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Tulving Company, Inc.

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8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **SANTA ANA DIVISION**

11 In re:  
12 THE TULVING COMPANY, INC., a  
13 California corporation,  
14 Debtor.

Case No.: 8:14-bk-11492-ES

Chapter 7

**NOTICE OF MOTION AND MOTION  
FOR ORDER APPROVING  
SETTLEMENT AGREEMENT WITH ON  
THE ROCKS JEWELRY & COINS, ET  
AL. PURSUANT TO BANKRUPTCY  
RULE 9019; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF; DECLARATION  
OF R. TODD NEILSON**

[NO HEARING REQUIRED PURSUANT  
TO L.B.R. 9013-1]

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20 **TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE,**  
21 **THE OFFICE OF THE UNITED STATES TRUSTEE AND ANY PARTIES THAT HAVE**  
22 **FILED REQUESTS FOR SPECIAL NOTICE, AND OTHER INTERESTED PARTIES:**

23 **PLEASE TAKE NOTICE** that R. Todd Neilson, the duly appointed chapter 7 trustee (the  
24 “Trustee”) for The Tulving Company, Inc. (the “Debtor”), in the above-entitled chapter 7 case,  
25 hereby files this motion (the “Motion”) for the entry of an order, substantially in the form attached  
26 hereto as **Exhibit 1**, pursuant to Federal Rule of Bankruptcy Procedure 9019(a), approving the  
27 terms of the settlement agreement (the “Settlement Agreement”) by and between the Trustee, on  
28 the one hand, and On the Rocks Jewelry & Coins (“On the Rocks”), David Halpin and Desirea

1 Sloan (collectively, the “On the Rocks Parties”), on the other hand. The Settlement Agreement  
2 provides, among other things, for the payment to the Debtor’s estate (the “Estate”) by the On the  
3 Rocks Parties of \$593,434, plus interest as applicable pursuant to the terms of the Settlement  
4 Agreement, in full and complete satisfaction of amounts owed to the Estate on account of jewelry  
5 and coins purchased by On the Rocks from the Debtor. In addition, the Settlement Agreement  
6 provides that the On the Rocks Parties agree to enter into a confession of judgment in the  
7 Settlement Amount. A copy of the Settlement Agreement is attached hereto as **Exhibit 2**. The  
8 Trustee seeks approval of the Settlement Agreement and authorization to take any and all actions  
9 reasonably necessary to effectuate the Settlement Agreement.

10 **PLEASE TAKE FURTHER NOTICE** that the Trustee, in the exercise of his business  
11 judgment, believes that the Settlement Agreement is fair and reasonable and in the best interests of  
12 the Estate. After extensive, arms-length negotiations between the Trustee and the On the Rocks  
13 Parties, the parties determined to enter into the Settlement Agreement. Absent such consensual  
14 resolution, the Estate will be subject to litigation risks and costs, the attendant delay, and the  
15 possibility of an adverse result. Accordingly, the Trustee believes that the Settlement Agreement is  
16 in the best interests of the Estate and its creditors and should be approved.

17 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice and  
18 Motion, the accompanying Memorandum of Points and Authorities, the Declaration of R. Todd  
19 Neilson that is attached to the Motion, and any other admissible evidence properly brought before  
20 the Court.

21 **PLEASE TAKE FURTHER NOTICE** that Local Bankruptcy Rule 9013-1(o)(1) requires  
22 that any response to the Motion and a request for a hearing thereon shall be filed with the  
23 Bankruptcy Court and served upon Trustee’s counsel at the address appearing on the upper-left  
24 hand corner of the caption page to this Motion and the Office of the U.S. Trustee within fourteen  
25 (14) days of the date of service of the Motion. Pursuant to Local Bankruptcy Rule 9013-1(h), the  
26 failure to timely file and serve written opposition may be deemed by the Court to be consent to the  
27 granting of the relief requested in the Motion.  
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1           **WHEREFORE**, the Trustee respectfully requests that the Court approve the Settlement  
2 Agreement, authorize the Trustee to take all actions necessary to implement the Settlement  
3 Agreement, and grant such other and further relief as is just and proper under the circumstances.

4  
5 Dated: March 17, 2015

PACHULSKI STANG ZIEHL & JONES LLP

6 By /s/ Linda F. Cantor  
7 Linda F. Cantor

8 Counsel for R. Todd Neilson, Chapter 7 Trustee  
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PACHULSKI STANG ZIEHL & JONES LLP  
ATTORNEYS AT LAW  
LOS ANGELES, CALIFORNIA

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS**

**A. The Background of the Debtor's Business**

The Debtor is a California corporation. The Debtor was in the business of selling and purchasing gold, silver, coins, bullion, and other precious metals through its internet website or by phone. Prior to the filing of the bankruptcy, customer complaints concerning delayed or undelivered orders were increasingly made to the Better Business Bureau against the Debtor and in early March, 2014, a class-action lawsuit was filed against the Debtor and its principal in the United States District Court, Northern District of California. The Debtor ceased operations on or about March 3, 2014. Shortly before the initiation of these proceedings, a raid was conducted at the business offices of the Debtor by the Secret Service and the Department of Justice and the Debtor's computers and documents were seized for an ongoing criminal investigation.

**B. Procedural Background of Case**

The Debtor commenced this case by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 10, 2014. In light of pending criminal investigation and other ongoing litigation, on March 18, 2014, the United States Trustee filed a *Stipulation Appointing Chapter 11 Trustee* [Docket No. 15] (the "Stipulation"), which was signed by both the Debtor and its attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket No. 16] and an Order was entered by the Court on March 21, 2014 approving the *U.S. Trustee's Application for the Appointment of a Chapter 11 Trustee, appointing R. Todd Neilson as Trustee of the Debtor's estate* [Docket No. 22]. Thereafter upon notice and hearing, the case was converted to a chapter 7 and R. Todd Neilson continues to serve as the chapter 7 Trustee [Docket 108].

**C. Estate's Claim Against the On the Rocks Parties**

On the Rocks Jewelry & Coins ("On the Rocks") is engaged in the business of buying and selling jewelry and coins and is a sole proprietorship owned by David Halpin and Desiree Sloan. On the Rocks, Mr. Halpin and Ms. Sloan are referred to collectively herein as the "On the Rocks

1 Parties. Prior to the Petition Date, On the Rocks purchased and received gold and silver coins in  
2 the total amount of \$5,676,880.00 (the "Purchased Coins") from the Debtor. On the Rocks paid the  
3 Debtor \$5,083,446.00 on account of certain of the Purchased Coins and stopped making payments  
4 to the Debtor on the remaining Purchased Coins on February 12, 2014. As set forth on Exhibit A to  
5 the Settlement Agreement, On the Rocks owes the Debtor's estate (the "Estate") \$593,434.00 on  
6 account of the remaining Purchased Coins. On or about July 14, 2014, the Trustee made demand  
7 upon On the Rocks to pay the outstanding balance in the amount of \$593,434.00. Rather than  
8 proceed with litigation, the parties engaged in good faith, arms' length negotiations to resolve  
9 payment by On the Rocks to the Estate of the outstanding balance.

10 The Trustee has determined in his reasonable business judgment that the compromise set  
11 forth in the Settlement Agreement is in the best interest of the Estate because it resolves the On the  
12 Rocks Parties' liability for and payment of amounts due and owing to the Estate and avoids  
13 litigation with respect thereto.

14 **D. Proposed Settlement Agreement**

15 After extensive, arms-length negotiations between the Trustee and the On the Rocks Parties,  
16 the parties determined to enter into the Settlement Agreement, which provides, among other  
17 things<sup>1</sup>:

18 (i) Each of the On the Rocks Parties agrees to pay to the Estate, pursuant to the  
19 terms, conditions, and requirements set forth in the Settlement Agreement, the sum of \$593,434.00,  
20 plus interest as applicable pursuant to the terms of this Settlement Agreement (the "Settlement  
21 Amount"), in full and complete satisfaction and settlement of the amount owed to the Estate on  
22 account of the Purchased Coins. Each of the On the Rocks Parties shall be jointly and severally  
23 liable up to the Settlement Amount until such amount is paid in full to the Estate. The Settlement  
24 Amount shall be paid in installment payments (each, an "Installment Payment") as set forth in the  
25 chart attached to the Settlement Agreement as Exhibit B.

