THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

MINUTES
Thursday, June 25, 2009

MINUTES of the Meeting of The Port Authority of New York and New Jersey held Thursday, June 25, 2009 at 225 Park Avenue South, City, County and State of New York

PRESENT:

NEW JERSEY	**NEW YORK**
Hon. Anthony R. Coscia, Chairman	Hon. Henry R. Silverman, Vice-Chairman
Hon. Virginia S. Bauer	Hon. Michael J. Chasanoff
Hon. Raymond M. Pocino	Hon. Stanley E. Grayson
Hon. Anthony J. Sartor	Hon. David S. Mack
Hon. David S. Steiner	

Christopher O. Ward, Executive Director
Susan Bass Levin, Deputy Executive Director
Darrell B. Buchbinder, General Counsel
Karen E. Eastman, Secretary

Susan M. Baer, Deputy Director of Aviation/Chief Operating Officer
A. Paul Blanco, Chief Financial Officer
Ernesto L. Butcher, Chief Operating Officer
Rosemary Chiricolo, Assistant Director, Management and Budget
Steven J. Coleman, Assistant Director, Media Relations
Harry Czinn, Senior Project Manager, Management and Budget
Arpan Dasgupta, Executive Assistant to the Deputy Executive Director
William R. DeCota, Director, Aviation
Michael P. DePallo, Director, Rail Transit
John J. Drobny, Director, Security Projects
Iran H. Engel, Assistant Director, Audit
Michael G. Fabiano, Deputy Chief Financial Officer/Comptroller
Ziomara Y. Foster, Executive Business Manager, World Trade Center Construction
Michael B. Francois, Chief, Real Estate and Development
Richard Friedman, Senior Advisor to the Executive Director
Glenn P. Guzi, Senior External Affairs Representative, Government and Community Affairs
Linda C. Handel, Deputy Secretary
Mark D. Hoffer, Special Advisor to the Executive Director
Lawrence S. Hofrichter, Deputy General Counsel
Howard G. Kadin, Esq., Law
John P. Kelly, Executive Communications Specialist, Media Relations
Julia G. Kerson, Leadership Fellow, Human Resources
Cristina M. Lado, Director, Government and Community Affairs
Conor Lanz, Special Assistant to the Executive Director
Richard M. Larrabee, Director, Port Commerce
Francis J. Lombardi, Chief Engineer
Michael G. Massiah, Director, Management and Budget
Candace McAdams, Director, Media Relations
James E. McCoy, Manager, Board Management Support, Office of the Secretary
Sanjay S. Mody, Advisor to the Chairman
Christopher J. Mohr, Senior Board Management Support Specialist, Office of the Secretary

Anne Marie C. Mulligan, Treasurer
Summer Oesch, Executive Assistant to the Deputy Executive Director
Steven P. Plate, Director, World Trade Center Construction
Jessica Schultz, Senior Government Community Affairs Manager, Government and Community Affairs
Stephen H. Sigmund, Chief, Public and Government Affairs
Timothy G. Stickelman, Assistant General Counsel
Gerald B. Stoughton, Director, Office of Financial Analysis
Ralph Tragale, Assistant Director, Government and Community Relations
David B. Tweedy, Chief, Capital Programs
Lillian D. Valenti, Director, Procurement
Sheree R. Van Duyne, Manager, Policies and Protocol, Office of the Secretary
Andrew S. Warshaw, Chief of Staff to the Executive Director
Michael B. Zapantis, Assistant Director, Procurement

Guest:
Sonia Frontera, Authorities Unit, Office of the Governor of New Jersey

The public meeting was called to order by Chairman Coscia at 1:39 p.m. and ended at 1:54 p.m. The Board met in executive session prior to the public session.

Action on Minutes

The Secretary submitted for approval Minutes of the meeting of May 28, 2009. She reported that copies of these Minutes were delivered in electronic form to the Governors of New York and New Jersey on May 29, 2009. She reported further that the time for action by the Governors of New York and New Jersey expired at midnight on June 12, 2009.

Whereupon, the Board of Commissioners unanimously approved the Minutes of the May 28, 2009 meeting.

