

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 Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants/Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

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**WALEED HAMED**, as the Executor of the Estate  
of MOHAMMAD HAMED, *Plaintiff,*

vs.

**UNITED CORPORATION**, *Defendant.*

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**WALEED HAMED**, as the Executor of the Estate  
of MOHAMMAD HAMED, *Plaintiff*

vs.

**FATHI YUSUF**, *Defendant.*

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**KAC357 Inc.**, *Plaintiff,*

vs.

**HAMED/YUSUF PARTNERSHIP**,

*Defendant.*

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**FATHI YUSUF**, *Plaintiff,*

vs.

**ESTATE OF MOHAMMAD A. HAMED**,

*Defendant.*

Case No.: **SX-2012-CV-370**

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: **SX-2014-CV-287**

Consolidated with

Case No.: **SX-2014-CV-278**

Consolidated with

Case No.: **ST-18-CV-219**

Consolidated with

Case No.: **ST-17-CV-384**

**HAMED'S MOTION FOR SUMMARY JUDGMENT  
RE CLAIM H-142: HALF-ACRE ACCESS PARCEL AT TUTU**

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## I. Introduction

It is now clear that Yusuf has no colorable claim regarding this motion. Moreover, Hamed doesn't believe a hearing or live testimony is necessary because (1) this claim should be decided solely on issues of law, and (2) even if the matter isn't disposed of "at law," full testimony has been extensively taken in two depositions subject to cross-examination.<sup>1</sup>

### a. The Paramount Issue Presented

Hamed Claim H-142 concerns a 0.536 acre parcel near the Tutu Park Mall.<sup>2</sup> In granting partial summary judgment on January 14, 2020, the Master noted three central points, at 2-3:

1. Hamed filed a written claim in 2016—that the parcel "belongs" to the Partnership:

Hamed, in his accounting claims filed on October 17, 2016 (hereinafter "Hamed's Accounting Claims"), included Hamed's claim that the Half Acre in Estate Tutu belongs to the Partnership<sup>[3]</sup> and was incorrectly titled....

2. But Yusuf made a contrary claim in his 2016 claims filing—that he got ownership in 2011:

Yusuf had agreed to resolve **this misappropriation** but not any others that Yusuf might later discover, **by the [2011] conveyance** of Hamed's interest in two

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<sup>1</sup> The Court has repeatedly stated that this is a RUPA accounting process by a special master. There is no right to a trial or jury as it is solely a claims processing exercise in equity: "As an accounting in this context is both an 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 *Order re Limitations on Accounting*, dated July, 25, 2017, at 32-33. See also *Jury Order* dated July, 25, 2017 at 22.

Thus, based upon Defendants' own representations, both Defendant Yusuf and Defendant United believed that by consenting to the Final Wind Up Plan-pursuant to which the claims between the parties would be decided by the Court based upon *recommendation of the Master* they waived the right to trial by jury. . . .

<sup>2</sup> Parcel 2-4 Rem., Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, USVI.

<sup>3</sup> As set forth in his claim, Hamed seeks judgment that the parcel "belongs to the Partnership," he does not seek a credit of \$500,000 to his Partnership Account. That was solely the appraised value of the raw land. **If Hamed prevails, ownership will be in the Partnership, 50/50—if Yusuf prevails he will own 100%.** As Hamed has consistently warned, this is a critical "access" parcel. If he wrests it from the Partnership, a large, jointly-funded grocery store site and extensively-planned development will effectively be controlled by him—because the Senate rejected the project and only reversed itself when this parcel was added for the requisite secondary access. If ownership is 50/50, the project will have to be dealt with jointly, with neither Partner having the completely unintended, overwhelming advantage when the parcels are inevitably auctioned. Despite its size, 100% ownership of this parcel holds hostage access to the 9.3 acres, and thus, the project of a separate, 50/50-owned corporation, Plessen.

parcels, one in Jordan . . . and one half acre parcel in St, Thomas, previously titled in the name of Plessen Enterprises, Inc.

**Exhibit 3.** Also set forth in that same Yusuf claim, was the additional statement that:

Yusuf insisted that if Hamed wanted a resolution addressing **all Hamed misappropriations, whether known or unknown**, Hamed would have to arrange for the conveyance to Yusuf or United of **another** approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. **Hamed, through his son, Waleed, refused to convey this third parcel.** (Emphasis added.)

3. The Master held that the parcel *did* become a partnership asset in 2008—and the Partnership, not Yusuf’s-United, was in title *in 2008*, pursuant to the ‘deed in lieu.’

Thus, in what remains of H-142, the Master is called on to decide between these two specific, competing claims as to this half-acre parcel—pursuant to Judge Brady’s order that he “direct and oversee the winding up of the Hamed-Yusuf Partnership.” As the Court also noted, these are RUPA, 26 V.I.C §77, claims within a RUPA winding-up. Hamed has never been in title. This is solely a claim by Yusuf against what was indisputably Partnership property in 2008. Yusuf further explained his claim above in his December 20<sup>th</sup> (“Prior”) Opposition at 3:

As partial performance of this agreement, Hamed relinquished his interests to the property in Jordan on July 18, 2011. As to the Tutu Half-Acre, because the record title to it was already in the name of United, an entity solely owed by Yusuf and his family, no further documentation was needed to **“transfer” or document Hamed’s relinquishment** of his partnership interests in the Tutu Half-Acre per the partners’ agreement. Hence, during the 2011 to the time of Dissolution Period and, in particular, at the time of the dissolution, the Tutu Half-Acre **was not a partnership asset.** . . .

Yusuf’s 2016 claim that the Master cannot hear this issue, based on his “view” that the parcel was “conveyed” to him during 2011, relies on his assertion that it was “transferred” and/or “relinquished” to him in 2011 pursuant to an oral “contract” for “two parcels” arising out of a face-to-face verbal settlement negotiation with Mohammad. Thus, he argues, this was no longer partnership property at dissolution. But, if there was no actual transfer in 2011, title still lies with the Partnership and this is just Yusuf claiming he had a 2011 oral contract that was never performed—as to which he seeks specific performance NOW. He is just a claimant in a

RUPA claims process trying to get partnership land from the partnership based on that alleged, as-yet-unperformed oral contract for Hamed to assist in a Partnership transfer of the property.

b. Two Threshold Problems— Before Even Reaching the Alleged Oral Contract

*i. Yusuf Admits There was no Actual “Transfer” by the Partnership in 2011*

Thus, before getting to the whole issue of whether Mohammad Hamed orally agreed to a ‘two parcel’ contract in 2011, there is a major threshold problem—Yusuf’s entire position that the parcel was “not a partnership asset after 2011” relies on the predicate ‘fact’ that **a 2011 transfer actually occurred**. He states this repeatedly. But, oddly, he can’t say how, when or where this purported transfer actually took place. That is because **he** admits it did not happen.

First, in Yusuf’s own, repeated (sworn) testimony he admits that contemporaneously, in 2011, Hamed repeatedly, emphatically refused to go through with the actual, physical transfer of the parcel from the Partnership to Yusuf. Second, the only written document was drafted by Yusuf’s own lawyers, and is for the one Jordanian parcel only—no reference to Tutu. Third, the facts as to how the parties acted, how they ‘treated’ the parcel, in and after 2011, are stark--the partners treated the parcel as though there was no such intent to transfer, or actual transfer.

The first of these facts is dispositive as **there is absolutely no question that Yusuf has sworn that in 2011, after the transfer of the Jordanian parcel, Hamed contemporaneously and unequivocally refused to cause the Partnership to transfer the parcel.**<sup>4</sup> In 2014, before his deposition in this case, Yusuf attested under oath:

When Responding Party [Yusuf] asked Waleed Hamed to proceed with the transfer of the Tutu Park property, it is at this point, several months later [in 2011] that Plaintiff Waleed "Wally" Hamed and **Plaintiff Mohammed Hamed refused to transfer not only the second property** [Tutu], but also the third property requested as a set-off for the unauthorized transactions.

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<sup>4</sup> Thus, what Yusuf alleges here is not that a transfer ever actually took place, but rather that it SHOULD HAVE taken place. The land is still in title to the Partnership, subject only to a contract claim here by Yusuf for specific performance of an alleged oral contract. Also, Yusuf wasn’t a purchaser without notice, therefore the full RUPA presumption applies. See **Exhibit 1**.

**Exhibit 2, Fathi Yusuf's Answers to Interrogatories, Hamed v. Yusuf, SX-12-CIV-377** at 9. It is hard to walk away from that. Moreover, Mohammad Hamed testified to this as did Wally.

The writing is equally clear: It states “one parcel in Jordan.” No mention of Tutu at all.

Equally damning under RUPA, which is based on what the partners *intended*, is that the *very best* evidence of what a partner “really” intended with regard to a partnership asset is: (1) what he said at the time, and (2) what he did at the time. There is no dispute; Fathi states Hamed expressly and repeatedly said “no” to the actual transfer. Thus, what is really happening here is that Yusuf has only a contractual claim for **specific performance of an oral contract** with his partner to transfer the property—under RUPA. That is what he is trying to enforce now.

ii. Yusuf Relies on Inadmissible Evidence of Settlement Negotiations and Mediations

To get around Yusuf’s patent admission of Hamed’s blatant refusal to transfer, the writing and the post-2011 treatment of the parcel by the partners, Yusuf tries to improperly use statements from other mediations and settlement negotiations to conflate a fictional “two parcel” oral contract which **wasn’t** reduced to a writing, with a real “one parcel” agreement—that doesn’t rely on statements from those other mediations and settlement negotiations, as it **was** reduced to writing. To be clear, these are statements long after the Fathi-Mohammad ‘one parcel’ deal that both parties describe in detail, in their prior deposition testimony.<sup>5</sup>

However, no matter how complicated Yusuf attempts to make this or how many *intermediate* statements from settlement negotiations he tries to patch together (and then get past Rule 408) this is not some bizarre quandary or an unfamiliar situation in a RUPA dissolution. The sad truth is that partnerships break up badly, and just before the end there can be a lot of this sort of maneuvering. There are many RUPA cases like this—in which one partner

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<sup>5</sup> All agree that the two men orally agreed at Hamed’s house prior to the July 2011 trip to Jordan, and that these subsequent mediations with elders and religious leaders occurred after the return—between August and December 2011.

alleges the other partner “orally” agreed to cause the partnership to transfer a partnership asset in a pre-dissolution settlement discussion—at a “settling of their rights” just prior to what turns out to be a breakup the partner is secretly planning. When this sort of claim involves partnership property which was purchased with partnership assets, RUPA §204(c) applies. *See, Reed v. Thurman*, No. E2014-00769, 2015 Tenn.App.LEXIS 111, at \*29 (Ct.App. Mar. 10, 2015):

Moreover, although Randell argues that the January 2010 settlement agreement settled all property rights between him and Leisa, we find no error in the trial court's conclusion that it did not. Leisa testified that **the parties had discussed settling their rights with respect to the farm equipment**, and despite representations from Randell that he would pay her for her share, she testified that he never did. A review of the settlement agreement confirms that it does not address the parties' rights concerning farm equipment, and we accordingly find that the trial court did not err in awarding Leisa compensation for identified partnership assets.

Specifically, we affirm the trial court's determination that Leisa had an interest in the "Hay Rings," "Gates," "Post Hole Digger/Auger," "Sprayer," "Cattle Chute," "2-Three Ton Feeders," "6-Ton Feeder," and "4-Three Ton Feeders." The trial court **awarded Leisa an interest in these assets upon determining that they were purchased out of the L&R Farm bank account during the period of the implied partnership**. We agree with this conclusion of the trial court. As already noted, **property is presumed to be partnership property if purchased with partnership assets**. Tenn. Code Ann. § 61-1-204(c) (2013). (Emphasis added.)

What happened in *Reed* is very similar to what happened here. The partnership was held to exist—implied under RUPA from a long, complex relationship. The property was purchased with partnership funds well before the breakup. As the end neared, one partner initiated oral discussions to “sett[le] their rights with respect to” that property. Although there was a writing as to some property, it did not mention the specific property at issue. That partner said a transfer had been agreed to orally and completed, the other disputed the agreement and transfer. This was classic “he said, she said.” Because the property was purchased with partnership assets, UPA §204(c) was applied. Based on that presumption, the “court awarded [the Partnership and the contesting partner] an interest in these assets upon determining that they were purchased out of the L&R Farm bank account during the period of the implied partnership.” That takes care of such oral discussions between partners. But here there is a further complication when

Yusuf tries to go beyond the actual discussion between the partners, beyond the “he said, he said” and into separate statements from totally distinct, subsequent settlement mediations and negotiations with third parties acting as the mediators.

As the Master has seen in two orders compelling responses as to this claim Yusuf refused for years to produce any documents about this parcel other than the original transfer documents. In 2017 Yusuf filed one of three affidavits about completely distinct settlement mediations about this parcel—but did not disclose two others.

First, Hamed takes the position that these mediations are confidential and privileged—completely inadmissible and all settlement negotiations are inadmissible under Rule 408.<sup>6</sup>

Second, Yusuf must be precluded from using anything that he failed to disclose and produce until the very last second, and then only because of an order compelling that disclosure. Third, Yusuf’s actions in disclosing one affidavit but holding the ones that are contrary to his interests

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<sup>6</sup> This was a series of much later settlement negotiations using family members, business associates or community leaders to mediate—NOT the single in-person negotiation cited by Hamed and Yusuf in their depositions. Mediation proceedings are privileged and confidential. *Webster v. FirstBank P.R.*, 66 V.I. 514, 520 (VI Supreme, 2017). **Hamed has never referred to these other mediations/settlement negotiations anywhere, and thus these have been neither sword nor shield for Hamed.** They are simply confidential and inadmissible. Even if that were not the case as “mediations,” it is black letter law in the USVI that any negotiations for settlement are completely inadmissible to show a either what was said or any putative settlement—even if they are pre-litigation, involve third parties or are informal. *See, e.g., Equinor USA Onshore Props. v. Pine Res., LLC*, 917 F.3d 807, 817 n.3 (4th Cir. 2019)(“those exhibits that contain references to settlement or **informal** resolution of the alleged breach are inadmissible under Rule 408.” *See also Statoil USA Onshore Props. v. Pine Resoures, LLC*, No. 2:14-cv-21169, 2018 U.S. Dist. LEXIS 23936, at \*13 n.5 (S.D. W. Va. Feb. 14, 2018)(“the emails simply confirm Mr. Heffelfinger's account of continuous efforts to communicate with Statoil. However, as the Court stated during trial, those exhibits that contain references to settlement or **informal** resolution of the alleged breach are inadmissible under Rule 408.” This is not a privilege that can be waived, it is an evidentiary exclusion rule.



violates Rule 26 generally, and more specifically highlights the repeated refusals to respond and to supply a privilege log (which Hamed repeatedly sought). It also violated Rule 34. But what is far more unfortunate is what was just revealed by the Master's new order.

Fourth and finally, on December 30, 2019, Yusuf did produce the other two affidavits pursuant to the order compelling production. One expressly contradicts the existence of an oral two-parcel contract and any final oral agreement. In that affidavit, Mr. Mohammad Hannun states of direct, personal knowledge as one of the mediators, that the partners **had** agreed to execute a two parcel deal, but after they agreed, after they shook, after it was **over**:

before 24 hours past, Mr. Yusuf called and asked, if I find anything else, can he ask for it, and **I said no the agreement covers everything, even what he doesn't know about right now**, and Mr. Yusuf said no, that the agreement was for what he knew now, not for anything else he finds. **Then there was no more agreement.**

**Exhibit 4, Hannun Aff.**, April 21, 2014, at ¶¶19-21. (Emphasis added.) Sound familiar? It is exactly what Yusuf did to Hamed—it is an obvious technique. Moreover, this was finally produced in the eighth year of the case...five years after mandatory Rule 26 disclosure...two years after initial discovery requests for any writings. Worse, it was withheld after it was obtained but before the motion to strike—which is outrageous, as none of this would have ever come out if that motion had been granted. And this is from a person aligned with Yusuf, whose affidavit Yusuf secretly obtained without the Hameds finding out for years, and who describes himself as “family to both the Yusuf and Hamed Families because I am the brother of the wives of Fathi Yusuf and Mohammad Hamed.”<sup>7</sup> “Then there was no more agreement.”

So, why would Hamed seek to exclude testimony that is so damning to Yusuf? The attempt to use this testimony is very, very important here. Yusuf seeks a hearing, but because these

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<sup>7</sup> After the motion is decided, when the Master hears the issues as to discovery on H-142, as *he has ordered*—Hamed asks that the affidavit filed in 2017 and Mr. Hannun's affidavit be reviewed together. The attempt to use them was wrong, but intentionally withholding the critical one without Rule 26 supplemental or later discovery disclosure was worse.

secondary witnesses cannot be allowed to testify on the facts surrounding negotiations, the testimony has been taken in two widely-spaced sets of depositions. It was videotaped for this exact reason, and can be submitted to the Master here, appended to Yusuf's opposition. Thus, while Hamed believes that this matter should be decided on the solely legal issues set forth below, even if that is not the case, a hearing is unnecessary.

The Master is presented with three alternatives:

1. *As a matter of law*, in the absence of a writing, the Master should not reach evidence purporting to show such a second, oral "two parcel" contract (a) discussed only in attempted settlement renegotiations, (b) with another person, and (c) that contradicts the sole contemporaneous writing—for 7 reasons "at law" (1) timeliness, (2) Rule 408, (3) the parol evidence rule, (4) Judicial estoppel/admission, (5) lack of meeting of the minds, (6) anticipatory breach/repudiation, and (7) RUPA.
2. *Presumption under RUPA §204(c)*. But if the Master *does* get beyond those seven legal issues, and reaches a consideration of the evidence on the merits, he will crash into the impenetrable ambiguities presented by "he said-he said" and "multiple, draining, conflicting Fathi explanations." When that occurs, Hamed enjoys a strong statutory presumption of the Partnership's ownership,<sup>8</sup> and Yusuf loses on the issue of 'burden' under RUPA § 204(c).<sup>9</sup> There is simply too much evidence against him for Yusuf to even begin overcome the presumption created by the Partnership having fully funded the purchase.
3. *RUPA Partners' intent as evaluated by "treatment."* And, finally, if there is sufficient evidence to decide one way or the other, and all of the other facts are not dispositive, Hamed must prevail because all of the evidence regarding the Partners' 2011 and post-2011 "treatment" of the parcel supports Hamed's position that they did not treat the parcels as if they intended transfer it in and after 2011.<sup>10</sup> Yusuf has conceded the Partnership's continuing receipt of all post-2011 rents, its continuing payment of all post-2011 taxes and

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<sup>8</sup> *Revised Uniform Partnership Act* ("RUPA") §204(c) ("When Property Is Partnership Property")  
(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners....

<sup>9</sup> Hamed incorporates his analysis of §204(c) of the 1997 RUPA in his PSJ motion. RUPA was adopted, *verbatim*, by the USVI, in 1998—as 26 V.I.C. § 24 ("When property is partnership property") *accord.*, *Yusuf v. Hamed*, 59 V.I. 841 (2013) ("the [VI] Code incorporates the [UPA] of 1997... See 26 V.I.C. §§ 1-274.") Thus, the actual operative section here is 26 V.I.C. § 24(c).

<sup>10</sup> Even under Yusuf's "best" telling of events, he clearly *took* with absolute notice of the Partnership's interest in this parcel. Thus, he should have created a writing to overcome the strong presumption. See, *Official Comment 4* to RUPA Section 204(c). Exhibit 1.

The inference concerning the partners' intent from the use of partnership funds outweighs any inference from the State of the title, subject to the overriding reliance interest in the case *of a purchaser without notice of the partnership's interest*.

its being carried on the financials long after 2011—until Yusuf changed this in 2015. Thus, this “finding” is favored under RUPA §204(c) and the VI cases on oral attacks on title.<sup>11</sup>

*c. Summary of Yusuf’s Challenge*

Yusuf is just one more partner seeking to claim transfer to him of partnership assets just before a breakup—via an oral, undocumented contract. **This is exactly why RUPA §204(c) exists**—rather than put all partnership property into a “he said, she said” lottery of this sort of last minute, pre-breakup claims, it creates a presumption of *equality*: “Property is presumed to be partnership property [and thus 50/50] if purchased with partnership assets” and then the burden shifts to the partner claiming **100%** to rebut the presumption of equal ownership.

In this regard, there is no factual dispute that in their only face-to-face settlement negotiation, Hamed and Yusuf agreed to a contract for “one parcel” in Jordan. Yusuf gave a detailed description of both the negotiation and agreement in his 2014 deposition. He testified that although he *originally* demanded two parcels in exchange for a release of his claims and Hamed was willing, they kept discussing matters and when it *ended* they had entered into an agreement to create a document to transfer “one parcel” in Jordan. Hamed described this identically in his 2014 deposition—one parcel, in Jordan. But no statements or conduct from that negotiation need be admitted, because Yusuf had his lawyers draft a writing that he says effectuated the outcome. It precisely reflects both men’s 2014 testimony above. Again, it conveys Hamed’s interest in just the one parcel (in Jordan) and contains no reference either (1) to a broader contract implicating a second parcel, or (2) to any land in Tutu.

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<sup>11</sup> See, e.g., *White v. White*, 234 So. 3d 1210, 1214 (Miss. 2017) (emphasis added.)

The 1992 deed lists the grantees as Charles W. White and Charles T. White, as tenants in common [not the partnership]. At trial, the testimony revealed that all of these properties were treated as partnership property, that they were purchased with partnership funds, that the property taxes were paid with partnership funds, and that the rent from the properties was collected by and paid to the partnership. [All true here.]

Yusuf's lawyers tendered that writing to Hamed. He executed it with no changes and returned it to them on the spot. They later faxed it to Yusuf with an invoice. Yusuf has said that the transfer was recorded. (While this fact cannot be reliably verified, as it involves property in Jordan not before this Court, it will be assumed to be true for the limited purpose of this motion.)

In the Prior Opposition Yusuf tries to make it sound like Hamed did transfer the property but that "there was no need for an additional writing because the deed was already in United's name." But this is a recent fabrication. **There has never been a prior assertion that the transfer took place.** Before he knew what the "new story" was, Yusuf repeatedly testified that back in 2011, contemporaneously with all of this happening, the Hameds refused to sign over the Tutu Parcel or any more parcels beyond the one in Jordan per the writing. Yusuf has repeatedly testified there was no transfer in 2011. Period. End of discussion. NO TRANSFER.

Plaintiff Mohammed Hamed refused to transfer not only the second property [Tutu], but also the third property requested as a set-off. . . .

