

1 Michael J. Gearin, WSBA # 20982  
2 David C. Neu, WSBA # 33143  
3 Brian T. Peterson, WSBA # 42088  
4 K&L GATES LLP  
5 925 Fourth Avenue, Suite 2900  
6 Seattle, WA 98104-1158  
7 (206) 623-7580

Honorable Christopher M. Alston  
Chapter 11  
Hearing Location: Seattle, Rm. 7206  
Hearing Date: Friday, October 21, 2016  
Hearing Time: 9:30 a.m.  
Response Date: October 14, 2016

8 UNITED STATES BANKRUPTCY COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE

11 In re:  
12 NORTHWEST TERRITORIAL MINT, LLC,  
13 Debtor.

Case No. 16-11767-CMA

**TRUSTEE'S MOTION TO ASSUME  
DAYTON, NEVADA LEASE AND  
ACKNOWLEDGE VALIDITY OF  
SECURITY AGREEMENT**

14 **I. INTRODUCTION**

15 Mark Calvert (the "Trustee"), Chapter 11 Trustee for Northwest Territorial Mint, LLC  
16 ("NWTM" or the "Debtor"), submits this Motion (the "Motion") to Assume the Real Property Lease  
17 for the Debtor's Dayton, Nevada facility located at 80 East Airpark Vista Blvd. (the "Dayton  
18 Facility") pursuant to 11 U.S.C. § 365(a), and in connection with such assumption, to resolve  
19 pending litigation and disputes with the landlords necessary to cure alleged defaults. In connection  
20 with the agreed resolution of disputes, the Trustee will acknowledge the validity of the security  
21 interest pledged to the landlords in connection with the Dayton lease and will make certain  
22 improvements and repairs to the premises. The Trustee and the Dayton landlords will also resolve  
23 litigation over the lease that has been pending since 2012 through an agreed resolution of the terms  
24 of assumption of the lease. The landlords will waive their claims for attorneys' fees which were  
25  
26

TRUSTEE'S MOTION TO ASSUME LEASE FOR  
DAYTON FACILITY - 1

K:\2070561\00001\22732\_BTP\22732P322W

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

1 previously awarded in the lease litigation<sup>1</sup> and will stipulate to the assumption of the lease by the  
2 bankruptcy estate.

3 The Dayton Facility is critical to the Debtor's minting operations, and the continued use of  
4 the facility will enable to the Trustee to enhance the profitability of the business which is intended to  
5 form the basis for returns to creditors under a chapter 11 plan.

6 Mr. Ross Hansen ("Hansen") and an entity he controls, Medallic Art Company, LLC  
7 ("Medallic LLC") have each asserted that they are the tenant under the Dayton Lease. In its  
8 Complaint for Declaratory, Injunctive, and Other Relief (Dkt. No. 602), Medallic LLC asserts that  
9 Medallic LLC is either the lessee, or sublessee under the Dayton lease. Mr. Hansen testified  
10 previously at the meeting of creditors in this case that he personally is the tenant under Dayton lease.

11 In fact, the Debtor is the tenant under the lease, not Medallic LLC or Hansen. The Debtor has  
12 consistently performed all of the obligations of the tenant under the lease, including directly paying  
13 rent for the Dayton Facility to the landlords since 2009, directly paying real property taxes and  
14 directly paying legal expenses and other expenses of the tenant. In the litigation with the Dayton  
15 landlords, Hansen testified under oath, both in deposition and at trial, that NWTM is the tenant under  
16 the lease for the Dayton Facility and Medallic, Hansen and NWTM all took that position before the  
17 Nevada State court. The Court should determine that the bankruptcy estate holds the tenant's rights  
18 under the Dayton Lease and should permit the Trustee to assume the lease for the Dayton Facility on  
19 the terms as agreed between the landlords and the Trustee.

## 20 II. BACKGROUND

21 On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under  
22 chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court entered an order  
23 appointing Mark Calvert as chapter 11 Trustee. *See* Dkt. No. 51.

24 \_\_\_\_\_  
25 <sup>1</sup> The District Court for the State of Nevada awarded attorneys fees in the amount of \$93,619.15 to the landlords in  
26 connection with the lease litigation. This award was overturned on appeal by the Nevada State Supreme Court. The case  
remains pending before the Nevada State District court for a final determination of the award of attorneys' fees, but is  
stayed as to NWTM.

