

1 **ARBOLEDA BRECHNER**  
2 ATTORNEYS AT LAW  
3 4545 EAST SHEA BLVD., STE. 120  
4 PHOENIX, ARIZONA 85028  
5 TEL.: 602/482-0123  
6 FAX: 602/482-4068

7 Carlos M. Arboleda, Bar No. 17109  
8 arboledac@abfirm.com

9 Attorneys for Debtor

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

12 ARIZONA CORPORATE COMMISSION,  
13 an Arizona governmental agency,

14 Plaintiff,

15 v.

16 DENSCO INVESTMENT COPORATION,  
17 an Arizona corporation,

18 Defenant.

Cause No.: CV2016-014142

**PETITION NO. 14:**

**MOTION FOR RELIEF FROM  
RECEIVERSHIP INJUNCTIONS**

19 This Motion is filed by PAJ Fund I, LLC, an Arizona limited liability company (the  
20 "Movant"), a secured creditor holding an interest in real property under the administration  
21 of the above-referenced receivership estate. Movant requests that the Court vacate any and  
22 all injunctions preventing Movant from enforcing its rights as a secured creditor holding a  
23 line in real property being administered by this receivership estate. Simply put, the stay  
24 previously imposed by the Court does not serve to preserve any estate asset, as there is no  
25 equity to protect in the real property serving as collateral. Moreover, Movant is likely to  
26 suffer irreparable harm if it is not allowed to complete its trustee's sale.

27 In further support of this Motion, the Movant states as follows:

28 ///

1           **I.       RELEVANT FACTUAL BACKGROUND**

2           1.       On or about January 17, 2008, Yom Tov Scott Menaged (the "**Borrower**")  
3 acquired that certain real property commonly known as 1605 W. Winter Dr., Phoenix, AZ  
4 85020 pursuant to a Quit Claim Deed recorded with the Maricopa County Recorder as  
5 instrument No. 2008-0047397, and attached hereto as **Exhibit "A"**.

6           2.       On or about April 21, 2009, Borrower borrowed \$250,000 from Arthur  
7 Koschubs (the "**Initial Lender**"), as evidenced by that certain Promissory Note (the  
8 "**Note**") attached hereto as **Exhibit "B"**.

9           3.       Repayment of the Note is secured by that certain Deed of Trust (the "**DOT**"),  
10 dated April 21, 2009, attached hereto as **Exhibit "C"**. The DOT encumbers the Subject  
11 Property in a senior position and was recorded on April 22, 2009, with the Maricopa County  
12 Recorder as instrument No. 2009-0354620.

13           4.       On April 20, 2016, the Borrower filed for bankruptcy protection under Chapter  
14 7 of the Bankruptcy Code. *See In re Menaged*, Case No. 2:16-bk-04268-PS. Although the  
15 Borrower did not disclose any interest in the Subject Property as part of hihs bankruptcy  
16 papers, on June 17, 2016, the Chapter 7 trustee abandoned the Subject Property from the  
17 bankruptcy estate.  
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21           5.       On or about May 9, 2016, the Initial Lender assigned to Movant all of Initial  
22 Lender's rights and interests under the Note and the DOT. *See Assignment of Deed of Trust*  
23 and *Assignment of Rents*, recorded with the Maricopa County Recorder as instrument No.  
24 2016-0313920, and attached hereto as **Exhibit "D"**.

25           6.       On or about August 17, 2016, the Arizona Corporate Commission brought the  
26 this case against Densco Investment Corporation ("**Densco**"), seeking, among other things,  
27 injunctive relief and the appointment of a receiver.  
28

1           7.     On or about August 18, 2016, the Superior Court entered its Order Appointing  
2 Receiver (the "**Receivership Order**"), appointing Peter S. David (the "**Receiver**") as a  
3 receiver to administer the financial affairs of Densco. The Receivership Order enjoins all  
4 persons, presumably including Movant, from taking any action that interferes with the  
5 Receiver or administration of the receivership.

6           8.     On August 30, 2016, the Receiver informed Movant that Densco held a junior  
7 interest in the Subject Property and requested 60 days to investigate the matter. See Letter  
8 from P. M. Murphy, attached hereto as **Exhibit "E"**.

9           9.     Movant provided copies of the Note and the DOT to the Receiver and  
10 demanded that the Receiver abandon the Subject Property as having inconsequential value  
11 to the receivership estate. In the alternative, Movant requested that the Receiver purchase  
12 the Note.  
13

14           10.    The Receiver, however, refused all demands from the Movant. Instead, the  
15 Receiver proposes that Movant wait for the Receiver to liquidate the Subject Property in the  
16 hope that sufficient cash be generated at sale to pay the Note in full. The Receiver has also  
17 not offered to make any interest payment under the Note in order to protect the equity  
18 cushion that he claims is available to the receivership estate.  
19  
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21           11.    As of October 31, 2016, the amount due under the Note was \$289,241.88 plus  
22 attorney's fees and other collection costs. The Note continues to accrue per diem interest in  
23 the amount of \$208.33.  
24

25           12.    According to the Maricopa County Assessor, the Limited Property Value for  
26 the Subject Property is \$312,999. And the Movant believes that the liquidation value of the  
27 Subject Property is \$338,400.

