

7IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MANAL MOHAMMAD YOUSEF a/k/a
MANAL MOHAMAD YOUSEF,

Plaintiff,

v.

SIXTEEN PLUS CORPORATION,

Defendant.

CIVIL NO. ST-17-CV-342

ACTION FOR DEBT AND
FORECLOSURE

COUNTERCLAIM FOR
DAMAGE

JURY TRIAL DEMANDED

SIXTEEN PLUS CORPORATION,

Counterclaim Plaintiff,

v.

MANAL MOHAMMAD YOUSEF a/k/a
MANAL MOHAMAD YOUSEF and
FATHI YUSUF,

Counterclaim Defendants.

**THIRD-PARTY DEFENDANT, FATHI YUSUF'S MOTION TO DISMISS
DEFENDANT/THIRD-PARTY PLAINTIFF, SIXTEEN PLUS'S THIRD-PARTY CLAIM**

Third-Party Defendant, Fathi Yusuf ("Mr. Yusuf"), through undersigned counsel, and pursuant to Virgin Islands Rule of Civil Procedure 12(b)(6), hereby moves the Court to dismiss Defendant/Third-Party Plaintiff, Sixteen Plus's "Third-Party Complaint" against him, in its entirety, given that it fails to state a claim upon which relief can be granted and, in support hereof, Mr. Yusuf states as follows.

I. INTRODUCTION & BACKGROUND FACTS

This case concerns a loan made to, and mortgage recorded against the property of, Sixteen Plus Corporation ("Sixteen Plus")—owned in equal shares by the Hamed and Yusuf families—by Plaintiff/Counter-Defendant, Manal Yousuf ("Ms. Yousuf"). In the course of Sixteen Plus's strained attempt to create causes of action against Mr. Yusuf related to Ms.

Yousuf's mortgage where none exist, Sixteen Plus has misrepresented, "cherry picked" and omitted highly relevant facts, which will be helpful to the Court in understanding the fatal legal flaws in the Third-Party Complaint and why it should be dismissed for failure to state a claim.

First, and crucially, Sixteen Plus borrowed money from Manal Yousuf to purchase the Diamond Keturah property (the "Property"). It is clear that the Yusuf/Hamed partnership wanted to borrow money to purchase the Property because a preexisting entity owned by the Yusufs and Hameds—Plessen Enterprises, Inc. ("Plessen")—made a request to the Bank of Nova Scotia for funds to purchase the same. *See* Commitment Letter from Bank of Nova Scotia, dated July 9, 1997, accepted by Waleed Hamed, approving a loan of two million two hundred thousand dollars to be used toward the purchase of the Property, to be secured by a mortgage on the same, attached as **Exhibit 1**. Second, it is abundantly clear that Waleed "Wally" Hamed,¹ was fully engaged in the purchase of the Property. *See e.g.*, Letter from "Wally" Hamed, dated February 4, 1997, on behalf of Plessen, to the Bank of Nova Scotia making an offer to purchase the Property attached as **Exhibit 2**. Moreover, speaking both to Wally Hamed's involvement and Sixteen Plus's desire to borrow money to purchase the Property, Sixteen Plus subsequently passed a corporate resolution, executed by Wally Hamed as President of Sixteen Plus, dated September 15, 1997, titled "Unanimous Consent of Directors in Lieu of a Meeting," which resolved to borrow four million five hundred thousand dollars from Manal Yousuf to purchase the Property and approving the Promissory Note and First Priority Mortgage between Sixteen Plus and Manal Yousuf. A copy of that Corporate Resolution is attached as **Exhibit 3**.

¹ Since the inception of the 2012 "Main Case," *Hamed v. Yusuf, et al.*, Case No. SX-12-CV-370, assigned to the Honorable Douglas A. Brady, Waleed Hamed has served as his father, Mohammad Hamed's agent and attorney-in-fact. He has also been substituted as a plaintiff in that case, been the main spokesman for the Hamed faction in the various cases between the Hameds and the Yusufs, and has filed numerous declarations in the Main Case.

Additionally, Wally Hamed, as President of Sixteen Plus, executed the Promissory Note and the First Priority Mortgage in the amount of four million five hundred thousand dollars. Copies of the Promissory Note and First Priority Mortgage are attached as **Composite Exhibit 4**. Further, after the First Priority Mortgage was recorded, Wally Hamed, "per his request," was provided with a recorded copy of the same, via Certified Mail, by attorney Carl A. Beckstedt III. *See* Letter from C. Beckstedt and Certified Mail receipt attached as **Exhibit 5**. The fact that Sixteen Plus's Third-Party Complaint is based on a transaction approved in writing by the Hamed son most engaged in the running of the Hamed/Yusuf businesses plainly underscores the lack of any legal basis.

Ms. Yousuf has brought this action to foreclose her mortgage due to non-payment of the money owed to her by Sixteen Plus. Sixteen Plus has asserted a counterclaim against Ms. Yousuf, as well as a third-party claim against Mr. Yusuf for unspecified tortious actions which are claimed to be "intentional, wanton, extreme and outrageous" (Count I) and a claim for a declaratory judgment that he is estopped from foreclosing on the mortgage—which he is not doing—and holding him liable for "injuries that would be suffered by Sixteen Plus" if he were "allowed to commit [] tax fraud, submit[] false documents and perjury" and "now state the opposite in this action." (Count II).

In reality, giving the Third-Party Complaint the most charitable reading possible, Sixteen Plus is alleging that in the late 1990s Mr. Yusuf made a fraudulent misrepresentation to the Hamed shareholders of Sixteen Plus that the note did not represent a legal obligation on the part of Sixteen Plus and that the mortgage did not really provide for a security interest in the Property because the note and mortgage could be discharged at any time at the mere request of Sixteen

Plus. However, for multiple reasons, even a clearly pled claim for fraudulent misrepresentation against Mr. Yusuf cannot stand.

First, as the Court is aware, a Sixteen Plus shareholder, Hisham Hamed, has brought a derivative action on behalf of Sixteen Plus against Mr. Yusuf, Ms. Yousuf and Isam and Jamil Yousuf, based on the same “sham” mortgage at issue in this case. Indeed, the factual allegations in the Third-Party Complaint are virtually identical to the allegations in the derivative case and the majority of the general factual allegations in the derivative case appear to have been “cut and pasted” verbatim into the Third-Party Complaint. A copy of the complaint in the derivative action (“Derivative Complaint”) is attached as **Exhibit 6**.² Additionally, among the laundry list of causes of action in the derivative case, is a claim for the “tort of outrage/prima facie tort” which is identical to Count I in the Third-Party Complaint at issue herein.³ Thus, Sixteen Plus’s third-party claims in this matter are barred by the first-filed doctrine. Sixteen Plus’s third-party claims are also barred by the statute of limitations since Sixteen Plus, by its own admission in the derivative case, knew as early as 2005 that Mr. Yusuf was treating the mortgage as a valid mortgage and insisting it get paid when the Property was sold. Sixteen Plus’s claims are also properly dismissed for failure to state a cognizable cause of action, and on the basis Judge Brady’s July 21, 2017, laches ruling in the Main Case.

² The exhibits attached to this motion are part of the public record, such as Exhibits 6 and 7, or produced in other cases between the parties, primarily by the Hameds, as evidenced by the Bates stamps located on the bottom of the documents. The Court can take judicial notice of—and consider for purposes of this motion to dismiss—the exhibits hereto. *See, e.g., Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006)(“In evaluating a motion to dismiss, we may consider documents that are attached to or submitted with the complaint and any ‘matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, [and] items appearing in the record of the case.’”)(citing 5B Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (3d ed. 2004)).

³ Sixteen Plus has also filed a declaratory judgment action against Manal Yousef to have the “sham” mortgage at issue declared invalid: *Sixteen Plus Corporation v. Manal Mohammad Yousef*, Case No. SX-15-CV-65, assigned to the Honorable Harold W.L. Willocks.

II. MEMORANDUM OF LAW

A. Motion to Dismiss Standard

The legal standard on a motion to dismiss for failure to state a claim under Rule 12(b)(6) is well known:

First, the court must take note of the elements a plaintiff must plead to state a claim so that the court is aware of each item the plaintiff must sufficiently plead. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. These conclusions can take the form of either legal conclusions couched as factual allegations or naked factual assertions devoid of further factual enhancement. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief. If there are sufficient remaining facts that the court can draw a reasonable inference that the defendant is liable based on the elements noted in the first step, then the claim is plausible.

Joseph v. Bureau of Corrections, 54 V.I. 644, 649–650 (V.I. 2011) (internal quotation marks omitted) (citations omitted). However, as observed by this Court in *Carter v. University of the Virgin Islands*, 2017 WL 3380533, at ** 1-2 (V.I. Super. July 31, 2017), the Supreme Court of the Virgin Islands promulgated the Virgin Islands Rules of Civil Procedure, which became effective on March 31, 2017, and apply to this case. The Virgin Islands Supreme Court distinguished its Rule 12 from its inspiration, Federal Rule of Civil Procedure 12, by emphasizing the Virgin Islands' status as a "notice pleading" jurisdiction and specifically rejecting the plausibility standard set forth in *Iqbal v. Ashcroft*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). *Cf. Joseph*, 54 V.I. at 650 (stating that the Supreme Court's decision in *Twombly* does not abandon the liberal pleading procedure known as "notice pleading.").

Consequently, it appears that the Rule 12 standard that existed prior to adoption of the Virgin Islands Rules of Civil Procedure remains largely intact—the court must identify the elements of the claim(s) a party is attempting to plead, exclude factual and legal conclusions, and determine if there are sufficient well-pled facts to support the claimed cause of action—with the exception that the Court should no longer undertake the plausibility analysis. *See Smith v. Law Offices of Karin A. Bentz, P.C.*, Civil No. ST-17-CV-116, 2017 WL 3123463, at *2 (Super. Ct. July 20, 2017) (noting the abrogation of the plausibility standard from the prior three part test and holding the first two steps remain in effect explaining, “[a] motion to dismiss a complaint should be denied if the factual allegations are enough to raise a right to relief above the speculative level and give the defendant fair notice of what the [] claim is and the grounds upon which it rests. Only after satisfying this analysis can a party survive motion to dismiss under [Virgin Islands Rule of Civil Procedure] []12(b)(6).”) (internal quotation marks and cites omitted). This standard also comports with common sense. It plainly would be impermissible to merely state that a party was “negligent,” or committed professional “malpractice” and have the claim survive a motion to dismiss. Although such a pleading technically would provide that party “notice” of the claim against it, *i.e.*, “negligence” or “malpractice,” even a notice-pleading standard must require that facts be pled which, when taken as true, support the elements of the claimed cause of action. Indisputably, it is the well-pled facts which give the defendant fair notice of the claim and the grounds upon which it rests.

B. Sixteen Plus’s Claims Are Barred by the First-Filed Doctrine

Sixteen Plus has reasserted the majority of the allegations in the derivative case, *Hisham Hamed v. Fathi Yusuf, Isam Yusuf, and Jamil Yusuf*, Civil Case No. 2016-SX-CV-650, verbatim in the Third-Party Complaint in this matter. *See* Derivative Complaint attached as

Exhibit 6. Additionally, Sixteen Plus has brought a wholly duplicative claim for the “tort of outrage/prima facie tort” in the Third-Party Complaint at issue herein.

Courts apply the first-filed rule to determine which court should adjudicate the merits of duplicative litigation and then exercise their discretionary power to stay or dismiss the second filed case. *See Georgia Fed. Bank, FSB, v. Great Cruz Bay Dev. Co.*, Civ. No. 92-160, 1995 WL 18099798, at *2 (D.V.I. Oct. 23, 1995). Typically, the first-filed rule requires the second court in which a party has filed duplicative litigation to refrain from reaching the merits of the case either by staying or dismissing the action pending before it. *Id.* Quite simply, the rationale behind the rule is to promote the efficient administration of cases. *Id.* In *Georgia Federal*, the District Court of the Virgin Islands held that the first-filed doctrine is properly extended to two cases filed in the same court and requires dismissal of the second filed action, explaining:

Where, as here, a party has filed two identical actions before two judges sitting within the same district, a court should have the power to quickly and easily dispose of such duplicative actions. Further, where one party has filed two identical actions, that party should not be heard to complain when a court has dismissed one of the two actions as administratively burdensome. Skopbank argues that the appropriate response to duplicative litigation is to consolidate the two actions. But, limiting a court's power merely to consolidation of duplicative suits would undoubtedly lead to “judge-shopping” or other attempts to circumvent the procedural rules.

Id. Clearly, the priority of the efficient administration of cases is properly served by dismissing the Third-Party Complaint against Mr. Yusuf given that the factual allegations in the Third-Party Complaint are virtually identical to the factual allegations in the derivative case, and both cases attempt to assert an identical claim for the “tort of outrage/prima facie tort” against Mr. Yusuf.

Further, Sixteen Plus should not get a second bite at the apple in this matter where it has already brought a laundry list of claims—several CICO claims, conversion, breach of fiduciary duty, usurpation of corporate opportunity, civil conspiracy and the tort of outrage/prima facie

tort—against Mr. Yusuf related to the “sham” mortgage in the first-filed derivative case currently pending in this Court. Nor should the Court be burdened with adjudicating two cases that assert the same facts as their predicate for recovery. Therefore, Sixteen Plus’s Third-Party Complaint is properly dismissed in its entirety on the basis of the first-filed doctrine.

C. Sixteen Plus’s Claims Are Properly Dismissed For Failure to State a Cognizable Cause of Action

In the instant case, Sixteen Plus has asserted a third-party claim against Mr. Yusuf for unspecified tortious actions which are claimed to be “intentional, wanton, extreme and outrageous” (Count I) and a claim for a declaratory judgment that he is estopped from foreclosing on the mortgage—which he is not doing—and holding him liable for “injuries that would be suffered by Sixteen Plus” if he were “allowed to commit [] tax fraud, submit[] false documents and perjury” and “now state the opposite in this action.” (Count II). Although Count I is so vague as to be incomprehensible, Count II veritably boggles the mind. As noted, Ms. Yusuf is foreclosing on her mortgage; Mr. Yusuf is not foreclosing on the mortgage, thus Sixteen Plus has no claim against him on that basis. Moreover, Mr. Yusuf was not a party to this action until Sixteen Plus brought a third-party claim against him and, after bringing him into the case, Sixteen Plus now attempts to hold him liable for “injuries that would be suffered by Sixteen Plus “if he were “allowed to commit [] tax fraud, submit[] false documents and perjury” and “**now state the opposite in this action.**” (Emphasis supplied.) Prior to being brought in by Sixteen Plus he was not involved in this action so would not be “stating” anything herein. So, simply put, Sixteen Plus brought him into the action and then tries to proactively assert an indecipherable cause of action for potentially doing something in the future in this matter. Sixteen Plus’s allegations are so vague that it is impossible to tell what the claimed causes of action even are, other than perhaps some variety of tort claim. Thus, it is also impossible to

determine the elements of the claims, or if there are sufficient well-pled facts to potentially support the claimed causes of action. Accordingly, Sixteen Plus's claims are properly dismissed on this independent basis as well.

