1	Michael J. Gearin, WSBA # 20982 David C. Neu, WSBA # 33143 Brian T. Peterson, WSBA # 42088	Honorable Christopher M. Alston Chapter 11 Hearing Location: Seattle, Rm. 7206	
2	K&L GATES LLP 925 Fourth Avenue, Suite 2900	Hearing Date: Friday, October 5, 2018 Hearing Time: 9:30 a.m.	
3	Seattle, WA 98104-1158 (206) 623-7580	Response Date: September 28, 2018	
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6			
7	7 UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF WASHINGTON		
8	AT SEATTLE		
9	In re:	Case No. 16-11767-CMA	
10	NORTHWEST TERRITORIAL MINT, LLC,	DECLARATION OF MARK CALVERT IN	
11	Debtor.	SUPPORT OF MOTION TO APPROVE SETTLEMENT WITH ROBERT AND	
12		CONNIE HOFF PURSUANT TO FRBP 9019	
13	 Mark Calvert declares as follows: 14 I am the Chapter 11 Trustee of Northwest Territorial Mint, LLC ("NWTM" or "Debtor"). I am over eighteen (18) years of age and I am competent in all ways to testify. Unless otherwise stated herein, the following declaration is based on my personal knowledge. 2. On April 1, 2016, the Debtor filed its chapter 11 petition commencing this case. The 		
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193. Robert and Connie Hoff (the "Hoffs") are the lessors under a real property least			
20	20 "Dayton Lease") for the Debtor's Dayton, Nevada facility located at 80 East Airpark Vista Blvd		
21			
22	manufacturing facility until I shut down the Debto	r's manufacturing operations on or about	
23	December 29, 2017.		
24			
25	Motion to Assume Lease for Dayton Facility (the	"Order Assuming Lease") (Dkt. No. 1018). The	
26			
	DECLARATION OF MARK CALVERT IN SUPPORT OF MOTION TO APPROVE SETTLEMENT - 1 501806941 v6	K&L GATES LLP 925 FOURTH AVENUE SUITE 2900 SEATTLE, WASHINGTON 98104-1158 TELEPHONE: (206) 623-7580 FACSIMILE: (206) 623-7022	

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Order Assuming Lease determined that the Dayton Lease is property of the bankruptcy estate and authorized me to assume the Dayton Lease.

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5. After entry of the Order Assuming Lease, the Court held an evidentiary hearing regarding the estate's specific cure obligations with respect to the assumption of the Dayton Lease. On September 1, 2017, the Court entered its Memorandum Decision on Trustee's Motion to Assume Dayton, Nevada Lease (the "Memorandum Decision") (Dkt. No. 1185). The Court ordered me to cure defaults under the Dayton Lease as identified in the Memorandum Decision. I have completed some of the cure items, other items were completed by the Hoffs at their expense, and I have continued to perform some of the cure projects through contract labor and outside contractors.

6. On December 29, 2017, the Hoffs filed a motion for relief from the automatic stay
 (the "Motion for Relief") (Dkt. No. 1328). The Hoffs asserted that bankruptcy estate was in default
 in numerous respects under the Dayton Lease. On February 14, 2018, the Court entered its Order
 Granting in Part and Denying in Part Motion for Relief from the Automatic Stay and Related Relief
 (the "Stay Relief Order") (Dkt. No. 1450). Under the Stay Relief Order, the Hoffs were granted an
 adequate protection lien and I was required to submit a budget for approval of the use of cash
 collateral encumbered by the adequate protection lien.

7. Over the course of the last approximately eight months, I have liquidated the majority
of the Debtor's physical assets, including machinery, inventory, equipment, and raw materials. The
majority of those physical assets were located in the Dayton Facility. The bankruptcy estate has
remained in possession of the Dayton Facility while I have liquidated the Debtor's assets and
cleaned up the facility.

8. The Hoffs and I have had dialogue and substantial disagreement over the scope of repairs that were required under the cure order and the scope of repairs that are required under the terms of the Dayton Lease upon surrender of possession of the facility. The Hoffs desire to retake possession of the Dayton Facility and take control over the completion of any and all repairs, maintenance and improvements processary to ready the Dayton Facility for re-leasing or sele

26 maintenance and improvements necessary to ready the Dayton Facility for re-leasing or sale.

