

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

HISHAM HAMED, derivatively, on behalf)
of **SIXTEEN PLUS CORPORATION**,)

Plaintiff,)

vs.)

FATHI YUSUF, ISAM YOUSUF and)
JAMIL YOUSEF,)

Defendants,)

and)

SIXTEEN PLUS CORPORATION,)

a nominal defendant.)

Case No.: 2016-SX-CV-650

DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES,
CICO RELIEF, EQUITABLE RELIEF
AND INJUNCTION

JURY TRIAL DEMANDED

**DEFENDANT FATHI YUSUF'S MOTION FOR LEAVE TO FILE A SUR REPLY
TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant, Fathi Yusuf ("Mr. Yusuf"), through undersigned counsel, pursuant to Local Rule of Civil Procedure 7.1(a) and Superior Court Rule 7¹, hereby moves for leave to file a sur-reply to Plaintiff, Hisham Hamed's Motion for Partial Summary Judgment on Count III (Breach of Fiduciary Duty) of the Complaint ("Motion for Summary Judgment") and, in support, states as follows.

1. On January 9, 2017, Mr. Yusuf filed a Motion to Dismiss all counts of Plaintiff's First Amended Complaint, including the breach of fiduciary duty claim set forth in Count III. In that motion Mr. Yusuf argued, *inter alia*, that Count III was time-barred, and, alternatively, that

¹ Local Rule of Civil Procedure 7.1(a), made applicable to this proceeding by Superior Court Rule 7, provides that "[o]nly a motion, response in opposition, and a reply may be served on counsel and filed with the Court; further response or reply may be made only by leave of Court obtained before filing[.]"

Plaintiff had failed to properly plead harm to the corporation, which is a necessary element of any claim for breach of fiduciary duty.

2. On January 20, 2017, Plaintiff filed a Motion for Partial Summary Judgment directed solely to Count III, the breach of fiduciary duty claim.²

3. On February 9, 2017, Mr. Yusuf filed an Opposition to the Motion for Summary Judgment on the principal ground that the Motion for Summary Judgment must be denied if the claims therein are properly disposed of by Defendant's Motion to Dismiss. Alternatively, Mr. Yusuf argued Plaintiff lacked the requisite personal knowledge of allegations in his Complaint upon which Count III depended; and that if the claim was not disposed of by the adjudication of the Motion to Dismiss, discovery was needed to properly oppose the motion.

4. On February 13, 2017, Plaintiff filed a reply which asserted new arguments in support of his motion for summary judgment, including but not limited to the argument that, in the derivative action context, a plaintiff seeking summary judgment may rely on verified allegations of his complaint even if he has no personal knowledge of those allegations, that lack of personal knowledge of certain allegations could not preclude summary judgment because his breach of fiduciary duty count did not depend on those allegations, and arguments suggesting that the power of attorney was exercised within the two-year limitations period for breach of fiduciary duty in a way that caused harm to the corporation.

5. Although it is understandable that these arguments were first raised in Plaintiff's reply brief given the content of Mr. Yusuf's opposition to the Motion for Summary Judgment, Mr. Yusuf should be given the opportunity to respond to the arguments. *See Amlin Underwriting*

² On the same day, Plaintiff also filed an opposition to Mr. Yusuf's Motion to Dismiss the First Amended Complaint.

Ltd. v. Caribbean Auto Mart of St. Croix, Civil Case No. 209/21, 2010 WL 3825106, at *2 (D.V.I. Sept. 28, 2010) (“Pursuant to Rule 7.1(a) of the Local Rules of Civil Procedure, ‘only a motion, a response in opposition, and a reply may be served on counsel and filed with the Court; further response or reply may be made only by leave of Court before filing.’ It is appropriate to grant a sur-reply to allow the non-moving party the opportunity to respond to arguments raised for the first time in the movant’s reply.”); *see also Carlins v. Bd. of Dir. of Gallows Point Condo. Corp.*, Case No. Civ. 2003-110, 2004 WL 3222762, at *2 (D.V.I. Nov. 29, 2004) (“Dispositive motions . . . serve the vastly different function of terminating or narrowing the scope of the litigation. Local Rule LRCi7.1(g) merely keeps the playing field even by allowing the non-movant to seek to sur-reply to arguments raised for the first time in the movant’s reply to the non-movant’s response in opposition to the issues raised in the motion.”).

6. A copy of Mr. Yusuf’s proposed sur-reply is attached hereto as **Exhibit A**. *See id.* (“Attaching a proposed sur-reply to arguments raised for the first time in the movant’s reply may or not be helpful to the Court. Accordingly, the non-movant is neither required nor prohibited from attaching her proposed sur-reply to her motion for leave to file it.”).


WHEREFORE, on the basis of the foregoing, Defendant, Fathi Yusuf respectfully requests that the Court grant him leave to file a sur-reply, in the form attached hereto, and award him such other relief as the Court deems just and proper.

Respectfully Submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: March 6, 2017

By:


Stefan B. Herpel (V.I. Bar No. 1019)
Lisa Michelle Kömives (V.I. Bar No. 1171)
1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 774-4422
Telefax: (340) 715-4400
sherpel@dtflaw.com
lkomives@dtflaw.com
Attorneys for Fathi Yusuf

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of March, 2017, I served the foregoing *DEFENDANT*, *FATHI YUSUF'S MOTION FOR LEAVE TO FILE A SUR REPLY TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT*, via e-mail addressed to:

Joel H. Holt, Esq.
Law Office of Joel H. Holt
2132 Company Street
Christiansted, USVI 00820
Email: holtvi@aol.com

Kevin A. Rames, Esq.
K.A. Rames, P.C.
2111 Company Street, Suite 3
Christiansted, VI 00820
Email: kevin.@rameslaw.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

EXHIBIT A

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
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HISHAM HAMED, derivatively, on behalf)
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**DEFENDANT FATHI YUSUF'S SUR-REPLY IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. Plaintiff's Reply Fails to Show Why the Fiduciary Duty Claim is Not Time-Barred.

In his reply to Mr. Yusuf's Opposition to Plaintiff's Motion for Partial Summary Judgment on the breach of fiduciary duty count, Plaintiff, Hisham Hamed, evades Mr. Yusuf's principal argument for denying the motion, which is that his claims cannot survive Mr. Yusuf's previously filed Motion to Dismiss. Plaintiff argues that nothing prevents him from filing a Rule 56 motion while a motion to dismiss is pending. *See* Plaintiff's Reply at p. 1. This dodge will not work. Obviously, if the claims are subject to dismissal, on any of the grounds articulated in Mr. Yusuf's January 9, 2017 Motion to Dismiss, then the Motion for Partial Summary Judgment on Plaintiff's breach of fiduciary duty claim ("Motion for Summary Judgment") must be denied.

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

One of the grounds for dismissal set forth in the Motion to Dismiss is the statute of limitations. As discussed in the Motion to Dismiss (at page 21), the statute of limitations for a breach of fiduciary duty claim is two years. *See* 5 V.I.C. 31(5) (“[A]ny injury to . . .rights of another not arising from contract not herein especially enumerated” has a two-year statute of limitations; *see also Guardian Ins. Co. v. Khalil*, 63 V.I. 3, 18 (Super. Ct. 2012) (breach of fiduciary duty claim “sound[s] in tort” and has a “two-year statute of limitations”).