D. Sixteen Plus's Claims Are Barred by the Applicable Statute of Limitations

1. *All Tort Claims Are Subject to a Two Year Statute of Limitations*

A tort claim must be brought within two (2) years of the cause of action accruing. *See* 5 V.I.C. § 31(5) (“[A]ny injury to . . . rights of another not arising from contract not herein especially enumerated” has a two (2) year statute of limitations.). Thus, any tort claims allegedly arising from Mr. Yusuf's actions surrounding Sixteen Plus executing the \$4.5 million dollar note and mortgage in favor of Ms. Yusuf accrued, at the latest, when the note and mortgage were signed in 1997. If Sixteen Plus claims that the discovery rule applies to toll the statute of limitations, this argument is foreclosed by the verified allegations in the derivative case which must be considered by the Court in deciding this motion to dismiss under the doctrine of judicial estoppel. Dispositively, in the derivative case Sixteen Plus claimed the mid-2000s were when Mr. Yusuf first refused to sell the Property unless the “sham” mortgage was paid off. Specifically, in the First Amended Verified Complaint, Hisham Hamed alleges that Sixteen Plus “lost [] [in 2005] . . . the benefit of such [potential] sales [of the Property] at the highest and best amount because of Fathi Yusuf's insistence the sham mortgage be paid upon the sale of the property.” Derivative Complaint, ¶ 43, a copy of which is attached as **Exhibit 6**; *see also id.* at p. 8, Section b (“The Value of the Sixteen Plus Property Dramatically Increases—2005). Thus, at the very latest, Sixteen Plus became aware of the alleged injury to it *vis-à-vis* the “sham mortgage,” in the mid-2000s, over ten (10) years ago.

2. ***The Doctrine of Judicial Estoppel Requires that the Allegations in the Derivative Complaint be Considered in Deciding this Motion***

To the extent Sixteen Plus attempts to disavow the facts in the verified Derivative Complaint, the doctrine of judicial estoppel precludes it from doing so. As the Virgin Islands Supreme Court has explained:

The judicial estoppel doctrine will preclude a party from asserting a position on a question of fact or a mixed question of law and fact that is inconsistent with a position taken by that party in a previous judicial proceeding if the totality of the circumstances compels such a result, the extent of the inconsistency (including any reasonable explanations that would harmonize both positions), whether the party has received an unfair advantage or benefit from asserting the inconsistent claims, and whether another court has already relied on the claim made in the first proceeding.

Sarauw v. Fawkes, 66 V.I. 253, 264-5 (V.I. 2017). The purpose of the doctrine is to protect the integrity of the judicial process. *Id.* at 264.

In the Third-Party Complaint at issue—in contrast to the Derivative Complaint—Sixteen Plus did not include the allegations concerning when it learned that Mr. Yusuf was insisting the mortgage was real and needed to be paid, *i.e.*, 2005, when he allegedly refused to sell the Property if the mortgage was not paid. Given that the statute of limitations issue has been extensively briefed in the derivative case as a bar to the same, this glaring omission is plainly an attempt to avoid a statute of limitations bar in this case. If Sixteen Plus can cast aside verified allegations which have previously been presented to the Court in another case, or avoid having the Court consider those allegations in ruling on the instant motion to dismiss, it would certainly cause a blight on the integrity of the judicial process. Plainly, the totality of the circumstances compels that the doctrine of judicial estoppel be applied in this matter to preclude Sixteen Plus from taking an inconsistent position on a question of fact in order to protect the integrity of the judicial process. Accordingly, when Sixteen Plus's allegation that Mr. Yusuf was claiming the

mortgage was real in 2005 is considered in connection with this motion to dismiss, all tort claims relating to Sixteen Plus's execution of the note and mortgage in favor of Ms. Yousuf are barred by the statute of limitations and the Third-Party Complaint is properly dismissed in its entirety on that independent basis as well.

E. **Judge Brady's Laches Ruling in the Main Case Bars The Third-Party Complaint**

As the Court is aware, the Yusuf and Hamed families are engaged in protracted and acrimonious litigation related to the families' long-term joint business interests. The ongoing litigation encompasses multiple civil cases pending in the courts of the Virgin Islands, including the main case between the parties, which is styled *Hamed v. Yusuf, et al.*, Case No. SX-12-CV-370 and assigned to the Honorable Douglas A. Brady ("Main Case"). The Main Case is for a dissolution of the Hamed/Yusuf partnership and winding up of the partnership affairs, including a partnership accounting. Judge Brady has created a process for resolving claims of each of the partners—Hamed and Yusuf—against partnership funds. Each party was to submit claims which were, as an initial matter, to be resolved by a Special Master, Judge Edgar Ross. Last September 30, 2016, Hamed and Yusuf submitted claims. In that submission, Hamed made a claim for \$4.5 million dollars in partnership funds which Hamed claims were transferred to Isam Yousuf in 1996-1999 and used to purchase the Diamond Keturah. *See Exhibit A - Hamed Partnership Claims for 1986 Through January 1, 2012* at Section F Entitled "**Isam Yousuf was given \$4.5M in Plaza Extra money to apply towards the Sixteen Plus mortgage for Diamond Keturah and it was further given to Manal Yousuf**" (stating, "In 1996-1997 Fathi Yusuf supplied Isam Yousuf with \$4.5M in partnership cash[.] . . . Those funds were then supplied by Isam to Isam's sister Manal Yousuf, who in turn supplied the funds to Sixteen Plus subject to a mortgage Neither Isam or Manal Yousuf contributed any of their own funds, or gave any consideration for

the \$4.5 million mortgage [on the Diamond Keturah].”), a copy of Exhibit A is attached as **Exhibit 7.**⁴

In late July of 2017, Judge Brady ruled that all of the parties’ respective counts asserted in the Main Case and counterclaim (conversion, misappropriation, breach of fiduciary duty) are to be treated as part of a single accounting claim asserted by each party. *See* July 21, 2017, Order. Judge Brady then decided under the doctrine of laches to limit each party’s accounting claim to transactions that post-date September 17, 2006. *See id.* at pp. 33 and 34. Judge Brady specifically stated that the accounting for the assets of the partnership “shall be limited in scope to consider only those claimed credits and charges to partnership accounts . . . based on transactions that occurred on or after September 17, 2006.” *Id.* at p. 34.

That ruling also applies to this matter given that Sixteen Plus alleges that “On December 24, 1997, BNS was finally entitled to a conveyance of the Land [Diamond Keturah] from the Marshal of the Territorial (now Superior) Court[.] . . . BNS assigned its right to the conveyance from the Marshal to Sixteen Plus.” *See* Counterclaim/Third Party Complaint at ¶¶ 20-21.⁵ Sixteen Plus further alleges “[a]ll funds used to buy the Land came from the Plaza Extra Supermarkets partnership – and thus from Yusuf and Hamed as the only two partners.” Accordingly, this case should also be dismissed on the basis of Judge Brady’s laches decision because the partnership allegedly used \$4.5M partnership funds—which would represent a \$2.25 million dollar credit on behalf of the Hameds—to purchase the Property, which transaction occurred prior to September 17, 2006.

⁴ Hamed recently withdrew this claim in the Main Case.

⁵ These exact same allegations are also made by in the derivative action, *Hisham Hamed v. Fathi Yusuf, Isam Yousuf, and Jamil Yousuf*, Civil Case No. 2016-SX-CV-650. *See* Derivative Complaint at ¶¶ 19, 29-30.

III. CONCLUSION

Sixteen Plus's third-party claims in this matter are barred by the first-filed doctrine given that the derivative case was filed first and concerns the same alleged facts and one of the same causes of action. Sixteen Plus's third-party claims are also barred in their entirety by the statute of limitations since Sixteen Plus, by its own admission in the derivative case, knew that Mr. Yusuf was treating the mortgage as a real mortgage, and insisting it got paid when the Property was sold, as early as 2005. These verified allegations are properly considered in this case on the grounds of judicial estoppel which prevents a party from taking inconsistent factual positions in different matters. Sixteen Plus's claims are also properly dismissed in their entirety for failure to state a cognizable cause of action, and on the basis Judge Brady's July 21, 2017, laches ruling in the Main Case.

WHEREFORE, Third-Party Defendant, Fathi Yusuf respectfully requests that the Court: 1) dismiss Sixteen Plus's Third-Party Complaint in its entirety; 2) award Mr. Yusuf the attorneys' fees and costs incurred in connection with defending this case; and 3) award him such other and further relief as the Court deems just and proper.

Respectfully Submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP



Dated: December 15, 2017

By:

Gregory H. Hodges (V.I. Bar No 174)
Lisa Michelle Kömives (V.I. Bar No. 1171)
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Attorneys for Fathi Yusuf

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(340) 774-4422

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December 2017, that I served a true and correct copy of the foregoing, *THIRD-PARTY DEFENDANT, FATHI YUSUF'S MOTION TO DISMISS DEFENDANT/THIRD-PARTY PLAINTIFF, SIXTEEN PLUS'S THIRD-PARTY CLAIM*, which complies with the word and page limitations of Rule 6.1(e), via e-mail addressed to:

Joel H. Holt, Esq.
Law Office of Joel H. Holt
2132 Company Street
Christiansted, USVI 00820
holtvi.plaza@gmail.com

Michel Bark

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P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

EXHIBIT 1

Scotiabank 
THE BANK OF NOVA SCOTIA

Sunny Isle Branch

P.O. Box 773, Christiansted, St. Croix, U.S. Virgin Islands 00821-0773

Tel: (809) 778-5350 / Fax: (809) 778-5898

July 9, 1997

Mr. Mohamad Hamed, President
Plessen Enterprises, Inc.
P.O. Box 763
Christiansted, VI 00821-0763

Dear Mr. Hamed:

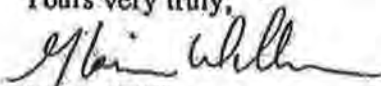
We are pleased to confirm that subject to acceptance by you, The Bank of Nova Scotia (the "Bank") will make available to Plessen Enterprises, Inc. (the "Borrower"), credit facilities on the terms and conditions set out in the attached Terms and Conditions Sheet and Schedule "A".

If the arrangements set out in this letter, and in the attached Terms and Conditions Sheet and Schedule "A" (collectively the "Commitment Letter") are acceptable to you, please sign the enclosed copy of this letter in the space indicated below, initial all pages and return the letter to us by the close of business on July 11, 1997 after which date this offer will lapse.

Your acceptance hereof shall constitute your agreement to pay or cause to be paid upon demand of the Bank, fees and expenses of the Bank in connection with the loan such as title searches and title insurance costs, including survey expenses, fees of our appraiser, credit reporting charges, recording fees, taxes and all such other out of pocket expenses which the Bank may incur in connection with the loan transaction, whether or not the loan transaction described herein is consummated.

This Commitment Letter is in addition to all previous commitments issued by the Bank to the Borrower.

Yours very truly,



Gloria Williams
Senior Account Manager



Ralph T. Chan
Vice President

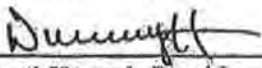
7/9

Plessen Enterprises, Inc.
July 9, 1997

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The arrangements set out above and in the attached Terms and Conditions Sheet and Schedule "A" (collectively the "Commitment Letter") are hereby acknowledged and accepted by:

Plessen Enterprises, Inc.

By: 
Mohamad Hamed, President
Waleed Hamed vice president

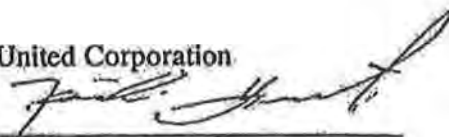
Date: 7-11-97

Guarantors:

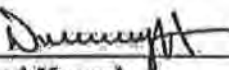

Fathi Yusuf

Date: 7-10-1997

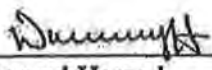
United Corporation


Fathi Yusuf, Secretary

Date: 7-10-1997


Waleed Hamed

Date: 7-11-97


Mohamad Hamed
Waleed Hamed

Date: 7-11-97

CREDIT NUMBER: 1 AUTHORIZED AMOUNT: \$2,200,000.00

TYPE

Non-revolving

PURPOSE

To be used to assist in the purchase of approximately 326 acres of undeveloped land known as the "Diamond Keturah" property.

CURRENCY

U.S. dollars

AVAILMENT

The Borrower may avail the credit by way of a direct advance evidenced by a Term Promissory Note.

INTEREST RATE

The Bank's U.S. Dollar Base Rate in New York, from time to time, plus 0.50% per annum with interest payable monthly.

"Base Rate (New York)" is a variable per annum reference rate of interest (as announced by the Bank from time to time) for United States dollar loans made by the Bank in the United States through its New York agency.

OTHER FEES

A Commitment Fee of \$15,000, which includes the Bank's legal fees (excluding title searches, title insurance and recording fees), is payable upon acceptance of this commitment. 74.

DRAWDOWN

The loan is to be fully drawn down by July 25, 1997.

REPAYMENT

The advance is repayable as follows, commencing 30 days after drawdown:

Year 1: \$ 29,000 plus interest monthly
Year 2: \$ 65,000 plus interest monthly
Year 3: \$ 89,333 plus interest monthly

PREPAYMENT

Provided 10 business days prior written notice has been given to the Bank, prepayment is permitted without penalty at any time in whole or in part.

Prepayments are to be applied against installments of principal in the inverse order of their maturities.

