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16 *Guardian ad Litem for Ty Riley Chittick & Dillon Cash Chittick*

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19 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

20 **IN AND FOR THE COUNTY OF MARICOPA**

21 In the Matter of the Estate of:

22 **DENNY J. CHITTICK,**

23 Deceased.

Case No: PB 2016-051754

24 **JOINT PETITION FOR SINGLE
TRANSACTION AUTHORITY
UNDER A.R.S. § 14-5409**

25 (Assigned to the Commissioner
Andrew Russell)

26 Peter Davis, Receiver for DenSco Investment Corporation (the "Receiver"), and
27 Paul Theut, as appointed Guardian *ad litem* (the "GAL") for the minor children of Denny
28 J. Chittick (the "Chittick Children"), hereby jointly petition the Court to appoint Paul
29 Theut as special conservator under A.R.S. § 14-5409 for the limited purpose of approving
30 and executing a formal settlement agreement on behalf of the Chittick Children and

1 seeking such agreement's approval in the Receivership. In support of this Petition, the
2 Receiver and the GAL state as follows:

3 **The Parties**

4 1. The matter before this Court in PB 2016-051754 involves the estate of
5 Denny J. Chittick (the "Estate of Chittick"), deceased.

6 2. At the time of his death, Denny J. Chittick (the "Decedent") was the sole
7 shareholder, board member, and employee of DenSco Investment Corporation
8 ("DenSco").
9

10 3. On August 18, 2016, in Case No. CV2016-014142 (the "Receivership"),
11 the Maricopa County Superior Court appointed Peter Davis as Receiver of DenSco.

12 4. The Receiver is interested in this matter because he has claims against the
13 Estate and claims adverse to the economic interests of the Chittick Children.
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15 5. The Chittick Children are Ty Riley Chittick, born May 15, 2006, and Dillon
16 Cash Chittick, born February 14, 2005, the Decedent's minor children.

17 6. The Receivership Court appointed Paul Theut as guardian ad litem for the
18 Chittick Children by order dated August 28, 2017.

19 7. This Court appointed Shawna Chittick Heuer as the personal representative
20 for the Estate of Chittick (the "Personal Representative") on August 4, 2016.
21

22 8. Ranasha Chittick is the natural mother of the Chittick Children (the
23 "Mother").
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Background of the Disputes

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2 9. At the time of his death, Decedent, through DenSco, had established and
3 maintained the DenSco Investment Corporation Defined Benefit Plan and Trust (the
4 “DB Plan”). Decedent was the sole trustee of the DB plan, which had a balance of
5 approximately \$1,834,988.93 at his death. Separately, Decedent, through DenSco, had
6 established and maintained the DenSco 401(k) Plan (the “401(k) Plan”), which, at
7 death, had a balance of approximately \$359,000.00.
8

9 10. The Receiver initially identified concerns that the DB Plan and 401(k) Plan
10 were not properly established, operated or maintained by the Decedent or DenSco,
11 leading the Receiver to conclude that, based on the actions of the Decedent, the DB
12 Plan and 401(k) Plan never met the requirements for a qualified retirement plan.
13 Therefore, the Receiver concluded, the DB Plan and the 401(k) Plan should be treated
14 as non-qualified retirement plans. For example, DenSco “loans” (by way of journal
15 entries and without actual transfers of legal interest) – transactions strictly prohibited by
16 ERISA – represented the sole assets of the DB Plan and 401(k) Plan. Moreover, after
17 discovering a fraud which would ultimately render DenSco insolvent, Decedent
18 “converted” the journal entry stock “investments” into liquid assets by transferring
19 \$1.8M of cash from DenSco’s accounts as the balance of the DB Plan, and similarly
20 converted \$359,000 of DenSco cash into the balance of the 401(k) Plan. Despite
21 conflicting and unclear documentation, and the DB Plan’s patent shortcomings, the
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1 Estate argued that the DB Plan and 401k Plan were salvageable, and that the Chittick
2 Children were the beneficiaries of the DB Plan.

3 11. After extensive meetings, factual disclosures and negotiations regarding the
4 DB Plan and the 401(k) Plan¹, the Estate and the Receiver agreed that litigation
5 regarding these assets would be protracted and incredibly expensive. Accordingly, the
6 Estate and the Receiver worked collaboratively to craft a resolution that was in the best
7 interests of the Receiver, the Estate, and the Chittick Children, ensuring significant
8 assets pass to the Chittick Children, without the large expense and delay that contested
9 litigation regarding the DB Plan and the 401(k) plan would entail.
10

11 **The Formal Settlement Agreement**

12 12. The Estate and the Receiver have reached an agreement resolving the
13 dispute over the DB Plan and the 401(k) Plan, and have prepared a formal settlement
14 agreement that all the Parties would execute (the "Formal Settlement Agreement"),
15 attached as **Appendix A**.
16

17 13. The Formal Settlement Agreement requires acceptance by the Chittick
18 Children.
19

20 14. Under the Formal Settlement Agreement, the Receiver agrees to release his
21 claim to the 401(k) Plan, and the Chittick Children will enjoy its benefits. In exchange,
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24 ¹ The Settlement also addresses the treatment of federal and state tax refunds, but these issues are
25 not directly related to the Chittick Children.