26 (ii) A confession of judgment (the "Confession of Judgment") in substantially  
27

28 <sup>1</sup> The summary contained herein is a summary only, and if and to the extent there is any inconsistency between the  
summary and the Settlement Agreement, the terms of the latter govern. Capitalized terms not otherwise defined herein  
shall have the meanings ascribed to them in the Settlement Agreement.

1 the form attached to the Settlement Agreement as Exhibit C will be executed by each of the On the  
2 Rocks Parties, jointly and severally, for the Settlement Amount. The Confession of Judgment will  
3 be held by counsel for the Trustee, who shall be permitted to file and seek to enforce the  
4 Confession of Judgment only upon the occurrence of an Event of Default (defined in the Settlement  
5 Agreement), and subject to applicable notice as set forth in paragraph 6 of the Settlement  
6 Agreement.

7 (iii) Effective on the date of the payment by the On the Rocks Parties to the  
8 Estate of the final Installment Payment, the Estate and the Trustee, solely in his capacity as trustee,  
9 and each of their respective successors and assigns (collectively the “Trustee Releasers”) shall be  
10 deemed to have irrevocably and unconditionally, fully, finally and forever waived, released,  
11 acquitted and discharged the On the Rocks Parties and each of its, his and her successors and  
12 assigns (collectively, the “On the Rocks Releasees”) from any and all claims, manner of actions,  
13 causes of action, suits, costs, debts, liabilities, obligations, dues, sums of money, accounts,  
14 reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises,  
15 variances, trespasses, damages, judgments, executions and demands whatsoever, of whatever kind  
16 or nature, whether known or unknown, suspected or unsuspected, in law or equity, which the  
17 Trustee Releasers have, have had, may have or may claim to have against the On the Rocks  
18 Releasees solely in connection with, or relating specifically to, the Purchased Coins. The foregoing  
19 is not intended to nor shall it have the effect of releasing any of the On the Rocks Parties from the  
20 performance of their obligations in accordance with the Settlement Agreement or the Confession of  
21 Judgment.

22 Further, effective on the date of the payment by the On the Rocks Parties to the  
23 Estate of the final Installment Payment, each of the On the Rocks Parties shall be deemed to have  
24 irrevocably and unconditionally, fully, finally and forever waived, released, acquitted and  
25 discharged the Trustee Releasers and each of their respective successors and assigns from any and  
26 all claims, manner of actions, causes of action, suits, costs, debts, liabilities, obligations, dues, sums  
27 of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies,  
28 agreements, promises, variances, trespasses, damages, judgments, executions and demands

1 whatsoever, of whatever kind or nature, whether known or unknown, suspected or unsuspected, in  
2 law or equity, which the On the Rocks Parties have, have had, may have or may claim to have  
3 against any of the Trustee Releasers relating to the Purchased Coins. The On the Rocks Parties  
4 specifically reserve and do not release any rights, claims, defenses, or counterclaims in connection  
5 with any claims that the Trustee Releasers have against the On the Rocks Parties other than those  
6 relating to the Purchased Coins.

7 As discussed herein, the Trustee believes that the compromise reached in the Settlement  
8 Agreement is a fair and reasonable one, offering the best net result for the Estate.

9 **II.**

10 **THE PROPOSED SETTLEMENT AGREEMENT**

11 **IS IN THE BEST INTEREST OF THE ESTATE**

12 **A. Standard for Approval of Settlements**

13 Federal Rule of Bankruptcy Procedure 9019(a) provides,

14 On motion by the trustee and after hearing on notice to creditors, the  
15 debtor and indenture trustees as provided in Rule 2002(a) and to such  
16 other entities as the court may designate, the court may approve a  
17 compromise or settlement.

17 The standard for approval of a compromise was further addressed by the Supreme Court in  
18 Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390  
19 U.S. 414, reh'g denied, 391 U.S. 909 (1968). There the Court held that a bankruptcy court in  
20 considering whether to approve a compromise, should inform itself regarding

21 all facts necessary for an intelligent and objective opinion of the  
22 probabilities of ultimate success should the claim be litigated.  
23 Further, the judge should form an educated estimate of the  
24 complexity, expense, and likely duration of such litigation, the  
25 possible difficulties of collecting on any judgment which might be  
26 obtained, and all other factors relevant to a full and fair assessment of  
27 the wisdom of the proposed compromise.

25 Id. The court further held in TMT Trailer that compromises reached during the course of  
26 insolvency proceedings must be “fair and reasonable.” 390 U.S. at 424. Significantly, the court  
27 stated that “[b]asic to this process in every instance, of course, is the need to compare the terms of  
28 the compromise with the likely rewards of litigation.” Id.

1 The Ninth Circuit Court of Appeals has held that the determination of whether a proposed  
2 settlement agreement meets the requisite standards of fairness, equity and reasonableness, is a  
3 function of several factors: (a) the probability of success in the litigation; (b) the difficulties, if any,  
4 to be encountered in the matter of collection; (c) complexity of the litigation involved, and the  
5 expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of  
6 creditors and a proper deference to their reasonable views. See Martin v. Kane (In re A&C  
7 Properties), 784 F.2d 1377, 1381 (9th Cir.), cert. denied sub nom., Martin v. Robinson, 479 U.S.  
8 854 (1986); accord Woodson v. Fireman’s Fund Insur. Co. (In re Woodson), 839 F.2d 610, 620  
9 (9th Cir. 1988); In re MGS Marketing, 111 B.R. 264, 267 (B.A.P. 9th Cir. 1990).

10 Finally, the bankruptcy court has wide latitude and discretion in evaluating a proposed  
11 compromise because the judge is “uniquely situated to consider the equities and reasonableness.”  
12 United States v. Alaska National Bank (In re Walsh Construction, Inc.), 669 F.2d 1325, 1328 (9th  
13 Cir. 1982). In that vein, the Ninth Circuit has further stated:

14 A compromise agreement allows the trustee and the creditor to avoid  
15 the expenses and burdens associated with litigating “sharply  
16 contested and dubious” claims. The bankruptcy court need not  
17 conduct an exhaustive investigation into the validity of the asserted  
18 claim. It is sufficient that, after appraising itself of all facts necessary  
19 for an intelligent and objective opinion concerning the claim’s,  
20 validity, the court determines that either (1) the claim has “substantial  
21 foundation” and is not “clearly invalid as a matter of law,” or (2) the  
22 outcome of the claim’s litigation is “doubtful.”

23 Id. at 1328 (citations omitted).

24 Here, the Trustee and the On the Rocks Parties have agreed on the terms of payment of  
25 amounts owed by On the Rocks to the Estate on account of merchandise purchased prior to the  
26 Petition Date. Although the Trustee believes that the Estate’s position is the stronger one, there is  
27 no guarantee that the Trustee would prevail in any litigation against the On the Rocks Parties to  
28 collect such amounts, which litigation would unduly require the expenditure of the Estate’s  
resources. In the Trustee’s view, the Settlement Agreement is a reasonable, expedient, and  
balanced resolution.

Further, the Estate is obtaining a release of all claims by the On the Rocks Parties and the  
Trustee does not believe that the Estate has any claims or causes of action against the On the Rocks



1 Parties that will be released pursuant to the release under the Settlement Agreement. Thus, the  
2 Trustee does not believe the Estate is giving up anything of material value through the release.

3 Accordingly, the Trustee believes that the Settlement Agreement and all its provisions are  
4 reasonable, fair and in the best interest of the Estate and creditors.

5 **III.**

6 **CONCLUSION**

7 **WHEREFORE**, the Trustee respectfully requests that the Court approve the Settlement  
8 Agreement, authorize the Trustee to take all actions necessary to implement the Settlement  
9 Agreement, and grant such other and further relief as is just and proper under the circumstances.