DECLARATION OF MARK CALVERT IN SUPPORT OF MOTION TO APPROVE SETTLEMENT - 2 501806941 v6 K&L GATES LLP 925 FOURTH AVENUE SUITE 2900 SEATTLE, WASHINGTON 98104-1158 TELEPHONE: (206) 623-7580 FACSIMILE: (206) 623-7022

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9. The Hoffs assert that they had a prepetition security interest in certain assets of the
 bankruptcy estate and I have an ongoing dispute with the Hoffs regarding the validity of that alleged
 security interest. In addition to such prepetition security interest dispute, the Hoffs have asserted
 other secured, administrative priority and superpriority claims in the bankruptcy case relating to the
 Dayton Lease which are the subject of dispute.

6 10. Over the course of the past number of weeks, I conducted arms-length negotiations
7 with the Hoffs regarding the various claims the Hoffs hold related to the Dayton Lease and Dayton
8 Facility. Ultimately, I reached a global settlement agreement with the Hoffs of all the claims and
9 issues between us (the "Settlement Agreement," and the settlement detailed therein, the
10 "Settlement"), a copy of which is attached hereto as <u>Exhibit A</u>.

11. The detailed terms of global compromise I reached with the Hoffs are set forth in the 11 Settlement Agreement. In general terms, the Settlement provides, among other things, that I will pay 12 \$354,421.90 to the Hoffs; be responsible for the removal and appropriate disposal of all remaining 13 chemicals in the Dayton Facility; surrender possession of the Dayton Facility on September 7, 2018 14 and remain responsible for occupancy costs through that date or the date of removal of the chemicals 15 if later than September 7, 2018. In exchange, the Hoffs will take responsibility to complete all 16 remaining unperformed cure obligations and maintenance projects and release the bankruptcy estate 17 from any and all claims, including claims related to the Dayton Lease and Dayton Facility. 18

12. I have determined, in my business judgment, that the Settlement is reasonable and in 19 the best interests of the bankruptcy estate. Absent approval of the Settlement Agreement with the 20 Hoffs, I would be forced to litigate the various complicated and fact-intensive issues between the 21 parties. Such litigation would be expensive and could likely result in an evidentiary hearing. There is 22 a risk that if the various issues are litigated, the estate could be liable for more than \$354,421.90, in 23 combined unperformed cure costs and amounts owed under the Dayton Lease. The rent under the 24 remaining term of the Dayton Lease alone is more than \$500,000. Moreover, the Hoffs have asserted 25 that all of their claims are secured by a first priority lien. The terms of the Settlement appropriately 26

DECLARATION OF MARK CALVERT IN SUPPORT OF MOTION TO APPROVE SETTLEMENT - 3 501806941 v6 K&L GATES LLP 925 FOURTH AVENUE SUITE 2900 SEATTLE, WASHINGTON 98104-1158 TELEPHONE: (206) 623-7580 FACSIMILE: (206) 623-7022

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1	account for the estate's potential liability, and the Settlement also avoids the expense associated with		
2	further litigation of the various complicated and fact-intensive disputes.		
3	13. I respectfully request that the Court to enter an order approving the Settlement		
4	Agreement.		
5	I declare under penalty of perjury under the laws of the United States that the foregoing is		
6	true and correct to the best of my knowledge.		
7	EXECUTED this 6th day of September 2018, at Seattle, Washington.		
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10	Mark Calvert		
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	K&L GATES LLP925 FOURTH AVENUEDECLARATION OF MARK CALVERT IN SUPPORT OFMOTION TO APPROVE SETTLEMENT - 4501806941 v6K&L GATES LLPSUITE 2900SEATTLE, WASHINGTON 98104-11TELEPHONE: (206) 623-7580FACSIMILE: (206) 623-7022		
C	ase 16-11767-CMA Doc 1874 Filed 09/06/18 Ent. 09/06/18 15:21:13 Pg. 4 of 5		