1 the Chittick Children concede the DB Plan to the Receiver, and release any claims
2 thereto. *See App. A at ¶ P.*

3 15. The Formal Settlement Agreement is conditioned on the GAL seeking and
4 receiving from the Court, the appointment as a special conservator under A.R.S. § 14-
5 5409 with authority to execute the Formal Settlement Agreement on behalf of the
6 Chittick Children. *See App. A at ¶¶ K & O.*

7
8 16. The Formal Settlement Agreement is also conditioned on the Formal
9 Settlement Agreement being approved by both the Probate Court and the Receivership
10 Court. *See App. A at ¶ O.*

11 **Single Transaction Authority**

12 17. Under A.R.S. § 14-5409, the Chittick Children's execution of the Formal
13 Settlement Agreement is a transaction over which the Court may exercise authority,
14 because the execution of the Formal Settlement Agreement constitutes a "transaction
15 relating to the [Chittick Children's] financial affairs." A.R.S. § 14-5409(B).

16
17 18. The Chittick Children are minors and unable to execute the Formal
18 Settlement Agreement, resolving their interests in the 401(k) Plan and the DB Plan on
19 their own accord. Therefore, under A.R.S. § 14-5401, a basis exists for the Court to
20 affect the affairs of the Chittick Children, because the Chittick Children's execution of
21 the Formal Settlement Agreement constitutes an "affair[]" that may be jeopardized or
22 prevented by minority." A.R.S. 14-5401(A)(1).
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1 19. Execution of the Formal Settlement Agreement is in the best interests of the
2 Chittick Children as contemplated by A.R.S. § 14-5409(B), because the alternative to
3 execution of the Formal Settlement Agreement is protracted and expensive litigation
4 over the validity of the DB Plan and the 401(k) Plan and the identification of the proper
5 beneficiaries of those Plans, without prospect of clear recovery under either of them for
6 the Chittick Children.

7
8 20. Under A.R.S. § 14-5409(C), the Court has the authority to appoint the GAL
9 as a special conservator to assist in the accomplishment of the Chittick Children's
10 execution of the Formal Settlement Agreement.

11 21. Appointment of the GAL as a special conservator under A.R.S. § 14-
12 5409(C) is in the best interests of the Chittick Children, because the GAL is already
13 under a duty to represent the best interests of the Chittick Children in the Receivership
14 Court. Further, the GAL is familiar with the complexities of the underlying disputes;
15 with the negotiation of the Formal Settlement Agreement; and with the terms of the
16 Formal Settlement Agreement. The GAL is best situated to ensure that those terms are
17 in the Chittick Children's best interests in light of both the litigation thus far and the
18 litigation that is likely to ensue if the Parties do not reach a resolution by agreement.
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21 22. Appointment of the GAL as special conservator under A.R.S. § 14-5409(C)
22 is appropriate, because after the GAL executes the Formal Settlement Agreement on
23 behalf of the Chittick Children and obtains approval of the Formal Settlement
24 Agreement in the Receivership Court and the Probate Court, the Chittick Children do
25

1 not need the continuing protection of a conservator. The assets of the Estate and the
2 401(k) for the benefit of the Chittick Children are payable to a testamentary trust
3 managed by the Personal Representative as Testamentary Trustee.

4 23. The Chittick Children have no creditors or dependents whose interests the
5 Court must consider under A.R.S. § 14-5409(C).

6 24. Under A.R.S. § 14-5405, the following persons are entitled to notice of the
7 hearing by personal service and shall be so served, and all other persons shall be given
8 notice as allowed by law:
9

Person	Method of Service	Relationship
Ty Riley Chittick	Served personally through his mother, Ranasha Chittick	Minor Child (under 14 years of age)
Dillon Cash Chittick	Served personally through his mother, Ranasha Chittick	Minor Child (under 14 years of age)

15
16 **WHEREFORE**, in accordance with A.R.S. § 14-5401 and § 14-5409, the
17 Receiver and the GAL request, after notice and hearing, that the Court enter an order
18 setting forth the following:

- 19 A. Finding that a basis exists for affecting the estates of the Chittick Children;
20 B. Finding that the Formal Settlement Agreement is in the best interests of the
21 Chittick Children;
22 C. Appointing the GAL as special conservator for the Chittick Children;
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- 1 D. Authorizing the GAL to execute the Formal Settlement Agreement as special
2 conservator under A.R.S. § 14-5409;
- 3 E. Authorizing the GAL as special conservator to seek and obtaining the approval of
4 the Formal Settlement Agreement by the Receivership Court; and
- 5 F. Such other relief as the Court deems reasonable and proper.

6
7 **DATED** this 23rd day of October, 2017.