1 The Debtor presently operates a manufacturing facility in Dayton, Nevada. This location  
2 includes a satellite corporate office and an 118,000-square foot minting facility as well as storage  
3 vaults. The real property where the Debtor's Dayton Facility is located was previously owned by  
4 Medallic Art Company, Ltd. ("Medallic LTD"), an entity owned by Robert and Connie Hoff  
5 (collectively, the "Hoffs" or the "Landlord"). Medallic LTD concluded its business and distributed  
6 the real property to and the rights under the Dayton Lease to the Hoffs personally. The Hoffs now  
7 own the real property in their individual capacities.

8 **A. The Northwest Territorial Mint is the Tenant under the Dayton Lease**

9 In 2009, Medallic LTD sold its personal property assets, including its equipment, archived  
10 materials, and goodwill. On July 2, 2009, Ross Hansen and Medallic LTD executed an asset  
11 purchase agreement ("Medallic APA") denominating as purchaser Ross Hansen, "or Assigns." In  
12 connection with the Medallic LTD sale and the Medallic APA Medallic LTD executed a lease  
13 agreement for the Dayton Facility (the "Dayton Lease") and a security agreement (the "Security  
14 Agreement") granting Medallic LTD a first priority security interest in certain business assets. In an  
15 amendment to the Dayton Lease dated the same day, the parties noted that Hansen had assigned his  
16 interest in the Dayton Lease to Medallic LP, a Nevada limited partnership.

17 Medallic LP is an inactive Nevada limited partnership whose status is listed as permanently  
18 revoked in the Nevada Secretary of State's records. Medallic LP has never performed any of the  
19 obligations of the tenant under the Dayton Lease. There are no written assignments by Medallic LP  
20 of the tenant's rights under the Dayton Lease to any party. However, the lessee's interest in the  
21 Dayton Lease was assumed by the Debtor and the parties to the lease have treated the Debtor as the  
22 tenant since the inception of the lease. Such assumption was evidenced by, among other things, the  
23 facts that the Debtor fulfilled all of the tenant's obligations under the Dayton Lease since its term  
24 commenced in July of 2009. The Debtor paid rent, utilities, insurance premiums, and taxes  
25 associated with the Dayton Facility, and, significantly, paid all legal fees incurred in litigation  
26 brought by the Landlord seeking damages related to an alleged breach of the Dayton Lease. The

1 Landlord views the Debtor as the tenant under the Dayton Lease and has routinely interacted with  
2 representatives of the Debtor with respect to lease issues.

3 On December 29, 2012, the Hoffs sued Northwest Territorial Mint, LLC, Medallic Art  
4 Limited Partnership, Medallic Art Corporation, Medallic Art Company, LLC, and Ross Hansen. The  
5 suit was case no. CI 22918 (the “Hoff Lawsuit”) in the Third Judicial District Court of the State of  
6 Nevada in Lyon County and was brought by the Hoffs to recover damages for defaults under the  
7 Dayton Lease. Counsel for the defendants in the state court action, the Gunderson Law Firm, filed a  
8 trial brief on behalf of all the defendants. The brief referred to all of the defendants collectively as  
9 NWTM.

10 Ross Hansen was deposed in the action on January 10, 2014. Counsel for the Hoffs asked  
11 Ross Hansen about the Dayton Lease. During the deposition, counsel for the Hoffs had the following  
12 exchange with Hansen regarding Northwest Territorial Mint being the tenant under the Dayton  
13 Lease:

14 **Q. Who do you consider to be the tenant under the [Dayton Lease]?**

15 A: Northwest Territorial Mint.

16 . . . .

17 **Q: Okay. And then why would you sign the lease, Exhibit 1, as “Ross  
18 Hansen, an individual”?**

19 A: Because at the time, we were in a hurry to get this done. And what  
20 happened was – is that we were getting this lease done and then it was to be assigned  
21 to the corporation, which I believe happened.

22 **Q: Okay. When you assigned it to the – when you say “the  
23 corporation,” you mean Northwest Territorial Mint?**

24 A: Yes.

25 **Q: All right. When the assignment occurred, did you notify Mr. and  
26 Mrs. Hoff about the assignment?**

A: Yes, I did.

**Q: Okay, in what form did you do that?**

1 A: Both verbally and letters. And, you know, for the purposes of brevity  
here, is all of this little nuances really that important?

2 **Q: Well, it is important to my understanding.**

3 A: Are your clients really that stupid? I know they're stupid. But are they  
4 really that stupid that we're going to sit here and play the nuances here? Seriously. I  
5 know your clients are really stupid. But why don't you get to the heart of what we're  
6 here to do. Let's not sit here and play hours of, you know, "When did you sign this?"  
And "When did this happen?" Northwest Territorial Mint is leasing this property.  
Okay? So can we resolve that and can we get to the meat of this stuff?

