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9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

10 IN AND FOR THE COUNTY OF MARICOPA

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. 17

PETITION FOR ORDER APPROVING
PROCEDURES FOR THE DISPOSITION
OF INTERESTS IN REAL PROPERTY

(Assigned to Judge Lori Horn Bustamante)

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

21 1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which
appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“Receivership
Order”). On September 19, 2016, this Court entered its *Order Placing Furniture King, LLC,
Scott's Fine Furniture, LLC and Furniture & Electronic King, LLC in Receivership*, which
appointing Peter S. Davis as Receiver of Furniture King, LLC, Scott's Fine Furniture, LLC
and Furniture & Electronic King LLC.

2. The Receiver has identified and will in the future acquire or identify various interests in real property that constitute receivership assets of one or more of the entities in receivership. Among those interests are loans made by DenSco that are secured by interests in real property. At the present time there are 23 such loans that are described more fully in Exhibit "A" to this Petition.

Interests in Real Property to be abandoned

3. In some cases it may become necessary for the Receiver to abandon an interest in real property that has no value to the receivership estate. The most likely situation where this will arise is where the secured interest of DenSco in real property under one of its loans is subordinate to secured interests held by other lenders, homeowners associations, judgment creditors and others. In those cases where the Receiver's secured interest is subordinate to the liens of others and the Receiver has determined that the receivership estate's interest in the security is of no value, the Receiver requests authority to abandon the interest and pursue the borrower for the amount of the debt. For example, in December 2012, DenSco loaned \$100,000 to Jess Menaged and was given a deed of trust to secure the loan with condominium unit number 1020 located at 9555 E. Raintree Dr. in Scottsdale. Although it appears that DenSco believed it was being provided a first position deed of trust, it turned out that DenSco's deed of trust was in fact subordinate to a deed of trust for \$180,000 previously given by Jess Menaged to another lender. Subsequently Jess Menaged failed to pay certain assessments to the homeowners association, which as a result acquired a lien on the property that is also superior to the DenSco lien. Since the Property has an estimated fair market value

1 of only \$200,000¹, after taking into consideration the amounts owed the first lienholder², the
2 homeowners association³, real property taxes⁴, and the costs of foreclosure of the DenSco
3 deed of trust and sale of the security⁵, the Receiver has determined that DenSco's secured
4 interest in the property has no value. Accordingly, under the procedures requested herein, the
5 Receiver would, after giving notice to the interested parties, execute and record a notice of
6 abandonment in which he would abandon all interests of the receivership estate in the
7 property, while retaining all rights to pursue the borrower for the amounts owed under the
8 promissory note.⁶ This would eliminate the interest of DenSco as a receivership asset thus
9 permitting the senior lienholder and homeowners association to pursue enforcement of their
10 respective debts.

11 4. Given the status of the loan portfolio, the Receiver expects that there will be
12 additional loans in which there is no value in the underlying security in which case, if the
13 relief requested herein is granted, the Receiver intends to execute and record a notice of
14 abandonment in accordance with the procedures described below.

15
16 ¹ The Receiver's real estate broker provided the Receiver with a Broker's opinion of value of \$200,000.

17 ² The current holder of the first position deed of trust has provided a payoff statement as of January 17, 2017 of \$170,270.16. The per diem interest accruing on this debt is \$19.89 per day.

18 ³ L.V. Homeowners Association has filed suit to foreclose its lien for unpaid assessments alleging that assessments, late fees and related collection costs, excluding interest, as of November 21, 2016 were \$4,569.15 plus attorney's fees of not less than \$3,500. In addition, assessments and late charges totaling \$300 are accruing each month.

19 ⁴ A real property tax payment of \$437.69 is due in May 2017.

20 ⁵ The Receiver estimates that the costs of foreclosure to be \$1,800 and the costs of sale to be \$20,000.

21 ⁶ As of December 31, 2016, the amount owed to DenSco under the promissory note from Jess Menaged was \$200,200.67.