8 **FRAZER RYAN GOLDBERG & ARNOLD, LLP**

9
10
11 By: 

12 T.J. Ryan

13 Marilyn D. Cage

14 *Attorney for Peter S. Davis, Receiver for DenSco
Investment Corporation*

15 **THEUT THEUT & THEUT PC**

16
17 By: 

18 Paul Theut

19 *Guardian ad Litem for Ty Riley Chittick & Dillon
Cash Chittick*

*w/ authorization
by email*

20 **ORIGINAL** of the foregoing filed this
21 23rd day of October, 2017, with:

22 Clerk of the Court
23 Maricopa County Superior Court
24 18380 N. 40th Street
25 Phoenix, AZ 85032

1 **COPY** of the foregoing hand-delivered this
2 23rd day of October, 2017, to:

3 Commissioner Andrew Russell
4 Maricopa County Superior Court, Courtroom E109
5 18380 N. 40th Street
6 Phoenix, AZ 85032

7 **COPY** of the foregoing mailed this
8 23rd day of October, 2017, to:

9 Christopher L. Raddatz
10 Kevin Merritt
11 James F. Polese
12 Christopher L. Hering
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21 *Attorney for Robert Brinkman Family Trust*

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1 Paul Theut
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2 5150 N. 16th Street
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3 *Guardian Ad Litem for Chittick Children*

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5 By:  _____
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APPENDIX “A”

SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is made by and between Peter S. Davis, as Receiver of DenSco Investment Corporation in Maricopa County Superior Court Cause No. CV2016-014142 (the "Receiver"); Shawna Chittick Heuer, as the personal representative of the Estate of Denny J. Chittick in Maricopa County Superior Court Cause No. PB2016-051754 (the "Estate of Chittick," and Shawna Chittick Heuer, in such capacity, the "Personal Representative"); Paul Theut, as the Court Appointed Guardian Ad Litem (the "GAL") for Ty Riley Chittick and Dillon Cash Chittick; and Ranasha Chittick. The parties hereto are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

1. Whereas in July of 2016, Denny J. Chittick died. Thereafter, Shawna Chittick Heuer was appointed as the personal representative of the Estate of Chittick by the probate court for Maricopa County, Arizona (the "Probate Court") in proceeding PB 2016-051754 (herein, the "Probate Proceeding");

2. Whereas Ty Riley Chittick and Dillon Cash Chittick are the minor children of Denny J. Chittick and Ranasha Chittick ("Chittick Children"). As beneficiaries of testamentary trusts established for their benefit, the Chittick Children are the sole beneficiaries of Denny J. Chittick under the terms of his Last Will and Testament dated May 9, 2009;

3. Whereas on or about August 18, 2016, Peter S. Davis was appointed by the Maricopa County Superior Court (the "Receivership Court") pursuant to an *Order Appointing Receiver* in Cause No. CV2016-014142 as the Receiver of DenSco Investment Corporation (hereinafter "DenSco"), an Arizona corporation;

4. Whereas, at the time of his death, Denny J. Chittick was the sole shareholder, board member and employee of DenSco;

5. Whereas, at the time of his death, DenSco had established and maintained the DenSco Investment Corporation Defined Benefit Plan and Trust (the "DB Plan") in which Denny J. Chittick was sole trustee. The DB Plan currently has approximately \$1,834,988.93 of assets;

6. Whereas, at the time of his death, Denny J. Chittick had established the DenSco Investment Corporation 401(k) Plan (the "401(k) Plan") through his employment at DenSco, which had a balance of approximately \$359,000.00 at the time of his death;

7. Whereas, the Parties, during their investigation into the issues related to the DB Plan, determined an inconsistency in the DB Plan documents that created a current dispute about who is the proper beneficiary under the DB Plan. While the DB Plan form document approved by the IRS states specifically that, in the absence of a clear beneficiary designation, the Estate of

Chittick is the proper beneficiary, the DB Plan Summary Plan Description states that the Chittick Children are the beneficiaries;

8. Whereas, the Receiver, during his investigation into the assets of DenSco, has significant concerns that the DB Plan was not properly established, operated or maintained by Denny J. Chittick or DenSco, leading the Receiver to conclude that, based on the actions of Denny J. Chittick, the DB Plan never met the requirements for a qualified retirement plan and should therefore be treated a non-qualified retirement plan;

9. Whereas, because the Receiver has concluded that the DB Plan should be treated as a non-qualified retirement plan and because DenSco was insolvent at the date of Denny J. Chittick's death and continues to be insolvent, the DB Plan assets are the property of DenSco. The Receiver has taken the position that the Estate of Chittick or the Chittick Children are general creditors of DenSco with respect their position as beneficiaries of the DB Plan;

10. Whereas, the Estate of Chittick contests the Receiver's interpretation and analysis with respect to the qualified status of the DB Plan, and its representatives have argued that, despite any alleged defects in the maintenance and operation of the DB Plan, its assets are not and cannot be treated as assets of DenSco but rather are subject to a credible claim by the Estate of Chittick or the Chittick Children;

11. Whereas, the Receiver, during his investigation into the assets of DenSco, has significant concerns that the 401(k) Plan was not properly established, operated or maintained by Denny J. Chittick or DenSco, leading the Receiver to conclude that, based on the actions of Denny J. Chittick, the 401(k) Plan never met the requirements for a qualified retirement plan and should therefore be treated as a non-qualified retirement plan.

