

LOWER MANHATTAN DEVELOPMENT CORPORATION

Meeting of the Directors
Held at the Offices of the Corporation
One Liberty Plaza - 20th Floor
New York, New York 10006

September 13, 2012

MINUTES

In Attendance

Directors:

Avi Schick, Chairman
Amanda Burden (via telephone)
Peter Davidson
Robert Douglass
Timothy Gilchrist
Robert Harding
Caswell Holloway
Kate D. Levin
Robert K. Steel (via telephone)
Carl Weisbrod

Staff Attending:

For Lower Manhattan Development Corporation:

Daniel Ciniello, Senior Vice President - Operations
David Emil, President
Robert Miller, Chief Financial Officer
Stephen Konopko, Vice President – Internal Audit

For Sheldon Silver:

Judy Rapfogel

Also Present:

The Media
The Press

The meeting of the Lower Manhattan Development Corporation (“LMDC”) was called to order at 8:42 a.m. It was noted for the record that notice to the public and news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law.

Before commencing the meeting, Chairman Schick noted that Jan Opper, a Deputy Assistant Secretary at HUD, LMDC’s funding partner, had recently announced his retirement.

The Chairman took the opportunity to congratulate him on his service and to thank him for his work and contributions in helping to establish the LMDC, and in all the years since giving support to LMDC, the City, the State and the residents and businesses of Lower Manhattan.

The Chairman noted that a copy of the transcript of this meeting would be sent to Jan Opper.

Chairman Schick then asked the Directors to ratify and approve the Minutes of the April 5, 2012 Directors meeting.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

Approval of April 5, 2012 Meeting Minutes

RESOLVED, that the minutes of the meeting of the Corporation held on April 5, 2012, as presented to this meeting, are hereby approved and all actions taken by the Corporation’s employees, Officers, or Directors in furtherance of the matters referred to therein are hereby ratified and approved as actions of the Corporation.

* * *

Chairman Schick then asked Director Johnson to provide the Audit and Budget Report.

Director Johnson first noted that the Committee met to review the funding authorizations that are being presented for consideration today and that the Committee recommends that the items be considered for approval by the Board.

Director Johnson further noted that the Committee was happy to report that having had a dispute over money regarding 130 Cedar Street for the last two years, a settlement has been reached and that LMDC will receive \$200,000 back on that issue.

As required by federal regulations governing HUD funds, Director Johnson continued, that money is being returned to the federal government.

Lastly, Director Johnson noted that the Committee met with the Internal Auditor and that there are no outstanding matters to be discussed resulting from that meeting.

Director Weisbrod asked why an item that was considered by the Audit and Finance Committee for staffing the Performing Arts Center (PAC) was not on today's Board Agenda.

Mr. Emil explained that the Audit and Finance Committee did consider an item which would have authorized \$1,000,000 for staff costs associated with the development of the PAC to come from the \$100 million that the Board had set aside for the PAC.

Mr. Emil continued that after a great deal of internal discussion concerning how the funds would be allocated and how the project would move forward, staff decided it would be appropriate to defer consideration of the item until a subsequent meeting.

Chairman Schick noted that it is anticipated there will be a Directors' meeting next month to consider a number of items, including those associated with how LMDC will move forward with the construction of the Museum and anticipates the Board will also consider the item to release the \$1,000,000 for PAC staffing costs.

Director Steel then asked for some idea of what the dynamics of the discussion on this item consisted of. Mr. Emil explained there is some concern regarding the structure of the funding for the entire project going forward. LMDC, he added, wants to give assurances to the Governor's Office, the Port Authority and the Directors that there is a picture in place that is going to bring this to a successful conclusion before authorizing more funding.

Director Levin stated that it seems unusual to have that kind of characterization regarding a project that has a deep history of community support as well as private and public funding. She urged LMDC to meet very quickly on this issue and resolve it.

Mr. Emil stated that the resolution of the dispute over funding of the Museum and the Memorial going forward includes the expectation of Board action by LMDC and is anxious to have that action taken as quickly as possible.

The Chairman then referred to the settlement mentioned by Director Johnson in the Audit and Finance Report. He expressed his appreciation to LMDC's legal staff and management for making this happen.

