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10 UNITED STATES BANKRUPTCY COURT
11 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

12 In re:

13 NORTHWEST TERRITORIAL MINT, LLC,
14 Debtor.

Case No. 16-11767-CMA
~~PROPOSED~~
ORDER APPROVING THE SALE OF
THE DEBTOR'S TOMBALL, TEXAS
ASSETS FREE AND CLEAR OF ALL
LIENS, CLAIMS, INTERESTS, AND
ENCUMBRANCES; APPROVING THE
ASSUMPTION AND ASSIGNMENT
OF CERTAIN OF THE DEBTOR'S
EXECUTORY CONTRACTS; AND
GRANTING OTHER RELIEF

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20 THIS MATTER comes before the Court upon the motion (the "Sale Motion") (Dkt. No.
21 200)¹ of the chapter 11 Trustee, Mark Calvert (the "Trustee"), for the entry of an Order approving (i)
22 the sale of substantially all of the Debtor's assets related to the business enterprise commonly
23 referred to as Graco Awards Manufacturing business located in Tomball, Texas, free and clear of all
24 liens, claims, interests, and encumbrances ("Interests") to Tom Tucker and Larry Cook or their

25 ¹ Unless specifically defined herein, capitalized terms used herein shall have the meanings ascribed to them in
26 the Purchase Agreement between the Trustee and Ira Green Holdings, Inc.- which is attached hereto, or, if not
defined in the Purchase Agreement, the Sale Motion.

~~PROPOSED~~-ORDER APPROVING THE SALE OF THE
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 1

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1 assigns to a to be formed entity (“Tucker/Cook”) pursuant to an asset purchase agreement and (ii)
2 the assumption and assignment of certain of Debtor’s executory contracts and leases related to the
3 Graco Awards Manufacturing business. The Court held a hearing on the Sale Motion on May 26,
4 2016, at which time the Court deferred a ruling on the Sale Motion pending the conclusion of an
5 auction—to be held the following morning—to determine the successful bidder for the purchase of
6 the assets under the Sale Motion. The Court conducted further hearings related to the auction and
7 Sale Motion on May 27, 2016, and May 31, 2016. Having considered the Sale Motion, the
8 accompanying declarations, the testimony of any witnesses presented in Court, the asset purchase
9 agreement (“Purchase Agreement”), a copy of which is attached hereto as Exhibit A, entered into
10 between the Trustee and Ira Green Holdings, Inc. (the “Buyer”), any objections and reply materials,
11 the arguments of counsel, and the pleadings and papers herein, the Court **HEREBY FINDS AND**
12 **DETERMINES AS FOLLOWS:**²

13 A. The Court hereby incorporates its oral findings stated on the record at the conclusion
14 of the May 31, 2016 hearing.

15 A.B. The Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and
16 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O).
17 Venue of this case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

18 C.B. As evidenced by the affidavits of service previously filed with the Court, the Trustee
19 provided proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearing, the
20 transactions contemplated under the Purchase Agreement, including, without limitation, the Sale and
21 the assumption and assignment of the Assumed ~~Executory Contracts and Leases~~ (collectively, the
22 “Transactions”) in accordance with the United States Bankruptcy Code, the Federal Rules of
23 Bankruptcy Procedure, and the Local Rules of the Bankruptcy Court for the Western District of
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25 ² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as
26 findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

~~PROPOSED~~-ORDER APPROVING THE SALE OF THE
DEBTOR’S GRACO ASSETS FREE AND CLEAR- 2

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1 Washington. Such notice was good and sufficient, and afforded parties a reasonable opportunity to
2 object or be heard with respect to the matters that are the subject of this Order, and no other or
3 further notice of the Sale Motion, the Sale Hearing or any of the Transactions is or shall be required.

4 ~~C.~~ D. The Trustee marketed the assets being sold pursuant to the Purchase Agreement with
5 to Ira Green Holdings, Inc. (the "Purchased Assets") and conducted the sale process in compliance
6 with applicable law and rules.

7 ~~D.~~ E. Ira Green Holdings, Inc. was the successful bidder at the May 27, 2016 auction for
8 the sale of the Graco assets that are the subject of the Sale Motion.

