

VENEZIANO & ASSOCIATES

COUNSELLORS-AT-LAW

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October 27, 2021

Michael Schiliro, Supervisor
Town of North Castle
15 Bedford Road
Armonk NY 10504

Re: Mariani Special Permit Extension - Adjournment Request

Honorable Supervisor Schiliro & Members of the Town Board:

This letter is submitted in support of a request to extend a Special Permit issued for the Mariani Gardens project in the Hamlet of Armonk.

Initially, it must be underscored that the proposed development plan, once submitted, will be identical to the Special Permit Site Plan approved by your Town Board and extended through October 16, 2021. There will be the same density, number of affordable units, height and setbacks, and the Community Benefits Agreement will be fulfilled. There is no change of circumstances associated with the project or the anticipated impacts.

As you may know, one of the three partners of 45 Bedford Road, LLC, submitted his 50% interest into Federal Bankruptcy Court, availing himself of those protections. On November 19, 2021, in front of Federal Judge Drain, there will be a hearing to authorize release of that 50% interest to a new entity, NCD Acquisitions, LLC. Attached is the notice of that hearing in Federal Court.

I've met with a representative of NCD Acquisitions, LLC. I have discussed the project with him and he has confirmed that all of the particulars of the project will remain as they were previously approved by your Board.

I would appreciate it if this matter were adjourned, so that I could appear before your Board and answer any specific questions in person. This request for adjournment is unrelated to the

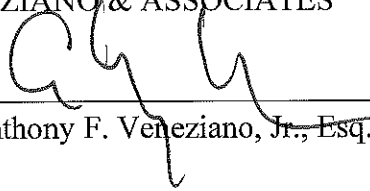
upcoming election, but rather, is due to the fact that the meeting tonight will be by Zoom. It is not an optimal forum for this review by your Board. Moreover, the adjournment allows us to have additional command of the facts in light of the upcoming hearing in Bankruptcy Court.

We are aware of the unkempt appearance of the site, particularly in light of its prior presence in the Hamlet, and we look forward to addressing those issues as well. If the objective is to clean up the property and develop it into an asset for the Hamlet, extending the Special Permit is a proactive approach to accomplishing that end.

Let us know regarding the requested adjournment. Thank you.

Very truly yours,

VENEZIANO & ASSOCIATES

By: 
Anthony F. Veneziano, Jr., Esq.

LaMONICA HERBST & MANISCALCO, LLP
Counsel to Mark S. Tulis, as Chapter 7 Trustee
3305 Jerusalem Avenue, Suite 201
Wantagh, New York 11793
Telephone: (516) 826-6500
Salvatore LaMonica, Esq.

Hearing Date: November 19, 2021 at 10:00 a.m.
Objection Deadline: November 12, 2021 by 5:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7

MARK J. MARIANI,

Case No. 21-22123 (RDD)

Debtor.
-----X

**NOTICE OF HEARING ON THE TRUSTEE'S MOTION
SEEKING ENTRY OF AN ORDER PURSUANT TO SECTIONS 105 AND 363 OF THE
BANKRUPTCY CODE: (I) AUTHORIZING THE TRUSTEE'S SALE AND
ASSIGNMENT OF THE DEBTOR'S OWNERSHIP INTERESTS TO THE DEBTOR;
AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that, on November 19, 2021 at 10:00 a.m., or as soon thereafter as counsel may be heard, a telephonic hearing will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, to consider the motion of Mark S. Tulis, solely in his capacity as Chapter 7 Trustee ("Trustee") of the estate of Mark J. Mariani ("Debtor"), by his counsel, seeking entry of an Order pursuant to §§ 105 and 363 of title 11 of the United States Code ("Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"): (i) authorizing and approving the Trustee's sale and assignment of the Debtor's ownership interests in (a) Mariani Leasing Corp. ("MLeasing"); (b) Mark Mariani, Inc. ("MMI"); (c) Mariani's Garden Market, Inc. ("MGM"); (d) Mariani & Company GC & CM, Inc. ("M&Co"); (e) MM Deer Lane, LLC ("MMDeer"); and (f) HM, LLC ("HM") (collectively, the "Ownership Interests") to the Debtor, for the sum \$155,000.00 pursuant to certain Terms and Conditions of Sale annexed to the motion as Exhibit

