

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

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

v. )

FATHI YUSUF and UNITED CORPORATION, )  
 )  
Defendants/Counterclaimants, )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )  
 )  
Additional Counterclaim Defendants. )

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

v. )

UNITED CORPORATION, )  
 )  
Defendant. )

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

v. )

FATHI YUSUF, )  
 )  
Defendant. )

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**CIVIL NO. SX-12-CV-370**

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

**Consolidated With**

**CIVIL NO. SX-14-CV-287**

**ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT**

**CIVIL NO. SX-14-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**FATHI YUSUF and**  
**UNITED CORPORATION,**  
  
Plaintiffs,  
  
v.  
  
**THE ESTATE OF MOHAMMAD HAMED,**  
**WALEED HAMED,** as Executor of the Estate of  
Mohammad Hamed, and **THE MOHAMMAD A.**  
**HAMED LIVING TRUST,**  
  
Defendants.

**CIVIL NO. ST-17-CV-384**  
  
**ACTION TO SET ASIDE**  
**FRAUDULENT TRANSFERS**

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**KAC357, INC.,** a USVI Corporation,  
  
Plaintiff,  
  
v.  
  
**FATHI YUSUF,** a partner, and  
**THE HAMED-YUSUF PARTNERSHIP**  
a/k/a **THE PLAZA EXTRA SUPERMARKET**  
**PARTNERSHIP,**  
  
Defendants.

**CASE NO.: SX-18-CV-219**  
  
**ACTION FOR DEBT AND**  
**UNJUST ENRICHMENT**

**UNITED CORPORATION’S REPLY TO OPPOSITION TO  
MOTION FOR  
SUMMARY JUDGMENT AS TO CLAIMS Y-5**

**I. Summary of United’s Claims for GRTs on United Shopping Center Rental  
Income (Y-5)**

United Corporation’s (“United”) has made various claims for amounts due to it from the  
Yusuf/Hamed partnership. One of those claims is for gross receipt taxes (“GRTs”) that United

paid to the Virgin Islands government on rental income earned by the United Shopping Center.<sup>1</sup> At the time the oral partnership agreement between Mr. Yusuf and Mohammad Hamed was formed in 1986, one of its terms was that the partnership would pay the GRTs on rental income earned by United for the United Shopping Center. That, in fact, happened during the time that Mr. Yusuf was in St. Croix managing the Plaza-Extra East store. However, Mr. Yusuf moved to St. Thomas after the United Shopping Center fire in 1992, in order to prepare for the opening of the Plaza Extra Tutu Park store, which happened in October 1993, and to manage that store until not long before this lawsuit was filed in 2012. From the time Plaza Extra East re-opened in 1994 until just before the FBI raid in September 2001, United paid the GRTs on rental income while the Plaza Extra East store was being managed by Waleed Hamed. The Y-5 claim seeks recovery from the partnership of all GRTs paid in that period, which comes to \$60,586.96. The material facts are uncontroverted, and the Master should grant United summary judgment on this claim in that amount. Nothing in Hamed's Opposition creates any genuine issue of material fact to preclude summary judgment to United on its claims for the GRTs.

In fact, in his Opposition, Hamed raises the same unavailing arguments as he raised in his oppositions to United's Motions for Summary Judgment as to Y-7 and Y-9 and in United's Motion for Partial Summary Judgment as to Y-8 as well as in his Motion for Summary Judgment as to H-150 (seeking reimbursement for GRTs paid from 2012 to 2015), to wit: 1) that United did not file its claim within the timeframe required by the Special Master, 2) that United's claims are barred by Judge Brady's July 25, 2017 Order regarding limitations on accounting claims between the partners, 3) that United's claims are barred by the Statute of Limitations, 4) that there is

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<sup>1</sup> United has advanced other claims for reimbursement from the partnership for other payments it made on behalf of the partnership (see claims Y-7 and Y-9) as well as for revenues from water sales after 2004 collected at the Plaza Extra East store (Y-8 – Water Revenues).

unsupported evidence of an “agreement” for the partnership to pay the GRTs and 5) that there was no agreement to have the partnership pay United’s GRTs.

## **II. United Timely Asserted its Y-5 Claims for Reimbursement of GRTs.**

Hamed first argues that United should be barred from seeking reimbursement of the GRTs it paid from United’s tenant accounts from the partnership because Yusuf’s September 30, 2016 Accounting Claims and Proposed Distribution Plan described this as a claim belonging to Yusuf personally, rather than United. *See* Hamed’s Opposition at pp. 19. Hamed’s assertion is frivolous. Yusuf’s Accounting Claims and Proposed Distribution Plan of September 30, 2016 (the “Claim”) stated that “all debts of the Partnership must be paid prior to any distributions to the Partners,” and noted that “the remaining debts include the unpaid rent obligations, with interest, due to United . . . as well as other obligations to United discussed in more detail below.” *See Exhibit 1*-Yusuf’s Accounting Claims and Proposed Distribution Plan Excerpts. Section III, entitled “Outstanding Debts of the Partnership” lists debts A-G of the Partnership owed to United, *i.e.* these are United’s claims and United is a party to this suit. *See id.* at 6-10. The Claim document was styled as “Yusuf’s Accounting Claims and Proposed Distribution Plan” because of Judge Brady’s directive that each partner submit a proposed accounting and distribution plan. *See* Judge Brady’s January 9, 2015 Order Adopting Final Wind Up Plan, p. 8 (“Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan...”). The fact that Yusuf did what he was asked to do by preparing and submitting a plan identifying all known claims against the partnership, including third party claims, obviously does not transform that which he clearly identified as a United claim into his own claim. Nor can it possibly mean that United’s Y-5 was not timely presented to the Master. Further, the “Y-\_\_” designations were imposed by Hamed in an effort to distinguish and number the individual issues to be addressed. This designation did not

transform the United claims into Yusuf claims. For ease of reference, the parties have conformed to that procedural convention but it does not substantively change that the claim is a United claim against the partnership.

### **III. Judge Brady's Laches-Based Limitations Ruling Does Not Apply United.**

Hamed argues without much conviction that United's claims are barred by Judge Brady's laches-based order providing that "the accounting...to which each partner is entitled [under RUPA<sup>2</sup>] §177(b)...shall be limited in scope...to those claimed credits and charges to partner accounts, within the meaning of [RUPA] §71(a)...occur[ing] on or after September 17, 2006." Hamed's Opposition at p. 19 (quoting from Judge Brady's July 25, 2017 Order). The order by its plain terms refers only to accounting claims by a partner brought pursuant to RUPA, and thus does not apply to United's claims. If United's Y-5 claims are time-barred, that result would flow from the statute of limitations, not laches or Judge Brady's laches-based order limiting partner claims. The statute of limitations, and not laches, was what Judge Brady considered in determining whether United's claims for rent owed for the 1994 to 2004 time period were time-barred (he concluded they were not), and the Master should likewise look to the statute of limitations, not laches, in determining whether the instant claims are time-barred.

### **IV. The Statute of Limitations Does not Preclude United's Y-5 Claims.**

United's claims for reimbursement of the GRTs are not barred because United has an open account with the partnership, as described in *In re: Estate of Vanderpool*, 2010 WL 11414826 (V.I. Super. Dec. 30, 2010), such that the statute of limitations accrued on the date of the last item in that account, which was the August 20, 2001 payment of GRTs. *See* Exhibit 3 to United's Motion for Summary Judgment as to Y-5, specifically at p. FY-14991.

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<sup>2</sup>Revised Uniform Partnership Act.

Although not in this Opposition, Hamed has argued in other pleadings on these same issues as to the running of the statute of limitations on United claims against the partnership, that *Vanderpool* is distinguishable, and that United cannot avail itself of the rule applied in that case, and instead that the statute of limitations would run separately on each item that comprises a claim. But the Court in *Vanderpool* did not say that there had to be regular repayments or account reconciliations in order for an economic arrangement between two parties to constitute an open account. Indeed, the facts in *Vanderpool* are inconsistent with any such requirement.

Under the 10-year statute of limitations that United believes is applicable, the limitations period would have ended on August 20, 2011; under the six-year statute, August 20, 2007. Both of these dates fall *after* the FBI raid and seizure of documents on October 3, 2001, and after United was indicted on September 19, 2003. Because the limitations period was tolled or suspended upon the occurrence of these and other extraordinary circumstances until 2012 at the earliest, United's Y-5 claims were timely brought on September 12, 2012 (the date United's counterclaim is deemed to have been filed).<sup>3</sup>

**V. United Has Produced Evidence of the Agreement for the Partnership to Pay United's GRTs on Rental Income from the Shopping Center.**

In his Opposition, Hamed reproduced verbatim, arguments raised in his Motion for Summary Judgment as to H-150, which is the obverse of United's claim Y-5. In H-150, Hamed shows that the partnership had been paying United's GRTs with limited exceptions for the period 2001 through 2015, when the parties split their joint operations of the stores pursuant to the Wind

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<sup>3</sup> Hamed does not address issues of equitable tolling in his Opposition to Y-5 but has made unsuccessful attempts to address it in other filings. To the extent that the equitable tolling is at issue as to United's claim Y-5, United incorporates by reference as if fully set forth herein its arguments as set forth in its Reply to Hamed's Opposition as to United's claims Y-7 and Y-9 also filed on this same date.

Up Order. Hamed contends that after the lawsuit was filed, that Hamed no longer consented to this practice and therefore, the partnership should be reimbursed from United for the GRTs it paid on United Shopping Center rental income from the date of the lawsuit in 2012 until the time of the split in 2015.

Hamed's Opposition to this Motion relating to Y-5 as to these contentions; i.e. the existence or non-existence of an agreement is exactly the same as Hamed advanced in his Motion for Summary Judgment as to his claim H-150, to which United has already replied. Therein, Hamed concedes that the crux of the issue is whether or not there was an agreement for the partnership to pay the United Shopping Center's GRTs on its rental income. If so, then Yusuf's claim Y-5 should be granted and Hamed's Claim H-150 should be denied.

Because Hamed reasserts in his Opposition to United's claim Y-5, all of the same issues that he raised in his H-150 Motion, rather than belabor the points, United incorporates by reference as if specifically set forth herein verbatim, its Opposition to Hamed's Motion for Summary Judgment as to H-150 as its Reply to Hamed's Opposition to United's Motion for Summary Judgment as to Y-5.

As the procedural practice with these motions has been for a hard copy to be provided to the Master and Law Clerk, United is attaching as **Exhibit A** – its Opposition to Hamed's Motion for Summary Judgment as to H-150, so that it is available to the Master and Law Clerk when reviewing this brief so that it will be provided to them in hardcopy for their review.<sup>4</sup> In the attached Exhibit A – the table containing Hamed's Statement of Material Facts (SOMF) as to H-

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<sup>4</sup> United and Yusuf further suggest that given the overlapping nature of the claims asserted in Y-5 and H-150 that they be viewed together. Likewise, many of the same arguments against United's claims are advanced in the various filings relating to Y-7 and Y-9 as well as Y-8.

150 are cross referenced with Hamed’s Counter Statement of Materials Facts (HCSOF) in his Reply as to Y-5 to demonstrate United’s responses to same in this Reply.

**VI. Timeframes as to the Claims for GRTs for United Shopping Center’s Rental Income**

To provide some clarity as to the timeline of the payments as to the GRTs, United shows that:

Timeframe	Description
1986-1992 [Partnership pays United’s GRTs on rental income]	<ul style="list-style-type: none"> <li>• Partnership paid United’s GRTs on rental income.</li> <li>• Faith Yusuf is in charge and running Plaza Extra East.</li> <li>• Plaza Extra East is only store of the Partnership at that time.</li> </ul>
1992 – 1994 [Y-5 claims]	<ul style="list-style-type: none"> <li>• The United Shopping Center had burned and there was no rental income.</li> <li>• Mr. Yusuf moves to St. Thomas to oversee the construction in begin operations of the Plaza Tutu Park store.</li> <li>• Waleed Hamed is operating the Plaza Extra East store.</li> <li>• The Partnership is experiencing extreme financial stress at this time as rebuilding was required of Plaza Extra East and it was not generating income.</li> <li>• Likewise, Plaza Extra Tutu Park was under construction and also experiencing losses.</li> <li>• The United Shopping Center Tenant Account was regularly receiving income which was used to cover various expenses of the Partnership. <i>See</i> Y-5 (GRTs), Y-7 and Y-9.</li> </ul>
1994 – 1995 [Y-5 claims]	<ul style="list-style-type: none"> <li>• Extreme financial stress continued at both Plaza Extra East and the new Plaza Extra Tutu Park</li> <li>• Waleed Hamed remained in charge of the Plaza Extra East store and was unaware of the agreement to pay for the United Shopping Center’s GRTs on rental income.</li> <li>• Fathi Yusuf was in St. Thomas running the Plaza Extra Tutu Park store, which was in need of financial support.</li> <li>• In 1995, Hurricane Marilyn hit St. Thomas and seriously damaged the roof of the St. Thomas store.</li> </ul>
1996 -2001 [Y-5 claims]	<ul style="list-style-type: none"> <li>• Gradually the Plaza Extra Tutu Park began to become more financially secure and the Plaza Extra East store also gained financial momentum.</li> </ul>

	<ul style="list-style-type: none"> <li>Late 2001 all taxes for the operations of the grocery stores and the GRTs for the United Shopping Center's rental income was paid through the Plaza Extra Tutu Park store.</li> </ul>
<p>2001 – 2015 [Partnership pays United's GRTs on rental income]</p> <p>Hamed claims H-150 that GRTs paid after filing of suit should be reimbursed to the partnership</p>	<ul style="list-style-type: none"> <li>The FBI raid occurred in October 2001.</li> <li>The partners did not disclose the fact of the partnership agreement during the investigation and indictment period in the criminal case.</li> <li>All of the GRTs for the grocery store operations as well as United Shopping Center were paid from the Plaza Extra Tutu Park store from the proceeds of the grocery store operations, i.e. from Partnership funds.</li> <li>With a few exceptions, United Shopping Center's GRTs were paid from the Partnership from this period thru the time of the split of the parties from the Partnership in 2015.</li> <li>In 2012, the lawsuit was filed but no changes were made to the payment of the GRTs by the Partnership.</li> </ul>

### **CONCLUSION AND REQUEST FOR RELIEF**

For all of the foregoing reasons, United respectfully requests the Master to grant its Motion for Summary Judgment on Claim Y-5.

