



BOARD OF DIRECTORS MEETING*

NanoFab East, Room 2107

June 29, 2023

12:00 p.m.

AGENDA

1. Call to order
2. Approval of Minutes of June 8, 2023 Meeting
3. Audit Committee
 - Approval of Insurance Renewals (NY CREATES, FRMC and FSMC)
4. Finance Committee
 - FRMC Resolution No. 186 - Sale of Kiernan Plaza (FRMC)
5. New Business
6. Public Comment
7. Next Board of Directors meeting: TBD
8. Adjournment

*This includes the joint meetings of the Board of Directors of the Fuller Road Management Corporation and Fort Schuyler Management Corporation.



**NY CREATES
Meeting of the Board of Directors
NanoFab East, Room 2107**

June 8, 2023

Minutes

Directors present: Kristin Proud (Vice Chair), Michael Abbott, Anita Brown, Christine Chung, Meng-Ling Hsiao, Joan McDonald and Kenneth Tompkins. Doreen Harris joined by phone.

Excused Absence: Heather Hage

Staff: David Anderson – President, Patricia Arciero-Craig – Chief Administrative Officer and Acting General Counsel, Paul Kelly – Chief Operating Officer, Scott Bateman – Treasurer (by phone), Timothy Taylor – Chief Financial Officer, Patricia Bucklin – Board Secretary

Guests: Ryan Farrell and Peter Taubkin (Research Foundation)

1. Call to order

Audit Committee Chair Michael Abbott called the meeting of the Board of Directors of NY CREATES to order at 3:32 pm. He introduced the directors and guests and served as Chair of the meeting.

2. Conflict of Interest

Audit Committee Chair Abbott asked the Directors if they had any potential conflict of interest with respect to items on the Board agenda, and if so, to disclose it. There were none.

3. Minutes

Audit Committee Chair Abbott asked for a motion to approve the NY CREATES minutes of May 11, 2023.

Motion: Kristin Proud
Second: Dr. Meng-Ling Hsiao

Vote: Following a roll call vote, the minutes were approved with no changes. Joan McDonald abstained from the vote.

4. Finance Committee Report

Audit Committee Chair Abbott gave the Finance Committee Report.

A. Amendment to the Independent Contractor Agreement (NY CREATES)

Audit Committee Chair Abbott asked for a motion to consider and adopt an amendment to the Independent Contractor Agreement.

Motion: Kenneth Tompkins
Second: Kristin Proud

Audit Committee Chair Abbott advised that, on April 19, 2022, the Board authorized the Corporation to enter into an agreement with Dr. Douglas Grose as an independent contractor to work with our partners in completing a submission to the U.S. Federal Government, in response to a request for proposals, for the National Semiconductor Technology Center and the Advanced Manufacturing Program. The term of the agreement with Dr. Grose was for six months beginning on April 25, 2022 and he was paid \$140,000 for his services.

In October, the parties amended the agreement to extended the term for six months on the same terms, as provided for in the original agreement. The parties now seek to further amend the agreement to extend the term for an additional six months to October 24, 2023 and reflect that Dr. Grose will be paid \$105,000 during such period. The amendment also would provide an option to renew the agreement for an additional six months on the same terms by mutual agreement of the parties.

The Finance Committee approved the resolution described in the memorandum provided to the Board in advance of the meeting, including recommending that the Board approve the same actions.

Requested Action: Approve a resolution (1) approving and authorizing the Corporation to amend the independent contractor agreement with Dr. Douglas Grose on the terms stated in the memorandum provided to the Board in advance of the meeting; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid agreement with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as

are necessary or appropriate to implement and carry out the purposes and intents of the resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

Vote: Following a roll call vote, the motion was approved. There were no nays or abstentions.

B. Lease with IBM (FRMC)

Audit Committee Chair Abbott asked for a motion to consider and adopt a lease with IBM.

Motion: Kristin Proud

Second: Dr. Meng-Ling Hsiao

Audit Committee Chair Abbott advised that IBM seeks to lease approximately 49,775 square feet of office space in ZEN for a term commencing on the date of execution of the lease and terminating 40 months later. The tenant will have an option to renew for two additional three-year periods. The tenant will pay \$28 per square foot. The rent includes operating expenses and utilities and will increase annually by 2.5%. The rent will commence four months after the effective date to allow for fit-up, which cost will be the responsibility of the tenant. FRMC will pay a tenant allowance of \$127,256, which will be recouped through rental payments.