“A”, free and clear of all liens claims and encumbrances and subject to such other higher and better offers that may be tendered to the Trustee; and (ii) granting related relief (“Motion”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion must be in writing and be filed, on or before **November 12, 2021 by 5:00 p.m.** as follows: (i) through the Court’s NextGen system, which may be accessed through the internet at the Court’s website at www.nysb.uscourts.gov and in portable document format (PDF) using Adobe Exchange Software for conversion; or (ii) if a party is unavailable to file electronically, such party shall submit the objection in PDF format on portable media in an envelope with the case name, case number, type and title of document, document number to which the objection refers and the file name on the outside of the envelope to the Clerk of the United States Bankruptcy Court, Southern District of New York, 300 Quarropas Street, White Plains, New York 10601. A courtesy copy should be simultaneously sent to the Honorable Robert D. Drain, at the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601.

PLEASE TAKE FURTHER NOTICE, this hearing shall take place virtually using Zoom for Government. If you wish to appear at the hearing, you must register your appearance utilizing the Electronic Appearance portal (<https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>) located on the Court's website. The Court will send an email with an invitation to participate by Zoom containing a hyperlink, meeting ID, passcode and teleconferencing number 1-2 days prior to the hearing. If you are only joining by telephone, the teleconferencing phone number will be provided in the invitation. Instructions on using Zoom are located on the Court's website (<https://www.nysb.uscourts.gov/zoom-video-hearing-guide>). You may contact the Clerk's Office at 914-467-7250 should you have any questions.

Dated: October 22, 2021
Wantagh, New York

LaMONICA HERBST & MANISCALCO, LLP
Counsel to Mark S. Tulis, Chapter 7 Trustee of Mark J. Mariani

By: *s/Salvatore LaMonica*
Salvatore LaMonica, Esq.
A Member of the Firm
3305 Jerusalem Avenue
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LaMONICA HERBST & MANISCALCO, LLP
Counsel to Mark S. Tulis, as Chapter 7 Trustee
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UNITED STATES BANKRUPTCY COURT
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In re:

Chapter 7

MARK J. MARIANI,

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Debtor.
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**TRUSTEE'S MOTION SEEKING ENTRY OF AN ORDER PURSUANT TO
SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE: (I) AUTHORIZING THE
TRUSTEE'S SALE AND ASSIGNMENT OF THE DEBTOR'S OWNERSHIP
INTERESTS TO THE DEBTOR; AND (II) GRANTING RELATED RELIEF**

Mark S. Tulis, solely in his capacity as Chapter 7 Trustee ("Trustee") of the estate of Mark J. Mariani ("Debtor"), by his counsel, seeks entry of an Order pursuant to §§ 105 and 363 of title 11 of the United States Code ("Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"): (i) authorizing and approving the Trustee's sale and assignment of the Debtor's ownership interests in (a) Mariani Leasing Corp. ("MLeasing"); (b) Mark Mariani, Inc. ("MMI"); (c) Mariani's Garden Market, Inc. ("MGM"); (d) Mariani & Company GC & CM, Inc. ("M&Co"); (e) MM Deer Lane, LLC ("MMDeer"); and (f) HM, LLC ("HIM") (collectively, "Ownership Interests") to the Debtor for the sum of \$155,000.00 ("Purchase Price"), pursuant to the Terms and Conditions of Sale annexed hereto as Exhibit "A", free and clear of all liens claims and encumbrances of whatever kind or nature and subject to such other higher and better offers that may be tendered to the Trustee; and (ii) granting the Trustee such other further and different relief as is just and proper, and respectfully represents as follows:

BACKGROUND

A. The Bankruptcy Filing

1. On February 26, 2021 ("Filing Date"), Mark J. Mariani ("Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code ("Bankruptcy Code"). See Dkt. No. 1.

2. By notice of appointment, Mark S. Tulis was appointed as the interim Chapter 7 Trustee of the Debtor's estate, and has since duly qualified and is acting as the permanent Trustee of the Debtor's estate.