28     ///

1           **II.    LAW AND ARGUMENT**

2           Although it is tempting to analogize a bankruptcy case with a receivership, the fact is  
3 that administration of these two types of matters differs greatly in substance and procedure.  
4 This is because the source of the law and rules governing these two types of cases is  
5 different. Thus, the requirements for relief from a blanket receivership stay order differs  
6 from those to obtain relief from the automatic stay under the Bankruptcy Code.  
7

8           In a receivership, “the power to stay competing actions falls within the court’s  
9 inherent power to prevent interference with the administration of that estate.” SEC v. Credit  
10 Bancorp., Ltd., 93 F. Supp. 2d 475, 477 (S.D.N.Y. 2000). Courts generally consider three  
11 factors when deciding whether to lift a receivership stay, including:

12           (1) whether refusing to lift the stay genuinely preserves the *status quo* or whether the  
13 moving party will suffer substantial injury if not permitted to proceed;

14           (2) the time in the course of the receivership at which the motion for relief from the  
15 stay is made; and  
16

17           (3) the merit of the moving parties underlying claim.  
18

19           SEC v. Universal Financial, 760 F.2d 1034, 1038 (9<sup>th</sup> Cir. 1985). This test differs in emphasis  
20 from the traditional equitable criteria employed by courts to decide whether to grant, deny  
21 or continue a preliminary injunction. The traditional preliminary injunction test would  
22 require the Receiver to show a probability of success on the merits and the possibility of  
23 irreparable harm to the receivership if the stay is not continued. In contrast, in a  
24 receivership, the Court must balance the interest of the Receiver and the moving party. *Id.*  
25

26           In this case, analysis of the three factors counsels for relief from the receivership stay.

27       ///

28       ///

1           **A. The equity cushion available to the Receiver, if any, is rapidly eroding**

2           It is undisputed that the Receiver's interest in the Subject Property is junior to that of  
3 the Movant. The principal amount due under the Note is \$250,000 and the Note went into  
4 default on May 6, 2016, for lack of payment. Moreover, the default interest rate due and  
5 payable under the Note is 30% per annum, or \$208.33 per day. The Note also allows the  
6 Movant to recover a late payment penalty of \$200 or 10% of the amount due, whichever is  
7 greater, plus collection charges. In other words, any equity cushion available to the Receiver  
8 is rapidly eroding.  
9

10           If the real goal of the stay is to protect the equity in the Subject Property, the Receiver  
11 should either buy the Note or pay accrued and accruing interest to protect the equity  
12 cushion. Refusing to do either of these two things forces the Movant to assume all risks  
13 associated with liquidation of the property. Maintaining the receivership stay, in other  
14 words, does not maintain the *status quo* because the Receiver's position continues to erode  
15 at the rate of \$208.33 per day. Instead, the receivership stay forces the Movant to assume  
16 the risk of an eroding equity cushion that will ultimately prove to be insufficient to protect  
17 the Movant.  
18

19           **B. Given the default interest under the Note, time is of the essence**

20           The issue in this case is, simply put, time. That is, the parties are facing a rapidly  
21 eroding equity cushion and waiting for any additional time to liquidate the property is not in  
22 anyone's interest. The Receiver is welcome to test the market and do whatever he wants to  
23 maximize the value of the Subject Property. But the Receiver should be required to pay for  
24 that right by making all interest payments due under the Note. Any alternative  
25 accommodation unfairly shifts the risks of sale to the Movant.  
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Also, it should not be lost on the Court that the Receiver asked for 60 days to propose a meaningful resolution of the issues at hand. But even after expiration of that period, the Receiver did not make any proposals that would serve to protect the alleged equity cushion. Instead, the solution that was ultimately proposed by the Receiver is that the Movant should assume all transactional risks. This is not fair or equitable.

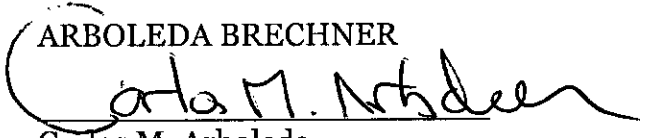
**C. The Note and the DOT are valid and enforceable instruments**

The Note and the DOT are valid and enforceable obligations of the Borrower. The right of the Movant to foreclose on the subject is also not in dispute. Neither the Borrower nor the Receiver dispute these facts. Therefore, the claims of the Movant over the Subject Property are higher in priority over the Receiver and there is no basis to challenge the rights of the Movant as a secured creditor.

**III. CONCLUSION**

Movant respectfully request that the Court vacate any and all stays or injunctions issued by the Court preventing the Movant from exercising its right to liquidate the Subject Property. Allowing this matter to linger indefinitely does not serve to protect the *status quo* of the receivership and exposes Movant to additional risks that it did not bargain for.

Dated this 22 December 2016.