Exhibit 2, *supra*. at 9. Reading only Yusuf's testimony, it is clear that this new version of events, that such a transfer took place in 2011 is absolutely not true.<sup>12</sup> The facts surrounding how the

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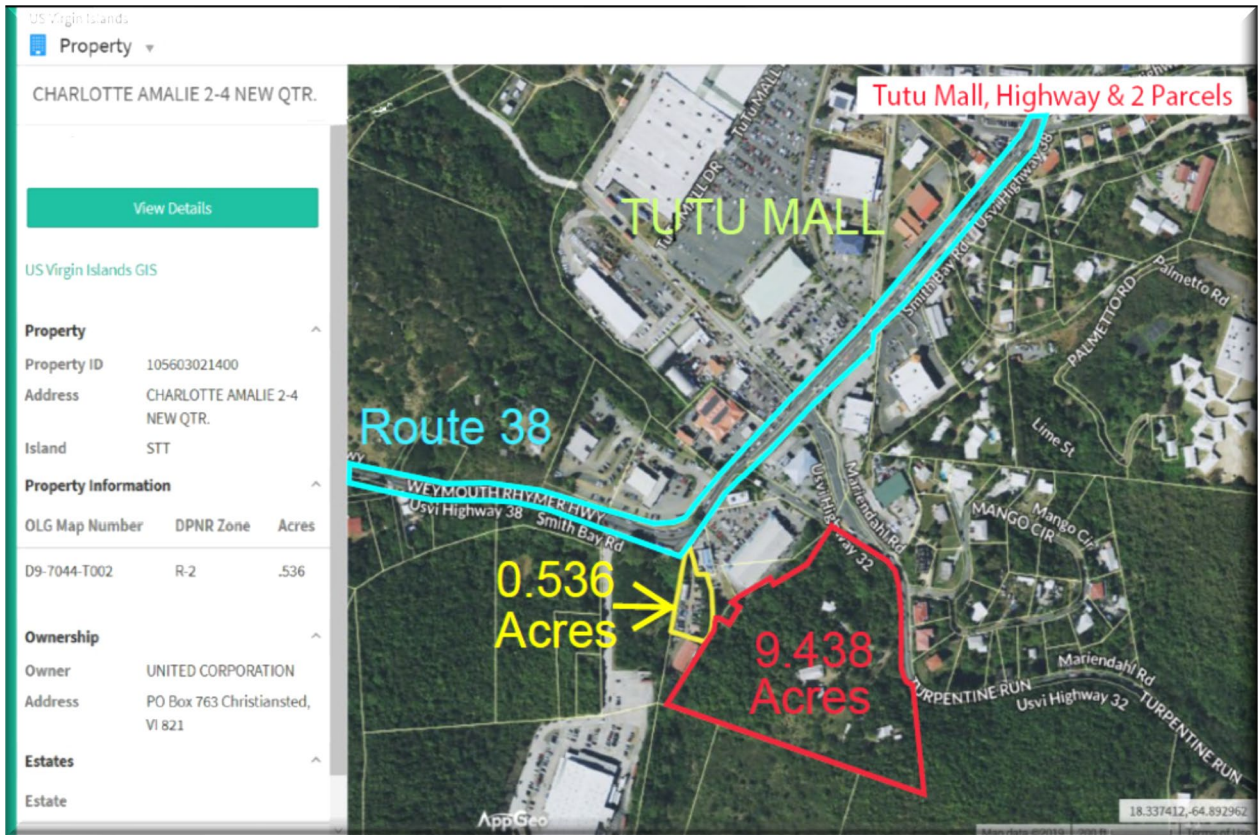
<sup>12</sup> Under the 1997 version of RUPA, partnerships are distinct entities. This was the major change when the old UPA was revised—it effected a complete re-visualization of the ownership of property by partnerships. Under RUPA, Hamed had no personal right to the half-acre and no personal right to alienate it—it is property of the entity, and his only interest in it is its intrinsic value to the entirety of his half ownership. *Etheridge v. Opitz*, 580 S.W.3d 167, 179 (Tex. App. 2019) ("Partnership property is not property of the partners. TEX. BUS. ORGS. CODE ANN. § 152.101. Neither a partner nor a partner's spouse [nor his Estate] has any interest in partnership property."); *Trowbridge Sidoti LLP v. Taylor*, No. No. 8:16-cv-00771-ODW-SK, 2017 U.S. Dist. LEXIS 138249, at \*8 (C.D. Cal. Aug. 28, 2017) ("such property is property of the partnership and not of the partners individually.") It is partnership property until it is alienated from the Partnership, which was never done here. Yusuf may contend that he intended that, or that they *should have* done that, but it wasn't ever done. Thus, a threshold issue is whether the Partnership ever actually transferred the property after it came into title in 2008. This is a matter of record title, either it did or it did not. **It did not. Yusuf himself has repeatedly testified that Hamed refused to make the transfer.** What Yusuf is actually trying to sue for here is an order compelling the deceased Hamed or his Estate to retroactively "vote his 50% partnership share" *nunc pro tunc because of an oral agreement Yusuf admits Hamed explicitly refused back in 2011*—to create a fiction that the Partnership SHOULD HAVE transferred title back in 2011.

parcel was 'treated' by the partners confirms this. There are absolutely no indications in Yusuf's own post-2011 actions that even suggest he believed the partners had made such a transfer. Nothing in the TREATMENT of the parcel BY THE PARTNERS suggests that Yusuf or Yusuf's United owned it after 2011 rather than the Partnership. To the contrary, the Partnership continued to pay everything. There were no post-2011 changes to 50/50 tax payments by the partners, no changes to the Partnership's post-2011 financials or tax filings, and no post-2011 changes to rents being deposited into the Partnership—much less one written reference to such a change of ownership. None of this occurred until the litigation began, and later in 2015.

Thus, Yusuf is attempting to overcome all of the real facts by suggesting that the written Agreement and the transfer of the one parcel in Jordan pursuant to that Agreement are “**partial performance**” of some larger deal. This is patently absurd. Again, until litigation there was no deed, recording, email, letter, discussion with counsel, accountant consultation, financial statement, tax document or anything else that even mentions such a “two parcel” contract, much less memorializes it. This “two parcel” contract appears in writing, testimony and declarations *only after litigation started*. Therefore, as to the one parcel contract, everything necessary was done correctly and reduced to a writing—but as to the illusory two parcel contract, there is, indisputably...zero, nothing, nada.

## II. Hamed's Statement of Material Facts Not in Dispute

1. The USVI GIS photosurvey below is an accurately annotated enlargement from the official online database which shows the location of this 0.536 acre parcel Yusuf calls the “entrance” parcel, in relation to the 9.438 acre parcel that Fathi Yusuf calls the “major” parcel. Proximity to Route 38 and the Tutu Park Mall can also be seen. See **Exhibit 5**, full survey image.



2. Yusuf admitted in his Prior Opposition that that the Hamed/Yusuf-owned (*Plaza Extra Partnership*) directly paid the seller the full \$330,000 price for the parcel "by using income from the *Plaza Extra* stores," and that the funds were paid to the seller with two checks from the Partnership's "d/b/a *Plaza Extra*" accounts. *Prior Opposition* at 16, ¶¶1-3.
3. In the Prior Opposition and in his 2014 deposition Yusuf admitted that the Partners' intended the parcel to be jointly owned by them 50/50. *Prior Opposition* at 16, ¶6.
 

Q. Okay. So, and what I'm trying to get at is I know there's a half-acre piece in United, that's in the name of United?

A. Yes.

\* \* \* \* \*

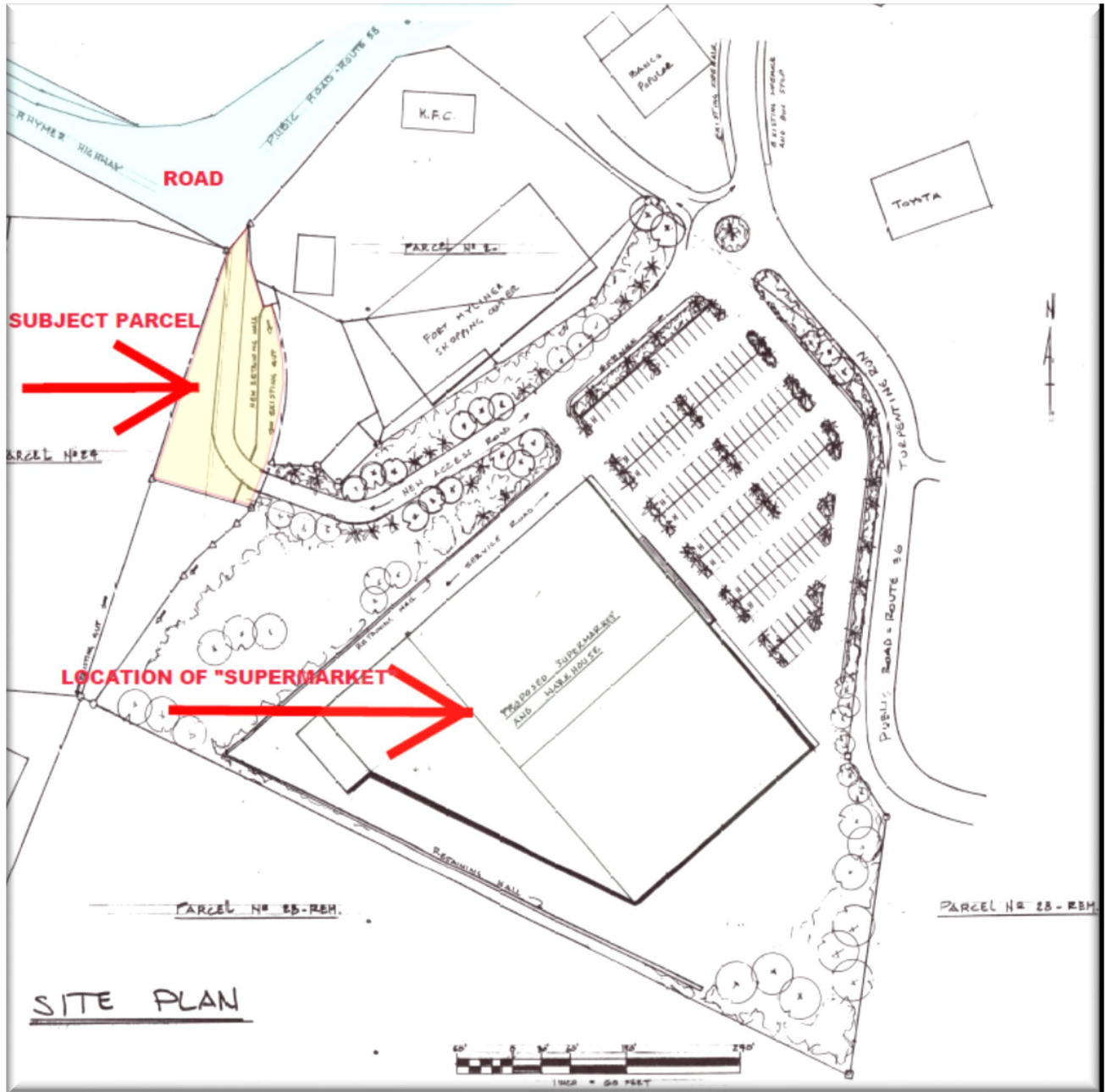
Q. Okay. And both of those, the smaller piece and the bigger piece, were purchased with money from the supermarket, so they're 50/50.

A. That's correct.
4. In his Prior Opposition, Yusuf admitted when the land was purchased, its intended use was as a Supermarket development for the Partnership. Also that in 2006 the Partners made an initial application to build the new Tutu Plaza Extra Supermarket on this land, but lacked the required secondary access to the major (9.3 acre) parcel from the Route 38 thoroughfare. He also admitted that the access was blocked by the half-acre parcel.<sup>13</sup> Therefore, as Fathi

<sup>13</sup> **Exhibit 6**, Act 6194. In his Prior Opposition, Yusuf conceded that Act 6194, 27<sup>th</sup> Legis., Reg. Sess., March 21, 2007," addresses the rezoning "from R-2 (Residential-Low Density)...to C (Commercial.) Also, that the proposed Plaza Extra Supermarket project had to be approved by

Yusuf also conceded in his Prior Opposition, at the time of the second application in 2007, the intended use of the parcel was still “as an entrance.” *Prior Opposition* at ¶¶7-8.

5. He also admitted that in 2007 this ‘Site Plan’ was submitted to the Senate, to add a mandatory “entrance”—for the second hearing regarding a Tutu Plaza Extra Supermarket, as the project would not be approved without access.<sup>14</sup> *Prior Opposition* at ¶¶7-8.



the Legislature. The project did not originally have secondary access to Route 38—but was approved with the parcel added, as shown on the *Site Plan* submitted with that application.

<sup>14</sup> See **Exhibit 7**, *Declaration* as to the Site Plan.

6. Judgment has been entered that in 2008 the Partnership recovered record title to the parcel in 2008 pursuant to a deed in lieu of foreclosure. Order of January 14, 2020.
7. A year and six months later, on February 26, 2010, the Hameds and Yusufs entered into a criminal plea agreement. Because of that, \$42 million in cash was about to become available for the first time in 8 years, along with mutually owned lands. See DE 1248, *USA et. al. v. Fathi Yusuf et. al.*, D.V.I, Div. of St. Croix, Crim. No. 2005-015.
8. Thereafter, in 2010, Yusuf began to claim Hamed owed him millions, and demanded Hamed's half interest in parcels of land. See citations to the record in ¶¶ 10-16 below.
9. Fathi Yusuf and Mohammad Hamed gave very similar deposition testimonies about what happened regarding the 2010 in-person negotiation and 2011 writing that underlie Yusuf's position here. *Compare* Yusuf testimony *with* Hamed testimony. ¶¶ 10-16 below.
10. Fathi Yusuf's deposition of April 2, 2014, provides the following at 77-79. **Exhibit 8.**

Q. [By Joel Holt] You know, I asked a question, but I asked it wrong, but didn't there come a time when you and Mohammad Hamed sat down within the last year and a half and tried to resolve things by—he talked about it a little bit in his deposition about the giving of properties and things of that nature. Do you recall that?

A. [By Fathi Yusuf] Much more than a year and a half.

Q. Can you tell me about that?

A. Can you come up with question, or you want to come up with a story?

Q. I can—I actually like the way you tell the story, but I'll tell you what I've—what I've heard, and then you can correct what I've heard. **That the two of you met to try to resolve all the differences** between you and yourself, the Hamed family, and Wally in particular.

**A. Yes.**

Q. And that he offered two or three properties, and **you agreed to take one** or something like that. And, you know, I never really quite -

A. I can comment on that.

Q. Okay. Please.

**A. I—we met, and after I tell him my story of what I know at that time, he say, What do you want? I say, I'll take two property for what I discover so far. He say, Which? I give him the description of the property, one in Jordan and one at Tutu Park.** The one in Jordan, I pay one million two, approximate. The one at Tutu Park, I paid 1 million for it. 1,000,350, I believe. It's two pieces at Tutu Park, but we call it one piece. One-half an acre as an entrance, and 9.31 as the major piece of property. **He say, You can have it.** And after they say it, the man come up front after I tell him my story, and he was very generous to say, You can have it. And we kept talking, as a family. After all, we are family, as you mentioned over and over in your correspondence. We are family at that time, and we have a very high respect for each other, even though, up to now we still have high respect to each other, **and I told him, No, one is enough.**

11. Thus, Fathi admitted that by the end of the only in-person negotiation with Mohammad, he agreed to a “one parcel” settlement contract—with just the Jordanian parcel, stating “one is enough.” He then went on to describe what happened after the meeting, with Wally. *Id.*



[*Id.* begin page 79] So I went to the store, I take a look, and I analyze the bank statement of what he was saying. I say, Man, after that, this man would not even tell me the truth, unfortunate? **So immediately I told Wally, Do me a favor, Wally. You was present. Go back to your father and tell him, No, I wanted the two piece of property.** That's the same day. Not even, as soon as we get to the store, it take me about half an hour to take a look of what he was talking about. Unfortunate, I have found it's impossible what he was talking about, it could be true. And I say, Come on, man. You know? **And—and he went home that night. He told his father. The next day he come to work, I say, Did you tell your father? He said, Yes. I said, Fine. That's it.**

Q. Okay. You done?

A. Done.

12. Thus, in 2014, Yusuf testified in deposition that there was an initial “one parcel” agreement for the Jordanian parcel in the face-to-face meeting and the meeting then ended. He testified he subsequently asked Wally to ‘tell’ his father about an additional demand. Yusuf demanded a different, “two parcel” agreement. Wally verified that he did “tell his father.” *Id.*
13. But Yusuf made a HUGE error between that first negotiation and his subsequent demands over the next few days and then months. He has testified that he started trying to justify more parcels by stating to Wally that he knew there were additional acts of theft and malfeasance he would find, and that based on his post-meeting “review of [his] papers” he was demanding the additional land for “known and unknown claims.” This really, really, really, really upset Mohammad Hamed. In his own filing, Yusuf admitted:

**Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover**, by the conveyance of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. See Ninth [BMR] at p. 5-6. **Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.** (Emphasis added.)

See Exhibit 3. Or, as Mohammad Hamed stated at 148-149 of his deposition:

Mr. Fathi had asked for two pieces of property. He [Hamed] had agreed to that. Mr. Fathi had then said one is enough, and then again changed his mind and said, No, he wants the two. And I understood that then he also asked for a third piece of property. That **there was a back and forth trying to find a way to -- to reach settlement, and that he [Hamed] says he's been accused by Mr. Fathi of stealing, he and his son. He says, I have not stolen. My son has not stolen. We are honorable people.**

14. That's why Yusuf did NOT and could not testify that the renegotiation for the second parcel, after that in-person negotiation ended, was accepted. Only that he told Fathi to tell Mohammad. To the contrary, the Hameds forcefully rebelled. Thus, all that we have on what happened when Yusuf overreached first for a “two parcel” contract and then for a “three

parcel” contract is the writing which Yusuf calls the “Agreement”—which involves just the one parcel in Jordan. *Id.* See also the Agreement. **Exhibit 9** and in English, **Exhibit 10**.

15. Mohammad Hamed’s deposition testimony about the identical “one parcel” settlement discussion in the in-person negotiation, contract and eventual writing, two days before Yusuf’s testimony, is substantially in agreement with Yusuf’s rendition. **Exhibit 11**.

Q. (Mr. Hodges) Mr. Hamed, given the 25-plus years that your—you and Mr. Yusuf have—have worked together in the store, why haven’t you taken the time to make sure you understand what the facts are with respect to this \$2.7 million dispute?

MR. HARTMANN: Object as to form. Object, argumentative.

A. (Speaking in Arabic.) Work, work, work, work, day and night.

THE INTERPRETER: Okay. I can only translate or interpret what he said. He’s saying—he said that they come from the same area, they are farmers, and that, you know, he was responsible for bringing them here. When they arrived here, they came to his home. He welcomed them, and—and helped them out, and—and over the years, he established a [begin page 138] business, a grocery business, and when he made some money, here came a time when—when Mr. Fathi Yusuf was going to build a shopping center. It’s a long story, and that, you know, most of their time has been working, working, and here’s really—there hasn’t been a time that they could sit and talk.

Q. (Mr. Hodges) In the past two years, isn’t that right?

A. (Speaking in Arabic.) Okay. Go ahead.

THE INTERPRETER: He said, I begged him to sit and—and—and—so we can finish this, and in Jordan, we—we—we, in my house, we met, and I was giving him—(speaking in Arabic). **He asked for two pieces of --**

A. Just one I want.

THE INTERPRETER: —he [Yusuf] had asked for two pieces of property in Jordan. He [Hamed] told him [Yusuf], I’d sign for—for them, no problem. Later, he came—meaning Mr. Fathi Yusuf—and told him [Hamed], You’ve kicked me in my stomach. It’s a term of, in other words, **he was willing to accept, as I understand, one piece of property instead of two.** (Speaking in Arabic.)

16. Also identical is Hamed’s next, immediately following line of testimony, that AFTER the in-person settlement negotiation was over, beginning the next day Yusuf spoke to Wally about “asking” to renegotiate to add the second parcel—the half acre in Tutu. *Id.*

**Next day**, he came back and **asked for** the other piece of property.

17. In two different sworn submissions, Yusuf has admitted that after the verbal agreement for one parcel, he instituted several additional renegotiation attempts for “two parcels” which would have been the Tutu half acre, and then a third parcels. He alleged additional “known and unknown wrongs. In both places, Yusuf represented that that the attempts failed.

- a. Yusuf Claims filing at 13, Exhibit 2, *supra*.

[In 2011] Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel

located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

a. Yusuf Interrogatory Response 377. Exhibit 1, *supra.*:

When Responding Party [Yusuf] asked Waleed Hamed to proceed with the transfer of the Tutu Park property, it is at this point, several months later, that *Plaintiff Waleed "Wally" Hamed and Plaintiff Mohammed Hamed refused to transfer not only the second property [Tutu], but also the third property requested as a set-off for the unauthorized transactions.* (Emphasis added.)

18. The admission in the 377 interrogatory was made BEFORE the 2014 depositions, and the claims filing admission is from 2016—yet in the Prior Opposition, Yusuf attempts to make all of these additional renegotiation “go away” in the same way he changed the “inadvertently misstated” rents and carrying the property in years of the “inadvertently misstated” Partnership financials go away—by making up an even newer, new story—tucked away in a footnote. See page 6, footnote 3. Seemingly forgetting the other places where he told the identical story, long BEFORE the “erroneous” 2016 claim:

The description in Yusuf’s Initial Accounting Claims inadvertently misstates the 9.3 acre to be considered a third property.

19. Yusuf’s testimony makes it clear that multiple attempts to increase this to two (and perhaps three) parcels failed because he told the Hameds starting the NEXT DAY, that he was trying to get this “extra” land in compensation for “other claims” he “might discover” in the future—which he described as ‘known or unknown’—for which he sought this additional land. Yusuf stated that Hamed rejected those proposal. *Id.* Again, Yusuf admitted the following:

Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, ***whether known or unknown***, Hamed would have to arrange for the conveyance to Yusuf or United of ***another*** approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc.

20. *Affidavit of Mohammad Hannun*, April 21, 2014, (Ex. 4) states, at ¶19, Exhibit 4:

before 24 hours past, Mr. Yusuf called and asked, if I find anything else, can he ask for it, and I said no the agreement covers everything, even what he doesn’t know about right now, and Mr. Yusuf said no, that the agreement was for what he knew now, not for anything else he finds. **Then there was no more agreement.**

And at ¶21:

Finally, at one the last meetings, Mr. Yusuf said that if the Hameds transferred a third piece of property that would settle everything about the unauthorized monies, whatever he knows and he would not do any more searching for monies he did not know about.

21. In fact, the negotiations never really stopped, and Fathi Yusuf testified that by the end of 2011, yet another renegotiation meeting was held — and again there was no written agreement for additional parcels. See *Answers to Plaintiff Waleed "Wally" Hamed's First Set of Interrogatories in Mohammad Hamed, et. al. v Fathi Yusuf*, SX-2012-CV-377, *supra.*

18. Do you dispute that a meeting was held in or around December 2011 in order to try and resolve the disputes between the parties, if not, who was present, the

date of the meeting, the substance of what was discussed, whether an investigation was undertaken, by whom the scope of the investigation and the results and whether an agreement was put in writing to be finalized by Attorneys and the terms and conditions of that agreement.