3. In his petition and schedules filed with this Court, the Debtor lists a 100% ownership interest in the following non-debtor entities: (i) Mariani Leasing Corp.; (ii) Mark Mariani, Inc.; (iii) Mariani's Garden Market, Inc.; (iv) Mariani & Company GC & CM, Inc.; and (v) MM Deer Lane, LLC, and (vi) a 50% ownership interest in HM, LLC (collectively, "Ownership Interests"). See Dkt. No. 1.

4. The Debtor operates these entities, to the extent they are operating, at the real property known as and located at 45 Bedford Road, Armonk, NY (the "Real Property"). The Real Property is owned by 45 Bedford Road LLC (the "Bedford Road LLC") and the Debtor owns a 50% interest in the Bedford Road LLC, which interest is also property of the bankruptcy estate. On the Filing Date, the Debtor owned and operated a nursery and related landscaping businesses at the Real Property. The nursery is operated by the entity MGM. The landscaping and sitework operations are operated by MMI utilizing vehicles and equipment owned by MLeasing and leased to MMI.

5. The Trustee has had numerous discussions with the Debtor in an attempt to liquidate the estate's interest in the Ownership Interests and has entered into the Terms and Conditions of Sale that provides for the sale of the Ownership Interests to the Debtor for the aggregate sum of \$155,000 free and clear of all liens claims and encumbrances of whatever kind or nature, subject to such other higher or better offers that may be tendered to the Trustee and without representation and warranty of any kind.

6. The Trustee has also entered into a proposed agreement for the sale of the estate's interest in the Ownership Interest of 45 Bedford Road LLC to NCD Acquisition (NCD). NCD has requested that the Real Property be delivered to it as part of the sale of the Bedford Road LLC vacant and free and clear of any and all tenancies. The sale of the estate's interest in the Bedford Road LLC is the subject of a separate motion before the Court.

7. The Trustee and the Debtor, through Counsel, have engaged in discussions regarding the potential sale and assignment of the Ownership Interests to the Debtor. After protracted, arm's-length negotiations, the Debtor offered to purchase the Ownership Interests for the sum of \$155,000.00 ("Purchase Price") pursuant to the Terms and Conditions of Sale annexed as Exhibit A.

8. The Terms and Conditions of Sale provide, inter alia, as follows:

- a. The Debtor shall pay a deposit of \$50,000 to the Trustee (paid already) and the balance of the Purchase Price at closing. See Exhibit A at ¶4.
- b. The Purchase Price is allocated as follows:

Mark Mariani, Inc. (MMI)	\$75,000
Mariani Leasing, Corp. (MLeasing)	\$25,000
Mariani's Garden Market, LLC (MGM)	\$52,000
Mariani & Company GC and CM, Inc. (M&Co)	\$1,000

MM Deer Lane, LLC (MMDeer) \$1,000

HM, LLC (HM) \$1,000

See id at ¶1.

- c. The Debtor must close title to the Ownership Interests within fourteen (14) days of the entry of the Order approving the proposed sale with time being of the essence as to Mariani. See id. at ¶5.
- d. The Ownership Interests are being sold and assigned “AS IS,” WHERE IS,” “WITH ALL FAULTS,” without any representations, covenants, guarantees or warranties of any kind or nature, but free and clear of all interests, liens, claims and encumbrances. See id. at ¶11.
- e. The parties agree to use commercially reasonable efforts to have the order approving the sale entered on or before November 30, 2021. See id. at ¶6.
- f. Mariani is required to deliver possession of the Real Property to the Trustee vacant and free of all occupants, tenants and personal property on or before October 31, 2021. See id. at ¶8.

9. The above recitation is intended as a summary of the more salient provisions of the Terms and Conditions of Sale. All parties are respectfully referred to Exhibit “A” for the complete Terms and Conditions of Sale.

STATUTORY PREDICATES FOR RELIEF REQUESTED

10. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and venue of this case and the Motion is proper in this District pursuant 28 U.S.C. §§ 1408 and 1409.

11. The statutory predicates for the relief sought herein include sections 105(a) and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002 and 6004.

