EXHIBIT A

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 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

YUSUF'S AMENDED ACCOUNTING CLAIMS
LIMITED TO TRANSACTIONS OCCURRING ON OR AFTER SEPTEMBER 17, 2006

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Motion for Partial Summary Judgment on Counts IV, XI and XII Regarding Rent. Although the Rent Order awarded certain amounts of rent to United during this period, the award did not address the increased rent claimed by United. The outstanding balance of the increased rent claimed as to Bay 1, net of the rent recovered pursuant to the Rent Order, is $6,974,063.10. *See* calculation of additional rents attached as Exhibit C to the Original Claims.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: Although this debt is disputed, it is fully briefed and ready for determination by the Master.

2. Bays 5 and 8

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

Disputed/Undisputed, Ripe for Determination or Discovery Needed: Although this debt is disputed, it is fully briefed and it is ready for determination by the Master.

3. Interest on Rent Claims

The interest that accrued at 9% per annum on the rent actually awarded by the Rent Order ($6,248,924.14) is $881,955.08 as of May 11, 2015, when that rent was paid to United. *See* calculation of interest on Bay 1 rent attached as Exhibit D to the Original Claims.[13]

Disputed/Undisputed, Ripe for Determination or Discovery Needed: Although this debt may be disputed, it is ripe for decision by the Master.

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

[13] This amount does not include any interest accruing at the 9% rate on each month's unpaid rent from June 1, 2013 through March 8, 2015.

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2016 is $241,005.18. Such interest continues to accrue at the daily rate of $195.78 until paid. *See* calculation of interest on Bays 5 and 8 rent attached as Exhibit E to the Original Claims.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that the issue of interest upon the unpaid rent for Bays 5 and 8 cannot be adjudicated until the claim for the unpaid rent is resolved. Once the unpaid rent for Bays 5 and 8 is resolved, the interest calculation can be readily determined by the Master.

C. Reimbursement For Gross Receipts Taxes Paid by United

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

Disputed/Undisputed, Ripe for Determination or Discovery Needed: This debt is disputed. The Master will need to determine whether United's gross receipts taxes and insurance were treated as part of the expenses of the Partnership. Additional discovery is needed on this issue.

D. Black Book Balance Owed to United

A black ledger book (the "Black Book") was used by the Partners to track spending and withdrawals as between the Partners and their families as well as by United on behalf of the Plaza Extra Stores. Certain entries from the Black Book are accounted for in the BDO Report

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INDEX OF EXHIBITS TO YUSUF'S AMENDED ACCOUNTING CLAIMS AND PROPOSED DISTRIBUTION PLAN

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Exhibit R -	Payment Analysis (*See* Amended Supplementation)
Exhibit S -	English translation of Exhibit O (*See* Amended Supplementation)
Exhibit T -	Invoices identified in Exhibit R (*See* Amended Supplementation)

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Exhibit U - Fraudulent Conveyance Complaint

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EXHIBIT A-1

Original Claim Distribution Summary Submitted September 30, 2016 (and amended in December 2016)	Amended Claim Distribution Summary Submitted October 30, 2017	Disputed or Undisputed	Ripe for Determination	Additional Discovery Needed
I. Total Assets Remaining After Liquidation:[1] $8,957,168.54	I. Total Assets Remaining After Liquidation:[2] $8,879,900.96	Undisputed	N/A	N/A
II. Less Reserves	II. Less Reserves			
A. Tutu Park Property Taxes:[3] $ 14,356.44	A. Tutu Park Property Taxes: $ 14,356.44	Undisputed	Yes	No
B. Matching Payment to United:[4] $ 9,812.14	B. Matching Payment to United:[5] $ 9,812.14	Disputed	Yes	No
C. FUTA Taxes: $ 350,000.00	C. FUTA Taxes: $ N/A	N/A	N/A	N/A
D. Master's Fees[6]: $ 150,000.00	D. Master's Fees[7]: $ 150,000.00	Need Add'l Estimate	Yes	No
E. Accounting Fees: $ 30,000.00	E. Accounting Fees[8]: $ 30,000.00	Need Add'l Estimate	Yes	No
F. Litigation Risks: $1,320,777.00 Subtotal: $1,874,945.58	F. Litigation Risks: $1,320,777.00 Subtotal: $1,524,945.58	Undisputed	Yes	No
Balance Less Reserves: $7,082,222,96	Balance Less Reserves: $7,354,955.38			

[1] *See* Partnership balance sheet as of August 31, 2016 provided by John Gaffney to the Master and counsel for the Partners on September 30, 2016.
[2] *See* ftn. 4 of the Amended Claims.
[3] *See* ftn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.
[4] *See* ftn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.
[5] *See* ftn. 5 to Twelfth and Final Bi-Monthly Report filed on January 31, 2017.
[6] This is an estimated amount.
[7] This is an estimated amount to be updated by the Master.
[8] This is an estimated amount.

III. Less Debts of the Partnership:		III. Less Debts of the Partnership:		Disputed or Undisputed	Ripe for Determination	Additional Discovery Needed
A. Balance Sheet Liabilities[9]	$ 176,267.97	A. Balance Sheet Liabilities[10]	$ 39,273.51	Disputed	Yes	No
B. Add'l Rent for Bay 1:	$ 6,974,063.10	B. Add'l Rent for Bay 1:	$ 6,974,063.10	Disputed	Yes	No
C. Int. on Bay 1 Rent Awarded:	$ 881,955.08	C. Int. on Bay 1 Rent Awarded:	$ 881,955.08	Disputed	Yes	No
D. Rent for Bays 5 & 8:	$ 793,984.34	D. Rent for Bays 5 & 8:	$ 793,984.34	Disputed	Yes	No
E. Int. on Unpaid Rent, Bays 5 & 8:	$ 241,005.18	E. Int. on Unpaid Rent, Bays 5 & 8:	$ 241,005.18	Disputed	Yes	No
F. Reimb. United for Gross Receipts Taxes	$ 60,586.96	F. Reimb. United for Gross Receipts Taxes	$ 60,586.96	Disputed	No	Yes
G. Black Book Balance owed to United	$ 49,997.00	G. Black Book Balance owed to United	$ 49,997.00	Disputed	No	Yes
H. Ledger Balances owed to United	$ 199,760.00	H. Ledger Balances owed to United	$ 199,760.00	Disputed	No	Yes
I. Water Revenue Re: Plaza Extra-East	$ 693,207.46	I. Water Revenue Re: Plaza Extra-East	$ 693,207.46	Disputed	No	Yes
J. Unreimbursed Transfers from United	$ 188,132.00	J. Unreimbursed Transfers from United	$ 188,132.00	Disputed	No	Yes
Subtotal:	$10,258,959.09	Subtotal:	$10,121,964.60			
IV. Net Partnership Assets Available for Distribution After Debts and Reserves:	($3,176,736.04)	IV. Net Partnership Assets Available for Distribution After Debts and Reserves:	($2,767,009.22)			

[9] *See* Total Liabilities shown on balance sheet provided by John Gaffney on September 30, 2016.

[10] *See* ftn. 11 of the Amended Claims. Since $30,000 was included as a reserve in item II E, above, that amount was not also included in the balance sheet liabilities.

V. Past Partnership Withdrawals and Distribution Reconciliation: A. Net funds withdrawn or deemed to be a distribution between the Partners per BDO Report – Net Due to Yusuf[11]: $ 9,670,675.36	V. Past Partnership Withdrawals and Distribution Reconciliation: A. Net funds withdrawn or deemed to be a distribution between the Partners per BDO Report – Net Due to Yusuf[12]: $ 2,549,819.22	Disputed or Undisputed Disputed	Ripe For Determination No	Additional Discovery Needed Yes
VI. Y&S Corporation and R&F Condominium Stock Sale Proceeds Distribution: $802,966.00	VI. Y&S Corporation and R&F Condominium Stock Sale Proceeds Distribution: $ 0	No longer applicable as barred by Accounting Order	N/A	N/A
VII. Foreign Accounts and Jordanian Properties: A. Net Due to Yusuf: $TBD, but at least $434,921.37	VII. Foreign Accounts and Jordanian Properties A. Net Due to Yusuf: $TBD, but at least $434,921.37 (Exhibit R)	Disputed	No	Yes
VIII. Loss of Going Concern Value of Plaza Extra West: $4,385,000.00	VIII. Loss of Going Concern Value of Plaza Extra West: $4,385,000.00	Disputed	No	Yes

[11] *See* BDO Report at p. 63.

[12] *See* Exhibit J-2.

EXHIBIT D

Calculation of Interest on Bay 1 Rent[1]

$ 3,999,679.73 (*see* Rent Order p. 10)
940,662.08 (*see* Rent Order p. 11) (1-1-12 through 5-1-13 or 16 mo. x $58,791.38)
$4,940,341.81 x .09 = $444,630.76 per annum or $1,218.17 per diem

Interest from May 17, 2013 (demand date) to May 11, 2015 (payment date) = $881,955.08 (724 days x $1,218.17). This does not include any interest accruing at 9% per annum on each month's unpaid rent from June 1, 2013 through March 8, 2015.

[1] Demand for payment of rent was made on May 17, 2013 and the rent was actually paid on May 11, 2015.

EXHIBIT E

Calculation of Interest on Rent for Bays 5 and 8

$793,984.34 (unpaid rent per Yusuf Declaration at ¶¶ 21-25) x .09 = $71,458.59 per annum or $195.78 per diem.

Interest from May 17, 2013 (demand date) to September 30, 2016 = $241,005.18 (1,231 days x $195.78).

EXHIBIT 1

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

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	21,474,873.86	
Tutu Park Store:		
Paid Rent, Water, & Property Tax	263,577.53	
Paid 1.5% Overage	71,914.23	
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	541,175.61	
Rent, etc. 5-5-2004 to 12-31-2011	4,304,496.57	
Parking Lot Cleaning	126,000.00	
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	217,895,269.93	b
Portion of Sales - Area built by Plaza	43,579,053.98	
Total Paid as a % of Sales (Rented Bldg.)	= a/b	2.03331470 73%
Sion Farm Sales:		
Sion Farm Sales 5-5-2004 to 12-31-2011	273,884,222.70	
Less: R/X	-7,874,897.13	
	266,009,325.57	
Calculated Rent as a % of Sales Sion Farm	$ **5,408,806.74**	

EXHIBIT

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A

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

Item to be Paid - Description	Discount Taken	Amount Paid
Rent - Sion Farm		5,408,806.74

UNITED CORPORATION D/B/A
PLAZA EXTRA
4C & 4D ESTATE SION FARM
CHRISTIANSTED, VI 00821
(340) 778-6240 (340) 719-1870

BANCO POPULAR DE PUERTO RICO
101-057218

64866

DATE
Feb 7, 2012

AMOUNT
$ ***$5,408,806.74

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

PAY TO THE ORDER OF:
UNITED SHOPPING PLAZA
P.O. BOX 763 C'STED
ST.C ROIX, VI 00821

VOID AFTER 90 DAYS

Memo: PLAZA EXTRA /SION FARM RENT

AUTHORIZED SIGNATURE

Details on Back. Security Features Inside

⑈064866⑈ ⑆026006674⑆ 196⑈4888306⑈

DEWOOD LAW FIRM
2006 Eastern Suburb Suite 101
Christiansted, V.I. 00820
Admitted NY, NJ, MD, & VI
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:

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

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.

EXHIBIT
tabbies
B

JOEL H. HOLT, ESQ. P.C.

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

Tele. *(340) 773-8709*
Fax *(340) 773-8677*
E-mail: holtvi@aol.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.

EXHIBIT
tabbies
C

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

EXHIBIT
D

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 Fathi Yusuf

CC: Wally Hamed

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

Date: January 19, 2012

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

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

- NOTICE OF LEASE TERMINATION FOR PLAZA EXTRA – SION FARM AS OF JUNE 30TH, 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 30th, 2012. The last date for this lease is June 30th, 2012. There will be no additional extensions of tenancy to Plaza Extra – Sion 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		$ 88,172.00
	Amount Due	$8,905,371.52
August 2014 rent currently due:		$250,000.00
Total Balance due august 1, 2014		**$9,155,371.52**

Please forward a check immediately.

Sincerely,

Maher Yusuf

EXHIBIT
E

UNITED CORPORATION DBA

PLAZA EXTRA

U S VIRGIN ISLANDS

PHONE 340-719-1870 FAX: 340 719 1874

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.	**25,917,937.13**	A
Total Amount Paid to TuTu Park	495,877.27	
Parking Lot Cleaning	18,000.00	
Total Cost Of Rent & Parking	**513,877.27**	B
B/A Rent	**1.982708992%**	C
Plaza East Sales	35,931,601.41	
Pharmacy Rent 3,000 Monthly	36,000.00	
Total Sales & Rent	35,967,601.41	
Less Pharmacy Sales	(515,701.87)	
Net Sales Plaza East In 2012	**35,451,899.54**	D
Rent Due IN 2012 :		
D X C	**702,908.00**	

EXHIBIT

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F

UNITED CORPORATION Inc.

PLAZA EXTRA

U. S. VIRGIN ISLANDS

PHONE: [illegible] FAX: [illegible]

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.	25,340,632.68	A
Total Amount Paid to TuTu Park	462,673.60	
Parking Lot Cleaning	18,000.00	
Total Cost Of Rent & Parking	480,673.60	B
B/A Rent	1.896849246%	C
Plaza East Sales	34,938,818.47	
Pharmacy Rent 3,000 Monthly	36,000.00	
Total Sales & Rent	34,974,818.47	
Less Pharmacy Sales	(486,569.56)	
Net Sales Plaza East In 2013	34,488,248.91	D
Rent Due IN 2013 :		
D X C	654,190.09	

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
TOTAL DUE:	**Bay 1, 5 and 8: $6,490,026.72**		

EXHIBIT 2

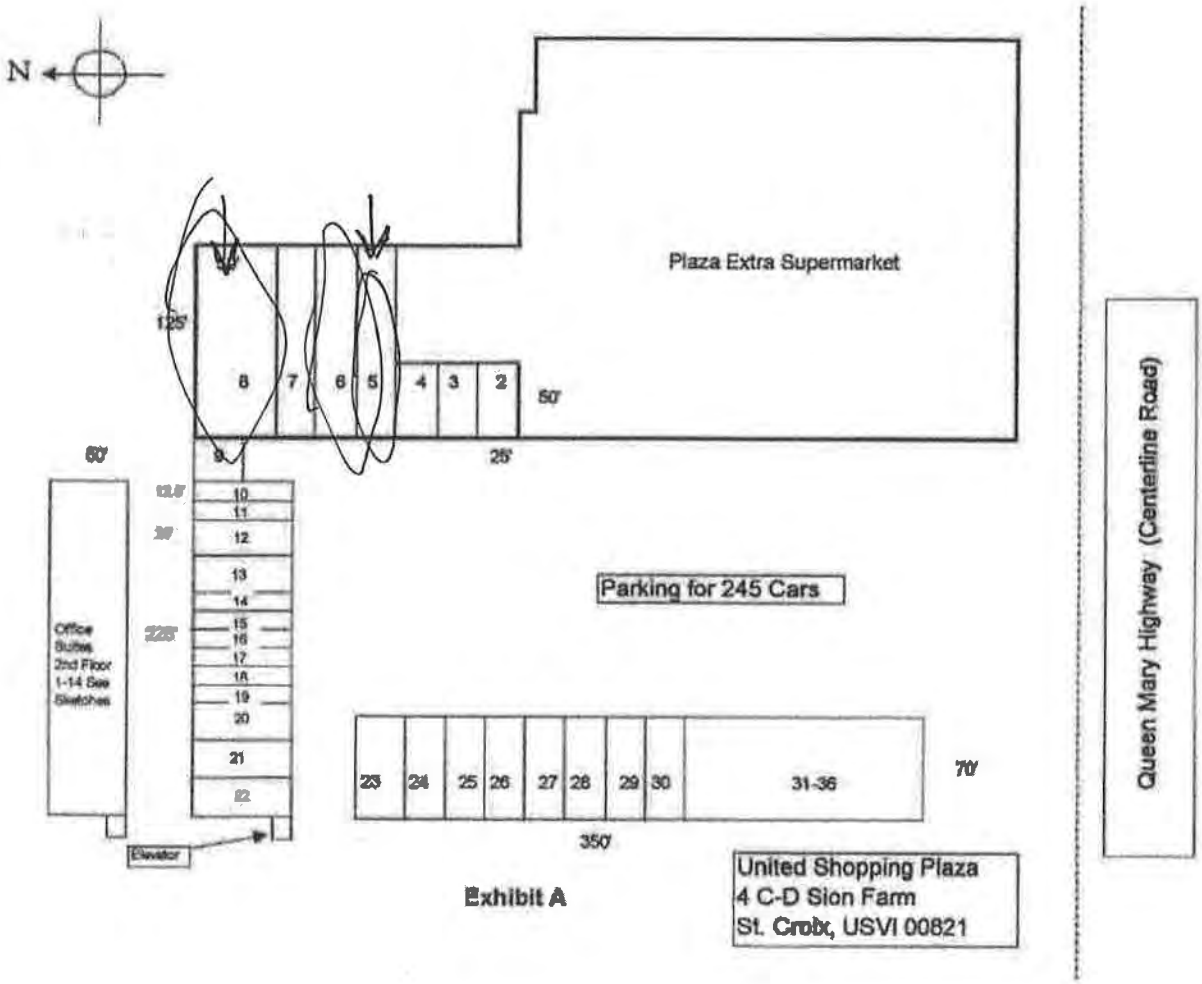

Exhibit A

EXHIBIT #1 W. Hamed 1.21.19

FY015135

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, 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**

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS IV, XI, AND XII REGARDING RENT

Defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants"), through their undersigned attorneys, respectfully move this Court, pursuant to Fed. R. Civ. P. 56 and LRCi 56.1, made applicable to this Court by Super. Ct. R. 7, to enter partial summary judgment on Counts IV, XI, and XII of their counterclaim regarding rent. In support of this motion, Defendants respectfully refer this Court to the accompanying Brief, Statement of Undisputed Material Facts, and proposed Order. Defendants request oral argument, pursuant to LRCi 7.1(f).

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

Dated: August 12, 2014 By: _____

Gregory H. Hodges (V.I. Bar No. 174)
1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail:ghodges@dtflaw.com

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)
The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830
Telephone: (340) 773-3444
Telefax: (888) 398-8428
Email: info@dewood-law.com

Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2014, I caused the foregoing **Defendants' Motion For Partial Summary Judgment On Counts IV, XI, and XII Regarding Rent** to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
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Christiansted, VI 00824
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Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI 00820
Email: jeffreymlaw@yahoo.com

_____

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**

DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS IV, XI, AND XII REGARDING RENT

INTRODUCTION

Defendants/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants") bring this motion for partial summary judgment on the claims for undisputed past due rent of certain premises at its shopping center known as United Shopping Plaza. These claims include rent for the primary space occupied by the Plaza Extra supermarket (Plaza Extra-East) at the United Shopping Plaza in St. Croix, which is known as "Bay 1," and two other smaller spaces (Bays 5 and 8) at the shopping center being used to warehouse Plaza Extra-East inventory. Since its opening in April 1986, and in an effort to support the development of the business, Plaza Extra-East has paid rent to United in multi-year blocks in amounts totaling several million dollars per payment. Mohammad Hamed ("Hamed") agreed with Yusuf at the formation

their business association[1] that they would pay rent to United for use of its premises, and that any reconciliation of partnership accounts (and distribution of profits) would have to be made after deducting rent, among other expenses. Indeed, Hamed and his son, Waleed, have recognized in testimony that the fact that profits of the partnership were to be determined after a deduction for rent was one of the partnership's characteristics. Hamed further agreed to the arrangement whereby, to support the growth of the supermarket business, rent would accrue for a number of years at a pre-determined rate, and then be paid at a time when the business could afford the expense.

There has been only one reconciliation of partnership accounts since the partnership was formed, and that occurred at the end of 1993. Hamed's portion of the rent payment due at that time was made by means of a credit against amounts that Yusuf owed Hamed for advances Yusuf had taken in the preceding years. Hamed does not contest the time period or amount of that rent payment or of another rent payment in the amount of $5,408.806.74 that covered more than eight years of rent (2004-2011), which was made in February 2012, just seven months before he brought this lawsuit. But he is now contending that, as part of the final windup of the partnership and reconciliation of the partners' accounts - and distribution of assets of the partnership – the partnership should not have to make a rent payment for another period during which Plaza Extra-East occupied the premises of United (1994-2004) in the amount of $4,595,070.36, which could not be paid when the $5,408,806.74 payment was made. Despite acknowledging in his deposition taken some 18 months after this case was filed that any unpaid rent for that period should be

[1] Defendants have conceded that this business association is a partnership in legal terms, and refer to it variously as an agreement, association or partnership in this brief

charged to the partnership, Hamed now maintains that this undisputed rent obligation is unenforceable because it is barred by the statute of limitations.

Hamed makes this claim knowing that, under the admitted terms of the parties' oral partnership agreement, whenever it came time to distribute profits of the partnership, they would be distributed net of the rent expense to United. Hamed's agent, his son Waleed, also knows that it was not possible for the partnership to have that kind of a reconciliation during most of the period following the commencement of the 2003 federal criminal proceedings against United, two of Hamed's sons, Yusuf, and two of his sons, because all partnership accounts were frozen. Waleed Hamed also knows that because business records needed to make the rent calculation and settle the partners' accounts had been seized by the Government in a 2001 raid, it was impossible to calculate the amount of rent to be paid, and reconcile the accounts, until those records were returned, something that is still in progress. Moreover, the unrebutted evidence is that, during discussions between Hamed's son, Waleed, and Yusuf in 2002 or 2003, and again in 2012, Waleed agreed on behalf of his father that the rent owed for the 1994-2004 period should continue to accrue and that collection of it should be deferred until the amount due could be calculated and paid.

The rent claims are asserted as United's claims for breach of contract counts in the counterclaim in counts XI and XII, and are also embraced by Yusuf's equitable claim for an accounting in Count IV of the counterclaim. These are separate and independent grounds for relief. United is entitled to partial summary judgment on the unpaid rent claims pursuant to its breach of contract counts, and Yusuf is entitled to partial summary judgment on the accounting claims. Because the legal analysis for the two sets of claims is different, including the explanation of why Hamed's limitations defense is without merit, they will be addressed separately in this brief. This brief will first summarize the terms of the agreement between Hamed and Yusuf regarding

calculation of profits, and then summarize the amount of rent to be charged to the partnership in order to determine what should be distributed to each partner in the windup. It will then address Yusuf's right to partial summary judgment on the rent claims as part of his accounting claim, before turning to United's right to partial summary judgment on its contract claims.

STATEMENT OF FACTS

The rent and accounting claims and the salient facts underlying them can be summarized as follows:

A. The Landlord: United owns the real estate (United Shopping Plaza), which houses Plaza Extra-East, the supermarket located at Estate Sion Farm, St. Croix.

B. The Tenant: Yusuf and Hamed agreed to carry on a supermarket business (the "Plaza Extra Stores") that eventually grew into three locations, including the first of the three stores, Plaza Extra-East, which opened at the United Shopping Plaza in April 1986. From the outset, Plaza Extra-East has paid rent to United for the space it occupies at the United Shopping Plaza. Hamed testified:

> Q: ...the United Corporation is the – is the company that you've been paying rent to for many years, is that correct?
>
> A: Yes, since we started.

See **Exhibit 1,** Deposition of Hamed, dated March 31, 2014, Vol. I, p. 86.[2]

Indeed, Hamed's son and self-described "authorized agent," Waleed, acknowledged that the payment of rent to United was one of the defining characteristics of the business arrangement. At the preliminary injunction hearing in this matter, Waleed testified as follows:

---

[2] Exhibit 1 will contain all cited pages from the transcript of Hamed's deposition on March 31, 2014 ("Vol. I") and April 1, 2014 ("Vol. II").

> Q: What were the terms of this agreement? You said it was 50/50?
>
> A: Yes.
>
> Q: What else?
>
> A: That the Plaza Extra-East store will pay rent to United Corporation, the United Shopping Plaza.
>
> Q: Just so we're clear, what you're saying is the grocery store operations will pay rent to United Corporation as the landlord for the actual dirt, you know, of Plaza Extra Sion Farm?
>
> A: For the Plaza Extra east store.

See **Exhibit 2**, testimony of Waleed Hamed on January 25, 2013, p. 98.

Hamed and Yusuf also agreed from the outset that, in order to enable the grocery store business to grow, the rent owed to United would be allowed to accrue for some number of years before being paid as part of a reconciliation of Hamed's and Yusuf's accounts. **See Exhibit** 3, Declaration of Yusuf at ¶¶ 2-3. Hamed and Yusuf frequently took advances of money (specifically, cash generated from grocery stores sales that was held in safes in the stores) and accrued rent would be paid in periodic reconciliations of accounts that would be held whenever the business could afford to pay the rent.

When Hamed and Yusuf formed their business agreement, the Plaza Extra-East store in St. Croix was under construction. In a few years, they embarked on a plan to open a second grocery store in St. Thomas (the store known as Plaza Extra-Tutu Park, which began operating in October 1993). And several years after the opening of Plaza Extra-Tutu Park, they made plans to open another grocery store in St. Croix (the store known as Plaza Extra-West, which started operating in 2000). Allowing rent to accrue for years, especially between 1994 to 2002, when the parties were planning to construct and make-ready the Plaza Extra – West store to begin operating in November 2000, rather than paying it on a monthly or even yearly basis, was very beneficial to

the supermarket business, because it afforded the funds required to cover the substantial capital and operating expenses that were incurred in opening and running three stores in economic conditions that were extremely challenging. See id. at ¶ 3. Yusuf was the person charged with determining when a reconciliation of accounts would be made and the rent obligation discharged.[3] See id. at 1-2.

C. Rent – the Early Years: As Hamed acknowledged in his deposition testimony, from the beginning in 1986 he and Yusuf agreed that the annual rent for Plaza Extra-East would be calculated on a price per square foot basis. See Exhibit 1, Vol. II, p. 106. The agreed-upon rental rate was $5.55 per square foot per year, and that rate multiplied by the 33,750 square feet of space originally occupied by Plaza Extra-East came to $187,312.50 per year. See Exhibit 3, ¶ 1.[4] This was a below-market rate. Id. at ¶ 5. The rent that accrued at this annual rate from 1986 through December 31, 1993 was paid to United at the end of 1993 (the "first rent payment"). The first rent payment was made by way of a reconciliation of accounts in which amounts Yusuf owed Hamed for advances taken from supermarket funds were credited against the rent payment. The

---

[3]Hamed further acknowledged that Yusuf knew what is owed and Yusuf was the one who calculated the rent due based on an agreed-upon formula:

> Q. So if he [Yusuf] –if he –if he told you how much you owe, would you disagree with him?
>
> ...
>
> A. Yes, he [Yusuf] know exactly.
>
> Q. He [Yusuf] knows exactly how much is owed?
>
> A. Yeah, how much we owe him.

See Exhibit 1, Vol. I, p. 94.

[4] The declaration attached to this brief as Exhibit 3 consolidates and amplifies to some degree two previous declarations of Yusuf filed in this matter dated September 9, 2013 and June 6, 2014.

end date of the period covered by the first rent payment (i.e., December 31, 1993) was reflected in a book kept in the store safe at Plaza Extra-East that was known as the "black book." Id. at ¶¶ 4, 8. After Plaza Extra-East burned down in 1992, and before it reopened in May of 1994, Yusuf agreed with Hamed, through his son Waleed, to leave the same per square foot rent rate in place for the ten years following the re-opening of the store, after which time the rent formula would be adjusted upward to something closer to a market rate. Id. at ¶ 5.

In late 2002 or early 2003, Waleed Hamed, on behalf of his father, and Yusuf agreed to a change in rent formula to be implemented on May 5, 2004, the date on which they had previously agreed that the old rent formula would be replaced. Specifically, Yusuf and Waleed agreed that effective May 5, 2004, rent would be calculated as a percentage-of-sales identical in percentage terms to what Plaza Extra-Tutu Park was paying to its landlord at the Tutu Park Mall. In other words, for each year, the payments made by Plaza Extra –Tutu Park to its landlord for the year would be divided by the store's adjusted gross sales for that year to yield a figure representing that store's payments to the Tutu Park landlord as a percentage of sales for the year. That annual percentage would then be multiplied by actual sales for the corresponding year at Plaza Extra-East to determine the amount of rent owed to United. Id. at ¶ 7.

In 2004, at about the time the new rent formula became effective, Yusuf and Waleed Hamed, on behalf of his father, discussed payment of the rent that had accrued at the $5.55 per square foot rate since the first rent payment. They agreed that having a reconciliation and paying the accrued rent at that time would not be possible, for two reasons. First, in October 2001, the FBI had raided the Plaza Extra Stores, taking with them substantially all of the financial and accounting records of the Plaza Extra Stores and United. Id. at ¶ 8. Then, two years later, in September 2003, the federal government indicted United, Yusuf, two of Yusuf's sons, and two of

Hamed's sons on income tax evasion charges, and the operating accounts of the Plaza Extra Stores and United were immediately frozen pursuant to a federal injunction. Consequently, until the injunction was relaxed and the stores' records returned, payment of the accrued rent was not possible. Id. Moreover, the black book, which reflected the December 31, 1993 end date of the prior period for which rent had been paid, and a comprehensive book showing advances of supermarket funds to Yusuf and Hamed, had both been seized. As a result, records needed to determine the date the next rent payment began accruing (January 1, 1994), and to make a full reconciliation of the accounts of Hamed and Yusuf, was no longer in their possession. They had been seized by federal agents in the 2001 raid. The black book was not returned until years later and the ledger has still not been returned.[5]

In the absence of the black book, neither Waleed Hamed nor Yusuf remembered whether the first rent payment had been paid in 1992, 1993 or 1994, let alone the debits and credits between Hamed and Yusuf in the subsequent years following the year in which the rent had been paid. At an annual rate of hundreds of thousands a year, guessing the start date incorrectly by even a few months would result in a substantial underpayment or overpayment of rent. Yusuf did not want to charge either more or less than what was due, and therefore made the decision, to which Waleed Hamed (on behalf of Hamed) agreed, that the payment of rent that had accrued since the first rent payment was made would have to await the unfreezing of the bank accounts and the return of the black book. Id. at ¶¶ 8 and 9.

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[5]In addition, it was not in Hamed's interest (or that of his sons) to do anything that would tend to show that he was in partnership with Yusuf, and the criminal defense lawyers so advised Yusuf. See Exhibit 3, ¶ 8.

By early 2012, the injunction in the criminal case has been relaxed sufficiently so that it was no longer a bar to payment of rent that had accrued since the first rent payment was made in 1993. But the federal government still had not returned the black book and the larger ledger book, which meant that full reconciliation of partnership accounts could not be made. The start date for the second rent period was not known, and neither were the amounts of advances taken by Hamed and his sons, and Yusuf and his sons. Waleed Hamed and Yusuf met in early 2012, and they agreed that rent beginning on May 5, 2004 and going forward could be determined, even without consulting the black book, because Waleed Hamed and Yusuf had previously agreed that the percentage-of-sales rent formula would become effective on that date. Yusuf and Waleed Hamed agreed that the rent for that period should be paid, even if a full reconciliation of accounts, going back to the date of the first reconciliation, could not be made. They also agreed, as they had before, that rent that had accrued from the first rent payment up to May 4, 2004 would have to be deferred until the black book was returned. Id. at ¶ 10.

Using the percentage of sales formula that he and Waleed had agreed would become effective on May 5, 2004, Yusuf calculated the amount of rent due for the period May 5, 2004 to December 31, 2011 to be $5,408,806.74. He presented the rent bill to Waleed Hamed for that sum and period, and Waleed, on behalf of his father, agreed that it should be paid to United. Payment in the amount of $5,408,806.74 was then made by means of a check signed by Waleed Hamed and by Yusuf's son, and there is **no dispute** that it covered unpaid rent for that nearly 8-year period. Id. at ¶ 7; see also **Exhibit 3A**.

The "black book" was finally retrieved about a year after the $5,408,806.74 rent payment was made, and from it Yusuf was able to determine that the first rent payment was paid through December 31, 1993, and hence that the rent for the second period began accruing on January 1,

1994. Using the annual rent calculation of $5.55 per square foot and the square footage of the rebuilt Plaza Extra-East store (69,680 square feet), Defendants (by their counsel) and after this litigation was commenced, made demand on Hamed for rent for that period, by letter dated May 17, 2013. Id. at ¶ 11; see also **Exhibit 3B**.

E. What is Due: As to Bay 1, the primary space being rented from United, the rent can be divided into four periods, two of which have been paid (1986-1993 and 2004-2011) and two of which remain unpaid (1994-2004 and 2012-present). See Exhibit 3 at ¶ 14 and **Exhibit 3G**, Chronology of Rents. Specifically, the 1994-2004 rent for Bay 1 based upon the price-per-square-foot calculation is due, and the rent from January 1, 2012 to date based upon the percentage-of-sales formula is due. Rent is also due for two other smaller "bays" that were used to warehouse merchandise before it made it to the grocery store shelves for the specific periods and rates shown below.

1. Bay 1 – Primary Space

a) January 1, 1994 – May 4, 2004 ("Past Due Rent"):

The Past Due Rent for Bay 1 (69,680 square feet) at the annual rate of $5.55 per/square foot, for the 10 years and 124 days, is $3,999,679.73. See Exhibit 3 at ¶ 15. Hamed admitted in deposition that if this rent payment has not yet been made,[6] then it should be:

> Q. ...if rent has not been paid on the – the square footage basis that you agreed with Mr. Yusuf for the period between January 1, 1994 and May 4, 2004, would you agree with me that that rent should be paid to United.
>
> ...

[6]While Hamed suggested in deposition that he did not know if this rent payment had been made, it is undisputed that it has not been made.

> A. He says that he's not denying the rent, and that Mr. Yusuf is the one who used to, in other words, determine the – the rental rate, and he's the one who would collect the rent.[7]

See Exhibit 1, Vol. II, p. 107. Later, when asked, "[I]f rent was not paid from January 1, 1994 through May 4, 2004, would you agree that rent should be paid," Hamed responded unequivocally, saying "It should be paid." Id. at Vol. II, p. 117. When asked if rent for that period should be paid "[r]egardless of how long it took to make a demand for payment," Hamed stated that Yusuf determined when rent was collected from the partnership, and he reiterated that if the rent for that period had not been paid it should be, as he had "never objected" to its payment:

> He says, If it hasn't been paid, it should be paid. And he's never – he's never objected to it being paid. Mr. Yusuf is the one who used to decided whether to collect rent or not collect rent.

Id. at Vol. II, p. 118.

b) **January 1, 2012 to the present ("Current Rent"):**

There is no dispute that rent for Bay 1 is also due from January 1, 2012 to date at least in the amount based on the percentage-of-sales formula that was used to write the joint check for the preceding 8 year period.[8] See Exhibit 3 at ¶7 and 17. The adjusted rent paid by Plaza Extra-Tutu Park for 2012, 2013 and 2014 to present was divided by sales of that store for each of those years to determine a percentage. That percentage was then multiplied by the Plaza Extra–East sales for each year. For 2012, the undisputed rent due is $702,908.00. See Exhibit 3 at ¶ 18. For 2013, the

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[7]An interpreter at the deposition translated Hamed's answers from Arabic to English, which is why some of Hamed's answers are prefaced with the third person expression "he says."

[8] Hamed's Response to United's Motion to Withdraw Rent filed on September 16, 2013 states on page 1 that "it 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."

undisputed rent due is $654,190.09. See Exhibit 3 at ¶ 19. For the period of January 1, 2014 through August 30, 2014, the undisputed rent due is $452,366.03. See Exhibit 3 at ¶ 20. The total uncontroverted Current Rent is therefore $1,809,464.12. Id. See also **Exhibit 3F.**[9]

2. Bays 5 and 8 – Additional Periodic Space

a) **May 1, 1994 through July 31, 2001 for Bay 5 ("Bay 5 Rent"):**

The Bay 5 Rent is calculated by multiplying the square feet actually occupied (3,125) by $12.00 by 7.25 years. The total due for Bay 5 Rent is $271,875.00. See Exhibit 3 at ¶ 22.

b) **May 1, 1994 through September 30, 2002 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 by 8 years, 5 months. The total due for First Bay 8 Rent is $323,515.63. Id. at ¶ 23.

c) **April 1, 2008 through May 30, 2013 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 by 5 years, 2 months. The total due for Second Bay 8 Rent is $198,593.75. Id. at ¶ 24.

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

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[9]In addition to rents owed for the period January 1, 2012 under the same percentage-of-sales formula used to calculate rent for the May 5, 2004 to December 31, 2011 period, United contends that additional amounts are owed over and above the agreed-upon rate. Since those additional amounts are disputed by Hamed, United and Yusuf believe it is appropriate to litigate those claims at trial, rather than as part of this motion for partial summary judgment. They reserve the right to seek those additional amounts at the trial of this case.

The total undisputed and unpaid rent for all the space occupied 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. Id. at ¶ 26.

ARGUMENT

I. Yusuf is Entitled to Partial Summary Judgment as to the Rent Obligation under his Accounting Claim in Count IV.

In Count IV of the counterclaim, Yusuf seeks an equitable accounting of the partnership. Because the agreement between Hamed and Yusuf provided that profits would be determined after deducting the accrued rent, Count IV requires that all of the unpaid rent be deducted from accrued revenues of the partnership before distribution. Section 177(b) of the Virgin Islands Revised Uniform Partnership Act ("RUPA"), V.I. Code Ann. tit. 26, § 1, et seq., entitled "Settlement of accounts and contributions among partners," describes the remedy of an accounting to which all partners are entitled upon dissolution or winding up of the partnership:

> Each partner is entitled to a settlement of *all* partnership accounts upon winding up of the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 46 of this chapter.

26 V.I.C. § 177(b) (emphasis added).

As discussed above, under the oral partnership agreement between Hamed and Yusuf, it was agreed that profits of the partnership to be paid in equal amounts to the partners were to be determined after deducting for rent, among other expenses. Yusuf was the partner charged with determining when those reconciliations would be undertaken, and under their agreement there was

no time limit within which he had to ask for and conduct a reconciliation. The only reconciliation of the partnership account that has been undertaken to date occurred at the end of 1993. By the assertion of the equitable accounting claim in his counterclaim, Yusuf is asking this Court to order a final reconciliation of the partnership account, which will necessarily require payment of accrued rent before any distributions to the partners.

In May 2013, Hamed (through his counsel) began asserting for the first time that rent for the 1994-2004 period could not be paid because the claim was stale and hence unenforceable. But since the partnership agreement provided that partnership profits had to be determined on the basis of a deduction for accrued rent, and also that the reconciliation of the partnership account could occur whenever Yusuf decided to make it, the argument is a complete red herring. The final reconciliation and division of profits has not yet taken place, and the claim that profits should be determined without taking into account the accrued rent for the 1994-2004 period was made after this litigation was brought. Logically, the claim that profits must be determined net of accrued rent could not have accrued until Hamed, in May 2013, anticipatorily repudiated his obligation under the partnership agreement to have profit determined after deducting accrued rent.

A. Even Assuming Arguendo that the Partnership Agreement Did Not Give Yusuf Complete Discretion to Determine When a Reconciliation of Partnership Accounts Would be Made, the Claim for Unpaid Rent Embraced in Count IV Would Not be Stale.

