

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

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )

Additional Counterclaim Defendants. )

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

Consolidated With

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff, )

v. )

UNITED CORPORATION, )

Defendant. )

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff, )

v. )

FATHI YUSUF, )

Defendant. )

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND  
CONVERSION

MOTION TO STRIKE HAMED'S AMENDED CLAIM NUMBERS 4, 5, AND 6

Defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation (collectively, the "Defendants") respectfully move the Master to strike Hamed's Amended Claim Nos. 4, 5, and

DUDLEY, TOPPER  
AND FEUERZEIG, LLP

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

6 totaling \$177,896.00<sup>1</sup> for the reasons set forth below. Defendants are taking the lead on filing this motion by the agreed upon January 12, 2018 deadline because their counsel mistakenly agreed to do so at the December 15, 2017 status conference despite the fact that Hamed is asserting these claims and has the burden of proof regarding same. *See* email exchange between counsel attached as **Exhibit 1**.

There is simply no dispute that the formula for calculating the rent for Plaza Extra East from May 2004 forward is based on a percentage of sales formula that uses the yearly sales of Plaza Extra Tutu Park. Under this formula, total rent payments including real estate taxes made to Tutu Park, Ltd., the landlord for Plaza Extra Tutu Park, for a given year are divided by sales for the same year at that store to determine a percentage. That percentage is then applied to the sales at Plaza Extra East to determine the rent to be paid by Plaza Extra East to United for that year. This is the formula Yusuf was referring to at ¶ 5 and 6 of his declaration dated September 9, 2013 supporting United's Motion to Withdraw Rent filed on September 9, 2013. A copy of that declaration is attached as **Exhibit 2**. Yusuf further clarified and expounded upon this formula, which pegs Plaza Extra East's rent to the rent of Plaza Extra Tutu Park, in ¶ 7 of his declaration dated August 12, 2014 attached as Exhibit 3 to Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent filed on August 12, 2014. A copy of that declaration is attached as **Exhibit 3**.

Hamed has never disputed that this percentage rent formula determined the rents due for Plaza Extra East. For example, at page 4 of Hamed's September 16, 2013 Response to United's Motion to Withdraw Rent, he states "Hamed agrees that the terms of the St. Thomas lease governed

---

<sup>1</sup> These claims are listed at item no. 4 at page 2 of the Master's Order of December 4, 2017.

the landlord-tenant issues for the Plaza Extra Supermarket in Sion Farm.” No better evidence that rent was determined based on this percentage of sales formula can be found than the fact that Waleed Hamed signed a check in the amount of \$5,408,806.74 on February 7, 2012 paying the rent from May 5, 2004 to December 31, 2011 based on this formula. *See* calculations and check at Exhibit 3-A.

In its Memorandum Opinion and Order entered on April 27, 2015, the Court granted United’s Motion to Withdraw Rent and accepted Yusufs’ calculation of the rents due from January 1, 2012 going forward. *See* page 11-12 of that Memorandum Opinion and Order, a copy of which is attached as **Exhibit 4**.

Hamed’s Amended Claim No. 4 seeks to recover \$89,442.92 paid to United as a matching payment for the Liquidating Partner’s payment of \$79,009.87 to Tutu Park, Ltd. for real property tax assessments for 2012 and 2013. *See* Hamed’s Submission Of His Suggestions As To The Further Handling Of The Remaining Claims dated October 30, 2017 (“Hamed’s Amended Claims”) at page 7 and page 1 of Exhibit A thereto. On December 6, 2015, John Gaffney emailed the Master his calculations supporting the \$89,442.92 payment to United based on the same percentage of sales formula used to make the \$5.4 million rent payment co-signed by Hamed. A copy of Gaffney’s email and calculations is attached as **Exhibit 5**.

Hamed’s Amended Claim No. 5 seeks to recover \$46,990 paid to United as a matching payment for the Liquidating Partner’s payment of \$43,069.38 to Tutu Park, Ltd. for 2014 taxes owed by Plaza Extra Tutu Park. *See* Hamed’s Amended Claims at page 7 and page 1 of Exhibit A thereto. That matching payment was calculated based on the same percentage of sales formula consistently used to calculate the rent for Plaza Extra East. A copy of the calculations presented to the Master is attached as **Exhibit 6**.

Hamed Amended Claim No. 6 seeks to recover \$41,462.28 paid to Yusuf as a matching distribution for the Liquidating Partner's payment of the same amount to Tutu Park, Ltd. on behalf of Hamed or his family's company. On December 4, 2015, Tutu Park, Ltd. sent a cover letter and invoice in the amount of \$41,462.28 to Yusuf via the Master for percentage rents due for the period from November 1, 2014 through October 31, 2015. *See* email dated December 4, 2015 from Steve Russell, counsel for Tutu Park, Ltd., and cover letter and invoice included with that email attached as **Exhibit 7**. In a letter dated December 5, 2015, Yusuf denied that he and United had any obligation to pay percentage rents since the revenues causing the \$25 million threshold for percentage rents to be reached were generated after Plaza Extra Tutu Park had been transferred to Hamed or his family's company. *See* **Exhibit 8**. This position was further elaborated upon in an email from counsel for the Defendants to Attorney Russell on December 9, 2015. *See* **Exhibit 9** without the attachments.

Although Yusuf, as the Liquidating Partner, initially rejected Tutu Park, Ltd.'s claim for percentage rents, given his legitimate concern regarding United's and his continuing liability under the lease with Tutu Park, Ltd. due to Hamed's continuing failure to "deliver the releases required by Judge Brady's Order of 1/7/15, Section 8(2) of his Plan, and Judge Ross' Order of 4/30/15," *see* last paragraph of Exhibit 9, on December 17, 2015, Yusuf chose to pay Tutu Park, Ltd. for its percentage rent invoice even though it was an obligation of Hamed or his family's company. Because this payment effectively represented a partnership distribution to Hamed, Yusuf made an identical distribution to himself. The Master signed off on both of these checks. *See* **Exhibit 10**.

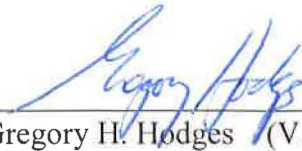
For all of the foregoing reasons, Defendants respectfully request the Master to find that Hamed's Amended Claim Nos. 4, 5, and 6 are invalid and to strike these claims from Hamed's Amended Claims.

Respectfully submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

**DATED:** January 9, 2018

By:



Gregory H. Hodges (V.I. Bar No. 174)  
Stefan B. Herpel (V.I. Bar No. 1019)  
Charlotte K. Perrell (V.I. Bar No. 1281)  
1000 Frederiksberg Gade - P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Fax: (340) 715-4400  
E-Mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)  
[sherpel@dtflaw.com](mailto:sherpel@dtflaw.com)  
[cperrell@dtflaw.com](mailto:cperrell@dtflaw.com)

Attorneys for Fathi Yusuf and United Corporation

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

**CERTIFICATE OF SERVICE**

It is hereby certified that on this 9<sup>th</sup> day of January, 2018, I served a true and correct copy of the foregoing **Motion To Strike Hamed's Amended Claim Numbers 4, 5, And 6**, which complies with the page and word limitations set forth in Rule 6-1(e), via the Case Anywhere electronic filing system to:

Joel H. Holt, Esq.  
**LAW OFFICES OF JOEL H. HOLT**  
Quinn House - Suite 2  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
E-Mail: [holtvi@aol.com](mailto:holtvi@aol.com)

Carl J. Hartmann, III, Esq.  
5000 Estate Coakley Bay – Unit L-6  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
E-Mail: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Mark W. Eckard, Esq.  
**ECKARD, P.C.**  
P.O. Box 24849  
Christiansted, St. Croix  
U.S. Virgin Islands 00824  
E-Mail: [mark@markeckard.com](mailto:mark@markeckard.com)

Jeffrey B.C. Moorhead, Esq.  
**JEFFREY B.C. MOORHEAD, P.C.**  
C.R.T. Brow Building – Suite 3  
1132 King Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
E-Mail: [jeffreymlaw@yahoo.com](mailto:jeffreymlaw@yahoo.com)

The Honorable Edgar A. Ross  
E-Mail: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)



R:\DOCS\6254\1\DRFTPLDG\17M6182.DOCX

# EXHIBIT 1

## Gregory Hodges

---

**From:** Gregory Hodges  
**Sent:** Friday, January 05, 2018 1:01 PM  
**To:** 'Joel Holt'  
**Cc:** Carl@hartmann.attorney; Kim Japinga  
**Subject:** RE: 12/4/17 Master's Order As Amended By 12/15/17 Hearing

If you insist that we file first on your client's "Hamed Claim H-4," we will, since I mistakenly said I would. Why would you want to pass on the reply opportunity?

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

Member

**LexMundi**  
World Ready

---

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

**From:** Joel Holt [mailto:[holtvi.plaza@gmail.com](mailto:holtvi.plaza@gmail.com)]  
**Sent:** Wednesday, December 27, 2017 3:50 PM  
**To:** Gregory Hodges <[Ghodges@dtflaw.com](mailto:Ghodges@dtflaw.com)>  
**Cc:** Carl@hartmann.attorney; Kim Japinga <[kim@japinga.com](mailto:kim@japinga.com)>  
**Subject:** Re: 12/4/17 Master's Order As Amended By 12/15/17 Hearing

Greg-this is a landlord claim, just like the one seeking "funds to be held in reserve" for the 2015 taxes owed to the STT landlord (found in section II A on page 5 of your client's Oct 30th list of his amended claims. As Judge Ross indicated, just because certain amounts have been paid to Mr. Yusuf that are based on the same premise-- that United gets additional funds when the landlord in STT gets funds-- does not mean the payment was proper. In short, the burden does not shift to Hamed to disprove the validity of this landlord claim just because they were paid during the wind-up phase. That is why we asserted this allocation should be United's burden to prove at the hearing, requiring it to file its explanation for this payment first, which you agreed to on the record.

On Fri, Dec 22, 2017 at 9:44 AM, Gregory Hodges <[Ghodges@dtflaw.com](mailto:Ghodges@dtflaw.com)> wrote:

For item 4 on the list on page 2 of the Order, Judge Ross obviously lifted your description of "Hamed Claim H-4" verbatim from page 3 of Exhibit 2 to your motion for hearing. This "Hamed Claim H-4" is the same as Hamed's Original



Claim Nos. 244, 272, and 356 and Hamed Amended Claim Nos. 4, 5, and 6 totaling \$177,896 in "reimbursements" you claim Yusuf was not entitled to recover. If you do not want to take the lead on your client's claim, that's your decision.