GENERAL SECURITY

The following security, evidenced by documents in form satisfactory to the Bank and registered or recorded as required by the Bank, is to be provided prior to any advances or avallment being made under the Credit(s):

1. First Priority Mortgage for \$2,200M on the following undeveloped properties:
 - Plot No. 26 Estate Diamond, consisting of approximately 75 acres of undeveloped land.
 - Matr. 39 & 5B Estate Diamond, consisting of approximately 75 acres of undeveloped land.
 - Matr. 28 & 29 Plessen, consisting of approximately 109 acres of undeveloped land.
2. Mortgagee Title insurance in the amount of \$2,200,000 issued by a title insurance company approved by the Bank, insuring the Bank as the holder of a valid First Priority mortgage lien over the properties described above, subject only to such exceptions as shall have been first approved by the Bank and its counsel. Z-y.
3. Letter of undertaking from Borrower not to pledge nor sell the "Diamond Keturah" property while any portion of this loan remains outstanding.

GUARANTEE

Guarantees given by the following (with corporate seal and resolution as applicable) in the amounts shown:

<u>NAME</u>	<u>AMOUNT</u>
Hamed, Mohamad	Unlimited
Yusuf, Fathi	Unlimited
Hamed, Waleed	Unlimited
*United Corporation	Unlimited

- * Together with supporting corporate documentation and authorizing resolutions in form and substance satisfactory to the Bank and its counsel and the legal opinion of counsel to the corporation covering all matters related to the execution and delivery of the guaranty by the corporation and its enforceability, said opinion to be in form and substance satisfactory to the Bank and its counsel.

GENERAL CONDITIONS

Until all debts and liabilities under the Credit has been discharged in full, the following conditions will apply in respect of the Credit:

1. All Banking business is to be conducted with the Bank, as long as the Bank's services and costs are competitive.
2. Without the Bank's prior written consent.
 - a) No change in ownership is permitted.
 - b) No mergers, acquisitions are permitted.
 - c) Assets are not to be further encumbered, guarantees or other contingent liabilities are not to be entered into.
 - d) No loans withdrawals, bonuses, advances to shareholders management or affiliates are permitted.
 - e) United Corporation cannot declare or pay any dividends or authorize or make any distribution of any shares of capital stock of the company, in excess of 50% of the company's net profit after taxes and debt servicing (to include servicing of Peter Farm Investment Corp.'s and Plessen Enterprises, Inc.'s debts).
3. A default on any loan to United Corporation is a default under this loan.
4. Sale of any portion of the collateral is subject to prior written approval of the Bank. In the event the Bank approves any such sale, the gross proceeds from such sale shall be applied to principal reduction of loan in inverse order of maturity and the Bank expressly reserves the right to impose additional conditions to the sale of any portion of the collateral at its sole discretion.

Plessen Enterprises, Inc.
July 9, 1997

Page 6

GENERAL BORROWER REPORTING CONDITIONS

Until all debts and liabilities under the Credit has been discharged in full, the Borrower will provide the Bank with the following:

1. Annual financial statements (CPA prepared) of United Corp. (Guarantor) within 120 days of fiscal year end.
3. Annual personal financial statements of the individual guarantors, duly signed.
4. Proof that all property tax payments are up to date.

EXPIRY OF OFFER

July 11, 1997

77.

SCHEDULE A

ADDITIONAL TERMS AND CONDITIONS APPLICABLE
TO ALL CREDITS

1. Interest on loans/advances made in U.S. dollars will be calculated on a daily basis and payable monthly on the 22nd day of each month, (unless otherwise stipulated by the Bank). Interest shall be payable not in advance on the basis of a 360 day year for the actual number of days elapsed both before and after demand of payment or default and/or judgment. The rate of interest based on a 360 day year is equivalent to a rate based on a calendar year of 365 days of 365/360 times the rate of interest that applies to the U.S. dollar loans/advances.

Waiver

2. Any waiver by either party or a breach of any part of this Agreement caused by the other party will not operate as or be interpreted as a waiver of any other breach. The failure of a party to insist on strict adherence to any term of the Agreement on one or more occasions is not to be considered to be a waiver of any of their rights under this Agreement or to deprive that party of the right to insist upon strict adherence to that term or any other term in the future. No waiver shall be of any effect unless it is in writing and authenticated by the waiving party.

Interest on Overdue Interest

3. Interest on overdue interest shall be calculated at the same rate as interest on the loans/advances in respect of which interest is overdue, but shall be compounded monthly and be payable on demand, both before and after demand and judgment.

Indemnity Provision

4. If the introduction of, or any change in, or in the interpretation of, or any change in its application to the Borrower of, any law or regulation, or compliance with any guideline from any central bank or other governmental authority (whether or not having the force of law) has the effect of increasing the cost to the Bank of performing its obligations hereunder or otherwise reducing its effective return hereunder or on its capital allocated in support of the credit(s), then upon demand from time to time the Borrower shall compensate the Bank for such cost or reduction pursuant to a certificate reasonably prepared by the Bank. 74.

(a) Prepayment without fee

In the event of the Borrower becoming liable for such costs, the Borrower shall have the right to cancel without fee all or any unutilized portion of the affected credit (other than any portion in respect of which the Borrower has requested utilization of the credit in which case cancellation may be effected upon indemnification of the Bank for any costs incurred by the Bank thereby), and to prepay, without fee the outstanding principal balance thereunder other than the face amount of any document or instrument issued or accepted by the Bank for the account of the Borrower, such as a Letter of Credit, a Guarantee or a Bankers' Acceptance.

Calculation and Payment of Standby Fee

5. Standby fees shall be calculated daily and payable monthly on the basis of a calendar year for Canadian dollar credits and on the basis of a 360 day year for U.S. dollar credits from the date of acceptance by the Borrower of this Commitment Letter.

Environment

6. The Borrower agrees:

- (a) to observe and conform to all laws and requirements of any federal, territorial, or any other governmental authority relating to the environment and the operation of the business activities of the Borrower;
- (b) to allow the Bank access at all times to the business premises of the Borrower to monitor and inspect all property and business activities and to conduct, in the Bank's sole discretion, environmental remedial actions at the expense of the Borrower;
- (c) to pay all the expenses of any environmental investigations or assessments that may be required by the Bank from time to time;
- (d) to notify the Bank from time to time of any business activity conducted by the Borrower which involves the use or handling of hazardous materials or wastes or which increases the environmental liability of the Borrower in any material manner;

7/9

Environment (Cont'd)

- (e) to notify the Bank of any proposed change in the use or occupation of the real property of the Borrower prior to any change occurring; and
 - (f) to provide the Bank with immediate written notice of any environmental problem and any hazardous materials or substances which have an adverse effect on the property, equipment, or business activities of the Borrower and with any other environmental information requested by the Bank from time to time.
7. If the Borrower notifies the Bank of any specified activity or change or provides the Bank with any information pursuant to subsections (d), (e), or (f), or if the Bank receives any environmental information from other sources, the Bank, in its sole discretion, may decide that an adverse change in the environmental condition of the Borrower has occurred which decision will constitute, in the absence of manifest error, conclusive evidence of the adverse change. Following this decision being made by the Bank, the Bank shall notify the Borrower of the Bank's decision concerning the adverse change.
8. If the Bank decides or is required to incur expenses in compliance or to verify the Borrower's compliance with applicable environmental or other regulations, the Borrower shall indemnify the Bank in respect of such expenses, which will constitute further advances by the Bank to the Borrower under this Agreement.

Acceleration

9. (a) All indebtedness and liability of the Borrower to the Bank payable on demand, is repayable by the Borrower to the Bank at any time on demand;
- (b) All indebtedness and liability of the Borrower to the Bank not payable on demand, shall, at the option of the Bank, become immediately due and payable, the security held by the Bank shall immediately become enforceable, and the obligation of the Bank to make further advances or other accommodation available under the Credits shall terminate, if any one of the following Events of Default occurs:
- (i) the Borrower or any guarantor fails to make when due, whether on demand or at a fixed payment date, by acceleration or otherwise, any payment of interest, principal, fees, commissions or other amounts payable to the Bank;

F.Y.

Acceleration (Cont'd)

- (ii) there is a breach by the Borrower of any other term or condition contained in this Commitment Letter or in any other agreement to which the Borrower and the Bank are parties;
- (iii) any default occurs under any security listed in this Commitment Letter under the headings "Specific Security" or "General Security" or under any other credit, loan or security agreement to which the Borrower is a party;
- (iv) any bankruptcy, re-organization, compromise, arrangement, insolvency or liquidation proceedings or other proceedings for the relief of debtors are instituted by or against the Borrower and, if instituted against the Borrower, are allowed against or consented to by the Borrower or are not dismissed or stayed within 60 days after such institution;
- (v) a receiver is appointed over any property of the Borrower or any judgement or order or any process of any court becomes enforceable against the Borrower or any property of the Borrower or any creditor takes possession of any property of the Borrower;
- (vi) any adverse change occurs in the financial condition of the Borrower or any guarantor.
- (vii) any adverse change occurs in the environmental condition of:
 - (A) the Borrower or any guarantor of the Borrower; or
 - (B) any property, equipment, or business activities of the Borrower or any guarantor of the Borrower.

74.

Borrower's Responsibilities

10. Neither the Bank nor the Bank's attorneys are responsible for the preparation, compilation, production or delivery of documents that are required from either the borrower or any parties (such as a seller, a landlord, a tenant, or another lender or lienholder) with whom the borrower is dealing, whether directly or indirectly. It is the responsibility of the borrower to ensure that all such documents, in form and substance satisfactory to the Bank and the Bank's attorneys, are provided to the Bank and the Bank's attorneys not less than forty-eight (48) hours before the time scheduled for closing. Please note that forty-eight (48) hours is the bare minimum. The borrower is strongly encouraged to submit documents to the Bank and the Bank's attorneys for approval sufficiently in advance as to allow adequate opportunity for amendment, substitution or replacement by the borrower of any documents submitted that do not prove satisfactory in form and substance to the Bank and the Bank's attorneys. Due to the technicalities and complexities involved in concluding a transaction of this nature, it is recommended that the borrower retain the services of a qualified attorney to assist in fulfilling the borrower's responsibilities.

Costs

11. All costs, including legal and appraisal fees incurred by the Bank relative to security and other documentation, shall be for the account of the Borrower and may be charged to the Borrower's deposit account when submitted.

7-y.

EXHIBIT 2

Plessen Enterprises, Inc.

P.O. Box 763
Christiansted, St. Croix, USVI 00821
Tel: (809) 778-6240 Fax: (809) 778-1200

February 4, 1997

Mr. Ralph T. Chan
Vice President
The Bank of Nova Scotia
P.O. Box 773
Christiansted, St. Croix, USVI 00821

Dear Mr. Chan:

Please accept this letter as our serious intent to purchase the Diamond Keturah Property in St. Croix.

PURCHASE PRICE: Your judgment amount plus costs, and interest through the end of redemption period (April 28, 1997). In no event will my offer exceed \$4,550,000.00 US.

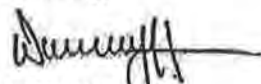
EARNEST DEPOSIT: \$100,000.00 US upon signing of the contract and an additional \$450,000.00 US within three (3) business days after the signing of the contract. The earnest money, is refundable only if the Bank cannot deliver clear title to the property.

TERMS & CONDITIONS: \$4,000,000.00 US additional cash upon closing.

CLOSING DATE: As soon as possible, after expiration of the redemption period.

Should you require any additional information, please do not hesitate to contact me at your earliest convenience. This offer expires on February 15, 1997.

Sincerely,



Wally Hamed
Vice President
Plessen Enterprises

EXHIBIT 3

SIXTEEN PLUS CORPORATION

UNANIMOUS CONSENT OF DIRECTORS
IN LIEU OF A MEETING

Pursuant to the provisions of Title 13, V.I.C. § 67b, the undersigned, constituting all of the Directors of Sixteen Plus Corporation (the "Company"), do hereby unanimously consent to the actions set forth below as though such actions had been taken at a meeting of the Board of Directors:

1. The Directors hereby approve the terms of a Promissory Note and First Priority Mortgage between the Company and Manal Mohamad Yousef.

2. The President or Vice President are authorized to execute any and all documents on behalf of the Corporation that they may deem necessary or appropriate to carry out the obligations of the Corporation, including, without limiting the generality of the foregoing, the execution of a Note and Mortgage substantially in the form attached as exhibits hereto.

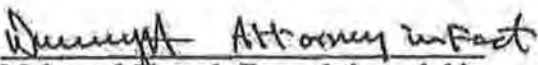
3. The Company agrees to borrow \$4,500,000 from Manal Mohamad Yousef in accordance with the terms of the aforesaid Promissory Note.

This written consent shall be filed with the minutes of the Corporation.

DATE: September 15, 1997.



Fathi Yusuf



Mohamad Hamed, By and through his
attorney-in-fact, Waleed M. Hamed



Waleed M. Hamed

**COMPOSITE
EXHIBIT 4**

\$4,500,000

September 15, 1997
St. Croix, U.S.V.I.

PROMISSORY NOTE

FOR VALUE RECEIVED, Sixteen Plus Corporation ("Maker") promises to pay to the order of Manal Mohamad Yousef ("Holder") of 25 Gold Finch Road Pointe Blanche, St. Martin, N.A.;, or such other place as Holder may designate to Maker in writing from time to time, the principal sum of Four Million, Five Hundred Thousand Dollars (\$4,500,000) together with interest at 8% per annum in lawful money of the United States of America.

Such indebtedness shall be paid as follows:

Payments of interest only (\$360,000 per year) will be made on the anniversary of the date of this note for five years, with payment of the full principal due five years from the date of this note.

This Note is secured by a first priority mortgage ("Mortgage"), dated of even date, in favor of the Holder encumbering certain real property known as:

SEE EXHIBIT A

In further consideration for this loan, Maker agrees to pay to Holder 20% of the net profit received from the sale of the property described in Exhibit A at the time of sale.

Maker shall pay to holder a late charge in the event that any installment is not received by the Holder on the date that it is due. The late charge shall be computed as follows:

Principal Balance		then applicable		number of days
Outstanding on Note	x	prime rate of	x	between date
		<u>interest plus 1/2%</u>		installment due
	365			and date
				installment
				received.

All payments received by Holder shall be applied as follows: first, to any unpaid late fees, costs and expenses; second, to any unpaid accrued interest; and finally, the balance, if any, to principal.

This Note may be prepaid in whole or in part at any time without penalty or premium. Partial prepayments shall be applied as set forth herein and shall not cause a change in the due date or amount of the installments unless otherwise agreed by the Holder in writing.

