

## AMENDMENT OF SEVERANCE LEASE (TOWER B)

This Amendment of Severance Lease (Tower B) ("Amendment") is dated as of June 29, 2012, 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 Financial Properties, L.P., Three World Financial Center, 200 Vesey Street, New York, New York 10281-1021 ("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; and (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. (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. Simultaneously herewith, Landlord, Tenant, Brookfield Financial Properties, L.P. (“**BFP**”), WFP Retail Co. L.P. (“**Retail Co.**”) and Merrill Lynch/WFC/L, Inc., are entering into a certain Marketplace and Dining Terrace Agreement (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) 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;

C. 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; and

D. 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 work is commenced and 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) “**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).

(c) **"Applicable Retail Percentage"** shall mean, for any Fiscal Year, a percentage obtained by dividing (i) 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), by (ii) the Gross Retail Revenue used to calculate the Retail Percentage Rent for such Fiscal Year.

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

(e) **"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 MDT Amendment of Severance Lease (Tower B)), and (y) Sixty Million Dollars (\$60,000,000) *divided by* (ii) fifteen (15).

(f) **"Follow-Up Trigger Notice"** shall have the meaning ascribed to such term in Section 7(a) of the MDT Amendment of Severance Lease (Tower B).

(g) **"MDT Amendment of Severance Lease (Tower B)"** shall mean that certain Amendment of Severance Lease (Tower B) dated as of June 29, 2012 by and between Landlord and Tenant.

(h) **"Marketplace"** shall have the meaning ascribed to such term in the Marketplace Agreement.

(i) **"Marketplace Agreement"** shall have the meaning ascribed to such term in Recital B of the MDT Amendment of Severance Lease (Tower B).

(j) **“Parcel B Retail Rent Credit”** shall mean, 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; 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.

(k) **“Project”** shall mean “Project,” as defined in the Marketplace Agreement.

(l) **“Project Costs”** shall mean the costs incurred by Tenant or its 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) that cannot be properly used in order for the Project Work to proceed or (C) that needs to be moved in order that the Project Space will become available for retail use, 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 (X) all reasonably incurred out-of-pocket costs and expenses incurred by Tenant and/or its Affiliates, including Retail Co. and BFP, in performing the Project Work and complying with the Marketplace 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 and/or its 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 and/or its 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 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 MDT Amendment of Severance Lease (Tower B).

(m) “**Project Space**” shall mean, collectively, the Marketplace and the Dining Terrace.

(n) “**Project Work**” shall mean the “Project Work,” as defined in the Marketplace Agreement.

(o) “**Retail Co.**” shall have the meaning ascribed to such term in Recital B to the MDT Amendment of Severance Lease (Tower B).

(p) “**Retail Rent Credit Commencement Date**” shall mean the date of the delivery of the Trigger Notice.

(q) “**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.

(r) “**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 MDT 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 Sixty Million Dollars (\$60,000,000) *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.

(s) “**Tenant’s Follow-Up Secondary Notice**” shall have the meaning ascribed to such term in Section 7(b) of the MDT Amendment of Severance Lease (Tower B).

(t) “**Tenant’s Secondary Notice**” shall have the meaning ascribed to such term in Section 7(b) of the MDT Amendment of Severance Lease (Tower B).

(u) “**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.

(v) “**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) 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”)

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 July 1, 2012, 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 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.

(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 July 1, 2012, 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 23.01(ii), the Additional Retail Use Allocation for the Buildings."

(b) 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. "

(c) 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.”

7. Parcel B Retail Rent Credit.

(a) The Trigger Notice shall include a certificate of Tenant executed by an officer of Tenant (or an officer of a direct or indirect partner or member of Tenant who is authorized to act on behalf of Tenant) 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. 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 and/or Tenant’s Initial Determination, 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 and/or (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. If Landlord does not timely deliver Landlord’s Initial Objection Notice as set forth above, Tenant 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 or Tenant’s Initial Determination, 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 Tenant’s determination as set forth in the Trigger Notice as to whether the Trigger Date has occurred, the date thereof and/or Tenant’s Initial Determination, 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 by Tenant in the Trigger Notice, (II) Landlord shall be deemed to have waived its

right to object to Tenant's Initial Determination and (III) Tenant's Initial Determination shall constitute 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). 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 for all purposes under this Amendment. 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.

(b) 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 Tenant executed by an officer of Tenant (or an officer of a direct or indirect partner or member of Tenant who is authorized to act on behalf of Tenant) 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 certification to be based on such certification of Project Costs, and Tenant shall attach thereto invoices or other reasonable evidence of such Project Costs. 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, provided that any such written notice ("**Landlord's Secondary Objection Notice**") of dispute 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. If Landlord does not timely deliver Landlord's Secondary Objection Notice as set forth above, Tenant 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 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 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 (II) Tenant's Secondary Determination shall

constitute 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). 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 for all purposes under this Amendment. 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.

(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 dates for any increase in Additional Basic Retail Rent Amount pursuant to the proviso in the definition thereof, (iv) the Retail Rent Credit Commencement Date, (v) 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, Dining Terrace Gross Retail Revenue, Parcel B Retail Rent Credit."

10. 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 Financial Properties, L.P.  
Three World Financial Center  
200 Vesey Street, 11th Floor  
New York, New York 10281-1021  
Attention: Mitchell E. Rudin  
President and Chief Executive Officer, U.S. Commercial  
Operations

with copies to:

Brookfield Financial Properties, L.P.  
Three World Financial Center  
200 Vesey Street, 11th Floor  
New York, New York 10281-1021  
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

One World Financial Center, 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  
One World Financial Center, 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.

11. 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 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.

12. 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 12.

[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: \_\_\_\_\_  
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 Kane  
Name: Kathleen G. Kane  
Title: Senior Vice President

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:

**GAYLE M. HORWITZ**  
**PRESIDENT & CEO**

**TENANT:**

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

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_