Gregory H. Hodges

Dudley, Topper and Feuerzeig, LLP

Law House, 1000 Frederiksberg Gade

St. Thomas, VI 00802

Direct: [\(340\) 715-4405](tel:(340)715-4405)

Fax: [\(340\) 715-4400](tel:(340)715-4400)

Web: [www.DTFLaw.com](http://www.DTFLaw.com)

Member

**LexMundi**  
World Ready

---

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

**From:** Joel Holt [<mailto:holtvi.plaza@gmail.com>]  
**Sent:** Friday, December 22, 2017 8:21 AM  
**To:** Gregory Hodges <[Ghodges@dtflaw.com](mailto:Ghodges@dtflaw.com)>  
**Cc:** [Carl@hartmann.attorney](mailto:Carl@hartmann.attorney); Kim Japinga <[kim@japinga.com](mailto:kim@japinga.com)>  
**Subject:** Re: 12/4/17 Master's Order As Amended By 12/15/17 Hearing

Item #4 on the list on page 2 of Judge Ross's December 4th Order is "Reimbursement to Fathi Yusuf for withdrawals related to TuTu Park rent and tax; payments-2012-2014 real estate taxes for Plaza Extra STT"—thus, this is properly on your list.

On Thu, Dec 21, 2017 at 5:24 PM, Gregory Hodges <[Ghodges@dtflaw.com](mailto:Ghodges@dtflaw.com)> wrote:

Take a look at the highlighted portions of the attached transcript of the 12/15/17 status conference. We both put item 4 from the 12/4/17 Master's Order on my list of items to file a lead brief on. I believe this was a mistake since item 4 from that Order corresponds to "Hamed Claim H-4" discussed at page 3-4 of Exhibit 2 to your motion for hearing. Can we agree that item 4 from the Order belongs on your list of items to file a lead brief on by 1/12/17?

Gregory H. Hodges

Dudley, Topper and Feuerzeig, LLP

Law House, 1000 Frederiksberg Gade

St. Thomas, VI 00802

Direct: [\(340\) 715-4405](tel:(340)715-4405)

Fax: [\(340\) 715-4400](tel:(340)715-4400)

Web: [www.DTFLaw.com](http://www.DTFLaw.com)

Member

**LexMundi**  
World Ready

---

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

--

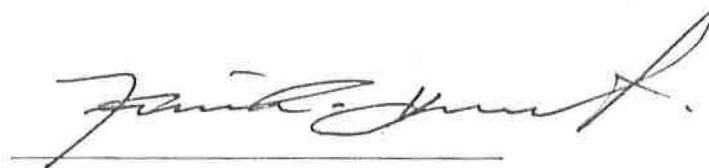
# EXHIBIT 2



attached Exhibit B shows how the calculations have been done, and to which everyone agreed to by issuing a check in the amount of \$5,408,806.74. Therefore, the monthly rate of \$58,791.38 is what the current monthly rent is.

7. For the period of January 1, 1994 through May 4<sup>th</sup>, 2004, there is rent outstanding in the amount of \$3,999,679.73 (69,680 Sq. Ft. of Retail Space @ \$5.55 sq. ft.). This reflects a rental period of 10 Years & 125 days. The rate of \$5.55 sq. ft. has always been significantly below market value.
8. United did not make a demand for the rent for the period of January 1, 1994 through May 4<sup>th</sup>, 2004 because records concerning the exact months that rental period began and ended were in the possession of the Federal government. Plaintiff knows well these records are in the possession of the federal government, and has never made any objections or denied that no agreement existed regarding the payment of rents.
9. It is respectfully requested that an Order permitting United withdraw the back rent of \$5,234,298.71 the value of all rents due for Bay 1.
10. As the fee simple owner of United Shopping Plaza, Defendant United is also entitled to repossess the premises immediately as a result of Plaintiff's bad faith refusal to allow United to withdraw rents at a rate that has already been agreed on.
11. Whether the court declares this to be partnership, a business agreement, or any other legal entity, the rent due must be paid, and there can be no excuse for failure to pay any rent.

Date: 9-5-2013



Fathi Yusuf

# **EXHIBIT 3**

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

MOHAMMAD HAMED, by his  
authorized agent WALEED HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

WALEED HAMED, WAHEED HAMED,  
MUFEEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES,

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

**DECLARATION OF FATHI YUSUF**

I, Fathi Yusuf, pursuant to 28 U.S.C. §1746 and Super. Ct. R. 18, declare under the penalty of perjury, that:

1. Mohammad Hamed (“Hamed”) and I agreed to carry on a supermarket business (the “Plaza Extra Stores”) that eventually grew into three locations, including the first of three stores, Plaza Extra-East, which opened in April 1986. Plaza Extra-East was and is located in United Plaza Shopping Center owned by United Corporation (“United”), of which I am the principal shareholder. Under the business agreement between Hamed and me that I now describe as a partnership, profits would be divided 50-50 after deduction for rent owed to United, among other expenses. Under our business agreement, we also agreed that rent would accrue until such time as I decided that our business accounts should be reconciled. The reconciliation of business accounts would not only involve payment of accrued rent, but also advances that each of us had taken by withdrawing money from the store safe(s). Under our agreement, I was the person



responsible for making all decisions regarding when the reconciliation would take place and hence when the rent would be paid. Hamed and I agreed at the outset that the rent would be calculated at a rate of \$5.55 per square foot for what is referred to as Bay 1, the primary space comprising the Plaza Extra-East store, which originally covered 33,750 square feet

2. Our decision to allow rent to accrue for some number of years before paying it was intended to enable the business to retain capital needed to grow the business.

3. This method of allowing rent to accrue for a number of years before being paid was important for the growth of the supermarket business for a number of reasons. First, at the time of the formation of the business agreement, the initial store, Plaza Extra-East, in St. Croix, was still in development. We thereafter made plans to open a second supermarket in St. Thomas (the store now known as Plaza Extra-Tutu Park), and it opened in October 1993. Later, we made plans to open a third grocery store in St. Croix (the store now known as Plaza Extra-West), and it opened in 2000. Construction began in 1998 and finished in 2000. Keeping money in the business for multi-year periods, rather than paying rent to United in monthly or even annual rent payments, ensured that the business would have the capital to establish and grow the stores in very challenging economic conditions.

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



5. In 1992, the Plaza Extra-East store burned down. As with all tenants in the United Shopping Plaza, the insurance policy on Bay 1 was paid to the property-owner, United. United decided to expand Bay 1 by purchasing an adjacent acre of land for \$250,000. I used \$100,000 of my personal funds and the balance was paid with insurance proceeds United received as the insured under a policy of insurance, which is required of all tenants of United Shopping Plaza. At that time, I agreed with Hamed, through his son, Waleed, to continue operating the Plaza Extra – East supermarket in Bay 1 of United Shopping Plaza. I further agreed to keep the rent at the much lower-than market rate of \$5.55 per square foot for a ten-year period. Specifically, I told Hamed that we would keep that rate in place for the ten years following the date the rebuilt store opened for business.

6. The Plaza Extra-East store was reopened in May 1994. The Plaza Extra-Tutu Park store had just opened in October 1993. Around the time that the Plaza Extra-East store reopened, I was arranging a Scotiabank loan to United for approximately \$5,000,000 for the benefit of the partnership. The loan was guaranteed by my wife and me, and it was secured by our home on St. Croix and by United's shopping center in St. Croix. Because money was short, Hamed and I agreed not to have the rent withdrawn, and to simply continue to accrue rent until such time as I made a demand.

7. Some time in 2002 or 2003, I began discussions with Waleed Hamed regarding how the rent would be calculated for Plaza Extra-East after the expiration of the ten-year period during which the \$5.55/square foot rent formula was in place. During those discussions, we recognized, as before, that the prior rent was far below fair market value, and the decision was made to set the rent based on a percentage of sales formula using the yearly sales of Plaza Extra-Tutu Park. Total payments made to that store's landlord, Tutu Park, Ltd., for a given year were to

be divided by sales for the same year at that store to determine a percentage, and that percentage was then applied to the sales at Plaza Extra-East to determine the rent to be paid by Plaza Extra-East to United for that year. There is no dispute concerning the formula for calculating the rent for Plaza Extra-East from May 2004 forward, since rent based upon that agreed formula was paid via a check signed by Waleed Hamed on February 7, 2012 in the amount of \$5,408,806.74, covering the period from May 5, 2004 to December 31, 2011. A calculation of the rent based on this formula and a copy of the check in the amount of \$5,408,806.74 is attached as **Exhibit A**.

8. Between 1994 and 2004, we discussed the rent issues on several occasions. We both agreed to continue accruing the rent because of the need for more capital for the then new St. Thomas store, and for the construction of the Plaza Extra – West store between 1998 and 2000. Between 2002 and 2003, I discussed with Hamed the new rental rate for the Plaza Extra – East store beginning May 5<sup>th</sup>, 2004. Also, in 2004, at about the time the new agreed-upon rent formula became effective, Waleed Hamed, acting on behalf of his father, and I discussed payment of the rent that had accrued since May 1994 at the \$5.55 per square foot rate. At the time, we were then embroiled in the criminal case, and all of the Plaza Extra accounts were frozen by an injunction. As a result, I made a decision and Waleed Hamed, on behalf of Hamed, agreed, that there was no prospect for the payment of the rent owed for the period since the last payment of rent and that payment of that rent would continue to be deferred. In addition, even if the ability to collect the rent had not been not blocked by the injunction, I was unable to calculate the rent for the second rental period and to do a full reconciliation of the partnership accounts, as I did not have the book of accounting entries called the “black book,” and also did not have the comprehensive, larger ledger showing advances against the partnership that Hamed and I had taken by means of withdrawals from store safes. The FBI had seized substantially all of the financial and accounting

records of the Plaza Extra Stores, including these items, when it conducted its raid on the stores in October 2001. Among other things, the black book reflected the exact date of the last rent payment, information I needed to accurately determine when the rent for the second period had begun accruing. And the larger ledger reflected the debits and credits between the two partners (for the funds taken by them and members of their families from the store safes in the form of advances against partners' accounts). I had no recollection (and neither did Hamed) of exactly what dates the rent for the preceding period had covered, and indeed was not sure whether it ended in 1992, 1993 or 1994. We therefore needed to consult the black book to determine the start date for the subsequent rental period, which in turn would affect the amount of rent that had accrued since the last payment. Waleed Hamed and I agreed that rent would be allowed to continue to accrue until it was possible to calculate the amount of rent due and make the payment. Another consideration that counseled in favor of letting the rent continue to accrue, rather than paying it, is that our criminal defense lawyers did not want us to take any actions that supported the existence of a partnership as the owner of the Plaza Extra Stores.