RESPONSE No. 18: [Yusuf] objects to the form of the question. . . . Notwithstanding the above objection, [Yusuf] believes that this Interrogatory is referring to a meeting that was held on the day before Christmas. For Attendees see Defendant's Response to No. 16. No agreement was reached. No agreement was drafted as a result of this meeting to [Yusuf's] knowledge.

22. It is undisputed on the documents of record in this motion that in late 2010 and early 2011, the sole written Agreement that came out of the negotiation was drafted by counsel retained, paid for, and directed completely by Fathi Yusuf. See invoices and facsimile. **Exhibit 12**.
23. That Agreement was signed on July 8, 2011. See *Agreement, supra.*, Exhibit 10.
24. The Agreement recites both Hamed's consideration (shares in the parcel) and Yusuf's ("received the price of my share in the mentioned land from Mr. Fathi Yusuf Mohamad Yusuf"—both men testified that the "price" Hamed received was the release of the alleged claims.) *Id.*<sup>15</sup>
25. It is also undisputed that Yusuf's legal counsel faxed that signed Agreement along with a bill in November 2011. *Supra*, Exhibit 12.
26. It is also a matter of the undisputed factual record that there are no subsequent writings or financial records which ever even mention any second agreement as to the Tutu parcel. It is not mentioned in any deed, document, communication, writing or other item of evidence. See **Exhibit 13**, Declaration.
27. No document or other evidence reflects that any deed or other writing contrary to the 2008 Deed has ever been executed or recorded. Declaration. *Id.*
28. No document or other evidence reflects that any counsel was ever retained by Yusuf or Hamed as to the half-acre parcel. See Declaration. *Id.*
29. To the contrary, in the Prior Opposition, Yusuf does not dispute that the books and financials of the Partnership, submitted both to this Court and to the IRB by Yusuf, continued to reflect the original status of the half-acre parcel as being Partnership property (owned 50/50) until mid-2015, when Yusuf unilaterally changed the Partnership books on the half-acre parcel in response to this claim. Prior Opposition at ¶¶11-12.
30. Yusuf also does not dispute that those 2013 financials, identifying the parcel as Partnership property were submitted by Yusuf as the correct Partnership accounting—to this Court, the BIR and the federal court. Prior Opposition at ¶¶11-12.

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<sup>15</sup> The U.S. Supreme Court held in *Mastrobucchio v. Shearson Lehman Hutton*, 514 U.S. 52, 62-63, 115 S. Ct. 1212, 1219 (1995):

Moreover, respondents cannot overcome the common-law rule of contract interpretation that a court should construe ambiguous language against the interest of the party that drafted it. [Citations omitted.] Respondents drafted an ambiguous document, and they cannot now claim the benefit of the doubt. The reason for this rule is to protect the party who did not choose the language from an unintended or unfair result. (Emphasis added.)

31. From that point on Yusuf repeatedly denied publicly and in court filings, verbally and under oath (1) that there ever had been a partnership, (2) that neither he nor Hamed ever referred to themselves as partners, (3) that Hamed was an illiterate backroom employee, *and (4) that Hamed wasn't due anything more than an annuity (which Yusuf could determine at his discretion) as Hamed was just a long-departed nobody.*

### **III. Argument: Applicable Law and Application of that Law to the Facts**

Yusuf's story presents eight threshold issues 'at law' and requires no additional facts:

1. The Master ordered that all RUPA claims be filed by September 30, 2016. However, (1) while Hamed filed a claim that the Partnership was in record title, and (2) United sort-of-claimed that IT was in record title (and in any case, because it actually had 'apparent title' on the face of the deed, Hamed had to litigate record title), (3) there was no claim filed in September of 2016 that Yusuf was the owner pursuant to oral settlement negotiations.
2. Yusuf's argument involves enforcing what both men agree occurred entirely during a settlement negotiation, and is therefore inadmissible under Rule 408—because, as a matter of VI law, evidence “either to prove or disprove the validity or amount of a disputed claim . . . is not admissible either [for] (1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim” or as to “(2) conduct or a statement made during compromise negotiations about the claim.”
3. Independently, the parol evidence rule applies where there is a contemporaneous written outcome of such discussions. Here, it was a writing drafted by counsel retained by Yusuf following the negotiation. Yusuf calls this the Agreement.
4. Four years after this supposed settlement, in 2015, Fathi Yusuf was still carrying the parcel on the Partnership books, United was NOT carrying it on United's books—and Fathi represented these financials as being accurate to both the IRB under penalty of perjury and this Court under oath. As a matter of law, he is either (1) judicially estopped from now arguing “alternative facts,” or (2) it is a “judicial admission” in this case, which he cannot contradict.
5. Even if Yusuf thought he had an oral deal for two parcels in good faith, there was no “meeting of the minds” as to which parcels were involved. This can be seen from their similar testimony, Yusuf's admission in an interrogatory response that Hamed rejected the multi-parcel renegotiation attempts—refusing transfer, and the undisputed documents of record. As a matter of law there is no contract.
6. Even if Yusuf thought he initially had an oral deal for two parcels, Yusuf repudiated and then breached that deal by subsequently demanding that the deal would only go through with 2 then 3 parcels.
7. There is a failure of consideration. Even if Yusuf thought he had an oral deal for two parcels, he cannot show facts that suggest he “paid” the full “purchase price” where he finally stated that he would not provide a release absent a third parcel.
8. The RUPA Effects of Burden and “Treatment”

Hamed will address each issue individually.

a. Legal Issue 1: Timeliness

This is a RUPA action—the Master ordered that all RUPA claims had to be filed by September 30, 2016. However, (1) while Hamed filed a claim that the Partnership was in record title, and (2) United sort-of-claimed that IT was in record title (and in any case, because it actually had ‘apparent title’ on the face of the deed, Hamed had to litigate record title), **(3) there was no claim filed in September of 2016 that Yusuf was the owner pursuant to oral settlement negotiations.** Thus, this challenge to the title should be summarily denied. It exists now only because ‘*Plan A*’ (2008 title in Yusuf’s-United) failed, and this plan (Plan B) *would have directly contradicted Plan A*—so ‘*Plan B*’ couldn’t be filed originally. **(Why would Yusuf be negotiating for Hamed’s share in 2010 if Yusuf’s-United had been in title since 2008, as he originally, repeatedly averred? It would have made no sense.)**

b. Legal Issue 2: This new Yusuf argument involves what both parties state was a settlement negotiation, and intermediate oral ‘agreements’ during such discussions are inadmissible and non-binding.

Both men describe an in-person settlement negotiation prior to July 2011—to deal with a disputed claim by Yusuf—one which eventually led to this litigation. The following are statements from the documents already cited and quoted above. First, from Yusuf’s deposition:

[Holt] ...the two of **you met to try to resolve all the differences** between you and yourself, the Hamed family, and Wally in particular.

A. [Yusuf] Yes.

Also, from Hamed’s deposition:

THE INTERPRETER: He said, **I begged him to sit and—and—and—so we can finish this**, and in Jordan, we—we—we, in my house, we met. . . .

The most basic USVI law on oral discussions in settlement negotiations is Rule 408:

Rule 408. Compromise Offers and Negotiations (a) Prohibited uses.

(a) Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or by contradiction:

(1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim.

(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, or negating a contention of undue delay.

Yusuf admits that the parties met to negotiate a compromise to a disputed claim. Despite this, he wants to create a contract out of what was discussed and re-discussed in those negotiations.

Worse yet, what he really wants to admit into evidence is an alleged oral RENEGOTIATION of that oral settlement discussed with another person AFTER the initial negotiation ended. Further, he wants to admit an oral agreement that is different from what the sole writing that emerged states—to show another, different, intermediary offer and acceptance in discussions, directly contrary to the writing. Finally, he *also* wants to ignore his own admission that he attempted a second and third renegotiation where he said he would not issue a release unless additional parcels were agreed to—an explicit repudiation of any earlier agreement. This is exactly why Rule 408 exists. This court stated the following as to “**statements**” in settlement negotiations between private parties not reduced to writings:

Rule 408 was amended and further clarified, effective December 1, 2006. . . . **statements** made during compromise negotiations *of* private matters are not admissible, if offered to prove liability, invalidity or amount of the claims in dispute. Third, the rule prohibits both the party attempting to compromise either by an offer to settle or through an admission of fault, and the party to whom the offer to compromise was made, from disclosing **the contents** of those discussions.

*People v. Brewley*, No. ST-06-CR-402, 2007 V.I. LEXIS 24, at \*16-17 (Super. Ct. Nov. 16, 2007)(emphasis added.) As the court noted: “These prophylactic measures are intended to ensure that Rule 408 retains the underlying policy of encouraging settlements and admitting fault when necessary.” In his Prior Opposition, Yusuf attempted to equate Hamed’s reliance on the written agreement from the first day of negotiations with his oral “statements” and the “contents” of such negotiations not reduced to a writing. This is turning the rule on its head.

c. Legal Issue 3: The parol evidence rule

Here there is not just an alleged oral agreement between partners, there is a writing that Yusuf has told the Master is the “Agreement” that arose out of the settlement negotiations. Parol oral evidence cannot be admitted contradicting the writing that Yusuf calls the Agreement.

In other words, “a writing intended as the entire understanding of the parties is then subject to the parol evidence rule which precludes consideration of extrinsic evidence of a prior or contemporaneous agreement extending or altering the authority granted in writing.” *Phillips v. Andrews*, 332 F. Supp. 2d 797, 803, 46 V.I. 233 (DVI App. Div. 2004). However, extrinsic evidence may be admitted interpreting a vague term in an agreement or it may be used to establish “illegality, fraud, duress, mistake, lack of consideration, or any other invalidating cause.” RESTATEMENT (SECOND) OF CONTRACTS § 214 [\*\*22] (1981).

*Jefferson v. Bay Isles Assocs., L.L.P.*, No. ST-09-CV-186, 2011 V.I. LEXIS 7, at \*21-22 (Super. Ct. Feb. 1, 2011). There was no vague term in the Agreement on the land—specific land is stated, and the Tutu parcel is not mentioned. If the writing is ambiguous in any way, that should be construed against the drafter. *See Mastrobuono, supra*. Yusuf admits in his own filing that this is the ‘Agreement’ that came out of that negotiation. It recites the consideration to Yusuf. Further, in his claims filing, Yusuf states:

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf **as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation** of \$2,000,000. . . A copy of **the agreement** in Arabic conveying Hamed's interest in such parcel is attached as Exhibit 0.

See Exhibits 9 and 10, *supra*. So what Yusuf is trying to get away with is the argument that while the two men retained counsel, had a writing drafted and entered into it with regard to the Jordanian parcel; but, oddly, the parallel contract for the half-acre at Tutu was not in writing.

d. Legal Issue 4: Yusuf is judicially estopped from arguing “alternative facts.”

Hamed incorporates the factual recitation in his main motion, that Fathi Yusuf submitted statements and financials, under oath to the IRB and to this Court; that until 2015, the half-acre parcel was always on the books and financials of the Partnership as a Partnership asset.



The doctrines of judicial estoppel and judicial admission preclude a party from contradicting its previous position where there has been no change in the law, simply because his interests have changed. *New Hampshire v. Maine*, 532 U.S. 742 (2001). This is "to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire*, 532 U.S. at 749.

The U.S. Supreme Court has noted that this doctrine is not restricted to statements in prior cases but applies within a single case. (This is sometimes referred to as a judicial admission.) For an excellent discussion of this, see *Intellivision v. Microsoft Corp.*, 784 F. Supp. 2d 356, 364 (S.D.N.Y. 2011), where the 2d Circuit, in affirming a district court, rejected the argument that judicial estoppel requires a party's position to have been adopted by a different court or in a "prior separate proceeding."<sup>16</sup> Citing *Pegram v. Herdrich*, the court noted that judicial estoppel is a flexible equitable doctrine without fixed requirements and that judicial estoppel "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase."

Thus, "[j]udicial estoppel prevents a party from 'playing fast and loose with the courts'," *Scarano v. Central R. Co.*, 203 F.2d 510, 513 (3d Cir. 1953) (internal citation omitted.)

e. Legal Issue 5: No "meeting of the minds" as to which parcels were involved.

Even if RUPA 204(c) wasn't creating a presumption in favor of this being Partnership property, a party asserting a contract has the burden to show there was a meeting of the minds.

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<sup>16</sup> The *Intellivision* court noted, at 364:

See *Pegram v. Herdrich*, 530 U.S. 211, 228 n.8 (2000) ("Judicial estoppel generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." (emphasis added)); see also *Stichting*, 407 F.3d at 45 (considering whether a party should be judicially estopped for taking "a position in their first motion to dismiss that was actually inconsistent with that taken on the current motion").

Thus, accepting every fact he has suggested as true and ignoring the inadmissibility of a settlement discussion and the existence of a writing, Yusuf cannot show there was actually a meeting of the minds in those settlement discussions. His own story varies from his deposition to this claims statement to his interrogatory response. But even accepting his “best” version, when did Hamed agree to the second parcel?

The basic law of contract and the basic burden Yusuf bears are clear. *Cornelius v. Bank of Nova Scotia*, No. 2015-0058, 2017 V.I. Supreme LEXIS 50, at \*21 (Aug. 8, 2017)(“a contract is only formed or modified to the extent there is mutual assent and mutual consideration,”) see also *Williams v. UVI*, 2019 V.I. LEXIS 2, at \*5-6 (Super. Ct. Jan. 18, 2019)(emphasis added)

Here, this court finds that Defendant is correct that there was no express contract created between the parties. The language of the 1997 memo does not expressly offer a promise of merit pay to Plaintiffs, **there was no clear acceptance by Plaintiffs** as Plaintiffs were conditioned on their employment agreement to continue working for Defendant, thus the continued benefit given to Defendant by Plaintiffs does not signal separate adequate consideration to this court. **Also, without an offer presented by Defendant and an acceptance by Plaintiffs, this court cannot deduce that there was a manifestation of mutual assent between both sides or a “meeting of the minds.”** Therefore, absent clear evidence of all requirements of an enforceable contract, this court holds that no enforceable express contract existed between Plaintiffs and Defendant.

Here, there was “no clear acceptance of any offer.” In short, there is no offer and acceptance after the initial oral agreement as to the one parcel in Jordan—which Hamed did transfer to Yusuf—exactly as described in the writing. There is only Yusuf repeatedly TELLING the Hameds that they must renegotiate, and Mohammad Hamed’s repeated silence or refusals to either agree or to do so. As best, absent Mohammad’s express assent, the 2-parcel renegotiation with Wally was a unilateral contract offer requiring Hamed’s performance for acceptance—which Yusuf admits Hamed declined.

- f. Legal Issue 6: Even if Yusuf thought he initially had an oral deal for two parcels, Yusuf repudiated and then breached that deal by subsequently demanding that the deal would only go through with 2 then 3 parcels.

Yusuf describes the “ongoing” nature of the “negotiations” (i.e., his continually increasing demands) he makes it absolutely clear that Hamed signed and delivered the Agreement but that was not the end.

As a result of these new discoveries of even more unauthorized transfer of funds by Plaintiff/Waleed Hamed, the Defendant informed Wally Hamed that it has to be three (3) properties to cover everything had found.

Thus, Yusuf was still negotiating what was necessary for a release. Even if there were had been an original, oral two-parcel deal, this was an express repudiation by Yusuf—**he says that he stated** there would now be no release without a THIRD parcel. And there is absolutely no factual disagreement that this **re-re-renegotiation** was refused.

- g. Legal Issue 7: There is a failure of consideration. Even if Yusuf thought he had an oral deal for two parcels, he cannot show facts that suggest he “paid” the full “purchase price” where he finally stated that he would not provide a release absent a third parcel.

This relies on the same facts as subparagraph “f” above. Yusuf’s saying “we have a deal” is no deal at all if he conditioned the release on additional parcels. Consideration was never given if it was conditioned on “more performance” to get it.

- h. Legal Issue 8: *The RUPA issues: Burden and “Treatment”*

- i. *Burden: The Presumption that the Parcel is Partnership Property*

First, as set forth above, RUPA §204(c) creates a mandatory presumption that because the Partnership supplied the funds from its “d/b/a Plaza Extra account” it is the owner. Thus, Yusuf must overcome the rebuttable presumption that property is partnership property the burden shifts to him to rebut that ownership by proving that the intent of the Partners was to transfer title to him in 2011. See *In re Estate of Bolinger*, 1998 MT 303, ¶ 80, 292 Mont. 97, 116, (1998)(“The presumption is rebuttable and may be overcome.”)

Once this presumption is triggered and the burden shifts, RUPA jurisdictions considering the resulting burden have looked to several factors—but in all cases, the single question that

all of these factors are reviewed to answer is: “What did the Partners intend?” For example, in *Mogensen v. Mogensen*, 273 Neb. 208, 215-19, 729 N.W.2d 44, 52-54 (2007), the Nebraska Supreme Court, interpreting its identical enactment of RUPA, *reversed the trial Court’s refusal* to properly apply this presumption against a third party that had title of record.

In determining whether a party has rebutted the presumption, no single factor or combination of factors is dispositive. Ultimately, the partners’ intentions control...

\* \* \* \*

The use of partnership funds in the purchase and the other evidence suggest that Opal owns [it] in name only....Once we acquire equity jurisdiction, we can adjudicate all matters properly presented and grant complete relief....

Obviously, the first and very best evidence of the Partner’s intent is their own testimony on what they intended in 2011—Yusuf conceded that in the Prior Opposition. Hamed never intended to transfer the half-acre parcel. There are four differing Yusuf versions of the facts, plus the Hamed version and the Agreement. **If, because of this ”he said-he said,” the Master cannot make this determination based on the facts and testimony of record, he must further analyze this intent through the other RUPA 204(c) factor-how the parties acted.**<sup>17</sup>

ii. *Intent Gauged by Acts in RUPA: How the Parties “Treated” it after 2012*

Thus, the Master must move to the next step, to consider what happened, what the Partners intended, from how the Partners “*treated*” the property in and after 2011. *White, supra*.

The 1992 deed lists the grantees as Charles W. White and Charles T. White, as tenants in common [not the partnership]. At trial, the testimony revealed that all of these properties were treated as partnership property, that they were purchased with partnership funds, that the property taxes were paid with partnership funds, and that the rent from the properties was collected by and paid to the partnership.

Again, there is no dispute. Not only did the rents from this parcel *still* go into Partnership’s account after 2011,<sup>18</sup> but the parcel was *still* carried on the Partnership’s books

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<sup>17</sup> See e.g., *Finch v. Raymer*, 2013 Tenn. App. LEXIS 319, at \*35 (Ct. App. May 6, 2013).

<sup>18</sup> As Nejeih Yusuf testified recently, it is undisputed that all of the rents for the businesses on that parcel were deposited into Partnership funds—directly into the d/b/a Plaza Extra store

as Partnership property from after the *2008 Deed*<sup>19</sup> *until 2015*—when Yusuf had it this changed after Hamed raised the issue.<sup>20</sup> Same with joint payment of taxes. They changed nothing at all.

For example, the **2013 Balance Sheet was provided to the BIR for tax purposes**. In his opposition to Yusuf's motion to strike this claim, Hamed submitted this to show the parcel was carried on the Partnership's books, not Yusuf's-United's books. There, Hamed noted that they are the official Partnership financials used to make sworn submissions to the Bureau of Internal Revenue regarding the years before the litigation began and they show this parcel being carried

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account. See January 22, 2019, deposition testimony of Negeh Yusuf, at 38. **Exhibit 18. This continued well after 2011**, at least until the litigation began, when Fathi ordered several financial records and practices changed to make things look better.

Q. Okay. And did you ever—any of the—the money that came in for rent, did it ever go through your hands or did it always go through the desk?

A. They always called me. I handled it with the folks. I wrote them a **receipt from the store. And I had it deposited in the accounts up until my dad told me stop depositing those funds in the—in the store's account.**

Q. And when did he tell you that?

A. Towards the end of the partnership.

Q. Okay. And from that point on, where did the rents go?

A. I just held onto it. It went—either I held onto it or it went into the—I **think I held onto it, mainly**. He said not to deposit into the account....(Emphasis added.)

Similarly, Yusuf has conceded that the intended use of the parcel was for a Partnership supermarket and thus the property taxes were paid on credit cards or from other accounts that were reimbursed with joint (50/50) funds. Again, this continued after 2011. This was still the “treatment” of the parcel in 2015 when Fathi Yusuf changed the books as described directly below. For example, **Exhibit 14** is a March 15, **2012** document provided by Yusuf's counsel, it shows Plessen Enterprises (not Yusuf personally) still reimbursing Yusuf's-United for the property taxes for Parcel No. 2-4 Rem. Estate Charlotte Amalie. (Regardless of who “paid” the taxes, they were reimbursed by the Partnership.) This is from the Plessen Enterprises Scotiabank account, no. 45012, check 348, for \$570.00. **Thus, for years after the alleged 2011 oral contract**, the Partners were still jointly reimbursing all of the taxes and other costs.

<sup>19</sup> See, e.g., Yusuf's financial statements of the Liquidating Partner were referred to in his July 31, 2015 *Third Bi-Monthly Report* was as follows: “The 2014 tax return for the Partnership was filed [with the BIR] on July 14, 2015. A copy has been provided to the Master and Hamed.” That 2014 tax return shows the parcel as Partnership property.

<sup>20</sup> Hamed's Objection to that 3rd Bi-Monthly, dated August 18, 2015, at 3-4. Similarly, the 2nd Bi-Monthly states that “An updated balance sheet was provided to counsel and the Master on February 6, 2015, as required by § 9, Step 4 of the Plan.” That balance sheet shows the same.

on the Partnership's books for \$330,000. However, in his July 12, 2018 Order on this issue, the Master stated (n4, at 4) that the balance sheet exhibit in the motion did not specifically refer to this parcel, but rather: "The balance sheets simply listed "Land, \$330,000.00" under "ASSETS." Fortunately, exactly what "land" is being referred to as being a \$330,000 Partnership asset can be seen in **Exhibit 15**, from the 2010 Plaza Extra Trial Balance Report (run Sept. 8, 2011). It *lists the land as this parcel*, "2 4 Rem, Est Ch"—for the same \$330,000.<sup>21</sup> Similarly, in the Fourth Bi-monthly Report, while Yusuf admitted that the parcel had always "been listed on the balance sheet of the Partnership" as partnership property, for the first time he also claimed that always carrying it as a Partnership asset until 2015 was just an "error". That same report belatedly informed the Master that the books were being changed—Yusuf, had the Partnership's books and reports changed to favor Yusuf's-United—same as the rent deposits.

