

# THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

## MINUTES

Wednesday, December 4, 2013

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**MINUTES of the Meeting of The Port Authority of New York and New Jersey held Wednesday, December 4, 2013 at 225 Park Avenue South, City, County and State of New York**

**PRESENT:**

**NEW JERSEY**

Hon. David Samson, Chairman  
 Hon. Richard H. Bagger  
 Hon. Raymond M. Pocino  
 Hon. Anthony J. Sartor  
 Hon. William P. Schuber  
 Hon. David S. Steiner

**NEW YORK**

Hon. Scott H. Rechler, Vice-Chairman  
 Hon. Kenneth Lipper  
 Hon. Jeffrey H. Lynford  
 Hon. Jeffrey A. Moerdler  
 Hon. Rossana Rosado

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 and Support Specialist, Office of the Secretary

Thomas E. Belfiore, First Deputy Chief Security Officer  
 Matthew R. Bell, Special Assistant to the Deputy Executive Director  
 Thomas L. Bosco, Interim Director, Aviation  
 Steven J. Coleman, Deputy Director, Media Relations  
 Philippe Danielides, Senior Advisor to the Chairman  
 Stephanie E. Dawson, Acting Chief Operating Officer  
 John C. Denise, Audio Visual Supervisor, Marketing  
 Gretchen P. DiMarco, Special Assistant to the Deputy Executive Director  
 Joseph P. Dunne, Chief Security Officer  
 Michael A. Fedorko, Director, Public Safety/Superintendent of Police  
 Michael B. Francois, Chief, Real Estate and Development  
 Robert Galvin, Chief Technology Officer  
 David P. Garten, Senior Advisor to the Vice Chairman  
 Linda C. Handel, Deputy Secretary  
 Mary Lee Hannell, Chief, Human Capital  
 Anthony Hayes, Manager, Media Planning, Media Relations  
 Mark Hoffer, Director, New Port Initiatives, Port Commerce Department  
 Howard G. Kadin, Esq., Law  
 Stephen Kingsberry, Director, Rail Transit  
 Cristina M. Lado, Director, Government and Community Affairs, New Jersey  
 John J. Liantonio, Senior External Relations Client Manager, Government and Community Affairs  
 John H. Ma, Chief of Staff to the Executive Director  
 Lisa MacSpadden, Director, Media Relations  
 Ronald Marsico, Assistant Director, Media Relations  
 Daniel G. McCarron, Comptroller  
 Elizabeth M. McCarthy, Chief Financial Officer  
 James E. McCoy, Manager, Board Management Support, Office of the Secretary  
 Christopher Mohr, Executive Business Manager, Office of the Secretary

Jared Pilosio, Staff External Relations Representative, Government and Community Affairs  
Krista I. Powers, Client Manager, Government and Community Affairs, New Jersey  
Brian W. Simon, Director, Government and Community Affairs, New York  
Gerald B. Stoughton, Director, Financial Analysis  
Robert A. Sudman, Director, Audit  
Christopher M. Valens, Senior Public Information Officer, Media Relations  
Lillian D. Valenti, Director, Procurement  
David M. Wildstein, Director, Interagency Capital Projects, Office of the Deputy Executive  
Director  
Peter J. Zipf, Chief Engineer

Guests:

Nicole Crifo, Senior Counsel, Authorities Unit, Office of the Governor of New Jersey  
Janet Ho, Assistant Secretary for Transportation, State of New York

Speakers:

Murray Bodin, Member of the Public  
Margaret Donovan, Twin Towers Alliance  
Richard Hughes, Twin Towers Alliance  
Hon. Gordon Johnson, Conference Leader, New Jersey General Assembly  
Hon. Loretta Weinberg, Majority Leader, New Jersey Senate

The public meeting was called to order by Chairman Samson at 1:49 p.m. and ended at 2:14 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 November 13, 2013. 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 November 14, 2013. The Secretary reported further that the time for action by the Governors of New York and New Jersey expired at midnight on November 29, 2013.

Whereupon, the Board unanimously approved the Minutes of the meeting of November 13, 2013.

### **Report of Committee on Governance and Ethics**

The Committee on Governance and Ethics reported, for information, on matters discussed in public and executive sessions at its meeting on November 19, 2013, which included a discussion of qualifications for prospective appointments to the Board, including statutory and By-Laws requirements, discussion of various methods for the review and evaluation of the performance and effectiveness of the Board and Committees, a report from the Inspector General on the independence and freedom from interference of his office in the conduct of its responsibilities, and discussion of matters related to personnel and personnel procedures and matters related to ongoing reviews of contracts or proposals, and the report was received.

### **Report of Committee on Security**

The Committee on Security reported, for information, on matters discussed in executive session at its meeting on November 19, 2013, which included discussion of matters involving public safety or law enforcement and matters related to personnel and personnel procedures, and the report was received.

The Committee on Security also reported, for information, on matters discussed in executive session at its meeting on December 4, 2013, which included discussion of matters involving public safety or law enforcement, and the report was received.

### **Report of Committee on Finance**

The Committee on Finance reported, for information, on matters discussed in executive session at its meeting on December 3, 2013, which included discussion of matters involving ongoing negotiations or reviews of contracts or proposals, matters related to the purchase, sale, or lease of real property, or securities where disclosure would affect the value thereof or the public interest, matters in which the release of information could impair a right to receive funds from the United States or other grantor, and matters involving external or internal investigations or audits, and the report was received.

**Report of Audit Committee**

The Audit Committee reported, for information, on matters discussed in executive session at its meeting on December 3, 2013, which included discussion of matters involving external or internal investigations or audits, matters involving ongoing negotiations or reviews of contracts or proposals, and matters involving public safety or law enforcement, and the report was received.

**Report of Committee on Finance's Insurance Working Group**

The Committee on Finance's Insurance Working Group reported, for information, on matters discussed in executive session at its meeting on December 4, 2013, which included discussion of matters involving ongoing negotiations or reviews of contracts or proposals, and the report was received.

**Report of Committee on Operations**

The Committee on Operations reported, for information, on matters discussed in public and executive sessions at its meeting on December 4, 2013, which included discussion of an item that authorizes a transfer of certain real property interests at the Brooklyn-Port Authority Marine Terminal, and discussion of matters involving ongoing negotiations or reviews of contracts or proposals, matters related to the purchase, sale, or lease of real property, or securities where disclosure would affect the value thereof or the public interest, and matters related to proposed, pending, or current litigation or judicial or administrative proceedings, 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 December 4, 2013, which included discussion of certain contracts and agreements in connection with the continued development and operation of the World Trade Center site, and discussion of matters involving ongoing negotiations or reviews of contracts or proposals, and the report was received.

**Report of Committee on Capital Planning, Execution and Asset Management**

The Committee on Capital Planning, Execution and Asset Management reported, for information, on matters discussed in public and executive sessions at its meeting on December 4, 2013, which included discussion of a project for the demolition of three buildings and the resurfacing of associated area at Newark Liberty International Airport, discussion of an item that authorizes a project for certain roadway improvements at Port Newark, and discussion of matters involving ongoing negotiations or reviews of contracts or proposals, and matters related to the purchase, sale, or lease of real property, or securities where disclosure would affect the value thereof or the public interest, and the report was received.

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

In view of the fact that, as a result of prospective recusals, there would not be a sufficient number of Commissioners present for the Board to consider certain items on the agenda at its meeting on December 4, 2013, 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 the items. A copy of the minutes of the special meeting of the Committee on Operations held on December 4, 2013 is included with these minutes.

**NEWARK LIBERTY INTERNATIONAL AIRPORT – DEMOLITION OF CERTAIN EXISTING STRUCTURES AND RESURFACING OF ASSOCIATED AREA – PROJECT AUTHORIZATION**

It was recommended that the Board authorize: (1) a project for the demolition of Buildings 14, 95 and 332 and the resurfacing of approximately ten acres of associated area, to enhance operational efficiencies at Newark Liberty International Airport (EWR), at an estimated total project cost of \$14.5 million; and (2) the Executive Director to award a contract for the demolition and resurfacing work in connection with the project, at an estimated total cost of \$10.4 million, which amount is included in the estimated total project cost.

Buildings 14, 95 and 332 are located on the north side of EWR on an approximate 15-acre site. The three buildings, which range in age from 12 to over 50 years, are unoccupied and functionally obsolete, and therefore are not marketable to prospective tenants. Five acres of the area is paved, and currently used for aircraft movements and parking associated with the three buildings.

A review of options concerning appropriate uses for the area resulted in the recommendation that the existing structures should be demolished, and that ten acres of the site should be resurfaced, combined with the existing five acres of paved area, and re-purposed for use as aircraft parking and for landside uses. The proposed project would address overnight aircraft parking needs and assist in reducing delays during inclement weather, while also improving the efficiency of landside operations, by providing a landside paved area to accommodate such uses as the temporary relocation of the overflow taxi hold and a charter bus staging area, as needs arise.

The project would include demolition of the three vacant buildings, resurfacing of approximately ten acres for airside and landside parking, modification of the nearby fire suppression system and restoration of airside fencing.

Bids for the project work under the contract would be procured via a public advertisement/Request for Qualifications solicitation, with award to the lowest-priced qualified bidder.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Moerdler, Pocino, Rechler, Rosado, Samson, Sartor, 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 a project for the demolition of Buildings 14, 95 and 332 and the resurfacing of the area on which the buildings are located at Newark Liberty International Airport, at an estimated total project cost of \$14.5 million, be and it hereby is authorized; and it is further

**RESOLVED**, that Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to award a contract for the demolition work and resurfacing of the area in connection with the foregoing project, at an estimated total cost of \$10.4 million, which amount is included in the estimated total project cost; 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, 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 shall be subject to the approval of General Counsel or his authorized representative.

**NEWARK LIBERTY INTERNATIONAL AIRPORT – TERMINALS A AND B – WESTFIELD CONCESSIONS MANAGEMENT, LLC – EXTENSION OF AGREEMENT ANB-753**

It was recommended that the Board authorize the Executive Director to extend the term of the management agreement with Westfield Concessions Management, LLC (Westfield) to provide for management of the retail and food-and-beverage concessions, loading dock and storage facility services for Terminals A and B (collectively, the Terminals) at Newark Liberty International Airport (EWR), for an additional two-year period, through August 31, 2019, in exchange for a capital investment of up to \$3.5 million by Westfield in the renovation of the food courts in the Terminals. Westfield would continue to be responsible for managing an area of over 78,616 square feet for concessions and would be obligated to manage the loading dock and storage facilities that support these concession operations.

At its meeting of July 26, 2007, the Board authorized the Executive Director to enter into a seven-year management agreement with Westfield, with a three-year extension option, for the management of the concessions, loading dock and storage facility services for the Terminals. As part of the agreement, Westfield made an investment of \$500,000 that included an allocation to concessionaires, in order to subsidize the cost to renovate stores, recruit better concessionaires and assist existing and new Disadvantaged Business Enterprises to design and build stores at the Terminals. Pursuant to the agreement, Westfield earns an annual management fee equal to the sum of 1.25 percent of gross receipts up to \$80 million, 1.75 percent of gross receipts from \$80 million to \$100 million and 4 percent of gross receipts in excess of \$100 million.

The current agreement's base term expires August 31, 2014. Authorization was requested to add two additional years to the previously authorized three-year option to extend the agreement. The expiration of the extended agreement would be August 31, 2019. The existing management fee structure would remain unchanged.

In exchange for the two-year extension, Westfield would make a capital investment of up to \$3.5 million in the renovation of the food courts in the Terminals, to be completed by mid-2014. The Port Authority would retain the right to terminate the leases on 30 days' notice, without cause, in which event the Port Authority would be obligated to reimburse Westfield for its unamortized capital investment. The revenues derived by the Port Authority from concessions at the Terminals would continue to be shared with airline lessees in the Terminals, to the extent required by the underlying terminal airline leases.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Moerdler, Pocino, Rechler, Rosado, Samson, Sartor, 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 extend the term of the management agreement (Agreement) with Westfield Concessions Management, LLC for the management of the concessions at Terminals A and B at Newark Liberty International Airport and the loading dock and storage facilities that support the concession operations in such Terminals, substantially in accordance with the terms outlined to the Board; and it is further

**RESOLVED**, that the form of the Agreement shall be subject to the approval of General Counsel or his authorized representative.

**BROOKLYN-PORT AUTHORITY MARINE TERMINAL – DECLARATION OF SURPLUS PROPERTY – GRANTING OF DEED AND EASEMENT TO GOVERNORS ISLAND CORPORATION D/B/A THE TRUST FOR GOVERNORS ISLAND**

It was recommended that the Board: (1) declare an approximately 20-foot-wide by 650-foot-long subsurface parcel (Tunnel Parcel) of real property at the Brooklyn-Port Authority Marine Terminal (BPAMT) as surplus property, no longer needed by the Port Authority for the purposes for which it was acquired; and (2) authorize the Executive Director to: (a) enter into agreement(s) with the Governors Island Corporation d/b/a The Trust for Governors Island (Trust) whereby the Trust would pay the Port Authority \$650,000 for the conveyance to the Trust of the Tunnel Parcel for the installation and operation of a water pipeline; (b) grant to the Trust a permanent easement across an approximately eight-foot-wide surface parcel within the area formerly known as Sullivan Street (Maintenance Area) at the BPAMT, for the maintenance and repair of such water pipeline; and (c) reserve the Port Authority's right to relocate the water pipeline, the Tunnel Parcel and the permanent easement for necessary current and future operations at the BPAMT, at the Port Authority's cost.

The Trust is a not-for-profit corporation that operates the portion of Governors Island controlled by the City of New York (City). Governors Island requires a reliable potable water supply, which it currently lacks. The Trust is constructing a tunnel and water pipeline from Brooklyn to Governors Island that would tie into the City's drinking water distribution system. A portion of such tunnel needs to cross through the Tunnel Parcel. The Tunnel Parcel is located just below the surface of Sullivan Street and at the end of Sullivan Street, slopes downwards to a depth of approximately 75 feet below the surface of the Brooklyn Cruise Terminal parking lot at the BPAMT. The Trust requires the Maintenance Area easement to maintain and repair the water pipeline.

The Port Authority would convey title to the Tunnel Parcel and grant a permanent easement to the Maintenance Area to the Trust. With the exception of the easement, the Trust would not be acquiring any rights in or to the surface area above the Tunnel Parcel. The Trust would pay the Port Authority \$650,000 for conveyance of the Tunnel Parcel, which reflects the fair market value of the Tunnel Parcel, as determined by independent appraisals commissioned by the Port Authority and the Trust, and subsequent consultation between the appraisers. The Trust would be responsible for all necessary permitting and for all costs of design, construction, operation, maintenance and repair of the proposed water pipeline, including the testing, characterization and disposal of excess soil excavated from Port Authority property, in order to ensure that it is disposed of properly.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Moerdler, Pocino, Rechler, Rosado, Samson, Sartor, Schuber and Steiner voting in favor; Commissioner Lynford 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 the Board hereby finds and determines that an approximately 20-foot-wide by 650-foot-long subsurface parcel (Tunnel Parcel) of real property at the Brooklyn-Port Authority Marine Terminal is no longer required for the purposes for which it was acquired; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to: (1) enter into agreement(s) with the Governors

Island Corporation d/b/a The Trust for Governors Island (Trust) whereby the Trust will pay the Port Authority \$650,000 for the conveyance of the Tunnel Parcel for the installation and operation of a water pipeline; (2) grant to the Trust a permanent easement across an approximately eight-foot-wide surface parcel within the area formerly known as Sullivan Street at the Brooklyn-Port Authority Marine Terminal, for the maintenance and repair of such water pipeline; and (3) reserve the Port Authority's right to relocate the water pipeline, the Tunnel Parcel and the permanent easement for necessary current and future operations at the BPAMT, at the Port Authority's cost; all substantially in accordance with the terms outlined to the Board; 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 any other contracts and agreements necessary or appropriate in connection with the foregoing; 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.

## **WORLD TRADE CENTER SITE – AUTHORIZATION OF ADDITIONAL CONTRACT ACTIONS AND EXPENDITURES TO SUPPORT ONGOING POST-HURRICANE SANDY RECOVERY WORK**

It was recommended that the Board authorize: (1) the expenditure of an additional estimated amount of approximately \$9 million for certain contract actions and expenses expected to be required through February 28, 2014 to effectuate ongoing repair and replacement of facilities and equipment at the World Trade Center (WTC) site that were damaged or destroyed as a result of Hurricane Sandy and its associated storm surge, resulting in a cumulative total authorization of approximately \$467.5 million for the response, recovery, restoration and mitigation efforts at the WTC site; and (2) the Executive Director to take all actions necessary to effectuate the foregoing, consistent with the terms outlined to the Board.

During the week of October 28, 2012, Hurricane Sandy and its associated storm surge caused significant flooding and devastating damage in Lower Manhattan and throughout the New York-New Jersey region. The storm resulted in severe flooding throughout the WTC site, particularly affecting the WTC Transportation Hub, Vehicular Security Center, WTC Memorial Museum, and One WTC, among other WTC projects in construction. Although the de-watering of the WTC site was substantially completed in early November 2012, and pre-storm levels of construction activity resumed throughout the WTC site by the end of that month, Hurricane Sandy recovery activities are ongoing, to assess and evaluate damaged areas and equipment for future repair or replacement, including efforts to mitigate the impacts of future storms. Through separate actions at its meetings from February 6, 2013 through November 13, 2013, the Board, and the Committee on Operations, acting for and on behalf of the Board pursuant to the By-Laws, ratified and authorized certain actions required for Hurricane Sandy response, recovery and restoration work at the WTC site and mitigation efforts through December 31, 2013, in a total estimated amount of \$458.5 million.

Although comprehensive damage assessments and project impact evaluations related to Hurricane Sandy will be ongoing, staff is ordering various contractors to repair or replace damaged and destroyed equipment and infrastructure, including the purchase or repurchase of major long-lead items, such as: electrical switchgear and substation equipment; vertical circulation equipment; and mechanical fans, air handling units and controls. Increases in contract amounts also are needed to provide for construction management, program management, design support, and other professional services to support the repair/replacement, re-installation work and mitigation efforts.

Consistent with previous discussions with the Board throughout 2013, as additional information is made available through ongoing latent damage inspections, further project evaluations and implementation decisions regarding Hurricane Sandy's impact and the potential for including additional mitigation efforts to deliver a more resilient site are being made. It is anticipated that there will be further requests for increases to contract amounts for actions that will be attributable to Hurricane Sandy recovery, including further equipment replacement and installation costs, construction general conditions costs and potential mitigation costs, on an ongoing basis.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Pocino, Rechler, Rosado, Samson, Schuber and Steiner voting in favor; Commissioners Moerdler and Sartor 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 the expenditure of an additional estimated amount of approximately \$9 million for certain additional actions and expenses expected to be required through February 28, 2014, to effectuate the repair and replacement of facilities and equipment at the World Trade Center site that were damaged or destroyed by Hurricane Sandy and its associated storm surge, be and it hereby is authorized, consistent with the terms outlined to the Board; 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 facilitate the foregoing, consistent with the terms outlined to the Board; 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.