ARBOLEDA BRECHNER  
  
Carlos M. Arboleda  
4545 E. Shea Blvd., Ste. 120  
Phoenix, AZ 85028

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COPIES of the foregoing mailed this  
22 December 2016, to:

Patrick Murphy  
GUTILLA, MURPHY & ANDERSON  
5415 E. High Street, Ste. 200  
Phoenix, AZ 85054

ALL PARTIES LISTED IN ATTACHED  
MASTER MAILING LIST

  
Misty Keys, Assistant

ARBOLEDA BRECHNER  
4545 EAST SHEA BLVD., STE. 120  
PHOENIX, ARIZONA 85028  
TEL.: 602/482-0123

**MASTER SERVICE LIST**

*Arizona Corporation Commission v. DenSco Investment Corporation*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

CV2016-014142

(Revised December 22, 2016)

The Honorable Lori Bustamante  
Maricopa County Superior Court  
East Court Building  
101 West Jefferson, Room 811  
Phoenix, Arizona 85003

Wendy L. Coy  
Arizona Corporation Commission  
1300 West Washington  
Phoenix, AZ 85007-2929  
Attorney for Plaintiffs

Peter S. Davis, Receiver  
Densco Receivership  
Simon Consulting, LLC  
The Great American Tower  
3200 North Central, Suite 2460  
Phoenix, Arizona 85012

James F. Polese  
Christopher L. Hering  
Gammage & Burnham, P.L.C.  
Two North Central Avenue, 15<sup>th</sup> Floor  
Phoenix, Arizona 85004  
Attorney for the Estate of Denny Chittick  
and DenSCO Investment Corporation

Ryan W. Anderson  
Guttilla Murphy Anderson, P.C.  
5415 East High St., Ste. 200  
Phoenix, Arizona 85054  
Attorney for the Receiver

Steven D. Nemecek  
Steve Brown & Associates  
1414 East Indian School  
Suite 200  
Phoenix, Arizona 85014  
Attorney for Chapter 7  
Trustee Jill H. Ford

Elizabeth S. Fella  
Quarles & Brady, LLP  
One S. Church Avenue,  
Suite 1700  
Tucson, Arizona 85701  
Attorney for Claimants



## Exhibit A

Recording requested by:  
EZ Homes, Inc.

When recorded mail to:  
**Yom Tov Scott Menaged**  
1006 West Adams Street  
Phoenix, Arizona 85007



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
2008-0047397 01/17/08 02:08 PM  
3 OF 7

Forward tax statements to the address given above

Space above this line for recorders use

Effective Date: January 17, 2008  
A.P.N.: 157-03-088

Exempt B-1

**QUIT CLAIM DEED**

For consideration of Ten Dollars, and other valuable consideration, receipt of which is hereby acknowledged, EZ Homes, Inc. an Arizona Corporation, does hereby quit-claim to:

Grantee

**Yom Tov Scott Menaged, an unmarried man as his sole and separate property**

But, without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held to the property situated in the county of Maricopa, State of Arizona, described as follows:

Subject Real Property (Legal Description)  
See Attached Exhibit "A".

Commonly know as:  
1605 West Winter Drive, Phoenix, Arizona 85020

EZ Homes, Inc.

By:

Eric Weinbrenner  
President  
Date: January 17, 2008

State of Arizona )  
                          ) ss.  
County of Maricopa )

On January 17<sup>th</sup>, 2008 before me, Shanon R. Secrest, a Notary Public, personally appeared Eric Weinbrenner personally known to me (or provided to me on the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledge to me that he/she/they executed the same and his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature:   
Shanon R. Secrest, Notary Public  
My commission will expire on the 30<sup>th</sup>  
Day of November, 2011



SHANON R. SECREST  
Notary Public - Arizona  
Maricopa County  
Expires 11/30/2011

20080047397

Exhibit 'A'

REF.NO. AZ-07-96185-JM LOT 9 THE COURTYARDS AT NORTHERN, ACCORDING TO BOOK 721 OF MAPS, PAGE 31,  
AND CERTIFICATE OF CORRECTION AS RECORDED IN DOCUMENT NO. 2005-0336550, RECORDS OF MARICOPA  
COUNTY, ARIZONA.

## Exhibit B

1605 W Winter Dr  
Phoenix, AZ 85021

**PROMISSORY NOTE**  
Single Payment

\$250,000.00

April 21<sup>st</sup>, 2009

FOR VALUE RECEIVED, Yomtov Scott Menaged, ("Maker") promises to pay to Arthur Koschubs, ("Lender"), the principal sum of Two Hundred Fifty Thousand Dollars and 00/100 (\$250,000.00) (the "Principal Sum"), together with simple interest thereon at a rate of Fifteen Percent (15%) per annum., INTEREST TO BE PAID AT THE RATE OF ONE HUNDRED FOUR DOLLARS AND 17/100 (\$104.17) PER DAY FOR EACH DAY UNTIL PAID IN FULL.

**Payments.** The Principal Sum and interest due under this Note shall be paid as follows: "interest only" payments in advance, on the monthly anniversary date of the note. Payments paid after 5 days after the due date will carry a late payment penalty of \$200.00 or 10% of the payment amount, whichever is greater. The entire note, including interest, penalties (if applicable) and all principal becomes due and payable on or before April 21<sup>st</sup>, 2010.

**PrePayment.** Maker may prepay this Promissory Note at any time, in whole or in part, without penalty, EXCEPT IN THE EVENT THAT THE MAKER PAYS THIS NOTE IN FULL WITHIN 30 CALANDER DAYS OF ITS ORIGINATION, IN WHICH CASE THE LENDER WILL BE ENTITLED TO A FULL 30 DAYS OF INTEREST, REGARDLESS OF THE NUMBER OF DAYS THAT HAVE ELAPSED FROM LOAN INCEPTION.

