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, MUFEED 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
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, v. UNITED CORPORATION, Defendant.	Consolidated With 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
FATHI YUSUF and UNITED CORPORATION, Plaintiffs, v. THE ESTATE OF MOHAMMAD HAMED, Waleed Hamed as Executor of the Estate of Mohammad Hamed, and THE MOHAMMAD A. HAMED LIVING TRUST, Defendants.	CIVIL NO. ST-17-CV-384 ACTION TO SET ASIDE FRAUDULENT TRANSFERS

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UNITED'S OPPOSITION TO HAMED'S
MOTION TO STRIKE UNITED CLAIM Y-8 ON PROCEDURAL GROUNDS

Claim Y-8 relates to water that is collected from the roof of the United Shopping Center and from several wells at the shopping center and stored in a nearly 500,000 gallon cistern and a much smaller cistern. In addition to being used for store operations, much of this water was sold to water delivery services in St. Croix who would send their trucks to the United Shopping Center and have them filled there and leave payment with Plaza Extra-East personnel.

Hamed's motion to strike the claim acknowledges in its opening paragraph that there is a factual dispute regarding whether the partnership or United Corporation owned the water whose sales revenues are at issue. But he also asserts that his motion does not depend on resolution of that disputed issue and that it should be granted as a matter of law. For context, however, Yusuf would like to advise the Master that he will testify that the water collection infrastructure, including the wells that were dug, the pumps, piping and the cisterns themselves, were built exclusively with Yusuf's own money, just as all of the improvements to the United Shopping Center property were built with his money (supplemented in part with insurance proceeds paid to United as the result of a fire[1]). United Corporation owns the real estate and all of its improvements, not the partnership. Mr. Yusuf will testify that Hamed was aware of and agreed that because the water was collected and stored by equipment that was part of the real estate owned by United, any revenues of sales of water belonged exclusively to United, just as revenues from any rent payments by tenants[2] at the United Shopping Center, belonged exclusively to United.

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[1] *See* **Exhibit A**, August 12, 2014 Declaration of Fathi Yusuf, ¶5.

[2] Hamed has throughout this litigation recognized that all income from rent paid by tenants of the United Shopping Center belonged exclusively to United, and Hamed has never asserted a claim for any portion of those revenues. The partnership's multi-million dollar rent obligation to United, which Judge Brady recognized in his April 27, 2015 Order granting summary judgment to United of course depends on the fact that United Corporation owns the real estate and improvements at the United Shopping Center.

Prior to the indictment in the criminal case that was filed in September 2003, United donated most revenues from water sales to charitable causes. But soon after the indictment, any proceeds from the sale of water were placed into the Plaza Extra accounts or safes at the store, along with grocery sales revenues. While the water sales were for reasons of convenience collected by Plaza Extra-East employees and then deposited into the store accounts that were overseen by a federal monitor, that did not change the fact that the water belonged to United and that any revenues from its sale therefore belonged to United. United's Claim Y-8 seeks the return of (or a credit for) all revenues from sales of its water from the period April 1, 2004 to February 28, 2015, just before the Plaza Extra-East store (which is located at the United Shopping Center) ceased being operated by the partnership under the Court's Wind Up Plan and Order.

Hamed argues in his Motion that the portion of the claim covered by the period April 1, 2004 to September 17, 2006 is barred by the statute of limitations. His second argument is that the entire claim should be dismissed because it is based on an oral agreement that was incapable of being performed in one year.

The statute of frauds argument can be readily disposed of. Hamed characterizes claim Y-8 as being "based on an alleged vendor contract pursuant to which United would supply water for sale at a Plaza Extra Supermarket, for which United would be paid." Hamed's Motion at p. 1. Analogizing this claim to a claim that a wholesaler would make for food items sold to a Plaza Extra supermarket, but not paid for, is strained, to say the least. Since United's position is that title to the water never passed from it to the Plaza Extra partnership, this claim is best characterized as one for unjust enrichment, restitution, or conversion. The statute of frauds plainly does not apply to claims for unjust enrichment, restitution or conversion.

But even if Claim Y-8 were solely in the nature of a claim for breach of an oral contract by United against the partnership, the statute of frauds would still not apply. One need only read the

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Virgin Islands Supreme Court's 2013 decision in the instant case to understand why that is so. In *Yusuf v. Hamed*, 59 V.I. 841 (2013), the Supreme Court rejected Yusuf's and United's argument that an oral partnership agreement was void under the statute of frauds, which is codified at 28 V.I.C. § 244, because the alleged agreement was for an indefinite term that exceeded one year. The Supreme Court held that "the statute of frauds has no application to oral contracts that, while intended to last more than a year, have no stated durational terms and *could* conclude within a year." *Id.* at 852. The Court stated that "it is well settled that the oral contracts invalidated by the statute of frauds because they are not to be performed within a year include only those which cannot be performed within that period." *Id.* at 852 (citation and internal marks omitted; emphasis in original). It is therefore "immaterial that the performance of the contract *actually* exceeds one year . . .." *Id.* at 852-853 (citation and internal marks omitted; emphasis in original).