The main element of the breach of fiduciary duty count is the allegation that Mr. Yusuf asked for and obtained a power of attorney from Manal Yousef dated May 18, 2010, which gave him certain powers regarding a mortgage given to her by Sixteen Plus Corporation (“Sixteen Plus”) in September of 1997, which mortgage Plaintiff contends is a sham.¹ This mortgage was signed on Sixteen Plus’s behalf by Plaintiff’s older brother, Waleed Hamed,² who also signed a promissory note to Manal Yousef referencing her \$4.5 million loan, and the corporate resolution of Sixteen Plus approving the promissory note and mortgage. *See* respectively, **Exhibits 1, 2 and 3.**

Because the power of attorney was given in 2010, it is well outside the two-year statute of limitations for such claims. In his opposition to the Motion to Dismiss, Plaintiff argues that, “as to each Count . . . at the very least there are sufficient facts pled to create a factual issue as to

¹ *See* Plaintiff’s January 20, 2017 Memorandum in Support of Motion for Partial Summary Judgment at p. 5 (stating Mr. Yusuf’s fiduciary duty “was breached here when Yusuf took the POA to enforce the mortgage” which Plaintiff alleges is a sham).

² Waleed Hamed was the Hamed family member most directly involved in all of the various businesses that were jointly owned by his late father, Mohammad Hamed, and Mr. Yusuf—or by members of the Hamed and Yusuf families. Waleed Hamed is designated as Mohammed Hamed’s “authorized agent” in the caption of the principal case in the dispute between the Hamed and Yusuf families, which is assigned to the Honorable Douglas A. Brady (Case No. SX-12-CV-370).

when the wrongful conduct was discovered and when the SOL has even started to run since the Defendants' wrongful acts are continuing." *See* Plaintiff's January 20, 2017 Opposition at p. 8. Plaintiff insisted in that same brief that as to all counts of his Complaint, including the breach of fiduciary duty count, there are triable issues of fact "as to the application of the SOL discovery rule" which "must be resolved by the jury." *See id.* at p. 8. Plaintiff's admission that there are genuine issues of material fact regarding the applicability of the statute of limitations defense to the breach of fiduciary duty count as set forth in Plaintiff's Opposition to the Motion to Dismiss should estop him from arguing he is entitled to summary judgment on that count.

Moreover, Plaintiff's summary judgment reply never directly addresses the limitations defense, nor retreats from the claim that there are triable issues of material fact regarding the statute of limitations defense to his claim for breach of fiduciary duty. But he does argue that in 2016, Mr. Yusuf "used his POA to act adversely to Sixteen Plus, hiring a lawyer to defend the action³ filed by Sixteen Plus to have the Manal Yousef mortgage declared void." *See* Plaintiff's Reply at p. 3. Mr. Yusuf denies that he has retained counsel or is paying for the defense of the case brought by Sixteen Plus against Manal Yousef. But even if he were doing so, this alleged act undertaken within the two-year limitations period cannot surmount the limitations defense. Because—even if Mr. Yusuf were funding the defense of the litigation against Manal Yousef—he would be doing so voluntarily, and not by virtue of an exercise of the power of attorney. He would not need a power of attorney – *i.e.*, he would not have to be Manal Yousef's attorney-in-

³As discussed in Mr. Yusuf's January 9, 2017 Motion to Dismiss (at pp.1-2), the Hamed shareholder faction caused Sixteen Plus to file this lawsuit on February 12, 2016, against Manal Yousef challenging the validity of the loan and mortgage. The Hameds did not inform Mr. Yusuf in advance of the filing of the case. Sixteen Plus's case against Manal Yousef (Case No. SX-15-CV-65) is pending before the Honorable Harold W.H. Willocks.

fact – in order to choose to fund the defense of litigation brought by Sixteen Plus that he regards as meritless, that was filed without his knowledge or consent, and that could otherwise expose Sixteen Plus to prevailing party attorneys' fees and other sanctions.⁴

II. Plaintiff's Reply Fails to Overcome Mr. Yusuf's Alternative Argument that Allegations Underlying the Fiduciary Duty Count Are Outside His Personal Knowledge.

Mr. Yusuf argued, in the alternative, in his opposition to Plaintiff's Motion for Partial Summary Judgment that "Hisham Hamed, the only individual Plaintiff, executed the Verified Complaint," and that "many 'facts' which [he] verified are outside of his personal knowledge and further represent conclusory allegations . . ." See Mr. Yusuf's February 9, 2017 Opposition to Motion for Summary Judgment, Declaration of Counsel, at ¶ 8). This argument rests on the rule that a verified complaint "can be considered as equivalent to an affidavit" under Rule 56 only "to the extent that it meets the requirements for affidavits set out in Rule 56(e) [now Rule 56(c)(4)]." *Runnels v. Rosendale*, 499 F.2d 733, 734 n.1 (9th Cir. 1974). Rule 56(c)(4) requires affidavits or declarations used to support a motion for summary judgment to "be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." For that reason, the allegations in a verified complaint can only be used to support a motion for summary judgment if "they are specific and clearly based on matters within the personal knowledge of the plaintiff, to which he

⁴ This also means that, as argued alternatively in Defendant's Motion to Dismiss (at p. 21), Plaintiff's fiduciary claim must be dismissed because of the absence of any meaningful allegation that the power of attorney has ever been exercised in any way, let alone a way that has harmed the interests of the corporation. The First Amended Complaint does not allege (and Plaintiff's Reply does not assert) that Mr. Yusuf has taken any action (either within or outside the two-year limitations period) which alters the loan or mortgage instruments, or changes the legal relations created by them. Rather, the mortgage is in precisely the same form today as it was when signed by Waleed Hamed and recorded many years ago.

[is] competent to testify.” *Rosendale, supra*, 499 F.2d at 734, n.1; *see also Moran v. Selig*, 447 F.3d 748, 759 n.16 (9th Cir. 2006) (“[A] verified complaint may serve as an affidavit for purposes of summary judgment is it is based on personal knowledge and if it sets forth the requisite facts with specificity[.]”); *Colon v. Coughlin*, 58 F.3d 865, 872 (1st Cir. 1995) (“[A] verified pleading may serve as an affidavit only if it contains facts known to be true in the affiant’s own knowledge . . .”) (citation omitted); *Walker v. Tyler County Commission*, 11 Fed.Appx. 270, 274 (6th Cir. 2001) (A verified complaint is the equivalent of an affidavit for summary judgment purposes “*when the allegations contained therein are based on personal knowledge[.]*”) (emphasis in original) (citation to Fourth Circuit case and internal quotation marks omitted).

A. The Paragraph 78 Allegation that Mr. Yusuf Has Retained Counsel to Defend the Lawsuit Against Manal Yousef.

Plaintiff’s response to the argument that he has not demonstrated he has personal knowledge of alleged facts which are crucial to his summary judgment motion is twofold. Plaintiff claims, without any citation to case law, that what Plaintiff knows from personal knowledge does not matter, because “this is a derivative action filed for the benefit of Sixteen Plus.” Plaintiff’s February 13, 2017 Reply to Mr. Yusuf’s Opposition to Motion for Partial Summary Judgment, at p. 3. He also argues that “none of these facts is salient to Count III” in any event. *Id.* at p. 5, n.1.

Plaintiff’s first argument is easily dispatched. Plaintiff cites no case law for the proposition that the Rule 56(e) requirements are inapplicable to derivative actions, and Defendant is aware of none.