**Application of Payments.** Payments on this Promissory Note will be applied to pay the following in the order stated: (i) costs of collection, if any, (ii) any interest due and payable under this Note and (iii) the unpaid Principal Sum.

**Late Payment Policies.** There will be three (3) levels of attempted collection activity when a Borrower is late tendering a regularly scheduled payment.

On the 10<sup>th</sup> day of delinquency, a letter is generated from the Arthur Koschubs detailing the amount of the payment due, plus any late fees. The letter will also detail what further collection actions will be taken if the account is not paid current within 5 business days. This letter is sent via regular U.S. Mail. The Customer will be contacted by telephone to determine when the payment will be made. A fee will be charged in the amount of ONE HUNDRED DOLLARS and 00/100 (\$100.00).

On the 31<sup>st</sup> day of delinquency, the Lender will instruct its Legal Council to file a Notice of Trustee Sale with the County Recorders Office (or whatever authority accepts such notices in the market specific legal requirements). While the Lender is not specifically required to do so, it may, at its option, attempt to contact the Borrower by telephone to determine when a payment will be made. Borrower understands and acknowledges that once the foreclosure process has been initiated, in addition to late fees due under the note, Borrower will be responsible for the payment of all Foreclosure activity related fees and charges, which may include, but not be limited to Trustee's fees, Legal fees, filing fees and other fees and costs.

Nothing contained herein shall create an event of Default on the part of the Lender in the event the Lender does not enforce the late payment policies, or any other penalties under this promissory note.

**Insufficient Funds.** If at any time during the term of this Promissory Note, or any Extension thereof, the Maker (Borrower) tenders a check or any form of payment to satisfy any obligation due herein, and in the event that such payment is deemed insufficient, in the case of a check, or rejected, in the case of a wire transfer, then the following will occur:

The Maker will immediately (within 24 hours of notice) tender a cashiers check replacing the NSF check, or, tender a cashiers check in identical amount to the wire transfer that was rejected. From that point forward, Maker agrees that all payments due the Lender will be made in certified funds only.

For each instance when a check tendered by Maker is presented to a financial institution, and such check is returned unpaid for any reason, Maker agrees to pay to lender a fee of One Hundred Dollars (\$100.00) in addition to any other remedies contained herein.

**Events of Default.** Each of the following will constitute an event of default ("Event of Default") under this Promissory Note:

1 Maker's failure to pay the Principal Sum, and/or any Payment due, and/or any accrued interest due under this Promissory Note on or before the scheduled payment date, and/or Maturity Date without any requirements of notice from Lender of such failure to pay;

2 Maker's (i) assignment for the benefit of its creditors, or (ii) application for, consent to or acquiescence in, the appointment of a trustee, receiver or other custodian for Maker, the property of Maker or any part thereof, or in the absence of any application, consent or acquiescence, the appointment of a trustee, receiver or other custodian for Maker or a substantial part of the property of Maker, which appointment is not discharged within forty-five (45) days; or

3 Commencement of any case under Title 11 of the United States Code or any other bankruptcy, re-organization, receivership, custodianship, or similar proceeding under any state or federal law by or against Maker or Trust and, with respect to any such case or proceeding that is involuntary, such case or proceeding is not dismissed within forty-five (45) days of the filing thereof.

4 Cross Default Agreement: In the event Maker (including any entity in which Maker or any guarantor hereunder is a member, partner or shareholder or otherwise holds an interest therein or and member, partner or shareholder or other interest holder of Maker herein) has more than one promissory note with Lender, both Maker and Lender agree that an event of default in the payment or performance under any such promissory note shall constitute a default under this Promissory Note.

**Default Interest Rate.** In the event that a payment hereunder is not made when due, as set forth above, the Principal Sum shall bear interest at a default rate of interest of Thirty percent (30%) per annum from the date the payment was due until the payment is made or the Principal Sum is paid in full in the event of acceleration.

**Acceleration Upon Default.** During the continuance of an Event of Default, Lender may, at its option, without notice, declare the entire unpaid Principal Sum owing by Maker to Lender under this Promissory Note immediately due and payable.

**General Provisions.**

A0 Successor and Assigns. This Note will be binding upon and inure to the benefit of Lender, Maker and their respective successors, assigns, executors, heirs, devisees and beneficiaries.

B0 Modification. This Note may not be modified except by an instrument in writing and signed by Lender.

C0 Time of Essence. Time is of the essence with regard to each and every term, condition and obligation of the Maker of this Note.

D0 Non-Waiver. Failure or delay in exercising any right or portion hereunder given to Lender will not constitute a waiver of any such right or option or waiver of any other right or option under this Note.

E0 Limitation on Interest. Notwithstanding any provision herein to the contrary, Lender shall never be entitled to receive or collect interest hereunder, nor shall or may amounts received hereunder be credited to interest hereunder, so that Lender shall receive or be paid interest exceeding the maximum amount permitted by applicable law.

F0 Applicable Law. This Note is governed by the laws of the State of Arizona.

G0 Severability. If at any time any provision of this Note is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Note will not be affected and such remaining provisions will remain in full force and effect.

H0 Waiver of Maker's Rights. Maker and any guarantors of this Note hereby expressly waive demand, presentment for payment, protest, notice of protest and diligence in collection, and consent to the time said payment or any part thereof is to be made and may be extended by the Lender.

