

DRAFT

FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: Z.C. Case No. 05-35

Contract Amount: _____

Project Name: The Townhomes at Stanton Square

Project Address: Stanton Road and Pomeroy Road, S.E. Ward: 8

Nonprofit Organization: (Yes) _____ (No) X

This First Source Employment Agreement, in accordance with D.C. Law 14-24, D.C. Law 5-93, and Mayor's Order 83-265 for recruitment, referral, and placement of D.C. residents, is between the District of Columbia Department of Employment Services, hereinafter referred to as DOES, and Horning Brothers¹, hereinafter referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral and placement of new hires or employees for the new jobs created by this project and will hire 51% District of Columbia residents for all new jobs created, as well, as 51% of apprentices employed in connection with the project shall be District residents registered in programs approved by the District of Columbia Apprenticeship Council.

General Terms

- A. The EMPLOYER will use DOES as its first source for the recruitment, referral and placement of employees.
- B. The EMPLOYER shall require all contractors and subcontractors, with contracts totaling \$100,000 or more to enter into a First Source Employment Agreement with DOES.
- C. DOES will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement.
- D. DOES participation in this Agreement will be carried out by the Office of the Director, with the Office of Employer Services, which is responsible for referral and placement of employees, or such other offices or divisions designated by DOES.

¹ Stanton Square LLC is the current owner of the site. Horning Brothers and Stanton Square LLC have entered into a contract whereby Horning Brothers will act as fee developer for the site upon approval of this project by the Zoning Commission.

- E. This Agreement shall take effect when signed by the parties below and shall be fully effective for the duration of the contract and any extensions or modifications to the contract.
- F. This Agreement shall not be construed as an approval of the EMPLOYER'S bid package, bond application, lease agreement, zoning application, loan, or contract/subcontract.
- G. DOES and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created (both union and nonunion) include all EMPLOYER'S job openings and vacancies in the Washington Standard Metropolitan Statistical Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project, including loans, lease agreements, zoning applications, bonds, bids and contracts.
- H. For purposes of this Agreement, apprentices as defined in D.C. Law 2-156, are included.
- I. The EMPLOYER shall register an apprenticeship program with the D.C. Apprenticeship Council for construction or renovation contracts or subcontracts totaling \$500,000 or more. This includes any construction or renovation contract or subcontract signed as the result of, but is not limited to, a loan, bond, grant, Exclusive Right Agreement, street or alley closing, or a leasing agreement of real property for one (1) year or more.
- J. All contractors who contract with the Government of the District of Columbia to perform information technology work with a single contract or cumulative contracts of at least \$500,000, let within any twelve (12) month period shall be required to register an apprenticeship program with the District of Columbia Apprenticeship Council.
- K. The term "information technology work" shall include, but is not limited to, the occupations of computer programmer, programmer analyst, desktop specialist, technical support specialist, database specialist, network support specialist, and any other related occupations as the District of Columbia Apprenticeship Council may designate by regulation.

Recruitment

- A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, salary range, hiring dates, and union requirements. The EMPLOYER will notify DOES of its specific need for new employees as soon as that need is identified.
- B. Notification of specific needs, as set forth in Section II.A., must be given to DOES at least five (5) business days (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of

employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment and work to be performed.

- C. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to DOES for placement and referral.
- D. The EMPLOYER will submit to DOES, prior to starting work on the project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the project.

Referral

DOES will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

Placement

- A. DOES will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants DOES will refer. DOES will make every reasonable effort to refer at least two qualified applicants for each job opening.
- B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by DOES.
- C. In the event DOES is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire 51% District residents for the new jobs created by the project.
- D. After the EMPLOYER has selected its employees, DOES will not be responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

Training

DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and set forth in a separate Training Agreement.

Controlling Regulations and Laws

- A. To this extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail.
- B. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.
- C. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

Exemptions

- A. Contracts, subcontracts or other forms of government-assistance less than \$100,000.
- B. Employment openings the contractor will fill with individuals already employed by the company.
- C. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.
- D. Suppliers located outside of the Washington Standard Metropolitan Statistical Area and who will perform no work in the Washington Standard Metropolitan Statistical Area.

Agreement Modifications, Renewal, Monitoring, and Penalties

- A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:
 - 1. Notify the party taking possession of the existence of the EMPLOYER'S Agreement.
 - 2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.
 - 3. EMPLOYER shall, additionally, advise DOES within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.

