

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,	)	CIVIL NO. SX-12-CV-370
v.)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,)	
)	
Additional Counterclaim Defendants.	)	Consolidated With
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
Defendant.)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
)	
FATHI YUSUF,)	
)	
Defendant.)	
FATHI YUSUF and UNITED CORPORATION,	)	CIVIL NO. ST-17-CV-384
)	
Plaintiffs,	)	ACTION TO SET ASIDE
v.	)	FRAUDULENT TRANSFERS
)	
THE ESTATE OF MOHAMMAD HAMED, Waleed Hamed as Executor of the Estate of Mohammad Hamed, and THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
Defendants.)	

UNITED'S MOTION TO SUPPLEMENT SUMMARY JUDGMENT
RECORD RE: CLAIM H-150

By this Motion, United Corporation (“United”) respectfully requests that the Master grant it leave to supplement the summary judgment Record regarding Hamed’s Motion for Summary Judgment re: Claim H-150 with the attached copy of a May 1994 mortgage given by United Shopping Center to support a multi-million dollar loan given to United by ScotiaBank for the partnership. This mortgage is already part of the record of the proceedings before the Master, as it was attached as Exhibit 12 to Yusuf’s April 9, 2020 Opposition to Hamed’s Motion for Summary Judgment regarding Claim H-163. The mortgage is also referenced in a 2014 declaration of Mr. Yusuf that has been submitted in connection with other motions made to the Master. *See, e.g.*, Exhibit 12 to United Corporation’s April 15, 2020 Motion for Summary Judgment re: Claim Y-7 and Y-9, Declaration of Fathi Yusuf, ¶2 (referring to loan obtained for the benefit of the partnership from ScotiaBank around May 1994, and secured in part by the United Shopping Center).

Mr. Yusuf testified in his January 21, 2020 deposition that at the time he made his partnership and rent agreements with Hamed, he advised Hamed that he would use the United Shopping Center as collateral in an attempt to obtain a loan in the “millions” to finance the partnership. *See* Exhibit 1, pp. 9-10 to United Corporation’s June 11, 2020 Opposition to Hamed’s Motion for Summary Judgment as to Claim H-150. To the extent that separate consideration is required to support the GRT agreement, as Hamed contends, Mr. Yusuf’s testimony provides that separate consideration in the form of a commitment to use United’s shopping center as collateral to obtain a future bank loan for the partnership.¹ The attached

¹To be sure, United does not believe that separate consideration is required to support Hamed’s agreement to pay United’s GRTs, and if it is right about that, then the Master need not even decide this issue or this motion to supplement. *See* United Corporation’s June 11, 2020

mortgage corroborates that testimony. United does not believe that Hamed would be unfairly prejudiced by granting this Motion, especially since the testimony it substantiates is already part of the record of this motion, and the Master has already seen the document and references to it in other filings.

United also notes that Hamed's July 1, 2020 Reply in Support of his Motion for Summary Judgment re: Claim H-150 relies for the first time in any of his briefing for the parties' Y-5 and H-150 dispositive motions on a May 20, 2020 decision of the Virgin Islands Supreme Court. The case is *Kennedy Funding, Inc. v. GB Properties, Ltd.*, 2020 Westlaw 2555113 (V.I. 2020).² See Hamed's July 1, 2020 Reply in Support of his Motion for Summary Judgment re: Claim H-150, p. 4. That decision affirmed a grant of summary judgment to a bidder at a foreclosure sale who allegedly breached a contract with the judgment creditor whereby the bidder, if successful, would pay the U.S. Marshall's commission owed by statute upon sale. The Supreme Court made the unremarkable holding, quoted in Hamed's reply at page 4, that the judgment creditor's email proposing a contract under which the bidder agree to pay all expenses of sale was not sufficient to create a genuine issue of material fact regarding the existence of the alleged contract, because there was no written or oral evidence manifesting the bidder's acceptance of that and other terms of the proposed contract. See *Kennedy Funding, Inc.*, *supra* at p. *8 ("There was no evidence of a response in writing *or otherwise* manifesting GAD's

Opposition to Hamed's Motion for Summary Judgment, pp. 4-5. With respect to Hamed's separate consideration argument, United noted in its Opposition that Hamed had failed to address what Hamed calls other "rationales" for the GRT agreement, and cited to Mr. Yusuf's deposition testimony at pages 9-10 for those other rationales. See *id.* at p. 6. That testimony includes the commitment Mr. Yusuf made to Hamed to obtain a loan for the partnership that would require putting up the shopping center as collateral.

