

# THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

## MINUTES

Thursday, February 9, 2012

(corrected as of 2/19/14)

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\*As reported in the Minutes of the February 19, 2014 Board meeting, this action has been corrected to reflect a recusal by Commissioner Samson (through clerical inadvertence such recusal was not noted). As such, the item moved to the Minutes of the Special Meeting of the Committee on Operations of February 9, 2012.

**MINUTES of the Meeting of The Port Authority of New York and New Jersey held Thursday, February 9, 2012 at 225 Park Avenue South, City, County and State of New York**

**PRESENT:**

**NEW JERSEY**

Hon. David Samson, Chairman  
 Hon. Virginia S. Bauer  
 Hon. William P. Schuber  
 Hon. David S. Steiner

**NEW YORK**

Hon. Scott H. Rechler, Vice-Chairman  
 Hon. Jeffrey H. Lynford  
 Hon. Jeffrey A. Moerdler

Patrick J. Foye, Executive Director  
 William Baroni, Jr., Deputy Executive Director  
 Darrell B. Buchbinder, General Counsel  
 Karen E. Eastman, Secretary

Heavyn-Leigh American, Associate Board Management Support Specialist, Office of the Secretary  
 Steven A. Borrelli, Assistant Director, Port Business Development, Port Commerce  
 Steven J. Coleman, Deputy Director, Media Relations  
 Stephanie E. Dawson, Chief of Staff to the Chief Operating Officer  
 Gerard A. Del Tufo, Assistant Director of Development and Operations, Real Estate and Development  
 John C. Denise, Audio Visual Supervisor, Marketing  
 Michael P. DePallo, Director, Rail Transit  
 Gretchen P. DiMarco, Special Assistant to the Deputy Executive Director  
 Paula T. Dow, First Deputy General Counsel  
 John J. Drobny, Director, Security Projects, Chief Operating Office  
 Jason Englese, Engineer, Port Authority Trans-Hudson Corporation  
 Michael G. Fabiano, Chief Financial Officer  
 Nancy A. Farrell, Police Officer, Port Authority Police  
 Michael A. Fedorko, Director, Public Safety/Superintendent of Police  
 Michael B. Francois, Chief, Real Estate and Development  
 Cedrick T. Fulton, Director, Tunnels, Bridges and Terminals  
 Glenn P. Guzi, Senior External Affairs Representative, Government and Community Affairs  
 Linda C. Handel, Deputy Secretary  
 Mary Lee Hannell, Director, Human Resources  
 Timothy Harrington, Trainmaster, Port Authority Trans-Hudson Corporation  
 Andrew T. Hawthorne, Director, Marketing  
 Anthony Hayes, Manager, Media Planning, Media Relations  
 Mark D. Hoffer, Director, New Port Initiatives, Port Commerce  
 Lawrence S. Hofrichter, Deputy General Counsel  
 Atiba A. Joseph-Cumberbatch, Police Officer, Port Authority Police  
 Howard G. Kadin, Esq., Law  
 Kirby King, Director, Technology Services  
 Krzysztof Kutarnia, Police Officer, Port Authority Police  
 Louis J. LaCapra, Chief Administrative Officer  
 Cristina M. Lado, Director, Government and Community Affairs, New Jersey  
 Richard M. Larrabee, Director, Port Commerce  
 Jamie E. Loftus, Chief, Public and Government Affairs  
 John Ma, Chief of Staff to the Executive Director

Lisa MacSpadden, Director, Media Relations  
 Norma L. Manigan, Project Director, External Affairs, Marketing  
 Catherine M. Massab, Supporting Office Assistant, Office of the Secretary  
 Michael G. Massiah, Director, Management and Budget  
 Daniel G. McCarron, Comptroller  
 James E. McCoy, Manager, Board Management Support, Office of the Secretary  
 Anne Marie C. Mulligan, Treasurer  
 Laurie Michel, Director, Federal Affairs, Government and Community Affairs  
 Toni L. Munford, Principal Records Management Officer, Office of the Secretary  
 Lynn A. Nerney, Senior Business Manager, Office of the Secretary  
 Patrick O'Reilly, Senior Advisor to the Chairman  
 Ann M. O'Rourke, Assistant Director, Government and Community Affairs  
 Jeffrey P. Pearse, Deputy Director, Aviation  
 Paul A. Pietropaolo, Corporate Information Security Officer, Office of the Secretary  
 Steven P. Plate, Deputy Chief, Capital Planning/Director, World Trade Center Construction  
 Alan L. Reiss, Deputy Director, World Trade Center Construction  
 Paul J. Richman, Director, Federal Affairs, Government and Community Affairs  
 Shane Robinson, Staff External Affairs Representative, Government and Community Affairs  
 Brian W. Simon, Director, Government and Community Affairs, New York  
 Timothy G. Stickelman, Assistant General Counsel  
 Gerald B. Stoughton, Director, Financial Analysis  
 Robert A. Sudman, Director, Audit  
 Ralph Tragale, Assistant Director, Public Affairs, Aviation  
 David B. Tweedy, Chief, Capital Programs  
 I. Midori Valdivia, Principal Financial Analyst, Executive Director's Office  
 Lillian D. Valenti, Director, Procurement  
 Sheree Van Duyne, Manager, Policies and Protocol, Office of the Secretary  
 Teresa Whitehead, Conductor, Port Authority Trans-Hudson Corporation  
 David M. Wildstein, Director, Interagency Capital Projects, Office of the Deputy Executive  
 Director  
 Peter J. Zipf, Chief Engineer

Guests:

Regina Egea, Director, Authorities Unit, Office of the Governor of New Jersey  
 Johanna Jones, Assistant Counsel, Authorities Unit, Office of the Governor of New Jersey

Speakers:

Murray Bodin, Member of the Public  
 Joseph Clift, Member of the Public  
 Jack Coughlin, Member of the Public  
 Margaret Donovan, Twin Towers Alliance  
 Yvonne Garrett-Moore, Member of the Public  
 Richard Hughes, Twin Towers Alliance  
 Kenneth D. Paskar, Friends of LaGuardia Airport  
 James T. Raligh, Friends of LaGuardia Airport

The public meeting was called to order by Chairman Samson at 12:25 p.m. and ended at 1:05 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 December 8, 2011. She reported that copies of these Minutes were delivered to the Governors of New York (in electronic form) and New Jersey (in paper form) on December 9, 2011. She reported further that the time for action by the Governors of New York and New Jersey expired at midnight on December 23, 2011.

Whereupon, the Board unanimously approved the Minutes of the meeting of December 8, 2011.

### **Report of Committee on Operations**

The Committee on Operations reported, for information, on matters discussed in public session at its meeting on February 9, 2012, which included discussion of an air service development incentive program at Stewart International Airport, additional planning to support the development of a project to address the navigational air draft clearance limitations posed by the Bayonne Bridge, a contract for the repainting of portions of the main span arch at the Bayonne Bridge, and discussion of the Freedom of Information Policy, 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 February 9, 2012, which included discussion of a program that authorizes planning for, and implementation of, three critical projects for the rehabilitation of the underside of the lower level of the George Washington Bridge (GWB) and several of the elevated approach roadways that serve the GWB, a project for the design, construction and maintenance of an Engineered Material Arresting System at Newark Liberty International Airport, and discussion of a program for energy efficiency improvements at various facilities, and the report was received.

### **Report of World Trade Center Redevelopment Subcommittee**

The World Trade Center Redevelopment Subcommittee reported, for information, on matters discussed in public and executive sessions at its meeting on February 9, 2012, which included discussion of a construction trade contract for fireproofing services at the World Trade Center (WTC) Vehicular Security Center and Tour Bus Parking Facility, and a contract for operation and maintenance services at the WTC site, and discussion of matters involving ongoing negotiations or reviews of contracts or proposals, and the report was received.

**Report of Special Meeting of Committee on Operations**

In view of the absence of a quorum for the Board to act on certain matters to be considered at its meeting on February 9, 2012, consistent with the Port Authority's By-Laws, a special meeting of the Committee on Operations was held. At the meeting, the Committee acted for and on behalf of the Board on certain matters included on the agenda for the Board meeting. A copy of the minutes of the special meeting of the Committee on Operations held on February 9, 2012 is included with these minutes.

**BAYONNE BRIDGE – NAVIGATIONAL CLEARANCE PROGRAM – INCREASE IN PLANNING AUTHORIZATION AND AUTHORIZATION TO INCREASE AN EXISTING PROFESSIONAL SERVICES AGREEMENT**

It was recommended that the Board authorize: (1) an increase of \$35 million in the amount of the planning authorization to perform final planning and engineering design services for the Bayonne Bridge Navigational Clearance Program (BBNCP), resulting in a total authorization of \$70 million; and (2) the Executive Director to increase the amount of an existing expert professional services agreement with HDR Engineering Inc./PB Americas Inc. to provide additional services, including final engineering design and construction support services during Stages III through IV, in an amount not to exceed \$34.7 million (inclusive of a contingency), of which funding in the aggregate amount of up to \$27 million (inclusive of \$5.8 million previously authorized to support planning work) is being requested as part of the proposed increase in planning authorization.

At its meeting of August 13, 2009, the Board authorized the expenditure of \$10 million for planning and conceptual engineering services and to perform a preliminary alternatives analysis of options to address the navigational clearance limitations posed by the Bayonne Bridge. Subsequently, the Board, at its meeting of September 14, 2010, authorized the provision of \$1 billion in Port Authority capital funding capacity for the BBNCP.

In December 2010, upon review of the preliminary alternatives analysis of options, the Port Authority announced that it had selected the raising of the roadway as the best solution to the Bayonne Bridge navigational clearance limitation.

At its May 25, 2011 meeting, the Board authorized an increase of \$25 million in the amount of the planning authorization to perform preliminary and final planning and engineering design services for the BBNCP, resulting in a total authorization of \$35 million. Additionally, the Board authorized the Executive Director to enter into an agreement with HDR Engineering Inc./PB Americas Inc., pursuant to a publicly advertised Request for Proposals process, to provide preliminary planning and engineering services, in a total amount not to exceed \$9.3 million (inclusive of a contingency), to support the implementation of the project. At that time, funding of \$5.8 million was authorized to support Stages II and III, with the balance subject to further authorization.

Initially, a design/build procurement strategy for the BBNCP was contemplated. However, as the program evolved, the engineering schedule significantly accelerated ahead of the environmental review schedule required under the National Environmental Policy Act, and therefore the opportunity exists to proceed with a design/bid/build contract procurement strategy. This design/bid/build strategy offers the benefit of reductions in program cost and schedule, and would help to reduce risk, ensure quality and retain engineering design control. This procurement strategy change would require modification of the existing agreement with HDR Engineering Inc./PB Americas Inc. to include the performance of final engineering design services to prepare design/bid/build contract documents, as well as construction support services through project completion to support the modification of the Bayonne Bridge.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bauer, Lynford, Moerdler, Rechler, Samson, Schuber and Steiner voting in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

**RESOLVED**, that an increase of \$35 million in the amount of the planning authorization to perform final planning and engineering design services for the Bayonne Bridge Navigational Clearance Program, resulting in a total authorization of \$70 million, be and it hereby is authorized; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to increase an existing expert professional services agreement with HDR Engineering Inc./PB Americas Inc. to provide additional services, including final engineering design and construction support services during Stages III through IV, in an amount not to exceed \$34.7 million (inclusive of a contingency), of which funding for up to \$27 million is being requested as part of the foregoing increase in planning authorization; and it is further

**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.

## **GEORGE WASHINGTON BRIDGE – REHABILITATION PROGRAM**

It was recommended that the Board authorize: (1) the George Washington Bridge (GWB) Rehabilitation Program (Program) to support the advancement of three critical projects to maintain the lower level GWB span and certain approach bridges that serve the GWB, including the 178<sup>th</sup> Street and 179<sup>th</sup> Street roadway ramps and associated roadways that provide connectivity to the GWB Bus Station (GWBBS) in New York, and two bridges that span the roadways serving the GWB in New Jersey, at an estimated total amount of \$230 million for the planning and construction work to be authorized presently in connection with the Program; and (2) the Executive Director to: (a) enter into separate agreements for professional architectural and engineering services with Hardesty and Hanover, LLC and Parsons Transportation Group of New York, Inc., at an aggregate amount of \$7.3 million, to support the Program, of which \$5.3 million is requested to support the Program at this time, and the balance would be subject to further authorization; and (b) expend an additional \$1.8 million (resulting in a total amount of \$2.6 million) for additional architectural and engineering services in connection with the previously authorized professional services agreement with URS Corporation to support the Program.

The GWB, which was constructed in 1931 and modified to include a lower-level roadway in 1962, is a critical link between New York and New Jersey. Currently, many elements of the bridge and its supporting roadway networks are between 50 and 80 years old, are reaching the end of their useful life, and require rehabilitation in order to maintain a state of good repair.

The proposed Program would encompass three projects, with authorization presently being requested for final engineering and construction work in connection with one of the projects, and for planning work only in connection with the other two projects, as outlined further below.

### **Project for Rehabilitation of 178<sup>th</sup> Street and 179<sup>th</sup> Street Ramps, and Bus Ramps in New York**

The 178<sup>th</sup> Street and 179<sup>th</sup> Street ramps, two associated bus ramps, and the bus connector ramp structure that links these elevated roadways (collectively, the Ramps), are critical for access to and from the New York side of the GWB and the GWBBS. The 178<sup>th</sup> Street and 179<sup>th</sup> Street ramps were constructed in 1931, and were last rehabilitated in 1991. The bus ramps and the connector ramp were constructed in 1958, and were partially rehabilitated in the late 1980s. Recent engineering studies and deck condition assessments have indicated that these structures are in need of rehabilitation in order to maintain a state of good repair.

It was recommended that the Board authorize a project for the rehabilitation of the Ramps, at an estimated project cost of \$218.8 million. The project would include final design, construction staging and estimating, value engineering and construction for the rehabilitation of the Ramps. The deck for all structures would be replaced, and the supporting elements, including piers and abutments, would be rehabilitated. The proposed authorization also would authorize the Executive Director to expend an estimated additional amount of \$1.8 million for additional professional architectural and engineering services under an existing agreement with URS Corporation, through project completion.

The Board, at its meeting of May 28, 2009, authorized the expenditure of \$1.6 million for planning and engineering services related to the rehabilitation of the Ramps. At that time, the Board also authorized the Executive Director to enter into an expert professional services agreement with URS Corporation, in an amount not to exceed \$6 million, to support several projects at the GWB, including the rehabilitation of the 178<sup>th</sup> Street and 179<sup>th</sup> Street ramps and adjacent ramps servicing the GWBBS. Of the amount of that agreement with URS Corporation, \$800,000 was to support the planning effort for the rehabilitation of the Ramps, with the expenditure of additional funds under the agreement to be subject to further authorization in the future. The total cost of URS Corporation's services to support the project to rehabilitate the Ramps, through completion, is estimated at \$2.6 million.

### **Planning for Rehabilitation of the Center Avenue and Lemoine Avenue Bridges in New Jersey**

The Center Avenue and Lemoine Avenue bridges (collectively, the Bridges), both of which are composed of concrete with steel girders, span over the approach roadways for the GWB in New Jersey. Both bridges were built by the Port Authority in stages between 1935 and 1965. The Center Avenue Bridge last underwent rehabilitation in the late 1980s. The Lemoine Avenue Bridge was partially rehabilitated in the late 1990s. Although this limited rehabilitation work extended the service life of each structure, based on recent inspections and known conditions, comprehensive rehabilitation and/or replacement of elements of both structures is required.

It was recommended that the Board authorize planning work, in an estimated amount of \$3.4 million, which would provide for the development of comprehensive rehabilitation concepts required to maintain the Bridges in a state of good repair. The proposed planning effort would include investigation and evaluation of the existing structures, development of appropriate replacement methods for the existing decks, replacement or rehabilitation methods for supporting beams, piers and abutments, and a determination of the cost-effectiveness of either rehabilitation or replacement of elements of the existing structures, based on a life-cycle cost-benefit analysis.

Authorization also was requested for the Executive Director to enter into an agreement with Hardesty & Hanover, LLP to provide professional architectural and engineering services to support the planning effort for the rehabilitation of the Bridges, at an estimated aggregate amount of \$3.9 million, of which \$1.9 million was requested to support the present planning effort, with the expenditure of the additional \$2 million under the agreement to be subject to further authorization in the future.

It is expected that project authorization for the rehabilitation of the Bridges will be sought in the future.

### **Planning for Rehabilitation of Structural Steel, Removal of Existing Paint and Repainting of the Underside of the Lower Level Bridge Span**

The addition of the lower level to the GWB was completed in 1962 and included movable maintenance platforms under the structure to support maintenance and inspection of the bridge. Engineering inspections conducted in 2009 and 2011 identified numerous structural

areas that require varying degrees of priority steel repair, paint removal and repainting work on the underside of the lower level bridge span.

It was recommended that the Board authorize planning work, in an estimated amount of \$7.8 million, to provide for the prioritization of structural steel rehabilitation work and assist in the development of a comprehensive plan to support the structural steel and paint removal and repainting work. The proposed planning effort would include detailed field inspections, so that the priority repairs would be properly classified and addressed under an initial project phase, the construction of which would commence in 2013, and that other repairs of lower priority may be addressed in a second phase of the project, beginning in 2015. The second phase of the project also would include seismic analysis and retrofit, paint removal and repainting, replacement of the four maintenance platforms, replacement of the median mesh between the eastbound and westbound lanes and recoating of the New York lower tower of the GWB. Under the requested authorization, final design and contract document development would be prepared for the project's first phase, and design development would be prepared for its second phase.

Authorization also was requested for the Executive Director to enter into an agreement with Parsons Transportation Group of New York, Inc. to provide for professional architectural and engineering services to support the project, at an estimated amount of \$3.4 million.

It is expected that project authorization for the rehabilitation of the structural steel and paint removal and repainting work will be sought in the future.

In addition to the three proposed projects listed above, approximately \$3 million would be allocated for community outreach from the contingency budgets for major projects to be implemented at the GWB, including those covered under the Program.

Currently, it is anticipated that the Program will commence in March 2012 and be completed in 2021. The rehabilitation of the various structures must be carefully coordinated to accommodate the facility operation, other ongoing projects and restricted work-hour requirements. The Program is necessary to maintain the structural integrity of the GWB lower level roadway and ancillary approach roadway bridges, including the ramps in New York, as well as the two bridges that span the roadways serving the GWB in New Jersey.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bauer, Lynford, Moerdler, Rechler, Samson, Schuber and Steiner voting in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

**RESOLVED**, that the George Washington Bridge (GWB) Rehabilitation Program (Program) to support the advancement of three critical projects to maintain the lower level GWB span and certain approach bridges serving the GWB, including the 178<sup>th</sup> Street and 179<sup>th</sup> Street roadway ramps and associated roadways that provide connectivity to the GWB Bus Station in New York, and two bridges that span the roadways serving the GWB in New Jersey, be and it hereby is authorized; and it is further

**RESOLVED**, that planning, final engineering and construction work in connection with the three projects that comprise the Program, in an estimated total amount of \$230 million, as set forth above, be and it hereby is authorized, and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into separate professional services agreements with Hardesty and Hanover, LLC and Parsons Transportation Group of New York, Inc., in an aggregate amount of \$7.3 million, to support the Program, as set forth above; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to expend an additional \$1.8 million for additional architectural and engineering services in connection with the previously authorized professional services agreement with URS Corporation to support the foregoing Program work; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to take action with respect to construction contracts, contracts for professional and advisory services and such other contracts and agreements as may be necessary to effectuate the foregoing project and planning work, pursuant to authority granted in the By-Laws or other resolution adopted by the Board; and it is further

**RESOLVED**, that the form of all contracts and agreements in connection with the foregoing project and planning work shall be subject to the approval of General Counsel or his authorized representative.

**LINCOLN TUNNEL – LINCOLN TUNNEL PARK-AND-RIDE LOT – NEW JERSEY  
TRANSIT BUS OPERATIONS, INC. – LEASE SUPPLEMENT**

As reported in the Minutes of the February 19, 2014 Board meeting, this action has been corrected to reflect a recusal by Commissioner Samson (through clerical inadvertence such recusal was not noted). As such, the item moved to the Minutes of the Special Meeting of the Committee on Operations of February 9, 2012.