Respectfully submitted,

**DUDLEY NEWMAN FEUERZEIG LLP**

**DATED:** July 7, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of June, 2020, I caused the foregoing **UNITED CORPORATION'S REPLY TO HAMED'S OPPOSITION TO UNITED'S MOTION FOR SUMMARY JUDGMENT AS TO CLAIMS Y-5**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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\_\_\_\_\_  
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# **EXHIBIT A**

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

<b>WALEED HAMED</b> , as Executor of the Estate of <b>MOHAMMAD HAMED</b> ,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	<b>CIVIL NO. SX-12-CV-370</b>
v.	)	
<b>FATHI YUSUF</b> and <b>UNITED CORPORATION</b> ,	)	<b>ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING</b>
	)	
Defendants/Counterclaimants,	)	
v.	)	
<b>WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.</b> ,	)	
	)	
Additional Counterclaim Defendants.	)	<b>Consolidated With</b>
_____	)	
<b>WALEED HAMED</b> , as Executor of the Estate of <b>MOHAMMAD HAMED</b> ,	)	
	)	<b>CIVIL NO. SX-14-CV-287</b>
Plaintiff,	)	
v.	)	<b>ACTION FOR DAMAGES AND DECLARATORY JUDGMENT</b>
<b>UNITED CORPORATION</b> ,	)	
	)	
Defendant.	)	
_____	)	

**UNITED CORPORATION’S OPPOSITION TO HAMED’S  
MOTION FOR SUMMARY JUDGMENT AS TO CLAIMS H-150:  
RECOVERY OF GROSS RECEIPTS TAXES PAID BY PARTNERSHIP**

**INTRODUCTION**

Hamed’s claim H-150 seeks reimbursement from Yusuf for that portion of the gross receipt taxes (“GRTs”) paid by the Yusuf/Hamed Partnership (“Partnership”) to the Virgin Islands government for rental income earned from United Corporation’s (“United”) tenants at the United Shopping Center in St. Croix for the period 2012 through 2015. However, Hamed ignores that in

1986, Mr. Yusuf (as principal of United) and Mohammad Hamed agreed that the Partnership would be responsible for paying all of the GRTs, both upon the tenant income recovered by United for space it leased from the United Shopping Center as well as the GRTs due for the income earned from the grocery store business operated by the Partnership. Despite this agreement made at the outset of the Partnership, Hamed seeks reimbursement for \$70,938.04 of United Shopping Center GRTs paid during that period.

Claim H-150 is the obverse of United's claim Y-5, in which United seeks recovery of GRTs for the United Shopping Center that were paid by United, from its tenant account, during the period from 1993 through 2001, without Mr. Yusuf's knowledge, and at a time when he was in St. Thomas and Waleed Hamed was in charge of Plaza Extra East but which Yusuf and United claim should have been paid by the Partnership. United's own motion for summary judgment on its Y-5 claim was filed in the CaseAnywhere system on April 15, and is pending.

### **STATEMENT OF FACTS**

The United Shopping Center's 36 bays (or retail spaces) and 15 office spaces have been rented by United to various tenants since it was originally built until the present (with an interruption caused by a major fire in 1992). When the Partnership was formed in 1986 to operate a supermarket, and an agreement was made for the Partnership to pay United rent at the large bay that the supermarket would occupy, one of its terms was that the supermarket also would pay the GRTs on rental income earned by United. *See Exhibit 1*, January 21, 2020 Deposition, pp. 10, 21 (testimony of Fathi Yusuf). That, in fact, happened during the time that Mr. Yusuf was in St. Croix managing the Plaza Extra East store for the Partnership. *See Exhibit 1*, p. 11 (testimony of Fathi Yusuf).

Mr. Yusuf moved to St. Croix after the United Shopping Center fire in 1992, in order to prepare for the opening of the Plaza Extra Tutu Park store, which happened in October 1993, and to manage that store until not long before this lawsuit was filed in 2012. *See* Exhibit 1, p. 11 (testimony of Fathi Yusuf). However, from the time Plaza Extra East re-opened in 1994 (when Mr. Yusuf had moved to St. Thomas) until just before the FBI raid in September 2001, United—as opposed to the Partnership—paid the GRTs on rental income for the United Shopping Center out of its tenant account, while the Plaza Extra East store was being managed by Waleed Hamed. The Y-5 claim seeks recovery from the Partnership of all GRTs paid for the rental income in that period, which comes to \$60,586.96.

The Partnership resumed paying GRTs on shopping center rental income from the Partnership's Plaza Extra accounts after 2001, and continued doing so until the time the Partnership relinquished its interest in the Plaza Extra East store to Mr. Yusuf, pursuant to the Court's Wind Up Order. Hamed has limited his claim for reimbursement of United's GRTs paid by the Partnership to the 2012 through 2015 period.<sup>1</sup> Hamed's motion for summary judgment recognizes that if the Court were to find that Hamed agreed with Yusuf that the Partnership would pay United's GRTs on shopping center income, his motion must be denied. Hamed strains to overcome the fact that Yusuf has testified to this agreement, and that Mohammad Hamed never testified to the contrary. His main argument—that there is no separate consideration to support the GRTs agreement—is legally meritless. His backup arguments regarding supposed contradictions in

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<sup>1</sup> Hamed is aware that the Partnership has been paying the GRTs for the shopping center income for years, which is evidence of the partners' agreement to do so. Hamed implicitly acknowledges that the agreement exists but premises his claim on the argument that the filing of the lawsuit in 2012 changed the longstanding agreement. Hence, Hamed's claim is limited to 2012 to 2015.

Yusuf's testimony, the significance of the Hamed sons' lack of knowledge of the agreement, and the alleged inconsistent course of dealing between the parties are also easily rebutted, and the Master should accordingly deny Hamed's motion.

## **ARGUMENT**

### **I. The GRTs Term of the Agreements between United and Yusuf and Hamed Need Not be Supported by Separate Consideration.**

Hamed's lead argument is that the Partnership's promise to pay United's GRTs for shopping center income is unenforceable because not supported by separate consideration. *See* Hamed's Motion at 25-26. That argument is based on a fundamental misunderstanding of contract law, and should be rejected. Hamed's argument incorrectly "assumes that every provision in a contract must have a separately bargained for and stated consideration. It need not." *Sarnoff v. Am. Home Prod. Corp.*, 798 F.2d 1075, 1080 (7th Cir. 1986). "[T]he law does not require every term of the contract to have a separately stated consideration." *Edwards v. First Am. Corp.*, 798 F.3d 1172, 1182 (9th Cir. 2015); *see also Harris v. Green Tree Financial Services*, 183 F.3d 173, 181 (3d Cir. 1991) (recognizing that under modern contract law, "[e]ach promise need not be supported by separate consideration"). "A single performance or return promise may thus furnish consideration for any number of promises." Restatement (Second) of Contracts § 80, cmt. a.

In this case, the rent agreement between United and the Partnership as a whole (as well as the partnership agreement itself) are both supported by sufficient consideration. United agreed to lease its premises to the Partnership, the Partnership agreed in turn to pay rent and other expenses including the GRTs for United, and Hamed and Yusuf agreed to share in revenues of the supermarket business. These mutual promises provide sufficient consideration, and "thus furnish[ed] consideration for any number of promises," Restatement (Second) of Contracts § 80,

cmt. a, and thus, furnished consideration for the GRTs promise.

Since Hamed's arguments about lack of consideration are inapposite, the Master need not even decide whether what Hamed calls Yusuf's "rationales" for the GRTs agreement were valid ones. *See* Hamed's Motion at p. 26. Nonetheless, United believes the Court should be aware that the alleged discrepancy in Yusuf's testimony about the rental rate for Plaza Extra East is easily explained. Yusuf testified in his 2014 deposition that the rental rate of \$5.55 per square foot in the 1986 to 1994 time period was made up of two components: \$3.00/sq. ft. in pure rent and \$2.55/sq. foot in maintenance charges. *See Exhibit 2*, April 2, 2014 Deposition, p. 83 (testimony of Fathi Yusuf). He spoke imprecisely in this past January's depositions when he referred to the \$3.00/sq. foot as the rent, without clarifying that the total payment for rent was \$5.55 per square foot when maintenance charges were included. That minor imprecision does not change the substance of his testimony in the January deposition that the rent being charged for the 1986 to 1994 time period was below market rates. *See also Exhibit 6*, August 12, 2014 Declaration of Fathi Yusuf, ¶5 (referring to the rent in the initial period as \$5.55/sq. foot rent and describing it as a below market rate). Yusuf also testified in his August 12, 2014 declaration that "[U]nder the business agreement between Hamed and me that I now describe as a partnership, profits would be divided 50-50 after deduction for rent owed to United, among other expenses." *Id.* at ¶1. Those other expenses included the GRT's for United.

Hamed also argues that there is no evidence that the depreciation deduction for the United Shopping Center building on United's tax returns made taxes lower on Partnership income for the 2012 to 2015 tax years than it otherwise would have been, and hence benefited Hamed by increasing the amount of after-tax partnership income that he and Yusuf would share. *See* Hamed's

Motion at p. 26. In the early years of the Partnership, United reported supermarket income on its own corporate tax returns as corporate income, which means that the depreciation deduction for the United Shopping Center property reduced the income that was subject to tax, and thus, resulted in payment of lower income tax. From tax years 2013 forward, John Gaffney began preparing separate United and Partnership tax returns, and building depreciation would no longer be deducted from Partnership income. *See* Exhibit 1, p. 122. In any event, whether the depreciation deduction benefitted Hamed in the years covered by claim H-150 (or, for that matter, any prior years) has no relevance to the issues raised by this motion or United's motion on claim Y-5.

Finally, Hamed fails to mention other "rationales" underlying the GRTs agreement, including the fact that Mr. Yusuf was giving a personal guaranty and using his home as collateral for the loans that would be needed to establish the supermarket business. *See* Exhibit 1, pp. 9-10; Exhibit 2, p. 53.

## **II. Hamed's Attempt to Show Material Inconsistencies in Mr. Yusuf's Testimony about the GRTs Agreement is Meritless.**

Mr. Yusuf testified unequivocally that he and Mohammad Hamed agreed that United's GRTs on Shopping Center income would be paid by the Partnership. When asked how the gross receipts taxes for the Shopping Center got paid from 1986 to the time of the fire, Mr. Yusuf responded that they was paid "by the partnership," and that Hamed "agreed to that, that all gross receipt will be paid by the store." Exhibit 1, p. 11 (testimony of Mr. Yusuf); *see also id.* at p. 9 (testifying that this was "the agreement between me and Mr. Mohammad").

Hamed argues that "[i]t is undisputed that Mr. Mohammad Hamed did not agree to have the Partnership pay the gross receipts taxes of the United Shopping Center" because on cross-examination Yusuf acknowledged that Hamed declined to agree to it. *See* Hamed's Motion at 26.

Hamed misrepresents the testimony and makes that flimsy claim on the basis of Mr. Yusuf's unremarkable testimony that during the meeting in which this agreement was made, Mohammad Hamed accepted Yusuf's proposal without expressing a word of disagreement with it. The full exchanges between Hamed's counsel and Mr. Yusuf make clear that this testimony is in no way at odds with his testimony on direct examination that Hamed agreed that the partnership would pay United's GRTs:

**Q.** Tell me a little bit about how that took place. Like, if you remember kind of like what he said and what you said.

**A.** What he said, he never say nothing. Whatever I say goes.

**Q.** Okay.

**A.** And he accepted it.

*See Exhibit 1, p. 20.*

Ignoring the "And he accepted it" statement, which is obviously the key part of this exchange, Hamed argues factitiously that Yusuf's "he never say nothing" remark means that Hamed never agreed to what Yusuf was proposing. This spin on Yusuf's testimony hardly merits consideration by the Master. It is perfectly clear from the context that all Yusuf was saying is that Hamed assented to the proposal without objecting to it, or even questioning it.<sup>2</sup>

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<sup>2</sup>Since the meaning of Mr. Yusuf's "never say nothing" remark is clear from context, no further elaboration of what he meant by it is necessary. But if confirmation of its meaning were needed, Yusuf's later exchange with counsel for Hamed in deposition would provide it:

**Q.** -- you said to him, The grocery store's got to pay the receipts, not only for the grocery store, but also for my -- what your lawyer called the part of United that is just the Yusuf, I'll call it Yusuf's United. So the gross receipts tax would be paid not only for the grocery store, but also for Yusufs' United?

**A.** Um-hum.

**Q.** And you said that you told him that?

**A.** Yeah.

Hamed also contends that Mr. Yusuf's 2014 deposition testimony contradicts his testimony of last January insofar as it suggests that the agreement to pay United's GRTs took effect in 1994, rather than 1986. *See* Hamed's Motion at 28. This additional strained attempt to contrive an inconsistency in Yusuf's testimony should also be rejected by the Master.

Yusuf testified unequivocally in that earlier deposition that he and Hamed were in a Partnership relationship by 1986. *See* Exhibit 2, pp. 24-25, 27. He also testified categorically, and without any qualification as to time period, that one of the conditions of the agreement to operate Plaza Extra as partners and pay United rent was that the Partnership would pay United's GRTs for the Shopping Center income:

**Q.** And the Plaza Extra Supermarket would pay the gross receipts, not just on the grocery store profits, but on the rent?

**A.** Yes.

*See* Exhibit 2, p. 54

In aside in that same 2014 deposition, Yusuf testified that "Plaza Extra was supposed to pay all the gross receipt from January 1st, 1994 up to present." *See* Exhibit 2, p. 3. According to Hamed, Yusuf's reference to 1994 must "mean the partnership would not have paid the United Shopping Center's GRTs in 1986-1992," and was only obligated to begin paying them in 1994. *See* Hamed's Motion at 28. The spin which Hamed seeks to place on the reference to 1994 would mean that, even though Mr. Yusuf has consistently testified that the agreement to pay shopping center GRTs out of supermarket accounts was reached around 1986, the agreement for some unexplained

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**Q.** And he never said anything?

**A.** He never said. And then I explain to him.

*See* Exhibit 1, p. 23 (testimony of Fathi Yusuf).

reason did not become effective until 8 years later. This cannot be reconciled with any other declaration or deposition testimony of Mr. Yusuf or Mohammad Hamed and defies common sense.

Hamed is here twisting Mr. Yusuf's words to mean exactly the opposite of what he intended. Mr. Yusuf undoubtedly referenced the year 1994 because that is when, unbeknownst to him, the practice that had been in effect from 1986 to 1992 (of United's Shopping Center GRTs being paid from the Partnership's Plaza Extra accounts) ceased, and United began paying its own GRTs on its rental income. What he was saying is that Plaza Extra—the Partnership—was "supposed" to have continued paying all of United's GRTs for the period January 2, 1994 forward, but did not.<sup>3</sup> Read in context, Mr. Yusuf's passing reference to the year 1994 in his prior deposition does not in any way undercut the agreement to pay GRTs that was implemented when the United Shopping Center opened in 1986.

### **III. The Lack of Witnesses to the GRT Agreement other than Mr. Yusuf is Immaterial.**

Hamed argues that because neither Mike Yusuf, Waleed Hamed or Waheed Hamed witnessed the agreement nor learned of it until a few years ago—and since Mohammed Hamed is not here to either refute or accept it—Yusuf's testimony is insufficient to prove that the agreement was made (or even to create a genuine issue of material fact that would preclude entry of summary judgment in Hamed's favor). This also will not do. The fact that neither of these individuals knew about the agreement at the time does not in any way detract from Mr. Yusuf's testimony that he and Mohammad Hamed made it in 1986, in light of their age at that time and lack of involvement with

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<sup>3</sup>Following his return to St. Croix and the filing of this lawsuit in 2012, Mr. Yusuf first discovered from a review of records that gross receipt taxes for rental income had been paid by United from tenant accounts, rather than the Partnership supermarket accounts, up to 2001. *See* Exhibit 1, pp. 13, 17 (testimony of Fathi Yusuf).

the stores.

