

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this \_\_\_\_ day of \_\_\_\_\_ 2007, by and between MR RANDALL CAPITAL LLC, 1155 Connecticut Avenue, N.W., Washington, D.C. (the "Developer") and the District of Columbia Department of Small and Local Business Development ("DSLBD"). In accordance with the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Act 16-166,<sup>1</sup> and in consideration of the approval of a Planned Unit Development granted by the District of Columbia Zoning Commission, c/o the Office of Zoning, an instrumentality of the District of Columbia, with offices at 441 4<sup>th</sup> Street, N.W., Suite 210S, Washington, D.C. (the "Zoning Commission") in Zoning Commission Case No. 07-\_\_\_\_ for property located at 65 I Street, S.W. (the "PUD"), to construct a mixed-use residential and arts-related development containing 499,843 square feet of gross floor area on Lot 801 in Square 643-S (the "PUD Site"), in accordance with the PUD application submitted by the Developer to the Zoning Commission on April 11, 2007, the Developer does hereby covenant and agree to make a bona fide effort to contract or subcontract with Local, Small or Disadvantaged Business Enterprises ("LSDBEs") certified by the D.C. Small and Local Business Opportunity Commission in order to achieve a subcontracting goal of thirty-five percent (35%) LSDBE participation in the Developer's adjusted development budget (the "35% Goal"). The 35% Goal is to be achieved in the contracted development costs in connection with the architectural design, development, construction (including, but not limited to, excavation, provision of construction materials, interior design and improvements, purchase of goods, supplies, and equipment, janitorial and refuse-collection services and other pre- and post-construction activities), maintenance and security for the Site being created by the development project, in accordance with the following provisions.

- A. The Developer by entering into this MOU agrees to develop a master procurement plan inclusive of LSDBEs for redeveloping 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 a value of 35% of the adjusted development budget. The Developer shall provide the DSLBD with the adjusted development budget prior to the issuance of the building permit for the Project in order to calculate the 35% Goal for the LSDBE contracts and subcontracts.
- B. The Developer shall utilize the resources of the DSLBD, including the LSDBE Business Center's Directory of Certified Local, Small and Disadvantaged Business Enterprises, and

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<sup>1</sup> The Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005 was enacted as part of the Fiscal Year 2006 Budget Support Act of 2005, effective October 20, 2006. Pursuant to section 2382 of the Act, however, "[a]n order, rule, or regulation in effect under a law [D.C. Official Code §§ 2-215.03, 2-215.04, 2-215.11, and 2-217.11] repealed by this section shall remain in effect under the corresponding provision enacted by this subtitle until repealed, amended, or superseded."

periodic updates, as the primary referral sources for LSDBEs. The primary contact for such referrals shall be the Director of the DSLBD (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 sixty (60) days following the filing of an 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 forty-five (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 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 a 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 Developer has made bona fide efforts.
- I. The Representatives of the 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) 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 any of its contractors include in all lower-tier contracts a provision requiring that 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 experiences or discovers 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 timetables.
- L. For purposes of this MOU, 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 will publish a public notice in a newspaper of general circulation in the District of Columbia, and in one or more 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 will publish a public notice in a newspaper of general circulation in the District of Columbia, and in one or more 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 bids.
  - 3. The General Contractor will contact DSLBD to obtain a current listing of all LSDBEs qualified to bid on procurements as they arise.

4. The General Contractor 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.

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

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2007.

**DEPARTMENT OF SMALL AND LOCAL MR RANDALL CAPITAL LLC**

**BUSINESS DEVELOPMENT**

By:

Its:

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