

## **AGREEMENT**

This Agreement (“Agreement”) is entered into this 12th day of March, 2004 by and between Independence Plaza North Tenant Association, Inc., a New York not-for-profit corporation, having an office at c/o Neil Fabricant, 80 N. Moore Street, Apt. 15H, New York, New York 10013 (the “Tenant Association”), Independence Plaza Associates, L.P., a New York limited partnership having an office located at c/o Stellar Management, 156 Williams Street New York, New York 10038 (“Landlord”), and Washington Plaza Towers, Inc., a limited profit housing company, having an office at c/o Stellar Management, 156 Williams Street, New York, New York 10038 (the “Housing Company”).

## **R E C I T A L S**

A. Landlord is the owner of the entire beneficial interest in a residential and commercial complex located in Tribeca, Manhattan, New York, known as Independence Plaza North (the “Project” or “Independence Plaza”). Independence Plaza contains approximately 1,332 apartments and an attended parking garage, among other things.

B. Record legal title to the Project is owned by the Housing Company, a limited-profit housing company organized under Article II of the Private Housing Finance Law of the State of New York (the “PHFL”). The Housing Company strictly acts a nominee for the Landlord, and is entering into this Agreement as a nominee. It is understood that the Housing Company will be dissolved on the “Exit Date” (as hereinafter defined). All the stock of the Housing Company is owned by Independence Plaza Associates, LLC, a Delaware limited liability company. Independence Plaza Associates, LLC is the principal partner of Independence Plaza Associates, L.P.

C. The Tenant Association was formed to represent the residential tenants at Independence Plaza. The Tenant Association, acting through its board of directors, has duly approved the Tenant Association entering into this Agreement.

D. Independence Plaza is currently operated as a so-called Mitchell-Lama Housing Project pursuant to Article II of the PHFL.

E. Landlord previously filed with the New York City Department of Housing Preservation and Development (“HPD”) and served upon the tenants of Independence Plaza and all other required parties, a Notice of Intent to Dissolve the Housing Company and a Notice of Prepayment of the Project Mortgage Loan (the “Project Mortgage Loan”) held by the New York City Housing Development Corporation (“HDC”) and subsidized by the United States Department of Housing and Urban Development (“HUD”) pursuant to Section 236 of the National Housing Act, as amended. Pursuant to the waiting period prescribed by current HPD regulations and HUD requirements, the Landlord anticipates dissolving the Housing Company and prepaying the Project Mortgage Loan, in order to exit the Mitchell-Lama program (the “Mitchell-Lama Program”) on or about June 28, 2004 (the date the Project Mortgage Loan is actually paid and the Housing Company is dissolved shall be referred to herein as the “Exit Date”).

F. The Tenant Association has threatened to institute litigation seeking to halt or delay the Exit Date, as well as to garner support from members of the New York City Council to sponsor proposed legislation which, if enacted, would complicate and burden the process of the Project exiting from the Mitchell-Lama Program.

G. In an effort to reach an amicable resolution, the Landlord and the Tenant Association have been conducting negotiations in good faith for the past several months, and have reached an

agreement on the terms and conditions of Independent Plaza's exit from the Mitchell-Lama Program. Pursuant to this agreement, the terms of which are detailed below, Landlord has agreed to provide substantial benefits to the tenants of Independence Plaza (each, a "Tenant" and collectively, the "Tenants"), in exchange for which the Tenant Association has agreed not to institute any litigation, and to urge all of the Tenants not to institute any litigation, which seeks to halt or delay the Exit Date or halt or delay rent increases thereafter. Furthermore, the Tenant Association agrees that it will advise the Council of the City of New York, HPD and any other relevant agency that if current Intro Number 5 or any similar bill is nonetheless enacted, the settlement described in this Agreement shall be considered a comprehensive conversion settlement thereunder, and that any such Intro, bill or law should not hinder or delay the Exit Date, or otherwise affect Landlord. Furthermore, if any delay in the Exit Date occurs and is caused by litigation initiated by any Tenant or Tenants, then the Tenant Association at its expense shall take all lawful and proper actions that are requested by the Landlord in connection with such litigation, to oppose and secure the discontinuance of such litigation, including without limitation making an appearance in such litigation and/or filing lawful and proper papers seeking the dismissal of such litigation and the denial or dissolution of any temporary restraining order or injunction.