It is hereby expressly agreed that should any default be made in the payment of principal and interest as stipulated above, and if such monetary default remains uncured for a period of fifteen (15) days, or if there is any default in any of the terms and conditions of the Mortgage, subject to the Notice provision, if any, in said instrument, then a default shall exist hereunder, and in such event the principal indebtedness evidenced hereby, and any other sums advanced or

due hereunder or under the Mortgage, at the option of the Holder without notice or demand, at once become due and payable and may be collected forthwith, and the entire unpaid principal balance of this Note shall thereafter bear interest at a per annum rate equal to eighteen percent (18.0%) per annum simple interest. A default shall be cured hereunder only upon the occurrence of the following:

- Payment of the sum and/or performance of the obligation which was the basis of the default; and
- Payment of all sums (including late fees and subsequent installments) and/or performance of all obligations which have become due hereunder as of the date of cure.

In the event this Note, or any part thereof, is collected by or through an attorney-at-law, Maker agrees to pay all costs of collection including, but not limited to, attorney's fees and court costs. Any notice sent in connection with this Note shall be sent in compliance with the notice provisions contained in the Mortgage.

Presentment for payment, demand, protest, notice of demand, protest and non-payment are hereby waived by Maker.

This Note is intended as a contract under and shall be construed, interpreted, and enforceable in accordance with the laws of the United States Virgin Islands.

As used herein, the terms "Maker" and "Holder" shall be deemed to include their respective heirs, successors, legal representatives and assigns, whether by voluntary actions of the parties or by operation of law. In the event that more than one person, firm or entity is a Maker hereunder, then all references to "Maker" shall be deemed to refer equally to each of said persons, firms, or entities, all of whom shall be jointly and severally liable for all of the obligations of Maker hereunder.

IN WITNESS WHEREOF, Maker has caused this Note to be executed by its duly authorized officer effective the date first above written.

DATED: 9/15/97

MAKER:

SIXTEEN PLUS CORPORATION

Waleed Hamed
Waleed Hamed, President

[Corporate SEAL]

ATTEST:

Rafiq Yusuf
Rafiq Yusuf, Secretary

HAMD596311

ACKNOWLEDGEMENT FOR CORPORATION

TERRITORY OF THE VIRGIN ISLANDS)
) SS:
DIVISION OF ST. CROIX)

On this 15 day of Sept, 1997, before me the undersigned officer, personally appeared Waleed M. Hamed, known to me (or satisfactorily proven) and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the President of Sixteen Plus Corporation, the corporation named in this Note;
- (b) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (c) this person knows the proper seal of the corporation which was affixed to this document; and
- (d) this person signed this proof to attest to the truth of these facts.

SIGNED AND SWORN to before me on
this 15 day of Sept, 1997.



Notary Public



HAMD596312

EXHIBIT A

1. Parcel No. 8, Estate Cane Garden, of approximately 2.6171 U.S. Acres.
2. Remainder No. 46A, Estate Cane Garden, of approximately 7.6460 U.S. Acres.
3. Parcel No. 10, Estate Cane Garden, of approximately 2.0867 U.S. Acres.
4. Road Plot No. 11, Estate Cane Garden, of approximately 0.0868 U.S. Acres.
5. Parcel No. 11, Estate Retreat, Matr. No. 37B of Company Quarter and Peter's Mingo, Matr. No. 37A and 37BA, Company Quarter, and No. 54 Queen's Quarter all of approximately 42.3095 U.S. Acres.
6. Remainder Matr. 32B, Estate Cane Garden of approximately 48.5175 U.S. Acres.
7. Parcel No. 9 Estate Cane Garden, of approximately 11.9965 U.S. Acres.
8. Remainder Matr. 32A, Estate Granard, of approximately 41.0736 U.S. Acres.
9. Parcel No. 40, Estate Granard of approximately 14.9507 U.S. Acres.
10. Remainder Matr. No. 31, Estate Diamond, of approximately 74.4220 U.S. Acres.
11. Parcel No. 4, Estate Diamond, of approximately 5.8662 U.S. Acres.
12. Parcel No. 1, Estate Diamond, of approximately 61.2358 U.S. Acres.
13. Parcel No. 3, Estate Diamond, of approximately 6.9368 U.S. Acres.
14. Parcel No. 2, Estate Diamond, of approximately 6.5484 U.S. Acres.
15. Road Plot No. 12, Estate Cane Garden, of approximately 0.4252 U.S. Acres.
16. Road Plot No. 41, Estate Granard, of approximately 0.4255 U.S. Acres.
17. Road Plot No. 6, Estate Diamond, of approximately 0.8510 U.S. Acres.

Handwritten initials or signature

February 22, 1999

FIRST PRIORITY MORTGAGE

No. 768/1999

THIS MORTGAGE ("Mortgage") is made this 15 day of September, 1997, between Sixteen Plus Corporation, whose address is 4C & D Sion Farm, Christiansted, St. Croix, 00820, ("Borrower") and Manal Mohamad Yousef ("Lender") whose address is 25 Gold Finch Road, Pointe Blanche, St. Martin, N.A.;

WITNESSETH:

A. Borrower is justly indebted to Lender in the principal sum of Four Million, Five Hundred Thousand Dollars (\$4,500,000) or so much thereof as shall have been advanced and remains unpaid, which indebtedness is evidenced by a Promissory Note in such principal amount, dated of even date herewith and hereinafter referred to as the "Note" and bears interest at the rate or rates and under the terms set forth in the Note, (said Note is incorporated herein by reference and made a part hereof); and

B. Borrower wishes to secure the full and punctual payment of the Note and the indebtedness evidenced thereby, and interest thereon, and the full performance of all the provisions, conditions, covenants and agreements herein contained or in any other document executed in connection herewith, and also to secure the reimbursement to the Lender for any and all money which may be advanced as herein provided for, and for any and all costs and expenses herein provided for or which may arise in respect of this Mortgage or the indebtedness hereby secured or the Property herein mentioned (collectively "Obligations").

NOW, THEREFORE, the Borrower does hereby grant, convey and give to the Lender a first priority mortgage on the following described property (collectively "Property") to secure the full and punctual payment and performance of the Obligations:

SEE EXHIBIT A

Together with

(a) all improvements now or hereafter erected thereon, and all modifications, additions, restorations and replacements of such improvements; and all rights-of-way, uses, servitude, licenses, tenements, hereditament, appurtenances, rights, privileges, and easements now or hereafter belonging or pertaining thereto; and

(b) all the appliances, fixtures, equipment, building materials and other personal property now or hereafter owned by the Borrower and located on the premises described above, whether or not incorporated in the improvements constructed thereon, and necessary to the use and occupancy thereof; and

(c) all awards and other payments in respect of any taking (as described in Section 12 herein below) in respect of any of the foregoing, together with all amounts received by the Lender, or expended by the Lender pursuant to this Mortgage; and

HAMD596314

4521

(d) all of the Borrower's rights, benefits, title and interest as lessor, in and to any agreement to lease, leases, licenses, concession agreements and other agreements granting a right or privilege to use or occupy any portion of the Property (collectively "Leases") now or hereafter in existence and pertaining to all or any portion of the Property described above, together with any and all rents, issues, profits, revenues, income, earnest money or security deposits made pursuant to such Leases from the Property or any part thereof (collectively "Rents"), and any and all guarantees of performance under any such Leases.

IT IS HEREBY COVENANTED by the parties hereto that the Property is to be held and applied subject to the further terms herein set forth; and the Borrower, for the Borrower and Borrower's successors and assigns, hereby covenants and agrees with the Lender, as follows:

1. THE NOTE.

1.1 Issuance and Payment of the Note. The Borrower has issued the Note, and will duly and punctually pay the principal of the interest (if any) on the Note in accordance with the terms thereof, and will otherwise duly comply with the terms of the Note.

1.2 Prepayment on Taking of the Property. In case of any taking (as described in Section 11.2 hereof) of the Property, the portion of awards or other payments on account thereof shall be paid to the Lender and applied to the prepayment of the Note, together with interest (if any) on the principal amount of the Note so prepaid accrued to the date of such prepayment, and to the payment of all other indebtedness which this Mortgage secures. Any balance of such awards or other payments remaining after payment in full of the principal of and interest (if any) on the Note and all other indebtedness which this Mortgage by its terms secures shall be paid to the Borrower.

1.3 Replacement of Note. Upon receipt of evidence reasonably satisfactory to the Borrower of the loss, theft, destruction or mutilation of the Note and, in the case of any loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to the Borrower or, in the case of any such mutilation, upon surrender and cancellation of such Note, the Borrower will issue, in lieu thereof, a new Note, dated the date to which interest has been paid on the lost, stolen, destroyed or mutilated Note and otherwise of like tenor, with appropriate variations.

2. AUTHORITY. The Borrower represents and warrants that the Borrower has good and lawful right and authority to execute this Mortgage and to mortgage the Property, and that the Borrower is well seized and possessed of a fee simple title to the Property. The Borrower, at the Borrower's expense, will warrant and defend to the Lender and its successors and assigns, for the benefit of the Lender, such interest and the lien and interest of the Lender on and in the Property against all claims and demands and will maintain and preserve such lien as long as the Note is outstanding.

3. **RECORDATION; PRESERVATION OF LIEN.** The Borrower at its expense, will at all times cause this Mortgage and any supplements hereto, and such other instruments as may be required by applicable law, to be recorded, registered and filed and to be kept recorded, registered and filed in such manner and in such places, and will pay all such recording, registration, filing or other taxes, fees and charges, and will comply with all such statutes and regulation, as may be required by law in order to establish, preserve and protect the lien of this Mortgage on all of the Property and the rights of the Lender hereunder.

4. **COMPLIANCE WITH APPLICABLE LAWS.** Borrower shall comply with all applicable laws, ordinances, rules, regulations, and codes applicable to the Property, including the use and possession thereof and any business located thereon. Borrower has received no notice of, and neither knows of, nor suspects any facts which might constitute any violations of any federal or territorial health, safety or environmental laws, codes, ordinances, rules or regulations with respect to the Property, including the use or possession thereof and any business located thereon.

5. **HAZARDOUS WASTE.** There shall be no emission, spill, release or discharge into or upon the air, soil or any improvements located thereon, surface water or ground water, or the sewer, septic system or waste treatment storage or disposal systems servicing the property, of any hazardous or toxic substances or wastes at or from the Property or otherwise and the Property shall be kept free from all such hazardous or toxic substance or wastes.

6. **LITIGATION.** No litigation, arbitration, condemnation, re-zoning or administrative proceedings are presently pending or, to Borrower's knowledge, threatened, which if adversely determined might have a material adverse effect on the Borrower, the financial condition of Borrower or upon the respective property rights of Borrower. Notwithstanding anything to the contrary set forth herein the parties recognize that a proposed land and water use plan may adversely impact the value of the property.

7. **PAYMENT OF TAXES, ETC.** Subject to Section 9 relating to contests, the Borrower will pay or cause to be paid all taxes, assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof), water, sewer or other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of any character (including all interest and penalties thereon), which at any time may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon (a) the Property or any part thereof or any rent therefrom or any estate, right or interest therein, or (b) any occupancy, use or possession of or activity conducted on the Property or any part thereof. Such payments will be made before any fine, penalty, interest or cost may be added for nonpayment, and the Borrower will furnish to the Lender, upon request, official receipts or other satisfactory proof evidencing such payments.

8. **CONSTRUCTION LIENS.** Subject to Section 9 relating to contests, the

Borrower shall not, without the Lender's prior written approval, directly or indirectly create or permit or suffer to be created or to remain, and will discharge, or cause to be discharged within thirty (30) days after issuance thereof, any construction lien with respect to the Property or any part thereof, or the Lender's interest therein.

9. **PERMITTED CONTESTS.** The Borrower or a tenant under any lease, at its expense, may contest (after prior written notice to the Lender) by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any mechanics' lien, construction lien, or taxes or other charges enumerated in Section 7 or lien therefor or the application of any instrument of record referred to in Section 8 provided; that (a) in the case of unpaid mechanics' liens, construction liens, or taxes or other charges enumerated in Section 7 or liens therefor, such proceedings shall suspend the collection thereof from the Borrower, the Lender and the Property; (b) neither the Property nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost; (c) neither the Borrower nor the Lender would be in any danger of any additional civil or any criminal liability for failure to comply therewith (except interest, or penalties in the nature of interest, and attorney's fees or court costs) and the Property would not be subject to the imposition of any additional lien as a result of such failure; and (d) the Borrower shall have deposited adequate monies with respect thereto with the lender, who shall have the power to pay such contested amounts in the event the Property is in danger of forfeiture or the Lender is in danger of being held civilly or criminally liable with respect thereto, or, in the event the contested matter is the subject of litigation, the Borrower shall have deposited in a fund administered by the court adequate moneys therefor (as determined by the Lender).

10. **NOTICES CONCERNING THE PROPERTY.** The Borrower will deliver to the Lender, promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by the Borrower which materially affect the Property.

11. **TAKING; APPLICATION OF AWARD.**

11.1. **Borrower to Give Notice, etc.** In case of any taking of all or any part of the Property, or any interest therein or right accruing thereto as the result of or in lien or in application of the exercise of the right of condemnation or eminent domain during the term hereof, the Borrower shall promptly give to the Lender written notice generally describing the nature of the proceedings and negotiations for such taking and the nature and extent of the taking which might result therefrom, as the case may be. The Lender may appear in any such proceedings and negotiation, and the Borrower shall promptly give to the Lender copies of all notices, pleadings, determinations and other papers in any such proceedings. The Borrower will in good faith and with due diligence file and prosecute any claim or claims for any award or payment on account of any taking of the Property, will pay all costs and expenses (including, without limitation, attorneys' fees and the expense of the Lender) in connection with any such taking and seeking and obtaining any award or payment on account thereof. Such costs and expenses shall constitute indebtedness secured by this Mortgage.

11.2 Taking. In the case of a taking of whatever nature, total or partial, of the Property or any portion thereof, any payment or award on account of such taking shall be collected and paid over in accordance with the provisions of Section 1.2 hereof.

12. INTENTIONALLY OMITTED.

13. INTENTIONALLY OMITTED.

14. NO CREDIT FOR PAYMENT OF TAXES. The Borrower shall not be entitled to any credit against the Principal of and interest, if any, on the Note, or any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any tax on the Property or any part thereof.