Sale of Real Property Interests

5. Some of the secured loans held by DenSco are in default and where there is equity available to satisfy part or all of DenSco's secured debt, it will be necessary for the Receiver to foreclose under the deed of trust recorded for DenSco's benefit. For example, in December 2012, DenSco loaned \$120,000 to Easy Investments, LLC, a limited liability company owned by Scott Menaged, and was given a deed of trust to secure the loan with condominium unit number 1004 located at 9555 E. Raintree Dr. in Scottsdale. Although it appears that DenSco believed it was being provided a first position deed of trust, it turned out that DenSco's deed of trust was in fact subordinate to a note and deed of trust in the original amount of \$142,500 currently owned by Deutsche Bank National Trust Company. The Receiver obtained a Broker's opinion of value that estimates that the property has a market value of \$200,000 and the Receiver has determined that the current balance owed on the senior deed of trust is approximately \$108,000. Assuming costs of foreclosure totaling \$1,800 and 10% costs of sale, there should be equity in the property for the benefit of DenSco in the amount of approximately \$70,000. Accordingly, the Receiver has noticed a Trustee's Sale to foreclose on DenSco's deed of trust and the sale is currently scheduled for February 1, 2017. Assuming DenSco acquires title at the Trustee's Sale it will be necessary for the Receiver to market and sell the property.

6. In order to properly manage, protect and ultimately dispose of the real estate interests held by the Receiver, it will be necessary for the Receiver from time to time, to employ the services of appraisers, environmental engineers, surveyors, real estate brokers and

1 others. The Receiver is concerned about the expense borne by the receivership estate if the
2 Receiver files a petition with this Court each time the Receiver seeks to engage an appraiser,
3 environmental engineer, surveyor, real estate broker and others whose services will be
4 required for the disposition of each of the real estate interests of the estate. In addition, the
5 Receiver does not wish to burden this Court with routine and ministerial receivership matters
6 if a fair and reasonable procedure for disposition of the real estate interests can be established.

7 **Procedures for the Disposition of Interests in Real Property Interests**

8 7. The Receiver recommends that Receivership Assets consisting of an interest in
9 real property that has value to the receivership estate, be marketed and sold in accordance
10 with the procedures set forth below:

11 a. The Receiver may employ appraisers, environmental engineers,
12 hydrologists, surveyors and similar real estate professionals as provided in this
13 paragraph without the necessity of further order of the Court and may pay such
14 professionals as services are rendered without the necessity of further order of the
15 court, except that payment of real estate brokers' commissions for the sale of real
16 property shall be contingent upon this Court's approval of, and upon the closing of, the
17 sale of the real property.

18 b. In selecting the professional to engage under this order the Receiver shall
19 consider, in addition to the price to be charged for the services, the professional's
20 professional experience, familiarity with particular markets, professional and technical
21 reputation in the community, and ability to perform in a timely manner.

1 c. Any contract for the sale or disposition of an interest in real property by
2 the Receiver shall be made contingent upon approval of this Court. Upon entering into
3 such a contract the Receiver shall file with this Court a petition seeking the Court's
4 approval of the contract. Each petition may include information concerning any bids
5 or quotations obtained from appraisers, engineers, hydrologists, surveyors, and real
6 estate brokers or other professionals, as the Receiver deems appropriate, and shall
7 include the amount or percentage to be paid as commissions.

8 d. Except as may otherwise be permitted by an order of this Court,
9 Receivership Assets consisting of an interest in real property shall not be knowingly
10 sold to any party or any employee, independent contractor or attorney of a party or of
11 the Receiver, or any member of their immediate families, or entities in which any such
12 persons have a material ownership interest, except where the sale is by public bid or
13 auction and any reserve price has been made available to the public.

14 e. This paragraph shall not apply to action taken to protect or enforce the
15 Receiver's security interests in real estate or in accepting a deed in lieu of foreclosure.

