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9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR MARICOPA COUNTY

11 ARIZONA CORPORATION  
12 COMMISSION,

13 Plaintiff,

14 v.

15 DENSCO INVESTMENT  
16 CORPORATION, an Arizona  
17 corporation,

18 Defendant.

Cause No. CV2016-014142

PETITION NO. 43

PETITION TO APPROVE  
SETTLEMENT AGREEMENT  
BETWEEN RECEIVER, SHAWNA  
CHITTICK HEUER, INDIVIDUALLY  
AND AS PERSONAL  
REPRESENTATIVE OF ESTATE OF  
DENNY J. CHITTICK, PAUL THEUT  
AS GUARDIAN AD LITEM FOR TY  
AND DILLON CHITTICK AND  
RANASHA CHITTICK

(Assigned to the Honorable Teresa  
Sanders)

19 Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation  
20 ("Receiver"), respectfully petitions the Court to approve the Settlement Agreement between  
21 the Receiver, Shawna Chittick Heuer, both individually and as the personal representative of  
the Estate of Denny J. Chittick in Maricopa County Superior Court Cause No. PB2016-  
051754 (the "Estate of Chittick,"), Paul Theut, as the Court Appointed Guardian Ad Litem  
(the "GAL") for Ty Riley Chittick and Dillon Cash Chittick and Ranasha Chittick as follows:

**I. PARTIES TO THE SETTLEMENT AGREEMENT**

1. In July of 2016, Denny J. Chittick, the sole shareholder, board member and employee of DenSco Investment Corporation (“DenSco”) died. Thereafter, Shawna Chittick Heuer was appointed as the personal representative of the Estate of Chittick by the probate court for Maricopa County, Arizona in proceeding PB 2016-051754 (the "Probate Proceeding"). Shawna Chittick Heuer, individually and as the Personal Representative of the Estate of Chittick is a party to the Settlement Agreement.

2. On August 18, 2016, Peter S. Davis was appointed by the Maricopa County Superior Court pursuant to an *Order Appointing Receiver* in Cause No. CV2016-014142 (“Receivership Order”) as the Receiver of DenSco. The Receiver, on behalf of DenSco, is a party to the Settlement Agreement.

3. At the time of his death, Mr. Chittick had two minor children, Ty Riley Chittick and Dillon Cash Chittick (“Chittick Children”). As beneficiaries of testamentary trusts established for their benefit, the Chittick Children are the sole beneficiaries of Mr. Chittick under the terms of his Last Will and Testament dated May 9, 2009. On May 22, 2017, the Personal Representative filed Petition No. 26 seeking the appointment of Paul Theut as the Guardian Ad Litem for the Chittick Children. On August 28, 2017, pursuant to the Court’s Order re: Petition No. 26, Paul Theut was appointed as the Guardian Ad Litem for the Chittick Children. Paul Thuet as the GAL of the Chittick Children is a party to the Settlement Agreement.

4. Ranasha Chittick is the ex-wife of Mr. Chittick and the mother of the Chittick Children. Ranasha Chittick is a party to the Settlement Agreement.

## II. BACKGROUND OF THE DISPUTES AND RECEIVER'S INVESTIGATION

5. On September 7, 2016, the Estate of Chittick sent a letter to the Receiver and the Arizona Corporation Commission indicating that the Estate of Chittick interpreted the Receivership Order to allow the Personal Representative to appoint herself as "director and president" of DenSco and in doing so, the Personal Representative would seek to become the "Plan Administrator" of the DenSco Defined Benefit Plan ("DB Plan"). Despite the Receiver's appointment in the DenSco matter only a few weeks old, the Estate of Chittick's request required the Receiver to take an initial look at Mr. Chittick's "personal" investments in DenSco and the DB Plan.

6. The Receiver's initial investigation determined, according to the records of DenSco, that Mr. Chittick was a DenSco investor with a total investor balance of \$3,625,313 as of December 23, 2014. However, Mr. Chittick's investments in DenSco were completely liquidated and removed from DenSco in December 2014.