As for the second argument, Plaintiff's own statements in his reply in support of his Motion for Summary Judgment and another brief filed in this case contravene his claim that none of the "facts" for which Plaintiff may not have personal knowledge are material for purposes of his entitlement to summary judgment. In that Reply, Plaintiff acknowledges that one of the "facts" which upon which his motion depends is that Yusuf has "hir[ed] a lawyer to defend the action filed by Sixteen Plus to have the Manal Yousef mortgage declared void." *Id.* at p. 3. And that ostensible "fact" is, in turn, based on paragraph 78 of the verified Amended Complaint, which alleges that "Fathi Yusuf retained USVI counsel" to defend the 2016 action challenging the validity of the mortgage and note. *See* First Amended Complaint, p. 17, ¶ 78. Yet, Plaintiff fails to show in his Amended Complaint that his allegation that Mr. Yusuf retained Attorney Kye Walker to defend the case in front of Judge Willocks is based on personal knowledge.

As such, the Court cannot treat the paragraph 78 allegation as the equivalent of a sworn affidavit or declaration for purposes of Plaintiff's partial summary judgment motion. *See Walker v. Tyler County Commission, supra*, 11 Fed.Appx. at 274 (holding that a verified complaint could not be considered the equivalent of an affidavit where the "factual allegations in the complaint do not indicate which, if any, are based on personal knowledge," and "we cannot determine that the [Appellant's] allegation . . . is based on [his] personal knowledge"); *Weberg v. Franks, supra*, 229 F.3d at 526, n.13 (stating, in context of review of summary judgment ruling, that "[w]e have had to disregard many of Plaintiff's allegations because they were not made with Plaintiff's personal knowledge . . ."); *Sheinkopf v. Stone*, 927 F.2d 1259, 1262 (1st Cir. 1991) (considering, in a review of summary judgment ruling, "the factual averments of the [verified] complaint, to the extent demonstrated to come within [appellant's] personal knowledge," and rejecting all other averments of the complaint); *Cooper v. Diggs*, 2010 WL 2331067, *7 (W.D.

Pa. 2010) (because "Plaintiff's verified complaint lacks such an affirmative demonstration of how Plaintiff knows [an allegation in his complaint], it cannot be treated as an affidavit for purposes of Rule 56").⁵ Since the paragraph 78 allegation cannot be treated as a sworn statement based on personal knowledge, Plaintiff's summary judgment motion would have to be denied even if the Court rejected Mr. Yusuf's arguments that the breach of fiduciary duty claim is time-barred and that the claim should be dismissed for failure to show that the power of attorney was ever exercised in a way that harmed the corporation.

B. The Paragraph 26 "Sham Mortgage" Allegation.

Plaintiff also insists in his Reply (at page 5, footnote 1) that his allegation in paragraph 26 that the mortgage is a sham is not "relevant" to his breach of fiduciary duty count. But Plaintiff's previously filed Opposition to Mr. Yusuf's Motion to Dismiss states otherwise, and confirms what is obvious from a full reading of Plaintiff's complaint and from common sense. In that Opposition, Plaintiff leaves no doubt that his allegation that the corporation has been harmed by the claimed breach of fiduciary duty absolutely depends on the mortgage being a sham:

The FAC then alleges that this act has harmed the Plaintiff, particularly since it is alleged that Yusuf is now using this POA to covertly defend the direct action taken by Sixteen Plus against Manal Yousef to void the sham mortgage, as alleged in ¶¶ FAC 72, 77-78, 96-98. Finally, the FAC alleges in ¶¶77-78, 98 that this conduct in retaining counsel to defend that action is causing direct harm to the company, as it

⁵ Plaintiff's verification of the First Amended Complaint (at page 25) recites that he has "carefully read the Complaint" and that it "comports with the requirements set forth in items (1) through (3) of 14 V.I.C. §607(d) . . ." Section 607(d) provides that such a verification (as well as the certification of counsel made on page 24) means only that the complaint is "well grounded in fact," the relief sought "is warranted by existing law, or a good faith argument for the extension, modification or reversal of existing law," and it was not filed "for any improper purpose, including to harass . . . or to force an unjust settlement . . ." It is not a statement by Plaintiff that the allegations of the Complaint are based on personal knowledge.

provides a bogus defense in the lawsuit filed by Sixteen Plus to have the sham mortgage declared void.

Plaintiff's January 20, 2017 Opposition to Motion to Dismiss, p. 13. This statement makes crystal clear that what makes the alleged act of retaining counsel harmful to the corporation is that it provides a "bogus" defense to a lawsuit filed at the behest of the Hamed shareholder faction to have the "sham mortgage declared void." If the mortgage is valid, then the defense to the lawsuit seeking to have the mortgage declared void would be legitimate rather than bogus, and the lawsuit itself would be baseless. Under those circumstances, retaining and paying for counsel to defend a meritless lawsuit which could expose the corporation to prevailing party attorneys' fees would actually mitigate, rather than create, harm to the corporation.⁶

The fact that the breach of fiduciary duty claim can only be maintained if the note and mortgage are a sham, as alleged in paragraph 26, has two implications. First, it means that, like the paragraph 78 allegation regarding retention of a lawyer to defend the lawsuit against Manal Yousef, Plaintiff must have personal knowledge of the paragraph 26 allegation in order for the verified complaint to be treated as a sworn declaration or affidavit on that point for purposes of Rule 56. Plaintiff Hisham Hamed was 21 years old and attending college in Florida at the time of the 1997 note and mortgage. There is no reason whatsoever to believe that the paragraph 26

⁶ Indeed, if the Manal Yousef mortgage is valid, any violations of fiduciary duties would be by Plaintiff and the other Hamed shareholders, and not by Mr. Yusuf. For, in that case, Plaintiff and the Hamed shareholders would have breached fiduciary duties to the corporation and to Mr. Yusuf by filing two meritless lawsuits challenging the validity of the loan and mortgage. Moreover, as a matter of law, the giving of the power of attorney by Manal Yousef to Mr. Yusuf for a valid mortgage cannot breach any duties Mr. Yusuf owes to Sixteen Plus. Powers of attorney are given for convenience. Manal Yousef lives abroad and there would be nothing improper about giving a power of attorney to an uncle she trusts for convenience, on the belief that he would not use it in any way inconsistent with her lawful interests and instructions.

allegation is supported by his personal knowledge, and nothing in the Amended Complaint demonstrates such personal knowledge.

Second, it means that the face of the Amended Complaint discloses genuine issues of material fact which would preclude summary judgment for Plaintiff on the breach of fiduciary duty count. In paragraph 65(a) of the Amended Complaint, Plaintiff refers to Mr. Yusuf's sworn interrogatory answer in another case which stated Manal Yousef did indeed loan the money to Sixteen Plus, and in paragraph 66, Plaintiff alleges this statement by Mr. Yusuf is false. These two allegations of the Amended Complaint are plainly an admission of a genuine issue of material fact regarding whether the Manal Yousef loan is, or is not, a sham.

The upshot is that even if the Court rejects Mr. Yusuf's arguments that the fiduciary duty count is time-barred, and the alternative argument that Plaintiff has failed to properly allege harm to the corporation flowing from the giving of the power of attorney, Plaintiff's summary judgment motion should be denied. Plaintiff has failed to provide sworn testimony based on personal knowledge to support two critical allegations of his fiduciary duty claim, and his own Complaint discloses the existence of, at the very least, genuine issues of material fact regarding whether a fiduciary duty was breached.