12. Whereas, the Estate of Chittick contests the Receiver's interpretation and analysis with respect to the qualified status of the 401(k) Plan, and its representatives have argued that, despite any alleged defects in the maintenance and operation of the 401(k) Plan, its assets are not and cannot be treated as assets of DenSco but rather are subject to a credible claim by the Chittick Children, the designated beneficiaries;

13. Whereas, the Receiver, during his investigation into the financial activities of DenSco, has determined that DenSco over-reported its actual income and, as a result, excessive state and federal income taxes may have been paid. Due to Denny J. Chittick's ownership of DenSco and its tax treatment, excess income taxes related to DenSco's reported income were paid by Denny J. Chittick through his personal tax returns. The Receiver believes that somewhere between \$1,000,000 and \$1,200,000 of excessive income taxes were paid by Denny J. Chittick in respect of over-reported DenSco income, and that such amounts may be recoverable from the applicable taxing authorities ("Tax Refunds"); and

14. Whereas without admitting the truth or validity of any claim or defense, the Parties desire to settle all claims that the Receiver and the Parties may have against each other including but not limited to claims regarding the DB Plan, 401(k) Plan and Tax Refunds.

AGREEMENT

In consideration of the above Recitals, which are incorporated as substantive provisions hereof, and the mutual promises contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

A. Settlement Funds. Upon approval of this Agreement, as set forth below, the Receiver shall pay a total of \$675,000.00("Settlement Funds") to the Estate of Chittick. The Parties agree that the Settlement Funds are in consideration for the agreement of the Estate of Chittick to sell and transfer to the Receiver the right (i) to receive 100% of the Tax Refunds, as set forth in Section G below, less Tax Impositions agreed to be borne by the Receiver, as provided therein, and (ii) to exercise control over the tax refund application process.

B. Segregation of Settlement Funds. Upon execution of this Agreement, and pending court approval hereof as contemplated by Section O below, the Receiver shall maintain the Settlement Funds in a separate and segregated bank account that will not be subject to any other creditor claims, in a manner reasonably satisfactory to the Estate of Chittick.

C. Withdrawal of Petition No. 11 and Creditor Claim. Upon court approval of this Agreement, as described in Section O below, the Estate of Chittick shall withdraw Petition No. 11 filed in Receivership Court in Maricopa County Superior Court Cause No. CV2016-014142 (the "Receivership Proceeding") and ask the court to vacate the hearing on Petition No. 11 currently set for November 11, 2017. Upon court approval of this Agreement, as described in Section O below, the Estate of Chittick shall also withdraw the creditor claim it filed in the DenSco Receivership Proceeding.

D. Beneficiary Designation under DB Plan. The Parties agree that despite inconsistencies in the DB Plan documents, the Chittick Children are the named beneficiaries under the DB Plan.

E. Treating DB Plan as a Non-Qualified Deferred Compensation Plan. Neither the Estate of Chittick, the Chittick Children nor Ranasha Chittick will contest the Receiver's treatment of the DB Plan as a non-qualified deferred compensation plan, and the Parties and their agents shall take no actions and make no statements that are inconsistent with, or in contravention of, that treatment, except to the extent required by law.

F. Tax Reporting and Refunds. The Receiver, the Personal Representative and the Estate of Chittick shall work cooperatively to prepare and file the necessary tax forms and/or amended tax returns (collectively, the "Returns") to pursue refund claims for previously paid state and federal income taxes. The Receiver shall be solely responsible for any and all fees and expenses that may be incurred in the pursuit of the refund claims, including any professional fees and expenses incurred by the Personal Representative or the Estate of Chittick in providing the cooperation required by this Agreement. The Personal Representative and the Estate of Chittick agree to use their commercially reasonable efforts to facilitate the Receiver's pursuit of the tax refund claims, which may include, among other things, reviewing, executing and filing the Returns on behalf of Denny J. Chittick, subject to the conditions that the Returns (i) must have

been prepared or reviewed and approved by David Preston, CPA, DenSco's historic accountant, or by another accountant selected by the Personal Representative, or (ii) if the Returns are not prepared by David Preston, CPA, must reflect that they have been prepared by an independent certified public accountant selected by the Receiver. With respect to the Settlement Funds, the Receiver agrees not to issue any IRS Form 1099 or comparable federal or state filing that could suggest that the Settlement Funds are to be treated as taxable income to the recipient of such funds.

