



on September 22, 2016, defendant/counterclaimant Fathi Yusuf (“Yusuf”) respectfully submits his Accounting Claims and Proposed Distribution Plan (the “Claim”) as follows:

**I. Current Status of Partnership Wind Up and Overview of Proposed Distribution**

The current status of the wind up of the Partnership is set forth in the Tenth Bi-Monthly Report of the Liquidating Partner filed on September 30, 2016 and the supporting financial information concurrently submitted to the Master and counsel. At present, the total remaining assets of the Partnership are \$8,957,168.54<sup>3</sup>.

A summary of the Claim’s proposed distributions is set forth in **Exhibit A**. It contemplates that a portion of the remaining Partnership Assets will be held in reserve for potential expenses including taxes and litigation costs for personal injury claims made or potentially to be made against the various Plaza Extra Stores prior to the dissolution. In addition, all Debts of the Partnership must be paid prior to any distributions to Partners. At this stage, the remaining Debts include the unpaid rent obligations, plus interest, due to United for occupying the Plaza Extra-East store and Bays 5 and 8 in the United Shopping Plaza, which have not been adjudicated<sup>4</sup>, as well as other obligations owed to United discussed in more detail below. As reflected in Exhibit A, there will be a shortfall of approximately \$4 million in Partnership Assets, if all listed Debts are paid and all proposed reserves are established. Any actual shortfall must be made up by the Partners or a deceased Partner’s estate.

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<sup>3</sup> These total assets are reflected in the Partnership balance sheet provided, along with income statement, on September 30, 2016 to the Master and counsel for the Partners by John Gaffney (“Gaffney”), who has served as the accountant for the Partnership.

<sup>4</sup> See Memorandum Opinion and Order dated April 27, 2015 (the “Rent Order”), which provides that although back rent for Bays 5 and 8 are set forth in United’s Counterclaim, “this Order addresses only Bay No. 1.” (Rent Order, p. 2, n. 1)

Once reserves are established and the outstanding Debts are allowed and paid, distributions to the Partners can be made only if there are remaining Partnership Assets. The Claim provides:

- a) reconciliation of the historical withdrawals and distributions between the Partners and their agents from the profits of the Plaza Extra Stores, reflecting a net balance of \$9,670,675.36 due to Yusuf;
- b) an accounting of funds received by Yusuf for the sale of Y&S Corporation (“Y&S”) and R&F Condominium, Inc. (“R&F”) stock resulting in a balance of \$802,966.00 due to Hamed;
- c) a description of Partnership funds entrusted to Hamed to be held in foreign accounts, invested in real estate or used as charitable donations of the Partners, reflecting a balance due to Yusuf; and
- d) quantification of the loss of the going concern value of Plaza Extra-West as a result of Hamed’s actions resulting in a balance of \$4,385,000.00 due to Yusuf.

## **II. Funds to Be Held in Reserve**

Prior to distribution of the remaining Partnership Assets, certain funds must be held in reserve to satisfy contingent obligations and risks of the Partnership.

### **A. Reserves Needed for Plaza Extra-Tutu Park Rent**

Given Hamed’s conceded failure to obtain releases of the Partnership, United and Yusuf, as required by the “Order Adopting Final Wind Up Plan” dated January 7, 2015 and entered on January 9, 2015 (the “Wind Up Order”) (p. 5), § 8(2) of the Plan, and the April 30, 2015 Master’s Order (p. 2), a reserve must be created for all rents to be paid to Tutu Park Limited over the remaining term of the lease in the amount of \$887,203.26 (\$30,359.38 per mo. in rent plus an

average of \$2,500 per mo. in water charges x 27 months), not including charges for real estate taxes and percentage rents.

**B. Reserves Needed for Plaza Extra-Tutu Park Property Taxes and United Matching Payment**

As described in the Tenth Bi-Monthly Report, *see* p. 4, n. 6, property taxes for 2015 have not yet been billed, but reserves should be set aside to pay these taxes which are estimated to be \$14,356.44, along with a matching payment to United of \$9,812.14.

**C. Reserves Needed for FUTA Taxes**

At present, there is a dispute as to the amount of Federal Unemployment Taxes ("FUTA") due from the Plaza Extra Stores. The Internal Revenue Bureau contends that approximately \$350,000.00 is due for 2014 and 2015. Gaffney, however, has determined that no additional FUTA taxes are due. While the amount remains in dispute, Yusuf proposes to hold these funds in reserve until the dispute is resolved. Once the dispute is resolved, the funds can be distributed according to the Plan or as otherwise ordered by the Court.