9. In the latter part of 2011 and early 2012, the injunction in the District Court criminal proceeding had been relaxed sufficiently to permit a payment for rent that had accrued to that date from the date of the last payment. However, the original problem regarding the absence of the records to accurately calculate the rent for the period ending in 2004, and to conduct a full reconciliation of the rents from the date of the last reconciliation, remained unresolved because of the absence of the black book and the ledger. Neither of these items had been returned. I did not want to either understate or overstate the rent amount, but wanted the dollar amount of rent to be exactly correct. By contrast, we did not need the black book to pay the rent covering the period

from May 5, 2004 to December 31, 2011, as we knew that the new rent rate was in effect for that time period.

10. In early 2012, I discussed with Waleed Hamed the payment of accrued rent, and we agreed that the May 5, 2004 to December 31, 2011 portion of the accrued rent should be paid, while the portion preceding that would be deferred. Waleed acknowledged that we could not pay all of the rent that had accrued from the date of last payment in 1993 to May 5, 2004, as we still had not recovered the black book to determine the exact starting point for that period, and there also were insufficient funds in the operating account to pay the rent due for the ten year period of January 1, 1994 to May 5, 2004. During that conversation in 2012, Waleed Hamed agreed that rent was owed for that period, and agreed that it would be paid once the black book was recovered and a proper calculation could be made, and when sufficient funds are available. Shortly after that discussion, the rent for the period May 5, 2004 to December 31, 2011 in the amount of \$5,408,806.74 was paid by a check signed by Waleed. See Exhibit A. The reason why the rent for the May 5, 2004 to December 31<sup>st</sup>, 2011 paid was paid before the rent for the January 1994 to May 5, 2004 period was that information regarding the exact starting date for that prior period was not available, while the period of May 5, 2004 to December 31, 2011 was certain as to start and end dates.

11. My son, Yusuf, found the black book in early 2013, among a large number of documents that were returned to us by the FBI. After receipt of the black book, at my instruction, the attorney for United and me sent a letter dated May 17, 2013 to Hamed's attorney requesting payment of the past due rent, as we then were able to properly calculate the dollar amount. See letter attached as **Exhibit B**. This letter contained errors in the amount of the outstanding unpaid rent that are corrected by the calculations set forth in this declaration. On May 22, 2013, counsel

for Hamed wrote a letter to my and United's counsel in which he advised that his client was now taking the position that because of the statute of limitations, profits did not have to be determined by deducting the unpaid rent for the 1994 to 2004 period. See letter attached as **Exhibit C**. Until receipt of this letter, nobody on the Hamed side had ever challenged or otherwise disputed this rental obligation or the terms of our partnership agreement that required rent to be deducted in order to determine profits.

12. I received a partial copy of the FBI file, records, and documents electronically produced and stored on a hard drive in approximately mid-2010. When these documents were initially returned, I had no reason to suspect any wrongdoing by Hamed, Waleed Hamed or any other members of the Hamed family. Later in 2010, as I reviewed these documents, I discovered certain documents that led me to believe that Hamed and his son, Waleed, may have taken monies without my knowledge. In 2012, I discovered the tax returns for Waleed Hamed for various years, which reflected more than \$7,500,000 in stocks and securities owned by Waleed Hamed. I knew Waleed's salary as a Plaza Extra store manager, and knew that he had no other employment or source of income. I believed there was no way he could have legitimately accumulated that much wealth, but for having taken money from the partnership without telling me or making a record of it.

13. As to the primary space occupied by the Plaza Extra-East store, Bay 1, rent is due for two basic periods: a) 1994 – 2004, and b) 2012 through the present. Additional rent is due for limited periods when Plaza Extra-East used additional space for extra storage and staging of inventory.

14. The rent as to Bay 1 can be divided into four periods, two of which have been paid and two of which remain unpaid: 1) 1986 through December 1993 was paid as of December 31, 1993;

2) January 1, 1994 through May 4, 2004 has *not* been paid; 3) May 5, 2004 through December 31, 2011 was paid as of February 7, 2012; and 4) January 1, 2012 to date has *not* been paid.

15. The rent for Bay 1 from January 1, 1994 to May 4, 2004 ("Past Due Rent") is due and owing. The Past Due Rent is \$3,999,679.73.

16. The rent for Bay 1 from January 1, 2012 to the present is due and owing. Although beginning in 2004 rent for Bay 1 was calculated on the basis of percentage of sales formula discussed above, once the disputes between the parties intensified, United sent a termination notice and requested the premises to be vacated. When Hamed refused to vacate despite receiving more than 1 year's notice to vacate, United provided written notice of rent increases. Beginning on January 1, 2012 through March 31, 2012, rent was increased to \$200,000.00 per month plus 1% per month interest on the unpaid balance. Copies of the three Notice Letters from United are attached as **Exhibit D**. Beginning on April 1, 2012, rent was further increased to \$250,000.00 per month plus 1% per month interest on the unpaid balance. See Exhibit D. The total amount of the increased rent from January 1, 2012 through August 30, 2014 is \$9,155,371.52, as set forth in the latest notice letter. See Exhibit E.

17. While United claims the authority to require payment of the increased rent as set forth in the preceding paragraph, there is no dispute that rent is due from January 1, 2012 to date at least in the amount based on the same percentage of sales formula used to calculate the rent payment covering the period May 5, 2004 to December 31, 2011 that was made on February 7, 2012. Although United reserves its right to pursue its claims for the increased rent as to Bay 1 at trial, it is seeking summary judgment only for the undisputed rent calculated according to the same formula used for the previous payment of rent on February 7, 2012 of \$5,408,806.74, which is the

formula used at Plaza Extra – Tutu Park. See Exhibit F, which are the rent calculations that I prepared. See Exhibit F.

18. For 2012, the undisputed rent due is \$702,908. See Exhibit F, p.1.

19. For 2013, the undisputed rent due is \$654,190.09. See Exhibit F, p. 2.

20. For the period from January 1, 2014 through August 30, 2014, the undisputed rent due is \$452,366.03. This amount was calculated by adding the rent for 2012 and 2013 and dividing that sum by 24 months in order to determine an average monthly rent, which is then multiplied by 8, representing the eight months from January through August 30, 2014 ( $\$702,908 + 654,190.09 = \$1,357,098.09 \div 24 = \$56,545.75 \times 8 = \$452,366.03$ ). The total undisputed Current Rent is the sum of \$702,908, \$654,190.09 and \$452,366.03, which is \$1,809,464.12.

21. At periodic points in time, additional space was used by Plaza Extra-East for extra storage and staging of inventory. United has made demand for the rent covering the additional space actually occupied by Plaza Extra-East, but no payment has been received to date.

22. For the period from May 1, 1994 through July 31, 2001, Plaza Extra-East has occupied and owes rent for Bay 5 (“Bay 5 Rent”). The Bay 5 Rent is calculated by multiplying the square feet actually occupied (3,125) by \$12.00 for 7.25 years. The total due for Bay 5 Rent is \$271,875.00.

23. For the period from May 1, 1994 through September 30, 2002, Plaza Extra-East has occupied and owes rent for Bay 8 (“First Bay 8 Rent”). The First Bay 8 Rent is calculated by multiplying the square feet actually occupied (6,250) by \$6.15 for 8 years, 5 months. The total due for First Bay 8 Rent is \$323,515.63.

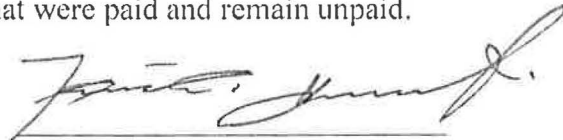
24. For the period from April 1, 2008 through May 30, 2013, Plaza Extra-East has occupied and owes rent for Bay 8 (“Second Bay 8 Rent”). The Second Bay 8 Rent is calculated by

multiplying the square feet actually occupied (6,250) by \$6.15 for 5 years, 2 months. The total due for Second Bay 8 Rent is \$198,593.75.

25. The total amount due for Bay 5 Rent, First Bay 8 Rent, and Second Bay 8 Rent is \$793,984.38.

26. The total outstanding, unpaid rent for all the space used by Plaza Extra-East from January 1, 1994 through August 30, 2014 is \$6,603,122.23, excluding the "disputed" increased rent from January 1, 2012 through the present. **Exhibit G** is a Chronology of Rents, which accurately reflects the history of the rents that were paid and remain unpaid.