15. EVENTS OF DEFAULT; DECLARATION OF NOTICE DUE. If one or more of the following events (herein referred to as "Events of Default") shall occur:

(a) if the Borrower shall fail to pay any principal of or interest, if any, on the Note when the same becomes due and payable (whether at maturity or on a date fixed for any interest payment, any installment payment, any prepayment or otherwise) and such default is not cured within fifteen (15) days after the payment due date; or

(b) if the Borrower shall fail to perform or comply with any of the other terms of this Mortgage and such default is not cured within thirty (30) days after the effective date of written notice from Lender to Borrower; or

(c) if the Borrower 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; or

(d) if, within sixty (60) days after the commencement of any proceeding against the Borrower 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 the Borrower, without the consent or acquiescence of the Borrower, such appointment shall not have been vacated; or

(e) if the Borrower assigns or sells, or further encumbers, its interest in all or any part of the Property or if the Beneficial Ownership of Borrower shall change in violation of paragraphs 30, 31 and/or 32;

Then and in any such event (regardless of the pendency of any proceeding which has or might have the effect of preventing the Borrower from complying with the terms of the Mortgage), the Lender may at any time, without notice to declare the entire unpaid principal balance and all other indebtedness evidenced by the Note and/or secured by this Mortgage to be immediately due and payable, without presentment, demand, protest or notice, all of which are hereby waived.

16. REMEDIES OF THE HOLDER OF THE NOTE.

16.1 Legal Proceedings. If an Event of Default shall have occurred, the Lender may proceed to foreclose this Mortgage and to protect and enforce its rights by any action at law, suit in equity or other appropriate proceeding, whether for the specific performance of agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.

16.2 Cost of Enforcement. The Borrower shall pay on demand all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by or on behalf of the Lender in enforcing this Mortgage, the Note, or any of the other documents executed in connection herewith, or occasioned by any default hereunder or thereunder. Such costs and expenses shall constitute indebtedness secured by this Mortgage.

16.3 No Waiver. Neither failure or any delay on the part of the Lender to exercise any right, remedy, power or privilege provided for herein or by statute or at law or in equity or otherwise shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. INTENTIONALLY OMITTED.

18. FORECLOSURE. If an Event of Default shall have occurred, the Lender may at any time proceed at law or in equity or otherwise to foreclose the lien of this Mortgage as against all or any part of the Property. Borrower hereby expressly waives all rights to require Lender to first resort to the sale of any portion of the Property before foreclosing upon and/or selling any other portion(s) of the Property which is subject to this Mortgage and Borrower hereby agrees that Lender, at Lender's sole discretion, may elect to sell any one or more portion of the property in one or more Marshal's sales.

19. APPOINTMENT OF RECEIVER. If an Event of Default shall have occurred, the Lender shall be entitled, as a matter of right without regard to the adequacy or inadequacy of the Lender's security, to the appointment of a receiver for all or any part of the Property, whether such receivership is incidental to a proposed sale of the Property or otherwise, and the Borrower hereby consents to the appointment of such a receiver and shall not oppose any such appointment.

20. PURCHASE OF PROPERTY BY THE HOLDER OF THE NOTE. The Lender may be a purchaser of the Property or of any part thereof or of any interest therein at any foreclosure sale thereof and may apply upon the purchase price the indebtedness secured hereby owing to the Lender. The Lender shall, upon any such purchase, acquire good title to the properties so purchased, free of the lien of this Mortgage and free of all liens and encumbrances subordinate to the Mortgage.

21. RECEIPT A SUFFICIENT DISCHARGE TO PURCHASER. Upon any sale of the Property or any part thereof or any interest therein pursuant to foreclosure, the receipt of the officer making the sale under judicial proceedings shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obliged to see to the application thereof.

22. APPLICATION OF PROCEEDS OF SALE. The proceeds of any sale of the Property or any part thereof or any interest therein pursuant to foreclosure or otherwise hereunder, together with any other monies at any time held by the Lender pursuant to this Mortgage, shall be applied to pay:

FIRST: All costs and expenses of the sale of the Property or any part thereof or any interest in connection therewith, or all costs and expenses of entering upon, taking possession of, removal from, holding, operating and managing the Property or any part thereof, as the case may be, reasonable attorneys' fees, and any taxes, assessments or other charges, prior to the lien of this Mortgage, which the Lender may consider it necessary or desirable to pay;

SECOND: All amounts of principal and interest at the time due and payable on the Note (whether at maturity or on a date fixed for any installment payment or any prepayment or by declaration and acceleration or otherwise), and in case such monies shall be insufficient to pay in full the amount so due an unpaid upon the Note, then, first, to the payment of all amounts of interest at the time due and payable on the Note, without preference or priority of any installment of interest over any other installment of interest, and, second, to the payment of all amounts of principal at the time due and payable on the Note, without preference or priority of any amount of principal over any other amount of principal;

THIRD: Any other indebtedness secured by this Mortgage and at the time due and payable (whether by acceleration or otherwise);

FOURTH: Any indebtedness secured by any lien on the Property which is subordinate to the lien of this Mortgage; and

FIFTH: Any balance to the Borrower.

23. REMEDIES CUMULATIVE. Each right, power and remedy of the Lender

provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise of any one or more of such rights, shall not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

24. NO WAIVER, ETC. No failure by the Lender or the holder of the Note to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term or any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

25. FURTHER ASSURANCES. The Borrower at its expense will execute, acknowledge and deliver all such instruments and take all such actions as the Lender from time to time may reasonably request for the better assurance to the Lender of the Property and rights now or hereafter subjected to the lien hereof or assigned hereunder or intended so to be subjected or assigned.

26. INDEMNIFICATION BY THE BORROWER. The Borrower will protect, indemnify and save harmless the Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against the Lender by reason of (a) its Mortgage interest in the Property, or receipt of any rent or other sum therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Property; (c) any use, non-use or condition of the Property; (d) any failure on the part of the Borrower to perform or comply with any of the terms of this Mortgage or the terms of any other documents executed in connection herewith; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the property or any part thereof for construction or maintenance or otherwise. Provided, however, that the foregoing indemnification provision shall not be applicable to any occurrence arising after the Lender retakes possession of the Property in connection with a default by the Borrower. Any amounts payable to the Lender under this Section which are not paid within ten (10) days after written demand therefor by the Lender shall bear interest at the rate set forth in the Note from the day of such demand and shall be secured by this Mortgage. In case any action, suit or proceeding is brought against the Lender by reason of any such occurrence, the Borrower, upon the Lender's request, will at the Borrower's expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by the Borrower and approved by the Lender. Such obligations of the Borrower under this Section as shall have accrued at the time of any termination or satisfaction of this Mortgage shall survive any such termination or satisfaction.

27. RIGHT OF HOLDER OF THE NOTE TO PERFORM BORROWER'S COVENANTS, ETC. If the Borrower fails to make any payment or perform any act required

to be made or performed hereunder, the Lender, after such notice to the Borrower as may be reasonable under the circumstance, and without waiving or releasing any obligation or default, may (but shall be under no obligation or default, may (but shall be under no obligation to) at any time hereafter make such payment or perform such act for the account and at the expense of the Borrower, and may enter upon the Property or any part thereof for such purpose and take all such action thereon as, in the opinion of the Lender, may be necessary or appropriate therefor. All sums so paid by the Lender and all costs and expenses (including, without limitation, attorney's fees and expenses) so incurred, together with interest thereon at the rate set forth in the Note, from the date of payment or incurring, shall constitute indebtedness secured by this Mortgage and shall be paid by the Borrower to the Lender on demand.

28. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, power and remedies provided herein may be executed only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity of other terms of the Mortgage shall in no way be affected thereby.

29. NOTICES. All notices and other communications hereunder shall be in writing and shall be deemed to have been given when hand delivered or mailed by first class certified mail, postage prepaid, return receipt requested, to the address given at the beginning of this Mortgage or at such other address as a party may have furnished to the other party by written notice.

30. ASSIGNMENT.

30.1. Assignment by Borrower. This Mortgage shall be binding upon the Borrower and the Borrower's successors and assigns, and all persons claiming under or through the Borrower or any such successor or assign, and shall inure to the benefit of and be enforceable by the Lender and the successors and assigns thereof; provided, however that the Borrower hereby agrees that the Borrower will not sell, assign or convey the Borrower's interest in the Property until all amounts of principal and interest at the time due and payable under the Note have been paid in full, without the prior written consent and approval of the Lender, which consent may be withheld for any reason or no reason at all. If legal or equitable title to the Property or any part thereof shall hereafter change by any means or if the Property or any part thereof shall be further encumbered without Lender's consent, then the indebtedness secured hereby shall become immediately due and payable upon demand of Lender and same shall constitute an Event of Default.

30.2. ASSIGNMENT BY LENDER. The Note and this Mortgage may at any time be assigned, in whole or in part, by the Lender and the benefits, advantages, rights and obligations of the Lender hereunder shall inure to the successors and assigns of the Lender.

31. - **TRANSFER OF THE PROPERTY; ASSUMPTION.** If all or any part of the Property or an interest therein is sold or transferred by the Borrower without the Lender's prior written consent (which consent may be withheld for any reason or no reason at all), the Lender may, at the Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable and same shall constitute an Event of Default.

32. **CHANGE OF OWNERSHIP.** In the event beneficial ownership of the Property shall change by any means without the Lender's consent (which consent may be withheld for any reason or no reason at all), then the indebtedness secured hereby shall become immediately due and payable upon demand of the Lender and same shall constitute an Event of Default. For the purposes of this provision, if the Borrower is a corporation, any sale or other change in the controlling or controlling beneficial interest of the corporate stock of Borrower to persons not shareholders of the Borrower as of the date hereof shall be considered a change of ownership requiring the Lender's consent.

33. **ASSIGNMENT OF RENTS.** Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the Rents of the Property, including those now due, past due or to become due by virtue of any one or more of the Leases, regardless of to whom the Rents of the Property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the Rents and hereby directs each tenant of the Property to pay such Rents to Lender or Lender's agents; however, prior to written notice given by Lender to Borrower of the default by Borrower of any covenant or agreement of Borrower in this Mortgage and the expiration of any period of cure therefor, Borrower shall have the right to collect and receive all Rents of the Property as trustee for the benefit of Lender and Borrower, to apply the Rents so collected to the sums secured by this Mortgage with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of Rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the default by Borrower of any covenant or agreement of Borrower in this Mortgage and the expiration of any period of time therefor and without the necessity of Lender entering upon the taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall be immediately entitled to possession of all Rents of the Property as specified in this paragraph as the same become due and payable, including, but not limited to Rents then due and unpaid, and all such Rents shall immediately be held by Borrower as trustee for the benefit of Lender only; however, the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such Rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such Rents payable to and pay such Rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of the tenant to inquire further as to the existence of a default by Borrower.

33.1 Borrower hereby covenants that Borrower has not executed any prior

assignment of the Rents, that Borrower has not performed and will not perform any acts and has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this paragraph, and that at the time of execution of this Mortgage there has been no anticipation or prepayment of any of the Rents of the Property for more than one (1) month prior to the due dates of such Rents. Borrower covenants that Borrower will not hereafter collect or accept payments of any Rents of the Property more than one (1) month prior to the due dates of such Rents. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of Rents of the Property as Lender may from time to time request.

33.2 Upon Borrower's default of any covenant or agreement of Borrower in this Mortgage, and upon the notice and expiration of period to cure, if any, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases and subleases, the collection of all Rents of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of the covenant or agreement of Borrower in this Mortgage, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

33.3 All Rents collected by Lender pursuant to this Section 33 shall be applied as provided in Section 22 hereof. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this paragraph.

33.4 If the Rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the Rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Mortgage. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

33.5 Any entering upon and taking and maintaining of Control of the Property by Lender or the receiver and any application of Rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or as provided herein. This assignment of Rents of the Property shall terminate at such time

as this Mortgage ceases to secure indebtedness held by Lender.

34. **MISCELLANEOUS.** This Mortgage may be changed, waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. The headings in this Mortgage are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. This Mortgage shall be governed by and construed in accordance with the laws of the United States Virgin Islands.

35. **INTEREST AND ADVANCES TO PROTECT COLLATERAL.** This Mortgage secures and shall secure the Obligations. Without limiting the foregoing, this Mortgage secures any and all interest on the indebtedness, costs of collection, and any advances made by the Lender reasonably necessary for protection of the collateral or otherwise authorized hereby.

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be duly executed on the date first above written:

DATED: 9/15/97

IN WITNESS







Waleed Hamad, President
Sixteen Plus Corporation

[CORPORATE SEAL]

ATTEST:



Rafeel Yusuf, Secretary

HAMD596325

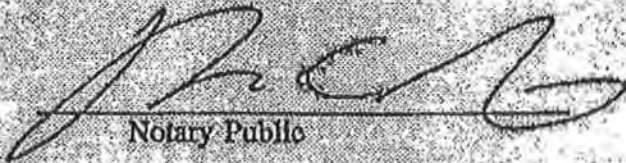
ACKNOWLEDGEMENT FOR CORPORATION

TERRITORY OF THE VIRGIN ISLANDS)
)ss:
DISTRICT OF ST. CROIX)

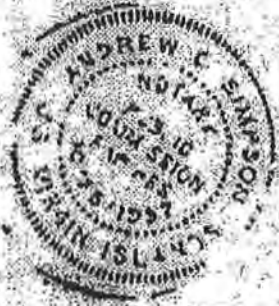
On this 15th day of September, 1997, before me the undersigned officer, personally appeared Fathil Yusuf, known to me (or satisfactorily proven) and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Secretary of Sixteen Plus Corporation, the corporation named in this Contract;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is Waleed Hamad, the President of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (d) this person knows the proper seal of the corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

SIGNED AND SWORN to before me on
this 15 day of September, 1997.


