

**AMENDMENT OF SEVERANCE LEASE (TOWER B)**

This Amendment of Severance Lease (Tower B) ("**Amendment**") is dated as of May 29, 2013, between **BATTERY PARK CITY AUTHORITY**, d/b/a The Hugh L. Carey Battery Park City Authority, a public benefit corporation under the laws of the State of New York, having an address at One World Financial Center, 24<sup>th</sup> Floor, New York, New York, 10281 ("**Landlord**") and **WFP TOWER B CO. L.P.**, a New York limited partnership, having an office c/o Brookfield Office Properties, 250 Vesey Street, 15th Floor, New York, New York 10281 ("**Tenant**").

**RECITALS**

A. Landlord, as landlord, and Olympia & York Battery Park Company, as tenant, entered into that certain Agreement of Severance Lease dated as of June 15, 1983, a memorandum of which lease was recorded in the Office of the Register of New York City (New York County) (the "**Register's Office**") on June 20, 1983, in Reel 696, at Page 495, which lease was assigned by Olympia & York Battery Park Company to Olympia & York Tower B Company ("**O&Y Tower B**") pursuant to that certain Assignment and Assumption of Severance Lease dated as of October 7, 1983, recorded in said Register's Office on October 7, 1983 in Reel 724 at Page 1258, and which lease was further assigned by WFC Tower B Company (f/k/a Olympia & York Tower B Company) to Tenant pursuant to that certain Assignment and Assumption of Severance Lease dated as of November 21, 1996, recorded in said Register's Office on November 27, 1996 in Reel 2396, Page 1897; and which lease was amended by: (a) unrecorded agreement, dated as of August 24, 1984, among Landlord, O&Y Tower B and Merrill Lynch & Co., Inc., which agreement is referred to in the recorded memorandum described in clause (b) below; (b) Amendment of Severance Lease, dated as of December 5, 1984, between Landlord and O&Y Tower B, a memorandum of which was recorded in said Register's Office on April 1, 1985, in Reel 892, at Page 1204; (c) unrecorded agreement dated July 12, 1985, among Landlord, O&Y Tower B and Bankers Trust Company as Collateral Agent, which agreement is referred to in the recorded memorandum described in clause (d) below; (d) Amendment of Severance Lease, between Landlord and O&Y Tower B, dated as of August 15, 1985, a memorandum of which was recorded in said Register's Office on May 19, 1986, in Reel 1065, Page 1548; (e) unrecorded agreement, dated as of January 30, 1987, among Landlord, O&Y Tower B and Bankers Trust Company as Collateral Agent, which agreement is referred to in the recorded memorandum described in clause (i) below; (f) unrecorded agreement, dated as of September 23, 1987, between Landlord, O&Y Tower B, Bankers Trust Company as Collateral Agent, Merrill Lynch & Co. Inc. and Merrill Lynch/WFC/L, Inc., which agreement is referred to in the recorded memorandum described in clause (i) below; (g) unrecorded agreement dated as of December 1987, between Landlord and O&Y Tower B, which agreement is referred to in the recorded memorandum described in clause (i) below; (h) unrecorded agreement, dated as of June 30, 1988, among Landlord and O&Y Tower B, as referred to in the recorded memorandum described in clause (i) below; (i) Amendment of Severance Lease, dated as of July 14, 1988 between Landlord and O&Y Tower B, a memorandum of which was recorded in said Register's Office on October 4, 1988 in Reel 1473, Page 2124, which memorandum also refers to the unrecorded agreements described in clauses (e), (f), (g) and (h) above; (j) unrecorded letter agreement dated December 14, 1988 between Banker's Trust Company as Collateral Agent,

Landlord and O&Y Tower B; (k) Amendment to Development Guidelines, dated as of February 29, 2012, made by and between Brookfield Properties One WFC Co. LLC, Tenant, WFP Tower D Co. L.P., American Express Company, Landlord, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch/WFC/L, Inc.; and (l) Amendment of Severance Lease (Tower B), dated as of June 29, 2012 (the “**MDT Severance Lease Amendment**”) made by and between Landlord and Tenant (as so assigned, amended and otherwise modified, the “**Original Lease**”), pursuant to which Landlord has leased to Tenant (i) the parcel of land known as Parcel B at the World Financial Center in Battery Park City, New York, New York, and (ii) the buildings and improvements constructed on said parcel of land (collectively, “**Building B**”);

B. American Express Company (“**Amex**”), together with its co-tenants, American Express Travel Related Services Company, Inc. (“**Amex Travel**”) and BFP Tower C Co. LLC (together with its successors and assigns, the “**BFP TIC Party**”) hold, as tenants-in-common, the interest of the tenant under that certain Agreement of Severance Lease dated as of June 15, 1983 between BPCA and O&Y with respect to Parcel C in the World Financial Center, as amended to date (as so amended, and as the same may hereafter be amended, supplemented, modified or replaced, subject to Article 18 of the Project Operating Agreement (as such term is defined in the Original Lease), the “**Tower C Severance Lease**”). Amex, Amex Travel and BFP TIC Party, collectively, together with their successors and assigns as tenant under the Tower C Severance Lease, are referred to herein as the “**Tower C Severance Lease Tenant**”;

C. WFP Tower D Co. L.P. (“**Tower D Co.**”) is the tenant (together with its successors and assigns in such capacity, the “**Tower D Severance Lease Tenant**”) under that certain Agreement of Severance Lease dated as of June 15, 1983 between BPCA and O&Y with respect to Parcel D in the World Financial Center, as amended to date (as so amended, and as the same may hereafter be amended, supplemented, modified or replaced, subject to Article 18 of the Project Operating Agreement, the “**Tower D Severance Lease**”);

D. Landlord, Tower D Co., Brookfield Financial Properties, L.P. (“**BFP**”), WFP Retail Co. L.P. (“**Retail Co.**”), and Merrill Lynch/WFC/L, Inc. (“**ML B Tenant**”), have entered into that certain Marketplace and Dining Terrace Agreement, dated as of June 29, 2012 (as the same may hereafter be amended, modified or supplemented, the “**Marketplace Agreement**”) to allow for the construction of the “Project” (as defined in the Marketplace Agreement and herein referred to as the “**Marketplace Project**”) which will include the construction of a dining and culinary shopping area on the street and upper lobby levels of Building B generally to the west of the Building B core. The Marketplace Project work has commenced and is currently in progress;

E. Simultaneously herewith, BFP, Landlord, Tenant, Tower B Co., Retail Co., Amex, ML B Tenant and Merrill Lynch, Pierce Fenner & Smith Incorporated are entering into a Retail Redevelopment Agreement (as the same may hereafter be amended, modified or supplemented, the “**Retail Redevelopment Agreement**”) to allow for the construction of the “Project” (as defined in the Retail Redevelopment Agreement and herein referred to as the “**Retail Redevelopment Project**”) which will include the reconfiguring, reconstruction of, and addition to existing retail space adjacent to or in the general vicinity of the Winter Garden and Courtyard (as such terms are defined in the Project Operating Agreement) for the purpose of creating an improved retail environment, including creating in areas to the east and west of the Courtyard a two-story retail destination with enclosed glass fronts;

F. Landlord and Tenant desire to supersede the MDT Severance Lease Amendment in its entirety such that the provisions thereof shall be of no further force and effect;

G. Landlord and Tenant acknowledge that certain modifications to the terms and conditions of the Original Lease relating to the calculation, reporting and payment of Retail Rent as set forth herein are expected to benefit each of Landlord and Tenant;

H. Landlord and Tenant desire to change the Retail Use Allocation and the Additional Retail Use Allocation in the Buildings in connection with the Project; and

I. In order to effectuate the foregoing, Landlord and Tenant now desire to further amend the Original Lease as more particularly set forth in this Amendment.