Report of Committee on Operations

The Committee on Operations reported, for information, on matters discussed in public and executive session at its meeting on June 25, 2009, which included discussion of (i) an item that would authorize new concessions leases at Newark Liberty International Airport in connection with the second phase of the Terminals A and B Concessions Program; (ii) an intermodal rail incentive program to encourage the use of the ExpressRail system to new origins and destinations; and (iii) matters related to the purchase, sale, or lease of real property, or securities where public disclosure would affect the value thereof or the public interest, and the report was received.

Report of Committee on Construction

The Committee on Construction reported, for information, on matters discussed in public session at its meeting on June 25, 2009, which included discussion of an award of contract for the reconstruction of Runway 13R-31L and construction of related taxiway improvements at John F. Kennedy International Airport, and the report was received.

NEWARK LIBERTY INTERNATIONAL AIRPORT – TERMINALS A AND B CONCESSIONS PROGRAM – NEW LEASE AGREEMENTS – PHASE TWO

It was recommended that the Board authorize the Executive Director to enter into 14 new concessions leases, constituting Phase Two of the concessions program for Terminals A and B at Newark Liberty International Airport (Airport). Phase Two would cover the leasing of approximately 27,654 square feet of space for the operations of these various concession establishments.

On July 26, 2007, the Board authorized the Executive Director to enter into a management agreement with Westfield Concessions Management, LLC (Westfield) for the management of the retail and food and beverage concessions at, and loading dock and storage facilities for, Terminals A and B at the Airport. That agreement was entered into for a seven-year term, which expires on August 31, 2014. The implementation of the concessions program is currently expected to be a five-phase process. Phase One, involving 14 leases, was authorized by the Board on June 30, 2008. In connection with the performance of its management services, Westfield has recommended that the Port Authority enter into 14 new concession leases for the implementation of Phase Two of the concessions program. Four locations previously authorized to be occupied under Phase One are included as part of Phase Two because the concessionaires originally recommended were unable to complete the transactions.

Each concessionaire would be obligated to pay the greater of a minimum annual guaranteed rent (MAG) or percentage rent based on the gross receipts of the concessionaire's operation. In addition, the concessionaires would pay an additional promotion fee over the lease term, and certain concessionaires would pay a common-area maintenance fee. The concessionaires would be obligated to make an initial capital investment in connection with their occupancy of the leased premises, and the Port Authority would retain the right to terminate the leases on 30 days' notice, without cause, in which event the Port Authority would be obligated to reimburse the concessionaires for their respective unamortized capital investment. The various lease terms would range from seven to ten years.

Specific material terms of the concessions leases are as follows:

<u>AREAS USA EWR, LLC d/b/a Tony Roma's – Lease ANC-001</u>

AREAS USA EWR, LLC d/b/a Tony Roma's would lease approximately 5,070 rentable square feet (rsf) of space in Terminal A for a casual dining operation. The term of the letting would be for ten years from the Date of Beneficial Occupancy (DBO), commencing on or about October 1, 2009. The aggregate rental over the term of the lease would be approximately $3,850,000 in MAG, in addition to the promotion fee.

<u>AREAS USA EWR, LLC d/b/a Currito Cantina – Lease ANC-002</u>

AREAS USA EWR, LLC d/b/a Currito Cantina would lease approximately 1,761 rsf of space in Terminal A for a casual dining operation. The lease term would be for seven years from the DBO, commencing on or about October 1, 2009. The aggregate rental over the lease term would be approximately $1,587,600 in MAG, in addition to the promotion fee.

AREAS USA EWR, LLC d/b/a Phillips Seafood – Lease ANC-003

AREAS USA EWR, LLC d/b/a Phillips Seafood would lease approximately 2,382 rsf of space in Terminal A for a casual dining operation. The lease term would be for seven years from the DBO, commencing on or about April 11, 2010. The aggregate rental over the lease term would be approximately $1,333,395 in MAG, in addition to the promotion fee.