²Hamed's May 27, 2020 Opposition to United's Motion for Summary Judgment re: Claim Y-5 did not cite to the *Kennedy Funding* decision, and United therefore had no occasion to address it in its reply. Hamed's motion for summary judgment regarding Claim H-150 was filed before the Supreme Court decided *Kennedy Funding* and therefore could not have cited the case.

acceptance of these terms and conditions”) (emphasis added). In the event the Master concludes that either the Supreme Court’s holding or its discussion of burdens in the summary judgment context (which Hamed also quotes) may be relevant to resolution of the parties’ respective dispositive motions regarding claims Y-5 and H-150, United requests an opportunity to brief the holding in *Kennedy Funding*.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: July 23, 2020

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

CERTIFICATE OF SERVICE

It is hereby certified that on this 23rd day of July, 2020, I caused the foregoing **UNITED’S MOTION TO SUPPLEMENT SUMMARY JUDGMENT RECORD RE: CLAIM H-150**, which complies with the page and word limitations 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

THE BANK OF NOVA SCOTIA

May 4, 1994

FIRST PRIORITY MORTGAGE

No. 2550/1994

THIS MORTGAGE is made on May 2, 1994, between UNITED CORPORATION d/b/a/ PLAZA EXTRA, a corporation incorporated under the laws of the U.S. Virgin Islands and having its principal place of business at United Shopping Plaza, Parcels 4c, 4D and 4H Estate Sion Farm, Christiansted, St. Croix, hereinafter referred to as "Mortgagor", and THE BANK OF NOVA SCOTIA, a banking corporation organized under the laws of the Dominion of Canada with its principal place of business located at 44 King Street West, Toronto, Ontario, Canada, acting through its branch office in Charlotte Amalie, St. Thomas, United States Virgin Islands, hereinafter referred as "Mortgagee".

MORTGAGOR acknowledges being indebted to Mortgagee in the sum of Six Million One Hundred Thousand (\$6,100,000.00) United States dollars or so much thereof as shall have been advanced and remains unpaid, which indebtedness is evidenced by Mortgagor's promissory note(s) in the amount of \$5,500,000 executed by Mortgagor on even date herewith; the Standby Letter of Credit for \$500,000 given by Mortgagee to Mortgagor on even date herewith; and, the Overdraft Agreement in the amount of \$100,000 executed by Mortgagor on even date herewith, as the said promissory note(s), standby letter of credit arrangement and overdraft agreement may be extended, renewed, modified or varied by mutual agreement of the parties thereto (hereinafter collectively referred to as the "Note").

This Mortgage secures the payment of all moneys due under the Note together with any and all sums which Mortgagor at any time and for any reason may be indebted to Mortgagee under the terms of the loan agreement between Mortgagor and Mortgagee dated this date (the "Loan Agreement"), or otherwise, and for any claims or demands whatsoever that Mortgagee at any time and for any reason may have or obtain against Mortgagor, solely or jointly, whether created directly or acquired by assignment, whether absolute or contingent and whether due or not.

Dudley
Clark &
Chan
Havensight
Executive
Towers, St.
Thomas, VI
776-7474

303

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110.80

For the purposes set forth above, Mortgagor hereby mortgages to Mortgagee and the successors and assigns of Mortgagee the following described real property located in the Territory of the Virgin Islands, United States of America:

United Shopping Plaza
Parcel Nos. 4C, 4D and 4H Estate Sion Farm
Christiansted, St. Croix, U.S. Virgin Islands

TOGETHER WITH all appurtenances of land, all present and future buildings, all improvements now or hereafter erected on the property and all fixtures and equipment now or hereafter a part of the property, (hereinafter referred to as the "Improvements"), which real property and the Improvements are hereinafter referred to as the "Property". All replacements and additions to the Property shall also be covered by the lien of this Mortgage. In case the Property is or becomes under lease or sublease, Mortgagor mortgages and assigns to Mortgagee all of its possessory interest in the Property so leased or subleased. Mortgagor further mortgages all house, building and land rents together with all awards heretofore and hereafter made for the taking by eminent domain of the whole or any part of the Property or any easement therein, all of which are assigned to Mortgagee.

