

**AGENDA**  
**SPECIAL PLANNING, BUILDING AND ZONING COMMITTEE**  
**Village of Hoffman Estates**  
**June 5, 2017**

**7:00 P.M. - Helen Wozniak Council Chambers**

<b>Members:</b>	<b>Gary Stanton, Chairman</b>	<b>Anna Newell, Trustee</b>
	<b>Karen Arnet, Vice Chairman</b>	<b>Gary Pilafas, Trustee</b>
	<b>Karen Mills, Trustee</b>	<b>Michael Gaeta, Trustee</b>
		<b>William McLeod, Mayor</b>

**I. Roll Call**

**NEW BUSINESS**

1. Request approval to enter into a Construction and Conveyance Escrow Agreement with M/I Homes of Chicago LLC and CASE Properties LLC relating to the renovation of the Bergman Farmhouse located on the north side of Algonquin Road, west of Ela Road

**II. Adjournment**

**COMMITTEE AGENDA ITEM  
VILLAGE OF HOFFMAN ESTATES**

**SUBJECT:** Request approval to enter into a Construction and Conveyance Escrow Agreement with M/I Homes of Chicago LLC and CASE Properties LLC relating to the renovation of the Bergman Farmhouse located on the north side of Algonquin Road, west of Ela Road

**MEETING DATE:** June 5, 2017

**COMMITTEE:** Special Planning, Building and Zoning

**FROM:** Jim Norris, Mark Koplín, Pete Gugliotta  
Art Janura, Patricia Cross

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**REQUEST:** Request approval to enter into a Construction and Conveyance Escrow Agreement relating to CASE Properties LLC's (Chad Evans, Manager) proposed renovation of the Bergman Farmhouse located on the north side of Algonquin Road, west of Ela Road.

**BACKGROUND:** At its November 14, 2016, meeting, the Planning, Building and Zoning (PB&Z) Committee authorized the Village's preparation of a formal three-party Escrow Agreement between the Village; M/I Homes of Chicago, LLC; and CASE Properties LLC (Chad Evans, Manager) regarding Mr. Evans' intended renovation of the Bergman Farmhouse. Following renovation, ownership of the property would be transferred from M/I Homes to CASE Properties LLC for sale as a private, single-family residence. In the event the renovation is not completed by July 31, 2018, the property will instead be transferred from M/I Homes to the Village for demolition or completion/sale, and the Escrow closed.

Following that meeting, staff met with M/I Homes and Mr. Evans and it was confirmed that the formal Construction and Conveyance Escrow Agreement would be executed by M/I Homes, CASE Properties, and the Village. The separate renovation agreement will be executed by M/I Homes and CASE Properties only, as the Village's interest in the property would only come into play in the event CASE Properties is unable to obtain a final certificate of occupancy before July 31, 2018.

**DISCUSSION:** The language of the separate Construction and Conveyance Escrow has been agreed upon and following approval by the Board and execution by the parties, Mr. Evans will next apply for the necessary permits to begin work. Once those permits have been issued, the Construction and Conveyance Escrow will be opened at Chicago Title Insurance Company into which M/I Homes will deposit the two quit claim deeds (one to CASE Properties LLC and another (backup) to the Village) and CASE Properties will deposit funds necessary to complete the renovation. All contractors and subcontractors will be paid by the Escrowee and lien waivers and releases secured. Principal term points are:



M/I Homes' Responsibilities

- ◆ Deposit quit claim deed in escrow, transferring the property to CASE Properties LLC only so long as the final occupancy permit is issued before July 31, 2018, and provided to CTIC as Escrowee.
- ◆ Deposit "back-up" quit claim deed in escrow, transferring the property to the Village in the event CASE Properties defaults on the project, at which point the Village will assume the responsibility for demolition or completion/sale (using \$55,000 of that deposit earmarked as the demolition "performance guarantee").
- ◆ M/I Homes will have no obligation for maintenance, repair, or demolition after the deeds are placed in escrow.

CASE Properties' Responsibilities

- ◆ Prepare and submit site plan and building plans that conform to all codes to Village for review and site plan approval.
- ◆ Submit itemized construction cost estimate to Village for use in establishing the performance guarantee (110% of the approved cost estimate, to guarantee project completion and for use to demolish and restore the site to a stand of grass if construction is not completed).
- ◆ Deposit the performance guarantee into the escrow, which will be payable to the Village if needed for demolition; balance of performance guarantee returned when final.
- ◆ Pay all closing costs and fees associated with the escrow account and real estate transaction.
- ◆ Agree to complete the project sufficient to receive final certificate of occupancy on or before July 31, 2018.

Village's Responsibilities

- ◆ Review site plan and building plans and issue approvals as appropriate.
- ◆ Monitor construction and issue final certificate of occupancy when complete.
- ◆ In event of CASE Properties' default on the Renovation Agreement with M/I Homes, and upon receiving the written direction from the Village of its intent to demolish the property, the backup deed will be recorded transferring ownership to the Village, and the Village will utilize CASE Properties' \$55,000 performance guarantee for demolition or completion/sale, as may be deemed appropriate by the Village Board at that time.