III. The Need for Additional Discovery is Abundantly Clear.

Mr. Yusuf also argued in the alternative that discovery was needed and that summary judgment should be denied under Rule 56(d) until that discovery had been completed. At a bare minimum, discovery of Waleed Hamed, who signed the mortgage and the corporate resolution approving it, regarding why he now apparently contends it is a sham and his basis for contending that is a sham, is needed. In addition, because of Plaintiff's lack of involvement with the Manal Yousef loan, mortgage and the Sixteen Plus corporate resolution approving the same, discovery

regarding the basis for Plaintiff's allegations that the note and mortgage are a sham – and that Mr. Yusuf retained (and is paying for) counsel in the case before Judge Willocks seeking to declare them invalid – is also needed. Mr. Yusuf regards both allegations as false, and he is entitled to discover the basis on which Plaintiff supports these allegations. If the Court rejects Mr. Yusuf's arguments for dismissing the fiduciary duty claim and agrees that Plaintiff has failed to demonstrate personal knowledge of either or both of the paragraph 26 and 78 allegations, or if the Court agrees that the amended Complaint discloses a genuine issue of material fact regarding whether a fiduciary duty has been breached, then discovery of all of the issues surrounding the alleged breach of fiduciary duty must proceed.

Respectfully Submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: March 6, 2017

By:


STEFAN B. HERPEL (V.I. Bar #1019)

LISA MICHELLE KÖMIVES (V.I. Bar #1171)

Law House

1000 Frederiksberg Gade - P.O. Box 756

St. Thomas, VI 00804-0756

Telephone: (340) 774-4422

Telefax: (340) 715-4400

sherpel@dtflaw.com

lkomives@dtflaw.com

Attorneys for Fathi Yusuf

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

Hamed v. Yusuf, et al.

Case No. 16-SX-CV-650

F. Yusuf's Sur-Reply in Opposition to Plaintiff's Motion for Partial Summary Judgment

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of March, 2017, I served the foregoing, *DEFENDANT FATHI YUSUF'S SUR-REPLY IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT*, via e-mail addressed to:

Joel H. Holt, Esq.
Law Office of Joel H. Holt
2132 Company Street
Christiansted, USVI 00820
E-Mail: holtvi@aol.com

Kevin A. Rames, Esq.
K.A. Rames, P.C.
2111 Company Street, Suite 3
Christiansted, VI 00820
E-Mail: kevin.@rameslaw.com

Michelle Barker

R:\DOCS\6254\7\PLDGM\1743834.DOCX

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

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

(340) 774-4422

EXHIBIT 1

February 22, 1999

FIRST PRIORITY MORTGAGE

THIS MORTGAGE ("Mortgage") is made this 15 day of September, 1997, between Sixteen Plus Corporation, whose address is 4C & D Sion Farm, Christiansted, St. Croix, 00820, ("Borrower") and Manal Mohamad Yousef ("Lender") whose address is 25 Gold Finch Road, Pointe Blanche, St. Martin, N.A.;

WITNESSETH:

A. Borrower is justly indebted to Lender in the principal sum of Four Million, Five Hundred Thousand Dollars (\$4,500,000) or so much thereof as shall have been advanced and remains unpaid, which indebtedness is evidenced by a Promissory Note in such principal amount, dated of even date herewith and hereinafter referred to as the "Note" and bears interest at the rate or rates and under the terms set forth in the Note, (said Note is incorporated herein by reference and made a part hereof); and

B. Borrower wishes to secure the full and punctual payment of the Note and the indebtedness evidenced thereby, and interest thereon, and the full performance of all the provisions, conditions, covenants and agreements herein contained or in any other document executed in connection herewith, and also to secure the reimbursement to the Lender for any and all money which may be advanced as herein provided for, and for any and all costs and expenses herein provided for or which may arise in respect of this Mortgage or the indebtedness hereby secured or the Property herein mentioned (collectively "Obligations").

NOW, THEREFORE, the Borrower does hereby grant, convey and give to the Lender a first priority mortgage on the following described property (collectively "Property") to secure the full and punctual payment and performance of the Obligations:

SEE EXHIBIT A

Together with

(a) all improvements now or hereafter erected thereon, and all modifications, additions, restorations and replacements of such improvements; and all rights-of-way, uses, servitude, licenses, tenements, hereditament, appurtenances, rights, privileges, and easements now or hereafter belonging or pertaining thereto; and

(b) all the appliances, fixtures, equipment, building materials and other personal property now or hereafter owned by the Borrower and located on the premises described above, whether or not incorporated in the improvements constructed thereon, and necessary to the use and occupancy thereof; and

(c) all awards and other payments in respect of any taking (as described in Section 12 herein below) in respect of any of the foregoing, together with all amounts received by the Lender, or expended by the Lender pursuant to this Mortgage; and

(d) . all of the Borrower's rights, benefits, title and interest as lessor, in and to any agreement to lease, leases, licenses, concession agreements and other agreements granting a right or privilege to use or occupy any portion of the Property (collectively "Leases") now or hereafter in existence and pertaining to all or any portion of the Property described above, together with any and all rents, issues, profits, revenues, income, earnest money or security deposits made pursuant to such Leases from the Property or any part thereof (collectively "Rents"), and any and all guarantees of performance under any such Leases.

IT IS HEREBY COVENANTED by the parties hereto that the Property is to be held and applied subject to the further terms herein set forth; and the Borrower, for the Borrower and Borrower's successors and assigns, hereby covenants and agrees with the Lender, as follows:

1. THE NOTE.

1.1 Issuance and Payment of the Note. The Borrower has issued the Note, and will duly and punctually pay the principal of the interest (if any) on the Note in accordance with the terms thereof, and will otherwise duly comply with the terms of the Note.

1.2 Prepayment on Taking of the Property. In case of any taking (as described in Section 11.2 hereof) of the Property, the portion of awards or other payments on account thereof shall be paid to the Lender and applied to the prepayment of the Note, together with interest (if any) on the principal amount of the Note so prepaid accrued to the date of such prepayment, and to the payment of all other indebtedness which this Mortgage secures. Any balance of such awards or other payments remaining after payment in full of the principal of and interest (if any) on the Note and all other indebtedness which this Mortgage by its terms secures shall be paid to the Borrower.

1.3 Replacement of Note. Upon receipt of evidence reasonably satisfactory to the Borrower of the loss, theft, destruction or mutilation of the Note and, in the case of any loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to the Borrower or, in the case of any such mutilation, upon surrender and cancellation of such Note, the Borrower will issue, in lieu thereof, a new Note, dated the date to which interest has been paid on the lost, stolen, destroyed or mutilated Note and otherwise of like tenor, with appropriate variations.

2. AUTHORITY. The Borrower represents and warrants that the Borrower has good and lawful right and authority to execute this Mortgage and to mortgage the Property, and that the Borrower is well seized and possessed of a fee simple title to the Property. The Borrower, at the Borrower's expense, will warrant and defend to the Lender and its successors and assigns, for the benefit of the Lender, such interest and the lien and interest of the Lender on and in the Property against all claims and demands and will maintain and preserve such lien as long as the Note is outstanding.