AREAS USA EWR, LLC d/b/a Cheeburger Cheeburger – Lease ANC-004

AREAS USA EWR, LLC d/b/a Cheeburger Cheeburger would lease approximately 846 rsf of space for the operation of a food and beverage concession in the Terminal A food court. The term of the letting would be for seven years from the DBO, commencing on or about October 1, 2009. The aggregate rental over the term of the lease would be approximately $784,000 in MAG, in addition to the promotion and common-area maintenance fees.

HEALTHY FOOD CONCEPTS, LLC d/b/a Jamba Juice – Lease ANC-005

HEALTHY FOOD CONCEPTS, LLC d/b/a Jamba Juice would lease approximately 725 rsf of space for the operation of a food and beverage concession in the Terminal A food court. The term of the letting would be for seven years from the DBO, commencing on or about August 1, 2009. The aggregate rental over the term of the lease would be approximately $1,011,500 in MAG, in addition to the promotion and common-area maintenance fees.

AREAS USA EWR, LLC d/b/a Qdoba – Lease ANC-006

AREAS USA EWR, LLC d/b/a Qdoba would lease approximately 737 rsf of space for the operation of a food and beverage concession in the Terminal A food court. The term of the letting would be for seven years from the DBO, commencing on or about September 1, 2009. The aggregate rental over the term of the lease would be approximately $1,015,000 in MAG, in addition to the promotion and common-area maintenance fees.

AREAS USA EWR, LLC d/b/a Champps Americana – Lease ANC-007

AREAS USA EWR, LLC d/b/a Champps Americana would lease approximately 3,431 rsf of space in Terminal B for a casual dining operation. The term of the letting would be for seven years from the DBO, commencing on or about April 11, 2010. The aggregate rental over the term of the lease would be approximately $1,261,400 in MAG, in addition to the promotion fee.

AREAS USA EWR, LLC d/b/a Blue Point RA Bar – Lease ANC-008

AREAS USA EWR, LLC d/b/a Blue Point RA Bar would lease approximately 1,707 rsf of space in Terminal B for a casual dining operation. The term of the letting would be for seven years from the DBO, commencing on or about April 11, 2010. The aggregate rental over the term of the lease would be approximately $693,700 in MAG, in addition to the promotion fee.

SUBWAY DEVELOPMENT CO. d/b/a Subway - Lease ANC-009

SUBWAY DEVELOPMENT CO. d/b/a Subway would lease approximately 1,108 rsf of space for the operation of a food and beverage concession in the Terminal B food court. The lease term would be for seven years from the DBO, commencing on or about October 1, 2009. The aggregate rental over the lease term would be approximately $1,392,300 in MAG, in addition to the promotion and common-area maintenance fees.

AREAS USA EWR, LLC d/b/a Island Chicken Grill – Lease ANC-010

AREAS USA EWR, LLC d/b/a Island Chicken Grill would lease approximately 1,335 rsf of space for the operation of a food and beverage concession in the Terminal B food court. The lease term would be for seven years from the DBO, commencing on or about August 1, 2009. The aggregate rental over the lease term would be approximately $1,142,400 in MAG, in addition to the promotion and common-area maintenance fees.

AMS-BW NEWARK JV d/b/a Hudson Booksellers – Lease ANC-011

AMS-BW NEWARK JV d/b/a Hudson Booksellers would lease approximately 1,719 rsf of space in Terminal A for the operation of a specialty retail concession space. The lease term would be for seven years from the DBO, commencing on or about September 19, 2009. The aggregate rental over the lease term would be approximately $618,800 in MAG, in addition to the promotion fee.

NEWARK Currency Services, LLC d/b/a Travelex – Lease ANC-012

Newark Currency Services, LLC d/b/a Travelex would lease approximately 765 rsf of space in Terminals A and B for the operation of seven currency exchange concession spaces. The lease term would be for seven years from the DBO, commencing on or about August 1, 2009. The aggregate rental over the lease term would be approximately $11,763,500 in MAG, in addition to the promotion fee.

Villa Enterprises Ltd., LLC d/b/a Villa Pizza/Casa Java – Lease ANC-046

Villa Enterprises Ltd., LLC d/b/a Villa Pizza/Casa Java would lease approximately 766 rsf of space for the operation of a food and beverage concession in the Terminal A food court. The lease term would be for seven years from the DBO, commencing on or about September 1, 2009. The aggregate rental over the lease term would be approximately $1,680,000 in MAG, in addition to the promotion and common-area maintenance fees.