## **WORLD TRADE CENTER STREETS, UTILITIES AND RELATED INFRASTRUCTURE – PHASE III – LIBERTY PARK – PROJECT AUTHORIZATION**

It was recommended that the Board authorize: (1) a project for the design and construction of Phase III of the World Trade Center (WTC) Streets, Utilities and Related Infrastructure Program (Streets Program), at an estimated amount of \$107 million; and (2) the Executive Director to enter into construction Contract WTC-324.828.F-01, through construction manager Tishman Construction Corporation (Tishman), with Oliveira Contracting Inc., to perform building and site-work for Liberty Park, as part of Phase III of the Streets Program, at an estimated total cost of \$25,921,942, inclusive of an allowance for extra work and net cost work.

### Overall Streets Program

Under prior authorizations through November 2011, the Board authorized up to \$15 million in planning work for the design of the Streets Program. Of that amount, approximately \$6.5 million was allocated for Phase III planning work. The overall Streets Program will support the future development and restoration of streets and sidewalks within and at the perimeter of the WTC site, and would create public open spaces, including the Wedge of Light and Liberty Park. Fulton Street and Greenwich Street would be constructed as new streets through the WTC site.

The Streets Program includes utilities, street furnishings, landscaping, lighting, signage and implementation of traffic measures and bollards as perimeter security protective measures for vehicle interdiction.

Preliminary engineering work for the overall Streets Program was completed at the end of 2010. In order to implement this work efficiently, it was necessary to separate the Streets Program into distinct phases.

### Project Phases

On January 22, 2009, the Board authorized a project, in an amount of \$55 million, for Phase I of the Streets Program, which includes the installation of utilities, below-grade structures, and interim sidewalks and roadway surfaces at the WTC site.

On October 22, 2009, the Board authorized a project, in an amount of \$140 million, for Phase II of the Streets Program, which consists of the installation of bollards and other security/traffic mitigation devices, to protect public spaces and provide for the timely installation of sidewalk and roadway surfaces to facilitate pedestrian and vehicular traffic around the WTC site.

Phase III of the Streets Program, pursuant to this proposed authorization, would include the development of a new, approximately 63,000-square-foot, elevated Liberty Park, to be located on the southern portion of the WTC site, above the roof of the WTC Vehicular Security Center and Tour Bus Parking Facility. Liberty Park would serve as a public gathering place for workers and the growing number of residents in the area surrounding the WTC site. Phase III also would include the installation of pathways, benches, landscaped areas, lighting, other furnishings and hardscape elements. Liberty Park would be a new public space and enhancement for the WTC site and Lower Manhattan, and would provide an east-west pedestrian connection between Battery Park City and points east. This community park would serve as a gathering place for as many as 750 people at a time, and would provide a scenic overlook to the Memorial Plaza and a landscaped forecourt for the

new church building being constructed by the Hellenic Eastern Orthodox Church of Saint Nicholas of the Downtown Part of the City of New York (Greek Church).

The scope of work under the proposed construction trade contract includes the furnishing and installation of concrete finishes, miscellaneous waterproofing, wall panels, structural steel, doors, louvers, miscellaneous metals, drainage, signage and electrical work. Work also would include construction of the surrounding streets of Liberty, Cedar and Greenwich Streets, and associated work adjacent to Liberty Park.

Work under the proposed authorization would support the Greek Church's construction schedule for its new church building.

The proposed authorization would result in a total authorization of \$302 million for the three projects under the Streets Program.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Pocino, Rechler, Rosado, Samson, Schuber and Steiner voting in favor; Commissioners Moerdler and Sartor 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 project for the design and construction of Phase III of the World Trade Center (WTC) Streets, Utilities and Related Infrastructure Program (Streets Program), at an estimated amount of \$107 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 enter into construction Contract WTC-324.828.F-01, through construction manager Tishman Construction Corporation, with Oliveira Contracting Inc., to perform building and site-work for Liberty Park, as part of Phase III of the Streets Program, at an estimated total cost of \$25,921,942, inclusive of an allowance for extra work and net cost 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, 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 shall be subject to the approval of General Counsel or his authorized representative.

**WORLD TRADE CENTER VEHICULAR SECURITY CENTER AND TOUR BUS PARKING FACILITY – AUTHORIZATION TO INCREASE THE EXTRA WORK ALLOWANCE UNDER EXISTING CONTRACT WITH YONKERS CONTRACTING COMPANY, INC.**

It was recommended that the Board authorize the Executive Director to increase, by \$6 million, the compensation under the existing construction trade contract with Yonkers Contracting Company, Inc. (Yonkers Contracting) for additional extra work associated with excavation and foundation construction for the World Trade Center Vehicular Security Center and Tour Bus Parking Facility (VSC), in coordination with project schedules and the overall redevelopment of the World Trade Center (WTC) site, resulting in a revised total authorization of approximately \$79,857,160.

The WTC VSC Project is critical for the redevelopment of the WTC site, because it will improve vehicular circulation and access within Lower Manhattan. Once completed, the WTC VSC will accommodate off-street screening of vehicles that enter the sub-grade roadway and loading docks, as well as a new below-grade support for site-wide operations.

On August 5, 2010, the Board authorized the Executive Director to enter into a construction trade contract, through construction manager Tishman Construction Corporation, with Yonkers Contracting for excavation and foundations work associated with the construction of the WTC VSC Project, at an estimated total cost of \$70,607,160, inclusive of an eight-percent allowance for extra work. Via subsequent actions of the Board and Executive Director through December 2011, authorization to increase the compensation under the contract with Yonkers Contracting, by an aggregate amount \$3,250,000, was granted, in order to accommodate certain work required to accommodate “Day 2 Operations” of the World Trade Center Memorial Plaza, which resulted in a revised total authorization of approximately \$73,857,160.

The currently proposed increase in authorization is needed to compensate Yonkers Contracting for additional work that was made necessary due to the restaging of construction of the WTC VSC to accommodate schedule changes associated with the dismantling of the former Deutsche Bank Building and the construction of a new church building at 130 Liberty Street (Greek Church) by the Hellenic Eastern Orthodox Church of Saint Nicholas of the Downtown Part of the City of New York. These expenditures include an added closure panel for foundation walls, additional drilling and blasting due to west wall leaks, extended core beams due to rock, additional contaminated soil disposal, extended dewatering costs and additional rock excavation. Approximately \$3.2 million of the increase is for work associated with accommodating the Greek Church.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Pocino, Rechler, Rosado, Samson, Schuber and Steiner voting in favor; Commissioners Moerdler and Sartor 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 the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to increase, by \$6 million, the amount of the extra work allowance under the existing excavation and foundation construction trade contract with Yonkers Contracting Company, Inc. to support the construction of the World Trade Center Vehicular Security Center and Tour Bus Parking Facility; 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.

**WORLD TRADE CENTER VEHICULAR SECURITY CENTER AND TOUR BUS PARKING FACILITY – AUTHORIZATION TO INCREASE THE EXTRA WORK ALLOWANCE UNDER EXISTING CONTRACT WITH RAPISCAN SYSTEMS, INC.**

It was recommended that the Board authorize the Executive Director to increase, by \$8,141,414, the extra work allowance under the existing construction trade contract with Rapiscan Systems, Inc. (Rapiscan) to provide for security screening equipment work associated with the construction of the World Trade Center (WTC) Vehicular Security Center and Tour Bus Parking Facility (VSC), resulting in a total authorization of approximately \$23,657,914.

The WTC VSC Project is critical for the redevelopment of the WTC site, because it will improve vehicular circulation and access within Lower Manhattan. Once completed, the VSC will accommodate off-street screening of vehicles that enter the sub-grade roadway and loading docks, as well as a new below-grade support for site-wide operations.

At its meeting of December 8, 2011, the Committee on Operations, acting for and on behalf of the Board pursuant to delegated authority, authorized the Executive Director to award a construction trade contract to Rapiscan for security screening equipment work associated with the construction of the VSC, at an estimated total cost of \$15,516,500, inclusive of an allowance for extra work.

The proposed increase would provide for screening equipment for an additional vehicular lane entering the WTC site's sub-grade roadway and building loading docks. The additional lane is required to meet the vehicular volume anticipated at full build-out of the WTC site. The scope of the additional work includes furnishing, installing, integrating, testing, commissioning and maintaining equipment for a Gantry-mounted Vehicle Scanner and a Chassis-mounted Mobile X-Ray Imaging System.

The proposed additional work would be performed by Rapiscan, because the contractor is already mobilized at the WTC site. Having Rapiscan perform the work would eliminate operational and construction delays, provide for added versatility in operations, and ensure compatibility with other security systems.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Pocino, Rechler, Rosado, Samson, Schuber and Steiner voting in favor; Commissioners Moerdler and Sartor 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 the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to increase, by \$8,141,414, the amount of the extra work allowance under the existing construction trade contract with Rapiscan Systems, Inc. to provide for security screening equipment work associated with the construction of the World Trade Center Vehicular Security Center and Tour Bus Parking Facility, resulting in a total authorization of approximately \$23,657,914; 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.

**WORLD TRADE CENTER SECURITY STAFFING DURING OPERATION TRANSITION  
– AUTHORIZATION OF NON-LAW ENFORCEMENT SECURITY OPERATIONS  
SERVICES**

It was recommended that the Board authorize the Executive Director to provide for: (1) funding for the retention of non-law enforcement World Trade Center (WTC) security staffing and related services, including unarmed, uniformed security guard services, explosive detection canine services, Vehicular Security Center (VSC) operations services and repair and maintenance of security equipment, through June 30, 2014, at an estimated aggregate amount of \$8,035,550, inclusive of a six-percent allowance for extra work, consistent with the terms outlined to the Board; and (2) an increase of \$1,470,000 in the amount of the Cushman & Wakefield (C&W) WTC Sitewide Property Manager (SWPM) contract, to provide for the acquisition of security equipment maintenance and repair services, the cost of which is included within the aforementioned aggregate amount for security staffing and related services.

Based on current construction completion forecasts, it is anticipated that certain WTC site assets, including the WTC Transportation Hub's West Concourse, the VSC and the Site Logistics Communications Center (SLCC), will transition to expanded operations beginning in late 2013. In order to ensure that appropriate operational security measures are in place to provide for the safety of the public who will be utilizing these facilities, as well as to ensure secure/restricted access to subgrade areas of the WTC site to protect its infrastructure, certain interim non-law enforcement security operations services have been identified that will be required through June 30, 2014. These measures include: (1) unarmed, uniformed security guards whose services would be required throughout public areas at the WTC site, including the West Concourse, and at "back-of-house" space used for monitoring activity and controlling access to secure areas; (2) services necessary for the operation of the VSC, which will serve as the point of entry for all vehicle traffic seeking entry to the WTC site's below-grade roadway network, including commercial and retail loading docks and parking areas, with such services to include staffing for the operation of equipment and screening processes; (3) canine services at certain access points to screen vehicles; and (4) contract services to repair and maintain security equipment that may fall outside of standard warranty coverage, including installation and positioning of additional video surveillance systems, access control readers, and other security equipment that supports site-wide operations, as well as software upgrades and license fees on security technology systems, as needed.

The proposed actions would ensure that appropriate security measures are in place to maximize the safety of the public and protect infrastructure at the WTC site.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Moerdler, Pocino, Rechler, Rosado, Samson, Schuber and Steiner voting in favor; Commissioner Sartor 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 the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to provide funds for the retention of non-law enforcement World Trade Center (WTC) security staffing and related services, including unarmed, uniformed security guard services, explosive detection canine services, Vehicular Security Center operations services and repair and maintenance of security equipment, through June 30, 2014, at an estimated aggregate amount of \$8,035,550,

inclusive of a six-percent allowance for extra work, consistent with the terms outlined to the Board; 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, by \$1,470,000, the amount of the Cushman & Wakefield WTC Sitewide Property Manager contract, to provide for the acquisition of security equipment maintenance and repair services, the cost of which is included within the aforementioned aggregate amount for security staffing and related services; 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 any contracts or agreements and amendments or supplements thereto, as may be necessary or appropriate in connection with the foregoing; 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.

**STORM MITIGATION AND RESILIENCE PROGRAM -- AUTHORIZATION OF PRELIMINARY PROGRAM FUNDING FOR THE AWARD OF CONTRACTS FOR ARCHITECTURAL AND ENGINEERING DESIGN SERVICES**

It was recommended that the Board authorize: (1) preliminary program funding to define projects to be developed, executed and delivered under a multi-year Storm Mitigation and Resilience Program (Program) for all Port Authority and Port Authority Trans-Hudson Corporation (PATH) facilities, excluding those at the World Trade Center site; and (2) the Executive Director to enter into agreements for the retention of architectural and engineering design services, and integrity monitoring services, in support of the Program, at an estimated total cost of \$108 million, consisting of an estimated \$27 million for agreements pertaining to Port Authority facilities and an estimated \$81 million for agreements pertaining to PATH facilities, consistent with the terms outlined to the Board.

During the week of October 28, 2012, Hurricane Sandy and its associated storm surge caused significant flooding and devastating damage throughout the New York-New Jersey region, including damage to Port Authority and PATH facilities. Since October 2012, efforts have advanced to restore Port Authority and PATH facilities to full functionality, repair infrastructure damage, mitigate the potential of future storm damage and make facilities more resilient.

The proposed authorization would progress these efforts by authorizing funding to develop, execute, and deliver the multi-year Program for all Port Authority and PATH facilities, excluding those at the World Trade Center site, which are covered under separate Board authorizations. Expert professional engineering and architectural design and post-award services would be retained for projects to repair damage, mitigate potential future damage, and add resilience to Port Authority and PATH infrastructure and operational activities. Services under the proposed authorization would consist of Stage I services (i.e. preliminary design and development of a construction estimate and schedule) and would be limited to \$1.5 million per project. Following planning analysis, proposed projects would be prioritized and coordinated, as part of the Program, which would include final design services to support the implementation of individual projects pursuant to this Program authorization and would be subject to further Board authorization. It is currently estimated that the proposed engineering and architectural services would support projects valued at an aggregate of approximately \$1.2 billion over a five-year period.

The recommended awardees that would support the design of storm mitigation and resilience measures at the Port Authority's airports, ports, and tunnels, bridges and terminals facilities include: AECOM USA, Inc.; CH2M Hill New York, Inc.; Henningson Durham & Richardson Architecture and Engineering, PC (HDR); HNTB New York Engineering and Architecture, PC, an affiliate of HNTB Corporation; STV Incorporated (STV); Tetra Tech Engineers, Architects, and Landscape Architects PC; and URS Corporation (URS). The recommended awardees that would support the design of such measures at PATH facilities include: Gannett Fleming Engineers and Architects, PC; HDR; HNTB New York Engineering and Architecture, PC, an affiliate of HNTB Corporation; Jacobs Civil Consultants Inc.; Parsons Transportation Group of New York, Inc.; STV; T.Y. Lin International, Inc; and URS. The proposed agreements conform to Federal Transit Administration (FTA) and Federal Emergency Management Agency guidelines, including FTA grant guidelines for Indefinite Quantity Contracts (IQCs), to ensure maximum federal cost recovery.

Each of the firms was selected pursuant to a publicly advertised Request for Proposals process, with recommended award of “call-in” agreements to the respondents who were deemed technically qualified based on the quality of their proposal. Individual task orders would be awarded on a competitive basis, with award to the highest rated proposer, in each instance, whose cost is deemed reasonable as compared to the engineer’s estimate, in compliance with federal procurement guidelines.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Pocino, Rosado, Samson, Schuber and Steiner voting in favor; Commissioners Moerdler, Rechler and Sartor 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 preliminary program funding to define projects to be developed, executed and delivered under a multi-year Storm Mitigation and Resilience Program (Program) for all Port Authority and Port Authority Trans-Hudson Corporation (PATH) facilities, excluding those at the World Trade Center site, 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 agreements for the retention of architectural and engineering design services, and integrity monitoring services, in support of the Program, at an estimated total cost of \$108 million, consisting of an estimated \$27 million for agreements pertaining to Port Authority facilities and an estimated \$81 million for agreements pertaining to PATH facilities, consistent with the terms outlined to the Board; 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.

**BAYONNE BRIDGE NAVIGATIONAL CLEARANCE PROGRAM – PROPERTY ACQUISITION, DECLARATION AS SURPLUS PROPERTY AND DISPOSITION OF PROPERTY INTERESTS IN STATEN ISLAND, NEW YORK**

It was recommended that, in furtherance of the Bayonne Bridge Navigational Clearance Program (BBNCP), the Board: (1) authorize the Executive Director to transfer parcels of real property lying in the roadway bed of Innis Street (approximately 6,470 square feet), Eaton Place (approximately 13,499 square feet), Newark Avenue (two parcels of approximately 19,988 square feet and approximately 3,463 square feet, respectively), and Richmond Terrace (approximately 8,784 square feet) near the Staten Island, New York terminus of the Bayonne Bridge (Parcels 5, 9, 13, 16 and 19, respectively) (collectively, the Property) to the City of New York (City) for street purposes, in return for the City's granting to the Port Authority easements to own, construct, operate and maintain the Bayonne Bridge (BB) over, under and within portions of such City streets; (2) find and determine that such Property is no longer required for the purposes for which it was acquired; (3) authorize the Executive Director to transfer real property (previously authorized by Board) lying in the roadbed of the following streets surrounding the BB: Morningstar Road, Trantor Place, Eaton Place, Newark Avenue and Richmond Terrace (Parcels 1, 2,3,4,6,7,8,10,11,12, 14, 15, 17, and 18) to the City, primarily for street purposes, and as identified on the map entitled BP-102 and approved by the then Chief Engineer, and to accept from the City easements to own, construct, operate and maintain the BB over, under and within portions of such City streets; and (4) authorize the Executive Director to execute deeds, easements and any other agreements and documents necessary to effectuate the foregoing actions, including title company agreements, surveys and subdivision approvals, and to grant and accept deeds.

On December 5, 1929, the Board adopted a resolution approving a plan for the BB's approach in Staten Island (the "BB Plan"). The BB Plan included the BP-102 map, and was approved by the Chief Engineer. The BB Plan provided for the conveyance of Port Authority-owned property Parcels 1, 2, 3, 4, 6, 7, 8, 10, 11, 12, 14, 15 17, and 18 (collectively, the BB Plan Parcels) to the City, primarily for street purposes, to accommodate changes in the street system. In return, the City would grant to the Port Authority the right to construct, operate and maintain the BB over, under and within portions of such City streets. On February 28, 1930, the City Board of Estimate also authorized the BB Plan and the conveyances it contemplated. Neither the Port Authority nor the City has been successful in locating final agreements memorializing the contemplated property transfers.

In furtherance of the BB Plan, the City and the Port Authority now would execute property transfers contemplated by the BB Plan and approved by the Board and the City Board of Estimate in connection with the BBNCP. The City and the Port Authority also would execute property transfers not contemplated by the BB Plan that now are needed for the BBNCP.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Moerdler, Pocino, Rechler, Rosado, Samson, Sartor, 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 Board hereby finds and determines that the following parcels of real property, consisting of Innis Street (approximately 6,470 square feet), Eaton Place (approximately 13,499 square feet), Newark Avenue (two parcels of approximately 19,988 square feet and approximately 3,463 square feet, respectively), and

Richmond Terrace (approximately 8,784 square feet) near the Staten Island, New York terminus of the Bayonne Bridge (BB), identified as Parcels 5, 9,13,16 and 19, respectively, on the revised map entitled BP-102, are no longer required for the purposes for which they were acquired; and it is further.