H. The Tenants fall into two basic categories: (1) Tenants who are eligible to receive Section 8 enhanced vouchers issued by HUD and/or HPD, as contract administrator for HUD and (2) Tenants who are not eligible to receive such Section 8 enhanced vouchers. Such Section 8 enhanced vouchers (but not conventional Section 8 vouchers) are referred to herein as "Sticky Vouchers." The program by which HUD issues Sticky Vouchers is referred to herein as the "Sticky Voucher Program," and Tenants eligible to receive Sticky Vouchers are referred to

herein as “Sticky Voucher Tenants.” HPD will make a determination as to each Tenant’s eligibility for Sticky Vouchers based upon his or her family income level and other relevant HPD/HUD standards. Tenants who do not apply to HPD or HUD for Sticky Vouchers, and those who apply to HPD or HUD for Sticky Vouchers and are determined by HPD or HUD not to be eligible for Sticky Vouchers, are referred to herein collectively as “Non-Sticky Voucher Tenants.”

I. Under relevant federal law, HUD regulations and HPD Guidelines (collectively, “Applicable Voucher Rules”), certain Qualified Sticky Voucher Tenants (as defined in Section 1(a)) may be determined to be “overhoused” by HUD’s agent HPD, meaning that such Tenants have been found to reside in an apartment larger than what is necessary under Applicable Voucher Rules (such Tenants are hereinafter referred to as “Overhoused Sticky Voucher Tenants”). Conversely, other Sticky Voucher Tenants may be determined by HPD to be “underhoused” under the Applicable Voucher Rules, meaning that such Sticky Voucher Tenants reside in apartments that are too small given the number of occupants (such Tenants are referred to hereinafter as “Underhoused Sticky Voucher Tenants”).

J. Many of the terms and provisions of the agreement reached by the parties will be embodied in the individual residential leases to be entered into between the Landlord and the respective Tenants. However, in advance of the full execution of those respective leases, the parties hereto believe it to be in their mutual interest to set forth in this Agreement the relevant terms and provisions of their agreement, each intending to be bound thereby.

NOW, THEREFORE, in consideration of the mutual promises herein set forth, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties do hereby agree as follows:

**1. Sticky Voucher Tenants.**

(a) The Tenant Association agrees to use its commercially reasonable efforts to cause each and every Tenant to apply to HPD for Sticky Vouchers as soon as possible, but not later than forty-five (45) days after Tenants receive appropriate Sticky Voucher application forms.

Although “Qualified Sticky Voucher Tenants” (as defined below) will be required to enter into leases at the full reasonable rental value determined by HPD (the “HPD Reasonable Rent”), the Landlord agrees that it will honor all Sticky Vouchers issued by HPD or HUD and submitted to Landlord in respect of Qualified Sticky Vouchers Tenants. Landlord will offer a “Sticky Voucher Lease” (as defined in Section 15) to each Qualified Sticky Voucher Tenant which will be consistent with this Agreement and will incorporate the terms of this Agreement by specific reference hereto. Furthermore, the “Sticky Voucher Lease” will provide that, while the applicable lease is in *full* force and effect, it is binding on all successors and assigns of the Landlord (other than foreclosing mortgagees or their successors assigns). Landlord will not be obligated to honor Sticky Vouchers in the manner herein set forth from any Tenant who has not executed and delivered a Sticky Voucher Lease to Landlord by no later than twenty (20) days after said Qualified Sticky Voucher Tenants are notified to come to the management office in accordance with Section 17C to execute their respective Sticky Voucher Leases. Sticky Voucher Tenants who timely apply for Sticky Vouchers, obtain them and execute and deliver to Landlord Sticky Voucher Leases by said date are referred to herein as “Qualified Sticky Voucher Tenants.” Landlord will take commercially reasonable actions, including working with Tenants, to assist the Tenants in their efforts to receive Sticky Vouchers and/or maintain Sticky Vouchers under the Sticky Voucher Program. Landlord further agrees that it will participate, under the same terms as stated herein, in the Sticky Voucher Program and any successor to the Sticky

Voucher Program so long as Landlord receives at least 90% of the economic benefits from such modified Sticky Voucher Program or successor program as it would have received at such time from the existing Sticky Voucher Program.