Dated: August 12, 2014



Fathi Yusuf



**United Corporation dba Plaza Extra**

**Tutu Park Store Sales:**

1-1-2004 to 12-31-2004	32,323,902.88
Less: 1-1-2004 to 5-4-2004	-10,849,029.02
Sales 5-5-2004 to 12-31-2004	<u>21,474,873.86</u>

**Tutu Park Store:**

Paid Rent, Water, & Property Tax	263,577.53
Paid 1.5% Overage	<u>71,914.23</u>
5-5-2004 to 12-31-2004	335,491.76

1-1-2005 to 12-31-2005	515,361.54
1-1-2006 to 12-31-2006	590,533.60
1-1-2007 to 4-1-2007	255,699.33
4-2-2007 to 12-3-2007	468,689.55
1-3-2008 to 12-5-2008	540,180.12
1-5-2009 to 12-10-2009	529,799.66
1-6-2010 to 12-3-2010	527,565.40
1-1-2011 to 12-31-2011	<u>541,175.61</u>

Rent, etc. 5-5-2004 to 12-31-2011	4,304,496.57
Parking Lot Cleaning	<u>126,000.00</u>
Total Amount Paid	4,430,496.57 a

**Tutu Park Store Sales:**

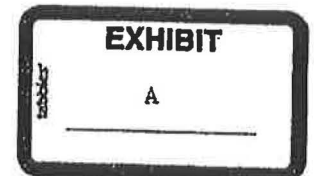
5-5-2004 to 12-31-2011	261,474,323.91
Portion of Sales - Rented building	<u>217,895,269.93</u> b
Portion of Sales - Area built by Plaza	43,579,053.98

Total Paid as a % of Sales (Rented Bldg.) = a/b 2.0333147073%

**Sion Farm Sales:**

Sion Farm Sales 5-5-2004 to 12-31-2011	273,884,222.70
Less: R/X	<u>-7,874,897.13</u>
	266,009,325.57

Calculated Rent as a % of Sales Sion Farm \$ 5,408,806.74



UNITED CORPORATION D/B/A PLAZA EXTRA  
UNITED SHOPPING PLAZA

64866

Check Number: 64866  
Check Date: Feb 7, 2012

Check Amount: \$5,408,806.74  
Discount Taken      Amount Paid  
S,408,806.74

Item to be Paid - Description  
Rent - Sign farm

UNITED CORPORATION D/B/A  
PLAZA EXTRA  
4C & 4D ESTATE SIGN FARM  
CHRISTIANSTED, VI 00821  
(340) 778-0240 (340) 719-1870

BANCO POPULAR DE PUERTO RICO  
107-887218

64866

DATE  
Feb 7, 2012

AMOUNT  
\$ \*\*\*\$5,408,806

Five Million Four Hundred Eight Thousand Eight Hundred Six and 74/100 Dollars

PAY  
TO THE  
ORDER  
OF:

UNITED SHOPPING PLAZA  
P.O. BOX 743 C'SSEB  
ST. C ROIX, VI 00821

VOID AFTER 90 DAYS



AUTHORIZED SIGNATURE

Memo: PLAZA EXTRA (SIGN FARM) RENT

⑆066866⑆ ⑆026606674⑆ 19 Feb 2012

**DEWOOD LAW FIRM**

2006 Eastern Suburb Suite 101  
Christiansted, V.I. 00820  
Admitted: NY, NJ, MD, & 17  
T: 340.773.3444  
F: 888.398.8428  
info@dewood-law.com

**BY: FIRST CLASS MAIL & EMAIL ONLY**

**May 17, 2013**

**Joel Holt, Esq.  
2132 Company Street  
Christiansted, VI 00820**

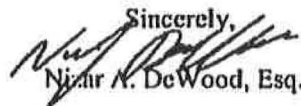
**Re: Rent Due -- Plaza Extra -- East Operations**

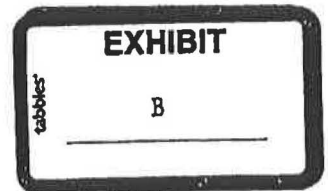
**Dear Attorney Holt,**

**On behalf of United Corporation, the following is a notice of the value of rents due as follows:**

<b>Rent due for Plaza Extra -- East</b>	
<b>Bay No. 1 January 1, 1994 through April 4, 2004</b>	
<b>69,680 SQ. FT. at \$5.55 10 years and 95 days</b>	<b>Balance Due \$3,967,894.19</b>
<b>Bay No. 5 May 1, 1994 through October 31, 2001</b>	
<b>3,125 SQ. FT. at \$12.00 6 years and 184 days</b>	<b>Balance Due \$243,904.00</b>
<b>Bay No. 8 April 1, 2008 through May 30, 2013</b>	
<b>6,250 SQ. FT. at \$12.00 5 years and one month</b>	<b>Balance Due \$381,250.00</b>
	<b>Total Amount Due <u>\$4,593,048.19</u></b>

**These amounts are undisputed, and have been outstanding for a very long time - before 2012. This amount does not reflect the rent increase requested and noticed to Mohammed Hamed since January 1, 2012. We reserve our client's right for the additional rents due and owing based on the rent increase after January 1, 2012. Kindly review the amount with your client, and advise when a check can be issued. Thank you.**

Sincerely,  
  
Nizar A. DeWood, Esq.



**FY 004004**

# JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

Tela. (340) 773-8709  
Fax (340) 773-8677  
E-mail: [holtvt@nol.com](mailto:holtvt@nol.com)

May 22, 2013

Nizar A. DeWood  
The Dewood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820

By Email and Mail

Re: Plaza Extra

Dear Attorney DeWood:

In response to your letter dated May 17, 2013, regarding "Rent Due" for Bay Nos. 1, 5 and 8, my clients have authorized me to respond as follows:

1. **Bay No. 1-**The rent claimed is for the time period between 1994 and 2004. There was never any understanding that rent would be paid for this time period, much less at that rate. In any event, this inflated claim is clearly barred by the statute of limitations.
2. **Bay No. 5-**The rent claimed for the time period between 1994 and 2001 is for vacant space was used without charge until a tenant could be located. Thus, there was never any agreement to pay rent for this space either. In fact, the rate your client is attempting to charge is grossly inflated as well. In any event, this claim is also barred by the statute of limitations.
3. **Bay No. 8-**The rent claimed for this Bay was never agreed to, as the items stored there were removed from a space in a trailer where everything was just fine. Moreover, no one would agree to pay the amount you claim is due for warehouse storage, The fact that this amount is even being sought confirms that Fathi Yusuf should no longer be a partner in the Plaza Extra supermarkets, as it is a breach of the duty of good faith and fair dealing (that every partner owes the partnership) when you try to extort money from your own business. In any event, these items will be removed from Bay 8 to the second floor of the store since your client now wants to charge rent for this space.



Ever since your clients lost the preliminary injunction hearing, they have done everything they can to undermine the partnership. Your clients' belated claim for inflated amounts of back rent (that were never agreed to) is just another example of your clients' continued efforts to try to undermine the Court's Order.

Yours,



Joel H. Holt

**UNITED CORPORATION**  
**4C & 4D Sion Farm**  
**St Croix, USVI 00821**  
Phone (340) 778-6240

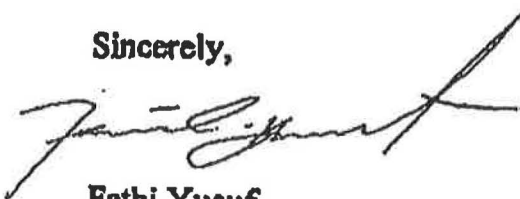
**January 12, 2012**

**Mr. Mohamed Hamed,**

**During the month of September 2009, I had a discussion with your son Wally, and within two days I repeat the same request while you were present that United Corporation would like to have its location back. Unfortunately, up to now, I have not seen that you give up the keys.**

**Therefore as of January 1, 2012 the rent will be \$200,000.00 per month, only for the coming three months. If you do not give up the keys before the three months, it will be \$250,000.00 per month until further notice.**

**Sincerely,**



**Fathi Yusuf**



**FY 004000**

UNITED CORPORATION  
4C & 4D Sion Farm  
St Croix, USVI 00821  
Phone (340) 778-6240

January 13, 2012

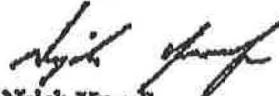
Mr. Mohamed Hamed,

Based on my father's phone call this morning, yesterday's letter (Jan 12, 2012) should read as follows; "During the month of September 2010 (not 2009)... I had a discussion with your son Wally, and within two days I repeat the same request while you were present that United Corporation would like to have its location back. Unfortunately, up to now, I have not seen that you give up the keys".

"Therefore as of January 1, 2012 the rent will be \$200,000.00 per month, only for the coming three months. If you do not give up the keys before the three months, it will be \$250,000.00 per month until further notice".

I am sorry for the error, he was hurrying to catch a plane.

Sincerely,

  
Najeh Yusuf  
for Nathl Yusuf

CC: Wally Hamed

FY 004001

United Corporation  
4-C & 4-D Estate Ston Farm  
P.O. Box 763  
Christianssted, VI 00820

Date: January 19, 2012

**\*\*VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED\*\***

Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Ston Farm  
Christianssted, V.I. 00820

Re: - **NOTICE & CONFIRMATION OF INCREASED RENT FOR PLAZA EXTRA -  
STON FARM - FOR THE PERIOD OF JANUARY 1, 2012 THROUGH JUNE 30,  
2012.**

- **NOTICE OF LEASE TERMINATION FOR PLAZA EXTRA - STON FARM  
AS OF JUNE 30<sup>TH</sup>, 2012.**

Dear Mr. Hamed,

This notice is to confirm the increased rent for the above referenced premises. As you will know, I have given both you and your son Waleed Hamed oral notice in September 2010 to vacate the premises. At that time, I have advised you that the rent will increase to Two Hundred Thousand Dollars (\$200,000.00) per month for each of the first three months of January, February, and March, 2012. Thereafter, the rent shall increase to Two Hundred & Fifty Thousand Dollars (\$250,000.00) each month commencing April 1, 2012 through June 30<sup>th</sup>, 2012. The last date for this lease is June 30<sup>th</sup>, 2012. There will be no additional extensions of tenancy to Plaza Extra - Ston Farm.

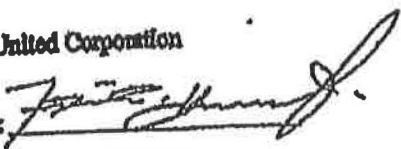
An orderly inspection will be done to evaluate the condition of the premises. Kindly, advise as to when you are available to conduct an inspection, and to inventory all fixtures and improvements that will remain on the premises. Should you have any concerns regarding this notice, or any other matters concerning this lease, please ensure that same be made in writing.



and delivered by way of certified mail, return receipt requested to the address above. Thank you  
for your prompt attention in this matter.

Sincerely,

United Corporation

By:   
Fathi Yusuf, CEO

UNITED CORPORATION  
4C & 4D Sion Farm  
St. Croix, USVI 00821  
Phone (340) 778-6240

August 1, 2014

Fathi Yusuf  
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

**Statement of Rent due for Plaza Extra – East as of August 1, 2014**

Rent due for Plaza Extra – East January 1, 2012 through July 31, 2014	Balance Due	\$8,817,199.52
1% interest on outstanding Balance	Amount Due	\$ <u>88,172.00</u>
		\$8,905,371.52
August 2014 rent currently due:		<u>\$250,000.00</u>
	Total Balance due August 1, 2014	<u>\$9,155,371.52</u>

Please forward a check immediately.

