

ORDINANCE NO. 2008-045

AN ORDINANCE AUTHORIZING THE VILLAGE MANAGER
TO ENTER INTO AN EXCLUSIVE RIGHT TO SELL CONTRACT
WITH MARK FORNES REALTY, INC.

WHEREAS, the Village is the owner of certain real property identified as 1400 Lytle Road, Waynesville, Ohio 45068; and

WHEREAS, this property currently is the site of the Waynesville Government Center, and

WHEREAS, the Village desires to engage the professional services of a real estate broker to market the property for sale; and

WHEREAS, Mark Fornes Realty, Inc. possesses the professional qualification desired by Council.

NOW THEREFORE BE IT ORDAINED by the Village Council of the Village of Waynesville, 7 members elected thereto concurring:

Section 1. That the Village Manager is hereby authorized to enter into an Exclusive Right to Sell Contract with Mark Fornes Realty, Inc. substantially in the form of the agreement attached hereto as Exhibit "A."

Section 2. That this Ordinance shall be effective from and after the earliest period allowed by law.

Adopted this 3rd day of November 2008. n /

Attest
Staci Morris, Clerk of Council

Earl J. Isaacs, Mayor

362699.1

1st rd - 10/20/2008

2nd rd - 11/03/2008

12/03/2008
Emergency

MARK FORNES REALTY, INC.

7755 Paragon Road • Dayton, Ohio 45459 • 937.434.2000 • Fax 937.434.5425 • www.fornes.com

EXCLUSIVE RIGHT TO SELL CONTRACT

October 15, 2008

This Exclusive Right to Sell Contract (Contract) is made between The Village of Waynesville (Owner), whether one or more, whose address is 1400 Lytle Road, Waynesville, OH 45068, and MARK FORNES REALTY, INC. (Broker), whose address is 7755 Paragon Road, Dayton, OH 45459.

1. **Exclusive Right to Sell.** In consideration of Broker's efforts to procure a purchaser, and for Broker's acceptance of the duties as Owner's exclusive agent, Owner grants to Broker the exclusive right to sell the real property (the Property) located at and commonly known as: 1400 Lytle Road, Waynesville, OH 45068 (See attached Exhibit A). The Property includes all buildings, improvements, and fixtures.

2. **Listing Period.** This Contract shall begin on the date first written above and shall expire at 12:00 Midnight on April 15, 2009 (The Listing Period).

3. **Terms of Sale.** The Property will be offered for sale at a price of \$1,199,000 (9,700 sf office building plus 2.5 acres - Parcel A) and \$25,000 per acre (±23 acres - Parcel B). Owner agrees to convey marketable title to the Property by general warranty deed with release of dower.

4. **Brokerage Fee.** If the Property is sold during the Listing Period, Owner shall pay Broker a brokerage fee of six percent (6%) of sales price, plus applicable sales tax, if any. This right to a brokerage fee applies to any sale during the Listing Period, whether the Property is sold through Broker, or by Owner's own efforts, or otherwise, and applies regardless of the amount of the sales price accepted by Owner. In addition, Broker shall be entitled to the same brokerage fee if the Property is sold within the sixty-day period following the expiration of the Listing Period (the Terminal Period), to any person (or anyone acting on that person's behalf) with whom Broker had made contact relative to the sale of the Property before the expiration of the Listing Period provided the names of all such persons are registered in writing with Owner within fifteen days of expiration of the Listing Period. Said commission shall be deemed earned and be payable when a binding sale is executed and closed between the Owner and a Buyer for the Property.

5. **Other Brokers.** Owner authorizes Broker to list the Property in any Multiple Listing Service or other listing service or publication for commercial/industrial/investment real estate. Owner authorizes Broker to offer compensation in accordance with Broker's company policy, which is to offer compensation to (Check all that apply):

<input type="checkbox"/> Subagents	Compensation amount _____
<input checked="" type="checkbox"/> Buyer Brokers	Compensation amount <u>one-half of total</u>
	(State compensation as dollar amount or percentage of sales price)

Owner (check one) has _____ has not received Broker's Consumer's Guide to Agency Relationship.

6. **Dual Agency.** If a prospective buyer of the Property is represented by Broker, or any agent of Broker, or if the prospective buyer is an employee or agent of Broker, Broker will be considered a dual agent (that is, agent of both Owner and the buyer) in the transaction. If this situation arises, Owner is willing to permit Broker's dual agency role, subject to Owner's approval of a dual agency consent agreement in accordance with Ohio law setting forth the rights and obligations of the parties.

7. **Owner's Representations.** Owner represents to Broker that (a) Owner is the sole owner of and has exclusive control of the Property; (b) Owner is fully authorized and able to enter into and perform this Contract; (c) to the best of Owner's knowledge, no latent defects are present in the Property, except as follows:

_____ and (d) to the best of Owner's knowledge, no toxic, explosive or otherwise hazardous substances have been store, disposed of, concealed within or released on or from the Property, and no other adverse environmental conditions affect the Property, except as follows: _____ (c) the Property is currently zoned R-1.

8. **Miscellaneous.** (a) Owner agrees to make the Property available for showing at all reasonable times by Broker, its associates and other brokers designated by Broker. (b) During the Listing Period, Broker may place For Sale signs on the Property. (c) Broker is authorized to disclose all information pertaining to the Property to all parties involved with its marketing and/or sale. Broker is further authorized to place information about the Property in any other informational service medium to advertise and promote the sale of the Property.

Owner The Village of Waynesville Date _____ Phone _____

By _____

Broker Mark Fornes Realty, Inc. Date _____ Phone 937-434-2000

By _____

RENEWAL

This contract is hereby renewed upon the same terms and conditions except as listed below for a period of _____ expiring _____.

MARK FORNES REALTY, INC.

THE VILLAGE OF WAYNESVILLE

By _____ By _____