

**Hilton Local Development  
Meeting Minutes of November 1<sup>st</sup>, 2011**

Present: Joe Lee, Walt Horylev, Jim Gates, Jim Bimmler & Larry Speer.  
Treasurer Janet Surridge  
Secretary Shari Pearce

Mr Lee called the meeting to order at 7:00 pm.

**Sale of Hovey Street Property**

Mrs Surridge gave the Board an update on the pending purchase contract. The Buyers have informed us that there is a good possibility that this contract will not close by the expiration date of January 1, 2012. Discussion followed.

**Resolution** that if the Purchase & Sale Contract between Robert Trowbridge and John Dianni fails to close on or before January 1<sup>st</sup>, 2012, their \$2,500 security deposit will be forfeited per the terms of that contract. Motion was made by Mr Speer, seconded by Mr Bimmler. Carried unanimously 5-0

A lengthy discussion took place about re-listing our property for sale. Mrs Surridge informed the Board that our current tenant, Fitness Warehouse Inc., is interested in purchasing the property. According to our attorney, we can enter into a purchase contract with that company so long as the contract contains a clause that states "subject to the release of the prior contract." She provided a copy of a proposed contract and a financial report which showed a projected cash flow through March 31, 2012.

**Resolution** to offer the following Purchase & Sale Contract to Fitness Warehouse Inc for the sale of #35-39 Hovey Square:

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the HILTON LOCAL DEVELOPMENT CORPORATION, having offices at 59 Henry Street, Hilton, New York 14468, (the "Seller"), and FITNESS WAREHOUSE, INC., having offices at 35/39 Hovey Square, Hilton New York, 14468, (collectively the "Buyer").

1. Property to be Conveyed. Seller agrees to sell and Buyer agrees to purchase all of Seller's right, title and interest in and to the following:

(a) Certain plots, pieces or parcels of land commonly known as 35 and 39 Hovey Square in the Village Hilton, Town of Parma, County of Monroe, New York, and identified as Tax Account Number 032.22-1-3.1 and Tax Account Number 032.22-1-2.1 respectively (collectively the "Premises");

(b) All buildings and improvements located on the Premises;

(c) All fixtures, furnishings, and other personal property, if any, belonging to the Seller which are attached to the Premises;

(d) With respect to the Premises, the conveyance will also include all right, title and interest of Seller, if any, in and to:

(i) strips and gores of land adjoining or abutting the Premises, if any;

(ii) any land lying in the bed of any street, road, avenue or alley, open or proposed, public or private, in front of, running through or adjoining the land, to the center line thereof, and any award made or to be made in lieu thereof, and in and to any unpaid award for damage by reason of a change in grade of any street;

(iii) any easement, privilege or right-of-way over, contiguous or adjoining the Premises, and all other easements, if any inuring to the benefit of the land or buildings or the fee owner thereof; and

(iv) the appurtenances and hereditaments belonging or in any way appertaining to the Premises.

2. Conditions of the Premises. In all respects, Buyer accepts the Premises "as is".

3. Purchase Price and Terms. Buyer agrees to pay to Seller as the total purchase price for the Premises the sum of \$230,000.00 payable by a delivery of cash, bank draft or certified check at time of closing.

4. Adjustments. The following will be prorated and adjusted between the Seller and the Buyer as of the date of closing, excluding any delinquent items, interest and penalties: current taxes computed on a fiscal year basis, charges or assessments, water, pure water and sewer charges and other utility charges.

5. Title Documents and maps. At time of closing, Seller will tender to Buyer a warranty deed with lien covenant conveying good and marketable title warranting same to be free and clear of all liens and encumbrances except public utility easements, provided those easements do not encroach upon the improvements on the Premises, and restrictive covenants of record, provided that those covenants have not been violated. Seller will also execute and furnish such other documents as may be reasonably required to provide Buyer with good and marketable title as provided herein. Seller agrees to furnish, at Seller's expense, promptly after execution of this Agreement by both parties, fully guaranteed tax, title, and United States District Court searches, dated or redated subsequent hereto. At its option, Buyer may obtain an instrument survey of the premises at Buyer's expense.

6. Rejection of Title. In the event that Buyer raises an objection to Seller's title which, if valid, would render the title unmarketable, Buyer shall accept insurable title rather than marketable title, and Seller may, in its discretion, secure a commitment for fee title insurance to insure marketability of title against the objections raised and at standard rates and for a face amount equal to the purchase price. Seller will pay the cost of any such fee title insurance.

7. Possession. Buyer agrees to take title subject to the existing lease of the premises by the Buyer, who is presently in possession and occupancy of the Premises in furtherance of the terms of such lease.

8. Costs. Seller will be responsible for the cost of any revenue stamps required to be attached to the deed and the recording of the deed. Buyer will be responsible for any mortgage recording fee, the mortgage tax, and the cost to file any report with or required by the State Board of Equalization.