The Finance Committee approved the resolution described in the memorandum provided to the Board in advance of the meeting, including recommending that the Board approve the same actions.

Action Requested: Approve a resolution (1) approving and authorizing the Corporation to enter into a lease with IBM on the terms stated in the memorandum provided to the Board in advance of the meeting; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid lease with such changes, variations, omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

Vote: Following a roll call vote, the motion was approved. There were no nays or abstentions.

C. Amended and Restated Lease with Applied Materials, Inc. (FRMC)

Audit Committee Chair Abbott asked for a motion to consider and adopt an Amended and Restated Lease with Applied Materials, Inc.

Motion: Joan McDonald

Second: Dr. Meng-Ling Hsiao

Audit Committee Chair Abbott advised that at its meeting in February, the Board authorized the corporation to allow Applied Materials to surrender 1,999 square feet of space in NanoFab South (“NFS”) and lease an additional 2,079 square feet of space in CESTM and NanoFab East (“NFE”) for one year at a base rent of \$35.08 per square foot. Prior to signing the lease, the parties changed the square footage based on updated drawings and modified the rent. Applied Materials will surrender 1,999 square feet of space as previously authorized, and will lease 1,811 square feet of additional space in CESTM and NFE. The lease for the new space will commence on the date of execution of the amended and restated lease and terminate on October 31, 2025. The rent will be \$36.02 per square foot, which includes utilities, plus parking fees. As to the 934 square feet in NFS only, the tenant will have an option to renew this currently leased space for seven years with a 3% increase annually in rent.

The Finance Committee approved the resolution described in the memorandum provided to the Board in advance of the meeting, including recommending that the Board approve the same actions.

Action Requested: Approve a resolution (1) approving and authorizing the Corporation to enter into an amended and restated lease with Applied Materials on the terms stated in the memorandum provided to the Board in advance of the meeting; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid lease with such changes, variations, omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

Vote: Following a roll call vote, the motion was approved. There were no nays or abstentions.

D. Lease with Applied Materials, Inc. (FRMC)

Audit Committee Chair Abbott asked for a motion to consider and adopt a Lease with Applied Materials, Inc.

Motion: Kenneth Tompkins
Second: Kristin Proud

Audit Committee Chair Abbott advised that Applied Materials seeks to lease an additional 1,992 square feet of lab space in CESTM for a term commencing on the date of last execution of the lease and terminating on October 31, 2025. The rent will be \$90 per square foot. The rent will increase by 3% annually. The tenant will have an option to extend the lease for one additional period of seven years.

The Finance Committee approved the resolution described in the memorandum provided to the Board in advance of the meeting, including recommending that the Board approve the same actions.

Action Requested: Approve a resolution (1) approving and authorizing the Corporation to enter into a lease with Applied Materials on the terms stated above; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid lease with such changes, variations, omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

Vote: Following a roll call vote, the motion was approved. There were no nays or abstentions.

E. Lease Amendment with TEL Technology Center, America, LLC (FRMC)

Audit Committee Chair Abbott asked for a motion to consider and adopt a lease amendment with TEL Technology Center, America, LLC.

Motion: Kristin Proud
Second: Anita Brown

Audit Committee Chair Abbott advised that TEL seeks to lease an additional 4,781 square feet of office space and 753 square feet of lab space in NFS. The term for the new space will commence when a building permit is issued to the tenant for construction of a wall securing a corridor and stairway door. The term will run concurrently with the term of the current lease for the majority of the premises, which extends to November 13, 2025, with an option to extend for two additional 24-month terms. The tenant will pay \$36.61 per square foot for the office space and \$93.32 per square foot for the lab space. The rent includes operating expenses and utilities. Rent will increase by 3% annually during the term of the lease and any renewal term. The Finance Committee approved the

resolution described in the memorandum provided to the Board in advance of the meeting, including recommending that the Board approve the same actions.

The Finance Committee approved the resolution described in the memorandum provided to the Board in advance of the meeting, including recommending that the Board approve the same actions.