7 Deposition Transcript, p. 12-14. Counsel for the Plaintiffs then asked whether Ross Hansen had a  
8 written assignment evidencing the assignment of the Dayton Lease to Northwest Territorial Mint.  
9 Hansen told him the Hofffs could get one to him and that while he doesn't recall exactly what form  
10 the assignment took, "it's been clear all along the ways" that the Dayton Lease was, in fact, assigned  
11 to Northwest Territorial Mint. Deposition Transcript, p. 14.

12 At the trial in the Hoff Litigation, Mr. Hansen also testified that NWTM is the tenant under  
13 the Dayton Lease:

14 **Q. All right. So -- so that I understand your testimony, you were a  
15 partner in Medallic Art Limited Partnership?**

16 A. I believe that is correct.

17 . . . .

18 **Q. And it's also true, isn't it, that that partnership no longer exists?**

19 A. That's correct.

20 **Q. Now, is it your contention that you later assigned the lease to  
21 Northwest Territorial Mint?**

22 A. Again, I go to my earlier question. I don't know, you know, how the  
23 accountants and the chief financial officers, you know, handled this  
through the legal courses, but yes, it's assigned to Northwest Territorial.

24 Hoff Litigation Trial Transcript, p.190-191.

25 The Hofffs acknowledge that the Dayton Lease was assumed by the Debtor and has always  
26 viewed NWTM as the tenant under the Dayton Lease. *See* Declaration of Connie Hoff filed in

1 support of the Motion (“Hoff Decl.”), ¶ 5. Thus, the Debtor is the tenant under the Dayton Lease  
2 having been assigned all rights thereunder and having performed on the lease for more than seven  
3 years.

4 **B. The Trustee and the Dayton Landlord Have Agreed to Terms of Assumption of the**  
5 **Lease by the Bankruptcy Estate**

6 The Trustee has negotiated, subject to Court approval, a compromise with the Hofffs of the  
7 terms under which the estate may assume the Dayton Lease and settle the Hoff Lawsuit. Under the  
8 proposed compromise, the Hofffs will waive their claims for attorneys’ fees against the estate and  
9 their claims relating to the Hoff Lawsuit. The estate will make \$120,000 in maintenance and repairs  
10 to the Dayton Facility and other capital improvements. The Hofffs allege that the maintenance and  
11 repairs are unperformed obligations of the tenant under the Dayton Lease which give rise to  
12 elements of default. The Trustee will cooperate with the Landlord in creating a schedule and budget  
13 for the repairs and improvements.

14 The Dayton Lease contains a provision that requires the tenant’s obligations to be secured by  
15 a “first priority security interest” in collateral identified in a written Security Agreement (the “Hoff  
16 Security Agreement”) between Medallic LTD and Medallic Art Company LP. See ¶ 38 of the  
17 Dayton Lease attached to the Hoff Decl. The collateral under that security agreement consists of the  
18 assets that were sold by Medallic LTD in July 2009. The Hofffs have insisted that the security  
19 interest (the “Security Interest”) which was granted in connection with the execution of the Dayton  
20 Lease be honored in order to assume the Dayton Lease. The Hofffs allege that, to the extent the first  
21 priority security interest is rendered invalid for any reason, that defect would constitute a default  
22 under the Dayton Lease. The Trustee has agreed, conditioned on approval of the motion to assume  
23 the Dayton Lease and the other terms of compromise described above, to recognize the validity of  
24 the grant of security to the Hofffs under the Hoff Security Agreement and, if necessary, to grant a  
25 security interest on the same collateral as described in the Hoff Security Agreement to the Hofffs  
26 securing the Debtor’s obligations under the lease. The acknowledgment of the validity of the

1 Security Interest and/or grant of a security interest by the estate is a reasonable cure or adequate  
2 assurance commitment under the terms of the Dayton Lease.

3 The Debtor's Dayton facility is critical to the business operations of the estate. The Debtor's  
4 custom minting and manufacturing takes place in Dayton. The continued operations of NWTM's  
5 minting and manufacturing business will be the focus of the chapter 11 plan which the Trustee  
6 intends to propose to creditors and the Court.

### 7 III. EVIDENCE RELIED UPON

8 This Motion relies upon the arguments set forth herein, the Declarations of Mark Calvert,  
9 Tod McDonald, David Neu and Connie Hoff filed in support of the Motion, the pleadings and  
10 records on file in this case, and the arguments of counsel, if any.