**. . . Yusuf submits that the Land has erroneously been carried on the balance sheet of the Partnership.** (Emphasis added.)

Thus, after 2008 the parcel was moved from Plessen's books to the Plaza Extra Partnership's books and stayed there long after 2011. Yusuf now says that while it is true that both the rent deposits and accounting entries all originally reflected that this parcel was "treated" as Partnership property well after 2011—this was all just a huge accounting mistake...it was "erroneous." But his sudden, late changes not only highlight how the parties really 'treated' the parcel for years, up to 2015, but also expose Fathi Yusuf's guilty knowledge and actions in trying to change the record because of what these financials reveal.

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<sup>21</sup> Compare **Exhibit 16**, the 2012 balance sheet for the Partnership *with* **Exhibit 17**, the completely separate balance sheet for the Yusuf's-United version of United, which operated through the "Tenant" account -- which is titled "*United Corporation - Balance Sheet - STX Shopping Center - December 31, 2012.*" That was after the alleged transfer and was compiled and filed far later than that. The Yusuf's-United balance sheet shows the real estate at Sion in the shopping center, but not the half-acre in Tutu. The Tutu parcel was carried in the St. Thomas section of the *Partnership books* as "Land - Est Char Ama - 330,000.00." Again, all of this was the treatment of the land long after 2011. Nobody thought of this as Yusuf's.

#### IV. Conclusion

There are no disputes as to any of the material facts here. There is no dispositive fact which requires testimony. As a matter of law, there is no contract and no transfer of the parcel.

**Dated:** February 3, 2020



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## CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2020, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross** (*w/ 2 paper copies to his Clerk*)  
Special Master  
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## CERTIFICATE OF WORD/PAGE COUNT

This document complies with the limitations set forth in Rule 6-1 (e). Counsel notes that this excludes the cover page, caption, table of contents, table of authorities, appendices, exhibits, certificates of service and "*Statement of Undisputed Facts*" per the revised requirements. As the Rule, as amended, is unclear, if the *Statement of Facts* is counted in the total, Hamed will remove it from the body and append it as a separate exhibit.





## LIST OF EXHIBITS

Exhibit	Description	Text
<b>Exhibit 1</b>	<i>Official Comment 4 to RUPA Section 204(c)</i>	The inference concerning the partners' intent from the use of partnership funds outweighs any inference from the State of the title, subject to the overriding reliance interest in the case of a purchaser without notice of the partnership's interest.
<b>Exhibit 2</b>	<i>Defendant Fathi Yusuf's Answers to Plaintiff Waleed "Wally" Hamed's First Set of Interrogatories, Hamed et al. v. Yusuf, SX-12-CIV-377 at page 9 of 50</i>	When Responding Party [Yusuf] asked Waleed Hamed to proceed with the transfer of the Tutu Park property, it is at this point, several months later [in 2011] that Plaintiff Waleed "Wally" Hamed and Plaintiff Mohammed Hamed refused to transfer not only the second property [Tutu], but also the third property requested as a set-off for the unauthorized transactions.
<b>Exhibit 3</b>	Yusuf Claims Filing, September 30, 2016, at 13	[In 2011] Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.
<b>Exhibit 4</b>	<i>Mohammad Hannun Aff.</i> , April 21, 2014, at ¶19 and ¶21	Paragraphs 19 and 21.
<b>Exhibit 5</b>	USVI GIS photosurvey	Location of this 0.536 acre parcel Yusuf calls the "entrance" parcel, in relation to the 9.438 acre parcel that Fathi Yusuf calls the "major" parcel.
<b>Exhibit 6</b>	Act 6194 [Bill 27-0036], 27 <sup>th</sup> Legis., Reg. Sess., March 21, 2007	Rezoning "from R-2 (Residential-Low Density) . . .to C (Commercial.)
<b>Exhibit 7</b>	<i>Declaration</i> as to the Site Plan	Extensive

<b>Exhibit 8</b>	Fathi Yusuf's deposition of April 2, 2014, at 77-7	Extensive
<b>Exhibit 9</b>	2011 "Agreement" in Arabic	Extensive
<b>Exhibit 10</b>	2011 "Agreement" in Arabic (English Translation]	Extensive
<b>Exhibit 11</b>	Mohammad Hamed's deposition of March 31, 2014.	Extensive
<b>Exhibit 12</b>	Fathi Yusuf's lawyers' fax and invoice for drafting 2011 Agreement	Extensive
<b>Exhibit 13</b>	Declaration	It is also a matter of the undisputed factual record that there are no subsequent writings or financial records which ever even <i>mention</i> any second agreement as to the Tutu parcel. It is not mentioned in any deed, document, communication, writing or other item of evidence.
<b>Exhibit 14</b>	March 15, 2012 Plessen Enterprises Scotiabank account, no. 45012, check 348, in the amount of \$570.00	Reimbursement of Yusuf's-United for Tax on half-acre parcel in 2012
<b>Exhibit 15</b>	2010 Plaza Extra Trial Balance Report (run Sept. 8, 2011)	Lists the land as parcel, "2 4 Rem, Est Ch" —for \$330,000.
<b>Exhibit 16</b>	2012 balance sheet for the Partnership	Extensive
<b>Exhibit 17</b>	2012 balance sheet for the Yusuf's-United version of United, which operated through the "Tenant" account	Extensive

# UNIFORM PARTNERSHIP ACT (1997)

EXHIBIT

1

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-FIFTH YEAR  
SAN ANTONIO, TEXAS  
JULY 12 - JULY 19, 1996

*WITH PREFATORY NOTE AND COMMENTS*

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

Approved by the American Bar Association  
San Antonio, Texas, February 4, 1997

~~name of one or more partners in their capacity as partners, but only if the name of the partnership is indicated in the instrument transferring title.~~

Property transferred to a partner is partnership property, even though the name of the partnership is not indicated, if the instrument transferring title indicates either (i) the partner's capacity as a partner or (ii) the existence of a partnership. This is consonant with the entity theory of partnership and resolves the troublesome issue of a conveyance to fewer than all the partners but which nevertheless indicates their partner status.

3. Ultimately, it is the intention of the partners that controls whether property belongs to the partnership or to one or more of the partners in their individual capacities, at least as among the partners themselves. RUPA sets forth two rebuttable presumptions that apply when the partners have failed to express their intent.

First, under subsection (c), property purchased with partnership funds is presumed to be partnership property, notwithstanding the name in which title is held. The presumption is intended to apply if partnership credit is used to obtain financing, as well as the use of partnership cash or property for payment. Unlike the rule in subsection (b), under which property is **deemed** to be partnership property if the partnership's name or the partner's capacity as a partner is disclosed in the instrument of conveyance, subsection (c) raises only a **presumption** that the property is partnership property if it is purchased with partnership assets.

That presumption is also subject to an important caveat. Under Section 302(b), partnership property held in the name of individual partners, without an indication of their capacity as partners or of the existence of a partnership, that is transferred by the partners in whose name title is held to a purchaser without knowledge that it is partnership property is free of any claims of the partnership.

Second, under subsection (d), property acquired in the name of one or more of the partners, without an indication of their capacity as partners and without use of partnership funds or credit, is presumed to be the partners' separate property, even if used for partnership purposes. In effect, it is presumed in that case that only ~~the use of the property is contributed to the partnership.~~

4. Generally, under RUPA, partners and third parties dealing with partnerships will be able to rely on the record to determine whether property is owned by the partnership. The exception is property purchased with partnership funds without any reference to the partnership in the title documents. The inference concerning the partners' intent from the use of partnership funds outweighs any inference from the State of the title, subject to the overriding reliance interest in the case of a purchaser without notice of the partnership's interest. This allocation of

risk should encourage the partnership to eliminate doubt about ownership by putting title in the partnership.

~~5. UPA Section 8(4) provides, "A transfer to a partnership in the partnership name, even without words of inheritance, passes the entire estate or interest of the grantor unless a contrary intent appears." It has been omitted from RUPA as unnecessary because modern conveyancing law deems all transfers to pass the entire estate or interest of the grantor unless a contrary intent appears.~~

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

MOHAMMED HAMED, WALEED  
"WALLY" HAMED, WAHEED  
"WILLY" HAMED, MUFEED "MAFI"  
HAMED, HISHAM "SHAWN" HAMED,

Plaintiffs,

vs.

FATHI YUSUF,

Defendant.

CIVIL NO. 377/2012

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**DEFENDANT FATHI YUSUF'S ANSWERS TO  
PLAINTIFF WALEED "WALLY" HAMED'S FIRST SET OF INTERROGATORIES**

COMES NOW, Defendant Fathi Yusuf, (hereinafter referred to as "Fathi Yusuf" or "Defendant" or "Responding Party"), by and through undersigned counsel, Law Offices of K. Glenda Cameron, by K. Glenda Cameron, Esq., and respectfully answers as follows to Plaintiff Waleed "Wally" Hamed's First Set of Interrogatories to Defendant Fathi Yusuf.

Subject to the objections set forth below, Defendant answers as follows to the First Set of Interrogatories served by Plaintiff Waleed "Wally" Hamed.

**PRELIMINARY STATEMENT**


These answers and objections are made solely for the purpose of this action. Each answer is subject to any and all objections as to competence, relevance, materiality, propriety, and admissibility; and any and all objections and grounds that would require the exclusion of any statement contained in any response, if such request were asked of, or any statement contained therein were made by, a witness present and testifying in court, all of which objections and grounds are hereby reserved and may be interposed at the time of trial.

one property not enough to compensate and that it had to be the two (2) properties they had agreed on—the Jordanian Property, and the Tutu Park property.

Shortly thereafter, Mohammed Hamed travelled to Jordan with his son Mufeed Hamed. Responding Party followed them to Jordan to complete the transfer of the property in Jordan. Before Mohammed Hamed transferred the property, Responding Party made it clear, more than once, that his acceptance of the two (2) properties were only for what he had discovered so far, the approximately \$300+ Merrill Lynch deposits, the \$1.3 million (\$2 million less the \$700K he had received) and an estimate of a \$1 million at least, to cover Wally Hamed's gambling habit.

Mohammed Hamed went ahead and transferred his interest in the Jordanian Property, and was supposed to transfer his interest in the Tutu Park Property, but never did so.

When Responding Party returned to St. Croix, he continued to review the hard-drive and discovered even more unauthorized transactions of Wally Hamed taking funds for his personal use. As a result of these new discoveries of even more unauthorized transfer of funds by Plaintiff Waleed Hamed, the Defendant informed Wally Hamed that it has to be three (3) properties to cover everything Responding Party had found. Responding Party requested that Mohammed Hamed transfer his interest in another property in Jordan Responding Party had bought and given an half interest to Mohammed Hamed.



When Responding Party asked Waleed Hamed to proceed with the transfer of the Tutu Park property, it is at this point, several months later, that Plaintiff Waleed "Wally" Hamed and Plaintiff Mohammed Hamed refused to transfer not only the second property, but also the third property requested as a set-off for the unauthorized transactions.

The parties' relationship broke down completely, Defendant informed Wally Hamed and Mohammed Hamed that he no longer wanted to work with them and it was time for the families to go their separate ways.

Sometime thereafter Plaintiff Waleed Hamed enlisted the assistance of his Uncle Mohammed Hannun and certain business associates in the Muslim Community to help settle the parties' disputes. The meetings to settle the dispute were arranged with the consent of Plaintiff Waleed Hamed as agent for Plaintiff Mohammed Hamed.

18. Do you dispute that a meeting was held in or around December 2011 in order to try and resolve the disputes between the parties, if not, who was present, the date of the meeting, the substance of what was discussed, whether an investigation was under taken, by whom the scope of the investigation and the results and whether an agreement was put in writing to be finalized by Attorneys and the terms and conditions of that agreement.

**RESPONSE No. 18:**

**Responding Party objects to the form of the question as misleadingly stated, in that it makes a statement and does not ask a question, contains a reference to the Plaintiffs' allegations in the Complaint which have been denied and is phrased in such a manner so as to cause any response to be ambiguous and potentially misleading.**

Notwithstanding the above objection, Responding Party believes that this Interrogatory is referring to a meeting that was held on the day before Christmas. For Attendees see Defendant's Response to No. 16.

No agreement was reached. No agreement was drafted as a result of this meeting to Responding Party's knowledge



**RESPECTFULLY SUBMITTED:**

Dated: November 20, 2013

**LAW OFFICES OF K. G. CAMERON**

By:

  
K. Glenda Cameron, Esq.

V.I. Bar No. 683

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***Counsel for Defendant***

## CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT a true and exact copy of the foregoing *Defendant Fathi Yusuf's Answers to Plaintiff Waleed "Wally" Hamed's First Set of Interrogatories* was served via U.S. Mail, postage prepaid, fax, electronic mail or hand delivery on this the 20<sup>th</sup> day of November 2013 to wit:

**Lee J. Rohn, Esq.**  
**Lee J. Rohn & Associates**  
1101 King Street  
St. Croix, Virgin Islands 00820  
Tel: 340.778.8855  
Email: lee@rohnlaw.com  
*Counsel for Plaintiffs*

via: CM/ECF  | Mail  | Fax  | Hand Delivery  | Email

  
Cordelia L. Jones  
Certified Paralegal, C.L.A.

**CERTIFICATION**

I hereby swear and affirm that the answers to the above Interrogatories are true and correct to the best of my knowledge and belief.

DATED: 11-19-2013 By: Fathi Yusuf  
Name  
Fathi YUSUF  
Print Name

**SUBSCRIBED AND SWORN TO**  
**BEFORE ME, this 19 day**  
of November 2013

[Signature]  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

K. Glenda Cameron  
Commission Number LNP 010-09  
Expiration Date: May 26, 2017

Attorney for Defendant

DATED: 11-19-13

By: [Signature]  
K. Glenda Cameron, Esquire

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

**EXHIBIT**  
**3**

MOHAMMAD HAMED, by his )  
authorized agent WALEED HAMED, )  
 )  
Plaintiff/Counterclaim Defendant, )  
 )  
vs. )  
 )  
FATHI YUSUF and UNITED CORPORATION, )  
 )  
Defendants/Counterclaimants, )  
 )  
vs. )  
 )  
WALEED HAMED, WAHEED HAMED, )  
MUFEEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )  
 )  
Additional Counterclaim Defendants. )  
 )  
\_\_\_\_\_) **Consolidated With**  
 )  
MOHAMMAD HAMED, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED CORPORATION, )  
 )  
Defendant. )  
 )  
\_\_\_\_\_)

CIVIL NO. SX-12-CV-370  
  
ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

CIVIL NO. SX-14-CV-287  
  
ACTION FOR DAMAGES  
AND DECLARATORY RELIEF

**YUSUF’S ACCOUNTING CLAIMS AND PROPOSED DISTRIBUTION PLAN**

Pursuant to the “Final Wind Up Plan Of The Plaza Extra Partnership,” entered on January 9, 2015 (the “Plan”),<sup>1</sup> §9, Step 6, and the August 31, 2016 directive<sup>2</sup> of the Master, as clarified

<sup>1</sup> Unless otherwise defined, all capitalized terms have the same meaning as provided in the Plan.  
<sup>2</sup> That directive required the Partners to submit any objection to the previously submitted Partnership Accounting and any claims against the Partnership or a Partner by September 30, 2016. It is undisputed that since the inception of the Partnership, the only Partners were Yusuf and Hamed, who died on June 16, 2016. On September 20, 2016, a Motion And Memorandum For Substitution Of Named Plaintiff was filed seeking an Order substituting Waleed M. Hamed, as Executor of the estate of Hamed, as Plaintiff.

on September 22, 2016, defendant/counterclaimant Fathi Yusuf (“Yusuf”) respectfully submits his Accounting Claims and Proposed Distribution Plan (the “Claim”) as follows:

**I. Current Status of Partnership Wind Up and Overview of Proposed Distribution**

The current status of the wind up of the Partnership is set forth in the Tenth Bi-Monthly Report of the Liquidating Partner filed on September 30, 2016 and the supporting financial information concurrently submitted to the Master and counsel. At present, the total remaining assets of the Partnership are \$8,957,168.54<sup>3</sup>.

A summary of the Claim’s proposed distributions is set forth in **Exhibit A**. It contemplates that a portion of the remaining Partnership Assets will be held in reserve for potential expenses including taxes and litigation costs for personal injury claims made or potentially to be made against the various Plaza Extra Stores prior to the dissolution. In addition, all Debts of the Partnership must be paid prior to any distributions to Partners. At this stage, the remaining Debts include the unpaid rent obligations, plus interest, due to United for occupying the Plaza Extra-East store and Bays 5 and 8 in the United Shopping Plaza, which have not been adjudicated<sup>4</sup>, as well as other obligations owed to United discussed in more detail below. As reflected in Exhibit A, there will be a shortfall of approximately \$4 million in Partnership Assets, if all listed Debts are paid and all proposed reserves are established. Any actual shortfall must be made up by the Partners or a deceased Partner’s estate.

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AND FEUERZEIG, LLP**

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<sup>3</sup> These total assets are reflected in the Partnership balance sheet provided, along with income statement, on September 30, 2016 to the Master and counsel for the Partners by John Gaffney (“Gaffney”), who has served as the accountant for the Partnership.

<sup>4</sup> See Memorandum Opinion and Order dated April 27, 2015 (the “Rent Order”), which provides that although back rent for Bays 5 and 8 are set forth in United’s Counterclaim, “this Order addresses only Bay No. 1.” (Rent Order, p. 2, n. 1)

Once reserves are established and the outstanding Debts are allowed and paid, distributions to the Partners can be made only if there are remaining Partnership Assets. The Claim provides:

- a) reconciliation of the historical withdrawals and distributions between the Partners and their agents from the profits of the Plaza Extra Stores, reflecting a net balance of \$9,670,675.36 due to Yusuf;
- b) an accounting of funds received by Yusuf for the sale of Y&S Corporation ("Y&S") and R&F Condominium, Inc. ("R&F") stock resulting in a balance of \$802,966.00 due to Hamed;
- c) a description of Partnership funds entrusted to Hamed to be held in foreign accounts, invested in real estate or used as charitable donations of the Partners, reflecting a balance due to Yusuf; and
- d) quantification of the loss of the going concern value of Plaza Extra-West as a result of Hamed's actions resulting in a balance of \$4,385,000.00 due to Yusuf.

## **II. Funds to Be Held in Reserve**

Prior to distribution of the remaining Partnership Assets, certain funds must be held in reserve to satisfy contingent obligations and risks of the Partnership.

### **A. Reserves Needed for Plaza Extra-Tutu Park Rent**

Given Hamed's conceded failure to obtain releases of the Partnership, United and Yusuf, as required by the "Order Adopting Final Wind Up Plan" dated January 7, 2015 and entered on January 9, 2015 (the "Wind Up Order") (p. 5), § 8(2) of the Plan, and the April 30, 2015 Master's Order (p. 2), a reserve must be created for all rents to be paid to Tutu Park Limited over the remaining term of the lease in the amount of \$887,203.26 (\$30,359.38 per mo. in rent plus an

average of \$2,500 per mo. in water charges x 27 months), not including charges for real estate taxes and percentage rents.

**B. Reserves Needed for Plaza Extra-Tutu Park Property Taxes and United Matching Payment**

As described in the Tenth Bi-Monthly Report, *see* p. 4, n. 6, property taxes for 2015 have not yet been billed, but reserves should be set aside to pay these taxes which are estimated to be \$14,356.44, along with a matching payment to United of \$9,812.14.

**C. Reserves Needed for FUTA Taxes**

At present, there is a dispute as to the amount of Federal Unemployment Taxes ("FUTA") due from the Plaza Extra Stores. The Internal Revenue Bureau contends that approximately \$350,000.00 is due for 2014 and 2015. Gaffney, however, has determined that no additional FUTA taxes are due. While the amount remains in dispute, Yusuf proposes to hold these funds in reserve until the dispute is resolved. Once the dispute is resolved, the funds can be distributed according to the Plan or as otherwise ordered by the Court.

**D. Master's Fees**

The fees of the Master for supervising the final liquidation and wind up of the Partnership will need to be reserved. It is estimated that \$150,000 should be set aside for such expenses.

**E. Accounting Fees**

Accounting fees for coordination and payment of various Debts and wind up of the Partnership will need to be reserved. It is estimated that \$30,000.00 should be set aside for such expenses.

**F. Funds to Be Held in Reserve for Litigation Risks**

Reserves must be set aside for pending and possible litigation relating to claims for injuries allegedly suffered at the various Plaza Extra Stores prior to the dissolution of the

Partnership and transfer of ownership of the stores. See Exhibit C-2 to the Seventh Bi-Monthly Report filed on April 1, 2016. Yusuf submits that the amount required to satisfy the potential risk to the Partnership as well as costs and expenses not otherwise covered by insurance for those claims is approximately \$1,320,777.00. This amount is comprised of two primary components: 1) pending claims and 2) estimated future claims.<sup>5</sup>

As to the pending claims, they are further divided into two categories: a) those claims with insurance coverage and a self-insured retention and b) uncovered claims. For those claims with insurance coverage, reserves are calculated by considering the total amount claimed or last demanded in settlement by the plaintiffs, multiplied by the probability of plaintiffs' success in each case, added to the costs for the litigation not covered by insurance.<sup>6</sup>

As to the estimated future claims, the average value of claims in a given year is calculated by review of historical claims. Then this value is multiplied by the average number of claims per year and by the number of years in the statute of limitation period to determine the total risk. That figure is in turn multiplied by the percentage of time remaining in the applicable statute of limitations. The statute of limitations is calculated for each store from the last date it was controlled by the Partnership; i.e. March 9, 2015 for Plaza Extra-East and West, and April 30, 2015 for Plaza Extra-Tutu Park. Such formulas are commonly utilized to evaluate risk exposure by insurers in setting insurance loss reserves.<sup>7</sup>

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<sup>5</sup> At present, Yusuf is unaware of any unfiled claims within the statute of limitations.

<sup>6</sup> See **Exhibit B**, Litigation Reserves Calculations.

<sup>7</sup> *A User-Friendly Introduction to Property and Casualty Claims Reserves*, Joseph Calandro, Jr. and Thomas J. O'Brien, 2004, describing accounting methodologies as to assessment of litigation risks and costs for setting reserves.



These reserves include the claims of Wadda Charriez<sup>8</sup> since her counterclaims are effectively against the Partnership and, therefore, constitute a potential obligation of the Partnership.

### **III. Outstanding Debts of the Partnership**

Although nearly all of the undisputed Debts of the Partnership have been paid or resolved, the following Debts remain:

#### **A. Miscellaneous Debts**

There are Debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners<sup>9</sup>. This amount relates primarily to accounts payable for open tax issues from 2013.