Sincerely,

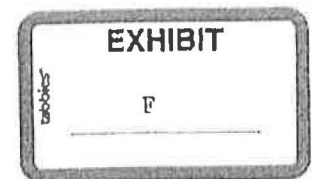


Maher Yusuf



UNITED CORPORATION INC.  
**PLAZA EXTRA**  
U.S. VIRGIN ISLANDS  
PHONE: 340-739-1870 FAX: 340-739-1879

Plaza Extra TuTu Park Mall Sales From 01-01-2012 To 12-31-2012	31,075,735.56	
Less 10,000 SQ.FT Build Area by Plaza	(5,157,798.43)	
Leased Area Of 50,250 SQ.FT.	<u>25,917,937.13</u>	A
Total Amount Paid to TuTu Park Parking Lot Cleaning	495,877.27 18,000.00	
Total Cost Of Rent & Parking	<u>513,877.27</u>	B
B/A Rent	<u>1.982708992%</u>	C
Plaza East Sales	35,931,601.41	
Pharmacy Rent 3,000 Monthly	36,000.00	
Total Sales & Rent	<u>35,967,601.41</u>	
Less Pharmacy Sales	(515,701.87)	
Net Sales Plaza East In 2012	<u>35,451,899.54</u>	D
Rent Due IN 2012 : D X C	<u>702,908.00</u>	



UNITED CORPORATION  
**PLAZA EXTRA**  
OF THE VIRGIN ISLANDS  
PHONE: 462-1870 FAX: 462-1874

Plaza Extra TuTu Park Mall Sales From 01-01-2013 To 12-31-2013	30,383,544.66	
Less 10,000 SQ.FT Build Area by Plaza	(5,042,911.98)	
Leased Area Of 50,250 SQ.FT.	<u>25,340,632.68</u>	A
Total Amount Paid to TuTu Park Parking Lot Cleaning	462,673.60 18,000.00	
Total Cost Of Rent & Parking	<u>480,673.60</u>	B
B/A Rent	<u>1.896849246%</u>	C
Plaza East Sales	34,938,818.47	
Pharmacy Rent 3,000 Monthly	<u>36,000.00</u>	
Total Sales & Rent	34,974,818.47	
Less Pharmacy Sales	<u>(486,569.56)</u>	
Net Sales Plaza East In 2013	<u>34,488,248.91</u>	D
Rent Due IN 2013 :		
D X C	<u>654,190.09</u>	

### CHRONOLOGY OF RENTS

Timeline	Bay 1	Bay 5	Bay 8
1986	Paid as of December 31, 1993	Not Utilized	Not Utilized
1987	Paid as of December 31, 1993	"	"
1988	Paid as of December 31, 1993	"	"
1989	Paid as of December 31, 1993	"	"
1990	Paid as of December 31, 1993	"	"
1991	Paid as of December 31, 1993	"	"
1992	Paid as of December 31, 1993	"	"
1993	Paid as of December 31, 1993	"	"
1994	Unpaid - Due	Beginning May 1, 1994 - Unpaid - Due	Beginning May 1, 1994 - Unpaid - Due
1995	Unpaid - Due	Unpaid - Due	Unpaid - Due
1996	Unpaid - Due	Unpaid - Due	Unpaid - Due
1997	Unpaid - Due	Unpaid - Due	Unpaid - Due
1998	Unpaid - Due	Unpaid - Due	Unpaid - Due
1999	Unpaid - Due	Unpaid - Due	Unpaid - Due
2000	Unpaid - Due	Unpaid - Due	Unpaid - Due
2001	Unpaid - Due	Thru July 31, 2001 Unpaid - Due [Balance Due for this period: \$271,875.00]	Unpaid - Due
2002	Unpaid - Due	Not Utilized	Thru Sept. 30, 2002 Unpaid - Due [Balance Due for this period: \$323,515.63]
2003	Unpaid - Due	"	"
Jan. 1, 2004- May 4, 2004	Unpaid - Due [Balance Due for this period: \$3,999,679.73]	"	"
May 4, 2004- Dec. 31, 2004	Paid as of February 7, 2012	"	"
2005	Paid as of February 7, 2012	"	"
2006	Paid as of February 7, 2012	"	"
2007	Paid as of February 7, 2012	"	"
2008	Paid as of February 7, 2012	"	Beginning April 1, 2008- Unpaid - Due
2009	Paid as of February 7, 2012	"	Unpaid - Due
2010	Paid as of February 7, 2012	"	Unpaid - Due
2011	Paid as of February 7, 2012	"	Unpaid - Due
2012	Unpaid - Due*	"	Unpaid - Due
2013	Unpaid - Due*	"	Thru May 30, 2013 Unpaid - Due [Balance Due for this period: \$198,593.44]
January 1, 2014 - Present	Unpaid - Due* [Balance Due for this period (excluding increased rent): \$1,696,362.61]	"	"
Subtotal:	\$5,696,042.34	\$271,875.00	\$522,109.38
<b>TOTAL DUE:</b>	<b>Bay 1, 5 and 8: \$6,490,026.72</b>		

tabbles'  
G

# **EXHIBIT 4**

RECEIVED  
MAY 12 2015  
62541

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED HAMED by his authorized agent WALEED HAMED  
Plaintiff )  
Vs. )  
FATHI YUSUF and UNITED )  
CORPORATION, ET AL Defendant )

CASE NO. SX-12-CV-370  
ACTION FOR: DAMAGES; ET AL


NOTICE  
OF  
ENTRY OF JUDGMENT/ORDER

TO: JOEL HOLT, ESQ.; CARL HARTMANN III, Esquire  
NIZAR DEWOOD, ESQ.; GREGORY HODGES, Esquire  
MARK ECKARD, ESQ.; JEFFREY MOORHEAD, Esquire

HON. EDGAR ROSS (edgarrossjudge@hotmail.com)  
JUDGES AND MAGISTRATES OF THE SUPERIOR COURT  
LAW CLERKS; LAW LIBRARY; IT; RECORD BOOK

Please take notice that on APRIL 27, 2015 Memorandum Order was  
entered by this Court in the above-entitled matter.

Dated: April 27, 2015

ESTRELLA H. GEORGE (ACTING)  
Clerk of the Superior Court  
  
By: IRIS D. CINTRON  
COURT CLERK II

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

MOHAMMED HAMED by his authorized agent )  
 WALEED HAMED, )  
   Plaintiff/Counterclaim Defendant, )  
   v. )  
 FATHI YUSUF and UNITED CORPORATON, )  
   Defendants/Counterclaimants )  
   v. )  
 WALEED HAMED, WAHEED HAMED, )  
 MUFEEED HAMED, HISHAM HAMED, and )  
 PLESSSEN ENTERPRISES, INC. )  
   Counterclaim Defendants. )

---

CIVIL NO. SX-12-CV-370  
 ACTION FOR DAMAGES, etc.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER is before the Court on Defendant United Corporation’s Motion to Withdraw Rent and Memorandum of Law in Support of United’s Motion (“Motion”), filed September 9, 2013; Plaintiff’s Response, filed September 16, 2013; United’s Reply, filed September 27, 2013; Plaintiff’s Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants’ Counterclaim Damages Prior to September 16, 2006 (Plaintiff’s “Summary Judgment Motion”), filed May 13, 2014; and Defendant’s Brief in Opposition (“Opposition”), filed June 6, 2014. For the reasons that follow, United’s Motion will be granted and Plaintiff’s Summary Judgment Motion will be denied, in part.



## FACTUAL BACKGROUND

In its instant Motion, United seeks allegedly past due rents for Bay No. 1 of United Shopping Plaza, defined therein as “69,680 Sq. Ft. Retail Space...,” “utilized for the day to day operations of Plaza Extra East Store located at 4C and 4D Estate Sion Farm, St. Croix, Virgin Islands.” Motion, 1-2.<sup>1</sup> Since 1986 this retail space has been leased by United to the Hamed-Yusuf Partnership (“Partnership”). According to United, and supported by the Affidavit of Defendant Yusuf, the Partnership has paid rent to United for leasing that space while operating Plaza Extra - East. Between 1986 and 1993, the parties settled rents following a request made by United. Motion, 3. Additionally, between 2004 and 2011, after United requested a rent payment for those years, the Partnership authorized payment to United for \$5,408,806. Motion, 7 (Yusuf Affidavit, ¶7 and Exhibit B).

However, according to United, the Partnership owes United substantial unpaid rents from 1994-2004 and from January 1, 2012 - September 30, 2013. As a result of the injunction, entered in April 2013, Yusuf, a United shareholder, is unable to unilaterally withdraw money from the Partnership accounts for the purpose of paying rent or for any other reason. United requests the Court to allow United to withdraw rent in the amount of \$3,999,679.73 (for 1994-2004) and \$1,234,618.98 (for 2012-2013) for a total of \$5,234,298.71 from the Partnership’s account. Motion 1-2.

United argues that it was a common practice for the Partnership to make lump sum rent payments as opposed to monthly or even yearly payments. Motion, 3. United argues that it did not

---

<sup>1</sup> Defendant United’s Counterclaim seeks back rent from Bays 1, 5 and 8 located in the same premises. However, for purposes of winding up the Partnership and because United’s Motion only seeks back rent for Bay No. 1, this Order addresses only Bay No. 1.

seek rental payments for 1994-2004 because certain relevant financial records, informally referred to as the “black book,” were seized by the FBI during the course of a criminal investigation. Motion, 7; Yusuf Affidavit, ¶8. As a result, United was unable to properly determine the amounts of past due Partnership rent and for that reason did not demand payments.

United explains in detail that the rent for Plaza Extra - East “is calculated based upon the 2012 sales of Plaza Extra -Tutu Park, St. Thomas store...” (Motion, 4). “The sales are divided by the square footage to arrive at a percentage amount. That percentage amount is multiplied by the sales of the Plaza Extra - East store located at 4C & 4D Estate Sion Farm, St. Croix.” Motion, 5. According to United, this formula has been agreed upon by United and the Partnership and “...was used to calculate the rent for the period of May 5<sup>th</sup>, 2004 through December 31<sup>st</sup>, 2011... the monthly rate of \$58,791.38 is what the current monthly rent is.” Yusuf Affidavit, ¶8; Exhibit C (Rent Calculations Sheet).