The common law rule regarding accrual of accounting claims is that they accrue on dissolution or wind-up of the partnership. This common law rule was established many years ago and it found nearly universal acceptance in the states, long before the drafting of the first Uniform Partnership Act in 1914. See, e.g., Annot., When Statute of Limitations Commences to Run on Right of Partnership Accounting, 44 A.L.R.4th 678 §§ 3, 6, and 9 (1986 and Supp. 2014)

(collecting common law cases in more than 26 jurisdictions, dating from 1854 to 1914, which hold that "as a general matter, a statute of limitations will not commence to run on a cause of action for an accounting of partnership affairs before the dissolution of the partnership in question"). Accordingly, even if the partnership agreement here did not confer upon Yusuf the authority to determine when to conduct a reconciliation (and make a concomitant payment of rent), as long as his claim for an accounting was brought within six years of the date of dissolution of the partnership, the claim will be timely. And as long as it is timely brought, an "action for an accounting examines the entire period of the partnership," from its inception to dissolution. See Sriraman v. Patel, 761 F. Supp. 2d 7, 41 (E.D. N.Y. 2011) (citation and internal quotation marks omitted); see also 2 Alan R. Bromberg and Larry E. Ribstein, *Partnership,* § 6.08(a) (1994) (In an action for an accounting, "the court (or more commonly, an auditor, master, or referee subject to court review) conducts a comprehensive investigation of the transactions of the partnership and the partners, adjudicates their relative rights, and enters a money judgment for or against each partner according to the balance struck").[10]

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[10]As the Court in Sriraman noted, under the "equity practice in [New York and] most other common law jurisdictions, an action for an accounting is a two-step process." Sriraman, supra, 761 F. Supp. 2d at 22. The first step is to "establish the right to an accounting," id. at 22, and it is "axiomatic" that such a right exists in the case of a partnership that has been dissolved. See id. at 22. "Once a plaintiff establishes that he has a right to an accounting, the second step is for the Court to 'true-up' the partners' individual accounts to make sure that each has been allocated his fair share of partnership distributions, 'fair share' referring to the allocation agreed between the partners or required by law." Id. at 23. Further, "[i]n making this determination, the Court can consider clerical errors in allocations to the individual accounts; breach of any partnership agreement or of fiduciary duty or fraud committed by one partner against another; diversion or non-contribution of assets that should be within the partnership; or any other matters necessary to restore the individual accounts to the levels established by the partners' agreement or the law." Id. at 23-24. The Court in Sriraman also made it clear that "[t]he mere fact that a plaintiff-partner might have brought an action at law for breach of contract, or an action at law or in equity for breach of fiduciary duty, at some point prior to the dissolution of the partnership, does not

Here, of course, while dissolution of the partnership was sought in Count VIII of Defendants' counterclaim, the Court has never formally ordered dissolution. Although Defendants have argued that the dissolution may have occurred in 1996 (when Hamed retired and returned to Jordan), or in March of 2012, or at the latest on April 7, 2014, when Defendants filed their memorandum in support of their Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up Or, In The Alternative, To Appoint Receiver To Wind Up Partnership ("Defendants' Memorandum"), see Defendants' Memorandum at 4, Hamed is now judicially estopped from asserting that the dissolution occurred any earlier than April 30, 2014. In his Response to Defendants' Memorandum at p. 2, Hamed declares that "the infirmities of Yusuf's attempted notice of dissolution are now moot, as Mohammed Hamed, likewise has given notice that *he* is dissolving the partnership. See **Exhibit 1**." (Emphasis in original). Of course, Exhibit 1 to Hamed's response was his "Notice of Dissolution of Partnership" dated April 30, 2014. As such, far from the statute of limitations having expired on any claim for an accounting in Count VIII of the Counterclaim, it has only just begun to run.

B. Hamed's Argument that the Common Law Accrual Rule for Accounting Claims Has Been Abrogated by the Virgin Islands RUPA is Meritless.

Hamed argued in his reply to his May 13, 2014 statute of limitations motion that section 75(c) of RUPA alters the longstanding common law rule regarding accrual of accounting claims, but that argument is based on a reading of that section that contravenes its plain words, and that has been rejected by at least two appellate decisions in states that have adopted RUPA. Section 75(b) provides that "[a] partner may maintain an action against the partnership or another partner

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'accelerate' the accrual date for bringing his cause of action for an accounting claim that arose when the partnership went into dissolution." Id. at 39.

for legal or equitable relief, with or without [also seeking] an accounting as to partnership business. . ." Section 75(c) then makes clear that RUPA itself does not provide a statute of limitations or an accrual rule for any of the various causes of action that a partner may bring, including an accounting, and that one must look to other law within the jurisdiction to resolve those issues:

> The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by [the other] law.

Thus, by its plain terms, contrary to Hamed's claim, RUPA does not itself provide any statute of limitations or accrual rule for an action seeking an accounting. Hamed's construction of section 75(c) is that it abrogates the common law rule that an action for an accounting accrues upon dissolution. But that construction has been expressly or implicitly rejected by the appellate courts of two states which have adopted RUPA – the Minnesota Court of Appeals and the Washington Court of Appeals.

In Smith v. Graner, 2010 Minn. App. Unp. LEXIS 717 (Minn. App. 2010), the estate of one partner, Smith, brought an action for breach of fiduciary duty, breach of contract and for dissolution and winding up of a partnership formed by Smith and Graner. On appeal from an adverse judgment, Graner argued that Smith's claim, which arose out of alleged acts occurring in 1993, was time-barred under a six-year catch-all statute of limitations. The Minnesota Court of Appeals quoted (in its entirety) section 323A.0405(c) of their Uniform Partnership Act, which is identical to section 75(c) of the Virgin Islands Act set forth above. See id. at p. *14. On the basis of that statutory language, the Court stated, "Thus, to determine when [Smith's] claim regarding the 1993 adjustment of partnership capital accounts accrued and what statute of limitations applied to the claim, we must look beyond the Act." Id. at p. *14. The Court of Appeals agreed with Graner that the Minnesota catch-all 6-year statute of limitations applied. Noting, however, that

the catch-all statute did not "address when an action [for an accounting] accrues," the Court looked to the common law of Minnesota to determine the applicable accrual rule. Id. at p. *14.

The Minnesota Court of Appeals, citing to the same ALR article mentioned earlier in this brief, then stated, "[A]s a general matter, a statute of limitations will not commence to run on a cause of action for an accounting of partnership affairs before the dissolution of the partnership in question." The Court then cited to an 1889 Minnesota Supreme Court case which applied this rule in a case in which a partner sought to recover a deficiency in annual profits owed to him for the years 1881 to 1887, and the defendant partner argued that the claim as to 1881 was time-barred under the six-year statute of limitations, because suit was not brought until 1888. In that case, Broderick v. Beaupre, 42 N.W. 83, 83-84 (1889), which is referenced in the ALR article, the Minnesota Supreme Court rejected the statute of limitations argument as "utterly untenable," because the statute of limitations on an accounting claim "did not begin to run . . . before the dissolution of the firm by [the suing partner's] retirement in November, 1887." Relying on the language of the Minnesota RUPA section that is codified as section 75(c) of the VI RUPA, along with the common law rule that an action for an accounting accrues upon dissolution, the Minnesota Court of Appeals rejected Graner's argument that Smith's claim for breach of fiduciary duty embraced within that accounting claim was time-barred, and it affirmed the lower court's ruling in favor of Smith on that claim.[11]

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[11]The Minnesota Court of Appeals also noted that this result was "consistent with Minn. Stat. § 323A.0807(b)(2008), which states that "[e]ach partner is entitled to a settlement of all partnership accounts *upon winding up the partnership business.*" (emphasis in original). That RUPA provision in the Minnesota Act is codified in the above-quoted section 177 of the Virgin Islands Act. Section 177 of RUPA thus offers another reason for holding that any accounting claim brought at or before dissolution is necessarily timely, and will entitle the partner to a settlement of "all" partnership accounts from inception.

A 2001 case from the state of Washington, which adopted RUPA in 1998,[12] also continues to apply the common law rule that an action for an accounting accrues upon dissolution of a partnership. See Laue v. Estate of Elder, 25 P.3d 1032 (Wash. App. 2001) (holding that "a cause of action for an accounting accrues at dissolution" and that "the statutory period does not begin to run until dissolution..."). In that case, a partner, Laue, claimed that the estate of his former co-partner "owe[d] him money" for a partnership that was effectively dissolved some four years before he served the summons and complaint on his co-partner. Id. at 703. The Washington Court of Appeals first acknowledged the rule that "[a]fter dissolution, a partner generally cannot bring a suit at law against a former copartner regarding partnership liabilities without first bringing an action to account for and settle the partner's affairs." Id. at 710-711. The Court then held that because "[a] cause of action for an accounting accrues at dissolution," id. at 711, and such actions are governed by "a three-year statute of limitation," id. at 711, Laue's claim for money damages in the form of a partnership distribution was untimely because served more than three years after dissolution.

Hamed is unable to cite a single state appellate decision upholding his construction of RUPA. Instead, he cites a federal district court case from Connecticut, Baghdady v. Baghdady, 2008 U.S. Dist. LEXIS 83505, p. *14 (D. Conn. 2008), which held that the RUPA provision that appears in the VI Code as section 75(c) "abolish[es] the common law rule that all claims during a partnership could be brought only on an action for an accounting during the dissolution and winding-up process." Baghdady suffers from a number of infirmities. First, Baghdady is incorrect

[12] See http://partnerships.uslegal.com/partnership/state-laws-governing-partnerships/ showing which states have adopted RUPA and when they have done so.

in suggesting that the common law rule barred the assertion of any claims by one partner against another (or against the partnership) prior to dissolution; in fact, it only barred a claim for an accounting prior to dissolution. Under the uniform partnership act that preceded RUPA, a partner could at his election opt to bring contract and tort claims against a co-partner before dissolution. See Sriraman v. Patel, 761 F. Supp. 2d 7, 39 (E.D. N.Y. 2011) (acknowledging that such actions could be brought before dissolution, but stating that this fact did not accelerate the accrual date of a claim for an accounting). Second, Baghdady never discusses the old common law accrual rule for accounting actions, let alone explains how that rule can be displaced by a RUPA provision which unambiguously requires litigants to look to other common law or statutory law of their state to determine when an accounting claim accrues.[13]

Baghdady also relies on a Delaware trial court decision in in Fike v. Ruger, 754 A.2d 254, 264 (Del. Ch. 1999), and misleadingly indicates that it was affirmed by the Delaware Supreme Court, without pointing out that the affirmance was on other grounds. The Supreme Court of Delaware specifically stated that it would not "address the Court of Chancery's determination that

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[13]Hamed's June 20 reply on his statute of limitations motion also relies on the statement in the official commentary to RUPA that "[t]he effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them . . .." See Hamed's 6/20/14 Reply Brief in Support of Statute of Limitations Motion, p. 4. But this statement, read in conjunction with the text of section 405(c), which unambiguously provides that RUPA does not establish a statute of limitations or accrual rule for accounting (or any other) claims, can only mean that parties will "risk losing their claims" if "other law" of the jurisdiction provides that a cause of action for an accounting accrues before dissolution. As discussed in more detail below, the common law rule that this Court should adopt for the Virgin Islands under a Banks analysis is that accounting claims accrue on dissolution or other termination of a partnership. In any event, even if section 75(c) of the VI Act had an ambiguity that required a resort to legislative history for resolution, none of the commentary to RUPA was adopted by the Virgin Islands legislature when it enacted that statute. As such, the commentary quoted by Hamed does not rise to the level of legislative history that could aid in the interpretation of section 75(c).

Plaintiff's claim is barred by the statute of limitations," and instead affirmed that Court's decision on an alternative ground – laches – that the lower court never addressed. Fike v. Ruger, 752 A.2d 112, 114 (Del. 2000). The fact that the Supreme Court of Delaware affirmed on the basis of a fact-specific doctrine like laches that was not even addressed by the trial court, rather than on the basis of the lower court's construction of RUPA as abrogating the common law rule for accrual of an accounting claim (the same construction urged here by Hamed), suggests strongly that Delaware's high court was not convinced by the lower court's reading of RUPA.[14] Moreover, generally speaking, when a lower court decision is affirmed on different grounds by an appellate court, the lower court decision loses whatever precedential status it once had, and the appellate opinion becomes binding on the lower courts only on the actual grounds for affirmance. See Negron v. Caleb Brett U.S.A., 212 F.3d 666, 670 (5th Cir. 2000) (noting that because it "affirmed [a district court decision] on other grounds," its decision is not an endorsement of the lower court's analysis); see also Dow Chemical v. United States Environmental Protection Agency, 832 F.2d 319, 323 (5th Cir. 1987) (where an appeals court affirms on other grounds, the ground relied upon by the district court ceases to be binding). Trial court decisions are generally not even binding on other trial courts in the same jurisdiction, and in this circumstance the Delaware chancery court decision in

[14]In addition, the Delaware Supreme Court may have been influenced by the fact that traditionally courts apply the equitable doctrine of laches, rather than the statute of limitations, to determine whether an equitable claim was filed too late – and a claim for an accounting is an equitable claim. See, e.g., Holmberg v. Armbrecht, 327 U.S. 392, 395-96 (1946) ("[t]raditionally and for good reasons, statutes of limitation are not controlling measures of equitable relief"). "Laches, as an equitable doctrine, differs from the statute of limitations in that it offers the courts more flexibility, eschewing mechanical rules." Waddell v. Small Tube Prods., Inc., 799 F.2d 69, 79 (3d Cir. 1986).

Fike should not be regarded by this Court as persuasive authority for construing section 75(c) in the Virgin Islands Act.

Defendants have been unable to find any cases that discuss the Virgin Islands common law rule governing when an action for an accounting of a partnership accrues for statute of limitations purposes. But under a Banks analysis, the Superior Court is empowered to decide what the common law of the Virgin Islands is, based on what the majority rule is and what the soundest rule is. See Banks v. International Rental and Leasing Company, 55 V.I. 967, 974-980 (V.I. 2011); see also Gov't of the V.I. v. Connor, 2014 V.I. Supreme LEXIS 17 (V.I. Fe 24, 2014). The majority rule at common law, and the common law rule apparently adopted by all state courts that addressed the issue, was that a claim for an accounting accrues upon dissolution of a partnership. It is a sound rule because it enables a court to "true-up" or reconcile each partner's individual accounts in accordance with their agreements and avoids the injustice that would result from not enforcing those agreements.

To be sure, as the Delaware Supreme Court held in the Fike case, the equitable doctrine of laches is still potentially available to a partner who is sued in equity for an accounting if he or she can show that he will be unfairly prejudiced by his or her co-partner's delay in bringing the claim. Here, although Hamed has pled laches as an affirmative defense to Defendants' counterclaims, he cannot show that he will be prejudiced unfairly by any alleged late assertion of Defendants' claims for rent or any fraud claims, and has not made that argument. Indeed, as discussed extensively above, the claim for rent is a straightforward claim, the validity of which has been acknowledged by Hamed in his prior depositions in this case, and the obligation to determine profits by deducting accrued rent is a key component of the terms of the partnership.

Hamed also argues in his June 20 reply brief on his limitations motion that the old common law rule was not a common law rule at all, but was instead a statutory rule first created by the original version of the Uniform Partnership Act ("UPA"), which was drafted in 1914 and adopted by a number of states in the ensuing decades. Id. at 3. The ALR article cited above shows Hamed to be mistaken. As discussed above, the article cites cases from 26 states decided prior to 1914 (and as far back as 1854) which apply the apparently universal common law rule that a cause of action for an accounting accrues upon dissolution or wind-up or similar termination of partnership affairs. See Annot., When Statute of Limitations Commences to Run on Right of Partnership Accounting, 44 A.L.R.4th 678, §§ 3, 6, and 9 (1986 and Supp. 2014) (citing numerous pre-1914 cases for this proposition). Cases from three other states cited in the article were decided shortly after 1914, but a review of those cases shows that they rely on other pre-1914 cases articulating the common law rule, and not on the UPA. See Williams v. Walker, 229 SW 28 (Ark. 1921), Ristine v. Ruml, 197 NW 27 (Iowa 1924); Carson v. Crossman, 225 P. 947 (Okla. 1924). As such, the article shows that the accrual rules for an accounting claim were part of the common law of 29 states prior to the adoption of the original UPA, and it identifies no other state in that time period that adopted the accrual rule urged by Hamed. In the absence of any common law cases in the Virgin Islands that address this limitations issue, under a Banks analysis this Court should determine that the common law rule here is that claims for an accounting accrue on dissolution. Consistent with that accrual rule, Yusuf's request for an accounting was timely asserted, and it would necessarily embrace the claims for unpaid rent in the amounts described above.

II. Hamed's Admissions and Yusuf's Declaration Testimony Entitle United To Judgment For Its Rent Claims in Counts XI and XII.

Yusuf and Hamed both agree that rent is due to United for the space that has been occupied by Plaza Extra-East from that store's inception. The percentage of sales rental rate for all periods since May 5, 2004 is not in dispute, as Hamed paid the rent for the 2004-2011 period at that rate. The $5.55 per square foot rate for the period January 1, 1994 to May 4, 2004 is likewise not in dispute, because the payment for the preceding period was made at that rate, and Hamed has never rebutted Yusuf's June 6, 2014 declaration, which asserts that Waleed and Yusuf specifically agreed that the payment of rent for that period would be deferred.[15] When asked specifically about the 1994-2004 rent, Hamed confirmed that he was "not denying the rent" for that period, that he "never objected" to its payment, and testified two times, without any qualification, that it "should be paid if it hasn't been paid." See Exhibit 1, Vol. II, pp. 107, 118; see also id. p. 117 (acknowledging that if rent was not paid for that period, then "it should be paid"). Notwithstanding Hamed's professed uncertainty about whether rent had been paid for the 1994-2004 period, the undisputed facts are that it was not paid.

No factual issues remain for determination regarding United's right to recover under Counts XI and XII. No new information is necessary to render judgment. Nor are there any legal arguments that preclude judgment in United's favor in the amounts set forth in Yusuf's declaration.

A. Hamed's Statute of Limitations Defense to Counts XI and XII is Without Merit.

[15]Moreover, as discussed above, the parties' agreement to allow annual rent to United to accrue for a period of years before it was paid clearly benefited the partnership by providing funds to grow the business from one to three stores, and allowing the business to survive not one, but three catastrophic events, Hurricanes Hugo and Marilyn, and the fire at Plaza Extra-East in 1992.

Hamed is now arguing that the claim for the 1994-2004 rent is time-barred – i.e., that a lawsuit to recover such rent apparently should have been brought by May 2010,[16] and that United waited too long to assert the claim for that rent in its December 2013 counterclaim filed in this case.[17] There are no genuine issues of material fact to support this defense. The claim for rent did not accrue until 2013, during the pendency of this litigation, when Hamed for the first time (in a letter written by his counsel to United's counsel) repudiated the obligation and took the position that it was unenforceable. And even if by tortured logic the claim could be treated as having accrued in 2004, the doctrine of equitable tolling would stop the running of the statute of limitations on the contract claims in Counts XI and XII until shortly before Hamed filed his complaint in this case, and the limitations defense would fail for that additional reason.

1. The Contract Claims for Unpaid Rent Did Not Accrue Until 2013.

It is well-settled that a claim for breach of contract accrues at the time of breach, or non-performance when performance is due. See, e.g., Peck v. Donovan, 2012 U.S. App. LEXIS 25281, p. *9 (3d Cir. 2012). The claim for breach of the lease agreement between the partnership and United could not have arisen until Yusuf, as United's representative, made demand for the rent on May 17, 2013 and Hamed (through his counsel) responded on May 22, 2013 by saying, for the first time, that the rent obligation was unenforceable. See **Exhibit 3C**, which responds to Exhibit

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[16]While Hamed has not yet identified the accrual date for the 1994-2004 rent claim, and hence the date he would contend a lawsuit should have been brought on that claim, his position presumably is that the claim accrued in May 2004, and that a lawsuit should have been brought by May 2010 under the six-year statute.

[17]As noted above, that argument was first made in a May 22, 2013 letter from his counsel to Defendants' counsel, and it is the subject of Hamed's May 13, 2014 motion for partial summary judgment on the limitations issue that was filed in this case.

3B. As discussed above, under the oral partnership agreement, Yusuf had the sole authority to determine when a reconciliation of partnership accounts would take place, and thus when the partnership had to pay United accrued annual rent. In 2003, with Hamed's concurrence, Yusuf deferred payment of that obligation, and then in 2013 he bound the partnership to pay United for the accrued rent. See Exhibit 3 at ¶¶ 8-10. Hamed acknowledges that under their partnership agreement Yusuf was in charge of all operations of the partnership, including determination of when to pay accrued rent. As Hamed testified, "he's the one who would collect the rent" and decide "whether to collect rent" at any point in time during its accrual. See Exhibit 1, Vol. II, p.107 and 118. See also Exhibit 3 at ¶ 1. Since Yusuf bound the partnership to pay the 1994-2004 rent in 2013, pursuant to authority vested in him by the oral partnership agreement, the claim for that rent could only have accrued when Hamed's counsel advised United's counsel for the first time in May 2013 that he regarded the claim as unenforceable.[18]

And even assuming arguendo that there were disputed issues of fact regarding Yusuf's exclusive authority to determine when reconciliation of the partners' accounts would be made, the claim would still have accrued in 2013 by reason of Waleed's agreement with Yusuf (first in 2003, then in 2012) that the rent owed for the 1994-2004 period would be paid to United later, after the lifting of the injunction in the criminal case and the return of the black book. United had no basis

[18]Moreover, a claim does not accrue until it can be pursued in court (which would require a determination of damages). Thus, even if Hamed had repudiated the rent obligation in 2004, and United had filed suit before the records were returned, the case would have been thrown out on the basis of the parties' mutual acknowledgment (or the incontestable fact) that the damages could not be determined without the records. As such, the claim did not accrue until the records were available.

for suing for the unpaid rent in 2004 because both partners agreed with United that payment of the rent would be deferred. In short, there simply was no breach until May 2013.

2. The Doctrine of Equitable Tolling Applies to Toll the Statute of Limitations as to the Contract Claims.

Even if this Court were somehow to determine that the claim for unpaid rent in the breach of contract counts accrued in 2010, the doctrine of equitable tolling would clearly toll the statute of limitations in this case and render the claims for past due rent in Counts XI and XII timely. In Podobnik v. U.S. Postal Serv., 409 F.3d 584 (3d Cir. 2005), the Third Circuit Court of Appeals concluded:

> There are three principal situations in which equitable tolling is appropriate: (1) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action, and that deception causes non-compliance with an applicable limitations provision; (2) where the plaintiff in some extraordinary way has been prevented from asserting his rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum.

Id. at 591 (citations omitted).

Here, circumstances demonstrating equitable tolling exist under situations (1) and (2). Hamed, through his authorized agent, Waleed Hamed, actively misled Yusuf by agreeing that rent for the period would be deferred because of the criminal case. As a result of these discussions, United had no reason whatsoever to bring suit on its rent claim in 2004. As such, the time for pursuing such claims was tolled until United was on notice that Hamed was renouncing a rent obligation he had recognized since the partnership was formed. That notice was first received from counsel for Hamed in a letter dated May 22, 2013. See Exhibit 3C. And even if Waleed had not misled Yusuf, United was prevented from collecting the rent in 2004 (and for years later) by virtue of the federal injunction which froze the accounts that could be used to pay the rent, making

collection impossible. The fact that the black book was seized and not returned until years later also made it impossible for either Hamed or Yusuf or United to know the amount of the rent payment. These extraordinary circumstances created by the bringing of the federal criminal case further demonstrate that any limitations period for assertion of the rent claim for 1994-2004 would be tolled at least until 2011. As such, there could be no time bar to assertion of United's counterclaim for rent for that period.

III. United Is Entitled To Recover Prejudgment Interest On The Unpaid Rent.

Although United did not charge any interest on the past due rent over the decade it accrued and while it could not be paid because of the criminal injunction and the absence of the "black book," it is entitled to recover prejudgment interest at 9% per annum, as provided by V.I. Code Ann. tit. 11, § 951(a)(4), from the date it demanded payment – May 17, 2013. See Exhibit 3B. "As a general rule, prejudgment interest is to be awarded when the amount of the underlying liability is reasonably capable of ascertainment and the relief granted would otherwise fall short of making the claimant whole because he or she has been denied the use of money which is legally due. Awarding judgment interest is intended to serve as least two purposes: to compensate prevailing parties for the true costs of money damages incurred, and, where liability and the amount of damages are fairly certain, to promote settlement and deter attempts to benefit from the inherent delays of litigation. Thus prejudgment interest should ordinarily be granted unless exceptional or unusual circumstances exist making the award of interest inequitable." Skretvedt v. E.I. Dupont de Nemours, 372 F.3d 193, 208 (3d Cir. 2004) (quotation marks and citation omitted); see also, Booker v. Taylor Milk Co., 64 F.3d 860, 868 (3d Cir. 1995) ("To fulfill this make–whole purpose, prejudgment interest should be given in response to considerations of fairness and denied when its

exaction would be unequitable.") (internal quotation marks and citation omitted); Elbrecht v. Carambola Partners, LLC, 2010 U.S. Dist. LEXIS 72158, * 19 (D.V.I. July 16, 2010) (same).

Here, there are no exceptional or unusual circumstances that would make it unfair for United to recover prejudgment interest. To the contrary, it would be entirely unfair to United if the partnership is allowed to have the uncompensated use of United's money after it made a demand for payment more than a year ago. It is certainly not inequitable for the partnership to be required to pay interest at the legal rate (9%) on the $3,999,679.73 from May 17, 2013 until entry of judgment. Likewise, it is only fair to require the partnership to pay prejudgment interest on the Bay 5 Rent, First Bay 8 Rent, and Second Bay 8 Rent from May 17, 2013.

Since Hamed conceded almost one year ago that the current rent is due and owing, see note 7, supra, it would be particularly unfair for United not to recover prejudgment interest on this unpaid rent. United submits that the interest should begin to accrue on the first day of the month following the month that the rent was not paid. In other words, the rent for January 2012 would begin to accrue interest on February 1, 2012 and continue accruing interest until entry of judgment.

CONCLUSION AND RELIEF REQUESTED

United respectfully submits that partial summary judgment should be entered in its favor on its breach of contract counts in its counterclaim (Counts XI and XII) for the undisputed portion of the unpaid rent in the amount of $6,603,122.23. Yusuf also asks this Court for partial summary judgment on his accounting claim (Count IV), by declaring that in making the final reconciliation of partnership accounts and determining what must be distributed to each partner, $6,603,122.23 should be deducted from partnership profits. Hamed and Yusuf should be ordered to pay those amounts from partnership accounts in accordance with the procedures set forth in the April 25, 2013 preliminary injunction.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

Dated: August 12, 2014

By: _____

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I hereby certify that on this 12th day of August, 2014, I caused the foregoing **United Corporation, Inc.'s Brief in Support of Motion For Summary Judgment On Its Claims For Rent** to be served upon the following via e-mail:

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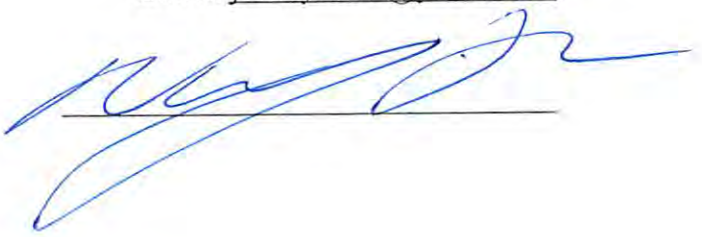

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
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WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,

Additional Counterclaim Defendants.

Case No. SX-12-CV-370
Volume I

THE VIDEOTAPED ORAL DEPOSITION OF MOHAMMAD HAMED was taken on the 31st day of March, 2014, at the Law Offices of Adam Hoover, 2006 Eastern Suburb, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 10:05 a.m. and 2:03 p.m. pursuant to Notice and Federal Rules of Civil Procedure.

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COLLOQUY

E-X-A-M-I-N-A-T-I-O-N

E-X-H-I-B-I-T-S

EXHIBIT
tabbies
1

Read the first sentence to him, and ask him if he agrees with it.

MR. DEWOOD: Okay.

MR. HARTMANN: Okay. Then go to the second question.

MR. DEWOOD: Sure. (Speaking in Arabic.)

Okay. I'm going to read to you the first sentence (speaking in Arabic).

In short, (speaking in Arabic).

MR. HARTMANN: Is that true?

THE WITNESS: Yeah.

MR. HARTMANN: Okay. He said yes. Go to the second sentence.

MR. DEWOOD: I did not end my oversight of major partnership issues. Just the daily operations. (Speaking in Arabic).

A. That's good.

MR. DEWOOD: He agrees.

MR. HARTMANN: Is that true?

THE WITNESS: Yeah.

MR. HARTMANN: Yes. Okay. Now the third sentence.

MR. DEWOOD: For instance, I was still consulted on the opening of the St. Thomas and West stores, as well as the rent issues surrounding East. (Speaking in

Arabic.)

MR. HARTMANN: Is that true?

THE WITNESS: Yeah.

MR. HARTMANN: Okay. That's true. Okay.

Q. (Mr. Hodges) All right. So then you under -- you were involved in the decisions with respect to the payment of rent, is that right?

A. Rent to who?

Q. The supermarket did not pay rent?

A. We pay rent. We talk, since we open, we talk about it, and he, Mr. Yusuf the one, he put the rent. Up from that time, we don't pay no rent. Still, we owe. We owe Mr. Yusuf, the owner for the Plaza Extra, half of the -- I don't pay for half. Still we owe him some more.

Q. So I think what you're saying is you agree that the partnership owes rent to United Corporation, is that right?

A. Yeah, and to Mr. Yusuf, yes.

Q. Well, Mr. -- the United Corporation is the -- is the company that you've been paying rent to for many years, is that correct?

A. Yes, since we started.

Q. Okay. So rent would be one of the expenses that the supermarket paid in order to get net profits, is that right?

MR. HARTMANN: Yes.

A. We pay for the supermarket, rent for the supermarket for monthly. We already give him 4 million-something half couple months ago for the when he ask, we do pay him that.

Q. (Mr. Hodges) Okay. So what --

A. Yeah, we pay him that.

Q. The answer to my question --

A. We pay him that, and then still we owe him some more.

Q. Okay. You -- you paid him some money a couple months ago, you say, and you acknowledge that the partnership still owes United rent?

A. Yeah. My own don't finish --

Q. Okay.

A. -- my rent one time.

Q. How much rent do you agree that the partnership owes United?

A. I don't know. He don't agree they have a between -- and ask him St. Thomas, and we told him it's as to St. Thomas, we pay rent for St. Thomas own.

Q. Okay.

A. And we still, we don't pay, I believe.

Q. What about insurance? Was the partnership required to -- to obtain and pay for insurance for the

building that it occupied under the -- the rental agreement with United Corporation?

A. I believe the -- the -- the insurance for Plaza Extra, not with United Corporation.

Q. But United --

A. And Plaza Extra owns it.

Q. Right. So United -- excuse me -- Plaza Extra paid, was required by your agreement, to pay insurance to cover the -- the -- the building that it was occupying, is that right?

MR. HARTMANN: Object. Asked and answered.

A. Well, I don't know.

Q. (Mr. Hodges) You -- you -- you never -- you never --

A. I never know.

Q. -- you never understood that part of the deal with United Corporation --

A. No, I never know.

Q. Okay.

MR. HARTMANN: You keep saying "the deal with United Corporation." He doesn't know of any deal with United Corporation.

MR. HODGES: Are you testifying again, Carl?

MR. HARTMANN: No. I'm just trying to help you through this thing.

MR. HODGES: Ask him the question.
MR. HARTMANN: Wait one second. Wait one second.
(Discussion held off the record.)
MR. HARTMANN: And ask it in Arabic first, if you would, and just ask me if it's correct.
MR. DEWOOD: Let me get the right word.
MR. HARTMANN: Okay.
MR. DEWOOD: (Speaking in Arabic.)
Has there been agreement --
A. (Through Mr. DeWood:) There is no agreement -- Since we opened.
MR. HARTMANN: Translate that.
A. (Through Mr. DeWood:) There is no agreement whatsoever since we opened. (Speaking in Arabic.)
We didn't agreed. He was the one who put the rent amount. We did not.
MR. HARTMANN: Okay. Go ahead.
A. We start, we stay longer, we don't pay rent. Till couple months ago, they pay him out of the loan. Exactly the number, I don't know. A million four or more. Two, three, four. We still, we owe him of rent.
Q. (Mr. Hodges) Do you know how much you owe?
A. No.
Q. Millions of dollars?

A. Not even a dollar or fifty cents.
Q. That's all that you owe?
A. I don't know how much I owe him.
Q. So if he -- if he -- if he told you how much you owe, would you disagree with him?
MR. HARTMANN: Object. Asked and answered. He said he doesn't know.
A. Yes, he know exactly.
Q. (Mr. Hodges) He knows exactly how much is owed?
A. Yeah, how much we owe him.
Q. And you don't disagree with him about the amount owed, do you?
MR. HARTMANN: Objection. Asked and answered. Objection to form.
A. I agree with him it's that the rest of it, everybody know he used to pay me like $200 allotment. This year he is going to pay 250. If we agree or not, we pay 250. If they ask 500, if they know we can't pay you 500. I know too much. Give me number. If I put it in my mind, I'll work with it.
Q. (Mr. Hodges) Your role in the partnership was to be responsible for receiving, is that right?
A. Huh?
Q. Is that right?
A. What's that?

Q. Your -- your -- under your agreement with Mr. Yusuf, --
A. Uh-huh.
Q. -- you were responsible for the warehouse.
A. Yeah.
Q. That's right?
A. Uh-huh.
Q. And what was his responsibilities?
A. In the office.
Q. And when you say "in the office," what do you mean by that?
A. He's in charge for the office. He's in the one who say yes or no. Buy paper, buy money, buy everything.
Q. Okay. Now --
A. Hiring, firing.
Q. Did there come a time that you retired from the -- your warehouse supervision, and -- and went back to Jordan?
A. Yeah, I going temporary and I come back.
Q. Well, in -- when was that, in 1996?
A. I don't know exactly.
Q. Well, you -- you -- you retired, did you not? You retired and went back to Jordan.
MR. HARTMANN: Object. Asked and answered.
A. Yeah.
Q. (Mr. Hodges) Okay. Why did you retire?

A. Why?
Q. Why?
A. Because I getted 79 years.
Q. You were 79 years?
A. I'm going to start with 80.
Q. Not in 1996, you weren't 79, were you?
A. Yeah, mon, now I'm past 79.
Q. Okay. In 19 --
A. I start to 80. What you want me, to work with you?
Q. If you'll work till 90, that will be okay.
A. No, I don't work.
Q. Okay.
A. Why you working with that? What's that question?
Q. When you retired in 1996, you would agree with me that you no longer had any day-to-day involvement in the operations of the partnership, is that right?
MR. HARTMANN: Object. Mischaracterizes the prior testimony.
Q. (Mr. Hodges) Is that right?
A. Is that's right? What's that, when I told you right? What's that?
Q. What is right? I don't want --
A. Well, isn't you tell me, it's right? How I tell you right, --

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Volume 2

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was taken on the 1st day of April, 2014, at the Law Offices of Adam Hoover, 2006 Eastern Suburb, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 9:12 a.m. and 5:13 p.m. pursuant to Notice and Federal Rules of Civil Procedure.

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Kim Japinga
Waleed Hamed
Hisham Hamed
Mufeed Hamed
Maher Yusuf
Fathi Yusuf

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E-X-A-M-I-N-A-T-I-O-N

E-X-H-I-B-I-T-S

funds were ever used to purchase property in Jordan in your name only?

MR. HARTMANN: Object as to form.

A. What I know, I never. No, I have -- no. (Speaking in Arabic.)

THE INTERPRETER: He's -- he's not -- in his name alone, no, he's not aware of that.

He's saying Mr. Yusuf is the only one who's purchased in his name only.

Q. (Mr. Hodges) And what property is that?

A. It's land. I don't know. I never see, and I don't know where. (Speaking in Arabic.)

THE INTERPRETER: He does not know.

Q. (Mr. Hodges) So it's -- it's -- it's your testimony that land wasn't purchased in your name only that Mr. Yusuf knew about?

MR. HARTMANN: Object as to form.

THE INTERPRETER: He swears on the Quran that he has -- he does not have anything in his name alone.

Q. (Mr. Hodges) That was purchased with partnership funds?

THE INTERPRETER: Yes.

Q. (Mr. Hodges) Okay. Would you agree with me, Mr. Hamed, that Plaza Extra paid rent to United Corporation for occupying the Plaza East premises from the beginning

until December 1993?

THE INTERPRETER: From the beginning?

MR. HODGES: '86, 1986.

THE INTERPRETER: Okay.

Yes.

Q. (Mr. Hodges) Okay. And that rental was based on a price per square foot that you agreed upon with Mr. Yusuf, is that correct?

THE INTERPRETER: Yes.

Q. (Mr. Hodges) Okay. And isn't it true that no rent has been paid to United since January 1, 1994 through May 4, 2004?

MR. HARTMANN: Object as to form.

A. I don't know. (Speaking in Arabic.)

THE INTERPRETER: He says, I don't know.

Q. (Mr. Hodges) You're not aware of any dispute regarding United's entitlement to rent for the ten years from January 1, 1994 to May 4, 19 -- excuse me -- 2004?

THE INTERPRETER: I am not aware, except recently I've learned that my son has told me that Mr. Fathi Yusuf is demanding rent of $250,000 per month, and this is of recent.

Q. (Mr. Hodges) Okay. Well, I'm -- I'm talking about the price per square foot monthly rent for the period between January 1, 1994 through May 4, 2004 that was agreed

upon with you.

THE INTERPRETER: In the beginning, yes, but not recent -- recently.

Q. (Mr. Hodges) I understand. But if -- if rent has not been paid on the -- the square footage basis that you agreed on with Mr. Yusuf for the period between January 1, 1994 and May 4, 2004, would you agree with me that that rent should be paid to United?

MR. HARTMANN: Object. Calls for a legal conclusion.

A. Couple months ago, they --

THE INTERPRETER: Wait. Arabic.

A. I'm sorry.

THE INTERPRETER: He says he's not denying the rent, and Mr. Yusuf is the one who used to, in other words, determine the -- the rental rate, and he's the one who would collect the rent.

Q. (Mr. Hodges) But you understand that you and your son have refused to allow United to draw the funds necessary to pay the rent from January 1, 1994 to May 4, 2004, correct?

THE INTERPRETER: What about the four-and-a-half million that was paid to him?

Q. (Mr. Hodges) That's not my question.

THE INTERPRETER: Maybe --

A. (Speaking in Arabic). When the rent, the one couple months -- couple years back.

Q. (Mr. Hodges) Do you know what period that payment --

A. I don't know.

MR. HODGES: Can I -- go ahead.

THE INTERPRETER: Yeah, he's saying that -- that was paid, and he mentioned an amount of four-and-a-half million prior to that. But he's indicating that that was paid.

Q. (Mr. Hodges) So it's your position that that five -- do you recall how much was paid?

A. Exactly number, no.

THE INTERPRETER: Exactly, no.