**ACCORDINGLY**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Capitalized Terms/Definitions.** All capitalized terms used in this Amendment which are not otherwise defined herein shall have the meanings ascribed to them in the Original Lease. The following definitions are hereby added to Article I of the Original Lease:

(a) **“Additional Basic Retail Rent Amount”** shall mean One Dollar (\$1.00), *provided, however*, if the Project is commenced and the Project Work is substantially completed, then (i) on the first day of the first month following the fifth (5th) anniversary of the Retail Rent Credit Commencement Date, such amount shall increase to Two Dollars (\$2.00); (ii) on the first day of the first month following the tenth (10th) anniversary of the Retail Rent Credit Commencement Date, such amount shall increase to Three Dollars (\$3.00); and (iv) on the first day of the first month following the Retail Rent Credit End Date, such amount shall increase to Four Dollars (\$4.00).

(b) **“Aggregate Retail Rent Credit”** shall mean, subject to Section 3.05(e), for any Fiscal Year, an amount equal to (i) the Applicable Retail Percentage for such Fiscal Year, *multiplied by* (ii) the Amortized Amount for such Fiscal Year.

(c) **“Amortized Amount”** shall mean, subject to proration as set forth in the following three sentences, (i) in each Fiscal Year prior to the Fiscal Year in which Tenant has delivered Tenant’s Secondary Notice, an amount equal to the Initial Amortized Amount and (ii) in any other Fiscal Year, an amount equal to the sum of the Initial Amortized Amount and the Secondary Amortized Amount, if any. If the Retail Rent Credit Commencement Date shall occur on a date other than the first day of a Fiscal Year, then for the Fiscal Year in which the Retail Rent Credit Commencement Date occurs, the Amortized Amount shall be the amount set forth in clause (i) above, multiplied by a fraction the numerator of which is the number of months remaining in such Fiscal Year (from and including the month in which the Retail Rent Credit Commencement Date occurs) and the denominator of which is twelve (12). If the date Tenant’s Secondary Notice is delivered shall occur on a date other than the first day of a Fiscal Year, then for the Fiscal Year in which the Tenant’s Secondary Notice is delivered, the Amortized Amount shall be the amount set forth in clause (i) above *plus* the product



of the Secondary Amortized Amount multiplied by a fraction the numerator of which is the number of months remaining in such Fiscal Year (from and including the month in which the Tenant's Secondary Notice is delivered) and the denominator of which is twelve (12). If the Retail Rent Credit End Date shall occur on a date other than the last day of a Fiscal Year, then for the Fiscal Year in which the Retail Rent Credit End Date occurs, the Amortized Amount shall be the amount set forth in clause (ii) above, multiplied by a fraction the numerator of which is the number of months elapsed in such Fiscal Year (prior to but excluding the month in which the Retail Rent Credit End Date occurs) and the denominator of which is twelve (12).

(d) **"Applicable Retail Percentage"** shall mean, subject to Section 3.05(e), for any Fiscal Year, a percentage obtained by dividing (i) the sum of (1) the Retail Percentage Rent for such Fiscal Year (calculated, for the purpose of this definition, without taking into account any deductions to be taken pursuant to Section 3.05(g) of the Lease) *plus* (2) the "Retail Percentage Rent" (as such term is defined in the Tower C Severance Lease) for such Fiscal Year (calculated, for the purpose of this definition, without taking into account any deductions to be taken pursuant to Section 3.05(g) of the Tower C Severance Lease), but only to the extent that any such "Retail Percentage Rent" is derived from space that is BFP Tower C Co.'s (or its successors and assigns) "Space" (as such term is defined in the Restated and Amended Agreement of Tenants-In Common by and among American Express Company, American Express Bank Ltd. (formerly known as American Express International Banking Corporation), American Express Travel Related Services Company, Inc., Lehman Brothers Inc., Lehman Government Securities, Inc. and Lehman Commercial Paper Incorporated dated as of May 7, 1994, as the same has been or hereafter may be amended; such Space being referred to herein as the **"BFP Tower C Space"**) *plus* (3) the "Retail Percentage Rent" (as such term is defined in the Tower D Severance Lease) for such Fiscal Year (calculated, for the purpose of this definition, without taking into account any deductions to be taken pursuant to Section 3.05(g) of the Tower D Severance Lease) by (ii) the sum of (1) the Gross Retail Revenue used to calculate the Retail Percentage Rent for such Fiscal Year, (2) the "Gross Retail Revenue" (as such term is defined in the Tower C Severance Lease) used to calculate the "Retail Percentage Rent" (as such term is defined in the Tower C Severance Lease) for such Fiscal Year, but only to the extent that any such "Gross Retail Revenue" is derived from space that is BFP Tower C Space, and (3) "Gross Retail Revenue" (as such term is defined in the Tower D Severance Lease) used to calculate the "Retail Percentage Rent" (as such term is defined in the Tower D Severance Lease) for such Fiscal Year. In no event shall the Applicable Retail Percentage ever be less than ten percent (10%).

(e) **"BFP TIC Party"** shall have the meaning ascribed to such term in Recital B of the RRP Amendment of Severance Lease (Tower B).

(f) **"Dining Terrace"** shall mean the upper lobby level of the dining and culinary shopping area to be constructed in the Buildings, generally to the west of the Buildings' core.



(g) **“Follow-Up Trigger Notice”** shall have the meaning ascribed to such term in Section 7(a) of the RRP Amendment of Severance Lease (Tower B).

(h) **“Initial Additional Basic Retail Rent Increase Date”** shall mean July 1, 2012.

(i) **“Initial Amortized Amount”** shall mean (i) the lesser of (x) the amount of all Project Costs incurred (whether or not then paid) on or prior to the Trigger Date (as reported by Tenant in the Trigger Notice, but subject to Landlord’s dispute rights as described in Section 7(a) of the RRP Amendment of Severance Lease (Tower B)), and (y) One Hundred Seventy-Three Million Dollars (\$173,000,000) *divided by* (ii) fifteen (15).

(j) **“Marketplace Agreement”** shall have the meaning ascribed to such term in Recital D of the RRP Amendment of Severance Lease (Tower B).

(k) **“Parcel B Retail Rent Credit”** shall mean, subject to Section 3.05(e), for any Fiscal Year, an amount equal to (i) the Aggregate Retail Rent Credit for such Fiscal Year, *multiplied by* (ii) the Project Costs Percentage for such Fiscal Year; *provided, however,* that the Parcel B Retail Rent Credit calculated as set forth above in any Fiscal Year may be increased (or not applied in whole or in part) as provided in Section 3.05(h) of the Lease.

(l) **“Project”** shall mean, collectively, (i) “Project,” as defined in the Marketplace Agreement and (ii) “Project,” as defined in the Retail Redevelopment Agreement.

