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The following constitutes  
the order of the court. Signed December 11, 2017

7 Attorneys for Chapter 11 Trustee  
8 TIMOTHY W. HOFFMAN

  
Roger L. Efremsky  
U.S. Bankruptcy Judge

9 **UNITED STATES BANKRUPTCY COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SANTA ROSA DIVISION**

13 In re  
14 SULLIVAN VINEYARDS CORPORATION,  
15 Debtor.

Case No. 17-10065 RLE  
(Jointly Administered)  
Chapter 11

**ORDER AUTHORIZING TRUSTEE TO (1)  
SELL REAL AND PERSONAL  
PROPERTY ASSETS OF DEBTORS FREE  
AND CLEAR OF LIENS AND  
ENCUMBRANCES PURSUANT TO 11  
U.S.C. § 363(b) AND (f), AND (2) ASSUME  
AND ASSIGN EXECUTORY CONTRACTS  
PURSUANT TO 11 U.S.C. § 365**

Date: December 11, 2017  
Time: 10:30 a.m.  
Place: 99 South E Street  
Santa Rosa, CA 95404  
Judge: Hon. Roger L. Efremsky

24 In re  
25 SULLIVAN VINEYARDS PARTNERSHIP,  
26 Debtor.

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1 Chapter 11 Trustee Timothy W. Hoffman’s (“Trustee”) Motion to Sell Real and Personal  
2 Property Assets of Debtors [11 U.S.C. § 363(b)] (“363(b) Motion”), Motion to Sell Real and  
3 Personal Property Assets of Debtors Free and Clear of Liens and Encumbrances [11 U.S.C. §  
4 363(f)] (“363(f) Motion”), and Motion to Assume and Assign Executory Contracts [11 U.S.C. §  
5 365] (“365 Motion” and, together with the 363(b) Motion and 363(f) Motion, the “Motions”)  
6 came for hearing in the captioned Court on December 11, 2017 at 10:30 a.m. Aron M. Oliner,  
7 Duane Morris LLP, appeared on behalf of the Trustee. Other appearances were as noted on the  
8 record.  
9

10 The Court, having reviewed and considered the Motions and all supporting pleadings, all  
11 pleadings filed in response to the Motions, and the oral argument of counsel, finding that notice  
12 of the Motions was proper and adequate and that the Buyer (as defined below) has acted in good  
13 faith and is entitled to the protections of 11 U.S.C. § 363(m), and good cause appearing therefor,  
14 now rules as follows:  
15

16 **IT IS HEREBY ORDERED** that:

- 17 1. The Motions are granted.
- 18 2. The Trustee is authorized to sell to VITE USA, Inc. (“Buyer”) the real and  
19 personal property assets (“Assets”) of debtors Sullivan Vineyards Corporation (“SVC”) and  
20 Sullivan Vineyards Partnership (“SVP” and, together with SVC, the “Debtors”) as described in  
21 the Motions and the Asset Purchase Agreement (“Agreement”) dated November 30, 2017 and  
22 executed by the Trustee, the Buyer and the Debtors.  
23
- 24 3. Except as set forth in the Agreement, the sale of the Assets is “as is, where is,”  
25 and “with all faults,” with no warranties or representations whatsoever.
- 26 4. Pursuant to Section 363(f) of the Bankruptcy Code, the sale of the Assets shall  
27 vest in the Buyer all right, title and interest of the Trustee, the Debtors, and the Debtors’  
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1 bankruptcy estates in the Assets free and clear of the following liens, claims and other interests  
2 (collectively, the “Affected Liens”):

3 (a) Real property taxes due the Napa County Tax Collector in two  
4 installments of approximately \$12,032.76 each;

5 (b) A Deed of Trust, Security Agreement, Assignment of Rents, and Fixture  
6 Filing recorded in the Official Records of Napa County on May 21, 2012 as Document  
7 No. 2012-0013174, together with related security documents, in favor of Winery  
8 Rehabilitation, LLC with an asserted amount in excess of \$9,940,098.42;

9 (c) A Subordinate Deed of Trust, Security Agreement, Assignment of Rents,  
10 and Fixture Filing recorded in the Official Records of Napa County on May 21, 2012 as  
11 Document No. 2012-0013175, together with related security documents, in favor of  
12 Stephen A. Finn with an asserted amount in excess of \$4,656,693.36;

13 (d) A statutory grower’s lien in favor of Castellucci Napa Valley in the  
14 approximate amount of \$9,863.75;

15 (e) A security interest in favor of Ford Motor Credit Company, LLC on a  
16 2016 Ford vehicle in the approximate amount of \$15,531.27;

17 (f) A statutory grower’s lien on bulk wine inventory in favor of Kelleen  
18 Sullivan in the approximate amount of \$39,910.27;

19 (g) A statutory grower’s lien on SVC’s bulk wine inventory in favor of SVP  
20 in the approximate amount of \$445,721.44;

21 (h) A security interest on personal property in the amount \$770.00 in favor of  
22 St. Helena Self Storage;

23 (i) A statutory lien on bottled wine inventory in favor of Biagi Brothers, Inc.  
24 in the approximate amount of \$5,557.07; and  
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1 (j) A statutory lien on bottled wine inventory in favor of Wineshipping in the  
2 approximate amount of \$30,774.50.