7. As the Receiver investigated the fraudulent schemes perpetrated upon DenSco by Yomtov Scott Menaged, the Receiver determined that Mr. Chittick liquidated his DenSco investments after Mr. Chittick was aware of the initial fraud scheme perpetrated by Mr. Menaged against DenSco<sup>1</sup>. Specifically, Mr. Chittick caused the liquidation of his personal

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<sup>1</sup> The Receiver in Petition No. 32- *Petition for Order Approving Settlement Agreement with Yomtov Scott Menaged and Francine Menaged*, has described in detail the two fraudulent schemes that were perpetrated by Menaged upon DenSco.

1 investment in DenSco by removing from DenSco \$359,609 in a 401k Plan and \$1,817,243 in  
2 the DB Plan. Mr. Chittick moved these funds from DenSco into more secure investments with  
3 third party financial institutions.

4       8. In response to the Estate of Chittick's September 7, 2016, letter, the Receiver  
5 advised the Estate of Chittick that he was actively investigating the fraudulent schemes of Mr.  
6 Menaged and that the administrative issue of control of the DB Plan was not an immediate  
7 priority of the Receiver. The Estate of Chittick initially indicated it would be willing to wait  
8 for the Receiver to address issues related to the DB Plan.

9       9. Meanwhile, the Receiver independently determined that Mr. Chittick likely  
10 paid significant federal and state income taxes on fictional income of DenSco. The Receiver  
11 believed after preparing and filing amended and corrected tax returns, that significant tax  
12 refunds could be recovered for the creditors of DenSco and Estate of Chittick.

13       10. After a meeting with the Estate of Chittick to discuss a collaborative effort to  
14 recover the tax refunds<sup>2</sup>, the Estate of Chittick insisted that any agreement to work together to  
15 recover the tax refunds would require the Receiver to relinquish control of the DB Plan to the  
16 Personal Representative. The Receiver was not prepared to address both issues and attempted  
17 to get the Estate of Chittick to agree to work together to recover the tax refunds and agree to  
18 have any tax refunds held in escrow pending resolution of issues between the Receiver and  
19 the Estate of Chittick.

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20 <sup>2</sup> A collaborative effort is necessary to explore and cause the recovery of any tax refunds as the fictional DenSco income  
21 was reported and paid through Mr. Chittick's personal tax returns and therefore any refunds would flow back through the  
Estate of Chittick.

1           11.     On December 9, 2017, the Receiver filed his Notice of Claim against the Estate  
2 of Chittick, which sought an approved claim of \$43,947,819.61 (“DenSco Probate Claim”).

3           12.     On December 16, 2016, the Receiver sought the engagement of Special  
4 Counsel TJ Ryan to prosecute the DenSco Probate Claim.

5           13.     On December 20, 2016, the Estate of Chittick filed its Petition No. 11 seeking,  
6 among other things, a judicial determination that the DB Plan was not an asset of the  
7 Receivership Estate and seeking approval to retain a CPA to amend DenSco’s tax returns.

8           14.     On December 21, 2016, the Receiver filed his Petition No. 13 seeking the  
9 approval to employ Marvin “Bucky” Swift as Special Counsel to assist the Receiver in  
10 evaluating issues related to the DB Plan. On January 18, 2017, over the objection of the  
11 Estate of Chittick, the Court approved the employment of Mr. Swift as Special Counsel.

12           15.     On February 3, 2017, the Estate of Chittick filed its Notice of Disallowance of  
13 Claim against the Estate of Chittick, denying the DenSco Probate Claim. As a result, the  
14 Receiver would need to file a lawsuit against the Estate of Chittick to establish that DenSco  
15 was a creditor of the Chittick Estate.

16           16.     After briefing was completed on Petition No. 11, the Court set oral argument  
17 for February 24, 2017. As the Receiver and Estate of Chittick continued a dialogue on the  
18 issues, oral argument on Petition No. 11 was continued until November 21, 2017.

19           17.     On or about April 3, 2017, a total of thirty-eight DenSco investors who had  
20 filed creditor claims against the Estate of Chittick in the Probate Proceeding agreed to assign  
21 their claims to the Receiver.

1           18.    Thereafter, the Estate of Chittick and the Receiver worked to fashion a  
2 comprehensive resolution to the myriad of issues including a resolution of disputes over the  
3 DB Plan, 401K plan, treatment of the DenSco Probate Claim and recovery of the tax refunds.