## **STEWART INTERNATIONAL AIRPORT – AIR SERVICE DEVELOPMENT INCENTIVE PROGRAM – PROGRAM AUTHORIZATION**

It was recommended that the Board authorize the Executive Director to implement a five-year air service development incentive program, which would provide for financial and marketing incentives to passenger airlines and charter tour operators who initiate non-stop service to new destinations from Stewart International Airport (SWF). Any new or incumbent carrier or charter tour operator providing scheduled non-stop passenger service to any domestic destination currently not served from SWF would be offered: (1) a credit of up to \$525 per turn for Ground Handling service charges for the first 24 months of new non-stop service; (2) marketing and advertising support valued at \$3 per outbound seat for such new non-stop service, not to exceed \$150,000 per destination during the first 12 months of service, and not to exceed \$75,000 per destination during the second 12 months of service; and (3) a 50-percent reduction in rent and fees associated with the new service for the first 12 months of non-stop service, and a 25-percent reduction in rent and fees for the second 12 months of new non-stop service. Any new or incumbent carrier or charter tour operator providing scheduled non-stop passenger service to any international destination currently not served from SWF would be offered: (1) a credit of up to \$900 per turn for Ground Handling service charges for the first 24 months of new non-stop service; (2) marketing and advertising support valued at \$3 per outbound seat for such new non-stop service, not to exceed \$250,000 per destination during the first 12 months of service, and not to exceed \$125,000 per destination during the second 12 months of service; and (3) a 100-percent reduction in rent and fees associated with the new service for the first 12 months of non-stop service, and a 50-percent reduction in rent and fees for the second 12 months of new non-stop service.

Since the Port Authority acquired SWF in November 2007, overall passenger enplanements at the airport have decreased by approximately 60 percent, due to continuing negative economic conditions combined with significantly higher fuel costs and a reduction in overall industry capacity. As a result, airlines have been reducing seats and retiring smaller, less fuel-efficient regional jets predominantly serving airports like SWF. Some airports in closer proximity to larger metropolitan hubs have witnessed a complete cessation of scheduled air service.

In an effort to prevent a further reduction in air service at SWF, the Board, at its meeting of August 14, 2008, authorized a Retention Incentive Program, which provided for a waiver of certain fees and rentals for all airlines providing passenger air service at SWF for the period of September 1, 2008 through February 28, 2009. At that time, the Board was advised that the Retention Incentive Program was an interim measure while staff developed longer-term solutions to grow air service at SWF.

At its meeting of September 30, 2010, the Board authorized a two-year air service development incentive program for SWF, which was limited to credits of \$525 per turn for Ground Handling service and marketing and advertising support of \$3 per outbound seat during the first 12 months of service. Given the significant number of airports competing for a limited number of available seats, staff has been aggressively pursuing airlines, using incentives and compelling market data, while concurrently marketing SWF as an alternative gateway to the New York/New Jersey region. These efforts have yielded some incremental gains, including a seasonal international charter program, as well as additional interest from other low-cost service

providers seeking cost-effective alternative access to the New York/New Jersey metropolitan region. Included among these service providers are longer-haul, wide-body international operators that would be willing to share the risk associated with developing a new route in a relatively unknown airport with the appropriate infrastructure, cost structure, incentive programs and community support.

In an effort to ensure that infrastructure is in place, at its meeting of December 8, 2011 the Board approved a terminal expansion project at SWF that would provide for a permanent facility to process international operations at SWF. The currently proposed incentive program seeks to attract and sustain new route service suitable for the efficient utilization of this expansion, while generating additional airport revenue and raising the profile of the facility on an international scale.

In view of the competition among airports for acquisition of service to additional destinations, staff undertook a review of similar airports' actions to attract airlines. The proposed program, which is designed to encourage carriers to offer service to new routes through a combination of mitigating start-up costs and providing marketing support during the critical first two years of service, would enable SWF to compete more effectively with other area airports, such as those in Albany and Westchester County in New York and Hartford, Connecticut.

The proposed incentive program would be in effect from April 1, 2012 through March 31, 2017. The proposed incentive program would supersede and replace the existing program authorized by the Board in September 2010 with respect to qualifying air service starting on or after April 1, 2012. The incentive credit to be provided to participating airlines would be limited to a 24-month period from the first date of service, provided service begins by March 31, 2017.

The total amount of expenses associated with the program would be determined by the flight activity, and the number of outbound seats, to new destinations. It is expected that additional revenue generated by increased flights and passenger traffic would more than offset the cost of the program.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bauer, Lynford, Moerdler, Rechler, Samson, Schuber and Steiner voting in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to offer any new or incumbent carrier or charter tour operator beginning scheduled non-stop passenger service from April 1, 2012 through March 31, 2017 to any domestic destination currently not served from Stewart International Airport (SWF) the following: (1) a credit of up to \$525 per turn for Ground Handling service charges for the first 24 months of new non-stop service; (2) marketing and advertising support valued at \$3 per outbound seat for such new non-stop service, not to exceed \$150,000 per destination during the first 12 months of service, and not to exceed \$75,000 per destination during the second 12 months of service; and (3) a 50-percent reduction in rent and fees associated with the new

service for the first 12 months of non-stop service, and a 25-percent reduction in rent and fees for the second 12 months of new non-stop service; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to offer any new or incumbent carrier or charter tour operator beginning scheduled non-stop passenger service from April 1, 2012 through March 31, 2017 to any international destination currently not served from SWF the following: (1) a credit of up to \$900 per turn for Ground Handling service charges for the first 24 months of new non-stop service; (2) marketing and advertising support valued at \$3 per outbound seat for such new non-stop service, not to exceed \$250,000 per destination during the first 12 months of service, and not to exceed \$125,000 per destination during the second 12 months of service; and (3) a 100-percent reduction in rent and fees associated with the new service for the first 12 months of non-stop service, and a 50-percent reduction in rent and fees for the second 12 months of new non-stop service; and it is further

**RESOLVED**, that the form of any agreements or other documents necessary in connection with the foregoing shall be subject to the approval of General Counsel or his authorized representative.

**PORT AUTHORITY BUS TERMINAL/LINCOLN TUNNEL AND PATH JOURNAL SQUARE TRANSPORTATION CENTER/HARRISON CAR MAINTENANCE FACILITY – ENERGY CONSERVATION IMPROVEMENTS TO BE IMPLEMENTED ON A PERFORMANCE BASIS – PROGRAM AUTHORIZATION**

It was recommended that the Board authorize a Port Authority Energy Savings Program (Program) to pursue energy efficiency initiatives throughout the Port Authority's facilities, and authorize the Executive Director to take such actions as are necessary to implement the first phase of the Program, under which the Port Authority would contract with Energy Service Companies (ESCOs), Constellation Energy and Johnson Controls, Inc., through existing call-in contracts issued pursuant to a publicly advertised Request for Proposals (RFP) process, at an aggregate maximum price of \$19.2 million, to implement certain energy conservation improvements at the Port Authority Bus Terminal (PABT)/Lincoln Tunnel (LT) and the Port Authority Trans-Hudson (PATH) Journal Square Transportation Center (JSTC)/Harrison Car Maintenance Facility (HCMF). These projects would yield guaranteed annual operating savings of approximately \$2 million and approximately \$31 million in aggregate savings to the Port Authority over a 15-year term.

The scope of work under the proposed authorization includes implementation of energy conservation improvements, development of savings monitoring and verification plans, and analysis of baseline and post-installation energy use for each improvement. The proposed JSTC/HCMF improvements, to be undertaken by Johnson Controls, Inc. at an estimated cost of \$10.2 million, would include extensive lighting and tower window upgrades, building heating and cooling improvements, building lighting and heating ventilation and air conditioning controls upgrades, transformer replacements, compressed air system repairs, solar photovoltaic system installations, and water conservation measures. The PABT/LT improvements, to be undertaken by Constellation Energy at an estimated cost of \$9 million, would include extensive building lighting upgrades, roadway lighting upgrades, new lighting controls and sensors, building envelope improvements to the PABT and LT Administration Building, steam pipe insulation and snow melt system controls.

The Program would utilize the Energy Performance Contracting model, through which ESCOs provide a turn-key solution, performing the audit, design, construction management and commissioning of improvements, while also assuming all technical and performance risks. ESCOs also would be responsible for identifying and pursuing grants and incentives available to reduce the total cost of improvements. The cost of the projects would be more than offset by the resultant savings.

Each improvement would have a specific monitoring and verification plan, whereby the ESCO would verify its own performance to determine actual achieved energy consumption reductions, as is prevailing practice when the ESCO also will guarantee the savings. Contractually, the monitoring and verification would follow established industry protocol, to determine actual energy consumption reductions achieved, and the Port Authority may audit the monitoring and verification findings at any time – either by itself or through a third party. Port Authority staff also would track savings through utility bill analysis.

The ESCOs would be compensated by the Port Authority through construction progress payments, based on the percentage completion of items identified in the project schedule, capped

at the guaranteed maximum price provided in the ESCO's accepted proposal. The ESCOs have established baseline energy usage figures for the project sites, based on metering of facility equipment, evaluation of facility occupancy characteristics, and analysis of actual utility bills – normalized for weather and other factors – and reviewed and approved by staff. The ESCOs would perform an annual process of monitoring and verifying energy consumption reductions against this baseline, to ensure that guaranteed savings are realized. The ESCOs would be obligated contractually to pay the Port Authority for a shortfall of expected consumption reductions and their attributed financial value, based on mutually agreed-upon escalation rates for energy market prices, or to modify improvements to ensure proper performance, as agreed by, and at no additional cost to, the Port Authority. In the event a specific work order were implemented at a cost below the guaranteed maximum price, the sum of the variance between the actual cost and the guaranteed maximum price would be shared between the ESCO and the Port Authority in a negotiated split, with the ESCO's share not to exceed 50 percent. If the parties were unable to resolve any disputes concerning energy savings calculations, disputes would be submitted to a third-party professional engineering firm for resolution.

In March 2010, through a competitive RFP process, the Port Authority established call-in agreements through which ESCOs performed audits of four Port Authority/PATH facilities and submitted proposals for energy conservation measures. After review of the proposals, work orders were issued for more detailed Investment Grade Audits, which resulted in the proposals for the energy upgrades at the PABT/LT and JSTC/HCMF. The current ESCO agreements extend through 2016, if the Port Authority exercises all available option periods.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bauer, Lynford, Moerdler, Rechler, Schuber and Steiner voting in favor; Commissioner Samson recused and did not participate in the consideration of, or vote on, this item. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

**RESOLVED**, that a Port Authority Energy Savings Program (Program) to pursue energy efficiency initiatives throughout the Port Authority's facilities be and it hereby is authorized; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to take all actions necessary to implement the first phase of the Program, under which the Port Authority would contract with Constellation Energy and Johnson Controls, Inc., through existing call-in contracts issued pursuant to a publicly advertised Request for Proposals process, at a total guaranteed maximum price of \$19.2 million, to implement certain energy conservation improvements at the Port Authority Bus Terminal/Lincoln Tunnel and the Port Authority Trans-Hudson Journal Square Transportation Center/Harrison Car Maintenance Facility, substantially in accordance with the terms outlined to the Board; and it is further

**RESOLVED**, that the form of any contracts and agreements in connection with the foregoing shall be subject to the approval of General Counsel or his authorized representative.

## **THE WORLD TRADE CENTER – AUTHORIZATION OF JOINT VENTURE BETWEEN THE PORT AUTHORITY AND WESTFIELD**

In furtherance of the continuing discussions with the Board concerning its desires to attract private capital to the redevelopment of the World Trade Center site, to reduce the Port Authority's development risk and improve its capital capacity regarding the retail project, and to otherwise maximize the value of the retail project generally, it was recommended that the Board authorize a transaction between the Port Authority and Westfield America, Inc. ("Westfield") in which Westfield and the Port Authority would form a 50/50 joint venture to develop, lease, and operate the World Trade Center retail project (the "Transaction").

The retail project at the World Trade Center site (the "WTC Site") includes certain retail space to be located in the World Trade Center Transportation Hub (the "Transportation Hub"), Tower 1, Tower 2, Tower 3, and Tower 4 (collectively, all such space, the "Retail Premises"). The Retail Premises are expected to include approximately 364,805 square feet of Gross Leasable Area ("GLA") upon completion of its initial development phase, and approximately 456,261 GLA upon completion of its full development.

The Westfield Group, which is the parent of Westfield and is publicly traded on the Australian Stock Exchange (ASX Code: WDC), is a vertically integrated shopping center owner, developer and operator, which operates one of the world's largest shopping center portfolios with investment interests in 124 shopping centers across Australia, the United States, the United Kingdom, New Zealand and Brazil, encompassing around 25,000 retail outlets and total assets under management of \$62 billion. The Westfield Group has developed and owns some of the most significant and valuable retail projects in the world, including recently developed Westfield London and Westfield Stratford City, two of the largest retail centers in Europe. Westfield's funding obligations are not contingent upon financing and it would fund its capital contributions entirely as equity.

Among the Port Authority's key objectives in developing the Transaction with Westfield were:

- Positioning the Retail Premises in the market with a private sector overlay and equity backing to increase its economic competitiveness.
- Acquiring best-in-class private sector expertise in development, leasing and management with a partner with a substantial economic interest in the Retail Premises and whose economic interests would be aligned with those of the Port Authority.
- Limiting the Port Authority's long-term financial risk in the Retail Premises while retaining an opportunity to realize a return on its substantial investment.

The Transaction would involve a joint venture arrangement (the "Joint Venture") between the Port Authority and Westfield in which Westfield would be a 50% participant and contribute \$612.5 million to the venture during the course of construction and initial lease-up of the Retail Premises. This level of contribution by Westfield would represent an initial \$1.225 billion participation basis for the project (the "Participation Basis"). The Port Authority would be entitled to additional earnout payments if certain metrics are met, thus increasing the

Participation Basis (as more fully described in “*Calculation of Contract Price Components: Initial Development Scope*”). This structure reduces the Port Authority’s risk by monetizing a portion of the investment in the Retail Premises today, while retaining upside potential through the metric based earnout and the Port Authority’s 50% share of future cash flows (as more fully described in “*Proposed Structure*”).

The Transaction represents a major validation of the value of the retail components of the WTC Site, and the significant progress being made at the entire site, by:

- Attracting the largest private sector investment of new cash in the redevelopment of the WTC Site.
- Significantly reducing the Port Authority’s development risk and maximizing its long-term capital capacity through Westfield’s substantial investment and its expertise as one of the world’s largest and most successful retail developers.

By putting in place one of the most critical pieces of the WTC “real estate puzzle”, the Joint Venture would ensure the WTC Site’s successful development and long-term financial viability. The Joint Venture signifies the resurgence of retail at the World Trade Center, with the potential to make Lower Manhattan one of the world’s leading retail centers. In addition to maximizing value on the Retail Premises itself, Westfield would create a retail complex that would serve as an amenity to the entire World Trade Center development and would enhance its value to the Port Authority, enliven the streets and concourses of Lower Manhattan, and create a worldwide destination that would benefit the entire region.

### **Overview of Key Economic Elements**

Key economic elements of the Transaction include:

- **Apportionment of Joint Venture Interests and Capital Funding:** In return for its \$612.5 million investment, Westfield would receive a 50% share of future cash flows and capital events proceeds in the Retail Premises (with the Port Authority holding the other 50% share). The Port Authority would fund all remaining project costs to construct and initially lease-up the Retail Premises, with the exception of Tenant Allowances, where the Port Authority would pay 100% of the initial costs up to a budgeted amount, and the Port Authority and Westfield would share costs above that amount. See “*Tenant Allowances*”. The Port Authority also would fund the cost of any future phases (e.g., Tower 2 above-grade retail) subject to an additional value-based 50% contribution by Westfield. See “*Capital Contributions*” and “*Cash Flow Distributions*”.
- **Timing of Westfield’s Investment:** Westfield would fund approximately \$100 million of equity at Closing (with a credit of approximately \$6.1 million for money it has already spent in connection with the development, as provided in the capital contribution credit agreement described in “*Proposed Structure*”). It would then fund up to its full investment of \$612.5 million in quarterly installments through construction and initial lease-up, as discussed below. Westfield, which is the top-most holding company for all Westfield North American properties and has a substantial net worth, would provide a corporate guaranty of the investment and other critical obligations of its single purpose

subsidiary created to undertake the Retail Project (defined in “*Proposed Structure*” below as “Westfield Member”). See “*Capital Contributions*” and “*Support of Each Member’s Obligations*”.

- **Preferred Return:** The full Participation Basis of \$1.225 billion (of which Westfield would invest a 50% share) was determined on the basis of an investment in a fully constructed asset. Therefore, Westfield would receive a 6.5% preferred return on its capital contributions during construction of the Retail Premises. The Port Authority could choose to fund this preferred return through the Port Authority’s share of future cash flow distributions in the early years of property operations or towards the end of construction as a credit against the remaining Westfield contribution. See “*Westfield Capital Return*”.

### **Summary of Operational Elements of the Transaction**

The overall operational elements of the Transaction (as more fully described in “*Overview of the Transaction*”) include:

- **Net Lease:** The Joint Venture would be the sole owner of another entity (the “Net Lessee”) that would lease the Retail Premises from the Port Authority under the terms of a net lease similar to the other net leases currently in place at the World Trade Center. The Net Lease would have a ground rent of \$1.00 per year (similar to the approach to the joint venture with the Durst Organization at One World Trade Center), which provides for the economics of the Transaction to be determined at the Joint Venture level. See “*Retail Net Lease*”.
- **Decision-Making:** While Westfield would be the managing member of the Joint Venture and direct all day-to-day activities of the leasing, management and operation of the Retail Premises, the Port Authority would retain approval rights over all Major Decisions, including financing, dispositions and annual operating budgets (see “*Major Decisions*”). If the parties are unable to reach agreement on a Major Decision, Westfield and the Port Authority would attempt to resolve any such deadlock through an escalating resolution process and, if the dispute cannot be resolved, the proposed action would not be taken. Other disputed matters would be resolved through a similar escalating resolution process and, if such efforts are unsuccessful, such disputes would be resolved through binding arbitration. See “*Dispute Resolution*”.
- **Property Management and Leasing; Development Services:** The Joint Venture (through its wholly-owned subsidiary, the Net Lessee) would engage Westfield to provide development advisory services, property management services, and leasing services for the Retail Premises, and would also enter into a contract with a Port Authority entity to complete construction of the Retail Premises.
  - For such services, Westfield would receive limited development fees and staff reimbursements during construction, standard New York City leasing commissions, and a standard property management fee. See “*Compensation and Expense Reimbursement*”.

- Should the Port Authority believe that Westfield is in material default in its performance as property manager, the Port Authority would have the ability to appoint a “shadow manager” to manage the property while the dispute is being resolved, with Westfield returning 25% of any property management fees earned during this period in the event the dispute resulted in its termination as property manager. See “*Default/Termination*”.
- **Retail and Signage/Special Events Exclusivity:** In return for Westfield’s substantial investment, the Joint Venture would have, in general, the exclusive right to all retail at the WTC Site as well as rights for signage, advertising and special events (e.g., seasonal markets and holiday fairs), and kiosks/merchandising units in the public areas of the project.
  - Westfield has projected a substantial amount of revenue from these activities, which would be monetized as part of its \$612.5 investment and offer substantial future upside. See “*Branding and Signage*” and “*Specialty Leasing, Advertising and Special Events Plan*”.
  - The exclusive right does not include certain areas, like the plazas adjacent to One World Trade Center, the Memorial and a limited amount of retail at the Tower 5 site. See “*Exclusivity*”.
  - Westfield and the Port Authority would develop general parameters with respect to Westfield entry signage/branding components, with the overall goal of attempting to recognize the Westfield Member’s desire to develop a branding and design solution for the Retail Premises while being sensitive to the complexities and historic significance of the multi-stakeholder WTC Site. See “*Branding and Signage*”.