9 ~~E.~~ F. Medallic Art Company, LLC ("Medallic") filed an Objection to the Sale Motion
10 dated May 23, 2016 (Dkt. No. 288). Medallic offered the testimony of Ross Hansen at the Sale
11 Hearing attempting to demonstrate the Trustee did not have title to the Purchased Assets. The Court
12 considered that testimony and overruled Medallic's objection to the Sale Motion. -The Court did not
13 make a ruling as to whether the bankruptcy estate or Medallic owns the assets that the Seller and the
14 Buyer understand are the subject of the sale and the entry of this order and overruling of Medallic's
15 objection shall not be deemed a determination or adjudication of the claims of ownership of
16 Medallic and the bankruptcy estate to the Purchased Assets.

17 ~~F.~~ G. The Trustee has full power and authority to execute the Purchase Agreement and all
18 other documents contemplated thereby, and the sale of the Purchased Assets and assumption and
19 assignment of the executory contracts set forth in Schedule 1.1(b) of the Purchase Agreement (the
20 "Assumed Contracts") by the Trustee have been duly and validly authorized by all necessary action
21 of the Trustee.

22 ~~G.~~ H. Approval of the Purchase Agreement and consummation of the Transactions are in
23 the best interests of the Debtor, its creditors, its estate, and other parties in interest.
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~~PROPOSED~~-ORDER APPROVING THE SALE OF THE
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 3
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1 ~~H.~~ I. The Trustee has demonstrated both (i) good, sufficient, and sound business purpose
2 and justification, and (ii) compelling circumstances for the Transactions pursuant to 11 U.S.C. §
3 363(b).

4 ~~I.~~ J. The Purchase Agreement was negotiated, proposed and entered into by the Trustee
5 and the Buyer at arms' length without collusion or fraud, and in good faith within the meaning of
6 Section 363(m) of the Bankruptcy Code.

7 ~~J.~~ ~~K.~~ The Buyer is a good faith purchaser under 11 U.S.C. § 363(m) and, as such, is
8 entitled to all of the protections afforded thereby. ~~The Buyer will be acting in good faith within the~~
9 ~~meaning of 11 U.S.C. § 363(m) in closing the Transactions at all times after the entry of this Order.~~

10 ~~K.~~ L. The consideration provided by the Buyer for the Purchased Assets pursuant to the
11 Purchase Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased
12 Assets, (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any
13 other practical available alternative, and (iv) constitutes reasonably equivalent value and fair
14 consideration under the Bankruptcy Code and under the laws of the United States, any state,
15 territory, possession, or the District of Columbia.

16 ~~L.~~ M. The transfer of the Purchased Assets to the Buyer will be a legal, valid, and effective
17 transfer of the Purchased Assets, and, as except as expressly stated in this Order, will vest the Buyer
18 with all right, title, and interest of the Debtor to the Purchased Assets free and clear to the fullest
19 extent permitted under the Bankruptcy Code or other applicable law of all Interests in such property
20 of any person or entity.

21 ~~M.~~ N. The Trustee may sell the Purchased Assets free and clear of all Interests because one
22 or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. Those holders of
23 Interests ~~who did not object, or~~ who withdrew their objections, to the Transactions or the Sale
24 Motion are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2). Other holders of Interests
25 who objected to the Sale Motion fall within one or more of the other subsections of 11 U.S.C. §
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~~PROPOSED~~-ORDER APPROVING THE SALE OF THE
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 4

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1 363(f) and are adequately protected by having their Interests, if any, attach to the cash proceeds of
2 the Sale attributable to the property against or in which they assert an Interest, in the same order of
3 priority that existed prior to the Closing and subject to all objections, counterclaims, recoupments
4 and other defenses of the Debtor's estate.

5 ~~N. O.~~ The Trustee has demonstrated that it is an exercise of his sound business judgment to
6 assume and assign the Assumed ~~Executory~~ Contracts listed on Schedule 1.1(b) of the Purchase
7 Agreement to the Buyer in connection with the consummation of the Transactions, and the
8 assumption and assignment of the Assumed ~~Executory~~ Contracts is in the best interests of the
9 Debtor, its estate, and its creditors. Furthermore, the assumption and assignment of the Assumed
10 Contracts represents the reasonable exercise of sound and prudent business judgment by the Trustee
11 There are no defaults or other obligations of the Debtor under the Assumed Contracts arising or
12 accruing prior to the Closing Date (without giving effect to any acceleration clauses or any default
13 provisions of the kind specified in 11 U.S.C. § 365(b)(2)) that must be cured, paid, satisfied or
14 otherwise discharged by the Buyer before the assumption and assignment of the Assumed Contracts.
15 ~~Any existing defaults under the Assumed Executory contracts have either been cured, and if not~~
16 ~~cured, the buyer has provided adequate assurance of cure within the meaning of 11 U.S.C. §~~
17 ~~365(b)(1)(A).~~ The Buyer has provided adequate assurance of the future performance of and under
18 the Assumed ~~Executory~~ Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(C).