 a caused the foregoing document to be filed electronically through the CM/ECF system v Registered Participants to be served by electronic means, as fully reflected on the Notic Electronic Filing. Also on September 6, 2018, she caused the foregoing document to be mailed to the addresses listed below: Northwest Territorial Mint LLC 325 E Washinton St #226 Sequim, WA 98382 I declare under penalty of perjury under the laws of the State of Washington and States that the foregoing is true and correct. Executed on the 6th day of September, 2018 at Seattle, Washington. <i>/s/Denise A. Lentz</i> Denise A. Lentz I Ket of 	CERTIFICATE OF SERVICE	
That she is a paralegal in the law firm of K&L Gates LLP, and on September 6, caused the foregoing document to be filed electronically through the CM/ECF system v Registered Participants to be served by electronic means, as fully reflected on the Notic Electronic Filing. Also on September 6, 2018, she caused the foregoing document to be mailed to the addresses listed below: Northwest Territorial Mint LLC 325 E Washinton St #226 Sequim, WA 98382 I declare under penalty of perjury under the laws of the State of Washington and States that the foregoing is true and correct. Executed on the 6th day of September, 2018 at Seattle, Washington. <i>/s/Denise A. Lentz</i> Denise A. Lentz Intervention of the second s	ares as follows:	
 Also on September 6, 2018, she caused the foregoing document to be mailed to the addresses listed below: Northwest Territorial Mint LLC 325 E Washinton St #226 Sequim, WA 98382 I declare under penalty of perjury under the laws of the State of Washington and States that the foregoing is true and correct. Executed on the 6th day of September, 2018 at Seattle, Washington. <i>/s/ Denise A. Lentz</i> Denise A. Lentz A. Lentz In the second seco	That she is a paralegal in the law firm of K&L Gates LLP, and on September 6, 2018, 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	
the addresses listed below: Northwest Territorial Mint LLC 325 E Washinton St #226 Sequim, WA 98382 J Ideclare under penalty of perjury under the laws of the State of Washington and States that the foregoing is true and correct. ID Executed on the 6th day of September, 2018 at Seattle, Washington. I1 ////////////////////////////////////		
 Northwest Territorial Mint LLC 325 E Washinton St #226 Sequim, WA 98382 I declare under penalty of perjury under the laws of the State of Washington and States that the foregoing is true and correct. Executed on the 6th day of September, 2018 at Seattle, Washington. <i>/s/ Denise A. Lentz</i> Denise A. Lentz Denise A. Lentz 16 17 18 19 20 21 23 24 25 26 26 27 	the addresses listed below:	
1 declare under penalty of perjury under the laws of the State of Washington and States that the foregoing is true and correct. 10 Executed on the 6th day of September, 2018 at Seattle, Washington. 11 ////////////////////////////////////		
Executed on the on day of September, 2018 at Seattle, Washington. 11 12 /s/ Denise A. Lentz 13 14 15 16 17 18 19 20 21 22 23 24 25 26	I declare under penalty of perjury under the laws of the State of Washington and the United	
12 /// Denise A. Lentz 13 Denise A. Lentz 14) Executed on the 6th day of September, 2018 at Seattle, Washington.	
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EXHIBIT A

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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into and effective as of this 31st day of August 2018, upon the terms and conditions set forth below, by and among Mark Calvert as Chapter 11 Trustee for Northwest Territorial Mint, LLC ("Trustee") in bankruptcy case no. 16-11767, United States Bankruptcy Court for the Western District of Washington and Robert and Connie Hoff (the "Hoffs") collectively referred to herein as the "Parties."

RECITALS

A. On April 1, 2016, Northwest Territorial Mint, LLC (the "Debtor") filed a chapter 11 voluntary bankruptcy petition, commencing Case No. 16-11767-CMA (the "Bankruptcy Case") in the United States Bankruptcy Court for the Western District of Washington (the "Bankruptcy Court"). On April 11, 2016, the Bankruptcy Court entered an order appointing Mark Calvert as chapter 11 Trustee.