### **Transaction Addresses Key Port Authority Issues**

While the Port Authority would accomplish its key objectives of maximizing capital capacity and realizing the commercial potential of the Retail Premises through the structure summarized herein, the Transaction also addresses several other matters that are of utmost importance to the agency, including:

- **Sale/Transfer and Financing Flexibility** The Joint Venture Agreement would allow the Port Authority to (i) bring in a partner for up to 50% of its interest in the Joint Venture after closing without Westfield’s approval, and (ii) sell up to 100% of its interest in the Joint Venture following stabilization with the prior consent of Westfield, without a Westfield right of first offer or right of first refusal. The Joint Venture Agreement also would provide the Port Authority with the ability to require that the Joint Venture pursue certain nonrecourse financing options after project completion. Westfield would have similar sale/transfer rights (subject to similar Port Authority consent rights), although it can only sell or transfer control of its entity to a qualified shopping center operator that meets certain key parameters. See “*Transfers to Qualifying Affiliates*” and “*Permitted Transfers*”.

- **Flexibility to Incorporate Future Phases:** While the initial portion of the Retail Premises (approximately 281,118 GLA) is intended to be delivered close to the opening of the Transportation Hub as described below, the Transaction provides significant flexibility with mechanisms to incorporate the following portions of the Retail Premises to be delivered at a later date: (i) retail to be located above grade in Tower 3 (approximately 59,383 GLA), (ii) North Temporary Access retail (approximately 19,426 GLA), (iii) retail to be located within potential future lobby space within Tower 2 (approximately 4,878 GLA), and (iv) retail to be located above grade in Tower 2 (approximately 96,334 GLA). From a financial perspective, Westfield’s initial investment of \$612.5 million assumes items (i), (ii), and (iii) above would be delivered as planned within two years from the delivery of the initial portion of the Retail Premises, and Westfield would fund the portion of the \$612.5 million related to those spaces upon delivery of each space (see “*Capital Contributions*”). The Transaction documents would contain two provisions related to this flexibility to incorporate future phases:
  - *Dilution option:* Recognizing it is difficult for Westfield to commit to future capital contributions in an uncertain timeframe, Westfield would, under limited circumstances, have the option to dilute its interests in the entire project in lieu of making a capital investment in the above-grade Tower 3 retail if such space is delivered two years later than projected, and would also have a dilution option with respect to the Tower 2 above-grade retail space if that space is delivered later than 2030. See “*Westfield Member’s Dilution Option (Tower 2 Above Grade and Tower 3 Above Grade)*”.
  - *Future valuation process:* As there is no certainty to the timing of the construction of Tower 2 and its retail space, the Joint Venture would establish a future valuation methodology to determine Westfield’s capital requirement for the Tower 2 retail. The actual cap rate used by Westfield in its publicly disclosed financial statements would be applied to actual income derived from the portions of the Retail Premises that have then reached stabilization to determine valuation. This cap rate is publicly reported in the Westfield Group’s annual reports and calculated through an independent process as mandated by applicable securities regulations. This process would also apply if the Tower 3 above-grade retail space was delivered two years later than projected. See “*Alternative Valuation Procedure*”.
- **Construction Delivery:** The “grand opening” of the initial portion of the Retail Premises is currently anticipated to occur between March and May 2015, after the Transportation Hub is completed. There would be no liquidated damages that would apply in the event of any delay in the “grand opening.” If the “grand opening” were to be delayed by more than two years from the currently scheduled delivery (i.e., a delay beyond May 31, 2017), Westfield would have the right to require the Port Authority to unwind the Transaction by repurchasing Westfield’s interest at an 8% return to Westfield. However, the Port Authority would have the right to extend the date of this unwind by six months if it reasonably determines that the “grand opening” would occur within such six-month period. Additionally, the Port Authority would have the right to deliver up to five percent of the aggregate demised tenant space late and still achieve the required delivery condition and grand opening requirements. See “*Late Delivery*”.

## **History and Background of the Retail Joint Venture**

On July 24, 2001, the retail portions of the then-existing World Trade Center were net leased to a Westfield affiliate as part of the 2001 omnibus net leasing transaction, which also included the net leases of the office components to affiliates of Silverstein Properties, Inc. (“SPI”). On December 1, 2003, to facilitate the redevelopment of the WTC Site after the terrorist attacks of September 11, 2001, the Port Authority purchased from Westfield 100% of the membership interests in the retail net lessee and provided Westfield with a right of first offer to re-acquire an interest in any redeveloped retail at the WTC Site (the “2003 ROFO”). The Transaction would eliminate the 2003 ROFO, so that the Port Authority would be able to further monetize its interest in the Retail Premises in the future by transferring all or a portion of its remaining share of the joint venture, as more fully described in “*Transfers to Qualifying Affiliates*” and “*Permitted Transfers*”.

At its January 4, 2008 meeting, the Board initially authorized a transaction in which the Port Authority and Westfield would establish a joint venture for the development, leasing and management of the Retail Premises. Due to uncertainty related to the development of the World Trade Center East Side (which contains the majority of the Retail Premises), the discussions concerning that initial joint venture transaction were suspended. After the approval of a revised World Trade Center East Side Site Development Plan at the August 26, 2010 Board meeting, Westfield and the Port Authority recommenced joint venture discussions with the desire to effectuate the Transaction.

## **Proposed Structure**

The Transaction would involve the Port Authority and Westfield forming a joint venture to indirectly hold the retail net lessee’s interest in the WTC Site and Westfield participating and/or advising in the development, leasing and operation of the Retail Premises.

In connection with the closing of the Transaction (the “Closing”):

1. The Port Authority would create a new single-purpose Delaware limited liability company wholly-owned by the Port Authority to act as its member in the Joint Venture (the “Port Authority Member”), and Westfield would create its own single purpose entity (“Westfield Member”) to act as the other member in the Joint Venture (the Port Authority Member and Westfield Member, each, a “Member”).

2. The Members would create the Joint Venture entity and each would receive a 50% interest in the Joint Venture. The Members would operate the Joint Venture pursuant to a Limited Liability Company Agreement of the Joint Venture (the “Joint Venture Agreement”). The Members would also create another new single-purpose Delaware limited liability company, which would be wholly-owned by the Joint Venture and would act as Net Lessee. This structure is designed to provide flexibility for the Port Authority to seek and obtain future financings, admit substitute members, and otherwise monetize its interest in the Retail Premises in the future.

3. The Port Authority, as net lessor, and the currently-existing net lessee, WTC Retail LLC (“PA Retail”), which is wholly-owned by the Port Authority, would terminate the existing retail net lease, and the Port Authority and Net Lessee would enter into the new retail net lease for the Retail Premises (the “Retail Net Lease”). As a result, the Joint Venture entity would hold, indirectly through Net Lessee, 100% of the retail net lessee’s interest in the Retail Premises.

4. PA Retail would enter into a new construction agreement (the “Construction Agreement”) with the Net Lessee, whereby PA Retail would retain all existing obligations related to the development of the Retail Premises and would be obligated to complete the construction of the Retail Premises in exchange for payments from Net Lessee. The initial capital contributions of the Members to the Joint Venture (\$100 million from each Member) would be contributed to the Net Lessee at Closing and immediately paid to PA Retail as an initial payment toward the construction costs of the Retail Premises. The net effect of such initial contributions and payments would be that the Port Authority (through PA Retail) would receive \$100 million at Closing. The Port Authority Member and Westfield Member would each be responsible under the Joint Venture Agreement for funding their respective pro rata shares of venture costs as construction and leasing continues, as more fully described in “*Payment of Contract Price*”.

In addition to Westfield’s up-front payment and development funding obligations, the Joint Venture Agreement and the Construction Agreement would provide for potential “earnouts” to be paid by Westfield to the Port Authority if the retail project outperforms certain targets at stabilization. Those payments would have the effect of increasing the Participation Basis and are more fully described in “*Calculation of Contract Price Components: Initial Development Scope*”.

### **Overview of the Transaction**

The Retail Premises are being constructed as part of the construction of Towers 1, 2, 3 and 4 and the Transportation Hub, and will therefore be completed and ready for occupancy in phases (each, a “Phase”). The initial Phase of construction (the “Initial Development Scope”) would consist of the retail areas located in the Transportation Hub, the retail areas located below-grade in Towers 1, 2, 3 and 4, the above-grade retail areas located in Tower 4, and Cortlandt Way (for specialty leasing and events purposes only). These areas total approximately 285,996 GLA, including approximately 4,878 GLA comprising below-grade space in Tower 2 that has been designed for future use as part of the Tower 2 office lobby (the “Tower 2 Lobby Conversion Space”), but which may, under certain circumstances, temporarily be included in the Retail Premises.

The Phase consisting of the 59,383 GLA of above-grade retail areas located in Tower 3 (“Tower 3 Above Grade”) may be ready for occupancy at the same time as the Initial Development Scope or it may be ready for occupancy as part of a different Phase, depending on the status of construction of Tower 3, as follows: (a) if Tower 3 is continuing to be built to completion as an office tower (“Full Build”), the Tower 3 Above Grade would be ready for occupancy along with the completion of Tower 3; and (b) if only the lower floors of Tower 3 are

being constructed (“Capped Podium”), Tower 3 Above Grade may be ready for occupancy as part of the Initial Development Scope, or may be deferred as a later Phase.

The Phase consisting of 19,426 GLA of the Retail Premises currently known as the north temporary access corridor to the Transportation Hub (the “NTA Retail Space”) for retail purposes is currently expected to be delayed relative to the remainder of the Initial Development Scope and is expected to be delivered in 2017.

Each of the foregoing Phases (Initial Development Scope, Tower 3 Above Grade, NTA Retail Space and Tower 2 Lobby Conversion Space) totaling 364,805 GLA would be included in the calculation of the Participation Basis. The Phase consisting of 96,334 GLA to be constructed above-grade in Tower 2 (“Tower 2 Above Grade”) would be added to the Retail Premises for an additional payment by Westfield Member (i.e., it is not included in the initial Participation Basis) based on a valuation of such additional space at the time.

The Joint Venture Agreement and the Construction Agreement would contain the essential financial agreements between the Members, including provisions for crediting the Westfield Member with a preferred return on its investment for all periods prior to the opening of each Phase, payment of additional earnouts to PA Retail in the event that net operating income at stabilization of any Phase exceeds certain thresholds, and the management of the Joint Venture by the Westfield Member subject to the Port Authority Member’s involvement in certain decisions.

The Joint Venture’s rights in the Retail Premises, through Net Lessee, would be set out in the Retail Net Lease, which would provide Net Lessee with the exclusive right to conduct retail activities at the WTC Site (except for certain ancillary retail areas in office and other buildings, and subject to certain “Excluded Areas” such as the Memorial and certain retail which could be separately developed as part of Tower 5).

The Joint Venture would develop, lease and operate the Retail Premises pursuant to the Joint Venture Agreement, the Retail Net Lease, a Development Services Agreement (the “Development Services Agreement”) between Net Lessee, as owner, and Westfield, LLC, as development advisor (“Development Advisor”), and a Property Management and Leasing Agreement (the “Property Management and Leasing Agreement”) between Net Lessee, as owner, and Westfield, LLC, as property manager and leasing agent (“Property Manager”).

In order to assure that the various Westfield and Port Authority entities satisfy their respective obligations to each other, Westfield and the Port Authority would each enter into a “Support Agreement” pursuant to which each party would agree to fund its affiliates as necessary to permit such affiliates to meet such obligations.

### **Proposed Documents**

The Transaction would be effectuated through the Construction Agreement, the Joint Venture Agreement, the Property Management and Leasing Agreement, the Development Services Agreement, the Retail Net Lease, and the two Support Agreements (collectively, the “Operative Documents”), together with such other ancillary agreements as are necessary (with

the Operative Documents, collectively, the “Transaction Documents”). This section describes the principal provisions of the Operative Documents that the Port Authority (directly or through the Port Authority Member, Net Lessee and PA Retail) would enter into in connection with the Transaction and certain related matters.

### Construction Agreement

#### *Phased Construction*

The Retail Premises would be constructed by PA Retail on a phased basis in the following four Phases: (i) Initial Development Scope; (ii) NTA Retail Space; (iii) Tower 3 Above Grade; and (iv) Tower 2 Above Grade. In addition, the Tower 2 Lobby Conversion Space, which is part of the Initial Development Scope, would be treated as a separate Phase. PA Retail’s construction obligations for each Phase would consist of the Core and Shell/Base Building Fit-Out and the Site Improvements for such Phase. The “Core and Shell/Base Building Fit-Out” would mean, with respect to each Phase, the construction of all improvements to be incorporated into such Phase in accordance with the applicable project plans and specifications for such Phase, but excluding in each case all retail tenant improvements. The “Site Improvements” for each Phase would mean certain improvements to be constructed outside such Phase which would reasonably be required to provide access, support, utilities, and mechanical systems necessary for the anticipated use of such Phase. The Site Improvements for the Retail Premises as a whole would mean primarily: (i) Transportation Hub Concourses (North/South and East/West Concourses); (ii) the Oculus; (iii) access to the loading docks in Towers 1, 2 and 3/4; (iv) certain shared or common entrances, service corridors, elevators and means of egress; and (v) certain portions of at-grade sidewalks to be located in or adjacent to Cortlandt Way, Dey Street and the Hub plaza in the East Bathtub. The Site Improvements for any Phase would be as shown on a Site Improvements Plan for such Phase to be agreed upon by the Port Authority Member and the Westfield Member prior to Closing as further described below. PA Retail would be obligated to construct the Site Improvements for each Phase substantially in accordance with the Site Improvements Plan for such Phase.

The basic obligation of PA Retail would be to deliver each Phase in Tenant Ready Condition, at which point the applicable Phase would be turned over by PA Retail to the Net Lessee in order to begin the retail tenant fit-out process. In concept, the definition of “Tenant Ready Condition” would mean the completion of certain components of the applicable Phase in accordance with the applicable plans and specifications, absence of interference from on-going construction activities, installation of all utilities and systems, access and logistical support relating to tenant fit-out work, and availability of freight elevators and loading docks. The obligation of PA Retail to deliver each Phase in Tenant Ready Condition would include the obligation to deliver the applicable Site Improvements.

Following delivery of a Phase in Tenant Ready Condition, PA Retail would remain obligated to provide the Net Lessee with logistical support in connection with tenant fit-out work, and to cause Substantial Completion and Final Completion to occur. In concept, “Substantial Completion” would mean the completion of the applicable Phase and its related Site Improvements in accordance with the applicable plans and specifications to a point at which opening of the Phase to the public for the intended retail operations is achievable. “Final

Completion” would require completion of all construction and punch-list items for the Phase and related Site Improvements.

To provide flexibility for PA Retail in terms of delivery of the Phases and the Site Improvements, the Construction Agreement acknowledges that certain limited areas may not be completed or available for use or access at various stages in the construction process. The principle is that PA Retail should not be treated as having failed to satisfy a particular delivery condition (e.g., Tenant Ready Condition, Substantial Completion, etc.) because certain limited elements (primarily in the Site Improvements) are not completed as long as the unfinished elements do not materially interfere with the requirements of retail fit-out or operation at the applicable stage of development.

#### *Costs of Development; Participation Basis*

The Westfield Member is not required to pay more than its share of the Participation Basis with respect to the construction, lease-up and pre-opening operating costs of the Retail Premises. Accordingly, PA Retail would be responsible for all construction costs and overruns in achieving Final Completion of the Initial Development Scope, and, through a credit against the Contract Price for any development costs paid directly by Net Lessee (i.e., Owner Project Costs, as defined in “*Capital Contributions*”), all costs of the initial lease-up of the Retail Premises (except as specified under “*Tenant Allowances*”), to the extent the same in the aggregate would exceed the agreed Participation Basis.

The Participation Basis was determined based upon the premise of a completed asset, and therefore the Joint Venture Agreement provides that the Westfield Member would be entitled to a 6.5% preferred return on its capital contributions during construction of the Retail Premises, which preferred return would continue through the Deemed Opening Date (or later with respect to unfinished elements). So that the Westfield Member would share risk with the Port Authority Member, the 6.5% preferred return ends at a “Deemed Opening Date” which is expected to occur (whether or not actual opening occurs) within a fixed time frame after delivery of the applicable Phase in Tenant Ready Condition. In other words, if PA Retail performs its construction obligations and delivers the applicable Phase in Tenant Ready Condition, then the Westfield Member’s 6.5% preferred return would end. The burden of any operating losses would be borne by the Members in accordance with their respective percentage interests. The Westfield Member’s 6.5% preferred return would be paid either by way of a credit toward Westfield’s capital contribution requirements or by directing cash flow distributions to Westfield which would otherwise be paid to the Port Authority Member in the early years of operations.

#### *Tenant Allowances*

To align the interests of the Port Authority and Westfield with respect to leasing the Retail Premises, Westfield would share in the obligation to fund certain costs associated with initial and on-going tenant allowances. With respect to tenant allowances incurred in connection with the initial lease-up of the Retail Premises (“Initial Lease-Up TAs”): (i) the Port Authority would pay 100% of all Initial Lease-Up TAs up to the first \$69 million of Initial Lease-Up TAs incurred; (ii) the Port Authority and Westfield would share the next \$41 million of Initial Lease-Up TAs incurred on a 75/25, pro rata per dollar basis; (iii) and the Members would share all

remaining Initial Lease-Up TA costs on a 50/50, pro rata per dollar basis. For all leasing of the Retail Premises following the initial lease-up, the Members would share any tenant allowances on a 50/50, pro rata per dollar basis.

#### *Development and Construction Services*

PA Retail would: (i) oversee development and construction of the Core and Shell/Base Building Fit-Out and the Site Improvements for each Phase, which are being performed by SPI and its contractors and the Port Authority and its contractors, and monitor the performance of such work to ensure it meets the standards of the applicable project plans and specifications; (ii) obtain necessary consents, approvals, licenses and other authorizations necessary for such construction, (but not in connection with approvals for signage, advertising, specialty leasing and events); (iii) pay all Project Costs other than Owner Project Costs; (iv) ensure that construction complies with the applicable project documents; (v) provide Net Lessee and retail tenants with logistical support for the construction of tenant improvements; (vi) obtain and deliver applicable close-out items; (vii) incorporate the infrastructure needed to implement the specialty leasing, advertising and special events plan and the physical components of the wireless network as set forth in that certain Telecommunications Network Access Agreement dated as of August 26, 1999 by and between the Port Authority and New York Telecom Partners, LLC, as amended; and (viii) construct the Tower 2 freight elevators and the loading docks at Towers 1, 2, 3 and 4 that will serve the Retail Premises.

#### *Payment of Contract Price*

The method through which the Westfield Member would contribute toward payment of construction costs for the Retail Premises involves making capital contributions to the Joint Venture. Subject to certain exceptions (see “*Class A and Class B Assets*”), capital contributions for construction costs would be made by the Port Authority Member and the Westfield Member on a 50/50 basis. Using capital contributions from the Members, the Joint Venture would then fund the obligations of the Net Lessee to pay the agreed amounts (the “Contract Price”) to PA Retail for construction of the Retail Premises. This structure permits capital contributions applicable to the relevant Joint Venture assets (see “*Class A and Class B Assets*”) to be in a 50/50 ratio so that capital accounts remain in appropriate balance for partnership tax and accounting purposes, while providing a mechanism for the Port Authority (through PA Retail) to be reimbursed for Project Costs in amounts that add up, when combined with the budgeted Owner Project Costs that will be paid by the Joint Venture directly, to the agreed \$1.225 billion Participation Basis. Although there are limited mechanisms for the Contract Price to be adjusted (see “*Calculation of Contract Price Components*”), the fixed Contract Price is also the mechanism that makes any excess Project Costs and Owner Project Costs above the agreed Participation Basis the responsibility of PA Retail. A detailed description of the calculation of the various components of the Contract Price is set forth below in the section entitled “*Calculation of Contract Price Components*”.

#### *Change Orders*

The Westfield Member would have approval rights over certain change orders (i.e., what has been defined “Material Change Orders”) which can potentially relate not only to the Retail

Premises itself, but also to the Site Improvements, which approval would not be unreasonably withheld. Examples of what constitute Material Change Orders depend in part on whether or not the change affects the Retail Premises or other space. Examples that would constitute Material Change Orders within any space to be leased to a retail tenant include without limitation (i) a change in the total area (usable square feet) of space (other than *de minimis* amounts), and (ii) a change in interior/exterior storefront dimensions (other than *de minimis* amounts). Examples that would constitute Material Change Orders within the Transportation Hub or publically accessed areas include without limitation (i) a material change in storefronts, and (ii) a change in vertical and horizontal circulation. Examples that would constitute Material Change Orders within retail support space include without limitation a change in the path of travel to retail leasable areas, a material change in corridor door widths and height, and a material change in area (usable square feet) and ceiling height of Management Office, Control Room, support areas and storage. The Westfield Member would be required to be reasonable with respect to approving Material Change Orders. There is a specific process to expedite the change order process (and potential deemed approval) in the case of required field changes, which requires PA Retail to provide the Westfield Member's design consultant with a reasonable description of the issue to be addressed, the alternative options to address such issue, the cost, benefits and drawbacks of each such option, and the effect of each such option on applicable the plans and specifications, and which further requires PA Retail to consult with Westfield Member's design consultant and/or the Westfield Member about such options.