(m) **“Project Costs”** shall mean the costs incurred by Tenant, the BFP TIC Party, the Tower D Severance Lease Tenant or any of their respective Affiliates, including Retail Co. and BFP, in connection with (i) the Project Work, (ii) the initial design and installation of fixtures, machinery, appurtenances, art works, decoration, furniture and furnishings within the Project Space (and other areas of the Premises providing support to the Project Space operations) and the initial equipping thereof, (iii) buying-out third party subtenants (including amounts paid to such third party subtenants for such purposes prior to the date hereof) from space to be utilized in connection with the Project in order that such space be available for use in the Project, (iv) relocating any existing use of space that (A) the Project Work is to occur in, (B) cannot be properly used in order for the Project Work to proceed or (C) needs to be moved to allow (x) the Project Space to become available for retail use or (y) other areas of the Parcels providing support to the Project Space operations to become available to provide such support, including, without limitation, the cost of preparing, fitting out, equipping and furnishing any temporary or permanent space in any of the Parcels that the use and user of such space will be temporarily or permanently relocated to, and (v) the initial leasing to third party subtenants of any of the rentable space in the Project Space (including kiosks) and/or the entering into an agreement with an operator to operate the same, including, without limitation, brokerage commissions (third party and, if applicable and the commissions are reasonable and customary, affiliated leasing agents) and work

allowances. "Project Costs" shall include all amounts to be paid under construction contracts, fees and expenses for architects, engineers, consultants and construction managers, the costs of any SEQRA Review (including, but not limited to, the fees of environmental counsel and consultants), the costs of obtaining all licenses, permits and approvals, including governmental approvals, costs of demolition, environmental testing and remediation costs, if applicable, costs of insurance and bonding (or the equivalent, such as the cost of a 'Subguard' policy), general conditions costs and indemnification payments and other liabilities (including, without limitation, those arising out of claims for damage to property or injury or death to person) which may arise out of the Project Work. "Project Costs" shall also include (W) amounts paid by the BFP TIC Party (or any of its Affiliates) to American Express Company (or any of its Affiliates) to pay for, or to reimburse American Express Company (or any of its Affiliates) for, all or a portion of the costs incurred by American Express Company (or any of its Affiliates) with respect to space in Parcel C, which costs, if the same had been incurred directly by the BFP TIC Party, would have constituted "Project Costs" hereunder, (X) all reasonably incurred out-of-pocket costs and expenses incurred by Tenant, the BFP TIC Party, the Tower D Severance Lease Tenant and/or any of their respective Affiliates, including Retail Co. and BFP, in performing the Project Work and complying with the Marketplace Agreement and the Retail Redevelopment Agreement, including, without limitation, reasonably incurred travel expenses and printing and copying expenses and (Y) without limiting the generality of the foregoing, (1) base salary paid to on-site employees of Tenant, the BFP TIC Party, the Tower D Severance Lease Tenant and/or any of their respective Affiliates, including Retail Co. and BFP, working on the Project, and (2) base salary paid to off-site employees (below the level of senior vice president) of Tenant, the BFP TIC Party, the Tower D Severance Lease Tenant and/or any of their respective Affiliates, including Retail Co. or BFP, working on matters related to the Project. The definition of "Project Costs" does not include marketing activities substantially similar to those described in the marketing plan previously provided by Tenant to Landlord and other marketing activities in connection with the Project, or any development fees, it being acknowledged and agreed that, without limiting clauses (X) and (Y) above, no development fee will be owed to Tenant, the BFP TIC Party, the Tower D Severance Lease Tenant or any of their respective Affiliates, including Retail Co. and BFP, in connection with the Project. For the avoidance of doubt, the definition of "Project Costs" shall include all Project Costs, as defined above, incurred prior to the date of the RRP Amendment of Severance Lease (Tower B).

(n) **"Project Costs Percentage"** shall mean

(i) with respect to each Fiscal Year prior to the Fiscal Year in which Tenant's Secondary Notice is delivered, (x) the portion of the Project Costs set forth in the Trigger Notice that are incurred with respect to space in Building B, *divided by* (y) the aggregate Project Costs set forth in the Trigger Notice, and

(ii) with respect to the Fiscal Year in which Tenant's Secondary Notice is delivered and all subsequent Fiscal Years, (x) (A) the amount set forth in clause (i)(x) above *plus* (B) the portion of the Project Costs set forth in

Tenant's Secondary Notice that are incurred with respect to space in Building B, *divided by* (y) (A) the amount set forth in clause (i)(y) above *plus* (B) the aggregate Project Costs set forth in Tenant's Secondary Notice.

If any portion of the Project Costs referenced above are timely disputed by Landlord, in accordance with Section 7 of the RRP Amendment of Severance Lease (Tower B), and, as a result of such dispute, it is finally determined (whether by agreement of the parties or by arbitration) that such amount should not be included in the aggregate Project Costs and/or should not be included as Project Costs incurred with respect to space in Building B, then the Project Costs Percentage shall be recalculated based on such final determination.

(o) **"Project Space"** shall mean all of the retail space (including restaurant space) in Parcel B, Parcel D and the BFP Tower C Space that will exist after completion of the Project Work, including the space in Parcel B referred to as the "Marketplace" and the "Dining Terrace" in the Marketplace Agreement. Notwithstanding the foregoing, the term "Project Space" shall not include any of the street level space in Parcel B currently leased to ML B Tenant and used as a gym or fitness center or for related uses.

(p) **"Project Work"** shall mean, collectively, (i) the "Project Work," as defined in the Marketplace Agreement and (ii) the "Project Work," as defined in the Retail Redevelopment Agreement.

(q) **"RRP Amendment of Severance Lease (Tower B)"** shall mean that certain Amendment of Severance Lease (Tower B) dated as of May 29, 2013 by and between Landlord and Tenant.

(r) **"Retail Co."** shall have the meaning ascribed to such term in Recital D to the RRP Amendment of Severance Lease (Tower B).

(s) **"Retail Redevelopment Agreement"** shall have the meaning ascribed to such term in Recital E to the RRP Amendment of Severance Lease (Tower B).

(t) **"Retail Rent Credit Commencement Date"** shall mean the date of the delivery of the Trigger Notice.

(u) **"Retail Rent Credit End Date"** shall mean the date that is the fifteenth (15<sup>th</sup>) anniversary of the Retail Rent Credit Commencement Date.

(v) **"Secondary Amortized Amount"** shall mean (i) the amount of all Project Costs incurred (whether or not then paid) prior to the date that is eighteen (18) months after the Trigger Date (as reported by Tenant in Tenant's Secondary Notice, but subject to Landlord's dispute rights as described in Section 7(b) of the RRP Amendment of Severance Lease (Tower B)); *provided, however*, that with respect to Project Costs incurred prior to the Trigger Date, such Project Costs shall only be included in the Secondary Amortized Amount if and to the extent such Project Costs were not previously



included in the Initial Amortized Amount, *provided, further*, that the amount of Project Costs to be included in the Secondary Amortized Amount, when taken together with the amount of Project Costs included in the Initial Amortized Amount, shall not exceed One Hundred Seventy-Three Million Dollars (\$173,000,000) *divided by* (ii) the number of years (or portion thereof) from and including the entire month in which Tenant's Secondary Notice is delivered through but excluding the month in which the Retail Rent Credit End Date occurs. As an example of how the above clause (ii) would be applied, if the Retail Rent Credit Commencement Date was August 10, 2013, the Retail Rent Credit End Date was August 10, 2028 and the Tenant's Secondary Notice was delivered on March 5, 2015, then the above clause (ii) amount would be 13 and 5/12 years, which represents the number of months and years from and including March 2015 through and including July 2028.

(w) **"Tenant's Follow-Up Secondary Notice"** shall have the meaning ascribed to such term in Section 7(b) of the RRP Amendment of Severance Lease (Tower B).

(x) **"Tenant's Secondary Notice"** shall have the meaning ascribed to such term in Section 7(b) of the RRP Amendment of Severance Lease (Tower B).