10 Dated: March 17, 2015

PACHULSKI STANG ZIEHL & JONES LLP

11  
12 By /s/ Linda F. Cantor  
Linda F. Cantor

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14 Counsel for R. Todd Neilson, Chapter 7 Trustee  
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# **EXHIBIT 1**

1 Linda F. Cantor (CA Bar No. 153762)  
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6 **UNITED STATES BANKRUPTCY COURT**  
7 **CENTRAL DISTRICT OF CALIFORNIA**  
8 **SANTA ANA DIVISION**

9 In re:

10 THE TULVING COMPANY, INC., a  
California corporation,

11 Debtor

Chapter 7

Case No.:8:14-bk-11492-ES

12 **ORDER GRANTING MOTION APPROVING**  
13 **SETTLEMENT AGREEMENT WITH ON**  
14 **THE ROCKS JEWELRY & COINS, ET AL.**

15 [NO HEARING REQUIRED PURSUANT TO  
16 L.B.R. 9013-1]

17  
18 The Court has considered the *Motion for Order Approving Settlement Agreement With On*  
19 *the Rocks Jewelry & Coins, et al.* (the "Motion")<sup>1</sup> [Docket No. \_\_\_\_], filed by R. Todd Neilson in his  
20 capacity as Chapter 7 Trustee (the "Trustee") of the bankruptcy estate of The Tulving Company,  
21 Inc., pursuant to which the Trustee and On the Rocks Jewelry & Coins (the "Parties") seek approval  
22 of entry into a settlement agreement dated February 23, 2015 (the "Settlement Agreement"). The  
23 terms and conditions of the compromise and settlement are specifically set forth in the Settlement  
24 Agreement between the Parties, a copy of which is attached to the Motion. No opposition to the  
25 Motion has been filed or served. \

26 Based upon the Court's review of the Motion, the Court finds that (1) the relief requested in  
27 the Motion is reasonable, appropriate, and in the best interests of the bankruptcy estate and its  
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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 creditors; and (2) notice of the Motion was adequate, appropriate, and properly served under the  
2 circumstances and no further notice need be given.

3 **THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED** that:

- 4 1. The Motion is granted;
- 5 2. The Settlement Agreement is approved;
- 6 3. The Parties are authorized to enter into the Settlement Agreement and take any and all  
7 actions reasonably necessary to consummate the terms thereof; and
- 8 4. This Court shall retain jurisdiction to determine any matters or disputes that arise in  
9 connection with the Settlement Agreement and this Order.

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11 ###

# **EXHIBIT 2**

**SETTLEMENT AGREEMENT BY AND BETWEEN  
R. TODD NIELSON, CHAPTER 7 TRUSTEE FOR THE TULVING  
COMPANY, INC., ON THE ROCKS JEWELRY & COINS,  
DAVID HALPIN AND DESIREA SLOAN**

This settlement agreement (the “Settlement Agreement”) is entered into by and between R. Todd Nielson, solely in his capacity as the chapter 7 trustee (the “Trustee”) for The Tulving Company, Inc. (the “Debtor”), on the one hand, and On the Rocks Jewelry & Coins (“On the Rocks”), David Halpin (“Halpin”), and Desirea Sloan (“Sloan” and, collectively with Halpin and On the Rocks, the “On the Rocks Parties”), on the other hand. The Trustee, On the Rocks, Halpin and Sloan may be referenced herein as the “Parties” and/or each as a “Party.”

**Background**

WHEREAS, on March 10, 2014 (the “Petition Date”), the Debtor commenced a case by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Central District of California (the “Court”); and

WHEREAS, on March 18, 2014, the Office of the United States Trustee (the “U.S. Trustee”) filed a *Stipulation Appointing Chapter 11 Trustee*, which was approved by the entry of an Order by the Court on March 18, 2014. On March 21, 2014, an Order was entered by the Court appointing R. Todd Neilson as chapter 11 trustee of the Debtor’s estate. Thereafter, upon notice and hearing, the case was converted to a chapter 7 and R. Todd Neilson continues to serve as the chapter 7 Trustee; and

WHEREAS, On the Rocks is engaged in the business of buying and selling jewelry and coins; and

WHEREAS, On the Rocks is a sole proprietorship owned by Halpin and Sloan;  
and

WHEREAS, prior to the Petition Date, On the Rocks purchased and received gold and silver coins in the total amount of \$5,676,880.00 (the "Purchased Coins") from the Debtor. On the Rocks paid the Debtor \$5,083,446.00 on account of certain of the Purchased Coins and stopped making payments to the Debtor on the remaining Purchased Coins on February 12, 2014. Attached hereto as **Exhibit A** is a list of the remaining Purchased Coins that On the Rocks purchased and received from the Debtor but for which it has not paid the Debtor. As set forth on **Exhibit A**, On the Rocks owes the Debtor's estate (the "Estate") \$593,434.00 on account of the remaining Purchased Coins set forth therein; and

WHEREAS, on or about July 14, 2014, the Trustee made demand upon On the Rocks to pay the outstanding balance in the amount of \$593,434.00 owed by On the Rocks to the Debtor; and

WHEREAS, rather than proceed with litigation, the Parties engaged in good faith, arms' length negotiations to resolve payment by On the Rocks to the Estate of the outstanding balance in the amount of \$593,434.00;

### **Terms and Conditions**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the Parties intending to be legally bound, the Parties hereby agree that:

1. **Recitals.** The recitals set forth above are true and correct and incorporated herein by reference.
2. **Settlement Amount.** Each of the On the Rocks Parties agrees to pay to the Estate, pursuant to the terms, conditions, and requirements set forth herein, the sum of \$593,434.00, plus interest as applicable pursuant to the terms of this Settlement Agreement (the

“Settlement Amount”), in full and complete satisfaction and settlement of the amount owed to the Estate on account of the Purchased Coins. Each of the On the Rocks Parties shall be jointly and severally liable up to the Settlement Amount until such amount is paid in full to the Estate. Each of the On the Rocks Parties is therefore individually liable for the full performance of all terms and payment of all sums required under this Settlement Agreement. The Settlement Amount shall be paid in installment payments (each, an “Installment Payment”) as set forth in the chart attached hereto as **Exhibit B**. In the event (i) the date upon which an Installment Payment is due is a Saturday or Sunday, such payment shall be due on the immediately following Monday and (ii) the date upon which an Installment Payment is due is a legal holiday, such payment shall be due on the immediately following business day. Any additional payments made by the On the Rocks Parties, other than the Installment Payments set forth on **Exhibit B**, shall reduce the ending principal balance of the Settlement Amount first by an additional 10% of the payment received. Each Installment Payment set forth on **Exhibit B** shall be wired to the Trustee as follows:

Bank:	Rabobank, N.A. Specialty Deposits 90 E. Thousand Oaks Blvd., Suite 300 Thousand Oaks, CA 91360
Routing Number:	122237159
Account Name:	The Tulving Company
Account Number:	5012086768

3. **Interest.** The Settlement Amount shall accrue interest at the rate of five percent (5%) as set forth on **Exhibit B**, provided, however, that such interest shall be waived only if each Installment Payment set forth on **Exhibit B** is timely made so that it is received by the Trustee on the applicable date set forth on **Exhibit B** or within the Cure Period (defined



below). Interest shall continue to accrue on the Settlement Amount on account of any Installment Payment that is not timely made in accordance with the foregoing sentence.

4. **Settlement Effective Date.** The effective date of this Settlement Agreement and all of its terms, with the exception of the releases set forth in paragraphs 9 and 10 of this Settlement Agreement, shall be the date this Settlement Agreement is executed by all Parties.

5. **Confession of Judgment.** A confession of judgment (the “Confession of Judgment”) in substantially the form attached hereto as **Exhibit C** shall be executed by each of the On the Rocks Parties, jointly and severally, for the Settlement Amount and delivered to the Trustee simultaneously with the execution of this Agreement by the On the Rocks Parties. Each of the On the Rocks Parties shall be jointly and severally liable up to the Settlement Amount until such amount is paid in full to the Estate. The Confession of Judgment shall be held by counsel for the Trustee, who shall be authorized to file and seek to enforce the Confession of Judgment only upon the occurrence of an Event of Default (and subject to applicable notice as set forth in paragraph 6 of this Settlement Agreement).