#### *Revenue Enhancement Change Orders*

The Joint Venture Agreement provides a detailed process for the Members to propose Revenue Enhancement Change Orders, which are change orders intended to enhance the design or scope of a Phase to generate additional operating cash flow for Net Lessee. The process would involve notice and consultation regarding the cost, benefit, and feasibility of the proposed change, and a process for interactions (through PA Retail) with the construction manager, contractors, and subcontractors. Revenue Enhancement Change Orders would constitute Major Decisions, so the approval of both Members would be required to implement any Revenue Enhancement Change Order. If approved as a Major Decision, any costs associated with any Revenue Enhancement Change Order would be borne by the Members on a 50/50 basis.

#### *Certain Port Authority Rights Regarding Changes*

If required to serve a valid governmental purpose (e.g., accommodating the Port Authority Police Department or the New York City Police Department), the Port Authority would have the right to in good faith make changes to the retail development at the WTC Site. PA Retail would implement such changes, provided that (i) such action would not be for the primary purpose of benefiting any commercial interests at the WTC Site or the Performing Arts Center ("PAC"); (ii) PA Retail has consulted with the Net Lessee to mitigate or avoid such changes; (iii) PA Retail would take reasonable measures to mitigate any impact of any action on the project; and (iv) the Port Authority pays the Net Lessee compensation for any adverse economic consequences.

*Timing of Construction and Completion of each Phase*

The process of delivery of each Phase would begin with a notice from PA Retail to the Net Lessee, setting out an anticipated opening date for such Phase, which would be at least eighteen months after the date of such notice. With respect to the Initial Development Scope, the Construction Agreement identifies each tenant space as being required either twelve months prior to opening (“12-Month Build Out Space”), ten months prior to opening (“10-Month Build Out Space”), or four months prior to opening (“4-Month Build Out Space”). PA Retail would deliver the Phase in Tenant-Ready Condition, and Net Lessee would construct the tenant improvements for the tenant space in such Phase with the objective of opening all or substantially all of such tenant space at the same time within twelve months following such delivery. Approximately four months before the anticipated opening date, PA Retail and Net Lessee would agree upon the target opening date for such Phase, and provide any retail tenants with notice of such opening date. Failure of PA Retail to deliver the applicable Phase in Tenant-Ready Condition by the date specified in the four-month notice would result in any Tenant-Delay Penalties (defined in “*Late Delivery*”) due to any retail tenant as a result of the delayed opening would be borne by PA Retail.

The “Deemed Opening Date” for each Phase would be the latest to occur of: (i) the date that is at least twelve months after PA Retail delivers the 12-Month Build Out Space in Tenant-Ready Condition, at least ten months after PA Retail delivers the 10-Month Build Out Space in Tenant-Ready Condition, and at least four months after PA Retail delivers the 4-Month Build Out Space in Tenant-Ready Condition; (ii) the date that is thirty days after the Substantial Completion Date of such Phase; and (iii) the date that is eighteen months after the Westfield Member would have received notice of the target grand opening date or opening date for such Phase. The applicable Deemed Opening Date would be extended on a day for day basis if: (x) a delay is caused by PA Retail’s failure to provide specified support for the construction of tenant improvements, or (y) the Deemed Opening Date falls within a Lockout Period (as defined in “*Lockout Period*”). Notwithstanding whether the foregoing conditions have been satisfied, the Deemed Opening Date will be deemed to have occurred on the date on which a Phase actually opens for business (except for early opening of coffee shops or convenience retail to serve commuters). However, the Deemed Opening Date for the Initial Development Scope would not occur unless the Transportation Hub is open to the public as a transportation center.

*Late Delivery*

PA Retail is not liable to the Net Lessee or the Westfield Member for liquidated damages or other delay penalties in the event of late delivery of any Phase, except as described in this section. If Net Lessee has entered into retail leases which provide for penalties by reason of a delay in the Grand Opening or Opening, as applicable (“Tenant-Delay Penalties”), then PA Retail would pay for any such Tenant-Delay Penalties in the form of a reduction of the Contract Price Component for the applicable Phase. However, Westfield Member would be required to direct Property Manager under the Property Management and Leasing Agreement to minimize all such damages.

In addition, until the Deemed Opening Date (or later with respect to unfinished elements): (i) the Joint Venture would continue to pay to the Westfield Member the Westfield

Capital Return (defined in “*Westfield Capital Return*”) on account of any Class A capital contributions (as defined in “*Class A and Class B Phases*”) paid under the Joint Venture Agreement on account of the costs for such Phase, (ii) PA Retail would continue to pay Project Costs due on account of such Phase, and (iii) during construction prior to the Deemed Opening Date of a Phase, PA Retail would be responsible for Net Lessee’s compliance with the insurance requirements set forth in the Retail Net Lease.

#### *Space Permitted to be Late*

Certain portions of the Retail Premises may not be available for delivery to the Net Lessee in Tenant-Ready Condition or would not satisfy the conditions of Substantial Completion, as the case may be, at the same time as the balance of the Initial Development Scope. In order to address certain unforeseen conditions, PA Retail would be permitted to deliver limited portions of a Phase late, provided that such space consists entirely of demised tenant space within such Phase and does not exceed in the aggregate five percent (5%) of the aggregate demised tenant space within such Phase (“Delayed Delivery Space”). Delivery of a Phase in Tenant-Ready Condition or in satisfaction of Substantial Completion would be deemed to have occurred with respect to such Phase notwithstanding the failure to deliver Delayed Delivery Space. For any Delayed Delivery Space, Westfield Member would continue to receive the Westfield Capital Return on an amount equal to the product of (i) the quotient obtained by dividing the gross leasable area of the applicable Delayed Delivery Space by the gross leasable area of the applicable Phase, and (ii) the Westfield Member’s Class A capital contributions made to fund the Contract Price and Owner Project Costs for the applicable Phase for a period to reflect the actual delay in delivery.

In addition, Property Manager would use good faith efforts to arrange for and cause certain coffee shops, newspaper stands, drug stores, and other similar convenience or service stores intended primarily to serve commuters, and which are located in the East-West concourse and potentially other areas of the Transportation Hub, to open prior to the Grand Opening Date for use by commuters and others utilizing the Transportation Hub.

Notwithstanding the foregoing, if PA Retail fails to deliver any Delayed Delivery Space in Tenant-Ready Condition by the date that is nine months after the Deemed Opening Date for the balance of the space within such Phase, then the Contract Price Component for such Phase would be adjusted based on the fair market rental value of such space, the number of days from the Initial Tenant-Ready Condition Date until the date such Delayed Delivery Space is delivered by PA Retail in Tenant-Ready Condition, and the portion of the Contract Price Component allocated to such space.

#### *Westfield Buyout Right*

If the Deemed Opening Date for the Initial Development Scope does not occur by May 31, 2017 (i.e., two years beyond the currently-projected opening date), subject to an additional six month extension if certain conditions (i.e. if the Port Authority reasonably determines that the Deemed Opening Date would occur within six months after Westfield’s election) are met, the Westfield Member would have the right to require the Port Authority Member to purchase the Westfield Member’s entire membership interest for a buyout price equal to the amount necessary

for Westfield Member to achieve an 8% internal rate of return on all capital contributions made by Westfield Member as of the effective date of the buyout (the “Buyout Purchase Price”).

#### *Lockout Period*

Consistent with standard retail industry practices, the Westfield Member would not be required to cause any Phase to open between either (i) April 15 and August 15 of any calendar year or (ii) November 15 of any calendar year and February 15 of the following calendar year (together, the “Lockout Period”).

#### *Tenant-Ready Condition/Substantial Completion/Final Completion*

When PA Retail believes that it has achieved each of Tenant-Ready Condition, Substantial Completion, and Final Completion, it would give written notice to the Net Lessee and the parties would undertake an inspection and punch-list process until agreement is reached that the applicable condition has been achieved. PA Retail would use commercially reasonable efforts to deliver certain specified close-out items for each Phase following the Opening Date for such Phase.

#### *Books and Records*

Each of PA Retail and Net Lessee would keep all books of accounts and records showing the Project Costs paid by such party on a cash basis. Either party would have reasonable access to such books and records upon at least two business days written notice. Each party would have such party’s books and records audited at least once each calendar year, and a copy of the annual audited financial statements would be submitted promptly to both parties. Net Lessee would provide necessary financial information in sufficient time for the Port Authority to issue timely and accurate financial statements in accordance with Port Authority practice.

#### *No Port Authority Warranties*

PA Retail would assign to the Net Lessee all warranties and other contract rights, and would cooperate with the Net Lessee in the pursuit of any remedies in connection with defects, but PA Retail would have no other liability to the Net Lessee with respect to any faults, errors, omissions, or other defects in any Phase which may be discovered following Final Completion of such Phase. Net Lessee may inspect the Retail Premises at all reasonable times during construction, but the responsibility of PA Retail would not be relieved by Net Lessee’s review or approval of any construction or construction schedule.

#### *Self-Help for Punch-List Items*

Net Lessee would have certain limited self-help rights in the event of any default in the timely completion of “punch-list” items required to complete the retail tenant fit-out work performed under the Turner-Tishman CMA (as defined in “*Port Authority Decision Rights*”), provided that such self-help rights may only be exercised after providing PA Retail with notice of intention to exercise such rights thirty days, and again ten days, prior to exercising such rights. In the event that the Construction Agreement is terminated, Net Lessee would be entitled to

employ another contractor to complete the work and no additional payments would be made to PA Retail. Upon Final Completion, if (i) the total amount paid by Net Lessee to PA Retail plus (ii) the amount of expenses incurred by Net Lessee to achieve Final Completion (together with any loss or damage) would exceed the sum paid to PA Retail and the unpaid balance of the Contract Price, then PA Retail would pay the excess to the Net Lessee plus interest.

### *Dispute Resolution*

In the event of a dispute or disagreement relating to (i) satisfaction of Tenant-Ready Condition, (ii) achievement of Substantial Completion, (iii) achievement of Final Completion, or (iv) determination of the Deemed Opening Date, a designated representative of each of the Port Authority and the Westfield Member would meet within ten business days to negotiate in good faith to resolve such dispute or disagreement. If resolution is not reached within fifteen days after the initial meeting, then the Director of World Trade Center Redevelopment of the Port Authority and the President of U.S. Operations of Westfield would meet. If resolution is not reached within thirty days after the initial meeting, then the Executive Director of the Port Authority and the chief executive officer of the Westfield Group would meet. If resolution is not reached within forty-five days after the initial meeting, then PA Retail and/or the Retail Lessee may elect to resolve such dispute through binding arbitration. The third-party arbitration would be administered by JAMS under its arbitration rules and would take place in New York, New York.

### Joint Venture Agreement

#### *Class A and Class B Phases*

The Retail Premises would be developed and constructed on a phased basis pursuant to the Construction Agreement. For purposes of determining capital contributions, distributions, tax allocations, property management responsibilities, and other allocations of rights and obligations under the Joint Venture Agreement, each Phase would be characterized as either a Class A Phase (i.e., a Phase for which both Members would be required to make capital contributions and be entitled to receive distributions in proportion to their respective Class A percentage interests, which are initially 50% for each Member) or a Class B Phase (i.e., a Phase which would permanently or temporarily be operated for the sole benefit of the Port Authority and for which only the Port Authority Member would be required to make capital contributions and be entitled to receive distributions, and which Property Manager would manage on an incentive fee basis (see “*Incentive Management of Class B Phases*”). The purpose of this distinction is to permit the Port Authority to cause some retail areas to be occupied and open for business as part of the Retail Premises even if such areas are not then permanent and therefore would not be ready for investment by Westfield. The Initial Development Scope would be a Class A Phase. Any Phase which is temporary or which may be temporary (such as the Tower 2 Lobby Conversion Space) would be a Class B Phase.

The goal of the Joint Venture would be for all of the Phases to be Class A Phases which both Members share in on a pari passu basis. However, each of the following Phases could be Class B Phases, as to which the Port Authority Member would bear 100% of the economic benefits and burdens (including tax attributes) of ownership, for the time periods described

below: (i) in the case of a Full Build scenario, Tower 3 Above Grade would be a Class B Phase until the Deemed Opening Date for such Phase; (ii) in the case of a Capped Podium scenario, Tower 3 Above Grade would be a Class B Phase until the later of the Deemed Opening Date for such Phase and the Acceptable Delivery Conditions Date for such Phase (where potential construction overbuild from construction relating to the later Full Build of Tower 3 after the Tower 3 Above Grade has been delivered in a Capped Podium scenario could result in Acceptable Delivery Conditions not being met); (iii) Tower 2 Above Grade would be a Class B Phase, but only until the Deemed Opening Date for such Phase; and (iv) Tower 2 Lobby Conversion Space would be a Class B Phase, until the later of the Deemed Opening Date and the Acceptable Conditions Delivery Date for such Phase (where potential construction interference from construction of Tower 2 and the potential for the Tower 2 owner to recapture the Tower 2 Lobby Conversion Space from the Retail Premises could result in Acceptable Delivery Conditions not being met).

### *Project Development Budget*

The “Project Development Budget” for each Phase would include all costs for pre-opening development and management services that would be incurred by the Net Lessee during the period (i) for the Initial Development Scope, prior to Grand Opening, or (ii) for each other Phase, prior to the Opening of such Phase. These costs would be paid for 100% by the Port Authority Member, and the Westfield Member would be able to spend in accordance with the mutually agreed-upon Project Development Budget. The Project Development Budget for the Initial Development Scope would include all start-up personnel (leasing, property management, tenant coordination) phased-in over the three year pre-opening period. Other costs set forth in the Project Development Budget for the Initial Development Scope include marketing/advertising, site office expenses, leasing procurements and management income capital expenditures. During the period prior to Opening, the Port Authority will approve a marketing plan/budget and retains the right to review and approve any changes thereto and the pre-opening plans/budget.

### *Capital Contributions*

At Closing, the capital accounts of both the Westfield Member and the Port Authority Member would be credited with an approximately \$100 million initial capital contribution. The Members would fund the Contract Price and Owner Project Costs for all Phases, over time, in proportion to their respective Class A and Class B percentage interests (see “*Class A and Class B Assets*”). Costs incurred by or on behalf of the Net Lessee (i) in the development, construction management, leasing, pre-opening operating, and pre-opening marketing of each Phase, (ii) to deliver such Phase in Tenant-Ready Condition, (iii) to achieve Final Completion of such Phase, and (iv) to satisfy the conditions for opening such Phase (collectively, “Owner Project Costs”) would be funded in accordance with the Project Development Budget for the applicable Phase. The Members would also make capital contributions to fund post-opening operating expenses and capital expenditures on a quarterly basis to the extent provided in an agreed-upon operating budget for the Retail Premises.

Prior to each November 15 during the construction period, the Port Authority Member would create a schedule for capital contributions to fund the Contract Price Component for each

Phase during each fiscal year, and the Westfield Member would create a schedule of anticipated capital requirements. Such schedules would be modified from time to time as necessary.

Any Member would have the right to call for capital contributions to fund the Contract Price, but only the Westfield Member would have the right to call for other capital contributions. Notwithstanding the foregoing, if the Westfield Member fails to call when capital contributions are required for purposes set forth in the applicable operating budget, capital budget or other component of the Annual Plan (defined in “*Leasing Services*”), the other Member would be permitted to make a capital call for such purposes.

#### *Calculation of Contract Price Components*

The budgeted capital contributions to the Joint Venture by the Members will be used to pay both the Contract Price under the Construction Agreement and the Owner Project Costs (which are the non-construction costs of developing and leasing the Retail Premises). The following sections describe the method for determining the amount of the Contract Price that will be required to be paid by the Joint Venture to the Port Authority through PA Retail. As noted above, it is anticipated that the aggregate Contract Price, plus the budgeted Owner Project Costs which will be paid by the Joint Venture on a 50/50 basis, would add up to the agreed \$1.225 billion Participation Basis.

#### *Calculation of Contract Price Components: Initial Development Scope*

The specific portion of the Contract Price allocable to each Phase would be known as a “Contract Price Component”. For the Initial Development Scope (excluding Tower 2 Lobby Conversion Space), the Contract Price Component would be a fixed amount equal to \$946.5 million. PA Retail would additionally be entitled to two possible earnout adjustments (the “Earnouts”) to such Fixed Contract Price Component, which mechanisms would allow PA Retail to recoup additional funds expended on the Retail Premises if the performance of the retail operations were to exceed the financial projections on which the Participation Basis was originally determined. The Earnout on account of the Initial Development Scope would be based on the net operating income generated by the Initial Development Scope for the twelve month period (the “Stabilized NOI”) following the earlier of (i) the first day of the quarter following the leasing of 95% of the retail space (not earlier than the first day of the first quarter following the first anniversary of the opening date of such Phase) and (ii) the first day of the first quarter following the second anniversary of the opening date of such Phase. If the Stabilized NOI attributable to the Initial Development Scope exceeds an amount equal to 8% of the sum of (i) the Fixed Contract Price Component; (ii) any additional costs paid by Net Lessee on account of certain change orders; and (iii) any Owner Project Costs funded by Westfield Member in excess of the amount Westfield Member is obligated to fund under the Joint Venture Agreement (all such factors, collectively, the “Contract Price Adjustment Factors”), then such Fixed Contract Price Component would be increased by an amount equal to such excess divided by 0.08 (up to a maximum aggregate amount of \$1.004 billion). If such Stabilized NOI exceeds an amount equal to 15% of the sum of the Contract Price Adjustment Factors attributable to the Initial Development Scope, then such Fixed Contract Price Component would be increased by an amount equal to such excess divided by 0.15 (up to a maximum aggregate amount of \$1.198 billion).

*Calculation of Contract Price Components: NTA Retail Space*

For the NTA Retail Space, the Contract Price Component would be a fixed amount equal to \$60 million. PA Retail would additionally be entitled to two possible Earnouts if the performance of the retail operations in the NTA Retail Space were to exceed the financial projections on which the Participation Basis allocated to such Phase was originally determined. The Earnouts would be calculated based on the Stabilized NOI of the NTA Retail Space, utilizing the same methodology used to calculate the 8% Earnout and the 15% Earnout for the Initial Development Scope, provided that the Fixed Contract Price Component for the NTA Retail Space, as adjusted, would not exceed a maximum aggregate amount of: (i) \$63.67 million, in the case of the 8% NTA Earnout, and (ii) \$75.92 million, in the case of the 15% NTA Earnout.

*Calculation of Contract Price Components: Tower 3 Above Grade under Full Build*

In the Full Build scenario for Tower 3 Above Grade, PA Retail would proceed with the Core and Shell/Base Building Fit-Out and the Site Improvements for Tower 3 Above Grade while Tower 3 is being constructed. According to current projections, the Deemed Opening Date of Tower 3 Above Grade would be expected to be approximately eight months after the Deemed Opening Date of the Initial Development Scope. So long as the Deemed Opening Date of Tower 3 Above Grade in the Full Build scenario is within twenty-four months after the Deemed Opening Date of the Initial Development Scope, the Contract Price Component for Tower 3 Above Grade would be a fixed amount equal to \$200 million (the “Tower 3 Above Grade Fixed Contract Price Component”). Provided that the Contract Price Component for Tower 3 Above Grade is the Tower 3 Above Grade Fixed Contract Price Component, PA Retail would additionally be entitled to two possible Earnouts if the performance of the retail operations in Tower 3 Above Grade were to exceed the financial projections on which the Participation Basis allocated to such Phase was originally determined. The Earnouts would be calculated based on the Stabilized NOI of the Tower 3 Above Grade, utilizing the same methodology used to calculate the 8% Earnout and the 15% Earnout for the Initial Development Scope, provided that the Tower 3 Above Grade Fixed Contract Price Component, as adjusted, would not exceed a maximum aggregate amount of: (i) \$212.24 million, in the case of the 8% Tower 3 Above Grade Earnout, and (ii) \$253.06 million, in the case of the 15% Tower 3 Above Grade Earnout. If not delivered within such twenty-four month period, then the Contract Price Component for Tower 3 Above Grade would be determined pursuant to the Alternative Valuation Procedure (see “*Alternative Valuation Procedure*”).