Mike Yusuf graduated college in 1991, which would make him a teenager when the agreement was entered. *See Exhibit 3*, January 22, Deposition, p. 89-90 (testimony of Mike Yusuf). Even after Mike Yusuf began working at the Plaza Extra East store in 1991, *see id.*, Mr. Yusuf, out of respect for the Partnership, discussed Partnership matters almost exclusively with Waleed Hamed. Mr. Yusuf kept Mike out of the loop generally about Partnership matters and did not discuss the agreement regarding GRTs with him. *See Exhibit 1*, pp. 12, 32-33 (testimony of Fathi Yusuf).<sup>4</sup> Mufeed Hamed is younger than Mike Yusuf, and acknowledged that he was only a “kid” when the agreement was made. *Exhibit 1*, pp. 114-115. Waleed Hamed was still in college when the agreement was made, and was not present for the discussions that resulted in the agreement. *See Exhibit 1*, p. 24. Waleed Hamed’s testimony that “I don’t think” Mohammad Hamed would ever have entered the GRTs agreement and operated under it for the 8 years from 1986 to 1994 without telling him is simply self-serving speculation on his part, and is entitled to no deference by the Master. *See Exhibit 1*, pp. 71-72.<sup>5</sup> Compared to his 50% share of net profits of the supermarket

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<sup>4</sup>Indeed, Mr. Yusuf testified that his wife repeatedly asked him to keep their son involved in and aware of Partnership matters, but that Mr. Yusuf declined to do so, because his business obligations were to his partner and not to any one of his ten children. *See Exhibit 1*, p. 32 (testimony of Fathi Yusuf).

<sup>5</sup>Counsel for Hamed prefaced a question in deposition to Waleed Hamed by saying that Mr. Yusuf “was a pretty persuasive talker,” and then asking, “Couldn’t he have talked your father into a secret agreement and run under that for 8 years without you knowing about it?” *Exhibit 1*, p. 71. Hamed responded, “I don’t think that would ever happen.” *Id.* at 72. In order to decide this motion and United’s Y-5 motion in its favor, the Master need not decide whether Waleed’s testimony that he was not told about the GRT agreement during the 1986 to 1994 time period is true or false, and if the latter, whether the falsity is knowing or based on faulty recollection. The only issue the Master needs to reach in order to deny Hamed’s motion for summary judgment on claim H-150, and grant United’s on Y-5, is whether there was a GRTs agreement of the kind Yusuf testified to.

business, this was a relatively small aspect of his agreement with Yusuf in dollar terms, and Waleed Hamed offered no reason why his father would be compelled to discuss it with him. *See Exhibit 1, p. 17* (testimony of Fathi Yusuf). Why would Mohammad Hamed necessarily feel a need to discuss this relatively minor matter with his son when there was a multi-million dollar supermarket to run?

Hamed also intimates that Yusuf’s testimony is not enough to prove an agreement because Mohammad Hamed died several years ago and is not here to give his testimony about it. Mohammad Hamed gave a deposition in this case in 2014, and was not asked about the GRTs agreement by either counsel. If he disagreed with Yusuf’s testimony about the GRTs agreement, he surely could have prepared and signed a declaration to that effect before he passed away in June 2016. In any event, any suggestion by Hamed that United may not prove an agreement through the testimony of Yusuf is mistaken, because the Virgin Islands has not enacted a so-called Deadman’s Statute that would bar a party from proving by his or her own testimony a transaction with a deceased person. The Courts and commentators have recognized that Deadman’s Statutes, in the few jurisdictions where they still exist, “deliberately impede[] the court’s search for the truth on the grounds that judges and jurors are not capable of properly assessing credibility.” *Cortland and Walston & Co.*, 340 F. Supp. 1076 (S.D. N.Y. 1972). By declining to enact such a statute, the Legislature here has made clear its judgment that triers of fact are indeed “capable of properly assessing credibility” in cases where one party is testifying to a transaction with a deceased party, and that agreements of this kind may be proved by the testimony of the living party. The absence of a Deadman’s Statute in the Virgin Islands Code or Rules of Evidence therefore dooms any argument that Mr. Yusuf’s testimony about the existence of the agreement is legally ineffective to prove it.<sup>6</sup>

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<sup>6</sup>Dead man’s statutes or rules have been subjected to withering criticism by nearly all of the

#### **IV. Hamed's Argument that the Parties' Course of Dealing Is Inconsistent with the GRTs Agreement is Meritless.**

Hamed also argues that the course of dealing between the parties belies the agreement because John Gaffney testified that in the period 2002 to 2012 “sometimes the Partnership paid the United Shopping Center GRTs and sometimes not.” *See* Hamed’s Motion at p. 29. That is a mischaracterization of Gaffney’s testimony. What Gaffney actually testified to on examination by Hamed’s counsel is that he did not know at all whether United’s GRTs from 2002 to 2006 were paid for out of United’s Plaza Extra accounts or its landlord tenant accounts. *See* Exhibit 1, p. 135. He testified that he had “some recollection” of reviewing records for the 2007 to 2011 time period,<sup>7</sup> and that he “saw evidence of payments coming from the Plaza – and I’m going to just say Plaza cash accounts,” with an “occasional payment out of the shopping center account” during those years. *Id.* at 135; *see also* Exhibit 1, p. 136 (testifying that when he began working at Plaza Extra in 2012, he “was aware of the fact that they were paying for the gross receipts taxes over in St. Thomas, because that’s where [Margie Soeffing] was located and that’s where Mr. Yusuf was located at that time too”). Previously, John Gaffney testified pursuant to a Declaration made in 2016 that “Since I began providing accounting services with respect to the Plaza Extra Stores, I have never found any evidence that the United Shopping Center ever previously paid or reimbursed Plaza Extra-East for such gross receipts taxes [for the Shopping Center] and insurance.” *See* **Exhibit 14**—Excerpts from Yusuf’s

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commentators, and they are now rare in the fifty states. *See Courtland, supra*, at 1091-1092; *State Farm Fire & Cas. Co. v. Prinz*, 743 S.E.2d 907, 912, 914-915 (W. Va. 2013). Most states that enacted dead man’s statutes years ago have long since abolished them, and as of 2013 “only nine states” still retained them in some form. *See State Farm Fire & Cas. Co., supra* at 915.

<sup>7</sup>The 2007 to 2011 period is shown in “light blue” on the chart created by Hamed’s counsel and marked in the January 2020 depositions as Exhibit 1. Gaffney’s testimony about the period shown in “light blue” is therefore testimony about the 2007 to 2011 time period. *See* Exhibit 1, p. 135.

Opposition to Motion to Remove Liquidating Partner, including Gaffney Declaration as Exhibit 6 thereto. The fact that occasionally United may have paid its own GRTs in the 2006 to 2011 time period from its tenant accounts hardly undercuts the existence of an agreement. At most, it means that the occasional payments from tenant accounts in that period would be reimbursable to United in this Wind Up proceeding if it had filed a claim for reimbursement for them.

More importantly, Hamed fails to acknowledge the most relevant evidence as to the partners' course of dealings—that Waheed (“Willie”) Hamed signed checks with NejeH Yusuf to pay for the collective GRTs for the stores as well as the rental income from the Shopping Center. A representative example are the actual checks for February and March of 2012 (before the lawsuit was filed). *See* Exhibit 14—Plaza Extra Partnership Checks signed by Willie Hamed and NejeH Yusuf to reimburse for payment of the collective GRTs for the supermarket and Shopping Center paid with credits cards. Clearly Hamed is aware of these payments as the documents bear the Hamed bates numbers—HAMD604078 thru HAMD604086. Additional checks signed by Waleed (“Wally”) Hamed to Inter Ocean Insurance dating back to July 2003 further reflect the course of dealing between the partners to pay for expenses such as insurance at the Shopping Center. *Id.* at HAMD604050, HAMD604053, HAMD604058, HAMD604067, HAMD604075. The payment of the collective GRTs (as well as other expenses) with the blessing and acknowledgement of the Hameds, before the lawsuit was filed, demonstrates that the Partners acted on the agreement for the entire duration of the Partnership.

John Gaffney did not become employed by Plaza Extra East until October 2012, and did not begin treating the Plaza Extra business as a Partnership for tax and accounting purposes until 2014, at which time he made the Partnership accounting treatment retroactive to January 2013.

See Exhibit 1, p. 122, 136. His predecessor, Margaret Soeffing, was making accounting determinations at a time before Judge Brady made his preliminary finding in April 2013 that a Partnership existed and was enforceable. Contrary to Hamed's suggestions in his Motion, all of her accounting treated the supermarket business and the shopping center business as being operated under United Corporation, and she could not possibly have been making any determinations about what might or could be charged to or owed to a Partnership. See Exhibit 1, pp. 141 (testimony of John Gaffney) (“[i]t’s all United Corporation,” and “everything that was paid on behalf of the shopping center was a legitimate gross receipts tax for purposes of the [United] tax return”). Furthermore, anything Ms. Soeffing was doing from an accounting standpoint could not have covered the years 2002 to 2012, as Hamed implies in his Statement of Undisputed Material Fact No. 28, *infra*, because she was only employed by United for a brief period from June 2011 and to mid-2013, a few months after John Gaffney joined. See **Exhibit 13**, Declaration of Nejeah Yusuf.

As for Mr. Yusuf, he is not an accountant, *see* Exhibit 1, p. 29, and nothing in his testimony suggests that he concerned himself to any significant degree with how Ms. Soeffing was treating the Shopping Center GRTs payments made from Plaza accounts for United's internal accounting purposes during her brief tenure at United. But Gaffney's testimony is that Mr. Yusuf did instruct her to make those GRTs payments from Plaza accounts, *see id.* at 131, and that Mr. Yusuf also instructed her when the issue arose that the payments of United Shopping Center GRTs should be expensed to Plaza Extra accounts and not United Shopping Center tenant accounts, *see id.* at 139. Far from being at odds with the agreement to pay Shopping Center GRTs, Mr. Yusuf's directives to Ms. Soeffing that Gaffney testified to would be entirely consistent with it.

Hamed also asserts in his Statement of Undisputed Material Fact Nos. 25 and 26 that under generally accepted accounting principles (“GAAP”), oral intra-company agreements or oral agreements between a company and a third party regarding who should be charged for an expense that was paid by one of them may not be given effect in financial statements. In response to a question from counsel for Hamed about how GAAP would treat an oral agreement unsupported by any paperwork, Mr. Gaffney stated that this kind of thing “happens in GAAP all the time” and is “usually covered in notes to the financial statements.” *See* Exhibit 1, pp. 146-147. GAAP’s only relevance to this issue is that once an issue about an oral agreement is resolved by the parties or the Master, GAAP would require that an appropriate journal entry be made to document the resolution. *See id.* at 147.

In the Partnership accounting that began in 2013, Gaffney handled the payments of Shopping Center GRTs as a “due to/from item,” leaving the issue of whether United or the Partnership was responsible for them to be resolved at a later time by the parties or the Master; and that treatment is entirely consistent with GAAP. *See id.* at 131-132, 143, 147-148. In treating this as a due to/from item, Gaffney was expressing no opinion of his own on whether the Partnership or United should ultimately be held responsible for the payments of shopping center GRTs, but was instead leaving that for others to resolve by “argu[ing] the point.” *See id.* at 145-146. Hamed’s counsel persistently tried to get Gaffney to agree that GAAP supported Hamed’s position, but was unsuccessful. It is clear from Hamed’s counsel extensive cross-examination on this subject that Gaffney did not believe that either GAAP or the history of the accounting treatment of this item dictated any particular resolution of this open issue, and it is just as clear that Gaffney would not have left this issue open for later resolution if he believed that GAAP

dictated a particular result. *See generally* Exhibit 1, pp. 130-151.

If Hamed's argument that GAAP does not permit the recognition of oral agreements, or oral agreements that were consistently not recognized in the accounting, were correct, he would be shooting himself in the foot in any event. For that would mean that no aspect of the oral Partnership agreement between Hamed and Yusuf regarding the Plaza Extra supermarkets can now be treated in accounting terms as a Partnership, especially since the supermarket business was consistently accounted for as a United Corporation business from its inception through 2012. And if the decision to begin treating the supermarket business as a Partnership for accounting and tax purposes for 2013 was illegitimate, then Hamed's claim H-150 would also be illegitimate because how the GRT payments should be treated would simply be an internal United accounting issue.

#### **V. United's Counter-Statement of Undisputed Material Facts and Its Response to Hamed's Statement of Undisputed Material Facts**

Below is United's Counter-Statement of Undisputed Material Facts ("Counter-SUMF") followed, in tabular form,<sup>8</sup> by Hamed's Statement of Undisputed Material Facts ("SUMF") and United's response to them. Completely apart from whether they are true or false, many of Hamed's tediously long statements of fact are immaterial to the narrow issues raised by his motion. It is also worth noting that Hamed has buried in his SUMF (at statement number 33, *infra*) a legal conclusion regarding the provision in section 71 of the Virgin Islands Revised Uniform Partnership

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<sup>8</sup>United has placed Hamed's SUMF and its responses in table format for the convenience of the Master in reviewing Hamed's statements and United's responses to each without having to flip back and forth between Hamed's motion and United's opposition. The use of the table format adds to the length of this opposition, but United hopes that this disadvantage is outweighed by the greater ease of comparing statements and responses. United has not reproduced and attached the exhibits that appear in Hamed's SUMF, although some of what Hamed attached as exhibits appears in United's own exhibits.

Act (“RUPA”) that “[e]ach partner has equal rights in the management and conduct of the partnership business.” 26 V.I.C. § 71(f). Hamed appears to assert, incorrectly, that this provision of RUPA may not be modified by the parties, and that Yusuf and Hamed did not have a different agreement regarding the management of the partnership business. Hamed does not develop this legal contention in the body of his Motion, but to the extent that it has any relevance to the issues raised by his motion, United will address why it is mistaken. The section 71(f) provision is drawn verbatim from RUPA section 401, Partner’s Right and Duties. The RUPA Comment to section 401 states unequivocally that this is one of the “default rules that govern the relations among partners” and that it (along with every other rule set forth in that section) is “subject to contrary agreement of the partners.” *See Exhibit 4*, RUPA Section 401 and excerpt from Comments. Moreover, 26 V.I.C. § 4 provides that “[e]xcept as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement.” Subsection (b) does not include section 71(f) in its enumeration of the ten items that may not be varied by agreement. *See also Exhibit 5*, Prefatory Note to RUPA, p. 2 (stating that RUPA “gives supremacy to the partnership agreement in almost all situations”). Judge Brady found in a pair of 2017 opinions that under the partnership agreement, Yusuf was the managing partner and in charge of the finances of the partnership. *See Hamed v. Yusuf*, 69 V.I. 168, 175, n.4 (V.I. Super. 2017) (finding that “Yusuf acted as the managing partner” and that Hamed was “completely removed from the financial aspects of the business”) and 69 V.I. 189, 215 (V.I. Super. 2017) (“As managing partner, . . . [i]t was Yusuf’s responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners”). Hamed’s contention that Hamed and Yusuf had equal roles in the management of the Partnership is therefore mistaken.