#### **B. Unpaid Rent for Plaza Extra-East and Adjacent Bays**

While the Court determined that certain past due rent obligations for Plaza Extra-East must be paid pursuant to the Rent Order, there remain additional rent claims for Plaza Extra-East. These claims have not yet been resolved<sup>10</sup> and, if found to be due and owing, then these are Debts of the Partnership that should be paid prior to any distribution of the remaining Partnership Assets to the Partners.

United makes the following claims against the Partnership as set forth in its Amended Counterclaim and Motion For Partial Summary Judgment Regarding Rent:

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<sup>8</sup> These claims are the subject of a separate suit, United Corporation v. Wadda Charriez, SX-13-CV-152, which Yusuf has moved to consolidate into this action for resolution. *See* Motion to Consolidate filed on March 17, 2016.

<sup>9</sup> The total liabilities are reflected in the Partnership balance sheet provided to the Master and counsel for the Partners by Gaffney on September 30, 2016.

<sup>10</sup> *See* Rent Order, p. 2, n. 1; p. 11, n. 4.

### 1. Bay 1 – Increased Rent Due Net of Rent Paid

United provided formal notice of increased rent of \$200,000 per month to the Partnership, which was to begin on January 1, 2012 through March 31, 2012, if the premises were not vacated before then. Thereafter, beginning on April 1, 2012 through March 8, 2015, United provided formal notice of increased rent of \$250,000 per month. See Exhibit D to Yusuf's Declaration dated August 12, 2014 (the "Yusuf Declaration") in support of Defendants' 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**.

### 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.

### 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**.<sup>11</sup>

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,

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<sup>11</sup> 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.

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**.

### **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**, Summary and Evidence of United Payment of Gross Receipts Taxes.

### **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 discussed in §IV below, to the extent they represent historical withdrawals as between the Partners and their families. However, as to funds which United paid on behalf of the Plaza Extra Stores, the Black Book entries reveal that the Partnership owes United \$49,997.00 for various expenses it paid on behalf of the Partnership. See **Exhibit G**, Relevant Black Book Entries.

### **E. Additional Ledger Balances Due to United**

In addition to the Black Book balance owed to United, at various points in time, United made other payments on behalf of the Plaza Extra Stores. In 1994, 1995 and in 1998, United paid \$199,760.00 for various expenses of the Partnership. See **Exhibit H**, Ledger Sheets

Reflecting United's Payments for Plaza Extra. In the same ledger book, records of withdrawals by Yusuf are also noted for certain personal expenses in 1995 and 1996. The amounts relating to Yusuf's personal expenses are included in the BDO Report discussed below in § IV, accounting for the withdrawals as between the Partners and their families. However, the total amount of \$199,760.00 paid by United has not otherwise been captured in other reconciliations and remains due and owing to United.

**F. Water Revenue Re Plaza Extra-East**

Beginning in 1994, Plaza Extra-East began selling United's water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 (\$52,000) and 1998 (\$75,000) as \$5,291.66 per month. Multiplying the average monthly sales revenue by 131 months, United is owed \$693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015.

**G. Unreimbursed Transfers to Plaza Extra from United's Tenant Account**

At various points throughout the Partnership, United would transfer funds from its tenant account, which the parties have already conceded was separate and independent from the Partnership, to the Plaza Extra Stores to cover expenses and to maintain cash-flow. The Partnership has not reimbursed United for certain transfers. The Partnership owes United \$188,132 for its unreimbursed transfers. *See Exhibit I*, Summary and Supporting Documentation of Unreimbursed Transfers from United.

#### IV. Past Partnership Withdrawals and Distribution Reconciliation

Throughout the Partnership, the Partners and their agents (*i.e.*, their sons) would withdraw cash from safes at the Plaza Extra Stores. Evidence of these withdrawals came in multiple forms including, *inter alia*, receipts, checks or ledger entries. In addition, the Partners and their agents used funds generated by the Plaza Extra Stores for personal expenses. These payments for personal expenses were to be counted against each Partner as a distribution. The withdrawals and payments for personal expenses were supposed to be done on the "honor system," which relied upon each Partner and their agents to disclose to the other Partner, via "tickets" or receipts left in the store safes, when withdrawals were made or personal expenses were paid from Partnership funds. Occasionally, the Partners would reconcile the various withdrawals and expenses between them. Upon review of the various accounting records as well as information regarding personal accounts and assets of the Partners and their agents, Yusuf submits that Hamed and his agents failed to fully disclose all of the funds they withdrew from the Partnership or personal expenses they paid with Partnership funds. Consequently, these previously undisclosed withdrawals and expenses are treated as distributions in the Claim. A full accounting of the Partnership withdrawals is set forth in the Expert Report of Fernando Scherrer of BDO Puerto Rico, P.S.C. ("BDO") attached as **Exhibit J**<sup>12</sup>. Based on that report, Hamed's withdrawals/distributions exceed Yusuf's withdrawals/distributions by \$19,341,350.72. See Exhibit J at p. 62-3. As a result, \$9,670,675.36 should be awarded to Yusuf to equalize the distributions between the Partners so that both Partners have equal distributions of \$18,820,989.98.

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<sup>12</sup> The tables, schedules and supporting documentation for this report are voluminous and will be submitted to the Master and counsel for Hamed via a flash drive or CD identified as **Exhibit J-1**.

## V. Y&S and R&F Stock Sale Proceeds Distribution

The Partnership invested in various entities used to purchase either stock or real estate. One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and Nejeih Yusuf. The two sons sold their stock for \$900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. Yusuf has received all of the proceeds from the sale of the stock. Although claims to these funds were the subject of a separate suit (Hamed v. Yusuf, Superior Court of St. Croix, SX-2014-CV-278), the parties stipulated to have these claims<sup>13</sup> consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966<sup>14</sup> should be allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F.

## VI. Foreign Accounts and Jordanian Properties

As part of the profit sharing arrangement between the Partners, at various points in time, profits of the Partnership were sent to Jordan to be held in bank accounts or invested in real property to the mutual benefit of the Partners. In addition, Partnership profits were also sent to

<sup>13</sup> Although no claims have ever been pled in this case or SX-2014-CV-278 concerning the \$600,000 in proceeds from Yusuf's sale of his 1,000 shares of stock in R&F pursuant to an agreement dated January 15, 2001 with Hakima Salem, Yusuf is prepared to include these proceeds in his accounting.

<sup>14</sup> Interest was not included on this claim because, among other things, United did not include all the interest it could claim on the rent actually awarded by the Rent Order. *See* n. 11, above. There are additional reasons for not paying interest on the claim as reflected in Yusuf's First Amended Answer And Counterclaim filed in SX-2014-CV-278. *See also* n. 15, below, regarding \$150,000 offset.

Jordan to be used as charitable donations of the Partners. Based upon Yusuf's review of bank documentation available to date and information discovered following the FBI raid, Yusuf claims that Hamed (either individually or through his sons or agents) failed to properly invest all Partnership funds with which he had been entrusted and failed to properly account for such funds. As a result, Hamed either breached his fiduciary duties to the Partnership by failing to properly safeguard, account for, and invest these funds as agreed between the Partners or he converted them for his own personal use or the personal use of his family members.

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

- a. Hamed and his sons have failed to account for the Partnership funds held in various foreign bank accounts from 1996 to date including, but not limited to, the accounts identified in **Exhibit K**;
- b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation; *see* **Exhibit L**, Wire Transfer Information Supporting Claim.<sup>15</sup>

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<sup>15</sup> This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should either be offset against the \$802,966 allocated to Hamed in § V, above, or it should be charged against Hamed's interest in the Partnership. Given Hamed's apparent negative balance in his Partnership account, Yusuf submits the \$150,000 should be offset against the \$802,966.

- c. Waleed Hamed's unauthorized check of \$536,405 to Hamed on April 29, 1998 and additional checks for \$10,000 and \$15,216; *see* **Exhibit M**.
- d. Waleed Hamed's failure to account for funds that were removed from the Commercial Francaise Bank in Saint Maarten with four (4) checks totaling \$550,373.14 to close out the account in January and February of 1997; and
- e. Waleed Hamed's conversion of \$1.4 million received in 1996 as reflected in a St. Maarten police report.

Approximately forty (40) parcels of real property were purchased in Jordan using funds from the Plaza Extra Stores. All but two of those properties were jointly titled in the names of Hamed and Yusuf. The Court's assistance in administering or liquidating the jointly titled parcels is not sought at this time. Yusuf does seek the Court's assistance, however, with respect to two (2) parcels that were incorrectly titled in Hamed's name alone. These two parcels are identified in the "Land Value Estimation" attached as **Exhibit N**. Yusuf respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these parcels. [\[2 Parcels in Jordan\]](#)

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as **Exhibit O**<sup>16</sup>. Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels,

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<sup>16</sup> Yusuf is arranging for this document to be translated. An English version will be provided to the Master and counsel upon receipt.



one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. *See Ninth Bi-Monthly Report at p. 5-6.* Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

## **VII. Loss of Going Concern Value of Plaza Extra-West**

During the period that the Partnership operated Plaza Extra-West, it generated income, supported its expenses and ultimately generated profits. Plaza Extra-West's net profits were expected to continue indefinitely or, upon the dissolution of the Partnership, they were to continue until an orderly liquidation process could be concluded involving purchase of the business by one of the Partners or a third party. In either case, Plaza Extra-West's value as a "going concern" would have been quantified and realized equally by the Partners.

As equal Partners, both Hamed and Yusuf had ownership interests in the "going concern" value of Plaza Extra-West. A "going concern" value recognizes the many advantages that an existing business has over a new business, such as avoidance of start-up costs and improved operating efficiency. In this sense, the "going concern" value of a business represents the

difference between the value of an established business and the value of a start-up one. "Going concern" value also indicates the value of a business as an operating, active whole, rather than merely as distinct items of property.<sup>17</sup>

Both Hamed and Yusuf had fiduciary obligations to each other to maintain the "going concern" value of Plaza Extra-West and to behave in such a way as to promote and not diminish its value as an on-going business. An essential component to Plaza Extra-West's on-going business operations was its ability to continue to operate out of its existing location in Estate Plessen. By orchestrating an April 30, 2014 lease of the premises occupied by Plaza Extra-West to a competing business (wholly owned by Hamed's sons), KAC357, Inc., which then took over the operation of the Plaza Extra-West supermarket formerly owned by the Partnership, Hamed effectively appropriated for the benefit and use of him and his sons the "going concern" value to the Partnership of the supermarket. Hence, Hamed's actions operated to substantially decrease the value of Partnership Assets. Plaza Extra-West's value as a "going concern" at the time that Hamed took such actions was \$8,770,000. *See* Valuation Report of Plaza Extra-West, prepared by Integra Realty Resources, attached as **Exhibit P**, at page 55.<sup>18</sup> Hamed's actions thus

<sup>17</sup> Preservation of the going concern value is recognized in many contexts including bankruptcy proceedings, which seek to preserve such value when reorganizing businesses in order to maximize recoveries for creditors and shareholders (11 U.S.C. § 1101 et seq.).

<sup>18</sup> In addition to the business valuation report for Plaza Extra-West, Integra Realty Resources also prepared an appraisal of the real property occupied by Plaza Extra-West, which is attached as **Exhibit Q**. Exhibit Q in turn contains an analysis of the market rent for use of the land and improvements occupied by Plaza Extra-West. In Exhibit Q, Integra Realty Resources concludes that the market rent for the property is \$7.50 per square foot per year, rather than the \$4.04 per square foot per year rate in the KAC357, Inc. lease. *See* Exhibit Q, pp. 63-64. The annual market rent is \$1,224,848 at the \$7.50/sq. ft./year rate. *See id.* at p. 63. That annual market rent of \$1,224,848 in Exhibit Q was in turn used in the income approach calculations of Exhibit P to determine the business value of Plaza Extra-West as of April 30, 2014. *See* Exhibit P, p. 39, item 4; pp. 40, 53-54. The \$7.50/sq. ft./year market rent for Plaza Extra-West is a conservative number because, as noted in Exhibit Q (at page 61), the actual annual rent paid at one of the

diminished the value of the Partnership Assets at the time of dissolution by \$8,770,000. As half owner of the Partnership, such actions decreased the value of Yusuf's Partnership interests by \$4,385,000. As a result, \$4,385,000 should be awarded to Yusuf to compensate him for such loss of value.

### **VIII. Half of Value of Six Containers**

As reflected in the Liquidating Partner's Sixth Bi-Monthly Report, n. 4, at the closed auction for the Tutu Park store, the Partners agreed before the Master that the inventory to be included in the auction consisted of the inventory located under the roof of the store facilities. After the auction, Yusuf learned that Hamed or his designee, KAC357, Inc., took possession of six (6) trailers of inventory located outside of the covered premises. Since the inventory contained in these 6 containers was indisputably Partnership property, Yusuf claims entitlement to half of the total value of such inventory, which is estimated to be approximately \$360,000 to \$420,000. Subject to further discovery, Yusuf submits he should be entitled to recover between \$180,000 and \$210,000. Since the Master has already rejected this claim, Yusuf reasserts it here merely to preserve the claim for review.

### **IX. Disposition of this Case and Related Litigation**

The Claim addresses or resolves many but not all of the open claims between the Partners and related entities. To fully and finally complete the dissolution of the Partnership and accomplish a final distribution to the Partners, further discovery will be required in this case and related litigation.

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other stores – Plaza Extra-Tutu Park – was \$8.91 (as a result of overage or percentage rent clauses in that lease).

**A. The Main Case and Consolidated Cases**

Yusuf's proposed distribution in this matter (Hamed v. Yusuf, SX-12-CV-370, the "Main Case") is based upon the discovery that had been conducted prior to the imposition of the discovery stay in October of 2014. Additional information which has been or will be sought from Hamed's estate and his agents or representatives reflecting their personal finances is expected to reveal additional undisclosed withdrawals or personal expenses paid with Partnership funds. Hence, additional discovery is needed to determine if such additional undisclosed withdrawals occurred which would result in a revised proposed distribution as to the historical withdrawals.

The matter dealing with Y&S (Hamed v. Yusuf, SX-14-CV-278, the "278 Case"), is the subject of a stipulation to consolidate that case into the Main Case. Therefore, any disputed issues relating to the claims for the sale and distribution of the proceeds of the sale of the Y&S (and R&F) stock can be resolved in the Main Case.

In addition, Hamed filed suit against United and Yusuf (Hamed v. United, SX-14-CV-287, the "287 Case") for the withdrawal of \$2.7 million in Partnership funds on August 20, 2012. Yusuf submits that payment of these funds was made as a matching withdrawal to address the disparity of the prior Partnership distributions to Hamed and his agents. The Partners stipulated for consolidation of these cases and on April 15, 2016 an Order was entered consolidating the 287 Case into the Main Case. The withdrawal at issue in the 287 Case is fully addressed in the accounting and reconciliation of past Partner withdrawals in the BDO Report. *See Exhibit J* at p. 14. Hence, these claims are now consolidated into the Main Case.

### **B. Additional Suits Which Should Be Consolidated with the Main Case**

The case captioned United v. Waheed Hamed, ST-13-CV-101 relates to actions of Waheed for improper removal of funds of the Partnership prior to recognition of the Plaza Extra Stores' operations as a "partnership."<sup>19</sup> These claims relate to specific withdrawals of funds or use of Partnership funds that are included in the accounting and reconciliation in Section IV of Exhibit J. To the extent that any additional discovery is necessary concerning these claims or defenses, they can be addressed in the Main Case. As a result, Yusuf also seeks to have this case consolidated into the Main Case, if it is not dismissed.

The suit captioned United Corporation v. Wadda Charriez, SX-13-CV-152, relates to claims by United that Ms. Charriez falsified her work hours and therefore received compensation to which she was not entitled. Ms. Charriez counterclaimed against United and filed a third party complaint against Yusuf for intentional infliction of emotional distress, tortious interference with contract, civil extortion, civil conspiracy, and defamation, all of which are essentially claims against the Partnership. Yusuf contends that the claim is a potential asset of the Partnership and that the counterclaim/third party complaint is a potential liability of the Partnership, which requires the establishment of appropriate reserves. Further, Yusuf proposes that, as the Liquidating Partner, he be allowed to pursue efforts to resolve the claims and counterclaims involving the Partnership.

### **C. Conclusion**

Yusuf submits that the remaining assets of the Partnership are insufficient to satisfy the outstanding Debts and reserves for anticipated or contingent obligations and litigation risks of

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<sup>19</sup> A similar suit was filed by United against Waleed Hamed (ST-13-CV-3). On motion of United, it was dismissed by Order dated August 5, 2016. United filed a similar motion to dismiss its case against Waheed Hamed on September 13, 2016.

the Partnership. Assuming the allowance of all the identified Debts and proposed reserves, there will be a shortfall of approximately \$4 million in Partnership Assets to pay or establish these Debts and reserves. *See* Exhibit A. Any actual shortfall must be made up by the Partners or a deceased Partner's estate. An accounting of the historical withdrawals and distributions between the Partners, both disclosed and undisclosed, reveals a large discrepancy in Yusuf's favor. Again, these calculations were prepared without the benefit of deposition testimony and additional written discovery following the stay. It is anticipated that additional discovery will yield information necessitating revisions to these calculations. Likewise, Partnership funds entrusted to Hamed and his sons in various foreign accounts also requires additional discovery. The loss of the going-concern value of Plaza Extra-West further reflects a significant amount due to Yusuf. On balance, there exists a substantial amount due to Yusuf to reconcile the Partner's withdrawals and distributions. Solvency of Hamed (or his estate)<sup>20</sup> is in doubt given the discrepancy in the amounts due to Yusuf. For this reason, Hamed's (or his estate's or his trust's) interests in the jointly owned entities (Plessen Enterprises, Inc., Peter's Farm Investment Corporation, and Sixteen Plus Corporation) may need to be quantified as a means of payment to equalize the Partnership withdrawals.

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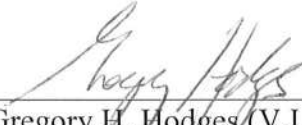
<sup>20</sup> A Petition for Probate of Will and for Letters Testamentary was filed on August 26, 2016 as Case No. SX-2016-PB-76. That petition reflects no available assets to satisfy Yusuf's claims other than Hamed's interest in the Partnership, since all of Hamed's interests in real and personal property had previously been conveyed to the Mohammad A. Hamed Living Trust dated September 12, 2012. Yusuf reserves all rights to challenge such conveyance as fraudulent.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

DATED: September 30, 2016

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E-mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)

Attorneys for Fathi Yusuf and United Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of September, 2016, I caused the foregoing **Yusuf's Accounting Claims and Proposed Distribution Plan** 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](mailto:holtvi@aol.com)

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



**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade  
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

**INDEX OF EXHIBITS TO YUSUF ACCOUNTING CLAIMS AND PROPOSED  
DISTRIBUTION PLAN**

- Exhibit A - Summary of Yusuf Plan Distributions
- Exhibit B - Litigation Reserves Calculations
- Exhibit C - Calculation of Additional Rent Net of Rent Paid
- Exhibit D - Calculation of Interest on Bay 1 Rent
- Exhibit E - Calculation of Interest on Bay 5 & 8 Rent
- Exhibit F - Summary and Evidence of United Payment of Gross Receipts Taxes
- Exhibit G - Relevant Black Book Entries
- Exhibit H - Relevant Ledger Entries
- Exhibit I - Summary and Supporting Documentation of Unreimbursed Transfers from United
- Exhibit J - Past Partner Withdrawals and Distribution Reconciliation, BDO Report
- Exhibit J-1 - Tables, Schedules and Supporting Documents for BDO Report
- Exhibit K - List of Foreign Accounts
- Exhibit L - Wire Transfer Information Supporting Claim
- Exhibit M - Cairo Amman Checks to Waleed Hamed
- Exhibit N - Land Value Estimation
- Exhibit O - Agreement in Arabic Conveying Hamed's Interest in Jordanian Parcel
- Exhibit P - Integra Realty Resources Valuation Report
- Exhibit Q - Integra Realty Resources Appraisal Report

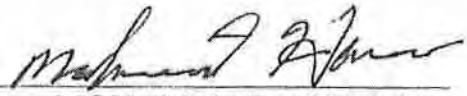




8. Fathi Yusef worked night and day to get the supermarket off the ground and was struggling to get a loan to get the supermarket loan. Fathi Yusuf mortgaged everything he owned to get the supermarket off the ground. I know that Fathi Yusuf was going to open the store without a dairy department. Just before he opened, friends of him took a tour of the store, saw that he had no dairy and offered him the money to buy the dairy. I know that they made this loan to Fathi Yusuf, just on his word alone.
9. Waleed Hamed came home from college, and started to work in the Supermarket with Mr. Yusuf, and he became Fathi's right hand person once the business got off the ground. Mike was in college at the time. Everyone knew that if you needed something from Fathi, and he wasn't around that you could ask Waleed Hamed, but that Fathi had the last word. Fathi Yusuf would treat Waleed better than his own son, and gave Waleed more authority than he gave his own son, Mike. Everyone in the whole community knew that when it come to the Supermarket, it was Fathi Yusuf, first and Waleed Hamed, second.
10. When the supermarket was being built, Mohammad Hamed was renting his house in Estate Carlton had no property to put up, he did not own any property. However, as the supermarket business became more profitable, Mohammad Hamed was able to buy the place he was renting in Estate Carlton. Mohammad Hamed now owns three (3) homes that I know about: 1) the house in Estate Carlton; 2) A house in the Westbank; and 3) a house in Irbid, Jordan, where my niece who married Mohammad Hamad's nephew lives. The house in Jordan he bought as a 2-story house then he added an additional level to make it three stories. I have been to all three homes.
11. I was surprised that Fathi Yusuf wanted to sell, when both families were doing well with the supermarket business. For example, Mohammad Hamed was later able to buy an Olive Farm in the Westbank, about 5 acres. That Olive Farm is fully planted with olive trees that were producing Olive Oil.
12. I know the supermarket was doing well for both families for the Hameds were able to open stock and operate the Five (5) Corners Mini-Mart store. I know that store was operated by Mohammad Hamed's nephews, Frankie Asad and Mike Abukais Quayyas.
13. I know the supermarket was doing well because all the Hamed sons now have their own homes. The Hameds only work at the Supermarket so the Supermarket business had to be doing well because I know that Waleed Hamed had brought a land overlooking the Estate Rattan and Estate Princess area, to build his home, but later brought a home on the East End, in Estate Southgate.
14. I know the Hameds also brought a duplex and property in Estate Carlton. The duplex was brought with two apartments and then they added three (3) other buildings with two (2) apartments each.