AMS-BW Newark JV d/b/a Hudson News – Lease ANC-047

AMS-BW Newark JV d/b/a Hudson News would lease approximately 5,302 rsf of space in Terminal B for the operation of five news and gift retail concessions. The lease term would be for seven years from the DBO of the last of the five spaces to be delivered for occupancy, commencing on or about September 1, 2009. The aggregate rental over the lease term would be approximately $18,900,000 in MAG, in addition to the promotion fee.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Bauer, Chasanoff, Coscia, Grayson, Mack, Pocino, Sartor, Silverman and Steiner voting in favor; none against:

> **RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into the 14 concessions lease agreements set forth above, for a total of approximately 27,654 square feet of space in Terminals A and B at Newark Liberty International Airport, substantially in accordance with the terms outlined to the Board; the form of the agreements shall be subject to the approval of General Counsel or his authorized representative.

NEWARK LIBERTY INTERNATIONAL AIRPORT – EL AL ISRAEL AIRLINES, LTD. – LEASE ANB-970 – NEW LEASE

It was recommended that the Board authorize the Executive Director to enter into a new lease agreement with El Al Israel Airlines, Ltd. (El Al) for the letting of approximately 5,000 square feet of space in the B2 corridor of Terminal B at Newark Liberty International Airport (EWR) for the construction, operation and maintenance of a first-class lounge for its patrons and those of other airlines, for an approximate five-year, six-month term, effective on or about July 1, 2009.

El Al would be responsible for the fit-out of the space and intends to invest $3 million for the construction. Currently, El Al rents 2,560 square feet of space in Terminal B to support its passenger handling services and security operations at EWR. El Al presently makes use of the on-airport hotel (Marriott) to accommodate its first-class and business patrons prior to flight departure.

Under the proposed lease agreement, El Al would pay a total aggregate rental of approximately $2.5 million. The Port Authority would have the right to terminate the lease, without cause, upon 30 days' prior written notice to El Al. Upon such termination, the Port Authority would be obligated to reimburse El Al for the unamortized portion of its capital investment, in an amount not to exceed $3 million.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Bauer, Chasanoff, Coscia, Grayson, Mack, Pocino, Sartor, Silverman and Steiner voting in favor; none against:

> **RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into a new lease agreement with El Al Israel Airlines, Ltd. for the letting of approximately 5,000 square feet of space in the B2 corridor of Terminal B at Newark Liberty International Airport, substantially in accordance with the terms outlined to the Board; and it is further
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> **RESOLVED**, that the form of the foregoing lease agreement shall be subject to the approval of General Counsel or his authorized representative.

PORT NEWARK – SEAMEN'S CHURCH INSTITUTE OF NEW YORK AND NEW JERSEY – LEASE L-NS-387 – SUPPLEMENT

It was recommended that the Board authorize the Executive Director to enter into a supplemental lease agreement with Seamen's Church Institute of New York and New Jersey (Seamen's), with respect to Lease L-NS-387 at Port Newark. The supplemental agreement would grant Seamen's the right to sublease certain space at its leasehold, subject to the prior written consent of the Port Authority and provided that such sublease is consistent with the Port Authority's land-use plans. Seamen's would be entitled to retain all of the revenue derived from such subleases.

Seamen's, a voluntary ecumenical not-for-profit organization, has been a tenant at Port Newark since 1960 and currently leases approximately 2.6 acres at Port Newark, which premises include an 8,649-square-foot building and 103,000 square feet of open area, under an agreement that expires in 2026. The facility is used as a recreational center for seafarers, and Seamen's is in the process of undertaking a major renovation and expansion of the building on the leasehold.