(b) Although Qualified Sticky Voucher Tenants will be required to enter into Sticky Voucher Leases at the full HPD Reasonable Rent, Landlord will not seek to collect, in any month, rent from a Qualified Sticky Voucher Tenant, except for certain Qualified Overhoused Sticky Voucher Tenants detailed in Section 3(b) hereof or any other Qualified Sticky Voucher Tenants who at any time lose their entitlement to Sticky Vouchers (other than Tenants who lose their Sticky Vouchers solely as a result of actions or inactions of Landlord), in an amount exceeding the excess of the HPD Reasonable Rent over the amount of the Sticky Voucher (hereinafter, the “Tenant Portion”), actually received by the Landlord. Stated another way, it is agreed that, except for certain Qualified Overhoused Sticky Voucher Tenants detailed in Section 3(b) hereof or any other Qualified Sticky Voucher Tenants who at any time lose their entitlement to Sticky Vouchers (other than Tenants who lose their Sticky Vouchers solely as a result of actions or inactions of Landlord), Landlord will honor, with respect to Qualified Sticky Voucher Tenants, the Sticky Vouchers it receives for the difference between the Tenant Portion and the HPD Reasonable Rent for such apartment. The parties recognize that, for sixty (60) days (hereinafter, the “Sixty Day Period”) following the Exit Date, the last Mitchell-Lama rent (including all current surcharges and other adjustments to rent) shall continue to be charged to each Qualified Sticky Voucher Tenant. Accordingly, the HPD Reasonable Rent for a Qualified Sticky Voucher Tenant’s apartment, as subsidized by the Sticky Vouchers, shall not go into effect until the day after the expiration of the Sixty Day Period.

(c) In the event the Sticky Voucher Program ends or the Sticky Voucher Program or its successor does not provide the Landlord with benefits that are at least 90% of the current benefits, then the Qualified Sticky Voucher Tenants will continue to pay only Tenant's Portion for three (3) months after the Landlord ceases to receive benefits under the Sticky Voucher Program. Seniors, namely, those Qualified Sticky Voucher Tenants whose head of household is 65 years old or older at the time of such an event, may continue to pay their Tenant's Portion for six (6) months after the Landlord ceases receiving benefits at least equal to 90% of the benefits then available under the Sticky Voucher Program. Thereafter, such Qualified Sticky Voucher Tenants must either vacate or pay market rent after such three or six-month period, as applicable.

**2. Non-Sticky Voucher Tenants.**

The following Tenants ("Qualified Non Sticky Voucher Tenants"), shall be eligible to receive the benefits of the Landlord Assistance Program (the "LAP") described herein:

(1) Tenants who are not illegal Tenants as described in section 5 of the Agreement; and who

(2) Execute and deliver to Landlord a Non-Sticky Voucher Lease (as defined below) on or before twenty (20) days after said Qualified Non-Sticky Voucher Tenant is notified in accordance with Section 17C to come to the management office to execute a "Non- Sticky Voucher Lease" (as defined below), in accordance with Section 17C; and who

(3) Apply by materially true and substantially complete forms, to HPD or HUD as appropriate for Sticky Vouchers by no later than forty five (45) days after the Tenant is sent the appropriate Sticky Voucher application forms in accordance with Section 17C; and who:

(4) Are determined by HPD or HUD as appropriate either:

a. to be income ineligible, or

- b. to be income eligible but who are nonetheless found not to be eligible for Sticky Vouchers because their apartment does not pass HPD's Housing Quality Standards ("HQS") inspection for reasons that are not the Tenant's responsibility, provided that such Tenants shall, no more than 48 hours after being notified of such failure to pass the HQS inspection, give such Tenant's keys to Landlord's Managing Agent and provide access to such Managing Agent to the apartment during normal business hours (Monday - Friday, 9:00 a.m. - 5:00 p.m.) for no less than 20 hours per week. (However, once the requisite repairs are made and such Tenant's apartment is reinspected and passes the HQS by HPD, then such Tenant shall thereupon become a Qualified Sticky Voucher Tenant, and shall sign a Sticky Voucher Lease.); or
- c. To be income eligible, but who are nonetheless found not to be eligible for Sticky Vouchers by HPD or HUD for reasons which do not implicate the moral turpitude of such Tenant or are based on such Tenant's immigration status.

The terms and the provisions of the LAP and the other applicable terms of this Agreement will be embodied in the individual Non-Sticky Voucher Leases between the Landlord and such Qualified Non-Sticky Voucher Tenants, as further defined in Section 15, which lease will also incorporate the terms of this Agreement by specific reference hereto and will provide that such Non-Sticky Voucher Lease is binding on all successors and assigns of the Landlord (other than foreclosing mortgagees and their successors and assigns). The Non-Sticky Voucher Lease will further provide in substance as follows:

(a) The initial rents payable by the Qualified Non-Sticky Voucher Tenants during the Sixty Day Period shall be the last Mitchell-Lama rent (including all current surcharges and other adjustments to rent) charged the respective Non-Sticky Voucher Tenants. Thereafter, and until the ninth (9<sup>th</sup>) anniversary of the Exit Date, the Qualified Non-Sticky Voucher Tenant's rent shall be increased in accordance with then prevailing New York City Rent Guideline Board ("RGB") increases, depending on whether a one or two-year lease is selected by the Qualified Non Sticky Voucher Tenant. Presently, the RGB requires a 4.5% increase for a one-year lease and a 7.5% increase for a two-year lease. Thus (assuming the current RGB increase remains

unchanged), effective on the 61<sup>st</sup> day following the Exit Date, each Qualified Non-Sticky Voucher Tenant's rent shall become 104.5% or 107.5% of the last Mitchell-Lama Rent (absent a default or a sublease), depending on whether the Non-Sticky Voucher Tenant selects a one or two year lease. Thereafter, and until the ninth (9<sup>th</sup>) anniversary of the Exit Date, renewal leases will be offered to Qualified Non-Sticky Voucher Tenants on the anniversaries of the Exit Date, on a one or two-year basis (to be selected by the Qualified Non-Sticky Voucher Tenants), with further rent increases being set in accordance with the then prevailing RGB increases. Notwithstanding the foregoing, the rents for the Qualified Non-Sticky Voucher Tenants' apartments for the three (3) consecutive one year periods beginning on the ninth anniversary of the Exit Date, shall be further increased (beyond the aforesaid RGB increases) by three and one third percent (in each such year). In other words, for each of those three (3) years, the increase shall be the sum of the then prevailing RGB increase plus three and one third percent (3.33%). Thus if a two year lease commences on the Ninth (9<sup>th</sup>) anniversary, and if the two year RGB increase is then 7.67%, the rent in the first year of the two year lease shall be increased by 11% and by 14.33% (over the rent of the preceding lease) in the second year. For each year after the twelfth (12<sup>th</sup>) anniversary of the Exit Date, the increase for each renewal lease shall be the then prevailing RGB increase plus 1 % for each year. If, for any reason, the RGB (and any successor to the RGB) no longer promulgates rent increases for New York City, increases for all further renewal leases will be based on the average of the one and two year renewal rate increases ordered by the RGB for the previous five (5) years. This calculation shall be made in accordance with the renewal lease chosen by the Qualified Non-Sticky Voucher Tenant; thus the average of the previous 5 years of one year increases will apply to those Qualified Non-Sticky Voucher Tenants choosing one year renewal leases, and the average of the previous five years of

two year renewal increases will apply to those Non-Sticky Voucher renewals choosing two year renewal leases. The difference between the market rent and the rent to be paid by Qualified Non-Sticky Voucher Tenants represents the rental assistance provided by the Landlord to such Non-Sticky Voucher Tenant.

(b) Qualified Non-Sticky Voucher Tenants will not be required to move apartments; nor will they be offered other apartments.

(c) Qualified Non-Sticky Voucher Tenants will not be permitted to sublet their apartments or assign their leases except that they may sublet their apartments in strict conformity with Real Property Law Section 226-b and the terms of this Agreement. If a Qualified Non-Sticky Voucher Tenant subleases an apartment, the monthly rent payable by the Qualified Non-Sticky Voucher Tenant, shall increase to the market rent for the period of the sublease. Market rent shall be determined by the Landlord's then current rates for similar market rate apartments. A Qualified Non-Sticky Voucher Tenant shall not charge the sublessee more rent than the market rent, except that Qualified Non-Sticky Voucher Tenants may charge up to 110% of such market rent if the Qualified Non-Sticky Voucher Tenant is subletting the apartment in a furnished conditioned. After the sublease term has ended, the rent for the apartment shall be determined according to the rent schedule as provided in Section 3(a) hereof.

(d) Certain persons shall have the right to succeed to the rights of the Qualified Non-Sticky Voucher Tenants as described below. As used herein "Succession Rights" shall mean, for the persons not listed as a "tenant" on the lease, the right to remain in the apartment under the same lease provisions as the "tenant" after all the existing tenants have permanently left or died (collectively, the "Departing Tenant").

The first person seeking Succession Rights must meet the following conditions:

- a. Those seeking Succession Rights must be 18 years old or older and have been a “Family Member” of the Departing Tenant. “Family Member” includes husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepmother, stepfather, brother, sister, grandfather, grandmother, grandson, granddaughter. Also included in the definition of Family Members are persons who, though not related by blood or marriage, lived with the Departing Tenant, as a domestic partner and who registered the Departing Tenant with the City Clerk as a “Domestic Partner.” Such persons shall be referred to herein as “Domestic Partners”;

And

- b. Those persons seeking Succession Rights must have lived with the Departing Tenant for two (2) consecutive years immediately prior to the departure or death of the Departing Tenant. This minimum period of required cohabitation will not be considered interrupted by any period during which the person seeking Succession Rights was (i) enrolled as a full time student; (ii) engaged in active military duty on behalf of the United States; and/or (iii) hospitalized for medical treatment.