9. Closing. The closing will occur on or before the one hundred eightieth (180<sup>th</sup>) day following the execution of this Agreement, or on or before the sixtieth (60<sup>th</sup>) day following removal of the Buyer's mortgage contingency pursuant to paragraph 11 hereinafter, whichever occurs first, at the offices of Buyer's lender, lender's attorneys or such other time and place mutually agreed upon by the parties.

10. Warranties and Representations of Seller. The Seller warrants and represents to the Buyer as follows:

(a) Authority. Upon acceptance of this Agreement, Seller will have taken all action advisable, necessary and proper to authorize and approve the acceptance, execution and delivery of this Agreement and the performance of its terms. This Agreement, once accepted by Seller, will constitute a valid and legally binding obligation of the Seller enforceable against Seller in accordance with its terms.

(b) Ownership. The Seller is the only entity whose authorization and approval is necessary to the effectiveness of this Agreement and consummation of the transactions contemplated herein. No other individual, corporation, organization or entity owns or has an interest in the Premises. Notwithstanding the foregoing, Buyer is aware of an existing lease of the Premises to the Fitness Warehouse, and specifically agrees to take title subject to said lease, which shall be assigned to the Buyer at closing. Thereafter, Buyer shall be solely responsible for all of the Seller's obligations to the tenant as Landlord and shall indemnify and hold the Seller harmless with respect thereto.

(c) Litigation. There are no suits, actions, proceedings or other litigation or know investigations of or against the Seller, threatened or pending, which would affect title to or use of the Premises or which would affect or delay consummation of the transactions set forth herein.

(d) Liabilities. There are no outstanding liabilities or obligations of Seller of any nature, whether direct or indirect, absolute, contingent, accrued or otherwise, whether arising out of contract, tort, statute or otherwise, which would affect title to or use of the Premises or which would affect or delay consummation of the transactions set forth herein.

(e) Title to Assets. The Seller has good and marketable title to the Premises free and clear of all claims, liens, mortgages, security interests, or other encumbrances, except as otherwise expressly provided in this Agreement.

(f) Use of the Premises. The Premises are zoned for and in full compliance with all restrictive covenants and zoning, building and other applicable orders, laws, rules and regulations of any federal, state, local or governmental body or authority relating to the current and intended use of the Premises for commercial use, including but not limited to use as a fitness facility.

(g) Sewers and Utilities. The Premises are serviced by public water and public sewers. All water and sewer lines and other utility services are connected to service provided by a public authority. All such water, sewer and other utility service provided to the Premises cannot be interrupted, diminished or cut-off by anyone other than a public authority.

(h) Governmental Approval. No consent of any governmental agency, other than the Seller, is required to consummate the transactions set forth herein.

(i) Licenses, Permits, Warranties and Service Contracts. All licenses, permits, warranties and service contracts relating to the Premises are in full force and effect and will not be affected by the consummation of the transactions contemplated herein. The Seller has performed no act or omission which adversely affects, nullifies or terminates any of such licenses, permits, warranties and service contracts.

(j) New Agreements. Seller will not enter into any new tenancies, service agreements or contracts, following the execution of this Agreement, without first obtaining the prior written consent of the Buyer.

(k) Environmental. To best of Seller's knowledge, there are no environmental problems relating to the Premises including, but not limited to, the existence on or under the surface of the Premises of any hazardous waste or hazardous substance or any material of any substance, the presence of which violates any federal, state or local environmental or other laws or which require any special permit, equipment, process or technique for its removal.

11. Mortgage Contingency. Unless waived by Buyer in writing, all obligations of the Buyer under this Agreement are subject to receipt by the Buyer, within one hundred fifty (150) days of execution of this Agreement, of a written commitment from a lending institution for a purchase money mortgage in the principal amount not to exceed \$230,000.00, with interest at a rate not to exceed 6.5%, amortized and repayable over a term of thirty (30) years and containing such terms as are reasonably acceptable to Buyer in its discretion.

12. Risk of Loss and Condemnation. The risk of loss or damage to the Premises by fire or other causes until the delivery of the deed to the Buyer is assumed by Seller. Seller represents that it has no knowledge of any proceedings instituted by any municipal, state, or federal agency to condemn or acquire the premises, or any portion of it, by eminent domain. If it is determined that any of such proceedings have been commenced or are threatened to be commenced, or if such casualty has occurred, Buyer may within 60 days after receiving written notice of such proceeding or casualty, notify Seller in writing of Buyer's election to either: (i) cancel this agreement, in which event, all rights and obligation of the parties shall cease and terminate, or (ii) accept delivery of the deed and take an assignment of any condemnation award or insurance proceeds received or to be received by Seller, less any reasonable expenses incurred by Seller in obtaining the award or insurance proceeds. In the event Seller is informed of the initiation of any condemnation proceeding during the term of this Agreement, Seller agrees to promptly notify Buyer in writing, forward to Buyer photocopies of any and all maps and documents received in connection with the proceeding, and keep Buyer informed concerning the progress of such proceeding and any negotiations with the condemning authority.