Seamen's does not have the right to sublease or otherwise permit the use of the premises under the existing lease agreement. In light of current economic conditions and its major investment in the building renovation, Seamen's has requested the Port Authority's permission to sublease portions of its leasehold and to allow it to retain the incremental revenue derived therefrom, subject to the prior written consent of the Port Authority. The proposed lease supplement would allow Seamen's to sublease an underutilized 1.4-acre soccer field located within its open area space for port-related commercial use. Additionally, upon completion of its building renovation, Seamen's will seek to sublease an approximately 2,500-square-foot kitchen area to a food franchise, to provide food services to seafarers and port workers. Seamen's previously provided food services at this space, prior to the commencement of its building renovation.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Bauer, Chasanoff, Coscia, Grayson, Mack, Pocino, Sartor, Silverman and Steiner voting in favor; none against:

> **RESOLVED,** that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into a supplemental agreement to Lease L-NS-387 with Seamen's Church Institute of New York and New Jersey (Seamen's) pursuant to which Seamen's would be entitled to sublease certain space with the prior written consent of the Port Authority, provided that the sublease is consistent with the Port Authority's land-use plans, and to retain the revenue derived therefrom, substantially in accordance with the terms outlined to the Board; and it is further
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> **RESOLVED,** that the form of all documents necessary to effectuate the foregoing shall be subject to the approval of General Counsel or his authorized representative.

PORT OF NEW YORK AND NEW JERSEY – NEW ORIGIN/DESTINATION INTERMODAL RAIL INCENTIVE PROGRAM

It was recommended that the Board authorize the Executive Director: (1) to implement a new origin/destination intermodal rail incentive of $25 per eligible container for any company that contracts with a railroad for the transportation of an ocean-borne, internationally traded container through a Port Authority ExpressRail facility to or from an origin or destination point that was not serviced directly by an ExpressRail facility prior to January 1, 2009, for a period of 12 calendar months after the official ExpressRail start of service to or from that inland destination, provided that the service is implemented in 2009; and (2) at his discretion, to extend the incentive to apply to shipments to or from origins or destinations that were not served directly by the ExpressRail system prior to January 1, 2010 for a 12-month period following the implementation of the service to such new origin or destination, provided that the service is implemented in 2010.

Over the past several years, the Board has authorized the expenditure of approximately $557 million to design and construct the ExpressRail System, a combination of dedicated rail facilities in Port Newark, the Elizabeth-Port Authority Marine Terminal and the Howland Hook Marine Terminal, and the support track (ExpressRail Corbin Street Intermodal Rail Support Facility) necessary to accommodate two-mile-long trains and to integrate the rail traffic to and from the ExpressRail facilities. The system will be capable of serving the projected cargo activity at the Port Authority marine terminals for the next 20 years, and is one of the most comprehensive on- and near-dock intermodal rail systems at any port in the United States serving markets in Eastern Canada, New England and the Midwest.

While rail cargo at the Port of New York and New Jersey (Port) has increased at a higher rate than overall container growth, competition from other ports along the eastern seaboard has increased for rail cargo, and is expected to increase further in the future.

In that regard, in January 2009 the Board authorized the Executive Director to implement an intermodal rail incentive program, from January 1, 2009 through December 31, 2009, that would reduce by $25 the tariff payable by an eligible ocean carrier for each ocean-borne, internationally traded container shipped on the ExpressRail system in 2009 that is in excess of the number shipped by that carrier on the ExpressRail system in 2008, and to exercise the option to extend the incentive program for one additional year. That incentive, which represents approximately one-half of the intermodal lift fee contained in the Port Authority Marine Terminal Tariff (Tariff), would be paid directly to the qualified ocean carrier(s) at the end of the calendar year.

In view of the fact that substantial capacity will be added to the ExpressRail facilities in 2009, and in light of ongoing concerns regarding regional roadway congestion and air emissions, staff recommended that the Port Authority continue to promote the development of additional rail shipments through its ExpressRail facilities by implementing a second intermodal rail incentive, targeted at containers moving to and from new origins or destinations not previously served by the Port Authority's ExpressRail facilities. The implementation of new service to areas previously not served by rail will reduce truck congestion in the Port and on our regional roads, and air emissions associated with the movement of containers.