### **A. United's Counter-Statement of Undisputed Material Facts.**

1. When the Partnership between Mr. Yusuf and Mohammad Hamed was formed in 1986, Mr. Yusuf knew and told Mr. Hamed that the Partnership would have to borrow money in order to realize the objective of opening a supermarket in St. Croix, that the lender would want his (Yusuf's) home as collateral for the loan, and would also insist on a personal guarantee, and that he (Yusuf) was the partner who would have to manage the supermarket. *See* Exhibit 1, pp. 10, 21 (testimony of Fathi Yusuf).

2. Mr. Yusuf and Mohammad Hamed agreed when the Partnership was formed that it would be responsible for all of the gross receipt taxes or GRTs to the Virgin Islands government, including the GRTs from United's rental income from the United Shopping Center and the GRTs from store income. *See* Exhibit 1, p. 11 (testimony of Fathi Yusuf).

3. The GRT rate was then 4%, and later increased to 5%. *See* Exhibit 1, p. 10 (testimony of Fathi Yusuf). The portion of the GRT on rental income was very small in comparison to the portion on supermarket income. *See id.* at 10, 17 (testimony of Fathi Yusuf).

4. From 1986 until the time of the fire that burned down the Plaza Extra East store and other bays at the shopping center, the GRT for rental income earned from tenants at the United Shopping Center was paid from Plaza Extra accounts. *See* Exhibit 1, p. 11 (testimony of Fathi Yusuf).

5. Mr. Yusuf moved to St. Thomas after the fire in 1992 in order to open the Plaza Extra Tutu Park store. *See* Exhibit 1, p. 11 (testimony of Fathi Yusuf).

6. Waleed Hamed was placed in charge of the Plaza Extra East store when it reopened,<sup>9</sup> and Mr. Yusuf expected and believed that the Partnership would continue paying the GRT on United's rental income in accordance with his agreement with Mohammad Hamed. *See* Exhibit 1, p. 13 (testimony of Fathi Yusuf); *see also* Exhibit 1, p. 43-44 (testimony of Mike Yusuf). Following his return to St. Croix and the filing of this lawsuit in 2012, Mr. Yusuf first discovered from a review of records that gross receipt taxes for rental income had been paid from United's tenant accounts, rather than Plaza Extra accounts, up to 2001. *See id.* at 13, 17 (testimony of Fathi Yusuf); Exhibit 3.

7. United's Claim Y-5 is supported by records showing that it paid from its tenant account at Community Bank a total of \$60,586.96 in GRT on rental income earned from tenants at the United Shopping Center that should have been paid by the partnership. *See* **Exhibit 7**, checks, gross receipts forms, and monthly tenant account reconciliations for 1996 - 2001 showing payment of gross receipt taxes from United's tenant account from 1993 to 2001; **Exhibit 8**, Community Bank account records from 1996 showing checks corresponding to GRT payments for 1996; **Exhibit 9**, 1995 monthly tenant account reconciliations; and **Exhibit 10**, monthly tenant account reconciliations for 1997 and 1998, and corresponding Community Bank statements for 1997 and 1998.

8. United resumed paying Shopping Center GRTs in 2001 for United's rental income from Plaza Extra Partnership accounts, and continued doing so until Fathi Yusuf became the sole

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<sup>9</sup>The Plaza Extra East store reopened in May, 1994, *see* Exhibit 6, excerpts of Fathi Yusuf's August 12, 2014 Declaration, p. 3, ¶6, and Waleed Hamed was placed in charge of that store, *see* Exhibit 3, January 22, 2020 Deposition, p. 10 (testimony of Fathi Yusuf).

owner of the Plaza Extra East store in March 2015, pursuant to Judge Brady's Wind Up Order. *See Exhibit 11*, Hamed's Chart marked as Deposition Exhibit 1 in the January 2020 depositions.

9. Waleed Hamed was still in college when Mr. Yusuf reached his agreement with Mohammad Hamed regarding the payment of gross receipt taxes, and was not present when that agreement was made. *See Exhibit 1*, p. 24 (testimony of Fathi Yusuf). Mufeed Hamed was still a "kid" when the agreement was made. *See id.* at pp. 114-115.

10. Waheed ("Willie") Hamed signed checks with NejeH Yusuf to pay for the collective GRTs for the stores as well as the rental income from the Shopping Center. A representative example are the actual checks for February and March of 2012 (before the lawsuit was filed). *See Exhibit 14—Plaza Extra Partnership Checks signed by Willie Hamed and NejeH Yusuf to reimburse for payment of the collective GRTs for the supermarket and Shopping Center paid with credits cards.*

11. Hamed is aware of these payments for the collective GRTs as reflected in Exhibit 14 as the documents bear the Hamed bates numbers—HAMD604078 thru HAMD604086.

12. Additional checks signed by Waleed Hamed to Inter Ocean Insurance dating back to July 2003 further reflect the course of dealing between the partners to pay for expenses such as insurance at the Shopping Center. *Id.* at HAMD604050, HAMD604053, HAMD604058, HAMD604067, HAMD604075.

13. The payment of the collective GRTs (as well as other expenses) with the blessing and acknowledgement of the Hameds, before the lawsuit was filed, demonstrates that the Partners acted on the agreement for the entire duration of the Partnership. *See Exhibit 14.*



	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
	<p>have been paid by the partnership?</p> <p>A. It should have. That's the agreement between me and Mr. Mohammad Hamed, is the rent, it was very, very low, \$3 a square foot. . . .</p> <p>* * * *</p> <p>Q. [Mr. Hartmann] Let's talk a little bit about the original deal back with you and Mr. Mohammad Hamed, okay? Back when -- when you say that you agreed about gross receipts tax and insurance, that you weren't going to pay it, okay?</p> <p>When was that? Do you remember, was that like in 1986 when you first started?</p> <p>A. [FATHI YUSUF] Before 1986.</p> <p>Q. Before there was a partnership –</p> <p>A. Yes. (<b>Exhibit 3</b>)</p>	
<p>3. HCSOF#3 as to Opp. to Y-5</p>	<p>According to Fathi Yusuf, Mohammad Hamed did not agree to have the Partnership pay the gross receipt taxes of the United Shopping Center. Fathi Yusuf testified in his 2020 deposition that Mr. Mohammad Hamed never specifically agreed to have the Partnership pay the gross receipt taxes for the Yusuf family-owned United Shopping Center, rather “[w]hat he [Mr. Hamed] said, he never say nothing. Whatever I say goes. And he [Mr. Hamed] accepted it.”</p> <p>Q. [Mr. Hartmann]..... Let's talk a little bit about the original deal back with you and Mr. Mohammad Hamed, okay?</p>	<p>Disputed. Mr. Yusuf’s testimony quoted in statement of undisputed fact no. 2 unequivocally demonstrates that the agreement was made. The full context of the Yusuf testimony referenced in this statement of undisputed fact makes it clear that Mr. Yusuf simply meant that Mohammad Hamed did not object to or question him about the proposed obligation before Hamed assented to it.</p>

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
	<p>Back when -- when you say that you agreed about gross receipts tax and insurance, that you weren't going to pay it, okay? When was that? Do you remember, was that like in 1986 when you first started?</p> <p>A. [FATHI YUSUF] Before 1986.</p> <p>Q. Before there was a partnership –</p> <p>A. Yes.</p> <p>* * * *</p> <p>Q. Tell me a little bit about how that took place. Like, if you remember kind of like what he said and what you said.</p> <p>A. What he said, he never say nothing. Whatever I say goes.</p> <p>* * * *</p> <p>A. And he accepted it. (<b>Exhibit 3</b>)</p> <p>Later in his deposition in 2020, Mr. Yusuf reiterated the fact that Mr. Mohammad Hamed never said anything in response to Yusuf’s alleged agreement that the Partnership would pay for the United Shopping Center’s gross receipt taxes.</p> <p>Q. [Mr. Hartmann]-- you said to him, The grocery store's got to pay the receipts, not only for the grocery store, but also for my -- what your lawyer called the part of United that is just the Yusuf, I'll call it Yusuf's United. So the gross receipts tax would be paid not only for the grocery store, but also for Yusufs' United?</p> <p>A. [FATHI YUSUF] Um-hum.</p>	<div data-bbox="1114 474 1533 705" style="border: 1px solid red; padding: 5px; color: red;"> <p>Hamed SUMF#3, is the same as in HCSOF#3 as to Y-5. United's Reply is the same.</p> </div>

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	<p>Q. And you said that you told him that?</p> <p>A. Yeah.</p> <p>Q. And he never said anything?</p> <p>A. He never said. And then I explain to him. <b>(Exhibit 3)</b></p>	
<p>4. HCSOF#4 as to Opp to Y-5</p>	<p>It is undisputed that no one other than Fathi Yusuf has testified that there was an agreement between Yusuf and Mohammad Hamed to have the Partnership pay the GRTs of the United Shopping Center. For example, Waleed "Wally" Hamed said his father did not tell him of such an agreement and he was unaware that this agreement existed.</p> <p>Q. [Ms. Perrell]. . . .The first question I have is, were you aware of the agreement between Mr. Fathi Yusuf and your father, Mohammad Hamed, that Mr. Yusuf testified to that the grocery store operations, the partnership, would ultimately pay all of the gross receipts for the shopping center? Were you aware of that?</p> <p>A. [WALLY HAMED] No.</p> <p>* * * *</p> <p>Q. [Ms. Perrell] ..... Did you have any conversations -- so if you weren't aware of it, that means you also, just to clarify, didn't discuss that issue with your father, correct?</p> <p>A. [WALLY HAMED] That's correct. <b>(Exhibit 3)</b></p>	<p>Undisputed.</p>

Hamed SUMF#4, is the same as in HCSOF#4 as to Y-5. United's Reply is the same.

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
<p>5.</p> <p>HCSOF#5 as to Opp. to Y-5</p>	<p>It is undisputed that Maher “Mike” Yusuf, Fathi Yusuf’s oldest son and current President of the United Corporation, did not know of the alleged agreement between his father and Mohammad Hamed to have the Partnership pay the GRTs of the United Shopping Center.</p> <p>Q. [Ms. Perrell] Did you have any conversations with your father prior to the time that he went over to St. Thomas about how the gross receipts issues were supposed to be resolved with the shopping center?</p> <p>A. [MAHER YUSUF] No.</p> <p>* * * *</p> <p>Q. All right. And when you issued the check, did you have any idea whether there had already been a prior arrangement between your father and Mr. Hamed?</p> <p>A. No, I didn't know the details back then. <b>(Exhibit 3)</b></p>	<p>Undisputed.</p>
<p>6.</p> <p>HCSOF#6 as to Opp. to Y-5</p>	<p>It is undisputed that Mufeed “Mafi” Hamed, who worked in the Plaza Extra East store, did not know of the alleged agreement between his father and Fathi Yusuf to have the Partnership pay the GRTs of the United Shopping Center. Further, Mafi Hamed stated that his father would have told him had such an agreement existed because his father discussed everything owed to Mr. Yusuf with him and his brothers.</p> <p>Q. [Ms. Perrell]. . . You're not aware -- you were not present during the meeting that Mr. Yusuf had with Mr. Mohammad Hamed, your father, that he testified about</p>	<p>Undisputed that Mufeed Hamed claims he did not know of the GRTs agreement, but disputed that Mohammad Hamed would have told him or his sons about the agreement. The GRTs were in dollar terms a relatively minor item compared to the operation of the Plaza Extra business and to Mohammad Hamed’s 50% share of that income. <i>See</i> Exhibit 1, p. 17 (testimony of Fathi Yusuf). Mufeed Hamed testified that he was still a “kid” when the agreement was made. <i>See id.</i> at pp. 114-115.</p>

Hamed SUMF#5, is the same as in HCSOF#5 as to Y-5.  
United's Reply is the same.

	<b>HAMED’S SUMF</b>	<b>UNITED’S RESPONSE TO SUMF</b>
	<p>earlier regarding how the gross receipts for the shopping center were to be paid; isn't that correct?</p> <p>A. [MAFI HAMED] Yeah, that's correct, but just because he says it, that doesn't mean it's true.</p> <p>Q. But you weren't present for the conversation, sir, you don't know, correct?</p> <p>A. No, I don't know.</p> <p>Q. All right. And you never discussed that with your father, correct?</p> <p>A. No. My father would discuss everything that was owed to Mr. Yusuf and we would know about it.</p> <p>* * * *</p> <p>A. [MAFI HAMED] He wouldn't keep anything out. He wouldn't have these secret meetings. He wouldn't have any of these other situation. My father's an honorable man. He's an honest man, and he was to his word. (<b>Exhibit 3</b>)</p>	<div data-bbox="1094 401 1510 583" style="border: 1px solid red; padding: 5px; color: red;"> <p>Hamed SUMF#6, is the same as in HCSOF#6 as to Y-5. United's Reply is the same.</p> </div>
	<p><b>Rationale for Partnership to Pay United Shopping Center’s GRTs &amp; Property Insurance</b></p>	
<p>7. HCSOF#7 as to Opp. to Y-5</p>	<p>Mr. Yusuf testified in his January 21, 2020 deposition that in the beginning of the Partnership he told Mr. Hamed that he would rent the space for the Plaza Extra East store to the Partnership for a low rate of \$3 per square foot. In exchange for that rental rate, Mr. Yusuf stated that the Partnership would allegedly have to pay for the Yusuf family-owned United Shopping Center’s gross receipt</p>	<p>Disputed, because the paragraph that purports to summarize the testimony of Mr. Yusuf does not state that he or United is offering anything in “exchange for” the promise of the Partnership to pay GRTs.</p>

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	<p>taxes and insurance.</p> <p>Q. [Ms. Perrell] So when I say United, I'm talking about United that is your family's entity that owns real estate and the shopping center and so forth.</p> <p>* * * *</p> <p>Q. [Ms. Perrell] . . . Has United made a claim in this lawsuit –</p> <p>A. [FATHI YUSUF] Yes.</p> <p>Q. -- to recover gross receipts that has been paid by the United on behalf of receipts from tenants that United believes should have been paid by the partnership?</p> <p>A. It should have. That's the agreement between me and Mr. Mohammad Hamed, is the rent, it was very, very low, \$3 a square foot. . . .</p> <p>* * * *</p> <p>A. [FATHI YUSUF] . . . I know we're going to face a project in the millions, at least \$3- to \$4 million. And I know my brother-in-law have nothing beside what he save, 400,000. So for us to go into a big business way above our financial capacity, we have no choice but to hit a lending institute. And from experience, nobody will lend any money without taking United Shopping Center as a collateral, and the house, and the owner personal financial guarantee. And based on that, I say, Listen, I am giving you this \$3 a square foot, but I'm not paying no insurance, I'm not paying no gross receipt. The store have to take care of it. <b>(Exhibit 3)</b></p>	<div data-bbox="1219 457 1572 663" style="border: 1px solid red; padding: 5px; color: red;"> <p>Hamed SUMF#7, is the same as in HCSOF#7 as to Y-5. United's Reply is the same.</p> </div>