6. **Event of Default/Notice to Cure.** The failure by the On the Rocks Parties to timely make any Installment Payment set forth on **Exhibit B** shall constitute an “Event of Default” under this Settlement Agreement. The Trustee will provide written notice of the Event of Default (the “Notice of Default”) by electronic mail to the On the Rocks Parties at myfairlady1600@gmail.com and the On the Rocks Parties shall have the opportunity to cure such default within seven (7) calendar days from the date such notice is sent (the “Cure Period”), provided, however, that if such day is a Saturday, Sunday, or legal holiday, the Cure Period shall expire on the immediately preceding business day. If the On the Rocks Parties fail to cure such

default within the Cure Period, the Trustee shall be permitted to exercise his rights under paragraph 7 of this Settlement Agreement. The On The Rocks Parties shall be required to provide written notice to the Trustee in the event of any change of the electronic mail address for the On the Rocks Parties set forth herein.

7. **Trustee's Rights Upon Event of Default.** Upon an Event of Default, subject to the notice provision set forth in paragraph 6 of this Settlement Agreement, the Trustee shall be permitted to file and enforce the Confession of Judgment in accordance with applicable law. The On the Rocks Parties unequivocally waive their rights to contest the entry of the Confession of Judgment except if proper notice was not given in accordance with paragraph 6 of this Settlement Agreement or there was no Event of Default. The resort to any rights, remedies, powers, and privileges of the Trustee hereunder or under applicable law shall not prevent the concurrent or subsequent employment of any other right. No failure by the Trustee to exercise, nor delay in exercising any right shall be construed as a waiver of any Event of Default or as a waiver of any right. Without limiting the generality of the foregoing provisions, the acceptance by the Trustee from time to time of any payment under this Settlement Agreement, which is past due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish any right or to exercise any other right at the time or at any subsequent time, or nullify any prior exercise of such right; or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

8. **Payment of the Confession of Judgment Amount.** All amounts paid by the On the Rocks Parties under this Settlement Agreement which reduced the Settlement Amount shall be credited against the Confession of Judgment to reduce the amount thereof. Notwithstanding any amounts paid pursuant to this Settlement Agreement, the Trustee shall be

authorized to have the Confession of Judgment entered in its full original amount and then shall reduce the amount of the Confession of Judgment by the amount of the Settlement Amount paid in accordance with this Settlement Agreement. In the event the Settlement Amount is paid in full, the Confession of Judgment shall be deemed satisfied and discharged ninety-one (91) days after the final payment assuming no bankruptcy is pending against any of the On the Rocks Parties.

9. **Release by the Trustee, the Debtor, and the Debtor's Estate.** Effective on the date of the payment by the On the Rocks Parties to the Estate of the final Installment Payment as set forth on **Exhibit B** such that the Settlement Amount is fully paid and satisfied, the Debtor, the Estate and the Trustee, solely in his capacity as trustee, and each of their respective successors and assigns (collectively the "Trustee Releasers") shall be deemed to have irrevocably and unconditionally, fully, finally and forever waived, released, acquitted and discharged the On the Rocks Parties and each of its, his and her successors and assigns (collectively, the "On the Rocks Releasees") from any and all claims, manner of actions, causes of action, suits, costs, debts, liabilities, obligations, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions and demands whatsoever, of whatever kind or nature, whether known or unknown, suspected or unsuspected, in law or equity, which the Trustee Releasers have, have had, may have or may claim to have against the On the Rocks Releasees solely in connection with, or relating specifically to, the Purchased Coins. Notwithstanding anything contained herein or elsewhere to the contrary, the foregoing is not intended to nor shall it have the effect of releasing any of the On the Rocks Parties from the performance of their obligations in accordance with this Settlement Agreement or the Confession of Judgment.

10. **Release by the On the Rocks Parties.** Effective on the date of the payment by the On the Rocks Parties to the Estate of the final Installment Payment as set forth on **Exhibit B** such that the Settlement Amount is fully paid and satisfied, each of the On the Rocks Parties shall be deemed to have irrevocably and unconditionally, fully, finally and forever waived, released, acquitted and discharged the Trustee Releasers and each of their respective successors and assigns from any and all claims, manner of actions, causes of action, suits, costs, debts, liabilities, obligations, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions and demands whatsoever, of whatever kind or nature, whether known or unknown, suspected or unsuspected, in law or equity, which the On the Rocks Parties have, have had, may have or may claim to have against any of the Trustee Releasers relating to the Purchased Coins. The On the Rocks Parties specifically reserve and do not release any rights, claims, defenses, or counterclaims in connection with any claims that the Trustee Releasers have against the On the Rocks Parties other than those relating to the Purchased Coins.

11. **Admissions.** This Settlement Agreement is and shall be construed as an admission by the On the Rocks Parties that each such party is jointly and severally liable for and indebted to the Estate on account of the Purchased Coins in the Settlement Amount.

12. **Expenses.** The Parties shall bear their own costs, expenses and attorneys' fees and expenses incurred to date in connection with this Settlement Agreement. In the event of any dispute, controversy, or claim arises in connection with this Settlement Agreement, and any Party institutes any litigation or other proceeding, the prevailing Party in any such litigation or proceeding shall be entitled to recover his, her, or its attorneys' fees and costs.

13. **Assignment by Trustee.** The Trustee shall have the right, in his sole discretion, to sell and/or assign the Estate's interest in this Settlement Agreement.

14. **Severability.** The Parties agree that if any provision of this Settlement Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall not be a part of this Settlement Agreement. The legality, validity and enforceability of the remaining provisions shall not be affected by a provision of this Settlement Agreement that is illegal, invalid, or unenforceable.

15. **Miscellaneous.**

(a) Neither this Settlement Agreement, nor any statement made or action taken in connection with the negotiation of this Settlement Agreement, shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among or between the Parties hereto, other than as may be necessary (i) to obtain approval of, and enforcement of, this Settlement Agreement (including the mutual releases contained herein); (ii) to seek damages or injunctive relief in connection therewith; or (iii) as more thoroughly set forth herein.

(b) Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary or appropriate in conjunction with the performance of each of the Parties' respective obligations hereunder.

(c) No provision of this Settlement Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any person other than the Parties hereto and their respective successors.

(d) This Settlement Agreement shall be governed by and construed in accordance with the law of the State of California without regard to any choice of law provisions or any similar law in any other jurisdiction.

(e) This Settlement Agreement may be signed in counterpart originals and delivered by facsimile or email, which, when fully executed, shall constitute a single original.

(f) The United States Bankruptcy Court for the Central District of California shall retain exclusive jurisdiction (and the Parties consent to such retention of jurisdiction) with respect to any disputes arising from or related to, or other actions to interpret, administer, or enforce the terms and provisions of, this Settlement Agreement.

(g) Any statute or period of limitations, statutes of repose, or other time-based limitations or defenses, whether at law, in equity, under statute, contract, or otherwise (including, but not limited to, the doctrine of laches or waiver), which might be asserted as a time bar and/or limitation in connection with the Purchased Coins is hereby tolled until the date of the payment by the On the Rocks Parties to the Trustee of the final Installment Payment as set forth on **Exhibit B** such that the Settlement Amount is fully paid and satisfied. Nothing in this Settlement Agreement shall operate to revive or extend the time for filing any claim that is now time barred or barred by any applicable statute or period of limitations, statutes of repose, or other time-related defense as of the date this Settlement Agreement is executed as set forth below.

(h) Each person or entity who executes this Settlement Agreement on behalf of another person or entity represents and warrants that he, she, or it is duly authorized to execute this Settlement Agreement on behalf of such person or entity, has the requisite authority to bind such person or entity, and such person or entity has full knowledge of and has consented

to this Settlement Agreement. The representations and warranties set forth in this paragraph shall survive execution of this Settlement Agreement.