Q. (Mr. Hodges) Does the -- does the figure of $5.4 million strike any memory chord?

A. I don't know, it's four or five.

THE INTERPRETER: I do not remember the exact amount, whether it was four or five.

Q. (Mr. Hodges) Okay. And do you -- do you know what period of time that payment covered?

A. No.

Q. So if it -- if it was agreed with your son, Waleed Hamed, that that $5.4 million payment only covered the period between May 4, 2004 and December 31, 2011, you

answered. Calls for a legal conclusion.
A. I don't know. (Speaking in Arabic.) I don't see it. I don't look at it.
Q. (Mr. Hodges) Your answer -- your answer is, you don't know?
A. I don't know. I don't check it. I don't see it.
Q. Okay.
A. Because I hear from my son, he say, We pay Mr. Yusuf the rent for the one that's past.
Q. Did -- did -- did your son tell you that rent had been paid for the period --
A. We pay, yeah.
Q. Wait a minute.
A. That's what he told me.
Q. Did your son tell you that rent had been paid by Plaza Extra for the period from January 1, 1994 through May 4, 2004?
MR. HARTMANN: Object. Asked and answered.
THE INTERPRETER: He did not tell me things. He told me we paid such and such.
Q. (Mr. Hodges) If -- if it -- if it -- if rent was not paid from January 1, 1994 through May 4, 2004, would you agree that rent should be paid?
MR. HARTMANN: Object. Asked and answered.
THE INTERPRETER: It should be paid.

Q. (Mr. Hodges) Okay. Regardless of how long it took to make a demand for payment?
MR. HARTMANN: Object. Calls for a legal conclusion.
THE INTERPRETER: He says, If it hasn't been paid, it should be paid. And he's never -- he's never objected to it being paid. Mr. Yusuf is the one who used to decide whether to collect rent or not collect rent.
Q. (Mr. Hodges) Okay. Has your son given you any reason for not paying the rent for the period from January 1, 1994 through May 4, 2004?
MR. HARTMANN: Object. Mischaracterizes prior evidence. Object to form, calls for speculation. Object. Assumes facts not in evidence.
Go ahead.
THE INTERPRETER: He did not tell me.
Q. (Mr. Hodges) But you would agree with me, sir, that it would not be fair to occupy somebody's property without paying rent?
MR. HARTMANN: Object. Asked and answered. Calls for speculation.
THE INTERPRETER: We do not have anything, any location, but the supermarket. They pay half, and we pay half.
MR. HODGES: My question is, would, in his

mind, would it be fair for the -- the supermarket to occupy the premises at Plaza Extra East for more than ten years without paying the rent that was agreed upon with Mr. Yusuf?
MR. HARTMANN: Object. Calls for speculation. Object to form. Asked and answered.
THE INTERPRETER: The first response is no. In other words, it's not fair, but this was controlled by Mr. Yusuf. I never objected to the payments of rent. I -- I -- (shrugs shoulders). In other words, he did not object and he understood that Mr. Yusuf could -- could charge for the rent and collect the rent.
MR. HODGES: Okay.
THE INTERPRETER: This is tougher than I thought.
MR. HARTMANN: Excuse me. Could we go off the record? Could we go off the record?
A. (Speaking in Arabic.)
(Discussion held off the record.)
THE VIDEOGRAPHER: Going off the record at 2:03.
(Respite.)
THE VIDEOGRAPHER: Going back on record at 2:05.
Q. (Mr. Hodges) Mr. Hamed, did there come a time that Mr. Yusuf gave notice to you that he wanted the -- the

premises back at Plaza Extra East, or United wanted the premises back?
MR. HARTMANN: Are you going to introduce 5?
MR. HODGES: I'm considering it.
THE INTERPRETER: All right.
MR. HODGES: What did he say?
THE INTERPRETER: His response is, Get back what location? There's only one store.
Q. (Mr. Hodges) Well, there's -- there's three stores that Plaza Extra owns, isn't that correct?
THE INTERPRETER: No.
Q. (Mr. Hodges) Who owns --
THE INTERPRETER: It's -- it's only one store with a warehouse and showroom.
Q. (Mr. Hodges) So you don't claim any partnership interest in the business that's run at Plaza Extra Tutu Park, or Plaza Extra West?
THE INTERPRETER: Yeah, I'm -- I'm a partner in the three.
Q. (Mr. Hodges) Okay. So there's three stores, and my question is, isn't it true that United Corporation gave you notice that it wanted the premises back that Plaza Extra East occupies in September of 2010?
THE INTERPRETER: September 2000 --
MR. HODGES: During the month of

September 2010?

THE INTERPRETER: How can -- how can he get it back when it belongs to both of us?

A. We have partner. We don't have no (inaudible) partner.

THE INTERPRETER: Arabic.

We are both partners in it. How can he get it back?

Q. (Mr. Hodges) The premises that Plaza Extra Supermarket occupies at Plaza Extra East are owned by United Corporation.

Do you agree with that, Mr. Hamed?

THE INTERPRETER: He says, It -- it's owned both by Fathi Yusuf and Mohammad Hamed, the land and the building.

He's referring to the supermarket.

MR. HODGES: He's saying that the land and the building is owned by --

A. Plaza Extra. And it still, I'm alive, Mr. Yusuf buy it from the guy, he's a Crucian, he was senator, Puerto Rican. They buy land from the --

THE REPORTER: Do it in Arabic, please.

THE INTERPRETER: It's -- he's -- his response is confusing. I mean, I -- I can't --

Q. (Mr. Hodges) Are you confusing Plaza West with

Plaza East, Mr. Hamed?

A. Yeah, Fathi Yusuf, his own. I don't have nothing to do with the property.

MR. HODGES: Okay.

THE INTERPRETER: Okay.

Q. (Mr. Hodges) And that's why Plaza East always paid rent.

A. No.

THE INTERPRETER: I mean, he's going back to say, The land --

MR. FATHI YUSUF: Can I say one word?

MR. HODGES: NO.

MR. FATHI YUSUF: Can you identify the Sion Farm --

MR. HODGES: No, no. No, no.

THE INTERPRETER: Your lawyer. Your lawyer.

Q. (Mr. Hodges) Okay. The Plaza store that is at Sion Farm St. Croix, that is the one that is owned by Mr. Yusuf's corporation, United, isn't that correct? It's the land and the building.

A. Yeah, yeah.

THE INTERPRETER: No. He says no.

A. Yeah.

MR. DEWOOD: I thought he said yes.

THE INTERPRETER: Yes?

Okay. I heard "la," which means no.

He's saying, Yes, it is.

Q. (Mr. Hodges) Okay. So you agree with me, I just want to.

THE INTERPRETER: He says, I'm not denying what he owns. I -- I -- I -- I will never deny that. I just want my rights.

MR. HODGES: Okay.

Q. (Mr. Hodges) The rent that Plaza East or Sion Farm paid to United over the years is because United owns that property, not Plaza East, isn't that right?

THE INTERPRETER: Yes.

Q. (Mr. Hodges) Okay. Now, if -- do you know whether rent has been paid by Plaza East to United since December 31, 2012?

A. No.

THE INTERPRETER: No.

Q. (Mr. Hodges) If rent has not been paid by Plaza Extra East since December 31, 2011, would you agree that that's not right?

MR. HARTMANN: Object as to form. Object to calling for a legal conclusion.

THE INTERPRETER: If we owe it, then it should be paid.

Q. (Mr. Hodges) You would agree with me, it's not

fair to occupy somebody's property as a tenant without paying rent?

MR. HARTMANN: Object. It's calling for a legal conclusion. Object as to form.

THE INTERPRETER: I've -- I've already responded yes.

Q. (Mr. Hodges) Okay.

A. How many times do you want I repeat it?

Q. Now, you testified earlier that you were in charge of the warehouse at -- at Plaza East, right?

THE INTERPRETER: He said, I was in charge of the receiving at the warehouse.

He told me -- and I understand it to refer to Mr. Fathi Yusuf -- He told me I should control this area, guard this -- this receiving area, and I will guard the front, the office.

Q. (Mr. Hodges) Okay. And when you retired in 1996, Mr. Hamed, were -- were those responsibilities of yours turned over to your son Wally?

MR. HARTMANN: Object. Mischaracterizes previous testimony.

A. I give him power of attorney for that.

THE INTERPRETER: He says, Yes, I gave him power of attorney for that.

A. He is my place.

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, Defendants.	CIVIL No. SX-12-CV-370 ACTION FOR DAMAGES INJUNCTIVE AND DECLARATORY RELIEF JURY TRIAL DEMANDED

CERTIFIED TRANSCRIPT

The Hearing in the above-entitled action was heard before the HONORABLE DOUGLAS A. BRADY, JUDGE, in Courtroom No. 211, Kingshill, St. Croix, on Friday, January, 25th, 2013, at approximately 10:30 a.m.

SUZANNE A. OTWAY-MILLER
REGISTERED PROFESSIONAL REPORTER
SUPERIOR COURT OF THE VIRGIN ISLANDS
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I N D E X

WITNESSES

FOR THE PLAINTIFFS

A It's a 50/50 partnership to the supermarket.
Q Be specific, when you say the supermarket what are you referring to?
A When they got together to form this partnership it was to open the Plaza Extra east store.
Q So you're talking about -- This partnership you're talking between Fathi Yusuf and your father in respect to the Plaza Extra grocery store operations, correct?
A Yes, sir.
Q What were the terms of this agreement? You said it was 50/50?
A Yes.
Q What else?
A That the Plaza Extra east store will pay rent to United Corporation, the United Shopping Plaza.
Q Just so we're clear, what you're saying is the grocery store operations will pay rent to United Corporation as the landlord for the actual dirt, you know, of Plaza Extra Sion Farm?
A For the Plaza Extra east store.
Q What else were the terms?
A It's -- really those are the terms as I understand.
Q Just so we're perfectly clear, you're testimony

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

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	21,474,873.86	
Tutu Park Store:		
Paid Rent, Water, & Property Tax	263,577.53	
Paid 1.5% Overage	71,914.23	
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	541,175.61	
Rent, etc. 5-5-2004 to 12-31-2011	4,304,496.57	
Parking Lot Cleaning	126,000.00	
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	217,895,269.93	b
Portion of Sales - Area built by Plaza	43,579,053.98	
Total Paid as a % of Sales (Rented Bldg.)	= a/b	2.03331470 73%
Sion Farm Sales:		
Sion Farm Sales 5-5-2004 to 12-31-2011	273,884,222.70	
Less: R/X	-7,874,897.13	
	266,009,325.57	
Calculated Rent as a % of Sales Sion Farm	$ **5,408,806.74**	

EXHIBIT

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A

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

Item to be Paid - Description	Discount Taken	Amount Paid
Rent - Sion Farm		5,408,806.74

UNITED CORPORATION D/B/A
PLAZA EXTRA
4C & 4D ESTATE SION FARM
CHRISTIANSTED, VI 00821
(340) 778-6240 (340) 719-1870

BANCO POPULAR DE PUERTO RICO
101-057218

64866

DATE
Feb 7, 2012

AMOUNT
$ ***$5,408,806.74

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

PAY TO THE ORDER OF:
UNITED SHOPPING PLAZA
P.O. BOX 763 C'STED
ST.C ROIX, VI 00821

VOID AFTER 90 DAYS

Memo: PLAZA EXTRA /SION FARM RENT

AUTHORIZED SIGNATURE

Details on Back. Security Features Inside

⑈064866⑈ ⑆026006674⑆ 196⑈4888306⑈

DEWOOD LAW FIRM
2006 Eastern Suburb Suite 101
Christiansted, V.I. 00820
Admitted NY, NJ, MD, & VI
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:

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

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.

EXHIBIT
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B

JOEL H. HOLT, ESQ. P.C.

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

Tele. *(340) 773-8709*
Fax *(340) 773-8677*
E-mail: holtvi@aol.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.

EXHIBIT
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C

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

EXHIBIT
D

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 Fathi Yusuf

CC: Wally Hamed

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

Date: January 19, 2012

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

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

- NOTICE OF LEASE TERMINATION FOR PLAZA EXTRA – SION FARM AS OF JUNE 30TH, 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 30th, 2012. The last date for this lease is June 30th, 2012. There will be no additional extensions of tenancy to Plaza Extra – Sion 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		$ 88,172.00
	Amount Due	$8,905,371.52
August 2014 rent currently due:		$250,000.00
Total Balance due august 1, 2014		**$9,155,371.52**

Please forward a check immediately.

Sincerely,

Maher Yusuf

EXHIBIT
E

UNITED CORPORATION DBA

PLAZA EXTRA

U S VIRGIN ISLANDS

PHONE 340-719-1870 FAX: 340 719 1874

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.	**25,917,937.13**	A
Total Amount Paid to TuTu Park	495,877.27	
Parking Lot Cleaning	18,000.00	
Total Cost Of Rent & Parking	**513,877.27**	B
B/A Rent	**1.982708992%**	C
Plaza East Sales	35,931,601.41	
Pharmacy Rent 3,000 Monthly	36,000.00	
Total Sales & Rent	35,967,601.41	
Less Pharmacy Sales	(515,701.87)	
Net Sales Plaza East In 2012	**35,451,899.54**	D
Rent Due IN 2012 :		
D X C	**702,908.00**	

EXHIBIT

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F

UNITED CORPORATION Inc.

PLAZA EXTRA

U. S. VIRGIN ISLANDS

PHONE: [illegible] FAX: [illegible]

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.	25,340,632.68	A
Total Amount Paid to TuTu Park	462,673.60	
Parking Lot Cleaning	18,000.00	
Total Cost Of Rent & Parking	480,673.60	B
B/A Rent	1.896849246%	C
Plaza East Sales	34,938,818.47	
Pharmacy Rent 3,000 Monthly	36,000.00	
Total Sales & Rent	34,974,818.47	
Less Pharmacy Sales	(486,569.56)	
Net Sales Plaza East In 2013	34,488,248.91	D
Rent Due IN 2013 :		
D X C	654,190.09	

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
TOTAL DUE:	**Bay 1, 5 and 8: $6,490,026.72**		

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**

UNITED CORPORATION'S AND FATHI YUSUF'S STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendant/counterclaimant United Corporation ("United") and Fathi Yusuf ("Yusuf"), through their undersigned attorneys, respectfully submit their Statement of Undisputed Material Facts, pursuant to LRCi 56.1(a)(1).

1.

United owns the real estate (the "United Shopping Plaza"), which houses the supermarket located at Estate Sion Farm, St. Croix ("Plaza Extra-East"). See Answer of Plaintiff/Counterclaim Defendant Mohammad Hamed ("Hamed") to First Amended Counterclaim at ¶ 4.

Yusuf and Hamed agreed to carry on a supermarket business (the "Plaza Extra Stores") that eventually grew into three locations, including the first of the three stores, Plaza Extra-East, which opened at the United Shopping Plaza in April 1986. See **Exhibit 3**, declaration of Fathi Yusuf, at ¶ 1.

3.

From the outset, Plaza Extra-East has paid rent to United for the space it used at the United Shopping Plaza. Hamed testified:

> Q: ...the United Corporation is the – is the company that you've been paying rent to for many years, is that correct?
>
> A: Yes, since we started.

See **Exhibit 1,** deposition of Hamed, dated March 31, 2014, p. 86. [1] See also **Exhibit 2,** testimony of Waleed Hamed on January 25, 2013, p. 98.

4.

As Hamed acknowledged in his deposition testimony, from the beginning in 1986 he and Yusuf agreed that the annual rent for Plaza Extra-East would be calculated on a price per square foot basis. See Exhibit 1, Vol. II, p. 106. The agreed-upon rental rate was $5.55 per square foot per year, and that rate multiplied by the 33,750 square feet of space originally occupied by Plaza Extra-East came to $187,312.50 per year. See Exhibit 3 at ¶1. This was a below-market rate. Id. at ¶ 5.

5.

[1] Exhibit 1 will contain all cited pages from the transcript of Hamed's deposition on March 31, 2014 ("Vol. I") and April 1, 2014 ("Vol. II").

When Hamed and Yusuf entered their business agreement, the Plaza Extra-East store in St. Croix was under construction. They later made plans to open a second grocery store in St. Thomas (the store known as Plaza Extra-Tutu Park, which began operating in October 1993). Thereafter, they made plans to open a third grocery store in St. Croix (the store now known as Plaza Extra-West, which started operating in 2000). Allowing rent to accrue for years, rather than paying it on a monthly or even yearly basis, was very beneficial to the supermarket business because it afforded the funds required to cover the substantial capital and operating expenses that were incurred in opening and running three stores in economic conditions that were extremely challenging. See id. at ¶ 3. Yusuf was the person charged with determining when a reconciliation of accounts would be made and the rent obligation discharged.[2] See id. at ¶ 1-3.

6.

The rent that accrued at this annual rate from 1986 through December 31, 1993 was paid to United at the end of 1993 (the "first rent payment"). The first rent payment was made by way of a reconciliation of accounts, in which amounts Yusuf owed Hamed for advances taken from supermarket funds were credited against the rent payment. The end date of the period covered by

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[2]Hamed further acknowledged that Yusuf knew what is owed and Yusuf was the one who calculated the rent due based on an agreed-upon formula:

> Q. So if he [Yusuf] –if he –if he told you how much you owe, would you disagree with him?
>
> ...
>
> A. Yes, he [Yusuf] know exactly.
>
> Q. He [Yusuf] knows exactly how much is owed?
>
> A. Yeah, how much we owe him.

See Exhibit 1, Vol. I, p. 94.

the first rent payment (i.e., December 31, 1993) was reflected in a book kept in the store safe at Plaza Extra-East that was known as the "black book." Id. at ¶¶ 4, 8. After Plaza Extra-East burned down in 1992, and before it reopened in May of 1994, Yusuf agreed with Hamed, through his son Waleed, to leave the same per square foot rent rate in place for the ten years following the re-opening of the store, after which time the rent formula would be adjusted upward to something closer to a market rate. Id. at ¶ 5.

7.

In late 2002 or early 2003, Waleed Hamed, on behalf of his father, and Yusuf agreed to a change in rent formula to be implemented on May 5, 2004, the date on which they had previously agreed that the old rent formula would be replaced. Specifically, Yusuf and Waleed agreed that effective May 5, 2004, rent would be calculated as a percentage-of-sales identical in percentage terms to what Plaza Extra-Tutu Park was paying to its landlord at the Tutu Park Mall. In other words, for each year, the payments made by Plaza Extra –Tutu Park to its landlord for the year would be divided by the store's adjusted gross sales for that year to yield a figure representing that store's payments to the Tutu Park landlord as a percentage of sales for the year. That annual percentage would then be multiplied by actual sales for the corresponding year at Plaza Extra-East to determine the amount of rent owed to United. Id. at ¶ 7.

8.

In 2004, at about the time the new rent formula became effective, Yusuf and Waleed Hamed, on behalf of his father, discussed payment of the rent that had accrued at the $5.55 per square foot rate since the first rent payment. They agreed that having a reconciliation and paying the accrued rent at that time would not be possible, for two reasons. First, in October 2001, the FBI had raided the Plaza Extra Stores, taking with them substantially all of the financial and

accounting records of the Plaza Extra Stores and United. Id. at ¶ 8. Then, two years later, in September 2003, the federal government indicted United, Yusuf, two of Yusuf's sons, and two of Hamed's sons on income tax evasion charges, and the operating accounts of the Plaza Extra Stores and United were immediately frozen pursuant to a federal injunction. Consequently, until the injunction was relaxed and the stores' records returned, payment of the accrued rent was not possible. Id. Moreover, the black book, which reflected the December 31, 1993 end date of the prior period for which rent had been paid, and a comprehensive ledger book showing advances of supermarket funds to Yusuf and Hamed, had both been seized. As a result, records needed to determine the date the next rent payment began accruing (January 1, 1994), and to make a full reconciliation of the accounts of Hamed and Yusuf, was no longer in their possession. They had been seized by federal agents in the 2001 raid. The black book was not returned until years later and the ledger has still not been returned.[3] Id. at ¶ 8.

9.

In the absence of the black book, neither Waleed Hamed nor Yusuf remembered whether the first rent payment had been paid in 1992, 1993 or 1994, let alone the debits and credits between Hamed and Yusuf in the subsequent years following the year in which the rent had been paid. At an annual rate of hundreds of thousands a year, guessing the start date incorrectly by even a few months would result in a substantial underpayment or overpayment of rent. Yusuf did not want to charge either more or less than what was due, and therefore made the decision, to which Waleed Hamed (on behalf of Hamed) agreed, that the payment of rent that had accrued since the first rent

[3]In addition, it was not in Hamed's interest (or that of his sons) to do anything that would tend to show that he was in partnership with Yusuf, and the criminal defense lawyers so advised Yusuf. See Exhibit 3, ¶ 8.

payment was made would have to await the unfreezing of the bank accounts and the return of the black book. Id. at ¶ 8 and 9.

10.

By early 2012, the injunction in the criminal case has been relaxed sufficiently so that it was no longer a bar to payment of rent that had accrued since the first rent payment was made in 1993. But the federal government still had not returned the black book and the larger ledger book, which meant that full reconciliation of partnership accounts could not be made. The start date for the second rent period was not known, and neither were the amounts of advances taken by Hamed and his sons, and Yusuf and his sons. Waleed Hamed and Yusuf met in early 2012, and they agreed that rent beginning on May 5, 2004 and going forward could be determined, even without consulting the black book, because Waleed Hamed and Yusuf had previously agreed that the percentage-of-sales rent formula would become effective on that date. Yusuf and Waleed Hamed agreed that the rent for that period should be paid, even if a full reconciliation of accounts, going back to the date of the first reconciliation, could not be made. They also agreed, as they had before, that rent that had accrued from the first rent payment up to May 4, 2004 would have to be deferred until the black book was returned. Id. at ¶ 10.

11.

Using the percentage of sales formula that he and Waleed had agreed would become effective on May 5, 2004, Yusuf calculated the amount of rent due for the period May 5, 2004 to December 31, 2011 to be $5,408,806.74. He presented the rent bill to Waleed Hamed for that sum and period, and Waleed, on behalf of his father, agreed that it should be paid to United in the amount of $5,408,806.74 by means of a check signed by Waleed Hamed and by Yusuf's son, and

there is **no dispute** that it covered unpaid rent for that nearly 8-year period. Id. at ¶ 7; see also **Exhibit 3A**.

12.

The "black book" was finally retrieved about a year after the $5,408,806.74 rent payment was made, and from it Yusuf was able to determine that the first rent payment was paid through December 31, 1993, and hence that the rent for the second period began accruing on January 1, 1994. Using the annual rent calculation of $5.55 per square foot and the square footage of the rebuilt Plaza Extra-East store (69,680 square feet), Defendants (by their counsel) and after this litigation was commenced, made demand on Hamed for rent for that period, by letter dated May 17, 2013. Id. at ¶ 11; see also **Exhibit 3B**.

13.

The rent as to Bay 1 can be divided into four periods, two of which have been paid (1986-1993 and 2004-2011) and two of which remain unpaid (1994-2004 and 2012-present). See Exhibit 3 at ¶ 14 and **Exhibit 3G**, Chronology of Rents.

14.

The unpaid rent for Bay 1 (69,680 square feet) calculated since 1986 at the annual rate of $5.55 per/square foot, for the 10 years and 124 days is $3,999,679.73 for the period January 1, 1994 through May 4, 2004 (the "Past Due Rent"). See Exhibit 3 at ¶ 15.

15.

Hamed admitted in deposition that if this rent payment has not yet been made,[4] then it should be made:

---

[4]While Hamed suggested in deposition that he did not know if this rent payment had been made, but it is undisputed that it has not been made.

> Q. ...if rent has not been paid on the – the square footage basis that you agreed with Mr. Yusuf for the period between January 1, 1994 and May 4, 2004, would you agree with me that that rent should be paid to United.
>
> ...
>
> A. He says that he's not denying the rent, and that Mr. Yusuf is the one who used to, in other words, determine the – the rental rate, and he's the one who would collect the rent.[5]

See Exhibit 1, Vol. II, p. 107. Later, when asked, "[I]f rent was not paid from January 1, 1994 through May 4, 2004, would you agree that rent should be paid," Hamed responded unequivocally, saying "It should be paid." Id. at Vol. II, p. 117. When asked if rent for that period should be paid "[r]egardless of how long it took to make a demand for payment," Hamed stated that Yusuf determined when rent was collected from the partnership, and he reiterated that if the rent for that period had not been paid it should be, as he had "never objected" to its payment:

> He says, If it hasn't been paid, it should be paid. And he's never – he's never objected to it being paid. Mr. Yusuf is the one who used to decided whether to collect rent or not collect rent.

Id. at Vol. II, p. 118.

16.

Rent is due from January 1, 2012 to date at least in the amount based on the percentage-of-sales formula that was used to write the joint check for the preceding 8-year period paid on February 7, 2012. See Exhibit 3 at ¶ 7 and 17.

---

[5]An interpreter at the deposition translated Mr. Hamed's answers from Arabic to English, which is why some of Mr. Hamed's answers are prefaced with the third person expression "he says."

17.

The adjusted rent paid by Plaza Extra-Tutu Park for 2012, 2013 and 2014 to present was divided by sales of that store for each of those years to determine a percentage. That percentage was then multiplied by the Plaza Extra –East sales for each year. For 2012, the undisputed rent due is $702,908.00. Id. at ¶ 18. For 2013, the undisputed rent due is $654,190.09. Id. at ¶ 19. For the period of January 1, 2014 through August 30, 2014, the undisputed rent due is $452,366.03. Id. at ¶ 20. The total undisputed rent for Bay 1 for the period January 1, 2012 through August 30, 2014 is $1,809,464.12 (the "Current Rent"). Id; see also **Exhibit 3F** and 3G.

18.

At periodic points in time, additional space was used by Plaza Extra-East for extra storage and staging of inventory. See Exhibit 3 at ¶21.

19.

From May 1, 1994 through July 31, 2001, Plaza Extra-East occupied Bay 5 consisting of 3215 square feet. The rent due for such occupancy ("Bay 5 Rent") is calculated by multiplying the square feet actually occupied (3,125) by $12.00 by 7.25 years. The total due for Bay 5 Rent is $271,875.00. Id. at ¶ 22.

20.

From May 1, 1994 through September 30, 2002, Plaza Extra-East occupied Bay 8 consisting of 6,250 square feet. The rent due for such occupancy ("First Bay 8 Rent") is calculated by multiplying the square feet actually occupied (6,250) by $6.15 by 8 years, 5 months. The total due for First Bay 8 Rent is $323,515.63. Id. at ¶ 23.

21.

From April 1, 2008 through May 30, 2013, Plaza Extra-East occupied Bay 8 consisting of 6,250 square feet. The rent due for such occupancy ("Second Bay 8 Rent") is calculated by multiplying the square feet actually occupied (6,250) by $6.15 by 5 years, 2 months. The total due for Second Bay 8 Rent is $198,593.75. Id. at ¶ 24.

22.

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

23.

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. Id. at ¶ 26.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

Dated: August 12, 2014 By: _____

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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2014, I caused the foregoing **UNITED CORPORATION'S MOTION FOR SUMMARY JUDGMENT UPON ITS CLAIMS FOR RENT AS TO THE PLAZA EXTRA – EAST LOCATION** to be served upon the following via e-mail:

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Nizar A. DeWood

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**

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

THIS MATTER is before the Court on the Motion of defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United") for Partial Summary Judgment On Counts IV, XI, and XII Regarding Rent (the "Motion"). The Court having read the briefs of the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED that the Motion is GRANTED, as follows:

1. There is no genuine issue of material fact that United is entitled to past due rent from the acknowledged partnership between Yusuf and Mohammad Hamed ("Hamed") for the use of United's property by the Plaza Extra supermarket located at Estate Sion Farm, St. Croix, under Counts XI and XII of the counterclaim, in the amount of $6,603,122.23. Accordingly, partial summary judgment is hereby entered in favor of United in the amount of $6,603,122.23

plus prejudgment interest at nine (9%) per centum per annum, as provided at V.I. Code Ann. tit. 11, § 951(a)(4), from May 17, 2013 and from the first day of the month following any month that has not been paid with respect to all Current Rent, as described in such Brief, until the date of this Judgment. Thereafter, interest shall accrue at the judgment rate of four (4%) per cent per annum.

2. Yusuf is granted partial summary judgment as to his accounting claim (Claim IV), and the Court rules that any final distribution to the partners should occur only after the rent expense of $6,603,122.23 is deducted to determine partnership profits.

3. Hamed and Yusuf are both directed to effectuate payment to United of $6,603,122.23 from the partnership accounts in accordance with the procedures set forth in this Court's April 25, 2013 Preliminary Injunction.

4. This Order does not address and is without prejudice to United's claims for increased rent beginning January 1, 2012 and thereafter, which amounts will be addressed by the Court as part of a separate motion or by trial.

Dated: August , 2014

_____
Douglas A. Brady
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By:_____
Court Clerk Supervisor
R:\DOCS\6254\1\DRFTPLDG\1577801.DOCX

EXHIBIT 4

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

SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Supplemental Responses to Hamed's Discovery as follows:

1. Interrogatory No 3 – Relating to H-1, Dorthea Condo

Dorthea Condo transaction. Mr. Yusuf confirms the following:

1. I was to receive the proceeds under the sales contract for the sale of the Dorthea Condo.
2. The full amount of $1.5 million for the sale was received.
3. I am currently in possession of $1,350,000 of the total amount of those proceeds in the form of another asset. The remaining $150,000, I directed the purchaser to pay directly to the Batch Plant to make up for what Hamed had received 10 years earlier but had failed to deliver to the Batch Plant. Attached is the document that reflects that payment (FY015136). The breakdown is: $750,000 for Yusuf (1/2 of the $1,500,000) and $600,000 for Hamed (total due $750,000 (his ½ of the 1,500,000) minus $150,000 paid to the Batch Plant from Hamed's portion).
4. I believe that I provided the handwritten "Dorothia" document to Willy but I do not recall when.
5. It is my belief that the principle payments were received prior to 2006. However, I cannot say this for sure.

2. Interrogatory No. 29 and Requests for Production of Documents No.s 21 and 34 – Relating to Y-2 and 4 relating to rent for Bays 5 and 8

Yusuf and United provide the following supplemental response to Interrogatory #29 and Requests for Production of Documents #21 and #34:

United has made a claim for past due rent for Bays 5 and 8 which were leased by Plaza Extra East at various points in time and utilized as extra storage. Yusuf set forth in his Declaration dated August 12, 2014 the square footage of each Bay, the period of the rental and the price per square foot. Again, Yusuf incorporates his August 12, 2014 Declaration together with the attached Chart as responsive to Interrogatory #29. In addition, attached is a floor plan of the United Shopping Center reflecting the location of Plaza Extra East and the other commercial/retail storefronts referred to as Bays (FY015135).

A. Bay 5 – Period May 1, 1994 through July 31, 2001

Bay 5 is close to the entrance of Plaza Extra East and is one of the most desirable storefronts in the United Shopping Center given its location and visibility. From 1987 to the time of the fire in 1992, Bay 5 was rented to a pharmacy. There is no copy of the lease for this period as it was destroyed in the fire. During this 1987-1992 timeframe, Plaza Extra East was utilizing a series of trailers as warehouse space to provide additional storage for inventory. There were eight trailers, four on the bottom and four on top. However, this storage system of trailers was very cumbersome and inefficient to access and effectively utilize. As Plaza Extra East was being rebuilt and then reopening, it needed additional space for storage which was easier to access.

As described more fully below, Plaza Extra East began utilizing Bay 8 for storage upon reopening in May, 1994. However, additional space was still needed. Mike Yusuf and Waleed Hamed broke through a cement block wall between Bay 4 and 5 to utilize the space in Bay 5 for sodas. They made an opening big enough for the forklift to go through. Their efforts demonstrate knowledge by Hamed that the space was being used. The space was utilized by Plaza Extra East from May 1, 1994 through July 31, 2001 for storage and primarily for the storage of sodas. Mr. Yusuf was not happy to discover that this particular Bay was needed for storage space because he would have preferred the space to be used as a retail store. In a conversation with Waleed Hamed, Mr. Yusuf explained that he would prefer to use the space to lease to retail but that if Plaza Extra East was going to use it for storage and needed the space, then it would have to pay rent, to which Waleed Hamed responded that he agreed. As Yusuf was in charge of setting the price and collecting the rent, he set the price at the same amount as other commercial tenants for that space. As with the rent for Bay 1, United allowed the rent to accrue so as to provide the partnership with greater liquidity. Waleed Hamed agreed to this arrangement.

At some point in the first half of 2001, Mr. Yusuf explained that Plaza Extra East cannot keep using Bay 5 for warehouse space as it is better utilized as retail space. It was helpful to the partnership to have other retail stores in the United Shopping Center which drives more customers to the area and then into Plaza Extra East. However, using such visible space for storage did not help increase the traffic to the center and by extension to Plaza Extra East. As Bay 5 is a highly visible space, the better use of the space was for retail. Beginning on September 1, 2001, United leased Bay 5 to a retail tenant operating as "Diamond Girl." A copy of the lease is attached to demonstrate the end of the period that Plaza Extra East was utilizing Bay 5. (Bates FY015138-75). The lease with Diamond Girl was for ten years. In December 2011, Diamond Girl entered into another lease with United and expanded their space to use Bay 4 in addition to Bay 5. A copy of that lease is also attached. (Bates FY015176-211). These leases reflect the price charged for the space and the ending time period of Plaza East's occupancy of Bay 5. There is no written lease for Plaza Extra East's use of the Bays 5 or 8, just as there was no written lease for the use of space to house the Plaza Extra East store. Waleed Hamed agreed to this arrangement. The total amount due for the period of rent for Bay 5 is as set forth in Yusuf's August 12, 2014 Declaration for $271,875.00.

B. Bay 8 – May 1, 1994 through September 30, 2002 ("First Bay 8 Rent")

Bay 8 is located in the corner of the shopping center and is a double bay. It is a less desirable location as a retail store given the limited storefront and lack of visibility being in the corner of the center.

From 1987 to the time of the fire in 1992, Bay 8 was rented to Ali's Hardware. Ultimately, United had to evict Ali Hardware at some point prior to the fire. Mike Yusuf recalls the scenario where the renter threw the keys to Mike as they were rebuilding the store after he had been evicted. The eviction was handled by Carl Beckstedt. Attached is an unsigned "Satisfaction of Judgment" reflecting the action brought against Ali Hardware for the collection of back rent demonstrating the date the suit was filed as 1993. (Bates FY01537). As described above, the storage system of stacked trailers used by Plaza Extra East at this time was inefficient. As Plaza Extra East was being rebuilt, it needed the additional space for storage.

Following the fire, Plaza Extra East reopened in May 1994 and began utilizing Bay 8 for additional storage. Given its less desirable location as a retail store, its large size and easy access to the back of the bay with a roll-down door, it was suitable and more feasible to use as a warehouse. Bay 8 was occupied by Plaza Extra East from May 1, 1994 through September 30, 2002. As the space had previously been rented to a third party but was now being utilized by Plaza Extra East, Mr. Yusuf discussed with Waleed Hamed that Plaza Extra East would need to pay rent for the use of this additional space and he agreed. As with the rent for Bay 1, United allowed the rent to accrue so as to provide the partnership with greater liquidity. Waleed Hamed agreed to this arrangement.

From October 1, 2002 to April 1, 2008, the space was then rented to an entity called Riverdale which is a food wholesaler who was not interested in utilizing the space as retail operation. A copy of the lease for Bay 8 is attached to reflect when the First Bay 8 Rent period ended and the amount charged for this space. (Bates FY015212-247). The total amount due to United for the First Bay 8 Rent is as set forth in Yusuf's August 12, 2014 Declaration for $323,515.63.

C. April 1, 2008 through May 30, 2013 ("Second Bay 8 Rent")

When the lease with Riverdale ended, Plaza Extra East began using the space for storage. As with the earlier period of use and the use of Bay 5, Yusuf discussed with Waleed Hamed that Plaza Extra East would pay rent on the same terms as before and Waleed Hamed Agreed. The total amount due to United for the Second Bay 8 Rent is as set forth in Yusuf's August 12, 2014 Declaration for $198,593.44. As before, United allowed the rent for this period to accrue rather than demanding payment so as to allow the partnership greater liquidity.

After May 30, 2013, United again rented Bay 8 to Riverdale or a relative of the individual who rented as Riverdale from that point forward.

There are no written leases between Plaza Extra East and United as to renting Bay 5 and Bay 8. At the time, the stores were all operating as United. However, as described above Mr. Yusuf discussed the matter with Waleed Hamed and he agreed to pay rent for the space utilized. Collection of the rent was deferred for Bays 5 and 8, just as it was deferred for the Plaza Extra East Store. *See* Yusuf Declaration of August 12, 2014, ¶8.

As to the period after this lawsuit was filed, United shows that Plaza Extra East continued to occupy the space until it was rented to the tenant associated with Riverdale. Mr. Yusuf considered the partial rent payments made by the partnership as to Bay 1 as a partial payment of the total rent debt due which included the rent for Bays 5 and 8. When Plaza Extra East was using either Bay 5 or 8, their use and occupancy was continuous during that period of time.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January 15, 2019

By: s/Charlotte K. Perrell
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Attorneys for Fathi Yusuf and United Corporation

VERIFICATION

I hereby certify under penalty of perjury that the facts contained in each of the foregoing responses to interrogatories are true and correct to the best of my knowledge, information and belief.

Dated: Jan. 15th, 2019

Fathi Yusuf
Attesting Individual

TERRITORY OF THE UNITED STATES VIRGIN ISLANDS

DISTRICT OF ST. CROIX) ss.

On this, the 15 day of January, 2019, before me, the undersigned officer, personally appeared the signor known to me (or satisfactorily proven to be) the person whose name is subscribed to the within document and acknowledged that he/she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NP-X9-17
Notary Public
Exp. 06/16/2021

EXHIBIT 5

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

WALEED HAMED, as the Executor of the Estate of MOHAMMAD HAMED, Plaintiff/Counterclaim Deft., vs. FATHI YUSUF and UNITED CORPORATION, Defendants/Counterclaimants, vs. WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC., Counterclaim Defendants.	Case No. SX-2012-CV-370
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, vs. UNITED CORPORATION, Defendant.	Consolidated with Case No. SX-2014-CV-287
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, vs. FATHI YUSUF, Defendant.	Consolidated with Case No. SX-2014-CV-278

VIDEOTAPED ORAL DEPOSITION OF
WALEED "WALLY" HAMED

THE VIDEOTAPED ORAL DEPOSITION OF WALEED "WALLY" HAMED

was taken on the 21st day of January, 2019, at the Offices of Joel H. Holt, 2132 Company Street, Downstairs Conference Room, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 9:10 a.m. and 11:15 a.m., pursuant to Notice and Federal Rules of Civil Procedure.

_____

Reported by:

Susan C. Nissman RPR-RMR
Registered Merit Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix
U.S. Virgin Islands 00820
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address is the rent due to United for Bays 5 and 8.

In a declaration that you have provided previously, you indicated that it was your understanding that Bays 5 and 8 were to be provided by United to the partnership rent-free; is that correct?