This is a First Priority Mortgage.

Mortgagor warrants to and covenants with Mortgagee that:

- 1 Payment of Secured Amounts
Mortgagor shall promptly pay when due the principal of and interest on the debt evidenced by the Note, any prepayment or late charges due under the Note and all other amounts under the Note or otherwise secured by this Mortgage.
- 2 Good Title
Mortgagor warrants title to the Property. Mortgagor warrants it has the right to mortgage the Property and that the Property is unencumbered, except as provided herein. Mortgagor will defend generally the title to the Property against all claims and demands.

3 Taxes

Mortgagor shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which shall become due from time, and shall promptly furnish to Mortgagee during all times that this Mortgage remains in effect all tax bills and other amounts to be paid under this paragraph and receipts evidencing such payments. Should Mortgagor fail at any time to pay any such taxes, assessments, charges, fines and impositions, Mortgagee may, but shall not be required to, make the required payment together with any interest and penalties then owing.

4 No Further Mortgages; Liens

Mortgagor expressly agrees not to grant any further mortgages, easements or leases over, or in any way encumber, the Property without the prior written consent of Mortgagee. Mortgagor shall promptly discharge any lien which may attach to the Property at any time during which this Mortgage remains in effect. Should Mortgagor fail at any time to discharge such lien, Mortgagee may, but shall not be required to, make the required payment together with any interest and penalties then owing.

5 Sale of the Property or of a Beneficial Interest In Mortgagor

Should the Property or any portion thereof be sold, encumbered or conveyed, or in the case of a change in ownership in any way, or if a beneficial interest of Mortgagor (if Mortgagor is not a natural person) is sold or transferred, Mortgagee at its sole option may declare the outstanding balance unpaid which is secured by this Mortgage to become immediately due and payable.

6 Property and Hazard Insurance

6.1 Mortgagor shall insure the Improvements, and all property which is mortgaged to or which secures Mortgagee under the terms of this Mortgage or any security document, at all times with responsible, reputable and financially sound insurance companies or associations acceptable to Mortgagee covering loss or damage to the Improvements and any secured property on a comprehensive basis from all risks (including fire, earthquake and windstorm, casualty, hurricane, flood and other risks), and consequential loss insurance and insurance against liability to

persons for such risks and hazards and business interruption insurance in such amounts and with such deductibles as are reasonably acceptable to Mortgagee.

- 6.2 All such insurance policies shall name Mortgagee as an additional insured party and provide for payment of the proceeds thereof to Mortgagee as loss payee, and shall contain an endorsement providing that the insurance shall not be cancelable except upon at least fifteen (15) days prior written notice to Mortgagee.
- 6.3 Should Mortgagor fail at any time to maintain such insurance coverage, Mortgagee may, but shall not be required, to obtain such coverage with insurance companies of its choosing and make the required premium payment together with any interest and penalties then owing.
- 6.4 Duplicate originals of all insurance policies insuring the Property and any other property which is mortgaged to or which secures Mortgagee under the terms of a security document shall be provided to Mortgagee by Mortgagor on a regular basis not later than 10 days prior to the expiration of the current policy, and without separate request from Mortgagee together with confirmation from the relevant insurer or insurers that the annual premiums in respect of such insurance has been paid and that such insurance is in full force and effect.
- 6.5 From time to time at the request of Mortgagee, Mortgagor shall deliver to Mortgagee a detailed schedule indicating all insurance policies then in force over the Property.
- 6.6 If all or any part of the Property and any other property which is mortgaged to or which secures Mortgagee under the terms of a security document is destroyed or damaged at any time by any cause whatsoever while the loan is outstanding, Mortgagee, in its absolute discretion, may apply the proceeds of any insurance policy or any part thereof, either to the reduction or satisfaction of the amounts secured by this mortgage, or to the construction, restoration or repair of the Property, in such manner as Mortgagee may elect in its complete discretion.

