

ORDINANCE NO. 2009-021

**AN ORDINANCE AUTHORIZING THE VILLAGE MANAGER
TO ENTER INTO AN EXCLUSIVE RIGHT TO SELL CONTRACT
WITH MILLER-VALENTINE 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, Miller-Valentine Realty, Inc. possesses the professional qualification desired by Council.

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

Section 1. That the Village Manager is hereby authorized to enter into an Exclusive Right to Sell Contract with Miller-Valentine 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 _____ day of _____ 2009.

Attest: _____
Staci Morris, Clerk of Council

Earl J. Isaacs, Mayor



EXCLUSIVE SALES LISTING AGREEMENT

Miller-Valentine Realty, Inc.
BROKERAGE AND MANAGEMENT
LICENSED REAL ESTATE BROKER

1. In consideration of the listing for sale of the real property hereinafter described ("Property") by MILLER-VALENTINE REALTY, INC. ("Broker") and Broker's agreement to use its best efforts to effect a sale of same, the undersigned ("Owner") hereby grants to Broker the exclusive right to sell the Property for a period commencing June 1, 2009 and ending midnight June 1, 2010, (the "Term"), at a price of one million, one hundred and ninety nine thousand Dollars (\$ 1,199,000) or lease at a rate of \$95,000 per year triple net. For the Building and approximately 2.5 acres of land. The 24 acres of land not required by the exiting village Hall facility is Approximately 24 acres and will be listed for sale at \$25,000 per acre.
2. The Property is situated in the of Village of Waynesville, County of Warren, State of Ohio , and is further described as 1400 Lytle Road, Approximately 9700 SF building on 2.5 acre.

References herein to the Property shall be understood to include portions of the Property.

3. Owner agrees to pay Broker a sales commission in accordance with Broker's Schedule of Sale and Lease Commissions (the "Schedule"), a copy of which is executed by Owner, attached hereto and hereby made a part thereof. This commission shall be earned for services rendered if, during the Term: (a) the Property is sold to a purchaser procured by Broker, Owner or anyone else; (b) a purchaser is procured, by Broker, Owner or anyone else, who is ready, willing and able to purchase the Property on the price and on the terms above stated, or on any other terms agreeable to Owner; (c) any contract for the sale of the Property is entered into by Owner; (d) Owner removes the Property from the market or the Property is transferred due to eminent domain or the threat thereof, foreclosure, or conveyance in lieu of foreclosure; (e) Owner contributes or conveys the Property to a partnership, joint venture or other business entity; (f) Owner is a corporation, partnership or other business entity and an interest in such corporation, partnership or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property. Broker is authorized to cooperate with and to share its commission with other licensed real estate brokers in accordance with its General Policy on Agency.
4. As used in this Agreement, the term "sale" shall include an exchange of the Property, and also the granting of an option to purchase the Property. Owner agrees that in the event such an option is granted, Owner shall pay Broker a sales commission in accordance with the Schedule on the price for the option and for any extensions thereof. This commission shall be paid upon receipt by Owner of any such payment(s). In the event such an option is exercised, whether during the Term or thereafter, Owner shall also pay Broker a sales commission on the gross sales price of the Property in accordance with the Schedule. Notwithstanding the foregoing, to the extent that all or part of the price paid for the option or any extension thereof is applied to the sales price of the Property, then any commission previously paid by Owner to Broker on account of such option payments shall be credited against the commission payable to Broker on account of the exercise of the option.
5. Owner further agrees to pay Broker a commission in accordance with the Schedule, if, within one hundred twenty (120) calendar days after the expiration or termination of the Term, the Property is sold to, or Owner enters into a contract of sale of the Property with, or negotiations continue, resume or commence and thereafter continue leading to a sale of the Property to any person or entity (including his/her/its successors, assigns or affiliates) with whom Broker has negotiated (either directly or through another broker or agent) or to whom the Property has been submitted prior to the expiration or termination of the Term. Broker is authorized to continue negotiations with such persons or entities. Broker agrees to submit a list of such persons or entities to Owner not later than fifteen (15) calendar days following the expiration or termination of the Term, provided, however, that if a written offer has been submitted it shall not be necessary to include the offeror's name on the list.
6. OWNER FURTHER AGREES THAT (a) IF A LEASE OF THE PROPERTY IS ENTERED INTO DURING THE TERM TO ANYONE, OR (b) IF, WITHIN ONE HUNDRED TWENTY (120) CALENDAR DAYS AFTER THE EXPIRATION OR TERMINATION OF THE TERM, THE PROPERTY IS LEASED TO, OR OWNER ENTERS INTO A CONTRACT TO LEASE THE PROPERTY WITH, OR NEGOTIATIONS CONTINUE, RESUME OR COMMENCE AND THEREAFTER CONTINUE LEADING TO THE LEASE OF THE PROPERTY TO ANY PERSON OR ENTITY AS DESCRIBED IN PARAGRAPH 4 ABOVE, OWNER SHALL PAY BROKER A LEASING COMMISSION IN ACCORDANCE WITH THE SCHEDULE.
7. Commissions shall be payable hereunder when earned or at the earliest of closing, close of escrow, recordation of a deed, lease execution, or taking of possession by the purchaser or tenant.
8. Unless otherwise provided herein, the terms of sale shall be, at the option of the purchaser, either cash or cash to any existing loan. Any offer may contain normal and customary contingencies such as those relating to the condition of the Property, title report, and timing of closing.
9. Owner and Broker agree that the Property will be offered in compliance with all applicable anti-discrimination laws.
10. Owner agrees to cooperate with Broker in bringing about a sale of the Property and to refer immediately to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker. Broker is authorized to accept a deposit from any prospective purchaser and to handle it in accordance with the instructions of the parties unless contrary to applicable law. Broker is exclusively authorized to advertise the Property and, exclusively to place a sign(s) on the Property if, in Broker's opinion, such would facilitate the sale of the Property. Owner and its counsel will be responsible for determining the legal sufficiency of a purchase agreement and any other documents relating to any transaction contemplated by this Agreement.
11. In the event the Property is removed from the market due to the opening of an escrow or acceptance of an offer to purchase the Property during the Term, or any extension thereof, and the sale is not consummated for any reason then, in that event, the Term shall be extended for a period of time equal to the number of days