A. That's correct.

Q. Okay. And you had no communications with Mr. Yusuf in this regard; is that correct?

A. That's correct.

Q. Okay. So it is your belief that it was rent-free, despite not having any conversations with Mr. Yusuf about that?

A. That is correct.

Q. Okay. Isn't it true that United utilized the space at Bay 5 and 8 at points in time from 1994 through 2012?

A. Yes, they did.

Q. Okay. Just so that we're all clear, let me hand you what's been marked as Exhibit 1.

(Deposition Exhibit No. 1 was marked for identification.)

Exhibit 1 is, in essence, a site plan of the United Shopping Center.

Is that what it appears to be to you?

A. Yes.

Q. All right. Just so that we're clear for the record, if you could indicate via circle where Bay 5 is located with the pen?

A. (Witness complies.) Do you want an X or do you want a mark or just --

Q. Just circle.

A. -- circle?

Q. Yeah. Okay.

A. Oops, did I mark 6? I did mark 6, yeah.

Q. All right. So let's go back.

A. Yeah.

Q. Okay. Put an arrow to the one that's Bay 5.

A. (Witness complies.)

Q. All right. Can you also mark where Bay 8 is located?

A. Yes.

Q. Okay. Put an arrow next to where Bay 8 is located. All right.

A. (Witness complies.)

Q. So with regard to Bays 5 and 8, do you recall a scenario in which after the store reopened following the fire, that you and Mike broke through the wall between Plaza Extra Supermarket and Bay 5?

A. Yes.

Q. Okay. And do you recall that that happened in the

May or spring of 2004?

A. I'm not quite sure what year it was, but it was done.

Q. Okay. Do you recall whether it was in the period of time in the mid-'90s?

A. Possibly, yeah.

Q. Okay. And if Mike Yusuf were to testify that it was in the spring of 1994, you cannot dispute that, correct?

A. I can't say for sure, but I guess what he says, he says. I don't recall exactly what year or what date or what month.

Q. Okay. You do recall breaking through the wall, however, and then utilizing it for storage space, correct?

A. Yes.

Q. Okay. And wasn't it primarily used for the storage of sodas?

A. Among other things. There was different things that we used it for.

Q. All right. And the space that you broke through was large enough for a -- what is the thing that goes through?

MR. HARTMANN: Forklift.

Q. **(Ms. Perrell)** -- forklift to go through?

A. Yes.

Q. All right. And you never had a discussion with

Mr. Yusuf about breaking the wall; isn't that correct?

A. I'm not too sure if that's quite clear, but maybe at one time or another. I mean, it's been so long, I don't really recall if we did or we didn't.

Q. Okay. Do you recall Mr. Yusuf being upset that the wall had been broken through?

A. Don't recall that.

Q. Okay. But you wouldn't dispute it if Mr. Yusuf said that he was upset and he discussed it with you?

A. Well, if he said so. I don't really recall that.

Q. Okay. All right. So you're not disputing that Plaza Extra used the store -- I'm sorry, used Bay 5 for storage at various points in time since 1994, correct?

A. Correct.

Q. All right. And did you keep any record as to when Plaza Extra used the store for storage?

A. No.

Q. All right. Would you agree with me that Plaza Extra had unfettered access to Bay 5 at any time that it needed?

A. I would say so, yes.

Q. Okay. And was there a period of time that you recall when Bay 5 was rented to another third party?

A. At one time, we did.

Q. Okay. All right. When -- when you say that it

Q. And so based on all of that, is it your belief that there was any cash payments for rent for the use of space by Plaza Extra East to United from 1994 to the time of the split?

A. I think everything was -- from 1994, that was paid by check.

Q. Okay.

A. Okay.

(Respite.)

Q. Let me ask you about the storage space at Plaza Extra East before the reopening.

Would you agree with me that before the reopening in May of 1994, that the storage system that was utilized by Plaza Extra East was a series of containers stacked upon each other in the back of the shopping center?

A. That's correct.

Q. Okay. As I understand it, there were four containers on the bottom, four on the top, and that was primarily used for the storage?

A. Yes.

Q. Okay. Would you agree with me also that that particular system of storage was a bit cumbersome?

A. Yes.

Q. Okay. Would you also agree with me that oftentimes when the stores were all three operating

Q. Okay.

A. And whenever there was a tenant or anything, we would definitely just give it up.

Q. Okay.

A. Move our merchandise out of there.

Q. I understand when there was a tenant. But when there was not a tenant, you used it that period of time when you were -- when there was not a tenant, correct?

A. Yes.

Q. Okay. All right. With regard to the check, Exhibit 5, it simply says "PLAZA EXTRA (SION FARM) RENT" in the memo, correct?

A. Correct.

Q. Okay. And my questions to you previously were you recall -- let me back up a little bit.

You recall that Mr. Yusuf had made a motion to receive rent for Bay 5 and 8, as well as for Bay 1, for the period 1991 through 1994. Do you recall that?

A. Yes.

Q. Okay. And do you recall that the judge issued an order relating to Bay 1, stating that Bay 1 rent is due from 1994 through 2004?

A. If that's what it states, yes, we did pay rent for that, because there was an order in place, yes.

Q. Okay. So this rent check did not cover all of the

rent for the space utilized by Plaza Extra from 1994 through 2012, it only covered a portion, correct?

A. Only covered a portion -- yeah, portion of the years, yes.

MS. PERRELL: Okay. All right. All right. I got no more questions. All right.

MR. HARTMANN: Okay. One final recross.

MS. PERRELL: Okay. First of all, recross? This would be redirect, okay?

MR. HARTMANN: Whose?

MS. PERRELL: This would be redirect, not recross.

MR. HARTMANN: You're the -- taking the direct.

MS. PERRELL: I know, but you also are sitting here. He's your witness.

MR. HARTMANN: I'm cross-examining him on your --

MS. PERRELL: Okay. However you want to call it, but it really should be redirect for you. I'm cross-examining him as a witness.

MR. HARTMANN: No, he's your witness. That's the direct. You're directly examining a witness.

MS. PERRELL: Go ahead.

MR. HARTMANN: And I'm crossing your direct

Exhibit 6

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 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

DECLARATION OF MAHER "MIKE" YUSUF

I, Maher "Mike" Yusuf, pursuant to 28 U.S.C. § 1746, and V.I.R. Civ. P. 84, declare under the penalties of perjury, that the following is true and correct:

1. I am over the age of 21. I make the following statements based upon my personal knowledge. I am the President of United Corporation and an all times relative to the issues in this case have been the President of United. I also worked co-managing the Plaza Extra-East Store with Waleed Hamed in 1994 and regularly was involved with the operations of the Plaza East-Store over the years.

2. In 1994, Waleed Hamed and I were working together at the Plaza Extra East location upon reopening of the store following the fire. We needed additional space for the storage primarily of sodas. The storage space behind the store consisted of a series of containers that we were using but they were cumbersome to utilize given the size and the stacking. At that time, Bay 5 was vacant and not being rented to any third-party tenant. Waleed and I broke through the cinderblock wall between Bay 1 and Bay 5 making an opening large enough for us to drive the forklifts through. We did this so as to have easier access and use of Bay 5 for storage of the grocery store inventory. We primarily used the space for the storage of sodas on pallets. We also used it as additional storage space for other goods. The inventory was stacked high.

3. Unfortunately, the use of the space in Bay 5 damaged not only the wall entrance area that we broke through but also damaged many of the tiles on the floor and made it difficult to show or market the space for retail use. I recall that my father was frustrated and angry with our use of that space but understood that the space was needed for storage given the limited storage behind the building.

4. The Plaza Extra East store was also utilizing Bay 8 for storage. It was a larger bay, located in the corner of United Shopping Center and had a roll-down door in the back of the bay making it much easier to access and use to store inventory.

5. During the timeframes that Plaza Extra East used Space 5 as well as Bay 8 for storage, the use was continuous. There was always inventory in the space during the periods of

utilization which included months and years on end. The only times that the space was not utilized by Plaza Extra East was when it was rented to a third-party tenant.

6. The Hamed's position that Plaza Extra East used Bay 5 and Bay 8 "off and on" as in not continuous or not daily is not accurate. During the periods when Plaza Extra East was utilizing the space in Bays 5 and 8, it utilized it continuously. There were not any days in which there was nothing stored in those areas. When a third-party tenant would rent the space, we would obviously have to remove all of Plaza Extra East's inventory at that time. But these were not daily or monthly occurrences. Rather, those were long-term leases for which we had significant advance notice before the third-party tenant would be moving in. Therefore, any characterization that the use of the space was in and out or not continuous during those timeframes is inaccurate. We used the Bays for the three (3) the different blocks of time that were for multiple years. When we used it during these blocks of time for years, we used it continuously. The blocks of time of our use were when the bays were not otherwise rented to third-party tenants.

Dated: February 25, 2019

Maher "Mike" Yusuf

Exhibit 7

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

WALEED HAMED, as the Executor of the Estate of MOHAMMAD HAMED, Plaintiff/Counterclaim Deft., vs. FATHI YUSUF and UNITED CORPORATION, Defendants/Counterclaimants, vs. WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC., Counterclaim Defendants.	Case No. SX-2012-CV-370
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, vs. UNITED CORPORATION, Defendant.	Consolidated with Case No. SX-2014-CV-287
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, vs. FATHI YUSUF, Defendant.	Consolidated with Case No. SX-2014-CV-278

VIDEOTAPED ORAL DEPOSITION OF
FATHI YUSUF

THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF

was taken on the 21st day of January, 2019, at the Offices of Joel H. Holt, 2132 Company Street, Downstairs Conference Room, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 12:22 p.m. and 2:41 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

_____

Reported by:

Susan C. Nissman RPR-RMR
Registered Merit Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8161

A. That is impossible. What date is that? What is the date here?

Q. 8-22-01.

A. '01?

Q. '01.

A. What is that, '01?

MS. PERRELL: You have to -- you have to answer.

Q. **(Mr. Hartmann)** August 2001.

A. No way.

Q. So this is wrong?

A. The store was using it. The store was using that warehouse.

Look, when we open in 1994, I was in St. Thomas. I came and I was surprised to see my building tearing apart, and I get angry, because I am the owner of that building. But Wally was smart enough, each time he do something he knows I don't like, he used to put my son with him. I say, Mike, you know about this? He say, Yes, Daddy, we need it and so. I say, Wally, you have to pay rent for this. He said, I will pay rent.

Because, sir, you's a lawyer and I respect your profession. You need to respect my profession. When we order trailers -- one time we order 17 container in one item when the price is right. That's why the warehouse is

time is 2:07.

Q. **(Mr. Hartmann)** Okay. You said that in addition to Plaza Extra, you had other tenants in there, Mr. Yusuf, in Bay 5?

A. I -- I had before, I think it was the pharmacy. And we catch fire. After the fire, it was vacant. And we build the store in 1994. We reopen it and they tear up the wall. This is adjacent to Plaza Extra. He tear up 25 feet of that wall completely.

Q. I understand. The question is, are there other tenants?

A. Excuse me. No, no, no, wait a minute.

After Plaza Extra, there is no tenant whatsoever took that place, except the people, the Diamond Girl, and they were paying $12. That's why I base my rent based on Diamond Girl rent.

Q. Okay. So there was another tenant, Diamond?

A. It was the pharmacy.

Q. Okay.

A. Part of the pharmacy, which is why -- I mean, I think it burned down, the pharmacy, or -- or close down?

Q. That's all right.

A. Close down. Okay.

Q. She can't answer. You told her not to answer.

A. No, I don't remember. No, I'm talking to my son,

A. He say, Yes.

Q. Okay.

A. That's a rental.

Q. Okay. So at that point, you were permitting Plaza Extra to use Bay 5, correct?

A. Yeah, I did. They put me in position I had no choice.

Q. Okay. All right. And the same would go for Bay 8?

A. Bay 8 is also the store needs it.

Q. Okay.

A. But it does not needed a free ride.

Q. Okay. All right.

A. The man stays there years.

Q. Right.

A. You don't put somebody years free.

Q. Right.

A. And I know -- I know how much the store is making money.

Q. Okay. And so it's your testimony that your -- you discussed it with Wally and you never had any intention for them to be able to use Bay 5 and 8 for free when they were using it?

A. Never.

Q. Okay. And do you know whether they were using

it -- during the periods that we have articulated, do you know whether they were using it continuously?

A. Definitely.

Q. Okay.

A. I hear the conversation few minutes ago, he say in and out. I want this gentleman to know that location is not a hotel to be in and out, it's a warehouse.

Q. Okay.

A. There's no in and out for -- in a warehouse.

Q. All right. With regard to Plaza Extra utilizing Bays 5 and 8, just to understand, you charged them the rent that you ultimately ended up charging the tenants who came in; is that right?

A. Yes.

Q. Okay. And in your mind, is that the clearest determination as to the fair market value of that space?

A. Yes, plus this is right almost next door to the Plaza Extra East. Plaza Extra East receive about 4,000 customers, shopping customers, daily.

Q. Okay.

A. Definitely. Ali Hardware was in the corner. Half of it is blocked and the other -- only the customer can see the other half, that's why it's six fifteen.

Q. Okay. That's why that rent is cheaper?

A. Oh, yes.

Exhibit 8

LEASE CONTRACT

For Bay No.: Five (5)

United Shopping Plaza

4–C & D Sion Farm

PO Box #763

Christiansted, VI 00820

Tenants: David Zahriyeh

and

Mazen Awadallah

Date: September 3, 2001

Exp 2011

FY015138

TABLE OF CONTENTS

THIS LEASE, ENTERED INTO BY AND BETWEEN:

LANDLORD: UNITED CORPORATION hereinafter also referred to as "Landlord"), a corporation organized and existing under the laws of the Government of the Virgin Islands, with principal offices at United Shopping Plaza, Plots 4C and 4D, Estate Sion Farm, Christiansted, St. Croix, United States Virgin Islands, herein represented by its PRESIDENT, MAHER YUSUF, who represents that he is duly authorized to execute and deliver this contract in the name and behalf of Landlord by appropriate authority granted by its Board of Directors, which authority, or the ratification thereof, he shall establish and exhibit whenever and wherever necessary.

AND TENANT:

David Zahriyeh

5727 SW 117th Ave

Ft Lauderdale, FL 33330

And Mazen Awadallah

1040 SW 10th Ave Bay 4

Pompano Beach FL 33069

(Hereinafter also referred to as "Tenant")

1. UNITED SHOPPING PLAZA:

Landlord has legal title to Plots 4C and 4D, Estate Sion Farm, Christiansted, St. Croix, U.S. Virgin Islands and the improvements thereon, hereinafter defined as the "United Shopping Plaza."

2. LEASED PREMISES:

Landlord agrees to lease to Tenant the facility in the Shopping Plaza identified in Exhibit A as Bay #5 (the Leased Premises), which said Leased Premises, together with all rights, improvements, appurtenances, easements and privileges attached thereto (including but not limited to the use in common with other tenants of the Shopping Plaza of the Common Areas, to be hereinafter defined) are defined as the "Leased Premises." The Leased Premises, as shown in Exhibit A will have on the ground floor dimensions of approximately 3,125 sq. ft. The Leased Premises include the exterior unfinished walls of the Leased Premises as well as the doors and glass windows. The Leased Premises also include one-half of the width of any common walls.

3. TITLE:

Landlord covenants that

a. it has the right to make this lease;

b. the United Shopping Plaza is and shall continue to be, during the term of this lease, free and clear of all liens, encumbrances and restrictions that may affect Tenant's quiet enjoyment of the Leased Premises; and

c. the United Shopping Plaza is duly zoned by the Government of the Virgin Islands for use as a shopping center.

4. LEASE :

The parties hereto state that they have agreed to enter into a lease contract with respect to the Leased Premises hereinabove described, accordingly, Landlord does hereby LEASE to Tenant, and Tenant LEASES from Landlord the Leased Premises with all rights, uses, servitudes, improvements appurtenances, easements and privileges belonging thereto, including, but not limited to, the non-exclusive right to use the Common Areas defined herein.

5. LANDLORD'S RESERVATION:

Landlord has reserved the right to place in the Leased Premises (in such manner to reduce to a minimum the interference with Tenant's use of the Demised Premises) utility lines, pipes, and the like, to serve premises other than the Leased Premises, and to replace and maintain or repair such utility lines, pipes and the like in, over and upon the Leased Premises as may have been installed in the building, including, but not limited to, those that may have been initially installed in the Leased Premises by Landlord. It is understood that upon Landlord making any maintenance work as provided by this Article Landlord will restore Leased Premises to the condition that Leased Premises were in prior to such work.

6. TERM OF LEASE:

The Term of this lease shall be for a period of Ten (10) calendar years commencing on September 1 ,2001.

7. TENANT'S ACCESS PRIOR TO COMMENCEMENT OF TERM:

Tenant, prior to the commencement of the term may, at its own risk and expense and without any liability to Landlord, install fixtures and other equipment in the Leased Premises and do other work; provided, however, that such activities of Tenant shall not interfere with any work performed by Landlord and further provided that the Leased Premises is are not otherwise occupied by a tenant under a lease in existence on or before the date this lease is executed.

8. INSPECTION BY TENANT:

The Tenant acknowledges that it has inspected the Leased Premises and accepts same on an "AS IS–WHERE IS" basis. Tenant acknowledges that it has sole responsibility to obtain any permits or certificates necessary to permit it to occupy the Leased Premises or otherwise open for business. If Tenant disputes the square footage of the Leased Premises, the amount set forth in this lease shall govern, irrespective of the actual square footage.

9. OPENING FOR BUSINESS:

Tenant, at its own cost and expense, shall equip its premises with trade fixtures and all personal property necessary or proper for the operation of Tenant's business, and shall open for business not later than sixty (60) days after the date when the Leased Premises have been made available for Tenant's occupancy.

Landlord, at its expense shall replace the ceiling tiles in the store area and repair hangers as necessary, clean the tile floor, repair the party wall between the premises and Plaza extra warehouse and also provide air-conditioning in the premises. Tenant shall repay Landlord for these expenses with 1/24 added to each monthly rent for 24 months.

10. RENT:

Tenant agrees to pay Rent to Landlord, without any prior demand and without any setoff or deduction whatsoever at the address of landlord or at such places as Landlord may direct in writing, at the following rates and times:

The Annual Rent for the Leased Premises shall be $ 31,250.00 [per year], payable in equal monthly installments of $ 2604.00 per calendar month, and proportionately at such rate for any partial month, such monthly installments to be paid in advance on the first day of each and every calendar month during the term hereof. Landlord will allow three months of free rent starting at the signing of the Lease and paying the Security Deposit or the date the Premises is opened for business, whichever is earliest.

11. PAYMENTS.

Tenant is responsible for the delivery of all payments due under this lease on the date due. Failure to make such payment within 30 days shall result in Landlord charging interest due on all unpaid sums at a rate of 1-1/2% per month. If Tenant shall fail to pay in full all payments due herein within 30 days of the date due, the Tenant shall be in default under this Lease. If the interest rate set forth herein is deemed to be usurious or otherwise against public policy, the interest rate shall be the maximum amount permitted by law or public policy. Interest shall accrue at the prevailing legal interest rate from and after the due date of any and all payments required under this Lease, including but without limitation, fixed minimum rent, percentage rents, additional rents described in this Lease.

Tenant agrees that it may not set-off against payments due hereunder any disputed payments or other charges it claims are due to it from Landlord.

12. DEFAULTS:

If default should be made in any of Tenant's obligations under this Lease and such default is not cured within thirty (30) days after written notice by Landlord to Tenant thereof (or if said default cannot be cured with thirty (30) days,) then, if Tenant does not commence within said thirty day period to attempt to cure said default and thereafter proceed with due diligence with the curing of the same, Tenant shall be in default under this Lease.

13. LANDLORD'S ADDITIONAL REMEDIES FOR DEFAULT:

Landlord may, at its option, terminate this Lease upon five (5) business days written notice to Tenant (if said default is not cured within such five-day period), and Landlord may reenter the Leased Premises as its own estate, and/or Landlord may relet the Leased Premises in whole or in part, and alter, change or subdivide the same as in Landlord's reasonable judgment may accomplish the best results at such rental reasonably approximating a fair market rental and upon such terms and for such length of time, whether less or greater than the unexpired portion of the Term of this Lease as Landlord may reasonably elect. Notwithstanding any such termination of this Lease, Tenant shall be liable unto landlord for any deficiency between Rent provided hereunder and the rentals collected by Landlord for the period of said reletting and/or vacancy, not exceeding the balance of the Term after deducting therefrom the reasonable cost of such reletting, induding reasonable costs for brokerage fees, attorneys fees, and reasonable cost of restoration of the Leased Premises to make them suitable for reletting. Landlord may monthly, or at such greater intervals as it may see fit, institute action to exact payment of said deficiency.

Should Landlord not initially terminate this Lease upon default, Landlord may nevertheless terminate this Lease at any time thereafter, provided the default is still continuing.

In the event of termination of this Lease, Landlord shall be immediately be entitled to recover from Tenant, the worth at the time of any such termination of the excess, if any, of an amount equivalent to Rent and Additional Rent for the balance of the Lease Term over the reasonable rental value of the Leased Premises for said period, both such amounts being discounted to their then present value at the rate of eight percent (8%) per annum.

In any action to exercise its rights and remedies hereunder, Landlord, if successful on the merits of such action, shall be entitled to recover its reasonable attorneys fees incurred in connection with such exercise.

14. COMMON AREAS:

The Common Areas of the Shopping Plaza are those areas designated on Exhibit A up to, but not including, doors or glass windows. Landlord agrees that Tenant may during the term hereof, with others, have the non-exclusive right to use the Common Areas, subject to the rules and regulations established herein and as established from time to time by the Landlord.

As part of the Common Areas, Landlord agrees to provide automobile parking facilities for the use of Tenant's customers, invitees and employees, doing business in the Shopping Plaza. Landlord will provide a minimum of 150 parking spaces for the entire United Shopping Plaza on a first come-first served basis, subject to the restrictions on Tenant's employee parking and Tenant's vehicle set forth below:

a. Vehicles owned by Tenant's employees and other vehicles owned or leased by Tenant or used by Tenant shall be

parked only in such areas as Landlord may from time to time designate. Such designated parking areas may be outside the United Shopping Plaza but shall be within a reasonable distance from the Leased Premises.

b. The following Rules and Regulations shall apply in all areas designated for use by customers at the United Shopping Plaza:

c. Neither Tenant, nor its employees, agents, or contractors shall cross-line park;

d. Car washing is not permitted; Neither Tenant nor its employees, agents, or contractors shall permit their vehicles to be washed in customer parking areas. Tenant shall not permit water from the Leased Premises to be used for car washing.

e. No trailers, "semi's" or storage vans are permitted.

f. No trucks with a cargo capacity of greater than 1/2 ton are permitted.

g. No heavy equipment such as backhoes or bulldozers are permitted.

h. No Tenant may park more than two pick-up trucks or one van in the parking lot at the same time from 6:00 PM. to 10:00 p.m.

i. Tenant is responsible for ensuring that its employees, agents and contractors comply with these rules and regulations and any other rules and regulations promulgated by Landlord.

j. Tenant shall be penalized $100 for each violation of these rules and regulations and any other rules and regulations promulgated by Landlord. Landlord shall have sole discretion to determine whether a Tenant is in violation. If Tenant's fines exceed $300 in any calendar year, then Landlord shall have the right to terminate this Lease. Fines must be paid with the rent payment that is due immediately following the assessment of the fine. Unpaid fines shall be treated as unpaid rent and all provisions in this Lease regarding unpaid rent shall apply equally to unpaid fines.

k. Tenant expressly recognizes that the above rules and regulations and penalties are promulgated for the benefit of all tenants and the Landlord to maintain the United Shopping Plaza as an attractive and convenient shopping

center. Tenant expressly agrees that it will be subject to the rules and regulations and penalties as consideration for Landlord's agreement to enter into this Lease.

l. Landlord has the right, but not the obligation, to enforce the parking regulation herein.

15. COMMON AREA MAINTENANCE

Landlord shall keep the Common Areas in good order and condition at its expense. Landlord shall make all decisions relating to maintenance at its sole discretion. Landlord shall not be obliged to repair such damages as may be caused by any act or negligence of any Tenant, its employees, agents, licensees or contractors. Landlord shall not be responsible to make any other improvements or repairs of any kind upon the Leased Premises. This paragraph is not intended to refer to damage by fire or other casualty to the Leased Premises which provision is hereinafter made. The Tenant shall make all necessary repairs to the interior of the premises. Tenant shall maintain the Leased Premises at its own expense.

Tenant agrees that if it is dissatisfied with Landlord's maintenance of the Common Areas, Tenant's sole remedy shall be an action for specific performance in the Territorial Court of the Virgin Islands. Tenant further agrees that Landlord shall only be liable for specific performance if the court determines that Landlord abused its discretion with respect to decisions regarding maintenance and such a determination is reduced to a final judgment.

16. UTILITIES:

Tenant shall pay for all of its requirements for utilities such as gas, steam, water*, power and electricity. Landlord shall furnish the Leased Premises with sufficient electric, water and sewer lines, all of them of the capacity initially required by Tenant, and connected to an adequate source of supply or disposal. Any changes in capacity shall be made at Tenant's expense. Landlord is not required to furnish the actual utilities and Tenant shall pay all connection/services charges for utilities.

*Landlord will supply well water, when available at a rate not exceeding the rate charged by the Water and Power Authority and such shall be metered on the Leased Premises. If well water is not available, Landlord will connect the water system to the government potable water system. Landlord expressly disclaims all warranties regarding the quality of the well water or its fitness for any purpose. If supplying said well water subjects Landlord to regulation by the Public Utility Commission, Landlord shall have no obligation to provide the well water.

Landlord may provide cistern water when available, without charge, solely for consumption on the premises but shall have no obligation to do so. Landlord expressly disclaims all warranties regarding the quality of the cistern water or its fitness for any purpose.

17. USE OF PREMISES:

It is understood, and Tenant so agrees, that the Leased Premises, during the term hereto, shall be used and occupied by Tenant only for the operation of a Beauty Supply store only. Tenant further agrees to conform to the following provisions during the entire term of this Lease.

a. Tenant shall always conduct its operations in the Leased Premises under its present trade name unless Landlord shall otherwise consent in writing, which consent shall not unreasonably be withheld;

b. Tenant shall be keep the Leased Premises open for business either during the usual business days and hours of a majority of the Tenants in the Shopping Plaza.

c. Tenant shall not use the sidewalks adjacent to the Leased Premises for business purposes without the previous written consent of the Landlord;

d. Upon each written request by Landlord, Tenant will furnish to Landlord the license numbers of the vehicles of all persons employed within the Leased Premises Tenant;

e. Tenant Shall not place on the outside of exterior walls (including both interior and exterior surfaces of windows and doors), or the roof of the Leased Premises, or any part of the Shopping Plaza outside of the Leased Premises, any signs other than the store sign, or any symbol, advertisement, neon light, other light or other object or thing visible outside the Leased Premises, without the prior written consent of Landlord, which consent Landlord agrees shall not be unreasonably withheld. The provisions of this subsection (e) shall not prohibit the Tenant placing flat paper signs on the interior or exterior of the windows of the Leased Premises. It is further understood that the store sign to be used by Tenant is hereby accepted by Landlord provided the same generally continues to the type, shape and form of those deemed permissible by the Government of the Virgin Islands.

f. No hazardous waste or materials, petroleum products pollutants, or contaminants may be stored in the United Shopping Plaza unless same are (1) held for retail sale in government approved containers and are stored in full compliance with all regulations or (2) necessary and incidental to the conduct of the Tenant's business as stated in this Lease.

g. Tenant is responsible for properly disposing of its garbage in the bins provided by Landlord at the back of the buildings. No oils, toxic or hazardous substances or similar materials may be disposed of in the bins or anywhere else within the United Shopping Plaza. No large items such as chairs, tables, or other items too large to fit in the bins may be disposed of in the bins or anywhere else within the United Shopping Plaza.

h. Tenant shall keep the interior of the Leased Premises clean, including showcases, appliances and the Tenant exterior sign. Tenant further agrees to keep the Leased Premises in a sanitary and safe condition in accordance with the laws of the Government of the Virgin Islands, ordinances of applicable local authorities and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector and other proper officials of the Government Agencies having jurisdiction thereof, except with respect to structural changes which may be required unless such structural changes shall be required as a result of any alteration made by Tenant or any use made of the Leased Premises by Tenant which is more hazardous than the use for which the Leased Premises are hereby leased

i. Tenant shall not perform any or carry on any practice which may injure the Leased Premises or any other part of the Shopping Plaza' or cause any offensive odors or loud noise or constitute a nuisance or a menace to any other tenant(s) or other persons in the Shopping Plaza.

18. ASSIGNMENT/SUBLETTING:

Tenant agrees that it has no right to assign this lease or sublet the whole or any part of the Leased Premises without first obtaining the written consent of Landlord, which shall not be unreasonably withheld. Tenant shall remain fully liable for the obligations of this Lease despite said assignment or sublease including, without limitation, the obligation to pay the rent and other amounts provided under this lease. Notwithstanding the foregoing, Landlord shall have no obligation to consent to an assignment or sublease if Tenant is in default of any of its obligations under this lease or is not fully current on all payments due under this Lease.

19. ALTERATIONS/IMPROVEMENTS:

Tenant shall not make any alterations, improvements and/or additions to the Leased Premises without first obtaining, in each instance, the Written consent of Landlord, which consent Landlord agrees will not be unreasonably withheld. Such alterations shall be made in accordance with all applicable laws and in a good and first-class workmanlike manner.

Any and all alterations, additions, improvements, air conditioning equipment and ducts, or fixtures (other than the usual trade fixtures) which may be made or installed by Tenant upon the Leased Premises and which in any manner are attached to the floors, walls, or ceilings (including, without limitation, any linoleum or other floor covering of similar character which may be cemented or otherwise adhesively affixed to the floor) shall remain upon the Leased Premises, and at the termination of this lease shall be surrendered with the premises as a part thereof, without disturbance, molestation or injury. With regard to the usual trade fixtures, furniture and equipment, which may be installed in the Leased Premises prior to or during the term hereof, at Tenant's cost, the same shall not be deemed to become a part of the Leased Premises and may be removed by Tenant from the Leased Premises upon the termination of this lease. Further, Tenant will repair any and all damage to the Leased Premises resulting from or caused by such removal

20. AIR CONDITIONING:

Notwithstanding any other provision of this Lease, Tenant must repair, maintain and if necessary replace, the air conditioning equipment supplied with the Leased Premises and shall bear the cost of same. For Office Suites the Landlord will supply and maintain the Air Conditioning.

21. GENERAL INSURANCE REQUIREMENTS:

All insurance provided for in this Lease shall be effected under policies issued by insurers, which are licensed or approved to do business in the U.S. Virgin Islands, and are acceptable to Landlord at its sole discretion. Upon the Tenant first taking possession of the Leased Premises, and thereafter prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Article, the parties shall provide certificates of the polices to each other.

Landlord and Tenant shall conform to the conditions and provisions of the insurers providing any insurance required pursuant to this Lease and shall comply with the reasonable and customary requirements of the companies writing such policies pertinent to the conduct of Tenant's business in the Leased Premises or to Landlord's maintenance of the Common Areas, respectively. Either party may contest any provisions thereof, and the other party shall cooperate in such party's efforts in connection therewith, but not in any event or manner 'which would result in the cancellation of such policy.

Tenant covenants and agrees that it will not do or permit anything to be done in or upon the Leased Premises or bring in anything or keep anything therein, which shall increase the rate of insurance on the Leased Premises or the building of which they are a part, above the then prevalent standard rate on said premises and buildings; and Tenant further agrees that in the event it shall do any of the foregoing, it will promptly pay to Landlord, on demand, any such increase resulting therefrom, which shall be due and payable as additional rent hereunder.

22. TENANTS' PROPERTY INSURANCE OBLIGATIONS:

Tenant shall procure and keep for the benefit of the Landlord other coverage as follows:

a. **Fire and Extended Coverage:** for Tenant's property (including leasehold improvements) against loss or damage by fire an against loss or damage by other risks now or hereafter embraced by "extended coverage", so called, in an amount sufficient to prevent the Landlord or the Tenant from becoming a co-insurer under the terms of the applicable policies but in no event less than $50,000, which amount shall specifically cover leasehold improvements and list landlord as a loss payee.

b. **Steam Boiler Insurance:** carried in companies authorized to do business in the Virgin Islands, Steam Boiler Insurance to the limit of One Hundred Thousand Dollars ($100,000.00), if there is a boiler or pressure object, including gas tank, in the Leased Premises;

c. **Builder's Insurance:** in an amount sufficient to cover the value of any and all improvements, alternations or other construction to be made to the leased premises during the term of this lease.

d. **Plate Glass Insurance:** plate glass insurance covering all exterior plate glass in the Leased Premises

Landlord and any of Landlord's mortgagees shall be named as a named insured (as their interests may appear) and loss payees (as their interests may appear) on all insurance policies required herein. All such policies shall contain a provision that no act, omission or breach of warranty of Tenant shall affect or limit the obligation of the insurer to pay Landlord or any of Landlord's mortgagees such as sums as would otherwise be due under the policy but for such act, omission or breach of warranty.

It is agreed that Landlord shall be entitled to One Hundred Percent (100%) of any insurance proceeds paid for loss to any part of the demised premises, including all alterations, additions and improvements which are the property of the Landlord, as set forth herein. Tenant shall only be entitled to receive insurance proceeds for loss to those items, which are the personal property of Tenant such as movable trade fixtures and inventory. All other proceeds shall be used at the Landlord's sole discretion.

Any insurance required by this Lease shall be in form satisfactory to Landlord and shall provide that it shall not be subject to cancellation, termination or change except after at least thirty (30) days prior written notice to Landlord. The policy or policies, or duly executed certificates of insurance for the same, together with satisfactory evidence of the payment of the premium thereon, shall be deposited with Landlord on the day the Term Commences and, upon renewal of such policies, no less than thirty (30) days prior to the expiration of the term of such coverage.

In the event Tenant fails to comply with such requirement, Landlord may obtain such insurance and keep the same in effect solely for the benefit of Landlord, and Tenant shall

pay Landlord the premium cost thereof upon demand. Should the Tenant fail to pay Landlord the premium for such insurance coverage, the Landlord reserves the right to terminate the lease immediately or, in the alternative, to prorate the premium and add the amount to the monthly rent until the premium is fully paid.

Tenant agrees to give immediate notice to Landlord in case of loss, casualty, fire or accidents in the Leased Premises and to permit Landlord to investigate same.

Tenant shall bear the cost of all insurance specified in this section.

23. LANDLORD'S PROPERTY INSURANCE:

Landlord may, but shall not have the obligation to, provide fire and extended insurance coverage for the United Shopping Plaza and all improvements thereon, including the Leased Premises, but excluding contents, against loss or damage by other risks now or hereafter embraced by "extended coverage" in amounts up to and including the replacement value of the covered property.

24. LANDLORD'S LIABILITY INSURANCE:

Landlord will maintain liability insurance, insuring Landlord against all claims, demands or actions for injury to or death of any one person in an amount of no less than One Hundred Thousand Dollars ($100,000.00), and for injury to or death of more than one person in any one accident to the limit of no less than Three Hundred Thousand Dollars ($300,000.00), and for liability for damage to property in an amount of no less than Fifty Thousand Dollars ($50,000.00); made by or on behalf of any individual or entity arising from, related to, or connected with the conduct and operation of the United Shopping Plaza or any portion thereof, including the Leased Premises.

Landlord may increase the amounts of the limits of the liability insurance as it determines, in its sole discretion, is appropriate.

25. PAYMENT FOR LANDLORD'S INSURANCE:

If it becomes necessary for all tenants to be allocated insurance expense, Tenant shall pay its proportionate share of the premium of Landlord's Property Insurance and Landlord's Liability Insurance. Tenant's proportionate share of the insurance premium shall be determined by multiplying the amount of the premium by a fraction, the numerator of which shall be the number of square feet underlying the Leased Premises, and the denominator of which shall be the total square footage of ground floor area of all buildings comprising the United Shopping Plaza as of the date of premium assessment;

26. INDEMNTIY AND HOLD HARMLESS:

Tenant agrees Landlord and Landlord's agents, subcontractors and employees shall not be liable for, and Tenant waives all claims for, damage to person or property sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Leased Premises or the building of which they shall be a part, or any other part of the Shopping Plaza, INCLUDING BUT NOT LIMITED TO claims for damage resulting from:

a. any equipment or appurtenances becoming out of repair;

b. injury done or occasioned by wind;

c. any defect in or failure of plumbing or air conditioning equipment, electric wiring or installation thereof, gas, water, and steam pipes, stairs, porches, railings or walks;

d. broken glass;

e. the backing up of sewer pipe or downspout;

f. the bursting, leaking or running of any toilet, tub, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or Leased Premises;

g. the escape of steam or hot water;

h. water being upon or coming through the roof, skylight, trap door, stairs, doorways, show windows, walks or any other place upon or near such building or the Leased Premises or otherwise;

i. the falling of any fixture, plaster, tile or stucco

j. any act, omission or negligence of co-tenants, licensees or of any other persons or occupants of said building or of adjoining or contiguous buildings or of owners of adjacent or contiguous property;

k. loss of the fire sprinkler system and

l. any latent defect in the Leased Premises or in the building of which they form a part.

Tenant agrees to use and occupy the Leased Premises and to use such other portions of the Shopping Plaza as it is herein given the right to use at its own risk; and that the Landlord shall have no responsibility or liability for any loss of or damage to fixtures or other personal property of Tenant, arising from any cause whatsoever, including, without limitation, loss by theft or otherwise. The provision of this Section shall apply during the whole of the term hereof and, in view of the permission given to Tenant to install fixtures prior to the commencement of the term hereof, shall also apply at all times prior to the commencement of the term hereof.

Tenant will indemnify and save Landlord harmless from any and all liability, damage, expense, cause of action, suits, claims or judgment arising from injury to person or property on the leased premises or any other part of the Shopping Plaza, arising from, related to, or connected with the conduct or operation of Tenant's business in the Leased Premises, from any cause whatsoever unless the landlord is found to be 100% negligent. Tenants liability under this agreement shall extend to any agent, servant, employee, visitor, or licensee of tenant.

27. LANDLORD'S ACCESS TO PREMISES:

Landlord shall have the right to enter upon the Leased Premises at all reasonable hours for the purpose of inspecting or of making repairs to the same, or the building of which they are a part if repairs are required to be made by Tenant pursuant to the terms hereof, Landlord may demand that Tenant make the forthwith, and if Tenant refuses or neglects to commence such repairs and complete the same with reasonable dispatch, after such demand, Landlord may (but shall not be required to do so) make or cause such repairs to be made and shall not be responsible to Tenant for any loss or damage that may accrue to its stock or business by reason thereof if Landlord makes or cause such repairs to be made, Tenant agrees that it will forthwith, on demand, pay to Landlord the cost thereof, and if it shall default in such payment, Landlord shall have the remedies provided herein.

The Landlord may enter the Leased Premises during all reasonable business hours to inspect them or to exhibit the premises to prospective purchasers or tenants.

28. DAMAGE OR DESTRUCTION:

If the Leased Premises should be damaged by fire, explosion or any other casualty or occurrence covered by Landlord's insurance to an extent which shall be twenty-five percent (25%) or more of the cost of replacement of the Leased Premises, Landlord may elect either to repair or to rebuild the Leased Premises or to terminate this lease upon giving notice of such election in writing to Tenant within ninety (90) days after the happening of the event causing the damage.