The second right of succession will be more limited and shall only be available to an adult child of a husband, wife or Domestic Partner of the Departing Tenant where such surviving or remaining parent used the first right of succession by him or herself becoming the Successor Tenant.

### **3. Overhoused Tenants**

(a) It is the parties’ understanding that HUD and HPD provide a one-year grace period commencing on the date the Sticky Voucher payments are first made (“Grace Period”) for Overhoused Sticky Voucher Tenants in which the Landlord will receive the full Sticky Voucher payment amount (“Full Voucher Payment”) from HUD for the actual apartment size, notwithstanding that an Overhoused Sticky Voucher Tenant resides there. It is the parties’ further understanding that HPD may, in its discretion, based on Applicable Voucher Rules, provide certain Overhoused Sticky Voucher Tenants with waivers (“Waivers”) allowing the Landlord to receive the Full Voucher Payment from HUD beyond the Grace Period, and the Landlord will cooperate in any reasonable efforts to obtain such Waivers. Overhoused Sticky Voucher Tenants

who do not receive a Waiver will be given the opportunity, as described below, to rent appropriate sized vacant apartments to the extent available. The parties expressly agree that Overhoused Sticky Voucher Tenants who move will bear all of their own moving expenses. Overhoused Sticky Voucher Tenants will be able to select available appropriate sized vacant apartments strictly according to each Overhoused Sticky Voucher Tenant's position on a list (the "Overhoused Sticky Voucher Tenants' List") to be maintained by the Landlord's managing agent at the Project under the supervision of **HPD**. The Overhoused Sticky Voucher Tenants' List shall be arranged according to a lottery of all Overhoused Sticky Voucher Tenants who submit their names to the managing agent; such lottery to be witnessed by a representative of the Tenant Association and supervised by HPD. Landlord agrees that as each Tenant on the Overhoused Sticky Voucher Tenants List becomes eligible pursuant to the aforesaid lottery, he or she shall be offered all the then available apartments at the Project of the appropriate size. The updated Overhoused Sticky Voucher Tenants' List shall be provided to the Tenant Association each month.

(b) Landlord will continue to accept Sticky Vouchers from an Overhoused Sticky Voucher Tenant after the expiration of the Grace Period and Landlord will only require that such Tenant pay the Tenant's Portion if Landlord is receiving a Sticky Voucher, even if Landlord is not receiving the Full Voucher Payment for the housing apartment, if such Overhoused Sticky Voucher Tenant has not yet been offered an appropriate sized vacancy in which to relocate. However, after the expiration of the Grace Period, if an Overhoused Sticky Voucher Tenant refuses to relocate to such appropriate sized vacant apartment (regardless of the lack of comparability of the substitute appropriate sized apartment or any dispute as to the accuracy of the Overhoused Sticky Voucher Tenant's List), then thereafter such Overhoused Sticky Voucher

Tenant must pay the Tenant Portion for the larger apartment plus the additional amount required to bring the total rent payable to the Landlord, taking into account the Sticky Voucher payment received from HUD, to the HPD Reasonable Rent for the apartment actually occupied by the Overhoused Sticky Voucher Tenant. Overhoused Sticky Voucher Tenants who do not comply with the provisions of this subsection 3(b) shall be subject to eviction.

#### **4. Underhoused Tenants**

The Landlord will offer each Qualified Sticky Voucher Tenant who is determined to be underhoused by HPD the opportunity to move into larger vacant units, provided such Underhoused Sticky Voucher Tenants qualify for and obtain HUD Sticky Vouchers applicable to the larger apartment size (“Qualified Underhoused Tenants”). After the Exit Date and after the initial group of Overhoused Sticky Voucher Tenants select new apartments as per Section 3 hereof. Qualified Underhoused Tenants will be given a list of available vacancies by the Landlord and the opportunity, as described below, to move into any appropriately sized vacant apartments at the Project. Qualified Underhoused Tenants will be offered available larger vacant apartments strictly according to each Qualified Underhoused Tenant’s position on a list (the “Qualified Underhoused Tenants’ List”) to be maintained by the Landlord’s managing agent at the Project under HPD supervision. The Qualified Underhoused Tenants’ List shall be arranged according to a lottery of all Qualified Underhoused Tenants who submit their names to the managing agent, such lottery to be witnessed by the Tenant Association and supervised by HPD. Landlord agrees that as each Tenant on the Qualified Underhoused Tenants’ List becomes eligible pursuant to the aforesaid lottery, he or she shall be offered all the then available apartments at the Project of the appropriate size. The updated Qualified Underhoused Tenants’ List shall be provided to the Tenant Association at the outset of the Sixty Day Period and each

thirty (30) days thereafter until all Qualified Underhoused Tenants have selected or declined to select a larger apartment. After a Qualified Underhoused Tenants is given the list of all then available vacancies, he or she shall have ninety (90) days in which to select their new apartment and move in.