I0 Costs of Collection. Maker agrees to pay Lender all costs and expenses, including without limitation all reasonable attorney's fees incurred, in the enforcement or collection of this Note or any judgment obtained thereon.

10 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and will be effective upon personal delivery or, if mailed, three (3) days after mailing, by certified or registered mail, return receipt requested, postage prepaid, addressed to Maker as follows (or to such other address as Maker may designate by written notice):

**BENEFICIARY:**  
Arthur Koschubs  
1006 W Adams  
Phoenix, AZ 85007

**TRUSTOR**  
Yomtov Scott Menaged  
1006 W Adams  
Phoenix, AZ 85007

The time of any such notice shall begin to run on the date of the mailing of such notice. For purposes hereof the refusal of certified mail shall constitute receipt.

By:   
Yomtov Scott Menaged

**Interest Payments should be made payable to:**  
Arthur Koschubs  
**All Interest Payment should be sent to:**  
1006 W Adams  
Phoenix, AZ 85007

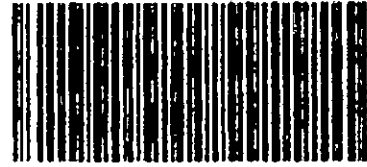
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## Exhibit C



OFFICIAL RECORDS OF  
 MARICOPA COUNTY RECORDER  
 HELEN PURCELL  
 2009-0354620 04/22/09 01:26 PM  
 5 OF 5

When recorded, return to:

Arthur Koschubs  
 1006 W Adams  
 Phoenix, AZ 85007

**DEED OF TRUST**

Effective Date: April 21 <sup>st</sup> , 2009	County and State Where Real Property is located: Maricopa County, Arizona
TRUSTOR: Yomtov Scott Menaged 1006 W Adams Phoenix, AZ 85007	BENEFICIARY: Arthur Koschubs 1006 W Adams Phoenix, AZ 85007
TRUSTEE:  Andrew Abraham, Esq.. 702 East Osborn Road Phoenix, AZ 85004	
Obligation Secured (Nature, Date, All Parties) Promissory Note dated: April 21 <sup>st</sup> , 2009 Two Hundred Fifty Thousand Dollars and 00/100 (\$250,000.00)	
Subject Property Street Address 1605 W Winter Dr Phoenix, AZ 85021	
Subject Real Property Legal Description: REF. NO. AZ-07-96185-JM LOT 9 THE COURTYARDS AT NORTHERN, ACCORDING TO BOOK 721 OF MAPS, PAGE 31, AND CERTIFICATE OF CORRECTION AS RECORDED IN DOCUMENT NO. 2005-0336550, RECORDS OF MARICOPA COUNTY, ARIZONA.	
TOGETHER with an undivided interest in and to the common elements as set forth in said declaration and as designed on said plat.	

1. **Conveyance.** Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, the Subject Real Property, subject to covenants, conditions, restrictions, rights of way and easements of record, to be held as security for the payment by Trustor of the Obligation Secured and for the performance of other obligations of Trustor as set forth in this Deed of Trust.

2. **Appurtenances.** Trustor grants, together with the Subject Real Property, all buildings and improvements now or hereafter erected thereon, and all fixtures attached to or used in connection with the Subject Real Property (including, without limiting the generality of the foregoing, all ventilating, heating, air-conditioning, refrigeration, plumbing and lighting fixtures), together with all leases, rents issues, profits or income therefrom (hereinafter "Property Income"), subject, however, to the right, power and authority hereinafter given to beneficiary to collect and apply such property income.

3. **Taxes and Assessments and Trust Expenses.** Trustor shall pay before delinquent all taxes and assessments affecting the Subject Real Property or any part thereof, which appear to be prior or superior

hereto all cost, fees and expenses of this trust and all lawful charges, costs and expenses of any reinstatement of this Deed of Trust following default.

4. **Fire Insurance.** Trustor shall, at Trustor's expense, maintain in force fire and extended coverage insurance in any amount of not less than the full replacement value of any buildings which may exist on the Subject Real Property with loss payable to Beneficiary. Trustor shall provide fire insurance protection on his furniture, fixtures and other personal property on the Subject of Real Property in an amount equal to the full insurable value thereof, and promises that any insurance coverage in this regard will contain a waiver of the insurer's right of the subrogation against Beneficiary.

5. **Liability Insurance.** Trustor shall, at Trustor's expense, maintain in force policies of liability insurance, with Beneficiary as an additional insured thereunder, insuring Trustor against any claims resulting from the injury to or the death of any person or the damage to or the destruction of any property belonging to any person by reason of Beneficiary's interest hereunder or the use and occupancy of the Subject Real Property by Trustor. Such insurance shall be in the following amounts:

- a. \$500,000 against any claim resulting from injury to or the death of any one person;
- b. \$1,000,000 against any claim resulting from injury to or the deaths of any number of persons from any one accident;
- c. \$500,000 against any claim resulting from the damage to or destruction of any property belonging to any person.

6. **Processing of Insurance Policies.** Trustor shall promptly deliver to Beneficiary the originals or true and exact copies of all insurance policies required by this Deed of Trust. Trustor shall not do or omit to do any act which will in any way impair or invalidate any insurance policy required by this Deed of Trust. All insurance policies shall contain a written obligation of the insurer to notify Beneficiary in writing at least ten (10) days prior to any cancellation thereof.