If the Leased Premises should be damaged by fire, explosion or any other casualty or occurrence and:

a. such casualty or occurrence shall not be covered by Landlord's insurance, or

b. the building of which the Leased Premises are a part should be damaged to the extent of forty percent (40%) or more of the cost of replacement thereof, notwithstanding the fact that damage to the Leased Premises may be less than twenty-five percent (25%) or

c. the buildings that form the United Shopping Plaza are damaged to the extent of thirty-three percent or more of the cost of replacement thereof, notwithstanding the fact that damage to the Leased Premises may be less than twenty-five percent (25%)

Landlord may elect either to repair or rebuild the Leased Premises or the building or buildings or to terminate this lease upon giving notice of such election in writing to Tenant within ninety (90) days after the happening of the event causing the damage.

If the casualty, repairing or rebuilding shall render the Leased Premises untenantable, in whole or in part, a proportionate abatement of the Fixed Minimum Rent shall be allowed from the date when the damage occurred until the date Landlord completes the repairs or

rebuilding or, in the event Landlord elects to terminate this lease, until said date of termination, which shall be no less than thirty (30) days nor more than sixty (60) days after said notice, said proportion to be computed on the basis of the relation which the gross square feet rendered untenable bears to the floor space of the Leased Premises.

If Landlord is required or elects to repair and/or rebuild the Leased Premises as herein provided, Landlord shall not be obligated to expend for such repair and/or rebuilding an amount in excess of the insurance proceeds recovered or recoverable as a result of such damage. Landlord's obligation to repair and/or rebuild shall in any event be limited to restoring the Leased Premises to substantially the condition in which the same existed prior to the casualty subject, however, to zoning laws and building codes then in existence, but Landlord shall not be responsible for any delay which may result from any cause beyond its reasonable control. Tenant agrees that, promptly after completion of such work by Landlord, it will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore its sign, stock in trade, fixtures, furnishings, floor coverings, equipment and reopen for business.

29. CONDEMNATION:

Section 1. If the whole of the Leased Premises shall be taken by any public or quasi-public authority under the power of condemnation, eminent domain or appropriation, or in the event of conveyance in lieu therein, the Lease Term shall cease as of the day possession shall be taken by such authority, and Tenant shall pay rent up to that date with an appropriate refund by Landlord of such rent as shall have been paid in advance for a period subsequent to said date.

Section 2. If twenty-five percent (25%) or more of the ground floor area of the Leased Premises shall be so taken or conveyed, or if said building shall be divided into separate parts by reason of such taking, and provided Landlord does not extend said building or build additionally to complete seventy-six percent (76%) of its original ground floor area or restore said building to a retain store unit, then Tenant shall have the right of terminating this lease, in which case any unearned rent shall be refunded to Tenant. In the event of any such taking of all or part of the Leased Premises, the Fixed Minimum Rent payable hereunder shall be reduced in the same proportion that the amount of floor space in the Leased Premises is reduced by or as a consequence of such condemnation.

If more than fifty percent of the floor space of the building in which the Leased Premises are located, or if more than twenty-five percent (25%) of the total floor space in the Shopping Plaza, shall be so taken or conveyed, Landlord may, by notice in writing to Tenant delivered on or before the day of surrendering possession to the authority, terminate this Lease, and Fixed Minimum Rent or any prepaid additional rents shall be paid or refunded as of the date of termination.

Section 3. All compensation awarded for any such taking or conveyance, whether for the whole or a part of the Leased Premises, shall go to and shall be the sole property of Landlord, whether such damages shall be awarded as compensation for the unexpired portion of, or diminution in the value of the leasehold or for compensation for or damages

to the fee of the Leased Premises, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation provided, however, that Landlord shall not be entitled to any award made to Tenant for loss of business, depreciation to and cost of removal of stock and fixtures, provided that any such award made to Tenant shall not reduce the amount of any award made to Landlord.

Section 4. If any part of the common areas should be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, this lease shall not terminate, nor shall the rent payable hereunder be reduced nor shall Tenant be entitled to any part of the award made for such taking except that either Landlord or Tenant may terminate this lease if the area of the common areas remaining following such taking or purchase in lieu thereof plus any additional parking area provided by Landlord shall be less than sixty-five percent (65%) of the total area of the common areas at the time of such taking, or purchase in lieu thereof.

30. TAXES:

Landlord shall pay, or cause to be paid, before the same become delinquent, all real estate taxes; provided, however, that if Landlord contests the taxes, Landlord may defer compliance therewith to the extent permitted by the laws of the Government of the Virgin Islands, so long as the validity or amount thereof is contested by it in good faith.

Wherever the term "real estate taxes" is used in this lease, it shall be deemed to include the taxes assessed on the land, the building, and/or other permanent improvements including general and special taxes, assessments for local improvements and other governmental charges which may be lawfully charged, assessed, or imposed upon the United Shopping Plaza, the Leased Premises, or any part thereof.

It is the intent that each respective occupant of premises within the United Shopping Plaza pay any taxes, which may be assessed on any fixtures and equipment located within its respective premises.

31. LANDLORD'S REMEDIES:

Tenant agrees that:

IF

a. Tenant shall neglect or fail to perform or observe any of the covenants, terms, provisions or conditions contained in these presents and on its part to be performed or observed promptly after notice of default, or

b. the estate hereby created shall be taken on execution or by other process of law, or

c. Tenant shall be declared bankrupt or insolvent according to law, or

d. any assignment shall be made of the property of Tenant for the benefit of creditors, or

e. a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of Tenant's property by a court of competent jurisdiction, or

f. a petition is filed for the reorganization of Tenant under any provisions of the Bankruptcy Act now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after it is begun, or

g. Tenant files a petition for such reorganization, or for arrangements under any provisions of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts, then, and in any of the said cases (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance),

THEN

Landlord lawfully may, immediately, or at any time thereafter, and without demand or notice, enter into and upon the said premises or any part thereof in the name of the whole and repossess the same as of its former estate, and expel Tenant and those claiming through or under it, and remove its or their effects (forcibly, if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrearage of rent or breach of covenant, and upon entry, as aforesaid, this Lease shall terminate, unless a subsidiary or affiliated company of Tenant shall become the Tenant hereunder and shall continue to conduct the store in the leased premises under the same name which Tenant had been using in the Virgin Islands for all its stores or such other name then being used in the Virgin Islands by a majority of the stores operated by Tenant, its subsidiaries or its successor; and Tenant covenants and agrees, notwithstanding any entry or re-entry by Landlord, whether by summary proceedings, termination, or otherwise, to pay and be liable, on the days originally fixed herein for the payment thereof, amounts equal to the several monthly installments of the annual rent and other charges reserved as they would, under the terms of this lease, become due if this lease had not been terminated. If Landlord has not entered or re-entered, as aforesaid and whether the Leased Premises be relet or remain vacant in whole or in part or for a period less than the remainder of the term, and for the whole thereof, but in the event the Leased Premises be relet by the Landlord, Tenant shall be entitled to a credit in the net amount of rent received by Landlord in reletting, after deduction of all expenses incurred in reletting the Leased Premises (including, without limitation, remodeling costs, brokerage fees, and the like), and in collecting the rent in connection therewith.

Landlord shall in no event be liable in any way whatsoever for expenditure to relet the Leased Premises, or in the event that the Leased Premises are relet, for failure to collect the rent thereof under such reletting. In the event of a breach or threatened breach of Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, unlawful detainer proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy shall not preclude Landlord from any other remedy in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of the Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Leased Premises, by reason of the violation by Tenant of any of the covenants and conditions of this lease or otherwise. The words, "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning.

Landlord shall have at all times a valid lien for all rentals and other sums of money becoming due hereunder from Tenant, upon all goods, wares, equipment, fixtures, furniture and other personal property and effects of tenant situated on the Leased Premises, and such property shall not be removed therefrom without the consent of Landlord until all arrearages in rent as well as any and all other of money then due to

Landlord hereunder first shall have been paid and discharged. Upon the occurrence of an event of default by Tenant of which default Tenant shall have notice but shall have not cured within the time permitted, if any, Landlord may in addition to any other remedies provided herein or by law, enter upon the Leased Premises and take possession any and all goods, wares, equipment, fixtures, furniture and other personal property and effects of Tenant situated on the premises without liability for trespass or conversion, and sell same with or without notice at public or private sale, with or without having such property at the sale, at which Landlord or his assigns may purchase, and apply the proceeds thereof, less any and all expense connected with the taking of possession and sale of the property, as a credit against any sums due by Tenant to Landlord. Any surplus shall be paid to Tenant, and Tenant agrees to pay any deficiency forthwith. Alternatively, the lien hereby granted may be foreclosed in the manner and form provided by law for foreclosure of chattel mortgages or in any other form provided by law. The statutory lien for rent, if any, is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereof.

32. TENANT'S AFIRMATIVE COVENANTS:

Tenant covenants at its expense at all times during the Lease Term and such further time as Tenant occupies the Leased Premises or any part thereof:

a. To perform promptly all of the obligations of tenant set forth in this Lease and in the Exhibits attached hereto, and to pay when due said Rent and all charges, rates and other sums which by the terms of this Lease are to be paid by Tenant;

b. To use the Leased Premises only for the permitted uses and for no other use without the written consent of Landlord; to operate its business in the Leased Premises under the Tenant's name as set forth in this Lease and to conduct its business at all times in accordance with this Lease and in such manner as to produce the maximum volume of Gross Sales and to help establish and maintain a high reputation for the United Shopping Plaza;

c. To store in the Leased Premises only such merchandise as is to be offered for sale at retail within a reasonable time after receipt; to receive and deliver goods and merchandise only in the manner and areas designated by Landlord; and to conform to all reasonable rules and regulations which Landlord may make in the management and use of the United Shopping Plaza, requiring such conformance by Tenant and Tenant's employees;

d. To permit Landlord and its agent to enter the Leased Premises at reasonable times for the purpose of inspecting

the same or of making repairs to the building in which the same are located; to permit Landlord during the six (6) months prior to the termination of this Lease or any renewal or extension thereof to place upon the Leased Premises the usual "For Rent" or "To Let" notices without molestation by Tenant;

e. To pay on demand Landlord's expenses, including reasonable attorneys' fees, incurred in enforcing any obligation of the Tenant under this Lease or in curing any default of Tenant under this Lease;

f. To remain fully obligated under this Lease notwithstanding any assignment or sublease, or any indulgence granted by Landlord to Tenant or to any assignee or sublessee;

g. To obtain all permits or licenses necessary to conduct business and to pay all taxes upon it's property in the Leased Premises. If any such taxes for which Tenant is liable are levied against Landlord or Landlord's property and if Landlord elects to pay the same, or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Leased Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder;

h. If the Leased Premises face on an enclosed mall, to operate its air conditioning units in the Leased Premises for a period commencing one hour before Tenant's premises are opened for business in order that at all times a compatible temperature as directed by landlord's engineers shall be maintained between the Leased Premises and the mall;

i. To maintain the Leased Premises clean and free from rubbish and dirt at all times, and to store all trash and garbage within the Leased Premises in appropriate containers and arrange for the regular pickup of such trash and garbage at Tenant's expense;

33. TENANT'S NEGATIVE COVENANTS:

Tenant covenants at all times during the Leased Term and such further time as Tenant occupies the Leased Premises or any part thereof, not to:

a. injure, overload, deface or otherwise harm the Leased Premises or any part thereof or any equipment or installation therein;

b. commit any nuisance (as determined by the sole discretion of the Landlord) or other act or thing which may disturb the quiet enjoyment of any tenant in the Shopping Plaza nor which would disturb the quiet enjoyment of any persons within five hundred (500) feet of the boundaries of the Shopping Plaza; nor permit the emission of any objectionable noise or odor; nor burn any trash or refuse within the United Shopping Plaza;

c. sell, or distribute any alcoholic liquors or beverages;

d. install or cause to be installed any automatic garbage disposal equipment;

e. conduct business at, in, on, about or from all or any part of the leased Premises on any day when the conduct of business is prohibited by any statutes, laws, regulations or ordinances of the Government of the Virgin Islands or any governmental authority having jurisdiction over the United Shopping Plaza.

a. make any use of the Leased Premises or of any part thereof or equipment therein which is improper, offensive or contrary to any law or ordinance or to reasonable rules and regulations of the Landlord, as such may be promulgated from time to time;

b. use any advertising medium or sound producing mechanism that may constitute a nuisance (as determined by Landlord in its sole discretion), such as radios, television sets, loud speakers, sound amplifiers or phonographs in a manner to be heard outside the Leased Premises;

c. conduct any auction, fire, "going out of business", "close out" or bankruptcy sales, nor do any act tending to injure the reputation of the Shopping Plaza; nor the use or occupancy of the Leased Premises, or to suffer or permit them to be used or occupied, in whole or in part, as a discount house, discount store, surplus store, Army-Navy type store, bargain store, or by similar business or activity;

d. sell or display merchandise on, or otherwise obstruct the driveways, walks, malls, courts, parking areas and other common areas in the Shopping Plaza;

e. use halls, courts and walks for any purpose other than pedestrian traffic; nor suffer the use of same

f. make any alterations or additions to the Leased Premises, nor permit the making of any holes in the walls, partitions, ceilings, or floors thereof, nor permit the painting or placing of any exterior signs, interior illuminated signs, placards or other advertising media, awnings, banners, -flags, pennants, aerials, antennae. or the like therein or thereon, without on each occasion obtaining prior written consent of the Landlord; nor attach interior signs, placards or other advertising media or other objects to the windows or locate the same in such manner as to materially obstruct the view of Tenant's store from the mall area or from the outside;

g. operate any coin or token operated vending machine or similar device for sale of any goods, wares, merchandise, food, beverages, or services, including but not limited to, pay lockers, pay toilets, scales, amusement devices and machines for the sale of beverages, goods, candy, cigarettes, or other commodities, without Landlord's written consent;

h. operate or cause to be operated any "elephant trains" or other means of transportation;

i. Change the exterior color or architectural treatment of the Leased Premises or of the building in which the same are located, or any part thereof.

34. WAIVER:

Failure on the part of Landlord to complain of any action or non-action on the part of Tenant, no matter how long the same may continue, shall never be deemed to be a waiver by Landlord of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Landlord shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval by Landlord to or of any action by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant.

35. COVENANT OF QUIET ENJOYMENT:

Tenant, subject to the terms and conditions of this Lease, on payment of the rent and observing, keeping and performing all of the terms and provisions of this Lease on its part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Leased Premises during the term hereof without hindrance or

ejection by any persons lawfully claiming under Landlord; and it is understood and agreed that this covenant and any and all other covenants of Landlord contained in this Lease shall be binding upon Landlord and its successors only with respect to breaches occurring during its and their respective ownership of Landlord's interest hereunder.

It is further understood and agreed that with respect to any services to be furnished by Landlord to Tenant, Landlord shall in no event be liable for failure to furnish the same when prevented from so doing by strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability by the exercise of reasonable diligence, to obtain supplies, parts or employees necessary to furnish such services, or because of war or other emergency, or for any cause beyond Landlord's reasonable control, or for any cause due to any act or neglect of Tenant or its servants, agents, employees, licensees or any person claiming by, through or under Tenant, or any termination for any reason of Landlord's occupancy of the premises from which the service is being supplied by Landlord, and in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages.

36. STATUS REPORT:

Recognizing that both parties may find it necessary to establish to third parties, such as accountants, banks, mortgagees, or the like, the then current status of performance hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Lease. Without limiting the generality of the foregoing, Tenant specifically agrees, promptly upon the commencement of the term hereof, to notify Landlord in writing of the date of commencement of the term, and acknowledge satisfaction of the requirements with respect to construction and other matters by Landlord, save and except for such matters as Tenant may wish to set forth specifically in said letter.

37. MECHANICS' LIENS:

Tenant agrees to immediately discharge (either by payment or by filing of the necessary bond, or otherwise) any mechanic's, materialmen's or other lien against the Leased Premises and/or Landlord's interest therein, which liens may arise out of any payment due for, or purported to be due for, any labor, services, materials supplies, or equipment alleged to have been furnished to or for Tenant in, upon or about the Leased Premises.

38. INVALIDITY OF PARTICULAR PROVISIONS:

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Any provision of this Lease that is determined to be invalid or unenforceable shall be interpreted in such a manner as to give it the fullest effect to the provision's intent possible without being invalid or unenforceable.

39. PROVISIONS BINDING:

Except as herein otherwise specifically provided, the terms hereof shall be binding upon and shall inure to the benefit of the heirs, successors and assigns, respectively, of Landlord and Tenant. Each term and each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition. The reference contained herein to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances where Landlord may give written consent to a particular assignment as provided in this Lease,

40. GOVERNING LAW:

This Lease shall be governed exclusively by the provisions hereof and by the laws of the Government of the Virgin Islands in existence at the time this Lease is executed.

41. NOTICES:

Whenever by the terms of this Lease, notice shall or may be given either to Landlord or to Tenant, such notice shall be in writing and shall be sent by certified mail, postage prepaid:

If intended for Landlord, addressed to it at:

PO Box 763 Christiansted St. Croix, 00821

If intended for Tenant, addressed to it at:

Bay # Five (5)

United Shopping Plaza, 4 C & D Estate Sion Farm

Christiansted, St. Croix, USVI 00821

Each party hereunder, by like notice, may designate any future addresses to which subsequent notices or payment shall be sent.

42. MORTGAGE SUBORDINATION:

Tenant agrees that this Lease and lien will be subordinated to the lien of any present or future mortgage to a bank, insurance company or similar financial institution, irrespective of the time of execution or time of recordation of such mortgage or mortgages. Tenant agrees that it will, upon the request of Landlord, execute, acknowledge and deliver any and all instruments necessary or desirable to give effect to or notice of such subordination. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments and modifications, consolidations, extensions, renewals, replacement and substitutes thereto.

43. HOLDOVER BY TENANT:

If Tenant remains in possession of the Leased premises after the expiration of the tenancy created hereunder and without the execution of a new lease, Tenant, at the option of Landlord, shall be deemed to be occupying said Leased Premises as a tenant from month to month at double the Rent and double all other payments due hereunder. In the case of payments that are assessed on an annual basis, such as real estate taxes and insurance, the

estimated monthly portion of such payment due for that year (as determined at the sole discretion of Landlord) shall be doubled and due and payable with the monthly rent, subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy. Tenant shall not interpose any counterclaim or counterclaims in an unlawful detainer proceeding or other action based on holdover.

44. LANDLORD'S RIGHT TO CURE DEFAULTS:

Landlord may, but shall not be obligated to, cure at any time, without notice any default by Tenant under this Lease; and whenever Landlord so elects, all costs and expenses incurred by Landlord in curing a default, including, without limitation, reasonable attorneys' fees together with interest on the amount of costs and expenses so incurred at $1^{1/2}$ percent per month (or if the maximum legal interest rate of $1^{1/2}$ percent per month is deemed to be usurious under Virgin Islands law) shall be paid by Tenant to Landlord on demand, and shall be recoverable as additional rent. Interest shall accrue at the prevailing legal interest rate from and after the due date of any payment of fixed minimum rent, percentage rent, or any additional rent described in this Lease.

45. VOTING CONTROL OF TENANT:

If Tenant is a corporation and if at any time during the Lease term the person, persons or corporation(s) who own or which own(s) a majority if its voting shares at the time of the execution of this Lease cease to own a majority of such shares (except as the result of transfers by bequest or inheritance) Tenant shall so notify Landlord and landlord may terminate this Lease by notice to Tenant given within ninety (90) days after Landlord shall have received other notice thereof. This section shall not apply whenever Tenant is a corporation, the outstanding voting stock of which is listed on a recognized security exchange. For the purposes of this section, stock ownership shall be determined in accordance with the principles set forth in Section 544 of the United States Internal Revenue Code of 1954, as the same existed in August 16, and the term "voting stock" shall refer to shares of stock regularly entitled to vote for the election of directors of the corporation.

46. SECURITY DEPOSIT:

As security for the faithful performance by Tenant of all of the terms and conditions upon the Tenant's part to be performed, Tenant has deposited with Landlord the sum of ~~$2604.00 on September~~ 2001.
$ 500 cash – [illegible] on 15 October 2001
Such amount will be returned to Tenant, WITHOUT INTEREST, thirty (30) days from the day set forth for the expiration of the Term herein if Tenant has fully and faithfully carried out all of the terms, covenants and conditions on its part to be performed. Landlord shall have the right to apply any part of said deposit to cure any default of Tenant.

In the event of a sale of the United Shopping Plaza, the buildings or portions of buildings therein, or of a lease of the land on which they stand, subject to this Lease, the Landlord shall have the right to transfer his security to the vendee or lessee and the Landlord shall

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be considered released by Tenant from all liability for the return of such security and the Tenant shall look to the new Landlord solely for the return of the said security, and it is agreed that this shall apply to every transfer or assignment made of the security to a new Landlord. The security deposited under this Lease shall not be mortgaged, assigned or encumbered by Tenant without the written consent of the Landlord. In the event of any authorized assignment of Lease, the said security deposit shall be deemed to be held by Landlord as a deposit made by the assignee and the Landlord shall have no further liability with respect to the return of said security deposit to the Tenant.

47. DELIVERY OF THIS INSTRUMENT:

This instrument cannot be construed to be a proposal of either Landlord to Tenant, nor of Tenant to Landlord, and shall have no effect whatsoever between the parties herein named unless properly executed by both parties, it being understood that this instrument has been delivered for examination only but without any purpose whatsoever of creating or confirming any contractual relationship between Landlord and Landlord and Tenant agree that neither party shall be construed the drafter of this Lease for interpretation purposes.

48. PARAGRAPH HEADINGS:

The Paragraph headings throughout this instrument are for convenience and reference only and the words contained therein shall in no way be held to explain, modify or aid in the interpretation, construction or meaning of the provisions of this Lease.

PERSON: The term "person" as used herein means natural person, firm, association or corporation, (including more than one natural person) as the case may

49. UNITED SHOPPING PLAZA:

Notwithstanding any other provision herein, "United Shopping Plaza" means the parcel(s) of land bound and described in Exhibit A hereto; plus (1) any other parcel(s) of land at any time designated by the Landlord to be added but only so long as any such designation remains unrevoked which are, or are to be, used for United Shopping Plaza or related purposes, including, but not limited to, employee parking, or the furnishing to the United Shopping Plaza of any utility or other service, or for any other improvement appropriate or related to the operation or functioning of the United Shopping Plaza, together with all buildings and improvements to any such parcel(s) of land; plus (2) any plant or other facility, including but not limited to, sewage or garbage disposal plant, serving the United Shopping Plaza, even though it is not located upon land which is a part of the United Shopping Plaza, and the facilities connecting any such plant or facility (whether or not so located) to the remainder of the United Shopping Plaza (but not including the land under or through which any such connection passes, if not otherwise included within the United Shopping Plaza).

The term "United Shopping Plaza" also means, when used not solely to designate the geographical location thereof, the operation and functioning thereof primarily as a general shopping center for the sale of goods, wares, merchandise, food, beverages and services at retail, together with such services and facilities as are incident-to or desirable in

connection with the operation thereof, including, but not limited to, medical, dental, and other office space. No road, way, street, easement, utility or facility otherwise included within the-United Shopping Plaza shall be deemed for any purposes to be partially or wholly excluded therefrom by reason of the fact that the same may also serve or be used by the occupant of any other premises or the customers thereof. Any portion of the United Shopping Plaza, which is condemned or dedicated to public use or ceded or conveyed to any governmental authority for street or related purposes, shall be thereafter excluded from the United Shopping Plaza.

50. CONSTRUCTION ON ADJACENT PREMISES:

If any excavation or other building operation shall be about to be made or shall be made on any premises adjoining the Leased Premises or on any other premises in the Shopping Plaza, the Tenant shall permit the Landlord, its agents, employees, licensees and contractors, to enter the Leased Premises and to shore-up the foundations and/or walls thereof, and to erect scaffolding and/or protective barricades around and about the Leased Premises (but not so as to preclude entry thereto) and to do any act or thing necessary for the safety or preservation of the Leased Premises. Any such construction or excavation work or any such shoring-up shall not affect the Tenant's obligations under this Lease. The Landlord shall not be liable in any such case for any inconvenience, disturbance, loss of business or any other annoyance arising from any such construction, excavation, shoring-up, scaffolding or barricades, but the Landlord shall use its best efforts so that such work will cause as little inconvenience, annoyance and disturbance to the Tenant as possible consistent with accepted construction practice in the vicinity and so that work shall be expeditiously completed.

51. EFFECT OF UNAVOIDABLE DELAYS:

The provisions of this Section shall be applicable if there shall occur, during the Lease Term, or prior to the commencement thereof, any (1) strike(s), lockout(s) or labor dispute(s); (2) inability to obtain labor materials, or reasonable substitutes therefor; or (3) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire or other casualty, or other conditions similar to those enumerated herein; beyond the reasonable control of the party obligated to perform. if the Landlord or the Tenant shall, as the result of any of the above-described events, fail punctually to perform any obligation on its part to be performed under this Lease, then the obligated party shall be relieved of such obligation, but only to the extent occasioned by such event. if any right or option of either party to take any action under or with respect to this Lease is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time and such named date shall be deemed to be extended or delayed as the case may be, for a period equal to the period of the delay occasioned by any above-described event. Notwithstanding anything therein contained, however, the provisions of the Section shall not be applicable to the Tenant's obligation to pay rent or its obligations to pay any other sums, monies, costs, charges or expenses required to be paid by the Tenant hereunder.

52. ATTORNMENT:

Tenant shall in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by the Landlord covering the Leased Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease.

53. ACCORD AND SATISFACTION:

No payment by Tenant or receipt by Landlord of a lesser amount than the total balance then due to Landlord shall be deemed to be an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such unpaid balances or pursue any other remedy provided in this Lease. Landlord shall have the right to allocate such partial payments to reduction of the balance as it deems appropriate, including using such payment to first reduce interest and/or late fees without reducing the balance due to Landlord.

54. NOTIFICATION TO MORTGAGEE:

At any time when there is outstanding a mortgage, deed of trust or similar security instrument covering Landlord's interest in the Leased Premises, Tenant may not exercise any remedies for default by Landlord hereunder, whether express or implied, unless and until the holder of the indebtedness secured by such mortgage, deed of trust or similar security instrument shall have received written notice of such default and a reasonable time for curing such default shall thereafter have elapsed, provided that Landlord shall have notified Tenant, in writing, of the name and address of the holder of the indebtedness secured by.

55. NO ORAL CHANGES:

This Lease may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any change, modification or discharge is sought.

56. REPRESENTATIONS BY LANDLORD:

Neither Landlord nor Landlord's agents have made any representations, warranties or promises with respect to the United Shopping Plaza, this Lease, the Leased Premises or the building of which they are a part except as herein set forth.

57. WAIVER OF LITIGATION:

Tenant expressly recognizes that part of the consideration for this Lease at the specified annual Rent is Tenant's agreement to waive all rights of litigation against Landlord to the maximum extent permitted by law and public policy.

Tenant expressly recognizes that the costs and delays of litigation increase the cost of doing business for a landlord and that because Tenant has agreed to waive its litigious rights, Landlord has entered into this Lease at the Rent specified in this Lease, subject to the following conditions:

a. Tenant agrees not to assert any set offs in any action for eviction or to collect payments due under this Lease.

b. Tenant agrees that it will not assert any counterclaim in an action for eviction or collection of payments due under this Lease nor seek consolidation of any action between the parties; Landlord in turn agrees that it will not assert that the failure to assert such a counterclaim is a waiver of a compulsory counterclaim.

c. Tenant expressly waives trial by jury in any action between Landlord and Tenant.

d. Tenant expressly waives any claim for special, consequential, or punitive damages in any action between Landlord and Tenant

e. Tenant agrees that if Landlord is required to perform repairs within the Leased Premises at the conclusion of the Lease (including any conclusion that results from Tenant's default), Landlord shall be entitled to liquidated damages for repair costs of a minimum of $35.00 per sq. of ground floor space and that Landlord shall have the sole discretion of determining the amount of square footage requiring repair.

f. Tenant expressly waives any claim it has or may have against Landlord for attorney's fees or interest

g. Tenant acknowledges that Landlord offered it the option of leasing the Leased Premises at an annual rent of $ 45,000, in which case Landlord would not have required the waivers set forth in (a)-(g) above.

Signature of Tenant

_____David Zahriyeh, _____Mazen Awadallah

Landlord is not responsible for water or sewer line leaks or repairs unless leak occurs outside of the leased premises. Leaks within common walls shall be the joint responsibility of the tenants on either side of the common wall.

THIS IS THE LEASE that the appearing parties hereby execute in the respective capacity that each appear hereunder, and they hereby ratify this instrument in all its parts and bind themselves to stand for all the terms therein contained at all times under the legal responsibilities arising therefrom according to law, and thus the appearing parties hereby accept this instrument in all its parts, as drafter, being all well informed of its contents, and they do hereby consent to the execution of this Lease.

IN EVIDENCE THERETO, the appearing parties place their initials on every page of this instrument and sign it on the lines indicated below, at the place and on the date indicated next to their respective signature.

Given at Christiansted, St. Croix; U S. Virgin Islands as of this 30 -day of ~~September~~ October, 2001.

WITNESSES(As to Landlord):UNITED CORPORATION, d/b/a

UNITED SHOPPING PLAZA,

Landlord

BY _____

Maher Yusef, President

WITNESES (As to Tenant):

BY David Zahriyeh and _____

David Zahriyeh, Tenant Mazen Awadallah

TERRITORY OF THE VIRGIN' ISLANDS)

:ss

DIVISION OF ST. CROIX)

On this___day of _____, 2001, before me appeared _____ who acknowledged himself to be the _____ of UNITED CORPORATION, the corporation described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of the corporation by subscribing the name of such corporation by himself as such officer, and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act and as the free and voluntary act of the said Corporation for the uses and purposes therein set forth.

WITNESS my hand and official seal_____ Notary Public

FY015169

Notary Public

TERRITORY OF THE VIRGIN' ISLANDS)

:ss

DIVISION OF ST. CROIX)

On this _____ day of _____, 19___, before me appeared _____ who acknowledged himself to be the _____ of the corporation described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of the corporation by subscribing the name of such corporation by himself as such officer, and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act and as the free and voluntary act of the said corporation for the uses and purposes therein set forth.

WITNESS my hand and official seal.

Rajai Suliman
Commission # CC 959200
Expires Aug. 7, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

Notary Public

X **INDIVIDUAL ACKNOWLEDGEMENT**

TERRITORY OF THE VIRGIN' ISLANDS)

:ss

DIVISION OF ST. CROIX)

On this _____ day of _____, 19___, before me appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument, and who acknowledged that he executed the foregoing instrument freely and voluntarily for the uses and purposes therein contained, WITNESS my hand and official seal.

Rajai Suliman
Commission # CC 959200
Expires Aug. 7, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

Notary Public

TENANT'S SECRETARY'S CERTIFICATE

The undersigned, _____ hereby certifies:

1. That he (she) is the Secretary of _____, a corporation organized according to the laws of the Virgin Islands.

2. That at a Special Meeting of the Board of Directors of the aforementioned corporation, held at _____ on _____ at which meeting a quorum was present, the following resolution was unanimously adopted:

"Resolved:

That the Lease Contract executed on _____, by _____ as the _____ of this corporation with UNITED CORPORATION, d/b/a UNITED SHOPPING PLAZA, whereby certain space was leased by this corporation at a Shopping Plaza owned by UNITED CORPORATION, located in St. Croix, U.S. Virgin Islands, is hereby RATIFIED and made binding upon this corporation."

That _____ occupies the office of _____, and has been duly elected to and of this corporation.

IN WITNESS WHEREOF, I execute this Certificate, under my hand and the seal of the corporation at , on this day of _____,2001

_____

Secretary

GUARANTY

This Guaranty is an absolute and unconditional Guaranty of payment and performance. It shall be enforceable against the Guarantor, its successors and assigns, without necessity for any suit or proceedings on the Landlord's part of any kind or nature whatsoever against the Tenant, its successors and assigns, and without the necessity of any notice of non-payment, non-performance or non-observance or of any notice of acceptance of this Guaranty or of any other notice or demand to which the guarantor might otherwise be entitled, all of which the Guarantor hereby expressly waives; and the Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of the Guarantor hereunder shall in no wise be terminated, affected, diminished or impaired by reason of the assertion, or the failure to assert, by the Landlord against the Tenant, or against the Tenant's successors and assigns, any of the rights or remedies reserved to the Landlord pursuant to the provisions of the said Lease.

This Guaranty shall be a continuing Guaranty, and the liability of the guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of said Lease, or by reason of any extension of time that may be granted by the Landlord to the Tenant, its successors or assigns, or by reason of any dealings or transactions or matter or thing occurring between the Landlord and the Tenant, its successors or assigns, whether or not notice thereof is given to the Guarantor.

Al' of the Landlord's Rights and Remedies under the said Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others.

This Guaranty shall be governed by and construed in accordance with the laws of the Government of the Virgin Islands. The Parties hereby subject themselves to the jurisdiction of the Courts of the Territory of the Virgin Islands in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with the aforementioned Lease or this Guaranty. Any such action or proceeding against Guarantor may be commenced by the service of the process necessary to commence such action or proceeding upon the Guarantor or registered or certified mail addressed to the Guarantor at the address set forth above.

Guarantors:

Signatures:

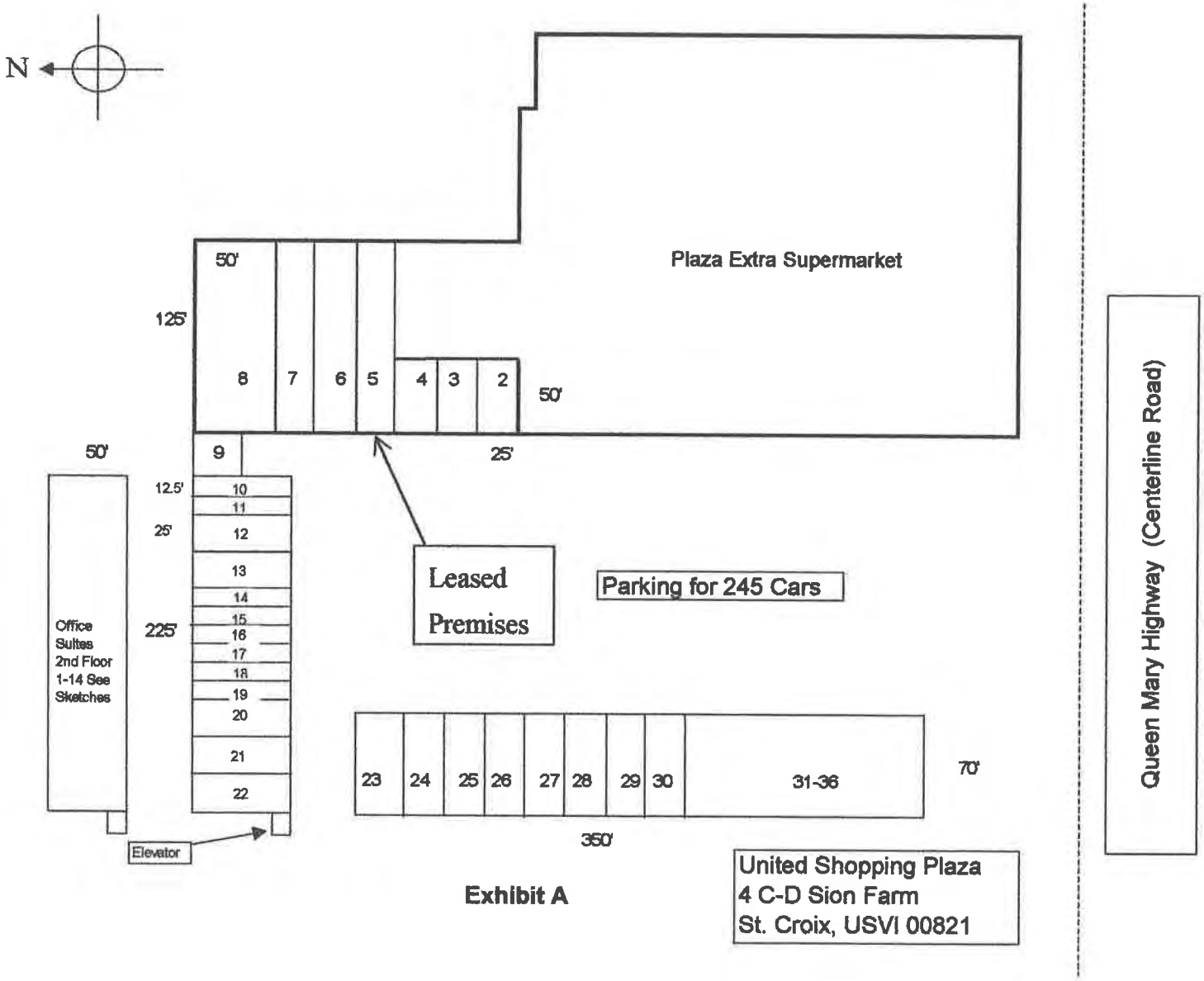
Name: David Zahriyeh Social Security # Mazen Awadallah Social Security #

Address: 5727SW 117th Avenue, 1040 SW 10th Ave, Bay 4

Ft. Lauderdale, FL 33330 Pompano Beach, FL 33069

110-66-1678 266-27-7819

David Zahriyeh


N
Plaza Extra Supermarket
50'
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8
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225'
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18
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21
22
Office Suites 2nd Floor 1-14 See Sketches
Elevator
Leased Premises
Parking for 245 Cars
23
24
25
26
27
28
29
30
31-36
70'
350'
Queen Mary Highway (Centerline Road)
United Shopping Plaza
4 C-D Sion Farm
St. Croix, USVI 00821

Exhibit A

United Corporation

United Shopping Plaza

P.O. Box 763, 4C & D Sion Farm, Christiansted, VI 00821 Phone (340) 778-6240, Fax (340) 778-1200

December 28, 2006

Diamond Girl

Bay 7

United Shopping Plaza

RE: Provisions of Lease, Paragraphs 17, 18 and 19

The Terms of the Lease Contract for Bay Seven define the permitted use of the space to be only for the operation of a beauty supply store. Please be advised that the operation of a hair salon is not contemplated nor approved by the Landlord.

Please also note the requirement within the lease that you provide Landlord with evidence of liability and fire insurance.

We anticipate your prompt attention to these matters.

Very truly yours,

Alan Mallory

Property Manager

United Corporation

United Shopping Plaza

P.O. Box 763, 4C & D Sion Farm, Christiansted, VI 00821 Phone (340) 778-6240, Fax (340) 778-1200

May 6, 2003

Diamond Girl

Bay No. 5

United Shopping Plaza

Christiansted, VI 00820

This letter attests payment in full of the $9000.00 due Landlord, as referenced in para. 10., Lease Contract between United Shopping Plaza and Mazan Awadallah, made in three installments of $3000 received by the date above. It is acknowledged the deposit therein referenced remains unpaid as of this date.

Thank you.