G. Tax Refunds/Responsibility for Tax Impositions. The Receiver shall receive 100% of any Tax Refunds that are recovered from any state or federal taxing authority, subject to the provisions of this Agreement. The Receiver shall also be responsible to bear any taxes, penalties, charges, interest, or any other fees and costs (collectively, "Tax Impositions") that are assessed against or imposed upon the Estate of Chittick or the Personal Representative by any state or federal taxing authority as a result of (i) the Receiver's pursuit of the tax refund claims, or (ii) the Receiver's determination to treat the DB Plan as a non-qualified deferred compensation plan (including, without limitation, Tax Impositions resulting from (a) changes to DenSco's reported taxes resulting as a consequence of that determination or (b) the tax reporting made or required to be made as a consequence of that determination), or (iii) conduct undertaken by the Personal Representative that is consistent with the requests of the Receiver in performing her obligation of reasonable cooperation as set forth in Section F above. All such Tax Impositions shall be borne, in the first instance, in the form of offsets against the amount of any Tax Refunds to be realized (including with respect to any Tax Refunds paid to the Estate of Chittick), but in the event any such Tax Impositions are assessed against the Estate of Chittick, the Receiver shall reimburse the Estate of Chittick for all such Tax Impositions. In order to effectuate the foregoing assurance, the Receiver hereby agrees that any claims made for the reimbursement of Tax Impositions will constitute Administrative Claims for the purposes of the Receivership Proceeding. Prior to distributing amounts to claimants in the Receivership Proceeding, the Receiver shall make a reasonable judgment (after having given the Estate of Chittick an opportunity to offer its input and advice) as to whether future Tax Impositions are anticipated, and if they are, shall take reasonable steps to preserve the receivership estate's ability to perform its duties under this Section G, including maintaining a reserve of funds from which Tax Impositions may be paid. In the event of a disagreement between the Receiver and the Estate of Chittick as to the likelihood or the amount of potential future Tax Impositions, or as to the size of a reserve reasonably necessary to provide for the payment of future Tax Impositions, the Estate of Chittick shall have the right to petition the Receivership Court to determine the proper amount for any such reserve (recognizing that the protections set forth in this paragraph were a material consideration to the Estate of Chittick and the Personal Representative in agreeing to transfer to the Receiver the right to receive 100% of the Tax Refunds). The Parties understand that the ability to recover and the amount of any recovery of Tax Refunds is subject to the approval of the Internal Revenue Service and of applicable state taxing authorities. Neither the Estate of Chittick, the Personal Representative, nor the Chittick Children are in a position to represent or warrant, and they do not represent, warrant, guaranty or offer any other assurance, that any Tax Refunds will be recovered. The Receiver represents and warrants that he is familiar with the uncertainty involved in the tax refund process, and is satisfied that, having been given the right to control the process, he is in a position to maximize the recovery of Tax Refunds. The Receiver further agrees that any agreement entered into between the Receiver, on the one hand, and either

the Internal Revenue Service or applicable state taxing authorities, on the other hand, to compromise or settle either the Tax Refund claims or issues arising in connection with the tax treatment of the DB Plan, will include an unconditional release of both the Estate of Chittick and the Personal Representative as a condition to the effectiveness of any such agreement.

H. Responsibility for fees and costs of DB Plan. The Receiver is informed that certain fees and expenses incurred by Pension Strategies are due and owing relating to the DB Plan, in the amount of \$2,300. The Receiver shall be responsible to pay all such fees and expenses related to the administration of the DB Plan.

I. Waiver of claims as to the 401(k) Plan. The Receiver is informed that the Chittick Children have already received, directly or indirectly, a distribution of the 401(k) Plan. As additional consideration under this Agreement, the Receiver hereby waives any claims against the Chittick Children or against any investment vehicle into which monies from the 401(k) Plan were distributed relating to the 401(k) Plan of the distribution of monies therefrom.

J. Claim in Probate Case. Upon the approval of this Agreement as set forth in Section M below, the Estate of Chittick and the Personal Representative shall deliver a Notice of Allowance to the Receiver, allowing the Receiver's creditor claim filed with the Estate of Chittick in the amount of \$5,000,000.00 (the "Allowed Probate Claim"). The Allowed Probate Claim will not be payable from, and the Receiver will have no claim or recourse against, either the Settlement Funds, any other assets held by the Estate of Chittick that have previously been disclosed in writing to the Receiver, or any other amounts payable by the Receiver to the Estate of Chittick pursuant to this Agreement, and it is contemplated under this Agreement that the Allowed Probate Claim may never be paid. For purposes of implementing the foregoing, the Receiver hereby waives any right to claim an offset against the Settlement Funds for purposes of satisfying part of the Allowed Probate Claim. In the event any additional assets are recovered by or collected into the Estate of Chittick (the "Recovered Assets"), the Parties agree that 70% of the amounts so collected, without reduction for estate administration expenses, shall be applied to the payment of the Allowed Probate Claim. Upon execution of this Agreement, the Estate of Chittick and the Personal Representative shall agree to provide an open-ended extension to the Receiver of the period in which to file a petition for payment of the Allowed Probate Claim in the Probate Proceeding in circumstances where assets available for the payment of the Allowed Probate Claim, in accordance with this Section J, exist. For purposes of allowing finality with respect to the Probate Proceeding, if at any time the cooperation of the Estate of Chittick and the Personal Representative in the prosecution of applications for Tax Refunds is no longer required, which may occur upon the Estate of Chittick executing an IRS Form 2848 in favor of the Receiver delegating authority to the Receiver to prosecute such claims, the Parties agree that the Personal Representative shall have the right to close the Probate Proceeding, subject to making an irrevocable assignment to the Receiver of any interest held by the Estate of Chittick in any future Recovered Assets (with the result that 100% of the amount of any future Recovered Assets shall inure to the benefit of the Receiver for application against the Allowed Probate Claim). Nothing herein shall prevent the Personal Representative from closing the Estate of Chittick so long as reasonable steps have been taken, or reasonable alternative procedures exist, to protect the rights of the Receiver under this Agreement.

