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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re:  
  
NORTHWEST TERRITORIAL MINT, LLC,  
  
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

THIS MATTER comes before the Court upon the motion (the “Sale Motion”) (Dkt. No. 200)<sup>1</sup> of the chapter 11 Trustee, Mark Calvert, for the entry of an Order approving (i) the sale of substantially all of the Debtor’s assets related to the business enterprise commonly referred to as Graco Awards Manufacturing business located in Tomball, Texas, free and clear of all liens, claims, interests, and encumbrances (“Interests”) to Tom Tucker and Larry Cook or their assigns to a to be

<sup>1</sup> Unless specifically defined, capitalized terms used herein shall have the meanings ascribed to them in the Purchase Agreement or Sale Motion.

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

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

17 B. As evidenced by the affidavits of service previously filed with the Court, the Trustee  
18 provided proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearing, the  
19 transactions contemplated under the Purchase Agreement, including, without limitation, the Sale and  
20 the assumption and assignment of the Assumed Executory Contracts and Leases (collectively, the  
21 “Transactions”) in accordance with the United States Bankruptcy Code, the Federal Rules of  
22 Bankruptcy Procedure, and the Local Rules of the Bankruptcy Court for the Western District of  
23 Washington. Such notice was good and sufficient, and afforded parties a reasonable opportunity to  
24

25 <sup>2</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact  
26 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 object or be heard with respect to the matters that are the subject of this Order, and no other or  
2 further notice of the Sale Motion, the Sale Hearing or any of the Transactions is or shall be required.

3 C. The Trustee marketed the Purchased Assets and conducted the sale process in  
4 compliance with applicable law and rules.

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

7 E. Medallic Art Company, LLC (“Medallic”) filed an Objection to the Sale Motion  
8 dated May 23, 2016 (Dkt. No. 288). Medallic offered testimony at the Sale Hearing attempting to  
9 demonstrate the Trustee did not have title to the Purchased Assets. The Court considered that  
10 testimony and overruled Medallic’s objection to the Sale Motion.

11 D.F. The Trustee has full power and authority to execute the Purchase Agreement and all  
12 other documents contemplated thereby, and the sale of the Purchased Assets and assumption and  
13 assignment of the executory contracts ~~and leases~~ set forth in Schedule 1.1(b) of the Purchase  
14 Agreement (the “Assumed Contracts”) by the Trustee have been duly and validly authorized by all  
15 necessary action of the Trustee.

16 E.G. Approval of the Purchase Agreement and consummation of the Transactions are in  
17 the best interests of the Debtor, its creditors, its estate, and other parties in interest.

18 F.H. The Trustee has demonstrated both (i) good, sufficient, and sound business purpose  
19 and justification, and (ii) compelling circumstances for the Transactions pursuant to 11 U.S.C. §  
20 363(b).

21 G.I. The Purchase Agreement was negotiated, proposed and entered into by the Trustee  
22 and the Buyer at arms’ length without collusion or fraud, and in good faith within the meaning of  
23 Section 363(m) of the Bankruptcy Code.

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

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

10        J.L. The transfer of the Purchased Assets to the Buyer will be a legal, valid, and effective  
11 transfer of the Purchased Assets, will vest the Buyer with all right, title, and interest of the Debtor to  
12 the Purchased Assets free and clear to the fullest extent permitted under the Bankruptcy Code or  
13 other applicable law of all Interests in such property of any person or entity.

14        K.M. The Trustee may sell the Purchased Assets free and clear of all Interests because one  
15 or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. Those holders of  
16 Interests who did not object, or who withdrew their objections, to the Transactions or the Sale  
17 Motion are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2). Other holders of Interests  
18 who objected to the Sale Motion fall within one or more of the other subsections of 11 U.S.C. §  
19 363(f) and are adequately protected by having their Interests, if any, attach to the cash proceeds of  
20 the Sale attributable to the property against or in which they assert an Interest, in the same order of  
21 priority that existed prior to the Closing and subject to all objections, counterclaims, recoupments  
22 and other defenses of the Debtor's estate.