To the extent that there was a contract between United and the partnership under which any sales of United's water would be consummated at the Plaza Extra-East store, and proceeds held by the store for the benefit of United, that contract was of indefinite duration, and could have been terminated in less than a year. United could have stopped selling water entirely within one year after beginning those sales, or it could have stopped using Plaza Extra-East employees to process those sales and collect the proceeds of sale. Under the Supreme Court's decision in the instant case, the statute of frauds is not implicated here, because this is an alleged oral agreement of indefinite duration. *See id.* at 853. The fact that United's water sales continued in this fashion well beyond one year does not undercut that conclusion in the least.[3] If the oral partnership

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[3] Even if the statute of frauds were implicated here, and it is not, it is well accepted that a party to a contract that is void by reason of the statute of frauds may seek restitution for any goods or services provided under the unenforceable contract. *See In the Matter of the Estate of McConnell*, 42 V.I. 43, 50 (V.I. Terr. 2000) (rejecting argument that a party to a contract that is unenforceable under the statute of frauds may not seek restitution). *See also* Restatement (Second) of Contracts § 375; Restatement (Second) of Contracts § 141 and Comment a; Restatement (Third) of Restitution and Unjust Enrichment § 31(1), all of which recognize the general rule that the

agreement between Hamed and Yusuf itself did not violate the statute of frauds, then how could a subsidiary oral agreement between the two of them regarding whether water was a partnership asset or a United asset violate the statute?

Hamed also argues that the statute of limitations bars the portion of this claim covering water sales during the period April1, 2004 to September 17, 2006. What Hamed is really arguing is that United should have commenced a lawsuit against the partnership by April 1, 2010 to preserve all of his claims for water sales revenues. But the partnership had not even been recognized by the Court at that time, so the idea of United suing the partnership is fanciful, to put it mildly. United had no reason to sue anybody or any entity regarding funds that were being held by United.

In addition, the Master has already recognized in a prior order involving claims for which the statute of limitations ran after the indictment came down that "genuine issues of material fact exist as to whether the statute of limitations should be equitable tolled" for such claims. *See* Master's February 8, 2018 Order, at p. 5. In United's Opposition to the motion to strike that was the subject of that Order, it cited *Podobnik v. U.S. Postal Serv.*, 409 F.3d 584, 591 (3d Cir. 2005) for the proposition that equitable tolling of the statute of limitations is appropriate where, *inter alia*, "the plaintiff in some extraordinary way has been prevented from asserting his rights." In support of its contention that there were, at the very least genuine issues of material fact regarding the applicability of equitable tolling to delay the accrual of claims, United pointed out that in the August 12, 2014 declaration attached to his motion for partial summary judgment on the rent issue, all of the Plaza Extra accounts were frozen by an injunction entered contemporaneously with the filing of the criminal case in September 2003, and recovery of any water sales revenues would

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equitable remedies of restitution and unjust enrichment are available to a party who performed under a contract that was later declared unenforceable under the statute of frauds.

have been impossible then. *See* Exhibit A, Declaration of Fathi Yusuf, ¶ 8. In addition, the criminal defense lawyers had instructed Yusuf and the other defendants not to take any action that would support the existence of a partnership, and thereby draw Mohammad Hamed (who was not named in the indictment) into the criminal case. *See id.* at ¶ 8. *See* United's January 11 Opposition at pp. 4-5. Likewise, if Yusuf had gone against the advice of his and Hamed's criminal lawyers and brought a lawsuit against Mohammed Hamed regarding reimbursement for water revenues in 2010, he would have compromised the defense of the criminal case and exposed Hamed to criminal prosecution. Consistent with its February 8 ruling, the Master should rule at a minimum that there are genuine issues of material fact regarding the availability of equitable tolling that compel a denial of the partial summary judgment that Hamed is seeking on claim Y-8.

CONCLUSION

For all of the foregoing reasons, and for the reasons already articulated in the Master's February 8, 2018 Order, Hamed's Motion to Strike Claim Y-8 on Procedural Grounds should be denied.

Respectfully submitted,
DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: June 15, 2018

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2018, I caused the foregoing **UNITED'S OPPOSITION TO MOTION TO STRIKE UNITED CLAIM Y-8 ON PROCEDURAL GROUNDS,** which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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EXHIBIT A

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

MOHAMMAD HAMED, by his authorized agent WALEED HAMED, Plaintiff/Counterclaim Defendant, vs. **FATHI YUSUF and UNITED CORPORATION,** Defendants/Counterclaimants, vs. **WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES,** 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 5th, 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 potion 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 31st, 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 ÷ 24 = $56,545.75 x 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