B. The Hoffs are the landlord under a real property lease (the "Dayton Lease") for the Debtor's Dayton, Nevada facility located at 80 East Airpark Vista Blvd. (the "Dayton Facility")

C. On May 15, 2017, the Court entered its Order Granting Trustee's Motion to Assume Lease for Dayton Facility (the "Order Assuming Lease") (Dkt. 1018). The Order Assuming Lease determined that the Dayton Lease is property of the bankruptcy estate and authorized the Trustee to assume the Dayton Lease. On September 1, 2017, the Court entered its Memorandum Decision on Trustee's Motion to Assume Dayton, Nevada Lease (the "Memorandum Decision") (Dkt. 1185). The Court ordered the Trustee to promptly cure the defaults under the Dayton Lease as identified in the Memorandum Decision. The Trustee has completed some of the cure items, other items were completed by the Hoffs at their expense, and the Trustee continues to perform some of the cure projects through contract labor and outside contractors. The Trustee will ensure no mechanics' liens are filed based on any such projects contracted by or performed by the Trustee.

D. On December 29, 2017, the Hoffs filed a motion for relief from stay (the "Motion for Relief") (Dkt. 1328). The Hoffs asserted that the Trustee was in default in numerous respects under the Dayton Lease. On February 14, 2018, the Court entered its Order Granting in Part and Denying in Part Motion for Relief from the Automatic Stay and Related Relief (the "Stay Relief Order") (Dkt. 1450). Under the Stay Relief Order, the Hoffs were granted an adequate protection lien and the Trustee was required to submit a budget for approval of the use of cash collateral encumbered by the adequate protection lien.

E. The Trustee remains in possession of the Dayton premises and has paid the rent and has paid or will pay all occupancy charges current through the end of August, 2018.

F. The Hoffs desire to retake possession of the Dayton premises and take control over the completion of any and all repairs, maintenance and improvements necessary to ready the property for releasing or sale.

G. The Hoffs assert that they had a prepetition security interest in certain assets of the bankruptcy estate, which assets the Trustee has sold, with Court permission. In addition to such prepetition secured claim, the Hoffs assert other secured, administrative priority and superpriority claims in the bankruptcy case relating to the Dayton Lease. The Trustee disputes the validity, amount and priority of such claims.

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H. The Trustee and the Hoffs wish to resolve all claims and issues between them regarding the Dayton Lease, the Dayton Facility and premises and the Hoffs' claims in the bankruptcy case as reflected by the terms contained below.

AGREEMENT

In consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement agree as follows:

1. <u>Recitals</u>. The Recitals set forth above constitute an integral part of this Agreement and the parties hereby affirm the facts set forth therein and agree to the incorporation of the Recitals by this reference with the same force and effect as if set forth herein as agreements of the Parties.

2. <u>RC Willey Contract</u>. The Hoffs entered into a contract with RC Willey to complete cure obligations for the replacement of carpet, vinyl tile, baseboard and related labor, and paid \$10,290 to RC Willey on account of that contract. The Trustee represents and warrants that the estate has paid RC Willey \$65,578.10 on account of such contract. The bankruptcy estate will assign any rights it may have in the RC Willey contract, including the Trustee's advance, to the Hoffs. The Hoffs will be responsible for all charges under the RC Willey contract in excess of the amounts advanced by the bankruptcy estate.

3. <u>Settlement Payment</u>. The Trustee shall pay, within five (5) business days of the Bankruptcy Court's approval of this Agreement, Three Hundred Fifty Four Thousand Four Hundred Twenty-One and 90/100 U.S. Dollars (\$354,421.90) (the "Settlement Payment") to the Hoffs. The Settlement Payment shall be made directly to the Hoffs by wire transfer.

4. <u>Chemicals in and at Dayton Facility</u>. The Trustee shall be responsible for the removal and appropriate disposal of all remaining chemicals from the interior and exterior of the Dayton Facility, including without limitation the anhydrous ammonia and container. All such chemicals shall be removed no later than September 7, 2018.