RELIEF REQUESTED AND BASIS FOR RELIEF

12. By this Motion, the Trustee seeks an Order authorizing the sale of the Ownership Interests to the Debtor, and granting the Trustee such further relief as this Court deems proper. A proposed Order is annexed as Exhibit B.

A. The Sale Of The Ownership Interests Is A Reasonable Exercise Of The Trustee's Business Judgment And Should Be Approved

13. Pursuant to Section 704(a) of the Bankruptcy Code, the Trustee is required to reduce to money property of the estate.

14. Section 363(b) and Bankruptcy Rule 6004 govern the sale of assets outside of the ordinary course of a debtor's business. Section 363 provides, in relevant part, that "[t]he trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" 11 U.S.C. § 363(b)(1). Under Bankruptcy Rule 6004(f)(1), a trustee is permitted to sell property of the estate pursuant to section 363(b) of the Bankruptcy Code by private sale or public auction. FED. R. BANKR. P. 6004(f)(1).

15. In this instance, the Trustee used his sound business judgment to determine that private sale of the Ownership Interests to the Debtor is in the best interests of the Debtor's estate. The Trustee, with the assistance of his professionals, analyzed the nature and extent of the Ownership Interests, as well as the Debtor's basis in the Ownership Interests. Indeed, MMI and MLeasing are the only entities with ongoing operations and MGM has limited operations and inventory. The remaining entities are no longer operating and have no assets. The Trustee also considered that these entities are closely held entities, have their own creditors both secured and unsecured, and that any prospective purchaser would require a restrictive covenant of the Debtor, which is something that the Trustee cannot deliver. As a result, the Trustee did not believe that the Ownership Interests could be effectively liquidated through a public sale to a third party.

Accordingly, the Trustee concluded that, under the circumstances, the sale of the Ownership Interests to the Debtor represented the best way to maximize the value of the Ownership Interests for the benefit of the Debtor's estate and its creditors. Nonetheless, in order to provide for other creditors or parties in interest to provide higher or better offers, the Trustee has provided that the sale of the Ownership Interests is subject to such other higher or better offers that may be tendered to the Trustee.

16. The Trustee believes the offer from the Debtor is a good one and the sale to the Debtor will be consummated swiftly.

17. Consequently, the Trustee submits that the sale of the Ownership Interests to the Debtor for the Purchase Price is a proper exercise of the Trustee's fiduciary responsibilities and a sound exercise of the Trustee's business judgment and should be approved.

B. The Ownership Interests Should Be Sold Free And Clear Of Liens, Claims And Encumbrances

18. Section 363 of the Bankruptcy Code permits the sale of assets to be free and clear of liens, claims and interests of an entity in such property if: (a) applicable state law will permit the sale; (b) such entity consents; (c) the price at which the assets is being sold exceeds the liens, claims and interests; (d) the security interest in the property is disputed; or (e) the entity with an interest in the asset being sold could be compelled in a legal or equitable proceeding to accept a money satisfaction of its interest in and to the property. See 11 U.S.C. § 363(f). Accordingly, a trustee may sell property of a bankruptcy estate outside the ordinary course of business if one of the five conditions under section 363(f) is satisfied. See In re Grubb & Ellis Co., Case No. 12-10685 (MG), 2012 Bankr. LEXIS 1279, at *31 (Bankr. S.D.N.Y. Mar. 27, 2012) (discussing Bankruptcy Code § 363(f)); In re Borders Group, Inc., 453 B.R. 477, 483-84 (Bankr. S.D.N.Y. 2011) (discussing Bankruptcy Code § 363(f)).

19. Here the Trustee is not aware of any liens, claims and interests asserted against the Ownership Interests.

20. Based on the foregoing, the requirements of Section 363(f) are satisfied.

NOTICE AND NO PRIOR REQUEST

21. Notice of this Motion will be provided to: (a) the Debtor, through his counsel of record; (b) the United States Trustee; (c) all parties who filed a notice of appearance in this case; (d) known creditors of the Debtor's estate; and (e) applicable taxing authorities. The Trustee submits that such notice complies with Bankruptcy Rule 2002(a)(2) and that no further notice is required.

22. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Trustee respectfully requests that this Court authorize and approve the sale of the Ownership Interests to the Debtor pursuant to the Terms and Conditions of Sale, and grant the Trustee such further relief as this Court deems proper.

Dated: October 22, 2021
Wantagh, New York

LaMONICA HERBST & MANISCALCO, LLP
Counsel to Mark S. Tulis, Chapter 7 Trustee of Mark J. Mariani

By: s/Salvatore LaMonica
Salvatore LaMonica, Esq.
A Member of the Firm
3305 Jerusalem Avenue
Wantagh, New York 11793
Telephone: (516) 826-6500

Exhibit "A"

TERMS AND CONDITIONS OF SALE

1. These Terms and Conditions of Sale are promulgated in connection with the sale and assignment of debtor Mark J. Mariani's ownership interests in:

Name	Amount
Mariani Leasing Corp.	\$25,000.00
Mark Mariani, Inc.	\$75,000.00
Mariani's Garden Market, Inc.	\$52,000.00
Mariani & Company GC & CM, Inc.	\$1,000.00
MM Deer Lane, LLC	\$1,000.00
HM, LLC	\$1,000.00

("Ownership Interests")

2. The seller of the Ownership Interests is Mark S. Tulis, solely in his capacity as Chapter 7 Trustee ("Trustee") of the estate of Mark J. Mariani ("Mariani"). Mariani's Chapter 7 bankruptcy case is pending before the Honorable Robert D. Drain in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") under case no.: 21-22123 (RDD).

3. Mariani has offered to purchase the Ownership Interests for \$155,000.00 ("Purchase Price") pursuant to these Terms and Conditions of Sale ("Offer"). This Offer is subject to Bankruptcy Court approval.

4. Upon execution of these Terms and Conditions of Sale, Mariani will deposit the sum of \$50,000.00 ("Deposit") with the Trustee as earnest money in the form of an official bank check or wire transfer payable to "Mark S. Tulis, as Trustee of Mark J. Mariani". The Deposit shall be maintained by the Trustee in a segregated estate account. Upon clearance of the Deposit, the Trustee shall promptly seek Bankruptcy Court approval of the sale and assignment of the Ownership Interests to Mariani pursuant to, inter alia, Section 363(b), (f) and (m) of Title 11 of the United States Code ("Bankruptcy Code"). In the event that the Bankruptcy enters an order denying the approval of these terms and conditions, the Trustee shall return the deposit to Mariani within 5 days of said denial.

5. Mariani must pay the balance of the Purchase Price to the Trustee by official bank check or wire transfer at the closing of title to the Ownership Interests ("Closing"). Mariani must close title to the Ownership Interests within fourteen (14) days of the entry of the Order approving the sale of the Ownership Interests to Mariani ("Closing Date"), **TIME BEING OF THE ESSENCE**, as to Mariani, although such date may be extended solely by the Trustee.

6. The parties agree to use commercially reasonable efforts to have the Order entered on or before November 30, 2021. In the event that the court does not enter an order approving these terms and conditions on or before December 15, 2021, the Debtor shall have the right to terminate this agreement and request the return of the Deposit.

7. The Closing shall take place on or before the Closing Date at the offices of the attorneys for the Trustee, LaMonica Herbst & Maniscalco LLP, 3305 Jerusalem Avenue, Wantagh, New York 11793 or by

mail. At Closing, Mariani shall deliver the balance of the Purchase Price to the Trustee, and the Trustee shall hold the shares representing the Ownership Interests and all executed documents assigning the Ownership Interests to Mariani in escrow until such time that Mariani delivers to the Trustee possession of the real property located at 45 Bedford Road, Armonk, NY ("45 Bedford Road Property"), vacant, free of all occupants, tenants, and personal property on or before October 31, 2021 ("Vacate Date").

8. Mariani shall deliver possession of the 45 Bedford Road Property to the Trustee vacant, and free of all occupants, tenants, and personal property, on or before the Vacate Date. In the event Mariani fails to vacate and deliver possession of the 45 Bedford Road Property on or before the Vacate Date, the Trustee shall: (i) destroy the Assignment Documents held in escrow, (ii) be entitled to retain the Ownership Interests on behalf of the estate, and (iii) retain the Purchase Price in its entirety for the benefit of the estate.

