

**CLERK'S CONTRACT and AGREEMENT COVER PAGE**

**Legistar File ID#:** 2015-0800

**Innoprise Contract #:** C15-0130

**Year:** 2016

**Amount:** \$14,560,000.00

**Department:** Dev Services - Mike Kowski

**Contract Type:** A141-2014 Design Build

**Contractors Name:** Walsh Construction Company II, LLC

**Contract Description:** Main Street Triangle Parking Structure Design-Build  
Escrow Trust and Disbursing Agreement - Chicago Title



**OWNER'S CONSTRUCTION ESCROW TRUST  
AND DISBURSING AGREEMENT  
(NO TITLE INSURANCE)**

**Escrow No.:** 15025639LPC

Chicago Title Ins Co Construction Lpc

**ARTICLE 1: GENERAL INFORMATION**

- A. Owner(s):  
Village of Orland Park  
9650 W 143rd  
Orland Park, IL 60462  
Annmarie Mampe  
708-403-6199  
Email: amampe@orlandpark.org
- Attorney for Owner(s):  
  
Phone No.:  
Fax No.:  
Email:
- B. Escrow Trustee:  
Chicago Title Ins Co Construction Lpc  
10 South Lasalle Street, 28th Floor  
Chicago, IL 60603
- Contact Person: Felicia Williams-Hardy  
Phone No.: 312-223-2979  
Fax No.: 312-223-5530  
Email: Felicia.Hardy@ctt.com
- C. Investor:  
Name: University of Chicago Medical Center  
Address: 850 E 58th, Ste 430  
Chicago, IL 60637  
C/O Capital Budget & Control
- Contact Person: Melinda Fritzler  
Phone No.: 773-702-6901  
Fax No.: 773-702-5075  
Email: MELINDA.FRITZLER@CHOSPITALS.EDU
- D. General Contractor(s):  
Walsh Construction Company II, LLC  
929 West Adam Street  
Chicago, IL 60607
- Contact Person: Jeff Pezza  
Phone No.: 312-563-5429  
Fax No.:  
Email: jpezza@walshgroup.com
- E. Project: 9650 W. 143rd, Orland  
Project Location: 9650 W 143rd  
Orland Park, IL 60462
- F. Cash Deposits:  
Amount of Deposits to be made by Investor: \$10,600,000.00  
Amount of Deposits to be made by Owner: \$4,000,000.00
- G. Billing Instructions:  
Title and Construction Escrow charges are to be billed to:  
Village of Orland Park  
14700 S. Ravinia Avenue  
Orland Park, IL 60462

**OWNER'S CONSTRUCTION ESCROW TRUST AND DISBURSING AGREEMENT  
(NO TITLE INSURANCE)**  
(continued)

H. Inspecting Architect:

# **OWNER'S CONSTRUCTION ESCROW TRUST AND DISBURSING AGREEMENT (NO TITLE INSURANCE)**

(continued)

## **ARTICLE 2: RECITALS**

- A. Owner is about to commence or has commenced construction of or rehabilitation of improvements on certain premises (the Project), described on Exhibit "A", attached hereto and made a part hereof; and  
Owner has requested Chicago Title Ins Co Construction Lpc to act as Escrow Trustee and to provide a disbursing service for the payment of Project construction costs, and other related development costs.
- B. The Owner and Escrow Trustee agree as follows:
  - 1. Owner will deposit or cause to be deposited from time to time certain sums of money (the funds) in the form of certified or cashier's check with Escrow Trustee; said deposit will not be made more frequently than once per calendar month.
  - 2. Escrow Trustee will disburse the funds to pay for Project construction costs and related development cost pursuant to the provisions of this Agreement as hereinafter set forth.
  - 3. Escrow Trustee will disburse funds for construction payment to General Contractor. In the event that the General Contractor and any subcontractor jointly authorize the Escrow Trustee to pay any funds due one to the other, the Escrow Trustee may comply with such authorization. However, it is the intent of the parties named herein and signatory hereto that no person not a party signatory to this escrow shall have the right to look to the Escrow Trustee for any disbursement hereunder under a third party beneficiary theory or otherwise, and that the Escrow Trustee owes no duty to any such third party to make any disbursement.
  - 4. If required, Escrow Trustee will disburse funds for nonconstruction costs pursuant to procedures set forth hereinafter at Article 3.E.

## **ARTICLE 3: REQUIREMENTS**

Prior to each disbursement of funds by Escrow Trustee hereunder, it is a requirement of this Agreement that the Owner shall furnish or cause to be furnished to the Escrow Trustee the following:

- A. A sworn Owner's Statement disclosing the various contracts entered into by the Owner relating to the construction of the Project and setting forth the name of the contractors, their addresses, the kind of service, work or materials to be furnished, the amounts of such contracts, the amounts paid to date, if any, the amounts of current payments, if any, and the balances to become due, if any.
- B. A sworn statement to Owner by the General Contractor setting forth the names and addresses of such persons furnishing labor, service or materials (i.e., subtrades and material suppliers), the kind of labor, service or materials to be furnished, the amounts of the contracts, amounts paid to date, if any, amount of current payments, if any, and balances to become due, if any.
- C. Written approval by Owner of the requested disbursement.
- D. A report by the Inspector or a certification by the Architect certifying that work has been completed and materials are in place as indicated by the current construction draw request of the General Contractor.
- E. With respect to payment of nonconstruction costs:

Written payment directions to Escrow Trustee setting forth the name and addresses of the payees, the amounts of the respective payments, and the purposes of the payments, i.e., legal fees, real estate taxes, etc.