(y) **"Tower D Severance Lease"** shall have the meaning ascribed to such term in Recital C of the RRP Amendment of Severance Lease (Tower B).

(z) **"Tower D Severance Lease Tenant"** shall have the meaning ascribed to such term in Recital C of the RRP Amendment of Severance Lease (Tower B).

(aa) **"Tower C Severance Lease"** shall have the meaning ascribed to such term in Recital B of the RRP Amendment of Severance Lease (Tower B).

(bb) **"Tower C Severance Lease Tenant"** shall have the meaning ascribed to such term in Recital B of the RRP Amendment of Severance Lease (Tower B).

(cc) **"Trigger Date"** shall mean the date on which at least fifty percent (50%) of the Net Rentable Square Footage of the Project Space collectively available to be leased to third parties has been leased to third parties and opened for business to the general public. When the Trigger Date has occurred, Tenant, or BFP on Tenant's behalf, shall promptly notify Landlord in writing (the **"Trigger Notice"**) that the Trigger Date has occurred.

(dd) **"Trigger Notice"** shall have the meaning ascribed to such term in the definition of "Trigger Date" above.

2. **Change to Fiscal Year Definition.** Section 1.49 "Fiscal Year" of the Original Lease is hereby amended by adding the following at the end thereof:

"Notwithstanding anything to the contrary contained in this definition, solely for purposes of calculating and reporting the Retail Percentage Rent (including Gross Retail Revenue), the Aggregate Retail Rent Credit and

the Parcel B Retail Rent Credit, the term "Fiscal Year" shall mean a calendar year and the foregoing shall not be subject to change, except by agreement of Landlord and Tenant; provided, however, the foregoing shall not affect the selection of a different twelve (12) month period as a "Fiscal Year" for any other purposes under this Lease. In furtherance of the foregoing, it is understood and agreed that where, pursuant to Sections 3.05(a), 3.05(e) and 3.05(h), the amount of Retail Percentage Rent in any Fiscal Year is compared to the amount of Basic Retail Rent in such Fiscal Year, the amount of Basic Retail Rent shall be determined using the calendar year, but the foregoing shall not affect any date of increase of such Basic Retail Rent pursuant to Section 3.05(c)."

3. Intentionally Omitted.

4. Retail Percentage Rent. Subclause (y) of clause (i) of Section 3.05(a) of the Original Lease is hereby deleted in its entirety and replaced with the following:

"(y) (I) ten percent (10%) of the Gross Retail Revenue from each Sublease of Retail space up to and including Forty Dollars (\$40) of Gross Retail Revenue per Net Rentable Square Foot under each such Sublease, *plus* (II) thirteen and one-half percent (13-1/2%) of the Gross Retail Revenue from each Sublease in excess of Forty Dollars (\$40) of Gross Retail Revenue per Net Rentable Square Foot; provided, however, that from and after the Retail Rent Credit Commencement Date, this subclause (II) shall only apply to Gross Retail Revenue from (A) each Sublease of space in the Dining Terrace (up to a maximum of 12,000 Net Rentable Square Feet, in the aggregate, of Sublease space in the Dining Terrace) in excess of Forty Dollars (\$40) up to and including Two Hundred Fifty Dollars (\$250) of Gross Retail Revenue per Net Rentable Square Foot (Gross Retail Revenue to which this subclause (II)(A) applies being sometimes referred to herein as "**Dining Terrace Gross Retail Revenue**") and (B) all other Subleases of Retail space in the Buildings (including Gross Retail Revenue from any Sublease space in the Dining Terrace that Tenant cannot include in calculating Dining Terrace Gross Retail Revenue) in excess of Forty Dollars (\$40) up to and including One Hundred Fifty Dollars (\$150) of Gross Retail Revenue per Net Rentable Square Foot, *plus* (III) from and after the Retail Rent Credit Commencement Date only, fifteen and one-half percent (15-1/2%) of the Gross Retail Revenue from (A) each Sublease of space in the Dining Terrace (to the extent such Sublease space generated Dining Terrace Gross Retail Revenue) in excess of Two Hundred Fifty Dollars (\$250) of Gross Retail Revenue per Net Rentable Square Foot and (B) all other Subleases in the Buildings (i.e., all Subleases of Retail space not included in the Dining Terrace or (to the extent such Sublease space did not generate Dining Terrace Gross Retail Revenue) included in the Dining Terrace) in excess of One Hundred Fifty Dollars (\$150) of Gross Retail Revenue per Net Rentable Square Foot (as the same may be adjusted pursuant to Sections 3.05(g) and 3.05(h) of the

Lease, the "Retail Percentage Rent"); by way of clarification and for the avoidance of doubt, the calculation of Retail Percentage Rent may be represented as the following formula (provided, however, that the above provisions of subclause (y) shall be definitive in case of conflict):

(I) 10% of the Gross Retail Revenue ("GRR") from each Sublease up to \$40 of GRR per Net Rentable Square Foot ("NRSF");

(II) *plus* 13.5% of the portion of GRR, if any, between \$40 and the amount set forth in subclause (a) or (b) of this clause (II) below, as applicable:

a. \$250 GRR per NRSF, up to a maximum amount of 12,000 NRSF, in the Dining Terrace; and

b. \$150 GRR per NRSF, in (x) the Dining Terrace NRSF not included in (II)(a), and (y) all other Sublease Retail space in the Buildings;

(III) *plus* 15.5% of the portion of GRR, if any, that exceeds the amount set forth in subclause (a) or (b) of clause (II) above, as applicable;"

5. Increase in Basic Retail Rent.

(a) Subclause (x) of clause (ii) of Section 3.05(a) of the Original Lease is hereby deleted in its entirety and replaced with the following:

"(x) the sum of (I) One and 50/100 Dollars (\$1.50), as such amount shall be adjusted as provided in Section 3.05(c), *plus* (II) commencing on the Initial Additional Basic Retail Rent Increase Date, the Additional Basic Retail Rent Amount for such Fiscal Year multiplied by the greater of (a) the number of Net Rentable Square Feet from time to time being used for Retail purposes in the Buildings and (b) the Retail Use Allocation for the Buildings."

(b) The penultimate sentence of Section 3.05(a) of the Original Lease is hereby deleted in its entirety and replaced with the following:

"If, with respect to a Fiscal Year for which Retail Rent is payable under Section 3.05(a)(i) or Section 3.05(a)(ii), a Sublease is not in effect for the entirety of such Fiscal Year, the Forty Dollars (\$40), the One Hundred Fifty Dollars (\$150) and the Two Hundred Fifty Dollars (\$250) referred to in clause (y) of Section 3.05(a)(i) shall be prorated for the number of days such Sublease is in effect during such Fiscal Year."

(c) The following is added at the end of Section 3.05(a) of the Original Lease:



"If in any Fiscal Year the Additional Basic Retail Rent Amount shall increase on a day other than the first day of such Fiscal Year pursuant to the definition of Additional Basic Retail Rent Amount, then in calculating Basic Retail Rent hereunder or the amount described in Section 3.05(d)(ii), as the case may be, for such Fiscal Year, the Additional Basic Retail Rent Amount used to calculate such Basic Retail Rent or amount described in Section 3.05(d)(ii) shall be a blended rate reflecting the portion of such Fiscal Year during which each such Additional Basic Retail Rent Amount is in effect. For example, if the Additional Basic Retail Rent Amount were to increase from \$2.00 to \$3.00 on the first day of the fourth month of such Fiscal Year, then the Additional Basic Retail Rent Amount for such Fiscal Year would be \$2.75 (i.e.,  $3/12 \times \$2.00$  plus  $9/12 \times \$3.00$ )."

