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MEMORANDUM OF UNDERSTANDING

The Salvation Army (the "DEVELOPER"), in accordance with D.C. Law 1-95, D.C. Code Section 1-1-1141 et seq. (1987 Ed. as amended), and in consideration of the District of Columbia Government granting DEVELOPER's Planned Unit Development **("PUD")** known as **D.C. Zoning Commission Case No. 04-___, for the property Lot ___, ___, ___, and ___, in Square _____to construct a community center (the "Project")**, does hereby commit to make a bona fide effort to utilize Local Small and Disadvantaged Business Enterprises (**"LSDBEs"**) in order to achieve, at a minimum, the goal of thirty-five percent (**35%**) LSDBE participation in the DEVELOPER'S adjusted development budget of _____ (the "35% Goal"). The 35% Goal in the amount of _____ is to be achieved in the contracted development costs in connection with the design, development, construction (including, but not limited to, pre-construction activities), maintenance and security for the project to be created as result of the Project, including janitorial, refuse collection, provision of supplies and other similar post-construction activities relating to the Project, in accordance with the following provisions.

A. **DEVELOPER** shall utilize the resources of the Office of Local Business Development ("OLBD"), 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 Office of Local Business Development (the "Director").

B. The appropriate representatives of **DEVELOPER** who negotiate, sign and are responsible for the implementation of the Memorandum of Understanding with the OLBD agree to meet with OLBD procurement and project officers to explore and develop ways for achieving the 35% Goal.

C. **DEVELOPER** agrees to make a continuing bona fide effort to utilize LSDBEs for certain goods and services as may be required by **DEVELOPER** to conduct its daily operations and understands that such efforts will accrue toward the 35% Goal.

D. Not later than (**45**) days following the approval of the PUD Project, **DEVELOPER** agrees to submit a local business plan (**Attachment A**) to OLBD for approval, which plan shall be incorporated in and made a part of this Agreement.

E. Not later than thirty (**30**) days following the filing of an application for a building permit pursuant to the approved **PUD, DEVELOPER** will submit to OLBD 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.

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F. 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 LSDBBEs. However, **DEVELOPER** agrees to make a bona fide effort to achieve, at a minimum, the 35% Goal over the life of the project.

G. **DEVELOPER** further agrees to submit quarterly LSDBE contracting and subcontracting reports to OLBD 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. The quarterly report shall be submitted on a form provided by OLBD (**Attachment B**). These reports should include detailed documentation of outreach efforts to LSDBEs in order to determine bona fide efforts.

H. **DEVELOPER** agrees to meet quarterly with OLBD staff on a mutually agreeable schedule to discuss LSDBEs participation on the project.

I. In the event that there are no LSDBEs in the District of Columbia which manufacture, construct, distribute, install, or otherwise supply the goods and services required to develop, construct, renovate and/or maintain the Project, **DEVELOPER** agrees to make bona fide efforts to achieve the 35% Goal through a broad scale approach to contracts with other local business enterprises certified by the District.

J. **DEVELOPER** further agrees to include in the terms of its contractual agreements with the general/prime contractor and/or construction manager (in any of such events, the "Contractor"), language which puts the Contractor on notice that the contractor is expected to make a bona fide effort to achieve the 35% Goal in: (1) its own contracting with respect to the Project; and (2) engaging subcontractors to perform work on the Project.

K. **DEVELOPER** will publish, in a timely manner, 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, a public notice to inform the business community as a whole of the overall project, including a general description of projected phases and anticipated time tables.

L. For purposes of this agreement, it is agreed that bona fide effort means that **DEVELOPER** will obtain the following commitments from its General Contractor ("GC"):

1. The GC will publish, 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, a public notice designed to inform the business community as a whole of specific contracting and subcontracting procurement opportunities.

2. The **GC** 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 invitations/requests for bids.

3. The **GC** will contact OLBD to obtain a current listing of all LSDBEs qualified to bid on major procurement as they arise.

4. The GC will negotiate with all bidders pre-qualified by **DEVELOPER.** and the GC, including LSDBEs to obtain each pre-qualified bidder's best and final price as understood in the marketplace.

5. The GC will not require that the LSDBEs provide bonding on contracts with a dollar value less than **$100,000**, provided that in lieu of bonding the GC may accept a job specific certificate of insurance.

6. The **GC** 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 the contract shall be a mutually agreed upon mediator and provisions for arbitration in accordance with the rules of the **American Arbitration Association.**

7. The **GC** and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule of payments. In the event that there is a delay in payment to the **GC**, the **GC** is to immediately notify the subcontractor and advise the subcontractor as to the date on which payment can be expected.

8. The **GC** commits to pay all subcontractors, including LSDBEs, within fifteen **(15)** days following the GC's receipt of a payment, which includes funds for such subcontractors, from **DEVELOPER. DEVELOPER** agrees to require the project manager to establish a procedure for giving notice to the subcontractors of **DEVELOPER** payments to the **GC.**

M. In order to encourage **DEVELOPER** to develop creative, cost competitive ways in which to meet its 35% Goal, OLBD will give credit negotiated by the parties for the opening up of opportunities in areas not traditionally provided to LSDBEs and/or expansion of opportunities in existing areas.

N. If at the end of the first calendar quarter following the issuance of a building permit, **DEVELOPER** is unable to comply with the proposed local business utilization plan for the Project, representatives of **DEVELOPER** and the Director of OLBD shall confer with a view toward adjusting goals and strategies to extend the time of performance based on facts and circumstances.

DATE THIS _____ DAY OF _____, 2005

OFFICE OF LOCAL BUSINESS DEVELOPMENT

BY: _____

Director

THE SALVATION ARMY

BY: _____

Document #: 1474932 v.2