**D. Master's Fees**

The fees of the Master for supervising the final liquidation and wind up of the Partnership will need to be reserved. It is estimated that \$150,000 should be set aside for such expenses.

**E. Accounting Fees**

Accounting fees for coordination and payment of various Debts and wind up of the Partnership will need to be reserved. It is estimated that \$30,000.00 should be set aside for such expenses.

**F. Funds to Be Held in Reserve for Litigation Risks**

Reserves must be set aside for pending and possible litigation relating to claims for injuries allegedly suffered at the various Plaza Extra Stores prior to the dissolution of the

Partnership and transfer of ownership of the stores. *See* Exhibit C-2 to the Seventh Bi-Monthly Report filed on April 1, 2016. Yusuf submits that the amount required to satisfy the potential risk to the Partnership as well as costs and expenses not otherwise covered by insurance for those claims is approximately \$1,320,777.00. This amount is comprised of two primary components: 1) pending claims and 2) estimated future claims.<sup>5</sup>

As to the pending claims, they are further divided into two categories: a) those claims with insurance coverage and a self-insured retention and b) uncovered claims. For those claims with insurance coverage, reserves are calculated by considering the total amount claimed or last demanded in settlement by the plaintiffs, multiplied by the probability of plaintiffs' success in each case, added to the costs for the litigation not covered by insurance.<sup>6</sup>

As to the estimated future claims, the average value of claims in a given year is calculated by review of historical claims. Then this value is multiplied by the average number of claims per year and by the number of years in the statute of limitation period to determine the total risk. That figure is in turn multiplied by the percentage of time remaining in the applicable statute of limitations. The statute of limitations is calculated for each store from the last date it was controlled by the Partnership; i.e. March 9, 2015 for Plaza Extra-East and West, and April 30, 2015 for Plaza Extra-Tutu Park. Such formulas are commonly utilized to evaluate risk exposure by insurers in setting insurance loss reserves.<sup>7</sup>

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<sup>5</sup> At present, Yusuf is unaware of any unfiled claims within the statute of limitations.

<sup>6</sup> *See Exhibit B*, Litigation Reserves Calculations.

<sup>7</sup> *A User-Friendly Introduction to Property and Casualty Claims Reserves*, Joseph Calandro, Jr. and Thomas J. O'Brien, 2004, describing accounting methodologies as to assessment of litigation risks and costs for setting reserves.

These reserves include the claims of Wadda Charriez<sup>8</sup> since her counterclaims are effectively against the Partnership and, therefore, constitute a potential obligation of the Partnership.

### **III. Outstanding Debts of the Partnership**

Although nearly all of the undisputed Debts of the Partnership have been paid or resolved, the following Debts remain:

#### **A. Miscellaneous Debts**

There are Debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners<sup>9</sup>. This amount relates primarily to accounts payable for open tax issues from 2013.

#### **B. Unpaid Rent for Plaza Extra-East and Adjacent Bays**

While the Court determined that certain past due rent obligations for Plaza Extra-East must be paid pursuant to the Rent Order, there remain additional rent claims for Plaza Extra-East. These claims have not yet been resolved<sup>10</sup> and, if found to be due and owing, then these are Debts of the Partnership that should be paid prior to any distribution of the remaining Partnership Assets to the Partners.

United makes the following claims against the Partnership as set forth in its Amended Counterclaim and Motion For Partial Summary Judgment Regarding Rent:

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<sup>8</sup> These claims are the subject of a separate suit, United Corporation v. Wadda Charriez, SX-13-CV-152, which Yusuf has moved to consolidate into this action for resolution. *See* Motion to Consolidate filed on March 17, 2016.

<sup>9</sup> The total liabilities are reflected in the Partnership balance sheet provided to the Master and counsel for the Partners by Gaffney on September 30, 2016.

<sup>10</sup> *See* Rent Order, p. 2, n. 1; p. 11, n. 4.