# **OWNER'S CONSTRUCTION ESCROW TRUST AND DISBURSING AGREEMENT (NO TITLE INSURANCE)**

(continued)

**F. With respect to payment of construction costs:**

Statements, waivers, affidavits, supporting waivers, and releases of lien from such persons and in such form as may be required by Chicago Title Ins Co Construction Lpc for the purpose of substantiating payment of the current construction draw and extinguishment of mechanics' lien rights thereby.

**Note:** Chicago Title Ins Co Construction Lpc will use the same care and diligence in the collection and examination of sworn statements, waivers, affidavits, supporting waivers and releases of liens, for the above purpose, as it would use were Chicago Title Ins Co Construction Lpc required by this Agreement to furnish mechanics' lien title insurance coverage to a construction lender, and no greater.

**Note:** If the funds are to be disbursed to the General Contractor rather than subcontractors, the collection and examination of the required statements, waivers, etc., by the Escrow Trustee shall not be constructed by the owner as an assurance by Chicago Title Ins Co Construction Lpc that the subcontractors have, in fact, been paid by the General Contractor.

**G. Sufficient funds to cover the current disbursement request.**

## **ARTICLE 4: GENERAL CONDITIONS**

- A. Owner understands and agrees that Escrow Trustee's duties are to disburse deposits pursuant to the provisions of this Agreement and Escrow Trustee's liability arising from the performance of those duties regarding the release of mechanics' lien rights, shall extend only to those persons to whom Escrow Trustee is making payments, and only for those amounts being paid. Escrow Trustee had no liability for any lien rights associated with work previously completed, or completed by persons not receiving direct payments from Escrow Trustee.
- B. Owner understands that Escrow Trustee makes no representation that a title insurance policy insuring over mechanics' lien claims will necessary issue without additional title insurance underwriting requirements being met.
- C. Escrow Trustee assumes no responsibility concerning the sufficiency of funds deposited herein to complete the contemplated construction satisfactorily.
- D. If the Escrow Trustee discovers a misstatement in an affidavit furnished by the General Contractor, it may stop disbursements until the misstatement has been corrected. Escrow Trustee may, at its option, verify information submitted by the General Contractor or may require the Owner to furnish verification by subcontractors or material suppliers.
- E. The functions and duties assumed by Escrow Trustee includes only those described in this Agreement and Escrow Trustee is not obligated to act except in accordance with the terms and conditions of this Agreement. Escrow Trustee does not insure that the building will be completed, nor does it insure that the building, when completed, will be in accordance with plans and specifications, nor that sufficient funds will be available for completion, nor does it make the certifications of the Inspector/Architect its own, nor does it assume any liability for same other than procurement as one of the conditions precedent to each disbursement.
- F. Escrow Trustee has no liability for loss caused by an error in the certification furnished it hereunder as to work in place.

**OWNER'S CONSTRUCTION ESCROW TRUST AND DISBURSING AGREEMENT  
(NO TITLE INSURANCE)**

(continued)

- G. Escrow Trustee shall not be responsible for any loss of documents which such documents are not in its custody. Documents deposited in the United States Mail shall not be construed as being in custody of Escrow Trustee.
- H. Deposits made pursuant to these instructions may be invested on behalf of Owner; provided, that any direction to Escrow Trustee for such investment shall be expressed in writing and be accompanied by the taxpayer's identification number and such investment forms as may be required. Escrow Trustee will, upon request, furnish information concerning its procedures and fee schedules for investment.
- I. Except as to deposits of funds for which Escrow Trustee has received express written direction concerning investment or other handling, the parties hereto agree that the Escrow Trustee shall be under no duty to invest or reinvest any deposits at any time held by it hereunder; and, further, that Escrow Trustee may commingle such deposits with other deposits or with its own funds in the manner provided for the administration of funds under Section 2-8 of the Illinois Corporate Fiduciary Act, Ill. Rev. Stat. 1989, ch. 17, par. 1552-8, and may use any part or all such funds for its own benefit without obligation to any party for interest or earnings derived thereby, if any. Provided, however, nothing herein shall diminish Escrow Trustee's obligation to apply the full amount of the deposits in accordance with the terms of this Agreement.
- J. In the event the Escrow Trustee is requested to invest deposits hereunder, Chicago Title Ins Co Construction Lpc is not to be held responsible for any loss of principal or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of this escrow trust.
- K. N.B.: Escrow Charges are payable thirty (30) days after billing. In the event escrow charges are not paid as agreed, Chicago Title Ins Co Construction Lpc may terminate this Agreement upon thirty (30) day written notice to Owner and Contractor. The parties acknowledge the beginning after a period of one (1) year from the date of this agreement, Chicago Title Ins Co Construction Lpc will impose an administrative maintenance fee (quarterly, semi-annually, or annually) equivalent to the fee set forth on the Company's then current rate schedule.
- This fee may be deducted from the outstanding escrow balance or billed to Village of Orland Park.
- L. This Agreement shall not inure to the benefit of any parties other than the parties hereto, under a third party beneficiary theory or otherwise; and any liability to such parties is expressly disclaimed.