Action Requested: Approve a resolution (1) approving and authorizing the Corporation to enter into a lease amendment with TEL on the terms stated in the memorandum provided to the Board in advance of the meeting; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid lease amendment with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

Vote: Following a roll call vote, the motion was approved. There were no nays or abstentions.

F. Amended and Restated Lease with Albany Valve & Fitting Co., Inc. (FRMC)

Audit Committee Chair Abbott asked for a motion to consider and adopt an amended and restated lease with Albany Valve & Fitting Co., Inc.

Motion: Dr. Meng-Ling Hsiao
Second: Kenneth Tompkins

Audit Committee Chair Abbott advised that Albany Valve has leased 407 square feet of office space in NFE since April 1, 2020. It seeks to continue to lease this space and to lease an additional 12 square feet of floor space in NFX for a vending machine. The term for the new space will begin on the date of last execution of the amended and restated lease, and the term for the entire space will terminate on March 31, 2025. The tenant will have the option to extend the lease for two additional 12-month terms. The tenant will pay \$32.98 per square foot for the first year, \$33.64 for the second year, \$34.32 for the third year, and \$35 for the fourth year. The rent includes operating expenses and utilities. The tenant will pay a fee for parking.

The Finance Committee approved the resolution described in the memorandum provided to the Board in advance of the meeting, including recommending that the Board approve the same actions.

Action Requested: Approve a resolution (1) approving and authorizing the Corporation to enter into an amended and restated lease with Albany Valve on the terms stated in the memorandum provided to the Board in advance of the meeting; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid lease with such changes, variations, omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

Vote: Following a roll call vote, the motion was approved. There were no nays or abstentions.

G. Lease with PsiQuantum Corp. (FRMC)

Audit Committee Chair Abbott asked for a motion to consider and adopt a lease with PsiQuantum Corp.

Motion: Kristin Proud

Second: Anita Brown

Audit Committee Chair Abbott advised that PsiQuantum seeks to lease approximately 181 square feet of office space in CESTM for a one-year term commencing on the date of execution of the lease. The tenant will pay \$5,400 in annual rent for the space, plus a parking fee. The rent includes operating expenses and utilities.

The Finance Committee approved the resolution described in the memorandum provided to the Board in advance of the meeting, including recommending that the Board approve the same actions.

Action Requested: Approve a resolution (1) approving and authorizing the Corporation to enter into a lease with PsiQuantum on the terms stated in the memorandum provided to the Board in advance of the meeting; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid lease with such changes, variations, omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

Vote: Following a roll call vote, the motion was approved. There were no nays or abstentions.

H. Lease Termination Agreement with Albany College of Pharmacy and Health Sciences (FRMC)

Audit Committee Chair Abbott asked for a motion to consider and adopt a lease termination Agreement with Albany College of Pharmacy and Health Sciences.

Motion: Kristin Proud
Second: Joan McDonald

Audit Committee Chair Abbott advised that Albany College of Pharmacy and Health Sciences has leased 3,781 square feet of lab and office space in NFE since August 1, 2020. The lease terminates on July 31, 2025. To accommodate expansion plans, the college seeks to terminate its lease effective May 1, 2023 and move into a new building. The new facility is adjacent to the College and will enable it to expand its Center for Biopharmaceutical Education and Training, which is the first training center of its kind in New York State. The project is supported by a \$1.75 million grant from Empire State Development. FRMC is willing to agree to the lease termination because they have several other potential new and existing tenants who are interested in leasing the space soon at competitive rates.

The Finance Committee approved the resolution described in the memorandum provided to the Board in advance of the meeting, including recommending that the Board approve the same actions.

Approve a resolution (1) approving and authorizing the Corporation to enter into a termination agreement with Albany College of Pharmacy and Health Sciences on the terms stated in the memorandum provided to the Board in advance of the meeting; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid agreement with such changes, variations, omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

Vote: Following a roll call vote, the motion was approved. There were no nays or abstentions.

5. New Business

Audit Committee Chair Abbott asked if there is any new business. There was none.

6. Public Comment

Audit Committee Chair Abbott asked if there is any comment from the public. There was none.

7. Schedule of Next Meeting

Audit Committee Chair Abbott advised that the date of the next meeting is to be determined and once finalized will be posted on the website.