*Alternative Valuation Procedure*

The “Alternative Valuation Procedure” with respect to any Phase would commence with negotiations between representatives of the Port Authority and the Westfield Member to determine the Contract Price Component the applicable Phase. If agreement is not reached by such parties within ninety days, the Contract Price Component would be determined utilizing a “Cap Rate Methodology” in which the actual net operating income attributable to such Phase would be divided by the actual cap rate used by Westfield in deriving its publicly disclosed valuation of the Phases that have then reached stabilization, which cap rate is publicly reported in the Westfield Group’s annual reports, determined on an independent basis as mandated by applicable securities regulations, and is referred to therein as Westfield Group’s “yield” on its

investment in such Phases (the “Cap Rate”). Although there is an interim mechanism for estimating the Contract Price Component for any applicable Phase prior to Stabilization, the final Contract Price Component would be determined based on actual net operating as of the one year anniversary of the stabilization date for the applicable Phase. If the Cap Rate Methodology is unavailable because the publication or disclosure of the Cap Rate is no longer required by the applicable regulatory authority or Westfield no longer owns Westfield Member, the Contract Price Component would be determined by valuation arbitration in which a single arbitrator would (A) determine the capitalization rate that is then used by investors investing in first-class retail assets (the “Selected Cap Rate”) and (B) divide the actual net operating income attributable to the applicable Phase by the Selected Cap Rate (“Valuation Arbitration”).

*Calculation of Contract Price Components: Tower 3 Above Grade under Capped Podium*

In the Capped Podium scenario for Tower 3 Above Grade, the Contract Price Component would be the Tower 3 Above Grade Fixed Contract Price Component unless the (i) Deemed Opening Date of Tower 3 Above Grade does not occur within twenty-four months after the Deemed Opening Date of the Initial Development Scope or (ii) the Acceptable Delivery Conditions for such Phase are not met within twenty-four months after the Deemed Opening Date of the Initial Development Scope, in which case the Contract Price Component for Tower 3 Above Grade would be determined pursuant to the Alternative Valuation Procedure. The term “Acceptable Delivery Conditions” means in concept that the applicable space, when delivered to the Net Lessee, is reasonably expected to be available and suitable for the conduct of normal retail operations on a long-term basis, including (a) reasonable assurance of functional and reasonable unimpeded access to such retail operations for contractors, vendors, tenants, employees and the general public, (b) reasonable assurance of use of such space for retail operations without material interference or material interruption from current or future construction activities, and (c) if such interference or interruption occurs, reasonable assurance of appropriate compensation for such interference to all affected parties. An example of the concern addressed by the “Acceptable Delivery Condition” requirement is that retail space might be available in Tower 3 in a Capped Podium scenario, but the space may not be leasable on favorable terms if retail tenants are concerned that their storefronts and access will be overshadowed with construction equipment and activities if the Tower 3 developer later decides to go beyond the Capped Podium and fully build out Tower 3.

In addition, if Tower 3 Above Grade is changed from Full Build to Capped Podium, then the plans and specifications would need to be modified accordingly. Such modifications would be subject to the review but not the approval of Net Lessee. While not expected, if the modifications have a material adverse effect on the use or functionality of the Phase, the amount of useable space, the gross leasable area, storefront area or other elements that effect the value of the space for retail use, and have a corresponding material adverse effect on value of such space for retail use, then the Contract Price Component of Tower 3 Above Grade would be appropriately adjusted to reflect the diminution in value.

*Calculation of Contract Price Components: Tower 2 Lobby Conversion Space*

The Deemed Opening Date of the Tower 2 Lobby Conversion Space is expected to occur at the same time as the Deemed Opening Date of the Initial Development Scope. So long as both

(i) the Deemed Opening Date and (ii) the Acceptable Delivery Conditions Date for the Tower 2 Lobby Conversion Space occurs within twenty-four months after the Deemed Opening Date of the balance of the Initial Development Scope, then the Contract Price Component for Tower 2 Lobby Conversion Space would be a fixed amount equal to \$18.5 million (the “Tower 2 Lobby Conversion Space Fixed Contract Price Component”). Provided that the Contract Price Component for the Tower 2 Lobby Conversion Space is the Tower 2 Lobby Conversion Space Fixed Contract Price Component, PA Retail would additionally be entitled to two possible Earnouts if the performance of the retail operations in Tower 2 Lobby Conversion Space were to exceed the financial projections on which the Participation Basis allocated to such Phase was originally determined. The Earnouts would be calculated based on the Stabilized NOI of the Tower 2 Lobby Conversion Space, utilizing the same methodology used to calculate the 8% Earnout and the 15% Earnout for the Initial Development Scope, provided that the Fixed Contract Price Component for the Tower 2 Lobby Conversion Space, as adjusted, would not exceed a maximum aggregate amount of: (i) \$19.63 million, in the case of the 8% Tower 2 Lobby Conversion Space Earnout, and (ii) \$23.41 million, in the case of the 15% Tower 2 Lobby Conversion Space Earnout. If either the Deemed Opening Date or the Acceptable Delivery Conditions Date does not occur within such twenty-four month period, then the Contract Price Component for the Tower 2 Lobby Conversion Space would be determined pursuant to the Alternative Valuation Procedure as previously described.

#### *Calculation of Contract Price Components: Tower 2 Above Grade*

For Tower 2 Above Grade, the Contract Price Component would be determined by the Alternative Valuation Procedure.

#### *Payment of Contract Price*

PA Retail would submit quarterly requisitions for payment of portions of the Contract Price, which are subject to confirmation by the Westfield Member. The Construction Agreement provides a mechanism that is intended to require PA Retail to pay for construction overruns as the project progresses, so that at any given time the Contract Price remaining to be paid with respect to any Phase equals the remaining cost to complete such Phase, taking into account Owner Project Costs (e.g., tenant improvement allowances and leasing commissions) which would have to be paid by the Joint Venture directly in order to deliver a completed and leased-up Retail Premises. A reconciliation of the Contract Price would take place after Final Completion.

#### *Remedies for Non-Funding for Class A Phases*

Under the Joint Venture Agreement, in the event a Member fails to make any required Class A capital contribution (a “Non-Funding Member”), then the other Member (the “Funding Member”) may: (i) after providing two required notices, enforce the Joint Venture’s rights under the applicable Support Agreement; (ii) with respect to post-opening costs only, make the contribution on behalf of the Non-Funding Member and receive interest on such amount at the Prime Rate plus 2% for the first sixty days, and the Prime Rate plus 5% thereafter, secured by the Non-Funding Member’s membership interest, to be repaid, together with accrued interest, out of distributions that would otherwise have been made to the Non-Funding Member; and/or (iii) elect to fund such capital contribution (the “Unfunded Contribution”) and, as a consequence, (x)

the capital contributions of the Funding Member would be increased by 150% of the Unfunded Contribution, (y) the capital contributions of the Non-Funding Member would be reduced by 50% of the Unfunded Contribution, and (z) the Class A percentage interests would be adjusted by dividing 150% of the Funding Member's Unfunded Contribution by the Class A capital contributions of both Members. To the extent possible, these adjustments to capital accounts would be made by allocating items of gain or loss among the Members.

#### *Cash Flow Distributions*

For each Member's percentage interest in the Class A Phases and Class B Phases, respectively, there would be one or more capital accounts on the books and records of the Joint Venture. The balance in each capital account would be adjusted as of the last day of each period.

"Operating Cash Flow" (which means gross revenue received by the Joint Venture less all expenses and deposits to reserves), if any, derived from the Class A Phases would be distributed to the Members in accordance with their respective Class A percentage interests, and Operating Cash Flow, if any, derived from the Class B Phases would be distributed to the Port Authority Member in accordance with its Class B percentage interests. Operating Cash Flow would be distributed on a quarterly basis, and net capital proceeds would be distributed as soon as practical following the receipt by the Joint Venture of such proceeds. No Member would be required to make up a negative balance in its respective capital account.

#### *Initial Development Scope*

Current projections provide for a Grand Opening Date for the Initial Development Scope between March 2015 and May 2015. The Port Authority Member would provide the Westfield Member (i) not less than eighteen months' notice of the target Grand Opening Date for the Initial Development Scope, (ii) not less than eighteen months' notice of the target Opening Date for each of the other Phases, and (iii) periodic updates as to the status of construction. Based on the updated construction delivery schedule, Property Manager would, approximately four months prior to the projected Grand Opening Date, direct the retail tenants within the Initial Development Scope to open on the Grand Opening Date.

#### *Westfield Capital Return: Initial Development Scope*

The Westfield Member would be entitled to a return (the "Westfield Capital Return") at an annual rate of 6.5% on its Class A capital contributions for each Phase, from the date of its investment through the Deemed Opening Date for such Phase (or later with respect to unfinished space). At the election of the Port Authority Member, the payment of the Westfield Capital Return for the Initial Development Scope would be paid: (i) by credit against its capital contributions for the Initial Development Scope which would otherwise be due prior to the Deemed Opening Date for the Initial Development Scope, or (ii) by payment from the Port Authority Member's share of operating cash flow. If the Port Authority Member elects to pay the Westfield Capital Return by credit against the Westfield Member's capital contributions, it is required to notify Westfield Member at least twelve months prior to the target Grand Opening Date for the Initial Development Scope.

*Westfield Capital Return: Tower 2 Lobby Conversion Space*

The Tower 2 Lobby Conversion Space would initially be a Class B Phase. Upon the later to occur of (i) the Deemed Opening Date for such Phase, and (ii) the date the Acceptable Delivery Conditions for such Phase are satisfied (the “Acceptable Delivery Conditions Date”), the Tower 2 Lobby Conversion Space would become a Class A Phase. At that time, the Westfield Member would make a Class A capital contribution on account of the Tower 2 Lobby Conversion Space equal to the sum of (i) Westfield Member’s Class A percentage interest of the Contract Price Component for the Tower 2 Lobby Conversion Space and (ii) Westfield Member’s Class A percentage interest of the Owner Project Costs for such Phase. The Westfield Member’s Class A capital contributions on account of the Tower 2 Lobby Conversion Space would be distributed to the Port Authority Member as a special distribution to reimburse the Port Authority for a portion of the costs of constructing the Tower 2 Lobby Conversion Space. Certain costs incurred to convert the Tower 2 Lobby Conversion Space from a Class B Phase to a Class A Phase would constitute Owner Project Costs, which would be paid by the Port Authority Member.

In consideration for allowing sufficient time to lease, market and fit-out the tenant space, the Westfield Member is entitled to at least twenty months prior notice of the projected conversion of the Tower 2 Lobby Conversion Space from a Class B Phase to a Class A Phase. If less than twenty months prior notice is provided by the Port Authority Member to Westfield Member, then the Westfield Member would receive the Westfield Capital Return on its capital contributions attributable to the Tower 2 Lobby Conversion Space for the period equal to (i) twenty months less (ii) the number of months from the date the Westfield Member received notice of the projected Deemed Opening Date or the Acceptable Delivery Conditions Date for the Tower 2 Lobby Conversion Space to the later of the Deemed Opening Date or the Acceptable Delivery Conditions Date for such Phase, which return would be paid from the Port Authority Member’s share of operating cash flow under the Joint Venture Agreement.

*Westfield Capital Return: NTA Retail Space*

The NTA Retail Space would be a Class A Phase. The Westfield Member would be entitled to the Westfield Capital Return on its Class A capital contributions for the Contract Price Component attributable to the NTA Retail Space through the Deemed Opening Date for such Phase, which would be paid in the manner elected by the Port Authority Member for the payment of the Westfield Capital Return on account of the Initial Development Scope.

*Westfield Capital Return: Tower 3 Above Grade*

Tower 3 Above Grade would initially be a Class B Phase. If Tower 3 is built in the Full Build scenario, then Tower 3 Above Grade would become a Class A Phase on the Deemed Opening Date for such Phase. If only the Capped Podium is constructed, Tower 3 Above Grade would become a Class A Phase on the later to occur of (i) the Deemed Opening Date for the Phase and (ii) the Acceptable Delivery Conditions Date for the Phase. Unless the Westfield Member exercises the Dilution Option (defined in “*Westfield Member’s Dilution Option (Tower 2 Above Grade and Tower 3 Above Grade)*”), the Westfield Member’s Class A capital contributions on account of the Tower 3 Above Grade would equal the sum of (i) Westfield

Member's Class A percentage interest of the Contract Price Component for the Tower 3 Above Grade and (ii) Westfield Member's Class A percentage interest of the Owner Project Costs for such Phase. Upon conversion to a Class A Phase, the Westfield Member's Class A capital contributions on account of the Tower 3 Above Grade would be distributed to the Port Authority Member as a special distribution to reimburse the Port Authority for a portion of the costs of constructing Tower 3 Above Grade. Certain additional costs incurred to convert the Tower 3 Above Grade from a Class B Phase to a Class A Phase would constitute Owner Project Costs.

If the date which is the later to occur of (i) the Deemed Opening Date for Tower 3 Above Grade and (ii) the Acceptable Delivery Conditions Date for such Phase is less than twenty months after notice of such date is provided by the Port Authority Member to Westfield Member, then the Westfield Member would receive the Westfield Capital Return on its Class A capital contributions attributable to the Tower 3 Above Grade for the period equal to (i) twenty months less (ii) the number of months from the date the Westfield Member received notice of the later of projected Deemed Opening Date or the Acceptable Delivery Conditions Date for the Tower 3 Above Grade to the later of the Deemed Opening Date or the Acceptable Delivery Conditions Date for such Phase, which return would be paid from the Port Authority Member's share of operating cash flow under the Joint Venture Agreement.

*Westfield Capital Return: Tower 2 Above Grade*

No defined schedule for the development of Tower 2 Above Grade currently exists; however, there is fully designed retail as part of the SPI plans for Tower 2. Any changes to the currently-existing construction documents for the retail portion of Tower 2 Above Grade would constitute a Material Change Order requiring the consent of the Westfield Member. As is the case with the rest of the Transaction, the price paid by Westfield Member for its 50% interest in the Tower 2 Above Grade would be based on the value of the completed space, not cost, with the Port Authority being responsible for the actual cost of constructing such space.

Tower 2 Above Grade would initially be a Class B Phase, but would become a Class A Phase upon the Deemed Opening Date for such Phase. So long as (i) the Port Authority Member provided the Westfield Member not less than three years notice of the Deemed Opening Date, and (ii) unless the Westfield Member exercises the Dilution Option, then the Westfield Member's Class A capital contributions on account of Tower 2 Above Grade would equal the sum of (i) Westfield Member's Class A percentage interest of the Contract Price Component for Tower 2 Above Grade and (ii) Westfield Member's Class A percentage interest of the Owner Project Costs for such Phase. Upon conversion to a Class A Phase, the Westfield Member's Class A capital contributions on account of Tower 2 Above Grade would be distributed to the Port Authority Member as a special distribution to reimburse the Port Authority for a portion of the costs of constructing Tower 2 Above Grade. Certain additional costs incurred to convert the Tower 2 Above Grade from a Class B Phase to a Class A Phase would constitute Owner Project Costs. If SPI does not deliver Tower 2 Above Grade to the Net Lessee until after November 1, 2030, then the Westfield Member has the right to exercise the Dilution Option with respect to Tower 2 Above Grade.

*Westfield Member's Dilution Option (Tower 2 Above Grade and Tower 3 Above Grade)*

Under limited circumstances, the Westfield Member would have two defined options (the "Dilution Option") to elect not to make capital contributions to fund the Contract Price and Owner Project Costs for (i) Tower 2 Above Grade and/or (ii) Tower 3 Above Grade, and, as a consequence, to have the Westfield Member's Class A interest diluted and its Class A percentage interests recalculated (and the Port Authority's interest commensurately increased). The Dilution Option would be available with respect to Tower 3 Above Grade only if Tower 3 Above Grade is not satisfactorily delivered within 24 months after the Deemed Opening Date of the Initial Development Scope (in which case the Contract Price for Tower 3 Above Grade would be determined under the Alternative Valuation Methodology). The Dilution Option would be available with respect to Tower 2 Above Grade only if Tower 2 Above Grade is not satisfactorily delivered on or before November 1, 2030.

*Mechanics of Dilution*

If the Westfield Member elects the Dilution Option with respect to Tower 2 Above Grade or Tower 3 Above Grade, the applicable Phase would be valued pursuant to an Alternative Valuation Procedure which mirrors the Alternative Valuation Procedure provided for in the Construction Agreement. All Class A Phases would be valued by the Alternative Valuation Procedure and the percentages of the Members would be proportionally adjusted based on current value to increase the Port Authority Member's percentage share and dilute Westfield's share accordingly.

The effective date of the dilution arising from Westfield Member's exercise of the Dilution Option is the Deemed Opening Date of the Phase with respect to which Westfield Member has exercised the Dilution Option, in the case of Tower 2 Above Grade or Tower 3 Above Grade (Full Build), and the later of the Deemed Opening Date and the Acceptable Delivery Conditions Date in the case of Tower 3 Above Grade (Capped Podium), provided that such effective date would not be earlier than the first day of the earliest taxable year for which the Joint Venture's partnership return is not yet due (excluding any filing extensions).

If the Westfield Member were to elect to exercise a Dilution Option, then the value of the applicable Phase would be determined through negotiation, or, if that fails, by the Cap Rate Methodology, or, if the Cap Rate Methodology is unavailable because the publication or disclosure of the Cap Rate is no longer required by the applicable regulatory authority or Westfield no longer owns Westfield Member, by Valuation Arbitration.

*Incentive Management of Class B Phases*

If the conditions for converting from Class B status to Class A status have not been satisfied with respect to any Phase, but the Port Authority Member nevertheless decides to conduct retail operations in the applicable Phase, then such Phase would be managed by Property Manager on an incentive management basis (described below) until the Phase in question is converted to a Class A Phase. In general terms, Class B Phases would be managed identically to Class A Phases, but the Port Authority Member would bear 100% of the economic benefits and burdens (including tax attributes) of ownership of each Class B Phase, and in addition to its

normal management and leasing fees, Property Manager would be entitled to an incentive management fee on each Class B Phase. In addition, the Port Authority Member would have broader control rights with respect to Class B Phases. The incentive management fee payable to Property Manager for space within a Class B Phase would equal twenty percent (20%) of the amount by which the actual net effective rent for each occupant's space within the applicable Class B Phase exceeds the target net effective rent for such occupant's space. The target net effective rent for an occupant's space within a Class B Phase would be established by agreement of the Port Authority Member and Westfield Member prior to the commencement of leasing activities for the applicable Class B Phase.

### *Expansion Opportunities*

Any opportunities for the Net Lessee or the Joint Venture to develop new retail facilities or expand existing retail facilities within the WTC Site would be a Major Decision requiring the consent of both Members. If any such expansion were to be approved by the Members, then it is expected that Westfield would be the property developer, architect and contractor on market terms, as negotiated at the time of the expansion.

### *Support of Each Member's Obligations*

At Closing, the Port Authority and Westfield would each provide a separate Support Agreement setting forth its respective support obligations in connection the Transaction.

The Westfield Member would cause Westfield or such other person or entity acceptable to the Port Authority with a net worth greater than (i) \$750 million for the period prior to full satisfaction of Westfield Member's capital contribution funding requirements with respect to the Initial Development Scope or (ii) \$500 million thereafter (the "Westfield Guarantor") to sign its Support Agreement. If the Westfield Guarantor's net worth were ever to fall below such amount (the "Net Worth Requirement"), then the Westfield Guarantor would either be required to replace with a person or entity meeting the Net Worth Requirement or provide the Port Authority Member with a letter of credit or other liquid collateral acceptable to the Port Authority Member in an amount equal to the difference between the net worth of the Westfield Guarantor and the Net Worth Requirement. The Westfield Member would deliver annual audited balance sheets of the Westfield Guarantor to the Port Authority Member to evidence the sufficiency of Westfield Guarantor's net worth.

Under its Support Agreement, the Westfield Guarantor would agree to (i) provide the Westfield Member with enough capital to make certain Class A capital contributions and (ii) pay any and all reasonable out-of-pocket costs incurred by the intended beneficiaries under the Westfield Guarantor Support Agreement in enforcing the Westfield Guarantor's obligations under the Westfield Guarantor's Support Agreement.