K. GAL to Seek Appointment as "Special Conservator". The GAL shall seek approval (incident to the other court approvals already required in this Agreement) to be appointed as a special conservator and to ask the Court to give the GAL authority to execute this Agreement on behalf of the minor children pursuant to A.R.S. § 14-5409.

L. Fees and Expenses of GAL. Either the Estate of Chittick or the Chittick Children shall be responsible for any fees and expenses of the GAL or any conservator for the Chittick Children.

M. Fees and Expenses of Estate of Chittick's Tax Reporting. The Estate of Chittick shall be responsible for any fees and expenses in the preparation and filing of any tax or other returns required to be filed by the Estate of Chittick in the administration of the Estate of Chittick.

N. Agreement for Joint Directive to First Bank. Upon approval of this Agreement in accordance with Section O, and if necessary, the Estate of Chittick agrees to cooperate with the Receiver's efforts to recover any funds of the DB Plan located at First Bank, or any other financial institution, including executing a joint directive to First Bank directing the turnover of funds of the DB Plan to the Receiver or stipulating to a motion filed by the Receiver directing the turnover of funds of the DB Plan to the Receiver.

O. Approval of Agreement/Treatment of Claims. This Agreement is conditioned on the approval of both the Receivership Court and the Probate Court, and the appointment of Paul Theut as both GAL and "special conservator" for the limited purposes described in Section K above. This Agreement shall become binding upon and enforceable against the Parties upon the entry of orders from both the Receivership Court in the Receivership Proceeding and the Probate Court in the Probate Proceeding approving this Agreement. If such approval is not obtained, this Agreement shall be considered null and void and of no force and effect, and no Party shall be bound by any agreements or concessions set forth herein. Following approval of this Agreement, claims made by any Party against the Receiver pursuant to this Agreement shall be treated as Administrative Claims in the Receivership Proceeding.

P. Mutual Releases. Each of the following releases shall be effective upon the approval of this Agreement in accordance with Section O above.

The Receiver, on his own behalf and on behalf of his attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives (including, without limitation, on behalf of those attorneys, employees, partners, officers, directors, agents, predecessors, assignors, and legal representatives of DenSco existing prior to the appointment of the Receiver) (all of the foregoing, collectively for purposes of this paragraph, the "Releasing Parties"), hereby releases and forever discharges the Estate of Chittick, the Personal Representative (individually and in her capacity as Personal Representative), Ty Riley Chittick, Dillon Cash Chittick and Ranasha Chittick, and each of their respective attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives, but expressly excluding from the scope of this release, for the avoidance of doubt, Clark Hill PLC, any attorneys rendering advice to DenSco at a time when they were

employed by or practicing law at Clark Hill PLC, and each of their respective successors, assigns, assignors, executors, administrators, and legal representatives, from all claims that the Receiver or the Releasing Parties may have against them, whether known or unknown, including but not limited to claims regarding the DB Plan, the 401(k) Plan, the sources from which and the manner in which each was funded, the operations and management of DenSco by Denny J. Chittick, the Tax Refunds, the administration of the Estate of Chittick, and the related proceedings in the Probate Court, including claims that may arise in the future, excluding, however, claims relating to enforcement of the rights, duties or obligations arising under this Agreement or any assessment from any state or federal taxing authority for Mr. Denny Chittick knowingly filing false corporate or personal income tax returns. The determination of whether Mr. Chittick knowingly filed a false corporate or personal income tax return shall be made without giving effect to any changes in the character or amount of any items of income, deductions or expenses previously reported if such changes resulted from the Receiver's treatment of the DB Plan as a non-qualified deferred compensation plan.