3 5. This Order is and shall be effective as a determination that, upon and subject to  
4 the occurrence of the closing of the sale, all of the Affected Liens identified above have been and  
5 hereby are adjudged and declared to be unconditionally released as to the Assets.

6 6. The Trustee, and any escrow agent upon the Trustee's written instruction, is  
7 authorized to satisfy all undisputed Affected Liens, including any outstanding real property taxes  
8 prorated through close of escrow, as well as the usual and customary escrow and closing costs,  
9 fees, commissions and related expenses, by payment from the proceeds of sale.

10 7. Unless the holders of the Affected Liens have agreed to other treatment, their  
11 liens, claims or other interests shall attach to the proceeds of sale to the same extent, and with the  
12 same force, effect, validity and priority as previously existed against the Assets, subject to all  
13 defenses.

14 8. All remaining proceeds of sale of the Assets, net of real property taxes, closing  
15 costs and related fees, commissions and expenses, and any Affected Liens the Trustee directs to  
16 be paid from escrow, shall be paid to the Trustee at the close of escrow.

17 9. Pursuant to 11 U.S.C. § 365, the Trustee is authorized to assume any or all of the  
18 following executory contracts, as the Trustee identifies at or before closing, and assign them to  
19 Buyer in return for prompt payment to the identified contract counterparties of the corresponding  
20 cure amounts set forth below:

21

| <u>Contract Counterparty</u> | <u>Debtor</u> | <u>Description of Agreement</u>  | <u>Proposed Cure</u> |
|------------------------------|---------------|--|----------------------|
| 22 County of Napa            | 23 SVP        | 24 Annual Permit to Operate – Unified<br>25 Programs Consolidated Operating permit<br>26 (Establishment No. 723) | 27 \$0.00            |

|   |                         |     |                                  |        |
|---|-------------------------|-----|----------------------------------|--------|
| 1 | Castellucci Napa Valley | SVC | Contract to purchase wine grapes | \$0.00 |
| 2 | Rutherford River Ranch  | SVC | Contract to purchase wine grapes | \$0.00 |

4           10.    The cure amount for each executory contract is fixed and determined as set forth  
5 above.

6           11.    Assumption and assignment of any of the above executory contracts to Buyer  
7 relieves the Trustee and the estates from any liability for any breach of such contracts occurring  
8 after assignment.

9           12.    The Trustee and Buyer are hereby authorized and directed to take any and all  
10 steps necessary and proper to effectuate the terms of the Agreement, the sale of the Assets and  
11 this Order.

12           13.    This Court retains jurisdiction to enforce and implement the terms and provisions  
13 of this Order and the Agreement, all amendments thereto, any waivers and consents thereunder,  
14 and each of the documents executed in connection therewith in all respects, including, but not  
15 limited to, retaining jurisdiction to (a) compel delivery of the Assets to the Buyer, (b) resolve any  
16 disputes arising under or related to the Agreement, and (c) resolve any disputes regarding liens,  
17 claims, or interests asserted against the Assets.

18           14.    The Agreement and any related documents or other instruments may be modified,  
19 amended or supplemented by the parties thereto without further order of the Court, provided that  
20 any such modification, amendment or supplement does not have a material adverse effect on the  
21 bankruptcy estates.

22           15.    Buyer is approved as a “good faith purchaser” of the Assets in accordance with  
23 section 363(m) of the Bankruptcy Code, and shall be entitled to all the protections of section  
24 363(m).

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16. This Order shall be effective immediately upon entry. Any stay of this Order under Fed. R. Bankr. P. 6004(h), 6006(d) or other applicable law is waived.

APPROVED AS TO FORM:

KORNFIELD, NYBERG, BENDES, KUHNER & LITTLE, P.C.

By: /s/ Chris D. Kuhner  
Chris D. Kuhner  
Counsel for VITE USA, INC.

**\*\*\*END OF ORDER\*\*\***

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**COURT SERVICE LIST**

All parties entitled to notice are ECF registered in this case.