that the escrow had been opened and/or the Property had been removed from the market, whichever is longer, provided that, in no event shall such extensions (s) exceed one hundred eighty (180) calendar days in the aggregate.

12. Owner agrees to disclose to Broker and to prospective purchasers and tenants any and all information which Owner has regarding present and future zoning and environmental matters affecting the Property and regarding the condition of the Property, including, but not limited to structural, mechanical and soils conditions, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks, in, on, or about the Property. Broker is authorized to disclose any such information to prospective purchasers or tenants.
13. Owner represents that it is the owner of the Property and that, except as may be set forth in an addendum attached hereto, no person or entity who has an ownership interest in the Property is a foreign person as defined in the Foreign Investment in Real Estate Property Tax Act (commonly known as "FIRPTA").
14. If earnest money or similar deposits made by a prospective purchaser or tenant are forfeited, in addition to any other rights of Broker pursuant to this Agreement, Broker shall be entitled to one-half (1/2) thereof, but not to exceed the total amount of the anticipated commission.
15. To the extent permitted by applicable law, Broker is authorized to deduct its commission from any deposits, payments or other funds, including proceeds of sale or rental payments, paid by a purchaser or tenant in connection with a transaction contemplated by this Agreement, and Owner hereby irrevocably assigns said funds and proceeds to Broker to the extent necessary to pay said commissions. Broker is authorized to provide a copy of this Agreement to any escrow or closing agent working on such transaction, and such escrow or closing agent is hereby instructed by Owner to pay Broker's commissions from any such funds or proceeds available. Owner shall remain liable for the entire amount of said commissions regardless of whether Broker exercises its rights under this paragraph.
16. Owner acknowledges that Broker is a regional brokerage firm and that in some cases it may represent prospective purchasers or tenants. Owner desires that the Property be presented to such persons or entities and consents to the dual representation created thereby. Broker shall not disclose the confidential information of one principal to the other.
17. In the event that the Property comes under the jurisdiction of a bankruptcy court, Owner shall immediately notify Broker of the same, and shall promptly take all steps necessary to obtain court approval of Broker's appointment, unless Broker shall elect to terminate this Agreement upon said notice.
18. In the event that the Property becomes the subject of foreclosure proceedings prior to the expiration of this Agreement, then this Agreement shall be deemed suspended until such time as the Owner may reacquire his interest in the Property within the Term. If this Agreement is suspended pursuant to this paragraph, Broker shall be free to enter into a listing agreement with any receiver, the party initiating the foreclosure, the party purchasing the Property at a foreclosure sale, or any other person having an interest in the Property.
19. In the event of any dispute between Owner and Broker relating to this Agreement, the Property or Owner or Broker's performance hereunder, Owner and Broker agree that such dispute shall be resolved by means of binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Depositions may be taken and other discovery obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings in the state where the office of Broker executing this Agreement is located. The arbitrator(s) shall be limited to awarding compensatory damages and shall have no authority to award punitive, exemplary or similar type damages. The prevailing party in the arbitration proceeding shall be entitled to recover its expenses, including the costs of the arbitration proceeding, and reasonable attorney's fees.
20. In the event that Owner lists the Property with another Broker after the expiration or termination of this Agreement, Owner agrees to provide in the subsequent listing agreement that a commission will not be payable to the new broker with respect to transactions for which Owner remains obligated to pay a commission to Broker under paragraphs 4 or 5 hereof. Owner's failure to do so, however, shall not affect Owner's obligations to Broker under paragraphs 4 or 5.
21. Each signator to this Agreement represents and warrants that he or she has full authority to sign this Agreement on behalf of the party for whom he or she signs and that this Agreement binds such party.
22. This Agreement constitutes the entire agreement between Owner and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration, cancellation or withdrawal of this Agreement shall be valid or binding unless made in writing and signed by both Owner and Broker. This Agreement shall be binding upon, and shall benefit, the heirs, successors and assignees of the parties. In the event any clause, provision, paragraph or term of this Agreement shall be deemed to be unenforceable or void based on any controlling state or federal law, the remaining provisions hereof, and each part, shall remain unaffected and shall continue in full force and effect.

23. The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

The undersigned Owner hereby acknowledges receipt of a copy of this Agreement and the Schedule.

Accepted:
Miller-Valentine Realty, Inc. a(n) _____
Owner

Gerry Smith, As Vice President/Agent By: _____

Address: 4000 Miller-Valentine Court Dayton, Ohio 45439

Date: _____
Telephone: 937-297-9368 Telephone: _____

CONSULT YOUR ADVISORS – This document has legal consequences. No representation or recommendation is made by Broker as to the legal or tax consequences of this Agreement or the transaction(s) which it contemplates. These are questions for your attorney and financial advisors.