(i) In executing the Settlement Agreement, each of the Parties represents and warrants, for itself, that it enters this Settlement Agreement knowingly, voluntarily, and intelligently and that: (a) it does so with full knowledge of its available rights, (b) it has had available to it such information as it considered reasonably necessary to making an informed judgment concerning the Settlement Agreement, and (c) it has conducted such investigation as it deems appropriate regarding the settlement and its rights and asserted rights in connection with the matters that are the subject of the Settlement Agreement.

(j) The Parties acknowledge that this Settlement Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and all prior agreements, negotiations and understandings with respect to the subject matter hereof are canceled and superseded by this Settlement Agreement.

(k) This Settlement Agreement shall not be modified, altered, amended or vacated without the written consent of all parties hereto or order of the Court.

(l) This Settlement Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

#  
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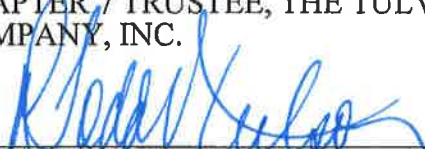
(m) The headings of all sections of this Settlement Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction or interpretation of any term or provision hereof.

IN WITNESS WHEREOF, this Settlement Agreement is hereby executed as of the date(s) set forth below:

ACCEPTED AND AGREED TO BY:

CHAPTER 7 TRUSTEE, THE TULVING  
COMPANY, INC.

February 27, 2015

By:   
R. Todd Nielson, solely in his capacity as Chapter 7  
Trustee of The Tulving Company, Inc.

ON THE ROCKS JEWELRY & COINS

February 23, 2015

By:   
Name: Desirea Sloan  
Title: owner

DAVID HALPIN

February 23, 2015

By:   
Name: David Halpin  
Title: owner

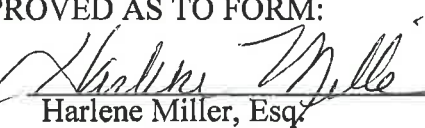
DESIREA SLOAN

February 23, 2015

By: 

APPROVED AS TO FORM:

February 23, 2015

By:   
Harlene Miller, Esq.  
Harlene Miller Law  
17910 Sky Park Circle, Suite 105  
Irvine, CA 92614  
Telephone: (949) 756-1313  
Facsimile: (949) 260-1185

Attorney for Defendants On the Rocks Jewelry  
& Coins, David Halpin and Desirea Sloan



**EXHIBIT A**

**Purchased Coins**

<b>Coin Quantity</b>	<b>Coin Description</b>	<b>Amount</b>
220	2014 Canadian Maple Leaf 1 Ounce .9999 Gold Coin	\$270,171.00
280	American Eagle 1 Ounce Gold Coin	\$347,018.00
30	South African Krugerrand 1 Ounce Gold Coin	\$36,850.50
2000	Amark 1 Ounce Silver Round	\$40,450.00
	Total:	\$694,489.50
	Less Partial Payments:	(\$101,055.50)
	Outstanding Balance:	\$593,434.00

**EXHIBIT B**

**Settlement Amount Payment Schedule**

Bankruptcy Estate of Tulving Company, Inc.  
Payment Schedule  
On The Rocks Jewelry & Coins

Date	Principal Subject to Interest	Principal Reduction	Interest	Balance of Loan Due	Balance of Loan if All Payments on Time	Total Payment	Date Received	Amount
10/31/14	1	\$ 593,434.00	\$ 6,000.00	\$ -	\$ 587,434.00	\$ 587,434.00	10/31/14	\$ 6,000.00
11/15/14	2	587,434.00	1,776.18	1,223.82	585,657.82	584,434.00	11/19/14	3,000.00
11/30/14	3	585,657.82	1,779.88	1,220.12	583,877.94	581,434.00	12/03/14	3,000.00
12/15/14	4	583,877.94	1,783.59	1,216.41	582,094.35	578,434.00	12/19/14	3,000.00
12/31/14	5	582,094.35	1,706.46	1,293.54	580,387.90	575,434.00	01/05/15	3,000.00
02/20/15	6	580,387.90	3,000.00	-	577,387.90	572,434.00		
02/28/15	7	577,387.90	2,358.46	641.54	575,029.44	569,434.00		
03/15/15	8	575,029.44	802.02	1,197.98	574,227.42	567,434.00		
03/31/15	9	574,227.42	3,723.94	1,276.06	570,503.48	562,434.00		
04/15/15	10	570,503.48	811.45	1,188.55	569,692.03	560,434.00		
04/30/15	11	569,692.03	3,813.14	1,186.86	565,878.89	555,434.00		
05/15/15	12	565,878.89	821.09	1,178.91	565,057.80	553,434.00		
05/31/15	13	565,057.80	3,744.32	1,255.68	561,313.48	548,434.00		
06/30/15	14	561,313.48	2,661.19	2,338.81	558,652.29	543,434.00		
07/31/15	15	558,652.29	2,594.69	2,405.31	556,057.60	538,434.00		
08/31/15	16	556,057.60	2,605.86	2,394.14	553,451.73	533,434.00		
09/30/15	17	553,451.73	2,693.95	2,306.05	550,757.78	528,434.00		
10/31/15	18	550,757.78	2,628.68	2,371.32	548,129.10	523,434.00		
11/30/15	19	548,129.10	2,716.13	2,283.87	545,412.97	518,434.00		
12/31/15	20	545,412.97	15,000.00	-	530,412.97	503,434.00		15,000.00
12/31/15	21	530,412.97	2,651.69	2,348.31	527,761.28	498,434.00		5,000.00
01/31/16	22	527,761.28	2,716.28	2,283.72	525,045.00	493,434.00		5,000.00
02/28/16	23	525,045.00	675.29	4,324.71	524,369.71	488,434.00		5,000.00
03/31/16	24	524,369.71	624.62	4,375.38	523,745.09	483,434.00		5,000.00
04/30/16	25	523,745.09	484.59	4,515.41	523,260.49	478,434.00		5,000.00
05/31/16	26	523,260.49	562.72	4,437.28	522,697.78	473,434.00		5,000.00
06/30/16	27	522,697.78	15,000.00	-	507,697.78	458,434.00		15,000.00
06/30/16	28	507,697.78	2,884.59	2,115.41	504,813.19	453,434.00		5,000.00
07/31/16	29	504,813.19	2,826.50	2,173.50	501,986.69	448,434.00		5,000.00
08/31/16	30	501,986.69	2,838.67	2,161.33	499,148.02	443,434.00		5,000.00
09/30/16	31	499,148.02	2,920.22	2,079.78	496,227.80	438,434.00		5,000.00
10/31/16	32	496,227.80	2,863.46	2,136.54	493,364.34	433,434.00		5,000.00
11/30/16	33	493,364.34	2,944.32	2,055.68	490,420.02	428,434.00		5,000.00
12/31/16	34	490,420.02	15,000.00	-	475,420.02	413,434.00		15,000.00
12/31/16	35	475,420.02	2,953.05	2,046.95	472,466.97	408,434.00		5,000.00
01/31/17	36	472,466.97	2,965.77	2,034.23	469,501.20	403,434.00		5,000.00
02/28/17	37	469,501.20	3,174.16	1,825.84	466,327.04	398,434.00		5,000.00
03/31/17	38	466,327.04	2,992.20	2,007.80	463,334.84	393,434.00		5,000.00
04/30/17	39	463,334.84	3,069.44	1,930.56	460,265.40	388,434.00		5,000.00
05/31/17	40	460,265.40	3,018.30	1,981.70	457,247.10	383,434.00		5,000.00
06/30/17	41	457,247.10	15,000.00	-	442,247.10	368,434.00		15,000.00
06/30/17	42	442,247.10	3,157.30	1,842.70	439,089.79	363,434.00		5,000.00
07/31/17	43	439,089.79	3,109.47	1,890.53	435,980.32	358,434.00		5,000.00
08/31/17	44	435,980.32	3,122.86	1,877.14	432,857.46	353,434.00		5,000.00
09/30/17	45	432,857.46	3,196.43	1,803.57	429,661.03	348,434.00		5,000.00
10/31/17	46	429,661.03	3,150.07	1,849.93	426,510.96	343,434.00		5,000.00
11/30/17	47	426,510.96	3,222.87	1,777.13	423,288.09	338,434.00		5,000.00
12/31/17	48	423,288.09	15,000.00	-	408,288.09	323,434.00		15,000.00
12/31/17	49	408,288.09	3,242.09	1,757.91	405,046.00	318,434.00		5,000.00
01/31/18	50	405,046.00	3,256.05	1,743.95	401,789.94	313,434.00		5,000.00
02/28/18	51	401,789.94	3,437.48	1,562.52	398,352.46	308,434.00		5,000.00
03/31/18	52	398,352.46	3,284.87	1,715.13	395,067.59	303,434.00		5,000.00
04/30/18	53	395,067.59	3,353.89	1,646.11	391,713.70	298,434.00		5,000.00
05/31/18	54	391,713.70	3,313.45	1,686.55	388,400.25	293,434.00		5,000.00
06/30/18	55	388,400.25	15,000.00	-	373,400.25	278,434.00		15,000.00
06/30/18	56	373,400.25	3,444.17	1,555.83	369,956.08	273,434.00		5,000.00
07/31/18	57	369,956.08	3,407.13	1,592.87	366,548.95	268,434.00		5,000.00
08/31/18	58	366,548.95	3,421.80	1,578.20	363,127.15	263,434.00		5,000.00
09/30/18	59	363,127.15	3,486.97	1,513.03	359,640.18	258,434.00		5,000.00
10/31/18	60	359,640.18	3,451.55	1,548.45	356,188.63	253,434.00		5,000.00
11/30/18	61	356,188.63	3,515.88	1,484.12	352,672.75	248,434.00		5,000.00
12/31/18	62	352,672.75	15,000.00	-	337,672.75	233,434.00		15,000.00
12/31/18	63	337,672.75	3,546.13	1,453.87	334,126.61	228,434.00		5,000.00
01/31/19	64	334,126.61	3,561.40	1,438.60	330,565.22	223,434.00		5,000.00
02/28/19	65	330,565.22	3,714.47	1,285.53	326,850.75	218,434.00		5,000.00
03/31/19	66	326,850.75	3,592.73	1,407.27	323,258.02	213,434.00		5,000.00
04/30/19	67	323,258.02	3,653.09	1,346.91	319,604.93	208,434.00		5,000.00
05/31/19	68	319,604.93	3,623.92	1,376.08	315,981.01	203,434.00		5,000.00
06/30/19	69	315,981.01	15,000.00	-	300,981.01	188,434.00		15,000.00
06/30/19	70	300,981.01	3,745.91	1,254.09	297,235.09	183,434.00		5,000.00
07/31/19	71	297,235.09	3,720.24	1,279.76	293,514.86	178,434.00		5,000.00
08/31/19	72	293,514.86	3,736.26	1,263.74	289,778.60	173,434.00		5,000.00
09/30/19	73	289,778.60	3,792.59	1,207.41	285,986.01	168,434.00		5,000.00
10/31/19	74	285,986.01	3,768.67	1,231.33	282,217.34	163,434.00		5,000.00
11/30/19	75	282,217.34	3,824.09	1,175.91	278,393.25	158,434.00		5,000.00