13. Further Assurances. The parties will execute such documents and take such other action which may be necessary or desirable to consummate the transactions contemplated herein.

14. Indemnification. The Seller will indemnify and hold the Buyer harmless, at all times from and after the date of this Agreement and subsequent to time of closing, from all claims, damages, liabilities and expenses, including reasonable attorneys' fees, arising out of or in any way connected with any liabilities, claims, suits, actions, proceedings, litigation or investigations of any nature, arising in connection with the ownership of the Premises by the Seller prior to time of closing. The Buyer will indemnify and hold the Seller harmless, at all times from and after the date of this Agreement and subsequent to time of closing, from all claims, damages, liabilities and expenses, including reasonable attorneys' fees, arising out of or in any way connected with any liabilities, claims, suits, actions, proceedings, litigation or investigations of any nature, arising in connection with the ownership of the Premises by the Buyer following the closing.

15. Broker's Commission. The Buyer and the Seller each represent and warrant to the other that no broker brought about this transaction, and that no sales commissions or fees of any nature are due as a result of this Agreement and/or transfer of title to the Premises. The Buyer and the Seller shall indemnify and hold the other harmless from and against any claim by any broker claiming to have dealt with such party in connection with this transaction, including reasonable attorneys' fees incurred in the defense of such claim. The provisions of this paragraph shall survive the closing.

16. Attorney Approval. This Agreement is subject to attorney approval on behalf of both the Buyer and the Seller. However, should such approval, conditional approval or disapproval not be provided within ten (10) days of execution of this Agreement by both parties, such approval shall be deemed waived and shall no longer be a condition of this Agreement.

17. Deposit. Upon execution of this Agreement, Buyer shall provide Seller's attorney with a deposit in the amount of \$2,500.00, such amount which shall be credited against the purchase price at closing or, if the transfer contemplated herein fails to close for any reason not the fault of the Seller, shall be deemed to belong to the Seller, in addition to which the Seller shall be entitled to pursue any other available remedies. Notwithstanding the foregoing, should the Buyer's attorney disapprove this Agreement, should the Buyer fail to secure a mortgage commitment pursuant to paragraph 11 above, and/or should the transfer contemplated herein fail to close due to the fault of the Seller, said deposit shall be returned to the Buyer.

18. Prior Contract. Buyer acknowledges that the Premises are subject to an existing contract for the sale of the premises, dated September 1, 2010, to John Dianni and Robert Trowbridge (who are shareholders and/or former shareholders of the Buyer). The parties agree that the within Agreement shall be subject to and conditioned upon the termination or release of said existing contract and Buyer enters into the within Agreement subject to said existing contract.

19. Survival. All warranties, representations and agreements made in this Agreement, or pursuant hereto, will survive the closing and any investigation at any time made by or on behalf of the Buyer.

20. Notices. All notices, requests, demands, consents or other communications which may be given or required to be given under the terms of this Agreement will be in writing and will be personally delivered, or sent by registered mail, or certified mail return receipt requested, at the addresses set forth above. Notice given by mail shall be deemed given five (5) business days after being deposited in a post office box in New York State, irrespective of the date of receipt. Notices may be signed by the attorney for the party sending the notice.

21. Construction. All understanding and agreements heretofore made by and between the parties are merged in this Agreement, which alone fully and completely expresses their agreement. This Agreement may not be changed, terminated, nor any of its provisions modified or waived, except in writing signed by the party against whom enforcement of the change, termination, modification or waiver is sought. This Agreement will be governed by and construed in accordance with the laws of the State of New York.

22. Waiver. In the event that any term or condition of this Agreement should be breached by any party and thereafter waived by the other party, then such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach either prior to or subsequent to the breach so waived.

23. Severability. Every provision of this Agreement is intended to be severable. If any provision is held to be invalid or unenforceable by law or by a court of competent jurisdiction, all other provisions will nevertheless continue in full force and effect.

24. Paragraph Headings. The paragraph headings contained in this Agreement have been prepared for convenience of reference only and will not control, affect the meaning, or be taken as an interpretation of any provision of this Agreement.

25. Assignment. Neither party can assign its interest in this Agreement without the prior written consent of the other.

26. Successors and Assigns. This Agreement will apply to, be binding upon and inure to the benefit of the parties, their respective distributees, legal representatives, successors, assigns and permitted transferees.

Motion made by Mr Gates, seconded by Mr Horylev. Carried unanimously 5-0

### Minutes

**Resolution** to approve the minutes of September 6th 2011. Motion made by Mr Bimmler, seconded by Mr Speer. Carried unanimously 5-0

Meeting adjourned at 7:30 pm

Janet Surridge  
Treasurer