**COMHAIRLE CHONTAE ÁTHA CLIATH THEAS
SOUTH DUBLIN COUNTY COUNCIL**

**MEETING OF SOUTH DUBLIN COUNTY COUNCIL**

**Monday, 25 September 2017**

**ITEM NO. H-I (9) G**

**Re: Proposed short term lease to Flynn & Flynn Global Trade Ltd. T/A**

**The Happy Pear to operate a restaurant, retail shop, interpretive centre and ancillary activities at The Round Tower - Brú Chrónáin Visitor Centre, Clondalkin, Dublin 22**

The development of the Round Tower Visitor Centre, Clondalkin as identified outlined red on drawing LD 1456 was completed by the Council in June 2017.

In 2015 and 2016, the Council initiated two separate public procurement processes to source an operator for the restaurant, retail shop and interpretive centre which forms part of the Round Tower – Brú Chrónáin Visitor Centre. Both processes did not result in the appointment of suitable operators.

Following review of available options it was decided to engage a retail food consultant to develop a business case, identify suitable operators and make a recommendation on operators (including related negotiated terms and conditions), in consultation with the Council. This was set out in a request for tender published on 16th September 2016. On receipt of the tender it was recommended to engage James Burke & Associates to consult in the engagement of operator(s) for the café/restaurant, retail and related facility services for the Round Tower – Brú Chrónáin Visitor Centre (Dev/100/16 refers).

Following issue of expressions of interest by James Burke & Associates, eight companies expressed an interest in the proposal. Site visits were carried out on the premises of the eight interested parties during November and December 2016 and closing date of submission for proposals as set out by James Burke & Associates was 3rd January 2017. Two submissions were received.

Following detailed consideration of both submissions, it was agreed by the evaluation panel, in consultation with James Burke & Associates to award the operation for services to Flynn & Flynn Global Trade Ltd. T/A The Happy Pear being one of the two submissions received.

On advices of the Law Agent, it was recommended that a Temporary Convenience Letting Agreement for a duration of four months or until alternative arrangements are made, be granted by South Dublin County Council to Flynn & Flynn Global Trade Ltd. T/A The Happy Pear, for the purposes of operating the restaurant, retail shop, interpretive centre and ancillary activities at the Round Tower – Brú Chrónáin, Clondalkin.

This Agreement was duly executed and commenced 29/6/2017.

Following a review of the operation by The Happy Pear since opening on 29/6/2017 and the positive feedback, press reviews and visitor footfall, the Council is satisfied to facilitate the continued operation of a restaurant, retail shop, interpretative area and ancillary activities by The Happy Pear. To this end the Council and The Happy Pear in consultation with legal representatives from both sides have established terms for the continued operation which have been accepted and agreed by both parties

Accordingly, I now recommend that Council grant a lease tenancy to Flynn & Flynn Global Trade Ltd. T/A The Happy Pear for the continued operation of a restaurant, retail shop, interpretative centre and ancillary activities at the Round Tower – Brú Chrónáin Visitor Centre, Clondalkin, Dublin 22 as identified within the site outlined red on drawing LD 1456 in accordance with Section 211 of the Planning and Development Act, 2000 and subject to the provisions of Section 183 of the Local Government Act, 2001 to include the following terms and conditions:-

1. That the lease tenancy will be for a period of 4 years with an option for a new 2 year lease at the expiry of the initial 4 year term. The commencement date of the Lease to be 29th June 2017. It is expressly provided that there are no automatic renewal rights after the term subject to the option for a new lease.
2. The leased premises is as indicated outlined in red on drawing LD 1456
3. The annual rent shall be payable by the Tenant at 5% of site revenue net of VAT and other taxes.
4. The Tenant shall be granted a six month rent free period.
5. The Council and the tenant to enter into a Service Level Agreement for the day to day running of the for the restaurant, retail shop, interpretive centre and ancillary activities
6. The Tenant shall be responsible for all outgoings, including commercial rates, charges, utility bills and refuse charges which are directly associated with the commercial elements of the leased premises during the period of the lease. The apportionment costs to be further agreed.
7. The Lease shall contain covenants in respect maintenance, repair, replacement and servicing of the building and infrastructural reports.
8. The Tenant to effect Public Liability and Employers Liability insurance to include indemnities to the Council in respect of the operation in a form satisfactory to the Council insurers.
9. The Tenant shall not assign, grant any sub interests, make any alterations or part with possession of the leased area without the prior consent of the Council.
10. That the Council, its Employees or Agents shall have the right at all reasonable times to enter upon the leased area to ensure that the Tenant is complying with the terms of the Lease or for any other reasonable purpose.
11. In the event of a breach of the Lease terms, either party may terminate the Lease by providing not less than one month notice in writing to the other party.
12. That each party shall be responsible for their own legal costs.
13. That each party shall use their best endeavours to complete the transaction within a reasonable timeframe following adoption of the disposal resolution.
14. That the Law Agent shall draft the necessary legal agreements and shall include any further terms deemed appropriate in Agreements/Leases of this nature.
15. That no contract enforceable at Law is created or intended to be created until such time as the Lease has been executed by both parties.
16. That the disposal is subject to the necessary approvals and consents being obtained.

The Council assembled the site subject to the within disposal over the period 1997 to 2016 by way of strategic acquisitions and possessory title for future development purposes from a series of property owners namely Kay Pollard, Oakfield Trust, Clondalkin Property Development Company, Rory Burgess, Rosemary Ryan, Brendan O’Connor, Marie O’Connor, Carol Nolan, Jessica & Margaret Murray, Thomas Coates, Christopher Keenan and James McCann.

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Daniel McLoughlin

Chief Executive