- 6.7 In the case of loss, Mortgagor shall give prompt notice to the insurance company and Mortgagee. Mortgagee may make proof of loss if not made promptly by Mortgagor.
- 6.8 Unless otherwise agreed in writing, any damage to the Property covered by insurance and/or any application of insurance proceeds to any amount secured by this Mortgage shall not extend or postpone the payment of amounts due under the Note, Standby Letter of Credit, Overdraft Agreement and Loan Agreement.
- 7 Removal or Destruction of Improvements
No Improvements shall be removed or demolished, without the prior written consent of Mortgagor.
- 8 Application of Payments and Proceeds of Sale & Management Income
Any payment made by Mortgagor, and the proceeds of any sale of the Property or any part thereof or any interest therein pursuant to foreclosure or otherwise hereunder, and all amounts received by Mortgagee by reason of any operation or management of the Property may be appropriated towards the reduction of Mortgagor's indebtedness to Mortgagee in such manner as Mortgagee may elect in its complete discretion.
- 9 Maintenance and Repair
Mortgagor shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property, and will maintain the Property in as good a condition and repair as it is at the time of execution of this Mortgage.
- 10 Appraisals
Mortgagee shall have the right to obtain a written appraisal of the Property not more than once in any one year period. The reasonable cost of such appraisal shall be paid by Mortgagor upon demand.
- 11 Right Of The Holder Of The Note To Perform Mortgagor's Covenants, Etc.
If Mortgagor fails to make any payment or perform any act required to be made or performed hereunder, Mortgagee, after such notice to Mortgagor as may be

reasonable under the circumstances, and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Property or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor.

12 Environmental Regulations

- 12.1 Mortgagor shall not cause or permit the presence, use, disposal, storage or release of any toxic or hazardous substance, including but not limited to any pollutant, contaminant, waste or hazardous waste, and any substance that when released to the natural environment is likely to cause at some immediate or future time, substantial harm to the natural environment or risk to human health or any other substances defined as toxic or hazardous under any Federal or Virgin Islands law or regulation relating to health safety or environmental protection (collectively "environmental laws"), (such substances collectively being described as "Hazardous Substances") on or in the Property without the prior written consent of Mortgagee.
- 12.2 Mortgagor shall not make any use, nor allow anyone else to make any use, of the Property that is in violation of environmental laws or which violate the terms of any Coastal Zone Management permit or other permit obtained by Mortgagor from the Federal or Virgin Islands government.
- 12.3 Mortgagor shall promptly give Mortgagee notice of any investigation, claim, demand, lawsuit or any action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substances and/or environmental laws.
- 12.4 If Mortgagor learns, or is notified by any governmental or regulatory authority, that any removal or other remedial action of or concerning any Hazardous Substances affecting the Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with the relevant environmental law and shall keep Mortgagee fully notified of the efforts.

- 12.5 Mortgagor shall permit Mortgagee at its discretion to conduct tests, inspections and appraisals of all or any of its records, business and assets insofar as they relate to the Property (including, without limitation, the right to conduct soil tests and to remove samples from the Property and any parts of the Property) at any time and from time to time to ensure compliance with the representation made by Mortgagor as to Hazardous Substances.
- 12.6 If Mortgagee is required, or deems it necessary or advisable to take any action as a result of any investigation, claim, demand, lawsuit or any action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substances and/or environmental laws, Mortgagee shall be entitled to recover all costs incurred or sums paid by Mortgagee as a result thereof and thereby, including reasonable attorney's fees.
- 13 Right of Entry & Inspection
Mortgagee or its duly authorized agents may make reasonable entry upon and inspection of the Property whenever Mortgagor deems necessary.
- 14 Right to Complete or Repair
Upon default of payment of any moneys due under the Note or hereunder or upon breach of any of the covenants or warranties of Mortgagor contained in this Mortgage, the Note or any other document evidencing the transaction in which this Mortgage was made, or should Mortgagor in good faith deem itself to be insecure after all or part of the moneys hereby secured have been advanced, Mortgagee or its duly authorized agents may, without notice, enter and remain upon the Property and make arrangements for the protection, construction, repair, put in order or completion of any Improvements as it sees fit, all without discharging Mortgagor in any way from its obligations hereunder.
- 15 Condemnation; Eminent Domain
In the event of any award or claim for damages, direct or consequential, in condemnation or other taking of all or any part of the Property, or for conveyance in lieu of condemnation, or for taking by eminent domain, Mortgagee is authorized to collect and receive the proceeds of such award and to give proper receipts and

