/13/15 43,069.36



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UNITED CORPORATION PARTNERSHIP

PAGE 3

We certify that these are true copies of your checks and other items paid during this statement.

UNITED CORPORATION PARTNERSHIP
CLAIMS RESERVE ACCOUNT
PO BOX 753
CHRISTIANSTEDT, VI 00821

281
101-447216

12-29-15 DATE 06/25/16

Pay to the Order of DUDLEY, TOPPER & FEUERZEIG LLP \$ 57,605.00
FIFTY SEVEN THOUSAND SIX HUNDRED FIVE & 00/100 Dollars

BANCO POPULAR
BANCO POPULAR DE PUERTO RICO
1945 THRU 11-30-15

01/06/16 57,605.00

FOR DEPOSIT ONLY
DUDLEY, TOPPER AND FEUERZEIG
Trust Account

FirstBank, Inc. 0719

tabbles

EXHIBIT

9

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

MOHAMMAD HAMED, by his
authorized agent WALEED HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

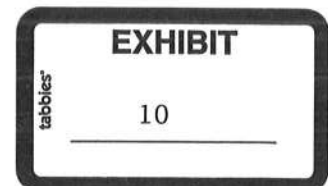
RECEIVED
COURT CLERK
ST. CROIX
OCT 14 2014

**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

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksborg Gade
P.O. Box 756
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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

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

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

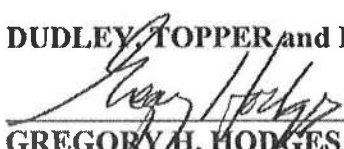
The lead in paragraph to Section 8(B)(1) of the competing plans should be added. Attached as **Exhibit 2** to this Response is the "combined" plan that Yusuf submits accurately sets forth the terms of the competing plans that the parties have not disputed and the provisions proposed by this Court. Yusuf's 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

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

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St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

Gregory H. Hodges

From: Gregory H. Hodges
Sent: Wednesday, February 03, 2016 5:08 PM
To: 'Edgar A. Ross (edgarrossjudge@hotmail.com)'
Cc: 'Joel H. Holt (holtvi@aol.com)'
Subject: Memo re Accounting
Attachments: 1688611-Further Stipultion Re Motion to Clarify Order of Liquidation.PDF; 16D9013-Gaffney Response To 1 28 16 Memo.ffd.DOCX

Judge Ross,

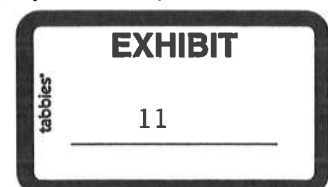
My apologies for the delayed response to Joel's email and memo. I was awaiting input from John Gaffney, who has been very occupied.

The attached stipulated Order provides that the "Partners will submit their proposed accounting and distribution plans required by Section 9, Step 6, of the Plan to each other and the Master by March 3, 2016 [.] To the extent the requested 60 day extension of that stipulated deadline is premised on "delays in the accounting by the Liquidating Partner," as claimed on page 2 of Joel's memo, that claim is disputed. The Liquidating Partner has timely submitted the accounting required by paragraph 1 of the attached Order and all bi-monthly reports required by the Plan and the Order approving the Plan.

The only delays that exist are delays in providing information responsive to the extraordinarily broad information request set forth in Exhibit A to the memo. As that exhibit reflects, the "Initial Request Date" for the information ranged from 8/17/2015, at the earliest, to 11/16/2015, at the latest, even though the Order approving the Plan was entered on 1/9/2015. While we disagree that much of the information being sought is necessary for the "accounting and distribution plans required by Section 9, Step 6, of the Plan," we acknowledge that Section 9, Step 4, of the Plan provides that "Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to present and to submit his findings to the Master." Why, for example, should John Gaffney be required to produce timekeeping records for payrolls in 2013 or individual cashier till stats when summary till stats are included in the daily sales journal batch records, which Hamed's accountants, Vizcaino Zomerfeld ("VZ") already have? According to John, the accounting department has never printed detailed till stats by cashier, so they aren't in boxes stored in each location and certainly have not gone "missing," as the VZ email attached as Exhibit B to the memo suggests regarding the "West boxes." (As I understand from John, each cashier prints a summary slip and these are stored in boxes at each location. But the summary total is on the till stats report in each daily sales journal. He can certainly give VZ many boxes with those records for Plaza East. Since John has no need for them, they remain in each location). Such records, if necessary, could be printed from each store location going back to 2012, including West, which was able to restore the limited historical records removed upon the transfer of that store. These types of requests would be understandable if VZ was performing a standard audit for post-2012 years, but such audits are rarely done years after the fact for obvious reasons. John informed me that even Joel questioned the need for some of the requested information when they met last week to discuss accounting issues. In short, just because the Plan provides that Hamed's accountants are entitled to view all post-2012 accounting information does not mean they should, particularly given the limited accounting resources available to assemble VZ's long list of requested information.

John informs me that much of the accounting records sought by VZ are either kept or accessible at the store locations. He says, for example, that Willie should have the till reports for the Tutu Park store and, generally, has not been responsive to any information requests from John, particularly after 4/30/15. John can arrange for the production of the till reports for East. Regarding West, Joel states at page 2 of his memo: "As your Honor knows, **all** of the accounting record, computers and disks of the West store were removed by the Liquidating Partner" (emphasis supplied). While computers, disks, and 2013-2015 sales journals and accounts payable records may have been removed since John worked out of that store, which served as the accounting "hub," all the other accounting records remained on the premises. So, for example, if VZ wants employee time records concerning West, it needs to get them from the Hameds. If VZ wants the "critical" till status reports for each cash register at West, the Hameds can print them from the restored POS system.