8. Adjournment

With no further business to come before the Board, Audit Committee Chair Abbott asked for a motion to adjourn the meeting.

Motion: Anita Brown
Second: Kristin Proud

The motion was approved and the meeting was adjourned 3:54 pm.

Respectfully Submitted,

Patricia K. Bucklin
Secretary of the Board

To: New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (“NY CREATES”) Board of Directors

Re: Approval of Insurance Renewals (NY CREATES, FRMC and FSMC)

Background:

NY CREATES, Fuller Road Management Corporation (“FRMC”) and Fort Schuyler Management Corporation (“FSMC”) seek to renew their various lines of insurance coverage for the period commencing on July 1, 2023. NY CREATES’ insurance broker, Amsure, conducted a competitive outreach process and prepared a proposed renewal package. Amsure is an independent risk management and insurance advisory firm that represents over 20 different insurance carriers. A summary of the proposed program is in the materials provided to the Board in advance of the meeting. Please note that NY CREATES is a named insured on all of the policies (except for the FRMC and FSMC pollution policies, on which it is an additional insured), and FRMC and FSMC are named insureds on the NY CREATES policies.

As noted in the attached summaries, the aggregate premium costs for NY CREATES, FRMC and FSMC will increase by approximately \$129,716 or 3.7% for the 2023-24 policy periods when compared to the expiring policy terms. The increase is primarily driven by increases in property insurance premiums. These rates have increased significantly across the nation due to increased claims caused by natural catastrophes, inflation, supply chain issues and increased costs for materials and repairs. Premiums for other lines of insurance either decreased or remained approximately the same as last year.

The Audit Committee approved resolutions for NY CREATES, FRMC and FSMC (1) approving and authorizing the insurance renewals as described in the summary provided to the Committee in advance of the meeting; (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid insurance renewals with such changes, variations, omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements; and (3) recommending that the Board approve the same actions.

Requested Action:

Approve resolutions for NY CREATES, FRMC and FSMC (1) approving and authorizing the insurance renewals as described in the summary provided to the Board in advance of the meeting; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid insurance renewals with such changes, variations,

omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

FULLER ROAD MANAGEMENT CORPORATION

PREMIUM SUMMARY

Premium Changes
2023-24 vs. 2022-23

Commercial Property	\$65,189
Commercial General Liability, WC, Auto & Umbrella	\$ 3,110
Flood Insurance (Kiernan)	-\$10
Pollution Liability	\$ -
Total Premium Change	\$ 68,289
Total Premiums	\$880,045

FORT SCHUYLER MANAGEMENT CORPORATION

PREMIUM SUMMARY

	<u>Premium Changes 2023-24 vs. 2022-23</u>
Commercial Property	\$ 298,650
Flood – Riverbend	\$ 495
Commercial General Liability / Auto	\$ 37
Commercial Umbrella Liability	\$ 3,426
Workers Compensation	(\$ 21)
Pollution Liability	\$ 0
Total Premium Change	<u>\$ 302,587</u>
Total Premiums	\$2,192,390

**NEW YORK CENTER FOR RESEARCH, ECONOMIC ADVANCEMENT, TECHNOLOGY,
ENGINEERING AND SCIENCE CORPORATION**

PREMIUM SUMMARY

**Premiums
2023-24 vs. 2022-23**

CRIME	(\$ 8,675)
Employed Lawyers Professional	(\$ 9,342)
<u>DIRECTORS & OFFICERS</u>	
Primary \$5m	(\$79,887)
\$5m xs \$5m	(\$56,445)
\$5m xs \$10m	(\$25,582)
\$5m xs \$15m	(\$21,261)
\$5m xs \$20m	(\$15,096)
\$5m xs \$25m	(\$25,172)
Total Change	(\$241,160)
Total Annual Premiums	\$438,176

OVERALL PREMIUMS NYCREATES, FRMC and FSMC

	<u>Total Annual Premiums</u>	<u>Change from Prior Year</u>
FRMC	\$ 880,045	\$ 68,289
FSMC	\$2,192,390	\$ 302,587
<u>NYCreates</u>	<u>\$ 438,176</u>	<u>(\$241,160)</u>
Totals	\$3,510,611	\$ 129,716