### 11 IV. ARGUMENT

#### 12 A. The Court Should Determine that Debtor is the Tenant under the Dayton Lease.

13 The Trustee anticipates that Mr. Hansen, either personally or on behalf of Medallic LLC, will  
14 argue that the Debtor is not the tenant under the Dayton Lease. The evidence is to the contrary. Mr.  
15 Hansen has testified alternatively that he personally is the tenant or that Medallic LLC is the tenant  
16 or that the Debtor is the tenant. Mr. Hansen has also testified that there are written subleases or  
17 agreements between himself and the Debtor or between Medallic LLC and the Debtor governing the  
18 Dayton Lease. But the Trustee has diligently searched the Debtor's records for copies of any  
19 subleases and has found no written subleases or agreements between Medallic LLC and the Debtor  
20 or between Mr. Hansen and the Debtor relating to the Dayton Facility. The Trustee has requested  
21 copies of these alleged subleases from Medallic LLC and Mr. Hansen and none have been produced.

22 Mr. Hansen testified under oath in the Hoff Lawsuit that the Dayton Lease had been assigned  
23 to the Debtor and that the Debtor was the tenant under the Dayton Lease. He further testified that he  
24 had notified the Hoff's of the assignment of the Dayton Lease to the Debtor. The Hoff's have always  
25 understood that NWTM was the tenant under the lease and have consistently treated NWTM as the  
26 tenant. And the Debtor has been the only party to perform obligations under the Dayton Lease since

1 its inception. Based upon this evidence, the Court should conclude that the Debtor is the tenant under  
2 the Dayton Lease.

3 **B. Judicial Estoppel Precludes Ross Hansen and Medallic LLC from Asserting that**  
4 **Medallic LLC is the Tenant Under the Dayton Lease.**

5 “Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage  
6 by asserting one position, and then later seeking an advantage by taking a clearly inconsistent  
7 position.” *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001). A court’s  
8 decision to apply the doctrine is informed by the following three factors: (1) whether the party’s later  
9 position “clearly inconsistent” with its earlier position; (2) whether the party succeeded in  
10 persuading a court to accept its earlier position so that “judicial acceptance of an inconsistent  
11 position in a later proceeding would create the perception that either the first or the second court was  
12 misled;” and (3) whether “the party seeking to assert an inconsistent position would derive an unfair  
13 advantage or impose an unfair detriment on the opposing party if not estopped.” *Kobold v. Good*  
14 *Samaritan Reg’l Med. Ctr.*, 2016 WL 4191521, at \*14 (9th Cir. Aug. 9, 2016).

15 Here, all of the factors supporting the application of judicial estoppel are present. The  
16 defendants in the action brought by the Hoffs against Medallic LLC and Ross Hansen took the  
17 position that Northwest Territorial Mint is the tenant under the Dayton Lease, which was the subject  
18 of that litigation. This position was adopted by the court, as judgment was entered against NWTM  
19 for breach of the Dayton Lease, it was ordered to specifically perform, and it was ordered to pay  
20 attorney fees under the relevant provision of the Dayton Lease. Ross Hansen, the managing member  
21 of Medallic LLC testified under oath that the Dayton Lease was assigned to the Debtor—not  
22 Medallic LLC. According to Hansen, it was clear all along the way that the Debtor was the tenant. It  
23 would be inequitable for Medallic LLC and Ross Hansen to be able to reverse course and argue that  
24 Medallic LLC is the tenant under the Dayton Lease in this case.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**C. Assumption of the Lease is In the Best Interests of the Estate.**

The Trustee’s assumption of the Dayton Lease and acknowledgment of the Security Interest is in the best interests of the estate. The Dayton Facility is critical to the custom minting operations of the Debtor. The chapter 11 plan presently being formulated by the Trustee contemplates the continued operations of the Debtor’s custom minting division. Without the Dayton Lease, the Trustee will be unable to continue operations in Dayton, Nevada. The Trustee previously obtained Court approval to extend the deadline for assumption or rejection of the Dayton Lease under 11 U.S.C. § 365. As extended by the Court, the Trustee must either assume or reject the Dayton lease no later than October 28, 2016.

Section 365(a) of the Bankruptcy Code provides that a debtor “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). “A court will normally approve the assumption of an executory contract upon a showing that the debtor’s decision to take such action will benefit the debtor’s estate and is in exercise of sound business judgment.” *In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 462 (Bankr. S.D.N.Y. 2014).