**5. Illegal Tenants**

Anything contained herein to the contrary notwithstanding, residents who do not use their apartment at the Project as a primary residence, Tenants who are illegally subletting or otherwise in material default of their leases (each, after the expiration of applicable notice and cure periods, hereinafter collectively “Illegal Tenants”) will not be offered any of the LAP or other benefits described herein (whether or not they are Sticky Voucher Tenants or Non-Sticky Voucher Tenants), and will be subject to eviction. As to any Tenant whose default (before the Exit Date) is solely monetary or is based on any other default (other than non primary residence or illegal subletting), Landlord will notify such Tenant in writing of such Tenant’s default and provide such Tenant ten (10) day notice to cure. This notice and cure right shall be a one time right only.

**6. Capital Improvements and Repairs**

Landlord agrees to make the capital improvements described on Schedule A hereto.

**7. Community Rooms Access**

Landlord agrees to give the Tenant Association reasonable access to one of the Community Rooms (the “Community Rooms”) that are located at 80 N. Moore Street and 310 Greenwich Street, in Landlord’s reasonable discretion. When choosing which Community Room to provide access, Landlord shall consider whether one of the Community Rooms will be more effectively utilized by the Tenant Association.

**8. Utilities**

Anything contained herein to the contrary notwithstanding, for both Sticky Voucher Tenants and Non-Sticky Voucher Tenants, Landlord will have the right at its expense to directly meter or privately sub-meter the provision of electricity to such apartments. Should Landlord elect to do such direct or private sub-metering, the otherwise applicable rent shall be reduced by the prevailing New York State Division of Housing and Community Renewal (“DHCR”) allowance in effect at such time, and such rent shall be further reduced by the current charge each Tenant pays of \$10 per month per air conditioner (provided such DHCR allowance does not already include a factor for air-conditioning). Should Landlord elect private sub-metering, Landlord shall not charge any administrative fee.

**9. Security**

Before the expiration of the Sixty Day Period, Landlord will make the changes to the security program at Independence Plaza described on Schedule B.

**10. Meetings**

The parties agree that one or more agents representing the Landlord and one or more representatives of the Tenant Association shall have monthly meetings, as necessary, in the Community Room in a good faith attempt to discuss and resolve any issues which may arise with respect to the interpretation of this Agreement and/or necessary or requested repairs and/or other issues of concern to Landlord or Tenant Association.

**11. Parking Garage**

(a) The parties recognize that the residents of Independence Plaza are currently paying a below market subsidized parking. Landlord agrees to cause the parking garage operator to accept

monthly rental from both Sticky and Non-Sticky Voucher Tenants (who are not Illegal Tenants) as follows:

(b) Sticky and Non-Sticky Voucher Tenants may use up to one parking spot per apartment according to the following rent schedule:

- i. The day after the Exit Date, the monthly parking rent for such Tenants shall increase to the sum of \$200;
- ii. Commencing with the first (1<sup>st</sup>) anniversary of the Exit Date, the monthly parking rent shall be further increased to \$275;
- iii. Commencing with the second (2<sup>nd</sup>) anniversary of the Exit Date, the monthly parking rent shall be further increased to \$350;
- iv. Commencing with the third (3<sup>rd</sup>) anniversary of the Exit Date, the monthly parking rent shall be further increased to \$425;
- v. Commencing with the fourth (4<sup>th</sup>) anniversary of the Exit Date, the monthly parking rent shall be further increased to \$500;
- vi. After the fifth (5<sup>th</sup>) anniversary, there shall be no further Landlord subsidy with respect to parking;
- vii. The subsidized parking rental rate shall only be applicable to cars registered in the State of New York in the name of either the named Tenant or a Family Member or Domestic Partner, who is in residence at the apartment. Only one car per apartment shall be allowed at the subsidized rate.

**12. Legal and Consulting Fees**

Landlord agrees to pay the legal fees charged by Manatt, Phelps & Phillips, LLP (“Manatt”) and consulting fees charged by Geto & DeMilly, Inc. (“G&M”) actually incurred by Tenant Association, up to a cap of \$75,000.00 for each firm.