7. **Indemnification of Trustee and Beneficiary.** Trustor shall hold Trustee and Beneficiary harmless from, and indemnify them for, any and all claims raised by any third party against Trustee or Beneficiary resulting from their interests hereunder or the acts of Trustor. Such indemnification shall include reasonable attorney's fees and costs, including cost of evidence of title.

8. **Right of Beneficiary or Trustee to Pay Obligations of Trustor.** If Trustor fails or refuses to pay any sums due to be paid by it under the provisions of this Deed of Trust, or fails or refuses to take any action as herein provided, then Beneficiary or Trustee shall have the right to pay any such sum due to be paid by Trustor and to perform any act necessary. The amount of such sums paid by Beneficiary or Trustee for the account of Trustor and the cost of any such action, together with interest thereon at the maximum legal contractual rate per annum from the date of payment until the satisfaction shall be added to the obligation Secured. The payment of Beneficiary or Trustee of any such sums or the performance of any such action shall be prima facie evidence of the necessity therefor.

9. **Condemnation.** Any award of damages in connection with any condemnation or injury to any of the Subject Real Property by reason of public use or for damages for private trespass or injury thereto, are assigned in full and shall be paid to Beneficiary, who shall apply them to payment of the principal of the Obligation Secured, the interest thereon and any other charges or amount secured hereby in such manner as Beneficiary may elect. Any remaining balance shall be paid to Trustor. Beneficiary may, at Beneficiary's option, appeal from any such award in the name of Trustor. Unless Trustor and Beneficiary otherwise agree in writing, any application of such proceeds to principal shall not extend or postpone the due dates of any installment payments of the Obligation Secured or change the amount of such payments.

10. **Care of Property.** Trustor shall take reasonable care of the Subject Real Property and the buildings thereon, ordinary depreciation excepted. Trustor shall commit or permit no waste and do no act which will unduly impair or depreciate the value of the Subject Real Property as required, then Beneficiary or Trustee, at their option, may make necessary repairs and add the cost thereof to the obligation Secured. Trustor shall purchase and use on the Subject Real Property the amount of water to which it is or shall be

entitled and shall not abandon any water rights, power rights or any rights of whatever nature which are appurtenant to the Subject Real Property.

**11. Right to Inspect Subject Real Property.** At all convenient and reasonable times, upon prior notice to Trustor, beneficiary or Trustee shall have the right and license to go on and into the Subject Real Property to inspect it in order to determine whether the provisions of the Deed of Trust are being kept and performed.

**12. Acceleration.** In the event of default by Trustor, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice setting forth the nature thereof and of election to cause the Subject Real Property to be sold under this Deed of Trust. Beneficiary shall also deposit with Trustee all documents evidencing the Obligation Secured and any expenditures secured hereby.

**13. Event of Default.** Each of the following shall be considered an event of default of this Deed of Trust:

- a. The failure of Trustor to make any payment due hereunder or under the Obligation Secured on or before the due date thereof;
- b. The failure of Trustor to perform any duty required by this Deed of Trust;
- c. The sale or attempted sale of the Subject Real Property by Trustor without the consent of Beneficiary;
- d. The removal or attempted removal by Trustor of any property included in the Subject Real Property without the consent of Beneficiary;
- e. Abandonment of the Subject Real Property by Trustor;
- f. The filing, execution or occurrence of:
  - i. A petition in bankruptcy by or against Trustor;
  - ii. A petition or answer seeking a reorganization, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act.
  - iii. Adjunction of Trustor as a bankrupt or insolvent, or insolvency in the bankruptcy equity sense;
  - iv. An assignment by Trustor for the benefit of creditors, whether by trust, mortgage or otherwise;
  - v. A petition or other proceeding by or against Trustor for the appointment of a trustee, receiver, guardian, conservator or liquidator of Trustor with respect to all or substantially all of its property;
  - vi. Trustor's dissolution or liquidation, or the taking of possession of Trustor's property by any governmental authority in connection with dissolution or liquidation.
- g. A determination by Beneficiary that the security of the Deed of Trust is inadequate or in danger of being impaired or threatened from any cause whatsoever.

**14. Trustee's Sale.** Upon receipt of Beneficiary's notice of election to cause the Subject of Real Property to be sold. Trustee shall, in accordance with all provisions of law, give notice of Trustee's sale and, after the lapse of the required amount of time, sell the Subject Real Property at public auction, at the time and place specified in the Notice of Trustee's Sale, to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Any persons, including Trustor, Trustee or Beneficiary may purchase at the Trustee's Sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for sale. Upon sale, Trustee shall deliver to the purchaser a Trustee's Deed conveying the Subject Real Property, but without any covenant or warranty, expressed or implied.

**15. Proceeds of Trustee's Sale.** After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of evidence of title in connection with the sale and reasonable attorney's fees, trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other sums

due under the terms hereof, with accrued interest, and the remainder, if any, to the persons legally entitled thereto or as provided by ARS § 33-812.

