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8 Attorneys for the Receiver

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
10 IN AND FOR MARICOPA COUNTY

| | | |
|----------------------------|---|-----------------------------------|
| 11 ARIZONA CORPORATION |) | Cause No. CV2016-014142 |
| 12 COMMISSION, |) | |
| 13 |) | |
| 14 Plaintiff, |) | PETITION NO. 64 |
| 15 |) | |
| 16 v. |) | PETITION FOR ORDER APPROVING |
| 17 |) | SETTLEMENT AGREEMENT |
| 18 DENSCO INVESTMENT |) | BETWEEN THE RECEIVER OF |
| 19 CORPORATION, an Arizona |) | DENSCO INVESTMENT |
| 20 corporation, |) | CORPORATION AND MICHELLE R. |
| 21 |) | MENAGED |
| |) | (Assigned to the Honorable Teresa |
| |) | Sanders) |
| |) | |
| |) | |
| |) | |
| |) | |

22 Peter S. Davis, as the court appointed Receiver, respectfully petitions the Court as follows:

- 23 1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which
24 appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“Receivership
25 Order”).
- 26 2. The Receivership Order empowers the Receiver to investigate, and if
27 necessary, litigate claims of DenSco Investment Corporation (“DenSco”).

1 **Charter Oak Loan**

2 3. During his investigation the Receiver discovered that the books and records of
3 DenSco reflected a loan of \$400,000 to Michelle Menaged (“Menaged”), purportedly secured
4 by a single family residence located at 9103 E. Charter Oak Drive, Scottsdale, Arizona, and
5 legally described as Lot 16, Scottsdale Mountain View Estates Unit II, according to the plat
6 Book 348 of Maps, Page 16 and thereafter Affidavit of Correction recorded in Document No.
7 92-104379, Records of Maricopa County, Arizona (“Property”). Menaged is the fee title
8 owner of the Property.

9 4. In connection with the above loan, on October 16, 2012, DenSco recorded a
10 Deed of Trust and Assignment of Rents with the Maricopa County Recorder’s Office as
11 Document No. 2012-0935712 (“Deed of Trust”) which was purportedly signed by Menaged
12 and secured a promissory note in the original principal amount of \$400,000 from DenSco to
13 Menaged (“Note”) with a second position lien on the Property.

14 5. The Note is in default and on December 5, 2016, the Receiver recorded a
15 Notice of Trustee’s Sale regarding DenSco’s interest in the Note and Deed of Trust (“Trustee
16 Sale”) which sale has been continued from time to time by the Receiver.

17 6. Menaged denies that any such loan was made to her by DenSco or that she
18 signed the Deed of Trust or the Note. The Receiver disputes that claim and further asserts
19 that \$555,288 of DenSco funds that were wrongfully taken by Menaged’s son, Scott
20 Menaged, were subsequently transferred to Michelle Menaged or paid for her benefit and
21

1 therefore at a minimum DenSco has an equitable lien in the Property of at least the amount of
2 the Note.

3 7. On March 16, 2017, Menaged filed a complaint in Superior Court seeking
4 among other things a declaration that the Deed of Trust is invalid. By stipulation between
5 Menaged and the Receiver this complaint was consolidated into the Receivership Action and
6 is now pending before this Court (“Menaged Complaint”).

7 **Settlement Agreement between the Receiver and Menaged**

8 8. The Receiver and Menaged have entered into a written settlement agreement
9 (“Settlement Agreement”) to resolve the claims against each other regarding the Property,
10 Deed of Trust and Note. A copy of the Settlement Agreement is attached hereto as **Exhibit**
11 **“A”**.

12 9. Pursuant to the terms of the Settlement Agreement, The Receiver has agreed to
13 cancel the pending Trustee Sale and Menaged is required to list the Property for sale with a
14 licensed and qualified broker for a sale price of not less than \$700,000, provided the listing
15 price may be reduced with the written approval of the Receiver. Upon the sale of the
16 Property, Menaged has agreed that the Receiver will be paid the sum of \$35,000 from the
17 proceeds generated from the sale of the Property in settlement of all of the Receiver’s claims
18 arising from the Deed of Trust or the Note.

19 10. The Receiver has agreed to forbear from enforcing the Note and Deed of Trust
20 for 180 days following the approval of the Receiver Court of the Settlement Agreement. In
21 addition, upon payment of the settlement amount, the Receiver shall mark the Note paid in

1 full and deliver it to Menaged and Menaged will cause the Menaged Complaint to be
2 dismissed with prejudice.

3 11. Because the first position loan, and senior secured position on the Property held
4 by Wells Fargo Bank, is also in default and the bank is threatening to seek a lift stay from this
5 Court and pursue foreclosure of its lien, the Receiver believes that it is in the best interests of
6 the receivership estate to conclude this matter in a prompt manner. For this reason and in
7 consideration of the usual risks of litigation and in order to avoid further costs to the
8 receivership estate, the Receiver recommends that the Court approve the attached Settlement
9 Agreement.

10 WHEREFORE, the Receiver respectfully requests that the Court enter an order
11 approving the Settlement Agreement between the Receiver and Menaged attached as Exhibit
12 “A”.