Plaintiff, in his Response, argues that Yusuf cites no procedural basis that would allow United, in its capacity as landlord, to withdraw rents from the Partnership’s accounts. Response, 1. Plaintiff further argues that United has issued rent notices for \$250,000.00 per month as opposed to the \$58,791.38 per month stated in Yusuf’s affidavit for rent allegedly due from January, 2012. Response, 4. Without disputing that some rent is due, Plaintiff disputes United’s calculations, pointing to discrepancies in the store’s square footage<sup>2</sup> and implying that the rent for Plaza Extra - Tutu and Plaza Extra - East should be identical. Response, 4-5.

---

<sup>2</sup> Plaintiff argues that the square footage of Bay No. 1 is 67,498 sq. ft. as opposed to United’s claim of 69,280 sq. ft. Response, 4-5. United has consistently averred that Bay No. 1 is 69,680 sq. ft. The Court will accept the previously undisputed square footage of Bay No. 1 as 69,680 sq. ft. and will allow monetary adjustments based on deviations from this area measurement if more accurate assessments in the future reveal that this area measurement is inaccurate. This can be accomplished as part of the Liquidating Partner’s and Master’s responsibilities during the wind up process.

Plaintiff, in both his Response and Summary Judgment Motion, asserts a statute of limitations defense for the past rents (1994-2004). Plaintiff cites V.I. Code Ann Tit. 5, §31(3) which sets a six year statute of limitations for "...actions upon contract or liability, express or implied, excepting those mentioned in paragraph (1)(C) of this article." Response, 5-6; Plaintiff's Summary Judgment Motion, 2-3.

United responds to Plaintiff's statute of limitations argument by claiming that Yusuf and Plaintiff's authorized agent, Waleed Hamed, reached an oral agreement in early 2012 to have the Partnership pay the past due rent back to United. Opposition, 10-11. This oral agreement was allegedly breached by Plaintiff when his attorney sent United a letter dated May 22, 2013 claiming that no agreement on rent had ever been reached. Opposition, 11; Exhibit D. Yusuf, by his affidavit, asserts that an agreement was reached for past rent to be paid when the Partnership's "black book" was returned by the FBI and a proper calculation could be achieved. Yusuf Affidavit, ¶¶4-6. Only when Yusuf's son discovered that the FBI had returned the black book in early 2013, did United calculate the past rent and seek repayment from the Partnership.

Hamed has admitted that the Partnership owes United rent: "We pay rent...we owe Mr. Yusuf... I don't pay for half. Still we owe him some more." Exhibit E, Hamed Deposition, p. 86; 10-14. Through an interpreter, Hamed admitted that rent is controlled by Yusuf, that he does not object to paying rent and that Yusuf (on behalf of United) could charge rent and collect it. Exhibit E, Hamed deposition p. 119; 7-11. In fact, when Hamed was asked "...if rent was not paid from January 1, 1994 through May 4, 2004, would you agree that rent should be paid," Hamed responded, "It should be paid." Exhibit E, Hamed Deposition, p. 117; 21-25.

Yusuf claims that he alone had been in charge of calculating rent and had bound the Partnership to paying United rent. Opposition, 11; Exhibit B, Yusuf Deposition p. 86; 8-12. Yusuf specified that United would charge the Partnership rent at \$5.55 per square foot, “the same as the old one.” *Id.* Yusuf states that the rental terms, as discussed with Hamed, revived the previous arrangement which had begun in 1986 and extended the landlord-tenant relationship from January, 1994 through 2004, briefly discussing how rent is calculated for Plaza Extra - East based on the percentage of sales from the Plaza Extra - St. Thomas store. Yusuf Deposition p. 88; 4-9; p. 89; 19-22.

### DISCUSSION

The Court will examine whether the Partnership owes United rents from 1994 to 2004 (past due rent) and from 2012 to 2013. This inquiry is limited to the issue of rents and does not extend to other relief sought by Defendants’ Counterclaim or to other aspects of Plaintiff’s Motion for Partial Summary Judgment beyond the issue of past due rents.

#### **1. The Court has the authority to order the Partnership to repay past due rent.**

Plaintiff argues that United has failed to cite a procedural justification for the Court to order the Partnership to pay past due rent to United. Response, 1.

Without a written partnership agreement, as is the case between Hamed and Yusuf, courts will look to the Uniform Partnership Act to determine a partnership’s property and its obligations to creditors (codified at 26 V.I.C. § 24; § 177, respectively). “The reason is that dissolution does not terminate or discharge pre-existing contracts between the partnership and its clients, and ex-partners who perform under such contracts do so as fiduciaries for the benefit of the dissolved partnership.” *Labrum & Doak v. Ashdale*, 227 B.R. 391, 409 (Bankr. E.D. Pa. 1998).

In connection with winding up the Partnership, the Court has made several discretionary decisions regarding asset allocation in accordance with the Uniform Partnership Act and for the benefit of the partners. *See* Final Wind Up Plan, entered January 9, 2015. As the parties move forward with the wind up process, it is necessary to determine what constitutes Partnership property. Most of this determination can and should be done without judicial intervention but, in the case of past rents, Hamed cannot agree with Partnership creditor United, or with Yusuf, a United shareholder and Hamed's equal partner in the Partnership, as to the amount of rent that the Partnership owes United.

The Virgin Islands Supreme Court, in denying Defendants' appeal of this Court's Wind Up Plan, stated that "...matters that fall within the administration of winding up the partnership, over which the Superior Court possesses considerable discretion... are not immediately appealable." *Yusuf v. Hamed*, 2015 V.I. Supreme LEXIS 6, at \*5-6 (V.I. February 27, 2015)(citing *Belleair Hotel Co. v. Mabry*, 109 F.2d 390, 391 (5th Cir. 1940); *see also United States v. Antiques Ltd. P'Ship*, 760 F.3d 668, 671-72 (7th Cir. 2014)).

Appellate courts, when treating a lower court's supervision over a wind up process as similar to a receivership, "...have recognized 'the scores of discretionary administrative orders a [trial] court must make in supervising its receiver.'" *Hamed*, 2015 V.I. Supreme LEXIS 6, at \*6 (quoting *S.E.C. v. Olins*, 541 Fed. Appx. 48, 51 (2d Cir. 2013) (quoting *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1020 (2d Cir. 1975)).

With the aim of winding up the Partnership in a fair and efficient manner, the Court in this Order exercises its "considerable discretion" to determine how much rent the Partnership owes to United as a debt due and owing under the Uniform Partnership Act.

**2. The statute of limitations does not bar Defendant United's claim for rent and United is entitled to past due rent in the amount of \$3,999,679.73 for 1994-2004.**

Plaintiff argues that the Partnership is not responsible for rent from 1994-2004 because the six year statute of limitations for actions in debt expired in 2010, two years before the filing of his original Complaint in this action. Defendant United argues that the parties entered into an oral contract in 2012 that bound the Partnership to pay the past due rents as soon as a proper accounting could be done (i.e. the black book was recovered). When the black book was located in early 2013 and United made a subsequent demand for past rent, Plaintiff claimed that "there was never an understanding that rent would be paid for this time period..." and even if there had been, the statute of limitations had expired (preventing all claims for rents that came due prior to September, 2006). Motion, Exhibit D. According to Defendant United, the Partnership renegeing on the agreement to pay back rents constituted a breach of contract which carries a six year statute of limitations that has yet to expire.

The Court views this matter somewhat differently. While 5 V.I.C. § 31(3) sets a six year statute of limitations for contractual liabilities such as payment of rents, there are certain equitable principles which operate to toll a statute of limitations. The "acknowledgment of the debt" doctrine (also known as the "revival of the promise to pay" doctrine) is recognized as follows:

A debt which is time-barred may be "revived" by an acknowledgment by the debtor. 'It has long been recognized that the expiration of the statutory period does not bar the claim if the plaintiff can prove an acknowledgment, a new promise, or part payment made by the defendant either before or after the statute has run. . . . Such conduct revives the cause of action so that the statute starts to run again for the full statutory period.'

*Gee v. CBS, Inc.*, 471 F. Supp. 600, 663 (E.D. Pa. 1979)(quoting *Developments in the Law Statutes of Limitations*, 63 Harvard L.Rev. 1177, 1254 (1950)).

Most courts only apply the acknowledgment of the debt doctrine when there exists “a clear, distinct, or unequivocal acknowledgment of the debt... [which] is sufficient to take the case out of the operation of the statute. It must be an admission consistent with a promise to pay. If so, the law will imply the promise, without its having been actually or expressly made. There must not be uncertainty as to the particular debt to which the admission applies.” *CBS, Inc.* 471 Supp. at 664 (citing *In re Nicolazzo's Estate*, 414 Pa. 186, 190, 199 A.2d 455, 458 (1964), quoting *Palmer v. Gillespie*, 95 Pa. 340 (1880)).

Courts have employed a second equitable principle when tolling a statute of limitations, referred to as the “payment on account doctrine.” Similar to the acknowledgment of the debt doctrine, the payment on account doctrine “... is regarded as an acknowledgment of liability.” *Basciano v. L&R Auto Parks, Inc.*, 2012 U.S. Dist. LEXIS 17750, \*36-39 (E.D. Pa. February 10, 2012)(citing *Quaker City Chocolate & Confectionery Co. v. Delhi-Warnock Bldg. Ass'n*, 53 A.2d 597, 600 (Pa. 1947)(“There can be no more clear and unequivocal acknowledgment of debt than actual payment.”)). To toll the statute of limitations, a partial payment “must constitute a constructive acknowledgment of the debt from which a promise to pay the balance may be inferred.” *GE Med. Sys. v. Silverman*, 1998 U.S. Dist. LEXIS 886, \* 20-21 (E.D. Pa. Feb. 2, 1998)(quoting *City of Philadelphia v. Holmes Electric Protective Co.*, 335 Pa. 273, 6 A.2d 884, 888 (Pa. 1939)). See also *Quaker City Chocolate & Confectionery Co.*, 53 A.2d at 600 (“Ordinarily, a payment on account of a debt is regarded as an acknowledgment of liability

and of willingness to pay the balance due thereon and therefore is held to interrupt the operation of the statute").<sup>3</sup>

In this case, both the acknowledgment of the debt doctrine and the payment on account doctrine apply to toll the statute of limitations on United's rent claims.

