

## ECONOMIC DEVELOPMENT FUND AGREEMENT

THIS ECONOMIC DEVELOPMENT FUND AGREEMENT (this "Agreement") is made this 18<sup>th</sup> day of MARCH, 2011 between MONTGOMERY COUNTY, MARYLAND (the "County"), and WHEATON PLAZA REGIONAL SHOPPING CENTER, LLP, a Maryland limited liability partnership (the "Recipient").

### RECITALS

A. The purpose of this Agreement is to set forth the agreement of Recipient and the County with respect to the application of Four Million Dollars (\$4,000,000) from the Economic Development Fund or other appropriate funding sources (the "Funds" or "Conditional Grant"), repayment or other disposition of the Funds from the Economic Development Fund, and Recipient's commitment to the construction and operation of a building in the Westfield Wheaton Mall (the "Center" or "Project") that will include a Costco membership warehouse store or a similar type retail operation (the "Costco Store"). The building will contain up to a 240,000 square foot but not less than a 148,000 square foot Costco Store. It will be constructed at the approximate location of the Hecht's Department Store at the Center (the "Project Site").

B. Revitalizing underserved communities in Montgomery County is a matter of high priority to the County. Recipient owns the site where the Project will be located. Subject to the terms of this Agreement, Recipient shall cause an investment of approximately \$50 million (inclusive of the amount of the Funds) to be expended to complete the Project, including acquisition costs for the former Hecht's Department Store.

C. The County has pursuant to Emergency Bill No. 19-95 created the Economic Development Fund, the primary purpose of which is to assist private employers who are located or planning to locate or substantially expand operations in Montgomery County.

D. The County has, pursuant to Executive Regulation 47-95, § 5(d), provided that the County Executive must notify and obtain comment from the County Council for any Economic Development Fund assistance valued at more than One Hundred Thousand Dollars (\$100,000).

E. The County by providing assistance pursuant to this Agreement intends to materially improve the County's economy and advance County economic development objectives.

F. Recipient has been determined by the County to be eligible to receive funds from the County's Economic Development Fund or other appropriate funding sources.

NOW THEREFORE, the parties in consideration of their respective obligations and undertakings hereinafter set forth agree as follows:

1. Subject to the provisions in **Exhibit A** of this Agreement ("Exhibit A") and **Exhibit B** of this Agreement ("Exhibit B"), and satisfaction by the County of its obligations as set forth herein, in order to be eligible for the grant or conditional loan hereunder, Recipient will cause the opening of the Project for business which will include not less than the opening of the Costco Store by November 30, 2015 (the "Opening Date").

2. The County agrees to disburse from the Economic Development Fund or other appropriate funding sources to Recipient the sum of Four Million Dollars (\$4,000,000), subject to the appropriations and conditions set forth herein, in two (2) separate disbursements. The entirety of the disbursed funds is to be used only for the acquisition of the Project Site and construction of the Project and for no other purpose. The disbursement conditions are contained

in Exhibit A and the conditions upon which the Conditional Grant will convert to a loan and be repayable to the County are contained in Exhibit B.

3. **Appropriation of Funds:** The Funds have yet to be appropriated by the County Council and the County's obligation to make any payments under this Agreement shall only arise following the appropriation of the Funds by the County Council. It is the responsibility of the County Executive to submit a request to the County Council to appropriate the Funds. The County will confirm in writing to Recipient that Two Million Dollars (\$2,000,000) has been appropriated and encumbered within ten (10) days of its occurrence during the County's fiscal year 2012, and that the additional Two Million Dollars (\$2,000,000) has been appropriated and encumbered in the County's fiscal year 2013 for a total of Four Million Dollars (\$4,000,000) over these two fiscal years. Furthermore, once appropriated and encumbered the Funds will be available to Recipient, upon Recipient satisfying the disbursement conditions. If the County fails to provide the notice required under this section for a total of Four Million Dollars (\$4,000,000) by August 15, 2013, the Opening Date shall be extended on a day-for-day basis beyond November 30, 2015, for every day after August 15, 2013, that the Funds are not appropriated.

4. Upon request by the County, Recipient agrees to provide the County with evidence of the use of the Funds as provided hereunder for the purposes stated in paragraph 2 above.

