

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

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

Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

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

Additional Counterclaim Defendants.)

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

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

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

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

CIVIL NO. SX-12-CV-370

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

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

**DEFENDANT FATHI YUSUF'S MOTION TO REQUIRE
EXECUTION OF STANDARD PERSONAL GUARANTEES
AND FURNISHING OF PERSONAL FINANCIAL STATEMENTS**

By order dated December 8, 2017, this Court denied Fathi Yusuf's Motion to Set Aside

Lease to KAC357, Inc., but conditioned that denial on "Plaintiff's submission to the Court . . . of

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notice that the three shareholders of KAC357, Inc. have formally been made personal guarantors of the Lease.” The three shareholders, Waleed, Mufeed and Waheed Hamed (the “Hamed sons”), signed a short document styled “Guarantee,” and submitted a copy to the Court in a December 18, 2017 filing. *See Exhibit 1*, attached hereto; *see also* Hamed’s December 18, 2017 Notice re: Compliance with this Court’s Order Dated December 8, 2017.

The one-paragraph document signed by the Hamed sons is not a standard form guaranty, and it omits many protections for obligees that are part of such a standard form. To ensure meaningful compliance with the Court’s December 8 Order, Yusuf requests that each of the Hamed sons separately complete and execute the standard form personal guaranty that is attached hereto as **Exhibit 2**.

In addition, Yusuf requests that this Court direct each of the Hamed sons to submit a personal financial statement. It is customary for commercial lessors requiring personal guaranties of a lease obligation to also require the submission of a financial statement, so that the lessor can assess the ability of the guarantor to honor his or her obligations in the event of a default by the corporate lessee. *See, e.g., Interserv, L.P. v. Beigel*, 2000 WL 562580, *1 (Bankr. N.D. Ill. 2000) (noting that, as a prerequisite to entering a lease, the lessor requested both a personal guaranty of a shareholder of the law firm lessee and a current financial statement); *Downey Land Limited v. Raynor*, 2008 WL 1924032, *1 (Bankr. D. Neb. 2008) (where landlord was asked to assign a lease with one tenant to a purchaser of the tenant’s business, the landlord “required each of the individuals involved in the purchase to provide a financial statement and a personal guarantee of the lease”). Indeed, the cases applying lease clauses which bar a landlord from unreasonably withholding consent to an assignment of a lease make clear that requiring a satisfactory personal financial statement of a principal of a corporate lessee is commercially reasonable. *See The Lodge, Inc., v. Caravelle Restaurant, Inc.*, 20 V.I. 268, 275 (V.I. Terr. Ct.

1984) (landlord's failure to consent to sublease was not unreasonable where proposed sublessee's principal "failed to supplement her financial statement" and otherwise failed to respond in a timely way to "legitimate requests of [the lessor] for supplementary financial information"); *Magoon Estate, LTD v. Grudowski*, 33 B.R. 154, 156 (Bankr. D. Hawaii 1983) (holding that landlord was "not unreasonably withholding its consent [to an assignment of a lease by the lessee] because [the proposed assignee] has failed to provide an adequate [personal] financial statement and a financial guarantee by a responsible officer"). The Court should direct each of the Hamed sons to submit an accurate, complete and up-to-date personal financial statement.

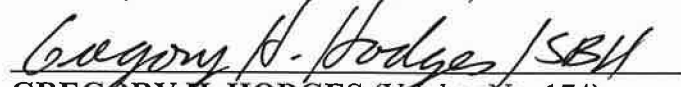
For all of the foregoing reasons, Fathi Yusuf respectfully requests this Court to grant his Motion to Require Execution of Standard Personal Guaranties and Furnishing of Financial Statements, and to provide such further relief as is just and proper. A proposed Order is attached.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

Dated: February 2, 2018

By:


GREGORY H. HODGES (V.I. bar No. 174)
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February, 2018, I served the foregoing **DEFENDANT FATHI YUSUF'S MOTION TO REQUIRE EXECUTION OF STANDARD PERSONAL GUARANTEES AND FURNISHING OF PERSONAL FINANCIAL STATEMENTS** and a proposed **ORDER**, which complies with the page or word limitations in V.I.R. Civ. P. 6.1(e), via e-mail addressed to:

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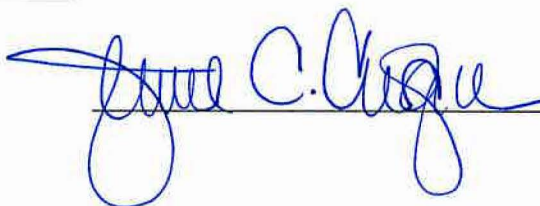
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EXHIBIT 1

GUARANTEE

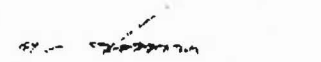
The undersigned, consisting of all of the shareholders of KAC357, Inc., hereby jointly and severally personally guarantee the performance of that certain Lease between Plessen Enterprises, Inc., and KAC357, Inc., a copy of which is attached hereto as Exhibit A, including all payments due thereunder. Said personal guarantee is being executed to fully comply with the Order of the Superior Court, dated December 8, 2017 Order in *Hamed v. Yusuf*, Civil No. SX-12-CV-370, attached as Exhibit 2.