4                           **A.     OVERVIEW OF DISPUTE REGARDING DB PLAN**

5           19.    As set forth above, the Estate of Chittick has sought to have the Receiver  
6 relinquish control of the DB Plan to enable the Personal Representative to facilitate the  
7 payment of the balance of funds in the DB Plan to the Chittick Children.

8           20.    During his initial investigation into the DB Plan, the Receiver discovered  
9 numerous potentially serious issues surrounding the formation and operation of the DB Plan.  
10 It became clear to the Receiver that Mr. Chittick appeared to engage in self-dealing  
11 transactions that could cause an independent party to conclude that Mr. Chittick used the DB  
12 Plan as a subterfuge to defraud DenSco's creditors. For example, the Receiver discovered:

- 13           • There is no executed version of the DB Plan;<sup>3</sup>
- 14           • Several crucial amendments to the Plan have never been signed by Mr. Chittick;
- 15           • The DB Plan never filed any IRS Form 5500s (which is the annual information  
16 return required to be filed with respect to the DB Plan), despite the fact that it  
17 appears the DB Plan's third party administrator prepared the returns and instructed  
18 Chittick of their required filing;
- 19           • The DB Plan was grossly overfunded based upon the unsigned Form 5500's  
20 prepared for but not filed for the DB Plan;

21           

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<sup>3</sup> The version of the Plan attached to the Estate of Chittick's Petition No. 11 is undated and unsigned.

- The DB Plan did not have a separate trust agreement; and
- Mr. Chittick caused the DB Plan to engage in a number of self-dealing prohibited transactions including: (a) investing the DB Plan's assets in DenSco stock; and (b) after the DB Plan's TPA informed Mr. Chittick that the investment in DenSco stock was a prohibited transaction, he caused the Plan to sell the stock to DenSco for a "profit" in excess \$879,000.00, at a time when DenSco was insolvent and when Mr. Chittick was aware of the fraud scheme perpetrated upon DenSco by Mr. Menaged.

21. Moreover, as the Receiver continued to investigate, it was discovered that internal DenSco accounting records detailed that the financial transactions that occurred "within" the DB Plan were accounting entries and not supported by any evidence of the deposit or transfer of tangible funds. It was discovered that the only legitimate cash transaction that took place was the initial deposit of \$77,009.10 to DenSco's "Wiring" bank account at FirstBank. Essentially, the Receiver determined that the over \$1,800,000.00 that has "accrued" in the DB Plan was fictional.

22. Additionally, during the Estate of Chittick's investigation into the DB Plan, it discovered an inconsistency in the DB Plan documents which created a dispute about who is the proper beneficiary under the DB Plan. While the DB Plan's form documents 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.

1           23.     Given his findings set forth above, the Receiver had significant concerns that  
2 the DB Plan was not properly established, operated or maintained by Mr. Chittick or DenSco,  
3 leading the Receiver to conclude that, based on the actions of Mr. Chittick, the DB Plan never  
4 met the requirements for a qualified retirement plan and it should be treated a non-qualified  
5 retirement plan.

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

11           25.     While the Receiver and the Estate of Chittick disagreed upon the facts, the  
12 potential legal ramifications of Mr. Chittick's operation of the DB Plan and the tax  
13 ramifications of the Receiver's treatment of the DB Plan as a non-qualified retirement plan,  
14 the Parties generally agree that the disputed issues are extremely complicated and factually  
15 intensive and there is scant binding legal precedent to guide the Parties or a court on how to  
16 resolve these issues. Accordingly, it is reasonable to conclude that whatever judicial decision  
17 is made as to the disposition of the assets of the DB Plan, it would be subject to appeal, given  
18 the amount in controversy and the lack of clear law on these issues.

19           26.     As of September 29, 2017, the universe of assets of the DB Plan is  
20 \$1,839,111.02 invested in a certificate of deposit at FirstBank.



**B. OVERVIEW OF DISPUTE REGARDING 401K PLAN**

27. During his investigation of the DB Plan, the Receiver discovered critical flaws with the 401k Plan similar to the DB Plan. Namely, that the money that was removed from DenSco purporting to be the accumulated funds in the 401k Plan were fictional book entities and did not reflect actual dollars deposited or maintained in a 401k Plan. This discovery lead the Receiver to conclude that, based on the actions of Mr. 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.