	HAMED'S SUMF	UNITED'S RESPONSE SUMF
8. HCSOF#8 as to Opp. to Y-5	<p>Contrary to Fathi Yusuf's deposition testimony on January 21, 2020, on April 27, 2015, Judge Brady made a factual finding in his Order that rent from 1986-2004 was charged at 5.55 per square foot for the Plaza Extra East store.</p> <p>Yusuf specifically addresses how rent is calculated (\$5.55 per square foot), stating that the past due rent is "the same as the old one," referring to the 1986 - 1994 rental amounts. . . . Yusuf presents more than sufficient evidence that the Partnership's arrangement with United from 1986 to 1994 was identical, in terms of past due rent, as the arrangement between 1994 through 2004. (<b>Exhibit 12</b>, p. 9)</p>	<p>Disputed that there is any substantive contradiction between Yusuf's January 21, 2020 deposition testimony and Judge Brady's finding, and disputes that this alleged discrepancy is material to any issues in this motion. Yusuf testified in his 2014 deposition that the rental rate of \$5.55 per square foot in the 1986 to 1994 time period was made up of two components: \$3.00/sq. ft. in pure rent charge and \$2.55/sq. foot in maintenance charges. <i>See Exhibit 2</i>, April 2, 2014 Deposition, p. 83 (testimony of Fathi Yusuf). He spoke imprecisely in this past January's depositions when he referred to the \$3.00/sq. foot as the rent without clarifying that the total rent was \$5.55 per square foot. That minor imprecision does not change the substance of his testimony in the January deposition that the rent being charged for the 1986 to 1994 time period was below market rates. <i>See also Exhibit 6</i>, August 12, 2014 Declaration of Fathi Yusuf, ¶5 (referring to the rent in the initial period as \$5.55/sq. foot rent and describing it as a below market rate).</p>
9. NOT incl. in Opp. to Y-5	<p>Judge Brady also found in his April 27, 2015 Order that rent from 2012-March 8, 2015 was to be charged at a rate of \$10.12 per square foot (Plaza Extra East grocery store is 69,680 square feet and rent was \$58,791.38 per month) (<b>Exhibit 12</b>, pp. 2, 11-12), the same amount of rent charged for 2004-2011. (<b>Exhibit 12</b>, p. 10)</p>	<p>Disputed. Judge Brady never found in his April 27, 2015 order that the parties agreed to a \$10.12 per square foot rental rate for the 2004 to 2011 and 2012 – 2015 periods. The agreed-upon rental rate for the 2004 to 2011 period was not a price per square foot rate, but instead a formula that</p>

Hamed SUMF#8, is the same as in HCSOF#8 as to Y-5. United's Reply is the same.

Hamed SUMF#9 is NOT included in his Opposition to Y-5. However, United incorporates its response for consideration in Y-5.

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
	<p>The proof before the Court is clear as to United's claim that rent is due for Bay No. 1 at the rate of \$58,791.38 per month from January 1, 2012 to September 30, 2013. . . .[T]he Liquidating Partner, under the supervision of the Master, is authorized and directed to pay. . . additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month, until the date that Yusuf assumed full possession and control of Plaza Extra - East. (<b>Exhibit 12</b>, pp. 11- 12)</p>	<p>calculated the annual rents as a percentage of annual sales at the Plaza Extra Tutu Park store and then applied that percentage to the Plaza Extra East sales to determine rent. <i>See Exhibit 12</i>, September 5, 2013 Declaration of Fathi Yusuf, ¶6. Judge Brady found in his April 27, 2015 Order that the parties agreed to this formula for calculating rent, and he used it to calculate rent due for the 2012 to 2015 time period. <i>See Hamed’s Exhibit 12</i>, p. 11.</p>
<p>10. HCSOF#9 as to Opp. to Y-5</p>	<p>On January 21, 2020, Mr. Yusuf also testified to another alleged trade-off for the agreement that the Partnership would pay the gross receipt taxes and property insurance for the Yusuf family-owned United Shopping Center. In exchange for paying the gross receipt taxes for the Yusuf family owned United Shopping Center, the Partnership would get the full depreciation of the United Shopping Center on its taxes.</p> <p>Q. [Mr. Hartmann]-- you said to him, The grocery store's got to pay the receipts, not only for the grocery store, but also for my -- what your lawyer called the part of United that is just the Yusuf, I'll call it Yusuf's United. So the gross receipts tax would be paid not only for the grocery store, but also for Yusufs' United?</p> <p>A. [FATHI YUSUF] Um-hum.</p> <p>Q. And you said that you told him that?</p> <p>A. Yeah.</p>	<p>Disputed, because the summary of the quoted testimony is inaccurate, insofar as Mr. Yusuf did not use the words “trade-off” or “exchange” to characterize depreciation of the United Shopping Center.</p>

Hamed SUMF#10, is the same as in HCSOF#9 as to Y-5. United's Reply is the same.

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
	<p>Q. And he never said anything?</p> <p>A. He never said. And then I explain to him.</p> <p style="text-align: center;">* * * *</p> <p>A. All my building depreciation, two-and-a-half -- two-and-a-half, \$3 million, it being wiped out, credit, to the income of this partnership. So Mohammad Hamed, he getting depreciation on something that he don't even own.</p> <p>Q. Could you use a depreciation at the time?</p> <p>A. Sure.</p> <p>Q. Did you have enough income?</p> <p>A. Yeah.</p> <p style="text-align: center;">* * * *</p> <p>A. All the -- my building value, it being wiped out completely to the partnership. <b>(Exhibit 3)</b></p>	
<p>11. HCSOF#10 as to Opp. to Y-5.</p>	<p>In an earlier deposition, on April 2, 2014, Fathi Yusuf testified under oath that he and Mr. Hamed were partners, but there were a lot of conditions Mr. Hamed had to agree to as a basis of that partnership. Mr. Yusuf stated that “I have the final word,” with respect to the Partnership. Mr. Yusuf explained that the United Corporation was supposed to have an office free of charge in the supermarket and the Partnership would pay all of the gross receipts and insurance for the entire building of the United Shopping Plaza. Yusuf explained it as a trade-off: the Partnership took the depreciation of the whole United Shopping</p>	<p>Disputed, because the summary of Yusuf’s testimony is incomplete and inaccurate. The summary, for example, omits the following: the fact that Mr. Yusuf was giving a personal guaranty, that he used his home as collateral for the financing that would be needed to establish the supermarket business; and that he would be charging the partnership a below-market rental rate. <i>See</i> Exhibit 1, pp. 9-10; Exhibit 2, p. 53.</p>

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	<p>Plaza on its taxes in exchange for the Partnership paying the United Shopping Center's the gross receipts taxes and insurance.</p> <p>[FATHI YUSUF] I have, with this gentleman, a shake-hand commitment, and I live up to it up to now, just to show you how clean I am and how decent I am, this man never have my signature as a partner, but I have never deny him as a partner in the profit. But there is a lot of condition, he have to live up to it.</p> <p>* * * *</p> <p>Q. [Attorney Holt] Are there some other conditions to this partnership agreement?</p> <p>A. [FATHI YUSUF] No. The condition is, I have the final word. It's I am obligated to consult with him, if I see it's important for me to consult. I was suppose to be, after 1993, I was supposed to have an office within the supermarket free of charge. I was -- he was supposed to, the Plaza Extra was supposed to pay all the gross receipt from January 1st, 1994 up to present, and it was covering in the building, the entire building of United Shopping Plaza. My duty was, is to go and commit the same thing we ensure, to bring money to Mr. Hamed an extent, which cost him nothing. It cost me personal guarantee, and it costing me everything I own except my children and my wife.</p> <p>* * * *</p> <p>Q. Okay. So the Plaza Extra stores would pay for insurance on the whole shopping</p>	<div data-bbox="1110 401 1459 615" style="border: 1px solid red; padding: 5px; color: red;"> <p>Hamed SUMF#11, is the same as in HCSOF#10 as to Y-5. United's Reply is the same.</p> </div>

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	<p>center?</p> <p>A. Yes.</p> <p>Q. And the Plaza Extra Supermarket would pay the gross receipts, not just on the grocery store profits, but on the rent?</p> <p>A. Yes.</p> <p>* * * *</p> <p>A. One more item. The United Shopping Plaza was using the entire shopping center value depreciation to offset any income tax, which that, in return, it will give you greater saving than the insurance and the gross receipt.</p> <p>Q. So there's a tradeoff you're giving them –</p> <p>A. It's a tradeoff, yes.</p> <p>Q. You're giving them depreciation; they're paying gross receipts and insurance?</p> <p>A. Yes. Yes, sir. (<b>Exhibit 4</b>)</p>	
<p>12. HCSOF#11 as to Opp. to Y-5.</p>	<p>It is undisputed that Fathi Yusuf and the United Corporation have not provided any evidence that the Partnership got the depreciation value of the United Shopping Center on its taxes from 2012-March 8, 2015, the time period of this claim. (<b>Exhibit 8</b>)</p>	<p>United does not dispute that the Partnership tax returns for the 2013 to 2015 tax years do not show a deduction for depreciation for the United Shopping Center. From tax years 2013, John Gaffney began preparing separate United and Partnership tax returns, and building depreciation would not be shown as a deduction on those returns as it had been when supermarket income was being reported on United Corporation returns. See Exhibit 1, p. 122.</p>

Hamed SUMF#12, is the same as in HCSOF#11 as to Y-5. United's Reply is the same.

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	<b>1986-1992 Payment of United Shopping Center's GRTs</b>	
13. HCSOF#12 to Opp. to Y-5.	<p>From 1986 to 1992, Fathi Yusuf testified in his 2020 deposition that the Partnership paid for the Yusuf family-owned United Corporation Shopping Center's gross receipt taxes.</p> <p>Q. [Ms. Perrell] How did the gross receipts tax for the shopping center get paid from 19 -- 1986 until the time of the fire?</p> <p>A. [FATHI YUSUF] It's being paid by the -- by the partnership.</p> <p>* * * *</p> <p>Q. Mr. Hartmann]. . . And who -- and who -- after you opened up in '86, who took -- physically took care of the taxes? Who wrote the check, etcetera?</p> <p>A. Write the check, sometime I write it. Sometime Wally write it.</p> <p>Q. Wrote the check?</p> <p>A. Yeah. (<b>Exhibit 3</b>)</p>	<p>Undisputed.</p> <div style="border: 1px solid red; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Hamed SUMF#13, is the same as in HCSOF#12 as to Y-5. United's Reply is the same.</p> </div>
14. HCSOF#13 as to Opp. to Y-5.	<p>Fathi Yusuf contradicted his own testimony. In an earlier deposition in 2014, Yusuf testified that the Partnership was not supposed to be paying the United Shopping Center's GRTs until 1994.</p> <p>Q. [Attorney Holt] Are there some other conditions to this partnership agreement?</p> <p>A. [FATHI YUSUF] No. The condition is, I have the final word. It's I am obligated to consult with him, if I see it's important for</p>	<p>Disputed, because there is no contradiction. From context, it is clear that the Yusuf referred to 1994 because that is when, unbeknownst to him, the practice that had been in effect from 1986 to 1992 (of the Partnership paying United's GRT's) ceased, and United began paying its own GRTs.</p>

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	<p>me to consult. I was suppose to be, after 1993, I was supposed to have an office within the supermarket free of charge. I was -- he was supposed to, the Plaza Extra was supposed to pay all the gross receipt from January 1st, 1994 up to present, and it was covering in the building, the entire building of United Shopping Plaza. <b>(Exhibit 4)</b></p>	<div style="border: 1px solid red; padding: 5px; color: red;"> <p>Hamed SUMF#14, is the same as in HCSOF#13 as to Y-5. United's Reply is the same.</p> </div>
<p>15. HCSOF#14 as to Opp. to Y-5.</p>	<p>It is also undisputed that Wally Hamed did not write Partnership checks for the 1986 to 1992 United Shopping gross receipt taxes because he testified in his deposition that he did not have checking writing authority until 1994 on the Partnership's Plaza Extra accounts.</p> <p>Q. [Ms. Perrell]. . . . And so before Mr. Yusuf left, did you have anything to do with the writing of any checks for the gross receipts, either for the grocery store operations, or any other gross receipts taxes?</p> <p>A. [WALLY HAMED] Like I told you, I had nothing to with the shopping center whatsoever. And as far as me signing checks, we opened Plaza Extra East in 1986. I didn't have any signing check -- I mean, I had no authority to sign checks. Fathi was the only one who signed the checks –</p> <p style="text-align: center;">* * * *</p> <p>A. -- for the Plaza Extra East.</p> <p>Q. [Ms. Perrell] When was it you were given authority to sign checks?</p> <p>A. [WALLY HAMED] Sometime probably 3-4 years after that.</p>	<p>Disputed. Mr. Yusuf testified that Waleed Hamed wrote some of those checks. See Exhibit 1, p. 12 (testimony of Fathi Yusuf).</p> <div style="border: 1px solid red; padding: 5px; color: red;"> <p>Hamed SUMF#15, is the same as in HCSOF#14 as to Y-5. United's Reply is the same.</p> </div>

	<b>HAMED’S SUMF</b>	<b>UNITED’S RESPONSE TO SUMF</b>
	<p>Q. So would that be early '90s?</p> <p>A. I'm not sure. I think probably after we moved to St. Thomas, or right after we moved to St. Thomas.</p> <p>Q. Because at that point, Mr. Yusuf would be gone and somebody would need to do it on behalf of the East store?</p> <p>A. I believe around that time, yes.</p> <p>Q. . . . . So that makes sense. . . .</p> <p>Q. (Mr. Hartmann) And just for the record, what was the date of that?</p> <p>A. The date of?</p> <p>Q. When you opened St. Thomas.</p> <p>A. St. Thomas, I believe it's in '94. (<b>Exhibit 3</b>)</p>	
	<b>1993-2001 Payment of United Shopping Center’s GRTs</b>	
<p>16. HCSOF#15 as to Opp. to Y-5.</p>	<p>From 1993 through August 2001, the United Corporation Shopping Center paid its own gross receipt taxes on the proceeds of its rents out of its tenant bank account. (<b>Exhibit 5</b>, pp. YUSF237705, YUSUF237727-YUSF237787)</p>	<p>Undisputed. <span style="border: 1px solid red; padding: 2px;">Hamed SUMF#16, is the same as in HCSOF#15 as to Y-5. United's Reply is the same.</span></p>
<p>17. HCSOF#16 as to Opp. to Y-5.</p>	<p>Fathi Yusuf left the St. Croix store at the end of 1992 to work in the newly opened Plaza Extra store in St. Thomas. Mr. Yusuf testified that between 1993 and 2001, he assumed that the Partnership continued to pay the United Shopping Center’s gross receipt taxes.</p>	<p>Undisputed. <span style="border: 1px solid red; padding: 2px;">Hamed SUMF#17, is the same as in HCSOF#16 as to Y-5. United's Reply is the same.</span></p>

