

Marcus & Millichap

Real Estate Investment Services

REPRESENTATION AGREEMENT

(EXCLUSIVE RIGHT TO SELL OR EXCHANGE)

The undersigned County of Chemung New York ("Seller"), hereby agrees to enter into this Exclusive Right To Sell Or Exchange Representation Agreement ("Agreement"), and hereby employs Marcus & Millichap Real Estate Investment Services of New York ("Agent"), and grants to Agent, for a period of time as set forth herein, the exclusive and irrevocable right and authority to sell or exchange that certain real property ("Property") located at:

Chemung County Health Center
103 Washington Street, Elmira, NY 14901

The "exclusive and irrevocable right and authority" granted by this Agreement makes Marcus & Millichap the exclusive agent of the Seller during the Term of this Agreement to invite offers for the potential sale of the Property. This Agreement does not authorize the Agent to enter into or endorse any binding agreement of sale or letter of intent for the sale of the property on behalf of the Seller. The Seller reserves the right to look at any and all offers of purchase of the facility, and accept or decline same in the Seller's complete and exclusive discretion, for any reason whatsoever. This Representation Agreement shall not be construed as a commitment by the Seller to sell the property, which is subject to County legislative approval (per the attached Legislative Resolution authorizing the County to enter into this Agreement). Nor shall this Agreement trigger any obligation to pay a commission to the Agent as outlined in Section 3.1, below, unless the Seller (with Legislative approval) first exercises its discretion to enter into an agreement of sale or letter of intent, and an event triggering a commission obligation occurs, as outlined in Paragraph 3.1(a-e).

1. **PURCHASE PRICE/TERMS:** Agent is authorized to offer the Property for sale at a gross purchase price of seven million five hundred thousand dollars (\$ 7,500,000) in cash, or upon the terms stated in the Addendum attached hereto, if any, or in all cases, upon such other terms and conditions as Seller may approve in writing.

2. **TERM:** This Agreement shall commence on March 1, 2013 (the "Commencement Date") and shall continue for a period of 364 days from such date through and including midnight on February 28, 2014 (the "Original Term"). If an agreement of sale or letter of intent for the sale is executed, and if said agreement or letter of intent is revoked or terminated, or the transaction is canceled, the Original Term shall be extended by the number of calendar days during which the sale agreement or letter of intent was in effect (the "Extended Term"). The purpose of this automatic extension is to allow agent the opportunity to expose the Property to the marketplace for the full period of time contemplated by this Agreement. The Original Term, as the same may be extended by the Extended Term, or by any other extensions as set forth herein, or as otherwise may be agreed to by Seller and Agent, shall collectively be referred to herein as the "Term".

3.1 **COMMISSION:** In consideration of the services to be rendered by Agent, Seller agrees to pay to Agent a commission equal to three percent (3%) of the purchase price of the Property (the "Commission") upon the occurrence of any of the following events:

a. A buyer is procured during the Term who is ready, willing and able to purchase the Property on the terms and conditions set forth herein or on any other terms and conditions acceptable to Seller and the transaction closes; or

b. The Property is sold, exchanged or otherwise conveyed during the Term, whether by Seller or any other person or entity; or

c. Intentionally omitted;

d. A sale, exchange or other conveyance of the Property is made during the Term, or within nine (9) months after the expiration of the Term to a person or entity with whom Agent has negotiated, or to whose attention the Property has been brought, or who was introduced to Seller as a prospective purchaser (herein, "Prospective Purchaser"), provided that (i) the name of any such person or entity has been submitted to Seller by delivery of a letter of intent, contract, or written offer to purchase the Property prior to expiration of the Term, or (ii) written notice has been given to Seller of the name of the Prospective Purchaser within fifteen (15) calendar days after the expiration of the Term. With respect to a sale, exchange or other conveyance to any Prospective Purchaser, Agent shall conclusively be deemed to be the procuring cause. The term "Prospective Purchaser" shall include that person or entity to whose attention Agent has brought the Property, as well as any partnership, joint venture, corporation, trust or other similar entity which that person or entity represents or in which it holds an ownership or beneficial interest.

e. Seller and Broker agree that if completion of a sale of the Property pursuant to a duly executed purchase agreement is prevented by default of the Buyer, Seller shall be obligated to pay to Broker its full commission as if the transaction closed, and such commission shall be paid from the Earnest Money, any damages or other monetary compensation (including liquidated damages) collected from said Buyer by suit or otherwise as a consequence of Buyer's default, if and when such damages or other monetary compensation are collected. However, the amount due Broker shall not exceed the brokerage commission set forth above. The term "Property" shall include any interest therein or in its ownership.