15. It was because I know the supermarket business was so doing well that I was really surprised to learn that Fathi wanted to sell the business. I asked Fathi Yusuf several times, "Fathi you doing well in the business, why do you want to sell" and he repeatedly told me that it was time to split up, because the families were getting too big.
16. It was not until I was asked to help settle a dispute between Waleed and, that I realized that there was a money problem between the families. At first all I knew was that Fathi was asking Waleed to explain about some money, and he was not getting an answer from Waleed.
17. I along with other family members, and close business' friends were asked to mediate a serious dispute Fathi Yusuf had with Waleed Hamed and Mohammed Hamed regarding monies taken from the business without his knowledge.
18. By the time of the first meeting to mediate, it was my understanding that the Hameds had agreed to turn-over two (2) properties to Mr. Yusuf, for what he had discovered so far: \$1.4 million, for the \$2 million transfer, including the \$700K that Mohammad Hamed agreed he received for the Batch Plant, and to cover what was spent on Waleed's gambling habit.
19. We called Waleed after Mr. Yusuf had agreed to settle the dispute for the two properties for what he had discovered, we called Waleed who came in and we told him of the agreement and we shook hands, and everyone left. Later that night, before 24 hours past, Mr. Yusuf called and asked, if I find anything else, can he ask for it, and I said no the agreement covers everything, even what he doesn't know about right now, and Mr. Yusuf said no, that the agreement was for what he knew now, not for anything else he finds. Then there was no more agreement.
20. There were other meetings to discuss splitting up the business, and there were discussions about the Yusuf family drawing \$1.3 million and the Hamed family drawing \$2.9 million. In trying to put together a settlement, Baker and Khaled Ali stated that Waleed had agreed that he owed Mr. Yusuf \$1.6, and that he was going to pay that money.
21. Finally, at one the last meetings, Mr. Yusuf said that if the Hameds transferred a third piece of property that would settle everything about the unauthorized monies, whatever he knows and he would not do any more searching for monies he did not know about.
22. Mr. Yusuf said he cannot work with the Hameds and that they still had to sell business and to divide up the business and go their separate ways

Date: 4/21/14

  
MOHAMMAD HANNUN

SUBSCRIBED AND SWORN TO before me

on this 21<sup>st</sup> day of April 2014.

  
NOTARY PUBLIC

K. Glenda Cameron  
Commission Number LNP 010-09  
Expiration Date: May 26, 2017

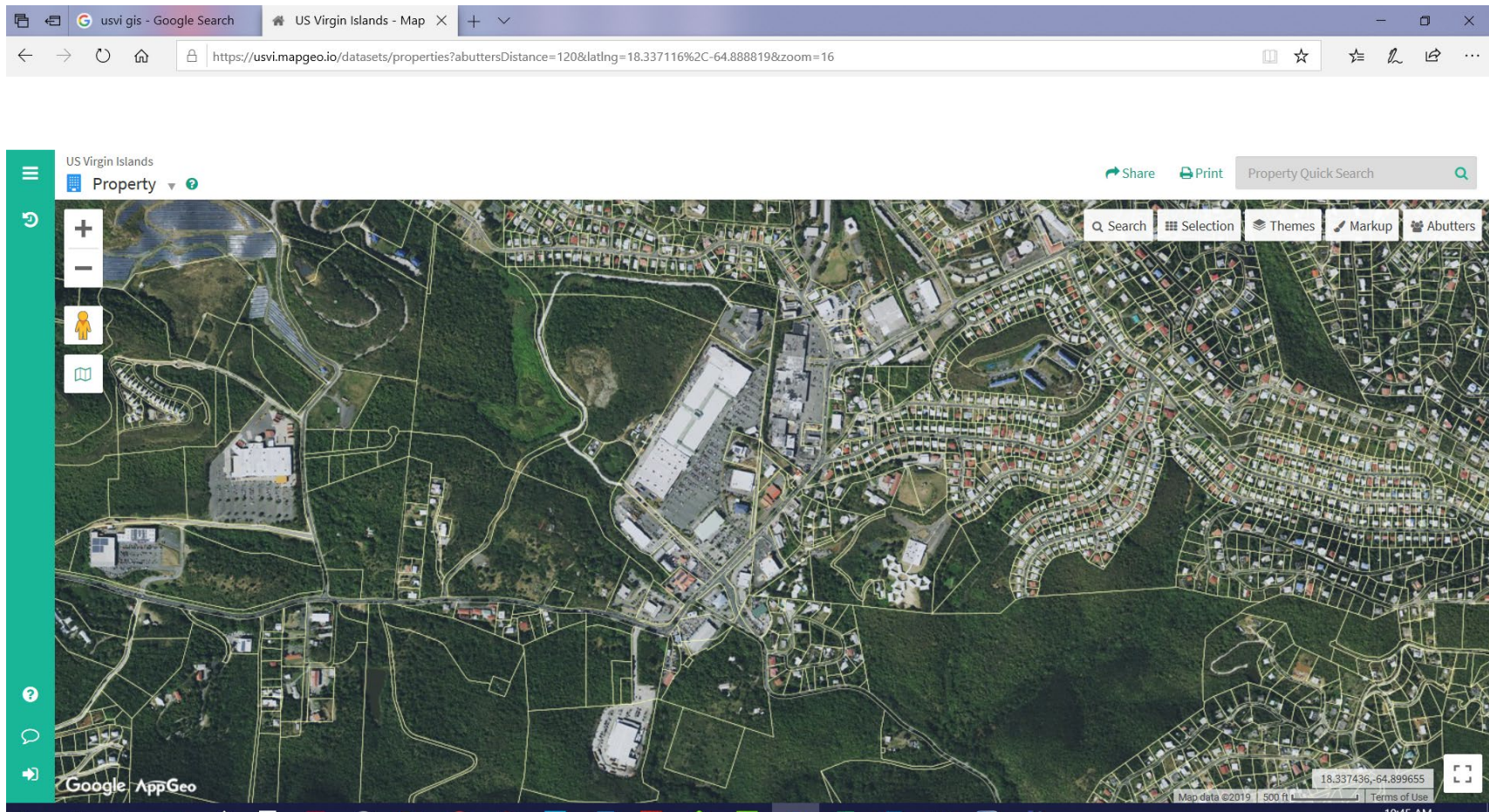
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U.S. DEPARTMENT OF STATE  
OFFICE OF THE INSPECTOR GENERAL  
WASHINGTON, D.C. 20520

**EXHIBIT  
5**





US Virgin Islands  
Property

CHARLOTTE AMALIE 2-4 NEW QTR.

[View Details](#)

US Virgin Islands GIS

**Property**

Property ID 105603021400  
Address CHARLOTTE AMALIE 2-4 NEW QTR.  
Island STT

**Property Information**

DLG Map Number	DPNR Zone	Acres
D9-7044-T002	R-2	.536

**Ownership**

Owner UNITED CORPORATION  
Address PO Box 763 Christiansted, VI 821

**Estates**

Estate

Tutu Mall, Highway & 2 Parcels

TUTU MALL

Route 38

0.536 Acres

9.438 Acres

Weymouth Highway 38  
Smith Bay Rd  
Usvi Highway 32  
Mariendahl Rd  
Palmetto Rd  
Lime St  
Mango Cir  
Turpentine Run  
Usvi Highway 32

AppGeo

18.337412, -64.892962

Attention: Mr. Donastorg

EXHIBIT

6

ACT NO. 6914  
BILL NO. 27-0036

TWENTY-SEVENTH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2007

An Act rezoning Parcel No. 2 Remainder, Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, from R-2 (Residential-Low Density - One and Two Family Dwelling) to C (Commercial)

-0-

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Pursuant to title 29 Virgin Islands Code, chapter 3, section 238, subsection (d) Official Zoning Map No. STZ-10 for the island of St. Thomas is amended by changing the zoning designation for Parcel No. 2 Remainder, Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, consisting of approximately 9.438 U.S. acres, from R-2 (Residential-Low Density - One and Two Family Dwelling) to C (Commercial).

Thus passed by the Legislature of the Virgin Islands on March 20, 2007.

Witnessed our Hands and Seal of the Legislature of the Virgin Islands this 21<sup>st</sup> Day of March, A.D., 2007.



*Usie R. Richards*  
Usie R. Richards  
President

*James A. Weber, III*  
James A. Weber, III  
Legislative Secretary



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

EXHIBIT

7

**WALEED HAMED**, as the Executor of the Estate  
of **MOHAMMAD HAMED**,  
*Plaintiff/Counterclaim Defendant*,

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

---

**WALEED HAMED**, as the Executor of the Estate  
of **MOHAMMAD HAMED**, *Plaintiff*,

vs.

**UNITED CORPORATION**, *Defendant.*

---

**WALEED HAMED**, as the Executor of the Estate  
of **MOHAMMAD HAMED**, *Plaintiff*

vs.

**FATHI YUSUF**, *Defendant.*

---

**FATHI YUSUF**, *Plaintiff*,

vs.

**MOHAMMAD A. HAMED TRUST**, *et al*,

*Defendants.*

---

**KAC357 Inc.**, *Plaintiff*,

vs.

**HAMED/YUSUF PARTNERSHIP**,

*Defendant.*

Case No.: **SX-2012-CV-370**

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: **SX-2014-CV-287**

Consolidated with

Case No.: **SX-2014-CV-278**

Consolidated with

Case No.: **ST-17-CV-384**

Consolidated with

Case No.: **ST-18-CV-219**

1. The undersigned is an attorney admitted to the practice of law in the USVI, Bar No. 48.
2. This Declaration is true and accurate to the best of my knowledge, and is made under oath.
3. The statements herein are provided in support Hamed's Motion for Partial Summary Judgment.
4. The attached document was supplied to counsel by Waheed ("Wally") Hamed at the request of counsel as a true and authentic copy, as follows:
5. Hamed stated that in response to counsel's requests for documents related to this the intended use of this parcel for this motion, he recalled and reviewed the legislative Act re-zoning the major parcel discussed herein to commercial use.
6. Hamed stated that the second application for re-zoning included documents supplied to the Senate which showed the subject parcel as an entrance, as testified to by Fathi Yusuf, such as the Site Plan submitted to show the planned premises.

**Dated:** November 20, 2019



**Carl J. Hartmann III, Esq.**

*Co-Counsel for Plaintiff*

5000 Estate Coakley Bay, L6

Christiansted, VI 00820

Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Tele: (340) 719-8941

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

MOHAMMED HAMED by His Authorized	)	
Agent WALEED HAMED,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	
	)	
vs.	)	Case No. SX-12-CV-370
	)	
FATHI YUSUF and UNITED CORPORATION,	)	
	)	
Defendants/Counterclaimants,	)	
	)	
vs.	)	
	)	
WALEED HAMED, WAHEED HAMED, MUFEED	)	
HAMED, HISHAM HAMED, and PLESSEN	)	
ENTERPRISES, INC.,	)	
	)	
<u>Additional Counterclaim Defendants.)</u>	)	

**THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF**

was taken on the 2nd 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 9:17 a.m. and 4:16 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Cheryl L. Haase  
Registered Professional Reporter  
Caribbean Scribes, Inc.  
2132 Company Street, Suite 3  
Christiansted, St. Croix U.S.V.I.  
(340) 773-8161

FATHI YUSUF -- DIRECT

1 ~~THE VIDEOGRAPHER: Going off record at 10:57.~~

2 (Short recess taken.)

3 THE VIDEOGRAPHER: Going back on record at  
4 11:12.

5 Q. (Mr. Holt) Mr. Yusuf, I think you'd finished with  
6 your last answer.

7 A. I think so, yes.

8 Q. Okay. But if you recall something that you wanted  
9 to say, always feel free to say it. Okay?

10 ~~A. Thank you very much for the offer.~~

11 Q. You know, I asked a question, but I asked it  
12 wrong, but didn't there come a time when you and Mohammad  
13 Hamed sat down within the last year and a half and tried to  
14 resolve things by -- he talked about it a little bit in his  
15 deposition about the giving of properties and things of that  
16 nature.

17 Do you recall that?

18 A. Much more than a year and a half.

19 Q. Can you tell me about that?

20 A. Can you come up with question, or you want to come  
21 up with a story?

22 Q. I can -- I actually like the way you tell the  
23 story, but I'll tell you what I've -- what I've heard, and  
24 then you can correct what I've heard.

25 That the two of you met to try to resolve all

**FATHI YUSUF -- DIRECT**

1 the differences between you and yourself, the Hamed family,  
2 and Wally in particular.

3 **A.** Yes.

4 **Q.** And that he offered two or three properties, and  
5 you agreed to take one or something like that. And, you  
6 know, I never really quite --

7 **A.** I can comment on that.

8 **Q.** Okay. Please.

9 **A.** I -- we met, and after I tell him my story of what  
10 I know at that time, he say, What do you want? I say, I'll  
11 take two property for what I discover so far. He say,  
12 Which? I give him the description of the property, one in  
13 Jordan and one at Tutu Park. The one in Jordan, I pay one  
14 million two, approximate. The one at Tutu Park, I paid  
15 1 million for it. 1,000,350, I believe. It's two pieces at  
16 Tutu Park, but we call it one piece. One-half an acre as an  
17 entrance, and 9.31 as the major piece of property.

18 He say, You can have it. And after they say  
19 it, the man come up front after I tell him my story, and he  
20 was very generous to say, You can have it. And we kept  
21 talking, as a family. After all, we are family, as you  
22 mentioned over and over in your correspondence. We are  
23 family at that time, and we have a very high respect for  
24 each other, even though, up to now we still have high  
25 respect to each other, and I told him, No, one is enough.

**FATHI YUSUF -- DIRECT**

1 But we kept talking.

2 And when we kept talking, you know, whatever  
3 what he was saying, it doesn't add up. So I went to the  
4 store, I take a look, and I analyze the bank statement of  
5 what he was saying. I say, Man, after that, this man would  
6 not even tell me the truth, unfortunate? So immediately I  
7 told Wally, Do me a favor, Wally. You was present. Go back  
8 to your father and tell him, No, I wanted the two piece of  
9 property.

10 That's the same day. Not even, as soon as we  
11 get to the store, it take me about half an hour to take a  
12 look of what he was talking about. Unfortunate, I have  
13 found it's impossible what he was talking about, it could be  
14 true. And I say, Come on, man. You know? And -- and he  
15 went home that night. He told his father. The next day he  
16 come to work, I say, Did you tell your father? He said,  
17 Yes. I said, Fine.

18 That's it.

19 **Q.** Okay. You done?

20 **A.** Done.

21 **Q.** Okay. On the property in Jordan, you say that  
22 there was 1.2 million paid for that. I take it that was  
23 purchased with the money, joint money from the supermarket?

24 **A.** Money, yes. I own 50 percent, they own 50.

25 **Q.** Okay. And did you ever get a deed to that

**FATHI YUSUF -- DIRECT**

1 property?

2 **A.** No. I have a contract.

3 **Q.** So if I went over to Jordan and did a title  
4 search -- I don't even know if they do that -- it would show  
5 the property's still in both your names?

6 **A.** Yes.

7 **Q.** And the Tutu Park property, is that also called  
8 Ft. Milner, as well?

9 **A.** Yeah, it's Ft. Milner or Tutu. It's Ft. Milner, I  
10 believe.

11 **Q.** Okay. And one is a 9-acre parcel?

12 **A.** 9.31.

13 **Q.** Then the other one is like a half-acre parcel?

14 **A.** It's about .53, if I recall.

15 **Q.** Okay.

16 **A.** Not too sure exactly.

17 **Q.** And -- and both of those properties were supposed  
18 to belong 50 percent to you and 50 percent to Hamed?

19 **A.** Up to the time he give me his word, it was 50/50.  
20 After that, I would assume all is mine.

21 **Q.** Okay. So, and what I'm trying to get at is I know  
22 there's a half-acre piece in United, that's in the name of  
23 United?

24 **A.** Yes.

25 **Q.** But that was actually purchased with --

**FATHI YUSUF -- DIRECT**

1           **A.**    This is part of the --

2           **Q.**    Bigger piece?

3           **A.**    -- of the one he pledge to settle the number I  
4 give him at our first meeting.

5           **Q.**    Okay. And both of those, the smaller piece and  
6 the bigger piece, were purchased with money from the  
7 supermarket, so they're 50/50.

8           **A.**    That's correct.

9           **Q.**    Okay. And, you know, you keep referring back to  
10 the testimony yesterday of Mr. Mohammad Hamed.

11                         Did you hear him say anything that you think  
12 is incorrect or untruthful?

13           **A.**    A lot, unfortunate. A lot of what he say, I don't  
14 agree with.

15           **Q.**    Okay. Let me come back to that.

16                         All right. So getting back to the exhibit in  
17 front of you, I'm just going to read you two more clauses  
18 and then we'll be done with this one.

19                         The third -- the third clause from the bottom  
20 says, Whereas the partners have shared profits, losses,  
21 deductions, credits and cash --

22           **A.**    Excuse me. Where -- where it says that? What  
23 page?

24           **Q.**    The page you're on, right there.

25           **A.**    This?





EXHIBIT

9

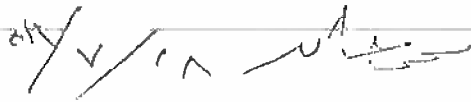
## إقرار وتعهد خطي

أنا الموقع أدناه محمد عبد القادر اسعد حامد اردني الجنسية واحمل الرقم الوطني (٩٣٥١٠١١٩٧٥) وحيث أنني امالك حصصا مقدارها (٢٤١٢٠) حصة من أصل (٤٦٨٠٠) حصة إجمالي الحصص في قطعة الأرض رقم (٣١٠) حوض (٦) حويجر قرية طبربور من أراضي شرق عمان أقر وأنا بكامل قواي العقلية بأنني قد قبضت ثمن حصتي في قطعة الأرض المذكورة من السيد فتحي يوسف محمد يوسف أردني الجنسية ويحمل الرقم الوطني (٩٤١١٠١٣٤٦٠) وبذلك يحق للسيد فتحي يوسف المذكور بالتصرف بكامل حصصي تصرف المالك بملكه اعتبارا من تاريخ توقيع هذا الإقرار وأنني أتعهد بعدم إجراء أية تصرفات قانونية في حصصي المباعة من إجارة و/أو رهن و/أو بيع و/أو أية تصرفات و/أو عقود منفعة مع الغير وأتعهد بنقل ملكية الحصة المباعة لدى دائرة الأراضي المختصة بالسرعة الممكنة و/أو تحرير وكالة غير قابلة للعزل للسيد فتحي أو للغير الذي يراه السيد فتحي في حينه مناسبا وأتعهد كذلك بمراجعة المحاكم و/أو الدوائر الرسمية و/أو الأهلية بما يخدم مصلحة المشتري السيد فتحي وحسب ما يراه مناسبا وأن جميع الحقوق المالية و/أو التعويضات التي قد تنشأ عن الاستملاك الواقع على قطعة الأرض موضوع هذا الإقرار والذي قد تحكم به المحكمة هي حقا مكتسبا لصالح السيد فتحي وأنني أوصي أهلي وورثتي الشرعيين من بعدي بعدم معارضة السيد فتحي في الأرض المذكورة وذلك لتعلق حقه بها وقد قمت بالتوقيع على هذا الإقرار على ثلاث نسخ أصلية وأنا بكامل قواي العقلية المعتمدة شرعا وقانونا واسقط حقي بالادعاء بكذب الإقرار و/أو الظروف التي أحاطت بتنظيم هذا الإقرار و/أو أي دفع ناشئ و/أو متعلق بهذا الإقرار و/أو تطبيقاته.

تحريرا بتاريخ ٢٠١١/٧/١٨.

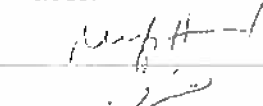
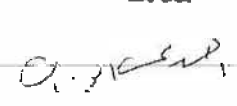
المقر بما فيه

الاسم الرباعي : 

التوقيع : 


شاهد

شاهد



المستشارون  
للمحاماة والقانون  
COUNSELLORS  
for Advocating and Law

المستشارون  
للمحاماة والقانون  
نظام أممي ويمرر تحت تصديرا في  
اليوم الثاني من شهر محرم لعام ١٤٣٢  
المحامي 

Handwritten signature and date: 28/7/11

16800 / 24120	39833	000	310	14	0	6 / 6	طاب
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المبلغ	المبلغ	المبلغ	رقم	رقم	رقم	رقم	اسم البرنامج

الرقم: ..... الرقم المرجعي

اسم البرنامج: ..... اسم البرنامج

التاريخ: 2011/07/11 : التاريخ



المملكة الأردنية الهاشمية  
الوزارة الأردنية للتعليم والتعليم العالي  
عمان - الأردن



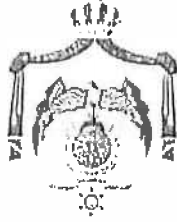
## وكالة خاصة

أنا / نحن الموقع ، إمامك ، بديله ، مستشار الادارة / سيد حنايل رشدي برسان  
 قد وكلت / وكلتنا وأقدم مقام نفسي المحامي احمد محمود قاسم  
 مجتمعين ومنفردين لنيوب عني / عينا بتقديم وإقامة الدعوى و المرافعة والمدافعة والمحكمة والمخاصمة في الدعوى المتكونة او التي  
 ستكون بين وبين  
 والتي موضوعها

وذلك أمام ..... و/ أو أية محاكم أو دوائر أو مجالس أو هيئات تحكيم أو أية جهات أخرى ذات اختصاص في الأردن والخارج على اختلاف أنواعها ووظائفها ودرجاتها واعترافا واستنادا وتمييزا واعادة محاكمة وتصحيحا ومحكمة العدل العليا والمحاكم الادارية و لآخر درجات المحاكمة ، بما في ذلك تقديم الدعوى وتوقيع وتقديم كافة ما يختص بها من لوائح واستدعاءات وطلبات وادعاءات وأوراق ومستندات وادعاء بالحق الشخصي وليتوب عني بالتقيام بكافة الاجراءات الادارية والقضائية بالخصوص الموكلة به وفي الدعوى المتقابلة وفي دفع الرسوم والنفقات بما في ذلك توقيع وتقديم وملائمة أي ادعاء أو طلب أو استدعاء أو ائذار عدلي أو أي مستند على الامتثال وما يلزم من أوراق ولوائح ومستندات مهما كان نوعها وتسمية البيعة وحصرها والظعن بينة الخصم وشيودود وبالبلغ والتبليغ والكشف وانتخب الخبراء وعزلهم والظعن بينهم وبمقراتهم والموافقة على التحكيم وتعين المحكم والمحكمين والمميزين وعزلهم والمرافعة أمامهم وباعتراض الغير في الدخول في الدعوى كشخص ثالث و طلب ادخال أي شخص له علاقة بالدعوى كمدعي أو مدعى عليه أو كشخص ثالث وبطلب الحجز التحفظي و/ أو التنفيذ وتعيينه وفكته واليمين وردد وبطلب نقل الدعوى ورد القضاء والمحكمين والخبراء وبالصلح والافترار والابراء ومراجعة دوائر التنفيذ والمرافعة أمامها وبطلب إعلان الإفلاس و الموافقة على المصالحة والقيام بكل ما يتعلق بطابق الافلاس دون تعييد وتنفيذ أي قرار أو أمر أو إتفاق يصدر أو يتفق عليه وقبول التسوية ورفضها وبطلب الحبس والتخليه و باستئناف القرارات التي تصدر عن هذه الدوائر و بقبض و بادستلام ما يحكم أو يقرر أو يجري الإتفاق عليه وبإعطاء وصولات نافذة وفعالة بذلك وبكل ما يجوز التوكيل به قانوناً ذكر أو لم يذكر ولو كان ذكره مشروطا وبتوكيل الغير بجميع ما وكل به أو ببعضه وعزل من يد كل المرة بعد المرة وكالة مفوضة لرأيه وقوله وفعله.