### **1. Bay 1 – Increased Rent Due Net of Rent Paid**

United provided formal notice of increased rent of \$200,000 per month to the Partnership, which was to begin on January 1, 2012 through March 31, 2012, if the premises were not vacated before then. Thereafter, beginning on April 1, 2012 through March 8, 2015, United provided formal notice of increased rent of \$250,000 per month. *See* Exhibit D to Yusuf's Declaration dated August 12, 2014 (the "Yusuf Declaration") in support of Defendants' Motion for Partial Summary Judgment on Counts IV, XI and XII Regarding Rent. Although the Rent Order awarded certain amounts of rent to United during this period, the award did not address the increased rent claimed by United. The outstanding balance of the increased rent claimed as to Bay 1, net of the rent recovered pursuant to the Rent Order, is \$6,974,063.10. *See* calculation of additional rents attached as **Exhibit C**.

### **2. Bays 5 and 8**

Likewise, outstanding rent is due to United for Bays 5 and 8 of the United Shopping Plaza. These amounts were not adjudicated in the Rent Order and they remain an outstanding rent claim against the Partnership. The total amount due to United for unpaid rent for Bays 5 and 8 is \$793,984.34. *See* the Yusuf Declaration at ¶¶ 21-25.

### **3. Interest on Rent Claims**

The interest that accrued at 9% per annum on the rent actually awarded by the Rent Order (\$6,248,924.14) is \$881,955.08 as of May 11, 2015, when that rent was paid to United. *See* calculation of interest on Bay 1 rent attached as **Exhibit D**.<sup>11</sup>

The interest due for the unpaid rent on Bays 5 and 8 is also claimed by United. The total interest calculated at 9% per annum for the period from May 17, 2013 through September 30,

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<sup>11</sup> This amount does not include any interest accruing at the 9% rate on each month's unpaid rent from June 1, 2013 through March 8, 2015.

2016 is \$241,005.18. Such interest continues to accrue at the daily rate of \$195.78 until paid.

See calculation of interest on Bays 5 and 8 rent attached as **Exhibit E**.

### **C. Reimbursement For Gross Receipts Taxes Paid by United**

As Yusuf has testified without contradiction (*see* transcript of Yusuf's deposition of April 2, 2014 at pages 53-4), the Partners originally agreed that the Plaza Extra Stores would pay all gross receipts taxes and insurance relating to United's Shopping Center. The Partners acted on this agreement for the life of the Partnership, as reflected in the actual payment of these expenses with funds from the Plaza Extra Stores for more than 28 years. The Partnership owes United for certain gross receipts taxes United paid on behalf of the Partnership totaling \$60,586.96, which were never reimbursed. See **Exhibit F**, Summary and Evidence of United Payment of Gross Receipts Taxes.

### **D. Black Book Balance Owed to United**

A black ledger book (the "Black Book") was used by the Partners to track spending and withdrawals as between the Partners and their families as well as by United on behalf of the Plaza Extra Stores. Certain entries from the Black Book are accounted for in the BDO Report discussed in §IV below, to the extent they represent historical withdrawals as between the Partners and their families. However, as to funds which United paid on behalf of the Plaza Extra Stores, the Black Book entries reveal that the Partnership owes United \$49,997.00 for various expenses it paid on behalf of the Partnership. See **Exhibit G**, Relevant Black Book Entries.

### **E. Additional Ledger Balances Due to United**

In addition to the Black Book balance owed to United, at various points in time, United made other payments on behalf of the Plaza Extra Stores. In 1994, 1995 and in 1998, United paid \$199,760.00 for various expenses of the Partnership. See **Exhibit H**, Ledger Sheets



Reflecting United's Payments for Plaza Extra. In the same ledger book, records of withdrawals by Yusuf are also noted for certain personal expenses in 1995 and 1996. The amounts relating to Yusuf's personal expenses are included in the BDO Report discussed below in § IV, accounting for the withdrawals as between the Partners and their families. However, the total amount of \$199,760.00 paid by United has not otherwise been captured in other reconciliations and remains due and owing to United.

**F. Water Revenue Re Plaza Extra-East**

Beginning in 1994, Plaza Extra-East began selling United's water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 (\$52,000) and 1998 (\$75,000) as \$5,291.66 per month. Multiplying the average monthly sales revenue by 131 months, United is owed \$693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015.