5. Trustee's Surrender of Dayton Facility. The Trustee shall surrender possession of the Dayton Facility on September 7, 2018. Upon execution of this Agreement the Trustee will discontinue any and all repairs, will pay rent of \$5,500 for the period of occupancy through September 7, 2018, and will remain responsible for insurance, utilities and taxes through the date of surrender. If the Trustee does not accomplish the removal of chemicals from the Dayton Facility by September 7, 2018, the Trustee will retain possession until such chemicals are removed, will pay prorated base rent based upon the current lease rate of \$46,446.40 per month through the date of surrender and will remain responsible for insurance, utilities and taxes through the date of surrender. Upon surrender of the Dayton Facility, the Trustee shall not be responsible for the payment of any additional rent, utility or other occupancy costs (but the Hoffs shall not have any obligation to refund anything paid prior to the date of surrender). Upon surrender of the Dayton Facility by the Trustee in accordance with the above, the Hoffs shall assume full responsibility for all remaining repairs, including repairs and cure projects required under the Memorandum Decision.

6. Dayton Facility Servers. The Trustee will convey to the Hoffs title to the computer servers located in the Dayton Facility, including the servers which service the telephone system and security system, the battery pack and server rack and related accessories, and will leave those items in the Dayton Facility. One or more of the servers stores business records of the bankruptcy estate, including confidential information of customers, employees and other parties. While the Hoffs will acquire the servers. The Hoffs will not acquire or have access to the stored estate records on the servers. The Trustee will secure the estate's business records so as to limit access by parties other than the Trustee and his representatives. The Trustee will take steps to, at his election, copy or destroy the records on the servers. Until such time as the Trustee has been able to copy or destroy the records, including obtaining necessary authority and approvals from the

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District Court and the Bankruptcy Court, the Hoffs will preserve the records and allow the Trustee such access to the records as the Trustee may desire. The Trustee will act as expeditiously as practicable to obtain such approvals and to destroy such estate records so as to afford the Hoffs unfettered use of the servers.

7. <u>Trustee's Budget for Bankruptcy Estate</u>. The Hoffs consent to submission of the Trustee's budget to the Bankruptcy Court upon execution of this Agreement in form submitted to the Hoffs in advance of execution of this Agreement.

8. <u>Release of Claims by Trustee against Hoffs</u>. Contingent upon the fulfillment by the Hoffs of their obligations under this Agreement, the Trustee, on behalf of the Bankruptcy Estate and its agents, affiliates, representatives, successors and assigns, shall be deemed to have fully and forever released, compromised and discharged the Hoffs and their current, former, and future, agents, lawyers, employees predecessors, successors, assigns, affiliates, and representatives from all actions, claims, demands, damages, debts, losses, liabilities, indebtedness, causes of action (whether at law or in equity) and obligations of whatever kind or nature, whether now known or hereafter discovered, direct or indirect, new or existing, foreseen or unforeseen, by reason of any matter, cause or thing whatsoever occurring on or prior to the date hereof, excepting for obligations under this Settlement Agreement.

9. Release of Claims by Hoffs. Contingent upon the fulfillment by the Trustee of his obligations under this Agreement on behalf of the Bankruptcy Estate, subject only to the provisions of paragraph 10 hereunder, the Hoffs, and their respective agents, affiliates, legal representatives, successors and assigns, shall be deemed to have fully and forever released, compromised and discharged the Bankruptcy Estate, the Trustee, and the Trustee's current, former, and future, agents, lawyers, employees, predecessors, successors, assigns, affiliates, and representatives from all actions, claims, demands, damages, debts, losses, liabilities, indebtedness, causes of action (whether at law or in equity) and obligations of whatever kind or nature, whether now known or hereafter discovered, direct or indirect, new or existing, foreseen or unforeseen, by reason of any matter, cause or thing whatsoever occurring on or prior to the date hereof, excepting for obligations under this Settlement Agreement. The Hoffs agree that upon fulfillment by the Trustee of his obligations under this Agreement and the consequent release of their claims, they will have no further standing in the bankruptcy case except in connection with enforcement of rights under this Agreement.