The Chairman then noted that Brad Sonnenberg, who served as the Corporation's General Counsel, left LMDC at the end of August to become General Counsel of a start-up company. He went on to express his appreciation to Mr. Sonnenberg for his service throughout his tenure at LMDC.

The Chairman further noted that Irene Chang-Cimino, LMDC's long standing General Counsel, will be returning to the Corporation to resume that position.

Chairman Schick then asked Mr. Emil to provide an update on recent activities concerning the West Thames Street Bridge.

Mr. Emil provided a status report noting that LMDC's Board had authorized a total of \$20 million to build a bridge at West Thames Street. At the time it was revealed the bridge may actually cost closer to \$25 to \$26 million.

Since that time, Mr. Emil continued, because of the passage of time and additional features the cost has gone up from the \$26 million figure.

Mr. Emil went on to explain that LMDC has been working successfully with the City, the State and the Battery Park City Authority on funding those additional costs. The City and the State have agreed to use funds from the Battery Park City Construction Fund to complete the cost of the Bridge.

Mr. Emil further noted that LMDC will be coming back to the Board with a fuller description of the project and the funding later in the fall.

Ms. Rapfogel then expressed appreciation to the involved parties for standing with Sheldon Silver to create a safe environment by building the West Thames Bridge.

Director Holloway then formally requested that a Directors' meeting be scheduled in October for the Directors to discuss the funding agreement with the Museum.

Director Douglass, on behalf of the Downtown Alliance, expressed his appreciation for the successful work done thus far with regard to funding for the Bridge.

Next, Chairman Schick asked the Directors to authorize LMDC to enter into six Community and Cultural Enhancement Fund Subrecipient Agreements from the slate of 38 that the Directors approved last year.

The Chairman briefly outlined the six grants noting, in part, that with this authorization LMDC will have moved forward on 34 of the original 38 approved grants. Mr. Emil commented

that the four remaining items from the approved slate are items that are awaiting final budgets to be produced by the proposed recipients. Those remaining items, he stated, will be presented to the Board when they reach the point to be funded.

Following the full presentation, the Chairman called for question or comments. Hearing none, and upon motion duly made and seconded, the following resolution was adopted:

Authorization to Enter into 6 Subrecipient Agreements for the Community and Cultural Enhancement Program

RESOLVED, that the Corporation is hereby authorized to enter into six subrecipient agreements from the slate of the 38 Community and Cultural Enhancement Program projects approved by the Board on September 7, 2011 in an amount not to exceed \$3,045,000 in the aggregate with the following parties:

- a. Asian Americans for Equality to support a housing preservation and anti-displacement program, in an amount not to exceed \$300,000;
- b. H.T. Dance Company, Inc. and NYC Department of Citywide Administrative Services for the renovation H.T. Dance Company's office space, public lobby and grand staircase, in an amount not to exceed \$125,000;
- c. New York Asian Women's Center, Inc. over two years for expansion of outreach services and to provide support for bilingual case workers at the soon to be opened NYC Family Justice Center, in an amount not to exceed \$300,000;
- d. NYC Department of Parks and Recreation F/B/O Hester Street Collaborative for the renovation of the long-abandoned comfort station at Allen and Delancey Streets, in an amount not to exceed \$1,000,000;
- e. NYC Health and Hospitals Corporation F/B/O Gouverneur Healthcare Services to support the purchase and installation of a 64 slice CAT scan and imaging system and to upgrade the related facilities, in an amount not to exceed \$820,000; and
- f. The Flea Theater, Inc. to support the construction of a new three-theater complex located at 20 Thomas Street, in an amount not to exceed \$500,000;

as described in the materials presented at this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from

funds included in the Community and Cultural Enhancement Program in the Final Action Plan; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

* * *

Chairman Schick then provided a brief presentation with regard to the request to authorize LMDC to amend its Subrecipient Agreement with the Battery Park City Authority for West Street pedestrian management services to increase funding by \$910,000 to an amount not to exceed \$1,832,000 in the aggregate.