IN WITNESS WHEREOF, the undersigned have executed this Agreement this 2nd day of December, 2015.

**OWNER(S):**

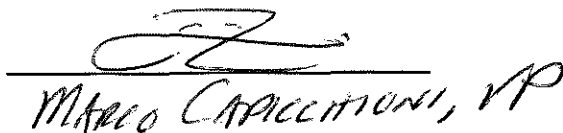
Village of Orland Park



Annmarie Mampe, Finance Director

**INVESTOR:**

University of Chicago Medical Center




Marco Capicchioni, VP

**OWNER'S CONSTRUCTION ESCROW TRUST AND DISBURSING AGREEMENT  
(NO TITLE INSURANCE)**

(continued)

**GENERAL CONTRACTOR(S):**

Walsh Construction Company II, LLC

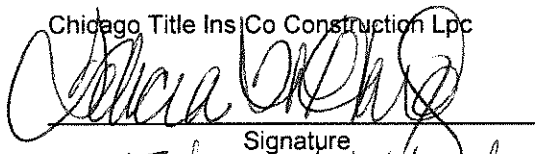
  
Signature

By: Sean C. Walsh  
Print Name

Its: President  
Print Title

**ESCROW TRUSTEE:**

Chicago Title Ins Co Construction Lpc

  
Signature

By: Felicia W. Hordy  
Print Name

Its: Asst. Vice President  
Print Title



**AMENDATORY OR SUPPLEMENTAL INSTRUCTIONS  
TO BE ATTACHED TO ESCROW TRUST AGREEMENT**

**(AFTER THE FACT PRODUCTION OF WAIVERS)**

**ESCROW TRUST NO: 1502639LPC**

**DATE: March 15, 2016**

**TAKEN BY: Felicia A. Hardy**

**PROPERTY ADDRESS: 9650 W. 143<sup>rd</sup>, Orland Park, IL 60462**

**CHICAGO TITLE & TRUST COMPANY:**

**THE ABOVE NOTED OWNER'S NOT TITLE AGREEMENT SHALL BE  
AMENDED TO ADD THE FOLLOWING:**

**Article 2, B:**

- (5) At the time of the first construction draw paid pursuant to the provisions of this Agreement, Owner shall furnish or cause to be furnished to the Escrow Trustee a Sworn Statement, to Owner by Walsh Construction Company II, LLC together with the partial waiver from Walsh Construction Company II, LLC in the amount of the draw.
- (6) At the time of subsequent construction draws, Owner shall furnish or cause to be furnished to Escrow Trustee a sworn statement to Owner by Walsh Construction Company II, LLC, as aforesaid, the partial waiver of Walsh Construction Company II, LLC in the amount of the current draw, and waivers of liens, affidavits, supporting waivers from subcontractors and material suppliers listed on the prior draw.
- (7) At the time of the final construction draw, Owner shall furnish or cause to be furnished to Escrow Trustee a final sworn statement to Owner by Walsh Construction Company II, LLC, as aforesaid, a final waiver from Walsh Construction Company II, LLC, final waivers and affidavits from subcontractors, final waivers from sub-subcontractors and material suppliers, and such other affidavits as may be reasonably required prior to approval of the final construction draw.

Note, this after the fact amendment only applies to contracts let by Walsh Construction Company II, LLC; all other payees with lien rights must present appropriate waivers in exchange for payment.

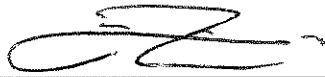
In Witness Whereof, the undersigned have executed this Amendatory or Supplemental Instructions and agree with the changes to the Tenant Improvement/Work Completion Escrow this

14 day of APRIL, A.D. 2016.



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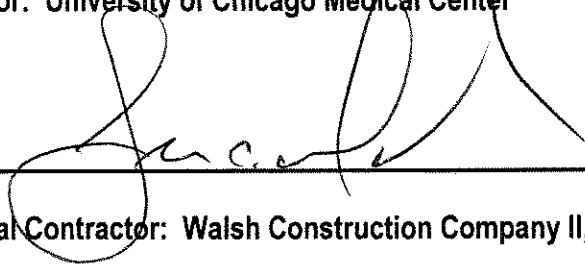
Owner: Village Of Orland Park



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Investor: University of Chicago Medical Center

*MARCO CIPICCHI, VP*



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General Contractor: Walsh Construction Company II, LLC