6. Reduction in Retail Rent; Certification of Changes in Net Rentable Square Feet Used for Retail or Other Purposes.

(a) Clause (ii) of Section 3.05(d) of the Original Lease is hereby deleted in its entirety and replaced with the following:

"(ii) with respect to each Fiscal Year or portion thereof during the Term from and after the date on which Substantial Completion of the Buildings shall occur, shall be in an amount equal to (x) the product of one-twelfth ( $1/12$ ) and the sum of (I) One and 50/100 Dollars (\$1.50), as One and 50/100 Dollars (\$1.50) may be adjusted as provided in Section 3.05(c), and (II) commencing on the Initial Additional Basic Retail Rent Increase Date, the Additional Basic Retail Rent Amount for such Fiscal Year, *multiplied by* (y) an amount which is equal to the greater of (1) the number of Net Rentable Square Feet in the Buildings which are then being used for Retail purposes, and (2) the Retail Use Allocation and, after the issuance of the certification of the Chairman of the City Planning Commission required pursuant to Section 23.04(ii), the Additional Retail Use Allocation for the Buildings."

(b) Section 3.05(d) of the Original Lease is hereby amended by adding after the last sentence thereof the following:

"Notwithstanding the foregoing, with respect to the number of Net Rentable Square Feet being used for Retail or Other purposes in connection with either the Winter Garden Subproject (as defined in the Retail Redevelopment Agreement) or the Tower B West Street Lobby Retail Subproject (as defined in the Retail Redevelopment Agreement), Tenant shall not be required to deliver to Landlord the aforementioned certificate or statement from a licensed engineer or registered architect until the first monthly payment of Retail or Other Rent following (i) with respect to the Winter Garden Subproject, the earlier to occur of (1) substantial completion of the Winter Garden Subproject or (2) the first retail store in the Winter Garden Subproject being opened to the general

public and (ii) with respect to the Tower B West Street Lobby Retail Subproject, the earlier to occur of (1) substantial completion of the Tower B West Street Lobby Retail Subproject or (2) the first retail store in the Tower B West Street Lobby Retail Subproject being opened to the general public.”

(c) Section 3.05(e) of the Original Lease is hereby amended by adding after the first sentence thereof the following:

“The Non-Office Rent Statements relating to the period from and including the Fiscal Year in which the Retail Rent Credit Commencement Date occurs to and including the Fiscal Year in which the Retail Rent Credit End Date occurs, shall include, as part of the calculations contained therein, a calculation of the Parcel B Retail Rent Credit for the applicable Fiscal Year.”

(d) Section 3.05(e) of the Original Lease is hereby amended by adding immediately prior to the last sentence thereof the following:

“If for any reason at the time Tenant delivers its Non-Office Rent Statement for a Fiscal Year, Tenant is not then an Affiliate of the Tower C Severance Lease Tenant or the Tower D Severance Lease Tenant and Tenant does not have access to any of the information relating to

(i) the portion of “Retail Percentage Rent” (as such term is defined in the Tower C Severance Lease) for such Fiscal Year that is derived from the BFP Tower C Space,

(ii) the “Retail Percentage Rent” (as such term is defined in the Tower D Severance Lease) for such Fiscal Year,

(iii) the “Gross Retail Revenue” (as such term is defined in the Tower C Severance Lease) used to calculate the portion of “Retail Percentage Rent” (as such term is defined in the Tower C Severance Lease) described in clause (1) above for such Fiscal Year, or

(iv) the “Gross Retail Revenue” (as such term is defined in the Tower D Severance Lease) used to calculate the “Retail Percentage Rent” (as such term is defined in the Tower D Severance Lease) for such Fiscal Year,

then Tenant may so indicate in its Non-Office Rent Statement for such Fiscal Year, in which event, for purposes of the payment to be made to Landlord as provided in the immediately preceding sentence (the “**Retail Rent Adjustment Payment**”), the Aggregate Retail Rent Credit (and, accordingly, the Parcel B Retail Rent Credit) shall be calculated assuming for such purposes that the Applicable Retail Percentage for such Fiscal

Year was ten percent (10%). Landlord shall forward to Tenant (within 10 Business Days of a written request therefor from Tenant) the "Non-Office Rent Statement" (as such term is defined in the Tower C Severance Lease or Tower D Severance Lease, as may be applicable) for such Fiscal Year from the Tower C Severance Lease Tenant and the Tower D Severance Lease Tenant, as applicable. Within twenty (20) Business Days after the receipt of the last such Non-Office Rent Statement by Tenant from Landlord, (I) Tenant shall advise Landlord in writing of the Applicable Retail Percentage (and its method of calculation thereof), (II) the Aggregate Retail Rent Credit and the Parcel B Retail Rent Credit will be adjusted to reflect the same, and (III) Landlord shall pay to Tenant within thirty (30) days of Tenant advising Landlord of the Applicable Retail Rent Percentage in accordance with clause (I) above the difference, if any, between the amount paid to Landlord as the Retail Rent Adjustment Payment for such Fiscal Year and the amount Tenant would have paid under this Section 3.05(e) as the Retail Rent Adjustment Payment for such Fiscal Year if it had been calculated using the Parcel B Retail Rent Credit described in clause (II) above, without interest."

(e) The following is hereby added as new Sections 3.05(g) and 3.05(h) of the Lease:

"(g) Notwithstanding anything to the contrary contained in Section 3.05, Section 3.06 or elsewhere in the Lease, commencing with the Fiscal Year in which the Retail Rent Credit Commencement Date occurs and for each Fiscal Year thereafter, through and including the Fiscal Year in which the Retail Rent Credit End Date occurs, in calculating the Retail Rent due under Section 3.05 of the Lease and for all other purposes under the Lease (including, without limitation, for the purposes of determining what is included in the Non-Office Rent Statement under Section 3.05(e) of the Lease and what payment is to be made in connection therewith), the Retail Percentage Rent shall be reduced, subject to Section 3.05(h) below, by the amount of the Parcel B Retail Rent Credit applicable to such Fiscal Year.

(h) Notwithstanding Section 3.05(g) above, if deducting the entire Parcel B Retail Rent Credit in any given Fiscal Year (other than the Fiscal Year in which the Retail Rent Credit End Date occurs) shall cause the Retail Percentage Rent to be less than the Basic Retail Rent, then the Retail Percentage Rent for such Fiscal Year shall only be reduced under Section 3.05(g) above by such portion of the Parcel B Retail Rent Credit as would cause the Percentage Retail Rent for such Fiscal Year to be equal to the Basic Retail Rent. The portion of the Parcel B Retail Rent Credit not deducted from the Percentage Retail Rent in any given Fiscal Year shall be automatically added to and deemed to be part of the Parcel B Retail Rent Credit for the following Fiscal Year; provided, however, that any portion of the Parcel B Retail Rent Credit for the Fiscal Year in which the



Retail Rent Credit End Date occurs not deducted from the Percentage Retail Rent in such Fiscal Year shall be forfeited by Tenant.”