acquittances therefor and to apply any amounts received towards payment of the indebtedness secured by this Mortgage, notwithstanding that the indebtedness may not then be due and payable.

16 Appointment of Receiver

Should Mortgagee bring an action to foreclose this Mortgage, Mortgagee shall be entitled (without notice and without regard to adequacy of the security for the debt) to the appointment of a receiver for all or any part of the Property.

17 Assignment of Rents & Profits

Mortgagor hereby assigns to Mortgagee the rents, issues and profits of the Property as further security for the payment of said indebtedness, and Mortgagor grants to Mortgagee the right to enter upon the Property for the purpose of collecting the same and to let the Property or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of said indebtedness. This assignment and grant shall continue in effect until this Mortgage is paid. Mortgagee hereby waives the right to enter upon said Property for the purpose of collecting said rents, issues, and profits, and Mortgagor shall be entitled to collect and receive said rents, issues and profits until default under any of the covenants, conditions or agreements contained in this Mortgage, and agrees to use such rents, issues and profits in payment of principal and interest becoming due on this Mortgage and in payment of taxes, assessments, sewer rents, water rates and carrying charges becoming due against said Property, but such right of Mortgagor may be revoked by Mortgagee upon any default, on five (5) days' written notice. Mortgagor will not, without the written consent of Mortgagee, receive or collect rent from any tenant of said Property or any part thereof for a period of more than one (1) month in advance, and in the event of any default under this Mortgage will pay monthly in advance to Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of said Property or such part thereof as may be in the possession of Mortgagor, and

upon default in any such payment will vacate and surrender the possession of said Property to Mortgagee or such receiver, and in default thereof may be evicted by summary proceedings.

18 Default, Acceleration and Foreclosure

If one or more of the following events shall occur:

- 18.1 if Mortgagor defaults in the observance or performance of any of the covenants, provisions, agreements, or conditions contained in this Mortgage, the Note or the Loan Agreement as the same may be amended or varied from time to time,
- 18.2 if Mortgagor has given materially false or inaccurate information or statements to Mortgagee (or failed to provide Mortgagee with any material information) in connection with the transaction in which this Mortgage is made or in connection with the Note,
- 18.3 if Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any arrangement, composition, readjustment or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee or receiver;
- 18.4 if, within sixty (60) days after the commencement of any proceeding against Mortgagor which seeks any arrangement, composition or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment of any trustee or receiver of Mortgagor, without the consent or acquiescence of Mortgagor, such appointment shall not have been vacated; or,

18.5 if Mortgagee in good faith deems itself insecure;

then Mortgagee shall have the right, without notice to Mortgagor, to accelerate payment of the amounts secured by this Mortgage, to declare the full amount secured by this Mortgage immediately due and payable and to commence legal foreclosure of this Mortgage and to proceed with the sale of the Property in the manner and form prescribed by law. If the proceeds of such sale are not sufficient to satisfy the indebtedness secured by this Mortgage, a deficiency judgment for such amounts remaining unpaid may be entered against Mortgagor.

19 Balloon Payment

A balloon payment applies to the loan for which this mortgage is taken as security and the final principal payment or the principal balance due upon maturity may be as much as \$1,960,000. In addition, accrued interest, if any, and all other advances made by Mortgagee under the terms of this mortgage will be due and payable upon maturity.