WJA

3. **RECORDATION; PRESERVATION OF LIEN.** The Borrower at its expense, will at all times cause this Mortgage and any supplements hereto, and such other instruments as may be required by applicable law, to be recorded, registered and filed and to be kept recorded, registered and filed in such manner and in such places, and will pay all such recording, registration, filing or other taxes, fees and charges, and will comply with all such statutes and regulation, as may be required by law in order to establish, preserve and protect the lien of this Mortgage on all of the Property and the rights of the Lender hereunder.

4. **COMPLIANCE WITH APPLICABLE LAWS.** Borrower shall comply with all applicable laws, ordinances, rules, regulations, and codes applicable to the Property, including the use and possession thereof and any business located thereon. Borrower has received no notice of, and neither knows of, nor suspects any facts which might constitute any violations of any federal or territorial health, safety or environmental laws, codes, ordinances, rules or regulations with respect to the Property, including the use or possession thereof and any business located thereon.

5. **HAZARDOUS WASTE.** There shall be no emission, spill, release or discharge into or upon the air, soil or any improvements located thereon, surface water or ground water, or the sewer, septic system or waste treatment storage or disposal systems servicing the property, of any hazardous or toxic substances or wastes at or from the Property or otherwise and the Property shall be kept free from all such hazardous or toxic substance or wastes.

6. **LITIGATION.** No litigation, arbitration, condemnation, re-zoning or administrative proceedings are presently pending or, to Borrower's knowledge, threatened, which if adversely determined might have a material adverse effect on the Borrower, the financial condition of Borrower or upon the respective property rights of Borrower. Notwithstanding anything to the contrary set forth herein the parties recognize that a proposed land and water use plan may adversely impact the value of the property.

7. **PAYMENT OF TAXES, ETC.** Subject to Section 9 relating to contests, the Borrower will pay or cause to be paid all taxes, assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof), water, sewer or other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of any character (including all interest and penalties thereon), which at any time may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon (a) the Property or any part thereof or any rent therefrom or any estate, right or interest therein, or (b) any occupancy, use or possession of or activity conducted on the Property or any part thereof. Such payments will be made before any fine, penalty, interest or cost may be added for nonpayment, and the Borrower will furnish to the Lender, upon request, official receipts or other satisfactory proof evidencing such payments.

8. **CONSTRUCTION LIENS.** Subject to Section 9 relating to contests, the

Borrower shall not, without the Lender's prior written approval, directly or indirectly create or permit or suffer to be created or to remain, and will discharge, or cause to be discharged within thirty (30) days after issuance thereof, any construction lien with respect to the Property or any part thereof, or the Lender's interest therein.

9. **PERMITTED CONTESTS.** The Borrower or a tenant under any lease, at its expense, may contest (after prior written notice to the Lender) by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any mechanics' lien, construction lien, or taxes or other charges enumerated in Section 7 or lien therefor or the application of any instrument of record referred to in Section 8 provided, that (a) in the case of unpaid mechanics' liens, construction liens, or taxes or other charges enumerated in Section 7 or liens therefor, such proceedings shall suspend the collection thereof from the Borrower, the Lender and the Property; (b) neither the Property nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost; (c) neither the Borrower nor the Lender would be in any danger of any additional civil or any criminal inability for failure to comply therewith (except interest, or penalties in the nature of interest, and attorney's fees or court costs) and the Property would not be subject to the imposition of any additional lien as a result of such failure; and (d) the Borrower shall have deposited adequate monies with respect thereto with the lender, who shall have the power to pay such contested amounts in the event the Property is in danger of forfeiture or the Lender is in danger of being held civilly or criminally liable with respect thereto, or, in the event the contested matter is the subject of litigation, the Borrower shall have deposited in a fund administered by the court adequate moneys therefor (as determined by the Lender).

10. **NOTICES CONCERNING THE PROPERTY.** The Borrower will deliver to the Lender, promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by the Borrower which materially affect the Property.

11. **TAKING; APPLICATION OF AWARD.**

11.1. **Borrower to Give Notice, etc.** In case of any taking of all or any part of the Property, or any interest therein or right accruing thereto as the result of or in lien or in application of the exercise of the right of condemnation or eminent domain during the term hereof, the Borrower shall promptly give to the Lender written notice generally describing the nature of the proceedings and negotiations for such taking and the nature and extent of the taking which might result therefrom, as the case may be. The Lender may appear in any such proceedings and negotiation, and the Borrower shall promptly give to the Lender copies of all notices, pleadings, determinations and other papers in any such proceedings. The Borrower will in good faith and with due diligence file and prosecute any claim or claims for any award or payment on account of any taking of the Property, will pay all costs and expenses (including, without limitation, attorneys' fees and the expense of the Lender) in connection with any such taking and seeking and obtaining any award or payment on account thereof. Such costs and expenses shall constitute indebtedness secured by this Mortgage.

11.2 Taking. In the case of a taking of whatever nature, total or partial, of the Property or any portion thereof, any payment or award on account of such taking shall be collected and paid over in accordance with the provisions of Section 1.2 hereof.

12. INTENTIONALLY OMITTED.

13. INTENTIONALLY OMITTED.

14. NO CREDIT FOR PAYMENT OF TAXES. The Borrower shall not be entitled to any credit against the Principal of and interest, if any, on the Note, or any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any tax on the Property or any part thereof.

15. EVENTS OF DEFAULT; DECLARATION OF NOTICE DUE. If one or more of the following events (herein referred to as "Events of Default") shall occur:

(a) if the Borrower shall fail to pay any principal of or interest, if any, on the Note when the same becomes due and payable (whether at maturity or on a date fixed for any interest payment, any installment payment, any prepayment or otherwise) and such default is not cured within fifteen (15) days after the payment due date; or

(b) if the Borrower shall fail to perform or comply with any of the other terms of this Mortgage and such default is not cured within thirty (30) days after the effective date of written notice from Lender to Borrower; or

(c) if the Borrower shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any arrangement, composition, readjustment or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee or receiver; or

(d) if, within sixty (60) days after the commencement of any proceeding against the Borrower with seeks any arrangement, composition or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment of any trustee or receiver of the Borrower, without the consent or acquiescence of the Borrower, such appointment shall not have been vacated; or

(e) if the Borrower assigns or sells, or further encumbers, its interest in all or any part of the Property or if the Beneficial Ownership of Borrower shall change in violation of paragraphs 30, 31 and/or 32;

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Then and in any such event (regardless of the pendency of any proceeding which has or might have the effect of preventing the Borrower from complying with the terms of the Mortgage), the Lender may at any time, without notice to declare the entire unpaid principal balance and all other indebtedness evidenced by the Note and/or secured by this Mortgage to be immediately due and payable, without presentment, demand, protest or notice, all of which are hereby waived.

16. **REMEDIES OF THE HOLDER OF THE NOTE.**

16.1 **Legal Proceedings.** If an Event of Default shall have occurred, the Lender may proceed to foreclose this Mortgage and to protect and enforce its rights by any action at law, suit in equity or other appropriate proceeding, whether for the specific performance of agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.

16.2 **Cost of Enforcement.** The Borrower shall pay on demand all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by or on behalf of the Lender in enforcing this Mortgage, the Note, or any of the other documents executed in connection herewith, or occasioned by any default hereunder or thereunder. Such costs and expenses shall constitute indebtedness secured by this Mortgage.