Regarding the acknowledgment of the debt, United has proven with sufficient certainty that the Partnership owes United rent from 1994 to 2004. Notwithstanding Plaintiff's denial that the parties had an agreement regarding past rents, Yusuf, by his affidavit, swears that Waleed Hamed entered into an agreement to pay United past due rent once the black book was recovered in early 2013. Opposition, 10-11; Exhibit D, Yusuf Affidavit, ¶¶4-6. Yusuf specifically addresses how rent is calculated (\$5.55 per square foot), stating that the past due rent is "the same as the old one," referring to the 1986-1994 rental amounts. Yusuf Deposition p. 86; 8-12. Yusuf presents more than sufficient evidence that the Partnership's arrangement with United from 1986 to 1994 was identical, in terms of past due rent, as the arrangement between 1994 through 2004.

Nothing presented by Hamed calls into questions the validity of this debt or the application of the acknowledgment of the debt doctrine. Hamed has admitted on several occasions that Yusuf is in charge of rent, that the Partnership owes United rent for January 1, 1994 through May 4, 2004, and that the rent for this period should be paid to United. Opposition, Exhibit E, Hamed Deposition, p. 117-119. It is clear that the Partnership, through the statements of both Hamed and Yusuf, has

---

<sup>3</sup> Courts will only allow "...a payment on a debt to qualify as an acknowledgment..." if there is an "unequivocal acknowledgment" of the debt, but have considered a debtor's payment on part of a debt to evidence an acknowledgment of the debt and therefore have tolled the statute of limitations. *See Basciano*, 2012 U.S. Dist. LEXIS 17750, at \*36. From the acknowledgment of the debt the law will infer a promise to pay the underlying debt. *Receiver of Anthracite Trust Co. v. Loughran*, 19 A.2d 61, 62 (Pa. 1941) (citing *Dick v. Daylight Garage*, 335 Pa. 224, 6 A.2d 823, 826 (Pa. 1939)).



acknowledged a debt for rents owed to United, which is determined to be in the amount of \$3,999,679.73 (based upon 69,680 sq. ft. @ \$5.55/sq. ft.) for the period January 1, 1994 to May 4, 2004.

Similarly, the payment on account doctrine acts as a bar to Plaintiff's statute of limitations defense. The Partnership's partial payments "...constitute a constructive acknowledgment of the debt from which a promise to pay the balance may be inferred." *GE Med. Sys.*, 1998 U.S. Dist. LEXIS 886, at \*20-21. For the period of the operation of Plaza Extra – East from 1986 through 2011, the Partnership made two lump sum rent payments to United (covering the periods from 1986-1994 and from 2004-2011). Motion, Yusuf Affidavit, ¶7; Exhibit B (previous rental check for \$5.4 million). United and Yusuf have explained in detail how rent is calculated and why United did not collect rent for the period in question due to the unavailability of their financial records. Motion, 4, 7; Yusuf Affidavit, ¶8.

Therefore, both the acknowledgment of the debt doctrine and the payment on account doctrine apply to the facts of the rent dispute between United and the Partnership. The six year statute of limitations for United's past rent claims was tolled as a result and began to run on May 22, 2013 when Hamed first disputed the validity of the 1994-2004 rent debt. Motion, Exhibit D. United is within the timeframe with which to bring this claim and has presented sufficient information, through affidavits, depositions, and other evidence in the record, for the Court to grant United's Motion as to that period and to direct the Partnership to pay United the sum of \$3,999,679.73.

**3. Defendant United is also entitled to rent from 2012 to 2013 in the amount of \$58,791.38 per month.**

Plaintiff does not argue that the Partnership is exempt from paying rent to United. “[I]t is undisputed that United is the landlord and Plaza Extra is the tenant at the Sion Farm location, for which rent is due since January of 2012.” Response, 1. Rather, Plaintiff claims that United itself has created a dispute regarding rents from January 2012 by issuing rent notices seeking increased rent in the amount of \$250,000.00 per month, rather than the \$58,791.38 per month set out in Yusuf’s affidavit. Response, 4. The proof before the Court is clear as to United’s claim that rent is due for Bay No. 1 at the rate of \$58,791.38 per month from January 1, 2012 to September 30, 2013, when United’s Motion was filed.<sup>4</sup>

As the fee simple owner and landlord of Bay No. 1 United Shopping Plaza, United is entitled to rents from the Partnership for its continued use of Bay No. 1 for the operations of Plaza Extra - East. Therefore, the Court will order the Partnership to pay United the sum of \$1,234,618.98 for rent from January 1, 2012 through September 30, 2013, Plus rent due from October 1, 2013 at the same rate of \$58,791.38 per month until the date that Yusuf assumed sole possession and control of Plaza extra – East.

On the basis of the foregoing, it is hereby

ORDERED that Defendant United Corporation’s Motion to Withdraw Rent is GRANTED, and the Liquidating Partner, under the supervision of the Master, is authorized and directed to pay

---


<sup>4</sup> It is acknowledged that United delivered notices to the Partnership following the April 2013 Preliminary Injunction, seeking to collect an increased rent sum of \$250,000.00. United presents in its Motion and proofs no numerical or factual justification for such claims, which are not considered in this Order.

from the Partnership joint account for past rents due to United the total amount of \$5,234,298.71, plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month, until the date that Yusuf assumed full possession and control of Plaza Extra – East. It is further

ORDERED that Plaintiff's Motion for Partial Summary Judgment is DENIED, in part, as to Plaintiff's claims that the statute of limitations precludes Defendant United's claims for past due rent.

Dated:

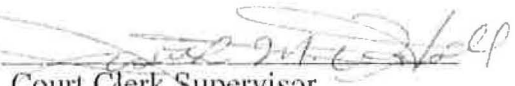
April 27, 2015

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:

  
Court Clerk Supervisor

4/27/15

CERTIFIED TO BE A TRUE COPY  
This 27<sup>th</sup> day of April 20 15

CLERK OF THE COURT

By  Court Clerk

# EXHIBIT 5

## Gregory Hodges

---

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

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

Dear Judge Ross:

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

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

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

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

Regards,

John Gaffney

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

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

United Corporation STT (Pship)  
Income Statement  
For the Twelve Months Ending December 31, 2013

	Year to Date This Year <i>Dec 2013</i>	Year to Date Last Year <i>Dec 2012</i>
<b>Revenues</b>		
40000 Revenue - Sales	\$ 30,745,517.91	\$ 31,230,797.13
47000 Revenue - Miscellaneous Sales	11,918.43	25,108.23
48000 Revenue - Sales Discounts	(351,868.57)	0.00
49000 Revenue - Rental Income	35,000.00	0.00
<b>Total Revenues</b>	<u>30,440,567.77</u>	<u>31,255,905.36</u>
<b>Cost of Sales</b>		
50000 COS - Purchases	19,234,028.94	21,018,992.82
50900 COS - Inventory Adjustments	(175,795.66)	0.00
51000 COS - Freight Expense	1,198,452.41	1,253,241.79
52200 COS - US Customs Expense	300,872.00	0.00
52400 COS - Broker Fees	2,298.40	288,941.60
54000 COS - Supplies	28,375.36	0.00
58000 COS - Less Vendor Rebates	(195,448.22)	(505,147.68)
<b>Total Cost of Sales</b>	<u>20,392,783.23</u>	<u>22,056,028.53</u>
<b>Gross Profit</b>	<u>10,047,784.54</u>	<u>9,199,876.83</u>
<b>Operating Expenses</b>		
60100 Advertising & Promotion	124,242.82	110,712.14
60500 Auto Expenses	2,062.58	9,344.77
60700 Bad Debts Expense	1,172.99	0.00
60800 Bank Charges	13,137.79	8,655.24
61000 Cash Short (Over)	(19,409.54)	0.00
61050 CC Batch Short (Over)	6,399.26	0.00
61100 Charitable Contributions	0.00	1,346.24
61200 Computer Supplies & Expense	138.95	0.00
61300 Contract Labor Expense	43,039.06	5,813.92
61800 Depreciation Expense	108,949.00	106,905.00
62100 Education Assistance Expense	0.00	4,200.00
62300 Employee Benefits Expense	22,433.00	2,474.00
63000 Insurance - Emp Health	118,581.59	124,884.49
63200 Insurance - Gen Liability	21,296.38	0.00
63400 Insurance - Property	101,045.28	202,936.66
63600 Insurance - Workers' Comp	36,548.35	14,838.25
63900 Interest Expense	689.04	0.00
64500 Legal Fees Expense	0.00	157,200.11
64900 Meals & Entertainment Expense	2,839.27	1,200.47
65100 Merchant Fees - MC/Visa/Amex	154,498.21	133,984.44
65200 Merchant Fees - Telecheck	5,339.07	17,860.23
65300 NSF Checks Expense	23,646.94	0.00
65500 Office Supplies & Expense	17,128.13	8,343.64
65700 Postage & Overnight Delivery	5,765.05	1,807.54
65900 Physical Inventory Expense	34,789.07	0.00
66000 Rent Expense - Buildings	333,953.08	536,689.00
66400 Rent Expense - Other	800.00	4,000.00
66700 Repairs & Maintenance Expense	433,813.17	248,805.54
66900 Security Expense	25,645.06	51,476.95
67000 Taxes - Gross Receipts	1,521,046.21	1,308,303.60
67200 Taxes - Empr FICA & Medicare	219,804.01	231,248.67
67400 Taxes - Empr FUTA Expense	23,412.84	27,133.56
67500 Taxes - Empr VI Unemp	37,317.89	12,394.66
67600 Taxes - Licenses	2,745.50	3,324.59
67800 Taxes - Property	11,551.81	0.00

Unaudited - For Management Purposes Only

United Corporation East (Pship)  
Income Statement  
For the Twelve Months Ending December 31, 2013

