

**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 and Counterclaimants.

vs.

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

Counterclaim Defendants,

Case No.: SX-2012-cv-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

Case No.: SX-2014-CV-287

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S REPLY TO YUSUF'S OPPOSITION TO MOTION TO STRIKE
YUSUF'S "PLAZA WEST / INTEGRA" CLAIM (Y-13)**

Yusuf claims a loss of Plaza West as a "going concern" from Hamed that he values at \$4,385,000, based solely on a report from Integra. In response to Hamed's motion to strike this claim, Yusuf raises several arguments that are both factually and legally incorrect.

First, Yusuf incorrectly argues that the Wind-Up Order does not bar this claim. However, while Judge Brady's Wind-Up Order allowed for the valuation of assets being purchased from the Partnership, including the St. Thomas Plaza store **because it had a lease**, no such valuation was ordered for either of the two St. Croix Plaza stores **since neither had a lease, so there was nothing to buy from the Partnership**. See **Exhibit 1**.

Second, Yusuf argues that Integra can value the Plaza West store even if it did not have a lease because they can "assume" one might be obtained. As Integra noted in its report, this is called an "extraordinary assumption," which that report specifically defines as "**uncertain information accepted as fact**. . . ." However, this assumption is more than "uncertain," as not only was there never a lease for the Plaza West store, but in fact there already was a lease to a third party, KAC357, Inc., **which was recognized as valid by multiple opinions** (from different Judges) issued by this Court.¹ Thus, Integra's "assumption" is worse than totally speculative, it fails to acknowledge controlling facts established by this Court--that a third party had a lease for this store so the Partnership could not have even "theoretically" obtained one and then sold the store as a "going concern." Yusuf could not have created a lease where none existed, **but if that could be done, Hamed would have the EXACT same claim on the Plaza East store**.

Third, and most importantly, Yusuf has already conceded in pleadings filed in this Court that the Plaza East store could not be sold as a "going concern," directly refuting the critical "extraordinary assumption" that Integra's report relies upon. In his opposition, Yusuf does not

¹These two opinions are found at 2014 WL 3697817 and 2016 WL 9454299. Judge Brady also denied a motion to reconsider, which can be supplied if requested.

dispute that **he represented to this Court that the Plaza East and Plaza West stores could not be sold as going concerns because neither has a lease.**² However, in footnote 3, he argues that he “changed” this view after realizing “this position was incorrect,” referencing a subsequent proposal he submitted for “both [St. Croix] stores should be sold in a closed bid between Hamed and Yusuf.” A review of the referenced document, attached as Exhibit D to Yusuf’s motion, shows this representation is false. That section (with the referenced excerpt attached here as **Exhibit 2** to assist this Court) only references such a “closed bid sale” for Plaza West, *not* Plaza East, and was contingent on the Court (1) voiding the already approved KAC lease and then (2) forcing the (non-party) owner of that property, Plessen Enterprises, to sell the property at an auction.

Thus, there was no such “change of position” as suggested by Yusuf, as his “new proposal” still required the buyer to be able to get title to the property in order to possess it, just like a lease. And, if that could happen, then Plaza East would have the identical “going concern” value too, allowing an off-set for any claim on the Plaza West store. In short, Yusuf still recognized in his revised plan that the Plaza West store could not be sold unless some type of lease or forced sale were imposed by the Court.

In summary, Yusuf cannot now assert that the Plaza West store could have been sold as a going concern, as the Partnership had no lease for the premises. Indeed, he judicially admitted that the store could not be sold as a going concern in his proposed plan because there was no lease, warranting the striking of this claim.