13 Respectfully submitted this 11th day of October, 2018.

14 GUTTILLA MURPHY ANDERSON, P.C.

15 /s/Patrick M. Murphy
16 Patrick M. Murphy
Attorneys for the Receiver

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18
19 2359-001(347227)

SETTLEMENT AGREEMENT

This Settlement Agreement, made and entered into effective October 2, 2018, by and between Peter S. Davis as the court appointed receiver of DenSco Investment Company ("Receiver"), and Michelle R. Menaged ("Menaged").

Recitals

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

WHEREAS Menaged has legal title to that certain single family residence located at 9103 E. Charter Oak Drive, Scottsdale Arizona, and legally described as Lot 16, Scottsdale Mountain View Estates Unit II, according to the plat Book 348 of Maps, Page 16, and thereafter Affidavit of Correction recorded in Document No. 92-104379, Records of Maricopa County, Arizona ("Property");

WHEREAS on October 16, 2012, DenSco caused to be recorded a *Deed of Trust and Assignment of Rents* with the Maricopa County Recorder as Document No. 2012-0935712 ("Deed of Trust") purportedly signed by Menaged which secured a promissory note in the original principal amount of \$400,000 from DenSco to Menaged ("Note") with a second position lien on the Property;

WHEREAS the Note is in default and on December 5, 2016, the Receiver recorded a Notice a Trustee's Sale regarding DenSco's interest in the Note and Deed of Trust ("Trustee Sale"), which sale has been continued from time to time by the Receiver;

WHEREAS Menaged denies that any such loan was made to her by DenSco or that she signed the Deed of Trust or the Note and has filed in the Receivership Action a complaint seeking a judgment declaring that the Deed of Trust is void ("Menaged Complaint"); and

WHEREAS the Receiver and Menaged, without admitting the contentions of the opposing party, desire to resolve their respective claims against each other regarding the Property, Deed of Trust and Note as more fully described herein.

Agreement

NOW, THEREFORE, it is mutually agreed that:

1. Upon execution of this Agreement:
 - a. The Receiver shall cancel the Trustee Sale; and
 - b. Menaged shall list the Property for sale with a licensed and qualified broker for a sale price of not less than \$700,000, provided the listing price may be reduced with the written approval of the Receiver.
2. Menaged shall, from the proceeds generated from the sale of the Property, pay to the Receiver the sum of \$35,000 ("Settlement Amount") in settlement of all claims that the

Exhibit "A"

Receiver may have relating to or arising from the Deed of Trust or Note. Menaged may, but is not obligated to, pay the Settlement Amount prior to the sale of the Property from other sources. Menaged may enter into a contract for the sale of the Property for any sale price as long as the net sale proceeds generated by the sale of the Property are sufficient to fund a payment to the Receiver of the Settlement Amount and the sale agreement and all escrow instructions are approved by the Receiver. Upon closing of the sale of the Property, the Settlement Amount shall be paid to the Receiver. Menaged shall execute all documents and escrow instructions that the Receiver or the escrow agent may reasonably require to effect this payment to the Receiver and the Receiver shall deposit with the escrow office a release of the Deed of Trust.

3. The Receiver shall forebear from enforcing the Note and Deed of Trust for 180 days following the approval of the Receivership Court of this Agreement as provided hereafter. Unless the Parties otherwise agree in writing, if the Property has not been sold and the Receiver paid the Settlement Amount within 180 days following the approval of the Receivership Court, the Receiver may proceed with the foreclosure of the Deed of Trust, in which case Menaged waives any objection to the sale and any claim as to the invalidity of the Deed of Trust or the Note; provided that any amounts received by the Receiver in excess of the Settlement Amount together with the costs of the trustee's sale and any subsequent sale of the Property, shall be paid to Menaged.

4. The Receiver shall, within thirty days after the execution of this Agreement, file a petition in the Receivership Action seeking the approval of this Agreement. The provisions contained herein are conditioned upon the approval of the Agreement by the Court in the Receivership Action and the Agreement shall not become effective until and unless so approved.

5. Effective upon payment of the Settlement Amount set forth in paragraph 2 above:

a. The Receiver shall mark the Note paid in full and shall deliver same to Menaged.

b. Menaged shall cause the Menaged Complaint to be dismissed with prejudice.

c. The Receiver, on his own behalf and on behalf of his attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges Michelle Menaged and her attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims arising from the Deed of Trust or Note, except claims relating to enforcement of rights, duties, or obligations under this Agreement.

d. Michelle Menaged hereby, on her own behalf and on behalf of her attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges the Receiver and Receiver's attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims arising from the Deed of Trust or Note, except claims relating to enforcement of rights, duties, or obligations under this Agreement.

6. Each Party hereto shall be responsible for the payment of its own costs, attorneys' fees and all other expenses incurred in connection with the Menaged Complaint, the Deed of Trust and the Note. If any Party commences an action against the other Party to enforce or

interpret any of the terms of this Agreement, 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.

7. This Agreement contains the entire agreement and understanding among the Parties concerning the subject 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 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.

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

9. 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 therefore shall be instituted only in the Receivership Court.

10. 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.

11. The execution of this Agreement is not to be construed as an admission of liability by either Party, or an acknowledgement by either Party that the other Party's claims have any basis, but is a compromise and settlement of disputed claims.

IN WITNESS WHEREOF, we have hereunto set our hands on the day, month and year above written.

Peter S. Davis, as Receiver

By  _____

Dated: 10/04/18

Michelle R. Menaged

By  _____

Dated: 10-2-18