**13. Disputes**

Disputes solely between the Landlord and the Tenant Association arising under Section 14 of this Agreement shall be decided by binding arbitration before a panel of three (3) arbitrators conducted by the American Arbitration Association (“AAA”) under its expedited commercial arbitration rules. Any such arbitration shall be conducted in New York County. In the event of any other disputes between the Tenant Association and the Landlord, the parties shall in good faith spend up to but no more than two (2) business days in non-binding mediation before a mediator designated by the AAA. The foregoing provisions shall not apply to, and there shall be no mediation requirement whatsoever as a condition precedent to, or any arbitration agreement applicable to, the Landlord’s bringing judicial proceedings against any individual Tenant for an alleged violation of any provision of a lease, or law, or regulation, or to commencing eviction, holdover, non-payment or other summary or ejectment proceedings against Tenants in default or Illegal Tenants.

**14. Conditions to Landlord’s Obligations Hereunder**

The Landlord’s obligations and Tenants’ rights under this Agreement shall be the contingent upon the satisfaction, or written waiver by the Landlord, of each of the following conditions:

(a) At least two-thirds of Tenants, determined by number of apartments (exclusive of vacant apartments and apartments subject to landlord-tenant proceedings at the time Tenants are

sent the Sticky Voucher applications), duly apply to HPD and/or HUD as appropriate for Sticky Vouchers by the date specified in Section 1(a) hereof.

(b) At least two-thirds of the Sticky Voucher Tenants, execute and deliver to Landlord by the date specified in Section 1(a) (or within 20 days of the date on which their current Mitchell Lama lease expires) their respective Sticky Voucher Lease or renewal lease, as the case may be;

(c) The Exit Date occurs on or before December 31, 2004, provided that should the Landlord seek to cancel this Agreement based on the occurrence of this condition 14(c), then in that event only, Landlord shall be required to provide notice to the Tenant Association of such intent to cancel, as provided in the Notices paragraph of this Agreement, not less than ninety (90) days prior the effective date of such cancellation (provided further that a failure of the Exit Date to occur by December 31, 2004 shall not be reason for Landlord to cancel this Agreement, if the reason therefor is Landlord's financial inability to prepay the Project Mortgage Loan).

(d) Between the date hereof and the Exit Date, the Tenant Association takes any action which delays the Exit Date.

(e) There not being enacted into law, on or before the Exit Date (or otherwise applicable to the Project), any bill or law which imposes net economic costs ("New Net Economic Costs") on the Landlord associated with the exit of the Project from the Mitchell-Lama Program, and such New Net Economic Costs do not exist under present law at the time of the execution of this Agreement, provided that any such bill or law shall not be grounds for Landlord to cancel this Agreement if all such New Net Economic Costs shall be paid, within ten (10) days of demand for same, by the Tenant Association to the Landlord. Time shall be of the essence with respect to all dates and deadlines set forth in this Section 14.

**15. Sticky Voucher and Non Sticky Voucher Leases**

The parties shall finalize the forms of Sticky Voucher Lease and Non-Sticky Voucher Lease within twenty (20) days of the date of this Agreement. Both the Sticky Voucher Lease and the Non-Sticky Voucher Lease shall provide that such a lease shall supersede and result in the termination of the last Mitchell Lama lease renewal for each Tenant. Such actually agreed forms are hereinbefore and hereafter referred to as the “Sticky Voucher Lease” and the “Non-Sticky Voucher Lease.” The Sticky Voucher Leases and Non Sticky Voucher Leases shall be executed by the Tenants in undated form, and dated and executed by the Landlord and a copy returned to the respective Tenants within fifteen (15) days after the Exit Date. Time shall be of the essence as to this Section 15.

**16. Representations**

A. Landlord hereby represents that:

(a) it intends to cause the withdrawal of the Project from the Mitchell-Lama Program;

(b) that, to the best of its knowledge, it has taken the steps thus far required, to permit such withdrawal on or about July 1, 2004;

(c) that the Landlord has received and approved HPD’s determination of the reasonable rent of the apartments at the Project;

(d) that Landlord (i) on or about June 26, 2003 filed with HPD and served upon the tenants of Independence Plaza and all other required parties, a Notice of Intent to Dissolve the Housing Company, (ii) on or about October 3, 2003 sent to HUD, the Tenants and all other required parties; a Notice of Prepayment of the Project Mortgage Loan, and (iii) caused HUD to be appointed as contract administrator; and

(e) that Landlord will diligently prosecute to completion the process of withdrawing the Project from the Mitchell Lama Program and dissolving the Housing Company; and

(f) that Landlord, to the best of its knowledge, knows of nothing (other than potential or pending legislation) which would halt or delay the Exit Date.