Notary Public

Recorded and Entered in Recorder's Book for the
 District of St. Croix, Virgin Islands of the U.S.A. at
 File No. 108-119199 Page 33
 on 15-9-97 and noted in Real Property Records
304,305 + 3
508.50



HAMD596326

EXHIBIT A

1. Parcel No. 8, Estate Cane Garden, of approximately 2.6171 U.S. Acres.
2. Remainder No. 46A, Estate Cane Garden, of approximately 7.6460 U.S. Acres.
3. Parcel No. 10, Estate Cane Garden, of approximately 2.0867 U.S. Acres.
4. Road Plot No. 11, Estate Cane Garden, of approximately 0.0868 U.S. Acres.
5. Parcel No. 11, Estate Retreat, Matr. No. 37B of Company Quarter and Peter's Mind, Matr. No. 37A and 37BA, Company Quarter, and No. 54 Queen's Quarter all of approximately 42.3095 U.S. Acres.
6. Remainder Matr. 32B, Estate Cane Garden of approximately 48.5175 U.S. Acres.
7. Parcel No. 9 Estate Cane Garden, of approximately 11.9965 U.S. Acres.
8. Remainder Matr. 32A, Estate Granard, of approximately 41.0736, U.S. Acres.
9. Parcel No. 40, Estate Granard of approximately 14.9507 U.S. Acres.
10. Remainder Matr. No. 31, Estate Diamond, of approximately 74.4220 U.S. Acres.
11. Parcel No. 4, Estate Diamond, of approximately 5.8662 U.S. Acres.
12. Parcel No. 1, Estate Diamond, of approximately 61.2358 U.S. Acres.
13. Parcel No. 3, Estate Diamond, of approximately 6.9368 U.S. Acres.
14. Parcel No. 2, Estate Diamond, of approximately 6.5484 U.S. Acres.
15. Road Plot No. 12, Estate Cane Garden, of approximately 0.4252 U.S. Acres.
16. Road Plot No. 41, Estate Granard, of approximately 0.4255 U.S. Acres.
17. Road Plot No. 6, Estate Diamond, of approximately 0.8510 U.S. Acres.



28th Feb
Recorded and Entered in Recorder's Book for the
District of St. Croix, Virgin Islands of the U.S.A.
No. 11181-1-347 and noted in Real Property Book
II, B-2, 126 Page 277, 186, 304, 305 & 306
[Signature]

HAMD596327

EXHIBIT 5

BRYANT, BARNES & SIMPSON, P.C.

ATTORNEYS AT LAW

BRYANT H. BRYANT
DARYL C. BARNES
ANDREW C. SIMPSON

C. BETH MOSS
BETHANEY VAZZANA
CARL A. BECKSTEDT III

47 KING STREET, 2ND FLOOR
POST OFFICE BOX 4589
CHRISTIANSTED, ST. CROIX
U.S. VIRGIN ISLANDS 00822-4589

TEL : 340-773-2785
FAX : 340-773-5427
E-MAIL: villegal@viaccess.net

August 27, 1999

VIA CERTIFIED MAIL

Waleed Hamed, President
Sixteen Plus Corporation
c/o Plaza Extra
United Shopping Plaza
St. Croix, VI 00820

RE: Diamond Keturah Property

Dear Waleed:

Per your request, enclosed please find the original First Priority Mortgage filed on the Diamond Keturah Property. You will see that it was recorded on February 22, 1999 as Document No. 768\1999 at pc 679, page 33. I return the original to you to keep in a safe and fireproof place.

If you have any questions, please don't hesitate to contact me. Thank you.

Very truly yours,



Carl A. Beckstedt III

CAB/alg

cc: Andrew C. Simpson, Esq.

E:\United Diamond Keturah\waleed-11-8-27-99.wpd

HAMD596308

344-FY-1148

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
 a Complete items 1 and/or 2 for additional services.
 b Complete items 3, 4, and 6.
 c Print your name and address on the reverse of this form so that we can return this card to you.
 d Attach this form to the front of the envelope, or on the back if space does not permit.
 e Write "Return Receipt requested" on the multilink below the article number. The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:
 Walter Hamed, President
 Sixteen Plus Corporation
 c/o Plaza Extra
 United Shopping Plaza
 St. Croix, VI 00820

4a. Article Number
 Z 364 353 413

4b. Service Type
 Registered
 Express Mail
 Return Receipt for Merchandise
 COD

4c. Certified
 Insured

5. Received By: (Print Name)
 X

6. Signature: (Addressee or Agent)

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

Z 364 353 413

US Postal Service
Receipt for Certified Mail
 No Insurance Coverage Provided.
 Do not use for International Mail (See reverse)

Sort to:
 Walter Hamed, President
 Street & Number
 c/o Plaza Extra United Shopping Plaza
 Post Office, State, & ZIP Code
 St. Croix, USVI 00820

Postage	\$.77
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom Date, & Addressee's Address	1.25
TOTAL Postage & Fees	\$ 3.42
Postmark or Date	

PS Form 3800, April 1988

Fold at line over top of envelope to the right of the return address.

CERTIFIED

Z 364 353 413

MAIL

Additionally, Wally Hamed, as President of Sixteen Plus, executed the Promissory Note and the First Priority Mortgage in the amount of four million five hundred thousand dollars. Copies of the Promissory Note and First Priority Mortgage are attached as **Composite Exhibit 4**. Further, after the First Priority Mortgage was recorded, Wally Hamed, "per his request," was provided with a recorded copy of the same, via Certified Mail, by attorney Carl A. Beckstedt III. *See* Letter from C. Beckstedt and Certified Mail receipt attached as **Exhibit 5**. The fact that Sixteen Plus's Third-Party Complaint is based on a transaction approved in writing by the Hamed son most engaged in the running of the Hamed/Yusuf businesses plainly underscores the lack of any legal basis.

Ms. Yousuf has brought this action to foreclose her mortgage due to non-payment of the money owed to her by Sixteen Plus. Sixteen Plus has asserted a counterclaim against Ms. Yousuf, as well as a third-party claim against Mr. Yusuf for unspecified tortious actions which are claimed to be "intentional, wanton, extreme and outrageous" (Count I) and a claim for a declaratory judgment that he is estopped from foreclosing on the mortgage—which he is not doing—and holding him liable for "injuries that would be suffered by Sixteen Plus" if he were "allowed to commit [] tax fraud, submit[] false documents and perjury" and "now state the opposite in this action." (Count II).

In reality, giving the Third-Party Complaint the most charitable reading possible, Sixteen Plus is alleging that in the late 1990s Mr. Yusuf made a fraudulent misrepresentation to the Hamed shareholders of Sixteen Plus that the note did not represent a legal obligation on the part of Sixteen Plus and that the mortgage did not really provide for a security interest in the Property because the note and mortgage could be discharged at any time at the mere request of Sixteen

EXHIBIT 6

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

HISHAM HAMED, on behalf of himself
and derivatively, on behalf of SIXTEEN
PLUS CORPORATION,

Plaintiffs,

v.

FATHI YUSUF, ISAM YOUSUF,
JAMIL YOUSEF,

Defendants,

and

SIXTEEN PLUS CORPORATION,

a nominal defendant.

Case No.: 2016-SX-CV-650

DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES,
CICO RELIEF, EQUITABLE
RELIEF AND INJUNCTION

JURY TRIAL DEMANDED

FIRST AMENDED VERIFIED COMPLAINT

The Plaintiffs, by counsel, hereby alleges as the basis of ~~his~~their First Amended
Verified Complaint against the Defendants as follows:

JURISDICTION AND PARTIES

1. This Court has jurisdiction pursuant to 4 V.I.C. §76 and 14 V.I.C. §607.
2. Individual Plaintiff Hisham Hamed, ("Hamed") is an adult resident of St. Croix and is now and at all times relevant to this Complaint has been an owner of stock in nominal defendant Sixteen Plus Corporation ("Sixteen Plus").
3. Defendant Fathi Yusuf is an adult resident of St. Croix who was at all times relevant to this Complaint (and still is) a shareholder, officer and director of Sixteen Plus ~~at all times relative hereto.~~

4. The Defendant Isam Yousuf is an adult resident of St. Martin and has been at all times relative hereto.
5. The Defendant Jamil Yousef is an adult resident of St. Martin and has been at all times relative hereto.
6. The Individual Plaintiff also brings ~~this~~ a shareholder's derivative action on behalf of Sixteen Plus Corporation ("Sixteen Plus"), a Virgin Islands corporation that was formed in February of 1997, which is joined as a nominal defendant, as the cause of action belongs to the corporation, but its Board of Directors is such that the Board cannot be reasonably expected to bring suit in the name of the corporation.
7. ~~The~~Individual Plaintiff Hamed was at all times relevant to this Complaint (and still is) a shareholder of Sixteen Plus at all times relative hereto, as he was an initial shareholder when the corporation was formed and has continuously remained a shareholder during all times relevant.
8. The Plaintiff ~~has standing to~~can bring this suitthe derivative claim on behalf of the corporation pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, which is applicable to this cause of action.
9. The Board of Directors of Sixteen Plus currently consists of two directors, Fathi Yusuf, a named defendant, and Waleed Hamed. An original third director voluntarily withdrew from the Board before the acts complained of here when he sold all of his stock in the corporation to the Hameds and Yusufs.
10. Fathi Yusuf and Waleed Hamed and their families are in intractable litigation in several other matters. Both have acknowledged this to be the case, and have

filed papers in other proceedings before the Superior Court attesting to this. Moreover, the Superior Court (Willocks, J.) has entered an Order stating that the Hamed and Yusuf families could file a derivative action as to another jointly controlled corporation for the same reason.

11. Thus, Plaintiff Hamed has not made a demand on the Board of Directors, as it would be futile to make a demand on them to bring this suit on behalf of Sixteen Plus. As was true in the same situation before Judge Willocks, there would be no reasonable expectation that Fathi Yusuf would agree to have Sixteen Plus sue him for embezzlement, fraud and a violation of Section 605 of Title 14 of the Virgin Islands Code

FACTS

a. Background History – 1997-1999: Prior to the Alleged Conspiracy and Alleged Predicate Criminal Acts

12. On February 10, 1997, Sixteen Plus was formed as a corporation to purchase a 300 plus acre parcel of land on the South shore of St. Croix, often referred to as Diamond Keturah (hereinafter referred to as the "Land") from the Bank of Nova Scotia ("BNS";) -- which had obtained its ownership interest subject to rights of redemption through a foreclosure sale conducted on February 13, 1996.
13. A contract to buy the Land subject to the rights of redemption was then entered into between Sixteen Plus and BNS on February 14, 1997.
14. At the time it was formed and at all times up to the present, all of the stock of Sixteen Plus ~~stock~~ Plus has been owned 50% by family members of Fathi Yusuf and 50% by family members of Mohammad Hamed.

15. At the time Sixteen Plus was formed in the late 1990's, Fathi Yusuf and Mohammad Hamed were 50/50 partners in a grocery business known as Plaza Extra Supermarkets.
16. Fathi Yusuf and Mohammad Hamed decided to buy the Land in question by providing the necessary funds to Sixteen Plus -- using only proceeds from the grocery stores they owned -- which they did as described below.
17. Yusuf, acting for the Plaza Extra partners, then ~~undertook~~directed the business arrangements regarding the purchase of the Land.
18. Yusuf ~~made~~directed these business arrangements for the partnership as to the purchase of the Land ~~on behalf of the~~using partnership funds rather than involving his partner Mohammad Hamed because, as both the Court in *Hamed v. Yusuf* and Fathi Yusuf himself have stated -- Fathi Yusuf was "in charge" of the business transactions for the partnership and they were under his "exclusive ultimate control". (See, *Hamed v. Yusuf*, 2013 WL 1846506 (V.I. Super. April 25, 2013)(para. 19 at page *6, "Yusuf's management and control of the "office" was such that Hamed was completely removed from the financial aspects of the business. . . ." and Yusuf's May 9, 2013, *Motion to Stay the Preliminary Injunction* in that same action -- where Yusuf admitted "[Hamed] never worked in any management capacity at any of the Plaza Extra Stores, which role was under *the exclusive ultimate control of Fathi Yusuf.*")
19. All funds used to buy the Land came from the Plaza Extra Supermarkets partnership -- and thus from Yusuf and Hamed as the only two partners.

20. However, Fathi Yusuf decided he did not want either the Government of the Virgin Islands or BNS to know the partnership source of the funds he was using to buy the Land, as he did not want them to know he was secretly diverting unreported cash from the Plaza Extra Supermarket to Sixteen Plus as part of a criminal money laundering effort ~~effort~~ money laundering effort. The following details of that effort are presented here as background information to the later predicate criminal acts and are not the subject of this Complaint.
21. ~~As such,~~ Fathi Yusuf ~~conspired~~ acted with Isam Yousuf, his nephew who lived on St. Martin, to launder in excess of \$4,000,000 in unreported, untaxed partnership funds to St. Martin from the Plaza Extra Supermarket operations -- so that they could then wire these funds back to a Sixteen Plus account at BNS in order for Sixteen Plus to use these 'laundered' funds to purchase the Land.
22. To accomplish this, Fathi Yusuf had large sums of cash delivered to Isam Yousuf in St. Martin, who thereafter deposited those funds into various accounts in St. Martin. Fathi Yusuf and Isam Yousuf then transferred the partnership's funds by wire to an account in the name of Sixteen Plus at BNS on St. Croix. The transfers (which exceeded \$4,000,000) to Sixteen Plus' account at BNS took place between February 13th and September 4th of 1997.
23. To further cover up the partnership source of these funds, as well as to try to shelter Isam Yousuf from exposure to criminal consequences from the effort to launder and use the cash from the partnership's supermarkets, Fathi Yusuf and Isam Yousuf agreed to create a sham note and mortgage for the transaction,

naming Fathi Yusuf's young niece who lived in St. Martin, Manal Mohammad Yousef ("Manal Yousef"), as the sham mortgagee.

24. Fathi Yusuf explained the note and mortgage to his partner, Mohammad Hamed, as well as the various Hamed shareholders of Sixteen Plus as being a legitimate business transaction to protect the property, that Manal Yousef could and would never actually enforce the mortgage, and that ~~he~~ Yusuf could get it the note and mortgage discharged at any time.

25. To demonstrate the legitimacy of this arrangement to his partner, Fathi Yusuf stated to Mohamad Hamed and his son Waleed Hamed that all of the financials of the corporation, USVI tax filings and annual USVI corporate filings would accurately reflect that the funds came from Hamed and Yusuf as the shareholders – and would not reflect the note and mortgage as a valid corporate debt – as further described below. Thus, he explained, no USVI laws would be broken by making it appear that Manal Yousef had provided funds or was the holder of an enforceable claim.