² Yusuf stated in his dissolution plan filed with the Court, attached to Hamed’s opening motion:

The Plaza Extra Stores cannot be sold as a going concern because of the absence of commercial leases for Plaza Extra - East and Plaza Extra - West

Dated: January 16, 2018



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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2018, I served a copy of the foregoing by email (via Case Anywhere ECF), as agreed by the parties, on:

Hon. Edgar Ross
Special Master
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EXHIBIT 1

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

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

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

ORDER ADOPTING FINAL WIND UP PLAN

By Order Soliciting Comments, Objections and Recommendations, entered October 7, 2014, the Court ordered the parties to review the Proposed Wind Up Plan ("Proposed Plan") presented therewith relative to the Hamed-Yusuf (Plaza Extra) Partnership and to present comments, objections and recommendations. Plaintiff Mohammed Hamed submitted his Comments re Proposed Winding Up Order (filed October 21, 2014); Defendant Fathi Yusuf submitted his Comments, Objections and Recommendations Concerning the Court's Proposed Plan (filed October 21, 2014). The Parties each then responded to the filing of the other: Plaintiff filed his Response to Defendant's Comments re Proposed Winding Up Order on October 28, 2014; and Defendant Yusuf filed his Response to Hamed's Comments Concerning the Court's Proposed Wind-Up Plan on October 29, 2014.



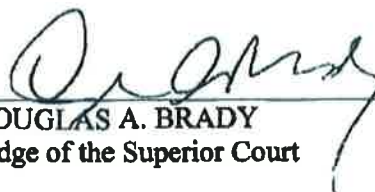
- b) All funds realized from the sale of the non-cash Partnership Assets shall be deposited into the Claims Reserve Account under the exclusive control of the Master.
- c) All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.
-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

On the basis of the foregoing, it is hereby

ORDERED that the foregoing modifications of the Proposed Plan shall be incorporated into and form a part of the Final Wind Up Plan of the Plaza Extra Partnership, submitted herewith, which Final Plan is ADOPTED by this Order. It is further

ORDERED that the Parties shall meet and confer with the Master FORTHWITH relative to the implementation of the Final Plan, which will be deemed final and effective ten (10) business days following the date of the entry of this Order.

Dated: January 7, 2015


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By:


Court Clerk Supervisor 1/7/15

CERTIFIED TO BE A TRUE COPY
This 7th day of Jan 20 15

CLERK OF THE COURT

By  Court Clerk 11

**FINAL WIND UP PLAN
OF THE PLAZA EXTRA PARTNERSHIP**

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

Section 1. DEFINITIONS

1.1 "Act" means the Uniform Partnership Act, V.I. Code Ann. tit. 26, §§ 1-274.

1.2 "Available Cash" means the aggregate amount of all unencumbered cash and securities held by the Partnership including cash realized from any Litigation Recovery or any Liquidation Proceeds.

1.3 "Case" means *Hamed v. Yusuf, et al.*, Superior Court of the Virgin Islands (Civil No. SX-12-CV-370).

1.4 "Claim" means

- (a) any right to payment from the Partnership whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
- (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Partnership whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1.5 "Claimant" means the holder of a Claim.

1.6 "Claims Reserve Account" means one or more interest-bearing bank account(s), money market or securities account(s) to be established and held in trust by the Master for the purpose of holding the Available Cash until distributed in accordance with the Plan and any interest, dividends or other income earned upon the investment of such Claims Reserve Account. The Claims Reserve Account will be further funded from time to time by the Liquidating Partner with:

- (i) any Liquidation Proceeds realized, plus
- (ii) any Litigation Recovery realized, minus
- (iii) any amounts necessary to pay Wind Up Expenses.

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

Section 8. PLAN OF LIQUIDATION AND WINDING UP

1) Plaza Extra-East

No
Leasehold
interest

Yusuf will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra-East: the inventory at one half of the landed cost and the equipment at its depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. In the event that Yusuf is unwilling to pay the appraised depreciated value of the equipment, the same shall be sold at public auction under the direction and supervision of the Master, with net proceeds equally divided and disbursed by the Master. Upon payment for such inventory, and upon payment (or auction and distribution of proceeds) for the equipment, Yusuf will assume full ownership and control and may continue to operate the business Plaza Extra-East without any further involvement of Hamed or the Hamed Sons, and free and clear of any claims or interest of Hamed.

For purposes of winding up the Partnership, Plot 4-H Estate Sion Farm shall not be considered Partnership property and is not subject to division under this Plan, without prejudice to any accounting claim that may be presented by Hamed.