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to: (1) transfer Parcels 5, 9, 13, 16 and 19 on the revised BP-102 map to the City of New York (the City); (2) accept from the City easements over, under and within portions of such Parcels 5, 9, 13, 16 and 19 to own, construct, operate, maintain and repair the BB; (3) transfer to the City, and to accept from the City easements to own, construct, operate and maintain the BB over, under and within portions of such City streets, in connection with Parcels 1, 2, 3, 4, 6, 7, 8, 10, 11, 12, 14, 15, 17, and 18; and (4) execute deeds, easements and any other agreements and documents necessary to effectuate the foregoing actions, including title company agreements, surveys and subdivision approvals, and to grant and accept deeds; and it is further

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

**JOHN F. KENNEDY INTERNATIONAL AIRPORT – BUILDING 78 – ARK DEVELOPMENT, LLC – LEASE AYE-245 – AUTHORIZATION OF FINAL LEASE TERMS**

It was recommended that the Board authorize the final terms of the lease agreement with ARK Development, LLC (ARK) for Building 78 at John F. Kennedy International Airport (JFK), which previously was authorized by the Board at its meeting of September 20, 2012.

On September 20, 2012, the Board authorized a lease agreement with ARK for Building 78, to provide for the development of an animal handling facility and cargo handling facility, for a 20-year term, with one five-year extension option, which agreement would include the following: (1) the leasehold would be used for a veterinary animal hospital; (2) a conditional, exclusive right for ARK to develop and operate an animal handling facility at JFK for the first ten years of the lease term; (3) the operation of the veterinary hospital and boarding center by ARK; (4) an investment by ARK of \$30 million for the development of approximately 108,650 square feet of the building for the animal handling facility; (5) an investment by ARK of \$2 million for the development of approximately 63,515 square feet of the building for the cargo handling facility; and (6) an aggregate rental of approximately \$108.6 million over the initial term of the lease. The Board did not authorize the financing of the development of the premises with a leasehold mortgage or a deferral of rent.

Since the date of the previous authorization, changes in the ownership and management of ARK led to negotiations between the parties concerning the final terms of the lease. The proposed final lease terms would differ from the terms previously authorized in the following respects: (1) ARK now would invest approximately \$48 million to develop approximately 78,265 square feet of the office/warehouse space for use as a business center, animal handling modules and a veterinary clinic, and to develop approximately 93,900 square feet of office/warehouse space for general administrative and office functions in support of cargo operations; (2) ARK would sublet the veterinary and boarding centers for operation by other parties; moreover, ARK currently has no plans to develop an animal hospital at the premises, but may do so in the future; (3) for the cargo handling facility, rent would be deferred up to the first six years of the lease, and such rent would be assessed interest and repaid over ten years; (4) the term of the lease would be 27 years, with a five-year extension option; (5) the aggregate rental over the initial term of the lease would be approximately \$138 million, of which \$111 million would be guaranteed fixed ground and building rent, and \$27 million would be participatory, in the form of percentage rent on gross receipts; (6) ARK would have the limited exclusive right to develop and operate an animal handling facility for the full term of the lease, rather than for the first ten years of the lease term; and (7) ARK would have the right to finance the development of the animal handling facility and cargo handling facility with a leasehold mortgage, which may be financed through the New York City Industrial Development Agency.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Moerdler, Pocino, Rechler, Rosado, Samson, Sartor, 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 final terms of the lease agreement with ARK Development, LLC (ARK) for Building 78 at John F. Kennedy International Airport (JFK), consisting of a total of approximately 172,165 square feet of office/warehouse space and approximately 14.4 acres of ground area, previously authorized by the Board

at its meeting of September 20, 2012, be and they hereby are authorized, substantially in accordance with the terms outlined to the Board; and it is further

**RESOLVED**, that the Executive Director be and hereby is authorized, for and on behalf of the Port Authority, to waive, for the ARK lease only, as outlined above, the provision of the Port Authority's underlying lease with the City of New York for JFK and LaGuardia Airport (LGA) that prohibits New York City Industrial Development Agency financing at JFK and LGA.

**THE WORLD TRADE CENTER – AUTHORIZATION OF SALE OF REMAINING RETAIL JOINT VENTURE INTEREST TO WESTFIELD AMERICA, INC.**

It was recalled to the Board that on February 9, 2012, in furtherance of the Board's continuing desire 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, the Board authorized the Port Authority to enter into a transaction with Westfield America, Inc. ("Westfield") pursuant to which Westfield and the Port Authority formed a 50/50 joint venture (the "Joint Venture") to develop, lease, and operate the World Trade Center retail project (the "Prior Transaction"). The Prior Transaction, which was consummated on May 17, 2012, is more fully described in the minutes of the Board's meeting of February 9, 2012 under "*The World Trade Center – Authorization of Joint Venture Between the Port Authority and Westfield*" (the "2012 Minutes").

It was recommended that, in order to further reduce the Port Authority's development risk, bring additional private capital to the redevelopment of the World Trade Center site and repurpose capital to the Port Authority's core mission as a transportation agency, the Board authorize a transaction (the "Transaction") whereby the Port Authority would sell to Westfield the Port Authority's remaining 50% joint venture interest in the retail project (the "PA JV Interest"), such that, after completion of the Transaction, Westfield would be the sole owner of the Joint Venture.

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 Prior Transaction involved the creation of the Joint Venture in which Westfield currently owns a 50% interest (the "WF Initial JV Interest" or its "First Half" interest). For its First Half interest, Westfield is currently making financial contributions to the Joint Venture, totaling \$612.5 million, during the course of construction and initial lease-up of the Retail Premises. This level of contribution by Westfield represented an initial \$1.225 billion nominal valuation of the retail project (the "Prior Participation Basis"). Under the Prior Transaction, the Port Authority is also entitled to additional earnout payments if certain metrics are met, thus increasing the Prior Participation Basis. Under the Transaction, those additional earnout payments relating to the Prior Transaction would continue to apply to the WF Initial JV Interest (and is referred to herein as the "First-Half Earnout"). The First-Half Earnout is more fully described in the 2012 Minutes under "*Calculation of Contract Price Components: Initial Development Scope*".

The Transaction would provide for the sale of the entire PA JV Interest for an initial up-front payment, other up-front construction contributions, and additional payments made upon the completion of portions of the retail project, all as more fully described below. These total payments made by Westfield under the Transaction represent a nominal valuation of the retail

project, at the projected retail grand opening (the “Grand Opening”) in 2015, of \$1.6 billion. Most of the Westfield payments for the PA JV Interest would be received by the Port Authority (discounted from an agreed upon date) at closing of the Transaction (the “Closing”). None of Westfield’s funding obligations are contingent upon financing, and Westfield would fund the up-front portion of the purchase price for the PA JV Interest entirely as equity. As additional consideration for the sale of the PA JV Interest, the Transaction would also include an additional “contingent purchase price” payment to be paid by Westfield to the Port Authority, which would be a percentage of a hypothetical value of the retail project above an amount necessary for Westfield to achieve a six percent (6%) internal rate of return on its investment relating to the PA JV Interest, all as more fully described in “*Membership Interest Purchase and Sale Agreement – Contingent Purchase Price*”.

In connection with the Transaction, the project budget would be increased from \$1.966 billion to \$2.060 billion. After completion of the Transaction, the Port Authority would no longer have an interest in the Joint Venture. However, it would continue to own the Retail Premises as landlord under the terms of a net lease of the Retail Premises between the Port Authority and the Joint Venture, for a term ending on July 16, 2100 at a rental of \$1.00 per year.

Westfield’s interest in purchasing the PA JV Interest at this time represents its confidence in the retail project at the WTC Site and its potential to make Lower Manhattan one of the world’s leading centers of retail activity. Westfield is working to create a retail complex that would serve as an amenity to the entire World Trade Center development and 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.

### **Description of the Retail Premises**

The Retail Premises is being completed and will be 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, and the above-grade retail areas located in Tower 4. These areas total approximately 364,805 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 will temporarily be included in the Retail Premises.

The Phase consisting of the approximately 59,383 GLA of above-grade retail areas located in Tower 3 (“Tower 3 Above Grade”) may be ready for occupancy soon after the Initial Development Scope or it may be ready for occupancy at a later time, 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 the approximately 19,426 GLA of the Retail Premises currently known as the north temporary space for 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 was included in the calculation of the Prior Participation Basis for the Prior Transaction and would be included in the payments to be made for the proposed Transaction. 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 based on a valuation of such additional space at that time. See “*Amended and Restated Construction Agreement – Alternative Valuation Procedure*”.

### **Overview of Key Economic Elements of the Transaction**

Key economic elements of the Transaction include:

- **Sale of PA JV Interest:** Westfield would purchase the PA JV Interest, entitling it to receive the remaining 50% share of future cash flows and capital events proceeds in the Retail Premises now owned by the Port Authority and become the sole owner of the Joint Venture. The total payments for the PA JV Interest would be paid part up-front at Closing and part later as Phases are delivered. Westfield’s up-front payment would consist of the purchase price for the PA JV Interest and a lump sum payment representing the PA JV Interest’s share of required contributions towards construction costs of the Retail Premises pursuant to the A&R Construction Agreement.
- **Costs of the Retail Project:** The Port Authority would continue to be obligated to fund all remaining project costs to construct the Retail Premises, and would continue to be responsible for construction of the Retail Premises. Under the Prior Transaction, the Port Authority was also obligated to pay certain variable “Owner Project Costs” (on account of tenant allowances, leasing commissions and development costs) incurred by the Joint Venture in connection with the Retail Premises. Under the proposed Transaction, the Port Authority’s obligation for Owner Project Costs (as defined below) would now be limited to a fixed amount of \$212.5 million, which would be credited in accordance with a schedule set out in the Transaction documents. See “*Amended and Restated Construction Agreement – Fixed Owner Project Cost Offset*”. The Port Authority would also agree to fund \$3.5 million of additional improvements toward construction of a dining terrace on the third floor of Tower 4, and \$2.5 million toward the construction of the PATH Mezzanine Space (as defined below), and under certain circumstances, 50% of the unamortized cost of upgrading the Tower 2 Lobby Conversion Space from Tenant-Ready Condition to a “white box” condition, but otherwise Westfield would be 100% responsible for funding any capital upgrades, change orders and revenue enhancements above the currently-approved plans and specifications for the Retail Premises. See “*Amended and Restated Construction Agreement – Contract Price*”.
- **Timing of Westfield’s First Half Investment:** Pursuant to the Prior Transaction, Westfield funded approximately \$100 million of equity at closing with a credit of approximately \$6.1 million for money it had already spent in connection with the retail

project. Westfield is currently obligated to fund up to its full investment of \$612.5 million in quarterly installments through construction and initial lease-up. See “*Payment of Contract Price*” in the 2012 Minutes. Those obligations would effectively remain unchanged by the Transaction. The WF Initial JV Interest (i.e., the 50% interest obtained in the Prior Transaction) is referred to as its “First Half” interest, and the amount paid by Westfield in connection therewith is its “First Half Investment”; the PA JV Interest which would be obtained by Westfield in the Transaction is referred to as its “Second Half” interest, and the amount paid on account thereof would be its “Second Half Investment”.

- **Preferred Return on First Half Investment:** The Prior Participation Basis was determined on the basis of an investment in a fully constructed and delivered retail asset. Therefore, Westfield is currently entitled to receive a 6.5% preferred return on its capital contributions during construction of the Retail Premises. Under the Prior Transaction, the Port Authority is entitled 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. Under the proposed Transaction, this preferred return would be unchanged, but because the Port Authority would no longer have a joint venture interest, this preferred return would not be paid from the Port Authority’s share of cash flow but rather as a credit against remaining Westfield construction contributions relating to its First Half Investment or as cash payments. See “*Amended and Restated Construction Agreement – Westfield Capital Return*”.
- **Timing of Westfield’s Second Half Investment:** The nominal valuation used to determine the purchase price for the PA JV Interest was \$1.6 billion (so that Westfield would nominally pay \$800 million for the PA JV Interest), which amount was also determined on the basis of an investment in a fully constructed and delivered retail asset. In the proposed Transaction, the entire investment for the Initial Development Scope and NTA Retail Space portions of the Retail Premises would be paid up front by Westfield at the Closing, partially as a payment for the PA JV Interest and partially as prepaid construction payments, which up-front payments would be discounted at a 5.5% annual rate from an agreed valuation date (the “Valuation Date”), which Valuation Date is anticipated to be August 15, 2015 but which could be deferred for up to 60 days to address structuring concerns, and which would be designated in the Transaction Documents. The Port Authority would not be required to pay any additional return on the Second Half Investment unless the delivery of the Retail Premises is delayed (for reasons not attributed to Westfield) such that the Grand Opening does not occur by the Valuation Date, in which case the Port Authority would thereafter be obligated to pay a return on Westfield’s investment in the PA JV Interest at a 5.5% annual rate. See “*Amended and Restated Construction Agreement – Westfield Capital Return*”. The Port Authority would work cooperatively with Westfield to identify and deliver certain portions of the Retail Premises, such as space in the West Concourses, which could be opened prior to the Grand Opening. The payments for the Tower 3 Above Grade and Tower 2 Lobby Conversion Space would be paid in full as those Phases are delivered. The payment for these Phases would be fixed unless delivery is delayed beyond the later of (i) September 15, 2018 and (ii) 24 months after opening of the Initial Development Scope, in which case the payment would be determined by an alternative valuation methodology. See

“Amended and Restated Construction Agreement – Alternative Valuation Procedure”. The following shows the allocation of Westfield’s Second Half Investment across the initial Phases of the Retail Premises, and the discounted purchase price for the Initial Development Scope and NTA Retail Space components:

WTC Retail Area	Proposed Allocations to Phases	Nominal Purchase Price	Discounted Purchase Price	Anticipated Payment Date
IDS/NTA	82.16%	\$657.3M	\$599.4M**	At Closing
T3 Above Grade	16.33%	\$130.6M	\$130.6M	Upon Delivery
T2 Lobby Conversion Space	1.51%	\$ 12.1M	\$ 12.1M	Upon Delivery
<b>Totals</b>	<b>100.00%</b>	<b>\$800.0M</b>	<b>\$742.1M</b>	
** This assumes a Closing of: January 1, 2014 and is subject to change based on a later Closing date.				

- Contingent Payments to the Port Authority – First Half Investment:** Under the Prior Transaction, the Port Authority is entitled to certain “earnouts” in the event that the net operating income generated by the Initial Development Scope in the first twelve months after stabilization (or following the second anniversary of the Grand Opening, if earlier) exceeds certain thresholds. See “*Calculation of Contract Price Components: Initial Development Scope*” in the 2012 Minutes. Under the proposed Transaction, those earnouts would continue to apply with respect to Westfield’s First Half Investment.
- Contingent Payments to the Port Authority – Second Half Investment:** As additional consideration for the sale of the PA JV Interest, the Transaction would include a “Contingent Purchase Price Payment” to be paid by Westfield to the Port Authority based on a hypothetical value of the Retail Premises during a twelve (12) month period ending on the last day of the calendar quarter immediately preceding the Cut-Off Date (as defined in “*Membership Interest Purchase and Sale Agreement – Contingent Purchase Price*”), which Cut-Off Date would be selected by the Port Authority within the first five years after the Grand Opening. Such Contingent Purchase Price Payment to be paid to the Port Authority would be 25% of the value of the PA JV Interest above a Westfield “hurdle rate” of a 6% internal rate of return on all of its Second Half Investment through the Cut-Off Date (i.e., the purchase price for the PA JV Interest plus one-half of any additional investments in the Retail Premises). See “*Membership Interest Purchase and Sale Agreement - Contingent Purchase Price*”.

### Overview of Key Operational Elements of the Transaction

Key operational elements of the proposed Transaction would include:

- Net Lease:** The Joint Venture is currently the sole owner of New WTC Retail Owner LLC (the “Retail Net Lessee”), which leases the Retail Premises from the Port Authority,

as landlord, under the terms of the Net Lease (defined below). As sole owner of the Joint Venture following the Closing, Westfield would own and control the Retail Net Lessee. See “*Existing Documents – Net Lease*”.

- **Operation of the Retail Premises:** Under the Prior Transaction, Westfield manages the Joint Venture and a Westfield affiliate will manage and lease the Retail Premises. The Port Authority participates in major decisions with respect to the Retail Premises through its ownership of the PA JV Interest. After the sale of its PA JV Interest as part of the Transaction, the Port Authority would no longer participate in decision-making with respect to the Retail Net Lessee.
- **Retail and Advertising/Special Events Exclusivity:** The Retail Net Lessee currently has, in general, the exclusive right to all retail at the WTC Site, as well as rights for signage and advertising, specialty retail in carts, kiosks and retail merchandising units, and special events (e.g., concerts and seasonal markets) in certain public areas of the Transportation Hub and the WTC Site. The exclusive right does not apply to certain areas of the WTC Site, such as the Memorial, a limited amount of retail at the Tower 5 site and certain areas of the office towers. Although these rights would remain, the Second Amendment to Net Lease would include the consent and approval of the Retail Net Lessee for certain food service operations at the One World Observatory at One World Trade Center and by China Center New York at One World Trade Center. See “*Second Amendment to Net Lease – Exclusions from Exclusivity*”.
- **Additional Rights:** The Second Amendment to Net Lease would grant the Retail Net Lessee the right to use certain areas in the public areas of the Transportation Hub for the installation of Automated Teller Machines (“ATMs”) in “as-is” condition. It would also grant the Retail Net Lessee the right to use approximately 430 square feet of space in the public area on the B-1 level of the Oculus for purposes of creating a restaurant seating area to be used by the restaurant subtenant of the adjacent Retail Premises, such license to be for a term which is co-terminous with such subtenant’s sublease. See “*Second Amendment to Net Lease – Update to Licensed Areas*”. The Second Amendment to Net Lease would also provide certain rights to the E Train Corridor Space (see “*Amended and Restated Construction Agreement – E Train Corridor Space*” below).
- **Additional Demised Premises:** The Second Amendment to Net Lease would add to the Retail Premises approximately 3,200 square feet of GLA located in the mezzanine above the PATH fare zone (the “PATH Mezzanine Space”). The Port Authority would deliver the PATH Mezzanine Space in “as-is” condition (unless the Retail Net Lessee were to elect to pay for an upgraded delivery condition) and fund \$2.5 million towards the further construction of the PATH Mezzanine Space. All remaining construction costs for the PATH Mezzanine Space would be paid by the Retail Net Lessee. The Port Authority would not be responsible for tenant allowances, leasing commissions or other Owner Project Costs with respect to the PATH Mezzanine Space. The total GLA of the Retail Premises would be reconciled prior to the Grand Opening taking into account the PATH Mezzanine Space and all other approved change orders relating to the Retail Premises.
- **Event Protocols:** Under the Net Lease, the Retail Net Lessee currently has the right to permit or use the Oculus and certain other designated portions of the WTC Site for

certain temporary events (a “Special Event”), subject to the obligation to comply with “Event Protocols” to be developed by Westfield and the Port Authority. As part of the Transaction, the parties would agree on certain parameters for the content of Special Events, including prohibitions on specific types of events that could be viewed as undesirable and a requirement for the Port Authority’s approval of certain political and other events, not to be unreasonably withheld. These parameters would be agreed to in concept as an interim step toward creating the final Event Protocols (to contain substantive, operational and other requirements). See “*Second Amendment to Net Lease – Event Protocols*”.