5. The County, subject to appropriation of the Funds by the County Council as contemplated in Section 3 above, agrees to disburse from the Economic Development Fund or other appropriate funding source the Funds to Recipient in the following manner: Montgomery County Department of Economic Development will process a request for (i) the first disbursement from the Economic Development Fund in the amount of Two Million Dollars (\$2,000,000) within twenty (20) working days of Recipient's satisfaction of the conditions for the first disbursement as set forth in **Exhibit A**, but provided that the Funds shall not be disbursed prior to October 15, 2011; and (ii) the second disbursement from the Economic Development Fund in the amount of Two Million Dollars (\$2,000,000) within twenty (20) working days of Recipient's satisfaction of the conditions for the second disbursement, as set forth in **Exhibit A**, but provided that the Funds shall not be disbursed prior to August 15, 2012.

6. Recipient agrees that if any portion of the Conditional Grant is required to be repaid as a loan as provided in Exhibit B attached hereto and incorporated herein, payments of such loan are to be paid in quarterly installments (unless otherwise provided in Exhibit B) on the 15<sup>th</sup> of the month in which due. Payments made after the 25<sup>th</sup> of the month in which they are due are subject to a five percent (5%) late charge. Unless otherwise directed by the Director of the Department of Finance, all payments to the County are to be delivered to the Director, Montgomery County Department of Finance, 101 Monroe Street, Suite 1500, Rockville, Maryland 20850. Payments must be made by check payable to Montgomery County, Maryland.

7. Recipient may sell, transfer, assign or otherwise convey the Center, a majority of the Center property or Center assets, or transfer, or assign or otherwise convey a majority of Recipient's partnership interest or controlling or managing interest at any time during the term of this Agreement, provided however that the purchaser, transferee, assignee or other successor-in-interest to Recipient to be eligible to succeed to Recipient's rights under this Agreement must (i) in the reasonable judgment of the County demonstrate that it is financially capable of fulfilling all of Recipient's obligations and (ii) execute an assignment of this Agreement in form and substance reasonably satisfactory to the County obligating it to fulfill all of Recipient's obligations and duties. Upon such occurrence, Recipient shall be relieved of all of the terms, conditions and obligations to be performed by Recipient hereunder; but not otherwise.

8. This Agreement shall expire, in the absence of any default or breach of the terms hereof, (i) upon satisfaction of the conditions contained in paragraph 2. of Exhibit B

“Performance Conditions”, or (ii) repayment by Recipient of the Funds or Conditional Grant in accordance with paragraph 3. of Exhibit B “Conversion of the Conditional Grant to a Loan”. In addition, if Recipient fails to satisfy the conditions set forth in paragraph 1. of Exhibit A, on or before the 15<sup>th</sup> day of August, 2012, this Agreement will automatically expire and the County will have no obligation to make any disbursement to Recipient from the Economic Development Fund.

9. Recipient indemnifies and holds the County harmless from any claims, costs, liabilities, judgments or damages, including but not limited to reasonable attorney fees, arising out of or related to Recipient’s business at the Center and the development and construction of the Project.

10. The Recitals are incorporated herein.

11. This Agreement, together with Exhibits A and B constitute the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter of this Agreement. Any waiver, amendment, or modification of any provision of this Agreement must be in writing and signed by both parties.

12. Any notices required to be provided under this Agreement shall be sent by certified or registered mail, return receipt requested, or by recognized overnight delivery service, receipt requested, to the respective parties at the following addresses, and any such notice shall be deemed delivered upon receipt or refusal thereof:

If to the County:

Attn: Director, Department of Economic Development  
Montgomery County Government  
111 Rockville Pike Suite 800  
Rockville, MD 20850

and, in the case of any alleged breach or default of this Agreement by the County, with a copy to:

Attn: County Attorney  
Office of the County Attorney  
101 Monroe Street  
Third Floor  
Rockville, MD 20850

If to the Developer or Developer:

Attn: Jim Agliata  
Westfield, LLC  
11601 Wilshire Boulevard, 12th Floor  
Los Angeles, CA 90025-1748

with a copy to:

Office of Legal Counsel  
Westfield, LLC  
11601 Wilshire Boulevard, 12th Floor  
Los Angeles, CA 90025-1748

and to:

Devin John Doolan, Esq.  
Furey, Doolan & Abell, LLP  
8401 Connecticut Avenue, Suite 1100  
Chevy Chase, MD 20815

*(Signatures are on the following page)*

IN WITNESS WHEREOF, this ECONOMIC DEVELOPMENT FUND AGREEMENT is executed by the parties as of the above-written date.