Mr. Emil commented that the additional \$910,000 allocation is by agreement with the Port Authority which has concluded that those monies will not be needed by the Port Authority for their work. Therefore those funds are being released back to LMDC to be used for this item.

Following this presentation, the Chairman called for questions or comments. Hearing none and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend Subrecipient Agreements with the Battery Park City Authority and The Port Authority of New York and New Jersey

RESOLVED, that the Corporation is hereby authorized to amend its subrecipient agreement with the Battery Park City Authority for West Street pedestrian management services to increase funding by \$910,000, to an amount not to exceed \$1,832,000 in the aggregate, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the Corporation is hereby authorized to amend its subrecipient agreement with The Port Authority of New York and New Jersey for pedestrian walkway improvements to reduce funding by \$1,200,000, to an amount not to exceed \$2,508,000 in the aggregate, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from funds included in Partial Action Plan 4; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

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Next, Chairman Schick asked the Directors to authorize LMDC to enter into a Subrecipient Agreement with the City of New York to create a small business expansion and competition program. The Chairman stated that he believes this program will attract excitement, energy and talent to Lower Manhattan.

Following a brief outline, the Chairman called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted: (It was noted for the record that Director Weisbrod recused himself with regard to the vote on the following resolution.)

Authorization to Enter into Subrecipient Agreement with the City of New York

RESOLVED, that the Corporation is hereby authorized to enter into a subrecipient agreement with the City of New York acting by and through its Department of Small Business Services for the Lower Manhattan Business Expansion Competition, in an amount not to exceed \$4,000,000, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from funds included in Partial Action Plan 12; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

* * *

The Chairman then presented an item relating to a request for authorization for LMDC to enter into a Subrecipient Agreement with University Settlement House for a rezoning study of Chinatown (“the Chinatown Planning Study”).

Mr. Emil noted that the Board originally authorized the Subrecipient Agreement with another group. However, that group was unable to conduct the study. He noted this request, therefore, is for a reallocation of funds that were previously authorized.

Mr. Emil further noted that the budget on this item is slightly higher than the initial authorization. Mr. Emil added that it may be necessary for LMDC to seek authorization for an additional \$15,000 for this study in the future.

Following the full presentation, the Chairman called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Designate University Settlement Society as Subrecipient for Chinatown Planning Study

WHEREAS, on April 8, 2010, the Board of Directors authorized the Corporation to enter a subrecipient agreement (the "Chinatown Study Agreement") with the City of New York through its Department of Small Business Services ("SBS") to provide up to \$150,000 for a rezoning study of Chinatown (the "Chinatown Planning Study");

WHEREAS, in 2011 SBS indicated that they were unwilling undertake the Chinatown Planning Study;

RESOLVED, that the Corporation is hereby authorized to designate the University Settlement Society as the subrecipient in the Chinatown Study Agreement, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

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Mr. Emil then provided a detailed presentation with regard to a request for the Directors to authorize LMDC to enter into a Subrecipient Agreement with the New York City Department of Transportation to provide wayfinding signs in Chinatown. Mr. Emil further asked the Directors to authorize an amendment to Partial Action Plan 10.

Mr. Emil noted that today's authorization is for the Chinatown Pilot as the City has tentatively indicated a willingness to reallocate some of the other transportation funding to expand this project to cover all of Lower Manhattan. Mr. Emil added that the expansion of the program would not require Board action as this is a transportation project.

Mr. Emil provided renderings of the signage prepared for London as an example of the Chinatown wayfinding signs.

Director Weisbrod inquired with regard to the identity of the graphics firm responsible. Mr. Emil explained that they were designed by Michael Bierut of the Pentagram Graphics Firm.

Director Weisbrod asked if it is anticipated that Michael Beirut and Pentagram will do the New York City signage and Mr. Emil stated that they will and further noted that the firm is currently working on some of the final tweaking of what they have developed as the New York City version.

Director Weisbrod noted that he has worked with Pentagram and Michael Bierut and is happy to hear that they are involved at this stage.