	Year to Date This Year <u>2013</u>	Year to Date Last Year <u>2012</u>
<b>Revenues</b>		
40000 Revenue - Sales	\$ 35,362,727.35	\$ 35,898,096.31
40800 Revenue - Less Pharmacy Sales	(499,979.45)	(395,402.13)
41000 Revenue - Net Lotto Sales	19,235.78	0.00
42000 Revenue - Net Phone Card Sales	19,868.00	0.00
47000 Revenue - Miscellaneous Sales	290.22	0.00
48000 Revenue - Sales Discounts	(561,505.40)	0.00
	<hr/>	<hr/>
Total Revenues	34,340,636.50	35,502,694.18
<b>Cost of Sales</b>		
50000 COS - Purchases	21,026,112.86	23,441,497.30
50900 COS - Inventory Adjustments	82,092.69	0.00
51000 COS - Freight Expense	1,044,254.15	1,291,517.22
52000 COS - Excise Tax Expense	0.00	137,155.51
52200 COS - US Customs Expense	117,398.82	100,080.57
58000 COS - Less Vendor Rebates	(306,880.28)	0.00
	<hr/>	<hr/>
Total Cost of Sales	21,962,978.24	24,970,250.60
	<hr/>	<hr/>
Gross Profit	12,377,658.26	10,532,443.58
<b>Expenses</b>		
60000 Accounting Fees	24,087.69	9,761.22
60100 Advertising & Promotion	81,106.98	61,293.53
60500 Auto Expenses	0.00	1,259.83
60800 Bank Charges	28,702.91	17,593.84
61000 Cash Short (Over)	13,545.34	827.42
61100 Charitable Contributions	40,314.98	229.53
61200 Computer Supplies & Expense	15,238.96	0.00
61300 Contract Labor Expense	1,878.97	4,377.33
61800 Depreciation Expense	13,435.00	2,451.01
62100 Education Assistance Expense	1,838.00	0.00
62300 Employee Benefits Expense	9,950.00	8,918.85
63000 Insurance - Emp Health	121,798.44	109,457.12
63200 Insurance - Gen Liability	139,659.72	0.00
63400 Insurance - Property	53,277.14	196,405.41
63600 Insurance - Workers' Comp	29,593.95	38,132.26
63900 Interest Expense	100.91	0.00
64500 Legal Fees Expense	104,696.71	450,252.76
65100 Merchant Fees - MC/Visa/Amex	280,724.46	256,241.27
65200 Merchant Fees - Telecheck	7,171.92	8,565.81
65300 NSF Checks Expense	8,366.19	0.00
65500 Office Supplies & Expense	30,355.16	14,092.71
65700 Postage & Overnight Delivery	940.15	1,799.62
65900 Physical Inventory Expense	29,094.77	52,243.78
66000 Rent Expense - Buildings	1,357,098.00	5,408,806.74
66400 Rent Expense - Other	11,302.15	3,315.39
66700 Repairs & Maintenance Expense	136,415.73	78,824.17
66900 Security Expense	30,935.46	7,995.40
67000 Taxes - Gross Receipts	1,720,860.89	1,496,459.75
67200 Taxes - Empr FICA & Medicare	227,816.44	221,700.77
67400 Taxes - Empr FUTA Expense	25,550.57	30,955.24
67500 Taxes - Empr VI Unemp	37,924.06	11,984.26
67600 Taxes - Licenses	3,010.50	357.04
67900 Taxes - Penalties	2,325.00	860.85
68000 Telephone Expense	20,374.50	22,556.22
68100 Trash Removal	25,938.00	14,776.86
68200 Travel & Hotels Expense	1,432.16	1,797.48

Unaudited - For Management Purposes Only





December 4, 2015

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

RE: Tutu Park Real Estate Taxes

Dear Mr. Yusuf,

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

In August 2015, Tax Assessor retroactively billed TPL for the assessed value for 2012 and 2013. In November 2015, TPL entered in to an installment agreement with the Office of the Lieutenant Governor for payment of the 2012 and 2013 real estate property tax. TPL paid a down payment of \$147,626.82 on the total outstanding bills of \$590,507.26. The balance of \$442,880.44 is payable over thirty-six (36) months commencing December 15, 2015 at the rate of \$12,302.23 per month. There is not interest or penalty included in the installment agreements.

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

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

Yours very truly,

A handwritten signature in black ink, appearing to read 'Donna Liska', written over a circular stamp.

Donna Liska  
General Manager

DWL/  
Enclosure

Tutu Park Mall  
**2012 and 2013 TAX RECOVERY  
 TAX BILL**

Tenant: PLAZA EXTRA

Billing Date: December 4, 2015

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

			<u>2012 &amp; 2013</u>	<u>Paid Deposit</u>	<u>Due Monthly</u>
Real Estate Taxes	Down payment		590,507.26	147,626.82	12,302.23
<u>Mall Square Footage</u>					
Kmart	106,585				
Plaza Extra	61,086	13.38 %	<u>79,009.87</u>	<u>19,752.47</u>	<u>1,646.04</u>
Western Auto	22,400				
Merchant's Bank	12,000				
McDonald's	3,000				
Office Max Bldg.	63,500				
Mall	177,000				
My Brother's Workshop	11,030				
TOTAL	<u>456,601</u>				

Plaza Extra Share of deposit  
 December 2015 installment

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

UNITED CORPORATION DBA

**PLAZA EXTRA**

U. S. VIRGIN ISLANDS

PHONE: 340-719-1870

FAX: 340-719-1874

December 8, 2015

Donna Liska  
Tutu Park Mall  
4605 Tutu Park Mall, Ste 254  
St. Thomas, VI 00802-1736

Re: 2012 & 2013 R/E Tax Assessment

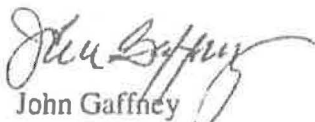
Dear Ms. Liska,

Enclosed is a payment in the amount of \$79,009.87 for 2012 and 2013 real estate taxes allocated to Plaza Extra St. Thomas. Although you elected to pay a portion of the taxes in monthly instalments and offered the same to us, due to our need to wrap up the remaining obligations of United Corporation dba Plaza Extra, we are remitting the entire amount with this payment.

Please keep us informed as to your lawsuit challenging the assessed values. We look forward to your success and reduction of the taxes.

Let me know if there's anything else you need from us.

Sincerely,

  
John Gaffney  
Controller

UNITED CORPORATION PARTNERSHIP  
CLAIMS RESERVE ACCOUNT  
PO BOX 763  
CHRISTIANSTED, VI 00821

270

101-667/216

12-8-15 Date

CHECK AMOUNT

Pay to the Order of Tutu Park Mall

\$ 79,009<sup>82</sup>

SEVENTY NINE THOUSAND NINE & 82/100

Dollars

Security Features. Details on Back.

 **BANCO POPULAR**

BIANCO POPULAR DE PUERTO RICO  
Orange Grove Branch  
5500 Calle L. S. Virgen Woods

For Full Pmt 2012 & 2013 RIR TAX

*[Signature]*

⑆021606674⑆ 190⑈199091⑈ 0270

**POSTED**

# **EXHIBIT 6**

**United Shopping Center  
2014 TAX RECOVERY  
TAX BILL**

Tenant: PLAZA EXTRA EAST

Billing Date: October 4, 2015

This invoice is the result of late billing of 2014 Real Estate Taxes at the Tutu Park Mall per invoice on September 23, 2015. All components of rent including Real Estate taxes at the Tutu Park Mall are used to calculate a ratio or percentage of Sales to be used to calculate the rent at Plaza East.

2014 Real Estate Taxes – Tutu Park Mall	\$ 43,069.36
2014 Total Revenues – Plaza St Thomas	\$ 29,977,700.63
Ratio of Taxes to Revenues	.0014367
2014 Total Revenues – Plaza East	<u>32,706,930.07</u>
2014 Balance DUE:	<u>\$ 46,990.48</u>

# EXHIBIT 7

## Gregory Hodges

---

**From:** Steve Russell <steve@mdrvi.com>  
**Sent:** Friday, December 04, 2015 11:02 AM  
**To:** Judge Edgar Ross; Joel Holt; Gregory H. Hodges  
**Cc:** Daryl Dodson  
**Subject:** United Corp - Tutu Park location  
**Attachments:** 2012-2013 prop tax recovery 12-4-15.pdf; 2014-5PercentRentInvoice.pdf

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

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

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





December 4, 2015

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

RE: 2014-2015 Percentage Rent Billing

Dear Mr. Yusuf,

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

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

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

Yours very truly,

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

Donna Liska  
General Manager

DWL/  
Enclosure



4-Dec-15

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

Calculated November 1, 2014 to October 31, 2015

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

# EXHIBIT 8

UNITED CORPORATION USA

**PLAZA EXTRA**

U. S. VIRGIN ISLANDS

PHONE: 340-719-1870

FAX: 340-719-1874

December 5, 2015

Donna Liska  
Tutu Park Mall  
4605 Tutu Park Mall, Suite 254  
St. Thomas, USVI 00802-1736

RE: 2014-2015 Percentage of Rent Billing

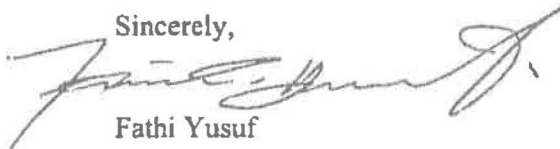
Dear Ms. Liska,

As you know, ownership of the Plaza Extra located in the Tutu Park Mall was transferred to the Hamed family and KAC357 LLC as a result of court a ordered auction on April 30, 2015. That same court order mandated that the Yusuf family and United Corporation were to be released under the Tutu Park lease at the time of the transfer.

It is our position that United Corporation and the Yusuf family are not obligated for the percentage rent billing as the revenues causing the excess over the \$25 million threshold occurred subsequent to the transfer.

Please submit your invoice to your tenant.

Sincerely,



Fathi Yusuf

# **EXHIBIT 9**

## Gregory Hodges

---

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

Steve,

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

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

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

Regards,

Greg

Gregory H. Hodges

Dudley, Topper and Feuerzeig, LLP

Law House, 1000 Frederiksberg Gade

St. Thomas, VI 00802

Direct: (340) 715-4405

Fax: (340) 715-4400

Web: [www.DTFLaw.com](http://www.DTFLaw.com) <<http://www.dtfllaw.com/>>

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

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

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

Charles S. Russell, Jr.

Moore Dodson & Russell, P.C.

P.O. Box 310

St. Thomas, VI 00804

Tel: (340) 777 5490

Fax: (340) 777-5498

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

# **EXHIBIT 10**