(f) The following is added to the end of Section 3.06(b) of the Original Lease:

“Notwithstanding the foregoing, in no event shall any certification or statement by the C.P.A., as described above, be required to include a certification or statement as to the Parcel B Retail Rent Credit, and the C.P.A. shall be entitled to make such assumptions and take such exceptions as may be reasonably required to effectuate the foregoing. In any verification by Tenant as to its entitlement to, and the amount of, the Parcel B Retail Rent Credit, Tenant shall be entitled to rely on information (or reporting) by the BFP TIC Party and the Tower D Severance Lease Tenant (to the extent the same relates to elements of the determination of the Parcel B Retail Rent Credit that are based on revenues and costs incurred with respect to Parcel C or D or events occurring therein) without Tenant being required to verify the same. However, nothing herein is intended to limit Landlord’s right to dispute the use of an element of the determination of the Parcel B Retail Rent Credit that is based on revenues and costs incurred with respect to Parcel C or D or events occurring therein, where the information establishing such revenues and costs is not prepared and verified in accordance with the requirements of the Tower C Severance Lease or Tower D Severance Lease, as the case may be, applicable thereto. As an example of the foregoing, if the information related to Parcel D that was used by Tenant to calculate the Applicable Retail Percentage in its verification of the amount of the Parcel B Retail Rent Credit in any Fiscal Year it is reporting is never prepared and verified by the Tower D Severance Lease Tenant in accordance with Section 3.06(b) of the Tower D Severance Lease, then Landlord may dispute Tenant’s determination of the Parcel B Retail Rent Credit in such Fiscal Year on that basis, and the determination of the correct amount of the Parcel B Retail Rent Credit in such Fiscal Year as to that element shall be based on the eventual resolution of the dispute between Landlord and the Tower D Severance Lease Tenant as to the amount of “Gross Retail Revenue” and “Retail Percentage Rent” (as such terms are defined in the Tower D Severance Lease) in such Fiscal Year based on which the “Retail Rent” (as such term is defined in the Tower D Severance Lease) in such Fiscal Year should be paid by the Tower D Severance Lease Tenant.”

7. Parcel B Retail Rent Credit.

(a) (i) The Trigger Notice shall include a certificate from either (I) Tenant, the BFP TIC Party and the Tower D Severance Lease Tenant, collectively, or (II) BFP, on their behalf, executed by an officer of such party (or an officer of a direct or indirect partner or member of such party who is authorized to act on behalf of such party), as to (i) the amount of Project Costs incurred (whether or not then paid) on or prior to the Trigger Date and Tenant’s calculation of the Initial Amortized Amount based thereon

(“**Tenant’s Initial Determination**”) and Tenant shall attach thereto invoices or other reasonable evidence of such Project Costs and (ii) (A) the leases to third parties that are then in effect which demise space within the Project Space, which space has been opened for business to the general public, (B) the Net Rentable Square Footage within the Project Space of each such space and (C) the date such space opened for business to the general public. The Trigger Notice shall also specify the portion of the aggregate Project Costs set forth in Tenant’s Initial Determination that was incurred with respect to (1) space in the Buildings, (2) space in the “Buildings” (as defined in the Tower C Severance Lease) and (3) space in the “Buildings” (as defined in the Tower D Severance Lease) (the “**Trigger Notice Allocation**”); it being acknowledged that all of the Project Costs set forth in Tenant’s Initial Determination shall be so allocated.

(ii) Landlord shall have the right, within one hundred twenty (120) days after delivery of the Trigger Notice, to dispute, by written notice to Tenant, whether the Trigger Date has occurred, the date thereof, Tenant’s Initial Determination and/or the Trigger Notice Allocation, provided that any such written notice (“**Landlord’s Initial Objection Notice**”) of dispute shall, (x) if such dispute is as to whether the Trigger Date has occurred, or the date thereof, set forth in reasonable detail Landlord’s reasons for objecting thereto, (y) if such dispute is as to Tenant’s Initial Determination, set forth in reasonable detail Landlord’s objections to any items of Project Costs used to calculate the same and Landlord’s calculations of the Initial Amortized Amount and/or (z) if such dispute is as to the Trigger Notice Allocation, set forth in reasonable detail Landlord’s objections to such allocation, in whole or in part, of any item of Project Costs and, if so disputed, how such disputed item of Project Costs (or part thereof) should instead be allocated and the reasons therefor; *provided, however*, that Landlord’s dispute shall in no event result in less than all of the Project Costs being fully allocated among the Parcels. If Landlord does not timely deliver Landlord’s Initial Objection Notice as set forth above, then any one or more of Tenant, the BFP TIC Party, the Tower D Severance Lease Tenant or BFP shall have the right to deliver to Landlord a follow-up notice (the “**Follow-Up Trigger Notice**”) which shall attach a copy of the Trigger Notice and shall clearly state that failure of Landlord to object to whether the Trigger Date has occurred, the date thereof, Tenant’s Initial Determination or the Trigger Notice Allocation, in each case as is set forth in the Trigger Notice, within thirty (30) days after delivery of the Follow-Up Trigger Notice shall result in Landlord’s waiver of the right to object to the determination as set forth in the Trigger Notice as to whether the Trigger Date has occurred, the date thereof, Tenant’s Initial Determination and/or the Trigger Notice Allocation, as the case may be. If Landlord does not deliver Landlord’s Initial Objection Notice within thirty (30) days after delivery of the Follow-Up Trigger Notice, (I) the Trigger Date shall be deemed to have occurred on the date set forth therefor in the Trigger Notice, (II) Landlord shall be deemed to have waived its right to object to Tenant’s Initial Determination and the Trigger Notice Allocation, (III) Tenant’s Initial Determination shall constitute (aa) the amount described in clause (x) of the definition of Initial Amortized Amount for all purposes under this Amendment (but as if the reference in said clause (x) to Landlord’s dispute right was not contained therein) and (bb) the amount described in clause (i)(y) of the definition of Project Costs Percentage and (IV) the amount of Project Costs allocated to space in the Buildings in the Trigger Notice

Allocation shall constitute the amount described in clause (i)(x) of the definition of Project Costs Percentage.

(iii) If Landlord's Initial Objection Notice is timely delivered and Landlord does not dispute therein that the Trigger Date has occurred, then the Trigger Date shall be deemed to have occurred. If Landlord's Initial Objection Notice is timely delivered and Landlord does not dispute therein the date that the Trigger Date has occurred, then the Trigger Date shall be deemed to have occurred on the date so determined by Tenant as set forth in the Trigger Notice. If Landlord's Initial Objection Notice is timely delivered and Landlord does not dispute therein any items of Project Costs included in Tenant's Initial Determination, Landlord shall be deemed to have waived its right to object to such items of Project Costs and such items of Project Costs shall be deemed to be included in any calculation of the Initial Amortized Amount and of the Project Costs Percentage, in each case, for all purposes under this Amendment. If Landlord's Initial Objection Notice is timely delivered and Landlord does not dispute therein the allocation, in whole or in part, of any items of Project Costs in the Trigger Notice Allocation, such items of Project Costs shall be deemed allocated among the Parcels as set forth in the Trigger Notice Allocation for purposes of the definition of Project Costs Percentage and Landlord shall be deemed to have waived its right to object to such allocation.

(iv) If Landlord timely delivers Landlord's Initial Objection Notice as set forth above, the parties shall diligently negotiate in good faith to resolve their dispute for a period of sixty (60) days following delivery thereof. If the parties do not resolve their dispute within such sixty (60) day period, the dispute shall be considered a dispute covered by Section 3.06(g) of the Lease and, accordingly, determined by arbitration in accordance with Article 36 of the Lease.