- **Subway Connections:** In connection with the proposed Transaction, Westfield raised certain questions regarding the “1” and “E” subway lines. Accordingly, the Retail Net Lessee (and Westfield) would clarify and confirm that in order to meet the requirements of “Substantial Completion”, the designed connections to the “1” subway line and the “E” subway line (at the B-1 mezzanine level of Tower 2) are not required to be opened. In connection with such clarification, the Port Authority would agree as follows:

a. The Port Authority would deliver the Tower 2 Lobby Conversion Space in “Tenant Ready Condition”, to be used by the Retail Net Lessee’s subtenants until those spaces are required by the Port Authority for conversion to use by the Tower 2 lobby.

b. The Port Authority would include as a licensed area under the Net Lease approximately 1,000 square feet of concourse space adjacent to the future “E” train entrance on level B-1 of Tower 2 for use by the Retail Net Lessee’s subtenants until such space is required for connection to the “E” train. See “*Amended and Restated Construction Agreement – E Train Connection Corridor*”.

c. In the event that the entrances to the #1 train from the Transportation Hub (the “1-Train Entrances”) are not open on or before the first anniversary of the Grand Opening, then the Port Authority would be responsible for an annual payment to the Retail Net Lessee of 50% of the economic consequences (which would be identified in the A&R Construction Agreement) suffered by the Retail Net Lessee on account of the failure of such entrances to open, up to a maximum payment in any year of \$1 million (the “Annual Impairment Payment”). In the event that the 1-Train Entrances are not open on or before the fifth anniversary of the Grand Opening, then the Port Authority would elect one of the two following options. First, in lieu of continuing payments after such fifth anniversary, the Port Authority could elect to pay to the Retail Net Lessee the capitalized value (at a 5.5% capitalization rate) of the Annual Impairment Payment payable with respect to the year ending on such fifth anniversary, but such payment obligation would be limited to the funds available from any Contingent Purchase Price Payment actually paid with respect to Westfield’s Second Half Investment. The Retail Net Lessee would be deemed to have suffered “economic consequences” only in certain limited circumstances specified in the Net Lease. Alternatively, if the Port Authority reasonably determines that such 1-Train Entrances would open in the near term, the Port Authority could elect to continue to pay 50% of the Annual Impairment actually suffered, without regard to the \$1 million annual cap, through the date such 1-Train Entrances actually open. See “*Amended and Restated Construction Agreement – 1-Train Entrances*.”

- **Additional Electricity:** Under the Prior Transaction, the Port Authority was responsible for delivering the Retail Premises in accordance with the then agreed-upon plans and specifications. Westfield has identified a desire for additional electrical capacity to serve particular portions of the Retail Premises. Under the proposed Transaction, the Port Authority would agree to work in good faith with the Retail Net Lessee to identify additional capacity that could be made available to the Retail Net Lessee (without making any representation as to such additional capacity). All costs associated with any electricity over and above the original plans and specifications, including without limitation, increasing or providing any such additional electrical capacity, would be borne solely by the Retail Net Lessee. See “*Amended and Restated Construction Agreement – Additional Electricity*”.

### **Description of the Existing Documents for the Prior Transaction**

The Prior Transaction was effectuated through the Construction Agreement, the Joint Venture Agreement, the Net Lease, the Property Management and Leasing Agreement, the Development Services Agreement and two Support Agreements (collectively the “Prior Operative Documents”), and other ancillary documents (together with the Prior Operative Documents, the “Prior Transaction Documents”). This section briefly describes the principal purpose of the Prior Operative Documents as background for the description of the proposed changes which would be necessary to effectuate the Transaction. The Prior Operative Documents are described in greater detail in the 2012 Minutes.

**Construction Agreement:** The Retail Premises is being constructed by WTC Retail LLC (“PA Retail”), which is wholly-owned by the Port Authority and, until the Prior Transaction, was the retail net lessee of the Retail Premises. Pursuant to the Construction Agreement dated as of May 17, 2012 (the “Construction Agreement”), PA Retail agreed to construct the Retail Premises and turn them over to the Retail Net Lessee, in phases, in exchange for payments from the Retail Net Lessee. The payments included an up-front component and payments during the course of construction based on the estimated cost to complete the Retail Premises. The total price (the “Contract Price”) was subject to reduction to reflect certain costs paid by the Joint Venture (i.e., Owner Project Costs), such as tenant allowances, brokerage commissions and development costs. PA Retail is also entitled to certain “earnouts” in the event that the net operating income exceeds certain thresholds.

**Joint Venture Agreement:** Westfield and the Port Authority each created a new single-purpose, wholly owned entity to act as its respective members in the Joint Venture pursuant to the Limited Liability Company Agreement of New WTC Retail JV LLC dated as of May 17, 2012 (the “Joint Venture Agreement”). Each member received a 50% interest in the Joint Venture. Westfield’s member acts as managing member, and Port Authority’s member has significant approval rights over major decisions as well as certain other matters. The Joint Venture created the Retail Net Lessee, a wholly owned subsidiary, to act as net lessee of the Retail Premises.

**Net Lease:** The Port Authority, as net lessor, entered into a new Net Lease of the Retail Premises entitled Agreement of Lease dated as of May 17, 2012, as amended by a First Amendment to Agreement of Lease dated as of April 30, 2013 (collectively, the “Net Lease”).

The Net Lease is for a term ending at 11:59pm on the business day immediately preceding July 16, 2100, provides for net rent of \$1.00 per year, and is similar to the other net leases currently in place at the World Trade Center. It provides for certain other payments to the Port Authority, such as PILOT payments and reimbursements of its share of site-wide operating and maintenance costs, allocates the insurance obligations between the parties, and provides for payments by the Retail Net Lessee of its allocated portion of certain insurance costs. The Net Lease currently grants to the Retail Net Lessee the exclusive right throughout the WTC Site (except with respect to “Excluded Retail” as defined below; *see Second Amendment to Net Lease; Exclusions from Exclusivity*) to (i) develop, operate, manage and lease retail facilities and retail operations, (ii) erect signage and advertising, except for limited non-revenue generating, non-competing signage, (iii) conduct specialty retail leasing in carts, kiosks, retail merchandising units and the like (collectively, “RMUs”), 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 twenty percent (20%) of available events, and to manage and calendar all special events of any nature for a fee determined by the Retail 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 “Retail Exclusive Rights”).

**Property Management and Leasing Agreement:** Westfield, LLC (as further assigned to Westfield Property Management LLC, “Property Manager”) is responsible for managing and leasing the Retail Premises at the direction of the Retail Net Lessee, in return for management fees, leasing commissions and reimbursement of expenses. In order to protect the Port Authority’s financial interests in the Joint Venture, the Property Manager is subject to various requirements and limitations concerning the leasing and management of the Retail Premises.

**Development Services Agreement:** The Development Services Agreement was entered into between the Retail Net Lessee and Westfield, LLC (as further assigned to Westfield Property Management LLC, “Development Advisor”) and is dated as of May 17, 2012 (the “Development Services Agreement”). Development Advisor is to provide development advisory services including 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, in return for certain development services fees and reimbursement for costs.

**Support Agreements:** The Port Authority and Westfield (referred to for purposes of the Support Agreements as the “Westfield Guarantor”) each previously executed separate Support Agreements to guaranty certain obligations of their respective affiliates under the Prior Transaction. Under the Support Agreement from the Westfield Guarantor (the “Westfield Support Agreement”), the Westfield Guarantor agreed to provide Westfield’s member in the Joint Venture with sufficient capital to make certain required capital contributions to the Joint Venture and to pay enforcement costs of the intended beneficiaries under the Westfield Support Agreement. The Westfield Guarantor is also obligated to comply with certain financial covenants. Under the Support Agreement from the Port Authority, the Port Authority agreed to provide the Port Authority’s member in the Joint Venture and PA Retail (as applicable) with sufficient capital to comply with their respective obligations under the Prior Transaction Documents, including the obligations to make certain capital contributions, cover certain losses and construction cost overruns, to hold Westfield harmless from certain pre-closing and post-

closing liabilities and to pay enforcement costs of the intended beneficiaries under the Support Agreement from the Port Authority.

### **Overview of Proposed Documents for the Transaction**

In connection with the Closing:

1. The Port Authority would sell the PA JV Interest to Westfield under the terms of a Membership Interest Purchase and Sale Agreement (the “Sale Agreement”) by and between PA Retail Newco LLC, the Port Authority’s member in the Joint Venture (“Seller”), and New WTC Retail Member LLC, Westfield’s member in the Joint Venture (“Buyer”). By that agreement, Westfield would own 100% of the economic interests in the Retail Premises through its sole ownership of the Retail Net Lessee.

2. The Net Lease would be amended (the “Second Amendment to Net Lease”) to address certain of the operational issues identified as part of the Transaction.

3. Under an Amended and Restated Construction Agreement (the “A&R Construction Agreement”), the Port Authority would remain responsible for the construction of the Retail Premises and for payment of Owner Project Costs, but that payment would be fixed with respect to the Initial Development Scope and would be subject to limiting parameters with respect to the AVP Phase (as defined below). The A&R Construction Agreement would continue to provide for the Port Authority’s “earnouts” with respect to the First Half Investment, and the Sale Agreement would provide for the Contingent Purchase Price Payment to be paid with respect to the Second Half Investment. See “*Amended and Restated Construction Agreement*” below which summarizes both the provisions of the existing Construction Agreement which would survive pursuant to the Transaction as well as the proposed new terms.

4. The Port Authority would no longer have a role in the Joint Venture, and its financial interest in the developed portions of the Retail Premises would be limited to the period from Grand Opening until the earnouts and contingent payments are determined, except with respect to Incentive Managed Space (see “*Amended and Restated Construction Agreement – Incentive Managed Space*”). Accordingly, the Port Authority would no longer have any role or rights with respect to the Property Management and Leasing Agreement.

5. The A&R Construction Agreement would require the Retail Net Lessee to cause a Westfield affiliate to provide certain specific development and tenant coordination services. The Port Authority would no longer have any approval or consent rights over amendments to or terminations of the Development Services Agreement, and therefore would not require any amendments or terminations as part of the Transaction.

6. The Support Agreements would be amended and restated. In the case of the Westfield Support Agreement, it would be amended and restated to run in favor of the Retail Net Lessee or the Westfield purchaser of the PA JV Interest, as applicable (and not WTC Retail Member LLC, as the existing Support Agreement does) and would be enforceable by PA Retail or Seller, as applicable, as intended beneficiaries. The obligations guaranteed by the Westfield Guarantor would include Contract Price payments required to be made by the Retail Net Lessee under the A&R Construction Agreement, the Contingent Purchase Price Payment which may be

required to be paid by the Buyer under the Sale Agreement and to pay enforcement costs of the intended beneficiaries under such agreement. In the case of the Support Agreement from the Port Authority, it would be amended and restated to guaranty the construction obligations of PA Retail under the A&R Construction Agreement, to backstop the representations and indemnities of the Seller under the Sale Agreement, and to pay enforcement costs of the intended beneficiaries under such agreement.

7. The existing Non-Disclosure Agreement would be amended to apply to additional confidential information made available by the Port Authority to Westfield after the date of the Transaction, to clarify that certain documents between the parties are not subject to such agreement and to permit Westfield to make certain limited disclosures to actual and potential investors, lenders and certain other designated parties.

## **Description of the Proposed Documents for the Transaction**

### **Membership Interest Purchase and Sale Agreement**

#### *Sale and Purchase of Membership Interest*

The Port Authority would sell the PA JV Interest to Westfield under the terms of the Sale Agreement. As a result, Westfield would own one hundred percent (100%) of the economic interests in the Retail Premises through its sole ownership of the Retail Net Lessee. The Port Authority would remain as the landlord under the Net Lease. The total nominal purchase price associated with the Transaction would be \$800 million, a portion of which would be paid up front at the Closing as a payment for the purchase of the PA JV Interest (the “JV Interest Purchase Price”), and a portion as a prepaid construction payment under the A&R Construction Agreement (the “Prepaid Construction Payment”). The remainder of the \$800 million would be payments for later Phases of the Retail Premises. The portion of the total nominal purchase price to be paid up front by Buyer will be discounted at a 5.5% annual rate from the Valuation Date. At the Closing (subject to certain limited prorations and adjustments), Buyer and Net Lessee would collectively pay to the Seller and the Port Authority a total of \$599,400,000, a portion of which would be allocable to the JV Interest Purchase Price, and a portion of which would be a Prepaid Construction Payment on account of the obligations attributable to the Second Half Interest.

#### *Representations and Warranties*

Similar to the representations made in the Joint Venture Agreement, each of Buyer and Seller would make representations to one another, including representations relating to formation, existence, authority, due execution, enforceability, brokerage commissions, non-foreign status, OFAC, and ERISA matters. In addition, Seller (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 Retail Net Lessee. The Sale Agreement would provide (A) that the property-related representations of Seller and the Port Authority would be subject to a survival

period of one year after the Grand Opening, (B) that all other representations of Seller, the Port Authority and Buyer made in the Sale Agreement would survive for an unlimited period of time, and (C) for a claim floor (but not a deductible) of \$1 million. Each party would waive remedies for breach of representations to the extent such party had actual knowledge that the representation in question was untrue when made. Subject to the foregoing limitations, each party would indemnify the other party for loss, cost, or damages arising from a breach of representations by such indemnifying party.

#### *Contingent Purchase Price*

As additional consideration for the sale of the PA JV Interest, the Sale Agreement would provide for a Contingent Purchase Price Payment to be paid by Buyer to Seller, based on a calculated value of a hypothetical sale of the Retail Premises at a time selected by the Port Authority within the five year period after the Grand Opening above a “hurdle amount” necessary for Westfield to achieve a six percent (6%) internal rate of return on all of its investment in connection with the Second Half Interest (i.e., the purchase price for the PA JV Interest plus one-half of any additional investments in the Retail Premises). The Contingent Purchase Price Payment would be calculated by determining the following:

- a) The date which is either (i) the fifth (5th) anniversary of the Grand Opening or (ii) an earlier date designated by Seller in writing to Buyer (which date would be within the sixty (60) day period following delivery by Buyer the most recent quarterly financial reports (the “Cut-Off Date”));
- b) The twelve (12) month period ending on the last day of the calendar quarter immediately preceding the Cut-Off Date (the “Calculation Period”);
- c) The amount of gross sale proceeds necessary for the Retail Net Lessee to achieve an “Unlevered Second-Half Investment IRR” (as defined below) of six percent (6%) from a sale of the Retail Premises as of the Cut-Off Date (the “6% IRR Hurdle Amount”);
- d) The amount equal to the product of (A) fifty percent (50%) and (B) the hypothetical gross purchase price (the “Net Proceeds”) calculated pursuant to the applicable capitalization rate (less transfer taxes but no other closing costs) that the Retail Net Lessee would receive as if the Retail Premises were to be hypothetically sold as of the Cut-Off Date at a purchase price calculated by applying a five percent (5%) capitalization rate to excess amount of “Operating Income” (as defined below) for a period over “Operating Expense” (as defined below) for such period (the “Net Operating Income”) during Calculation Period (the “Stabilized Value Amount”);
- e) The Net Operating Income would be based on the four (4) most recent calendar quarters ending prior to the Cut-Off Date and be adjusted by excluding, prorating, or otherwise making reasonable adjustments on account of any material extraordinary items of income or expense (including any free rent or tenant allowances attributable to the Calculation Period) (the “Normalizing Adjustments”); and
- f) The amount (if any) equal to (A) the Stabilized Value Amount less (B) the 6% IRR Hurdle Amount (the “Additional Value Amount”).

The Contingent Purchase Price Payment would be the amount equal to twenty-five percent (25%) of the Additional Value Amount.

#### *Unlevered Second-Half Investment IRR*

The “Unlevered Second-Half Investment IRR” would be the discount rate at which the net present value of all cash in-flows relating to the Second Half Investment is equal to the net present value of all cash out-flows from such investments calculated using the “IRR Function” on Excel. For each calendar month, the cash out-flows would be the amount of the Second Half Investment made during the particular calendar month and the cash in-flows would be equal to the sum of (a) fifty percent (50%) of all Net Operating Income (as defined above) and (b) to the extent allocable to the Second Half Investment, the “Westfield Capital Return” (defined in “*Amended and Restated Construction Agreement – Westfield Capital Return*” below) (if paid to the Retail Net Lessee or if Retail Net Lessee is provided with a credit for such amount against other sums due and payable under the A&R Construction Agreement), in each case during the such calendar month.

#### *Operating Income*

For purposes of calculating the Net Operating Income, “Operating Income” in respect of a particular period is all minimum, fixed and percentage rents and all other receipts, revenues, proceeds and other monies received by the Retail Net Lessee, or an affiliate of the Retail Net Lessee, or by a permitted manager of the Retail Premises (“Manager”) on behalf of or as agent for the Retail Net Lessee or its affiliates, from or in connection with the ownership, use, or operation of all or any portion of the Retail Premises in respect of such period, directly or indirectly from any third party source whatsoever. Operating Income would include, without limitation, the following: (i) minimum, fixed and percentage rent (including proceeds from litigation relating thereto), (ii) chargebacks or other reimbursement for capital items, but excluding certain construction management fees paid by tenants or licensees, (iii) rent, licensing fees, or other revenues from RMUs, ATMs, or pop-up vendors, and the like, (iv) event income, excluding certain management, booking or promotional fees paid to an affiliate of the Retail Net Lessee, (v) receipts or proceeds from any event tickets, licenses or other admission or participation rights, and (vi) advertising, signage and merchandising income excluding certain fees, royalties or commissions paid to an affiliate of the Retail Net Lessee. With respect to any fees, royalties, commissions or payments relating to Operating Income that are made to an affiliate of the Retail Net Lessee and excluded from the definition of “Operating Income”, a market rental fee for the use of the applicable space would be included as “Operating Income”.

#### *Operating Expenses*

For purposes of calculating the Net Operating Income, “Operating Expenses” for each relevant period is all out-of-pocket and internal costs and expenses incurred or accrued in respect of the Retail Premises by the Retail Net Lessee or an affiliate of the Retail Net Lessee or Manager, on behalf of or as agent for the Retail Net Lessee or an affiliate of the Retail Net Lessee. Operating Expenses would include, without limitation, the following: (i) all taxes, assessments and impositions assessed, charged or imposed in respect of the Retail Premises or

Retail Net Lessee, or payments in lieu thereof; (ii) charges for utilities supplied to the Retail Premises; (iii) costs of operating, leasing, maintaining, repairing, replacing and cleaning (including trash removal from food court and non-food court areas) all areas of the Retail Premises; (iv) advertising, marketing and promotional costs for the Retail Premises; (v) fees of attorneys and consultants for the Retail Premises of the Retail Net Lessee; (vi) political or charitable contributions or miscellaneous donations made by the Manager in the ordinary course; (vii) an assumed management and leasing brokerage fee of five percent (5%) of Operating Income and all customary internal leasing and tenant coordination costs payable to the Manager, and any other customary fees paid to any affiliate of Buyer or the Manager; and (viii) an annual “capital” charge for routine and recurring capital items, which is to be further defined prior to Closing.