To: New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (“NY CREATES”) Board of Directors

Re: Sale of Kiernan Plaza, 575 Broadway, Albany, NY (FRMC)

Background:

At its meeting on April 22, 2022, the Corporation authorized the sale of Kiernan Plaza to Redburn Development Partners and/or its affiliates for \$1.25MM. The sale followed a competitive process during which two bids were received, with the highest bid being submitted by Redburn at \$1MM. The Board was advised that the Corporation negotiated a sales price of \$1.25MM and that Redburn planned to invest \$10MM to upgrade the facility to be used as office space. Specifically, Redburn had identified a large law firm as the potential tenant for the building, which would strengthen the nongovernmental base of occupants and lessees in Albany. It was recognized that the sale of the property will relieve FRMC of the need to invest in various capital improvements at the facility and the need to address the upcoming lease expirations of two large tenants in the facility. It also would enable FRMC to streamline its property holdings and focus on high-tech growth opportunities that better fulfill its mission.

FRMC has been in continuing discussions with Redburn to finalize the purchase and sale agreement for the facility. Redburn has indicated that it is not financially feasible for it to proceed with the purchase of the facility and intended use at the original price due to the significant rise in the construction-related costs that would be incurred to fit up the facility for office space and also due to higher interest rates. It now seeks to reduce the purchase price to its bid of \$1MM and intends to consider other uses of the building, such as residential. Additionally, in the event Redburn decides to transfer ownership of the building within two years of closing, Redburn will be required to return a percentage of any net proceeds of such transfer to FRMC.

Given the significant increase in interest rates and construction costs over the last year, the deferred maintenance needs, the considerable change in the market and the original bid price, it is arguable that the revised offer of \$1MM continues to represent a fair market value for the property as was originally described in the April 2022 Board memorandum. A sale to Redburn for additional uses, such as residential, would continue to further a public purpose by ensuring that a historic building is given a new life and potentially attract a solid tenant base that would help revive the neighborhood, with economic benefits for the entire downtown area. Additionally, and more importantly, the sale would eliminate the need for FRMC to address the expiration of leases for two large tenants and the need to invest in capital improvements, thereby enabling FRMC to focus on high-tech opportunities that better fulfill its mission.

As noted above, FRMC continues to believe that the proposed sale represents fair market value. However, out of an abundance of caution, FRMC in its April 2022 Board memorandum provided the Board with all relevant information required for a less than fair market sale as required by the Acquisition and Disposition of Real Property Policy. The information previously provided remains the same except that (i) the purchase price is now \$1 MM rather than \$1.25 MM and (ii) purchaser intends to consider other uses for the facility, such as a conversion to apartments. A residential use will draw people to live in the downtown area and similar to office space, will create a strong base in a key area of downtown, with resultant economic benefits to the entire surrounding area. Nevertheless, the sale will still enable FRMC to forgo maintenance expenses and focus on high-tech opportunities that better fulfill its mission and public purpose. Accordingly, Chief Operating Officer Paul Kelly and Interim Contracting Officer Scott Bateman approve this proposed transfer. In addition, Hope Knight, President, and Chief Executive Officer - Designate of Empire State Development consents to the transfer.

Based on the foregoing, FRMC seeks authorization to transfer the facility to Redburn for \$1MM with a requirement that Redburn must return a certain percentage, as determined by Chief Operating Officer, of the net proceeds if the building is resold within two years.

The Finance Committee approved a resolution (1) determining that, based upon the economic benefits to be derived from the transfer and the other factors enumerated in the memorandum provided to the Committee in advance of the meeting, there is no reasonable alternative to the proposed transfer of the property to Redburn that would achieve the same purpose as such transfer, and approving and authorizing a change to the provisions of FRMC Resolution No. 182 to authorize the sale of Kiernan Plaza by FRMC to Redburn for \$1MM on the terms stated in the memorandum provided to the Committee in advance of the meeting; (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation (i) to execute, acknowledge and deliver any associated agreements for such transfer with such changes, variations, omissions and insertions as the officer of the corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements; and (3) recommending that the Board approve the same actions.

Requested Action:

Approve FRMC Resolution No. 186.