(v) If Landlord disputes and is successful in such dispute (whether by agreement of the parties thereto or by arbitration) the amount of Project Costs allocated to space in the "Buildings" (as defined in the Tower C Severance Lease) as set forth in the "Trigger Notice Allocation" (as defined the Tower C Severance Lease), then Landlord shall promptly notify Tenant thereof and the amount thereof that should be allocated to Building B pursuant to "Landlord's Initial Objection Notice" (as defined in the Tower C Severance Lease) (or as otherwise determined to be properly allocated to Building B pursuant to such agreement or arbitration) shall automatically be added to the amount set forth in clause (i)(x) of the definition of Project Costs Percentage (including for purposes of recalculating any Retail Rent previously paid). If Landlord disputes and is successful in such dispute (whether by agreement of the parties thereto or by arbitration) the amount of Project Costs allocated to space in the "Buildings" (as defined in the Tower D Severance Lease) as set forth in the "Trigger Notice Allocation" (as defined the Tower D Severance Lease), then Landlord shall promptly notify Tenant thereof and the amount thereof that should be allocated to Building B pursuant to "Landlord's Initial Objection Notice" (as defined in the Tower D Severance Lease) (or as otherwise determined to be properly allocated to Building B pursuant to such agreement or arbitration) shall automatically be added to the amount set forth in clause (i)(x) of the definition of Project



Costs Percentage (including for purposes of recalculating any Retail Rent previously paid).

(b) (i) Tenant may, but shall not be required to, send Landlord a written notice ("**Tenant's Secondary Notice**") of Tenant's calculation of the Secondary Amortized Amount ("**Tenant's Secondary Determination**"), which shall include a certificate of either (I) Tenant, the BFP TIC Party and the Tower D Severance Lease Tenant, collectively, or (II) BFP on their behalf, executed by an officer of such party (or an officer of a direct or indirect partner or member of such party who is authorized to act on behalf of such party), as to the amount of Project Costs incurred (whether or not then paid) after the Trigger Date (and, to the extent not previously included in the Initial Amortized Amount, prior to the Trigger Date) through and including the date that is eighteen (18) months after the Trigger Date (or through and including such earlier date on which Tenant's Secondary Notice is delivered), such calculation to be based on such certification of Project Costs, and Tenant shall attach thereto invoices or other reasonable evidence of such Project Costs. Tenant's Secondary Notice shall also specify the portion of the aggregate Project Costs set forth in Tenant's Secondary Determination that was incurred with respect to (1) space in the Buildings, (2) space in the "Buildings" (as defined in the Tower C Severance Lease) and (3) space in the "Buildings" (as defined in the Tower D Severance Lease) (the "**Secondary Notice Allocation**"); it being acknowledged that all of the Project Costs set forth in Tenant's Secondary Determination shall be so allocated.

(ii) Landlord shall have the right, within one hundred twenty (120) days after delivery of Tenant's Secondary Notice, to dispute, by written notice to Tenant, Tenant's Secondary Determination and/or the Secondary Notice Allocation, provided that any such written notice ("**Landlord's Secondary Objection Notice**") of dispute (x) if such dispute is as to Tenant's Secondary Determination, shall set forth in reasonable detail Landlord's objections to any items of Project Costs used to calculate the same and Landlord's calculations of the Secondary Amortized Amount and/or (y) if such dispute is as to the Secondary Notice Allocation, set forth in reasonable detail Landlord's objections to such allocation, in whole or in part, of any item of Project Costs set forth in Tenant's Secondary Determination and, if so disputed, how such disputed item of Project Costs (or part thereof) should instead be allocated and the reasons therefor; *provided, however,* that Landlord's dispute shall in no event result in less than all of the Project Costs set forth in Tenant's Secondary Determination being fully allocated among the Parcels. If Landlord does not timely deliver Landlord's Secondary Objection Notice as set forth above, then any one or more of Tenant, the BFP TIC Party, the Tower D Severance Lease Tenant or BFP shall have the right to deliver to Landlord a follow-up notice ("**Tenant's Follow-Up Secondary Notice**") which shall attach a copy of Tenant's Secondary Notice and shall clearly state that failure of Landlord to object to Tenant's Secondary Determination or the Secondary Notice Allocation, in each case as set forth in Tenant's Secondary Notice within thirty (30) days after the delivery of Tenant's Follow-Up Secondary Notice shall result in Landlord's waiver of the right to object to Tenant's Secondary Determination and/or the Secondary Notice Allocation, as the case may be, as set forth in Tenant's Secondary Notice. If Landlord does not deliver Landlord's Secondary Objection Notice within thirty (30) days after the delivery of Tenant's Follow-

Up Secondary Notice, (I) Landlord shall be deemed to have waived its right to object to Tenant's Secondary Determination and the Secondary Notice Allocation, (II) Tenant's Secondary Determination shall constitute (aa) the amount described in clause (i) of the definition of Secondary Amortized Amount for all purposes under this Amendment, (but as if the reference in said clause (i) to Landlord's dispute right was not contained therein), although the inclusion of such amount therein shall continue to remain subject to the second proviso contained in said clause (i) and (bb) the amount described in clause (ii)(y)(B) of the definition of Project Costs Percentage and (III) the amount of Project Costs allocated to space in the Buildings in the Secondary Notice Allocation shall constitute the amount described in clause (ii)(x)(B) of the definition of Project Costs Percentage.

(iii) If Landlord's Secondary Objection Notice is timely delivered and Landlord does not dispute therein any items of Project Costs included in Tenant's Secondary Determination, Landlord shall be deemed to have waived its right to object to such items of Project Costs and such items of Project Costs shall be deemed to be included in any calculation of the Secondary Amortized Amount and of the Project Costs Percentage, in each case for all purposes under this Amendment. If Landlord's Secondary Objection Notice is timely delivered and Landlord does not dispute therein the allocation, in whole or in part, of any items of Project Costs in the Secondary Notice Allocation, such items of Project Costs shall be deemed allocated among the Parcels as set forth in the Secondary Notice Allocation for purposes of the definition of Project Costs Percentage and Landlord shall be deemed to have waived its right to object to such allocation.

(iv) If Landlord timely delivers Landlord's Secondary Objection Notice as set forth above, the parties shall diligently negotiate in good faith to resolve their dispute for a period of sixty (60) days following delivery thereof. If the parties do not resolve their dispute within such sixty (60) day period, the dispute shall be considered a dispute covered by Section 3.06(g) of the Lease and, accordingly, determined by arbitration in accordance with Article 36 of the Lease.

(v) If Landlord disputes and is successful in such dispute (whether by agreement of the parties thereto or by arbitration) the amount of Project Costs allocated to space in the "Buildings" (as defined in the Tower C Severance Lease) as set forth in the "Secondary Notice Allocation" (as defined the Tower C Severance Lease), then Landlord shall promptly notify Tenant thereof and the amount thereof that should be allocated to Building B pursuant to "Landlord's Secondary Objection Notice" (as defined in the Tower C Severance Lease) (or as otherwise determined to be properly allocated to Building B pursuant to such agreement or arbitration) shall automatically be added to the amount set forth in clause (ii)(x)(B) of the definition of Project Costs Percentage (including for purposes of recalculating any Retail Rent previously paid). If Landlord disputes and is successful in such dispute (whether by agreement of the parties thereto or by arbitration) the amount of Project Costs allocated to space in the "Buildings" (as defined in the Tower D Severance Lease) as set forth in the "Secondary Notice Allocation" (as defined the Tower D Severance Lease), then Landlord shall promptly notify Tenant thereof and the amount thereof that should be allocated to Building B

pursuant to "Landlord's Secondary Objection Notice" (as defined in the Tower D Severance Lease) (or as otherwise determined to be properly allocated to Building B pursuant to such agreement or arbitration) shall automatically be added to the amount set forth in clause (ii)(x)(B) of the definition of Project Costs Percentage (including for purposes of recalculating any Retail Rent previously paid).