25-26. Fathi Yusuf then caused a corporate resolution, sham note and mortgage in the amount of \$4,500,000 to be drafted by Sixteen Plus' counsel in favor of Manal Yousef, dated September 15, 1997, even though she had no such funds, and had never advanced any funds to Sixteen Plus -- as those funds came solely from the partnership and belonged 50/50 to the Hameds and Yusufs.

27. The note and mortgage exceeded the amount laundered through St. Martin by \$500,000. The additional \$500,000 came from partnership funds that Fathi Yusuf caused the supermarkets to deposit directly as currency into the St. Croix

bank account. Thus, \$500,000 of the \$4.5 million used to buy the land was directly provided by the Partnership as cash deposits.

26-28. At Fathi Yusuf's direction, that sham note and mortgage in the amount of \$4,500,000 were then executed by Sixteen Plus in favor of Manal Yousef on September 15, 1997, even though the Land in question had actually not been purchased yet – and the amount transferred through St. Martin was only \$4 million.

27-29. On December 24, 1997, BNS finally was entitled to a conveyance of the Land from the Marshal of the Territorial (now Superior) Court of the Virgin Islands, as the rights of redemption in the foreclosure sale had expired.

28-30. As per the contract between them, instead of taking title, BNS assigned its right to this conveyance from the Marshal to Sixteen Plus. Sixteen Plus paid for this assignment with the funds from the partnership.

29-31. On February 22, 1998⁹, Sixteen Plus finally received and recorded the deed to the Land. On that same day, Sixteen Plus also recorded the sham mortgage (as originally dated September 15, 1997) in favor of Manal Yousef.

a. The Money Laundering Charges-2003

30-32. In 2003, the Federal Government filed felony money laundering and tax evasion criminal charges against Fathi Yusuf and Isam Yousuf, among others.

31-33. The felony case included criminal charges related to the aforementioned laundering of funds by diversion from the partnership's Plaza Extra supermarkets to St. Martin to buy the Sixteen Plus Land. That case and those criminal charges are not the subject of the CICO case here – or claimed as predicate acts.

32-34. Pursuant to those charges, the Federal Government placed a lien against various real property owned by Fathi Yusuf's United Corporation as well as corporations also owned jointly by the Yusuf and Hamed families -- including the Land owned by Sixteen Plus.

35. The Government also identified the money laundering through St. Martin and the fact that \$500,000 in currency was deposited with funds from the supermarkets to make up the difference.

33-36. As part of its investigation and the charges, the FBI retrieved and documented the bank records from St. Martin showing the diversion of the \$4 million in funds from the partnership's Plaza Extra Supermarkets to St. Martin -- and subsequent transfer of those laundered funds back to the bank account of Sixteen Plus in order to purchase this Land. It also documented the deposits of \$500,000 directly into the St. Croix account by the partnership.

b. The Value of the Sixteen Plus Property Dramatically Increases-2005

34-37. While the criminal case continued over the next years, various third parties attempted to buy the Land from Sixteen Plus at substantially higher prices than was paid for the property, with the highest offer exceeding \$22 million.

35-38. Recognizing this substantial increase of 500% in value in less than 10 years, Fathi Yusuf ~~tried~~began to try to figure out how to pocket these funds for himself.

36-39. In this regard, the Federal Government agreed that it would remove its lien and the Land could be sold -- but **only** if the proceeds of any such sale were

escrowed pending the outcome of the criminal case and not paid to Manal Yousef.

37.40. Contrary to the best interests of Sixteen Plus and its shareholders, Fathi Yusuf initiated~~began~~ to formulate a plan (the "Plan") to embezzle from and defraud Sixteen Plus of the value of the Land, ~~rejecting the~~ and thus rejected offers for the Land unless the sham Manal Yousef note and mortgage were paid, so he could then get sole control of these funds.

38.41. The Federal Government refused to agree to the request that the Manal Yousef mortgage be paid first, ~~confirming~~ asserting its own doubts about the validity of this the sham mortgage.

39.42. Fathi Yusuf could also have had Manal Yousef agree to an escrow of the sales proceeds while preserving her alleged mortgage rights, which would have allowed the sale to take place and fully protect the debt allegedly owed to her, but this would have necessarily involved her in the on-going criminal prosecution since the Land was actually purchased with laundered funds, so such a request was never made. Indeed, once the funds were escrowed, Fathi Yusuf would lose his opportunity to keep the funds for himself pursuant to his Plan.

40.43. As such, Sixteen Plus lost then, and is continues to lose the benefit of such sales at the highest and best amount because of Fathi Yusuf's insistence that the sham mortgage be paid upon the sale of the property -- which payment the Federal Government refused to allow.

c. The Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy

41.44. By May of 2010 it was clear that a settlement and plea would eventually be reached in the criminal action.

42.45. In May of 2010, without the knowledge of the Hameds, Defendants took an additional step to further the Plan (the "Plan") to obtain or disclosure of either their acts or the related documents. Defendants began to implement the *Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy* (the "Hidden Plan") by first obtaining a "Real Estate Power of Attorney" from "Manal Mohammad Yousef Mohammad" that gave Fathi Yusuf, **personally**, the power to do whatever he wished with the mortgage, including releasing the mortgage or foreclosing on the Land for his own benefit, even though the Hamed family had actually paid 50% for of the purchase price to buy the Land. See **Exhibit 1**. The St. Martin Defendants were central to this effort to embezzle the Sixteen Plus funds.

43.46. This power of attorney Fathi Yusuf supplied and they had Manal Yousef sign, gave no rights or benefits to Sixteen Plus, even though or the Hameds and thus usurped the corporate opportunity, despite the fact that Fathi Yusuf was an officer and director of the corporation, owing it fiduciary and statutory duties, as well as a shareholder.

44.47. Additionally, this undisclosed power of attorney specifically stated that Fathi Yusuf was effectively given total power over what to do with the Land and foreclosure proceeds -- as he was also released and indemnified as to all actions he might take in regard to his broad, personal power of attorney—which further demonstrated that the mortgage and note were a sham, as no bona fide lender

gives a principal of the borrower a full power of attorney to discharge the debt without requiring payment.

45-48. Upon information and belief, the power of attorney was drawn up by a Virgin Islands lawyer retained by Fathi Yusuf and executed at the request and direction of the St. Martin Defendants by Manal Yousef on St. Martin.

49. The existence and purpose of this power of attorney were not disclosed to the Hameds – and they did not learn of it or the Hidden Plan until after Yusuf attempted to steal all of the assets of Sixteen Plus, like he did with the Plaza Extra Supermarkets partnership in 2012 – all of which occurred well within the period of the statute of limitations applicable here.

46-50. That execution of the undisclosed, exclusive power of attorney in favor of Fathi Yusuf personally was orchestrated by Isam Yousuf in furtherance of the Plan with Fathi Yusuf to steal half of the value of the Land, then in excess of \$25 million, from Sixteen Plus and the Hamed shareholders.

47-51. The Defendants planned to use the sham mortgage to allow Fathi Yusuf to foreclose of the Land *for his own personal benefit*, and to thus deny Sixteen Plus the value of the Land.

48-52. In 2013, the Federal Government reached a settlement in the criminal case, which included *inter alia* a lump sum \$10 million payment of taxes to the Government of the Virgin Islands for previously unreported income from the Plaza Extra Supermarkets.

49-53. In addition to this large payment for back taxes, a fine in excess of \$1,000,000 was also paid to the Government, along with a plea of guilty to the

pending felony charge of tax evasion by the corporate defendant, who United Corporation, which subsequently was determined to be Yusuf's agent for the partnership.

~~50-54.~~ As a result of the plea and settlement, the Federal Government removed its lien on the Land. Also, Fathi Yusuf, Waleed Hamed and several of the other defendants were given personal immunity from criminal prosecution for ~~pre-~~ 2002 the acts of tax evasion and money laundering described above.

d. The Predicate Criminal Acts to Consummate the Hidden Plan

~~51-55.~~ After the criminal case was dismissed, the Fathi Yusuf and the St. Martin Defendants, in furtherance of the Hidden Plan, ~~retained~~ arranged for counsel on St. Martin to send a demand to Sixteen Plus – for payment of the sham note and mortgage Sixteen Plus allegedly owed to Manal Yousef. See **Exhibit 2.**

~~52-56.~~ That St. Martin counsel did not disclose to Sixteen Plus or the Hameds that Fathi Yusuf was the person personally directing the demand.

~~53-57.~~ A response was made to that demand by Hamed's counsel on behalf of Sixteen Plus, which was reduced to writing -- pointing out that the mortgage was not valid for the reasons stated herein. That writing also specifically stated that St. Martin counsel was acting improperly in asserting he was representing Manal Yousef's interests rather than Fathi Yusuf's. See **Exhibit 3.**

~~54-58.~~ While counsel on St. Martin promised to get a response to that letter after discussing the matter with his real "client" (see **Exhibit 4**), he never did so, strongly indicating to the Hameds that he had never really been retained by Manal Yousef.

59. In furtherance of the Hidden Plan, Fathi Yusuf, in conjunction with the other Defendants, committed multiple criminal acts including conversion, attempted conversion, perjury, attempted perjury, wire and mail fraud, and others.

55-60. In 2016, Fathi Yusuf filed a civil lawsuit in the Superior Court as part of the Hidden Plan; seeking to dissolve Sixteen Plus in an attempt to, *inter alia*, dispose of the Land and trigger payment of the sham mortgage.

56-61. In the course of that litigation, Fathi Yusuf was required to produce all documents he had exchanged with Manal Yousef, including any powers of attorney.

57-62. When Fathi Yusuf did supply what he represented to be all such documents on July 26, 2016, the power of attorney was not disclosed.

58-63. Hamed's counsel wrote to Yusuf's counsel pursuant to Fed. R. Civ. P. 34 and 37 (**Exhibit 5**), specifically asking for verification under the Rules that there was no such "power of attorney":

Stefan - I reviewed these new responses and there are still several deficiencies:

* * * *

3) Supplemental Document Response #13-The documents you referenced as documents exchanged with Manal Yousef only include the deed, mortgage, mortgage note and certain wire transfers from someone else—**please confirm** there are no letters, faxes, emails, documents showing any interest payments to her (as alleged were made), **powers of attorney**, pre-mortgage negotiations or any other documents exchanges with your client and her or her agent. (Emphasis added.)

59-64. On August 5, 2016, Fathi Yusuf's counsel responded that he had initiated a "reasonable search" as to his client and his client's documents, and falsely

represented – on behalf of Fathi Yusuf -- there was no such power of attorney.

See **Exhibit 5**.

Joel, . . . Here are my responses to your numbered paragraphs:

* * * *

I stand by my statement in the supplemental Rule 34 response that ***based on a reasonable search there are no other documents responsive to your request.*** I believe that supplemental response to your request is sufficient under the Rules (and I thought from our meet and confer that is what you wanted), and that I am not under any duty to go into more detail. (Emphasis added.)

60-65. During the same Superior Court litigation, Fathi Yusuf was also required to answer an interrogatory about the note and mortgage on the Land. To falsely make it appear that Manal Yousef was a *bona fide* mortgagee, hide the undisclosed personal power of attorney and protect the Hidden Plan – Fathi Yusuf stated under oath as follows (See **Exhibit 6**):

- a. That Manal Yousef loaned the full \$4.5 million on September 15, 1997, for the purchase of the Land;
- b. That Manal Yousef was paid three interest only payments on the mortgage between 1998 and 2000;
- c. That Manal's last known address is 25 Gold Finch Road, Point Blanche, St. Martin, N.A.;
- d. That he did not recall the last time he spoke with her;
- e. That Manal Yousef had retained counsel in the Virgin Islands;
- f. That he would not provide a phone number for Manal Yousef because she had counsel in the Virgin Islands.

~~61-66.~~ All of the foregoing statements made by Fathi Yusuf in his interrogatory response are false, and were made in furtherance of the Hidden Plan to steal half of the value of the Land from Sixteen Plus and its shareholders, the Hameds, by a foreclosure -- as Fathi Yusuf committed perjury under oath before the Court in furtherance of the Plan when he made these statements.

~~62-67.~~ Yusuf then filed a motion for a protective order to avoid providing Manal Yusuf's phone number, as a Sixteen Plus or Hamed discussion with Manal would disclose the power of attorney and the Plan to steal half of the value of the Land in a sham foreclosure.

~~63-68.~~ After the Court denied Yusuf's motion and ordered Fathi Yusuf to provide the phone number of Manal Yousef, he then repeated the false statements above -- and **now** stated that he did not have her phone number despite his motion to protect that exact information -- but that she could be reached through her nephew, Jamil Yousef, although to date he has repeatedly refused to verify that response. See **Exhibit 7**.

~~64-69.~~ However, the location given by Fathi Yusuf as Manal Yousef's address is actually in the possession of and used by Isam Yousuf, which is where he and his son, Jamil Yousef, reside.

~~65-70.~~ Yusuf knew, when he falsely certified to the contrary, that this was not the location where Manal Yousef resided.

~~66-71.~~ The purpose of this false representation in response to the Court's Order being that the St. Martin Defendants planned had agreed to intercept any mail, service or other communications to Manal before she could receive them.

67.72. Indeed, when service of process in the another pending Superior Court action was left at that address for Manal Yousef, Isam and Jamil Yousef intercepted the summons and contacted Fathi Yusuf to further the conspiracy to steal the land from Sixteen Plus, telling him about the suit instead.

68.73. Upon information and belief, Jamil Yousef then agreed to further participate in this fraudulent Plan by allowing Fathi Yusuf to provide his name to the Court as the alleged contact for Manal Yousef, to hide the truth -- promising to call Fathi Yusuf if he was contacted by anyone, so that her whereabouts would remain secret and she would not learn that "she" alone was allegedly going to get millions of dollars – money which Fathi Yusuf was seeking.

69.74. Fathi Yusuf thereafter represented to the Superior Court, without the necessary identification of the true party in interest, that he had been contacted by Manal Yousef's "agent", when he knew in fact that it was he, Fathi Yusuf, who was directing the case and attempting to foreclose the sham mortgage under the undisclosed power of attorney -- for his own benefit.

75. During this time period, including in 2012, Fathi Yusuf personally arranged for and signed, under the penalty of perjury -- tax and other governmental filings showing that no outstanding obligations were due to Manal Yousef, and, to the contrary, that the \$4.5 million had been advanced by – and was due to – the shareholders, Hamed and Yusuf, as follows:

- a. To conceal the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf filed tax returns for Sixteen Plus during this time period, including 2012. See Exhibits 8 and 9.