19 **NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**

20 **THAT:**

21 1. The Sale Motion is GRANTED ~~in its entirety, as further described herein as described~~
22 ~~below.~~

23 ~~2.~~ The Court hereby incorporates its conclusions of law stated on the record at the
24 conclusion of the May 31, 2016 hearing.

25 ~~2-3.~~ The findings of fact and conclusions of law recited above are incorporated herein.
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~~PROPOSED~~ ORDER APPROVING THE SALE OF THE
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 5

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1 3.4. All objections to the Sale Motion or the relief requested therein that have not been
2 withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on
3 the merits, provided however, that neither the approval of this sale nor the overruling of Medallie's
4 objection shall be deemed to be a determination or adjudication of the claims of Medallie or the
5 bankruptcy estate to ownership of the Purchased Assets.

6 4.5. The Purchase Agreement, and all of the terms and conditions thereof, is hereby
7 APPROVED.

8 5.6. Pursuant to 11 U.S.C. § 363(b), the Trustee is authorized and directed to consummate
9 the Transactions, pursuant to and in accordance with the terms and conditions of the Purchase
10 Agreement.

11 6.7. The Trustee is authorized and directed to execute and deliver, and empowered to
12 perform under, consummate and implement, the Purchase Agreement, together with all additional
13 instruments and documents that may be reasonably necessary or desirable to implement the Purchase
14 Agreement, and to take all further actions as may be requested by the Buyer for the purpose of
15 assigning, transferring, granting, conveying and conferring to the Buyer or reducing to possession,
16 the Purchased Assets, or as may be necessary or appropriate to the performance of the obligations as
17 contemplated by the Purchase Agreement.

18 7.8. Except as otherwise specifically provided herein, pursuant to 11 U.S.C. §§ 105(a) and
19 363(f), the Purchased Assets and Assumed Contracts shall be transferred at Closing to the Buyer,
20 free and clear of all Interests with all such Interests to attach to the net proceeds of the Sale in the
21 order of their priority, with the same validity, force and effect which they now have as against the
22 Purchased Assets and Assumed Contracts, subject to any claims and defenses the Debtor may
23 possess with respect thereto.

24 8.9. The sale of the Purchased Assets and Assumed Contracts by the Trustee to Buyer
25 (A) is or will be legal, valid and effective transfers of the Purchased Assets and Assumed Contracts;
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DEBTOR'S GRACO ASSETS FREE AND CLEAR- 6
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1 (B) ~~except as otherwise specifically provided herein, will vest or~~ will vest Buyer with all right, title
2 and interest of the Debtor to the Purchased Assets and Assumed Contracts free and clear of all Liens
3 and claims ("Interests") pursuant to Section 363(f) of the Bankruptcy Code (other than Liens created
4 by Buyer); and (C) constitute transfers for reasonably equivalent value and fair consideration under
5 the Bankruptcy Code and the laws of the state in which Debtor is incorporated and any other
6 applicable non-bankruptcy laws.

7 ~~9.10.~~ Pursuant to 11 U.S.C. §§ 105(a) and 365, and subject to and conditioned upon the
8 Closing of the Sale, the Trustee's assumption and assignment to the Buyer of the Assumed
9 ~~Executory~~ Contracts is hereby approved, and the requirements of 11 U.S.C. § 365(b)(1) with respect
10 thereto are hereby deemed satisfied.

11 ~~10.11. There are no defaults or other obligations of the Debtor under the Assumed Contracts~~
12 ~~arising or accruing prior to the Closing Date (without giving effect to any acceleration clauses or any~~
13 ~~default provisions of the kind specified in 11 U.S.C. § 365(b)(2)) that must be cured, paid, satisfied~~
14 ~~or otherwise discharged by the Buyer before the assumption and assignment of the Assumed~~
15 ~~Contracts.~~ The Debtor's bankruptcy estate shall have no further liability under the Assumed
16 Contracts and each non-Debtor party to such Assumed Contract hereby is forever barred, estopped,
17 and permanently enjoined from asserting against the Debtor's bankruptcy estate, or the property of
18 the Debtor, any default existing thereunder as of the date of Closing, any counterclaim, defense,
19 setoff, or any other claim assertable against the Trustee.