16.3 **No Waiver.** Neither failure or any delay on the part of the Lender to exercise any right, remedy, power or privilege provided for herein or by statute or at law or in equity or otherwise shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. **INTENTIONALLY OMITTED.**

18. **FORECLOSURE.** If an Event of Default shall have occurred, the Lender may at any time proceed at law or in equity or otherwise to foreclose the lien of this Mortgage as against all or any part of the Property. Borrower hereby expressly waives all rights to require Lender to first resort to the sale of any portion of the Property before foreclosing upon and/or selling any other portion(s) of the Property which is subject to this Mortgage and Borrower hereby agrees that Lender, at Lender's sole discretion, may elect to sell any one or more portion of the property in one or more Marshal's sales.

19. **APPOINTMENT OF RECEIVER.** If an Event of Default shall have occurred, the Lender shall be entitled, as a matter of right without regard to the adequacy or inadequacy of the Lender's security, to the appointment of a receiver for all or any part of the Property, whether such receivership is incidental to a proposed sale of the Property or otherwise, and the Borrower hereby consents to the appointment of such a receiver and shall not oppose any such appointment.

20. **PURCHASE OF PROPERTY BY THE HOLDER OF THE NOTE.** The Lender may be a purchaser of the Property or of any part thereof or of any interest therein at any foreclosure sale thereof and may apply upon the purchase price the indebtedness secured hereby owing to the Lender. The Lender shall, upon any such purchase, acquire good title to the properties so purchased, free of the lien of this Mortgage and free of all liens and encumbrances subordinate to the Mortgage.

21. **RECEIPT A SUFFICIENT DISCHARGE TO PURCHASER.** Upon any sale of the Property or any part thereof or any interest therein pursuant to foreclosure, the receipt of the officer making the sale under judicial proceedings shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obliged to see to the application thereof.

22. **APPLICATION OF PROCEEDS OF SALE.** The proceeds of any sale of the Property or any part thereof or any interest therein pursuant to foreclosure or otherwise hereunder, together with any other monies at any time held by the Lender pursuant to this Mortgage, shall be applied to pay:

FIRST: All costs and expenses of the sale of the Property or any part thereof or any interest in connection therewith, or all costs and expenses of entering upon, taking possession of, removal from, holding, operating and managing the Property or any part thereof, as the case may be, reasonable attorneys' fees, and any taxes, assessments or other charges, prior to the lien of this Mortgage, which the Lender may consider it necessary or desirable to pay;

SECOND: All amounts of principal and interest at the time due and payable on the Note (whether at maturity or on a date fixed for any installment payment or any prepayment or by declaration and acceleration or otherwise), and in case such monies shall be insufficient to pay in full the amount so due an unpaid upon the Note, then, first, to the payment of all amounts of interest at the time due and payable on the Note, without preference or priority of any installment of interest over any other installment of interest, and, second, to the payment of all amounts of principal a the time due and payable on the Note, without preference or priority of any amount of principal over any other amount of principal;

THIRD: Any other indebtedness secured by this Mortgage and at the time due and payable (whether by acceleration or otherwise);

FOURTH: Any indebtedness secured by any lien on the Property which is subordinate to the lien of this Mortgage; and

FIFTH: Any balance to the Borrower.

23. **REMEDIES CUMULATIVE.** Each right, power and remedy of the Lender

provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise of any one or more of such rights, shall not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

24. **NO WAIVER, ETC.** No failure by the Lender or the holder of the Note to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term or any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

25. **FURTHER ASSURANCES.** The Borrower at its expense will execute, acknowledge and deliver all such instruments and take all such actions as the Lender from time to time may reasonably request for the better assurance to the Lender of the Property and rights now or hereafter subjected to the lien hereof or assigned hereunder or intended so to be subjected or assigned.

26. **INDEMNIFICATION BY THE BORROWER.** The Borrower will protect, indemnify and save harmless the Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against the Lender by reason of (a) its Mortgage interest in the Property, or receipt of any rent or other sum therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Property; (c) any use, non-use or condition of the Property; (d) any failure on the part of the Borrower to perform or comply with any of the terms of this Mortgage or the terms of any other documents executed in connection herewith; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the property or any part thereof for construction or maintenance or otherwise. Provided, however, that the foregoing indemnification provision shall not be applicable to any occurrence arising after the Lender retakes possession of the Property in connection with a default by the Borrower. Any amounts payable to the Lender under this Section which are not paid within ten (10) days after written demand therefor by the Lender shall bear interest at the rate set forth in the Note from the day of such demand and shall be secured by this Mortgage. In case any action, suit or proceeding is brought against the Lender by reason of any such occurrence, the Borrower, upon the Lender's request, will at the Borrower's expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by the Borrower and approved by the Lender. Such obligations of the Borrower under this Section as shall have accrued at the time of any termination or satisfaction of this Mortgage shall survive any such termination or satisfaction.

27. **RIGHT OF HOLDER OF THE NOTE TO PERFORM BORROWER'S COVENANTS, ETC.** If the Borrower fails to make any payment or perform any act required

to be made or performed hereunder, the Lender, after such notice to the Borrower as may be reasonable under the circumstance, and without waiving or releasing any obligation or default, may (but shall be under no obligation or default, may (but shall be under no obligation to) at any time hereafter make such payment or perform such act for the account and at the expense of the Borrower, and may enter upon the Property or any part thereof for such purpose and take all such action thereon as, in the opinion of the Lender, may be necessary or appropriate therefor. All sums so paid by the Lender and all costs and expenses (including, without limitation, attorney's fees and expenses) so incurred, together with interest thereon at the rate set forth in the Note, from the date of payment or incurring, shall constitute indebtedness secured by this Mortgage and shall be paid by the Borrower to the Lender on demand.

28. **PROVISIONS SUBJECT TO APPLICABLE LAW.** All rights, power and remedies provided herein may be executed only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity of other terms of the Mortgage shall in no way be affected thereby.

29. **NOTICES.** All notices and other communications hereunder shall be in writing and shall be deemed to have been given when hand delivered or mailed by first class certified mail, postage prepaid, return receipt requested, to the address given at the beginning of this Mortgage or at such other address as a party may have furnished to the other party by written notice.

30. **ASSIGNMENT.**

30.1. **Assignment by Borrower.** This Mortgage shall be binding upon the Borrower and the Borrower's successors and assigns, and all persons claiming under or through the Borrower or any such successor or assign, and shall inure to the benefit of and be enforceable by the Lender and the successors and assigns thereof; provided, however that the Borrower hereby agrees that the Borrower will not sell, assign or convey the Borrower's interest in the Property until all amounts of principal and interest at the time due and payable under the Note have been paid in full, without the prior written consent and approval of the Lender, which consent may be withheld for any reason or no reason at all. If legal or equitable title to the Property or any part thereof shall hereafter change by any means or if the Property or any part thereof shall be further encumbered without Lender's consent, then the indebtedness secured hereby shall become immediately due and payable upon demand of Lender and same shall constitute an Event of Default.

30.2. **ASSIGNMENT BY LENDER.** The Note and this Mortgage may at any time be assigned, in whole or in part, by the Lender and the benefits, advantages, rights and obligations of the Lender hereunder shall inure to the successors and assigns of the Lender.

31. **TRANSFER OF THE PROPERTY; ASSUMPTION.** If all or any part of the Property or an interest therein is sold or transferred by the Borrower without the Lender's prior written consent (which consent may be withheld for any reason or no reason at all), the Lender may, at the Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable and same shall constitute an Event of Default.