Bankruptcy Estate of Tulving Company, Inc.  
Payment Schedule  
On The Rocks Jewelry & Coins

Date	Principal Subject to Interest	Principal Reduction	Interest	Balance of Loan Due	Balance of Loan if All Payments on Time	Total Payment	Date Received	Amount
12/31/19	76	278,393.25	15,000.00	-	263,393.25	143,434.00		15,000.00
12/31/19	77	263,393.25	3,865.95	1,134.05	259,527.30	138,434.00		5,000.00
01/31/20	78	259,527.30	3,882.59	1,117.41	255,644.71	133,434.00		5,000.00
02/28/20	79	255,644.71	4,005.83	994.17	251,638.88	128,434.00		5,000.00
03/31/20	80	251,638.88	3,881.60	1,118.40	247,757.28	123,434.00		5,000.00
04/30/20	81	247,757.28	3,967.68	1,032.32	243,789.60	118,434.00		5,000.00
05/31/20	82	243,789.60	3,950.35	1,049.65	239,839.25	113,434.00		5,000.00
06/30/20	83	239,839.25	15,000.00	-	224,839.25	98,434.00		15,000.00
06/30/20	84	224,839.25	4,063.17	936.83	220,776.08	93,434.00		5,000.00
07/31/20	85	220,776.08	4,049.44	950.56	216,726.64	88,434.00		5,000.00
08/31/20	86	216,726.64	4,066.87	933.13	212,659.77	83,434.00		5,000.00
09/30/20	87	212,659.77	4,113.92	886.08	208,545.85	78,434.00		5,000.00
10/31/20	88	208,545.85	4,102.09	897.91	204,443.76	73,434.00		5,000.00
11/30/20	89	204,443.76	4,148.15	851.85	200,295.61	68,434.00		5,000.00
12/31/20	90	200,295.61	15,000.00	-	185,295.61	53,434.00		15,000.00
12/31/20	91	185,295.61	4,202.20	797.80	181,093.41	48,434.00		5,000.00
01/31/21	92	181,093.41	4,220.29	779.71	176,873.12	43,434.00		5,000.00
02/28/21	93	176,873.12	4,312.16	687.84	172,560.96	38,434.00		5,000.00
03/31/21	94	172,560.96	4,257.03	742.97	168,303.93	33,434.00		5,000.00
04/30/21	95	168,303.93	4,298.73	701.27	164,005.19	28,434.00		5,000.00
05/31/21	96	164,005.19	4,293.87	706.13	159,711.33	23,434.00		5,000.00
06/30/21	97	159,711.33	15,000.00	-	144,711.33	8,434.00		15,000.00
06/30/21	98	144,711.33	4,397.04	602.96	140,314.29	3,434.00		5,000.00
07/31/21	99	140,314.29	4,395.87	604.13	135,918.42			5,000.00
08/31/21	100	135,918.42	4,414.80	585.20	131,503.63			5,000.00
09/30/21	101	131,503.63	4,452.07	547.93	127,051.56			5,000.00
10/31/21	102	127,051.56	4,452.97	547.03	122,598.59			5,000.00
11/30/21	103	122,598.59	4,489.17	510.83	118,109.41			5,000.00
12/31/21	104	118,109.41	15,000.00	-	103,109.41			15,000.00
12/31/21	105	103,109.41	4,556.06	443.94	98,553.36			5,000.00
01/31/22	106	98,553.36	4,575.67	424.33	93,977.68			5,000.00
02/28/22	107	93,977.68	4,634.53	365.47	89,343.15			5,000.00
03/31/22	108	89,343.15	4,615.33	384.67	84,727.82			5,000.00
04/30/22	109	84,727.82	4,646.97	353.03	80,080.86			5,000.00
05/31/22	110	80,080.86	4,655.21	344.79	75,425.65			5,000.00
06/30/22	111	75,425.65	15,000.00	-	60,425.65			15,000.00
06/30/22	112	60,425.65	4,748.23	251.77	55,677.42			5,000.00
07/31/22	113	55,677.42	4,760.28	239.72	50,917.15			5,000.00
08/31/22	114	50,917.15	4,780.77	219.23	46,136.37			5,000.00
09/30/22	115	46,136.37	4,807.77	192.23	41,328.61			5,000.00
10/31/22	116	41,328.61	4,822.06	177.94	36,506.55			5,000.00
11/30/22	117	36,506.55	4,847.89	152.11	31,658.66			5,000.00
12/31/22	118	31,658.66	15,000.00	-	16,658.66			15,000.00
12/31/22	119	16,658.66	4,928.28	71.72	11,730.38			5,000.00
01/31/23	120	11,730.38	4,949.49	50.51	6,780.89			5,000.00
02/28/23	121	6,780.89	4,973.63	26.37	1,807.26			5,000.00
03/31/23	122	1,807.26	1,807.26	7.78	0.00			1,815.04
		\$ 593,434.00	#####			#####		\$ 18,000.00

Note 1: Additional payments received other than shown above will reduce the ending principal balance first by an additional 10% of the payment received.  
Note 2: Payments that are scheduled to be paid on a weekend and/or holiday are due on the next business day.