- B. **DOES shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in DOES' monitoring effort and will submit a Contract Compliance Form to DOES monthly.**
- C. **To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.**
- D. **If additional information is needed during the review, the EMPLOYER will provide the requested information to DOES.**
- E. **With the submission of the final request for payment from the District, the EMPLOYER shall:**
 - 1. **Document in a report to the Contracting Officer its compliance with the requirement that 51 % of the new employees hired by the project be District residents; or**
 - 2. **Submit a request to the Contracting Officer for a waiver of compliance with the requirement that 51 % of the new employees hired by the project be District residents and include the following documentations:**
 - a. **Material supporting a good faith effort to comply;**
 - b. **Referrals provided by DOES and other referral sources; and**
 - c. **Advertisement of job openings listed with DOES and other referral sources.**
- F. **The Contracting Officer may waive the requirement that 51 % of the new employees hired by the project be District residents, if the Contracting Officer finds that:**
 - 1. **A good faith effort to comply is demonstrated by the contractor;**
 - 2. **The EMPLOYER is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area;**

The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loudon, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert;

and the West Virginia Counties of Berkeley and Jefferson.

3. The EMPLOYER enters into a special workforce development training or placement arrangement with DOES; or
 4. DOES certifies that insufficient numbers of District residents in the labor market possess the skills required by the positions created as a result of the contract.
- G. Willful breach of the First Source Employment Agreement by the EMPLOYER, or failure to submit the Contract Compliance Report, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract.
- H. Nonprofit organizations are exempted from the requirement that 51% of the new employees hired on the project be District residents.
- I. The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement.
- J. The project may be terminated because of the EMPLOYER'S non-compliance with the provisions of this Agreement.

Dated this _____ day of _____ 20__

Signed:

Department of Employment Services

Signature of Employer

Horning Brothers
Name of Company

1350 Connecticut Avenue, NW
Suite 800
Washington, DC 20036
Address

(202) 659-0700

Telephone

david@horningbrothers.com
E-mail

EMPLOYMENT PLAN

NAME OF FIRM Horning Brothers²

ADDRESS 1350 Connecticut Avenue, NW, Washington, DC 20036

TELEPHONE NUMBER (202) 659-0700 FEDERAL IDENTIFICATION NO. _____

CONTACT PERSON David Roodberg TITLE _____

E-mail: David@horningbrothers.com TYPE OF BUSINESS _____

ORIGINATING DISTRICT AGENCY District of Columbia Zoning Commission

CONTRACTING OFFICER: _____ TELEPHONE NUMBER: 727-6311

TYPE OF PROJECT Planned Unit Development FUNDING AMOUNT N/A

PROJECTED START DATE 2007 PROJECT DURATION 18 Months

NEW JOB CREATION PROJECTIONS (Attach additional sheets, as needed.) Please indicate the new position(s) your firm will create as a result of this project.

	JOB TITLE	# OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A	N/A*				
B					
C					
D					
E					
F					
G					
H					

² Stanton Square LLC is the current owner of the site. Horning Brothers and Stanton Square LLC have entered into a contract whereby Horning Brothers will act as fee developer for the site upon approval of this project by the Zoning Commission.

* The general contractor will be required to satisfy this requirement. At the present time, the general contractor has not determined its staffing needs for this project.

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MEMORANDUM OF UNDERSTANDING

HORNING BROTHERS¹ (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**”) and Zoning Map Amendment application, known as D.C. Zoning Commission Case No. 05-35, for the property bounded by Stanton Road, Elvans Road, and Pomeroy Road, SE in Square 5877, Lots 60, 61, 78, 832, 835, 853, 854, 855, 856, 857, 858, 873, 878, and 879, to construct a mixed-use development featuring approximately 187 townhome units (the “**Project**”). The **DEVELOPER** 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.

¹ Stanton Square LLC is the current owner of the site. Horning Brothers and Stanton Square LLC have entered into a contract whereby Horning Brothers will act as fee developer for the site upon approval of this project by the Zoning Commission.

- 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.
- 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 LSDBEs. 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 _____, 2007

**OFFICE OF LOCAL BUSINESS
DEVELOPMENT**

HORNING BROTHERS

BY: _____
Director

BY: _____