(c) Tenant shall keep and maintain (or shall cause its Affiliates to keep and maintain) at an office located in New York City books and records related to the incurring of its Project Costs, including, without limitation, copies of agreements with contractors, subleases and brokerage agreements. Unless consented to by Landlord, such books and records shall not be destroyed or disposed of prior to the expiration of the period for Landlord to deliver Landlord's Initial Objection Notice or Landlord's Secondary Objection Notice pursuant to Sections 7(a) or 7(b) above, as may be applicable to such books and records, and if Landlord timely delivers Landlord's Initial Objection Notice and/or Landlord's Secondary Objection Notice in accordance with Sections 7(a) or 7(b) above, as applicable, and such dispute relates to an item covered by such books and records, then for such additional period until such dispute is resolved in accordance with the Lease. During the additional period described in the preceding sentence, Landlord or its representatives, shall have the right during regular business hours, on not less than ten (10) days notice to Tenant, to examine, audit and/or photocopy all such books and records.

8. Confirmatory Amendment. If at any time any one or more of (i) the Initial Amortized Amount, (ii) the Secondary Amortized Amount, (iii) the Project Costs Percentage, (iv) the dates for any increase in Additional Basic Retail Rent Amount pursuant to the proviso in the definition thereof, (v) the Retail Rent Credit Commencement Date, (vi) the Retail Rent Credit End Date and/or (vii) the Amortized Amount has been determined and is not subject to further dispute in accordance with the terms of this Amendment, then, upon request of either Landlord or Tenant at any time or from time to time, Landlord and Tenant shall execute and exchange one or more amendments to the Lease setting forth any such date, percentage or amount then so determined; *provided, however*, that the failure to execute and deliver such amendments shall not affect the determination of any such date, percentage or amount in accordance with the terms of this Amendment, including, without limitation, the dispute provisions contained herein. Any such amendment shall be in form and substance reasonably satisfactory to both Landlord and Tenant.

9. Inclusion in Rent Dispute Procedures. Section 3.06(g) of the Original Lease is hereby amended by adding after the words "Gross Retail Revenue," wherever such term shall appear in said Section 3.06(g) the words "Amortized Amount, Applicable Retail Percentage, Project Costs Percentage, Aggregate Retail Rent Credit, Parcel D Retail Rent Credit."

10. Amendment to Retail Use Allocation and Additional Retail Use Allocation. Section 23.04(ii) of the Original Lease is hereby amended by replacing

(a) the words "twenty thousand (20,000)" with the words "twenty-seven thousand five hundred and four (27,504)"; and

(b) the words "eighty-nine thousand (89,000)" with the words "sixty-five thousand eight hundred and seventy-five (65,875)".

11. MDT Severance Lease Amendment. The MDT Severance Lease Amendment is hereby made null and void in its entirety and the provisions thereof shall be of no further force and effect as of the date of this Amendment and have been superseded in their entirety by the provisions of this Amendment.

12. Notices. Clauses (a) and (b) of Section 25.01 of the Original Lease are hereby deleted in their entirety and replaced with the following:

(a) if by Landlord, by mailing the same to Tenant by (x) certified or registered mail, postage prepaid, return receipt requested or (y) Federal Express or other nationally recognized overnight courier service, addressed to

WFP Tower B Co. L.P.  
c/o Brookfield Office Properties  
250 Vesey Street, 15th Floor  
New York, New York 10281  
Attention: Mitchell E. Rudin  
President and Chief Executive Officer, U.S. Commercial  
Operations

with copies to:

Brookfield Office Properties.  
250 Vesey Street, 15th Floor  
New York, New York 10281  
Attention: General Counsel

and

Fried Frank Harris Shriver & Jacobson LLP  
One New York Plaza  
New York, New York 10004  
Attention: Joshua Mermelstein, Esq.

and/or to such other address(es) and attorneys as Tenant may from time to time designate by Notice given to Landlord by certified or registered mail as aforesaid, except that at no time shall Landlord be required to give, in the aggregate, more than four Notices or copies thereof; and

(b) if by Tenant, by mailing the same to Landlord by (x) certified or registered mail, postage prepaid, return receipt requested or (y) Federal Express or other nationally recognized overnight courier service, addressed to

Battery Park City Authority, d/b/a  
Hugh L. Carey Battery Park City Authority  
200 Liberty Street, 24<sup>th</sup> Floor  
New York, New York 10281  
Attention: President

with a copy to:

Battery Park City Authority, d/b/a  
Hugh L. Carey Battery Park City Authority  
200 Liberty Street, 24<sup>th</sup> Floor  
New York, New York 10281  
Attention: General Counsel

with a copy to:

Shearman & Sterling LLP  
599 Lexington Avenue  
New York, NY 10022  
Attention: Chris Smith, Esq

and/or to such other address(es) and attorneys as Landlord may from time to time designate by Notice given to Tenant by certified or registered mail as aforesaid, except that at no time shall Tenant be required to give, in the aggregate, more than four Notices or copies thereof.

13. Miscellaneous. Upon execution and delivery of this Amendment, this Amendment shall become part of the Lease and all references to the "Lease" shall mean the Original Lease, as amended by this Amendment, and all amendments, modifications, extensions and renewals thereof. The terms, provisions or conditions of the Original Lease are hereby ratified and shall remain in full force and effect, as modified hereby.

(b) The Section headings used in this Amendment are for convenience only, and are not to be used in determining the meaning of this Amendment or any part thereof.

(c) This Amendment contains the sole and entire understanding and agreement of the parties with respect to its entire subject matter and all prior negotiations, discussions, representations, agreements and understandings heretofore had among the parties with respect thereto are merged herein.

(d) This Amendment may be executed in duplicate counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

(e) This Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns under the Lease.



(f) A memorandum of this Amendment in form suitable for recording (and any other instruments required to record such memorandum) and reasonably acceptable to both Landlord and Tenant, shall be executed and filed at the request of Tenant, at Tenant's sole cost and expense.

14. Broker. Landlord and Tenant each represents and warrants to the other that it has not dealt with any broker in connection with this Amendment. Landlord and Tenant shall each indemnify and hold harmless the other party from and against any and all claims, damages and costs (including reasonable attorneys' fees and disbursements) incurred by such other party in connection with a breach or alleged breach of the indemnifying party's representation and warranty contained in this Section 14.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date first above written.

**LANDLORD:**

**BATTERY PARK CITY AUTHORITY,**  
d/b/a The Hugh L. Carey Battery Park City  
Authority, a public benefit corporation under  
the laws of the State of New York

By: RM Serpico  
Name: Robert M. Serpico  
Title: CFO

**TENANT:**

**WFP TOWER B CO. L.P.,** a New York  
limited partnership

By: WFP Tower D Co. G.P. Corp., its  
general partner

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date first above written.

**LANDLORD:**

**BATTERY PARK CITY AUTHORITY,**  
d/b/a The Hugh L. Carey Battery Park City  
Authority, a public benefit corporation under  
the laws of the State of New York

By: \_\_\_\_\_  
Name:  
Title:

**TENANT:**

**WFP TOWER B CO. L.P.,** a New York  
limited partnership

By: WFP Tower B Co. G.P. Corp., its  
general partner

By: Kathleen G. Kane  
Name:  
Title: Kathleen G. Kane  
Senior Vice President