**16. Deficiency Judgment.** Unless prohibited by law, Beneficiary shall be entitled to a deficiency judgment against Trustor if the Trustee's Sale yields an amount insufficient to fully satisfy Trustor's obligation hereunder. ARS § 33-814

**17. Defaults on Prior Encumbrances.** If there are mortgages upon the Subject Real Property or other encumbrances which are prior in time or prior in right, then Trustor promises to comply with the terms of these prior mortgages or encumbrances. If Trustor fails to comply with such terms and defaults on these mortgages or obligations, such default shall also be considered a default of this Deed of Trust, and Trustee or Beneficiary herein may advance the moneys necessary to remedy such defaults, and, if it does, such moneys shall be added to the obligation secured and shall bear the maximum contractual legal rate of interest from the date moneys are tendered. Beneficiary may also proceed on this default by exercising the same remedies it has on this Deed of Trust.

**18. Foreclosure and Other Remedies.** In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available hereunder and at law or in equity. All rights and remedies shall be cumulative.

**19. Reinstatement After Default.** Notwithstanding Beneficiary's acceleration of sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued and to have this Deed of Trust reinstated at any time before the day of the Trustee's Sale or before the filing of a foreclosure action. In order to have the Deed of Trust reinstated after default, the Trustor must:

- a. Pay to beneficiary the entire amount due under this Deed of Trust and the Obligation Secured, other than such portion of the principal as would not be due had no default occurred;
- b. Cure all defaults or any covenants or agreements of Trustor as contained in this Deed of Trust;
- c. Pay all costs and expenses incurred by Beneficiary and Trustee in enforcing the terms of this Deed of Trust and pursuing remedies;
- d. Pay reasonable attorney's fees actually incurred by Beneficiary and Trustee, in an amount not to exceed One Hundred Dollars (\$100) or one-half of one percent (.5%) of the entire unpaid principal sum secured, whichever is greater;
- e. Pay the recording fee for any cancellation of notice of sale;
- f. Pay the Trustee's fees, in an amount not to exceed One Hundred Dollars (\$100) or one-half of one percent (.5%) of the entire unpaid principal sum secured, whichever is greater. Upon reinstatement, this Deed of Trust and the obligation secured hereby shall remain in full force and effect as if no acceleration had occurred.

**20. Assignment of Property Income.** As additional security, Trustor hereby gives Beneficiary the right, power and authority during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured: (i) enter upon and take possession of the Subject Real Property or any part thereof; in its own name sue for or otherwise collect such property income, including that past due and unpaid; and (ii) apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, in such order as Beneficiary may determine.

**21. Acts of Trustee Affecting Subject Real Property.** At any time, without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Obligation Secured for endorsement, Trustee may, without liability, release and reconvey all or any part of the Subject of Real Property; consent to the making and recording, or either, of any map or plat of all or any part of the Subject Real Property; join in

granting any easement thereon; join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof. Any such action by Trustee may be taken without affecting the personal liability of any person for payment of the indebtedness secured hereby, without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by Trustee's action be credited on the indebtedness.

**22. Satisfaction of the Obligation.** If Trustee receives full payment of the Obligation Secured in the amount secured, at the request of Trustor, Trustee shall acknowledge satisfaction of the Deed of Trust by recording and delivering to Trustor a Satisfaction or Release of Realty Deed of Trust. Should Trustee fail to make such acknowledgment within ten (10) days of the request by Trustor, Trustee shall be liable to Trustor, its heirs or assigns, in the amount of \$100 plus actual damages occasioned by the neglect or failure. **ARS § 33-712.**

**23. Notices.** Copies of all notices and communication concerning this Deed of Trust shall be mailed to the parties at the addresses specified in this Deed of Trust, and any change of address shall be communicated to the other party in writing. Any documents which may adversely affect the rights of any party to this Deed of Trust shall be dispatched by Certified Mail, Return Receipt Requested.

**24. Headings.** The marginal or topical headings of the provisions herein are for convenience only and do not define, limit or construe the contents of these provisions.

**25. Interpretation.** In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural and vice versa.

**26. Applicable Law.** This Deed of Trust shall be subject to and governed by the laws of the State of Arizona, regardless of the fact that one or more parties now is or may become a resident of a different state.

**27. Waiver.** Any waiver by either party of a breach of any provision of this Deed of Trust shall not operate or be constructed as a waiver of any subsequent breach hereof.

**28. Succession of Benefits.** The provisions of this Deed of Trust shall insure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives, conservators and permitted assigns.

**29. Successor Trustee.** Beneficiary may appoint a Successor Trustee in the manner prescribed by law. A Successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all predecessor's title, estate, rights, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

**30. Entire Agreement.** The terms of this Deed of Trust constitute the entire agreement between the parties, and the parties represent that there are no collateral or side agreements no otherwise provided for within the terms of this Deed of Trust.

**31. Time of Essence.** Time is of the essence in this Deed of Trust and every term, condition, covenant and provision hereof.

**32. Modification.** No modification of this Deed of Trust shall be binding unless evidenced by an agreement in writing and signed by both parties.

**33. Partial Invalidity.** If any provision of this Deed of Trust is held to be invalid or unenforceable, all the remaining provisions shall nevertheless continue in full force and effect.