Following the full presentation, the Chairman called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Enter into Subrecipient Agreement with the NYC Department of Transportation; Authorization to Amend Partial Action Plan 10

RESOLVED, that the Corporation is hereby authorized to enter into a subrecipient agreement with the NYC Department of Transportation (the "NYC DOT") to provide wayfinding signs in Chinatown, in an amount not to exceed \$800,000 (the "Chinatown Funds"), as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the Corporation is hereby authorized to amend Partial Action Plan 10 (the "Amended Partial Action Plan 10") to identify the NYC DOT rather than the Chinatown Partnership Local Development Corporation as a recipient of the Chinatown Funds as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to submit for public comment and review by the Federal Department of Housing and Urban Development ("HUD") the Amended Partial Action Plan 10, as may be required; and be it

FURTHER RESOLVED, that the President of the Corporation or his designee shall be authorized to make such changes to the Amended Partial Action Plan 10 as may be necessary or appropriate to comport with applicable HUD requirements and to reflect any public comments solicited and received thereon; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from funds included in the Amended Partial Action Plan 10; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

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Chairman Schick asked the Directors to authorize LMDC to enter into a Subrecipient Agreement with the National September 11 Memorial and Museum for the Tribute in Light Program.

The Directors were further requested to provide authorization to amend the Final Action Plan.

Following the full presentation, the Chairman called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was

unanimously adopted:

Authorization to Enter into Subrecipient Agreement with the National September 11 Memorial and Museum for the Tribute in Light Program; Authorization to Amend the Final Action Plan

RESOLVED, that the Corporation is hereby authorized to enter into a subrecipient agreement with the National September 11 Memorial and Museum at the World Trade Center Foundation Inc. (the "9/11 Memorial") to provide for three additional years of the annual September 11 commemoration Tribute in Light through October 1, 2014, in an amount not to exceed \$810,000, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the Corporation is hereby authorized to amend the Final Action Plan (the "Amended Final Action Plan") to reallocate \$810,000 from the Transportation Improvements Program to the Tribute in Light program, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to submit for public comment and review by the Federal Department of Housing and Urban Development ("HUD") the Amended Final Action Plan, as may be required; and be it

FURTHER RESOLVED, that the President of the Corporation or his designee shall be authorized to make such changes to the Amended Final Action Plan as may be necessary or appropriate to comport with applicable HUD requirements and to reflect any public comments solicited and received thereon; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from funds included in the Amended Final Action Plan; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

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The Chairman then asked the Directors to authorize LMDC to increase by \$150,000 funding authorized to enter into agreements with firms on the Pre-Qualified Counsel list for legal services.

Director Davidson asked what the work is for Mr. Emil stated that it involves a variety of legal services including environmental work.

Director Davidson then asked if LMDC has looked into ways to incorporate Port Authority legal staff for these undertakings.

Director Rampe noted that early on LMDC attempted to use Port Authority counsel and was informed by the Authority that there are certain restrictions that prevent them from acting in that capacity with LMDC.

Director Davidson stated that he is hesitant to approve additional expenses when LMDC has so many attorneys on staff. Mr. Emil stated that upon Ms. Chang's return she will be the one attorney on staff and the anticipated upcoming work cannot be handled by one attorney.

Director Harding asked if the additional funds were for additional work, which was confirmed by Mr. Emil.

Following the full presentation, the Chairman called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Increase Funding of Pre-Qualified Counsel Agreements for Legal Services

RESOLVED, that the amount of the Corporation's expenditures authorized under the agreements and amendments with one or more law firms on the Empire State Development Corporation Pre-Qualified Counsel List shall increase by \$150,000, to an amount not to exceed \$2,425,000 in the aggregate, and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from the appropriate fiscal year budgets for the Legal Affairs Department and/or the appropriate project-related Partial Action Plans; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized

to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

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Chairman Schick then asked the Directors to authorize LMDC to enter into an agreement with Winston & Strawn LLP for litigation services.

Chairman Schick noted that the firm of Dewey LeBoeuf no longer exists. Jeff Kessler, the leader of the legal team that handled LMDC's litigation and corresponding related matters with Bovis, moved his team to Winston and Strawn.