In addition, the Receiver hereby releases, with the same effect as if each of the following persons was named in the preceding paragraph as a Releasing Party, any and all claims of James Trainor; Dori Ann Davis; Glen P. Davis IRA; Glen P. Davis; Gary L. Thompson; Coralee Thompson; Jolene Page; Robert B. Hahn; Todd Einck; Laurie Weiskopf; Thomas Weiskopf; Judith E. Siegford; Gary Siegford; Michael J. Zones; Jim McArdle; Nancy L. Swirtz; William J. Swirtz; Pete Rzoncoso; Marvin and Patricia Miller; Branson Smith (The Branson and Sandra Smith Trust); Branson Smith (Branson M. Smith IRA *aka* Tony Smith IRA); Mary L. Butler (IRA); Van H. Butler (IRA); Van H. Butler; Marlene Pearce; Terry Lee (re: The Lee Group, Inc. and 6541 N. Paseo Tamayo, Tucson, AZ 85750); Terry Lee; Lil Lee; Julie Kent; Paul Kent; Mary Kent; William S. Sherriff on behalf of self-investment and that of Saltine LLC; James McCoy; James and Lesley McCoy Trust; Wayne J. Ledet; Vincent I. Muscat; Muscat Family Trust; Wade Underwood; LJL Capital; Russell T. Griswold; Russ Griswold-IRA; Valerie J. Paxton; and Kaylene Moss (collectively, the "Assigning Investors"). The Receiver hereby represents and warrants to the Estate of Chittick that (i) each of the Assigning Investors has assigned their respective claims against the Estate of Chittick to the Receiver pursuant to an Assignment of Chose of Action with an effective date of April 3, 2017 (the "Investor Assignment Form"), an example of which is attached hereto as Exhibit "A", (ii) each Investor Assignment Form is substantially identical to Exhibit "A" other than with the respect to the particular investor or investors named therein, and (iii) each Investor Assignment Form authorizes the Receiver to enter into this Agreement and to release all claims. In the event any of the Assigning Investors subsequently dispute the authority of the Receiver to enter into this Agreement on their behalf, or hereafter assert claims against the Estate of Chittick or the Personal Representative that are inconsistent with the agreements made by such Assigning Investor pursuant to that person's applicable Investor Assignment Form, the Receiver agrees to reasonably cooperate with the Estate of Chittick and the Personal Representative to establish the authority of the Receiver under the applicable Investor Assignment Form to bind such Assigning Investor and to cause all claims asserted by such person to be dismissed with prejudice.

The Estate of Chittick and the Personal Representative, on their own behalf and on behalf of their respective attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives (collectively, for purposes of this paragraph, the "Releasing Parties"),

hereby release and forever discharge the Receiver and his attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives, but expressly excluding from the scope of this release those attorneys, legal representatives, and professional advisors who provided services to DenSco prior to the appointment of the Receiver, their successors and assigns, from all claims that the Estate of Chittick or the Releasing Parties may have against them, including but not limited to claims regarding the DB Plan, the 401(k) Plan and any Tax Refunds, excluding, however, any allowed claim made by the Estate of Chittick in the Receivership Proceeding and claims relating to enforcement of the rights, duties or obligations arising under this Agreement. This release shall not apply, prejudice, or otherwise frustrate any putative or potential causes of action that the Estate of Chittick and/or the Personal Representative may hold or have against Clark Hill PLC and its lawyer, David G. Beauchamp, as expressly contemplated in that Tolling Agreement executed May 25, 2017 by and between the Estate of Chittick and the Personal Representative, on one hand, and Clark Hill PLC and David G. Beauchamp, on the other hand. Any such claims are not subject to or contemplated by this release, and shall in all events expressly survive the execution of this Agreement.

Dillon Cash Chittick, by and through the approval of the GAL, on his own behalf and on behalf of his attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives (collectively, for purposes of this paragraph, the "Releasing Parties"), hereby releases and forever discharges the Receiver and his attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from all claims that Dillon Cash Chittick and the Releasing Parties may have against them, including but not limited to claims regarding the DB Plan, the 401(k) Plan and any Tax Refunds, excluding, however, claims relating to enforcement of the rights, duties or obligations arising under this Agreement.

Ty Riley Chittick, by and through the approval of the GAL, on his own behalf and on behalf of his attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives (collectively, for purposes of this paragraph, the "Releasing Parties"), hereby releases and forever discharges the Receiver and his attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from all claims that Ty Riley Chittick and the Releasing Parties may have against them, including but not limited to claims regarding the DB Plan, the 401(k) Plan and any Tax Refunds, excluding, however, claims relating to enforcement of the rights, duties or obligations arising under this Agreement.

Ranasha Chittick, on her own behalf and on behalf of her attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives (collectively, for purposes of this paragraph, the "Releasing Parties"), hereby releases and forever discharges the Receiver and his attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from all claims that Ranasha Chittick and the Releasing Parties may have against them, including but not limited to claims regarding the DB Plan, the 401(k) Plan and any Tax Refunds, excluding, however, claims relating to enforcement of the rights, duties or obligations arising under this Agreement.

Q. Attorneys' Fees. Each Party hereto shall be responsible for the payment of its own costs, attorneys' fees and all other expenses incurred in connection with each Party's

investigation, negotiation and execution of this Agreement. The Estate of Chittick shall bear its attorneys' fees solely from either the Settlement Funds or from other assets held by the Estate of Chittick as of the date of entering into this Agreement. If any Party commences an action against any other Party to enforce or interpret any of the terms hereof, the losing or defaulting Party shall pay to the prevailing Party, as determined by the Receivership Court, all costs and expenses, including reasonable attorneys' fees and disbursements, incurred in connection with the prosecution or defense of such action.

R. Further Assurances. The Parties to this Agreement shall execute any further or additional instruments, and they shall perform any further acts, which may become necessary in order to effectuate and carry out the purposes hereof.

S. Entire Agreement. This Agreement contains the entire agreement and understanding among the Parties concerning the subject matter hereof and supersedes and replaces all prior negotiations, agreements and proposed agreements, written or oral, relating thereto. Each of the Parties hereto acknowledges that no other Party, nor any agent or attorney of any Party, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce it to execute this Agreement, and each Party acknowledges that this Agreement has not been executed in reliance on any promise, representation or warranty not contained herein. This Agreement shall not be amended, modified or supplemented at any time unless by a writing executed by the Parties hereto.