Sincerely,

Alan Mallory
Property Manager

Exhibit 9

LEASE CONTRACT

For Bay No.8

United Shopping Plaza

4–C & D Sion Farm

PO Box #763

Christiansted, VI 00821

Tenant: Mahmud A. Idheilah

And

Majdi Zgheir

Bay 8

United Shopping Plaza

Date: October 1, 2002

EXPIRES 1-1 2007

FY015212

TABLE OF CONTENTS

THIS LEASE, ENTERED INTO BY AND BETWEEN:

LANDLORD: UNITED CORPORATION hereinafter also referred to as "Landlord"), a corporation organized and existing under the laws of the Government of the Virgin Islands, with principal offices at United Shopping Plaza, Plots 4C and 4D, Estate Sion Farm, Christiansted, St. Croix, United States Virgin Islands, herein represented by its PRESIDENT, MAHER YUSUF, who represents that he is duly authorized to execute and deliver this contract in the name and behalf of Landlord by appropriate authority granted by its Board of Directors, which authority, or the ratification thereof, he shall establish and exhibit whenever and wherever necessary.

AND TENANT: MAHMUD A IDHEILEH AND MAJDI ZGHEIR, BAY 8,
UNITED SHOPPING PLAZA

(Hereinafter also referred to as "Tenant")

1. UNITED SHOPPING PLAZA:

Landlord has legal title to Plots 4C and 4D, Estate Sion Farm, Christiansted, St. Croix, U.S. Virgin Islands and the improvements thereon, hereinafter defined as the "United Shopping Plaza."

2. LEASED PREMISES:

Landlord agrees to lease to Tenant the facility in the Shopping Plaza identified in Exhibit A as Bay 8 (the Leased Premises), which said Leased Premises, together with all rights, improvements, appurtenances, easements and privileges attached thereto (including but not limited to the use in common with other tenants of the Shopping Plaza of the Common Areas, to be hereinafter defined) are defined as the "Leased Premises." The Leased Premises, as shown in Exhibit A will have on the ground floor dimensions of approximately 6250 sq. ft. The Leased Premises include the exterior unfinished walls of the Leased Premises as well as the doors and glass windows. The Leased Premises also include one-half of the width of any common walls.

3. TITLE:

Landlord covenants that

a. it has the right to make this lease;

b. the United Shopping Plaza is and shall continue to be, during the term of this lease, free and clear of all liens, encumbrances and restrictions that may affect Tenant's quiet enjoyment of the Leased Premises; and

c. the United Shopping Plaza is duly zoned by the Government of the Virgin Islands for use as a shopping center.

FY015215

4. LEASE:

The parties hereto state that they have agreed to enter into a lease contract with respect to the Leased Premises hereinabove described, accordingly, Landlord does hereby LEASE to Tenant, and Tenant LEASES from Landlord the Leased Premises with all rights, uses, servitudes, improvements appurtenances, easements and privileges belonging thereto, including, but not limited to, the non-exclusive right to use the Common Areas defined herein.

5. LANDLORD'S RESERVATION:

Landlord has reserved the right to place in the Leased Premises (in such manner to reduce to a minimum the interference with Tenant's use of the Demised Premises) utility lines, pipes, and the like, to serve premises other than the Leased Premises, and to replace and maintain or repair such utility lines, pipes and the like in, over and upon the Leased Premises as may have been installed in the building, including, but not limited to, those that may have been initially installed in the Leased Premises by Landlord. It is understood that upon Landlord making any maintenance work as provided by this Article Landlord will restore Leased Premises to the condition that Leased Premises were in prior to such work.

6. TERM OF LEASE:

The Term of this lease shall be for a period of Sixty-Three (63) calendar months commencing on October 1, 2002. Tenant shall have first option on Bay 8 for a further term of five years.

7. TENANT'S ACCESS PRIOR TO COMMENCEMENT OF TERM:

Tenant, prior to the commencement of the term may, at its own risk and expense and without any liability to Landlord, install fixtures and other equipment in the Leased Premises and do other work; provided, however, that such activities of Tenant shall not interfere with any work performed by Landlord and further provided that the Leased Premises is are not otherwise occupied by a tenant under a lease in existence on or before the date this lease is executed

8. INSPECTION BY TENANT:

The Tenant acknowledges that it has inspected the Leased Premises and accepts same on an "AS IS–WHERE IS" basis, subject to Landlord's improvements: Landlord will provide a loading door; will remove the existing suspended ceiling; install a working bathroom; and will install warehouse lighting, all work to commence promptly after execution of this Lease. Tenant acknowledges that it has sole responsibility to obtain any permits or certificates necessary to permit it to occupy the Leased Premises or otherwise open for business. If Tenant disputes the square footage of the Leased Premises, the amount set forth in this lease shall govern, irrespective of the actual square footage.

FY015216

for business not later than ninety (90) days after the date when the Leased Premises have been made available for Tenant's occupancy.

10. RENT:

Tenant agrees to pay Rent to Landlord, without any prior demand and without any setoff or deduction whatsoever, at the address of landlord or at such places as Landlord may direct in writing, at the following rates and times:

The Rent for the Leased Premises shall initially be waived until January 1, 2003. Therafter the Annual Rent shall be $31,260.00 for the first year, payable in equal monthly installments of $2,605.00 per calendar month beginning with January 1, 2003. The Annual Rent for the remaining four years of the lease, beginning January 1, 2004 shall be $37,500 payable in equal monthly installments of $3,125 and proportionately at such rate for any partial month, such monthly installments to be paid in advance on the first day of each and every calendar month during the term hereof. APRIL 1

11. PAYMENTS:

Tenant is responsible for the delivery of all payments due under this lease on the date due. Failure to make such payment within 30 days shall result in Landlord charging interest due on all unpaid sums at a rate of 1-1/2% per month. If Tenant shall fail to pay in full all payments due herein within 30 days of the date due, the Tenant shall be in default under this Lease. If the interest rate set forth herein is deemed to be usurious or otherwise against public policy, the interest rate shall be the maximum amount permitted by law or public policy. Interest shall accrue at the prevailing legal interest rate from and after the due date of any and all payments required under this Lease, including but without limitation, fixed minimum rent, percentage rents, additional rents described in this Lease, maintenance fees and tenant's proportional share of real property tax.

Tenant agrees that it may not set-off against payments due hereunder any disputed payments or other charges it claims are due to it from Landlord.

12. DEFAULTS:

If default should be made in any of Tenant's obligations under this Lease and such default is not cured within thirty (30) days after written notice by Landlord to Tenant thereof (or if said default cannot be cured with thirty (30) days,) then, if Tenant does not commence within said thirty day period to attempt to cure said default and thereafter proceed with due diligence with the curing of the same, Tenant shall be in default under this Lease.

13. LANDLORD'S ADDITIONAL REMEDIES FOR DEFAULT:

Landlord may, at its option, terminate this Lease upon five (5) business days written notice to Tenant (if said default is not cured within such five-day period), and Landlord may reenter the Leased Premises as its own estate, and/or Landlord may relet the Leased Premises in

whole or in part, and alter, change or subdivide the same as in Landlord's reasonable judgment may accomplish the best results at such rental reasonably approximating a fair market rental and upon such terms and for such length of time, whether less or greater than the unexpired portion of the Term of this Lease as Landlord may reasonably elect. Notwithstanding any such termination of this Lease, Tenant shall be liable unto landlord for any deficiency between Rent provided hereunder and the rentals collected by Landlord for the period of said reletting and/or vacancy, not exceeding the balance of the Term after deducting therefrom the reasonable cost of such reletting, induding reasonable costs for brokerage fees, attorneys fees, and reasonable cost of restoration of the Leased Premises to make them suitable for reletting. Landlord may monthly, or at such greater intervals as it may see fit, institute action to exact payment of said deficiency.

Should Landlord not initially terminate this Lease upon default, Landlord may nevertheless terminate this Lease at any time thereafter, provided the default is still continuing.

In the event of termination of this Lease, Landlord shall be immediately be entitled to recover from Tenant, the worth at the time of any such termination of the excess, if any, of an amount equivalent to Rent and Additional Rent for the balance of the Lease Term over the reasonable rental value of the Leased Premises for said period, both such amounts being discounted to their then present value at the rate of eight percent (8%) per annum.

In any action to exercise its rights and remedies hereunder, Landlord, if successful on the merits of such action, shall be entitled to recover its reasonable attorneys fees incurred in connection with such exercise.

14. COMMON AREAS:

The Common Areas of the Shopping Plaza are those areas designated on Exhibit A up to, but not including, doors or glass windows. Landlord agrees that Tenant may during the term hereof, with others, have the non-exclusive right to use the Common Areas, subject to the rules and regulations established herein and as established from time to time by the Landlord.

As part of the Common Areas, Landlord agrees to provide automobile parking facilities for the use of Tenant's customers, invitees and employees doing business in the Shopping Plaza. Landlord will provide a minimum of 150 parking spaces for the entire United Shopping Plaza on a first come-first served basis, subject to the restrictions on Tenant's employee parking and Tenant's vehicle set forth below:

a. Vehicles owned by Tenant's employees and other vehicles owned or leased by Tenant or used by Tenant shall be parked only in such areas as Landlord may from time to time designate. Such designated parking areas may be outside the United Shopping Plaza but shall be within a reasonable distance from the Leased Premises.

b. The following Rules and Regulations shall apply in all areas designated for use by customers at the United Shopping Plaza:

c. Neither Tenant, nor its employees, agents, or contractors shall cross-line park;

d. Car washing is not permitted; Neither Tenant nor its employees, agents, or contractors shall permit their vehicles to be washed in customer parking areas. Tenant shall not permit water from the Leased Premises to be used for car washing.

e. No trailers, "semi's" or storage vans are permitted in customer parking areas.

f. No trucks with a cargo capacity of greater than 1/2 ton are permitted.

g. No heavy equipment such as backhoes or bulldozers are permitted.

h. No Tenant may park more than two pick-up trucks or one van in the parking lot at the same time from 6:00 PM. to 10:00 p.m.

i. Tenant is responsible for ensuring that its employees, agents and contractors comply with these rules and regulations and any other rules and regulations promulgated by Landlord.

j. Tenant shall be penalized $100 for each violation of these rules and regulations and any other rules and regulations promulgated by Landlord. Landlord shall have sole discretion to determine whether a Tenant is in violation. If Tenant's fines exceed $300 in any calendar year, then Landlord shall have the right to terminate this Lease. Fines must be paid with the rent payment that is due immediately following the assessment of the fine. Unpaid fines shall be treated as unpaid rent and all provisions in this Lease regarding unpaid rent shall apply equally to unpaid fines.

k. Tenant expressly recognizes that the above rules and regulations and penalties are promulgated for the benefit of all tenants and the Landlord to maintain the United Shopping Plaza as an attractive and convenient shopping center. Tenant expressly agrees that it will be subject to the rules and regulations and penalties as consideration for Landlord's agreement to enter into this Lease.

l. Landlord has the right, but not the obligation, to enforce the parking regulation herein.

15. COMMON AREA MAINTENANCE

Landlord shall keep the Common Areas in good order and condition at its expense. Landlord shall make all decisions relating to maintenance at its sole discretion. Landlord shall not be obliged to repair such damages as may be caused by any act or negligence of any Tenant, its employees, agents, licensees or contractors. Landlord shall not be responsible to make any other improvements or repairs of any kind upon the Leased Premises. This paragraph is not intended to refer to damage by fire or other casualty to the Leased Premises which provision is hereinafter made. The Tenant shall make all necessary repairs to the interior of the premises. Tenant shall maintain the Leased Premises at its own expense.

Tenant agrees that if it is dissatisfied with Landlord's maintenance of the Common Areas, Tenant's sole remedy shall be an action for specific performance in the Territorial Court of the Virgin Islands. Tenant further agrees that Landlord shall only be liable for specific performance if the court determines that Landlord abused its discretion with respect to decisions regarding maintenance and such a determination is reduced to a final judgment.

16. UTILITIES:

Tenant shall pay for all of its requirements for utilities such as gas, steam, water, power and electricity. Landlord shall furnish the Leased Premises with sufficient electric, water and sewer lines, all of them of the capacity initially required by Tenant, and connected to an adequate source of supply or disposal. Any changes in capacity shall be made at Tenant's expense. Landlord is not required to furnish the actual utilities and Tenant shall pay all connection/services charges for utilities.

Landlord will supply well water when available at a rate not exceeding the rate charged by the Water and Power Authority and such shall be metered on the Leased Premises. If well water is not available, Landlord will connect the water system to the government potable water system. Landlord expressly disclaims all warranties regarding the quality of the well water or its fitness for any purpose. If supplying said well water subjects Landlord to regulation by the Public Utility Commission, Landlord shall have no obligation to provide the well water.

Landlord may provide cistern water when available, without charge, solely for consumption on the premises but shall have no obligation to do so. Landlord expressly disclaims all warranties regarding the quality of the cistern water or its fitness for any purpose.

17. USE OF PREMISES:

It is understood, and Tenant so agrees, that the Leased Premises, during the term hereto, shall be used and occupied by Tenant only for the operation of a Wholesale Grocery Warehouse. Tenant further agrees to conform to the following provisions during the entire term of this Lease.

a. Tenant shall always conduct its operations in the Leased Premises under its present trade name unless Landlord shall otherwise consent in writing, which consent shall not unreasonably be withheld;

b. Tenant shall be keep the Leased Premises open for business either during the usual business days and hours of a majority of the Tenants in the Shopping Plaza.

c. Tenant shall not use the sidewalks adjacent to the Leased Premises for business purposes without the previous written consent of the Landlord;

d. Upon each written request by Landlord, Tenant will furnish to Landlord the license numbers of the vehicles of all persons employed within the Leased Premises Tenant;

e. Tenant Shall not place on the outside of exterior walls (including both interior and exterior surfaces of windows and doors), or the roof of the Leased Premises, or any part of the Shopping Plaza outside of the Leased Premises, any signs other than the store sign, or any symbol, advertisement, neon light, other light or other object or thing visible outside the Leased Premises, without the prior written consent of Landlord, which consent Landlord agrees shall not be unreasonably withheld. The provisions of this subsection (e) shall not prohibit the Tenant placing flat paper signs on the interior or exterior of the windows of the Leased Premises. It is further understood that the store sign to be used by Tenant is hereby accepted by Landlord provided the same generally continues to the type, shape and form of those deemed permissible by the Government of the Virgin Islands.

f. No hazardous waste or materials, petroleum products pollutants, or contaminants may be stored in the United Shopping Plaza unless same are (1) held in government approved containers and are stored in full compliance with all regulations or (2) necessary and incidental to the conduct of the Tenant's business as stated in this Lease.

g. Tenant is responsible for properly disposing of its garbage. No oils, toxic or hazardous substances or similar materials may be disposed of anywhere within the United Shopping Plaza. No items such as pallets, cardboard or other items maybe disposed of, or stored anywhere within the United Shopping Plaza so as to create nuisance, odor, attract vermin, or create hazardous conditions.

h. Tenant shall keep the interior of the Leased Premises clean, including showcases, appliances and the Tenant exterior sign. Tenant further agrees to keep the Leased Premises in a sanitary and safe condition in accordance with the laws of the

Government of the Virgin Islands, ordinances of applicable local authorities and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector and other proper officials of the Government Agencies having jurisdiction thereof, except with respect to structural changes which may be required unless such structural changes shall be required as a result of any alteration made by Tenant or any use made of the Leased Premises by Tenant which is more hazardous than the use for which the Leased Premises are hereby leased

i. Tenant shall not perform any or carry on any practice which may injure the Leased Premises or any other part of the 'Shopping Plaza' or cause any offensive odors or loud noise or constitute a nuisance or a menace to any other tenant(s) or other persons in the Shopping Plaza.

18. ASSIGNMENT/SUBLETTING:

Tenant agrees that it has no right to assign this lease or sublet the whole or any part of the Leased Premises without first obtaining the written consent of Landlord, which shall not be unreasonably withheld. Tenant shall remain fully liable for the obligations of this Lease despite said assignment or sublease including, without limitation, the obligation to pay the rent and other amounts provided under this lease. Notwithstanding the foregoing, Landlord shall have no obligation to consent to an assignment or sublease if Tenant is in default of any of its obligations under this lease or is not fully current on all payments due under this Lease.

19. ALTERATIONS/IMPROVEMENTS:

Tenant shall not make any alterations, improvements and/or additions to the Leased Premises without first obtaining, in each instance, the Written consent of Landlord, which consent Landlord agrees will not be unreasonably withheld. Such alterations shall be made in accordance with all applicable laws and in a good and first-class workmanlike manner. Any and all alterations, additions, improvements, air conditioning equipment and ducts, or fixtures (other than the usual trade fixtures) which may be made or installed by Tenant upon the Leased Premises and which in any manner are attached to the floors, walls, or ceilings (including, without limitation, any linoleum or other floor covering of similar character which may be cemented or otherwise adhesively affixed to the floor) shall remain upon the Leased Premises, and at the termination of this lease shall be surrendered with the premises as a part thereof, without disturbance, molestation or injury. With regard to the usual trade fixtures, furniture and equipment, which may be installed in the Leased Premises prior to or during the term hereof, at Tenant's cost, the same shall not be deemed to become a part of the Leased Premises and may be removed by Tenant from the Leased Premises upon the termination of this lease. Further, Tenant will repair any and all damage to the Leased Premises resulting from or caused by such removal

20. AIR CONDITIONING:

Notwithstanding any other provision of this Lease, Tenant must repair, maintain and if necessary replace, the air conditioning equipment supplied with the Leased Premises and shall bear the cost of same.

21. GENERAL INSURANCE REQUIREMENTS:

All insurance provided for in this Lease shall be effected under policies issued by insurers, which are licensed or approved to do business in the U.S. Virgin Islands, and are acceptable to Landlord at its sole discretion. Upon the Tenant first taking possession of the Leased Premises, and thereafter prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Article, the parties shall provide certificates of the polices to each other.

Landlord and Tenant shall conform to the conditions and provisions of the insurers providing any insurance required pursuant to this Lease and shall comply with the reasonable and customary requirements of the companies writing such policies pertinent to the conduct of Tenant's business in the Leased Premises or to Landlord's maintenance of the Common Areas, respectively. Either party may contest any provisions thereof, and the other party shall cooperate in such party's efforts in connection therewith, but not in any event or manner 'which would result in the cancellation of such policy.

Tenant covenants and agrees that it will not do or permit anything to be done in or upon the Leased Premises or bring in anything or keep anything therein, which shall increase the rate of insurance on the Leased Premises or the building of which they are a part, above the then prevalent standard rate on said premises and buildings; and Tenant further agrees that in the event it shall do any of the foregoing, it will promptly pay to Landlord, on demand, any such increase resulting therefrom, which shall be due and payable as additional rent hereunder.

22. TENANTS' PROPERTY INSURANCE OBLIGATIONS:

Tenant shall procure and keep for the benefit of the Landlord other coverage as follows:

a. **Fire and Extended Coverage:** for Tenant's property (including leasehold improvements) against loss or damage by fire an against loss or damage by other risks now or hereafter embraced by "extended coverage", so called, in an amount sufficient to prevent the Landlord or the Tenant from becoming a co-insurer under the terms of the applicable policies but in no event less than $50,000, which amount shall specifically cover leasehold improvements and list landlord as a loss payee.

b. **Steam Boiler Insurance:** carried in companies authorized to do business in the Virgin Islands, Steam Boiler Insurance to the limit of One Hundred Thousand Dollars ($100,000.00), if there is a boiler or pressure object, including gas tank, in the Leased Premises;

c. **Builder's Insurance:** in an amount sufficient to cover the value of any and all improvements, alternations or other construction to be made to the leased premises during the term of this lease.

d. **Plate Glass Insurance:** plate glass insurance covering all exterior plate glass in the Leased Premises

Landlord and any of Landlord's mortgagees shall be named as a named insured (as their interests may appear) and loss payees (as their interests may appear) on all insurance policies required herein. All such policies shall contain a provision that no act, omission or breach of warranty of Tenant shall affect or limit the obligation of the insurer to pay Landlord or any of Landlord's mortgagees such as sums as would otherwise be due under the policy but for such act, omission or breach of warranty.

It is agreed that Landlord shall be entitled to One-Hundred Percent (100%) of any insurance proceeds paid for loss to any part of the demised premises, including all alterations, additions and improvements which are the property of the Landlord, as set forth herein. Tenant shall only be entitled to receive insurance proceeds for loss to those items, which are the personal property of Tenant such as movable trade fixtures and inventory. All other proceeds shall be used at the Landlord's sole discretion.

Any insurance required by this Lease shall be in form satisfactory to Landlord and shall provide that it shall not be subject to cancellation, termination or change except after at least thirty (30) days prior written notice to Landlord. The policy or policies, or duly executed certificates of insurance for the same, together with satisfactory evidence of the payment of the premium thereon, shall be deposited with Landlord on the day the Term Commences and, upon renewal of such policies, no less than thirty (30) days prior to the expiration of the term of such coverage.

In the event Tenant fails to comply with such requirement, Landlord may obtain such insurance and keep the same in effect solely for the benefit of Landlord, and Tenant shall pay Landlord the premium cost thereof upon demand. Should the Tenant fail to pay Landlord the premium for such insurance coverage, the Landlord reserves the right to terminate the lease immediately or, in the alternative, to prorate the premium and add the amount to the monthly rent until the premium is fully paid.

Tenant agrees to give immediate notice to Landlord in case of loss, casualty, fire or accidents in the Leased Premises and to permit Landlord to investigate same.

Tenant shall bear the cost of all insurance specified in this section.

23. LANDLORD'S PROPERTY INSURANCE:

Landlord may, but shall not have the obligation to, provide fire and extended insurance coverage for the United Shopping Plaza and all improvements thereon, including the Leased Premises, but excluding contents, against loss or damage by other risks now or hereafter embraced by "extended coverage" in amounts up to and including the replacement value of the covered property.

24. LANDLORD'S LIABILITY INSURANCE:

Landlord will maintain liability insurance, insuring Landlord against all claims, demands or actions for injury to or death of any one person in an amount of no less than One Hundred Thousand Dollars ($100,000.00), and for injury to or death of more than one person in any one accident to the limit of no less than Three Hundred Thousand Dollars ($300,000.00), and for liability for damage to property in an amount of no less than Fifty Thousand Dollars ($50,000.00); made by or on behalf of any individual or entity arising from, related to, or connected with the conduct and operation of the United Shopping Plaza or any portion thereof, including the Leased Premises.

Landlord may increase the amounts of the limits of the liability insurance as it determines, in its sole discretion, is appropriate.

25. PAYMENT FOR LANDLORD'S INSURANCE:

If it becomes necessary for all tenants to be allocated insurance expense, Tenant shall pay its proportionate share of the premium of Landlord's Property Insurance and Landlord's Liability Insurance. Tenant's proportionate share of the insurance premium shall be determined by multiplying the amount of the premium by a fraction, the numerator of which shall be the number of square feet underlying the Leased Premises, and the denominator of which shall be the total square footage of ground floor area of all buildings comprising the United Shopping Plaza as of the date of premium assessment;

26. INDEMNITY AND HOLD HARMLESS:

Tenant agrees Landlord and Landlord's agents, subcontractors and employees shall not be liable for, and Tenant waives all claims for, damage to person or property sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Leased Premises or the building of which they shall be a part, or any other part of the Shopping Plaza, INCLUDING BUT NOT LIMITED TO claims for damage resulting from:

a. any equipment or appurtenances becoming out of repair;

b. injury done or occasioned by wind;

c. any defect in or failure of plumbing or air conditioning equipment, electric wiring or installation thereof, gas, water, and steam pipes, stairs, porches, railings or walks;

d. broken glass;

e. the backing up of sewer pipe or downspout;

f. the bursting, leaking or running of any toilet, tub, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or Leased Premises;

g. the escape of steam or hot water;

h. water being upon or coming through the roof, skylight, trap door, stairs, doorways, show windows, walks or any other place upon or near such building or the Leased Premises or otherwise;

i. the falling of any fixture, plaster, tile or stucco

j. any act, omission or negligence of co-tenants, licensees or of any other persons or occupants of said building or of adjoining or contiguous buildings or of owners of adjacent or contiguous property;

k. loss of the fire sprinkler system and

l. any latent defect in the Leased Premises or in the building of which they form a part.

Tenant agrees to use and occupy the Leased Premises and to use such other portions of the Shopping Plaza as it is herein given the right to use at its own risk; and that the Landlord shall have no responsibility or liability for any loss of or damage to fixtures or other personal property of Tenant, arising from any cause whatsoever, including, without limitation, loss by theft or otherwise. The provision of this Section shall apply during the whole of the term hereof and, in view of the permission given to Tenant to install fixtures prior to the commencement of the term hereof, shall also apply at all times prior to the commencement of the term hereof.

Tenant will indemnify and save Landlord harmless from any and all liability, damage, expense, cause of action, suits, claims or judgment arising from injury to person or property on the leased premises or any other part of the Shopping Plaza, arising from, related to, or connected with the conduct or operation of Tenant's business in the Leased Premises, from any cause whatsoever unless the landlord is found to be 100% negligent. Tenants liability under this agreement shall extend to any agent, servant, employee, visitor, or licensee of tenant.

27. LANDLORD'S ACCESS TO PREMISES:

Landlord shall have the right to enter upon the Leased Premises at all reasonable hours for the purpose of inspecting or of making repairs to the same, or the building of which they are a part if repairs are required to be made by Tenant pursuant to the terms hereof, Landlord may demand that Tenant make the forthwith, and if Tenant refuses or neglects to commence such repairs and complete the same with reasonable dispatch, after such demand, Landlord may (but shall not be required to do so) make or cause such repairs to be made and shall not

be responsible to Tenant for any loss or damage that may accrue to its stock or business by reason thereof if Landlord makes or cause such repairs to be made, Tenant agrees that it will forthwith, on demand, pay to Landlord the cost thereof, and if it shall default in such payment, Landlord shall have the remedies provided herein.

The Landlord may enter the Leased Premises during all reasonable business hours to inspect them or to exhibit the premises to prospective purchasers or tenants.

28. DAMAGE OR DESTRUCTION:

If the Leased Premises should be damaged by fire, explosion or any other casualty or occurrence covered by Landlord's insurance to an extent which shall be twenty-five percent (25%) or more of the cost of replacement of the Leased Premises, Landlord may elect either to repair or to rebuild the Leased Premises or to terminate this lease upon giving notice of such election in writing to Tenant within ninety (90) days after the happening of the event causing the damage.

If the Leased Premises should be damaged by fire, explosion or any other casualty or occurrence and:

a. such casualty or occurrence shall not be covered by Landlord's insurance, or

b. the building of which the Leased Premises are a part should be damaged to the extent of forty percent (40%) or more of the cost of replacement thereof, notwithstanding the fact that damage to the Leased Premises may be less than twenty-five percent (25%) or

c. the buildings that form the United Shopping Plaza are damaged to the extent of thirty-three percent or more of the cost of replacement thereof, notwithstanding the fact that damage to the Leased Premises may be less than twenty-five percent (25%)

Landlord may elect either to repair or rebuild the Leased Premises or the building or buildings or to terminate this lease upon giving notice of such election in writing to Tenant within ninety (90) days after the happening of the event causing the damage.

If the casualty, repairing or rebuilding shall render the Leased Premises untenantable, in whole or in part, a proportionate abatement of the Fixed Minimum Rent shall be allowed from the date when the damage occurred until the date Landlord completes the repairs or rebuilding or, in the event Landlord elects to terminate this lease, until said date of termination, which shall be no less than thirty (30) days nor more than sixty (60) days after said notice, said proportion to be computed on the basis of the relation which the gross square feet rendered untenable bears to the floor space of the Leased Premises.

If Landlord is required or elects to repair and/or rebuild the Leased Premises as herein provided, Landlord shall not be obligated to expend for such repair and/or rebuilding an amount in excess of the insurance proceeds recovered or recoverable as a result of such

damage. Landlord's obligation to repair and/or rebuild shall in any event be limited to restoring the Leased Premises to substantially the condition in which the same existed prior to the casualty subject, however, to zoning laws and building codes then in existence, but Landlord shall not be responsible for any delay which may result from any cause beyond its reasonable control. Tenant agrees that, promptly after completion of such work by Landlord, it will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore its sign, stock in trade, fixtures, furnishings, floor coverings, equipment and reopen for business.

29. CONDEMNATION:

Section 1. If the whole of the Leased Premises shall be taken by any public or quasi-public authority under the power of condemnation, eminent domain or appropriation, or in the event of conveyance in lieu therein, the Lease Term shall cease as of the day possession shall be taken by such authority, and Tenant shall pay rent up to that date with an appropriate refund by Landlord of such rent as shall have been paid in advance for a period subsequent to said date.

Section 2. If twenty-five percent (25%) or more of the ground floor area of the Leased Premises shall be so taken or conveyed, or if said building shall be divided into separate parts by reason of such taking, and provided Landlord does not extend said building or build additionally to complete seventy-six percent (76%) of its original ground floor area or restore said building to a retain store unit, then Tenant shall have the right of terminating this lease, in which case any unearned rent shall be refunded to Tenant. In the event of any such taking of all or part of the Leased Premises, the Fixed Minimum Rent payable hereunder shall be reduced in the same proportion that the amount of floor space in the Leased Premises is reduced by or as a consequence of such condemnation.

If more than fifty percent of the floor space of the building in which the Leased Premises are located, or if more than twenty-five percent (25%) of the total floor space in the Shopping Plaza, shall be so taken or conveyed, Landlord may, by notice in writing to Tenant delivered on or before the day of surrendering possession to the authority, terminate this Lease, and Fixed Minimum Rent or any prepaid additional rents shall be paid or refunded as of the date of termination.

Section 3. All compensation awarded for any such taking or conveyance, whether for the whole or a part of the Leased Premises, shall go to and shall be the sole property of Landlord, whether such damages shall be awarded as compensation for the unexpired portion of, or diminution in the value of the leasehold or for compensation for or damages to the fee of the Leased Premises, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation provided, however, that Landlord shall not be entitled to any award made to Tenant for loss of business, depreciation to and cost of removal of stock and fixtures, provided that any such award made to Tenant shall not reduce the amount of any award made to Landlord.

Section 4. If any part of the common areas should be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by

private purchase in lieu thereof, this lease shall not terminate, nor shall the rent payable hereunder be reduced nor shall Tenant be entitled to any part of the award made for such taking except that either Landlord or Tenant may terminate this lease if the area of the common areas remaining following such taking or purchase in lieu thereof plus any additional parking area provided by Landlord shall be less than sixty-five percent (65%) of the total area of the common areas at the time of such taking, or purchase in lieu thereof.

30. TAXES:

Landlord shall pay, or cause to be paid, before the same become delinquent, all real estate taxes; provided, however, that if Landlord contests the taxes, Landlord may defer compliance therewith to the extent permitted by the laws of the Government of the Virgin Islands, so long as the validity or amount thereof is contested by it in good faith.

Wherever the term "real estate taxes" is used in this lease, it shall be deemed to include the taxes assessed on the land, the building, and/or other permanent improvements including general and special taxes, assessments for local improvements and other governmental charges which may be lawfully charged, assessed, or imposed upon the United Shopping Plaza, the Leased Premises, or any part thereof.

It is the intent that each respective occupant of premises within the United Shopping Plaza pay any taxes, which may be assessed on any fixtures and equipment located within its respective premises.

31. LANDLORD'S REMEDIES:

Tenant agrees that:

IF

a. Tenant shall neglect or fail to perform or observe any of the covenants, terms, provisions or conditions contained in these presents and on its part to be performed or observed promptly after notice of default, or

b. the estate hereby created shall be taken on execution or by other process of law, or

c. Tenant shall be declared bankrupt or insolvent according to law, or

d. any assignment shall be made of the property of Tenant for the benefit of creditors, or

e. a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of Tenant's property by a court of competent jurisdiction, or

f. a petition is filed for the reorganization of Tenant under any provisions of the Bankruptcy Act now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after it is begun, or

g. Tenant files a petition for such reorganization, or for arrangements under any provisions of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts, then, and in any of the said cases (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance),

THEN

Landlord lawfully may, immediately, or at any time thereafter, and without demand or notice, enter into and upon the said premises or any part thereof in the name of the whole and repossess the same as of its former estate, and expel Tenant and those claiming through or under it, and remove its or their effects (forcibly, if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrearage of rent or breach of covenant, and upon entry, as aforesaid, this Lease shall terminate, unless a subsidiary or affiliated company of Tenant shall become the Tenant hereunder and shall continue to conduct the store in the leased premises under the same name which Tenant had been using in the Virgin Islands for all its stores or such other name then being used in the Virgin Islands by a majority of the stores operated by Tenant, its subsidiaries or its successor; and Tenant covenants and agrees, notwithstanding any entry or re-entry by Landlord, whether by summary proceedings, termination, or otherwise, to pay and be liable, on the days originally fixed herein for the payment thereof, amounts equal to the several monthly installments of the annual rent and other charges reserved as they would, under the terms of this lease, become due if this lease had not been terminated. If Landlord has not entered or re-entered, as aforesaid and whether the Leased Premises be relet or remain vacant in whole or in part or for a period less than the remainder of the term, and for the whole thereof, but in the event the Leased Premises be relet by the Landlord, Tenant shall be entitled to a credit in the net amount of rent received by Landlord in reletting, after deduction of all expenses incurred in reletting the Leased Premises (including, without limitation, remodeling costs, brokerage fees, and the like), and in collecting the rent in connection therewith.

Landlord shall in no event be liable in any way whatsoever for expenditure to relet the Leased Premises, or in the event that the Leased Premises are relet, for failure to collect the rent thereof under such reletting. In the event of a breach or threatened breach of Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, unlawful detainer proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy shall not preclude Landlord from any other remedy in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of the Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Leased Premises, by reason of the violation by Tenant of any of the covenants and conditions of this lease or otherwise. The words, "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning.

Landlord shall have at all times a valid lien for all rentals and other sums of money becoming due hereunder from Tenant, upon all goods, wares, equipment, fixtures, furniture and other personal property and effects of tenant situated on the Leased Premises, and such property shall not be removed therefrom without the consent of Landlord until all arrearages in rent as well as any and all other of money then due to Landlord hereunder first shall have been paid and discharged. Upon the occurrence of an event of default by Tenant of which default

Tenant shall have notice but shall have not cured within the time permitted, if any, Landlord may in addition to any other remedies provided herein or by law, enter upon the Leased Premises and take possession any and all goods, wares, equipment, fixtures, furniture and other personal property and effects of Tenant situated on the premises without liability for trespass or conversion, and sell same with or without notice at public or private sale, with or without having such property at the sale, at which Landlord or his assigns may purchase, and apply the proceeds thereof, less any and all expense connected with the taking of possession and sale of the property, as a credit against any sums due by Tenant to Landlord. Any surplus shall be paid to Tenant, and Tenant agrees to pay any deficiency forthwith. Alternatively, the lien hereby granted may be foreclosed in the manner and form provided by law for foreclosure of chattel mortgages or in any other form provided by law. The statutory lien for rent, if any, is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereof.

32. TENANT'S AFIRMATIVE COVENANTS:

Tenant covenants at its expense at all times during the Lease Term and such further time as Tenant occupies the Leased Premises or any part thereof:

a. To perform promptly all of the obligations of tenant set forth in this Lease and in the Exhibits attached hereto, and to pay when due said Rent and all charges, rates and other sums which by the terms of this Lease are to be paid by Tenant;

b. To use the Leased Premises only for the permitted uses and for no other use without the written consent of Landlord; to operate its business in the Leased Premises under the Tenant's name as set forth in this Lease and to conduct its business at all times in accordance with this Lease and in such manner as to produce the maximum volume of Gross Sales and to help establish and maintain a high reputation for the United Shopping Plaza;

c. To store in the Leased Premises only such merchandise as is to be offered for sale at wholesale within a reasonable time after receipt; to receive and deliver goods and merchandise only in the manner and areas designated by Landlord; and to conform to all reasonable rules and regulations which Landlord may make in the management and use of the United Shopping Plaza, requiring such conformance by Tenant and Tenant's employees;

d. To permit Landlord and its agent to enter the Leased Premises at reasonable times for the purpose of inspecting the same or of making repairs to the building in which the same are located; to permit Landlord during the six (6) months prior to the termination of this Lease or any renewal or extension

thereof to place upon the Leased Premises the usual "For Rent" or "To Let" notices without molestation by Tenant;

e. To pay on demand Landlord's expenses, including reasonable attorneys' fees, incurred in enforcing any obligation of the Tenant under this Lease or in curing any default of Tenant under this Lease;

f. To remain fully obligated under this Lease notwithstanding any assignment or sublease, or any indulgence granted by Landlord to Tenant or to any assignee or sublessee;

g. To obtain all permits or licenses necessary to conduct business and to pay all taxes upon its property in the Leased Premises. If any such taxes for which Tenant is liable are levied against Landlord or Landlord's property and if Landlord elects to pay the same, or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Leased Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder;

h. To maintain the Leased Premises clean and free from rubbish and dirt at all times, and to store all trash and garbage within the Leased Premises in appropriate containers and arrange for the regular pickup of such trash and garbage at Tenant's expense.

33. TENANT'S NEGATIVE COVENANTS:

Tenant covenants at all times during the Leased Term and such further time as Tenant occupies the Leased Premises or any part thereof, not to:

a. injure, overload, deface or otherwise harm the Leased Premises or any part thereof or any equipment or installation therein;

b. commit any nuisance (as determined by the sole discretion of the Landlord) or other act or thing which may disturb the quiet enjoyment of any tenant in the Shopping Plaza nor which would disturb the quiet enjoyment of any persons within five hundred (500) feet of the boundaries of the Shopping Plaza; nor permit the emission of any objectionable noise or odor; nor burn any trash or refuse within the United Shopping Plaza;

c. sell, or distribute any alcoholic liquors or beverages;

d. install or cause to be installed any automatic garbage disposal equipment;

e. conduct business at, in, on, about or from all or any part of the leased Premises on any day when the conduct of business is prohibited by any statutes, laws, regulations or ordinances of the Government of the Virgin Islands or any governmental authority having jurisdiction over the United Shopping Plaza.

a. make any use of the Leased Premises or of any part thereof or equipment therein which is improper, offensive or contrary to any law or ordinance or to reasonable rules and regulations of the Landlord, as such may be promulgated from time to time;

b. use any advertising medium or sound producing mechanism that may constitute a nuisance (as determined by Landlord in its sole discretion), such as radios, television sets, loud speakers, sound amplifiers or phonographs in a manner to be heard outside the Leased Premises;

c. conduct any auction, fire, "going out of business", "close out" or bankruptcy sales, nor do any act tending to injure the reputation of the Shopping Plaza; nor the use or occupancy of the Leased Premises, or to suffer or permit them to be used or occupied, in whole or in part, as a discount house, discount store, surplus store, Army-Navy type store, bargain store, or by similar business or activity;

d. sell or display merchandise on, or otherwise obstruct the driveways, walks, malls, courts, parking areas and other common areas in the Shopping Plaza;

e. use halls, courts and walks for any purpose other than pedestrian traffic; nor suffer the use of same

f. make any alterations or additions to the Leased Premises, nor permit the making of any holes in the walls, partitions, ceilings, or floors thereof, nor permit the painting or placing of any exterior signs, interior illuminated signs, placards or other advertising media, awnings, banners, -flags, pennants, aerials, antennae. or the like therein or thereon, without on each occasion obtaining prior written consent of the Landlord; nor attach interior signs, placards or other advertising media or other objects to the windows or locate the same in such manner as to materially obstruct the view of Tenant's store from the mall area or from the outside;

g. operate any coin or token operated vending machine or similar device for sale of any goods, wares, merchandise, food, beverages, or services, including but not limited to, pay lockers, pay toilets, scales, amusement devices and machines

for the sale of beverages, goods, candy, cigarettes, or other commodities, without Landlord's written consent;

h. operate or cause to be operated any "elephant trains" or other means of transportation;

i. Change the exterior color or architectural treatment of the Leased Premises or of the building in which the same are located, or any part thereof.