32. **CHANGE OF OWNERSHIP.** In the event beneficial ownership of the Property shall change by any means without the Lender's consent (which consent may be withheld for any reason or no reason at all, then the indebtedness secured hereby shall become immediately due and payable upon demand of the Lender and same shall constitute an Event of Default. For the purposes of this provision, if the Borrower is a corporation, any sale or other change in the controlling or controlling beneficial interest of the corporate stock of Borrower to persons not shareholders of the Borrower as of the date hereof shall be considered a change of ownership requiring the Lender's consent.

33. **ASSIGNMENT OF RENTS.** Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the Rents of the Property, including those now due, past due or to become due by virtue of any one or more of the Leases, regardless of to whom the Rents of the Property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the Rents and hereby directs each tenant of the Property to pay such Rents to Lender or Lender's agents; however, prior to written notice given by Lender to Borrower of the default by Borrower of any covenant or agreement of Borrower in this Mortgage and the expiration of any period of cure therefor, Borrower shall have the right to collect and receive all Rents of the Property as trustee for the benefit of Lender and Borrower, to apply the Rents so collected to the sums secured by this Mortgage with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of Rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the default by Borrower of any covenant or agreement of Borrower in this Mortgage and the expiration of any period of time therefor and without the necessity of Lender entering upon the taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall be immediately entitled to possession of all Rents of the Property as specified in this paragraph as the same become due and payable, including, but not limited to Rents then due and unpaid, and all such Rents shall immediately be held by Borrower as trustee for the benefit of Lender only; however, the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such Rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such Rents payable to and pay such Rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of the tenant to inquire further as to the existence of a default by Borrower.

33.1 Borrower hereby covenants that Borrower has not executed any prior

assignment of the Rents, that Borrower has not performed and will not perform any acts and has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this paragraph, and that at the time of execution of this Mortgage there has been no anticipation or prepayment of any of the Rents of the Property for more than one (1) month prior to the due dates of such Rents. Borrower covenants that Borrower will not hereafter collect or accept payments of any Rents of the Property more than one (1) month prior to the due dates of such Rents. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of Rents of the Property as Lender may from time to time request.

33.2 Upon Borrower's default of any covenant or agreement of Borrower in this Mortgage, and upon the notice and expiration of period to cure, if any, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases and subleases, the collection of all Rents of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of the covenant or agreement of Borrower in this Mortgage, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

33.3. All Rents collected by Lender pursuant to this Section 33 shall be applied as provided in Section 22 hereof. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this paragraph.

33.4. If the Rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the Rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Mortgage. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

33.5. Any entering upon and taking and maintaining of Control of the Property by Lender or the receiver and any application of Rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or as provided herein. This assignment of Rents of the Property shall terminate at such time

as this Mortgage ceases to secure indebtedness held by Lender.

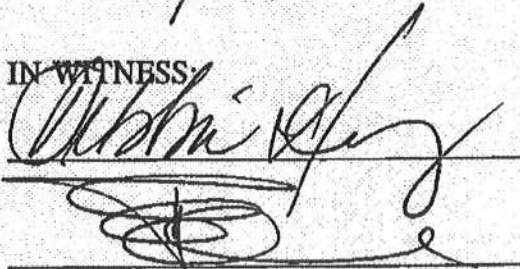
34. MISCELLANEOUS. This Mortgage may be changed, waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. The headings in this Mortgage are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. This Mortgage shall be governed by and construed in accordance with the laws of the United States Virgin Islands.

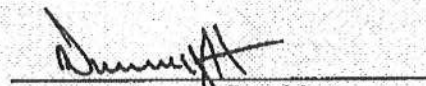
35. INTEREST AND ADVANCES TO PROTECT COLLATERAL. This Mortgage secures and shall secure the Obligations. Without limiting the foregoing, this Mortgage secures any and all interest on the indebtedness, costs of collection, and any advances made by the Lender reasonably necessary for protection of the collateral or otherwise authorized hereby.

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be duly executed on the date first above written:

DATED: 9/15/97

IN WITNESS:

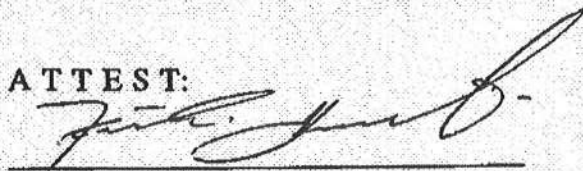




Waleed Hamed, President
Sixteen Plus Corporation

[CORPORATE SEAL]

ATTEST:



Pathi Yusuf, Secretary

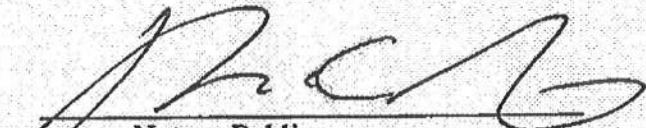
ACKNOWLEDGEMENT FOR CORPORATION

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

On this 15th day of September, 1997, before me the undersigned officer, personally appeared Fathi Yusuf, known to me (or satisfactorily proven) and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Secretary of Sixteen Plus Corporation, the corporation named in this Contract;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is Waleed Hamad, the President of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (d) this person knows the proper seal of the corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

SIGNED AND SWORN to before me on this 15 day of September, 1997.



Notary Public


22nd Feb
 2:51 o'clock
 Recorded and Entered in Recorder's Book for the
 District of St. Croix, Virgin Islands of the U.S.A.
 Photo-copy 1019 Page 33
 No. 7108/1999 and noted in Real Property Register
 11:37:11 Page 27, 186; 304, 305 + 3

 \$ 508.50



EXHIBIT A

1. Parcel No. 8, Estate Cane Garden, of approximately 2.6171 U.S. Acres.
2. Remainder No. 46A, Estate Cane Garden, of approximately 7.6460 U.S. Acres.
3. Parcel No. 10, Estate Cane Garden, of approximately 2.0867 U.S. Acres.
4. Road Plot No. 11, Estate Cane Garden, of approximately 0.0868 U.S. Acres.
5. Parcel No. 11, Estate Retreat, Matr. No. 37B of Company Quarter and Peter's Minde, Matr. No. 37A and 37BA, Company Quarter, and No. 54 Queen's Quarter all of approximately 42.3095 U.S. Acres.
6. Remainder Matr. 32B, Estate Cane Garden of approximately 48.5175 U.S. Acres.
7. Parcel No. 9 Estate Cane Garden, of approximately 11.9965 U.S. Acres.
8. Remainder Matr. 32A, Estate Granard, of approximately 41.0736, U.S. Acres.
9. Parcel No. 40, Estate Granard of approximately 14.9507 U.S. Acres.
10. Remainder Matr. No. 31, Estate Diamond, of approximately 74.4220 U.S. Acres.
11. Parcel No. 4, Estate Diamond, of approximately 5.8662 U.S. Acres.
12. Parcel No. 1, Estate Diamond, of approximately 61.2358 U.S. Acres.
13. Parcel No. 3, Estate Diamond, of approximately 6.9368 U.S. Acres.
14. Parcel No. 2, Estate Diamond, of approximately 6.5484 U.S. Acres.
15. Road Plot No. 12, Estate Cane Garden, of approximately 0.4252 U.S. Acres.
16. Road Plot No. 41, Estate Granard, of approximately 0.4255 U.S. Acres.
17. Road Plot No. 6, Estate Diamond, of approximately 0.8510 U.S. Acres.