20 Other Indebtedness And Future Advances

This Mortgage secures and shall secure any and all indebtedness of Mortgagor to Mortgagee. For the purpose of this paragraph, "indebtedness" means all loans, advances and Future Advances (as described below), now or hereafter made by Mortgagee to Mortgagor, together with any and all interest accrued thereon, and all other obligations and liabilities of Mortgagor, whether now existing or hereafter incurred or created, whether voluntarily or involuntarily, or whether incurred directly or acquired by Mortgagee by assignment or otherwise. The term "indebtedness" as used herein specifically includes those obligations of Mortgagor arising under any agreement delivered by Mortgagor to Mortgagee whereby Mortgagor guarantees repayment to Mortgagee of the debts and/or liabilities of any individual, corporation, association, partnership or other entity. Mortgagor expressly waives notice of any discontinuation, reduction, increase or other variation in the indebtedness as that term is used herein. Mortgagor shall promptly pay to Mortgagee when due the indebtedness in the manner provided in the Mortgage and the Note(s), Overdraft Agreement(s), Guarantee(s), the Loan Agreement and other written agreements and instruments evidencing and

securing the indebtedness. Notwithstanding anything to the contrary set forth herein, all indebtedness secured by this Mortgage shall bear interest at the maximum rate permissible by law, not to exceed, however, the rate(s) set forth in the above-mentioned documents creating the indebtedness.

Without limiting the foregoing, this Mortgage secures any and all Future Advances made by Mortgagee to Mortgagor, jointly or individually, as provided for by 28 V.I.C. 1032. "Future Advances" means any and all indebtedness, as defined above and of the nature described in 28 V.I.C. 1032, arising after the date hereof. At no time shall the principal amount of indebtedness secured by this Mortgage, including Future Advances, but not including sums advanced to protect the security of this Mortgage, exceed the sum of \$6,100,000. Mortgagor acknowledges that Mortgagee has no obligation to Mortgagor to make Future Advances.

21 Costs of Legal Proceedings

- 21.1 If any action or proceeding is commenced involving, connected with or relating to the Property which Mortgagee is made a party, or in which it becomes necessary for Mortgagee to defend or uphold the lien of this Mortgage, or if Mortgagee is required or deems it necessary to appear before any court or administrative tribunal in connection with the Property or the transaction evidenced in part by this Mortgage, all sums paid by Mortgagee in regard hereto, including reasonable attorney's fees.
- 21.2 If Mortgagee is required to legally foreclose upon the Property and to sell the Property in the manner and form prescribed by law, and to recover amounts secured by this Mortgage, all costs incurred or sums paid by Mortgagee as a result thereof and thereby, including reasonable attorney's fees, shall be promptly paid by Mortgagor upon request, together with interest thereon at the same rate applicable to the principal amount shown on the Note, and until paid shall be a lien on the Property secured by this Mortgage.

Notwithstanding any other provision herein to the contrary, the terms "attorney's fees" as used herein shall mean the fees charged to Mortgagor by Mortgagor's attorneys for the time expended by any attorney, paralegal, legal assistant, or law

clerk employed by Mortgagor's attorneys, plus disbursements incurred by the said attorneys on behalf of Mortgagor. In determining the reasonableness of attorney's fees, the rates charged by Mortgagor's attorneys to Mortgagor shall be presumed to be reasonable except upon a showing that the rates charged Mortgagor are in excess of the standard and customary hourly rates charged by the said attorneys. It is the express intention of Mortgagor and Mortgagee that indemnification for attorney's fees be governed by contract rather than by statute or judicial discretion.

22 Amounts Paid By Mortgagee

All the amounts paid by Mortgagee under the provisions of paragraphs 3, 4, 6.3, 10, 11, 12.6, and 14 above, shall: i) be added to the then unpaid principal amount secured by this Mortgage; ii) bear interest at the highest rate accruing on such principal amount; iii) be a lien on the Property attaching or accruing subsequent to the lien of this Mortgage; iv) be deemed to be secured by this Mortgage; and, v) be paid by Mortgagor to Mortgagee on demand.