Any company that books rail transit through the ExpressRail facilities with one of the Class I railroads serving those facilities would be eligible to receive the $25-per-container incentive, which represents approximately one-half of the intermodal lift fee contained in the Tariff. The incentive would apply to containers transited to or from a new ExpressRail origin or destination, which is defined as one not directly served by ExpressRail prior to January 1, 2009, provided that the service is implemented in 2009. At the discretion of the Executive Director, the incentive would be extended to shipments to or from origins or destinations that were not served by the ExpressRail System prior to January 1, 2010 for a 12-month period following the implementation of the service to such new origin or destination, provided that the service is implemented in 2010. The incentive would be paid directly to the qualified company(ies) at the end of each calendar year. There is a possibility that one or more companies may benefit from both the proposed new origin/destination intermodal rail incentive and the previously authorized intermodal rail incentive program for incremental containers. Should that occur, the maximum amount of the combined incentive that can be paid to a company will not exceed the intermodal lift fee paid to the Port Authority.

It is expected that this initiative not only would bring additional cargo to the Port Authority's ExpressRail facilities, and thus more revenue to the Port Authority through the intermodal lift fee payable to the Port Authority as part of the Tariff, but also would attract additional cargo to our container terminals, which would provide additional revenue to the Port Authority through the container terminal lift fee paid by the terminal operators to the Port Authority.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Bauer, Chasanoff, Coscia, Grayson, Mack, Pocino, Sartor, Silverman and Steiner voting in favor; none against:

> **RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to implement an origin/destination rail incentive program that would reduce by $25 the tariff payable by an eligible ocean carrier for each ocean-borne, internationally traded container shipped through any of the Port Authority's ExpressRail facilities to or from any destination or origin that was not served directly by the Port Authority's ExpressRail facilities prior to January 1, 2009 for a 12-month period following the implementation of such service, provided that such service is implemented in 2009; and it is further
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> **RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, at his discretion, to extend the foregoing program to apply to shipments to or from origins or destinations that were not served directly by the ExpressRail System prior to January 1, 2010 for a 12-month period following the implementation of such service, provided that such service is implemented in 2010; and it is further
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> **RESOLVED**, that the form of all contracts and agreements in connection with the foregoing shall be subject to the approval of General Counsel or his authorized representative.

SETTLEMENT OF CLAIM – KENNETH BERTOSEN v. THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

It was recommended that the Board authorize General Counsel to settle a 1993 World Trade Center (WTC) bombing personal injury claim in the action entitled, "Kenneth Bertosen v. The Port Authority of New York and New Jersey," in the amount of $575,000, inclusive of liens, attorneys' fees, costs and disbursements. Plaintiff has provided a General Release, a Hold Harmless Stipulation and a Stipulation of Discontinuance with Prejudice, which are being held in escrow pending finalization of this settlement. The Port Authority would be reimbursed fully for the settlement amount under its applicable insurance coverage. Such reimbursement would reduce available excess liability insurance coverage limits by an equivalent amount, and has been approved by the insurer responsible for the first layer of such insurance coverage.

On February 26, 1993, plaintiff, Kenneth Bertosen, who was 59 years old at the time and employed by Cantor Fitzgerald, was on the 104th floor of One WTC when the bombing occurred. Plaintiff sustained various personal injuries, requiring medical attention, and a loss of time from work and wages as a result of this incident. Plaintiff is responsible for a Workers' Compensation lien of $285,323 for lost wages and medical expenses.

The proposed settlement was achieved through a court-ordered mediation process pertaining to the remaining 1993 WTC bombing claims, which requires that settlement information remain confidential. Therefore, this item would not be made available for public inspection.

Pursuant to the foregoing report, the following resolution was adopted in executive session with Commissioners Bauer, Chasanoff, Coscia, Grayson, Mack, Pocino, Sartor, Silverman and Steiner voting in favor; none against:

> **RESOLVED**, that General Counsel be and he hereby is authorized, for and on behalf of the Port Authority, to settle the action entitled, "Kenneth Bertosen v. The Port Authority of New York and New Jersey," in the amount of $575,000, inclusive of liens, attorneys' fees, costs and disbursements.

Whereupon, the meeting was adjourned.

Secretary