9. In connection with the Closing, Closing Date, and the Vacate Date, Mariani is hereby given notice that TIME IS OF THE ESSENCE against Mariani and the failure of Mariani to close for any reason whatsoever (except as otherwise provided below), including his failure to pay the balance of the Purchase Price on the Closing Date, will result in the Trustee retaining the Deposit and the termination of Mariani's right to acquire the Ownership Interests under these Terms and Conditions of Sale. Mariani shall be obligated to close title to the Ownership Interests and there is no contingency of any kind or nature that will permit Mariani to cancel or avoid its obligation under these Terms and Conditions of Sale.

10. The Trustee and his professionals have not made, and do not make, any representations or warranties of any kind with respect to the Ownership Interests. Mariani hereby expressly agrees and acknowledges that no such representations or warranties have been made.

11. The Ownership Interests are being sold and assigned "**AS IS,**" "**WHERE IS,**" "**WITH ALL FAULTS,**" without any representations, covenants, guarantees or warranties of any kind or nature, free and clear of all liens, claims, encumbrances and interests of whatever kind or nature, and subject to any higher or better offers for the Ownership Interests that may be tendered to the Trustee.

12. Nothing contained in these Terms and Conditions of Sale is intended to supersede or alter any provisions of the Bankruptcy Code or otherwise interfere with the jurisdiction of the Bankruptcy Court. All of the terms and conditions set forth in these Terms and Conditions of Sale are subject to non-material modification as may be directed by the Trustee or by the Bankruptcy Court. The Trustee reserves the right to make non material modifications to these Terms and Conditions of Sale to maintain consistency with the provisions of the Bankruptcy Code and/or prior orders of the Bankruptcy Court or as may be appropriate under the circumstances of this case.

13. If the Trustee is unable to assign the Ownership Interests to Mariani in accordance with these Terms and Conditions of Sale for any reason whatsoever, or the Trustee determines it is not in the best interests of Mariani's estate to close, then the Trustee's only obligation will be to refund the Deposit to Mariani and, upon such refund, Mariani shall not have any claim or recourse against the Trustee, Mariani's estate or the Trustee's professionals.

14. The Trustee reserves his right to withdraw the Ownership Interests from sale for any reason whatsoever as he deems necessary or appropriate until the entry of an order of the Bankruptcy Court approving this transaction.

15. The Bankruptcy Court shall determine any disputes between the Trustee and Mariani concerning the sale of the Ownership Interests.

I have read these Terms and Conditions of Sale and agree to be bound by them.

Dated: September 20, 2021
Armonk, New York

By:


MARK J. MARIANI

October
Dated: September 22, 2021
White Plains, New York



Mark S. Tullis, Solely in his Capacity as Chapter 7 Trustee
Of Mark J. Mariani

Exhibit "B"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7

MARK J. MARIANI,

Case No. 21-22123 (RDD)

Debtor.
-----X

**ORDER PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE:
(I) AUTHORIZING THE TRUSTEE'S SALE AND ASSIGNMENT OF
THE DEBTOR'S OWNERSHIP INTERESTS TO THE DEBTOR;
AND (II) GRANTING RELATED RELIEF**

Upon the motion dated October 22, 2021 ("Motion") of Mark S. Tulis, solely in his capacity as Chapter 7 Trustee ("Trustee") of the estate of Mark J. Mariani ("Debtor"), by his counsel, seeking entry of an Order pursuant to §§105 and 363 of Title 11 of the United States Code ("Bankruptcy Code"), and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"): (i) authorizing and approving the Trustee's sale and assignment of the Debtor's ownership interests in (a) Mariani Leasing Corp. ("MLeasing"); (b) Mark Mariani, Inc. ("MMI"); (c) Mariani's Garden Market, Inc. ("MGM"); (d) Mariani & Company GC & CM, Inc. ("M&Co"); (e) MM Deer Lane, LLC ("MMDeer"); and (f) HM, LLC ("HM") (collectively, "Ownership Interests") to the Debtor ("Debtor") for \$155,000.00 pursuant to certain Terms and Conditions of Sale free and clear of all liens claims and encumbrances of whatever kind or nature and subject to such higher or better offers that may be tendered to the Trustee; and (ii) granting the Trustee such other further and different relief as the court deems just and proper; and no objections to the Motion having been filed or received; and the matter having come on to be heard before the Court on November 19, 2021 ("Hearing"); and upon the record of the Hearing and evidence proffered and adduced at the Hearing, the transcript of which is incorporated by reference herein; and no additional notice or hearing being required,