تحريراً في هذا اليوم ١١ / ١١ / ٢٠١٨ من شهر تشرين الثاني سنة ١٤٤٠ هـ  
 اصادق على صحة التوكيل والتوقيع في  
 المحامي

الموكلة / الموكلون



المملكة الأردنية الهاشمية  
صورة قيد تسجيل الأموال غير المنقولة

رقم القيد : 2011-EA-17377  
اسم الحوض : حويج  
نوع الأرض : ملك

المديرية : اراض شرق عمان  
القرية : طبربور  
اسم الحر :

يحتوي هذا القيد على 1 (بنحة)

رقم القطعة : 310	رقم الحسي : 0		
رقم الحوض : 6	رقم اللوحة : 14		
رقم الشقة : 000	مجموع الحصص : 46800		
القيمة التسجيلية : 65.844	مقياس الرسم : 1/2500		
رقم بيان التغيير : --			
<p>متر مربع      دويم</p> <p>المساحة رقما : 833.000      39</p> <p>المساحة كتابية : تسعة و ثلاثون دويم و ثمانمائة و ثلاثة و ثلاثون مترومط</p>			
<p>يوجد ونوعات</p>			
الرقم الوطني	اسم المالك	الجنسية	الحصص
9411013460	فخر يوسف يوسف	الأردنية	22680
	محمد عبدالقادر احمد حامد	الأردنية	24120

إن الأموال غير المنقولة المبينة اعلاه مسجلة بأسماء المالكين المذكورين وقد اعطي هذا السند شهادة بذلك بتاريخ 2011/07/13 واستوفيت الرسوم بموجب الوفول رقم 864195 تاريخ 2011/05/23

مدير تسجيل : اراض شرق عمان

\* : المالك المشار اليه بإشاره (\*) هو الشخص المعنى بهذا السند

حاصر بانه الرقة : 17377-YOKP6G

EXHIBIT 10

Page 4 of 5

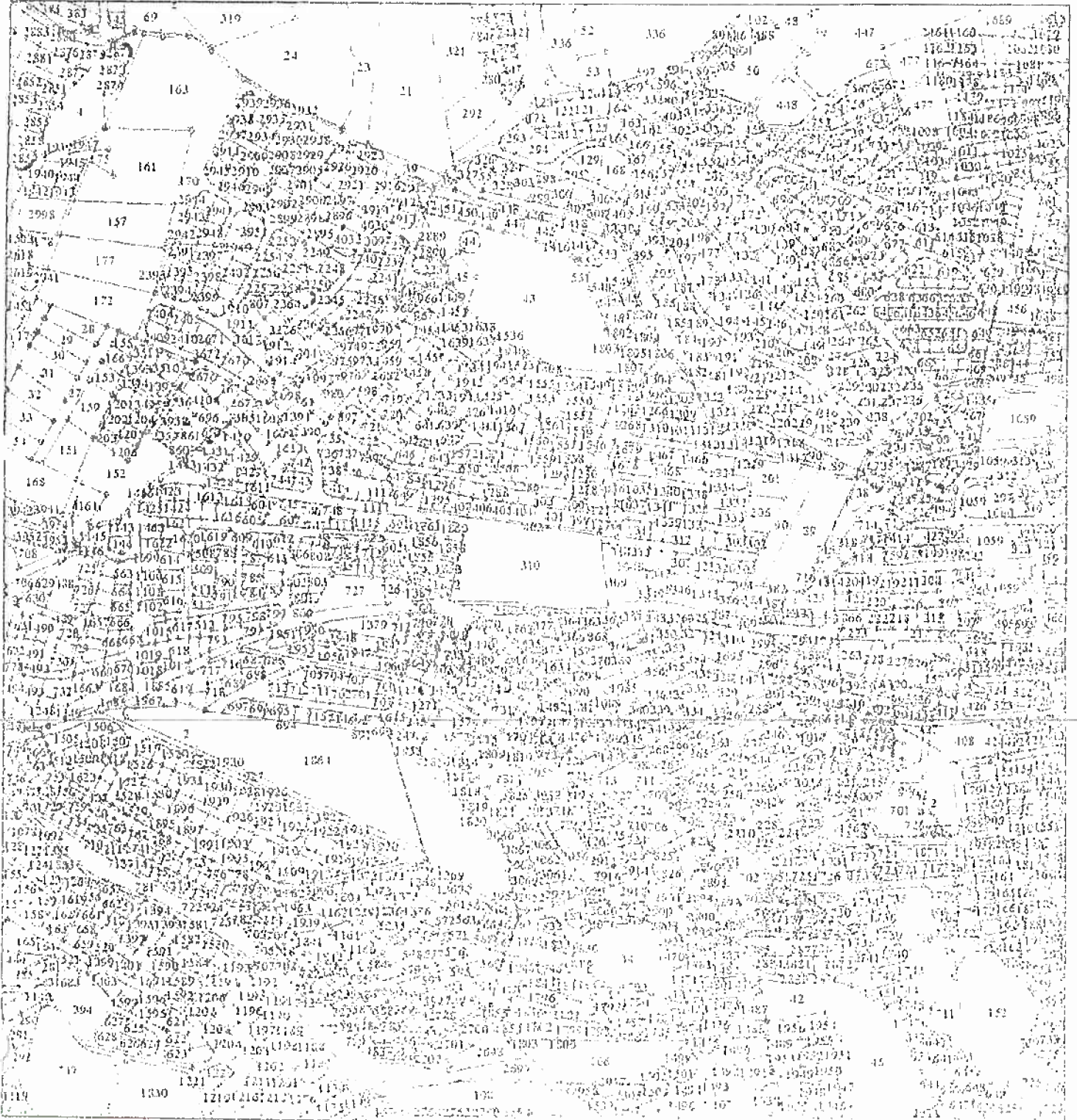
المملكة الأردنية الهاشمية  
دائرة الأراضي والمساحة  
مخطط أراضي



رقم الوصل: للعمل الرسمي  
تاريخ الاصدار: 12-7-2011  
تاريخ الوصل: 12-7-2011

الحوض: حريجر (6)  
الحي: -  
رقم القطعة: 310

محافظة العاصمة  
اراضي شرق عمان  
القرية: طبربور (129)



الختم و التوقيع

YUSF237901

Jabal Al-Husain  
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Telefax ( + 962-6 ) 5689459  
Tel. ( + 962-6 ) 5658604  
(For Correspondence Only)  
P. O. B. 343 Zarka 13110 Jordan )  
E-Mail:translationh@nets.com.jo

دار الترجمة  
TRANSLATION HOUSE  
DAR UTTARJAMA

جبل الحسين - مجمع سكيمة التجاري  
المدخل الشرقي - الطابق الاول  
مكتب رقم ٢٠  
تلفاكس ٥٦٨٩٤٥٩ (+٩٦٢-٦)  
تلفون ٥٦٥٨٦٠٤ (+٩٦٢-٦)  
(للمراسلات فقط ص.ب ٣٤٣ الزرقاء ١٣١١٠ الاردن)  
البريد الالكتروني: translationh@nets.com.jo

**Counselors For Advocating and Law**

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Fax : 5535965, P.O.B. 2323 code 11910 Jordan

**EXHIBIT**  
**10**

**Written Declaration and Undertaking**

I, the undersigned Mohammad Abdel Qader Asad Hamed, Jordanian nationality, holder of National No. (0933101975), whereas I own 24120 shares out of 46800 shares of the total shares in piece of land No. (310), basin 6, Huwaijer, Tabarbour Village, of east Amman lands, declare, while in full sound mental powers, that I received the price of my share in the mentioned land from Mr. Fathi Yusuf Mohamad Yusuf, Jordanian nationality, holder of National No. (9411 01 3460), hence the said Mr. Fathi has the right to dispose of my shares in full similar to the acts of owner's disposal of his property as of the date of signing this declaration and I undertake not to make any legal disposals in my sold shares such as lease and/or mortgage and/or sale, and and/or any acts and or benefit contracts with third parties and undertake to transfer the ownership of the sold share at the competent Lands Department as soon as possible or execute an irrevocable power of attorney to Mr. Fathi or third parties as deemed appropriate in due course and undertake also to appear before the courts and/or official departments and/or official and/or national departments so as to serve the interest of the buyer Mr. Fathi and as he deems fit and that all the financial rights and/or compensations which may rise out of the expropriation imposed on the piece of land subject of this declaration and which may be adjudged by the court are an acquired right in favour of Mr. Fathi and I recommend my folks and legal heirs after me not to oppose Mr. Fathi in the said land due to his right in it and I have signed this declaration in three originals whilst enjoying my full mental power that are legitimately and legally considered and drop my right to claim the falsehood of the declaration and/or the circumstances surrounding the execution of this declaration and/or any rebut arising from or relating to this declaration and/or its applications.

Executed on 18/7/2011.

Witness (Signed)	Witness (Signed)	Declarant, Quadriple Name: Mohammad Abdel Qader Asad Hamed Signature : (Signed)
---------------------	---------------------	---

(Counselors for Advocating & Law organized before me  
and with my knowledge. Executed on: the twelveth of  
July in the year of two thousand and eleven)  
Lawyer : (Signed)

Seal of Counselors for  
Advocating and Law

**EXHIBIT**

S


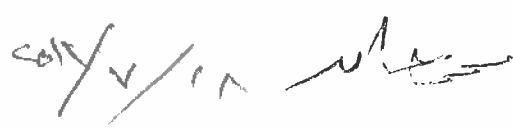
HAMD639549



إقرار وتعهد خطي

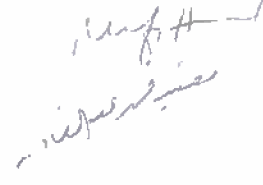
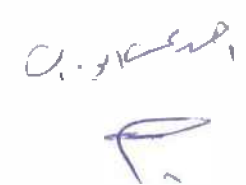
أنا الموقع أدناه محمد عبد القادر اسعد حامد أردني الجنسية واحمل الرقم الوطني (٩٣٥١٠١١٩٧٥) وحيث أنني امتلك حصصاً مقدارها (٢٤١٢٠) حصة من أصل (٤٦٨٠٠) حصة إجمالي الحصص في قطعة الأرض رقم (٣١٠) حوض (٦) حويجر قرية طبربور من أراضي شرق عمان أقر وأنا بكامل قواي العقلية بأنني قد قبضت ثمن حصتي في قطعة الأرض المذكورة من السيد فتحي يوسف محمد يوسف أردني الجنسية ويحمل الرقم الوطني (٩٤١١٠١٣٤٦٠) وبذلك يحق للسيد فتحي يوسف المذكور بالتصرف بكامل حصصي تصرف المالك بملكه اعتباراً من تاريخ توقيع هذا الإقرار وأنني أتعهد بعدم إجراء أية تصرفات قانونية في حصصي المبيعة من إجارة و/أو رهن و/أو بيع و/أو أية تصرفات و/أو عقود منفعة مع الغير وأتعهد بنقل ملكية الحصة المبيعة لدى دائرة الأراضي المختصة بالسرعة الممكنة و/أو تحرير وكالة غير قابلة للعزل للسيد فتحي أو للغير الذي يراه السيد فتحي في حينه مناسباً وأتعهد كذلك بمراجعة المحاكم و/أو الدوائر الرسمية و/أو الأهلية بما يخدم مصلحة المشتري السيد فتحي وحسب ما يراه مناسباً وأن جميع الحقوق المالية و/أو التعويضات التي قد تنشأ عن الاستملاك الواقع على قطعة الأرض موضوع هذا الإقرار والذي قد تحكم به المحكمة هي حقاً مكتسباً لصالح السيد فتحي وأنني أوصي أهلي وورثتي الشرعيين من بعدي بعدم معارضة السيد فتحي في الأرض المذكورة وذلك لتعلق حقه بها وقد قمت بالتوقيع على هذا الإقرار على ثلاث نسخ أصلية وأنا بكامل قواي العقلية المعتبرة شرعاً وقانوناً واسقط حقي بالادعاء بكذب الإقرار و/أو الظروف التي أحاطت بتنظيم هذا الإقرار و/أو أي دفع ناشئ و/أو متعلق بهذا الإقرار و/أو تطبيقاته.  
تحريراً بتاريخ ٢٠١١/٧/١٨.

المقر بما فيه

الاسم الرباعي :   
التوقيع :  ٢٠١١/٧/١٨

شاهد

شاهد




المستشارون  
للمحاماة والقانون  
COUNSILORS  
for Advocating and Law

المستشارون  
للمحاماة والقانون

نظم أمامي وبمصرفتي تحريراً في

اليوم التاسع من شهر محرم لعام الفانوسم

المعالي 

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

**EXHIBIT**  
**11**

MOHAMMED 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 PLESSSEN )  
ENTERPRISES, INC., )

Additional Counterclaim Defendants.)

Case No. SX-12-CV-370  
Volume 2

**THE VIDEOTAPED ORAL DEPOSITION OF MOHAMMAD HAMED**

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.

---

Reported by:

Cheryl L. Haase  
Registered Professional Reporter  
Caribbean Scribes, Inc.  
2132 Company Street, Suite 3  
Christiansted, St. Croix U.S.V.I.  
(340) 773-8161



**APPEARANCES****A-P-P-E-A-R-A-N-C-E-S****For the Plaintiff/Counterclaim Defendant:**

Law Offices of  
Joel H. Holt  
2132 Company Street  
Suite 2  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

By: Joel H. Holt

and

Law Offices of  
Carl Hartmann, III  
5000 Estate Coakley Bay, #L6  
Christiansted, U.S. Virgin Islands 00820

By: Hartmann, III

**For the Defendant/Counterclaimants**

Law Offices of  
Dudley, Topper & Feuerzeig  
P.O. Box 756  
Charlotte Amalie, St. Thomas  
U.S. Virgin Islands 00804

By: Gregory H. Hodges

and

Law Offices of  
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2006 Eastern Suburbs, Suite 101  
Christiansted, VI 00830

By: Nizar A. DeWood

Cheryl L. Haase  
(340) 773-8161

HAMD600051

**APPEARANCES**1  
2  
3  
4  
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24  
25**For Waleed Hamed:**

Law Offices of  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824

By: Mark W. Eckard

**For Fathi Yusuf:**

Law Offices of  
K. Glenda Cameron  
2006 Eastern Suburb, Suite 101  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

By: K. Glenda Cameron

**Also Present:**

Josiah Wynans, Videographer  
Hatim Yusuf, Interpreter  
Kim Japinga  
Waleed Hamed  
Hisham Hamed  
Mufeed Hamed  
Maher Yusuf  
Fathi Yusuf

Cheryl L. Haase  
(340) 773-8161

MOHAMMAD HAMED -- DIRECT

1 ~~Q. (Mr. Hodges) Okay. In fact, your son Waleed has~~  
2 never explained the -- the facts to you, has he?

3 MR. HARTMANN: Object. Asked and answered.

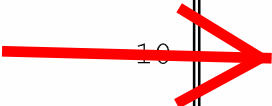
4 THE INTERPRETER: Yes.

5 Q. (Mr. Hodges) Okay.

6 THE INTERPRETER: "La," meaning he did not.  
7 He did not, is the way I understand it.

8 MR. DEWOOD: Did not what?

9 ~~MR. HODGES: He did not explain it.~~



10 Q. (Mr. Hodges) Mr. Hamed, given the 25-plus years  
11 that your -- you and Mr. Yusuf have -- have worked together  
12 in the store, why haven't you taken the time to make sure  
13 you understand what the facts are with respect to this  
14 \$2.7 million dispute?

15 MR. HARTMANN: Object as to form. Object,  
16 argumentative.

17 A. (Speaking in Arabic.) Work, work, work, work, day  
18 and night.

19 THE INTERPRETER: Okay. I can only translate  
20 or interpret what he said.

21 He's saying -- he said that they come from  
22 the same area, they are farmers, and that, you know, he was  
23 responsible for bringing them here. When they arrived here,  
24 they came to his home. He welcomed them, and -- and helped  
25 them out, and -- and over the years, he established a

Cheryl L. Haase  
(340) 773-8161

HAMD600186

## MOHAMMAD HAMED -- DIRECT

1 business, a grocery business, and when he made some money,  
2 there came a time when -- when Mr. Fathi Yusuf was going to  
3 build a shopping center. It's a long story, and that, you  
4 know, most of their time has been working, working, and  
5 there's really -- there hasn't been a time that they could  
6 sit and talk.

7 Q. (Mr. Hodges) In the past two years, isn't that  
8 right?

9 A. (Speaking in Arabic.) Okay. Go ahead.

10 THE INTERPRETER: He said, I begged him to  
11 sit and -- and -- and -- so we can finish this, and in  
12 Jordan, we -- we -- we, in my house, we met, and I was  
13 giving him -- (speaking in Arabic).

14 He asked for two pieces of --

15 A. Just one I want.

16 THE INTERPRETER: -- he had asked for two  
17 pieces of property in Jordan. He told him, I'd sign for --  
18 for them, no problem. Later, he came -- meaning Mr. Fathi  
19 Yusuf -- and told him, You've kicked me in my stomach. It's  
20 a term of, in other words, he was willing to accept, as I  
21 understand, one piece of property instead of two. (Speaking  
22 in Arabic.)

23 Next day, he came back and asked for the  
24 other piece of property.

25 ~~Q. (Mr. Hodges) But my question, Mr. Hamed, is that~~

**CERTIFICATE****C-E-R-T-I-F-I-C-A-T-E**

1  
2  
3 I, CHERYL L. HAASE, a Registered Professional Reporter  
4 and Notary Public No. NP-158-03 for the U.S. Virgin Islands,  
5 Christiansted, St. Croix, do hereby certify that the above  
6 and named witness, MOHAMMAD HAMED, was first duly sworn to  
7 testify the truth; that said witness did thereupon testify  
8 as is set forth; that the answers of said witness to the  
9 oral interrogatories propounded by counsel were taken by me  
10 in Stenotype and thereafter reduced to typewriting under my  
11 personal direction and supervision.

12 I further certify that the facts stated in the caption  
13 hereto are true; and that all of the proceedings in the  
14 course of the hearing of said deposition are correctly and  
15 accurately set forth herein.

16 I further certify that I am not counsel, attorney or  
17 relative of either party, nor financially or otherwise  
18 interested in the event of this suit.

19 IN WITNESS WHEREOF, I have hereunto set my hand as such  
20 Certified Court Reporter on this the 21st day of April,  
21 2014, at Christiansted, St. Croix, United States Virgin  
22 Islands.

23 \_\_\_\_\_  
24 Cheryl L. Haase, RPR  
25 My Commission Expires 2/10/16

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دار الترجمة  
TRANSLATION HOUSE  
DAR UTTARJAMA

جبل الحسين - مجمع سكنية التجاري  
المدخل الشرقي - الطابق الاول  
مكتب رقم ١٠  
تلفاكس ٥٦٨٩٤٥٩ (+٩٦٢-٦)  
تلفون ٥٦٥٨٦٠٤ (+٩٦٢-٦)  
(للمراسلات فقط ص.ب ٣٤٣ الزرقاء ١٣١١٠ الاردن)  
البريد الالكتروني: translationh@nets.com.jo

**Counselors For Advocating and Law**

**EXHIBIT**  
**12**

**Collection Voucher**  
**"JD 150"**

Date : 17/7/2011

No.: 2669

Received from Mr. **Fathi Mohamad Yusuf** the sum of one hundred and fifty Dinars only in **cash** in consideration of verbal and written consultations in consideration of payment and preparing a written undertaking for piece of land No. (310) Tabarbour of East Amman Lands.

Receiver's Signature  
(Signed)

TRANSLATION HOUSE  
DAR UTTARJAMA  
O.T.MUSLIH  
6<sup>TH</sup> OCTOBER 2016

**EXHIBIT**  
T

**HAMD639551**

Jabal Al- Husain  
Sukayna Commercial Complex  
Eastern Entrance, 1st Floor,  
Office No: 10  
Telefax ( + 962-6 ) 5689459  
Tel. ( + 962-6 ) 5658604  
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E-Mail:translationh@nets.com.jo

دار الترجمة  
TRANSLATION HOUSE  
DAR UTTARJAMA

جبل الحسين - مجمع سكنية التجاري  
المدخل الشرقي - الطابق الاول  
مكتب رقم ١٠  
تلفاكس ٥٦٨٩٤٥٩ (+٩٦٢-٦)  
تلفون ٥٦٥٨٦٠٤ (+٩٦٢-٦)  
(للمراسلات فقط ص.ب ٣٤٣ الزرقاء ١٣١١٠ الاردن)  
البريد الالكتروني: translationh@nets.com.jo

## Counselors For Advocating and Law

### Collection Voucher "JD 250"

Date : 28/11/2012

No.: 2344

Received from Mr. **Fathi Mohamad Yusuf** the sum of two hundred and fifty Dinars only in **cash** in consideration of verbal and written consultations.

Receiver's Signature  
(Signed)



TRANSLATION HOUSE  
DAR UTTARJAMA  
O.T.MUSLIL  
6<sup>TH</sup> OCTOBER 2016



Jabal Al-Husain  
Sukayna Commercial Complex  
Eastern Entrance, 1st Floor,  
Office No. 10  
Telefax ( + 962-6 ) 5689459  
Tel. ( + 962-6 ) 5658604  
(For Correspondence Only  
P. O. B. 343 Zarka 13110 Jordan )  
E-Mail:translationh@nets.com.jo

دار الترجمة  
TRANSLATION HOUSE  
DAR UTTARJAMA

جبل الحسين - مجمع سكنية التجاري  
المدخل الشرقي - الطابق الاول  
مكتب رقم ١٠  
تلفاكس ٥٦٨٩٤٥٩ (+٩٦٢-٦)  
تلفون ٥٦٥٨٦٠٤ (+٩٦٢-٦)  
(للمراسلات فقط ص.ب ٣٤٣ الزرقاء ١٣١١٠ الاردن)  
البريد الالكتروني: translationh@nets.com.jo

**JAMAL Abu Doush**  
**Real Estate Office**

**Office Fees Details**

- Fees for issuing power of attorneys regarding all plots of land amounting in total to twenty four plots of land.
- Fees for power of attorneys regarding all plots of lands.
- Obtaining title deeds for all plots of lands together with fees.
- Obtaining land plans for all plots of lands.
- Obtaining zoning plans together with fees.
- Fees for executing power of attorneys for confirming transactions of power of attorney at the Lands & Survey Department in all the registration departments affiliated with this Department.
- Fees for implementing sale transactions for all the plots of lands at all registration departments.
- Charges for estimation of land plots and field inspections.