3.2 The Commission shall be paid at the Closing, and Agent shall be entitled to make demand of any escrow holder or closing attorney for payment from the proceeds of sale.

THE COMMISSION ESCROW ACT: AT THE TIME OF CLOSING, YOU MAY BE REQUIRED TO DEPOSIT THE BROKER'S COMMISSION WITH THE COUNTY CLERK IN THE EVENT THAT YOU DO NOT PAY THE BROKER HIS OR HER COMMISSION AS SET FORTH HEREIN. YOUR OBLIGATION TO DEPOSIT THE BROKER'S COMMISSION WITH THE COUNTY CLERK MAY BE WAIVED BY THE BROKER.



3.3 Notwithstanding anything contained in this Representation Agreement to the contrary, the Seller shall have no obligation to pay a "commission" should the Seller exercise its discretion to not enter into an agreement of sale or letter of intent for the sale of the Property.

4. **OTHER TERMS AND CONDITIONS:**

a. **Indemnification:** Seller agrees to indemnify and hold Agent harmless from any and all liability, damages, losses, causes of action, or other claims (including attorneys' fees and other defense costs) arising from or asserted in connection with any incomplete or inaccurate information provided by Seller, or any material information concerning the Property which Seller has failed to disclose and for any claims against Agent for environmental responsibility with respect to the Property.

b. **Notification of Inquiries:** Owner agrees to promptly refer to Agent all inquiries of anyone interested in the Property or who approaches Seller in any direct or indirect way with respect to the Property. It is understood and agreed that Seller shall provide Agent with fully executed copies of any and all Letters of Intent, Agreements of Sale, Settlement or Closing Statements, and an executed FIRPTA form on or before the Closing date.

c. **Inspections:** Seller agrees that Agent and its representatives shall have the right to enter upon and inspect the interior and exterior of the Property with prospective buyers at reasonable hours. Seller agrees to furnish and make available to Prospective Purchasers all financial data concerning the Property.

5. **SCOPE OF AGENT'S AUTHORITY AND RESPONSIBILITY:** Agent shall assist Seller in marketing the Property and in negotiating the terms and conditions of sale with any prospective purchasers. Agent shall not, however, have authority to bind Seller to any contract or purchase agreement. Agent shall not be responsible for performing any due diligence or other investigation of the Property, or for providing professional advice with respect to any legal, tax, engineering, construction or hazardous materials issues. Except for confidential information regarding Seller's business or financial condition and the negotiation of the terms of a purchase agreement between Seller and a prospective purchaser, Seller and Agent agree that their relationship is at arm's length.

6. **AFFILIATED BROKERS/DUAL AGENCY:** Agent is affiliated with other Marcus & Millichap brokerage companies in other states. Agent shall disseminate information about the Property to such affiliated brokers, inviting the submission of offers on the Property. Seller authorizes Agent and any affiliated broker to represent any prospective buyer in the acquisition of the Property, and to submit offers on behalf of such buyers. Seller understands that this authorization may result in Agent's representing both Seller and a prospective buyer, and Seller hereby authorizes and consents to such dual representation and agrees to execute a confirmation of such disclosed dual agency if prospective purchaser is already represented by an affiliated entity.