28th Feb
2:51 o'clock
Recorded and Entered in Recorder's Book for
District of St. Croix, Virgin Islands of the U.S.A.
Photo-copy No. 1079 Page 33
No. 1108/1999 and noted in Real Property Records
II: 32: 166 Page 277: 186; 304, 305 & 306
Signature of Recorder
15

EXHIBIT 2

\$4,500,000

September 15, 1997
St. Croix, U.S.V.I.

PROMISSORY NOTE

FOR VALUE RECEIVED, Sixteen Plus Corporation ("Maker") promises to pay to the order of Manal Mohamad Yousef ("Holder") of 25 Gold Finch Road Pointe Blanche, St. Martin, N.A.;, or such other place as Holder may designate to Maker in writing from time to time, the principal sum of Four Million, Five Hundred Thousand Dollars (\$4,500,000) together with interest at 8% per annum in lawful money of the United States of America.

Such indebtedness shall be paid as follows:

Payments of interest only (\$360,000 per year) will be made on the anniversary of the date of this note for five years, with payment of the full principal due five years from the date of this note.

This Note is secured by a first priority mortgage ("Mortgage"), dated of even date, in favor of the Holder encumbering certain real property known as:

SEE EXHIBIT A

In further consideration for this loan, Maker agrees to pay to Holder 20% of the net profit received from the sale of the property described in Exhibit A at the time of sale.

Maker shall pay to holder a late charge in the event that any installment is not received by the Holder on the date that it is due. The late charge shall be computed as follows:

Principal Balance		then applicable		number of days
Outstanding on Note	x	prime rate of	x	between date
		<u>interest plus 1/2%</u>		installment due
				and date
	365			installment
				received.

All payments received by Holder shall be applied as follows: first, to any unpaid late fees, costs and expenses; second, to any unpaid accrued interest; and finally, the balance, if any, to principal.

This Note may be prepaid in whole or in part at any time without penalty or premium. Partial prepayments shall be applied as set forth herein and shall not cause a change in the due date or amount of the installments unless otherwise agreed by the Holder in writing.

It is hereby expressly agreed that should any default be made in the payment of principal and interest as stipulated above, and if such monetary default remains uncured for a period of fifteen (15) days, or if there is any default in any of the terms and conditions of the Mortgage, subject to the Notice provision, if any, in said instrument, then a default shall exist hereunder, and in such event the principal indebtedness evidenced hereby, and any other sums advanced or



due hereunder or under the Mortgage, at the option of the Holder without notice or demand, at once become due and payable and may be collected forthwith, and the entire unpaid principal balance of this Note shall thereafter bear interest at a per annum rate equal to eighteen percent (18.0%) per annum simple interest. A default shall be cured hereunder only upon the occurrence of the following:

- Payment of the sum and/or performance of the obligation which was the basis of the default; and
- Payment of all sums (including late fees and subsequent installments) and/or performance of all obligations which have become due hereunder as of the date of cure.

In the event this Note, or any part thereof, is collected by or through an attorney-at-law, Maker agrees to pay all costs of collection including, but not limited to, attorney's fees and court costs. Any notice sent in connection with this Note shall be sent in compliance with the notice provisions contained in the Mortgage.

Presentment for payment, demand, protest, notice of demand, protest and non-payment are hereby waived by Maker.

This Note is intended as a contract under and shall be construed, interpreted, and enforceable in accordance with the laws of the United States Virgin Islands.

As used herein, the terms "Maker" and "Holder" shall be deemed to include their respective heirs, successors, legal representatives and assigns, whether by voluntary actions of the parties or by operation of law. In the event that more than one person, firm or entity is a Maker hereunder, then all references to "Maker" shall be deemed to refer equally to each of said persons, firms, or entities, all of whom shall be jointly and severally liable for all of the obligations of Maker hereunder.

IN WITNESS WHEREOF, Maker has caused this Note to be executed by its duly authorized officer effective the date first above written.

DATED: 9/15/97

MAKER:

SIXTEEN PLUS CORPORATION

Waleed Hamed
Waleed Hamed, President

[Corporate SEAL]

A T T E S T:

Fathi Yusuf
Fathi Yusuf, Secretary

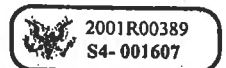


EXHIBIT A

1. Parcel No. 8, Estate Cane Garden, of approximately 2.6171 U.S. Acres.
2. Remainder No. 46A, Estate Cane Garden, of approximately 7.6460 U.S. Acres.
3. Parcel No. 10, Estate Cane Garden, of approximately 2.0867 U.S. Acres.
4. Road Plot No. 11, Estate Cane Garden, of approximately 0.0868 U.S. Acres.
5. Parcel No. 11, Estate Retreat, Matr. No. 37B of Company Quarter and Peter's Minde, Matr. No. 37A and 37BA, Company Quarter, and No. 54 Queen's Quarter all of approximately 42.3095 U.S. Acres.
6. Remainder Matr. 32B, Estate Cane Garden of approximately 48.5175 U.S. Acres.
7. Parcel No. 9 Estate Cane Garden, of approximately 11.9965 U.S. Acres.
8. Remainder Matr. 32A, Estate Granard, of approximately 41.0736, U.S. Acres.
9. Parcel No. 40, Estate Granard of approximately 14.9507 U.S. Acres.
10. Remainder Matr. No. 31, Estate Diamond, of approximately 74.4220 U.S. Acres.
11. Parcel No. 4, Estate Diamond, of approximately 5.8662 U.S. Acres.
12. Parcel No. 1, Estate Diamond, of approximately 61.2358 U.S. Acres.
13. Parcel No. 3, Estate Diamond, of approximately 6.9368 U.S. Acres.
14. Parcel No. 2, Estate Diamond, of approximately 6.5484 U.S. Acres.
15. Road Plot No. 12, Estate Cane Garden, of approximately 0.4252 U.S. Acres.
16. Road Plot No. 41, Estate Granard, of approximately 0.4255 U.S. Acres.
17. Road Plot No. 6, Estate Diamond, of approximately 0.8510 U.S. Acres.

MA

EXHIBIT 3

SIXTEEN PLUS CORPORATION

UNANIMOUS CONSENT OF DIRECTORS
IN LIEU OF A MEETING

Pursuant to the provisions of Title 13, V.I.C. § 67b, the undersigned, constituting all of the Directors of Sixteen Plus Corporation (the "Company"), do hereby unanimously consent to the actions set forth below as though such actions had been taken at a meeting of the Board of Directors:

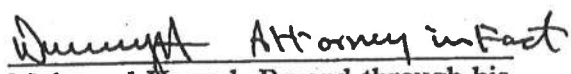
1. The Directors hereby approve the terms of a Promissory Note and First Priority Mortgage between the Company and Manal Mohamad Yousef.
2. The President or Vice President are authorized to execute any and all documents on behalf of the Corporation that they may deem necessary or appropriate to carry out the obligations of the Corporation, including, without limiting the generality of the foregoing, the execution of a Note and Mortgage substantially in the form attached as exhibits hereto.
3. The Company agrees to borrow \$4,500,000 from Manal Mohamad Yousef in accordance with the terms of the aforesaid Promissory Note.

This written consent shall be filed with the minutes of the Corporation.

DATE: September 15, 1997.



Fathi Yusuf



Mohamad Hamed, By and through his
attorney-in-fact, Waleed M. Hamed



Waleed M. Hamed

295-1412