B. The Tenant Association represents that it has presented the substance of this Agreement to the Tenant body at large, that such presentation met with overall Tenant approval, and that the Tenant Association will not directly or indirectly take any steps seeking to halt or delay the Exit Date, or to halt or delay rent increases following the Exit Date (exclusive of this Agreement) and to file appropriate papers as specified in Recital G of this Agreement seeking, to dismiss any lawsuit or proceeding seeking to halt or delay the Exit Date.

## **17. Miscellaneous Provisions**

### **A. Headings**

The Article headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any party hereof.

### **B. Counterparts**

This Agreement may be executed in separate counterparts which taken together shall be deemed one Agreement.

### **C. Notices**

Any statement, notice, request, demand or other communication (each, a “notice”) permitted or required to be given by the terms and provisions of this Agreement, by either party hereunder to the other, shall be in writing and shall be sent by United States certified mail, return receipt requested, or by overnight delivery service, or by hand delivery, addressed to the applicable party, at the following addresses:

If to Landlord: Stellar Management Inc.  
156 William Street, 10 & Floor  
New York, New York 10038  
Attention: Laurence Gluck

with a copy to: Meister, Seelig & Fein LLP  
708 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10017  
Attention: Stephen Meister, Esq.

And: Swidler, Berlin Shereff Friedman  
405 Lexington Avenue  
New York, New York 10174  
Attention: Martin Siroka, Esq.

If to the Tenant Association: Independence Plaza North Tenant Association  
c/o Neil Fabricant  
80 N. Moore Street, Apt. 15(h)  
New York, New York 10013  
Attention: President

with a copy to: Manatt, Phelps & Phillips LLP  
1675 Broadway  
New York, New York 10019  
Attention: Alan E. Epstein, Esq.

Notices shall be deemed given (i) upon receipt or upon refusal of the addressee to receive same as evidenced on the returned receipt, if sent by United States certified mail, return receipt requested, or (ii) upon the next business day if sent by overnight delivery service, or (iii) on the day when sent if sent by hand delivery and received before 5:00 p.m. (recipient's local time) on a business day or otherwise on the next business day thereafter. Either party may, by notice as aforesaid, designate different addressees or addresses for notices to it.

**18. Further Assurances**

From time to time, each party hereto shall, within twenty (20) days after a request therefor by the other party take such other or further commercially reasonable actions as may be reasonably required to carry out the provisions of this Agreement or to confirm any right to be created or transferred hereunder.

**19. Waiver, Modification**

No covenant, agreement, term or condition of this Agreement to be performed or complied with by either party, shall be changed, modified, altered, waived or terminated except by written instrument of change, modification, alteration, waiver or termination executed by the party against which enforcement of such covenant, agreement term or condition is sought. No waiver of any act which might constitute a default affects or alters this Agreement, but each and every covenant, agreement, term and condition of this Agreement continues in full force and effect with respect to any other then existing or subsequent default.

**20. Governing Law**

This Agreement shall be governed, construed and interpreted in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of laws.

**21. Successors and Assigns**

The agreements, terms, covenants and conditions herein are binding upon, and shall inure to the benefit of, the parties hereto and, their respective permitted successors and assigns.

**22. Construction**

The terms “hereby”, “hereof”, “hereto”, “hereunder” and any similar terms as used in this Agreement refer to this Agreement in its entirety and not only to the particular portion of this Agreement where the term is used. Wherever in this Agreement the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require.

**23. Severability**

If any provision of this Agreement is invalid or unenforceable as against any person or under certain circumstances, the remainder of this Agreement and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**24. Entire Agreement**

This Agreement and the Exhibits annexed hereto are the entire agreement between Landlord and the Tenant Association concerning the subject matter hereof and all understandings and agreements heretofore had or made between the Parties are merged in this Agreement which, together with aforementioned other items, alone fully and completely expresses the agreement of the parties.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Understanding as of the date first set forth herein.

**INDEPENDENCE PLAZA ASSOCIATES, LP**

By: Independence Plaza Associates, LLC Its  
Managing General Partner

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

Name: Laurence Gluck  
Title: Managing Member

**WASHINGTON PLAZA TOWERS, INC.**

(Nominee for Independence Plaza Associates, LP)

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

Name: Laurence Gluck  
Title: Managing Member

**INDEPENDENCE PLAZA NORTH TENANT  
ASSOCIATION, INC.**

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

Name: Neil Fabricant  
Title: President

## **Schedule A**

1. New Windows
2. Plaza Beautification
3. Renovation of Lobbies including Addition of package room, if commercially feasible
4. Repair plumbing, as needed
5. Laundry Room Improvements, subject to existing leases

**Schedule B**

To be determined and agreed to by the parties within 20 days of the date hereof.