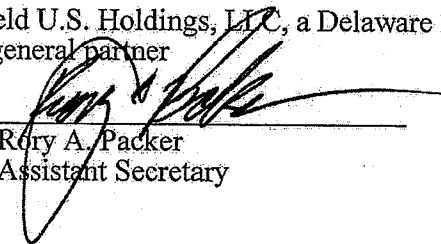
**RECIPIENT:**

Wheaton Plaza Regional Shopping Center, LLP, a Maryland limited liability partnership

By: Wheaton Plaza No. 1 LLC, a Delaware limited liability company,  
its managing partner;

By: Westfield America Limited Partnership, a Delaware limited partnership,  
its sole member;

By: Westfield U.S. Holdings, LLC, a Delaware limited liability company,  
its general partner

By:   
Rory A. Packer  
Assistant Secretary

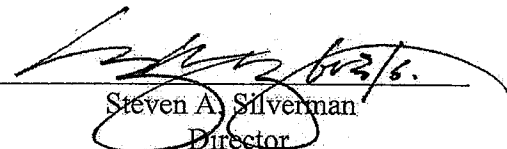
Date: 3/18/2011

*(Signatures continue on following page)*

**MONTGOMERY COUNTY, MARYLAND:**

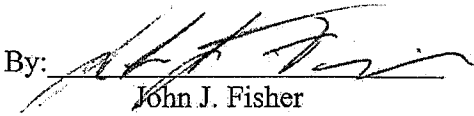
By:   
Isiah Leggett  
County Executive

Date: 3/8/11

Recommended by:   
Steven A. Silverman  
Director  
Department of Economic Development

3/3/11  
Date

Approved as to form and legality  
Office of the County Attorney

By:   
John J. Fisher  
Associate County Attorney

2/29/11  
Date

ECONOMIC DEVELOPMENT FUND AGREEMENT  
BETWEEN MONTGOMERY COUNTY AND WHEATON PLAZA REGIONAL SHOPPING  
CENTER, LLP

Exhibit A

1. Grant Disbursement Conditions: The Conditional Grant will be disbursed to Recipient in two phases over two years, with the first disbursement of \$2 million to be issued after October 15, 2011, upon submission of the following documentation to the Department of Economic Development (DED) in form and substance reasonably satisfactory to the County:

- A final Project budget for expenditures of not less than \$50 million for the Project (including the County's \$4 million) by Recipient including acquisition costs for the former Hecht's Department Store of not less than \$10,740,289.00. The budget shall include all direct and indirect hard and soft costs to be incurred by Recipient (including costs incurred by Recipient's affiliates for plans and supervision of the Project and related matters) (the "Minimum Recipient Investment") and a schedule identifying milestones and the projected length of time required to complete the construction of the Project.
- Evidence that (i) construction has commenced on the Project (evidenced by issuance of a building permit); (ii) evidence that Recipient has executed a construction contract with a general contractor or a certification from Recipient that it is acting as general contractor.
- Recipient's commitment to make commercially reasonable efforts to procure approximately \$7 million of prime or sub-contracting work from vendors located in Montgomery County for the Project.
- A copy of Recipient's registered articles of incorporation and corporate bylaws.
- Developer and Costco will send written confirmation to the County certifying that a lease with Costco Wholesale Corporation has been executed and which confirms the lease is for a term which is not less than 10 years.

The second disbursement of \$2 million will occur after August 15, 2012 when Recipient provides DED evidence of the following in form and substance reasonably satisfactory to the County:

- Proof that a use and occupancy permit has been issued for the Costco Store.
- Proof that Recipient has designated an area in the enclosed mall (the Center) near the entrance to the Costco Store, where small businesses in the Wheaton CBD will be permitted to advertise their businesses (the "CBD Advertising Area") in accordance with criteria and guidelines to be determined by Recipient and approved by the County. The CBD Advertising Area shall be determined by Recipient (subject to County approval) and any such advertising shall be at the expense of each business desiring such advertising in accordance with the agreed-upon criteria and guidelines, including the permitted advertising medium and time such advertising may be displayed. In addition, the annual value of such marketing opportunities for the area small businesses shall be

not less than \$100,000 using comparable rates charged by paid advertising services which the parties hereto acknowledge without further evidence. This commitment is for a five (5) year period expiring on the fifth anniversary of the Opening Date.

- Recipient's agreement to be a sponsor for the Taste of Wheaton for a three (3) year period commencing on the Opening Date and expiring on the third anniversary of the Opening Date. The annual sponsorship payment must be at least \$10,000 per year (the "Taste Payment"), for a total three-year commitment of at least \$30,000.
- Recipient's agreement to be a sponsor for the Summer Concert Series located in the CBD of Wheaton for a 3-year period commencing on the Opening Date and expiring on the third anniversary of the Opening Date. The annual sponsorship payment must be at least \$20,000 per year (the "Concert Payment"), for a total three-year commitment of at least \$60,000.
- Recipient shall have reduced the rent for the premises leased to the County for the Montgomery County Wheaton Business Innovation Center located at 11002 Viers Mill Road. The rent reduction must be not less than \$62,500 for FY 11, and \$50,000 per year from FY12 through FY14 for a total of \$212,500 over four years.