Trustor

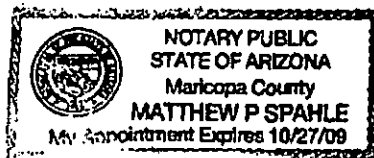
  
Yonkov Scott Menaged

State of Arizona )  
                          ) ss.  
County of Maricopa )

On April 21<sup>st</sup>, 2009 before me, Matt Spahle, a Notary Public, personally appeared Yonkov Scott Menaged personally known to me (or provided to me on the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledge to me that he/she/they executed the same and his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature:   
Matt Spahle, Notary Public  
My commission will expire on the 27<sup>th</sup>  
Day of October, 2009



## Exhibit D



When recorded return to:

PAJ Fund I, LLC  
2200 E Camelback Rd Ste 216  
Phoenix, AZ 85016

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20160313920,05/09/2016 10:29,1605winterDOT-  
3-1-1--N ELECTRONIC RECORDING

---

**ASSIGNMENT OF DEED OF TRUST AND ASSIGNMENT OF RENTS  
("ASSIGNMENT")**

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Arthur Koschubs, as Trustee of the Arthur Koschubs Revocable Trust dated March 6, 2003 ("Assignor"), hereby assigns and transfers to PAJ Fund I, LLC, an Arizona limited liability company ("Assignee"), all of Assignor's right, title and interest as beneficiary under those certain deeds of trust and assignments of rent more fully described in Exhibit "A" attached hereto and incorporated herein by reference and recorded as instruments in the official records of the Maricopa County Recorder's Office in Instrument No. 2009-354620 (collectively, the "Deeds of Trust"), which Deeds of Trust secure the promissory notes described in such Deeds of Trust or otherwise referred to therein and the monies due and to become due thereon with interest, and all other rights accrued or to accrue under said Deeds of Trust.

This Assignment is made without recourse, representations or warranties of any kind, expressed or implied.

This Assignment and the covenants contained herein shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

This Assignment shall be governed by and constructed under the laws of the State of Arizona.

This Assignment may be executed in any number of counterparts, each of which shall constitute an original.

**SIGNATURE PAGE TO FOLLOW**

Dated this 5th day of May 2016

**Arthur Koschubs**, as Trustee of the  
Arthur Koschubs Revocable Trust dated  
March 6, 2003

By: Arthur Koschubs  
Name: Arthur Koschubs  
Its: Trustee

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this 6th day of MAY 2016, by ARTHUR KOSCHUBS, in his capacity as Trustee of the Arthur Koschubs Revocable Trust dated March 6, 2003 of , an Arizona limited liability company, who executed the instrument on behalf of the limited liability company for the purposes set forth therein.

Patricia J. Gaynor

Notary Public

My Commission Expires:

8-1-2016



**EXHIBIT "A"**

**List of Deeds of Trust and Assignments of Rent**

REF. NO. AZ-07-69185-JM LOT 9 THE COURTYARDS AT NORTHERN, ACCORDING TO BOOK 721 OF MAPS, PAGE 31, AND CERTIFICATE OF CORRECTION AS RECORDED IN DOCUMENT NO. 2005-0336550, RECORDS OF MARICOPA COUNTY, ARIZONA

Commonly Known as: **1605 W Winter Dr, Phoenix, AZ 85021**

## Exhibit E

**GUTTILLA MURPHY  
ANDERSON**

5415 E. HIGH STREET, SUITE 200  
PHOENIX, ARIZONA 85054  
(480) 304-8300  
FAX (480) 304-8301

Our No. 2359-001

August 30, 2016

PAJ Fund, I, LLC  
c/o PAJ Enterprises, LLC  
2200 E. Camelback Rd. Ste. 216  
Phoenix, AZ 85016

Re: *Ariz. Corp. Comm'n v. DenSco Investment Corp.*, Maricopa County Superior  
Court, CV2016-014142  
Densco Receivership  
Property Address: 1605 W. Winter Drive, Phoenix, AZ 85021 ("Property")  
Property APN: 157-03-088

Dear Sir or Madam:

This law firm represents Peter S. Davis, the court appointed Receiver in the above case of DenSco Investment Corporation. The Receiver was appointed under the *Order Appointing Receiver* ("Receivership Order") entered on August 18, 2016, by the Maricopa County Superior Court ("Receivership Court"). A copy of the Receivership Order is enclosed for your information.

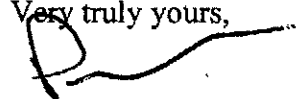
The Receiver has reason to believe that you may assert a lien or other interest in the above Property. The receivership estate also holds an interest in the above Property and that interest is a Receivership Asset under the terms of the Receivership Order. This letter is to notify you that the Receivership Order enjoins all persons, including you, from taking any action that interferes with the Receiver or the Receivership Assets. The only manner and place for you to enforce an interest in the Property is to file a claim with the Receiver or obtain leave of the Receivership Court to proceed in another manner. The Receiver is currently investigating the value of the interest in the above Property held by the receivership estate in order to determine how he should proceed. That investigation should be completed as to the above Property within the next 30 to 60 days. In the meantime, if you wish to discuss the status of the Receiver's investigation, please call me.

Finally, please provide the undersigned with (a) the unpaid principal balance of the note or other obligation which is secured by your deed of trust together with the all other amounts due under the obligation including but not limited to accrued and unpaid interest and late charges,

PAJ Fund, I, LLC  
c/o PAJ Enterprises, LLC  
August 30, 2016

and (b) a copy of your Trustee's Sale Guarantee or a listing of liens and encumbrances upon the Property as of the date of the notice of trustee's sale.

Very truly yours,



Patrick M. Murphy

PMM:cs  
Enclosure

cc: Peter S. Davis, Receiver  
Sara Beretta, Asst. to the Receiver

257024