Waleed Hamed,

12/18/17
Date


Mufeed Hamed

12-18-17
Date


Waheed Hamed

12/13/2017
Date



EXHIBIT 2

GUARANTY OF LEASE

THIS GUARANTY OF LEASE (the "Guaranty") is dated as of the ____ day of February, 2018, by Waleed Hamed, Mufeed Hamed and Waheed Hamed (collectively, the "Guarantors").

WHEREAS, Plessen Enterprises, Inc. ("Landlord") and KAC357, Inc. ("Tenant") are parties to a lease executed on April 30, 2014, as may hereafter from time to time be amended (the "Lease") for premises (the "Premises") located on a portion of Parcel No. 14 Estate Plessen, St. Croix, U.S. Virgin Islands, as described more fully in the Lease; and

WHEREAS, Guarantors are shareholders of Tenant, and thus have benefited and are continuing to benefit from the making of the Lease;

NOW THEREFORE, in compliance with the February ____, 2018 Order of the Superior Court of the Virgin Islands, entered in case no. 2012-cv-370, which is styled in part as *Waleed Hamed, as the Executor of the Estate of Mohammad Hamed, v. Fathi Yusuf and United Corporation*, which Order is attached hereto, Guarantors, intending to be legally bound, hereby agree as follows:

Section 1. Guaranty. Guarantors hereby jointly and severally guarantee to Landlord that Guarantors will pay to Landlord all amounts due or coming due under the Lease, whether in respect of rent, utility charges, common area charges, late fees, interest, damages, attorney's fees or costs, or any other sums now or hereafter due and owing from the Tenant to the Landlord, and further guarantee to Landlord the full and faithful performance and observance of any and all covenants, whether present or future, contained in the Lease to be performed and observed by Tenant.

Section 2. Waiver. Guarantors waive all notices or demands given or required to be given to Tenant under the Lease. This waiver extends to any notice of default under the Lease and to any notice of modification, extension or indulgence granted to Tenant.

Section 3. Term of Guaranty.

3.1 Duration. This Guaranty shall commence as of the date of the Lease and shall remain in effect during the entire term of the Lease, including any option, renewal or extension terms, and until Tenant has discharged all of its obligations under the Lease, unless sooner terminated by Landlord, as hereinafter provided.

3.2 No Termination. This Guaranty shall not be terminated, modified, or impaired because of any of the following actions: (a) the extension, modification or amendment of the Lease; (b) any action Landlord may take or fail to take against Tenant; (c) any waiver or failure to enforce any of the rights or remedies available to Landlord or to which Landlord may be entitled under law or in equity; (d) any assignment by Tenant of Tenant's leasehold interest in the Premises or any sublease of the Premises; (e) any use or change in use of the Premises; (f) damage to, destruction of or taking by power of eminent domain of all or any part of the Premises; (g) any other dealings between Landlord and Tenant; or (h) any bankruptcy, insolvency, dissolution, liquidation, receivership, trusteeship, reorganization, assignment for the benefit of creditors, bankruptcy or rejection of the Lease in any bankruptcy, or other similar proceeding affecting Tenant, whether voluntary or involuntary.

Section 4. Enforcement of this Guaranty.

4.1 Action or Proceeding. At Landlord's option, (a) Guarantors may be joined in any action or proceeding against Tenant in connection with the Lease, or (b) Landlord may recover against Guarantors, jointly or severally, in any action or proceeding even if Landlord does not pursue or exhaust its remedies against Tenant.

4.2 **WAIVER OF JURY TRIAL.** Guarantors irrevocably consent to the jurisdiction of any court in the U.S. Virgin Islands for any proceedings arising out of this Guaranty or the enforcement hereof, and **GUARANTORS WAIVE THE RIGHT TO TRIAL BY JURY IN ANY SUCH PROCEEDING.** In the event of a default by Tenant under the Lease where Landlord shall employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Guarantors contained in this Guaranty, Guarantors shall on demand reimburse to the Landlord the reasonable fees of such attorneys and such other expenses so incurred.

Section 5. Miscellaneous. This Guaranty shall apply to and bind the successors and assigns of Guarantors. If any provision of this Guaranty shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Guaranty and all such other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, Guarantors have executed this Guaranty as of the date and year set forth below.

WITNESSES AS TO ALL SIGNERS:

GUARANTORS:

Waleed Hamed

Date

Waheed Hamed

Date

Mufeed Hamed

Date

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)	CIVIL NO. SX-14-CV-278
Plaintiff,)	
v.)	ACTION FOR DEBT AND
)	CONVERSION
FATHI YUSUF,)	
)	
<u>Defendant.</u>)	

ORDER

The Court having read Fathi Yusuf's Motion to Require Execution of Standard Personal Guaranties and Furnishing of Financial Statements (the "Motion"), and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED that the Motion is **GRANTED**, and that Waleed, Waheed and Mufeed Hamed shall, within 21 days of entry of this Order, sign a Personal Guaranty in the form that is attached to the Motion as Exhibit 2 (and append to that Personal Guaranty a copy of this Order); and

IT IS FURTHER ORDERED that Waleed, Waheed and Mufeed Hamed shall, within 21 days of entry of this Order, provide accurate, complete and up-to-date personal financial statements in the form in which they customarily are prepared.

DATED: February ____, 2018

DOUGLAS A. BRADY
Judge of the Superior Court

A T T E S T:

Estrella H. George
Clerk of the Court

By: _____
Deputy Clerk

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