- b. In those filings he, personally signed and swore under oath and penalty of perjury that the \$4.5 million held by Sixteen Plus was received from shareholders and due to them – and there was no loan or mortgage to a third person. *Id.*
- c. This comported with his repeated representations to the Hameds intended to keep the Hidden Plan hidden.
- d. To hide the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf also prepared and filed annual corporate filings for Sixteen Plus during this time period, including 2012.
- e. In those filings he stated that the \$4.5 million held by Sixteen Plus was received from shareholders and due to them – and was not a loan or mortgage to a third person. See **Exhibit 10.**
- f. This comported with representations to the Hameds.

76. In furtherance of this scheme, in 2013 Fathi Yusuf also created and requested Waleed Hamed sign an annual corporate filing that showed \$4.5 million due as a mortgage and loan and not money due to the Shareholders as had been reported for the prior 13 years. He also inserted his family members as the directors on the document, which he signed and proffered to Hamed. See **Exhibit 11.**

70.77. Indeed, the Fathi Yusuf and the other Defendants were wrongfully attempting to hide the fact that Fathi Yusuf was the real plaintiff in interest – and that Manal Yousef had not personally ~~even~~ contacted counsel in the USVI to represent her alleged interests.

~~74.~~78. To further this Plan, Fathi Yusuf retained USVI counsel to represent him "acting" as Manal Yousef -- and then represented to the USVI Court that Manal Yousef had retained USVI counsel, when she had not in fact done so. He did not disclose that the suit was actually being brought by him, that he was the true party in interest, or the existence of the wrongfully undisclosed power of attorney.

79. Notwithstanding all of these facts being disclosed to Yusuf, he has not recanted any of his false statements or filings -- and continues to pursue his Plan to steal the real property at Diamond Keturah from Sixteen Plus without any payment to the company or its shareholders, as he continues to try to divert all such funds through Manal Yousef, which funds he will then take back for himself with a share to Defendants for their assistance.

COUNT I - CICO

~~72.~~80. Plaintiff ~~repeats~~ Plaintiffs repeat and realleges all preceding paragraphs, which are incorporated herein by reference.

~~73.~~81. Section 605 of Title 14 of the Virgin Islands Code provides in part as follows:

- a. ~~(a)~~ It is unlawful for any person employed by, or associated with, any enterprise, as that term is defined herein, to conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity.
- b. ~~(b)~~ It is unlawful for any person, through a pattern of criminal activity, to acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.
- c. ~~(c)~~ It is unlawful for any person who has received any proceeds derived, directly or indirectly, from a pattern of criminal activity in which he participated as a principal, to use or invest, directly or indirectly, any part of the proceeds thereof, or any proceeds derived from the investment or use of any of those proceeds, in the

acquisition of any title to, or any right, interest, or equity in, real property, or in the establishment or operation of any enterprise. . . .

~~74-82.~~ Pursuant to 14 V.I.C. §607(a), any aggrieved party may institute civil proceedings against any persons to obtain relief from a violation of §605.

~~83.~~ Sixteen Plus and its shareholders are such aggrieved parties, as the under subsection in that:

a. All Defendants haveare "person[s]" who through a pattern of criminal activity set forth in paragraphs 55 through 79, have "acquire[d]. . . directly or indirectly" an "interest in" the Land which is "real property" within the meaning of the statute.

b. All Defendants are "person[s] who have received. . . proceeds derived, directly or indirectly, from a pattern of criminal activity in which [they] participated as. . . principal[s], to use or invest, directly or indirectly, . . . part of the proceeds thereof. . . in the acquisition of. . . [a] right, interest, or equity in" the Land, which is real property as set forth above.

~~75-84.~~ Defendants acted in concert with one another in conspiring together in a pattern of activities to embezzle funds from and criminally defraud Sixteen Plus and its shareholders, which is expressly prohibited by 14 V.I.C. §834, causing damages to Sixteen Plus and its shareholders.

~~76-85.~~ ~~The Defendants conspired together~~ within the statutory limitations period to accomplish this goal by using unlawful means, including the use of knowingly false court filings in two different cases — and, tax and corporate filings, use of the mail and wires — and by perjured testimony in violation of 14 V.I.C. §1541 and §1548.

~~77-86.~~ ~~This enterprise of criminal activity included~~ This was criminal activity as defined by Title 14, Chapter 41 (giving false statements), Chapter 75 (obstruction

of justice) and Chapter 77 (perjury) as well as various reporting, wire fraud and other crimes.

~~78.87.~~ Such criminal conduct by the Defendants ~~constitutes an enterprise of criminal activity~~ was undertaken in a years long pattern as defined by set forth in Chapter 30 of Title 14 of the Virgin Islands Code, as the Defendants acted in concert as a group in association with one another in carrying out their goal of embezzling funds from and otherwise defrauding Sixteen Plus and its shareholders, with each of the named Defendants being a Principal in this enterprise within the statutory limitations period. Indeed, the criminal enterprise is still on-going.

~~79.88.~~ ~~This enterprise of criminal activity involved a continued pattern of related criminal acts, beginning in 2005 when the first offers to purchase the Land were received, continuing through their more recent actions following the release of the Federal lien, and up to the current date related to the goal of the enterprise, which consisted of multiple felonies during this time period. These were not isolated acts, and were all done with the intent to embezzle from, defraud and otherwise injure Sixteen Plus, file tax and corporate information with the USVI government and give perjured documents and testimony to the Courts of the Virgin Islands.~~

~~80.89.~~ Pursuant to 14 V.I.C. §605, it is unlawful for the Defendants to engage in such a criminal activity, as was done here.

~~81.90.~~ Sixteen Plus has been injured by this ~~enterprise of criminal activity,~~ targeting the enterprise, already subjecting its real property to a sham mortgage

in a present value in the millions of dollars and by loss of value from the time the Land could have been sold or could now be sold for peak value ~~but for the~~ enterprise.

~~82.91.~~ As such, Sixteen Plus is entitled to all civil remedies permitted an aggrieved party by 14 V.I.C. § 607, **including statutory treble damages**, for all damages caused by Defendants' unlawful criminal enterprise.

COUNT II - CONVERSION

92. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

93. The acts alleged herein constitute conversion of the corporate assets and corporate opportunities of the corporation, in that:

- a. Defendants 'intentionally or wrongfully exercise[d] acts of ownership, control or dominion by the acts set forth in paragraphs 44 through 79,
- b. over property, being the \$4.5 million in funds of Sixteen Plus,
- c. to which they have no right of possession.

94. Plaintiff repeats and realleges and the Corporation are injured thereby in loss of value.

COUNT III (Yusuf Only) – BREACH OF FIDUCIARY DUTIES

95. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

96. The acts alleged herein constitutes breach of fiduciary duty and self-dealing by Fathi Yusuf, an officer and director of the corporation, in that:

- a. Fathi Yusuf is and has been a director of Sixteen Plus,

- b. In that capacity, he negotiated the note and mortgage with Manal Yousef for the purpose of protecting the corporation's principal asset, the Land, for the benefit of Sixteen Plus.
- c. He later obtained a power of attorney from Manal Yousef giving himself control of and all rights in those assets, and denying them to the corporation.
- d. He did this without (1) offering the power of attorney or (2) disclosing it to Sixteen Plus,
- e. In violation of his duty as an officer and the negotiating official to do so,
- f. And has taken those benefits as his own

97. The corporation has been injured thereby.

98. The corporation will be further injured if equitable relief in the form of a disgorgement order and injunction are not entered to stop the corporation's officer from further acting against the interest of the corporation by use of information, documents and position so obtained.

COUNT IV (Yusuf Only) – USURPING OF CORPORATE OPPORTUNITY

99. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

100. The acts alleged herein in paragraph 96 constitutes usurping of a corporate opportunity by Fathi Yusuf, an officer of the corporation acting in that capacity in dealing with Manal Yousef.

101. The corporation has been injured thereby.

102. The corporation will be further injured if equitable relief in the form of a disgorgement order and injunction are not entered to stop the corporation's officer from further acting against the interest of the corporation by use of information, documents and position so obtained.

COUNT V – CIVIL CONSPIRACY

103. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

104. Defendants entered into a civil conspiracy as follows:

- a. They entered into an agreement and combination
- b. to perform a wrongful act, the tort of conversion, as set forth in Count II above,
- c. that resulted in damage to the plaintiff.

105. In the alternative, Defendants"

- a. entered into an agreement
- b. to do a lawful act, obtaining and prosecuting a power of attorney to control a mortgage
- c. by unlawful means: perjury and the other criminal acts set forth above.

106. Both the individual plaintiff and the corporation have been injured thereby

COUNT VI – TORT OF OUTRAGE

83-107. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

84-108. The actions of the Defendants were intentional, wanton, extreme and outrageous.

85-109. The actions of the Defendants were culpable and not justifiable under the circumstances.

86-110. The actions of the Defendants caused injury to Sixteen Plus.

87-111. As such, the Defendants are liable for said injuries suffered by Sixteen Plus as a result of their intentional and unjustifiable misconduct.

WHEREFORE, the ~~Plaintiff seeks~~ Plaintiffs seek:

A. an award of compensatory damages of multiple loses of the sale of the Land at the highest and best sales value, including treble damages where permitted by law, as well as

B. equitable orders with regard to the acts.

A-C. consequential damages against the Defendants, jointly and severally, in an amount as determined by the trier of fact, along with any other relief the Court deems appropriate, including but not limited to Punitive damages if warranted by the facts and applicable law.

D. Punitive damages if warranted by the facts and applicable law.

E. Any and all other damages, fees, costs or other relief the Court may deem appropriate.

A TRIAL BY JURY IS DEMANDED AS TO ALL ISSUES

Dated: ~~October 31~~ December _____, 2016

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CERTIFICATION

Counsel hereby certifies that he has affixed his signature hereto pursuant to the requirements of 14 V.I.C. §607(d) and has sent a true copy to the Attorney General as required by § 607(f). See Exhibit 1.

Dated: ~~October 31~~ December _____, 2016

Joel H. Holt, Esq.
V.I. Bar No. 6
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VERIFICATION

I, Hisham Hamed, do hereby verify that I have carefully read the Complaint and that based upon reasonable inquiry, I believe that the Complaint comports with the requirements set forth in items (1) through (3) of 14 V.I.C. §607(d), which I have read.

Dated: ~~October 31, 2015~~ December , 2016

Hisham Hamed

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF DECEMBER, 2016

NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of December, 2016, I served a copy of the foregoing by mail and email, as agreed by the parties, on:

Gregory H. Hodges
Stephen Herpel
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

EXHIBIT 7

**D. Gift of Partnership Funds to Nejeih Yusuf for Car
(Spreadsheet Item 347)**

On October 26, 2004, Fathi Yusuf wrote a check to Nejeih Yusuf (ck. No. 16073-STT operating acct.) from partnership funds to Nejeih Yusuf for reimbursement of a Toyota Camry. The amount of the check, owed to the partnership, was \$28,900.

**E. Gold and Diamonds the U.S. Government Discovered in Mike Yusuf's Two
Safe Deposit Boxes (Spreadsheet Item 348)**

After the federal government raids, in 2003 diamonds and gold purchased with unaccounted Plaza Extra cash was discovered by governmental authorities in two safety deposit boxes belonging to Mike Yusuf. Hamed asked for detail as to such goods and the source of cash in discovery, but no detail was given. Thus Hamed approximates the value to be \$1,000,000 but requests a deposition of Mike Yusuf.

**F. Isam Yousuf was given \$4.5M in Plaza Extra money to apply toward the
Sixteen Plus mortgage for Diamond Keturah and it was further given to
Manal Yousef (Spreadsheet Item 350)²**

In 1996-1997, Fathi Yusuf supplied Isam Yousuf with \$4.5 million in partnership cash as part of a money laundering operation to avoid the scrutiny of federal marshals. Those funds were then supplied by Isam to Isam's sister, Manal Yousef, who in turn supplied the funds to Sixteen Plus subject to a mortgage. Neither Isam or Manal Yousef contributed any of their own funds, or gave any consideration for the \$4.5 million

² This matter of the sham mortgage is also in civil litigation. A current action, *Sixteen Plus v. Manal Yousef*, SX-16-CV-65, is pending before the Superior Court. In addition, an action is being prepared against Fathi Yousef and others for fraud in attempting to foreclose the sham mortgage and steal the underlying property. If these actions are successful, this claim will be obviated. Because of the current activities attempting to enforce the mortgage, by Yousuf and Yusuf, it is also listed on the post-2012 accounting as a currently pursued claim. With interest, this claim exceeds \$14 million.

mortgage. Fathi Yusuf has now taken over that mortgage for all practical purposes and is trying to collect the whole amount for himself despite his knowledge that the mortgage is a result of 100% Partnership funds and is a sham. Those are partnership funds and should be recovered from Isam and Manal (or the mortgage should be voided.)

The documents which demonstrate this list the specific dates of the transactions and are attached as follows:

- 350-a---HAMD227019-HAMD227020--Isam Yousuf \$100k,
- 350-b--HAMD203062-HAMD203065--1997 02 13 BFC \$2 Mil transfer,
- 350-c--HAMD493359-HAMD493360--1997 02 19 Scotia \$2 Mil transfer,
- 350-d--HAMD204003-HAMD204003--BFC ltr 2 Mil and \$400k cks,
- 350-e--HAMD204004-HAMD204004--1996 08 11 BFC \$2 Mil and 2 \$400k cks, 350-f--HAMD204002-HAMD204002--BFC \$2 Mil wdrawl bank state,
- 350-g--HAMD204060-HAMD204065--BFC \$400k wdrawl bank state,
- 350-h--HAMD204181-HAMD204181--BFC \$400k wdrawl bank state,
- 350-i--HAMD242114-HAMD242115--ltr to BFC re \$2 Mil and \$400k

**G. Options trading losses in Partnership account by Fathi Yusuf
(Spreadsheet Item 354)**

Prior to 2002, Fathi Yusuf lost millions of dollars of the Partnership's funds because he saw himself as a genius in market trading. After losing those millions, he was told by Mohammad Hamed to stop doing so.

After Hamed's permission for such trading was explicitly withdrawn, Yusuf lost more than \$15 million more in unauthorized trading. He stated the following regarding this in his deposition of April 2, 2014, at pp 215-220, in this proceeding (emphasis added):