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	<p>Q. [Mr. Hartmann]. . . . And -- and during that time [1986-1992], you had to -- even back in those days, you had to fill out a sheet, right, for the gross receipts tax every month?</p> <p>A. [FATHI YUSUF] Yes.</p> <p>Q. Yeah. And was -- did one of you, in particular, do it, or did whoever do it?</p> <p>A. No, the man who collecting the rent. I don't collect rent. I used to have a manager.</p> <p style="text-align: center;">* * * *</p> <p>Q. So you had a manager who filled out the tax forms --</p> <p>A. Yeah.</p> <p>Q. -- and then paid them?</p> <p>A. Yes.</p> <p style="text-align: center;">* * * *</p> <p>A. He asked for a check and check would be written and give to him.</p> <p style="text-align: center;">* * * *</p> <p>Q. And -- and did it stay that way from --from the time you opened until you left for St. Thomas in '92?</p> <p>A. Yes.</p> <p style="text-align: center;">* * * *</p> <p>Q. [Mr. Hartmann] So -- so when you moved to</p>	

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	<p>St. Thomas at the end of '92, did the taxes continue to get paid the same way? In other words, did your manager –</p> <p>A. [FATHI YUSUF] I would assume so.</p> <p>Q. But you don't know?</p> <p>A. I don't know. (<b>Exhibit 3</b>)</p>	
<p>18. HCSOF#17 as to Opp. to Y-5</p>	<p>By way of example, Mr. Yusuf testified that the United Shopping Center paid its own gross receipt tax for the month of July 1999 out of its tenant bank account. He noted that his son Mike Yusuf and the Shopping Center's property manager signed the check for the GRT payment.</p> <p>Q. [Mr. Hartmann] . . . I'm showing the witness Exhibit F, which has been marked as Exhibit 3 for the purposes of this deposition, which previously the witness identified as his claim.</p> <p>Q. (Mr. Hartmann) And what I'm referring to is marked with a Bates Stamp Number Exhibit FY 015001.</p> <p>Q. (Mr. Hartmann) What I'm showing you is a check written on United Corporation Tenants Account.</p> <p>A. [FATHI YUSUF] Um-hum, yes.</p> <p>Q. The tenants' account, not -- not on the partnership account.</p> <p>A. Yeah.</p> <p>Q. And -- and it's Check Number . . . 1674, dated 8-27-99. And itself written to the Government of the Virgin Islands for gross</p>	<p>Undisputed.</p> <div data-bbox="1122 737 1406 968" style="border: 1px solid red; padding: 5px; color: red;"> <p>Hamed SUMF#18, is the same as in HCSOF#17 as to Y-5. United's Reply is the same.</p> </div>

	<b>HAMED'S SUMF</b>	<b>UNITED'S RESPONSE TO SUMF</b>
	<p>receipts taxes for July. In the notation, it says July of '99. And it's accompanied by a -- by a form that was submitted with it.</p> <p>* * * *</p> <p>Q. [Mr. Hartmann]. . . . And could you tell me whose signature appears on that check?</p> <p>A. I believe this is my son, Mike.</p> <p>* * * *</p> <p>A. Maher Yusuf.</p> <p>Q. And -- and do you recognize the signature -- the presented name and the signature on the form below it?</p> <p>* * * *</p> <p>Q. I think it says Thomas.</p> <p>A. I don't know who's that.</p> <p>Q. Thomas Luff.</p> <p>A. I don't know. I don't know. I tell you, I'm in St. Thomas.</p> <p>* * * *</p> <p>A. That must be the manager of the shopping center.</p> <p>Q. So this is a check from 1999 paying the gross receipts tax.</p> <p>A. Um-hum.</p> <p>Q. Written on the tenants' account, and it's signed by your son, Mike?</p>	

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	A. Right. (Exhibit 3)	
	<b>2002-2012 Payment of United Shopping Center's GRTs</b>	
19. HCSOF#18 as to Opp. to Y-5.	<p>From about 2002 through 2012, sometimes the United Corporation paid its own gross receipt taxes on the rent proceeds from the United Shopping Center and sometimes the Partnership paid the United Shopping Center's gross receipts.</p> <p>Q. [Mr. Hartmann] When I say you didn't know anything at all before 2012, you knew some stuff?</p> <p>A. [JOHN GAFFNEY] I did.</p> <p>Q. And, for instance, on this, you knew that some of the times, the partnership paid its own -- paid the tenants' account and sometimes the tenant paid the tenants' --</p> <p>A. Yes.</p> <p>Q. -- gross receipts taxes?</p> <p>A. Yes. (Exhibit 3)</p>	<p>Disputed, because it omits relevant testimony of John Gaffney, and fails to state that United's GRTs on shopping center income were mostly paid from Plaza Extra accounts, and that they were only occasionally paid from United tenant accounts. John Gaffney testified that he "saw evidence of payments coming from the Plaza -- and I'm going to just say Plaza cash accounts," with an "occasional payment out of the shopping center account" during those years. Exhibit 1, p. 135; <i>see also</i> Exhibit 1, p. 136 (testifying that when he began working at Plaza Extra in 2012, he "was aware of the fact that they were paying for the gross receipts taxes over in St. Thomas, because that's where [Margie Soeffing] was located and that's where Mr. Yusuf was located at that time too").</p> <p>Hamed SUMF#19, is the same as in HCSOF#18 as to Y-5. United's Reply is the same.</p>
20. HCSOF#19 as to Opp. to Y-5.	<p>John Gaffney testified under oath in his deposition on January 21, 2020, that prior to his arrival in 2012, the predecessor controller, Margie Soeffing, tried to account for the taxes as a "due to/from item," but sometimes was pressured to expensing it. This meant that sometimes the United Shopping Center GRTs' payment was characterized on the Partnership's accounting as an item to be resolved at some point in the future as to which entity (Partnership or Shopping Center) should ultimately be responsible for paying it. Other</p>	<p>Disputed, because no Partnership had been determined to exist while Margie Soeffing was employed at the partnership, and she therefore could not have possibly been making any judgments about whether United GRTs paid from Plaza Extra accounts would or might later be determined to be obligations of United, on the one hand, or a partnership, on the other. Whatever accounting decisions she made during her tenure were decisions about the internal</p>

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	<p>times, the GRT payment for the United Shopping Center came out of the Partnership's bank account and the Partnership books reflected that the Partnership paid it straight out, in other words, it was a Partnership expense.</p> <p>A. [JOHN GAFFNEY] Well, he [Fathi Yusuf] just told me that his agreement had always been that the gross receipts taxes for the shopping center were to be paid by Plaza. The -- the -- I will say that I had conversations with the former controller, Margie Soeffing, about that too, and she was under the -- she was under the same guideline.</p> <p>* * * *</p> <p>Q. [Mr. Hartmann] So going back to my GAAP question again, you said that -- you said that you had no personal knowledge and that no documents in there, but that you could make some sort of statement about consistency. What statement could you make about consistency?</p> <p>A. [JOHN GAFFNEY] Well, there was an effort to basically treat the payments that were being made on behalf of the shopping center gross receipts taxes as a due to/from item.</p> <p>Q. So if I understand what you're saying is they weren't trying to pay the tenant gross receipts taxes out of the partnership, or they were?</p> <p>A. I -- I believe, and I'm going to just say I believe because I believe that Margie was trying to account for it as a due to/from</p>	<p>accounting of United only. Until January 2013, "all of the annual reporting of all gross receipts taxes was under that United Corporation, whether it was a shopping center or whether it was Plaza Extra. Didn't matter. It's all United Corporation..." <i>Id.</i> at 140 (testimony of John Gaffney).</p> <div data-bbox="1045 699 1330 930" style="border: 1px solid red; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Hamed SUMF#20, is the same as in HCSOF#19 as to Y-5. United's Reply is the same.</p> </div>

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
	<p>item. And what was happening is occasionally it would come up and she would be pressured into expensing it. <b>(Exhibit 3)</b></p>	
<p>21. HCSOF#20 as to Opp. to Y-5.</p>	<p>Gaffney further testified in his January 21, 2020 deposition that the prior controller, Margie Soeffing, flip-flopped back and forth between sometimes classifying the Partnership’s payment of the Yusuf family owned United Shopping Center’s gross receipt taxes as a “due/to from item” meaning the responsible party for paying the GRTs would be determined at a later date and sometimes Ms. Soeffing just wrote the payment off—and the Partnership paid the United Shopping Center’s GRTs—because Fathi Yusuf pressured her to do so.</p> <p>Q. [Mr. Hartmann] And, for instance, on this, you knew that some of the times, the partnership paid its own -- paid the tenants' account and sometimes the tenant paid the tenants' –</p> <p>A. [JOHN GAFFNEY] Yes.</p> <p>Q. -- gross receipts taxes?</p> <p>A. Yes.</p> <p>* * * *</p> <p>Q. [Mr. Hartmann] And what I'm asking is, and the only reason that came up, the only reason you were placed in that position is Mr. Hamed -- Mr. Yusuf told you that there was some old oral agreement that would have the partnership pay the tenant account's gross receipts tax; is that correct?</p> <p>A. [JOHN GAFFNEY] That, plus the fact I</p>	<p>Disputed as written. There was no judicial determination of the existence of a Partnership when Margie Soeffing was employed at United, and any due to/from treatment by her during the short period of her employment related strictly to United Corporation’s internal accounting (as between Untied supermarket accounts and United shopping center accounts). The agreement by the parties to treat the Plaza Extra business as a Partnership for accounting purposes was made in 2014, and made retroactive to January 2013. <i>See</i> Exhibit 1, p. 122. John Gaffney, who was Ms. Soeffing’s successor and who joined Plaza Extra in 2012, performed that Partnership accounting. <i>See</i> Exhibit 1, p. 122, and Exhibit 13, Declaration of Negeh Yusuf.</p> <div data-bbox="1078 1398 1362 1629" style="border: 1px solid red; padding: 5px; margin-top: 20px;"> <p>Hamed SUMF#21, is the same as in HCSOF#20 as to Y-5. United's Reply is the same.</p> </div>

	<b>HAMED’S SUMF</b>	<b>UNITED’S RESPONSE TO SUMF</b>
	<p>did see some evidence of the same issue existing before 2000 -- I started the, you know, doing the conversion in January of 2013.</p> <p>* * * *</p> <p>Q. [Ms. Perrell] You said you saw some evidence. And that evidence was you had had some conversations with a lady that was the accountant. What was her name?</p> <p>A. [JOHN GAFFNEY] Margie Soeffing.</p> <p>* * * *</p> <p>Q. (Ms. Perrell) You -- you spoke with her directly, right?</p> <p>A. [JOHN GAFFNEY] I've spoke with her directly, yes.</p> <p>Q. And as a result of that conversation, did you have an understanding how the tenant -- how the shopping center gross receipts were to be paid, at least what was --</p> <p>A. Well, Margie -- Margie flip-flopped back and forth, and she admitted to it, to me that she did. And she did tell me that, you know, sometimes under pressure from Mr. Yusuf, she would start feeling like she needed to write it off, and then sometimes under, I don't know whether she was getting pressure from anybody else, I can't say specifically, but she would -- she did have a tendency to also try and treat it as a due to/from item, too.</p> <p>Q. All right. So that you understood that there were folks that were treating it both ways?</p>	

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
	A. Yeah. <b>(Exhibit 3)</b>	
	<b>2013-2015 Payment of United Shopping Center’s GRTs</b>	
<p>22. HCSOF#21 as to Opp. to Y-5.</p>	<p>On January 21, 2020, John Gaffney testified that Judge Ross told him to go ahead and pay the gross receipt taxes for the Yusuf family owned United Shopping Center with Partnership funds and the dispute could be settled later. Gaffney posted a journal entry and expensed the gross receipts for 2013-2015 in 2015.</p> <p>Q. [Ms. Perrell]. . . .So as we sit here today, has the partnership paid for the United Shopping Center's gross receipt taxes from January of '13 forward until the split?</p> <p>A. [JOHN GAFFNEY] And – and ultimately what happened was in a meeting with Judge Ross, Mr. Yusuf and I, we spent quite a bit of time on this, and the point was argued about who was supposed to be incurring the cost of the shopping center. Judge Ross finally said, Okay. For our purposes right now, go ahead, and let's, you know, let's go ahead. I proposed a journal entry. I proposed a journal entry so that we could get these off the books. And then the point about the \$44,000 in the gross receipts taxes could be argued later. But ultimately what happened was, once I posted that journal entry, I expensed \$44,000 to taxes, gross receipts, and I did that in 2015. <b>(Exhibit 3)</b></p>	<p>Undisputed.</p> <div style="border: 1px solid red; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Hamed SUMF#22, is the same as in HCSOF#21 as to Y-5. United's Reply is the same.</p> </div>
<p>23. HCSOF#22 as to Opp. to Y-5.</p>	<p>Gaffney explained in his January 21, 2020, deposition that by placing the payment of the Yusuf family-owned United Shopping Center GRTs in a due to/from account on the</p>	<p>Undisputed.</p>

	<b>HAMED'S SUMF</b>	<b>UNITED'S RESPONSE TO SUMF</b>
	<p>Partnership's accounting, the amount was accumulating to be resolved at a future point. In other words, the entity that was supposed to have paid the taxes would be determined later.</p> <p>Q. [Mr. Hartmann] You weren't there before 2012, were you?</p> <p>A. [JOHN GAFFNEY] Arrived in October of 2012.</p> <p>Q. So you don't really have any idea what was done before then, do you?</p> <p>A. I have some idea, because what happened was, when I arrived, they were about eight months or -- eight to ten months behind on their accounting. And so what happened was, I had discussions with Margie Soeffing, and we agreed, we -- we came to an agreement on how it would be brought current and so forth.</p> <p style="text-align: center;">* * * *</p> <p>Q. [Mr. Hartmann] And, for instance, on this, you knew that some of the times, the partnership paid its own -- paid the tenants' account and sometimes the tenant paid the tenants' --</p> <p>A. [JOHN GAFFNEY] Yes.</p> <p>Q. -- gross receipts taxes?</p> <p>A. Yes.</p> <p style="text-align: center;">* * * *</p> <p>A. [JOHN GAFFNEY] See, who -- who paid it and what account it came out of is irrelevant. It is the debit side that is --has the</p>	<div style="border: 1px solid red; padding: 5px; color: red;"> <p>Hamed SUMF#23, is the same as in HCSOF#22 as to Y-5. United's Reply is the same.</p> </div>