**G. Unreimbursed Transfers to Plaza Extra from United's Tenant Account**

At various points throughout the Partnership, United would transfer funds from its tenant account, which the parties have already conceded was separate and independent from the Partnership, to the Plaza Extra Stores to cover expenses and to maintain cash-flow. The Partnership has not reimbursed United for certain transfers. The Partnership owes United \$188,132 for its unreimbursed transfers. *See Exhibit I*, Summary and Supporting Documentation of Unreimbursed Transfers from United.

#### IV. Past Partnership Withdrawals and Distribution Reconciliation

Throughout the Partnership, the Partners and their agents (*i.e.*, their sons) would withdraw cash from safes at the Plaza Extra Stores. Evidence of these withdrawals came in multiple forms including, *inter alia*, receipts, checks or ledger entries. In addition, the Partners and their agents used funds generated by the Plaza Extra Stores for personal expenses. These payments for personal expenses were to be counted against each Partner as a distribution. The withdrawals and payments for personal expenses were supposed to be done on the “honor system,” which relied upon each Partner and their agents to disclose to the other Partner, via “tickets” or receipts left in the store safes, when withdrawals were made or personal expenses were paid from Partnership funds. Occasionally, the Partners would reconcile the various withdrawals and expenses between them. Upon review of the various accounting records as well as information regarding personal accounts and assets of the Partners and their agents, Yusuf submits that Hamed and his agents failed to fully disclose all of the funds they withdrew from the Partnership or personal expenses they paid with Partnership funds. Consequently, these previously undisclosed withdrawals and expenses are treated as distributions in the Claim. A full accounting of the Partnership withdrawals is set forth in the Expert Report of Fernando Scherrer of BDO Puerto Rico, P.S.C. (“BDO”) attached as **Exhibit J**<sup>12</sup>. Based on that report, Hamed’s withdrawals/distributions exceed Yusuf’s withdrawals/distributions by \$19,341,350.72. *See* Exhibit J at p. 62-3. As a result, \$9,670,675.36 should be awarded to Yusuf to equalize the distributions between the Partners so that both Partners have equal distributions of \$18,820,989.98.

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<sup>12</sup> The tables, schedules and supporting documentation for this report are voluminous and will be submitted to the Master and counsel for Hamed via a flash drive or CD identified as **Exhibit J-1**.

## **V. Y&S and R&F Stock Sale Proceeds Distribution**

The Partnership invested in various entities used to purchase either stock or real estate. One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and Nejeah Yusuf. The two sons sold their stock for \$900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. Yusuf has received all of the proceeds from the sale of the stock. Although claims to these funds were the subject of a separate suit (Hamed v. Yusuf, Superior Court of St. Croix, SX-2014–CV-278), the parties stipulated to have these claims<sup>13</sup> consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966<sup>14</sup> should be allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F.

## **VI. Foreign Accounts and Jordanian Properties**

As part of the profit sharing arrangement between the Partners, at various points in time, profits of the Partnership were sent to Jordan to be held in bank accounts or invested in real property to the mutual benefit of the Partners. In addition, Partnership profits were also sent to

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<sup>13</sup> Although no claims have ever been pled in this case or SX-2014-CV-278 concerning the \$600,000 in proceeds from Yusuf's sale of his 1,000 shares of stock in R&F pursuant to an agreement dated January 15, 2001 with Hakima Salem, Yusuf is prepared to include these proceeds in his accounting.

<sup>14</sup> Interest was not included on this claim because, among other things, United did not include all the interest it could claim on the rent actually awarded by the Rent Order. *See* n. 11, above. There are additional reasons for not paying interest on the claim as reflected in Yusuf's First Amended Answer And Counterclaim filed in SX-2014-CV-278. *See also* n. 15, below, regarding \$150,000 offset.

Jordan to be used as charitable donations of the Partners. Based upon Yusuf's review of bank documentation available to date and information discovered following the FBI raid, Yusuf claims that Hamed (either individually or through his sons or agents) failed to properly invest all Partnership funds with which he had been entrusted and failed to properly account for such funds. As a result, Hamed either breached his fiduciary duties to the Partnership by failing to properly safeguard, account for, and invest these funds as agreed between the Partners or he converted them for his own personal use or the personal use of his family members.