2) Plaza Extra-Tutu Park

The Partners will be allowed to bid on Plaza Extra-Tutu Park at a closed auction supervised by the Master. The auction shall take no more than one day and should not cause any delay in implementing this Plan or disrupt the business operations of any Plaza Extra store. The Partners may discuss and jointly or individually propose the format and procedures for the auction, subject however to the Master's sole determination.

Leasehold interest

→ The Partnership assets sold in connection with Plaza Extra-Tutu Park shall consist of the leasehold interests, the inventory, equipment, and all leasehold improvements not a part of the real property. The value of such assets shall be determined by a qualified appraiser selected by the Master prior to the auction. Whichever Partner submits the winning bid for Plaza Extra-Tutu Park shall receive and assume all existing rights and obligations to the pending litigation with the landlord in the Superior Court of the Virgin Islands, Division of St. Thomas and St. John, *United Corporation d/b/a Plaza Extra v. Tutu Park Limited and P.I.D., Inc.* (Civ. No. ST-01-CV-361) (the "Tutu Park Litigation"). The Partner who receives and assumes said rights and obligations to the Tutu Park Litigation shall be obligated to reimburse the other Partner 50% of the amount of costs and attorneys' fees incurred to date directly attributable to the Tutu Park Litigation. Additionally, the prevailing Partner at auction shall be responsible for obtaining releases or otherwise removing any continuing or further leasehold obligations and guarantees of the Partnership and the other Partner. ←

No leasehold
interest

3) Plaza Extra-West

Hamed will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra-West: inventory at one half of the landed cost and the equipment at its depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. In the event

that Hamed is unwilling to pay the appraised value of the equipment, the same shall be sold at public auction under the direction and supervision of the Master. Upon payment for the inventory, and upon payment (or auction and distribution of the proceeds) for the equipment, Hamed will assume full ownership and control and may continue to operate Plaza Extra-West without any further involvement of Yusuf, Yusuf's sons or United, and free and clear of any claims or interests of Yusuf or United.

Hamed will be entitled to a recordable non-exclusive easement for the existing sewage line servicing Plaza Extra-West, which shall not preclude Plessen Enterprises, Inc., the owner of the servient parcel, from reserving the right to tap into and to utilize such sewage line.

4) Stock of Associated Grocers

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

5) Plaza Extra Name

The Master will conduct and supervise a closed auction wherein the Partners alone will be allowed to bid to purchase the trade name "Plaza Extra." The prevailing Partner at the auction shall receive the right to the exclusive use of the name "Plaza Extra," to the exclusion of all others, including the other Partner, who shall be forever barred from using the name "Plaza Extra" in connection with operation of any business in the U.S. Virgin Islands.

The auction shall take no more than one day and will be conducted in a manner that will not cause any delay in implementing this Plan or any disruption in the business operations of any Plaza Extra store. The Partners may discuss and jointly or individually propose the format and procedures for the auction, subject however to the Master's sole determination.

Section 9. Steps to Be Taken for the Orderly Liquidation of the Partnership

This Plan is conditioned upon the ability of Hamed and Yusuf to use the 50% interest of each in Available Cash and Encumbered Cash to purchase the non-liquid Partnership Assets. While the bid-in process may continue, actual payment of the funds shall be subject to approval of the Master, the Court and, to the extent necessary, the District Court.

Step 1: Budget for Wind Up Efforts

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

EXHIBIT 2

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,
MUFEEH HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

FILED
ST. CROIX
JAN 14 2015

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

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

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

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Excerpt from Yusuf Ex. D.

Blumberg No. 5208
EXHIBIT
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means for maximizing partnership value, and also ensures continued operation of the stores (thereby avoiding the economic waste that would be entailed by closure of the stores).

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

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

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

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

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

Section 6: SALARIES, WITHDRAWALS

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

Section 7: CRIMINAL CASE AND ENCUMBERED CASH

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

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

Section 8: PLAN OF LIQUIDATION AND WINDING UP

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

1) Plaza Extra – East

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

No
sale

2) Plaza Extra – Tutu Park

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

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

3) Plaza Extra – West

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

4) Stock of Associated Grocers

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

5) Plaza Extra Name

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

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

Steps to Be Taken for the Orderly Liquidation of the Partnership