Attached for your further information is a response I received today from John. Since he is the person most knowledgeable about these accounting issues, I encourage you to speak directly with him, if you have questions or need further information.



I respectfully submit that the requested 60 day extension from 3/3/16 (the current stipulated deadline) to 5/2/16 is too long. I propose a compromised extension of 32 days until 4/4/16. If Joel had simply asked for such an extension, I think we could have done a simple stipulation like we did the last time, without all this finger pointing. Please let us know your views or decision concerning this matter at your earliest convenience.

Regards,

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From: Joel Holt [<mailto:holtvi@aol.com>]
Sent: Thursday, January 28, 2016 10:29 AM
To: edgarrossjudge@hotmail.com
Cc: Gregory H. Hodges
Subject: Memo re Accounting

Judge Ross-attached is the promised memo re the continued need for accounting documents, which will further delay the completion of the accounting by the current March 3rd date. Indeed, John Gaffney told me another accounting statement will be issued after Jan 31st. In the memo, I suggest w emote the date to submit objections to the accounting, as well as all other partner claims, back 60 days to May 2nd. I know you suggested this be discussed with opposing counsel, which comments I am requesting by copying his on this email.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

Gaffney Response to Holt Memo to Judge Ross on January 28, 2016,

Exhibit A:

Yes, there are in fact missing records, many of which preceded me. Scotia bank records pertain mostly to St. Thomas. These are exactly the records I mentioned related to my request of Willie Hamed that Humphrey be allowed to secure sales journal records for 2013, 2014 and 2015. Willie specifically denied my request and as a result, I not only don't have some bank statements, I don't have any of the sales journals for St. Thomas which records include daily "Till Statistics."

We never received monthly bank statements from Scotia on the STT operating account. I spent weeks in early 2013 attempting to get Scotia to drop monthly statements (for operating a/c ***2010) and after listening to every lame excuse imaginable, the best they could do was daily (yes daily) bank statements. To make matters worse, they wouldn't mail them to me. So I had to pick them up periodically from the Scotia Red Hook branch. After dealing with repeated delays because of one or two missing days in a batch of records over a three week period of time, I found it easier to simply do screen prints online to reconcile cash. Humphrey picked up the same procedure when he started with us in March 2013. He too was intensely frustrated by Scotia's refusal to provide us with monthly statements on the most important Plaza account we had with them. He can certainly elaborate on this if needed.

Regarding Banco not providing copies of enclosures, there was an abrupt stoppage in August 2013 after the Hameds served Banco with the official court order requiring 2 signatures (one from each family) on all United Plaza accounts. Although dual signatures as indicated was already a well-established procedure, this action really put Banco on notice they would be liable in the event of a violation. Our ability to conduct business with Banco became very strained after that. Not only did they discontinue providing copies of enclosures (which is no doubt the direct result of the threatening nature of the Hameds' service) but we began regularly experiencing countless numbers of returned items for the simple reason Banco couldn't review each and every document presented. So they regularly returned items which caused an accounting and reconciling nightmare. Recall that we became precariously close to having all of our accounts closed at Scotia and Banco and Scotia has recently closed all of our accounts.

I can barely talk about the accounting problems resulting from the impasse over Mr. Yusuf's attempt to stop paying Wally Hamed's payroll after Wally was MIA for so long. In fact, I didn't know who Wally was for at least the first year I was here. But a thousand (all) payroll checks were cashed on premises that were held in lieu of being deposited in the normal course of business. Before payroll checks were finally co-signed (after Judge Ross' order that Mafi do so) and deposited, the outstanding checks list was about 25 pages long. But much more importantly, Plaza East was withholding cash from daily deposits once all previous cash had been depleted. There was no other way to meet the demand to pay payroll which resulted in severe accounting control issues.

It's impossible to respond to each and every line item in this exhibit. I spent weeks assembling what VZ does possess and they have yet to review most of what I have already provided. They were still reviewing the sales journals for the first 3 months of 2013 on Friday 1/22/16 – a full week after they

arrived. I was and am prepared to deliver sales journals for the remainder of 2013, all of 2014 and 2015. Again, each daily sales journal contains summary till statistics and the need for all detailed till statistics by cashier is not only highly suspect, it probably goes way beyond any reasonable need under any audit. Had we printed those reports we'd need another large warehouse to store them. And frankly, we simply have no need for them – never have and never will for the simple reason they are maintained forever in the POS system.

It's obvious to me that VZ feels the need to justify their lack of progress toward a known goal. They expressed no interest in seeing the electronic documentation provided to and by the Kauffman Rossin (KR) 2014 review. We did in fact print cashier till statistics for KR for Plaza East and Plaza St. Thomas because we still had access to both stores. Although Plaza West POS history had been removed on March 8th it has since been restored which I only recently found out about.

It was clear that Kaufman Rossin realized after some review of 2014 cashier till stats, the need for those records was questionable – even to them. A big difference is KR selected every 6th day to test unlike VZ whose requests are blanket requests for “all” documents. If I were to print and provide all of the records they requested, I'd easily need a 40 foot container to deliver it in. That's exactly why I suggested providing and did provide them with Sage backups and having them pick (either randomly or subjectively) items for review on a sample basis.

We now have only two clerks at Plaza East who handle accounts payable and payroll. I need another person to handle receivables, reconciliations, etc. and preferably someone with a knowledge of debits and credits. This was a \$100 million company before the dissolution with millions of sales transactions annually, over 36,000 payroll transactions annually, and over 20,000 produce/service purchases that are paid for throughout the year. This is a company that is normally run with at least a dozen people in the accounting department. The swap of accounting personnel after the split exacerbated the challenge requiring a settling down period, but more importantly left me with very low level accounting personnel. In other words, I'm the “only one.”