28. The Estate of Chittick contested the Receiver's interpretation and analysis with respect to the qualified status of the 401(k) Plan, and 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. Moreover, the Estate of Chittick highlighted numerous legal decisions that protected the assets in a 401k plan despite issues as to its qualified status.

29. While the Receiver and the Estate of Chittick have disagreed upon the facts and the potential legal ramifications of Mr. Chittick's formation and operation of the 401k Plan, the Receiver concedes that there is a significant amount of law that provides significant protections from actions by creditors, such as the Receiver, when seeking to recover funds from a 401k Plan. Moreover, the funds in the 401(k) plan have already been distributed to trusts for the benefit of the Chittick Children, who by all accounts are innocent parties.

1           30.    The Receiver has determined that the assets of the 401k Plan, approximately  
2 \$359,609, were distributed by the Personal Representative to trusts for the Chittick Children.

3                           **C.     OVERVIEW OF DISPUTE REGARDING TAX REFUNDS**

4           31.    The Receiver, during his investigation into the financial activities of DenSco,  
5 determined that DenSco over-reported its actual income and, as a result, excessive state and  
6 federal income taxes were paid on fictional income of DenSco.

7           32.    As his investigation progressed, the Receiver discovered a previously unknown  
8 letter from Chittick to the Personal Representative which, among other things, confirmed that  
9 Mr. Chittick intentionally misrepresented DenSco's financial position and knowingly paid  
10 excess income taxes to hide from his accounting professionals DenSco's insolvency.

11           33.    Due to Mr. Chittick's ownership of DenSco and its tax treatment, excess  
12 income taxes related to DenSco's reported income were paid by Mr. Chittick through his  
13 personal tax returns. Therefore, the Estate of Chittick and Personal Representative are  
14 necessary to assist in the facilitation and recovery of the tax refunds.

15           34.    The Receiver believes that somewhere between \$1,000,000 and \$1,200,000 of  
16 excessive income taxes were paid by Mr. Chittick in respect of over-reported DenSco  
17 income, and that such amounts may be recoverable from the applicable taxing authorities.

18                           **III.    THE SETTLEMENT**

19           35.    Attached as Exhibit "A" is a copy of the Settlement Agreement between the  
20 Parties.

21           36.    The fundamental provisions of the Settlement Agreement are as follows:

- 1 • DenSco will pay \$675,000.00 to the Estate of Chittick in exchange for a resolution of  
2 all issues relating to the DB Plan and 401k Plan and Tax Refunds. [See Exhibit “A”  
3 ¶A.]
- 4 • With respect to the DB Plan, 100% of assets of the DB Plan [at least \$1,839,111.02]  
5 are deemed to be the property of DenSco and the Parties will not contest the  
6 Receiver’s treatment of the DB Plan as a non-qualified deferred compensation plan.  
7 [See Exhibit “A” ¶E.]
- 8 • With respect to the 401k Plan, 100% of the proceeds will remain property of the  
9 Chittick Children. [See Exhibit “A” ¶I.]
- 10 • With respect to the Tax Refunds, the Estate of Chittick has agreed to cede complete  
11 control and all rights to all potential tax refunds that the Receiver may recover from  
12 the United States Treasury and the State of Arizona [an amount believed to be  
13 somewhere between \$1,000,000 and \$1,200,000] to DenSco. [See Exhibit “A” ¶A.]
- 14 • With respect to the recovery of the Tax Refunds, the Personal Representative and  
15 Receiver will work together to prepare and file the necessary paperwork to seek to  
16 recover the Tax Refunds, but the Receiver will be responsible for all professional fees  
17 in an effort to recover the Tax Refunds. [See Exhibit “A” ¶F.]
- 18 • If there are penalties or other fees from the pursuit or recovery of the Tax Refunds and  
19 the treatment of the DB Plan, those fees will be paid and borne by the DenSco  
20 Receivership. [See Exhibit “A” ¶G.]
- 21

- The Estate of Chittick has agreed to allow the Receiver to have a \$5,000,000 allowed claim in the Probate Proceeding (“Allowed Claim”). The Allowed Claim cannot be payable from the consideration under the Settlement Agreement, but in the event other assets are recovered by the Estate of Chittick a total of 70% of those recoveries will be applied to the payment of the Allowed Claim. [See Exhibit “A” ¶J.]
- The Receiver shall pay \$2,300.00 to Pension Strategies, the administrator of the DB Plan; [See Exhibit “A” ¶H.]
- The Settlement Agreement is contingent upon approval by the Probate Court and Receivership Court. [See Exhibit “A” ¶O.]
- The Settlement Agreement contains comprehensive mutual releases between and among the Parties and specifically compromises the claims of the thirty-eight DenSco investors who had filed creditor claims in Probate proceeding and assigned their claims to the Receiver. [See Exhibit “A” ¶P.]