	<b>HAMED’S SUMF</b>	<b>UNITED’S RESPONSE TO SUMF</b>
	<p>most relevance to me, because if the debit side is going to a due to/from account, it's entirely different than if the debt's going to an expense account called taxes, gross receipts. If it's going to a due to/from account, it's accumulating to be resolved at some future point. (Exhibit 3)</p>	
	<p><b>GAAP Accounting Principles Govern Accounting for Businesses</b></p>	
<p>24. HCSOF#23 as to Opp. to Y-5.</p>	<p>Mr. Gaffney testified that GAAP stands for generally accepted accounting principles and it covers the entire subject of accounting for businesses.</p> <p>Q. [Mr. Hartmann]. Just tell me very briefly, what is GAAP?</p> <p>A. [JOHN GAFFNEY] Generally accepted accounting principles.</p> <p>Q. And what is -- what is it used for?</p> <p>A. Well, it covers basically the entire subject of accounting for businesses. . . (Exhibit 3)</p>	<p>United objects on the grounds that this purported statement of fact is immaterial to any issues raised by this motion. Subject to that objection, undisputed.</p> <div style="border: 1px solid red; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Hamed SUMF#24, is the same as in HCSOF#23 as to Y-5. United's Reply is the same.</p> </div>
	<p><b>According to John Gaffney, Conformance with GAAP Requires Documentation or Consistency in Treatment of Over Time</b></p>	
<p>25. HCSOF#24 as to Opp. to Y-5.</p>	<p>According to John Gaffney, an appropriate GAAP accounting entry has documents backing up the accounting entry. For example, the repair of a refrigerator would include obtaining and retaining an invoice of the work from the repair person. That receipt could then be showed to the IRS, if necessary, to prove the expense was work related.</p> <p>Q. [Mr. Hartmann]. just tell me very</p>	<div style="border: 1px solid red; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Hamed SUMF#25, is the same as in HCSOF#24 as to Y-5. United's Reply is the same.</p> </div> <p>Dispute the heading to this statement of fact (beginning with “According to...”) to the extent it is asserting that anything in GAAP precludes an oral agreement regarding which entity is to ultimately responsible for an expense from being given effect. In</p>

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
	<p>briefly, what is GAAP?</p> <p>A. [JOHN GAFFNEY] Generally accepted accounting principles.</p> <p>Q. . . .And what is -- what is it used for?</p> <p>A. Well, it covers basically the entire subject of accounting for businesses. . .</p> <p>* * * *</p> <p>Q. [Mr. Hartmann] If I was going to charge repairs to a refrigerator, I would get an invoice from the person who repaired it, that would go into my books. And later on, when the IRS or someone else came knocking, I would go back and show them that document to show why it was in there; is that correct?</p> <p>A. [JOHN GAFFNEY] Correct, yes. (<b>Exhibit 3</b>)</p>	<p>response to a question from counsel for Hamed about how GAAP would treat an agreement unsupported by any paperwork, Mr. Gaffney stated that this kind of thing “happens in GAAP all the time” and is “usually covered in notes to the financial statements.” Exhibit 1, pp. 146-147. Once an issue about an oral agreement is resolved by the parties or the Master, GAAP would only require that an appropriate journal entry be made to document the resolution. <i>See id.</i> at 147. In the partnership accounting that began in 2013, Gaffney handled the payments of shopping center GRTs as a due/to from item, in which the issue of whether United or the partnership was responsible for them would be resolved at a later time by the parties or the Master; and that treatment is entirely consistent with GAAP. <i>See id.</i> at 147-148.</p>
<p>26. HCSOF#25 as to Opp. to Y-5.</p>	<p>Mr. Gaffney testified that an accounting entry without documentation could survive a GAAP audit if consistency in handling the item is established over the course of years or months.</p> <p>Q. [Ms. Perrell] And what was your understanding as to why the gross receipts for the shopping center, which was not part of the partnership, would be paid by the partnership?</p> <p>A. [JOHN GAFFNEY] Just discussions with Mr. Yusuf over the agreement, the purported agreement that the shopping center gross receipts taxes are to be paid by the -- by Plaza Extra.</p>	<p>United objects to this statement of fact on the grounds that it is immaterial to the issues in this case. The accounting for the Plaza Extra supermarket business treated it as a United Corporation business until 2013. When counsel for Hamed questioned John Gaffney in deposition about whether there was a GAAP problem in having “the partnership . . . just going out and paying somebody else’s gross receipts tax,” Gaffney made it clear that there was no such problem because “it was all still reported under United Corporation.” <i>See</i> Exhibit 1, pp. 140. <i>See also</i> Exhibit 1, pp. 141 (“[i]t’s all United Corporation,” and</p>

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
	<p>****</p> <p>Q. [Mr. Hartmann]. . . .And is there any such document with regard to this agreement? That's all I'm asking.</p> <p>A. [JOHN GAFFNEY] No.</p> <p>****</p> <p>Q. [Mr. Hartmann]. . . .And -- and would this -- would this --would the documentation that you have with regard to this, survive an audit under GAAP?</p> <p>A. [JOHN GAFFNEY] Yes, it could survive an audit under GAAP, based upon consistency, because sometimes agreements are made. They're not necessarily always in writing. And then what happens is if something has been handled a certain way for so many years and –</p> <p>****</p> <p>A. -- so many months, it could -- it could be actually easily accepted. (<b>Exhibit 3</b>)</p>	<p>“everything that was paid on behalf of the shopping center was a legitimate gross receipts tax for purposes of the tax return”).</p> <p>Also, dispute any implication that John Gaffney testified that, under GAAP, whether the United shopping center GRTs were paid from supermarket accounts or shopping center accounts determines which account they should ultimately be charged to. Gaffney testified that “how it’s being paid or who’s paying it” is “irrelevant” in accounting terms to which entity is charged with the expense. Exhibit 1, p. 142. He also testified that it is entirely consistent with GAAP for “differences of opinion” on these matters to “give rise to a balance sheet item that can sit there for a while [on a financial statement] until it’s resolved.” Exhibit 1, p. 147. GAAP only requires that once an issue is resolved, either by agreement of the parties or by the Master, that a journal entry be made reflecting the resolution. See Exhibit 1, p. 147. When asked by Hamed’s counsel, “And under GAAP, how are things like that resolved,” Gaffney responded, “Well, what happens is they’re resolved, just like you guys are doing now, and eventually what happens is somebody makes a journal entry.” <i>Id.</i> at 147. Gaffney’s response to a question which asked him to reconcile his view “that this was done in a particular way consistently” with it “being charged to a due to/from account” makes clear that he does not regard the “due</p>

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
		<p>to/from” accounting treatment as an “inconsistent” accounting treatment. Exhibit 1, p. 143-144.</p> <div data-bbox="967 386 1411 548" style="border: 1px solid red; padding: 5px;"> <p>Hamed SUMF#26, is the same as in HCSOF#25 as to Y-5. United's Reply is the same.</p> </div>
<p>27. HCSOF#26 as to Opp. to Y-5.</p>	<p>It is undisputed that no writing exists documenting the purported agreement between Fathi Yusuf and Mohammad Hamed that the Partnership would pay the United Shopping Center’s GRTs.</p> <p>Q. [Mr. Hartmann]. just tell me very briefly, what is GAAP?</p> <p>A. [JOHN GAFFNEY] Generally accepted accounting principles.</p> <p>Q. . . . And what is -- what is it used for?</p> <p>A. Well, it covers basically the entire subject of accounting for businesses. . .</p> <p>* * * *</p> <p>Q. [Mr. Hartmann] If I was going to charge repairs to a refrigerator, I would get an invoice from the person who repaired it, that would go into my books. And later on, when the IRS or someone else came knocking, I would go back and show them that document to show why it was in there; is that correct?</p> <p>A. [JOHN GAFFNEY] Correct, yes.</p> <p>Q. And is there any such document with regard to this agreement? That's all I'm asking.</p>	<p>Undisputed that there is no writing documenting the agreement to pay the United Shopping Center GRTs. Dispute that GAAP has any relevance to the legal issue of whether the oral agreement was made, and dispute any implication that John Gaffney testified that that it has any such relevance. In response to a question from counsel for Hamed about how GAAP would treat “a theoretical agreement entered into [in] 1986 with a guy who’s dead,” with “no paperwork” and no “consistent history” to document the agreement, Mr. Gaffney stated that this kind of thing “happens in GAAP all the time” and is “usually covered in notes to the financial statements.” Exhibit 1, pp. 146-147.</p> <div data-bbox="985 1358 1326 1589" style="border: 1px solid red; padding: 5px;"> <p>Hamed SUMF#27, is the same as in HCSOF#26 as to Y-5. United's Reply is the same.</p> </div>

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
	A. No. (Exhibit 3)	
28. HCSOF#27 in Opp. to Y-5.	<p>It is undisputed that the payment of the gross receipt taxes was not handled consistently on the Partnership’s books:</p> <ul style="list-style-type: none"> <li>• 1986-1992 – Mr. Yusuf alleged in his deposition testimony in 2020 that the Partnership paid the GRTs for the United Shopping Center. (Hamed SOF ¶ 13)</li> <li>• 1986-1993 – In contrary deposition testimony in 2014, Mr. Yusuf stated “[t]he Plaza Extra was supposed to pay all the gross receipt from January 1st, 1994 up to present, and it was covering in the building, the entire building of United Shopping Plaza.” (Hamed SOF ¶ 14)</li> <li>• 1993 to 2001 – the United Shopping Center paid its own GRTs from its tenant bank account. (Hamed SOF ¶ 16)</li> <li>• 2002-2012 – Mr. Gaffney testified that the prior controller, Margie Soeffing, flip flopped back and forth between sometimes classifying the Partnership’s payment of the Yusuf family owned United Shopping Center’s gross receipt taxes as a “due/to from item,” to determine which entity owed the GRTs at a later date and sometimes Ms. Soeffing just wrote the payment off (meaning the Partnership paid it), because Fathi Yusuf pressured her to do so. (Hamed SOF ¶ 21)</li> <li>• 2013-2015 – Mr. Gaffney testified</li> </ul>	<p>Disputed generally because there were no “partnership books” maintained before January 2013, and hence there was no handling of gross receipts taxes on partnership books before 2013 by Margie Soeffing or anybody else. <i>See</i> Exhibit 1, pp. 122 (testimony of John Gaffney). Until January 2013, “all of the annual reporting of all gross receipts taxes was under that United Corporation, whether it was a shopping center or whether it was Plaza Extra. Didn’t matter. It’s all United Corporation...” <i>Id.</i> at 140 (testimony of John Gaffney).</p> <p>The 1986-1992 statement is undisputed, except that it would be more precise to say that GRTs for the United Shopping Center were paid from Plaza Extra accounts. There was no partnership from the standpoint of bank accounts, accounting and tax returns as all were in the name of United Corporation.</p> <p>The 1986-1993 statement is disputed. With respect to the reference in Mr. Yusuf’s testimony to the year 1994, Mr. Yusuf’s testimony in his 2014 deposition and in the January 2020 deposition is that the Partnership agreement and agreement of the Partnership to pay rent were formed around 1986, and that one of its conditions was that United’s Shopping Center GRTs would be paid from Partnership’s Plaza Extra accounts. <i>See</i> Exhibit 2, pp. 24-25, 27,</p>

	<b>HAMED’S SUMF</b>	<b>UNITED’S RESPONSE TO SUMF</b>
	<p>that Judge Ross told him to go ahead and pay the gross receipt taxes for the Yusuf family owned United Shopping Center with Partnership funds and the dispute could be settled later. Mr. Gaffney posted the taxes as a “due/to from item” on the Partnership’s books, signifying that determining which entity bore responsibility for the GRTs would be determined at a later date. (Hamed SOF ¶¶ 22-23)</p>	<p>54. It makes no sense to interpret the reference to 1994 as meaning that a GRTs agreement entered in 1986 would not take effect until 1994. What Mr. Yusuf meant was that, starting in 1994, United began paying its shopping center GRTs from tenant accounts, rather than Plaza Extra accounts, contrary to its prior practice and contrary to what it was “supposed” to do under the 1986 agreement.</p> <p>The 1993 to 2001 statement is undisputed.</p> <p>The 2002 to 2012 statement is disputed in part, and most of it is immaterial to the issues raised by this motion. Margaret Soeffing was only employed by Plaza Extra from June 2011 to mid-2013, so any accounting she performed was for that period only, and not the entire 2002 to 2012 time period. <i>See</i> Exhibit 13, Declaration of Nejeah Yusuf. Furthermore, what Gaffney actually testified to on examination by Hamed’s counsel is that he did not know at all whether United’s GRTs from 2002 to 2006 were paid for out of United’s Plaza Extra accounts or its landlord-tenant accounts. <i>See</i> Exhibit 1, p. 135. As for the accounting for the 2007 to 2012 period, as noted above in this response, all of the Plaza accountants for that period treated the supermarket business and the shopping center as all part of United Corporation for accounting purposes. How Matjorie Soeffing treated payments made from Plaza Extra</p>

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
		<p>accounts for shopping center GRTs as an internal United accounting matter during the 2 years she was employed by United has little, if any, relevance to the issues raised by this motion. To the extent it is relevant at all, if Mr. Yusuf asked Ms. Soeffing to account for them for United’s internal purposes as a Plaza Extra expense, that would be entirely consistent with the existence of an agreement to have those GRTs paid out of Plaza Extra accounts.</p> <p>The 2013 to 2015 statement is undisputed.</p>
<p>29. NOT incl. in Opp. to Y-5.</p>	<p>On March 3, 2016, the US District Court of the Virgin Islands, Division of St. Croix, ended the United Corporation’s probation in <i>United States of America v. United Corporation, et. al.</i>, 1:05-cr-00015. (<b>Exhibit 6</b>) United Corporation was indicted on, among other things, money laundering, tax evasion and filing false corporate income tax returns. (<b>Exhibit 7</b>)</p>	<p>Undisputed.</p>
<p>30. NOT incl. in Opp. to Y-5,</p>	<p>On May 15, 2018, Yusuf and United claimed in their response to interrogatory number 16 that the Partnership agreement between Hamed and Yusuf dictated that the profits would be divided 50-50 after the deduction of expenses. Yusuf stated that he made the decisions for the Partnership as to when the rent and other expenses would be reconciled and paid to United. Finally, Yusuf and United said that the filing of the lawsuit between the two partners was of no consequence on their agreement because the filing of Hamed’s lawsuit “did not enable him to continue receiving the benefits of the partnership.” Fathi Yusuf and the United Corporation</p>	<p>United objects to this purported statement of fact on the grounds that it is immaterial to issues raised by this motion. Subject to that objection, United states that Hamed has quoted correctly interrogatory 16 and the response to it, but disputes that Hamed’s paraphrasing of the response is accurate or fair.</p>

Hamed SUMF#28, is the same as in HCSOF#27 as to Y-5. United's Reply is the same.

Hamed SUMF#29 is NOT included in his Opposition to Y-5.

Hamed SUMF#30 is NOT included in his Opposition to Y-5.