Under its Support Agreement, the Port Authority would provide the Port Authority Member or PA Retail (as applicable) with enough capital to comply with its respective obligations under the Transaction Documents, including the obligations to make certain capital contributions, cover certain losses, and hold Westfield harmless from certain pre-closing and post-closing liabilities.

*Allocations of Net Profit and Net Loss*

Allocations of net profit and net loss would be allocated to the Members to reflect their respective interests in Class A Phases and Class B Phases.

*Westfield Member as the Joint Venture Manager*

Subject to the Port Authority Decisions and Major Decisions (each as defined immediately below), the Westfield Member would act as the “Managing Member” of the Joint Venture. The Westfield Member would submit the Annual Plan by each November 1.

*Port Authority Decision Rights*

In general, management rights over the Joint Venture would be vested in the Westfield Member, as Managing Member, subject to the requirement of obtaining the approval of the Port Authority Member with respect to Major Decisions (described in “*Major Decisions*”), and subject also to certain limited rights of the Port Authority Member to unilaterally cause the Joint Venture to act. In general, such unilateral rights would be with respect to overseeing the performance of construction, including construction under that certain Construction Management Agreement, dated as of March 13, 2011, between the Port Authority, as Owner, and Tishman-Turner Joint Venture III, as Construction Manager, pertaining to Retail Pre-Tenant and Parking Garage Fit-Out (the “Turner-Tishman CMA”), except that the Westfield Member has approval rights over Material Change Orders (see “*Change Orders*”). The Port Authority Member would also have rights to direct decisions relating to the operations, maintenance, leasing, improvement and repair of any Class B Phase, subject to certain limitation which are intended to be protective of the Westfield Member’s interest in the Retail Premises. The Port Authority Member has certain limited rights to cause the Joint Venture to enforce, and where applicable, terminate agreements between the Joint Venture or the Net Lessee, on one hand, and any affiliate of the Westfield Member, on the other hand (e.g., the Property Management and Leasing Agreement and the Development Services Agreement). Finally, the Port Authority Member has the unilateral right, on behalf and in the name of the Joint Venture, to enforce the Support Agreement to which Westfield Guarantor is a party.

*Major Decisions*

“Major Decisions” would be decisions requiring the approval of both Members and would include the following: (1) approving the disposition of all or any part of the Retail Premises, (2) approving the financial terms of any financing or refinancing, (3) approving the Annual Plan, (4) approving the leasing parameters, (5) approving all retail leases and other lease transactions to the extent the leasing guidelines require approval by the Port Authority Member, (6) approving calls for capital contributions, except as otherwise permitted, (7) approving the acquisition of additional real property by the Joint Venture, (8) approving any changes in the purposes of the Joint Venture, (9) admitting an additional investor or issuing additional membership interests, except as otherwise permitted, (10) approving the merger, consolidation, dissolution, transfer or winding up of the Joint Venture, (11) settling certain litigation, (12) approving certain change orders, (13) approving the capital improvements or renovations in any capital budget, (14) approving design concept plans, design development and final construction

documents (other than the project plans and specifications), (15) approving the hiring and firing of certain general contractors, architects and engineers, (16) approving any bankruptcy action against the Joint Venture, (17) approving any modification to the project documents, (18) approving certain affiliate agreements, (19) amending or modifying the Branding and Signage Plan (as defined in “*Branding and Signage*”) or the Management Income Plan (as defined in “*Management Income Plan*”), (20) engaging any legal counsel for the Joint Venture or Net Lessee, (21) amending the Project Development Budget, the Owner Project Costs budget or any operating budget, and certain other technical matters.

#### *Certain Unilateral Rights of the Westfield Member*

Notwithstanding the Major Decision regime, the Westfield Member would have the unilateral right on behalf the Joint Venture to enter into service contracts without the Port Authority Member’s consent, as long as such service contracts are consistent with the applicable Annual Plan. The Westfield Member would have the unilateral right, on behalf of Net Lessee, to enforce the Net Lease and to enforce the REOAs against the Port Authority. With respect to the enforcement of the REOAs against any other stakeholder, the Westfield Member would have the right to act on behalf of Net Lessee to enforce the REOAs against the other stakeholders subject to obtaining the Port Authority Member’s consent, which would be required to be exercised on a commercially reasonable basis. Also, the Westfield Member would have the unilateral right, on behalf and in the name of the Joint Venture or the Net Lessee, to enforce the Support Agreement to which the Port Authority is a party. In addition, the Westfield Member would have various consent and enforcement rights relative to the Construction Agreement (detailed on Exhibit J to the Joint Venture Agreement), since the counterparty under the Construction Agreement is PA Retail, which is owned and controlled by the Port Authority.

#### *Project-Level Financing*

Following stabilization of the Initial Development Scope, each Member would have the right to cause the Joint Venture to seek to obtain non-recourse, investment grade mortgage financing on the Retail Premises in an amount not to exceed 50% of the value of the Retail Premises, on market payment terms and otherwise on customary terms for non-recourse mortgage loans. In addition, at the request of either Member, each Member would agree to work cooperatively to evaluate other options for obtaining financing on behalf of the Joint Venture or the Members including the possibility of obtaining financing at a higher percentage of value. Approval of the financing terms of any financing or refinancing would be a Major Decision requiring the approval of both Members.

#### *Deadlock*

In the event of a deadlock or disagreement with respect to any proposed Major Decision or any Covered Dispute (defined in “*Arbitration*”), a designated representative of each of the Port Authority Member and Westfield Member would meet within ten business days to negotiate in good faith to resolve such deadlock or disagreement. If resolution is not reached within fifteen days after the initial meeting, then the Director of World Trade Center Redevelopment of the Port Authority and the President of U.S. Operations of Westfield would meet. If resolution is not reached within thirty days after the initial meeting then the Executive Director of the Port

Authority and the chief executive officer of the Westfield Group would meet. If no agreement to move forward is reached from such meetings, then in the case of (i) a Major Decision, the Joint Venture would not take the action proposed, or (ii) a Covered Dispute, then the dispute would be resolved through binding arbitration.

### *Branding and Signage*

The Joint Venture Agreement would authorize the Westfield Member and Property Manager to implement branding and signage at the WTC Site in accordance with a “Branding and Signage Plan”, which plan would be subject to the approval of the Port Authority Member. To the extent that third party consents are required in connection with implementing an approved Branding and Signage Plan, the Members would be obligated to cooperate to obtain such approvals.

The Members would agree to certain general parameters with respect to major Westfield entry signage/branding components with the overall goal of attempting to recognize the Westfield Member's desire to apply the Westfield brand to the retail project and to incorporate Westfield brand imagery and signage into the WTC Site while being sensitive to the complexities and historic significance of the multi-stakeholder WTC Site. The parameters would include, without limitation, general location and placement, interior vs. exterior, type, general color schemes, lettering styles, and the like, and take into account the Port Authority's interest in a contextual branding hierarchy, compatibility with an urban mixed use environment, consistency with the site architecture and special significance and compliance with all legal and other requirements and restrictions on size, quantity, and the like.

Accordingly, the Members would agree to an initial branding and signage plan that sets forth the Port Authority approved locations and approximate sizes of select “Westfield” signs within WTC Site, which Branding and Signage Plan would respect the Port Authority’s site-wide “World Trade Center” distinction branding efforts. These signs would be located at the common retail and transit entrances in Tower 3, Tower 4, and the entry to the Oculus from the West Bathtub, and would include the Westfield signature. Prior to Closing, the Members would agree to more details regarding signage and branding, and any amendments to the Branding and Signage Plan, as a Major Decision.

### *Specialty Leasing, Advertising and Special Events Plan*

The Joint Venture Agreement would authorize the Westfield Member and Property Manager to implement specialty leasing, advertising and special events in the Retail Premises and within certain common areas at the WTC Site in accordance with a “Specialty Leasing, Advertising and Special Events Plan”, which plan would be subject to the approval of the Port Authority Member prior to closing and is expected to mirror the plan that was approved by the Port Authority during the 2008 joint venture discussions. The Members would agree to seek approval of any additions or other changes to that plan after Closing as a Major Decision. To the extent that third party consents are required in connection with implementing an approved Specialty Leasing, Advertising and Special Events Plan, the Members are obligated to cooperate to obtain such approvals. Except within the Excluded Areas (defined below), the Westfield Member will have the ability (i) to erect signage and advertising, except for limited non-revenue

generating, non-competing signage, (ii) to conduct specialty retail leasing in carts, kiosks, retail merchandising units and the like, and (iii) to conduct all special events in designated event areas, except for non-revenue generating non-competing special events not accounting for more than 20% of available events (e.g., free public concerts), and to manage and calendar all special events of any nature for fees to be agreed to by Westfield Member and Port Authority Member (the fee would, however, be a nominal administrative fee with respect to non-revenue generating non-competing special events).

*Interaction with WTC Stakeholders and Public Officials.*

The Joint Venture Agreement would require the Members to use good faith efforts to coordinate so that representatives of both Members have reasonable notice and opportunity to participate in all discussions with other WTC stakeholders or public officials involving Joint Venture issues and to cooperate with one another in good faith to schedule such discussions at times when representatives of both Members are available. Notwithstanding the foregoing, in no event would the Port Authority Member have any obligation to invite or permit any Westfield Member or representative to be present during any internal meeting of the Port Authority or any meetings between any employee or commissioner of the Port Authority, on the one hand, and the Mayor of the City of New York, the Governor of the State of New Jersey or the Governor of the State of New York, on the other hand.

*Reinstatement of Property Management and Leasing Agreement*

The Joint Venture Agreement would require that, if as a result of damage or destruction of the Retail Premises, the Property Management and Leasing Agreement is terminated and following such damage or destruction the Retail Premises reopen, in whole or in part, to the public, then so long as Net Lessee continues to own the leasehold estate in the Retail Premises created by the Net Lease and the Joint Venture continues to own Net Lessee, then the Property Management and Leasing Agreement shall be reinstated with Westfield, LLC as Property Manager so long as Westfield Member's membership interest equals or exceeds the Minimum Ownership Threshold (i.e., 25% in the aggregate).

*Representations and Indemnities*

Pursuant to the Joint Venture Agreement, the Members would make representations to one another regarding formation, existence, authority, due execution, enforceability, brokerage commissions, non-foreign status, OFAC, and ERISA matters.

In addition, the Port Authority Member (and the Port Authority itself) would make additional representations relating to the Retail Premises and its contemplated use and operations, including, for example, (i) the existence and applicability of various agreements relating to the WTC Site and affecting the Retail Premises, and (ii) the entities having approval rights with respect to the proposed signage, advertising, specialty leasing and events proposed to be undertaken by the Net Lessee. The Joint Venture Agreement would provide that the property-related representations of the Port Authority and the Port Authority Member (other than certain title warranties) would be subject to a survival period of one year after the Opening of the Initial Development Scope and a claim floor of \$1 million. Each Member would waive remedies for

breach of representations to the extent such Member had actual knowledge that the representation in question was untrue when made. Subject to the foregoing limitations, each Member would indemnify the other Member for loss, cost, or damages arising from a breach of representations by such Member.

Pursuant to the Net Lease, the Port Authority Member also would make certain covenants providing assurances with respect to matters of concern to the Westfield Member. The Port Authority would covenant that in establishing operating procedures for the Vehicle Security Center (for example, for deliveries to retail tenants), among other things, it would not unreasonably discriminate against the Net Lessee. The Port Authority would also covenant to work cooperatively with the Net Lessee to attempt to obtain an amendment of (or other appropriate agreement with respect to) the East and West Reciprocal Easement and Operating Agreements governing the operation of the WTC Site, to address or clarify certain matters of concern to the Net Lessee. The Port Authority would covenant that it has title to the Retail Premises, subject to the prior net leases, which were based on prior plans and are to be conformed to the final plans after completion of the construction, and that it would indemnify the Net Lessee and its title insurance company from claims that the Net Lessee does not have clear title to the Retail Premises. The Port Authority would also covenant that it would indemnify Net Lessee from costs or loss attributable to certain agreements which precede the date of the Transaction. The Port Authority has given assurances to Westfield Member that Net Lessee would be able to utilize the Tower 1 temporary and permanent loading docks for use by retail tenants.

#### *Tax Matters Partner*

The Joint Venture Agreement would provide that so long as Westfield Member is the Managing Member, Westfield Member would have full power and authority to act for the Company and the Members as “Tax Matters Partner”. All decisions as to accounting principles, whether for the Joint Venture’s books or for income tax purposes and all elections available to the Joint Venture under applicable tax law would be made by the Tax Matters Partner; provided, however, that certain decisions or elections that have a material adverse economic effect on a Member other than the Tax Matters Partner shall be approved by the Members as a Major Decision.

#### *Sale, Assignment or Transfer*

The Joint Venture Agreement would provide that as a general rule, subject to exceptions described below, no Member may sell, transfer, assign, convey or otherwise dispose of or subject to a security interest or otherwise charge or encumber, voluntarily or by operation of law all or any part of its membership interest, and no direct or indirect holder of an equity interest in a Member may sell, transfer, assign, convey or otherwise dispose of or subject to a security interest or otherwise charge or encumber, voluntarily or by operation of law all or any part of its equity interest (collectively, “Transfer” or “Transferred”).

### *Transfers to Qualifying Affiliates*

Notwithstanding that general prohibition on Transfers, either Member would be permitted, without the consent of the other Member but upon prior written notice, to Transfer its direct or indirect interest in the Joint Venture to a Qualifying Affiliate, provided that the transfer does not result in a termination of the Joint Venture for federal income tax purposes within the meaning of Section 708 of the Internal Revenue Code. As to either Member, a “Qualifying Affiliate” means any entity in which such Member (i) owns at least a fifty percent (50%) economic and voting interest and (ii) possesses, directly or indirectly, the power to Control such entity. The purpose of this provision would be to permit each Member to transfer up to one-half of its economic interest in the Joint Venture (i.e., up to a 25% interest in the Retail Premises) at any time after Closing without approval of the other Member.

### *Permitted Transfers*

Any Transfer of any portion of a Member’s membership interest (other than a Transfer to a Qualifying Affiliate) would require the other Member’s prior written consent, in such Member’s sole discretion, except that, following the stabilization date for the Initial Development Scope: (i) the Westfield Member may transfer its entire membership interest to a MM Permitted Transferee (defined below) with the prior consent of the Port Authority Member, which consent would not be arbitrarily withheld; and (ii) the Port Authority Member may transfer its entire membership interest to an Institutional Investor (defined below) (or to a person directly or indirectly controlled by an Institutional Investor) with the prior consent of the Westfield Member, which consent would not be arbitrarily withheld. However, the Members have agreed that it would not be arbitrary to withhold consent to any Transfer described in clause (i) or (ii) which would result in a termination of the Joint Venture for federal income tax purposes within the meaning of Section 708 of the Internal Revenue Code. Any violation of these provisions would be enforceable by restraining order or specific performance.

A “MM Permitted Transferee” would be (i) an entity with a net worth of not less than \$1 billion and own, or actively operate, at least five regional shopping centers with an aggregate gross leasable area of not less than 5 million square feet and at least two urban shopping centers containing at least 500,000 square feet each, or (ii) be an Institutional Investor that has engaged a property manager or leasing manager that owns or actively operates at least five regional shopping centers with an aggregate gross leasable area of not less than 5 million square feet and at least two urban shopping centers containing at least 500,000 square feet each.

An “Institutional Investor” would be a person commonly recognized as such, including, without limitation, a savings bank, pension plan or real estate fund which has a net worth of not less than \$1 billion. Competitors of Westfield that operate, manage and/or lease regional or super regional shopping malls, lifestyle or power centers of more than 1 million square feet in the aggregate would not be an Institutional Investor.

### *Transfer Tax on Post-Closing Transfers*

With respect to Transfers after the initial Closing, applicable laws may provide that transfer tax would be incurred if 50% or more of the direct and indirect interests in the Joint

Venture are transferred within any thirty-six month period. The Joint Venture Agreement would provide that in the event of transfers by both Members within such period, then each Member would bear any applicable transfer tax in proportion to the value of the interest transferred by such Member.

### *Default*

A “Default” by a Member under the Joint Venture Agreement would be the occurrence of any of the following events (each, a “Potential Default”) that becomes an Adjudicated Default (except with respect to item (i), which event would constitute a Default immediately upon its occurrence): (i) a voluntary or involuntary bankruptcy of such Member; (ii) such Member withdraws from the Joint Venture in violation of the Joint Venture Agreement; (iii) such Member effects a Transfer which is in violation of the Joint Venture Agreement; (iv) with respect to Westfield Member only, any of Westfield Member or Property Manager is found to have committed with the approval, prior knowledge, or complicity of the Board of Directors of the Westfield Member or any one or more of the Westfield Member’s chief executive officer, chief financial officer, chief operating officer, or general counsel (collectively, with the Board of Directors “Specified Officers”), fraud, embezzlement or theft against the Joint Venture or Port Authority Member which is susceptible to prosecution as a felony and which causes it material injury, and such default continues for a period of thirty days after written notice thereof (other than a good faith misappropriation of funds which are repaid promptly following discovery of same); (v) such Member breaches in any material respect any representation, warranty or covenant of such Member set forth in the Joint Venture Agreement, which breach continues for a period of twenty days after written notice, provided that if the breach is not susceptible of being cured within such twenty day period, then for such longer period as may be necessary to effect such cure, so long as such Member has commenced such cure within such twenty day period and thereafter diligently prosecutes such cure to completion; (vi) with respect to the Westfield Member only, any Adjudicated Default by Property Manager under the Property Management and Leasing Agreement; or (vii) with respect to Port Authority Member only, a voluntary or involuntary bankruptcy of PA Retail.

An “Adjudicated Default” would only occur if: (i) a court renders a final decision finding that any Potential Default has occurred, and the applicable Member does not deliver a notice of appeal to the appropriate parties within the applicable appeal period; or (ii) a court renders a final decision finding that any Potential Default has occurred and an appeal is perfected by the applicable Member within the applicable appeal period, and a second court renders a final decision finding that such Potential Default has occurred.

In the event that a Default occurs, then, except as expressly required by applicable law, such defaulting Member would not have the right to participate in the management of the Joint Venture (except that such Member would retain the right of approval with respect to all Major Decisions) and no consent, approval or participation of such defaulting Member would be needed (except with respect to a Major Decision). A Member in Default would remain obligated from and after such Default to make required capital contributions. With respect to the replacement of Westfield, LLC as Property Manager (which would constitute a Major Decision which the Westfield Member would otherwise be able to veto even after removal following an Adjudicated Default by the Westfield Member), each Member shall be entitled to recommend

one or more reputable, qualified replacement property manager which owns or actively operates at least five regional shopping centers with an aggregate gross leasable area of not less than 5 million square feet and at least two urban shopping centers containing at least 500,000 square feet each, and which is not an Affiliate of such Member, and Westfield Member shall act reasonably in approving, and shall approve, at least one of such recommended replacements.

### *Arbitration*

Under the terms of the Joint Venture Agreement and the Construction Agreement, disputes as to the following items would go to binding third-party arbitration if not resolved through the dispute resolution process described in “*Deadlock*”, and would be considered “Covered Disputes”: (i) whether any requirement relating to Tenant-Ready Condition, Deemed Opening Date, Substantial Completion, Final Completion, or Acceptable Delivery Conditions for a Phase has been satisfied; (ii) any claim by a Member for direct loss, damage, liability or expense (including costs and attorneys fees) actually incurred by such Member on account of any breach of any representation and warranty by the other Member; and (iii) any material disputes arising under the Joint Venture Agreement, other than a dispute regarding a Major Decision or a dispute regarding the occurrence or existence of an event of default. The third-party arbitration would be administered by JAMS under its arbitration rules and would take place in New York, New York. Each Member would be entitled to select an arbitrator, and the party-appointed arbitrators would then select a third arbitrator. The majority decision of the arbitrators would be binding on the Members. The arbitrators would be entitled, but not required, to provide that the losing party in any arbitration would pay all or a portion of the prevailing party’s costs incurred in connection therewith, including, without limitation, the costs and fees of the arbitrators, provided, however, if the arbitrator decline to make such a provision, then the costs of the arbitration would be split equally between the parties (except that each party would bear its own attorneys’ fees).