23 Not A Waiver

From time to time, Mortgagee may, without notice and at its sole discretion:

- a) release this Mortgage as to all or any part of the Property; or
- b) accept any sum on account of this Mortgage after the date when such sum is due or after foreclosure proceedings have begun; or
- c) release or extend the time or alter the terms of payment of this Mortgage or any promissory Note of Mortgagor; or
- d) take or release other security for all or part of this Mortgage, all without:
 - i) Prejudicing or affecting the liability of any person for the payment and performance of any part of this Mortgage or the lien thereof; and
 - ii) Waiving any of Mortgagee's rights hereunder as to any unpaid balance of this Mortgage.

Notwithstanding any of the foregoing, Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of all terms and conditions of this Mortgage to be performed by Mortgagor.

24 Loan Charges

If the loan secured by this Mortgage is subject to a law which sets maximum loan charges or interest rates, and the interest rates or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then Mortgagor and Mortgagee agree that as Mortgagor's sole remedies:

- (a) any such loan charge or interest rate shall be reduced by the amount necessary to reduce the charge to the permitted limit; and
- (b) any sums already collected from Mortgagor which exceeded permitted limits will be refunded to Mortgagor.

Mortgagor and Mortgagee agree that Mortgagee may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Mortgagor. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

25 Severability

In the event that any provision or clause of this Mortgage is declared invalid, such provision or clause shall be deemed deleted from this Mortgage and the remainder given full effect as if the offending provision or clause had not appeared.

26 Further Instruments

Mortgagor will execute and deliver to Mortgagee any further and additional instruments which may be necessary or proper to confirm this Mortgage in accordance with its true intent.

27 Release

Upon payment of all sums secured by this Mortgage, Mortgagee shall execute a written document releasing this Mortgage. Mortgagor shall be responsible for recording any such release and pay any recordation costs to satisfy and remove the Mortgage of record.

28 Assignment

This Mortgage, and the Note, may at any time be assigned, in whole or in part, by Mortgagee, and the benefits, advantages, rights and obligations of Mortgagee hereunder shall inure to the successors and assigns of Mortgagee.

29 Successors and Assigns; Joint and Several Liability; Interpretation

29.1 Subject to the provisions of clause 5, "Mortgagor" shall include heirs, administrators, executors, successors and assigns of Mortgagor and "Mortgagee" shall include the successors and assigns of Mortgagee.

29.2 All covenants, liabilities and other obligations entered into or imposed herein upon Mortgagor shall be joint and several if there be more than one Mortgagor.

29.3 Any Mortgagor who co-signs this Mortgage but does not execute any guarantee or Note: (a) is co-signing this Mortgage only to mortgage, grant and convey that Mortgagor's interest in the premises under the terms of this Mortgage; (b) is not personally obligated to pay the sums secured by this Mortgage; (c) has executed this Mortgage for the purpose of complying with 5 V.I.C. 478(c); (d) by execution of this Mortgage hereby expressly waives the benefits of the homestead exemption; and (e) agrees that Mortgagee and any other Mortgagor may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Mortgage or the Note without that Mortgagor's consent.

29.4 Words in the singular shall include the plural and vice-versa, and words importing the masculine gender shall include the feminine gender unless the context states to the contrary.

Captions used in this Mortgage are for reference only and shall not be considered in the interpretation and construction of this Mortgage.

30 Proceedings Before Magistrate

Should Mortgagee so elect, Mortgagor consents to dispositive legal proceedings before a United States Magistrate in any litigation concerning or involving this

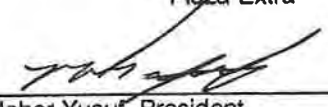
Mortgage or the transaction in connection with which this Mortgage was made to the fullest extent permitted by 28 U.S.C. 636(c) or such other provision of law which shall replace, modify or supersede it.


31 Jury Waiver

Mortgagor and Mortgagee each hereby irrevocably waive all right to trial by jury in any action, proceeding, or counterclaim, including, but not limited to, actions sounding in tort, "bad-faith," fraud or otherwise, arising because of or in any way relating to this Mortgage, any guaranty or other security document executed in connection herewith or the transactions contemplated thereby.