23        L.N. The Trustee has demonstrated that it is an exercise of his sound business judgment to  
24 assume and assign the Assumed Executory Contracts ~~and Leases~~ to the Buyer in connection with the  
25 consummation of the Transactions, and the assumption and assignment of the Assumed Executory  
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PROPOSED ORDER APPROVING THE SALE OF THE  
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 4

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1 Contracts ~~and Leases~~ is in the best interests of the Debtor, its estate, and its creditors. Any existing  
2 defaults under the Assumed Executory contracts have either been cured, and if not cured, the buyer  
3 has provided adequate assurance of cure within the meaning of 11 U.S.C. § 365(b)(1)(A). The Buyer  
4 has provided adequate assurance of the future performance of and under the Assumed Executory  
5 Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(C).

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

7 **THAT:**

8 1. The Sale Motion is GRANTED in its entirety, as further described herein.

9 ~~1-2.~~ The findings of fact and conclusions of law recited above are incorporated herein.

10 ~~2-3.~~ All objections to the Sale Motion or the relief requested therein that have not been  
11 withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on  
12 the merits.

13 ~~3-4.~~ The Purchase Agreement, and all of the terms and conditions thereof, is hereby  
14 APPROVED.

15 4-5. Pursuant to 11 U.S.C. § 363(b), the Trustee is authorized and directed to consummate  
16 the Transactions, pursuant to and in accordance with the terms and conditions of the Purchase  
17 Agreement.

18 ~~5-6.~~ The Trustee is authorized and directed to execute and deliver, and empowered to  
19 perform under, consummate and implement, the Purchase Agreement, together with all additional  
20 instruments and documents that may be reasonably necessary or desirable to implement the Purchase  
21 Agreement, and to take all further actions as may be requested by the Buyer for the purpose of  
22 assigning, transferring, granting, conveying and conferring to the Buyer or reducing to possession,  
23 the Purchased Assets, or as may be necessary or appropriate to the performance of the obligations as  
24 contemplated by the Purchase Agreement.  
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PROPOSED ORDER APPROVING THE SALE OF THE  
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 5

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1        ~~6.7.~~ Except as otherwise specifically provided herein, pursuant to 11 U.S.C. §§ 105(a) and  
2 363(f), the Purchased Assets and Assumed Contracts shall be transferred at Closing to the Buyer,  
3 free and clear of all Interests with all such Interests to attach to the net proceeds of the Sale in the  
4 order of their priority, with the same validity, force and effect which they now have as against the  
5 Purchased Assets and Assumed Contracts, subject to any claims and defenses the Debtor may  
6 possess with respect thereto.

7        ~~7.8.~~ The sale of the Purchased Assets and Assumed Contracts by the Trustee to Buyer  
8 (A) is or will be legal, valid and effective transfers of the Purchased Assets and Assumed Contracts;  
9 (B) vest or will vest Buyer with all right, title and interest of the Debtor to the Purchased Assets and  
10 Assumed Contracts free and clear of all Liens and claims ("Interests") pursuant to Section 363(f) of  
11 the Bankruptcy Code (other than Liens created by Buyer); and (C) constitute transfers for reasonably  
12 equivalent value and fair consideration under the Bankruptcy Code and the laws of the state in which  
13 Debtor is incorporated and any other applicable non-bankruptcy laws.

14        ~~8.9.~~ Pursuant to 11 U.S.C. §§ 105(a) and 365, and subject to and conditioned upon the  
15 Closing of the Sale, the Trustee's assumption and assignment to the Buyer of the Assumed  
16 Executory Contracts ~~and Leases~~ is hereby approved, and the requirements of 11 U.S.C. § 365(b)(1)  
17 with respect thereto are hereby deemed satisfied.