RESOLUTION OF THE BOARD OF DIRECTORS OF
FULLER ROAD MANAGEMENT CORPORATION

June 29, 2023

RESOLUTION NO: 186

AUTHORIZATION TO ENTER INTO A REVISED REAL PROPERTY PURCHASE AND
SALE AGREEMENT AND TAKE RELATED ACTIONS

WHEREAS, the Fuller Road Management Corporation (the “Corporation”) Board of Directors is charged with directing the management of the operations, property, affairs and concerns of the Corporation; and

WHEREAS, at its meeting on April 22, 2022, pursuant to FRMC Resolution No. 182, the Corporation authorized the sale of Kiernan Plaza at 575 Broadway, Albany, NY to Redburn Development Partners and/or its affiliates (“Redburn”) for \$1.25MM; and

WHEREAS, this followed a competitive process during which two bids were received, with the highest bid being submitted by Redburn at \$1MM, and the Board was advised that the Corporation negotiated a sales price of \$1.25MM, and that Redburn planned to invest \$10MM to upgrade the facility to be used as office space; and

WHEREAS, FRMC has been in continuing discussions with Redburn to finalize the purchase and sale agreement for the facility, and Redburn has indicated that it is not financially feasible for it to proceed with the purchase of the facility and intended use at the original price due to the significant rise in the construction-related costs that would be incurred to fit up the facility for office space and also due to higher interest rates; and

WHEREAS, Redburn now seeks to reduce the purchase price to its bid of \$1MM and intends to consider other uses of the building, such as residential; and

WHEREAS, given the significant increase in interest rates and construction costs over the last year, the deferred maintenance needs, the considerable change in the market and the original bid price, it is arguable that the revised offer of \$1MM continues to represent a fair market value for the property as was originally described in the April 2022 Board memorandum; however, in an abundance of caution, the information required by the Acquisition and Disposition Policy for a less than fair market value sale was set forth in the April 2022 Board memorandum and that information remains the same except that (i) the purchase price is now \$1 MM rather than \$1.25 MM and (ii) purchaser intends to consider other uses for the facility, such as a conversion to apartments; and

WHEREAS, a sale to Redburn for an additional uses, such as residential, would continue to further a public purpose by ensuring that a historic building is given a new life and potentially attract a solid tenant base that would help revive the neighborhood, with economic benefits for the entire downtown area; and additionally and more importantly, the sale would eliminate the need for FRMC to address the expiration of leases for two large tenants and the need to invest in capital improvements, thereby enabling FRMC to focus on high-tech opportunities that better fulfill its mission; and

WHEREAS, based on the foregoing, FRMC seeks authorization to transfer the facility to Redburn for \$1MM, with a requirement that Redburn must return a certain percentage, as determined by the Chief Operating Officer, of the net proceeds if the building is resold within two years; and

WHEREAS, the Chief Operating Officer, Paul Kelly, and the Interim Contracting Officer, Scott Bateman, approve the proposed sale, and Hope Knight, President and Chief Executive Officer – Designate of Empire State Development consents to the transfer; and

NOW, THEREFORE, BE IT RESOLVED BY THE DIRECTORS AS FOLLOWS:

SECTION 1: APPROVAL AND AUTHORIZATION FOR SALE OF THE PROPERTY. The Board of Directors hereby approves and authorizes a change to the provisions of FRMC Resolution No. 182 to authorize the sale of Kiernan Plaza by FRMC to Redburn for \$1MM on the terms stated in the memorandum provided to the Board in advance of the meeting.

SECTION 2: APPROVAL OF TRANSFER. The Board of Directors hereby determines that, based upon the economic benefits to be derived from the transfer of the property to Redburn and the other factors enumerated in the memorandum provided to the Board in advance of the meeting, there is no reasonable alternative to the proposed transfer that would achieve the same purpose as such transfer.

SECTION 3: DOCUMENTS AND CONTRACTS. The Board of Directors approves and authorizes the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (1) to execute, acknowledge and deliver any associated documents for such transfer of property with such changes, variations, omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (2) to take such actions as are necessary or appropriate to implement and carry out the purposes and intents of this Resolution, including without limitation, the execution, acknowledgement and delivery of other documents and agreements.

SECTION 4: This Resolution shall take effect immediately.