Operating Expenses would not include: (i) non-cash charges, including without limitation, depreciation, amortization, write-offs, charge offs under any mark-to-market requirements, or similar items; (ii) any amounts paid as interest, principal, origination fees, exit fees, prepayment premiums or penalties, yield maintenance payments, or other costs in respect of or in connection with loans or financing, whether paid to a third party or to any affiliate of Westfield; (iii) cost of travel by the employees or agents of the Manager to and from the Retail Premises if not otherwise generally paid by Westfield’s third party partners holding at least a 40% interests in a property; (iv) costs and expenses incurred by or on behalf of the permitted manager of the Retail Premises arising from gross negligence, misconduct or fraud on the part of the Manager or its affiliates or the employees, contractors or agents of Manager of its affiliates or arising from Manager’s breach of any term of Manager’s property management and leasing agreement with the Retail Net Lessee; and (v) cost of insurance maintained by Manager in respect of its duties and Manager.

#### *Assignment of Contingent Purchase Price Payment*

Seller shall have no right to pledge, hypothecate, mortgage, transfer, assign or otherwise dispose of the right to, any direct or indirect interest in, the Contingent Purchase Price Payment except that Seller would have the right to assign the rights to receive the Contingent Purchase Price Payment to any wholly-owned subsidiary of the Port Authority.

#### *Audits; Financial Statements; Reports*

Buyer would cause the Retail Net Lessee to keep complete and accurate books of account, records and financial statements for the Retail Premises and its operation to the extent necessary to verify the Contingent Purchase Price (and the components thereof). If the books, accounts and records are maintained outside of New York City, Buyer would either make such books, accounts and records available at a location within New York City or pay all reasonable, out-of-pocket costs of Seller to examine such books, accounts and records outside of New York City. Seller would have the right to conduct an audit of such books, accounts and records not more than one (1) time per calendar year. 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 Buyer. Buyer is obligated to cause its personnel to cooperate fully with Seller’s appraisers, accountants and advisors. The rights to access and audit such books, account and records shall survive until three (3) years after the date that is sixty (60) days following the

Cut-Off Date, unless a Covered Dispute remains unresolved, in which case such rights shall continue until each Covered Dispute is fully and finally resolved.

Buyer would cause the Retail Net Lessee, at least once each fiscal year of the Retail Net Lessee up to and including the fiscal year in which the Calculation Period ends, to have the Retail Net Lessee's books and record audited, at the Retail Net Lessee's expense, by a "big four" accounting firm. Not later than 120 days after the end of each fiscal year of the Retail Net Lessee, Buyer would deliver to Seller a copy of the audited financials and Buyer's calculation of Net Operating Income for such fiscal year of the Retail Net Lessee. Not later than 45 days after the end of each fiscal quarter up to and including the quarter in which the Calculation Period ends, Buyer shall furnish to Seller quarterly financial statements. The rights to the financial statements shall terminate upon the end of the fiscal year during which the Calculation Period ends, unless a Covered Dispute remains unresolved, in which case such rights shall continue until each Covered Dispute is fully and finally resolved.

#### *Additional Documents and Acts*

At each party's respective cost and expense, each of Seller and Buyer would covenant to execute and deliver additional documents and instruments and perform additional acts that may be necessary to effectuate, carry out and perform all of the obligations of the Sale Agreement.

#### *Closing and Conditions Precedent*

The Sale Agreement would set forth required closing deliveries which would be performed on or prior to the Closing, including the following: (i) Seller causing the Contractor to deliver to Buyer an executed counterpart of the Amended and Restated Construction Agreement; (ii) Seller and Buyer causing the Retail Net Lessee to deliver to Seller and Buyer an executed counterpart of the Second Amendment to Net Lease; (iii) Seller causing the Port Authority to deliver to Buyer an executed counterpart of the Second Amendment to Net Lease; (iv) each of Buyer and Seller executing and delivering all required filings with respect to the transfer of the PA JV Interest; (v) Seller delivering to Buyer a Certificate of Certain Proceedings, duly executed by the Port Authority; and (vi) Seller delivering to Chicago Title Insurance Company copies of documents, resolutions, and certificates necessary to enable Chicago Title Insurance Company and/or First American Title Insurance Company to issue a title insurance policy for the Retail Premises and/or Westfield Member and Buyer.

#### *Transfer Tax*

The Sale Agreement would provide that Seller would pay any transfer tax due and payable as a result of the sale of the PA JV Interest.

#### *Assignment*

The Sale Agreement would provide that as a general rule neither party may assign, delegate, sublicense or transfer, in whole or in part, by operation of law or otherwise, whether voluntarily or involuntarily, the Sale Agreement and any rights, interests or obligations under the Sale Agreement without the prior written consent of the other party, and Seller would not

unreasonably withhold its consent to an assignment, delegation, sublicensing or transferring of the Sale Agreement, in whole or in part, to a permitted assignee or mortgagee pursuant to the terms of the Net Lease.

#### *Deadlock*

The dispute resolution process set forth in the Sale Agreement would be a similar process as set forth in the Joint Venture Agreement. In the event of a deadlock or disagreement with respect to any proposed any Covered Dispute (defined in “*Membership Interest Purchase and Sale Agreement – Arbitration*” below), a designated representative of each of Seller and Buyer would meet within ten (10) business days to negotiate in good faith to resolve such deadlock or disagreement. If resolution is not reached within fifteen (15) 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 (30) 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 the dispute would be resolved through binding arbitration.

#### *Arbitration*

The arbitration process set forth in the Sale Agreement would be a similar process as set forth in the Joint Venture Agreement. Under the terms of the Sale Agreement, disputes as to the following items would go to binding arbitration if not resolved through the dispute resolution process described in “*Membership Interest Purchase and Sale Agreement – Deadlock*”, and would be considered “Covered Disputes”: (i) any dispute about any claim for “Losses”; and (ii) any dispute regarding the Contingent Purchase Price Payment and any component thereof (including, without limitation, the 6% IRR Hurdle Amount, the Additional Value Amount, the Stabilized Value Amount, Operating Income, Operating Expenses and Net Operating Income). The arbitration would be administered by JAMS under its arbitration rules and would take place in New York, New York. Each party 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 parties. 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 arbitrators 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).

#### Amended and Restated Construction Agreement

##### *Phased Construction*

The Retail Premises would continue to 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 for certain purposes. 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 the Site Improvements Plan for such Phase which was agreed upon in connection with the Prior Transaction. As with the existing Construction Agreement, 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 Retail 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 Retail 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 A&R Construction Agreement would acknowledge 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.

*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 Silverstein Properties, Inc. (“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 the Retail Net Lessee’s 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 the Retail 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.

*Costs of Development; Participation Basis*

Under the A&R Construction Agreement, the Retail Net Lessee would not be required to pay more than a fixed Contract Price with respect to the construction costs of the initial Phases of the Retail Premises, except to the extent of costs associated with owner change orders initiated by the Retail Net Lessee. Accordingly, PA Retail would be responsible for all construction costs and overruns in achieving Final Completion of the Initial Development Scope in excess of the negotiated price. In addition, through a credit against the Contract Price for certain development, leasing and tenanting costs paid directly by the Retail Net Lessee (i.e., Owner Project Costs), PA Retail would be responsible for (1) Owner Project Costs in amounts equal to the Fixed Owner Project Cost Offset as to Phases for which the Contract Price Component is the Fixed Contract Price Component (“non-AVP Phases”), and (2) Owner Project Costs in amounts equal to expenditures which are within pre-determined budgetary parameters as to Phases to which the Alternative Valuation Procedure applies (“AVP Phases”) (see “*Amended and Restated Construction Agreement – Alternative Valuation Procedure*” below). The Participation Basis would be determined based upon the premise of a completed asset.

*Westfield’s First Half Investment*

Westfield’s First Half Investment would continue to be paid on a “cost to complete” basis as construction progresses. In consideration of the valuation of the premises as a completed asset, the A&R Construction Agreement provides that the Retail Net Lessee would be entitled to a 6.5% preferred return on Westfield’s First Half Investment 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 Retail Net Lessee would bear leasing risk, the 6.5% preferred return on Westfield’s First Half Investment 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, delivers the applicable Phase in Tenant Ready Condition, and performs its obligations with respect to Site Logistics and achievement of Substantial Completion with respect to the Phase in question, then the Retail Net Lessee's 6.5% preferred return on Westfield's First Half Investment for the Phase in question would end at the Deemed Opening Date. The Retail Net Lessee's 6.5% preferred return on Westfield's First Half Investment would be paid by way of a quarterly credit toward the Retail Net Lessee's payment obligations under the A&R Construction Agreement.

#### *Westfield's Second Half Investment*

With respect to Westfield's Second Half Investment, Westfield would make a payment at closing for the PA JV Interests under the Sale Agreement and the Retail Net Lessee would make advance payments with respect to construction costs for the Initial Development Scope and NTA Retail Space. See "*Membership Interest Purchase and Sale Agreement – Sale and Purchase of Membership Interest*".

Westfield's Second Half Investment would effectively be "prepaid" at the Closing, and is discounted assuming that the applicable Phases of the Retail Premises will be delivered as completed assets no later than the Valuation Date. If delivery of the applicable Phases is delayed beyond the Valuation Date, the A&R Construction Agreement provides that the Retail Net Lessee would be entitled to a 5.5% preferred return on Westfield's Second Half Investment, which preferred return would continue from the Valuation Date through the Deemed Opening Date (or later with respect to unfinished elements) of the applicable Phases.

#### *Contract Price*

Subject to certain exceptions (see "*Amended and Restated Construction Agreement – Class A Phases and Incentive Managed Space*") and the present valuation discount embedded in Westfield's Second Half Investment, the Retail Net Lessee would pay the agreed amounts (the "Contract Price") to PA Retail for construction of the Retail Premises, subject to the applicable offset of Owner Project Costs. Although there are limited mechanisms for the Contract Price with respect to Westfield's First Half Investment to be adjusted, the fixed Contract Price for the non-AVP Phases is also the mechanism that makes any excess construction cost overruns the responsibility of PA Retail.

#### *Calculation of Contract Price Components; Early Delivery*

The discount applicable to the upfront payments being made with respect to Westfield's Second Half Investment would be calculated by discounting the agreed valuation back from the Valuation Date. If the opening of the Initial Development Scope occurs sooner than the Valuation Date, a recapture of a portion of the discount (which would have been calculated at a 5.5% discount rate) would be earned by the Port Authority. The Transaction Documents would provide that, if the opening of the Initial Development Scope occurs sooner than the Valuation Date, Westfield would be obligated to make a payment corresponding to the appropriate recapture of the previously taken discount.

*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 (representing the combination of Westfield’s First Half Investment in the Initial Development Scope and the undiscounted amount of Westfield’s Second Half Investment in the Initial Development Scope). PA Retail would additionally be entitled to two possible earnout adjustments (the “First Half Earnouts”) on 50% of such Fixed Contract Price Component (representing Westfield’s First Half Investment and defined as the “First Half 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 First Half 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 50% of the Stabilized NOI attributable to the Initial Development Scope exceeds an amount equal to 8% of the First Half Investment (which equals the sum of First Half Fixed Contract Price Component for the Initial Development Scope (\$473,250,000) plus 50% of the costs paid by Retail Net Lessee on account of Owner Change Orders for the Initial Development Scope plus 50% of the costs paid by Retail Net Lessee on account of construction undertaken by Retail Net Lessee (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 increase of \$28,975,000). If 50% of 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 increase of \$96,582,000).

The First Half Earnouts described above relate only to Westfield’s First Half Investment in the Initial Development Scope. With respect to Westfield’s Second Half Investment in all Phases, PA Retail has the potential to receive additional payments in the form of the Contingent Purchase Price Payment, which would be measured with respect to internal rate of return thresholds on Westfield’s Second Half Investment, as more fully set forth in the Membership Interest Purchase and Sale Agreement (see “*Membership Interest Purchase and Sale Agreement*”).

*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 (representing the combination of Westfield’s First Half Investment in the NTA Retail Space and the undiscounted amount of Westfield’s Second Half Investment in the NTA Retail Space). PA Retail would additionally be entitled to two possible First Half Earnouts on Westfield’s First Half Investment in the NTA Retail Space 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 First Half Earnouts would be calculated based on 50% of 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 maximum 8% contract price increase for the NTA Retail Space would not exceed \$1,836,500, and the maximum 15% contract price increase for the NTA Retail Space would not exceed \$6,122,500.

*Calculation of Contract Price Components: Tower 3 Above Grade*

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 in the Full Build scenario would be projected to occur after the projected opening of the Initial Development Scope. If construction of Tower 3 Above Grade proceeds in the Capped Podium scenario, it is likely that satisfaction of Acceptable Delivery Conditions (as defined in “*Amended and Restated Construction Agreement – Calculation of Contract Price Components under Alternative Valuation Procedure: Tower 3 Above Grade under Capped Podium*” below) with respect to Tower 3 Above Grade may be delayed, due to the special factors associated with the Capped Podium scenario (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). So long as the Deemed Opening Date and Acceptable Delivery Conditions Date of Tower 3 Above Grade both occur on or before the later of September 15, 2018 or the date that is 24 months after the Deemed Opening Date of the Initial Development Scope, the Fixed Contract Price Component for Tower 3 Above Grade would be a fixed amount equal to \$230,600,000 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 First Half 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 First Half Earnouts would be calculated based on 50% of 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 maximum 8% contract price increase for the Tower 3 Above Grade would not exceed \$6,122,500, and the maximum 15% contract price increase for the Tower 3 Above Grade Space would not exceed \$20,408,000. If not delivered (i.e., Deemed Opening Date and Acceptable Delivery Conditions Date having been met) on or before the later of September 15, 2018 the date that is 24 months after the Deemed Opening Date of the Initial Development Scope, then the Contract Price Component for Tower 3 Above Grade would be determined pursuant to the Alternative Valuation Procedure (see “*Amended and Restated Construction Agreement – Alternative Valuation Procedure*”).

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

So long as the Deemed Opening Date and Acceptable Delivery Conditions Date of the Tower 2 Lobby Conversion Space both occur on or before the later of September 15, 2018 the date that is 24 months after the Deemed Opening Date of the Initial Development Scope, the

Fixed Contract Price Component for Tower 2 Lobby Conversion Space would be a fixed amount equal to \$21,350,000 (the “Tower 2 Lobby Conversion Space Fixed Contract Price Component”). It should be noted that 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 in time to cause the Tower 2 Lobby Conversion Space Fixed Contract Price Component to apply. Provided that the Contract Price Component for 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 First Half 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 First Half Earnouts would be calculated based on 50% of 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 maximum 8% contract price increase for the Tower 2 Lobby Conversion Space would not exceed \$566,000, and the maximum 15% contract price increase for the Tower 2 Lobby Conversion Space would not exceed \$1,887,500. If not delivered (i.e., Deemed Opening Date and Acceptable Delivery Conditions Date having been met) on or before September 15, 2018 (or if later, on or before the date that is 24 months after the Deemed Opening Date of the Initial Development Scope), then the Contract Price Component for Tower 2 Lobby Conversion Space would be determined pursuant to the Alternative Valuation Procedure (see “*Amended and Restated Construction Agreement – Alternative Valuation Procedure*”). Prior to the payment of the Contract Price for the Tower 2 Lobby Conversion Space, the Retail Net Lessee would be entitled to operate the Tower 2 Lobby Conversion Space for its own account and retain net revenues therefrom under the so-called “Interim Status” (described more fully below; see “*Amended and Restated Construction Agreement – Class A and Incentive Managed Space*”).

#### *Alternative Valuation Procedure*

The “Alternative Valuation Procedure” with respect to any Phase would commence with negotiations between representatives of the Port Authority and the Retail Net Lessee to determine the Contract Price Component for 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 income 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 the Retail Net Lessee, 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 under Alternative Valuation Procedure: 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 Deemed Opening Date and Acceptable Delivery Conditions Date for such Phase are not met on or before September 15, 2018 (or if later, on or before the date that is 24 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 Retail 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 the Retail 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 under Alternative Valuation Procedure: 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 occur on or before the later of September 15, 2018 or the date that is 24 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 the \$21,350,000 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 First Half Earnouts with respect to the Tower 2 Lobby Conversion Space as described above. If either the Deemed Opening Date or the Acceptable Delivery Conditions Date for Tower 2 Lobby Conversion Space does not occur on or before the applicable deadline, 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*

As described above, following the Closing, the Retail Net Lessee would continue to make payments with respect to Westfield's First Half Investment in the Initial Development Scope (excluding Tower 2 Lobby Conversion Space) and NTA Retail Space on a "cost to complete" basis.

PA Retail would submit quarterly requisitions for payment of portions of the Contract Price, which are subject to confirmation by the Retail Net Lessee. 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.

With respect to the non-AVP Phases, payments with respect to Westfield's First Half Investment would be subject to offset and credits for the applicable Fixed Owner Project Cost Offset in accordance with the Notional Schedule (each as defined below; see "*Amended and Restated Construction Agreement – Fixed Owner Project Cost Offset*" below) and the applicable Westfield 6.5% Capital Return (as defined below; see *Westfield 6.5% Capital Return* below).

*Development Costs, Tenant Allowances, and Leasing Commissions*

The fact that the Participation Basis would be determined based upon the premise of a completed and leased asset requires adjustments to address certain Owner Project Costs that would need to be incurred for development, leasing commissions, tenant allowances, and certain other non-construction costs. The financial terms relating to these Owner Project Costs with respect to the Transaction are described in general below.

*Fixed Owner Project Cost Offset*

With respect to the Phases where a Fixed Contract Price Component would apply (Initial Development Scope, NTA Retail Space, and if delivered on or before the later of September 15, 2018 of the date that is 24 months after the opening of the Initial Development Scope, Tower 3 Above Grade and Tower 2 Lobby Conversion Space), PA Retail would provide the Retail Net

Lessee with a “Fixed Owner Project Cost Offset” for each Phase. The Fixed Owner Project Cost Offset will be allocated across the Phases in a manner to be agreed by the parties set out in the A&R Construction Agreement, provided that the parties have agreed that no portion of the overall Fixed Owner Project Cost Offset would apply to the Tower 2 Lobby Conversion Space.

Where the Fixed Owner Project Cost Offset applies, the Retail Net Lessee would also be potentially eligible for certain further offsets against the Contract Price with respect to development delays. The concept is that the Fixed Owner Project Cost Offset for any Phase includes a fixed amount for development costs relating to the projected development period during which Westfield is expected to perform development, tenant coordination, and leasing services. However, if this period must be extended due to delays by PA Retail in satisfying construction or site logistics obligations, then the Fixed Owner Project Cost Offset would be increased by a monthly increment to reflect the “burn rate” for development costs incurred for each month that the development period is extended due to delay caused by PA Retail. This potential incremental increase to the Fixed Owner Project Cost Offset for each Phase is referred to as the “Development Delay Increase”.

