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August 4, 2006

VIA HAND DELIVERY

Moses Animashaun
LSDBE Office
441 4th Street, N.W.
Room 970 North
Washington, DC 20001

Re: Memorandum of Understanding - Final Application for Approval of a Planned Unit Development - Zoning Commission Case No. 03-12C/03-13C

Dear Mr. Animashaun:

Enclosed please an original, executed Memorandum of Understanding for the above-referenced PUD application, and a copy of the application materials. Please have the agreement countersigned, and have a fully executed copy of the agreement returned to me.

Thank you for your assistance in this matter. Should you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,



Kyrus L. Freeman

Enclosure

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LSDBE MEMORANDUM OF UNDERSTANDING

Between THE DISTRICT OF COLUMBIA
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT
And
Square 769, LLC

Square 769, LLC (hereinafter, the "**Developer**"), in accordance with D.C. Law 1-95 (as amended), D.C. Code Section 2-215.03 et seq. (2001 Ed.) and 2-217.01 et seq. (2001 Ed.), the statutes regarding "**Equal Opportunity for Local, Small and Disadvantaged Business Enterprises**" and in consideration of the Zoning Commission for the District of Columbia's approval of a Planned Unit Development known as Zoning Commission Case No. 03-12C/03-13C the "**PUD**"), to construct a nine-story office building, including ground floor retail, to a maximum height of 110 feet and including approximately 194 parking spaces, on parts of Lots 18, 20, and 21 in Square 769 in the District of Columbia (the "**Property Site**"), **Developer** does hereby covenant and agree to make a bona fide effort to contract and subcontract with Local, Small and Disadvantaged Business Enterprises certified by the D.C. Local Business Opportunity Commission ("**LSDBEs**") to achieve a contracting and subcontracting goal of thirty-five percent (35%) LSDBEs participation in the **Developer's** contracted development costs in connection with the architectural and design, development, construction (including but not limited to, excavation, provision of construction materials, interior design and improvements, purchase of goods and supplies and equipment, janitorial and refuse collection services and other pre and post construction activities, maintenance and security for the project being created (the "**Project**"), in accordance with the following provisions.¹

- A. The **Developer** by entering into this Memorandum of Understanding Agreement (the "**MOU**") agrees to develop a master procurement plan inclusive of LSDBEs for redeveloping of the Site, including implementation of all design, pre-development and development activities contemplated by such master plan, and the demolition and/or construction of all improvements (as defined in the **MOU**) to be located at the Site (collectively, the "**Project**"). The **Developer**, on its behalf and/or on behalf of its successors and assigns (if any), hereby agrees to use bona fide efforts (as defined herein) to achieve, at a minimum, LSDBE participation in professional/technical services, construction management, construction trade subcontracting, and construction trade suppliers for the Project equivalent to 35% of the adjusted development budget. The actual amount of the 35% Goal will be based upon Developer's final construction budget submitted to the DSLBD Director.
- B. The **Developer** shall utilize the resources of the Department of Small and Local Business Development ("**DSLBD**"), including the Local Business Opportunity Commission's Directory of Certified Local, Small and Disadvantaged Business Enterprises, and periodic updates, as the primary referral sources for LSDBEs. The primary contact for such referrals shall be the Director of the Department of Small and Local Business Development (the "**Director**").
- C. The **Developer** shall designate one or more representatives (the "**Representatives**") who shall be duly authorized to negotiate, sign, and

implement this MOU, and the **Developer** shall provide the name(s) of the Representatives to DSLBD promptly upon their selection together with reasonably satisfactory evidence of their authority to act as Representatives. The Representatives shall meet with DSLBD officials to explore and develop ways for achieving the 35% Goal.

- D. The **Developer** agrees to make a continuing bona fide effort to utilize LSDBEs for certain goods and services as may be required by the **Developer** to conduct its daily operations during the Project, and understands that such efforts will accrue toward the 35% Goal.
- E. Not later than 60 days following the filing of application for a building permit pursuant to the approved PUD, the Developer agrees to submit a local business plan, in the form of **Attachment A** to DSLBD for approval, which plan shall be incorporated in and made a part of this MOU.
- F. Not later than 45 days after the local business plan has been approved by DSLBD, the **Developer** will submit to DSLBD a more extensive plan listing all of the projected procurement items, quantities and estimated costs, bid opening and closing dates, and start-up and completion dates. This plan should indicate whether any items will be bid without restriction in the open market, or limited to LSDBEs certified by the Local Business Opportunity Commission.
- G. The parties hereto understand and agree that the means of achieving the 35% Goal may vary according to the types of goods and services contracted for and the current availability of Certified LSDBEs. However, the **Developer** agrees to make a bona fide effort to achieve, at minimum, the 35% Goal.
- H. The **Developer** further agrees to submit quarterly LSDBE contracting and subcontracting reports, in the form of **Attachment B**, to DSLBD no later than fifteen (15) days after the end of each calendar quarter; the quarterly report periods shall begin on **January 1, April 1, July 1, and October 1**. These reports should include detailed documentation of outreach efforts to LSDBEs in order for DSLBD to determine whether the Owners have made bona fide efforts.
- I. The Representatives of **Developer** shall meet quarterly with DSLBD staff on a mutually agreeable schedule to discuss LSDBE participation during the construction phase(s) of the Project.
- J. The **Developer** further agrees to include in the terms of its contractual agreements with the general/prime contractor(s) and/or construction manager (any such general contractor or construction manager, the "**General Contractor**"), language that requires the General Contractor to make a bona fide effort to achieve the 35% Goal in (1) in its own contracting with respect to the Project, and (2) engaging subcontractors to perform work on the Project, and the General Contractor will require that the any of its contractors include in all lower-tier contracts a provision requiring such lower-tier subcontractors make bona fide efforts to achieve the 35% Goal.

