

RESOLUTION 164-17

**RESOLUTION TO AUTHORIZE EXECUTION OF EXCLUSIVE RIGHT TO
SELL PROPERTY KNOWN AS BLOCK 1404, LOT 22 BETWEEN THE FLYNN
COMPANY AND THE BOROUGH OF CLAYTON**

WHEREAS, the Borough of Clayton is the owner of a vacant parcel of land known as Block 1404, Lot 22 and located within the Borough's Redevelopment Area along Delsea Drive; and

WHEREAS, the Borough of Clayton is interested in the sale of said property as part of its Redevelopment efforts along the Delsea Drive corridor; and

WHEREAS, the Borough of Clayton has determined that the property be listed for sale to assist in the marketing and ultimate sale of the property; and

WHEREAS, The Flynn Company is a licensed real estate company; and

WHEREAS, the Borough of Clayton and The Flynn Company need to enter into an Exclusive Right to Sell Agreement ("Agreement") to provide for the sale of the Borough's property known as 408 N. Delsea Drive, Clayton, New Jersey, also known as Block 1404, Lot 22; and

WHEREAS, the governing body has reviewed the terms and conditions of the attached Exclusive Right to Sell Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Clayton, County of Gloucester and State of New Jersey as follows:

1. That the governing body does hereby approve and authorize the execution of the attached Exclusive Right to Sell Agreement between the Borough of Clayton and The Flynn Company for the sale of the Borough's vacant lot known as Block 1404, Lot 22 until August 1, 2018.
2. That the Mayor or Borough Administrator be and hereby is authorized to execute said Agreement on behalf of the Borough of Clayton.

ADOPTED at a meeting of the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey held on Thursday, August 10, 2017.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Attest:



CHRISTINE NEWCOMB, Municipal Clerk

CERTIFICATION

I, Christine Newcomb, Municipal Clerk, of the Borough of Clayton, in the County of Gloucester, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton held on Thursday, August 10, 2017.



CHRISTINE NEWCOMB
Municipal Clerk

EXCLUSIVE RIGHT TO SELL

THIS AGREEMENT is made and entered into as of July, 2017 by and between THE FLYNN COMPANY, a Pennsylvania corporation (hereinafter referred to as "Agent", and the BOROUGH OF CLAYTON, and its heirs and successors, (hereinafter referred to as "Owner").

1. **APPOINTMENT.** Owner hereby appoints Agent as Owner's sole and exclusive agent to sell the following property ("Property"): 408 N. Delsea Drive, Clayton, NJ 08312 for a gross sale price of not less than Ninety nine thousand nine hundred and ninety nine dollars and no cents (\$99,999.00) or at a lower price, and on such terms, as may be acceptable to Owner.

2. **TERM.** This Agreement shall be in force for a term commencing on the date written above and terminating on August 1st, 2018, unless extended in writing by Owner and Agent.

3. **COMMISSION.**

(a) If (i) the Property, any portion thereof or any interest therein, shall be sold, transferred or exchanged during the term of this Agreement, through the efforts of Agent, Owner or any other person, or (ii) a purchaser who is ready, willing and able to purchase the Premises, any portion thereof or any interest therein under the aforesaid terms is obtained by any person, Owner shall pay Agent, in cash at closing for such sale, transfer or exchange, a commission equal to six percent (6 %) of the gross sale price (or if the Premises is exchanged, the price set forth in Section 1). For purposes of the Agreement, if the Property constitutes substantially all of the assets of a corporation, partnership trust or other entity, a sale or exchange of stock, partnership interests, beneficial interests or other interests in such entity shall be deemed a sale or exchange of the Property for purposes of Agent's right to a commission.

(b) Owner will pay the same commission to Agent if, within a period of one year after this Agreement expires (Follow-Up Period), Owner or any other person sells all or any portion of the Premises or any interest therein to anyone with whom Agent inspected the Premises during the term of this Agreement (or any other person controlled by or under common control with such person), provided that such person is identified on a list of the persons with whom Agent inspected the Premises during the term hereof, which list must be mailed to Owner by Agent, at the address set forth above, within two (2) weeks after the termination of this Agreement. Owner will also pay a commission to Agent if a potential Client signs a Purchase Agreement after expiration of the Follow-Up Period, if there is continuing and ongoing negotiations during the Follow-Up Period or if the execution of the Purchase Agreement was delayed pending zoning and municipal approvals.