THE COURT FINDS AND DETERMINES THAT:

a) The Court has subject matter jurisdiction over the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (N). Venue in this district is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

b) Proper, timely, adequate and sufficient notice of the Hearing was provided in accordance with Bankruptcy Rule 2002(a), which notice adequately described the nature of the Hearing and the relief requested in the Motion.

c) The Motion was duly and properly served on all required persons and entities, and a reasonable opportunity to object or be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

d) The Trustee has demonstrated that the sale of the Ownership Interests to the Debtor for \$155,000 ("Purchase Price") is a reasonable exercise of the Trustee's business judgment.

e) The Debtor is a good faith purchaser of the Ownership Interests within the meaning of Section 363(m) of the Bankruptcy Code.

f) In the absence of any person obtaining a stay pending appeal, upon the closing on the sale and assignment of the Ownership Interests, it shall be deemed that neither the Trustee nor the Debtor have engaged in any conduct that would cause or permit the transaction to be avoided or costs and damages to be imposed under Section 363(n) of the Bankruptcy Code.

g) The Trustee has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion.

h) The legal and factual bases set forth in the Motion and on the record at the Hearing establish just cause for the relief granted herein.

NOW, THEREFORE, IT IS HEREBY

ORDERED, that, pursuant to Sections 105(a), 363(b) and 363(f) of the Bankruptcy Code, the Trustee is authorized and empowered to sell and assign the Ownership Interests to the Debtor for the Purchase Price in accordance with the Terms and Conditions of Sale annexed as Exhibit A; and, it is further

ORDERED, that the Ownership Interest will be transferred to the Debtor “AS IS”, “WHERE IS”, “WITH ALL FAULTS”, without any representations, covenants, guarantees or warranties of any kind or nature whatsoever, and free and clear of any and all interests in the Ownership Interests including, but not limited to, all monetary liens, claims, encumbrances, judgments and/or mortgages, or adverse claims to title, of whatever kind or nature (collectively, “Liens”) with such Liens (if any) to attach to the proceeds in the same order and priority as they existed as of the date of the entry of the Order for relief against the Debtor except as to any Liens of the Debtor, which are expressly waived; and, it is further

ORDERED, that the Debtor is a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to, and is hereby granted, the full rights, benefits, privileges, and protections of Section 363(m) of the Bankruptcy Code if the Debtor closes on the sale and assignment of the Ownership Interests in accordance with the Terms and Conditions of Sale; and, it is further

ORDERED, that neither the Trustee nor the Debtor have engaged in any conduct that would cause or permit the sale of the Ownership Interests to be avoided or costs or damages to be imposed under Section 363(n) of the Bankruptcy Code; and, it is further

ORDERED, that each and every federal, state and local government agency or department is directed to accept any and all documents necessary and appropriate to consummate the sale and assignment of the Ownership Interests outlined herein, and a copy of this Order may be filed in any place where state, federal or local law permits filing or recording; and, it is further

ORDERED, that the Trustee is authorized and empowered to expend such funds and execute and deliver any and all documents as are reasonably necessary to implement the terms of this Order; and, it is further

ORDERED, that this Court may retain jurisdiction to: (i) interpret and construe and enforce the provisions of this Order and any ancillary documents in connection therewith; (ii) hear and determine any and all disputes arising under or related to the foregoing; and (iii) enforce the provision of this Order.

Dated: November ____, 2021
White Plains, New York

Hon. Robert D. Drain
United States Bankruptcy Judge