### *Audit Rights*

Upon two business days advance notice to the Managing Member (i.e., the Westfield Member, absent removal), a Member may, at its option and at its own expense, conduct audits of such books, records and accounts of the Joint Venture. The required notice must set forth a general description of the type of documents that the requesting Member seeks to have available at the time of the audit. Audits would be conducted during normal business hours and shall be conducted in a manner so as to not materially interfere with the ordinary business operations of the Westfield Member. The auditing Member’s appraisers, accountants and advisors shall be given access to all information related to the value of the Joint Venture investments, payments by Net Lessee under the Construction Agreement and to the management personnel involved directly or indirectly in the affairs of the Joint Venture during any such audit. The Westfield Member is obligated to cause such personnel to cooperate fully with the auditing Member’s appraisers, accountants and advisors.

## Property Management and Leasing Agreement

### *Property Management Services*

Under the Property Management and Leasing Agreement, Property Manager would engage and manage staff and provide services related to billing and collection under leases, negotiation of leases (subject to the Leasing Guidelines described in “*Leasing Guidelines*”), lease administration, reporting and accounting, payment of operating expenses, cleaning and maintenance of certain portions of the Retail Premises, management and administration of the marketing fund, formulating and implementing an insurance program, management and coordination of tenant improvement work at the Retail Premises (except initial tenant improvement work and any development services to be performed under the Development Services Agreement) and overseeing third party service providers.

### *Leasing Services*

Property Manager would be responsible for leasing the Retail Premises in accordance with the Annual Plan, the Leasing Guidelines and the Leasing Parameters. Property Manager’s leasing responsibilities would include preparing the “Standard Form of Shop Lease”, negotiating all leases and amendments, coordinating execution of leases, locating suitable tenants, coordinating the leasing program at the Retail Premises, preparing an informational Merchandising Plan, compliance with requirements in loan documents and supporting work related to tenant build-out and move-in (except initial tenant improvement work and any development services to be performed under the Development Services Agreement).

Property Manager could cooperate with tenant brokers in its effort to secure prospective tenants for the Retail Premises, and would be responsible for the payment of all leasing commissions due to such third party brokers after it has received the applicable leasing commissions from the Net Lessee.

Property Manager would be required to obtain the approval of the Port Authority Member prior to execution of any retail lease to the extent such approval is required under the Leasing Guidelines.

### *Leasing Guidelines*

If Property Manager satisfies the specific approval requirements and processes set forth in the Leasing Guidelines for all retail leases and licenses, as more fully described below, Property Manager and/or Westfield Member would be authorized to execute such leases and licenses without additional approval by the Port Authority Member. In all other cases, the Port Authority Member’s approval would be required prior to the execution of leases and licenses, which approval would not be unreasonably withheld (it being specifically understood that it would not be unreasonable for the Port Authority Member to withhold consent if the tenant allowance provisions of the applicable lease that are Owner Project Costs are inconsistent with the Leasing Parameters or if the Screening Protocols (defined in “*Procurement Provisions / Screening Protocols*”) are not satisfied with respect to the tenant in question). In addition, all leases would be required to contain certain Port Authority Required Lease Provisions and

otherwise comply with the applicable provisions of the Retail Net Lease. The Port Authority Required Lease Provisions would consist of the following: (i) specific provisions that would be required to be included in all retail leases (for example, provisions requiring compliance with the Port Authority's Freedom of Information policy); (ii) provisions addressing particular Port Authority practices and policies, which are based on specific language approved by the Port Authority but may be negotiated by Property Manager in the exercise of its professional judgment; and (iii) for any retail lease that requires approval by the Board, a provision that subjects such retail lease to the gubernatorial review legislation. Unless otherwise approved by the Port Authority Member, Property Manager would commence lease negotiations (other than for Temporary Leases and Event Licenses) with either (x) the Standard Form of Shop Lease without material modification or (y) for a national retail tenant, the form of lease used at projects owned or managed by an affiliate of the Westfield Member with such national retail tenant or such tenant's customary form of national lease.

1. *Conforming Temporary/Small Shop Leases*

Any retail lease for (i) a tenant occupying a gross leasable area at the Retail Premises which is 15,000 square feet or less and is not a Temporary Lease or Event License ("Small Shop Lease") or (ii) a temporary or seasonal nature with a term of not more than one year (including renewals) ("Temporary Lease") that conforms with the Leasing Parameters (defined in "*Leasing Parameters*") would not require Port Authority Member consent prior to being executed by the Westfield Member or Property Manager.

2. *Non-Conforming Temporary/Small Shop Leases*

Any Small Shop Lease or Temporary Lease that is not in conformity with the Leasing Parameters would require Port Authority Member's approval prior to execution by the Westfield Member or Property Manager.

3. *Anchor Leases and Large Shop Leases*

An "Anchor Lease" would be a retail lease for a tenant occupying not less than 75,000 square feet of gross leasable area at the Retail Premises. A "Large Shop Lease" would be a retail lease which is not an Anchor Lease, a Small Shop Lease, a Temporary Lease or an Event License. Both Anchor Leases and Large Shop Leases would require Port Authority Member's approval prior to execution by the Westfield Member or Property Manager.

4. *Event Licenses*

Any temporary occupancy permit or license for occupancy or use of a portion of the Retail Premises for a discrete event having a term of less than 30 days ("Event License") would be subject to certain approval requirements set forth in protocols to be developed prior to opening by the Westfield Member and the Port Authority Member.

5. *Extensions and Renewals*

The approval process for any extension or renewal of any retail lease other than Event Licenses would be subject to the same approval process applying as if such extension or renewal

were a new lease, unless such extension or renewal is exercised pursuant to an option in the lease, in which case the Westfield Member or Property Manager would be authorized to execute such extension or renewal without the consent of Port Authority Member.

6. *Subleases and Assignments of Event Licenses, Temporary Leases and Small Shop Leases*

The Westfield Member or Property Manager would be authorized to consent to subleases and assignments of Event Licenses, Temporary Leases and Small Shop Leases without Port Authority Member's consent provided such subleases and assignments do not release the existing tenant of tenant obligations under such Event License, Temporary Lease or Small Shop Lease, subject to certain qualifications.

7. *Subleases and Assignments of Anchor Leases and Large Shop Leases*

Subleases and assignments of Anchor Leases and Large Shop Leases would require Port Authority Member consent prior to execution by the Westfield Member or Property Manager.

8. *Termination of Event Licenses, Temporary Leases and Small Shop Leases*

The Westfield Member or Property Manager would be authorized to terminate Event Licenses, Temporary Leases and Small Shop Leases for monetary default or a material non-monetary default without Port Authority Member's consent provided such termination is not connected to a termination of the applicable tenant (or an affiliate) at any other location owned or operated by the Westfield Member or any of its respective affiliates. Any other termination of an Event License, Temporary Lease or Small Shop Lease would require Port Authority Member consent prior to execution by the Westfield Member or Property Manager.

9. *Termination of Anchor Leases and Large Shop Leases*

Any termination of an Anchor Lease or Large Shop Lease would require Port Authority Member consent prior to execution by the Westfield Member or Property Manager.

10. *Other Amendments of Retail Leases*

Other amendments of retail leases would be subject to the same approval process applying as if such proposed amendment, together with the existing retail lease, was a new retail lease. Notwithstanding the foregoing, for retail leases other than an Anchor Lease or Large Shop Lease, no approval of an amendment would be required so long as (i) the amendment is with respect to non-economic terms which are immaterial, and (ii) with respect to economic terms, such terms do not cause the economic terms to cease to comply with the Leasing Parameters.

11. *Retail Leases for Incentive Managed Space*

Retail leases within any Class B Phase would require Port Authority Member consent prior to execution by the Westfield Member or Property Manager.

### *Leasing Parameters*

The “Leasing Parameters” would be a component of the Leasing Guidelines and would contain the minimum economic and business terms for retail leases in the Retail Premises. The Leasing Parameters would contain (i) minimum initial fixed rent, (ii) maximum aggregate tenant improvement allowance and landlord special work above standard work letter and (iii) standard rent steps and escalations for various types of tenant space in the Retail Premises. The initial Leasing Parameters will be developed by the Westfield Member and approved by the Port Authority Member in accordance with the Joint Venture Agreement prior to Closing. The Leasing Parameters could be updated from time to time by Westfield with the approval by the Port Authority Member. The economic terms in any proposed retail lease would be deemed consistent and in conformity with the Leasing Parameters if the economic terms in such retail lease are within 10% of the economic terms in the Leasing Parameters.

### *Compensation and Expense Reimbursement*

#### *1. Property Management Fees*

From and after the Grand Opening Date, Property Manager would be entitled to a management fee of 3% of the net operating income from the Retail Premises (the “Management Fee”), and with respect to Class B phases may qualify for an Incentive Management Fee. Property Manager would be authorized to pay itself from Net Lessee’s account on a monthly installment basis in arrears, subject to monthly and annual adjustments and to possible escrow and disgorgement upon a termination of the Property Management and Leasing Agreement due to an Adjudicated Default (defined in “*Adjudicated Default*”).

#### *2. Leasing Commissions*

From and after the Closing, with respect to retail leases entered into in accordance with the Leasing Guidelines, Property Manager would be entitled to a leasing brokerage fee of (i) 100% of the market leasing fee if no third-party broker is involved or (ii) 150% of the market leasing fee if a third-party broker is involved (the “Leasing Fee”). The Leasing Fee would be paid 50% upon execution of the applicable lease and the remaining 50% upon the earlier to occur of the commencement of regular monthly rent payments or the retail tenant opening for business. If any portion of a Leasing Fee is paid with respect to the initial leasing of any space at the Retail Premises and the applicable retail tenant fails to open for business or commence regular monthly payments, the Leasing Fee with respect to a subsequent lease for that space would be reduced by any Leasing Fee previously paid (to the extent the previously paid Leasing Fee was not required to be paid over to a third party broker).

#### *3. Expense Reimbursement*

Property Manager would be entitled to reimbursement, as an operating expense of the Retail Premises, for costs and expenses related to the management and leasing of the Retail Premises, including legal fees, the costs of maintaining a marketing center, the costs of advertising the Retail Premises and the compensation and other costs of the leasing staff, to the extent any of such costs are provided for in the Annual Plan or other approved budget.

### *Property Management and Leasing Staffing*

No later than (i) for the initial Annual Plan, ninety days prior to the scheduled Grand Opening Date and (ii) for subsequent Annual Plans, November 1 prior to the fiscal year covered by such plan, Property Manager would be required to deliver an annual plan (the “Annual Plan”) for Net Lessee’s approval, which incorporates an operating budget, a capital expenditures budget, the projected timing and amount of required capital advances by Net Lessee, proposed insurance coverages and premiums, and a summary of all affiliate agreements related to the Retail Premises. Net Lessee’s approval or disapproval of any Annual Plan would have to be consistent with the Joint Venture Agreement.

Except where acting as agent of Net Lessee as expressly authorized in the Property Management and Leasing Agreement, Property Manager would act as an independent contractor contracted by Net Lessee. All contractors or consultants engaged or supervised by Property Manager would be independent contractors or employees of Property Manager and all employees of the Retail Premises would be employed by Property Manager or its affiliates. At the termination of the Property Management and Leasing Agreement, any rights of Property Manager in any union, collective bargaining, pension or similar agreement would be assigned to the Net Lessee.

### *Procurement Provisions / Screening Protocols*

No retail lease, contract for goods or services, or revenue generating agreement would be signed by or on behalf of the Net Lessee or the Joint Venture with any prospective contractor who fails to pass certain integrity screening protocols (the “Screening Protocols”) that have been agreed to in concept by the Members. Within sixty days after Closing, the Members would reduce to writing the specific requirements of all Screening Protocols, which may be updated from time to time by the Members. The Screening Protocols would include at a minimum customary checks for violations of Anti-Money Laundering and Anti-Terrorism Laws and certifications as to no felony convictions or adverse actions against the Members. Any violation of the Screening Protocols would entitle the Port Authority to, at a minimum, require the termination of any such retail lease, contract or Revenue Generating Agreement.

In addition, the Members would include in certain contracts for goods or services and Revenue Generating Agreements provisions required pursuant to Port Authority procurement and legal practice.

### *Performance Standard and Compliance Requirements*

Property Manager would be required to perform its duties and responsibilities as set forth in the Property Management and Leasing Agreement in a diligent and professional manner in accordance with standards for a first-class retail space in certain comparable buildings such as, for example, Time Warner Center, New York, NY, Westfield San Francisco, San Francisco, CA, Beacon Court (a/k/a The Bloomberg Building), New York, NY, and Westfield Century City Mall, Los Angeles, CA (collectively, “Comparable Buildings”). Such performance would be subject to the rights, obligation and limitations imposed on Property Manager under any agreements to which Net Lessee, Property Manager and the Retail Premises are subject.

### *Default/Termination*

#### *1. Non-Curable Terminating Events*

Net Lessee would be able to terminate the Property Management and Leasing Agreement upon fifteen days written notice following the occurrence of any of the following termination events: (a) the bankruptcy of Property Manager; (b) foreclosure or possession by deed-in-lieu of the Retail Premises; (c) substantial casualty where Net Lessee decides not to rebuild; (d) Westfield fails to maintain, directly or indirectly, the Minimum Ownership Threshold in Net Lessee following certain events, and the same is determined to be an Adjudicated Default; (e) Property Manager with the approval, prior knowledge or complicity of certain senior executives of Property Manager commit fraud, embezzlement or theft against Net Lessee or its Affiliates which is susceptible to prosecution as a felony, and the same is determined to be an Adjudicated Default; or (f) the removal of Westfield Member as managing member of the Joint Venture due to a default by Westfield Member which is determined to be an Adjudicated Default under the Joint Venture Agreement.

#### *2. Curable Defaults*

Either Net Lessee or Property Manager would be able to commence the process to terminate the Property Management and Leasing Agreement by written notice from the non-defaulting party (the “Non-Defaulting Party”) to the other party (the “Defaulting Party”) of a default by the Defaulting Party in the performance or observance of any material term, condition or covenant of the Property Management and Leasing Agreement that constitutes a Material Default (defined below) if such Material Default continues for (1) ten days after notice, for any monetary Material Default, or (2) thirty days after notice, for any other Material Default (provided that such thirty day period shall be extended with respect to any default that is reasonably susceptible to cure but not reasonably curable within thirty days, so long as the Defaulting Party (a) has commenced the remedy as soon as is practicable after receiving such Default Notice, (b) thereafter diligently prosecutes the cure to its completion, and (c) provides notice to the Non-Defaulting Party no less often than once every thirty days as to the status of such cure.

Net Lessee would be able to terminate the Property Management and Leasing Agreement by written notice to Property Manager for certain junior-level bad acts (e.g., fraud, embezzlement, etc. by lower level employees of Property Manager), which remain uncured after applicable notice and extended cure periods, but only to the extent the same would constitute a Material Default.

The term “Material Default” would mean a default in the performance of a material obligation that remains uncured and such default (either in and of itself or taken in the aggregate with all substantially similar prior defaults which evidence a practice and pattern of neglect by the Defaulting Party) has or can reasonably be expected to have a material adverse effect on the Non-Defaulting Party or the Premises. An “Adjudicated Default” would occur if, following notice: (i) certain senior officers are unable to resolve the dispute and the Defaulting Party does not institute a judicial proceeding within sixty days of the termination notice; (ii) a court renders a final decision finding that a Material Default by the Defaulting Party occurred and the

Defaulting Party does not timely file an appeal; or (iii) a court renders a final decision, the Defaulting Party timely appeals the decision, but a second court renders a final decision finding that a Material Default by the Defaulting Party occurred.

### 3. *Shadow Manager*

If Property Manager, as Defaulting Party, institutes or is defending a judicial action with respect to the determination of whether a Material Default has occurred, Net Lessee would be able to appoint a reputable third party professional property manager with experience managing first-class, urban shopping centers (the “Shadow Manager”) to serve as a property management consultant. Until the adjudication is finally concluded, Property Manager would be required to cooperate with the Shadow Manager and not take any material action with respect to the Retail Premises without the prior written approval of the Shadow Manager, which approval shall not be unreasonably withheld. All fees, costs, and expenses of the Shadow Manager would be paid by Port Authority Member.

### 4. *Fees Upon Termination*

If the Property Management and Leasing Agreement is terminated on account of an Adjudicated Default in which Property Manager is determined to be the Defaulting Party, Property Manager would be required to pay the Port Authority Member 25% of Management Fees actually paid (or escrowed by Net Lessee) during the period of adjudication. If the Property Management and Leasing Agreement is terminated, Property Manager would be entitled to all such Management Fees under the Property Management and Leasing Agreement earned prior to the termination.

## Development Services Agreement

### *Advisory Services*

The development advisory services to be performed by Development Advisor under the Development Services Agreement would include base building construction services, primary responsibility for the management and supervision of the retail tenant improvement work and move-ins, enhancement recommendation services, and development schedule services. Development Advisor would be required to provide the advisory services to a high-quality, first-class standard.

### *Staffing*

In connection with the initial Project Development Budget, Development Advisor would provide a staffing plan describing all potential employees anticipated to provide development advisory services. Development Advisor would at all times be acting as an independent contractor contracted by Net Lessee, and all personnel engaged by Development Advisor would be independent contractors or employees of Development Advisor.

Development Advisor would have the right to engage consultants, advisors and other third parties to perform its obligations if provided for in (i) the Project Development Budget, for

the period prior to the Grand Opening Date; or (ii) the operating budget, for the period following the Grand Opening Date.

### *Compensation and Reimbursement*

Net Lessee would pay Development Advisor a development services fee of \$5 million with respect to the Initial Development Scope, payable in equal installments beginning at Closing and quarterly in arrears thereafter, and a development services fee of \$1 million, subject to adjustment as provided in the Development Services Agreement, attributable to Tower 3 Above Grade, which would be paid in quarterly installments during the projected construction period for Tower 3 Above Grade.

Development Advisor would be reimbursed, without markup, for costs allocable to staff salaries and benefits as well as consultant and other third party costs, but only to the extent provided for in (i) the Project Development Budget, for the period prior to the Grand Opening Date; or (ii) the operating budget, for the period following the Grand Opening Date.

If Net Lessee does not pay an installment of the Development Services Fee or reimbursable costs within ten days of receipt of notice of deficiency, such unpaid amount would bear interest at a default rate.

### *Insurance*

Development Advisor would be obligated, at its own expense, in the name of Development Advisor, Net Lessee and the Joint Venture, to provide for professional liability insurance coverage as set forth in the Development Services Agreement.

### *Default/Termination*

#### *1. Non-Curable Terminating Events*

Net Lessee would be able to terminate the Development Services Agreement upon fifteen days written notice following the occurrence of any of the following termination events: (a) the bankruptcy of Development Advisor; (b) foreclosure or possession by deed-in-lieu of the Retail Premises; (c) substantial casualty where Net Lessee decides not to rebuild; (d) Westfield fails to maintain, directly or indirectly, the Minimum Ownership Threshold in Net Lessee following certain events, and the same is determined to be an Adjudicated Default; (e) Development Advisor with the approval, prior knowledge or complicity of certain senior executives of Development Advisor commit fraud, embezzlement or theft against Net Lessee or its Affiliates which is susceptible to prosecution as a felony, and the same is determined to be an Adjudicated Default; (f) the termination of the Property Management and Leasing Agreement due to a default by Property Manager; or (g) the removal of Westfield Member as managing member of the Joint Venture due to a default by Westfield Member which is determined to be an Adjudicated Default under the Joint Venture Agreement.

## 2. *Curable Defaults*

Either Net Lessee or Development Advisor would be able to commence the process to terminate the Development Services Agreement by written notice from the non-defaulting party (the “Non-Defaulting Party”) to the other party (the “Defaulting Party”) of a default by the Defaulting Party in the performance or observance of any material term, condition or covenant of the Development Services Agreement that constitutes a Material Default (defined below) if such Material Default continues for (1) ten days after notice, for any monetary Material Default, or (2) thirty days after notice, for any other Material Default (provided that such thirty day period shall be extended with respect to any default that is reasonably susceptible to cure but not reasonably curable within thirty days, so long as the Defaulting Party (a) has commenced the remedy as soon as is practicable after receiving such Default Notice, (b) thereafter diligently prosecutes the cure to its completion, and (c) provides notice to the Non-Defaulting Party no less often than once every thirty days as to the status of such cure. In addition, Net Lessee would be able to terminate the Development Services Agreement by written notice to Development Advisor for certain junior-level bad acts (e.g., fraud, embezzlement, etc. by lower level employees of the Development Advisor), which remain uncured after applicable notice and extended cure periods, but only to the extent the same would constitute a Material Default.