16 8. If the Receiver determines that an interest in real property that is a Receivership
17 Asset has no value to the receivership estate, the Receiver may abandon that interest but only
18 after the Receiver first provides notice of the proposed abandonment in accordance with the
19 following procedures:
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1 a. At least twenty days prior to any abandonment of an interest in real
2 property, the Receiver shall post on the receivership website⁷ and mail to every person
3 entitled to receive such notice, a written Notice of Intent to Abandon describing the
4 interest in real property to be abandoned and the reasons why it is being abandoned.
5 Every person who has made a request in writing to the Receiver shall receive the
6 written Notice of Intent to Abandon as provided in this paragraph addressed to the
7 address provided to the Receiver. The Receiver may in his discretion provide
8 additional notice as he deems appropriate.

9 b. Any person who wishes to object to the proposed abandonment, shall file
10 a written petition with this Court setting forth the objection and shall file and serve the
11 petition on the Receiver not more than ten days after mailing of the Notice of Intent to
12 Abandon by the Receiver.

13 c. If no objection is timely filed and served, the interests of the receivership
14 estate and the Receiver described in the Notice of Abandonment shall be deemed
15 abandoned without further order of the Court upon the Receiver recording a Notice of
16 Abandonment in the County in which the real property is located describing the
17 interest in real property that is being abandoned.

18 d. If an objection is timely filed and served, the proposed abandonment
19 shall not be completed until the petition setting forth the objection has been decided by
20 the Court as provided in the Court's Order Re: Petition No. 2.

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⁷ The Receiver maintains a website for information regarding this receivership at
www.denscoinvestment.com.

DenSco Open Loans

1/11/2017

	Loan No.	Borrower	Address of Real Property	City	Orig. Loan Amt.
1	3883	Easy Investments, LLC	9555 E Raintree Dr., #1004	Scottsdale	\$152,000.00
2	3736	Michelle Menaged	9103 E Charter Oak Dr	Scottsdale	\$400,000.00
3	3828	Yomov Scott Menaged	1605 W Winter Dr	Phoenix	\$477,352.68
4	3885	Jess Menaged	9555 E Raintree Dr #1020	Scottsdale	\$100,000.00
5	4604	Arizona Home Foreclosures, LLC	707 E Potter Dr	Phoenix	\$170,000.00
6	8116	Omega Prop Invest, LLC	7815 W Vermont Ave	Glendale	\$100,000.00
7	7342	Daniel Smith	2021 W Adams St	Phoenix	\$45,000.00
8	8109	Daniel Smith	319 W Sunland Ave	Phoenix	\$350,000.00
9	7999	Aboveboard Marketing, LLC	1227 W Pima St	Phoenix	\$115,000.00
10	6418	Chevron Group, Inc	2329 N 69th Avenue	Phoenix	\$50,000.00
11	5050	Chevron Group, Inc	9613 N 10th Ave	Phoenix	\$50,000.00
12	5051	Colby Holdings 1, LLC	1017 N Los Robles Dr	Goodyear	\$75,000.00
13	5052	Colby Holdings 1, LLC	4604 N 9th Street	Phoenix	\$40,000.00
14	5794	Emma Holdings I, LLC	2010 N Lindsay Rd	Mesa	\$115,475.56
15	5046	Maryvale Properties 1, LLC	1606 W Culver St	Phoenix	\$75,000.00
16	5048	Maryvale Properties 1, LLC	6307 W Clarendon Ave	Phoenix	\$50,000.00
17	7359	Maryvale Properties 1, LLC	2615 E Portland St	Phoenix	\$50,000.00
18	7686	Maryvale Properties 1, LLC	23210 S Sossaman	Queen Creek	\$60,000.00
19	6796	Wesmore Rentals 1, LLC	215 S 5th Street	Buckeye	\$35,000.00
20	8083	Wesmore Rentals 1, LLC	110 N 2nd Street	Buckeye	\$75,000.00
21	3835	J and J Marketing, LLC	7126 W Glenrosa Ave	Phoenix	\$50,000.00
22	2566	Justin Moore	4021 E Moreland St	Phoenix	\$32,000.00
23	5830	Rimovsky Investments, LLC	1412 W South Fork Dr	Phoenix	\$230,000.00