**Exhibit C**

**Form of Confession of Judgment**

1 PACHULSKI STANG ZIEHL & JONES LLP  
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4 Attorneys for Plaintiff, R. Todd Neilson, as the Chapter 7  
5 Trustee for The Tulving Company, Inc.

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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**  
10 **CENTRAL DISTRICT**

11 In the Matter of the Confession of Judgment  
by ON THE ROCKS JEWELRY AND COINS,  
12 DAVID HALPIN, and DESIREA SLOAN,

13 Defendants,

14 In Favor of R. TODD NEILSON, AS CHAPTER 7  
15 TRUSTEE FOR THE TULVING COMPANY,  
INC.,

16 Plaintiff.

Case No.:

**CONFESSION OF JUDGMENT  
STATEMENT**

17 We, On the Rocks Jewelry & Coins ("On the Rocks"), David Halpin and Desirea Sloan,  
18 hereby confess judgment in the above-entitled cause in favor of Plaintiff R. Todd Neilson, as  
19 Chapter 7 Trustee (the "Trustee") for the estate (the "Estate") of The Tulving Company, Inc.  
20 ("Tulving"), in the sum of \$593,434.00, plus interest as applicable pursuant to the terms of the  
21 Settlement Agreement (defined below) (the "Settlement Amounts"). A true and correct copy of the  
22 Settlement Agreement is attached hereto as **Exhibit 1** and incorporated herein by reference. This  
23 Confession of Judgment is for a debt justly due to the Estate which arises out of the following facts:

24 1. On March 10, 2014 (the "Petition Date"), Tulving commenced a case by filing a  
25 voluntary petition for relief in the United States Bankruptcy Court for the Central District of  
26 California (the "Bankruptcy Court") under chapter 11 of title 11 of the United States Code. On  
27 March 21, 2014, and Order was entered by the Bankruptcy Court appointing R. Todd Neilson as  
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ATTORNEYS AT LAW  
LOS ANGELES, CALIFORNIA

1 chapter 11 trustee of the Estate. Thereafter, upon notice and hearing, the case was converted to a  
2 chapter 7 and R. Todd Neilson continues to serve as the chapter 7 Trustee of the Estate.

3 2. On the Rocks is a sole proprietorship owned by David Halpin and Desirea Sloan. On  
4 the Rocks, Mr. Halpin and Ms. Sloan shall be referred to collectively herein as the "On the Rocks  
5 Parties."

6 3. Prior to the Petition Date, On the Rocks purchased and received gold and silver coins  
7 in the total amount of \$5,676,880.00 (the "Purchased Coins") from Tulving. On the Rocks paid  
8 Tulving \$5,083,446.00 on account of certain of the Purchased Coins and stopped making payments  
9 to Tulving on the remaining Purchased Coins on February 12, 2014. Attached to the Settlement  
10 Agreement as Exhibit A is a list of the remaining Purchased Coins that On the Rocks purchased and  
11 received from Tulving but for which it did not pay Tulving.

12 4. On or about July 14, 2014, the Trustee made demand upon On the Rock to pay the  
13 outstanding balance in the amount of \$593,434.00 owed by On the Rocks to Tulving.

14 5. The Trustee and the On the Rocks Parties have entered into a settlement agreement  
15 (the "Settlement Agreement") pursuant to which, among other things, each of the On the Rocks  
16 Parties agrees to pay to the Trustee, pursuant to the terms, conditions, and requirements set forth  
17 herein, the Settlement Amount, in full and complete satisfaction and settlement of the amount owed  
18 to the Estate on account of the Purchased Coins. Each of the On the Rocks Parties has agreed to and  
19 shall be jointly and severally liable up to the Settlement Amount until such amount is paid in full to  
20 the Estate. Each of the On the Rocks Parties is therefore individually liable for the full performance  
21 of all terms and payment of all sums required under the Settlement Agreement.

22 6. This Confession of Judgment is further made pursuant to the Settlement Agreement.

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CONFESSION OF JUDGMENT STATEMENT

7. In making this Confession of Judgment, we have conferred with our counsel and we understand that we are giving up defenses and the right to challenge any of the statements set forth above, we are giving up the rights to a trial by a court or by a jury on the matters stated above, and the right to challenge the Settlement Amount, and we knowingly and voluntarily waive those rights.

Dated: Feb 23, 2015

ON THE ROCKS JEWELRY & COINS  
By:   
David Halpin

By:   
Desirea Sloan

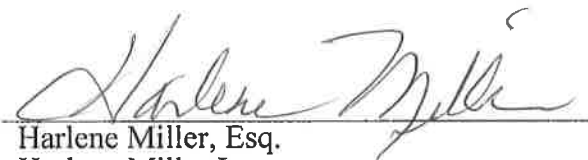
Dated: Feb 23, 2015

By:   
David Halpin

Dated: Feb. 23, 2015

By:   
Desirea Sloan

Dated: Feb 23, 2015

By:   
Harlene Miller, Esq.  
Harlene Miller Law  
17910 Sky Park Circle, Suite 105  
Irvine, CA 92614  
Telephone: (949) 756-1313  
Facsimile: (949) 260-1185

Attorney for Defendants On the Rocks  
Jewelry & Coins, David Halpin and  
Desirea Sloan

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ATTORNEYS AT LAW  
LOS ANGELES, CALIFORNIA



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5 Attorney for Defendants On the Rocks  
Jewelry & Coins, David Halpin and  
6 Desirea Sloan

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**  
10 **CENTRAL DISTRICT**

11 In the Matter of the Confession of Judgment  
12 by ON THE ROCKS JEWELRY AND COINS,  
DAVID HALPIN, and DESIREA SLOAN,

13 Defendants,

14 In Favor of R. TODD NEILSON, AS CHAPTER 7  
15 TRUSTEE FOR THE TULVING COMPANY,  
INC.,

16 Plaintiff.  
17

Case No.:

**ATTORNEY'S DECLARATION IN  
SUPPORT OF STATEMENT  
CONFESSING JUDGMENT**

18 I, Harlene Miller, declare:

19 I am an attorney at law duly admitted to practice before all the courts of the State of  
20 California and the attorney of record for On the Rocks Jewelry & Coins ("On the Rocks"), David  
21 Halpin and Desirea Sloan, the parties confessing judgment in the above-entitled cause.

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I further declare that I have examined the *Confession of Judgment Statement* by On the Rocks, Mr. Halpin and Ms. Sloan and have advised On the Rocks, Mr. Halpin and Ms. Sloan to utilize the confession of judgment procedure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 23, 2015

By   
Harlene Miller, Esq.  
Harlene Miller Law  
17910 Sky Park Circle, Suite 105  
Irvine, CA 92614  
Telephone: (949) 756-1313  
Facsimile: (949) 260-1185

Attorney for Defendants On the Rocks  
Jewelry & Coins, David Halpin and  
Desirea Sloan

**DECLARATION OF R. TODD NEILSON**

I, R. Todd Neilson, declare as follows:

1. I am the duly appointed chapter 7 trustee (the "Trustee") in the above-captioned bankruptcy case (the "Case"). I make this Declaration on facts within my personal knowledge (albeit my own or that gathered by professionals rendering services to me), or as a result of having reviewed the court file in this Case. If called upon, I can and will competently testify to the facts stated herein

2. I make this declaration in support of the *Motion For Order Approving Settlement Agreement With On the Rocks Jewelry & Coins, et al. Pursuant To Bankruptcy Rule 9019; Memorandum Of Points And Authorities In Support Thereof* (the "Motion"). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

3. The Debtor is a California corporation. The Debtor was in the business of selling and purchasing gold, silver, coins, bullion, and other precious metals through its internet website or by phone.