ECONOMIC DEVELOPMENT FUND AGREEMENT  
BETWEEN MONTGOMERY COUNTY AND WHEATON PLAZA REGIONAL SHOPPING  
CENTER, LLP

Exhibit B

1. Performance Provisions: The County will permanently forgive Recipient's obligation to repay the Conditional Grant if all of the following conditions are satisfied:
  - Recipient has made the Minimum Recipient Investment for the Project and provided verification of such expenditures from an independent construction cost verifier, such as Rider Levett Bucknall Ltd;
  - Opening of the Costco Store has occurred by the Opening Date of November 30, 2015;
  - Recipient has procured (to the extent commercially reasonable) prime or sub-contracting work from the vendors located in Montgomery County for the Project for approximately \$7 million by the opening of the Costco Store.
  - The Costco Store remains continuously open from the Opening Date through the 10<sup>th</sup> anniversary of the Opening Date, subject to interruptions resulting from a force majeure or for a remodeling of the Costco Store.
  
2. Conversion of the Conditional Grant to a Loan: Under the following circumstances, all or a portion of the entire amount of the Conditional Grant, as provided below, will be converted to a loan. Interest shall be calculated at three percent (3%) per annum and shall accrue from the date of the first Conditional Grant disbursement. The repayment will be made in one lump sum, or in quarterly payments as a loan at three percent (3%) interest per annum for two (2) years.
  - If Recipient fails to cause the expenditures investment of \$50 million for the Project (including the County's \$4 million and Recipient's acquisition costs for the former Hecht's Department Store and hard and soft costs) by November 30, 2015, \$1 million of the Conditional Grant will (upon written demand from the County to Recipient) be converted to a loan and be paid back to the County in quarterly installments over two (2) years at three percent (3%) interest per annum as provided above.
  - If Recipient has not undertaken commercially reasonable efforts to procure approximately \$7 million of prime or sub-contracting work from the vendors located in Montgomery County by the opening of the Costco Store, \$1 million will (upon written demand from the County to Recipient) be converted to a loan and be paid back to the County in quarterly installments over two (2) years at three percent (3%) interest per annum as provided above.
  - If the Costco Store closes prior to the 5<sup>th</sup> anniversary of the Opening Date, \$400,000 of the Conditional Grant will (upon written demand from the County to Recipient) be converted to a loan for each year short of the 5<sup>th</sup> anniversary, up to a maximum of \$2 million of the Conditional Grant, and be paid back to the County in quarterly installments over two (2) years at three percent (3%) interest per annum as provided above.

- If the Costco Store remains open subsequent to the 5<sup>th</sup> anniversary of the Opening Date but less than the 10<sup>th</sup> anniversary of the Opening Date, \$200,000 of the Conditional Grant will (upon written demand from the County to Recipient) be converted to a loan for each year between the 5<sup>th</sup> anniversary and the 10<sup>th</sup> anniversary, up to a maximum of \$1 million, and be paid back to the County in quarterly installments over two (2) years at three percent (3%) interest per annum as provided above.
- Recipient shall provide a guaranty of repayment from Westfield America Limited Partnership (“WALP”) if the Conditional Grant or any part of the Conditional Grant is converted to a loan, in form and substance reasonably satisfactory to the County and a certification from a senior officer of WALP that it has unencumbered cash of not less than the principal amount of the loan; failure to do so within twenty (20) business days of demand from the County shall result in the full amount of the loan becoming immediately due and payable without further notice, action, or demand by the County.
- If Recipient fails to make the Taste Payment, part of the Conditional Grant will be converted to a loan on a dollar for dollar basis for every dollar short of the required Taste Payment and be paid back to the County within 60 days of written demand from the County.
- If Recipient fails to make the Concert Payment, part of the Conditional Grant will be converted to a loan on a dollar for dollar basis for every dollar short of the required Concert Payment and be paid back to the County within 60 days of written demand from the County.
- If Recipient fails to make available to small business in the Wheaton CBD, the CBD Advertising Area, part of the Conditional Grant will be converted to a loan on a dollar for dollar basis for every day the advertising is not made available and be paid back to the County within 60 days of written demand from the County.