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

- a. Hamed and his sons have failed to account for the Partnership funds held in various foreign bank accounts from 1996 to date including, but not limited to, the accounts identified in **Exhibit K**;
- b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation; *see* **Exhibit L**, Wire Transfer Information Supporting Claim.<sup>15</sup>

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<sup>15</sup> This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should either be offset against the \$802,966 allocated to Hamed in § V, above, or it should be charged against Hamed's interest in the Partnership. Given Hamed's apparent negative balance in his Partnership account, Yusuf submits the \$150,000 should be offset against the \$802,966.

- c. Waleed Hamed's unauthorized check of \$536,405 to Hamed on April 29, 1998 and additional checks for \$10,000 and \$15,216; *see Exhibit M.*
- d. Waleed Hamed's failure to account for funds that were removed from the Commercial Francaise Bank in Saint Maarten with four (4) checks totaling \$550,373.14 to close out the account in January and February of 1997; and
- e. Waleed Hamed's conversion of \$1.4 million received in 1996 as reflected in a St. Maarten police report.

Approximately forty (40) parcels of real property were purchased in Jordan using funds from the Plaza Extra Stores. All but two of those properties were jointly titled in the names of Hamed and Yusuf. The Court's assistance in administering or liquidating the jointly titled parcels is not sought at this time. Yusuf does seek the Court's assistance, however, with respect to two (2) parcels that were incorrectly titled in Hamed's name alone. These two parcels are identified in the "Land Value Estimation" attached as **Exhibit N**. Yusuf respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these parcels.

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as **Exhibit O**<sup>16</sup>. Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels,

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<sup>16</sup> Yusuf is arranging for this document to be translated. An English version will be provided to the Master and counsel upon receipt.

one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. See Ninth Bi-Monthly Report at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

#### **VII. Loss of Going Concern Value of Plaza Extra-West**

During the period that the Partnership operated Plaza Extra-West, it generated income, supported its expenses and ultimately generated profits. Plaza Extra-West's net profits were expected to continue indefinitely or, upon the dissolution of the Partnership, they were to continue until an orderly liquidation process could be concluded involving purchase of the business by one of the Partners or a third party. In either case, Plaza Extra-West's value as a "going concern" would have been quantified and realized equally by the Partners.

As equal Partners, both Hamed and Yusuf had ownership interests in the "going concern" value of Plaza Extra-West. A "going concern" value recognizes the many advantages that an existing business has over a new business, such as avoidance of start-up costs and improved operating efficiency. In this sense, the "going concern" value of a business represents the

difference between the value of an established business and the value of a start-up one. “Going concern” value also indicates the value of a business as an operating, active whole, rather than merely as distinct items of property.<sup>17</sup>

Both Hamed and Yusuf had fiduciary obligations to each other to maintain the “going concern” value of Plaza Extra-West and to behave in such a way as to promote and not diminish its value as an on-going business. An essential component to Plaza Extra-West’s on-going business operations was its ability to continue to operate out of its existing location in Estate Plessen. By orchestrating an April 30, 2014 lease of the premises occupied by Plaza Extra-West to a competing business (wholly owned by Hamed’s sons), KAC357, Inc., which then took over the operation of the Plaza Extra-West supermarket formerly owned by the Partnership, Hamed effectively appropriated for the benefit and use of him and his sons the “going concern” value to the Partnership of the supermarket. Hence, Hamed’s actions operated to substantially decrease the value of Partnership Assets. Plaza Extra-West’s value as a “going concern” at the time that Hamed took such actions was \$8,770,000. *See* Valuation Report of Plaza Extra-West, prepared by Integra Realty Resources, attached as **Exhibit P**, at page 55.<sup>18</sup> Hamed’s actions thus

<sup>17</sup> Preservation of the going concern value is recognized in many contexts including bankruptcy proceedings, which seek to preserve such value when reorganizing businesses in order to maximize recoveries for creditors and shareholders (11 U.S.C. § 1101 et seq.).