20 ~~11.12.~~ At the Closing under the Purchase Agreement, the Trustee may assume each contract
21 listed on Schedule 1.1(b) of the Agreement, and assign each of them to the Buyer pursuant to
22 sections 363 and 365 of the Bankruptcy Code and this Order notwithstanding any anti-assignment
23 clause or other similar provision in the Assumed Contract, as provided by section 365(f) of the
24 Bankruptcy Code. ~~The assumption and assignment of the Assumed Contracts listed on Schedule~~
25 ~~1.1(b) of the Agreement is in the best interest of the Debtor and its estate, creditors, and other parties~~
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~~PROPOSED~~ ORDER APPROVING THE SALE OF THE
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 7

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1 ~~in interest, representing the reasonable exercise of sound and prudent business judgment by the~~
2 ~~Trustee.~~

3 ~~12.13.~~ Any provisions in any Assumed Contract that prohibit or condition the assignment of
4 any Assumed Contract or allow the non-debtor party to such Assumed Contract to terminate,
5 recapture, impose any penalty, condition any renewal or extension, or modify or limit any term or
6 condition upon assignment of such Assumed Contract, constitute unenforceable anti-assignment
7 provisions that are void and of no force and effect.

8 ~~13.14.~~ Except as otherwise provided herein, all persons having Interests of any kind or
9 nature whatsoever against or in any of the Purchased Assets shall be forever barred, estopped, and
10 permanently enjoined from pursuing or asserting such Interests against the Purchased Assets, the
11 Buyer, or any of its assets, property, successors, or assigns.

12 ~~14.15.~~ Except as specifically provided in the Purchase Agreement and this Order, the
13 transfers contemplated by the Purchase Agreement do not and shall not subject the Buyer to any
14 liability for claims against the Debtor by reason of such transfers under: (i) the laws of the United
15 States, any state, territory or possession thereof, including claims relating to the operation of the
16 Debtor's business before the Closing Date; (ii) any employment contract, understanding, or
17 agreement, including, without limitation, collective bargaining agreements, employee pension plans,
18 or employee welfare or benefit plans; and/or (iii) any additional contracts and/or other agreements
19 which have been previously entered into by the Debtor and which are not Assumed Contracts.

20 ~~15.16.~~ The Transactions contemplated under the Purchase Agreement do not amount to a
21 consolidation, merger or de facto merger of either the Buyer or the Debtor and/or its estate,
22 particularly as there is no substantial continuity between the Buyer and the Debtor, no continuity of
23 enterprise between the Buyer and the Debtor and the Buyer is not a mere continuation of either the
24 Debtor or its estate.

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~~PROPOSED~~-ORDER APPROVING THE SALE OF THE
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 8

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1 ~~16. All entities that are presently, or on the Closing Date may be, in possession of some~~
2 ~~or all of the Purchased Assets are hereby directed to surrender possession of the Purchased Assets to~~
3 ~~the Buyer at the Closing, and the Buyer hereby is authorized to retrieve and take possession of all~~
4 ~~Purchased Assets in the possession of any third parties, including but not limited to, any lessor or~~
5 ~~licensor.~~

6 17. This Court retains exclusive jurisdiction to interpret, enforce, implement and resolve
7 any disputes arising under or in connection with the terms and provisions of the Purchase Agreement
8 and the ownership of the Purchased Assets, all amendments thereto, any waivers and consents
9 thereunder, and any agreements executed in connection therewith, and this Order. The Buyer shall
10 have standing to participate in any proceeding related to the Purchased Assets.

11 18. Neither the Trustee nor the Buyer is required to make any filing with or give any
12 notice to, or to obtain any approval, consent, ratification, permission, waiver or authorization from,
13 any person or any governmental authority in connection with the execution and delivery of the
14 Purchase Agreement or the consummation of the Transactions, and the Trustee does not need to seek
15 or obtain consent to consummate the Transactions.

16 19. The Purchase Agreement and any related agreements, documents or other instruments
17 may be modified, amended or supplemented by the parties thereto, in a writing signed by both
18 parties, and in accordance with the terms thereof, without further order of the Court, provided that
19 there will be no material impact on the bankruptcy estate.