#### **IV. THE RECEIVER’S RECOMMENDATION TO APPROVE THE SETTLEMENT AGREEMENT**

37. The Receiver recommends that the Court approve the Settlement Agreement between the Parties. As set forth above, the issues that are being compromised with respect to the DB Plan and 401(k) Plan are factually and legally complex. The Receiver has determined that the potential legal fees from advancing these disputes could exceed \$675,000 which is the consideration being paid under the Settlement Agreement. Moreover, the Receiver has estimated the gross recovery under the Settlement Agreement to be between \$1.8M and \$3M to the DenSco Receivership. This range of the potential monetary recovery

1 under the Settlement Agreement accounts for the unknown amount that may be recovered  
2 from the Tax Refunds. However, under the Settlement Agreement 100% of whatever is  
3 recovered in the form of tax refunds shall be property of the DenSco Receivership.  
4 Moreover, pursuant to the Settlement, if there are additional recoveries by the Estate of  
5 Chittick in the Probate Proceeding, the Receiver shall receive 70% of those additional  
6 recoveries in partial satisfaction of its approved claim of \$5M in the Probate Proceeding.

7 38. Finally, the Settlement Agreement allows the Receiver to reduce his ongoing  
8 legal fees and expenses for his Special Counsel who would be critical and necessary to  
9 advance litigation to recover these funds for the DenSco Receivership Estate from the DB  
10 Plan and 401K Plan. Based on the foregoing, the Receiver recommends that the Court  
11 approve the Settlement Agreement between the Parties.

## 12 V. THE STATUS OF SETTLEMENT AGREEMENT

13 39. As set forth above, the Settlement Agreement is contingent upon the approval  
14 by the Probate Court and the GAL.

15 40. On October 23, 2017, the GAL and the Receiver filed in the Probate Proceeding  
16 a *Joint Petition for Single Transaction Authority Under A.R.S. §14-5409* (“Joint Petition”)  
17 seeking the approval of the Settlement Agreement and authorizing the GAL to execute the  
18 Settlement Agreement.

19 41. On October 26, 2017, the Personal Representative filed in the Probate  
20 Proceeding her *Petition to Approve Settlement Agreement Resolving Claims against Chittick*  
21 *Estate and Chittick Children* (P.R. Petition) seeking approval of the Settlement Agreement.

43. Given the complexity of the issues and the desire to resolve these disputes as efficiently as possible, the Receiver [upon consultation with the Estate of Chittick] has filed this Petition in advance of the hearings in the Probate Proceeding and the hearing set for November 21, 2017 on Petition No. 11.

44. It is contemplated that upon the approval of the Joint Petition and P.R. Petition, the Receiver shall provide notice to the Court of the approvals and lodge a fully executed copy of the Settlement Agreement with the Court along with a final proposed form of Order.

WHEREFORE, the Receiver respectfully requests that the Court enter an order approving the Settlement Agreement as lodged herewith.

Respectfully submitted this 17th day of November, 2017.

GUTTILLA MURPHY ANDERSON, P.C.

/s/ Ryan W. Anderson  
Ryan W. Anderson  
Attorneys for the Receiver

## 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 Rzoncos; 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; LJI 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: 11/13/2017

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: \_\_\_\_\_



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.

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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  
Shawna C. Heuer

Dated: 11.10.17

\_\_\_\_\_  
Ty Riley Chittick  
By: Paul J. Theut, Esq.  
His: Court-Appointed Guardian Ad Litem

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dillon Cash Chittick  
By: Paul Theut  
His: Court-Appointed Guardian Ad Litem

Ranasha Chittick  
Ranasha Chittick

Dated: \_\_\_\_\_

Dated: 9-22-17

# 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: \_\_\_\_\_