<sup>18</sup>In addition to the business valuation report for Plaza Extra-West, Integra Realty Resources also prepared an appraisal of the real property occupied by Plaza Extra-West, which is attached as **Exhibit Q**. Exhibit Q in turn contains an analysis of the market rent for use of the land and improvements occupied by Plaza Extra-West. In Exhibit Q, Integra Realty Resources concludes that the market rent for the property is \$7.50 per square foot per year, rather than the \$4.04 per square foot per year rate in the KAC357, Inc. lease. *See* Exhibit Q, pp. 63-64. The annual market rent is \$1,224,848 at the \$7.50/sq. ft./year rate. *See id.* at p. 63. That annual market rent of \$1,224,848 in Exhibit Q was in turn used in the income approach calculations of Exhibit P to determine the business value of Plaza Extra-West as of April 30, 2014. *See* Exhibit P, p. 39, item 4; pp. 40, 53-54. The \$7.50/sq. ft./year market rent for Plaza Extra-West is a conservative number because, as noted in Exhibit Q (at page 61), the actual annual rent paid at one of the

diminished the value of the Partnership Assets at the time of dissolution by \$8,770,000. As half owner of the Partnership, such actions decreased the value of Yusuf's Partnership interests by \$4,385,000. As a result, \$4,385,000 should be awarded to Yusuf to compensate him for such loss of value.

### **VIII. Half of Value of Six Containers**

As reflected in the Liquidating Partner's Sixth Bi-Monthly Report, n. 4, at the closed auction for the Tutu Park store, the Partners agreed before the Master that the inventory to be included in the auction consisted of the inventory located under the roof of the store facilities. After the auction, Yusuf learned that Hamed or his designee, KAC357, Inc., took possession of six (6) trailers of inventory located outside of the covered premises. Since the inventory contained in these 6 containers was indisputably Partnership property, Yusuf claims entitlement to half of the total value of such inventory, which is estimated to be approximately \$360,000 to \$420,000. Subject to further discovery, Yusuf submits he should be entitled to recover between \$180,000 and \$210,000. Since the Master has already rejected this claim, Yusuf reasserts it here merely to preserve the claim for review.

### **IX. Disposition of this Case and Related Litigation**

The Claim addresses or resolves many but not all of the open claims between the Partners and related entities. To fully and finally complete the dissolution of the Partnership and accomplish a final distribution to the Partners, further discovery will be required in this case and related litigation.

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other stores – Plaza Extra-Tutu Park – was \$8.91 (as a result of overage or percentage rent clauses in that lease).



**A. The Main Case and Consolidated Cases**

Yusuf's proposed distribution in this matter (Hamed v. Yusuf, SX-12-CV-370, the "Main Case") is based upon the discovery that had been conducted prior to the imposition of the discovery stay in October of 2014. Additional information which has been or will be sought from Hamed's estate and his agents or representatives reflecting their personal finances is expected to reveal additional undisclosed withdrawals or personal expenses paid with Partnership funds. Hence, additional discovery is needed to determine if such additional undisclosed withdrawals occurred which would result in a revised proposed distribution as to the historical withdrawals.

The matter dealing with Y&S (Hamed v. Yusuf, SX-14-CV-278, the "278 Case"), is the subject of a stipulation to consolidate that case into the Main Case. Therefore, any disputed issues relating to the claims for the sale and distribution of the proceeds of the sale of the Y&S (and R&F) stock can be resolved in the Main Case.

In addition, Hamed filed suit against United and Yusuf (Hamed v. United, SX-14-CV-287, the "287 Case") for the withdrawal of \$2.7 million in Partnership funds on August 20, 2012. Yusuf submits that payment of these funds was made as a matching withdrawal to address the disparity of the prior Partnership distributions to Hamed and his agents. The Partners stipulated for consolidation of these cases and on April 15, 2016 an Order was entered consolidating the 287 Case into the Main Case. The withdrawal at issue in the 287 Case is fully addressed in the accounting and reconciliation of past Partner withdrawals in the BDO Report. *See Exhibit J at p. 14.* Hence, these claims are now consolidated into the Main Case.

### **B. Additional Suits Which Should Be Consolidated with the Main Case**

The case captioned United v. Waheed Hamed, ST-13-CV-101 relates to actions of Waheed for improper removal of funds of the Partnership prior to recognition of the Plaza Extra Stores' operations as a "partnership."<sup>19</sup> These claims relate to specific withdrawals of funds or use of Partnership funds that are included in the accounting and reconciliation in Section IV of Exhibit J. To the extent that any additional discovery is necessary concerning these claims or defenses, they can be addressed in the Main Case. As a result, Yusuf also seeks to have this case consolidated into the Main Case, if it is not dismissed.