Where the Fixed Owner Project Cost Offset applies, it would be implemented without regard to the timing or amount of Westfield’s actual expenditures on the Owner Project Costs that are intended to be covered by the Fixed Owner Project Cost Offset. In order to properly calculate certain financial elements of the Transaction (including Westfield’s 6.5% preferred return on Westfield’s First Half Investment, the internal rate of return thresholds under the Sale Agreement, and the potential First Half Earnouts (described above)), the parties have agreed to a notional schedule (“Notional Schedule”) which would stipulate the amount and timing for Owner Project Costs covered by the Fixed Owner Project Cost Offset.

The anticipated timing of the Retail Net Lessee’s payments with respect to Westfield’s First Half Investment (which would be paid on a “cost to complete” basis as construction progresses) contrasts with the timing of payment with respect to Westfield’s Second Half Investment (which would be paid up front, but discounted to reflect the present value of a completed asset that would be delivered in the future). The structural distinction between Westfield’s First Half Investment and Westfield’s Second Half Investment also leads to a difference in approach with respect to Fixed Owner Project Cost Offset.

With respect to Westfield’s First Half Investment, the Contract Price payments that the Retail Net Lessee would otherwise pay on a “cost to complete” basis as construction of an applicable Phase progresses, would be partially offset by the Fixed Owner Project Cost Offset for the applicable Phase. The timing and amount of the credits for the Fixed Owner Project Cost Offset for a Phase would be as shown on the Notional Schedule for that Phase.

Because Westfield’s Second Half Investment would be paid up front on a discounted basis, the Fixed Owner Project Cost Offset would be implemented to the maximum extent possible by providing a credit against payments for the First Half Investment, and then to the extent necessary by providing a refund or rebate of the applicable portion of Westfield’s Second Half Investment. Here again, the amount and timing of credits, refunds or rebates of Fixed Owner Project Cost Offset for each Phase would be as shown on the Notional Schedule.

The Fixed Owner Project Cost Offset for non-AVP Phases is intended to provide a mechanism to cap PA Retail's exposure for applicable Owner Project Costs, subject to certain exceptions related to delays caused by PA Retail (e.g., Development Delay Increases, tenant delay penalties). With respect to tenant allowances and leasing commissions, the Fixed Owner Project Cost Offset reflects part of larger financial settlement which is intended to give Westfield flexibility to spend more or less than the Fixed Owner Project Cost Offset on tenant allowances and leasing commissions, while leaving PA Retail with an exposure for these cost that would largely be fixed. The willingness of the parties to address tenant allowances and leasing commissions for the non-AVP Phases with a fixed offset reflects the relative certainty as to the timing of the delivery of the non-AVP Phases and the market conditions that can be expected at the times relevant to expenditures for tenant allowances and leasing commissions for non-AVP Phases.

In contrast to the expectation on non-AVP Phases, the AVP Phases would be delivered in the future, and the delivery dates are uncertain at this point. Therefore, the parties were not able to agree on a fixed offset approach to dealing with Owner Project Costs for AVP Phases. Instead, relative to tenant allowances and leasing commissions, the parties would establish parameters for those costs, and Westfield would get offsets against the Contract Price for a Phase so long as the expenditures in question do not exceed costs permitted under agreed parameters. A general description of the parameters for tenant allowances and leasing commissions for the AVP Phases is described below.

#### *Owner Project Costs Where Alternative Valuation Applies*

The Fixed Owner Project Cost Offset described above will apply to the Initial Development Scope and NTA Retail Space, which would always be non-AVP Phases. If Tower 3 Above Grade and Tower 2 Lobby Conversion Space are delivered in acceptable delivery condition on or before September 15, 2018 (or if later, 24 months after the opening of the Initial Development Scope), they would also be non-AVP Phases and the Fixed Owner Project Cost Offset described above will also apply to Tower 3 Above Grade and Tower 2 Lobby Conversion Space. However, if Tower 3 Above Grade or Tower 2 Lobby Conversion Space are not delivered in acceptable delivery condition on before September 15, 2018 (or if later, 24 months after the opening of the Initial Development Scope), they would be AVP Phases and the Contract Price for these AVP Phases would no longer be fixed but would be determined by means of the Alternative Valuation Procedure. In addition, in all cases the Contract Price for Tower 2 Above Grade would be determined by means of the Alternative Valuation Procedure. For any AVP Phase, the Fixed Owner Project Cost Offset does not apply. Instead, Owner Project Cost for AVP Phases would be handled through the mechanisms described below.

For AVP Phase, there are three general categories of Owner Project Costs which would need to be addressed: (i) development costs, (ii), tenant allowances and (iii) leasing commissions.

#### *Owner Project Costs Where Alternative Valuation Applies; Development Costs*

The A&R Construction Agreement would obligate the Retail Net Lessee to cause Westfield LLC or another Westfield affiliate to provide certain development and tenant

coordination services for the Retail Premises. In general, development costs are Owner Project Cost of the Retail Net Lessee, but credits and offsets against the Contract Price are required in light of the assumption underlying the agreed Participation Basis (i.e., valuing the Retail Premises on a completed, leased-up basis). For non-AVP Phases, development costs would be addressed as part of the Fixed Owner Project Cost Offset (subject to increase on account of any Development Delay Increase as described above). For AVP Phases, the A&R Construction Agreement would identify a baseline development cost budget that would apply to each AVP Phase. These baseline budgets would be subject to increase or enlargement in two ways. First, each baseline budget would be supplemented with a “burn rate” budget to reflect any potential extension in the development period for each applicable Phase which results from delay caused by PA Retail. As with the non-AVP Phases, this potential incremental increase to the baseline budget is referred to as the “Development Delay Increase” for such Phase. Second, because it is not certain when the AVP Phases would be delivered (the development services period for each AVP Phase generally being the 12 month period prior to expected delivery, which would occur at some point in the future after opening of the Initial Development Scope), adjustments to deal with the potential for “inflation” prior to the future delivery are required. Therefore, the baseline development cost budget and the Development Delay Increase for each AVP Phase would be subject to an escalation factor to reflect possible inflation which could occur with the passage of time until the development services period for each AVP Phase begins. Under the A&R Construction Agreement, the escalation factor is 2.5% per annum (the “Development Escalation Increase”). The Contract Price for each AVP Phase would be subject to offset by the amount of the budgeted development costs (as increased by any Development Delay Increase and any Development Escalation Increase). The offset to the Contract Price for each AVP Phase would be based on the such budgeted amount, without regard to the actual amount expended by Westfield on development costs.

*Owner Project Costs Where Alternative Valuation Applies; Tenant Allowance Parameters*

The “*Tenant Allowance Parameters*” for AVP Phases would establish the maximum amount to be credited against the Contract Prices for the AVP Phases for tenant allowances, based on the number of months of rent. These Tenant Allowance Parameters would be set forth in an exhibit to the A&R Construction Agreement. Although Westfield could spend more on tenant allowances for an AVP Phase than provided for in the Tenant Allowance Parameters, the Retail Net Lessee would only be entitled to an offset against the Contract Price for that Phase to the extent the amounts actually expended on tenant allowances for the Phase would not exceed the limits established by the Tenant Allowance Parameters. The Tenant Allowance Parameters exhibit would provide for a mechanism for the parties to revisit the Tenant Allowance Parameters to see if agreement can be reached on necessary updates and revisions. Unresolved disputes over proposed updates and revisions would be decided by arbitration. Unlike Owner Project Costs for non-AVP Phases, the timing and amount for Contract Price offsets and credits relating to the AVP Phases would be determined by reference to Westfield’s actual expenditures for those Phases.

*Owner Project Costs Where Alternative Valuation Applies; Leasing Commissions*

With respect to leasing commissions for AVP Phases, the A&R Construction Agreement would contain an exhibit which would identify the agreement of the parties on what currently

constitute “market leasing fees”. With respect to AVP Phases, the Retail Net Lessee would be entitled to the following offsets to the applicable Contract Price on account of leasing fees (the “Maximum Leasing Fee Offset”): (i) if no third-party broker is involved, 100% of the market leasing fees shown on the A&R Construction Agreement exhibit, or (ii) if a third-party broker is involved, 150% of the market leasing fee shown on the A&R Construction Agreement exhibit. Although leasing commissions on any AVP Phase may exceed the Maximum Leasing Fee Offset, the Retail Net Lessee would only be entitled to an offset against the Contract Price for that Phase to the extent the leasing commissions for the initial lease up of a Phase would not exceed the Maximum Leasing Fee Offset for that Phase. The leasing fee exhibit to the A&R Construction Agreement provides that if any portion of a leasing fee is paid with respect to the initial leasing of any space at an AVP Phase 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), and the leasing fee on the replacement lease would count as an expense for the initial lease up of the Phase in question. The A&R Construction Agreement provides that the Maximum Leasing Fee Offset would be adjusted to reflect then existing market terms by agreement of the parties from time to time, but not later than five years after the Grand Opening of the Initial Development Scope, and on each 10 year anniversary thereafter. If there is an unresolved dispute over future adjustments of the Maximum Leasing Fee Offset to reflect then-current market terms, such dispute would be decided by arbitration.

### *Change Orders*

Under the A&R Construction Agreement, other than Demising Wall Change Orders (see *Demising Wall Change Orders* below) and MEP Capacity Change Orders (see *MEP Capacity Change Orders* below), there would in general be four types of change orders that would be relevant to the relationship of the parties under the A&R Construction Agreement.

First, there would be non-material change orders that can be initiated and implemented by PA Retail without the consent of the Retail Net Lessee at the sole cost and expense of PA Retail.

Second, there would be material change orders that can be proposed by PA Retail but that can only be implemented with the prior consent of the Retail Net Lessee (i.e., which would be defined as “Material Change Orders”). Material Change Orders would be implemented at the sole cost and expense of PA Retail. Material Change Orders can potentially relate not only to the Retail Premises itself, but also to the Site Improvements. 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), (ii) a change in interior/exterior storefront dimensions (other than *de minimis* amounts) and (iii) a change to the ceiling height. 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). The Retail Net Lessee 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 Retail Net Lessee'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 the Retail Net Lessee's design consultant and/or the Retail Net Lessee about such options.

The third and fourth types of change orders under the A&R Construction Agreement would be change orders that can be proposed by the Retail Net Lessee (i.e., which would all be defined as "Owner Change Orders"). In all cases, Owner Change Orders can only be implemented if the Retail Net Lessee agrees both (i) to pay applicable costs of implementing the applicable Owner Change Order (which applicable costs would be determined through a detailed change order process to be set out in the A&R Construction Agreement) and (ii) to be responsible for applicable delays and delay costs associated with implementing the applicable Owner Change Order (which applicable delays and delay costs would be determined through the same detailed change order process under the A&R Construction Agreement).

The distinction between the third and fourth types of change orders under the A&R Construction Agreement (both types being "Owner Change Orders") would be that, with respect to the third type of change orders, the Retail Net Lessee would have the unilateral right to require PA Retail to implement certain change orders (which would be defined as "Permitted Owner Change Orders") without the consent of PA Retail, so long as the Retail Net Lessee agrees to be responsible for the costs and delays associated with such change orders. The definition of "Permitted Owner Change Orders" would be finalized prior to the execution of the A&R Construction Agreement, but in general would prevent the Retail Net Lessee from unilaterally requiring any Owner Change Order which would (i) affect design elements or significant components outside the retail demised premises, (ii) adversely affect safety or traffic flow, (iii) be inconsistent with the Retail Design Standards or other requirements of the Port Authority Manual, (iv) not be feasible in light of existing project conditions, or (v) cause a material delay in the projected opening of the applicable Phase.

The fourth type of change orders are Owner Change Orders that the Retail Net Lessee would not have the unilateral right to require PA Retail to implement, even though the Retail Net Lessee agreed to be responsible for associated costs and delays. These Owner Change Orders (i.e., Owner Change Orders which do not qualify as Permitted Owner Change Orders) would require the prior approval of PA Retail, in addition to the Retail Net Lessee's agreement to be responsible for projected costs and delays associated with such change orders (as described above).

It should be noted that with respect to any AVP Phases, the Retail Net Lessee may have certain rights to offset the cost of certain Owner Change Orders against the Contract Price for such AVP Phases. The Contract Price for an AVP Phase would by definition be determined by the Alternative Valuation Procedure, and that process involves a true up of the Contract Price at stabilization to reflect the actual net operating income from the applicable AVP Phase. In light of the required true up, it is possible that certain Owner Change Orders implemented prior to

stabilization could in theory increase the stabilized net operating income from the applicable Phase. Therefore, with respect to an AVP Phase, the A&R Construction Agreement would contain a mechanism whereby the Retail Net Lessee could propose an Owner Change Order and request that PA Retail agree to a Contract Price offset on account of the cost of such Owner Change Order. If the parties are unable to agree on a Contract Price offset, the A&R Construction Agreement would contain a dispute resolution process to determine the proper Contract Price offset for the cost of the applicable Owner Change Order.

#### *Demising Wall Change Orders*

The A&R Construction Agreement would contain provisions allowing the Retail Net Lessee to initiate Demising Wall Change Orders (defined below) to properly demise the Retail Premises in light of leases that the Retail Net Lessee would enter into with third party tenants. Prior to the Demising Wall Deadline (defined below), the Retail Net Lessee would have the right to require PA Retail to change the location of demising walls separating demised tenant space, together with any corresponding change to the location of storefronts entrances, and any change in the location of doors accessing corridors from the demised tenant space (collectively, “Demising Wall Change Order”). The Retail Net Lessee would not be responsible for the cost of implementing any Demising Wall Change Order or any delay in the project schedule on account of any Demising Wall Change Order so long as the such Demising Wall Change Order is requested not later than 6 months prior to the later of (a) when such space is delivered to the Retail Net Lessee in Tenant-Ready Condition, and (b) the latest date when such space is required to be delivered to the Retail Net Lessee in Tenant-Ready Condition in accordance with the Construction Phasing Plans (such later date being the “Demising Wall Deadline”). With respect to the cost of Demising Wall Change Orders made after the Demising Wall Deadline, PA Retail’s obligation to address any such Demising Wall Change Order would be subject to feasibility, and the additional cost thereof would be added to the Contract Price for the applicable Phase.

#### *Additional Electricity*

Under the Prior Transaction, the Port Authority was responsible for delivering the Retail Premises in accordance with the then agreed-upon plans and specifications. Westfield has identified a desire for additional electrical capacity to serve particular portions of the Retail Premises. Under the proposed Transaction, the Port Authority would agree to work in good faith with the Retail Net Lessee to identify any additional capacity that could be made available to the Retail Net Lessee (without making any representation as to such additional capacity). All costs associated with any electricity over and above the original plans and specifications, including without limitation, increasing or providing any such additional electrical capacity, would be borne solely by the Retail Net Lessee.

#### *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 Retail 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 A&R Construction Agreement would identify 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”), eight months prior to opening (“8-Month Build Out Space”), six months prior to opening (“6-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 the Retail 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 the Retail 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 “*Amended and Restated Construction Agreement – 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, at least eight months after PA Retail delivers the 8-Month Build Out Space in Tenant-Ready Condition, at least six months after PA Retail delivers the 6-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 Retail Net Lessee 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 “*Amended and Restated Construction Agreement – 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, or any other limited “early opening” which may be mutually agreed to by PA Retail and Net Lessee).

#### *Initial Development Scope*

Current projections provide for a Grand Opening Date for the Initial Development Scope in 2015. PA Retail would provide the Retail Net Lessee (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, the Retail Net Lessee would cause the Property Manager, approximately four months prior to the projected Grand Opening Date, to direct the retail tenants within the Initial Development Scope to open on the Grand Opening Date.

#### *E Train Connection Corridor*

The planned corridor from the exterior slurry wall at the Tower 2 B-1 mezzanine level to the E Train platform (such corridor being the “E Train Corridor”) is not expected to be completed prior

to the Grand Opening Date and may be delayed until vertical construction of Tower 2 commences. In the meantime, the concourse in the Tower 2 B-1 mezzanine level that would lead to the planned E Train Corridor (such concourse being the “T2 B-1 Mezz Concourse”) will not be needed for pedestrian access to the E Train Corridor. Instead, PA Retail would agree in the Second Amendment to Net Lease to provide the Retail Net Lessee with rights to operate the T2 B-1 Mezz Concourse on an Interim Status basis (i.e., for the Retail Net Lessee’s own account) until the Retail Net Lessee is required to surrender such space. The uses of the T2 B-1 Mezz Concourse would be limited to RMUs and similar uses appropriate for licensed areas under the Net Lease. The T2 B-1 Mezz Concourse would be delivered in accordance with the existing plans and specifications, and any improvements would be at the cost of the Retail Net Lessee. The A&R Construction Agreement would provide that the Retail Net Lessee would be required to surrender the T2 B-1 Mezz Concourse when it is needed in connection with construction of the E Train Corridor. Prior to the surrender date, the Retail Net Lessee would be obligated to cause any tenant in the T2 B-1 Mezz Concourse to permit reasonable access to its leased or licensed premises for testing and other purposes related to the potential construction of the E Train Corridor.

#### *Tower 2 Lobby Conversion Space*

The Port Authority would deliver the Tower 2 Lobby Conversion Space in “Tenant Ready Condition”, to be used by the Retail Net Lessee’s subtenants until those spaces are required by the Port Authority for conversion to use as the Tower 2 lobby. If the period being from the later of the Deemed Opening Date and the Acceptable Delivery Conditions Date for the Tower 2 Lobby Conversion Space Date through the date that the Retail Net Lessee is required to surrender the Tower 2 Lobby Conversion Space for conversion to use as the Tower 2 lobby is less than 10 years, then the Port Authority will be responsible for paying 50% of the unamortized cost incurred by the Retail Net Lessee in upgrading this space from Tenant Ready Condition to “white box” condition.

#### *Notice of 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 Retail 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.

#### *Late Delivery*

PA Retail is not liable to the Retail Net Lessee for liquidated damages or other delay penalties in the event of late delivery of any Phase, except as described in this section. If the Retail 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. However, the Retail Net Lessee would be required to minimize all such damages. PA Retail would also be responsible for Development

Delay Increases (see “*Amended and Restated Construction Agreement – Fixed Owner Project Cost Offset*” above).

In addition, until the Deemed Opening Date (or later with respect to unfinished elements): (i) PA Retail would continue to pay to the Retail Net Lessee a capital return (described in detail in “*Amended and Restated Construction Agreement – Westfield Capital Return*”) on account of Westfield’s investment, and (ii) during construction prior to the Deemed Opening Date of a Phase, PA Retail would be responsible for the Retail Net Lessee’s compliance with the insurance requirements set forth in the Net Lease.

#### *Space Permitted to be Late*

Certain portions of the Retail Premises may not be available for delivery to the Retail 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, the Retail Net Lessee would continue to receive both (1) a capital return at a 6.5% rate 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’s First Half Investment for the applicable Phase for a period to reflect the actual delay in delivery and (2) a capital return at a 5.5% rate 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’s Second Half Investment for the applicable Phase for a period from and after the Valuation Date to reflect the actual delay in delivery.