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	<p>Responses to Hamed's Fourth Interrogatories per the Claim Discovery Plan of 1/29/2018 Nos. 16-28 of 50 in <i>Hamed v Yusuf</i>, SX-12-CV-370 (May 15, 2018).</p> <p><b>Interrogatory 16 of 50</b> relates to . . . H-150 (old Claim No. 3002a) . . . "United Shopping Center's gross receipts taxes," . . . .</p> <p>State with specificity why, assuming that Yusuf is correct that Hamed had agreed that the Partnership would pay the separate (non-partnership-related) United Corporation costs for such things as GRT taxes, franchise taxes and fees, property insurance, etc., -- what facts, conversations, writings, communications or other information or <b>documents</b> leads Yusuf to believe and assert that he <i>continued</i> to have Hamed's consent as to such payments after September 17, 2012, despite a lawsuit filed by Hamed seeking to stop Yusuf's involvement in the Partnership, with a claim of outright theft by Hamed, as well as Yusuf's denial of the existence of a partnership, attempted removal of the Hameds from the stores by Yusuf and letters from Hamed and his counsel stating that various of the unilateral uses of funds, payments and actions were henceforth denied and actionable? (Bold emphasis added).</p> <p><b>Response:</b></p> <p style="text-align: center;">* * * *</p> <p>Further responding, Yusuf submits that in his earlier declaration he explained that "[u]nder the business agreement between Hamed and me that I now describe as a partnership, profits would</p>	

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	<p>be divided 50-50 after deduction for rent owed to United, among other expenses" and that "[u]nder our agreement, I was the person responsible for making all decisions regarding when the reconciliation would take place" and that Yusuf had the discretion to determine when the reconciliation would take place. See August 12, 2014 Yusuf Declaration, p. 2. There is no reason for Yusuf to believe that this discretion, consistent with the manner in which the partnership operated from its inception, would not continue in the same manner until its dissolution. This belief and understanding has been further confirmed with Yusuf's designation as the Liquidating Partner under the Final Wind Up Plan of the Plaza Extra Partnership adopted by the Court by Order dated January 7, 2015. Finally, the filing of Hamed's lawsuit on September 17, 2012 did not enable him to continue receiving the benefits of the partnership without the burdens he agreed to from the outset. (HAMD660351-HAMD660375) (Exhibit 8)</p>	
<p>31. NOT incl. in Opp. to Y-5.</p>	<p>On May 15, 2018, Fathi Yusuf and the United Corporation denied in their response to request to admit no. 7 that when Hamed sued Yusuf in 2012, any prior or then existing voluntary consent allowing Yusuf to unilaterally act for the Partnership or for the benefit of United Corporation using Partnership funds ended. Fathi Yusuf and the United Corporation Response to Hamed's Third Request to Admit Pursuant to the Claims Discovery Plan of 1/29/2018, Nos. 7-29 of 50 in <i>Hamed v Yusuf</i>, SX-12-CV-370 (May 15, 2018).</p>	<p>United objects to this purported statement of fact on the grounds that it is immaterial to any issues raised by this motion. Subject to that objection, United does not dispute that Hamed's quotation of the request to admit number 7 in his Third Request to Admit, and the response, is an accurate quotation. United disputes that Hamed's paraphrasing of the response is accurate or fair.</p> <div data-bbox="966 1711 1401 1835" style="border: 1px solid red; padding: 5px; color: red;"> <p>Hamed SUMF#30 is NOT included in his Opposition to Y-5.</p> </div>

	<b>HAMED’S SUMF</b>	<b>UNITED’S RESPONSE TO SUMF</b>
	<p><b>Request to Admit 7 of 50</b></p> <p>Admit or Deny that when Hamed sued Yusuf, on or about September 17, 2012, “to establish Hamed's rights under his partnership” and “<i>enjoining the defendants from interfering with Hamed's partnership rights</i>, including enjoining Yusuf from interfering with the operations of the three Plaza Extra supermarkets” that any prior or then existing voluntary consent by Hamed -- for Fathi Yusuf to <i>unilaterally</i> act for the Partnership or for the benefit of United Corporation using Partnership funds -- ended.</p> <p><b>Response:</b></p> <p>Denied (<b>Exhibit 9</b>)</p>	
<p>32. NOT incl. in Opp. to Y-5.</p>	<p>On May 15, 2018, Yusuf and the United Corporation in their response to request to admit no. 10, admitted that there was no written agreement after September 17, 2012 that the Partnership would continue to pay United’s gross receipt taxes. Fathi Yusuf and United Corporation Response to Hamed's Third Request to Admit Pursuant to the Claims Discovery Plan of 1/29/2018, Nos. 7-29 of 50 in <i>Hamed v Yusuf</i>, SX-12-CV-370 (May 15, 2018).</p> <p><b>Request to Admit 10 of 50:</b></p> <p>Request to admit number 10 of 50 as described in Hamed’s November 16, 2017 Motion for a Hearing Before Special Master relates to . . . Claim H-150 (old Claim No. 3002a) “United Shopping Center’s gross receipt taxes. . .</p> <p>..</p>	<p>Undisputed.</p> <div style="border: 1px solid red; padding: 5px; margin: 10px 0;"> <p>Hamed SUMF#33 is NOT included in his Opposition to Y-5.</p> </div>

	HAMED’S SUMF	UNITED’S RESPONSE TO SUMF
	<p>With regard to Yusuf Claim Y-5 and Hamed Claims H-150, Admit or Deny that there was no written agreement effective after September 17, 2012, between Hamed and Yusuf (<i>i.e.</i> after the date that Hamed sued Yusuf in 2012 for breach of the Partnership) that the Partnership would continue to pay United's <i>separate</i> gross receipt taxes, franchise taxes, annual franchise fees and property insurance.</p> <p><b>Response:</b></p> <p>Admitted. (<b>Exhibit 9</b>)</p>	
<p>33. HCSOF#28 in Opp. to Y-5.</p>	<p>On May 29, 2018, Hamed requested the Court’s guidance regarding United’s claim of “special” treatment, Hamed Motion for Court Assistance and Directions re Special Master Ross's May 21st Order, <i>Hamed v Yusuf</i>, SX-12-CV-370 (May 29, 2018):</p> <p>The thrust of this inquiry arises from the fact that each time Yusuf or United is found to have taken Partnership funds for their own uses, they argue that there was a "special arrangement" or an unwritten provision of the "Partnership Agreement" that allows this inequality. (<b>Exhibit 10</b>, p. HAMD661330)</p> <p>Hamed argued in his motion that 26 V.I.C. § 44 requires that the partnership agreement dictates the terms of the partnership. When there is no written partnership agreement, 26 V.I.C. § 44 controls.</p> <p>But, absent a written agreement, what are the "terms" of the partnership? Missing or unclear terms are supplied by the Act.</p>	<p>United objects to this purported statement of fact on the grounds that it states a legal conclusion, and on the additional grounds that it is immaterial to any issues raised by this motion. Subject to that objection, United states that the legal conclusion asserted by Hamed regarding 26 V.I.C. § 71 is incorrect, as explained more fully above, at pages 16-17, in the paragraph that immediately precedes this table of SUMF and responses. RUPA provides that all § 71 rights may all be varied by the partnership agreement, and Judge Brady has already found that under the partnership agreement, Yusuf was the managing partner and in charge of the finances of the partnership. <i>See Hamed v. Yusuf</i>, 69 V.I. 168, 175, n.4 (V.I. Super. 2017) (finding that “Yusuf acted as the managing partner” and that Hamed was “completely removed from the financial aspects of the business”) and</p>

	<b>HAMED’S SUMF</b>	<b>UNITED’S RESPONSE TO SUMF</b>
	<p><i>See</i> 26 V.I.C. § 44 (Effect of partnership agreement; nonwaivable provisions.)</p> <p>(a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. <b>To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners</b> and between the partners and the partnership. (Emphasis added)(footnote omitted).</p> <p><i>See, e.g., Bunnell v. Lewis</i>, No. 05-92-02558-CV, 1993 WL 290781, at *5 (Tex. App. July 27, 1993), <i>writ denied</i> (Mar. 9, 1994) ("A partnership is an association of two or more persons to carry on a business for profit as co-owners In the absence of agreement on other terms, the Texas Uniform Partnership Act supplies the missing terms. <i>See Park Cities Corp. v. Byrd</i>, 534 S.W.2d 668, 672 (Tex. 1976).")</p> <p>Fortunately, once a partnership is determined to exist, one partner cannot make up, "explain" or dictate the rights, relative authority and power of the partners -- as these are set by statute in the Virgin Islands:</p> <p>26 V.I.C. § 71 Partner's rights and duties</p> <p style="text-align: center;">* * * *</p> <p>(f) Each partner has equal rights in the management and conduct of the partnership business. (<b>Exhibit 10,</b></p>	<p>69 V.I. 189, 215 (V.I. Super. 2017) (“As managing partner,...[i]t was Yusuf's responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners”).</p> <div style="border: 1px solid red; padding: 5px; margin: 10px 0;"> <p style="color: red;">Hamed SUMF#33, is the same as in HCSOF#28 as to Y-5. United's Reply is the same.</p> </div>

	HAMED'S SUMF	UNITED'S RESPONSE TO SUMF
	p. HAMD661332)	
34. HCSOF#29 in Opp. to Y-5.	<p>In a June 26, 2018 Order, Judge Brady noted that thus far in the case, “no findings have been made detailing with specificity the duties, responsibilities, benefits and obligations of each partner, including whether any benefits are due United and its shareholders during the period relevant to the issues and claims being addressed by the Master.” (<b>Exhibit 11</b>, p. HAMD661980) To determine whether any benefits are due United and its shareholders, Judge Brady ordered that the following factors be considered: 1) the partners’ agreements, 2) history and 3) course of dealing.</p> <p>ORDERED that the Master is directed to proceed to conduct such evidentiary proceedings as are deemed appropriate to make factual findings necessary to permit full consideration of the claims of the partners, including the determination of the duties, responsibilities, benefits and obligations of each partner, including whether any benefits are due United and its shareholders, in light of the partners' agreements, history and course of dealing; and to report and make recommendations regarding the claims and the distribution of partnership assets in light of such findings (<b>Exhibit 11</b>, p. HAMD661981)</p>	<p>Disputed to the extent that Hamed is saying that the three factors enumerated by Judge Brady are the only factors that should be considered by the Master.</p> <div style="border: 1px solid red; padding: 5px; margin: 10px 0;"> <p>Hamed SUMF#35, is the same as in HCSOF#29 as to Y-5 (except for the quote from the Court). United's Reply is the same.</p> </div>
35. NOT incl. in Opp. to Y-5.	The Partnership paid \$70,938.04 in gross receipt taxes for the Yusuf family-owned United Shopping Center from 2012-April 2015. ( <b>Exhibit 13</b> )	<p>Disputed. Counsel for Hamed conceded in deposition that he has adjusted that figure downward to \$69,000. <i>See</i> Exhibit 1, p. 83.</p> <div style="border: 1px solid red; padding: 5px; margin: 10px 0;"> <p>Hamed SUMF#35 is NOT included in his Opposition to Y-5.</p> </div>

## CONCLUSION AND REQUEST FOR RELIEF

For all of the foregoing reasons, United respectfully requests the Master to deny Hamed's Motion for Summary Judgment on Claim H-150, and to rule that this claim should be denied with prejudice. In the alternative, United requests that the Court determine that there are, at the very least, genuine issues of material fact that preclude summary judgment for Hamed.

Respectfully submitted,

**DUDLEY NEWMAN FEUERZEIG LLP**

**DATED:** June 11, 2020

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Attorneys for Fathi Yusuf and United Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of June, 2020, I caused the foregoing **UNITED CORPORATION'S OPPOSITION TO HAMED'S MOTION FOR SUMMARY JUDGMENT AS TO CLAIM H-150**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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/s/Charlotte K. Perrell

# **EXHIBIT 1**



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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<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:

<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

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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.*

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#### 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**.

**EXHIBIT A**

**Claim Distribution Summary**

I. Total Assets Remaining After Liquidation: <sup>1</sup>		\$8,957,168.54
II. Less Reserves:		
A. Tutu Park Rent:	\$ 887,203.26	
B. Tutu Park Property Taxes: <sup>2</sup>	\$ 14,356.44	
C. Matching Payment to United: <sup>3</sup>	\$ 9,812.14	
D. FUTA Taxes:	\$ 350,000.00	
E. Master's Fees <sup>4</sup> :	\$ 150,000.00	
F. Accounting Fees:	\$ 30,000.00	
G. Litigation Risks:	\$ <u>1,320,777.00</u>	
	Subtotal:	\$2,762,148.84
		Balance Less Reserves: \$6,195,019.70

III. Less Debts of the Partnership:

A. Balance Sheet Liabilities <sup>5</sup>	\$ 176,267.97	
B. Add'l Rent for Bay 1:	\$ 6,974,063.10	
C. Interest on Bay 1 Rent Awarded:	\$ 881,955.08	
D. Rent for Bays 5 & 8:	\$ 793,984.34	
E. Interest on Unpaid Rent, Bays 5 & 8:	\$ 241,005.18	
F. Reimb. United for Gross Receipts Taxes	\$ 60,586.96	Y-5
G. Black Book Balance owed to United	\$ 49,997.00	
H. Ledger Balances owed to United	\$ 199,760.00	Y-7
I. Water Revenue Re: Plaza Extra-East	\$ 693,207.46	
J. Unreimbursed Transfers from United	\$ <u>188,132.00</u>	Y-9
	Subtotal:	\$10,258,959.09

IV. Net Partnership Assets Available for Distribution After Debts and Reserves: .(\$4,063,939.39)

V. Past Partnership Withdrawals and Distribution Reconciliation:

A. Net funds withdrawn or deemed to be a distribution between the Partners per BDO Report - Net Due to Yusuf: <sup>6</sup>	\$ 9,670,675.36
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<sup>1</sup> See Partnership Balance Sheet as of August 31, 2016 provided by John Gaffney to the Master and counsel for the Partners on September 30, 2016.

<sup>2</sup> See ftn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.

<sup>3</sup> See ftn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.

<sup>4</sup> This is an estimated amount.

<sup>5</sup> See Total Liabilities shown on Balance Sheet provided by John Gaffney on September 30, 2016.

<sup>6</sup> See BDO Report at p. 63.

VI. Y&S Corporation and R&F Condominium, Inc. Stock Sale Proceeds Distribution:

A. Net Due to Hamed: \$802,966.00

VII. Foreign Accounts:

A. Net Due to Yusuf: \$TBD – Following add'l discovery

VIII. Loss of Going Concern Value of Plaza Extra-West

A. Net Due to Yusuf: \$4,385,000.00

IX. Half of Value of Six Containers

A. Approx. \$180,000 - \$210,000.00  
(Not included based on Master's initial determination)

Total Due to Yusuf: \$13,402,709.36\*

\*This amount represents the sum of \$9,670,675.36 from § V and \$4,385,000.00 from § VIII less \$652,966.00 (\$802,966.00 from § VI - \$150,000.00 from Claim n. 15). It represents the amount known as of September 30, 2016 based upon the information available, not including any punitive damages to which Yusuf may be entitled. It is subject to further revision following the reopening of discovery.