18        ~~9.10.~~ There are no defaults or other obligations of the Debtor under the Assumed Contracts  
19 arising or accruing prior to the Closing Date (without giving effect to any acceleration clauses or any  
20 default provisions of the kind specified in 11 U.S.C. § 365(b)(2)) that must be cured, paid, satisfied  
21 or otherwise discharged by the Buyer before the assumption and assignment of the Assumed  
22 Contracts. The Debtor's bankruptcy estate shall have no further liability under the Assumed  
23 Contracts and each non-Debtor party to such Assumed Contract hereby is forever barred, estopped,  
24 and permanently enjoined from asserting against the Debtor's bankruptcy estate, or the property of  
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PROPOSED ORDER APPROVING THE SALE OF THE  
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 6

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1 the Debtor, any default existing thereunder as of the date of Closing, any counterclaim, defense,  
2 setoff, or any other claim assertable against the Trustee.

3 ~~10.11.~~ At the Closing under the Purchase Agreement, the Trustee may assume each contract  
4 listed on Schedule 1.1(b) of the Agreement, and assign each of them to the Buyer pursuant to  
5 sections 363 and 365 of the Bankruptcy Code and this Order notwithstanding any anti-assignment  
6 clause or other similar provision in the Assumed Contract, as provided by section 365(f) of the  
7 Bankruptcy Code. The assumption and assignment of the Assumed Contracts listed on Schedule  
8 1.1(b) of the Agreement is in the best interest of the Debtor and its estate, creditors, and other parties  
9 in interest, representing the reasonable exercise of sound and prudent business judgment by the  
10 Trustee.

11 ~~11.12.~~ Any provisions in any Assumed Contract that prohibit or condition the assignment of  
12 any Assumed Contract or allow the non-debtor party to such Assumed Contract to terminate,  
13 recapture, impose any penalty, condition any renewal or extension, or modify or limit any term or  
14 condition upon assignment of such Assumed Contract, constitute unenforceable anti-assignment  
15 provisions that are void and of no force and effect.

16 ~~12.13.~~ Except as otherwise provided herein, All persons having Interests of any kind or  
17 nature whatsoever against or in any of the Purchased Assets shall be forever barred, estopped, and  
18 permanently enjoined from pursuing or asserting such Interests against the Purchased Assets, the  
19 Buyer, or any of its assets, property, successors, or assigns.

20 ~~13.14.~~ Except as specifically provided in the Purchase Agreement and this Order, the  
21 transfers contemplated by the Purchase Agreement do not and shall not subject the Buyer to any  
22 liability for claims against the Debtor by reason of such transfers under: (i) the laws of the United  
23 States, any state, territory or possession thereof, including claims relating to the operation of the  
24 Debtor's business before the Closing Date; (ii) any employment contract, understanding, or  
25 agreement, including, without limitation, collective bargaining agreements, employee pension plans,  
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PROPOSED ORDER APPROVING THE SALE OF THE  
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 7

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1 or employee welfare or benefit plans; and/or (iii) any additional contracts and/or other agreements  
2 which have been previously entered into by the Debtor and which are not Assumed Contracts.

3 ~~14.15.~~ The Transactions contemplated under the Purchase Agreement do not amount to a  
4 consolidation, merger or de facto merger of either the Buyer or the Debtor and/or its estate,  
5 particularly as there is no substantial continuity between the Buyer and the Debtor, no continuity of  
6 enterprise between the Buyer and the Debtor and the Buyer is not a mere continuation of either the  
7 Debtor or its estate.

8 ~~15.16.~~ All entities that are presently, or on the Closing Date may be, in possession of some  
9 or all of the Purchased Assets are hereby directed to surrender possession of the Purchased Assets to  
10 the Buyer at the Closing, and the Buyer hereby is authorized to retrieve and take possession of all  
11 Purchased Assets in the possession of any third parties, including but not limited to, any lessor or  
12 licensor.

13 ~~16.17.~~ This Court retains exclusive jurisdiction to interpret, enforce, implement and resolve  
14 any disputes arising under or in connection with the terms and provisions of the Purchase  
15 Agreement, all amendments thereto, any waivers and consents thereunder, and any agreements  
16 executed in connection therewith, and this Order.

17 ~~17.18.~~ Neither the Trustee nor the Buyer is required to make any filing with or give any  
18 notice to, or to obtain any approval, consent, ratification, permission, waiver or authorization from,  
19 any person or any governmental authority in connection with the execution and delivery of the  
20 Purchase Agreement or the consummation of the Transactions, and the Trustee does not need to seek  
21 or obtain consent to consummate the Transactions.