The suit captioned United Corporation v. Wadda Charriez, SX-13-CV-152, relates to claims by United that Ms. Charriez falsified her work hours and therefore received compensation to which she was not entitled. Ms. Charriez counterclaimed against United and filed a third party complaint against Yusuf for intentional infliction of emotional distress, tortious interference with contract, civil extortion, civil conspiracy, and defamation, all of which are essentially claims against the Partnership. Yusuf contends that the claim is a potential asset of the Partnership and that the counterclaim/third party complaint is a potential liability of the Partnership, which requires the establishment of appropriate reserves. Further, Yusuf proposes that, as the Liquidating Partner, he be allowed to pursue efforts to resolve the claims and counterclaims involving the Partnership.

### **C. Conclusion**

Yusuf submits that the remaining assets of the Partnership are insufficient to satisfy the outstanding Debts and reserves for anticipated or contingent obligations and litigation risks of

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<sup>19</sup> A similar suit was filed by United against Waleed Hamed (ST-13-CV-3). On motion of United, it was dismissed by Order dated August 5, 2016. United filed a similar motion to dismiss its case against Waheed Hamed on September 13, 2016.

the Partnership. Assuming the allowance of all the identified Debts and proposed reserves, there will be a shortfall of approximately \$4 million in Partnership Assets to pay or establish these Debts and reserves. *See* Exhibit A. Any actual shortfall must be made up by the Partners or a deceased Partner's estate. An accounting of the historical withdrawals and distributions between the Partners, both disclosed and undisclosed, reveals a large discrepancy in Yusuf's favor. Again, these calculations were prepared without the benefit of deposition testimony and additional written discovery following the stay. It is anticipated that additional discovery will yield information necessitating revisions to these calculations. Likewise, Partnership funds entrusted to Hamed and his sons in various foreign accounts also requires additional discovery. The loss of the going-concern value of Plaza Extra-West further reflects a significant amount due to Yusuf. On balance, there exists a substantial amount due to Yusuf to reconcile the Partner's withdrawals and distributions. Solvency of Hamed (or his estate)<sup>20</sup> is in doubt given the discrepancy in the amounts due to Yusuf. For this reason, Hamed's (or his estate's or his trust's) interests in the jointly owned entities (Plessen Enterprises, Inc., Peter's Farm Investment Corporation, and Sixteen Plus Corporation) may need to be quantified as a means of payment to equalize the Partnership withdrawals.

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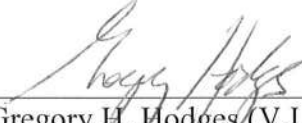
<sup>20</sup> A Petition for Probate of Will and for Letters Testamentary was filed on August 26, 2016 as Case No. SX-2016-PB-76. That petition reflects no available assets to satisfy Yusuf's claims other than Hamed's interest in the Partnership, since all of Hamed's interests in real and personal property had previously been conveyed to the Mohammad A. Hamed Living Trust dated September 12, 2012. Yusuf reserves all rights to challenge such conveyance as fraudulent.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

DATED: September 30, 2016

By:

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of September, 2016, I caused the foregoing **Yusuf's Accounting Claims and Proposed Distribution Plan** to be served upon the following via e-mail:

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**INDEX OF EXHIBITS TO YUSUF ACCOUNTING CLAIMS AND PROPOSED  
DISTRIBUTION PLAN**

- Exhibit A - Summary of Yusuf Plan Distributions
- Exhibit B - Litigation Reserves Calculations
- Exhibit C - Calculation of Additional Rent Net of Rent Paid
- Exhibit D - Calculation of Interest on Bay 1 Rent
- Exhibit E - Calculation of Interest on Bay 5 & 8 Rent
- Exhibit F - Summary and Evidence of United Payment of Gross Receipts Taxes
- Exhibit G - Relevant Black Book Entries
- Exhibit H - Relevant Ledger Entries
- Exhibit I - Summary and Supporting Documentation of Unreimbursed Transfers from United
- Exhibit J - Past Partner Withdrawals and Distribution Reconciliation, BDO Report
- Exhibit J-1 - Tables, Schedules and Supporting Documents for BDO Report
- Exhibit K - List of Foreign Accounts
- Exhibit L - Wire Transfer Information Supporting Claim
- Exhibit M - Cairo Amman Checks to Waleed Hamed
- Exhibit N - Land Value Estimation
- Exhibit O - Agreement in Arabic Conveying Hamed's Interest in Jordanian Parcel
- Exhibit P - Integra Realty Resources Valuation Report
- Exhibit Q - Integra Realty Resources Appraisal Report