In addition, the A&R Construction Agreement would provide that PA Retail and the Retail Net Lessee would investigate opportunities to open certain portions of the Retail Premises prior to the Grand Opening Date, on terms to be agreed upon by the parties.

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.

#### *1-Train Entrances*

The A&R Construction Agreement would provide that in the event that 1-Train Entrances are not open on or before the first anniversary of the Grand Opening, then the Port Authority

would be responsible for an annual payment to the Retail Net Lessee of 50% of the economic consequences suffered by the Retail Net Lessee on account of the failure of such entrances to open, up to the Annual Impairment Payment. In the event that the 1-Train Entrances are not open on or before the fifth anniversary of the Grand Opening, then the Port Authority would elect one of the two following options. First, in lieu of continuing payments after such fifth anniversary, the Port Authority could elect to pay to the Retail Net Lessee the capitalized value (at a 5.5% capitalization rate) of the Annual Impairment Payment payable with respect to the year ending on such fifth anniversary, but such payment obligation would be limited to the funds available from any Contingent Purchase Price Payment actually paid with respect to Westfield's Second Half Investment. The Retail Net Lessee would be deemed to have suffered an "Impairment" only to the extent that certain circumstances occur, to be more fully set out in the Second Amendment to Net Lease. Alternatively, if the Port Authority reasonably determines that such 1-Train Entrances would open in the near term, the Port Authority could elect to continue to pay 50% of the Annual Impairment actually suffered, without regard to the \$1 million annual cap, through the date such 1-Train Entrances actually open.

#### *Westfield Buyout Right*

If the Deemed Opening Date for the Initial Development Scope does not occur by September 15, 2018, 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 Retail Net Lessee would have the right to require PA Retail to purchase the Retail Net Lessee's entire interest in the Retail Premises for a buyout price equal to the amount necessary for the Retail Net Lessee to achieve an 8% internal rate of return on all payments made by Westfield with respect to its First Half Investment and Second Half Investment as of the effective date of the buyout (the "Buyout Purchase Price").

#### *Lockout Period*

Consistent with standard retail industry practices, the Retail Net Lessee 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"). If the target Grand Opening is prior to the Lockout Period that begins on April 15th and construction delays result in a delay of the completion of such construction until after April 15th but not beyond May 31, then the Retail Net Lessee would be obligated to use good faith efforts to achieve a Grand Opening between April 15 and May 31. The Retail Net Lessee would further agree not to delay the Grand Opening beyond the Deemed Opening Date without the consent of Contractor.

#### *Class A Phases and Incentive Managed Space*

The Retail Premises would be developed and constructed on a phased basis pursuant to the A&R Construction Agreement. For purposes of determining Contract Price payments, property management responsibilities, and other allocations of rights and obligations under the A&R Construction Agreement, each Phase would be characterized as either a Class A Phase (i.e., a Phase for which there is relative certainty about the turnover of the Phase to the Retail Net Lessee in acceptable condition) or as Incentive Managed Space (i.e., a Phase which would

permanently or temporarily be operated for the benefit of the Port Authority and for which PA Retail would be required to pay capital costs and be entitled to receive payments of net operating income, and which would be managed on an incentive fee basis (see “*Amended and Restated Construction Agreement – Incentive Managed Space*”). 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 have not fully satisfied all conditions to requiring investment by Westfield. The Initial Development Scope would be a Class A Phase. Any Phase which would be temporary or which may be temporary (such as the Tower 3 Above Grade) would be Incentive Managed Space.

Tower 3 Above Grade would initially be classified as a Class B phase. If Tower 3 is constructed on a Full Build basis, then Tower 3 Above Grade will become a Class A Phase on the Deemed Opening Date. If Tower 3 is initially constructed as a Capped Podium (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), then Tower 3 Above Grade will become a Class A Phase on the later to occur of the Deemed Opening Date and the Acceptable Delivery Conditions Date.

In relation to Tower 2 Lobby Conversion Space (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), a hybrid status would initially apply. In this regard, until the Acceptable Delivery Conditions are satisfied, the Retail Net Lessee would operate the Tower 2 Lobby Conversion Space for the Retail Net Lessee’s own account and at the Retail Net Lessee’s cost, but not as a Class A Phase. Until the later of the Deemed Opening Date and the Acceptable Delivery Condition Date for Tower 2 Lobby Conversion Space, the Retail Net Lessee would have no obligation to pay the Contract Price for Tower 2 Lobby Conversion Space. The status of the Tower 2 Lobby Conversion Space until the later of the Deemed Opening Date and the Acceptable Delivery Conditions Date would be referred to as “Interim Status.” On the later of the Deemed Opening Date and the Acceptable Delivery Condition Date for Tower 2 Lobby Conversion Space, such Phase would become a Class A Phase and Owner would pay Contractor the Contract Price for such Phase. The effect of this special “Interim Status” for Tower 2 Lobby Conversion Space is to permit Westfield to collect and retain the net rental income from the space without having to first pay the Contract Price for the space. The Contract Price would be paid later, if at all, at the later of the Deemed Opening Date and the Acceptable Delivery Condition Date for Tower 2 Lobby Conversion Space.

#### *Incentive Management of Tower 3 Above Grade*

All Incentive Managed Space will be included in the demised premises which is leased to the Retail Net Lessee pursuant to the Net Lease. However, the A&R Construction Agreement would contain special provisions for the management and operation of Incentive Managed Space, which would make PA Retail responsible for costs of leasing and operating Incentive Managed Space, and entitle PA Retail to the net operating income from Incentive Managed Space, subject to payment to a Westfield affiliate of an incentive management fee. In general terms, PA Retail would bear 100% of the economic benefits and burdens with respect to each

Class B Phase, and in addition to its normal management and leasing fees, a Westfield affiliate would be entitled to a base management fee and an incentive management fee on each Class B Phase. PA Retail would have certain leasing and operational control rights with respect to Incentive Managed Space, including control over the decision of whether or not to enter into a particular lease for space within a Class B Phase. The incentive management fee payable to Westfield 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 PA Retail and the Retail Net Lessee prior to the commencement of leasing activities for the applicable Class B Phase.

*Westfield Capital Return*

*Westfield Capital Return: Initial Development Scope*

The Retail Net Lessee would be entitled to a return (the "Westfield 6.5% Capital Return") at an annual rate of 6.5% on its First Half Investment for the Initial Development Scope, from the date of its investment through the Deemed Opening Date for the Initial Development Scope (or later with respect to unfinished space). If the Deemed Opening Date for the Initial Development Scope does not occur on or before the Valuation Date, the Retail Net Lessee would also be entitled to a return (the "Westfield 5.5% Capital Return") at an annual rate of 5.5% on its Second Half Investment for the Initial Development Scope, from and after the Valuation Date through the Deemed Opening Date for the Initial Development Scope (or later with respect to unfinished space). Westfield 5.5% Capital Return recognizes the undiscounted value of the completed Initial Development Scope as of the Valuation Date (the date from which the present discounted payments would be calculated), and would provide a return on Westfield's Second Half Investment for the period of delay at the same return rate as the discount rate which would be applied to the present valuation of the Second Half Investment. The Westfield 6.5% Capital Return and the Westfield 5.5% Capital Return are referred to collectively as the "Westfield Capital Return".

*Westfield Capital Return: NTA Retail Space*

The NTA Retail Space would be a Class A Phase. The Retail Net Lessee would be entitled to the Westfield 6.5% Capital Return on its First Half Investment in the NTA Retail Space through the Deemed Opening Date for the NTA Retail Space. If the Deemed Opening Date for the Initial Development Scope does not occur on or before the Valuation Date, the Retail Net Lessee would also be entitled to the Westfield 5.5% Capital Return on its Second Half Investment for the NTA Retail Space, from and after the Valuation Date through the Deemed Opening Date for the NTA Retail Space (or later with respect to unfinished space).

*Westfield Capital Return: Tower 2 Lobby Conversion Space*

The Tower 2 Lobby Conversion Space would initially be operated by the Retail Net Lessee under the Interim Status. 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. So long as such conditions are satisfied on or before September 15, 2018 (or if later, on or before the date that is 24 months after the Deemed Opening Date of the balance of the Initial Development Scope), the Retail Net Lessee would pay the Tower 2 Lobby Conversion Space Fixed Contract Price Component for the Tower 2 Lobby Conversion Space.

In consideration for allowing sufficient time to lease, market and fit-out the tenant space, the Retail Net Lessee is entitled to at least twenty months prior notice of the projected conversion of the Tower 2 Lobby Conversion Space to a Class A Phase. If less than twenty months prior notice is provided by PA Retail to the Retail Net Lessee, then the Retail Net Lessee would receive both (1) the Westfield 6.5% Capital Return on its First Half Investment attributable to the Tower 2 Lobby Conversion Space and (2) the Westfield 5.5% Capital Return on its Second Half Investment attributable to the Tower 2 Lobby Conversion Space, in each case for the period equal to (i) twenty months less (ii) the number of months from the date the Retail Net Lessee 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.

*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.

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 PA Retail to the Retail Net Lessee, then the Retail Net Lessee would receive would receive both (1) the Westfield 6.5% Capital Return on its First Half Investment attributable to Tower 3 Above Grade and (2) the Westfield 5.5% Capital Return on its Second Half Investment attributable to Tower 3 Above Grade, in each case Tower 3 Above Grade for the period equal to (i) twenty months less (ii) the number of months from the date the Retail Net Lessee 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.

*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 Retail Net Lessee. As is the case with the rest of the Transaction, the price paid by the Retail Net Lessee for 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) PA Retail provided the Retail Net Lessee not less than three years notice of the Deemed Opening Date, and (ii) unless the Retail Net Lessee exercises the Opt Out Option, then the Retail Net Lessee would pay the Contract Price Component for Tower 2 Above Grade, determined pursuant to the Alternative Valuation and subject to certain credits and offsets for Owner Project Costs. If SPI does not deliver Tower 2 Above Grade to the Retail Net Lessee until after November 1, 2030, then the Retail Net Lessee has the right to exercise the Opt Out Option with respect to Tower 2 Above Grade.

#### *Method of Payment of Westfield Capital Return*

The payment of the Westfield 6.5% Capital Return would be paid by means of a quarterly credit against the Retail Net Lessee's obligations to make payments with respect to Westfield's First Half Investment. In the case of any delay beyond the Valuation Date (or as to the NTA Retail Space, beyond June 1, 2017), PA Retail would make quarterly payments of any Westfield Capital Return accruing after such applicable date (or credit such payments against other amounts owing to the Port Authority.)

#### *Retail Net Lessee's Opt Out Option (Tower 2 Above Grade)*

Under limited circumstances, the Retail Net Lessee would have a defined option (the "Opt Out Option") to elect not to fund the Contract Price for Tower 2 Above Grade and, as a consequence, to have Tower 2 Above Grade excluded from the Retail Premises under the Retail Net Lessee and have Tower 2 Above Grade treated as "Excluded Retail" for purposes of Westfield's retail exclusive under the Retail Net Lessee. The Opt Out 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 Opt Out*

Tower 2 Above Grade would be valued pursuant to an Alternative Valuation Procedure in a process that would begin between 18 and 24 months prior to the projected construction start date for Tower 2 Above Grade. No sooner than 18 months prior to the projected construction start date for Tower 2 Above Grade (at which point the Contract Price Component for Tower 2 Above Grade should effectively be known, based on the Alternative Valuation Procedure), PA Retail could give the Retail Net Lessee a notice requiring the Retail Net Lessee either to exercise the Opt Out Option or waive the Opt Out Option and remain committed to paying the Contract Price Component for Tower 2 Above Grade based on the Alternative Valuation Procedure. If the Retail Net Lessee elects the Opt Out Option with respect to Tower 2 Above Grade, Tower 2 Above Grade would be excluded from the Retail Premises under the Retail Net Lessee and have Tower 2 Above Grade treated as "Excluded Retail" for purposes of Westfield's retail exclusive under the Retail Net Lessee.

#### *Books and Records*

Each of PA Retail and the Retail 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. The Retail 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.

Although the primary reporting requirements under the A&R Construction Agreement relate to the Project Costs, there would be supplementary rights and obligations relating to operating revenues, operating income, and net operating income, all of which are relevant to (1) the First Half Earnouts, and (2) to the Alternative Valuation Procedure to be applied to any AVP Phase. These supplemental provisions would provide PA Retail with access rights to the applicable books and records of the Retail Net Lessee with respect to these financial matters, together with limited audit rights. These access and audit rights would survive the relevant dates for Contract Prices calculations for a limited period to be set forth in the A&R Construction Agreement.

#### *No Port Authority Warranties*

PA Retail would assign to the Retail Net Lessee all warranties and other contract rights, and would cooperate with the Retail Net Lessee in the pursuit of any remedies in connection with defects, but PA Retail would have no other liability to the Retail 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. The Retail Net Lessee may inspect the Retail Premises at all reasonable times during construction, but the responsibility of PA Retail would not be relieved by the Retail Net Lessee's review or approval of any construction or construction schedule.

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

The Retail 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 below), 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 A&R Construction Agreement is terminated, the Retail 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 the Retail Net Lessee to PA Retail plus (ii) the amount of expenses incurred by the Retail 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 Retail Net Lessee plus interest. The term "Turner-Tishman CMA" means 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.

*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 Retail 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 Retail Net Lessee compensation for any adverse economic consequences.

*Dispute Resolution*

The A&R Construction Agreement would make provision for dealing with certain disputes, which would be defined as “Arbitrable Disputes”. “Arbitrable Disputes” means a dispute or disagreement relating to any of the following: satisfaction of Tenant-Ready Condition; any claimed breach or dispute regarding PA Retail’s obligations with respect to Site Logistics Support; achievement of Substantial Completion; achievement of Final Completion; determination of the Deemed Opening Date or Tenant-Ready Condition Date; the amount of any credit against the Contract Price for any Tenant Allowances; the amount of any reimbursement or credit to which the Retail Net Lessee is entitled in respect of the Contract Price of any Phase on account of Retail Net Lessee Project Costs paid by the Retail Net Lessee; the amount Contractor is entitled to invoice the Retail Net Lessee for or which the Retail Net Lessee is required to pay on account of the Contract Price for any Phase, including the amount of Project Costs, Excess Project Costs, Retail Net Lessee Project Costs, or any reconciliation relating to the foregoing; whether Acceptable Delivery Conditions have been satisfied; disputes arising in connection with the exercise of the Pot Authority’s decisions to serve governmental purposes; the Tenant Allowance Parameters when an applicable party proposes that they be adjusted on account of market conditions; the Market Leasing Fee when an applicable party proposes that they be adjusted on account of market conditions; disputes regarding the diminution in value of Tower 3 Above Grade arising from a change in the Project Plans and Specifications from Full Build to Capped Podium; and/or any other disputes involving multiple claims or issues where one or more of the foregoing matters form a material part of the basis for such disputes, claims, or issues.

In the case of an Arbitrable Dispute, a designated representative of each of the Port Authority and the Retail Net Lessee 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 Net 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. Each party 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 parties. 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).

## Second Amendment to Net Lease

### *Exclusions from Exclusivity*

The Net Lease grants to the Retail Net Lessee the Retail Exclusive Rights throughout the WTC Site, except for "Excluded Retail". Under the Net Lease, "Excluded Retail" includes: (a) ancillary uses in Towers 1 through 5 of the type commonly found in comparable office buildings, (b) in Tower 1, conference venues, a fine dining restaurant located in the upper levels of Tower 1, and the 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 uses 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, (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.

The Second Amendment to Net Lease would expand "Excluded Retail" to include the following: (i) Tower 3 above-grade retail and Tower 2 above-grade retail to the extent such areas would be removed from the Transaction pursuant to the relevant terms and provisions of the A&R Construction Agreement or the Net Lease as amended by the Second Amendment to Net Lease, (ii) a coffee kiosk for selling coffee, tea, beverages and pre-wrapped or pre-packaged food items and a "grab-and-go" food service facility for selling prepared foods and beverages for take-out, each on the 64th floor of Tower 1, together with catering for tenants of Tower 1, and, to the extent to be set forth in the Second Amendment to Net Lease, certain other food service uses, and (iii) as a permitted alternative to the fine dining restaurant in the upper levels of Tower 1, food, beverage and dining service facilities (which may include fine dining) within the observation deck of Tower 1 to serve ticketed patrons visiting (or those attending events at) the observation deck in Tower 1.

### *Update to Retail Premises*

The Second Amendment to Net Lease would update Exhibit A to the Net Lease to reflect the addition of the PATH Mezzanine Space and make other updates consistent with existing approved change orders and other updates to conform to the terms of the Transaction.

### *Update to Licensed Areas*

The Second Amendment to Net Lease would grant the Retail Net Lessee, as part of the consideration for the Transaction, the right to use certain areas in the public areas of the Transportation Hub for the installation of ATMs. It would also grant the Retail Net Lessee the right to use approximately 430 square feet of space in the public area on the B-1 level of the Oculus for purposes of creating a restaurant seating area to be used by the restaurant subtenant of the adjacent Retail Premises, such license to be for a term which is co-terminous with such subtenant's sublease. The Second Amendment to Net Lease would also provide certain rights to the E Train Corridor Space (see "*Amended and Restated Construction Agreement – E Train Corridor Space*" above).

### *Food and Beverage Minimum*

The Property Management and Leasing Agreement currently provides that at least ten percent (10%) of the total gross floor area of the Retail Premises must be devoted to food and beverage uses and not more than thirty-five percent (35%) of the total gross floor area of the Retail Premises must be devoted to service retail uses (including, without limitation, banks, financial services and similar uses) (the "F&B/Service Requirements"). In order to preserve the F&B/Service Requirements, the Second Amendment to Net Lease would incorporate such requirements. Following the fifth (5th) lease year after Grand Opening of the Initial Development Scope, the Retail Net Lessee would be entitled to make reasonable adjustments to the percentages provided that the adjustments are consistent with a first-class mixed-use facility with transportation.

### *Required Lease Provisions*

The Property Management and Leasing Agreement currently requires all retail leases, subleases, licenses, sublicenses, permits, or concession agreements, or any other form of agreements creating the right to use or occupancy of a portion of the Retail Premises to contain certain Port Authority Required Lease Provisions. Because the Port Authority will no longer have an economic interest in such subleases, licenses, sublicenses, permits or concession agreements, the Second Amendment to Net Lease would contain requirements for including required lease provisions only in certain cases, such as where the Retail Net Lessee is operating a particular "Class B Space" for the benefit of the Port Authority, but not in other cases.

### *Screening Protocols*

The Property Management and Leasing Agreement currently requires the Retail Net Lessee to acquire from all prospective tenants or licensees pursuant to a retail lease, sublease, license, sublicense, permit, or concession agreement, or any other form of agreement creating the right to use or occupancy of a portion of the Retail Premises certain certifications referred to as "screening protocols". Because the Port Authority will no longer have an economic interest in such subleases, licenses, etc., the Second Amendment to Net Lease would include a requirement for reduced screening protocols to be undertaken by the Retail Net Lessee. Such protocols would include requirements for customary background checks (details of which would be set

forth in the Second Amendment to Net Lease) that would be applicable to prospective occupants of the Retail Premises or the Licensed Areas.