22 ~~18.19.~~ The Purchase Agreement and any related agreements, documents or other instruments  
23 may be modified, amended or supplemented by the parties thereto, in a writing signed by both  
24 parties, and in accordance with the terms thereof, without further order of the Court.  
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PROPOSED ORDER APPROVING THE SALE OF THE  
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 8

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1           ~~19-20.~~ The Tomball Independent School District (“Tomball ISD”) and the City of Tomball,  
2 Texas (“Tomball”), have asserted secured tax claims against the estate in the amount of \$57,979.58  
3 and \$14,774.18, respectively. In addition, Harris County, Texas (“Harris County”) has filed a proof  
4 of claim, asserting a secured claim in the amount of \$34,987.95. From the proceeds of the sale  
5 approved by this Order, the amount of \$110,000 (the “Local Texas Tax Reserve Funds”) shall be set  
6 aside by the Trustee in a segregated account for the purported secured claims of Tomball ISD,  
7 Tomball, and Harris County (collectively, the “Local Texas Tax Authorities”). The liens, if any, of  
8 the Local Texas Tax Authorities shall attach to the Local Texas Tax Reserve Funds to the same  
9 extent, and with the same priority, as the liens the Local Texas Tax Authorities had on any of the  
10 Purchased Assets. The reservation of the Local Texas Tax Reserve Funds shall constitute neither the  
11 allowance of the claims of the Local Texas Tax Authorities, nor a cap on the amounts the Local  
12 Texas Tax Authorities may be entitled to receive. Furthermore, the claims and liens of the Texas Tax  
13 Authorities shall remain subject to objections as to the priority, validity or extent of such claims or  
14 liens of any party, including but not limited to the Trustee. The Local Texas Tax Reserve Funds may  
15 be distributed upon agreement between the Trustee and any of the Local Texas Tax Authorities, or  
16 by subsequent order of the Court, duly noticed to the Local Texas Tax Authorities.

17           ~~20-21.~~ The Trustee asserts that the Estate’s liability for the allowed secured claims of the  
18 Local Texas Tax Authorities may exist only to the extent of the prorated portion of taxes through the  
19 date of the closing of the sale approved herein. To the extent that the Local Texas Tax Authorities  
20 hold a lien securing ad valorem taxes arising from ownership of any of the Purchased Assets for any  
21 period after closing of the sale, such liens are preserved and may be asserted against the Buyer of the  
22 Purchased Assets. The Buyer reserves its rights to object to any claims or liens asserted by the Local  
23 Texas Tax Authorities.

24           ~~21-22.~~ This Order shall be effective immediately upon entry, and any stay of orders provided  
25 for in Bankruptcy Rules 6004(h), 6006(d), 7062 and any other provision of the Bankruptcy Code or  
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PROPOSED ORDER APPROVING THE SALE OF THE  
DEBTOR’S GRACO ASSETS FREE AND CLEAR- 9

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1 Bankruptcy Rules shall not apply, is expressly lifted and this Order is immediately effective and  
2 enforceable.

3 22-23. The provisions of this Order are non-severable and mutually dependent.

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

18 24-25. Article 6 of the Uniform Commercial Code governing Bulk Sale Transfers and  
19 comparable state statutes are not applicable to the sale of the Purchased Assets to the Buyer.

20 25-26. To the extent that any provision of this Order is inconsistent with the provisions of  
21 the Purchase Agreement, any prior order, or any pleading with respect to the motions in this case, the  
22 terms of this Order control.

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///END OF ORDER///

PROPOSED ORDER APPROVING THE SALE OF THE  
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 10

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1 Presented by:  
2 K&L GATES LLP

3  
4 /s/ Michael J. Gearin  
5 Michael J. Gearin, WSBA #20982  
6 David C. Neu, WSBA #33143  
7 Brian T. Peterson, WSBA #42088  
8 Attorneys for Mark Calvert, Chapter 11 Trustee  
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PROPOSED ORDER APPROVING THE SALE OF THE  
DEBTOR'S GRACO ASSETS FREE AND CLEAR- 11

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