4. **DEFAULTS.** If a purchaser of the Premises defaults under an agreement of sale and fails to complete closing, Owner will pay to Agent one-half (1/2) of the deposit received

under such agreement, but not more than the commission to which Agent was entitled if closing had been completed. If closing fails to occur under an agreement of sale due to default by Owner, Agent shall be entitled to the full commission to which Agent was entitled if closing had been completed.

5. **SIGNS.** During the term of this Agreement, Agent is authorized to display Agent's sign upon the Premises, and Owner agrees that Agent's sign will be the only sale sign displayed on the Property.

6. **ADVERTISING.** Agent is hereby authorized to incur advertising expenses to sell the Premises not to exceed (\$1,000.00). Owner will reimburse Agent for advertising expenses upon presentation of invoices therefor.

7. **COOPERATION AND INDEMNIFICATION.**

(a) Owner will cooperate with Agent in bringing about the sale of the Premises, and will refer all inquiries with respect thereto to Agent. Owner will defend, indemnify and hold Agent harmless from and against claims, disputes, litigation and damages (including attorneys' fees) arising from Agent's engagement hereunder (including without limitation, any such claims or litigation arising from the physical or environmental condition of the Premises), unless caused by Agent's gross negligence or willful misconduct. Any agreement of sale signed by Owner will provide that the purchaser or tenant has not relied on any representation from Agent. Owner will name Agent as an additional insured under Owner's policies of liability, casualty, and workmen's compensation insurance, which Owner will maintain in reasonably adequate amounts, pertaining to the Premises. Owner will furnish Agent with certificates confirming such insurance and providing for notice to Agent 30 days prior to cancellation or modification thereof.

(b) Owner shall disclose to Agent in writing the presence of any hazardous wastes, hazardous substances, asbestos, petroleum products, PCBs or underground storage tanks at the Property known to Owner. Agent shall be entitled to rely on such written disclosure in selling the Property.

8. **AUTHORITY.** Owner represents to Agent that Owner has the legal right and authority to sell the Premises, and agrees that Agent's sole and exclusive right to sell the Premises will be binding upon Owner's heirs, personal representatives, successors and assigns. Owner and Agent each acknowledge receipt of an exact copy of this agreement.

9. **ESCROWS.** Pursuant to the Real Estate Licensing law of the State of New Jersey, all payments of money paid on account of the sale of the Premises, regardless of the persons designated as payee, will be retained in an escrow or fiduciary account for the benefit of the parties to the transaction.

10. **COMMISSION NEGOTIABLE.** Owner acknowledges that before signing this Agreement, Owner was informed that Agent's commission and the expiration date of this Agreement were negotiable.

11. **FIRPTA INDEMNITY.** Pursuant to Section 1445 of the Internal Revenue Code, and the regulations issued thereunder ("FIRPTA"), Owner may agree to provide the buyer with a "nonforeign certificate" indicating that Owner is not a foreign person for purposes of FIRPTA. Agent may be subject to liability if Owner issued a false nonforeign certificate. Owner hereby agrees to indemnify, defend and hold Agent harmless from liability for any tax, penalty, interest or other charge imposed upon Agent under FIRPTA resulting from a false nonforeign certificate given by Owner to the buyer.

12. **INTEREST.** Any sum owing to Agent by Owner under the terms of this Agreement which shall not have been paid when due shall bear interest at the rate of one percent (1%) over the then current prime rate of interest as publicly announced from time to time by TD Bank, New Jersey (if the payor is an individual, then the interest rate shall be the highest legal rate of interest up to such rate) from the date when the same becomes due and payable by the terms hereof until paid.