The term “Material Default” would mean a default in the performance of a material obligation that remains uncured and such default (either in and of itself or taken in the aggregate with all substantially similar prior defaults which evidence a practice and pattern of neglect by the Defaulting Party) has or can reasonably be expected to have a material adverse effect on the Non-Defaulting Party or the Premises. An “Adjudicated Default” would occur if, following notice: (i) certain senior officers are unable to resolve the dispute and the Defaulting Party does not institute a judicial proceeding within sixty days of the termination notice; (ii) a court renders a final decision finding that a Material Default by the Defaulting Party occurred and the Defaulting Party does not timely file an appeal; or (iii) a court renders a final decision, the Defaulting Party timely appeals the decision, but a second court renders a final decision finding that a Material Default by the Defaulting Party occurred.

## 3. *Fees Upon Termination*

If the Development Services Agreement is terminated for any reason, Development Advisor would be entitled to payment of all amounts due under the Development Services Agreement for the supervision and management of the consulting work at the date of termination equal to the product obtained by multiplying (x) the total of all amounts that would have been due to Development Advisor had Development Advisor completed the supervision and management of the consulting work by (y) the percentage of such work actually completed less (i) all amounts previously paid to Development Advisor, (ii) the liquidated amount of any claims by Net Lessee against Development Advisor and (iii) any direct reimbursable amount for staff yet to be hired at the time of such termination.

## Retail Net Lease

The Retail Net Lease would set forth the operating and management responsibilities of Net Lessee with respect to the Retail Premises and grant rights to the Net Lessee as exclusive

retail operator of the WTC Site (subject to certain exceptions). The term of the Retail Net Lease would be for the balance of the 99-year term of the currently-existing retail net lease, expiring on July 16, 2100.

### *Exclusivity*

Except within the Excluded Areas (defined below), Net Lessee would be granted the exclusive rights throughout the WTC Site (i) to develop, operate, manage and lease retail facilities and retail operations, (ii) to erect signage and advertising, except for limited non-revenue generating, non-competing signage, (iii) to conduct specialty retail leasing in carts, kiosks, retail merchandising units and the like, and (iv) to conduct all special events in designated event areas, except for non-revenue generating non-competing special events not accounting for more than 20% of available events, and to manage and calendar all special events of any nature for a fee determined by Net Lessee in its sole discretion (the fee would, however, be a nominal administrative fee with respect to non-revenue generating non-competing special events). The Port Authority would agree to cooperate with the Net Lessee in enforcing these exclusive rights and, if necessary, join in any enforcement actions brought by Net Lessee.

In addition, Net Lessee would be responsible for complying with the obligations of WTC Tower 1 LLC, as landlord under that certain lease for space in Tower 1 dated as of May 25, 2011 between WTC Tower 1 LLC and Advance Magazine Publishers Inc., d/b/a Conde Nast (the “Conde Lease”), to make available at the WTC Site a newsstand that satisfies certain requirements specified in the Conde Lease.

### *Exclusions from Exclusivity*

The “Excluded Areas” would include: (a) ancillary retail locations in Towers 1 through 5 of the type commonly found in comparable office buildings, (b) in Tower 1, conference venues, a fine dining restaurant and observation deck and, in portions of Tower 1 leased to China Center New York LLC, event venues, (c) up to one and one-half floors of retail space within the first two floors of Tower 5, (d) ancillary retail within the “fare zone” of the Transportation Hub of the type commonly found in comparable transportation areas, (e) a gift shop, restaurant and food concessions stands in the PAC, (f) areas used for non-revenue generating non-competing special events in the plaza between Tower 1 and the PAC, (g) restaurants, bars and sundries shops in a full service hotel developed at the World Trade Center, (h) all retail, signage and events in the Memorial/Museum, (i) within the Greek Church site, retail uses to the extent commonly found in religious and spiritual centers, (j) upon disposal of Liberty Park to a governmental or public entity for park or other public purposes, any retail, signage and assemblies within that area, and (k) parking facilities and retail ancillary to such parking facilities.

### *Site-Wide Operating and Maintenance Costs Contributions*

The Annual Rent under the Retail Net Lease would be \$1. Commencing on the Grand Opening Date, Net Lessee would pay its allocated share of site-wide operating and maintenance costs, capped at \$12.5 million annually (which cap would be subject to annual increase by the greater of 3% and CPI and would be proportionately adjusted during years in which the retail project is only partially complete).

*Payments in Lieu of Taxes (PILOT)*

Following the Closing, Net Lessee would make semi-annual payments to the Port Authority in an amount equal to the Net Lessee's allocated share of the PILOT payment due from the Port Authority to the City of New York pursuant to the PILOT Agreement. If the PILOT Agreement is amended, Net Lessee would not be responsible for any increases in its PILOT payment as a result of any amendment in the first fifteen years after the Grand Opening Date, and thereafter Net Lessee's responsibility for the full amount of such increases would be phased in over a five year period. In any event, Net Lessee would not be responsible for any such increases to the extent they exceed real property taxes that would be payable in the absence of a PILOT Agreement. The Port Authority would agree not to enter into amendments of the PILOT Agreement which unfairly discriminate against Net Lessee versus other World Trade Center stakeholders. If it is determined that real property taxes are payable with respect to the leased portions of the Retail Premises, Net Lessee would be responsible for the payment of all such amounts up to the amount of Net Lessee's maximum PILOT exposure as described above and the Port Authority would pay the excess.

*Utilities*

Electrical power would be supplied to the Net Lessee through a dedicated retail network and designated common spot networks at rates (including, for so long as available, rates charged by the New York Power Authority) reflecting a satisfactory mark-up for the Port Authority's electrical services costs. Net Lessee is entitled to pass on to its tenants the aforementioned amounts charged by the Port Authority together with limited additional charges to cover Net Lessee's electrical services costs.

*Security Costs*

The Net Lessee is responsible at its own cost for compliance with the Port Authority's security guidelines within the Retail Premises and the other areas in which it exercises its exclusive signage, specialty leasing and event rights that have achieved substantial completion. However, the Port Authority would agree not to adopt security guidelines that impact the Retail Premises of a standard in excess of then prevailing security standards in listed comparable buildings unless recommended by a professional third-party security expert involved in the security planning of the World Trade Center. Until security guidelines are adopted by the Port Authority after substantial completion, the Net Lessee must comply with standards that are consistent with those of listed comparable buildings. With respect to security compliance in areas outside of the Retail Premises in which the Net Lessee exercises its exclusive signage, specialty leasing and event rights, the Net Lessee must reimburse the Port Authority for any security costs incurred by the Port Authority in the provision of security services to such areas at the request of the Net Lessee or due to the Net Lessee's failure to comply with security requirements in such areas.

*Changes to Retail Development Project*

If required to serve a valid governmental purpose, the Port Authority would have certain rights to in good faith make changes to the retail development at the WTC Site or agree to

encumber the WTC Site, as described “*Certain Port Authority Rights Regarding Changes*”. Being an integral part of the retail project, the Port Authority would agree to continue operating and maintaining the Transportation Hub and other essential PATH areas even if PATH services stop running at the WTC Site.

As was the case in the 2001 retail net lease and has been the case since 2001 with the SPI net leases, the Retail Net Lease would provide that in the unlikely event the Port Authority decides to sell to a non-governmental entity the Port Authority’s fee interest (i.e., its interest as net lessor) in the portions of the Retail Premises leased to the Net Lessee, the Net Lessee would have a right of first offer to purchase the fee interest.

#### *Default/Termination*

Prior to exercising any termination rights for a Net Lessee default under the Retail Net Lease, such default must be an Adjudicated Default.

#### *Port Authority Manual and Legal Compliance*

Net Lessee would maintain the Retail Premises and comply with all building, health and fire codes, security guidelines and rules and regulations established by the Port Authority and amended from time to time (“Port Authority Manual”). Unless the New York City Building Code or other municipal safety codes or regulations are subsequently modified, any increased costs caused by modification of the Port Authority Manual, in excess of Net Lessee’s allocable share of \$1 million of capital costs in each 10-year period and in excess of Net Lessee’s allocable share of \$1 million per year of operating expenses, are to be borne by the Port Authority. The Port Authority would continue to maintain its statutory jurisdiction and oversight with respect to (i) compliance with applicable building codes, subject to existing agreements with the City of New York; (ii) compliance with fire, environmental, and health codes; (iii) the operating integrity, when constructed, of the elevator/escalator systems, electrical and mechanical systems, and the structural integrity of the World Trade Center; (iv) the administration of components for electrical distribution outside of the retail dedicated spot network; and (v) Port Authority police. Additionally, the Port Authority would provide sufficient staff and resources, following Substantial Completion of the Retail Premises, to operate its code compliance office in a manner that is capable of meeting the obligations assumed by that office. The Port Authority would agree to be responsible for the cost of correcting any violations issued by the Port Authority’s Code Compliance Office related to defects in the original construction of the retail development project.

#### *Indemnification and Limitation of Liability*

The Port Authority would agree to indemnify Net Lessee for the Port Authority’s breaches of the Retail Net Lease and for any liability arising under certain transaction documents during the period the Retail Premises were not net leased by the Port Authority. Except with respect to the Port Authority’s obligations in the event of a casualty, the Port Authority’s liability for the satisfaction of any right of the Net Lessee for the collection of a judgment or arbitration award from the Port Authority would not exceed an amount equal to the Participation Basis, increased over time by a CPI escalation.

*Insurance and Casualty: Retail Premises Base Building Improvements*

The Net Lessee would maintain casualty insurance for the full replacement cost, to the maximum extent available at commercially reasonable rates, of the Retail Premises base building improvements constructed after completion of the core and shell, the cost of which insurance would be equally split between the Port Authority Member and the Westfield Member. The Port Authority Member and the Westfield Member would agree to cooperate to obtain insurance in a coordinated, cost-effective manner. If there is a casualty and the core and shell is either unaffected or restored, the Net Lessee would restore the Retail Premises base building improvements. To the extent that insurance proceeds are not sufficient to restore such improvements, the Net Lessee would be responsible for such deficiency.

*Insurance and Casualty: Core and Shell - Towers 1, 2, 3 and 4*

With respect to the portions of the Retail Premises within Towers 1, 2, 3 and 4, to the extent that the Net Lessee believes there is a gap in the insurance coverage benefitting the Net Lessee due to insufficient Core and Shell coverage being maintained by the office net lessees of those towers pursuant to their Reciprocal Easement and Operating Agreement ("REOA") obligations, then the Westfield Member may cause the Net Lessee to obtain excess property coverage.

As between the Port Authority as lessor and the Net Lessee there would be an agreement that if an office tower has not been restored following a casualty, and such restoration is necessary in order to restore the Retail Premises, then the Net Lessee would have the right to be relieved of any obligation to restore the Retail Premises until such restoration occurs.

If during the last fifteen years of the term of an office tower net lease an office tower net lessee elects not to restore the tower following a casualty pursuant to its existing office tower net lease rights (in which case the Port Authority would receive the insurance proceeds and succeed to the office tower net lessee's interest in the applicable tower), then the Port Authority must elect either to (A) restore the tower or (B) pay to the Net Lessee an amount equal to its share of the core and shell insurance proceeds, representing the value of the then remaining term of the Retail Net Lease in no event to exceed the Retail Premises' share of such proceeds, in which event under (B) the Net Lease would be terminated with respect to the Retail Premises located in such tower. The Retail Lessee would also be entitled to retain a portion of its Retail Base Building Improvements insurance proceeds also reflecting the then remaining term of the Net Lease.

The same results would occur if the Port Authority became the owner of an office tower on account of the early termination of an office net lease, and a casualty occurs which causes the Port Authority to make a formal decision not to rebuild the Retail Premises located within such office tower. In that case, the Port Authority would pay to the Net Lessee an amount equal to the Retail Premises' share of the core and shell insurance proceeds, and the Retail Net Lease would be terminated with respect to such Retail Premises. The Retail Lessee would also be entitled to retain its Retail Base Building Improvements insurance proceeds.

*Insurance and Casualty: Core and Shell - Transportation Hub*

The Port Authority would determine the appropriate insurance coverages, policy limits and deductibles for the Transportation Hub, and would obtain such insurance as it deems appropriate, from third party insurers, an affiliated insurance provider or self insurance, subject to such retention and other terms as the Port Authority elects. The Port Authority would also have discretion as to whether or not to rebuild the Transportation Hub should a casualty occur.

Each year during the term of the Retail Net Lease, the Port Authority and the Net Lessee would reach agreement on (a) “notional” insurance coverages, policy limits and deductibles for the Transportation Hub based upon the coverages actually obtained by the net lessees of the office towers (which may include insurance on the Base Building Improvements or gap insurance purchased by Net Lessee) and utilizing comparable limits (i.e., if the limits of coverage for the office towers are X% of replacement cost, then the limits applicable to the notional insurance coverage would be the same percentage of replacement cost) (such notional insurance coverage is called the "Notional Insurance Coverage"), and (b) the premiums which would be applicable to such coverages based on the average cost per thousand for comparable coverages for the portions of the Retail Premises located within the footprint of the office towers (the "Agreed Insurance Premium"). The Retail Net Lease would provide a mechanism for determining the Notional Insurance Coverage and Agreed Insurance Premium in the event of a disagreement by utilizing an arbitration process with insurance experts. The Retail Net Lease would require the Net Lessee to pay to the Port Authority an allocated share of the Agreed Insurance Premium each year commensurate with an allocation of costs to the Retail Premises.

In the event of a casualty affecting the core and shell of the Transportation Hub which materially impacts the Retail Premises, the Port Authority would, at its election, either (i) rebuild such core and shell of the Transportation Hub (and, if applicable, the Base Building Improvements) to its condition prior to the casualty, including all common corridors and loading facilities required for the operation of the Retail Premises (a “Full Restoration”), or rebuild a portion of such core and shell of the Transportation Hub (and, if applicable, the Base Building Improvements) as may be feasible (a "Partial Restoration"), or (ii) pay to the Net Lessee an allocated share (commensurate with an allocation of costs to the Retail Premises) of the insurance proceeds, excluding deductibles, which would have been made available to the Port Authority (in a non-rebuilding scenario) if the Notional Insurance Coverage had been in place, without regard to the amount of insurance proceeds actually available (the “Hypothetical Retail Insurance Proceeds”).

If the Port Authority elects to do a Full Restoration, then the Port Authority would be responsible for Full Restoration of the Transportation Hub, including the core and shell of the Retail Premises (and, if applicable, the Base Building Improvements), without any financial contribution from the Net Lessee. If, however, a Partial Restoration occurs, then the Westfield Member (acting on behalf of the Net Lessee) would determine whether the Transportation Hub and the Retail Premises, as restored, constitutes a feasible retail facility or not: (a) if determined that it does not constitute a feasible retail facility, the Net Lessee may elect to terminate the Retail Net Lease as to the portion of the Retail Premises which are not within the footprint of the office towers and the Port Authority would pay to the Net Lessee an amount equal to the Hypothetical Retail Insurance Proceeds; or (b) if determined that it does constitute a feasible

retail facility (or if the termination option is not selected in a timely manner), the Retail Net Lease would be amended as necessary to reflect the restored facility, and the Port Authority would pay to the Net Lessee a pro rata portion of the Hypothetical Retail Insurance Proceeds. The terminated portion of the Retail Premises would thereafter be considered Excluded Areas, so that the Port Authority may utilize such portion as it desires, including for retail purposes.

#### *Antenna Restrictions*

Net Lessee would be prohibited from broadcasting signals that interfere with transmissions from the Tower 1 antenna or transmissions that constitute over the air TV or AM/FM radio regulated by the FCC.

#### *Signage*

The Net Lessee would be required to comply with “Retail Design Standards” which have been established for the Retail Premises and incorporated into the Retail Net Lease. The Retail Design Standards generally conform to the City of New York’s zoning resolution for comparable commercial properties, other than with respect to certain deviations pertinent to the World Trade Center site, which have been previously accepted by the Port Authority, the City of New York and other WTC Site stakeholders. The Port Authority would have the right to require the Net Lessee to remove any offensive or distasteful signage erected pursuant to its exclusive signage rights. The Port Authority would reasonably determine whether any signage content is offensive or distasteful taking into account the standards of Comparable Buildings and the Port Authority would not be entitled to require the removal of signage which it permits at other Port Authority facilities. Additionally, the Port Authority's prior consent must be obtained for political advertising, although the Port Authority would not impose a comprehensive ban on all such advertising.

#### Retail Project and Certain Contract Cost Increases

In connection with the Transaction, it was recommended that the Board: (1) re-authorize the project to design and construct the World Trade Center Retail Premises, in an estimated amount of \$1.966 billion, including, among other items, payments to contractors and consultants, allowances for extra work, insurance, design, construction administration, engineering, project contingency, financial expense and other project costs; and (2) authorize an increase in compensation on behalf of this and other Port Authority projects at the WTC Site of \$12.4 million for the contract with SPI for design and construction administration services, of which \$10.83 million is attributable to the Retail Premises. The increase in (1) is \$540 million above the prior authorized amount of \$1.426 billion and \$411 million above the prior budget of \$1.555 billion.

The phased implementation of core and shell and pre-tenant fit-out work to support the implementation of the WTC retail development throughout the WTC Site is currently authorized at a total amount of \$1.426 billion. Reauthorization of the retail project was recommended at this time in order to properly align the authorized project budget with additional work necessary to implement the project, as well as certain work on behalf of other Port Authority projects at the WTC Site, which are adjacent to the Retail Premises.

Tower 2 Loading Dock

Pursuant to the Construction Agreement, PA Retail has agreed to deliver to the Net Lessee in an operational/working condition the Tower 2 loading dock and retail freight elevators at an estimated cost of \$12 million. Activation of the Tower 2 loading dock would address a significant logistical concern during the retail tenant fit-out and operational phases of the project by providing loading dock access in an appropriate location close to freight elevators and corridors. This access would enable deliveries to retail tenants in the northern portion of the Transportation Hub along back of house corridors instead of requiring such retail tenants to traverse the publicly-occupied Transportation Hub and over-burdening loading docks in Tower 3 and Tower 4. To fund this unanticipated capital cost, the Port Authority would use a portion of its outstanding \$30 million East Bathtub contingency amount that was authorized by the Board on August 26, 2010 and would authorize the necessary agreements with SPI.

Tower 2 Plaza Activation

The T2 Structure to Grade Project approved as part of the East Side Site Development Plan (Exhibit EE-1) provides for the ability to activate a portion of the planned Tower 2 structure at-grade (the “T2 Plaza”) along/west of Church Street between Vesey and Fulton Streets. Contemplated to be retail leasable area once the above-grade office tower is developed (if at all), the T2 Plaza would provide the Port Authority with an opportunity to develop a temporary architecturally compatible interim use that activates an otherwise vacant open space and provides for revenue generating opportunity. The Port Authority would spend approximately \$5.23 million to develop a plaza which would include retail merchandising units and informational kiosks. It is anticipated that such retail would be operated by the Joint Venture under terms to be agreed as the retail program becomes more fully developed. To fund this capital cost, the Port Authority would use a portion of the outstanding \$30 million East Bathtub contingency amount authorized by the Board on August 26, 2010 (which amount would have an \$18 million balance after reserving for the T2 Loading Dock costs as proposed above).

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Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bauer, Lynford, Moerdler, Rechler, Samson, Schuber and Steiner voting in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

**RESOLVED**, that the Executive Director and his designated representatives be and they each hereby are authorized, for and on behalf of the Port Authority, to take any and all action pertaining to the joint venture transaction between the Port Authority and Westfield America, Inc. consistent with the foregoing report to the Board, including the execution of contracts, agreements and other documents, together with amendments and supplements thereof, or amendments and supplements to existing contracts, agreements and other documents, and to take action in accordance with the terms of such contracts, agreements and documents, as may be necessary in connection therewith; and it is further

**RESOLVED**, that the form of all contracts and agreements, in each case, in connection with the foregoing shall be subject to the approval of General Counsel or his authorized representatives.

Whereupon, the meeting was adjourned.

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Secretary