7. **PERSONNEL ASSIGNMENT:** It is expressly understood that Joshua Jandris & Mark Myers shall be assigned primary responsibility for supervising and conducting the sales and marketing activities for the Property on behalf of Broker. Broker shall use its best efforts to provide Owner with

thirty (30) days advance written notice of any change of personnel, and Owner may approve or disapprove any such change. Broker agrees to use employees, agents, and other personnel who are acceptable to Owner. In the event Owner determines in its sole, absolute and arbitrary discretion that such personnel are not diligently pursuing the leasing and sales programs, Broker agrees to make personnel changes within fifteen (15) days from transmittal of written notice by Owner. If Broker and Owner are unable to agree on such personnel changes, then Owner may terminate this Agreement by giving Broker fifteen (15) days written notice. In no event shall Broker or its agents or employees be deemed to be employees of Owner but shall be independent contractors with respect to Owner for the limited purposes of the Agreement.

8. **ARBITRATION OF DISPUTES:** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by final binding arbitration administered before a single arbitrator by the American Arbitration Association (AAA) under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator) may be entered in any court having jurisdiction thereof. Unless the parties agree otherwise, the arbitration shall be governed by the AAA's Expedited Procedures. The parties also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings. The AAA's fees and charges shall be paid equally by the parties as they become due, provided that such costs shall be recoverable by the prevailing party in accordance with Paragraph [9] of this Agreement. If either party fails to pay its share of the AAA's fees or expenses as they become due, and such failure is not cured within five days of receiving written notice thereof from the other party or the AAA, such party shall be deemed to have defaulted and the arbitrator shall enter final judgment in favor of the non-defaulting party.

9. **ATTORNEYS' FEES:** In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover its costs and expenses, including costs and expenses of arbitration, court costs and expenses incurred on appeal, and reasonable attorneys' fees incurred in any dispute through arbitration and appeal of and final judgment in addition to any other relief to which such party may be entitled.

10. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth where the Property is located.

11. **SEVERABILITY:** In the event any term or provision of this Agreement shall be held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.

12. **SELLER AND AGENT AGREE THAT THE PROPERTY WILL BE OFFERED FOR SALE AND WILL BE SOLD WITHOUT REGARD TO RACE, COLOR, RELIGIOUS CREED, SEX, ANCESTRY, AGE, NATIONAL ORIGIN, DISABILITY OR FAMILIAL STATUS.**

13. **WARRANTY OF AUTHORITY:** Seller represents and warrants to Agent that the undersigned Seller has the legal right to sell the Property and to bind all other individuals and entities that may have an ownership interest in the Property.

14. **ADDENDA:** Any addendum attached hereto and either signed or initialed by the parties shall be deemed a part hereof. This Agreement expresses the entire agreement of the parties and

supersedes any and all previous agreements between them with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge the terms hereof, and there are no warranties or representations of any nature whatsoever; either express or implied, except as set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

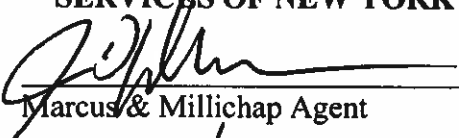
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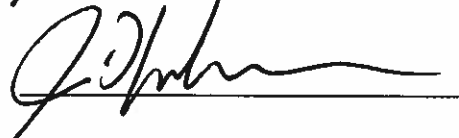
The undersigned Seller and Agent understand that this is a legal document and agree to the terms and conditions set forth in this Agreement, and Seller acknowledges receipt of an executed copy hereof and that Seller has read the Agreement carefully.

SELLER:  DATE: 5-3-13

SELLER: _____ DATE: _____

AGENT: MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES OF NEW YORK

BY:  DATE: 4/30/13
Marcus & Millichap Agent

BY:  DATE: 4/30/13
New York Broker of Record
Marcus & Millichap REIS of New York

SELLER UNDERSTANDS AND ACKNOWLEDGES THAT BROKER IS NOT QUALIFIED TO PROVIDE, AND HAS NOT BEEN CONTRACTED TO PROVIDE, LEGAL, FINANCIAL OR TAX ADVICE, AND THAT ANY SUCH ADVICE MUST BE OBTAINED FROM SELLER'S ATTORNEY, ACCOUNTANT OR TAX PROFESSIONAL