34. WAIVER:

Failure on the part of Landlord to complain of any action or non-action on the part of Tenant, no matter how long the same may continue, shall never be deemed to be a waiver by Landlord of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Landlord shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval by Landlord to or of any action by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant.

35. COVENANT OF QUIET ENJOYMENT:

Tenant, subject to the terms and conditions of this Lease, on payment of the rent and observing, keeping and performing all of the terms and provisions of this Lease on its part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Leased Premises during the term hereof without hindrance or ejection by any persons lawfully claiming under Landlord; and it is understood and agreed that this covenant and any and all other covenants of Landlord contained in this Lease shall be binding upon Landlord and its successors only with respect to breaches occurring during its and their respective ownership of Landlord's interest hereunder.

It is further understood and agreed that with respect to any services to be furnished by Landlord to Tenant, Landlord shall in no event be liable for failure to furnish the same when prevented from so doing by strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability by the exercise of reasonable diligence, to obtain supplies, parts or employees necessary to furnish such services, or because of war or other emergency, or for any cause beyond Landlord's reasonable control, or for any cause due to any act or neglect of Tenant or its servants, agents, employees, licensees or any person claiming by, through or under Tenant, or any termination for any reason of Landlord's occupancy of the premises from which the service is being supplied by Landlord, and in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages.

36. STATUS REPORT:

Recognizing that both parties may find it necessary to establish to third parties, such as accountants, banks, mortgagees, or the like, the then current status of performance hereunder,

either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Lease. Without limiting the generality of the foregoing, Tenant specifically agrees, promptly upon the commencement of the term hereof, to notify Landlord in writing of the date of commencement of the term, and acknowledge satisfaction of the requirements with respect to construction and other matters by Landlord, save and except for such matters as Tenant may wish to set forth specifically in said letter.

37. MECHANICS' LIENS:

Tenant agrees to immediately discharge (either by payment or by filing of the necessary bond, or otherwise) any mechanic's, materialmen's or other lien against the Leased Premises and/or Landlord's interest therein, which liens may arise out of any payment due for, or purported to be due for, any labor, services, materials supplies, or equipment alleged to have been furnished to or for Tenant in, upon or about the Leased Premises.

38. INVALIDITY OF PARTICULAR PROVISIONS:

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Any provision of this Lease that is determined to be invalid or unenforceable shall be interpreted in such a manner as to give it the fullest effect to the provision's intent possible without being invalid or unenforceable.

39. PROVISIONS BINDING:

Except as herein otherwise specifically provided, the terms hereof shall be binding upon and shall inure to the benefit of the heirs, successors and assigns, respectively, of Landlord and Tenant. Each term and each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition. The reference contained herein to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances where Landlord may give written consent to a particular assignment as provided in this Lease,

40. GOVERNING LAW:

This Lease shall be governed exclusively by the provisions hereof and by the laws of the Government of the Virgin Islands in existence at the time this Lease is executed.

41. NOTICES:

Whenever by the terms of this Lease, notice shall or may be given either to Landlord or to Tenant, such notice shall be in writing and shall be sent by certified mail, postage prepaid:

If intended for Landlord, addressed to it at:

PO Box 763 Christiansted St. Croix, 00821

If intended for Tenant, addressed to it at:

Bay # 31-36

United Shopping Plaza, 4 C & D Estate Sion Farm

Christiansted, St. Croix, USVI 00821

Each party hereunder, by like notice, may designate any future addresses to which subsequent notices or payment shall be sent.

42. MORTGAGE SUBORDINATION:

Tenant agrees that this Lease and lien will be subordinated to the lien of any present or future mortgage to a bank, insurance company or similar financial institution, irrespective of the time of execution or time of recordation of such mortgage or mortgages. Tenant agrees that it will, upon the request of Landlord, execute, acknowledge and deliver any and all instruments necessary or desirable to give effect to or notice of such subordination. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments and modifications, consolidations, extensions, renewals, replacement and substitutes thereto.

43. HOLDOVER BY TENANT:

If Tenant remains in possession of the Leased premises after the expiration of the tenancy created hereunder and without the execution of a new lease, Tenant, at the option of Landlord, shall be deemed to be occupying said Leased Premises as a tenant from month to month at double the Rent and double all other payments due hereunder. In the case of payments that are assessed on an annual basis, such as real estate taxes and insurance, the estimated monthly portion of such payment due for that year (as determined at the sole discretion of Landlord) shall be doubled and due and payable with the monthly rent, subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy. Tenant shall not interpose any counterclaim or counterclaims in an unlawful detainer proceeding or other action based on holdover.

44. LANDLORD'S RIGHT TO CURE DEFAULTS:

Landlord may, but shall not be obligated to, cure at any time, without notice any default by Tenant under this Lease; and whenever Landlord so elects, all costs and expenses incurred by Landlord in curing a default, including, without limitation, reasonable attorneys' fees together with interest on the amount of costs and expenses so incurred at $1^{1/2}$ percent per month (or if the maximum legal interest rate of $1^{1/2}$ percent per month is deemed to be usurious under Virgin Islands law) shall be paid by Tenant to Landlord on demand, and shall be recoverable as additional rent. Interest shall accrue at the prevailing legal interest rate from and after the due date of any payment of fixed minimum rent, percentage rent, or any additional rent described in this Lease.

45. VOTING CONTROL OF TENANT:

If Tenant is a corporation and if at any time during the Lease term the person, persons or corporation(s) who own or which own(s) a majority if its voting shares at the time of the execution of this Lease cease to own a majority of such shares (except as the result of transfers by bequest or inheritance) Tenant shall so notify Landlord and landlord may terminate this Lease by notice to Tenant given within ninety (90) days after Landlord shall have received other notice thereof. This section shall not apply whenever Tenant is a corporation, the outstanding voting stock of which is listed on a recognized security exchange. For the purposes of this section, stock ownership shall be determined in accordance with the principles set forth in Section 544 of the United States Internal Revenue Code of 1954, as the same existed in August 16, and the term "voting stock" shall refer to shares of stock regularly entitled to vote for the election of directors of the corporation.

46. SECURITY DEPOSIT:

As security for the faithful performance by Tenant of all of the terms and conditions upon the Tenant's part to be performed, Tenant has deposited with Landlord the sum of $3,125 on or before October 31, 2002.

Such amount will be returned to Tenant, WITHOUT INTEREST, thirty (30) days from the day set forth for the expiration of the Term herein if Tenant has fully and faithfully carried out all of the terms, covenants and conditions on its part to be performed. Landlord shall have the right to apply any part of said deposit to cure any default of Tenant.

In the event of a sale of the United Shopping Plaza, the buildings or portions of buildings therein, or of a lease of the land on which they stand, subject to this Lease, the Landlord shall have the right to transfer his security to the vendee or lessee and the Landlord shall be considered released by Tenant from all liability for the return of such security and the Tenant shall look to the new Landlord solely for the return of the said security, and it is agreed that this shall apply to every transfer or assignment made of the security to a new Landlord. The security deposited under this Lease shall not be mortgaged, assigned or encumbered by Tenant without the written consent of the Landlord. In the event of any authorized assignment of Lease, the said security deposit shall be deemed to be held by Landlord as a deposit made by the assignee and the Landlord shall have no further liability with respect to the return of said security deposit to the Tenant.

47. DELIVERY OF THIS INSTRUMENT:

This instrument cannot be construed to be a proposal of either Landlord to Tenant, nor of Tenant to Landlord, and shall have no effect whatsoever between the parties herein named unless properly executed by both parties, it being understood that this instrument has been delivered for examination only but without any purpose whatsoever of creating or confirming any contractual relationship between Landlord and Landlord and Tenant agree that neither party shall be construed the drafter of this Lease for interpretation purposes.

48. PARAGRAPH HEADINGS:

The Paragraph headings throughout this instrument are for convenience and reference only and the words contained therein shall in no way be held to explain, modify or aid in the interpretation, construction or meaning of the provisions of this Lease.

PERSON: The term "person" as used herein means natural person, firm, association or corporation, (including more than one natural person) as the case may

49. UNITED SHOPPING PLAZA:

Notwithstanding any other provision herein, "United Shopping Plaza" means the parcel(s) of land bound and described in Exhibit A hereto; plus (1) any other parcel(s) of land at any time designated by the Landlord to be added but only so long as any such designation remains unrevoked which are, or are to be, used for United Shopping Plaza or related purposes, including, but not limited to, employee parking, or the furnishing to the United Shopping Plaza of any utility or other service, or for any other improvement appropriate or related to the operation or functioning of the United Shopping Plaza, together with all buildings and improvements to any such parcel(s) of land; plus (2) any plant or other facility, including but not limited to, sewage or garbage disposal plant, serving the United Shopping Plaza, even though it is not located upon land which is a part of the United Shopping Plaza, and the facilities connecting any such plant or facility (whether or not so located) to the remainder of the United Shopping Plaza (but not including the land under or through which any such connection passes, if not otherwise included within the United Shopping Plaza).

The term "United Shopping Plaza" also means, when used not solely to designate the geographical location thereof, the operation and functioning thereof primarily as a general shopping center for the sale of goods, wares, merchandise, food, beverages and services at retail, together with such services and facilities as are incident-to or desirable in connection with the operation thereof, including, but not limited to, medical, dental, and other office space. No road, way, street, easement, utility or facility otherwise included within the-United Shopping Plaza shall be deemed for any purposes to be partially or wholly excluded therefrom by reason of the fact that the same may also serve or be used by the occupant of any other premises or the customers thereof. Any portion of the United Shopping Plaza, which is condemned or dedicated to public use or ceded or conveyed to any governmental authority for street or related purposes, shall be thereafter excluded from the United Shopping Plaza.

50. CONSTRUCTION ON ADJACENT PREMISES:

If any excavation or other building operation shall be about to be made or shall be made on any premises adjoining the Leased Premises or on any other premises in the Shopping Plaza, the Tenant shall permit the Landlord, its agents, employees, licensees and contractors, to enter the Leased Premises and to shore-up the foundations and/or walls thereof, and to erect scaffolding and/or protective barricades around and about the Leased Premises (but not so as to preclude entry thereto) and to do any act or thing necessary for the safety or preservation of the Leased Premises. Any such construction or excavation work or any such shoring-up shall not affect the Tenant's obligations under this Lease. The Landlord shall not be liable in

any such case for any inconvenience, disturbance, loss of business or any other annoyance arising from any such construction, excavation, shoring-up, scaffolding or barricades, but the Landlord shall use its best efforts so that such work will cause as little inconvenience, annoyance and disturbance to the Tenant as possible consistent with accepted construction practice in the vicinity and so that work shall be expeditiously completed.

51. EFFECT OF UNAVOIDABLE DELAYS:

The provisions of this Section shall be applicable if there shall occur, during the Lease Term, or prior to the commencement thereof, any (1) strike(s), lockout(s) or labor dispute(s); (2) inability to obtain labor materials, or reasonable substitutes therefor; or (3) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire or other casualty, or other conditions similar to those enumerated herein; beyond the reasonable control of the party obligated to perform. if the Landlord or the Tenant shall, as the result of any of the above-described events, fail punctually to perform any obligation on its part to be performed under this Lease, then the obligated party shall be relieved of such obligation, but only to the extent occasioned by such event. if any right or option of either party to take any action under or with respect to this Lease is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time and such named date shall be deemed to be extended or delayed as the case may be, for a period equal to the period of the delay occasioned by any above-described event. Notwithstanding anything therein contained, however, the provisions of the Section shall not be applicable to the Tenant's obligation to pay rent or its obligations to pay any other sums, monies, costs, charges or expenses required to be paid by the Tenant hereunder.

52. ATTORNMENT:

Tenant shall in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by the Landlord covering the Leased Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease.

53. ACCORD AND SATISFACTION:

No payment by Tenant or receipt by Landlord of a lesser amount than the total balance then due to Landlord shall be deemed to be an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such unpaid balances or pursue any other remedy provided in this Lease. Landlord shall have the right to allocate such partial payments to reduction of the balance as it deems appropriate, including using such payment to first reduce interest and/or late fees without reducing the balance due to Landlord.

54. NOTIFICATION TO MORTGAGEE:

At any time when there is outstanding a mortgage, deed of trust or similar security instrument covering Landlord's interest in the Leased Premises, Tenant may not exercise any remedies for default by Landlord hereunder, whether express or implied, unless and until the

holder of the indebtedness secured by such mortgage, deed of trust or similar security instrument shall have received written notice of such default and a reasonable time for curing such default shall thereafter have elapsed, provided that Landlord shall have notified Tenant, in writing, of the name and address of the holder of the indebtedness secured by.

55. NO ORAL CHANGES:

This Lease may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any change, modification or discharge is sought.

56. REPRESENTATIONS BY LANDLORD:

Neither Landlord nor Landlord's agents have made any representations, warranties or promises with respect to the United Shopping Plaza, this Lease, the Leased Premises or the building of which they are a part except as herein set forth.

57. WAIVER OF LITIGATION:

Tenant expressly recognizes that part of the consideration for this Lease at the specified annual Rent is Tenant's agreement to waive all rights of litigation against Landlord to the maximum extent permitted by law and public policy.

Tenant expressly recognizes that the costs and delays of litigation increase the cost of doing business for a landlord and that because Tenant has agreed to waive its litigious rights, Landlord has entered into this Lease at the Rent specified in this Lease, subject to the following conditions:

a. Tenant agrees not to assert any set offs in any action for eviction or to collect payments due under this Lease.

b. Tenant agrees that it will not assert any counterclaim in an action for eviction or collection of payments due under this Lease nor seek consolidation of any action between the parties; Landlord in turn agrees that it will not assert that the failure to assert such a counterclaim is a waiver of a compulsory counterclaim.

c. Tenant expressly waives trial by jury in any action between Landlord and Tenant.

d. Tenant expressly waives any claim for special, consequential, or punitive damages in any action between Landlord and Tenant

e. Tenant agrees that if Landlord is required to perform repairs within the Leased Premises at the conclusion of the Lease (including any conclusion that results from Tenant's default), Landlord shall be entitled to liquidated damages for repair costs of a minimum of $35.00 per sq. of ground floor space

and that Landlord shall have the sole discretion of determining the amount of square footage requiring repair.

f. Tenant expressly waives any claim it has or may have against Landlord for attorney's fees or interest

g. Tenant acknowledges that Landlord offered it the option of leasing the Leased Premises at an annual rent of $ 100,000, in which case Landlord would not have required the waivers set forth in (a)-(g) above.

Signature of Tenant

Mahmud A. Thai Jr. _____

Landlord is not responsible for water or sewer line leaks, damage or repairs unless leak occurs outside of the leased premises. Leaks within common walls shall be the joint responsibility of the tenants on either side of the common wall.

Signature of Tenant

Mahmud A. Thai Jr. _____

THIS IS THE LEASE that the appearing parties hereby execute in the respective capacity that each appear hereunder, and they hereby ratify this instrument in all its parts and bind themselves to stand for all the terms therein contained at all times under the legal responsibilities arising therefrom according to law, and thus the appearing parties hereby accept this instrument in all its parts, as drafter, being all well informed of its contents, and they do hereby consent to the execution of this Lease.

IN EVIDENCE THERETO, the appearing parties place their initials on every page of this instrument and sign it on the lines indicated below, at the place and on the date indicated next to their respective signature.

Given at Christiansted, St. Croix; U S. Virgin Islands as of this __-day of _____, 2002.

WITNESSES(As to Landlord):

UNITED CORPORATION, d/b/a
UNITED SHOPPING PLAZA,
Landlord

BY _____
Maher Yusef, President

WITNESSES (As to Tenant):

BY _____
Tenant-

BY _____
Tenant

TERRITORY OF THE VIRGIN' ISLANDS)
:ss
DIVISION OF ST. CROIX)

On this___day of _____, 2002, before me appeared _____ who acknowledged himself to be the _____ of UNITED CORPORATION, the corporation described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of the corporation by subscribing the name of such corporation by himself as such officer, and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act and as the free and voluntary act of the said Corporation for the uses and purposes therein set forth.

WITNESS my hand and official seal.

_____
Notary Public

INDIVIDUAL ACKNOWLEDGEMENT

TERRITORY OF THE VIRGIN' ISLANDS)

:ss

DIVISION OF ST. CROIX)

On this _____ day of _____, 19___, before me appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument, and who acknowledged that he executed the foregoing instrument freely and voluntarily for the uses and purposes therein contained, WITNESS my hand and official seal.

_____

Notary Public

TENANT'S SECRETARY'S CERTIFICATE

The undersigned, _____hereby certifies:

1.That he (she) is the Secretary of_____, a corporation organized according to the laws of the Virgin Islands.

2.That at a Special Meeting of the Board of Directors of the aforementioned corporation, held at _____ on _____ at which meeting a quorum was present, the following resolution was unanimously adopted:

"Resolved:

That the Lease Contract executed on _____, by _____ as the _____ of this corporation with UNITED CORPORATION, d/b/a UNITED SHOPPING PLAZA, whereby certain space was leased by this corporation at a Shopping Plaza owned by UNITED CORPORATION, located in St. Croix, U.S. Virgin Islands, is hereby RATIFIED and made binding upon this corporation."

That_____occupies the office of_____, and has been duly elected to and of this corporation.

IN WITNESS WHEREOF, I execute this Certificate, under my hand and the seal of the corporation at , on this day of _____,2002

_____

Secretary

GUARANTY

This Guaranty is an absolute and unconditional Guaranty of payment and performance. It shall be enforceable against the Guarantor, its successors and assigns, without necessity for any suit or proceedings on the Landlord's part of any kind or nature whatsoever against the Tenant, its successors and assigns, and without the necessity of any notice of non-payment, non-performance or non-observance or of any notice of acceptance of this Guaranty or of any other notice or demand to which the guarantor might otherwise be entitled, all of which the Guarantor hereby expressly waives; and the Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of the Guarantor hereunder shall in no wise be terminated, affected, diminished or impaired by reason of the assertion, or the failure to assert, by the Landlord against the Tenant, or against the Tenant's successors and assigns, any of the rights or remedies reserved to the Landlord pursuant to the provisions of the said Lease.

This Guaranty shall be a continuing Guaranty, and the liability of the guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of said Lease, or by reason of any extension of time that may be granted by the Landlord to the Tenant, its successors or assigns, or by reason of any dealings or transactions or matter or thing occurring between the Landlord and the Tenant, its successors or assigns, whether or not notice thereof is given to the Guarantor.

All of the Landlord's Rights and Remedies under the said Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others.

This Guaranty shall be governed by and construed in accordance with the laws of the Government of the Virgin Islands. The Parties hereby subject themselves to the jurisdiction of the Courts of the Territory of the Virgin Islands in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with the aforementioned Lease or this Guaranty. Any such action or proceeding against Guarantor may be commenced by the service of the process necessary to commence such action or proceeding upon the Guarantor or registered or certified mail addressed to the Guarantor at the address set forth above.

Guarantor:

Signature Raymond A. Thiele Social Security No.: 580-16-4397

Name: _____

Address: _____

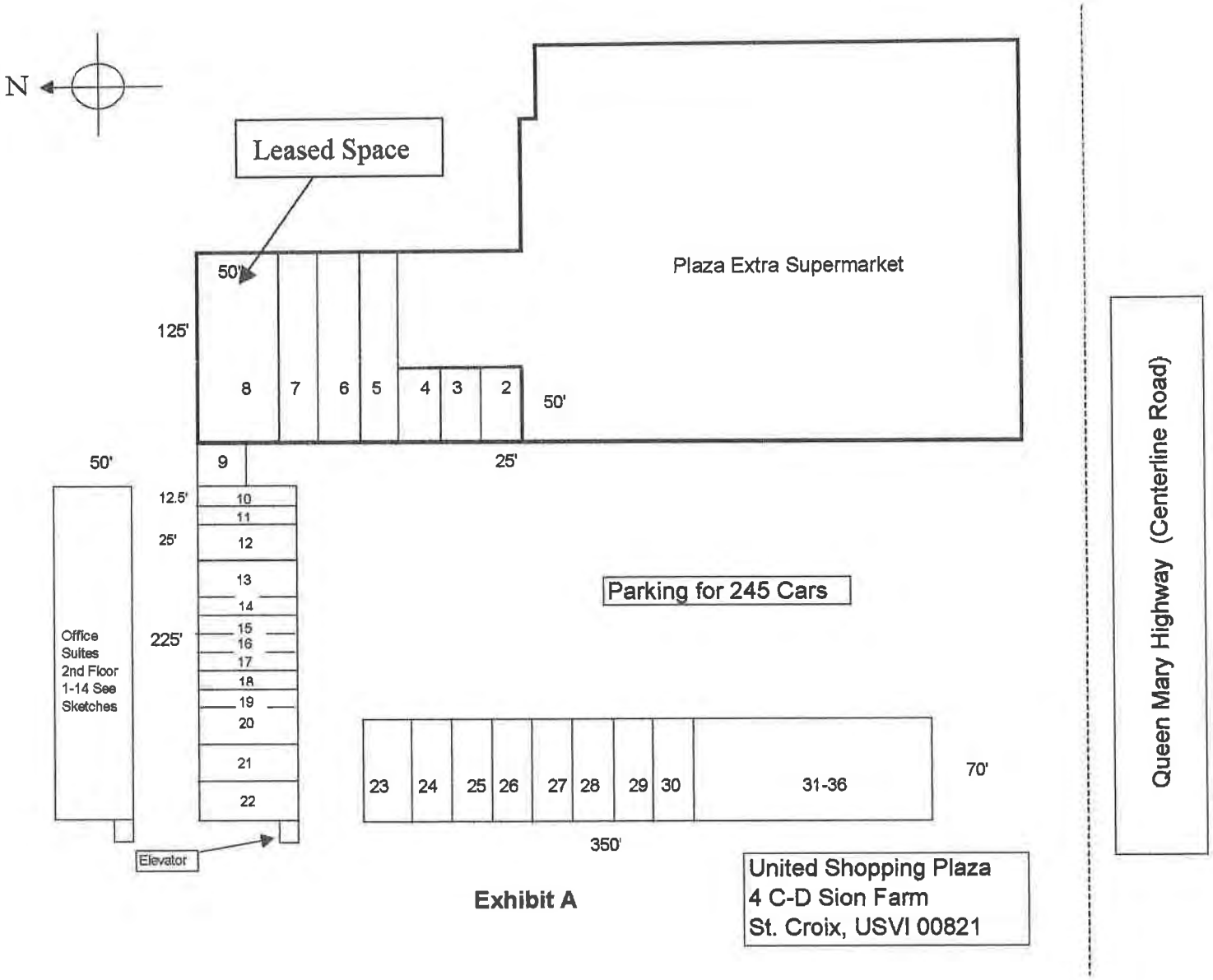

Exhibit A

FY015247

Exhibit 10

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, MUFEED HAMED, HISHAM HAMED, and PLESSEN 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.[1] 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

[1] 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 5th, 2004 through December 31st, 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[2] and implying that the rent for Plaza Extra - Tutu and Plaza Extra - East should be identical. Response, 4-5.

[2] 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 reneging 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").[3]

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

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[3] 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.[4]

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

[4] 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 27th day of April 20 15

CLERK OF THE COURT
By _____ Court Clerk

Exhibit 11

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

WALEED HAMED, as Executor of the Estate of MOHAMMED 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., 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 MOHAMMED 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 MOHAMMED HAMED, Plaintiff, v. FATHI YUSUF, Defendant.	Civil No. SX-14-CV-278 ACTION FOR DEBT and CONVERSION

MEMORANDUM OPINION AND ORDER RE LIMITATIONS ON ACCOUNTING

This matter came on for hearing on March 6 and 7, 2017 on various pending motions, including Hamed's fully briefed Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006, filed May 13, 2014.[1] Because the Court concludes that Defendant Yusuf has not, in fact, presented

[1] Hamed's Motion was followed by: Defendants' Brief in Opposition, filed June 6, 2014; Hamed's Reply, filed June 20, 2014; Hamed's Notice of Supplemental Authority, filed November 15, 2016; Yusuf's Brief in Response, filed December 3, 2016; Yusuf's post-hearing Supplemental Brief, filed March 21, 2017; and Hamed's Response, filed March 27, 2017. Also pending is Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, which is addressed herein.

any legal claims for damages, but has rather presented a single, equitable action for a partnership accounting,[2] and because the parties do not assert that the action for accounting is itself barred by the statute of limitations, Plaintiff's Motion will be denied as to Yusuf's claim for accounting. Additionally, as to Defendant United's claim for rent presented in Count XII of the Counterclaim, the Court finds that there exist genuinely disputed issues of material fact such that summary judgment is inappropriate.

Nonetheless, in light of the arguments presented by the parties, as well as the general complexities and difficulties inherent in addressing the peculiar questions of fact necessary for the resolution of this matter, the Court finds that the interests of the parties in the just and fair disposition of their claims, as well as the overarching interest of the judiciary in the efficient resolution of disputes before it, are best served by utilizing the broad powers conferred upon the Court sitting in equity to fashion remedies specifically tailored to the circumstances presented in order to establish an equitable limitation upon claimed credits and charges submitted to the Master in the context of the Wind Up process.

Background

Hamed's Complaint was filed September 17, 2012, followed by his First Amended Complaint (Complaint), filed in the District Court following removal and prior to remand, on October 19, 2012, seeking, among other relief, "A full and complete accounting... with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf..." Complaint, at 15, ¶1. Defendants filed their First Amended

[2] Count IX of the First Amended Counterclaim, seeking the dissolution of Plessen Enterprises, Inc., constitutes the sole claim presented by Yusuf that is unrelated to, and therefore not incorporated into, his equitable claim for accounting. However, Plaintiff's Motion, by its own terms, concerns only "monetary damage claims," and therefore Yusuf's Count IX is excluded from consideration in this Opinion.

Counterclaim (Counterclaim) on January 13, 2014, seeking relief as follows: Count: I— Declaratory Relief that No Partnership Exists; Count II— Declaratory Relief, in the event that a partnership is determined to exist to determine, among other relief, "their respective rights, interests, and obligations concerning the Plaza Extra Stores and the disposition of the assets and liabilities of these stores;" Count III— Conversion; Count IV— Accounting, alleging that "Yusuf is entitled to a full accounting…;" Count V— Restitution; Count VI— Unjust Enrichment and Imposition of a Constructive Trust; Count VII— Breach of Fiduciary Duty; Count VIII— Dissolution of Alleged Partnership, stating: "Although Defendants deny the existence of any partnership with Hamed, in the event the Alleged Partnership is determined to exist, then Yusuf is entitled to dissolution of the Alleged Partnership and to wind up its affairs, in that such partnership would be an oral at-will partnership and Yusuf provided notice of his intent to terminate any business relationship (including any partnership) with Hamed in March of 2012;" Count IX— Dissolution of Plessen; Count X— Appointment of Receiver; Count XI—Rent for Retail Space Bay I;[3] Count XII— Past Rent for Retail Spaces Bay 5 & 8; Count XIII— Civil Conspiracy; Count XIV—Indemnity and Contribution. Counterclaim ¶¶ 141-191.

Legal Standard

By his Motion, Plaintiff is entitled to entry of summary judgment barring certain relief sought by Defendants' Counterclaim pursuant to the applicable statute of limitations if he "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.I. R. Civ. P. 56(a).

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[3] This Count was the subject of Memorandum Opinion and Order entered April 27, 2015, denying, in part, Plaintiff's present Motion and granting United's Motion to Withdraw Rent. United's claim in Count XII and other monetary claims of United were unaffected by that Order.

"A party is entitled to judgment as a matter of law when, in considering all of the evidence, accepting the nonmoving party's evidence as true, and drawing all reasonable inferences in favor of the nonmoving party, the court concludes that a reasonable jury could only enter judgment in favor of the moving party." *Antilles School, Inc. v. Lembach*, 2016 V.I. Supreme LEXIS 7, at *6-7 (V.I. 2016). The nonmoving party in responding to a motion for summary judgment has the burden to "set out specific facts showing a genuine issue for trial." *Williams v. United Corp.*, 50 V.I. 191, 194-95 (V.I. 2008). A dispute is genuine if the evidence is such that a reasonable trier of fact could return a verdict for the nonmoving party. *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 391-92 (V.I. 2014).

Discussion

There can be no more appropriate introduction to this matter than the lucid observations of Judge Herman E. Moore of the District Court of the Virgin Islands who remarked of another matter involving a dispute between business partners more than half a century ago:

> This case illustrates the pitfalls open to friends going into business. When two strangers go into business, you usually have each one requiring formal contracts, formal statements, formal deposits, and everything of the kind; but usually when two friends go into business, and where it becomes one happy family, so many of these things are omitted; and when they do fall out, as happened in this case, there arises bitterness and difficulties which make it the most difficult type of case to try.

Stoner v. Bellows, et al., 2 V.I. 172, 174-75 (D.V.I. 1951).

Hamed's Motion seeks to bar Defendants' unresolved monetary claims, as alleged in their Counterclaim, for "debt, breach of contract, conversion, breach of fiduciary duty, recoupment/ constructive trust and accounting" that accrued more than six years prior to the September 17, 2012 commencement of this action, citing *James v. Antilles Gas Corp.*, 43 V.I. 37 (V.I. Terr. Ct.

2000).[4] Defendants respond to Hamed's assertion that Defendants' monetary claims are governed by the six-year limitation period set out in 5 V.I.C. § 31(3) (Motion, at 3) by asserting that Yusuf's monetary claims constitute a cause of action for an accounting which, consistent with longstanding common law precedent, accrues upon dissolution of the partnership, and examines the entire period of the partnership, or the period from the last accounting. Opposition, at 9; Supplemental Brief, at 1. Defendant United has not denied the applicability of a six-year limitation period to its third-party claims against Hamed and/or the partnership, but rather argues that the limitation period should be equitably tolled.

"Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business." 26 V.I.C. § 177(b). "A partnership is dissolved, and its business must be wound up… upon… in a partnership at will, the partnership's having notice from a partner… of that partner's express will to withdraw as a partner." 26 V.I.C. § 171(1).

By their pleadings in this litigation, Hamed alleged and Yusuf denied the existence of a partnership at will. Although Yusuf had previously acknowledged the existence of a partnership during pre-litigation negotiations in February and March 2012, and his intention that the partnership be dissolved, by the time litigation ensued, Defendants sought "declaratory relief that no partnership exists." Counterclaim, Count I. By his Motion to Appoint Master, filed April 7, 2014, Yusuf "now concedes for the purposes of this case that he and Hamed entered into a partnership to carry on the business of the Plaza Extra Stores and to share equally the net profits

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[4] While acknowledging a split of authority, the Territorial Court in *James* found "compelling" the majority view, as described by Professors Wright and Miller: "although there is some conflict on the subject, the majority view appears to be that the institution of *plaintiff's suit tolls or suspends the running of the statute of limitations governing a compulsory counterclaim.*" *James v. Antilles Gas Corp.*, 43 V.I. at 44, 46, citing 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure,* § 1419, at 151 (2d ed. 1990) (emphasis in original).

from the operation of the Plaza Extra Stores." The Court granted in part Plaintiff's May 9, 2014 Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership by Order entered November 7, 2014, finding and declaring the existence of a 50/50 partnership between Yusuf and Hamed based upon their 1986 oral agreement for the ownership and operation of the Plaza Extra Stores.

Yusuf has argued that, to the extent a partnership existed, it was dissolved by Hamed's retirement in 1996 which constituted his withdrawal from the partnership. However, the Court has already found that Hamed's participation in the operation and management of the three Plaza Extra Stores continued after his withdrawal from day-to-day operations through his son Waleed Hamed, acting pursuant to powers of attorney. *Hamed v. Yusuf,* 58 V.I. 117, 126 (V.I. Super. Ct. 2013). As noted, Yusuf's pre-litigation negotiations seeking an agreement to dissolve his business relationship with Hamed never resulted in an agreement, such that the partnership was not dissolved by the time the litigation commenced. Within his April 7, 2014 Motion to Appoint Master, Yusuf states his "'express will to withdraw as a partner,' thus dissolving the partnership," quoting 26 V.I.C. § 171(1). In his Response to that Motion, Hamed submitted his April 30, 2014 "Notice of Dissolution of Partnership." Hamed and Yusuf concur that the partnership is dissolved, and both concur that the right of each partner to an accounting has accrued upon dissolution. Both also concur that the monetary claims set forth in Hamed's Complaint and the monetary claims of Yusuf set forth in Defendants' Counterclaim relate back to September 17, 2012, the date Hamed filed his original Complaint.

MOTION FOR PARTIAL SUMMARY JUDGMENT RE: STATUTE OF LIMITATIONS

As discussed in detail in the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith, despite the misleading form of both Hamed's Complaint and

Yusuf's Counterclaim, each partner has presented in this matter only a single, tripartite cause of action for the dissolution, wind up, and accounting of the partnership pursuant to 26 V.I.C. § 75(b)(2)(iii). However, Count XII of Defendants' Counterclaim also presents a separate cause of action on behalf of United for debt in the form of rent. The Court first considers Hamed's Motion for Partial Summary Judgement Re: Statute of Limitations as it applies to United's action for rent, and then as it applies to the partners' competing claims for dissolution, wind up, and accounting.

United's Cause of Action for Debt (Rent)

By Memorandum Opinion and Order entered April 27, 2015, the Court denied Plaintiff's Motion for Partial Summary Judgment Re: Statute of Limitations as to United's Count XI for debt in the form of rent owed with respect to "Bay 1" and granted United's Motion to Withdraw Rent, filed September 9, 2013; authorizing the Liquidating Partner, under the supervision of the Master, to pay to United from partnership funds 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. That Memorandum Opinion and Order also effectively, though not explicitly, granted in part Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, as to Count XI, and entered judgment thereon in favor of United.

In Count XII of Defendants' Counterclaim, United seeks an award of $793,984.38 for rent owed with respect to "Bay 5" and "Bay 8," which the partnership allegedly used for storage space in connection with the Plaza Extra-East store during various periods between 1994 and 2013. Counterclaim ¶¶ 179-84. United's arguments against the applying the statute of limitations to bar its claims for rent generally fail to distinguish between the rent owed for Bay 1 (Count XI) and the rent owed for Bays 5 and 8 (Count XII). Thus, the Court must infer that United opposes Hamed's statute of limitations argument as to Count XII on the same grounds as it opposed the argument

with respect to Count XI. In denying Hamed's Motion for Partial Summary Judgment Re Statute of Limitations as to Count XI, the Court found that the limitations period had been tolled on the basis of Hamed's undisputed acknowledgement and partial payment of the debt.

However, in his August 24, 2014 Declaration, attached as Exhibit 1 to Plaintiff's Response to Defendants' Rule 56.1 Statement of Facts and Counterstatement of Facts, Waleed Hamed expressly states that "there was no agreement to use [Bays 5 and 8] other than on a temporary and periodic basis, nor was there any agreement to pay rent for this space, as United made it available at no cost." Declaration of Waleed Hamed ¶¶ 19-20. Mohammed Hamed's comments acknowledging the debt, which formed the basis of the Court's judgment as to Count XI, do not explicitly distinguish between the rent owed for Bay 1 and the rent owed for Bays 5 and 8. Yet, considered in light of the declaration of his son, the Court is compelled to conclude that a genuine dispute of material fact exists as to whether Hamed ever acknowledged any debt as to rent owed for Bays 5 and 8, and more basically, whether the partnership ever agreed to pay any rent for the use of Bays 5 and 8 in the first place. Accordingly, both Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations and Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must be denied as to Count XII of Defendants' Counterclaim.[5]

[5] Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must also be denied as to Count IV (Accounting). While Hamed and Yusuf are each entitled to an accounting of the partnership pursuant to 26 V.I.C. § 177, United's cause of action for rent is entirely unrelated to the partners' respective actions for accounting except insofar as each partner will ultimately be liable in the final accounting for 50% of whatever debt is found to be owing from the partnership to United.

Partners' Causes of Action for Partnership Dissolution, Wind Up, and Accounting

26 V.I.C. § 75(b) and (c) provide:

> (b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:
>
> (1) enforce the partner's rights under the partnership agreement;
>
> (2) enforce the partner's rights under this chapter… or
>
> (3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.
>
> (c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

By Act No. 6205, the Revised Uniform Partnership Act (RUPA) was adopted in the Virgin Islands, effective May 1, 1998.[6] The amended statute changed the common law and predecessor statute by, among other things, linking the accrual and limitations of actions brought by a partner against another partner or the partnership to the periods provided "by other law," such that claims accruing during the life of the partnership are not revived upon dissolution.[7]

"The first step when interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning. If the statutory language is unambiguous and the statutory scheme is coherent and consistent, no further inquiry is needed." *Brady v. Gov't of the V.I.*, 57 V.I. 433, 441 (V.I. 2012) (citations omitted). By its plain language, Section 75 unambiguously provides

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[6] Yusuf argues that the RUPA savings clause (26 V.I.C. § 274) preserves his claims against Hamed that predate May 1, 1998, the effective date of RUPA in the Virgin Islands. That is, Yusuf contends that RUPA does not apply to claims that accrued before that date, which are instead governed by the limitations period then in effect. His argument fails in that claims in the nature of an accounting of one partner against another could only presented upon dissolution of the partnership. Here, since the partnership had not been dissolved by the date of the enactment of RUPA in the Virgin Islands, and since all his monetary claims against Hamed could only be brought on dissolution, no claims of Yusuf had accrued by May 1, 1998.

[7] See National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act (1997); Section 405(c) [26 V.I.C. § 75(c)], comment 4: "The statute of limitations on such claims is also governed by other law, and claims barred by a statute of limitations are not revived by reason of the partner's right to an accounting upon dissolution, as they were under the UPA." http://www.uniformlaws.org/shared/docs/partnership/upa_final_97.

that during the life of the partnership, a "partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership business;" and that "accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law." "The effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them." National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act; Section 405(c) comment 4.

Though the parties have submitted lengthy briefs presenting their respective positions on how the limited case law interpreting this section of RUPA affects the "claims" purportedly presented by Yusuf and United, there is significant confusion surrounding precisely what is meant by the term "claims."[8] As it is often used in legal parlance, the term "claim" is essentially synonymous with "cause of action." Used in this sense, Hamed and Yusuf have each, in their respective pleadings, presented only a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. § 75(b)(2)(iii).[9] However, as

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[8] Much of this confusion stems from the imprecision of the Complaint and Counterclaim. Both pleadings are presented in essentially the same fashion, consisting of a litany of alleged instances in which the opposing party partner, or his relatives, withdrew or otherwise utilized monies from partnership funds, followed by a "kitchen sink" style presentation of "counts" in which the parties purport to characterize these allegedly improper transactions variously as giving rise to causes of action for conversion, breach of fiduciary duty, unjust enrichment, constructive trust, etc., with no attempt to distinguish between them or to explain which transactions give rise to which cause of action. As a result, Plaintiff's Motion for Partial Summary Judgment is peculiar in that it does not, and indeed cannot, seek entry of judgment as to any one count presented in the Counterclaim, but rather seeks to bar from consideration as to all counts any alleged financial transaction occurring more than six years prior to the commencement of this litigation. In this respect, Plaintiff's Motion seems more akin to a motion *in limine* than a motion for summary judgment, as Plaintiff seeks only to limit the scope of the accounting process by excluding from consideration any transaction pre-dating September 2006.