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on the date first above written.

United Corporation d/b/a/
Plaza Extra


Maher Yusuf, President


Witness

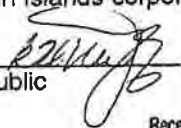

Witness

ATTEST:

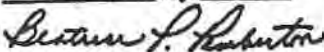

Fathi Yusuf, Secretary/Treasurer

TERRITORY OF THE VIRGIN ISLANDS)
(SS:
DISTRICT OF ST. THOMAS AND ST. JOHN)

The foregoing Mortgage Instrument was acknowledged before me this 2nd day of
May, 1994, by MAHER YUSUF, president of United Corporation d/b/a/ Plaza Extra, a
U.S. Virgin Islands corporation, on behalf of the corporation.


Notary Public

Received for recording on the 4th day of May
1994 at 11:45 o'clock A.M. and
Recorded and Entered in Recorder's Book for the
District of St. Croix, Virgin Islands of the U.S.A. at
Photo-copy 506 Page _____
No. 25501994 and noted in Real Property Register
Page _____


FEE \$ 6,110.00

Dudley
Clark &
Chan
Havensight
Executive
Towers. St.
Thomas, VI
776-7474

318

74

February 11, 2000

RELEASE OF MORTGAGE

No. 537/2000

KNOW ALL MEN BY THESE PRESENTS, that The Bank of Nova Scotia, the mortgagee of the First Priority Mortgage from United Corporation d/b/a Plaza Extra dated May 2, 1994, in the original principal amount of \$6,100,000.00, and recorded in the Office of the Recorder of Deeds for St. Croix on May 4, 1994, in PC 506, Page 303, No. 2550, on the following realty:

Plot No. 4-C (consisting of 2.5 U.S. Acres), Plot No. 4-D (consisting of 3.0 U.S. Acres) and Plot No. 4-H (consisting of 1.0 U.S. Acres) of Estate Sion Farm, Queen Quarter, St. Croix, U.S. Virgin Islands, as more fully shown and described on Public Works Drawing No. 2348 dated April 19, 1968, revised August 24, 1992,

as modified by Mortgage Consolidation Certificate by The Bank of Nova Scotia dated May 3, 1994 and recorded May 4, 1994 in PC 506, Page 301, No. 2549, does hereby acknowledge that said Mortgage, as modified, has been satisfied, and in consideration thereof, does hereby cancel, release and discharge said lien.

00 FEB 11 AM 11:53

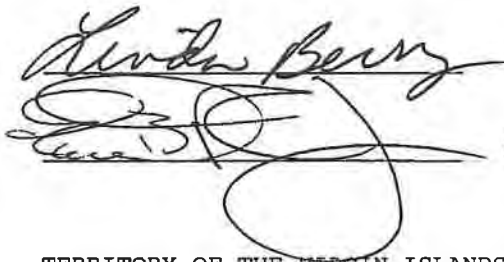
RECORDED IN OFFICE OF THE RECORDER OF DEEDS ST. CROIX

1527

IN WITNESS WHEREOF, this Release has been executed this
7th day of February, 2000.

WITNESSES:

THE BANK OF NOVA SCOTIA



By: 

Title: Senior Manager Commercial Banking

TERRITORY OF THE VIRGIN ISLANDS)

) SS:

DIVISION OF ST. THOMAS/ST. JOHN)

The foregoing Release of Mortgage was acknowledged before
me this 7th day of February, 2000 by Robert Edwards as
Sr. Manager Commercial Banking of The Bank of Nova Scotia, on behalf
of the Bank.



Notary Public

My commission expires:

Linda M. Berry
Notary Public No. 6298
St. Thomas/St. John, U.S. Virgin Islands
My Commission expires 7/18/2002

Received for recording on the 11th day of Feb.
2000 at 11:58 o'clock A. M. and
Recorded and Entered in Recorder's Book for the
District of St. Croix, Virgin Islands of the U.S.A. at
Photo copy 114 Page
No. 537/200 and noted in Real Property Register
Page

FEE: \$ 1,525.50 Althea L Pedro
Recorder

2