

VENEZIANO & ASSOCIATES

COUNSELLORS-AT-LAW

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December 23, 2021

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

Re: Mariani Gardens

Honorable Supervisor and Members of the Town Board:

As you are aware, my firm represents 45 Bedford Road, LLC. We have recently received a 90-day extension through January 14, 2022 of the special permit previously granted by your Board.

As we had indicated at the time of this extension, 50% of the LLC membership interests have been secured by NCD, Acquisitions, LLC ("NCD") through investor equity.

As we had also indicated, Mr. Mariani had owned 50% of 45 Bedford Road, LLC and his interests were placed in bankruptcy. That remaining 50% membership interest needed to be acquired upon consent of the United States Bankruptcy Court. On November 19, 2021, the bankruptcy court approved the sale with terms. That transaction was signed off on by Federal Judge Drain on December 19, 2021 (see attached Order). In accordance with that Order, Trustee's counsel is endeavoring to prepare the transfer documents to assign, Mariani's interest to NCD.

At this point, NCD is still awaiting transfer of the Mariani membership interests of 45 Bedford Road, LLC. While we anticipate those interests will be transferred in the immediate future, until such time that the legal conveyance has been transacted, NCD is unable to make a formal appearance before the Board on behalf of 45 Bedford Road. I have met with representatives of NCD and they are eager to meet with the Town and their prospective development group to continue the redevelopment of the site. Unfortunately, due to the upcoming holiday schedule and

the legal remedies that still need to be completed, we anticipate that process will continue through January.

The project has remained identical to the terms and particulars as approved by this Town Board in the prior special permit. We are hereby requesting a 180 to 360 day extension; a longer extension would avoid need for an additional extension. Once NCD has completed the formal acquisition of the shares through the Bankruptcy Trustee and completed the retention of the development team, we will come and meet with the Town Board. All of the general findings and special findings associated with the grant of the special permit resolution are intact and enforceable at this time.

We look forward to working with this Town to develop this very important hamlet site.

Very truly yours,

Anthony F. Veneziano, Jr.

ANTHONY F. VENEZIANO, JR.

AFV/kj

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 interest in 45 Bedford Road LLC ("Ownership Interest").

2. The seller of the Ownership Interest 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. NCD Acquisition LLC ("NCD") has offered to purchase the Ownership Interest for \$75,000.00 ("Purchase Price") pursuant to these Terms and Conditions of Sale ("Offer"). This Offer is all subject to Bankruptcy Court approval.

4. Upon execution of these Terms and Conditions of Sale, NCD 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 Interest to NCD pursuant to, inter alia, section 363(b), (f) and (m) of title 11 of the United States Code ("Bankruptcy Code").

5. NCD 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 Interest ("Closing"). NCD must close title to the Ownership Interest by the later of November 2, 2021 or fourteen (14) days after the entry of the Order approving the sale of the Ownership Interest to NCD (the "Order") becoming final and non appealable, unless otherwise waived by NCD ("Closing Date"), **TIME BEING OF THE ESSENCE**, as to NCD, although such date may be extended solely by the Trustee. In the event that Closing does not occur within 120 days from the entry of the Order approving the sale of the ownership Interest NCD may elect to revoke its offer to purchase and upon request the Trustee shall return of the Deposit.

6. **TIME BEING OF THE ESSENCE**, 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 denies the approval of these terms the Trustee shall return the Deposit to the Buyer.

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.

8. In connection with the Closing and Closing Date, NCD is hereby given notice that **TIME IS OF THE ESSENCE** against NCD and the failure of NCD to close for any reason whatsoever (except as otherwise provided below), including its 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 NCD's right to acquire the Ownership Interest under these Terms and Conditions of Sale. NCD shall be obligated to close title to the Ownership Interest and there is no contingency of any kind or nature that will permit NCD to cancel or avoid its obligation under these Terms and Conditions of Sale.

9. NCD's obligation to close is subject to the Trustee delivering the Real Property, located at 45

Bedford Road, vacant and free of all occupants, tenants and personal property, on or before November 1, 2021.

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 Interest. NCD hereby expressly agrees and acknowledges that no such representations or warranties have been made.

11. The Ownership Interest is 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 Interest 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 modification as may be directed by the Trustee or by the Bankruptcy Court. The Trustee reserves the right to modify 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 Interest to NCD 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 NCD and, upon such refund, NCD 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 Interest from sale for any reason whatsoever as he deems necessary or appropriate provided that the Trustee shall not be able to withdraw the Ownership Interest from sale after the Order approving the sale becomes final and non appealable.

15. The Bankruptcy Court shall determine any disputes concerning the sale of the Ownership Interest.

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

Dated: August____, 2021
New York, New York

NCD Acquisition LLC

By:

[Name]
[Title]

Dated: August____, 2021
White Plains, New York

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