T. Opportunity to Consult with Counsel. The Parties acknowledge that they have had the opportunity to consult with and obtain the advice of counsel prior to entering this Agreement, and that each has entered into this Agreement voluntarily and free from coercion, duress or undue influence.

U. No Tax or Legal Advice. The Parties have not sought, nor have they received, tax or legal advice of any kind from any other Party or that Party's respective attorneys or tax advisors. The Parties have sought, or shall seek, to the extent they each deem it appropriate to do so, tax and legal advice regarding this Agreement, if any, from their own respective tax and legal advisors.

V. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona applicable to contracts executed and intended to be performed entirely within the state of Arizona by residents of the state of Arizona. Any action at law, suit in equity or judicial proceeding for the enforcement or interpretation of this Agreement or any provision hereof shall be instituted only in the Receivership Court.

W. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

X. Representation of Authority. The signatories to this Agreement represent and warrant that they have full authority to execute this Agreement and to bind the Party on whose behalf they are signing to the provisions hereof.

Y. Severability. Should any portion of this Agreement be ruled unenforceable or invalid, such ruling shall not affect the enforceability or validity of the remaining portions of this Agreement.

Z. Headings. Article and section headings are inserted herein solely for convenience, and the same shall not by themselves alter, modify, limit, expand or otherwise affect the meaning of any provision of this Agreement.

AA. Assignment and Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that nothing herein shall relieve any Party of any obligation under this Agreement, except upon the express written consent of each other Party to whom such obligation is owed.

BB. Interpretation. This Agreement shall be interpreted fairly in light of the intentions of the Parties as set forth in this Agreement. The Parties each hereby waive the benefit of any rule or law or statute requiring that ambiguities be interpreted against the Party preparing this Agreement or causing the ambiguity.

CC. No Admissions. The execution of this Agreement is not, and shall not be construed to be, an admission of liability by any Party, or an acknowledgement by any Party that any other Party's claims have any basis or merit, but instead is entered into as a compromise and settlement of disputed claims.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year written below.

Peter S. Davis, as Receiver of DenSco Investment Corporation in Cause No. CV2016-014142

Peter S. Davis, as Receiver

Dated: _____

Shawna Chittick Heuer, individually and in her capacity as the Personal Representative of the Estate of Denny J. Chittick

Shawna C. Heuer

Dated: _____

Ty Riley Chittick
By: Paul Theut
His: Court-Appointed Guardian Ad Litem

Dated: _____

Dillon Cash Chittick

By: Paul Theut

~~His: Court-Appointed Guardian Ad Litem~~

Dated: _____

Ranasha Chittick

Dated: _____

Exhibit A

ASSIGNMENT OF CHOSE OF ACTION

THIS ASSIGNMENT OF CHOSE OF ACTION is made effective as of 3rd day of April, 2017, by and between the undersigned (the "Assignor"), and PETER S. DAVIS, as Receiver for the DENSCO INVESTMENT CORPORATION (the "Assignee"), in consideration of the mutual covenants herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged.

WHEREAS, DenSco Investment Corporation ("DenSco") is an Arizona Corporation formed by Denny J. Chittick ("Chittick"), who is the sole owner, shareholder and operator;

WHEREAS, the Assignor is a current investor of DenSco;

WHEREAS, Chittick passed away on July 28, 2016, and the Assignee is the court appointed receiver for DenSco appointed pursuant to the *Order Appointing Receiver*, dated August 18, 2016 in *Arizona Corporation Commission v. DenSco Investment Corporation* CV2016-014142;

WHEREAS, an estate for Chittick was opened and established by Application of the Personal Representative on August 4, 2016 in the Probate Division of the Maricopa County Superior Court in case no. PB2016-051754 (the "Estate");

WHEREAS, Arising out of Chittick's operation of DenSco during his life, Assignor has individual claims against Chittick and his Estate for, including but not limited to, breach of fiduciary duties, negligence and gross negligence, conversion, unjust enrichment, fraudulent transfer, fraud, intentional misrepresentation, and negligent misrepresentation;

WHEREAS, Assignor desires to assign to Assignee, all of Assignor's legal and equitable claims which Assignor may have against Chittick and his Estate arising from any matter, including but not limited to Assignor's investment in DenSco and Chittick's operation and management of DenSco.

NOW THEREFORE:

1. Assignor hereby assigns to Assignee any and all claims, demands, and causes of action of any kind or nature whatsoever, whether present or past, known or unknown, that the Assignor now has or may have against Chittick and his Estate arising from any issue or matter whatsoever, including but not limited to Chittick's operation and management of DenSco.

2. The Assignor agrees that Assignee may, in its own name, and for its own

benefit, free and clear of any claims by the Assignor, prosecute, collect, settle, compromise, and grant releases on said claims as Assignee, in its sole discretion, deems advisable.

~~ENTERED into effective as of the date first noted above.~~

By: _____

PRINTED NAME: _____