[9] For a detailed analysis of the nature of the claims presented by the parties in this action, see the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith; explaining that despite the misleading form of the Complaint and Counterclaim, Hamed presents only a single action for dissolution, wind up, and accounting, while Yusuf presents an action for accounting, and an action for corporate dissolution, and United presents an action for debt/breach of contract for failure to pay rent.

used by both the Court and the parties in the context of this litigation, the term "claims" has also taken on an entirely different, and more specific meaning, by which the term "claims" refers not to the parties' respective causes of action for accounting, but rather to the numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery, will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan.[10]

Pursuant to 26 V.I.C. § 71(a), "[e]ach partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses." Thus, under the RUPA framework, the "claims" to which the parties refer are, in fact, nothing more than the parties' respective assertions of credits and charges to be applied in ascertaining the balance of each partner's individual partnership account.[11]

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[10] It is worth noting that this type of claims resolution process would appear to be unnecessary, or at least far less complicated, in the context of many, if not most, actions for partnership accounting, as the need for such a claims resolution process is generally obviated by the existence of the type of comprehensive ledger and periodic accounting statements typically maintained by modern businesses. Here however, as a result of the questionable and highly informal financial accounting practices of the partnership, by which both partners and their respective family members unilaterally withdrew funds from partnership accounts as needed to cover various business and personal expenses, there exists no authoritative ledger or series of financial statements recording the distribution of funds between partners upon which the Master or the Court could reasonably rely in conducting an accounting. Instead the Court finds itself in the predicament of having to account for multiple decades' worth of distributions of partnership funds among the partners and their family members based upon little more than a patchwork of cancelled checks, hand-written receipts for cash withdrawn from Plaza Extra safes, and the personal recollections of the partners and their agents.

[11] Alternatively, such "claims" may be referred to as § 71(a) claims, and the accounts to which they apply may be referred to as § 71(a) accounts.

As discussed above, pursuant to 26 V.I.C. § 75(c), "any time limitation on a right of action for a remedy under this section is governed by other law." In the Virgin Islands, limitations on the time for the commencement of various actions are codified at 5 V.I.C. § 31. In his Motion, Hamed argues that Yusuf's "claims" should be subject to the six year limitations period under § 31(3); presumably on the theory that they are essentially claims to enforce the Yusuf's rights under the partnership agreement as described in 26 V.I.C. § 75(b)(1), effectively rendering them claims upon a contract.

However, by its own terms, 5 V.I.C. § 31 applies to bar, in their entirety, *causes of action* that are commenced outside of the relevant limitations period: "Civil actions shall only be commenced within the period prescribed below after the cause of action shall have accrued." Here, Hamed does not contend that Yusuf's cause of action for accounting was commenced outside the relevant limitations period,[12] but only that Yusuf should be barred from asserting claims—meaning credits to and charges against the partners' accounts—based upon any transaction that took place more than six years prior to the filing of Hamed's initial Complaint. And while Yusuf's action for accounting, as a whole, is undoubtedly subject to a statutory limitations period, the statute of limitations, by its plain language, has no direct applicability to individual, claimed credits and charges presented within the accounting process. Accordingly, Plaintiff's Motion for Partial Summary Judgment will be denied.

[12] The Court need not determine the relevant limitations period for the commencement of a cause of action for accounting, as Hamed has not challenged the timeliness of Yusuf's action for accounting as such, but only the timeliness of the individual § 71(a) claims presented within the accounting.

EQUITABLE LIMITATION OF SCOPE OF PARTNERSHIP ACCOUNTING

Despite concluding that Plaintiff is not entitled to partial summary judgment based upon the statute of limitations as such, the Court is nonetheless moved to consider whether the various issues raised and arguments presented in Plaintiff's Motion, among other concerns, justify the imposition of some equitable limitation on the presentation of claimed credits and charges in the accounting process.

The Supreme Court of the Virgin Islands has explained that "[d]espite the fact that the Superior Court of the Virgin Islands—like almost all modern American courts—exercises both equitable and legal authority, the division between law and equity remains meaningful to defining the remedies available in a particular action." *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 553 (V.I. 2015) (quoting *Cacciamani & Rover Corp. v. Banco Popular*, 61 V.I. 247, 252 n.3 (V.I. 2014)). Furthermore, "because '[a] court of equity has traditionally had the power to fashion any remedy deemed necessary and appropriate to do justice in [a] particular case,' a court has a great deal more flexibility in considering equitable remedies than it does in considering legal remedies." *Id.* (quoting *Kalloo v. Estate of Small*, 62 V.I. 571, 584 (V.I. 2015)).

As explained in detail in the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith, both Hamed and Yusuf have presented in this matter competing equitable actions to compel the dissolution, winding up, and accounting of their partnership pursuant to 26 V.I.C. § 75(b)(2)(iii).[13] As an accounting in this context is both an

[13] 26 V.I.C. § 75(b)(2)(iii) codifies the right of one partner to maintain an action against the partnership or another partner to enforce the partner's "right to compel a dissolution and winding up of the partnership business under section 171 of this chapter or enforce any other right under subchapter VIII of this chapter." In turn, subchapter VIII, §177 explicitly provides that "[e]ach partner is entitled to a settlement of all partnership accounts upon winding up the partnership business."

equitable cause of action and an equitable remedy in itself, the Court is granted considerable flexibility in fashioning the specific contours of the accounting process. *See, e.g., Isaac v. Crichlow,* 2015 V.I. LEXIS 15, at *39 (V.I. Super. 2015) ("An equitable accounting is a ***remedy*** of restitution where a fiduciary defendant is forced to disgorge gains received from the improper use of the plaintiffs [sic] property or entitlements.") (quoting *Gov't Guarantee Fund of Republic of Finland v. Hyatt Corp.*, 5 F. Supp. 2d, 324, 327 (D.V.I. 1998)) (emphasis added).

Partnership Accounting Under RUPA

The general framework for conducting a partnership accounting in the Virgin Islands is outlined at 26 V.I.C. § 177(b):

> Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 46 of this chapter.

In turn, the "partners' accounts" referenced in § 177(b) are described at 26 V.I.C. § 71(a):

> Each partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

By the plain language of the statute,[14] these individual partner accounts, are deemed to exist, regardless of whether any such accounts are in fact maintained, and irrespective of the actual accounting practices of the partners. In this case, these § 71(a) accounts exist purely as a creation of equity, as Hamed and Yusuf, and their sons, withdrew partnership funds at will over the lifetime of the partnership with no formal system of accounting either for distributions made to partners from partnership funds, or contributions made by partners to partnership funds. Thus, because these implied partner accounts, particularly in this case, exist solely to facilitate the efficient settlement of accounts between partners under 26 V.I.C. § 177, which is itself an equitable remedy, the Court, operating within the parameters established by RUPA, possesses significant discretion and flexibility in determining the manner and scope of the partner account reconstruction process. *See 3RC & Co.*, 63 V.I. at 553.

As the last and only true-up of the partnership business occurred in 1993,[15] the parties, by their respective actions for accounting, effectively impose upon the Court the onerous burden of reconstructing, out of whole cloth, twenty-five years' worth of these partner account transactions, based upon nothing more than scant documentary evidence and the ever-fading recollections of the partners and their representatives.[16] For the reasons discussed below, the Court concludes, upon considerations of laches and a weighing of the interests of both the parties and the Court in the just and efficient resolution of their disputes, that the equities of this particular case necessitate

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[14] Subject to certain specified exceptions, "relations among the partners and between the partners and the partnership are governed by the partnership agreement." 26 V.I.C § 4. However, "[t]o the extent the partnership agreement does not otherwise provide, [Title 26, Chapter 1] governs relations among the partners and between the partners and the partnership." Here, the terms of the oral partnership agreement are limited, and establish only that Hamed and Yusuf agreed to jointly operate the three Plaza Extra Stores, and to each share 50% in the profits and losses thereof. See Order entered November 7, 2014, granting Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership.

[15] *See* Counterclaim in SX-14-CV-287 (Counterclaim 287) ¶ 10.

[16] *See supra*, note 10 and accompanying text.

the imposition of a six-year equitable limitation period for §71(a) claims submitted to the Master in the accounting and distribution phase of the Wind Up Plan.

Doctrines of Laches and Statute of Limitations by Analogy

In other similar situations, some courts have imposed equitable limitation periods by applying the "statute of limitations by analogy." In the days of the divided bench, when statutes of limitations were largely inapplicable to suits in equity, courts of equity regularly invoked the statute of limitations by analogy to bar stale claims. Thus, Justice Strong remarked:

> The statute of limitations bars actions for fraud... after six years, and equity acts or refuses to act in analogy to the statute. Can a party evade the statute or escape in equity from the rule that the analogy of the statute will be followed by changing the form of his bill? We think not. We think a court of equity will not be moved to set aside a fraudulent transaction at the suit of one who has been quiescent during a period longer than that fixed by the statute of limitations, after he had knowledge of the fraud, or after he was put upon inquiry with the means of knowledge accessible to him.

Burke v. Smith, 83 U.S. 390, 401 (1872).

Modern courts of equity, such as the Court of Chancery of Delaware, also apply the statute of limitations by analogy as a component of the equitable defense of laches. *See, e.g., Whittington v. Dragon Group, L.L.C.,* 991 A.2d 1, 9 (Del. 2009) ("Where the Plaintiff seeks equitable relief... failure to file within the analogous period of limitations will be given great weight in deciding in deciding whether the claims are barred by laches"); *see also Williams v. Williams,* 2010 Conn. Super. LEXIS 2344, at *15 (Conn. Super. Ct. Sep. 15, 2010) (noting that court may consider an analogous statute of limitation when considering laches defense). Under this approach, "[w]here the statute bars the legal remedy, it shall bar the equitable remedy in analogous cases, or in reference to the same subject matter, and where the legal and equitable claim so far correspond, that the only difference is, that the one remedy may be enforced in a court of law, and the other in

a court of equity." *Whittington*, 991 A.2d at 9.[17] Different jurisdictions disagree, however, as to how much force an analogous statute of limitations should have. *See* Dobbs, *Law of Remedies* § 2.4(4), at 78 (2d ed. 1993) ("When courts look to an analogous statute of limitations for guidance, and that statute has run, they may (1) presume unreasonable delay and prejudice, but permit the plaintiff to rebut the presumption; (2) treat the statute as one element 'in the congeries of factors to be considered.' Some authority has gone beyond either of these rules by holding that equity will follow the law and (3) give the statute conclusive effect").[18]

The Supreme Court of the Virgin Islands has recognized the availability of the equitable defense of laches in territorial courts. In one of its earliest cases, *St. Thomas-St. John Board of Elections v. Daniel,* the Court explained:

> Laches is an affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure that bars a plaintiff's claim where there has been an inexcusable delay in prosecuting the claim in light of the equities of the case and prejudice to the defendant from the delay. *See Cook v. Wikler*, 320 F.3d 431, 438 (3d Cir. 2003); Churma, 514 F.2d at 593. "Laches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *Costello v. United States*, 365 U.S. 265, 282, 81 S. Ct. 534, 543, 5 L. Ed. 2d 551 (1961).

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[17] The Delaware Supreme Court agreed with the Chancery Court's analysis that "[a]s a practical matter, there is not likely to be much difference between the prosecution of [the party's] claim here for an accounting and a claim for damages at law," and that, in turn, the "claims for declaratory relief and an accounting are analogous to a legal claim for the same relief" for the purposes of the laches analysis. *Whittington*, 991 A.2d at 9. The higher court disagreed with the lower court's conclusion that the three-year limitations period for contract actions applied, and instead found applicable the twenty-year limitations period for actions upon contracts under seal. *Id.* Nonetheless, the general approach of considering analogous statutes of limitations in the context of the laches analysis was upheld.

[18] It appears that the Virgin Islands has effectively codified the doctrine of statute of limitations by analogy to conclusive effect in equitable actions. "An action of an equitable nature shall only be commenced within the time limited to commence an action as provide by this chapter." 5 V.I.C. § 32(a). This suggests, in the event that a particular equitable cause of action is not explicitly included in any particular limitation period outlined in 5 V.I.C. § 31, that the Court must apply the most analogous statute of limitations, or fall back on the residual limitations period of ten years for "any cause not otherwise provided for," under § 31(2).

49 V.I. 322, 330 (V.I. 2007).[19]

It must be noted that, just as with the statute of limitations defense, the equitable defense of laches is also typically invoked as a bar to causes of action, in their entirety. Thus, in a case such as this, the defense of laches, if proven, would typically be applied as a complete bar to the party's cause of action for accounting under 26 V.I.C. § 75(b)(2)(iii), rather than as a limitation on the partners' § 71(a) claims presented within the § 177(b) accounting process.[20] However, the equitable defense of laches differs from any defense based upon the statute of limitations—a creature of law—in critical respects. Whereas direct application of a statute of limitations defense must fail because 5 V.I.C. § 31, by its own terms, applies only to causes of action, laches, as an equitable defense, is inherently flexible by nature, and may therefore be molded to suit the particular equities of a given case.[21]

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[19] The Supreme Court has since adopted the Virgin Islands Rules of Civil Procedure to govern civil practice in the territory, however Virgin Islands Rule of Civil Procedure 8(c) is identical to the formerly applicable Federal Rule, and thus the Supreme Court's reasoning regarding the affirmative defense of laches, insofar as it relates to this rule, remains equally applicable under the new rules.

[20] In addition to pleading the affirmative defense of the statute of limitations, both Plaintiff and Defendants pled in their respective Answers the affirmative defense of laches.

[21] The Supreme Court of the Virgin Islands has recognized at least one application of the defense of laches outside the confines of its traditional use as a bar to causes of action brought before the Court, further supporting the Court's conclusion herein that laches, as a creature of equity, is inherently broader and more flexible in its application than the statute of limitations. *See In the Matter of the Suspension of Joseph*, 60 V.I. 540, 558-59 (V.I. 2014) (noting that "laches, an equitable defense, is distinct from the statute of limitations, a creature of law," and finding that "the laches defense may apply to attorney discipline proceedings in certain very narrowly defined circumstances, such as when the delay in instituting the disciplinary proceedings results in prejudice to the respondent"). Particularly appropriate here, the Court also noted that "there may be factual situations in which the expiration of time destroys the fundamental fairness of the entire proceeding." *Id.* (citing *Anne Arundel County Bar Ass'n, Inc. v. Collins*, 272 Md. 578 (1974)).

Doctrine of Laches as Limit on Scope of Accounting

A most instructive case on this issue, bearing notable factual similarity to the case at bar, is the Connecticut Superior Court case of *Williams v. Williams*, 2010 Conn. Super. LEXIS 2344.[22] As described by the court, *Williams* involved a "battle between two brothers over how the assets of [their partnership] had been handled," in which each partner presented his own action for dissolution and accounting of the partnership. In response, each brother also presented affirmative defenses including, *inter alia*, statute of limitations and laches. *Id.* at *2-3. In explaining the law governing each partner's right to an accounting, the court noted that while a final accounting is generally "the one great occasion for a comprehensive and effective settlement of all partnership affairs" in which "all the claims and demands arising between the partners should be settled," the partners' "right to an accounting is not absolute." *Id.* at *7. Consistent with the principle that "actions for accounting generally invoke the equitable powers of the court," courts are granted wide latitude in setting the terms and principles upon which any accounting shall be based.[23] *Id.* "Consequently, a party's right to an accounting may be limited by other equitable considerations, for example a claim of laches." *Id.* at *8 (citations omitted).

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[22] Although the Connecticut Superior Court did not explicitly frame its opinion in the language of RUPA, Connecticut is a RUPA jurisdiction, and therefore the court's decision in *Williams* necessarily concerns principles applicable to actions for dissolution and accounting under RUPA. *See* Conn. Gen. Stat. § 34-300 et seq. (Revised Partnership Act). As the complaint in *Williams* was filed in 2006 there can be no doubt that the Williams partnership was governed by RUPA. *See* Conn. Gen. Stat. § 34-398(b) ("After January 1, 2002, sections 34-300 to 34-399, inclusive, govern all partnerships").

[23] In articulating this rule, the Connecticut Superior Court referred to a Connecticut statute explicitly providing that "in any judgment or decree for an accounting, the court shall determine the terms and principles upon which such accounting shall be had." *Williams,* 2010 Conn. Super. LEXIS 2344, at *7 (citing Conn. Gen. Stat. § 52-401). Although the Virgin Islands lacks such a specific statute, the Court nonetheless concludes that the relevant provisions of RUPA such as 26 V.I.C. §§ 71, 75, and 177, coupled with the considerable discretion granted to the Court in tailoring equitable remedies to suit the needs of any given case, confer upon the Court wide latitude and discretion in establishing the terms and principles, including the scope, of this kind of judicially ordered and supervised accounting. *See supra*, discussion of Equitable Limitation of Scope of Partnership Accounting.

After noting that the statute of limitations had no direct applicability in the context of an accounting, the court explained that "to establish the defense [of laches], [a defendant] must prove both that there was an inexcusable delay by [the plaintiff] in seeking the accounting, and that [the defendant] has been prejudiced by the delay." *Id.* at *15. Under Connecticut law, the court was permitted to consider analogous statutes of limitation when evaluating the laches claim, but was not obligated to apply any such statute.[24] *Id.* Lastly, the court noted that the laches analysis "is an inherently fact specific question that can only be resolved by a close examination of the circumstances of the particular case." *Id.* at *16.

After examining nine separate claimed credits and charges to partner accounts presented by the defendant partner in his counterclaim, the court concluded that "the doctrine of laches precludes [defendant] from seeking an accounting on any of the issues he claims." *Id.* at *37. The court found that there had been "inexcusable delay" as plaintiff did not file his claims until 2007; even the most recent of which was related to events that transpired in 1999. *Id.* The court further noted that, while not dispositive of the issue, the most analogous statutory limitations period—three years for breach of fiduciary duty—had long expired. *Id.* This delay was inexcusable, as the defendant partner was, for most of the relevant period, "in charge of the day-to-day operations" of the partnership and therefore possessed either "actual or constructive knowledge of every transaction of which he now complains," and accordingly tolling was inappropriate. *Id.* at *38.

Additionally, it was "clear to the court that [defendant's] delay in asserting his claims [had] prejudiced [plaintiff]." The court explained: "the passage of time puts [plaintiff] at an unfair

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[24] As discussed above, different jurisdictions afford different weight to the consideration of analogous statutes of limitations in the laches analysis. Connecticut appears to treat analogous statutes of limitations merely as one factor among many to be considered in evaluating a laches defense.

disadvantage in responding to the merits of [defendant's] claims. Because many of [defendant's] claims involve how transactions were or were not recorded by [the partnership's] accountants an analysis of those claims would likely involve testimony from the accountants. Yet, how much [the accountant] might remember of a schedule he prepared for a client a decade before the claim relating to that schedule was made is questionable, at best." *Id.* at *39-40. Lastly, the court noted that while the parties had presented a "substantial amount" of accounting records, "they are by no means complete," and as such, "[plaintiff] would be at a distinct disadvantage if he were required to recreate or find decades of accounting records prepared by a variety of accountants." *Id.* at *40.

In summation, the court remarked: "While an accounting upon a dissolution of a partnership may be the final opportunity for the partners to square up, where one partner ignores issues year after year and allows the other partner to proceed along thinking everything is fine, the first partner cannot be heard to cry upon dissolution a decade or more later, 'I'd like a do over.'" *Id.* at *40-41. Accordingly, the court found that the plaintiff had met his burden in proving his laches defense to the defendant's counterclaim, entered judgment dissolving the partnership pursuant to stipulation of the parties, and ordered a final accounting to be conducted by an appointed third party, limited in scope to the reconciliation of the partners' respective interests in the partnership from January 1, 2009 to the September 15, 2010 dissolution of the partnership. *Id.* at *42.

Hamed/Yusuf Partnership Accounting

Turning to the case at bar, there are both striking similarities and critical differences between the factual scenario presented in this matter and that before the court in *Williams*. Just as in *Williams*, this matter is best described as a battle between two partners, here former friends and brothers-in-law, over how the assets of the partnership were handled. Additionally, despite having,

at all times, either actual or constructive knowledge of the alleged ongoing, repeated withdrawals of partnership funds, both Hamed and Yusuf ignored these issues year after year and allowed one another to continue conducting partnership business, each implying to the other that all was well.

Procedurally, however, the *Williams* court considered the limitation of only one partner's accounting claims, as only that partner sought an accounting reaching back to the formation of the partnership while the other sought an accounting only as to how to divide the current assets of the partnership, as they stood at the time of dissolution. Additionally, whereas the defendant in *Williams* had identified in his counterclaim, by subject matter and date, nine specific challenged transactions, the description of the challenged transactions in the pleadings in this matter are largely devoid of specificity and generally fail to include the precise date, or even year of their occurrence. And while the parties in *Williams* had conducted significant discovery at the time of the court's ruling, here Hamed filed his present Motion with the clear aim of limiting not only the scope of Yusuf's § 71(a) claims, but also the cost and burden of the discovery process itself. *See* Plaintiff's Reply re Statute of Limitations, filed June 20, 2014, at 19. As a result of the partnership's notably informal and unreliable accounting, as well as each partner's general lack of concern or attention toward each other's financial practices over the lifetime of the partnership, neither partner truly knows what he might uncover upon investigation.

State of Partnership Accounting Records

Here, the pleadings alone demonstrate the imprecision and inadequacy of the partners' accounting practices. Hamed's Complaint explains the partners' practice of unilaterally withdrawing partnership funds as needed for various business and personal expenses on the understanding that "there would always be an equal (50/50) amount of these withdrawals for each partner directly or to designated family members." *See* Complaint ¶ 21. Though Hamed alleges

that the partners "scrupulously maintained" records of these withdrawals, the other pleadings and evidence of record in this matter fatally belie this unsupported assertion. For example, Yusuf's First Amended Counterclaim in SX-14-CV-278 (FAC 278) speaks of the need for reconciliation of both "documented withdrawals" of cash from store safes, and "undocumented withdrawals from safes (i.e., all misappropriations)," in the § 177 accounting process. *See* FAC 278 ¶¶ 37-38.

Yusuf has pled that, aside from the sole "full reconciliation of accounts" at the end of 1993, the partners only sporadically attempted to account for, and reconcile their respective §71(a) charges and credits when Yusuf, for unspecified reasons, "decided their business accounts should be reconciled." *See* Counterclaim 287 ¶¶ 9-10. Alternatively, Yusuf has also alleged that such reconciliations sometimes occurred when Hamed specifically "sought to recover funds from his investment," at which point "funds would be given in cash and a notation would be made as to the amount given so as to insure an equal amount was paid to Yusuf from these net profits." *See* FAC 278 ¶ 55.

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes "a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012." *See* Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during

the life of the partnership.[25] *See* Plaintiff's Motion to Strike BDO Report, Exhibit 1, at 22. Additionally, the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' § 71(a) accounts. Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.

Furthermore, in his Revised Notice of Partnership Claims (RNPC), filed October 17, 2016, Hamed expressly states that he "believes that it is clear that because of the state of the partnership records due to Yusuf's acts and failures to act, no [accounting for the period from 1986-2012] is even arguably possible." RNPC, at 6-7. Plaintiff's belief appears to be based in large part on the Opinion Letter of Lawrence Shoenbach, presenting the "expert opinion of a criminal defense attorney with experience in federal criminal practice and so-called 'white collar' business crimes involving tax evasion, money laundering, and/or compliance." *See* RNPC, Exhibit C (Op. Letter), at 1.

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[25] These limitations include the following: 1) "Accounting records of Plaza Extra-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993;" 2) "Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012;" and 3) "Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007 and electronic transactions do not generate any physical evidence as to regular deposits and/or debits." Plaintiff's Motion to Strike BDO Report, Exhibit 1, at 22.

Plaintiff's expert[26] bases his opinion on the 2003 Third Superseding Indictment in the matter captioned *United States of America and Government of the Virgin Islands v. Fathi Yusuf Mohamad Yusuf, et al.* and United's plea of guilty to Count 60 (tax evasion) thereof.[27] Under the terms of the plea agreement, United pled guilty to willfully preparing and presenting a materially false corporate income tax return for the year 2001 by reporting gross receipts as $69,579,412, knowing that the true amount was approximately $79,305,980. Plea Agreement at 3-4, United States v. Yusuf, No. 2005-15F/B (D.V.I. Feb. 26, 2010). According to the indictment, United evaded reporting gross receipts by employing a cash diversion/money laundering scheme by which United, through its officers and employees,[28] conspired "to withhold from deposit substantial amounts of cash received from sales, typically bills in denominations of $100, $50, and $20." *See* Plaintiff's Reply re Statute of Limitations, Exhibit D (Indictment) ¶ 12. Additionally, it was alleged that "instead of being deposited into the bank accounts with other sales receipts, this cash was delivered to one of the defendants or placed in a dedicated safe in a cash room." *Id.* As described by Plaintiff's expert, "those acting on behalf of the company took cash out of sales before the Company could properly account for them." Op. Letter, at 5.

The expert explains:

> The most fundamental feature of such a scheme is that the actual accounting records of the entity do not, and in fact *cannot*, accurately reflect the amount of cash taken in. No proper accounting can be determined from the Company's financial records because the gross receipts have been intentionally misapplied and documented. The

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[26] The Court refers to Lawrence Shoenbach as "Plaintiff's expert" in this Opinion for simplicity. The Court expresses no opinion, however, as to the qualifications of this expert within the meaning of Virgin Islands Rule of Evidence 702.

[27] "Although all of the individual defendants [Fathi Yusuf, Maher Yusuf, Isam Yusuf, Nejeh Yusuf, Waleed Hamed, and Waheed Hamed], were charged in the criminal indictment, only the corporate defendant [United] was convicted of a crime... Critical to my analysis is that United admitted at the time of entry of the corporate plea that it under-reported gross receipts by utilizing the money laundering scheme outlined in the 3rd superseding indictment." Op. Letter, at 3.

[28] Including Fathi Yusuf, Maher Yusuf, Isam Yusuf, Nejeh Yusuf, Waleed Hamed, and Waheed Hamed. *See* Indictment, at 1.

> very purpose of this sort of scheme is to render any accounting innacurate... It is critical that the parties have both admitted that many records of transaction that should have gone into any accurate accounting were not kept or mutually and intentionally destroyed...Because the very nature of the crime, particularly money laundering/tax evasion, is to hide such incoming and outgoing funds from legitimate accounting it is impossible to determine and account for any portion of that amount each partner has or owes to the other. Since many such transactions were not recorded or destroyed, any remaining "records" can never be legitimately credited or debited against the unknown amounts.

Op. Letter, at 6-7.[29]

In his April 3, 2014 deposition in this matter, Maher Yusuf recounted one instance, just prior to the FBI's raid of the Plaza Extra stores in 2001, in which Waheed Hamed advised Waleed Hamed of the impending raid, and Maher Yusuf and the Hameds mutually "decided to destroy some of the receipts, because they were all in cash." *See* Op. Letter, at 7 n.5. According to his deposition testimony, Maher Yusuf, together with Mufeed Hamed, "pulled out a good bit of receipts from the safe in Plaza East," and after roughly estimating the amount of withdrawals attributable to the Hameds and the Yusufs, each family destroyed their own receipts. *Id.* At the hearing on March 6-7, 2017, witnesses including Hamed's sons corroborated this account as well as many of the allegations of the Third Superseding Indictment. Evidence presented at the hearing included testimony concerning a cash diversion scheme involving cashier's checks, conflicting testimony regarding the ledger and receipt system for keeping track of cash withdrawals at each partnership store, and testimony that records documenting the withdrawals had been destroyed.

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[29] The Court is not called upon to express any opinion, and therefore does not express any opinion, as to the criminal nature of the conduct of the individual defendants named in the criminal matter, except to the extent that such conduct demonstrates both the impossibility of reconstructing financial records or conducting, at present, an accurate accounting, and the partners' knowledge of this state of affairs. However, United's guilty plea as to Count 60 establishes that United, which as a corporation must necessarily act through its officers and employees, intentionally schemed to obfuscate gross receipts and cash disbursements thereby rendering impossible any accurate reconstruction of accounts.

Altogether, the allegations presented in the pleadings paint a clear picture of the partners' loose, "honor system" style accounting practices by which each partner and his sons freely and unilaterally withdrew partnership funds, either by check drawn upon partnership bank accounts or, apparently more often, by directly removing cash from store safes; the only apparent control being a general understanding between the partners that such withdrawals would be documented by hand-written receipts to be placed in the safe so that the partners, at some undetermined date, could reconcile their accounts if, and when, they deemed it appropriate. Additionally, evidence of record reveals one clear instance in which the partners, through their sons, deliberately destroyed a substantial amount of records evidencing such withdrawals, and further suggests a general pattern of negligent, if not willful, failure to record such withdrawals throughout the history of the partnership. At a bare minimum, the pleadings and record evidence establish that the partners and their sons had both unfettered access to large amounts of cash, deliberately kept off company books, and ample opportunity to secretly remove that cash, secure in the knowledge that no partner, accountant, or investigator would be able, after the fact, to ascertain the amount taken, as the total amount of cash kept in store safes was intentionally omitted from any record keeping.

Knowledge, Delay, and Prejudice

Against this backdrop of decades of woefully inadequate and, in some instances, deliberately misleading accounting practices, the partners now present their competing claims for partnership accounting asking the Court to employ its already strained resources to untangle the web that they have spun and clean up the mess that they have made. Given the dismal state of the relevant records, this process necessarily entails an evaluation of each individual § 71(a) claim submitted to determine whether, in light of the frequently conflicting recollections of the partners, any given withdrawal or expenditure of partnership funds constituted a legitimate business

expenditure on behalf of the partnership, or a unilateral withdrawal chargeable to the partner's § 71(a) account. However, just as in the *Williams* case, where each partner "ignores issues year after year and allows the other partner to proceed along thinking everything is fine, [neither partner will] be heard to cry upon dissolution a decade or more later, 'I'd like a do over.'" 2010 Conn. Super. LEXIS 2344, at *40-41.

Here, both partners and their respective sons were well aware from the beginning of their involvement with the business that any record keeping and accounting of distributions to the partners was highly informal and controlled only by the "honor system." As managing partner, Yusuf was not only intimately familiar with the methods of record keeping, or lack thereof, employed by the partnership, but was the one responsible for designing and implementing those procedures in the first place. It was Yusuf's responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners. And though Yusuf was content to dispense with the standard business accounting formalities for nearly the entire life of the partnership, upon Hamed's filing his Complaint in this matter, Yusuf changed course and now seeks to vindicate his right to a thorough and methodical partnership accounting.[30]

Hamed is no less to blame for this state of affairs and no less at fault for failing to seek any formal accounting of his interest until this late hour. Although Hamed was not the managing partner, he was undoubtedly aware of the absence of any formal record keeping from at least the date of the first and only true-up of the partnership business in 1993, if not from the very inception

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[30] Yusuf argues that he only became aware of the extent of the Hameds' withdrawals of partnership funds upon the 2010 return of the voluminous documentation seized by the FBI in 2002. However, affidavit evidence shows that all documents seized by the FBI were not only available to the defendants in the criminal matter, including Yusuf, but were, in fact, thoroughly reviewed by them, through their lawyers, on multiple occasions. *See* Hamed's Reply re Statute of Limitiations, Exhibit 4-B (Declaration of Special Agent Thomas L. Petri) (noting that in 2003, subsequent to the return of the indictment, counsel were given complete access to seized evidence, and that a team of four to five individuals led by the attorney for defendants reviewed evidence at the FBI office on St. Thomas for several weeks).

of the partnership.[31] While Hamed may not have had the foresight to know that the 1993 true-up would be the last undertaken, the fact that the partners waited approximately seven years—since the founding of the partnership in 1986—to conduct the first and only complete reconciliation of the accounts between them demonstrates that Hamed was equally content with this practice of informal and sporadic accounting.

Furthermore, both partners were clearly aware, during the entire life of the partnership, of their mutual practice of making, either personally or through their sons, unilateral withdrawals of partnership funds documented by hand-written receipts and controlled only by the honor system. Additionally, by at least 2001 and likely before, Hamed and Yusuf were similarly aware that substantial monies deposited in the store safes were being deliberately kept off the partnership books, and that all involved acted without hesitation in destroying voluminous records of cash withdrawals thereby rendering any independently verifiable accounting or audit impossible. Certainly, by the time of the 2003 filing of the Third Superseding Indictment in the criminal case recounting the cash diversion scheme implemented by the officers of United, even the most trusting individual would have sufficient reason to suspect malfeasance, thereby putting both partners on inquiry notice.[32]

Thus, on the basis of the pleadings and evidence of record, it is clear that both Hamed and Yusuf, personally and through their sons as agents, had actual notice of the informal and imprecise

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[31] Even the 1993 "true-up" itself was merely an informal reconciliation. As Hamed explains, "reliable books have only been attempted since an order from the District Court in the criminal case requiring such an accounting." *See* Plaintiff's Comments Re Proposed Winding-Up Order, filed October 21, 2014, at 11.

[32] This notion is perhaps best, and most memorably, expressed in Martin Scorsese's 1995 film, *Casino*, in which the gangster, Nicky Santoro, played by Joe Pesci, remarks of the men conducting the skim operation at the fictional Tangiers Casino: "You gotta know that the guy who helps you steal… even if you take care of him real well… he's gonna steal a little extra for himself. Makes sense, don't it?"

nature of the accounting practices of the partnership since at least 1993, as well as actual notice of the deliberate destruction of substantial accounting records in 2001. In turn, even if the partners were ignorant of any one withdrawal of partnership funds considered in isolation, they both had actual notice of the significant potential for abuse inherent in their chosen method of record keeping, and therefore constructive, if not actual, notice of the need to protect their respective partnership interests by action pursuant to 26 V.I.C. § 75(b).

Additionally, by his acquiescence to such inadequate record keeping and his inexcusable delay in seeking to enforce his rights under 26 V.I.C. §§ 71(a) and 75(b), each partner has irrevocably prejudiced the ability of the other to respond to the various allegations against him. Here, as in *Williams* "the passage of time puts [each partner] at an unfair disadvantage in responding to the merits of [the other partner's] claims." 2010 Conn. Super. LEXIS 2344, at *39-40. Similarly, "because many of [the] claims involve how transactions were or were not recorded... an analysis of those claims would likely involve testimony" from the partners and their sons, yet, how much they might remember concerning the details of a transaction completed a decade earlier "is questionable, at best." *Id.* Lastly, while the court in *Williams* concluded that the defendant was prejudiced despite the production of "substantial records," here, in the absence of complete or comprehensive records, the partners are even more so "at a distinct disadvantage" in any attempt to "recreate or find decades of accounting records." *Id.* at *40. Thus, the Court concludes that consideration of the principles underlying the doctrine of laches strongly supports

the imposition of an equitable limitation on the submission of § 71(a) claims in the accounting and distribution phase of the Wind Up Plan.[33]

Policy Considerations

Moreover, imposing such a limitation furthers the clear policy goals of the legislature as embodied by RUPA. In *Fike v. Ruger*, the Delaware Chancery Court examined statutory language identical to 26 V.I.C. § 75, and determined that "it is clear under RUPA that a right of action arising during the life of a partnership is not revived merely because dissolution occurs and a separate right to an accounting on dissolution arises." *Id.* at 263. While the common law and prior statutory scheme "placed partners in the predicament of either causing a dissolution to resolve disputes or continuing the partnership despite a cloud of conflict and uncertainty hanging over it, the drafters of [RUPA] included Section 22 [26 V.I.C. § 75], specifically authorizing actions prior to dissolution." *Id.* "The effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them." National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act; Section 405(c) comment 4.

Both partners' claims, as presented in this matter, must be construed as actions for dissolution, wind up, and accounting under § 75(b)(2)(iii). Yet, each partner could have, and under the policy considerations undergirding RUPA, should have, brought his claims concerning individual withdrawals of partnership funds or other transactions, with or without an

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[33] In addition to laches, consideration of the equitable doctrine of unclean hands also supports the impositions of an equitable limitation on the partners' § 71(a) claims. "It is an ancient and established maxim of equity jurisprudence that he who comes into equity must come with clean hands. If a party seeks relief in equity, he must be able to show that on his part there has been honesty and fair dealing." *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 205-06, (V.I. Super. Ct. 2015) (quoting *Sunshine Shopping Ctr., Inc. v. KMart Corp.*, 85 F. Supp. 2d 537, 544 (D.V.I. 2000)). As explained above, both partners bear responsibility for the dismal state of partnership records, and for allowing the practice of unilateral withdrawal of partnership funds to continue unchecked, in the absence of accurate records. Additionally, as both partners, through their sons as agents, engaged in the deliberate destruction of accounting records, neither partner can be said to have come to Court in this matter with clean hands.

accompanying action for accounting, as each partner became aware or should have become aware of those transactions pursuant to § 75(b). Such a policy not only furthers the traditional goals of the statute of limitations by preventing prejudice to defendants resulting from the inevitable decay of memory and other evidence, but also prevents litigants from imposing upon the judiciary, and in turn the taxpayer, the burden of individually evaluating the validity of numerous disputed transactions decades after the fact. In this instance, the stated policy of RUPA clearly prevents both Hamed and Yusuf from imposing upon the Court the great burden of sorting through the ramshackle patchwork of evidence supporting their § 71(a) claims, to reconstruct decades' worth of partnership accounts, when the partners, who deliberately determined not to keep accurate records in the first place, were themselves content to carry on conducting partnership business despite having full knowledge of the pattern of conduct of which they now, belatedly, complain.

Conclusion

"Equity aids the vigilant, not those who slumber upon their rights." *Kan. v. Colo.*, 514 U.S. 673, 687 (1995) (quoting Black's Law Dictionary 875 (6th ed. 1990)). And in keeping with this great maxim of jurisprudence, the Court concludes that considerations of laches, in addition to the express policy goals of the legislature as embodied by RUPA, justify the imposition of an equitable limitation on the submission of the partners' § 71(a) claims to the Master in the accounting and distribution phase of the Final Wind Up Plan. Because each of these § 71(a) claims could have, and should have, been pursued as they arose as causes of action under § 75(b)(1) to "enforce the partner's rights under the partnership agreement," the Court finds that such actions, had they been brought individually, would be subject, either directly or by analogy, to the six year limitations

period outlined in 5 V.I.C. § 31(3)(A) as a species of an action upon contract.[34] Therefore, the Court exercises the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint.[35]

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[34] Alternatively, these claims could have been pursued under 26 V.I.C. § 75(b)(2)(i) to "enforce the partner's rights under sections 71, 73, or 74 of this chapter," which, as "action upon a liability created by statute," are also subject, whether directly or by analogy, to a six year limitations period under 5 V.I.C. § 31(3)(B).

[35] Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that "if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary." First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006.

In light of the foregoing, it is hereby

ORDERED that Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent is DENIED, as to Counts IV and XII. It is further

ORDERED that Hamed's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 17, 2006 is DENIED. It is further

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

DATED: July 21, 2017.

DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST: ESTRELLA GEORGE
Clerk of the Court

By: _____ 7/24/17
Court Clerk Supervisor