10. Environmental Claims. Notwithstanding the release set forth in the preceding paragraph, the Hoff's may file an administrative claim against the estate based on contamination of the Dayton Facility or surrounding premises as a result of improper handling or storage or disposal of hazardous materials at the premises if the results of a Phase I Environmental Site Assessment discloses environmental contamination caused by the bankruptcy estate or its debtor predecessors. The Trustee will, immediately upon execution of this Agreement, contract with McGinley & Associates to complete a Phase I Environmental Site Assessment. The environmental assessment shall be provided to the parties before the hearing on approval of this Agreement. If the Phase I Environmental Site Assessment discloses no environmental contamination caused by the bankruptcy estate or its debtor predecessors, the release in paragraph 9 above shall include and apply to claims against the estate based on contamination of the Dayton Facility or surrounding premises as a result of improper handling or storage or disposal of hazardous materials at the premises. If the Phase I Environmental Site Assessment discloses environmental contamination caused by the bankruptcy estate or its debtor predecessors, the Hoffs may file a claim based on such contamination within 30 days after receipt of the Phase I Environmental Site Assessment. The Hoffs reserve the right to request superpriority status for some or all of such claims against the estate based on contamination of the Dayton Facility or surrounding premises as a result of improper handling or storage or disposal of hazardous materials at the premises. Nothing herein constitutes an admission by the Trustee that any such claims have any validity or that they are entitled to superpriority status.

11. <u>Representation</u>. The Parties to this Agreement have had the opportunity to review this Agreement and acknowledge that they fully understand and agree to the contents herein. The Parties have had the opportunity to consult with their own attorneys concerning this Agreement and have not entered into this Agreement under any undue

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influence. Each of the individuals signing this Agreement specifically represents and warrants that they have authority to bind the parties to this Agreement.

12. <u>Governing Law: Jurisdiction and Venue</u>. This Agreement is entered into in Washington and shall be governed by and construed in accordance with the substantive laws of the State of Washington, without giving effect to conflicts of laws rules. The Parties agree that the Bankruptcy Court for the Western District of Washington shall have jurisdiction and shall be the sole venue for the determination of any disputes arising out of this Agreement.

 <u>Successors and Assigns</u>. This Agreement shall inure to the benefit and be binding upon the parties to this Agreement and their successors and assigns.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersede all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. No variations, modifications, or changes herein shall be binding upon any party unless set forth in a document executed by the Parties.

15. <u>Counterparts; Signature Pages</u>. This Agreement may be executed in one or more counterparts, each of which shall constitute an original document but all of which when taken together shall constitute one and the same agreement. Delivery of an executed copy facsimile or email transmission or other means of electronic communication producing a printed copy will be deemed to be an execution and delivery of this Agreement on the date of such communication by the parties so delivering such a copy. Any party so delivering such a copy via electronic communication shall deliver an executed original of this Agreement to the other parties upon request.

16. <u>Headings</u>. The captions or headings provided in this Agreement are for convenience only and shall not be deemed to be a part of this Agreement.

17. <u>Further Assurances</u>. From time to time and without further consideration, the parties hereto shall execute and deliver such other instruments of conveyance, assignment, transfer, delivery, security and take such other action as may be reasonably necessary in order to evidence or consummate the transactions contemplated by this Agreement, providing however that any such instruments shall be without warranty.

18. <u>Severability</u>. If any provision of this Agreement is determined by any court or governmental authority to be unenforceable, the Parties intend that this Agreement be enforced as if the unenforceable provisions were not present and that any partially valid and enforceable provisions be enforced to the extent that they are enforceable.

19. <u>Rules of Construction</u>. Each of the Parties and/or counsel for each party have reviewed this Agreement and accordingly the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

20. <u>Bankruptcy Court Approval</u>. This Agreement is conditioned upon the approval of the United States Bankruptcy Court. The Trustee shall forthwith request such approval by means of pleadings reasonably acceptable to the Hoffs.

MARK CALVERT, CHAPTER 11 TRUSTEE OF THE BANKRUPTCY ESTATE OF NORTHWEST TERRITORIAL MINT, LLC

By MARK CHLVERT

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2018 9 5 Date

ROBERT AND CONNIE HOFF

By Date 9-4-2018

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