13. **LEASES.** In the event that, during the term of this Agreement, all or any portion of the Property shall be leased or rented by Agent, Owner, or any other person, Agent shall have the exclusive right to negotiate the Lease, and Owner shall pay Agent at the time of the signing of the Lease by Owner and the tenant a leasing commission of the rents payable for the term of the Lease and any renewal, extension, option or expansion terms. Owner will pay the same commission to Agent if, within a period of one year after this Agreement expires (Follow-Up Period), Owner or any other person leases all or any portion of the Premises or any interest therein to anyone with whom Agent negotiated during the term of this Agreement (or any other person controlled by or under common control with such person), provided that such person is identified on a list of the persons with whom Agent inspected the Premises during the term hereof, which list must be mailed to Owner by Agent, at the address set forth above, within two (2) weeks after the termination of this Agreement. Owner will also pay a commission to Agent, if a potential Client signs a Lease Agreement after expiration of the Follow-Up Period, if there is continuing and ongoing negotiations during the Follow-Up Period or if the execution of the Lease Agreement was delayed pending zoning or municipal approvals.

14. **AGENCY.** Agent acknowledges a willingness to cooperate with subagents and buyer's agents in procuring a buyer or tenant for the Property. A buyer's agent, even if compensated by the listing broker or Owner/Landlord will represent the interests of the buyer/tenant. Owner acknowledges that Agent is a regional real estate services and that in some cases it may represent prospective buyers and/or tenants. Owner desires that the Property be presented to such persons or entities and consents to the dual agency created thereby. Agent agrees not to disclose the confidential information of one principal to the other. The Agent has the duty to disclose in a reasonably practicable period of time any conflict of interest that arises during the term of this agreement.

15. **LEGAL COUNSEL.** Owner acknowledges that Agent is not an attorney and that Agent makes no representations about the legal sufficiency of any documents in the transaction.

Owner and its counsel will be responsible for determining the legal sufficiency of a lease or any other documents relating to any transaction contemplated by the Agreement.

16. **LEGAL PROCEEDINGS.** In case either party initiates legal proceedings to enforce this Agreement or any term hereof, or to recover damages because of an alleged breach, the prevailing party shall be entitled to recover from the breaching party its reasonable attorney fees and costs. Each party waives the right to a jury trial in any such proceedings. If the Agent is granted any or all of the Agent's demands, Agent shall be considered the prevailing party.

17. **COMMISSION SPLITS.** LISTING BROKERS USUALLY COOPERATE WITH OTHER BROKERAGE FIRMS BY SHARING INFORMATION ABOUT THEIR LISTINGS AND OFFERING TO PAY PART OF THEIR COMMISSION TO THE FIRM THAT PRODUCES A BUYER. THIS IS GENERALLY REFERRED TO AS THE "COMMISSION SPLIT". SOME LISTING BROKERS OFFER TO PAY COMMISSION SPLITS OF A PORTION OF THE GROSS COMMISSION; USUALLY EXPRESSED AS A PERCENTAGE OF THE SELLING PRICE, LESS A SIGNIFICANT DOLLAR AMOUNT. OTHER LISTING BROKERS OFFER A PORTION OF THE GROSS COMMISSION LESS ONLY A MINIMAL LISTING FEE OR LESS ZERO.


THE AMOUNT OF COMMISSION SPLIT YOUR BROKER OFFERS CAN AFFECT THE EXTENT TO WHICH YOUR PROPERTY IS EXPOSED TO PROSPECTIVE BUYERS WORKING WITH LICENSEES FROM OTHER BROKERAGE FIRMS.

PER YOUR REQUEST, ON THIS LISTING, THE BROKER IS NOT OFFERING A FULL COMMISSION TO POTENTIAL COOPERATING BROKERS WITH AN OVERRIDE TO THE LISTING BROKER.

IF YOU FEEL THAT THIS MAY RESULT IN YOUR PROPERTY RECEIVING LESS THAN MAXIMUM EXPOSURE TO BUYERS, YOU SHOULD DISCUSS THOSE CONCERNS WITH THE LISTING SALESPERSON OR HIS/HER SUPERVISING BROKER.

18. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of New Jersey. Time is of the essence with regard to all dates in this Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement the day and year first above written.


_____ (OWNER)

By: Tom Bianco _____ (SEAL)

Title: Mayor

THE FLYNN COMPANY (AGENT)

By: _____ (SEAL)

Kevin D. Flynn

Title: President