Michael J. Gearin, wsba # 20982 Honorable Christopher M. Alston 1 David C. Neu, wsba # 33143 Chapter 11 Brian T. Peterson, WSBA # 42088 Hearing Location: Seattle, Rm. 7206 2 K&L GATES LLP Hearing Date: June 2, 2017 or such other time 925 Fourth Avenue, Suite 2900 set by the Court 3 Seattle, WA 98104-1158 Hearing Time: 9:30 a.m. (206) 623-7580 Response Date: May 31, 2017 or such other time 4 set by the Court 5 6 7 UNITED STATES BANKRUPTCY COURT 8 WESTERN DISTRICT OF WASHINGTON 9 AT SEATTLE 10 In re: Case No. 16-11767-CMA 11 NORTHWEST TERRITORIAL MINT, LLC, MOTION FOR AUTHORITY TO ENTER INTO POST-PETITION FINANCING 12 Debtor. AGREEMENT PURSUANT TO 11 U.S.C. §364 13 Mark Calvert, the Chapter 11 Trustee (the "Trustee") of Northwest Territorial Mint, LLC 14 ("NWTM" or "Debtor") applies to the Court for authority to enter into a post-petition financing 15 agreement with Prestige Capital Corporation ("Prestige"). In support of this motion, the Trustee 16 respectfully represents as follows: 17 I. **FACTS** 18 1. On April 1, 2016, the Debtor commenced this case by filing a voluntary petition 19 under chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court appointed 20 Mark Calvert as chapter 11 Trustee. See Dkt. No. 51. Upon his appointment, the Trustee took 21 control over the business operations of the Debtor and initiated his investigation of the financial 22 affairs of the bankruptcy estate. Following his appointment, the Trustee quickly discovered that the 23 Debtor had a severe cash shortfall, and was in danger of not being able to pay immediate operating 24

K&L GATES LLP 925 FOURTH AVENUE SUITE 2900 SEATTLE, WASHINGTON 98104-1158 TELEPHONE: (206) 623-7580 FACSIMILE: (206) 623-7022

MOTION TO APPROVE POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §364 - 1 500403866 v2

25

26

expenses. As a result, the Trustee has spent the last year engaged in efforts to streamline and

stabilize the business in order to restructure the financial affairs of the estate and bring a return to

7

10

16

17

18 19

20

2122

23

24

25

26

creditors. The Trustee has previously liquidated assets in Tomball, Texas and closed facilities in Auburn and Federal Way, Washington and has consolidated the minting operations of the Debtor in Dayton, Nevada.

- 2. Despite the Trustee's ongoing efforts to restore NWTM's profitability through downsizing and consolidation, revenue streams have not fully developed. As a result of significant fixed overhead including building lease expenses and expenses associated with the restructuring, NWTM continues to experience a tight cash flow. While the Trustee remains convinced of the long-term viability and profitability of NWTM's business, the Debtor needs an infusion of cash in order to have sufficient runway to allow time for the new CEO and sales team to grow sales.
- 3. The Trustee has explored options for post-petition financing, and has received a proposal from Prestige under which Prestige will provide financing through a factoring arrangement. A copy of the proposed agreement for financing (the "Credit Agreement"), is attached to the Declaration of Mark Calvert (the "Calvert Decl.") as <a href="Exhibit A">Exhibit A</a>.
  - 4. The key terms under which Prestige will provide financing are as follows:
- a. Prestige will purchase NWTM's eligible accounts receivable (no more than
   120 days from the invoice date) at an advance rate of 80%;
  - b. The maximum advance is \$1,000,000;
- c. The fee paid to Prestige will be 1.8% for the first 30 days, plus an additional .65% for each ten-day period thereafter, up to 120 days. If not repaid within 120 days, the fee will increase by 1.5% for each additional 10 days thereafter until the advance and fee are paid back;
- d. NWTM will be required to factor a minimum of \$1.8 million of invoices during the six month term of the agreement or it will pay a 3% fee on any shortfall;
- e. Prestige will be granted a first-position security interest on NWTM's postpetition receivables and inventory.
- f. The Trustee retains the right to repurchase factored accounts for the amounts of the funds advanced plus the discount fees accrued through the date of repurchase.

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

22

23

24

25

26

5.	To the best of the Trustee's knowledge, there are no secured creditors which hold an
interest in NW	TM's receivables or inventory.

6. The Trustee has extensive experience in restructuring, both in and out of court, investment banking, and assisting parties in obtaining credit. Based on his experience, NWTM would be unable to obtain unsecured credit allowable under §503(b)(1) of the Bankruptcy Code as an administrative expense. The Trustee believes that the Credit Agreement represents the best alternative to meet NWTM's liquidity needs.

#### II. EVIDENCE RELIED UPON

This Motion relies on the Declaration of Mark Calvert, and the exhibits thereto together with the pleadings and papers herein.

## III. ARGUMENT

Section 364(c) of the Bankruptcy Code provides that:

- (c) If the trustee is unable to obtain unsecured credit allowable under section 503 (b) (1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt –
- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or, 507 (b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

Section 364(d)(1) of the Bankruptcy Code provides that:

The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- (A) the trustee is unable to obtain such credit otherwise and;
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

Given the nature of this case and the Debtor's business operations, the Trustee cannot procure the funds necessary to continue operations in the form of unsecured credit or unsecured debt with an administrative priority. The circumstances of this case thus require the Trustee to obtain financing under § 364(c) and (d). The credit facility detailed herein is in the best interest of the Debtor's estate and creditors because it provides means at this critical juncture of continuing operations during the Trustee's efforts to restructure NWTM's business to maximize value for the estate.

### IV. CONCLUSION

Based on the above, the Trustee respectfully requests that the Court enter an order authorizing the Trustee to enter into the Credit Agreement and incur post-petition indebtedness as described herein.

Dated this 19th day of May, 2017.

## **K&L GATES LLP**

By <u>/s/ David C. Neu</u>
Michael J. Gearin, wsba #20982
David C. Neu, wsba #33143
Brian T. Peterson, wsba #42088
Attorneys for Mark Calvert, Chapter 11 Trustee

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

MOTION TO APPROVE POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §364 - 4 500403866 v2

# **CERTIFICATE OF SERVICE**

13

14

15

16

17

18

19

20

21

22

23

24

25

26

500403866 v2

The undersigned declares as follows:

That she is a Paralegal in the law firm of K&L Gates LLP, and on May 19, 2017, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

Also on May 19, 2017, she caused the foregoing document to be placed in the mail to the Parties at the addresses listed below:

Northwest Territorial Mint LLC c/o Ross Hansen, Member P.O. Box 2148 Auburn, WA 98071-2148

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

Executed on the 19th day of May, 2017 at Seattle, Washington.

/s/ Denise A. Lentz Denise A. Lentz

MOTION TO APPROVE POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §364 - 5 K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022