#### *Event Protocols*

Under the Net Lease, the Retail Net Lessee currently has the right to permit or use the Oculus and certain other designated portions of the WTC Site for Special Events, subject to the obligation to comply with “Event Protocols” to be developed by Westfield and the Port Authority. As part of the Transaction, the parties would agree to continue to work together to develop and finalize the Event Protocols which would take into account the following: (i) establishing a monthly event schedule, (ii) prohibitions on undesirable events and a requirement for Port Authority approval of certain political and other events, (iii) providing prototypical event layouts, (iv) establishing food service standards and requirements, (v) outlining the Port Authority’s right to object, (vi) implementing Port Authority QAD and Risk Management Department review and approval rights and procedures, (vii) addressing pedestrian flow level of service considerations, (viii) addressing security considerations, and (ix) addressing other site operation and logistics considerations, as an interim step toward creating the final Event Protocols (to contain substantive operational and other requirements).

The programmatic content of Special Events would not be (i) sexually explicit, lewd, lascivious, or pornographic; (ii) involve the promotion, encouragement, or glamorization of illegal drug use or other substance abuse; (iii) involve the promotion, encouragement, or glamorization of hate speech, intolerance, violence, or terrorism; (iv) without the prior written consent of the Port Authority, not to be unreasonably conditioned, delayed or withheld, benefit, support, or promote (a) a political party, (b) a political, governmental or legislative cause or issue applicable to the Port Authority, PATH, the City of New York, the State of New York or the State of New Jersey, (c) the holder of, or a candidate or prospective candidate for, a political or public office or a candidate or prospective candidate for nomination for such office, or (d) a political action committee (whether registered with the Federal Election Commission or otherwise) or other political lobbying or interest group, and the Port Authority would not exercise such approval rights in a manner that results in a comprehensive ban against all such Special Events; or (v) be offensive to the memory of the events of September 11, 2001.

#### *Retail at T2 Plaza*

The Second Amendment to Net Lease would clarify that any retail on the temporary Tower 2 grade-level plaza (the “T2 Plaza”) would be subject to the Retail Net Lessee’s approval, and for so long as there is no retail on the T2 Plaza the Retail Net Lessee would have no right to participate in the ownership, development, control, non-retail leasing or operation of the T2 Plaza.

#### *No Gifts, Gratuities, Offers of Employment, Etc.*

The Retail Net Lessee would be prohibited from knowingly offering, giving, agreeing to give any gifts or gratuities to any employee, officer or director of the Port Authority or to a member of the immediate family of the foregoing. In addition, the Retail Net Lessee would be prohibited from making an offer of employment or using confidential information in a manner

proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996. A violation of this provision would not constitute an event of default under the Net Lease, but in the event of a violation, the Port Authority may require the Retail Net Lessee to make a reasonable payment in an amount based upon the nature of the violation and undertake reasonable remedial action including implementing reasonable policies and/or training programs to avoid future violations.

#### *Press Releases and Public Relations*

Prior to the Grand Opening, the Retail Net Lessee and the Port Authority would coordinate any press release or formal public announcement which promotes or reports on the Grand Opening, any major transaction or announcement (including major tenant signings) relating to the Retail Premises, or any Special Event. Subsequent to the Grand Opening, the Retail Net Lessee and the Port Authority would coordinate any press release or or formal public announcement that promotes any major transaction or announcement (including major tenant signings) relating to the Retail Premises or any Special Event within the Licensed Area. Both parties would identify to the other a representative to act as a press release coordinator, and the press release coordinators would schedule and meet at regular intervals to coordinate any such press releases or public relations matters. A violation of this provision would not constitute an event of default under the Net Lease, but in the event of a violation, the parties would take reasonable remedial action including implementing reasonable policies and/or training programs to avoid future violations.

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

The Transaction Documents would provide for an updated Specialty Leasing, Advertising and Special Events Plan, which would be revised from the plan approved in the Prior Transaction to make provision for certain ATM locations, applicable activation of the T2 B-1 Mezzanine Concourse, and certain other limited matters.

#### *Signage and Branding*

In connection with the Prior Transaction, the Retail Net Lessee obtained certain rights from the World Trade Centers Association, Inc., which provided the Retail Net Lessee and certain Westfield affiliates with certain intellectual property rights to use the term “World Trade Center” and certain related marks (the “WTCA IP Rights”). In connection with the Transaction, the Port Authority would confirm that, if the Port Authority were to have consent rights over the exercise of Westfield’s WTCA IP Rights, then the Port Authority would not withhold its consent to such exercise or require additional payment from Westfield or the Retail Net Lessee in connection with the exercise of such rights.

#### *Direct Assignments*

The Second Amendment to Net Lease would provide that, subject to the provisions of the Net Lease that are specifically applicable to mortgages, in connection with any sale, assignment, transfer, mortgage, pledge, hypothecation, encumbrance, conveyance or disposal of the Net Lease or all of the Retail Net Lessee’s right, title and interest in the Retail Premises (a “Direct Assignment”), and for so long as the obligations of the Retail Net Lessee under the A&R Construction Agreement remain outstanding, a Direct Assignment would not be permitted unless

(i) the assignee under such proposed Direct Assignment assumes all of the obligations of the Retail Net Lessee under the A&R Construction Agreement, (ii) an affiliate of such assignee satisfying the net worth requirements applicable to the Westfield affiliate in the Westfield Support Agreement, as amended, assumes all corresponding obligations under the Westfield Support Agreement, as amended (if Westfield is not being released), and (iii) the Port Authority receives reasonable documentation evidencing such assignment and assumption and compliance with the applicable net worth requirements.

#### *Bona Fide Purchasers*

The Second Amendment to Net Lease would provide that, for so long as the applicable obligations of the Retail Net Lessee under the A&R Construction Agreement remain outstanding, a purchaser of the leasehold estate under the Net Lease at foreclosure of a mortgage or an assignee of the Net Lease under an assignment in lieu of foreclosure (each, a “Bona Fide Purchaser”) would be required to (i) qualify as an “Institutional Investor”, which requires among other certain requirements having a minimum net worth of \$250,000,000 (based on present, not historical value and subject to adjustment by the Port Authority), and provide the Port Authority with reasonable documentation evidencing such qualification, (ii) assume in writing, for the benefit of the Port Authority, all the obligations of the Retail Net Lessee under the A&R Construction Agreement, and (iii) an affiliate of such Bona Fide Purchaser satisfying the net worth requirements applicable to the Westfield affiliate in the Westfield Support Agreement, as amended, assumes the corresponding obligations under the Westfield Support Agreement, as amended, if Westfield is being released and the Port Authority receives reasonable documentation evidencing such compliance with the applicable net worth requirements.

#### Support Agreements

At Closing, the Port Authority and Westfield (referred to for purposes of the Support Agreements as the “Westfield Guarantor”) would each provide a separate Amended and Restated Support Agreement setting forth its respective support obligations in connection the Transaction.

The Amended and Restated Support Agreement from the Westfield Guarantor would run in favor of the Retail Net Lessee (and not the WTC Retail Member LLC, as the existing Support Agreement does) and would be enforceable by PA Retail as an intended beneficiary. The obligations guaranteed by the Westfield Guarantor would include Contract Price payments required to be made by the Retail Net Lessee under the A&R Construction Agreement, as well as the Contingent Purchase Price Payment which may be required to be paid by the Retail Net Lessee under the Sale Agreement. Under its Amended and Restated Support Agreement, the Westfield Guarantor would agree to pay any and all reasonable out-of-pocket costs incurred by the intended beneficiaries under such Amended and Restated Support Agreement in enforcing the Westfield Guarantor’s obligations thereunder. The Amended and Restated Support Agreement would contain financial covenants obligating the Westfield Guarantor to maintain a minimum net worth greater than (i) \$750 million for the period prior to full satisfaction of the Retail Net Lessee’s Contract Price payment obligations with respect to the Initial Development Scope and (ii) \$500 million thereafter. 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

Seller with a letter of credit or other liquid collateral acceptable to Seller in an amount equal to the difference between the net worth of the Westfield Guarantor and the Net Worth Requirement. The Westfield Guarantor would deliver annual audited balance sheets of the Westfield Guarantor to Seller to evidence the sufficiency of the Westfield Guarantor's net worth.

Under its Amended and Restated Support Agreement, the Port Authority would run in favor of PA Retail and Seller and would be enforceable by Retail Net Lessee and Buyer as intended beneficiaries. The obligations guaranteed by the Port Authority include PA Retail's and Seller's respective obligations under the Transaction Documents, including the obligations to pay for construction costs, cover certain losses, and hold Retail Net Lessee and Buyer harmless from certain pre-closing and post-closing liabilities, including backstopping the representations, indemnities and covenants of Seller under the Sale Agreement. Under its Support Agreement, the Port Authority would agree to pay any and all reasonable out-of-pocket costs incurred by the intended beneficiaries under such Support Agreement in enforcing the Port Authority's obligations thereunder. Such Support Agreement may not be assigned by the Port Authority.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Moerdler, Pocino, Rechler, Rosado, Samson, Sartor, 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 interest sale 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.

## **WORLD TRADE CENTER RETAIL – PROJECT RE-AUTHORIZATION AND AUTHORIZATION OF RELATED CONTRACT ACTIONS**

It was recommended that the Board: (1) re-authorize the retail project at the World Trade Center (the “WTC Site”) which includes certain retail space to be located in the World Trade Center Transportation Hub, Tower 1, Tower 2, Tower 3, and Tower 4 (collectively, all such space, the “Retail Premises”) to design and construct the World Trade Center Retail Premises, in an estimated amount of \$2.060 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 and transaction-related costs; (2) authorize an increase in compensation on behalf of this and other Port Authority projects at the WTC Site of \$3.7 million for the contract with Silverstein Properties, Inc. for design and construction administration services, of which (a) \$1.2 million is included in (1) above, and (b) \$2.5 million is for any approved or instituted “Owner Change Orders,” as described in the Minutes of today’s meeting entitled “*The World Trade Center – Authorization of Sale of Remaining Retail Joint Venture Interest to Westfield,*” which would be fully funded by Westfield America, Inc. (“Westfield”), as net lessee of the Retail Premises (the “Retail Net Lessee”); and (3) authorize an increase in compensation on behalf of this and other Port Authority projects at the WTC Site of \$14 million for the contract with Tishman-Turner Joint Venture III for construction management services, of which amount (x) \$5 million is included in existing \$1.966 billion project authorization, (y) \$4 million is included in (1) above, and (z) \$5 million is for any approved or instituted Owner Change Orders, which would be fully funded by the Retail Net Lessee. The increase in (1) above is \$93.6 million above the prior authorized project amount of \$1.966 billion and includes (i) costs related to capping the Port Authority’s “Owner Project Cost” exposure at \$212.5 million (of which amount \$165.4 million is within the existing \$1.966 billion project authorization amount), (ii) to the extent applicable, certain transfer taxes that may be payable by the Port Authority of up to \$8 million, and (iii) costs related to legacy Port Authority obligations needed to meet completion and delivery conditions totaling \$38.5 million, which include site logistics support, way-finding program installation, change order reconciliation and the completion of certain contingent site improvements, in each case, related to the transaction described in the Minutes of today’s meeting entitled “*The World Trade Center – Authorization of Sale of Remaining Retail Joint Venture Interest to Westfield*”.

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 \$1.966 billion. Re-authorization of the retail project was recommended at this time, in order to properly align the authorized project budget with obligations necessary to implement the project and fulfill the Port Authority’s delivery obligations for projects at the WTC Site, which are adjacent to the Retail Premises.

### Trade Contractor Authorization

Pursuant to the ongoing development and delivery of the Retail Premises, it was recommended that the Board authorize increases to the following trade contracts totaling \$96.7 million, as follows: (i) within the existing \$1.966 billion project authorization amount, \$27.9 million to be allocated as required across the following trade contracts: ASM Mechanical Corp. (WTCR-W30-2011-3); F.W. Sims Inc. (WTCR-W30-2011-7); Five Star Electric Corp. (WTCR-W30-2011-1, WTCR-W30-2011-4 and WTCR-W30-2011-12); Pace Plumbing (WTCR-W30-2011-5); Rael Automatic Sprinkler (WTCR-W30-2011-6 and WTCR-W30-2011-11); Schneider

Electric (WTCR-W30-2011-2); PJ Mechanical/Delta Sheet Metal (WTCR-W30-2011-8); WDF, Inc. (WTCR-W30-2011-9 and WTCR-W30-2011-10); Navillus Contracting (WTCR-W30-2011-15); Eurotech Construction (WTCR-W30-2011-17); Empire City Iron Works (WTCR-W30-2011-16); Pabco Construction Corp. (WTCR-W30-2011-20); Spectrum Painting Contractors (WTCR-W30-2011-21); Port Morris Tile and Marble Corp. (WTCR-W30-2011-22); Gamma USA, Inc. (WTCR-W30-2011-19); Northbrook (WTCR-W30-2011-24); Cardella Trucking Co., Inc. (WTCR-W30-2011-13); and T.B. Penick & Sons, Inc. (WTCR-W30-2011-29); (ii) within the \$93.6 million recommended increase in the re-authorized project amount, \$16.8 million to be allocated as required across the following trade contracts: ASM Mechanical Corp. (WTCR-W30-2011-3); F.W. Sims Inc. (WTCR-W30-2011-7); Five Star Electric Corp. (WTCR-W30-2011-1, WTCR-W30-2011-4 and WTCR-W30-2011-12); Pace Plumbing (WTCR-W30-2011-5); Rael Automatic Sprinkler (WTCR-W30-2011-6 and WTCR-W30-2011-11); Schneider Electric (WTCR-W30-2011-2); PJ Mechanical/Delta Sheet Metal (WTCR-W30-2011-8); WDF, Inc. (WTCR-W30-2011-9 and WTCR-W30-2011-10); Navillus Contracting (WTCR-W30-2011-15); Eurotech Construction (WTCR-W30-2011-17); Empire City Iron Works (WTCR-W30-2011-16); Pabco Construction Corp. (WTCR-W30-2011-20); Spectrum Painting Contractors (WTCR-W30-2011-21); Gamma USA, Inc. (WTCR-W30-2011-19); Northbrook (WTCR-W30-2011-24); Cardella Trucking Co., Inc. (WTCR-W30-2011-13); T.B. Penick & Sons, Inc. (WTCR-W30-2011-18); and Champion Metal and Glass Inc. (WTC-264.607); and (iii) \$58.5 million for any approved or instituted Owner Change Orders, to be fully funded by the Retail Net Lessee outside of the \$2.060 billion re-authorized project amount, and allocated across following trade contracts: Five Star Electric Corp. (WTCR-W30-2011-1); Rael Automatic Sprinkler (WTCR-W30-2011-11); Schneider Electric (WTCR-W30-2011-2); PJ Mechanical/Delta Sheet Metal (WTCR-W30-2011-8); WDF, Inc. (WTCR-W30-2011-9 and WTCR-W30-2011-10); Navillus Contracting (WTCR-W30-2011-15); Eurotech Construction (WTCR-W30-2011-17); Empire City Iron Works (WTCR-W30-2011-16); Pabco Construction Corp. (WTCR-W30-2011-20); Spectrum Painting Contractors (WTCR-W30-2011-21); Port Morris Tile and Marble Corp. (WTCR-W30-2011-22); Gamma USA, Inc. (WTCR-W30-2011-19); Northbrook (WTCR-W30-2011-24); Cardella Trucking Co., Inc. (WTCR-W30-2011-13); and T.B. Penick & Sons, Inc. (WTCR-W30-2011-18 and WTCR-W30-2011-29).

Pursuant to the foregoing report, the Board adopted the following resolution in executive session, with Commissioners Bagger, Lipper, Lynford, Pocino, Rosado, Schuber and Steiner voting in favor; Commissioners Moerdler, Rechler, Samson and Sartor 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 project to design and construct the World Trade Center Retail (WTC) Premises, at an estimated total project cost of approximately \$2.06 billion, be and it hereby is re-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 the amounts of existing construction and related contracts necessary to effectuate the foregoing project, consistent with the terms outlined to the Board; 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, 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 shall be subject to the approval of General Counsel or his authorized representative.

**ONE WORLD TRADE CENTER – RETENTION OF FOUR TIMES SQUARE ASSOCIATES, LLC FOR THE MARKETING AND LEASING OF CERTAIN OFFICE SPACE AT 4 TIMES SQUARE**

It was recommended that the Board authorize the Executive Director to enter into an agreement (Agreement) with Four Times Square Associates, LLC (4TS Landlord), the owner of 4 Times Square (4TS) in New York City and an affiliate of The Durst Organization (Durst), for the marketing and leasing of certain commercial office space at 4TS.

At its meeting of May 25, 2011, the Committee on Operations, acting for and on behalf of the Board pursuant to delegated authority, authorized the Port Authority to enter into a lease agreement with Advance Magazine Publishers, Inc. d/b/a/ Condé Nast (Condé) for office space at One World Trade Center (One WTC). As part of that agreement, the Port Authority entered into a lease takeover agreement with Condé, pursuant to which the Port Authority would be responsible for the rental obligation and for performing certain other financial obligations under Condé's existing lease at 4TS (consisting of approximately 842,000 rentable square feet under current measurement standards), with 4TS Landlord, an affiliate of Durst, for the balance of Condé's 4TS lease, which expires on April 30, 2019.

4TS Landlord, as owner of 4TS, is in the best position to assist the Port Authority in the lease-up of the 4TS space covered under the lease takeover agreement. Under the proposed Agreement, 4TS Landlord would seek to enter into direct leases with replacement tenants for Condé's 4TS premises. Unless otherwise approved by the Port Authority, replacement leases must be for at least a 10-year term, with a rent commencement date on or before June 1, 2016. 4TS Landlord would fund all capital expenditures associated with each executed replacement lease (i.e., commissions, tenant improvement allowances, demolition, and marketing) and would recover such expenditures on an amortized basis over the term of such replacement lease. No brokerage commissions payable to 4TS Landlord or any other Durst affiliate would be included in the amortized costs. The Agreement would provide for the Port Authority and 4TS Landlord to share the net income from replacement leases, after deducting amortization for capital costs, as noted above. The Agreement would require that replacement leases treat the Port Authority and 4TS Landlord in a neutral fashion.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bagger, Lipper, Lynford, Moerdler, Pocino, Rechler, Rosado, Samson, Sartor, 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 enter into an agreement with Four Times Square Associates, LLC, an affiliate of The Durst Organization, to assist the Port Authority in meeting its obligations in connection with the marketing and leasing of Advance Magazine Publishers, Inc. d/b/a/ Condé Nast's existing commercial office space at 4 Times Square; 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 any other contracts and agreements and take such other actions as may be necessary or appropriate to effectuate the foregoing; 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.

**CONFIDENTIAL ITEM**

The Board took action in executive session on a security matter that shall remain confidential until such time as its publication is determined not to endanger the public interest.

Whereupon, the meeting was adjourned.

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Secretary