20 20. The Tomball Independent School District (“Tomball ISD”) and the City of Tomball,
21 Texas (“Tomball”), have asserted secured tax claims against the estate in the amount of \$57,979.58
22 and \$14,774.18, respectively. In addition, Harris County, Texas (“Harris County”) has filed a proof
23 of claim, asserting a secured claim in the amount of \$34,987.95. From the proceeds of the sale
24 approved by this Order, the amount of \$110,000 (the “Local Texas Tax Reserve Funds”) shall be set
25 aside by the Trustee in a segregated account for the purported secured claims of Tomball ISD,
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~~PROPOSED~~-ORDER APPROVING THE SALE OF THE
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 9

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1 Tomball, and Harris County (collectively, the “Local Texas Tax Authorities”). The liens, if any, of
2 the Local Texas Tax Authorities shall attach to the Local Texas Tax Reserve Funds to the same
3 extent, and with the same priority, as the liens the Local Texas Tax Authorities had on any of the
4 Purchased Assets. The reservation of the Local Texas Tax Reserve Funds shall constitute neither the
5 allowance of the claims of the Local Texas Tax Authorities, nor a cap on the amounts the Local
6 Texas Tax Authorities may be entitled to receive. Furthermore, the claims and liens of the Texas Tax
7 Authorities shall remain subject to objections as to the priority, validity or extent of such claims or
8 liens of any party, including but not limited to the Trustee. The Local Texas Tax Reserve Funds may
9 be distributed upon agreement between the Trustee and any of the Local Texas Tax Authorities, or
10 by subsequent order of the Court, duly noticed to the Local Texas Tax Authorities.

11 21. The Trustee asserts that the Estate’s liability for the allowed secured claims of the
12 Local Texas Tax Authorities may exist only to the extent of the prorated portion of taxes through the
13 date of the closing of the sale approved herein. To the extent that the Local Texas Tax Authorities
14 hold a lien securing ad valorem taxes arising from ownership of any of the Purchased Assets for any
15 period after closing of the sale, such liens are preserved and may be asserted against the Buyer of the
16 Purchased Assets. The Buyer reserves its rights to object to any claims or liens asserted by the Local
17 Texas Tax Authorities.

18 22. This Order shall be effective immediately upon entry, and any stay of orders provided
19 for in Bankruptcy Rules 6004(h), 6006(d), 7062 and any other provision of the Bankruptcy Code or
20 Bankruptcy Rules shall not apply, is expressly lifted and this Order is immediately effective and
21 enforceable.

22 ~~23. The provisions of this Order are non-severable and mutually dependent.~~

23 24-23. If any person or entity that has filed financing statements, mortgages, mechanics’
24 liens, lis pendens, or other documents or agreements evidencing claims against or in the Debtor, the
25 Purchased Assets or Assumed Contracts shall not have delivered to the Trustee prior to Closing, in
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~~PROPOSED~~-ORDER APPROVING THE SALE OF THE
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1 proper form for filing and executed by the appropriate parties, termination statements, instruments of
2 satisfaction, releases of all interests which the person or entity has with respect to the Debtor, the
3 Purchased Assets, Assumed Contracts or otherwise, then (at the Closing) only with regard to the
4 Purchased Assets and Assumed Contracts being acquired by the Buyer pursuant to the Agreement,
5 the Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order
6 (and file any UCC-3 termination statements), which, once filed, registered or otherwise recorded,
7 shall constitute conclusive evidence of the release of all claims against the Purchased Assets, the
8 Assumed Contracts (other than the Buyer's obligations to the counterparty to any Assumed
9 Contracts) other than the Assumed Liabilities. This Order is deemed to be in a recordable form
10 sufficient to be placed in the filing or recording system of each and every federal, state or local
11 government agency, department or office.

12 ~~25-24~~ Article 6 of the Uniform Commercial Code governing Bulk Sale Transfers and
13 comparable state statutes are not applicable to the sale of the Purchased Assets to the Buyer.

14 ~~26-25~~ To the extent that any provision of this Order is inconsistent with the provisions of
15 the Purchase Agreement, any prior order, or any pleading with respect to the motions in this case, the
16 terms of this Order control.

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18 ///END OF ORDER///
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~~PROPOSED~~ ORDER APPROVING THE SALE OF THE
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 11

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~~PROPOSED~~-ORDER APPROVING THE SALE OF THE
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