Here, there are valid and sufficient business justifications for the Trustee to assume the Dayton Lease and Security Agreement. The preservation of the Dayton Lease is essential to the ongoing business of the bankruptcy estate and the agreement with the Hoff’s results in the waiver and release of a substantial monetary award against the estate and resolves litigation that has been pending for years. The acceptance of the Dayton Lease and Security Agreement is in the sound business discretion of the Trustee and should be approved by the Court.

1                   **D. Recognition of the Hoff Security Interest is an Appropriate Cure and Adequate**  
2                   **Assurance Provision.**

3                   The Court should authorize the Trustee to acknowledge the validity of the Hoff's Security  
4                   Interest in the assets which were pledged under the Security Agreement. The Trustee recognizes that  
5                   there is an outstanding dispute as to the ownership of the collateral that is pledged under the Security  
6                   Agreement (the "Collateral") which is the subject of a pending adversary proceeding between the  
7                   Trustee and Medallic LLC. Medallic LLC asserts ownership of the Collateral as the successor in  
8                   interest to the purchaser of the assets from Medallic LTD in 2009. The Trustee, on the other hand,  
9                   asserts that the assets which were acquired from Medallic LTD in 2009 are part of the bankruptcy  
10                  estate because Medallic LLC is an alter ego of the Debtor or alternatively because the assets and  
11                  liabilities of Medallic LLC should be substantively consolidated with those of the bankruptcy estate.  
12                  These issues will ultimately be resolved by the Court through the pending adversary proceeding.  
13                  Whether the Collateral are assets of Medallic LLC or of the bankruptcy estate, the Hoff Security  
14                  Interest should be acknowledged.

15                  If the Collateral is owned by Medallic LLC, Medallic LLC has acquired its interest subject to  
16                  the Hoff Security Interest. As evidenced by the Security Agreement (as attached to the Hoff Decl.)  
17                  and the UCC-1 filing (attached to the Declaration of David Neu in support of the Motion), the Hoff's  
18                  lien was validly granted and is a properly perfected.<sup>2</sup> If the Collateral is property of the bankruptcy  
19                  estate, the Trustee recognizes that there is doubt as to whether the Hoff's Security Interest is  
20                  perfected because the re-perfection of that lien after the petition date would be barred by the  
21                  automatic stay. However, the Trustee believes that the Hoff's Security Interest should be recognized  
22                  in order to adequately protect the Hoff's interest in the Dayton Lease and to preclude default under  
23                  the lease based on the lack of a valid lien as is required under the terms of the Dayton Lease. The  
24                  acknowledgment of the validity of the Security Interest and/or grant of a security interest by the  
25                  estate is a reasonable cure or adequate assurance commitment under the terms of the Dayton Lease

26                  

---

<sup>2</sup> The perfection of the Hoff security interest lapsed in 2014 when no continuation statement was filed within the five  
year period required under Nevada law. *See* Nev. Rev. Stat. § 104.9515. The Hoff's re-perfected the lien by filing a new  
UCC-1 in April, 2016.

1 and the Trustee requests the Court's approval for the Trustee to acknowledge or grant a lien to the  
2 Hoffs to fulfill this obligation.

3 **V. CONCLUSION**

4 For the foregoing reasons, the Trustee respectfully requests that the Court grant the Motion,  
5 determine that the Debtor is the tenant under the Dayton Lease, and permit the Trustee to assume the  
6 Dayton Lease and recognize the validity of Security Agreement and the Hoff Security Interest.

7 DATED this 27th day of September, 2016.

8  
9 K&L GATES LLP

10  
11 By /s/ Michael J. Gearin  
12 Michael J. Gearin, WSBA #20982  
13 David C. Neu, WSBA #33143  
14 Brian T. Peterson, WSBA #42088  
15 Attorneys for Mark Calvert, Chapter 11 Trustee  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

The undersigned declares as follows:

That she is a Paralegal in the law firm of K&L Gates LLP, and on September 27, 2016, 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 September 27, 2016, she caused the foregoing document to be mailed 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

Medallic Art Company, Ltd.  
Robert and Connie Hoff  
85 Hollow Creek Road  
Sheridan, WY 82801

Medallic Art Company, Ltd.  
Robert and Connie Hoff  
2205 Old Ranch Road  
Washoe Valley, NV 89704

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 27th day of September, 2016 at Seattle, Washington.

/s/ Denise A. Evans  
Denise A. Evans