4. The Debtor commenced this case by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 10, 2014. In light of certain pending criminal investigation and other ongoing litigation, on March 18, 2014, the United States Trustee filed a *Stipulation Appointing Chapter 11 Trustee* [Docket No. 15] ("Stipulation"), which was signed by both the Debtor and its attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket No. 16] and an Order was entered by the Court on March 21, 2014 approving the U.S. Trustee's Application for the Appointment of a Chapter 11 Trustee, appointing me as Trustee of the Debtor's estate (the "Estate") [Docket No. 22]. Thereafter upon notice and hearing, the case was converted to a chapter 7 proceeding and I continue to serve as the chapter 7 Trustee [Docket 108].

5. I understand that On the Rocks Jewelry & Coins ("On the Rocks") is engaged in the business of buying and selling jewelry and coins and is a sole proprietorship owned by David Halpin and Desiree Sloan. Prior to the Petition Date, On the Rocks purchased and received gold and silver coins in the total amount of \$5,676,880.00 (the "Purchased Coins") from the Debtor. On

1 the Rocks paid the Debtor \$5,083,446.00 on account of certain of the Purchased Coins and stopped  
2 making payments to the Debtor on the remaining Purchased Coins on February 12, 2014. As set  
3 forth on Exhibit A to the Settlement Agreement, On the Rocks owes the Debtor's estate (the  
4 "Estate") \$593,434.00 on account of the remaining Purchased Coins. On or about July 14, 2014,  
5 counsel on my behalf made demand upon On the Rocks to pay the outstanding balance in the  
6 amount of \$593,434.00. Rather than proceed with litigation, the parties engaged in good faith,  
7 arms' length negotiations to resolve payment by On the Rocks to the Estate of the outstanding  
8 balance.

9 6. I have determined in my reasonable business judgment that the compromise set forth  
10 in the Settlement Agreement is in the best interest of the Estate because it resolves the On the  
11 Rocks Parties' liability for and payment of amounts due and owing to the Estate and avoids  
12 litigation with respect thereto.

13 7. After extensive, arms-length negotiations, the parties determined to enter into the  
14 Settlement Agreement, which provides, among other things:<sup>1</sup>

15 a. Each of the On the Rocks Parties agrees to pay to the Estate, pursuant  
16 to the terms, conditions, and requirements set forth in the Settlement Agreement, the sum of  
17 \$593,434.00, plus interest as applicable pursuant to the terms of this Settlement Agreement  
18 (the "Settlement Amount"), in full and complete satisfaction and settlement of the amount  
19 owed to the Estate on account of the Purchased Coins. Each of the On the Rocks Parties  
20 shall be jointly and severally liable up to the Settlement Amount until such amount is paid  
21 in full to the Estate. The Settlement Amount shall be paid in installment payments (each, an  
22 "Installment Payment") as set forth in the chart attached to the Settlement Agreement as  
23 Exhibit B.

24 b. A confession of judgment (the "Confession of Judgment") in  
25 substantially the form attached to the Settlement Agreement as Exhibit C will be executed  
26 by each of the On the Rocks Parties, jointly and severally, for the Settlement Amount. The

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28 <sup>1</sup> The summary contained herein is a summary only, and if and to the extent there is any inconsistency between the  
summary and the Settlement Agreement, the terms of the latter govern. Capitalized terms not otherwise defined herein  
shall have the meanings ascribed to them in the Settlement Agreement.

1 Confession of Judgment will be held by counsel, who shall be authorized to file and seek to  
2 enforce the Confession of Judgment only upon the occurrence of an Event of Default  
3 (defined in the Settlement Agreement), and subject to applicable notice as set forth in  
4 paragraph 6 of the Settlement Agreement.

5 c. Effective on the date of the payment by the On the Rocks Parties to  
6 the Estate of the final Installment Payment, the Estate and the Trustee, solely in his capacity  
7 as trustee, and each of their respective successors and assigns (collectively the “Trustee  
8 Releasers”) shall be deemed to have irrevocably and unconditionally, fully, finally and  
9 forever waived, released, acquitted and discharged the On the Rocks Parties and each of its,  
10 his and her successors and assigns (collectively, the “On the Rocks Releasees”) from any  
11 and all claims, manner of actions, causes of action, suits, costs, debts, liabilities, obligations,  
12 dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts,  
13 controversies, agreements, promises, variances, trespasses, damages, judgments, executions  
14 and demands whatsoever, of whatever kind or nature, whether known or unknown,  
15 suspected or unsuspected, in law or equity, which the Trustee Releasers have, have had,  
16 may have or may claim to have against the On the Rocks Releasees solely in connection  
17 with, or relating specifically to, the Purchased Coins. The foregoing is not intended to nor  
18 shall it have the effect of releasing any of the On the Rocks Parties from the performance of  
19 their obligations in accordance with the Settlement Agreement or the Confession of  
20 Judgment.

21 Further, effective on the date of the payment by the On the Rocks Parties to the  
22 Estate of the final Installment Payment, each of the On the Rocks Parties shall be deemed to  
23 have irrevocably and unconditionally, fully, finally and forever waived, released, acquitted  
24 and discharged the Trustee Releasers and each of their respective successors and assigns  
25 from any and all claims, manner of actions, causes of action, suits, costs, debts, liabilities,  
26 obligations, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants,  
27 contracts, controversies, agreements, promises, variances, trespasses, damages, judgments,  
28 executions and demands whatsoever, of whatever kind or nature, whether known or

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ATTORNEYS AT LAW  
LOS ANGELES, CALIFORNIA

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unknown, suspected or unsuspected, in law or equity, which the On the Rocks Parties have, have had, may have or may claim to have against any of the Trustee Releasers relating to the Purchased Coins. The On the Rocks Parties specifically reserve and do not release any rights, claims, defenses, or counterclaims in connection with any claims that the Trustee Releasers have against the On the Rocks Parties other than those relating to the Purchased Coins.


8. The parties have agreed on the terms of payment of amounts owed by On the Rocks to the Estate on account of merchandise purchased prior to the Petition Date. Although I believe that the Estate's position is the stronger one, there is no guarantee that the Estate would prevail in any litigation against the On the Rocks Parties, which would unduly require the expenditure of estate resources. In my view, the Settlement Agreement is a reasonable, expedient, and balanced resolution.

9. Further, the Estate is obtaining a release of all claims by the On the Rocks Parties and I do not believe that the Estate has any claims or causes of action against the On the Rocks Parties that will be released pursuant to the release under the Settlement Agreement. Thus, I do not believe the Estate is giving up anything of material value through the release.

10. Accordingly, I respectfully submit that the Settlement Agreement and all its provisions are reasonable, fair and in the best interest of the Estate and creditors.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 16<sup>th</sup> day of March 2015, at San Pedro, California.

  
R. Todd Neilson

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
**10100 Santa Monica Boulevard, 13<sup>th</sup> Floor, Los Angeles, California 90067**

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH ON THE ROCKS JEWELRY & COINS, ET AL. PURSUANT TO BANKRUPTCY RULE 9019; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF R. TODD NEILSON** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **March 17, 2015**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (*date*) **March 17, 2015**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **March 17, 2015**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Via Federal Express**

The Honorable Erithe A. Smith  
United States Bankruptcy Court  
Central District of California  
Ronald Reagan Federal Building and Courthouse  
411 West Fourth Street, Suite 5040  
Santa Ana, CA 92701-4593

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 17, 2015

*Date*

Myra Kulick

*Printed Name*

/s/ Myra Kulick

*Signature*

---

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

- Wesley H Avery wamiracle6@yahoo.com, wavery@rpmlaw.com
- Candice Bryner candice@brynerlaw.com
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- R. Todd Neilson (TR) tneilson@brg-expert.com, sgreenan@brg-expert.com; tneilson@ecf.epiqsystems.com; ntroszak@brg-expert.com
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- Nanette D Sanders becky@ringstadlaw.com
- Richard C Spencer rspencer@rspencerlaw.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

**2. SERVED BY UNITED STATES MAIL:**

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Laurence P Nokes on behalf of Interested Party John  
Frankel  
Nokes & Quinn  
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Accountants for Landlord

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Interested Party

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On the Rocks Jewelry & Rare Coins  
Attn: David Halpin and Desirea Sloan  
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