Grand total fees : JD 20,000 (Twenty thousand Dinars)  
which amount to US\$ 28,368.00

- All transactions were carried out in the year 2011.
- The title of half of the shares of Mr. Mohammad Abdel Qader Asad Hamed were transferred to the benefit of : Fathi Yusuf Mohamad Yusuf

All costs were paid by Mr. Fathi Yusuf Mohamad Yusuf

General Manager of Office  
Jamal Mousa Abu Doush  
(Signed)



Sweifieh- Hamra St- Marmara Center- Close to Boston Restaurant  
Tel : 00962 5855479, Fax : 00962 5855497,  
Mob. : 00962 79 5457541  
Email : [Jamal-abudoush-R-E-O@yahoo.com](mailto:Jamal-abudoush-R-E-O@yahoo.com)





Jabal Al-Husain  
Sukayna Commercial Complex  
Eastern Entrance, 1st Floor,  
Office No. 20  
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# دار الترجمة

## TRANSLATION HOUSE

DAR UTTARJAMA

جبل الحسين - مجمع سكيينة التجاري  
المدخل الشرقي - الطابق الاول  
مكتب رقم ٢٠  
تلفاكس ٥٦٨٩٤٥٩ (+٩٦٢-٦)  
تلفون ٥٦٥٨٦٠٤ (+٩٦٢-٦)  
(للمراسلات فقط ص.ب ٣٤٣ الزرقاء ١٣١١٠ الاردن)  
البريد الالكتروني: translationh@nets.com.jo

### Counselors For Advocating and Law

Wasfi Al- Tal Str., Youbeel Circle,  
Al-Kafjy Complex, 2<sup>nd</sup> Entrance, 3<sup>rd</sup> Floor  
Tel. : 009626 5535464/5535414  
Fax : 5535965, P.O.B. 2323 code 11910 Jordan

### Written Declaration and Undertaking

I, the undersigned Mohammad Abdel Qader Asad Hamed, Jordanian nationality, holder of National No. (0933101975), whereas I own 24120 shares out of 46800 shares of the total shares in piece of land No. (310), basin 6, Huwaijer, Tabarbour Village, of east Amman lands, declare, while in full sound mental powers, that I received the price of my share in the mentioned land from Mr. Fathi Yusuf Mohamad Yusuf, Jordanian nationality, holder of National No. (9411 01 3460), hence the said Mr. Fathi has the right to dispose of my shares in full similar to the acts of owner's disposal of his property as of the date of signing this declaration and I undertake not to make any legal disposals in my sold shares such as lease and/or mortgage and/or sale, and and/or any acts and or benefit contracts with third parties and undertake to transfer the ownership of the sold share at the competent Lands Department as soon as possible or execute an irrevocable power of attorney to Mr. Fathi or third parties as deemed appropriate in due course and undertake also to appear before the courts and/or official departments and/or official and/or national departments so as to serve the interest of the buyer Mr. Fathi and as he deems fit and that all the financial rights and/or compensations which may rise out of the expropriation imposed on the piece of land subject of this declaration and which may be adjudged by the court are an acquired right in favour of Mr. Fathi and I recommend my folks and legal heirs after me not to oppose Mr. Fathi in the said land due to his right in it and I have signed this declaration in three originals whilst enjoying my full mental power that are legitimately and legally considered and drop my right to claim the falsehood of the declaration and/or the circumstances surrounding the execution of this declaration and/or any rebut arising from or relating to this declaration and/or its applications.

Executed on 18/7/2011.

Witness	Witness	Declarant,
(Signed)	(Signed)	Quadriple Name: Mohammad Abdel Qader Asad Hamed
		Signature : (Signed)

(Counselors for Advocating & Law organized before me  
and with my knowledge. Executed on: the twelveth of  
July in the year of two thousand and eleven)  
Lawyer : (Signed)

Seal of Counselors for  
Advocating and Law

EXHIBIT

S


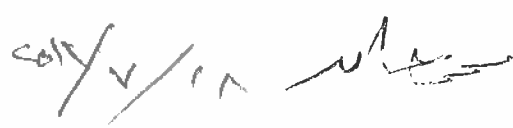
HAMD639549



إقرار وتعهد خطي


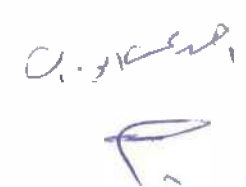
أنا الموقع أدناه محمد عبد القادر اسعد حامد أردني الجنسية واحمل الرقم الوطني (٩٣٥١٠١١٩٧٥) وحيث أنني امتلك حصصاً مقدارها (٢٤١٢٠) حصة من أصل (٤٦٨٠٠) حصة إجمالي الحصص في قطعة الأرض رقم (٣١٠) حوض (٦) حويجر قرية طبربور من أراضي شرق عمان أقر وأنا بكامل قواي العقلية بأنني قد قبضت ثمن حصتي في قطعة الأرض المذكورة من السيد فتحي يوسف محمد يوسف أردني الجنسية ويحمل الرقم الوطني (٩٤١١٠١٣٤٦٠) وبذلك يحق للسيد فتحي يوسف المذكور بالتصرف بكامل حصصي تصرف المالك بملكه اعتباراً من تاريخ توقيع هذا الإقرار وأنني أتعهد بعدم إجراء أية تصرفات قانونية في حصصي المباعة من إجارة و/أو رهن و/أو بيع و/أو أية تصرفات و/أو عقود منفعة مع الغير وأتعهد بنقل ملكية الحصة المباعة لدى دائرة الأراضي المختصة بالسرعة الممكنة و/أو تحرير وكالة غير قابلة للعزل للسيد فتحي أو للغير الذي يراه السيد فتحي في حينه مناسباً وأتعهد كذلك بمراجعة المحاكم و/أو الدوائر الرسمية و/أو الأهلية بما يخدم مصلحة المشتري السيد فتحي وحسب ما يراه مناسباً وأن جميع الحقوق المالية و/أو التعويضات التي قد تنشأ عن الاستملاك الواقع على قطعة الأرض موضوع هذا الإقرار والذي قد تحكم به المحكمة هي حقاً مكتسباً لصالح السيد فتحي وأنني أوصي أهلي وورثتي الشرعيين من بعدي بعدم معارضة السيد فتحي في الأرض المذكورة وذلك لتعلق حقه بها وقد قمت بالتوقيع على هذا الإقرار على ثلاث نسخ أصلية وأنا بكامل قواي العقلية المعتبرة شرعاً وقانوناً واسقط حقي بالادعاء بكذب الإقرار و/أو الظروف التي أحاطت بتنظيم هذا الإقرار و/أو أي دفع ناشئ و/أو متعلق بهذا الإقرار و/أو تطبيقاته.  
تحريراً بتاريخ ٢٠١١/٧/١٨.

المقر بما فيه

الاسم الرباعي :   
التوقيع :  ٢٠١١/٧/١٨

شاهد

شاهد




المستشارون  
للمحاماة والقانون  
COUNSILORS  
for Advocating and Law

المستشارون  
للمحاماة والقانون

نظم أمامي وبمصرفتي تحريراً في

اليوم التاسع من شهر محرم لعام الفانوسم

المعالي 

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

EXHIBIT  
13

**WALEED HAMED**, as the Executor of the Estate  
of **MOHAMMAD HAMED**,  
*Plaintiff/Counterclaim Defendant*,

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

---

**WALEED HAMED**, as the Executor of the Estate  
of **MOHAMMAD HAMED**, *Plaintiff*,

vs.

**UNITED CORPORATION**, *Defendant.*

---

**WALEED HAMED**, as the Executor of the Estate  
of **MOHAMMAD HAMED**, *Plaintiff*

vs.

**FATHI YUSUF**, *Defendant.*

---

**FATHI YUSUF**, *Plaintiff*,

vs.

**MOHAMMAD A. HAMED TRUST**, *et al*,

*Defendants.*

---

**KAC357 Inc.**, *Plaintiff*,

vs.

**HAMED/YUSUF PARTNERSHIP**,

*Defendant.*

Case No.: **SX-2012-CV-370**

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: **SX-2014-CV-287**

Consolidated with

Case No.: **SX-2014-CV-278**

Consolidated with

Case No.: **ST-17-CV-384**

Consolidated with

Case No.: **ST-18-CV-219**

1. The undersigned is an attorney admitted to the practice of law in the USVI, Bar No. 48.
2. This Declaration is true and accurate to the best of my knowledge, and is made under oath.
3. The statements herein are provided in support of Hamed's H-142 Motion for Summary Judgment.
4. I have examined and I have also had paralegals examine the record of evidence and exhibits (filed and unfiled) in this case. There are no subsequent writings or financial records which even mention any second agreement or writing as to the transfer by Hamed to Yusuf or United of the Tutu half-acre parcel. No such agreement or writing is mentioned in any deed, document, communication, writing or other item of evidence we have been able to locate with diligent and extensive efforts.

**Dated:** January 22, 2020



**Carl J. Hartmann III, Esq.**

*Co-Counsel for Plaintiff*

5000 Estate Coakley Bay, L6

Christiansted, VI 00820

Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Tele: (340) 719-8941



**Plaza Extra - Acquisition**  
Year End: December 31, 2010  
Trial balance Report

Account	Annotation	Rep 12/09	Prelim	Adj's	Rep
14900031 Land No. 2 4 Rem. Est Ch		330,000.00	330,000.00 ✓	0.00	330,000.00
151 Land - cost		644,664.00	644,664.00	0.00	644,664.00
15500030 Building		1,261,480.00	1,261,480.00 ✓	0.00	1,261,480.00
15600010 Building		5,600,127.00	5,600,127.00 ✓	0.00	5,600,127.00
15600020 Building		1,688,559.00	1,688,559.00 ✓	0.00	1,688,559.00
15900010 Security		199,265.00	199,265.00 ✓	0.00	199,265.00
15900020 Security		95,181.00	95,181.00 ✓	0.00	95,181.00
<b>153.100 Buildings &amp; Improvements- (</b>		<b>8,844,612.00</b>	<b>8,844,612.00</b>	<b>0.00</b>	<b>8,844,612.00</b>
16000010 Accum. Depr. F&F		(138,153.00)	(144,453.00) ✓	0.00	(144,453.00)
16000030 Accum. Depr. F&F		(100.00)	(100.00) ✓	0.00	(100.00)
16200010 Accum. Depr. C&E		(4,708,028.00)	(4,708,028.00) ✓	0.00	(4,708,028.00)
16200020 Accum. Depr. C&E		(2,247,461.00)	(2,266,361.00) ✓	0.00	(2,266,361.00)
16300010 Accum. Depr. Auto		(55,906.00)	(60,106.00) ✓	0.00	(60,106.00)
16300020 Accr. Depr. Auto		(41,440.00)	(45,640.00) ✓	0.00	(45,640.00)
16500030 Accum. Depr. Bldg		(1,398,974.00)	(1,430,474.00) ✓	0.00	(1,430,474.00)
16600010 Accum. Depr. Bldg		(2,175,395.00)	(2,292,995.00) ✓	0.00	(2,292,995.00)
16600020 Accum. Depr. Bldg		(679,809.00)	(707,109.00) ✓	0.00	(707,109.00)
16900010 Accum. Depr. Security		(165,839.00)	(165,839.00) ✓	0.00	(165,839.00)
<b>154 Buildings - accumulated depreci:</b>		<b>(11,611,105.00)</b>	<b>(11,821,105.00)</b>	<b>0.00</b>	<b>(11,821,105.00)</b>
15100010 Auto Equipment		132,606.00	132,606.00 ✓	0.00	132,606.00
15100020 Auto Equipment		25,800.00	25,800.00 ✓	0.00	25,800.00
<b>157.100 Vehicles - Cost</b>		<b>158,406.00</b>	<b>158,406.00</b>	<b>0.00</b>	<b>158,406.00</b>
15000010 Furniture & Fixtures		125,872.00	155,973.00 ✓	0.00	155,973.00
15000020 Furniture & Fixtures		53,187.00	63,967.00 ✓	0.00	63,967.00
15000030 Furniture & Fixtures		100.00	100.00 ✓	0.00	100.00
<b>159.100 Furniture and fixtures - cost</b>		<b>179,159.00</b>	<b>220,040.00</b>	<b>0.00</b>	<b>220,040.00</b>
15200010 Computers & Equipment		4,862,404.00	4,862,404.00 ✓	0.00	4,862,404.00
15200020 Computers & Equipment		2,208,229.00	2,208,229.00 ✓	0.00	2,208,229.00
<b>161.100 Computer equipment - cost</b>		<b>7,070,633.00</b>	<b>7,070,633.00</b>	<b>0.00</b>	<b>7,070,633.00</b>
13500010 Deposits Utilities		20,001.00	20,001.00 ✓	0.00	20,001.00
13500020 Deposits Utilities		37,962.00	37,962.00 ✓	0.00	37,962.00
<b>180 Prepays/Deferreds - Long Term</b>		<b>57,963.00</b>	<b>57,963.00</b>	<b>0.00</b>	<b>57,963.00</b>
12000020 A/R Intercompany St. Cro		1,532,472.00	1,532,472.00 ✓	0.00	1,532,472.00
12010010 A/R Intercompany St. Tho		17,445,409.00	17,445,409.00 ✓	0.00	17,445,409.00
12010030 A/R Intercompany St. Cro		196,382.00	196,382.00 ✓	0.00	196,382.00
12050000 Intercompany Elimination		(9,774,263.00)	(9,774,263.00) ✓	0.00	(9,774,263.00)
23980020 A/P Intercompany St. Cro		(17,445,409.00)	(18,645,409.00) ✓	1,200,000.00	(17,445,409.00)
24000010 A/P Intercompany St. Tho		(1,532,472.00)	(1,532,472.00) ✓	0.00	(1,532,472.00)
24010010 A/P Intercompany Tenant		(196,382.00)	(196,382.00) ✓	0.00	(196,382.00)
24050000 Intercompany Elimination		9,774,263.00	9,774,263.00 ✓	0.00	9,774,263.00
<b>190 Intercompany Accounts</b>		<b>0.00</b>	<b>(1,200,000.00)</b>	<b>1,200,000.00</b>	<b>0.00</b>
20500010 Accounts Payable Trade		(2,739,043.00)	(2,562,190.00) ✓	0.00	(2,562,190.00)

09/08/2011  
6:13 PM

United Corporation  
Balance Sheet - Plaza Extra STT  
December 31, 2012

**EXHIBIT**  
**16**

## ASSETS

## Current Assets

105000-20	Scotia - TeleCheck STT	\$	107,890.35
105100-20	Scotia - Operating STT		20,106.91
105200-20	Scotia - Payroll STT		10,523.05
105300-20	Banco Popular - CC STT		306,646.08
111000-20	Cash Room		10,000.00
112000-20	Cash - Registers		5,000.00
113000-20	Cash - STT Safe		61,000.00
128000-20	Inventory - St. Thomas		2,008,308.64
131000-20	Prepaid Property/Hurricane Ins		63,398.58

Total Current Assets

2,592,873.61

## Property and Equipment

149000-20	Land - Est Char Ama		330,000.00
150000-20	Furniture & Fixtures		2,247,158.00
151000-20	Auto Equipment		25,800.00
156000-20	Building		4,188,558.00
159000-20	Security		95,180.00
162000-20	Accum Depreciation		(4,092,580.00)

Total Property and Equipment

2,794,116.00

## Other Assets

185000-20	Deposits - Utilities		37,962.40
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Total Other Assets

37,962.40

Total Assets

\$ 5,424,952.01

## LIABILITIES AND CAPITAL

## Current Liabilities

205000-20	Accounts Payable - Trade	\$	1,852,242.80
214500-20	Due to Stockholders		186,819.33
218600-20	AFLAC W/H & Payable		2,228.35
220000-20	Accrued Gross Receipts Tax		138,231.07
231000-20	Accrued VI Withholding Tax		21,308.52
232000-20	Accrued FICA / Medicare Tax		26,367.76
233000-20	Accrued VIESA Tax		6,184.00
239000-20	Accrued FUTA Tax		63,362.54

Total Current Liabilities

2,296,744.37

## Long-Term Liabilities

Total Long-Term Liabilities

0.00

Total Liabilities

2,296,744.37

## Capital

Net Income 794,040.89

Total Capital

794,040.89

Total Liabilities &amp; Capital

\$ 3,090,785.26

United Corporation  
Income Statement - Plaza Extra STT  
For the Twelve Months Ending December 31, 2012

	Year to Date	
Revenues		
Sales - Cash	13,948,147.76	44.62
Sales - Checks	1,984,244.19	6.35
Sales - WIC	1,485,009.69	4.75
Sales - Credit Cards	13,813,395.49	44.19
Other Inc Not GRT Taxable	25,108.23	0.08
Interest Income	1,032.67	0.00
	<hr/>	
Total Revenues	31,256,938.03	100.00
	<hr/>	
Cost of Sales		
Cost of Goods Sold	21,018,992.82	67.25
Freight	1,253,241.79	4.01
Customs Broker	288,941.60	0.92
Freight Rebate	(505,147.68)	(1.62)
	<hr/>	
Total Cost of Sales	22,056,028.53	70.56
	<hr/>	
Gross Profit	9,200,909.50	29.44
	<hr/>	
Expenses		
Auto Expense	9,344.77	0.03
Professional Fees	7,396.46	0.02
Hurricane Insurance	202,936.66	0.65
Legal	149,803.65	0.48
Maintenance & Repair	248,805.54	0.80
Trash Removal	45,147.00	0.14
Office Supplies	4,483.97	0.01
Advertising & Promotion	110,712.14	0.35
Telecheck Service Charge	17,860.23	0.06
Bank Service Charge	8,655.24	0.03
Visa / MC Service Charge	133,984.44	0.43
Licenses	3,324.59	0.01
Postage	1,807.54	0.01
Depreciation Expense	111,105.00	0.36
Rent - Tutu Park Mall	536,689.00	1.72
Rent - Employees	4,000.00	0.01
Security	51,476.95	0.16
Telephone	4,864.30	0.02
Electric	1,270,666.33	4.07
Gas & Diesel	70,636.81	0.23
Donations	1,346.24	0.00
Adult Education Assistance	2,474.00	0.01
Penalty	1,936.40	0.01
Travel	621.61	0.00
Meals	1,200.47	0.00
Gross Receipts Tax	1,308,303.60	4.19
Wages Expense - Cashier	2,361,728.16	7.56
Wages Expense - Bagger	4,189.03	0.01
Wages Expense - Supervisor	247,291.40	0.79
Officers' Salaries	1,063,903.86	3.40
Contract Labor	5,813.92	0.02
FICA / Medicare Tax	231,248.67	0.74
VIESA Tax	12,394.66	0.04
Pre-Tax CIGNA Empl Health Ins	122,831.35	0.39
Pre-Tax Life & AD & D	2,053.14	0.01
Workers' Compensation	14,838.25	0.05
FUTA Tax	27,133.56	0.09
Other Expenses	3,859.67	0.01

Confidential - For Internal Management Purposes Only



United Corporation  
Income Statement - Plaza Extra STT  
For the Twelve Months Ending December 31, 2012

	<u>Year to Date</u>	
Total Expenses	<u>8,406,868.61</u>	26.90
Net Income	<u>\$ 794,040.89</u>	2.54

United Corporation  
 Balance Sheet - STX Shopping Center  
 December 31, 2012

**EXHIBIT  
17**

		ASSETS	
Current Assets			
104000-30	Scotia - Tenant	\$	165,455.81
114500-30	Due from Stockholders		0.00
119900-30	Due from STT - Interco		0.00
120100-30	Due from STX - Interco		0.00
121000-30	Due from Peter's Farm		0.00
121400-30	Due from Royal Furniture		500,000.00
122100-30	A/R - United Shopping Plaza		135,446.40
125000-30	Allowance for Doubtful Account		0.00
131000-30	Prepaid Property/Hurricane Ins		18,419.71
			<u>819,321.92</u>
Total Current Assets			
Property and Equipment			
149000-30	Land - Tenant		3,023,652.10
150000-30	Furniture & Fixtures		0.00
151000-30	Auto Equipment		101,355.00
155000-30	Building		3,357,243.00
160000-30	Accum Deprec - F&F		0.00
165000-30	Accum Depreciation		(2,266,719.00)
			<u>4,215,531.10</u>
Total Property and Equipment			
Other Assets			
190000-30	Investment - Laundromat		159,882.79
191000-30	Investment - Mattress Pal LLC		5,000,000.00
			<u>5,159,882.79</u>
Total Other Assets			
			<u>\$ 10,194,735.81</u>

LIABILITIES AND CAPITAL

Current Liabilities			
205100-30	Security Deposits - USP	\$	35,782.99
214500-30	Due to Stockholders		0.00
220000-30	Accrued Gross Receipts Tax		1,817.85
240200-30	A/P Intercompany - St. Thomas		0.00
242000-30	Accrued Property Tax		0.00
			<u>37,600.84</u>
Total Current Liabilities			
Long-Term Liabilities			
			<u>0.00</u>
Total Long-Term Liabilities			
			37,600.84
Total Liabilities			
Capital			
280000-30	Retained Earnings		0.00
	Net Income		5,308,711.48
			<u>5,308,711.48</u>
Total Capital			
			<u>\$ 5,346,312.32</u>
Total Liabilities & Capital			

United Corporation  
Income Statement - STX Shopping Center  
For the Twelve Months Ending December 31, 2012

	Year to Date	
Revenues		
Rental Income	5,868,646.70	100.00
	<u>5,868,646.70</u>	
Total Revenues	5,868,646.70	100.00
	<u>5,868,646.70</u>	
Cost of Sales		
	<u>0.00</u>	0.00
Total Cost of Sales	0.00	0.00
	<u>0.00</u>	
Gross Profit	5,868,646.70	100.00
	<u>5,868,646.70</u>	
Expenses		
Hurricane Insurance	63,896.03	1.09
Legal	136,957.32	2.33
Maintenance & Repair	152,600.81	2.60
Trash Removal	5,727.50	0.10
Office Supplies	14,675.13	0.25
Advertising & Promotion	408.50	0.01
Bank Service Charge	892.62	0.02
Returned Check Charge	135.00	0.00
Depreciation Expense	56,099.00	0.96
Electric	33,759.74	0.58
Gas & Diesel	84.11	0.00
Property Tax	54,196.94	0.92
Gross Receipts Tax	19,297.33	0.33
Contract Labor	21,205.19	0.36
	<u>559,935.22</u>	9.54
Total Expenses	559,935.22	9.54
	<u>559,935.22</u>	
Net Income	\$ 5,308,711.48	90.46
	<u><u>5,308,711.48</u></u>	