Following the full presentation, the Chairman called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Enter into Agreement with Winston & Strawn LLP

RESOLVED, that the Corporation is hereby authorized to enter into an agreement with Winston & Strawn LLP for legal services in connection with the pending litigation relating to the abatement and deconstruction of 130 Liberty Street, in an amount not to exceed \$6,600,000 in the aggregate and for an initial term through March 31, 2013, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from LMDC's settlement with the Prior Insurers of the Deutsche Bank Building and/or through Partial Action Plans 7 and S-2 as may be appropriate; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

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Chairman Schick then asked the Directors for authorization to amend LMDC and LMCCC current office lease and authorization to amend Partial Action Plan S-2.

The Chairman explained that part of the space will be used by the Memorial staff. Mr. Emil elaborated upon the requested actions noting that in addition to the lease extension, the Directors are also being asked to authorize an amendment to the S-2 Partial Action Plan to allocate those funds to the Memorial so they can pay rent and pay additional rent for the PAC.

Director Harding asked when the lease expires and Mr. Emil stated that the lease will expire at the end of December.

Director Harding asked for clarification with regard to the space for PAC staff and Mr. Emil provided that clarification.

Following the full presentation, the Chairman called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend LMDC and LMCCC Current Office Lease; Authorization to Amend Partial Action Plan S-2

RESOLVED, that the Corporation is hereby authorized to amend its current lease agreement with BFP 1 Liberty Plaza Co. Inc., as landlord, for the Corporation's existing office space at One Liberty Plaza to extend the term 12 months through December 31, 2013; and be it

FURTHER RESOLVED, that the amount of the Corporation's expenditures authorized under the amended lease shall increase by an amount not to exceed \$788,000 in the aggregate; and be it

FURTHER RESOLVED, that the Corporation is hereby authorized to amend Partial Action Plan S-2 (the "Amended Partial Action Plan S-2") to allocate up to \$394,000 for the National September 11 Memorial & Museum at the World Trade Center Foundation, Inc. and the World Trade Center Performing Arts Center, Inc. when necessary and provide funding for the use of approximately 50% of the Corporation's office space, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to submit for public comment and review by the Federal Department of Housing and Urban

Development (“HUD”) the Amended Partial Action Plan S-2, as may be required; and be it

FURTHER RESOLVED, that the President of the Corporation or his designee shall be authorized to make such changes to the Amended Partial Action Plan S-2 as may be necessary or appropriate to comport with applicable HUD requirements and to reflect any public comments solicited and received thereon; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from the Corporation’s HUD Planning and Administration funds and funds included in the Amended Partial Action Plan S-2 as may be appropriate; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

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Next, Chairman Schick asked the Directors to authorize LMDC to amend its contract with Miller Advertising Agency.

Following the full presentation, the Chairman called for questions or comments.

Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend Agreement with Miller Advertising Agency

RESOLVED, that the Corporation is hereby authorized to amend its existing agreement with Miller Advertising Agency, Inc. for advertising services for a two-year period through July 31, 2014 and to increase the authorized amount by \$60,000 to an amount not to exceed \$260,000 in the aggregate, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from funds through the relevant Partial Action Plan or the Corporation’s Planning and Administration funds, as may be appropriate; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

* * *

Lastly, the Chairman asked the Directors to authorize LMDC to enter into an Agreement with the Port Authority of New York and New Jersey.

Following the full presentation, the Chairman called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Enter into Agreement with Port Authority of New York and New Jersey

RESOLVED, that the Corporation is hereby authorized to enter into an agreement with the Port Authority of New York and New Jersey ("PANYNJ") for use of a PANYNJ employee to serve as Director of Construction Coordination and Environmental Compliance for the Lower Manhattan Construction Command Center (LMCCC), in an amount not to exceed \$140,000 in the aggregate and for an initial term of 18 months through December 31, 2013, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures hereby approved shall be allocated from funds included in the LMCCC budget for fiscal year ending March 31, 2013 and the planned 2014 budget, and will be provided from LMCCC funding received from the Federal Transit Administration, the Port Authority of New York and New Jersey, the Metropolitan Transportation Authority, and the New York State Department of Transportation sufficient to fund these expenditures; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

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There being no further business, the meeting was adjourned at 9:26 a.m.

Respectfully submitted,

Eileen McEvoy
Assistant Corporate Secretary