The **Developer** shall take responsibility for training the General Contractor and any subcontractors to ensure that they understand the economic development commitments made by the **Developer** to certified Local, Small and Disadvantaged Business Enterprises.

The **Developer** shall employ and maintain an aggressive contract tracking and monitoring program, along with a prescribed and detailed means of dealing with inconsistent, incorrect and/or tardy reports. To the extent that the **Developer** experience or discover non-compliance with this MOU, the **Developer** may request additional retainage be withheld from non-complying subcontractors (including the General Contractor) until complete and correct documentation reflecting bona fide efforts to achieve the 35% Goal is submitted. Contractors shall be advised that any and all non-compliance with this MOU may negatively impact all future opportunities with the **Developer** or the General Contractor, as applicable.

- K. The **Developer** will publish, at a reasonable time period prior to any bid opening henceforth, a public notice in a newspaper of general circulation in the District of Columbia and in one or more other newspapers serving the District of Columbia local business community, to inform the business community as a whole of the overall project including a general description of projected phases of the development and anticipated time tables.
- L. For purposes of this MOU agreement, the term “bona fide effort” shall mean good faith efforts designed to meet all applicable requirements with consideration for the particular facts and circumstances of any given situation. Furthermore, “bona fide efforts” shall include, among other things, the following actions, together with a commitment from the **Developer** that it shall enforce the same:
 - 1. The General Contractor subject to this MOU will publish a public notice in a newspaper of general circulation in the District of Columbia, and in other newspapers serving the District of Columbia local business community, designed to inform the business community as a whole of specific contracting and subcontracting procurement opportunities.
 - 2. The General Contractor subject to this MOU will publish public notices in a newspaper of general circulation in the District of Columbia and in one or more other newspapers serving the District of Columbia local business community, soliciting bids for products or services being sought, and will allow a reasonable time for all bidders to respond to the invitation for bid.
 - 3. The General Contractor subject to this MOU will contact DSLDB to obtain a current listing of all LSDBEs qualified to bid on procurements as they arise.
 - 4. The General Contractor subject to this MOU will negotiate with each bidder pre-qualified by the **Developer** and the General Contractor, including LSDBEs, to obtain such bidder’s best and final price as understood in the marketplace.
 - 5. The General Contractor will not require that LSDBEs provide bonding on contracts with a dollar value less than **\$100,000**, provided that in lieu of

bonding the General Contractor may accept a job specific certificate of insurance.

6. The General Contractor will design and include in all contracts and subcontracts a process for dispute settlement. This process shall incorporate an opportunity for the presentation of documentation involving the work performed and invoices regarding requests for payments. Included in such contracts shall be a provision for selecting a mutually agreed upon mediator or provisions for arbitration in accordance with the rules of the **American Arbitration Association**.
 7. The General Contractor and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the General Contractor, the General Contractor is to immediately notify any affected subcontractor as to the date on which payment can be expected.
 8. The General Contractor commits to pay all subcontractors, including LSDBEs, in accordance with the terms of the relevant subcontract, within thirty - (30) days following the General Contractor's receipt of a payment, which includes funds for such subcontractors, from the **Developer**. The **Developer** agrees to require the General Contractor to establish a procedure for giving notice to the subcontractors of the Developer's payment to the General Contractor.
- M. In order to encourage the **Developer** to develop creative, cost competitive ways in which to meet its 35% Goal, DSLBD will give credit for new opportunities created by the **Developer** in areas not traditionally made available to LSDBEs and expansion of opportunities in existing areas.

- N. If at the end of the first calendar quarter following the issuance of a building permit for the Project, the **Developer** is unable to comply with the LSDBE utilization plan for the Project as presented by the **Developer**, the Representatives of the **Developer** and the Director of DSLBD shall meet and discuss the possibilities for adjusting goals and strategies to extend the time of performance based on facts and circumstances.

This Memorandum of Understanding shall be construed in accordance with the laws of the District of Columbia.

DATE THIS 4th DAY OF August, 2006

DEPARTMENT OF SMALL AND LOCAL
BUSINESS DEVELOPMENT

SQUARE 769, LLC

-a District of Columbia Limited Liability
Company

BY: JACQUELYN A. FLOWERS
DIRECTOR

By: R. F. Farrell

Contact Information:

Department of Small and Local Business Development
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