**RECOMMENDATION:**

Request approval to enter into a formal three-party Escrow Agreement (attached) between the Village, M/I Homes of Chicago LLC, and CASE Properties LLC, with Chicago Title Insurance Company as Escrowee, regarding renovation of the Bergman Farmhouse as a single-family residence and transfer of ownership from M/I Homes to CASE Properties upon its completion of the renovation project and the Village's issuance of a final certificate of occupancy on or before July 31, 2018.

## Attachment

cc: Matt Pagoria (M/I Homes)  
Scott Gudmundson (Gudmundson Law, P.C.)  
Chad Evans (Manager, CASE Properties LLC)  
Pat Barch (Village Historian)



CONSTRUCTION AND CONVEYANCE  
ESCROW AGREEMENT

DATE: \_\_\_\_\_, 2017  
ESCROW NUMBER: \_\_\_\_\_  
OWNER: M/I HOMES OF CHICAGO, LLC  
GENERAL CONTRACTOR: CASE PROPERTIES, LLC  
INSPECTOR/ARCHITECT: VILLAGE OF HOFFMAN ESTATES  
PROPERTY ADDRESS: 2150 WEST ALGONQUIN ROAD, HOFFMAN ESTATES, IL  
TO: CHICAGO TITLE INSURANCE COMPANY, ESCROWEE:

I. INTRODUCTION.

Owner and General Contractor are parties to a certain Bergman Farmhouse Agreement dated \_\_\_\_\_, 2017 (“**Farmhouse Agreement**”). Pursuant to the terms and subject to the conditions of the Farmhouse Agreement, among other things: (i) General Contractor agreed to renovate the farmhouse located on the Property (“**Bergman Farmhouse**”) pursuant to plans and specifications approved by the Inspector/Architect, and (ii) Owner agreed to transfer and convey the Property to (a) General Contractor, if General Contractor receives a Final CO (as defined below) for the Bergman Farmhouse by July 31, 2018, or (b) to Inspector/Architect, if General Contractor does not receive a Final CO for the Bergman Farmhouse by July 31, 2018. Inspector/Architect has agreed to accept title to the Property if General Contractor does not receive a Final CO for the Bergman Farmhouse by July 31, 2018. For purposes of this Construction and Conveyance Escrow, the term “**Final CO**” shall mean a certificate of occupancy for the Bergman Farmhouse issued by the Village, together with a certification from the Village that the certificate of occupancy satisfies the requirements of a “final” certificate of occupancy under Article Four Section C of the Farmhouse Agreement.

Owner, General Contractor and Inspector/Architect have agreed to enter into this Construction and Conveyance Escrow in order to provide for renovation of the Bergman Farmhouse, payment of the costs thereof by Escrowee, as disbursing agent, and conveyance of the Property to either General Contractor or Inspector/Architect, as provided herein. Any and all charges hereunder are to be billed to and paid by General Contractor. At such time as Owner has completed its deposits herein as provided in section III.A below, Owner shall have no further obligations with respect to the Property, other than to take no affirmative action that will affect Owner’s title thereto as provided in Chicago Title Insurance Company (also sometimes referred to herein as “**CTIC**”) commitment no. \_\_\_\_\_ (“**Owner’s Title Commitment**”), a copy of which is attached hereto and made a part hereof as Exhibit A.

II. CONSTRUCTION ESCROW DISBURSEMENTS

A. General Contractor is about to commence or has commenced construction of or rehabilitation of improvements on the Bergman Farmhouse; and

General Contractor has requested CTIC to act as Escrowee and to provide a disbursing service for the payment of Project construction costs and other related development costs.

B. The General Contractor and Escrowee agree as follows:

1. General Contractor has deposited or caused to be deposited \$\_\_\_\_\_ with Escrowee on the date hereof by wire transfer, which amount is the sum of the following:

(i) \$55,000.00 (demolition costs)

- (ii) \$ \_\_\_\_\_ (110% renovation costs)
- (iii) \$ \_\_\_\_\_ (CTIC Escrow Fees and Closing Costs)
- (iv) \$ \_\_\_\_\_ (2016 RE Taxes)
- (v) \$ \_\_\_\_\_ (transfer taxes for the Case Properties Deed).
- (vi) \$ \_\_\_\_\_ (Title insurance upon completion of improvements).

2. General Contractor has also deposited the following:

- (i) Construction Plans;
- (ii) General Contractor's Sworn Statement (budget);
- (iii) Two copies of a Builders risk, liability insurance policy (naming as additional insureds the Inspector/Architect and Owner) and homeowner's insurance coverage, prepaid for 12 months, together with two original certificates thereof
- (iv) Agreement to indemnify/hold harmless Inspector/Architect;
- (v) Agreement to indemnify/hold harmless Owner;
- (vi) Two copies of an Acknowledgement of Sole and Exclusive Possession and Control of the Property.

3. Escrowee will disburse funds for construction payments directly to subcontractors and material suppliers (each, a "**Subcontractor**"). In the event that the General Contractor and any Subcontractor jointly authorize the Escrowee to pay any funds due one to the other, the Escrowee may comply with such authorization.

4. In the event that Escrowee fails to receive a Final CO, on or before July 31, 2018, then upon further written direction from the Village of its intention to cause the Bergman Farmhouse to be demolished, Escrowee shall disburse the total sum of \$55,000 to the Village of Hoffman Estates as and for contingent demolition costs and record the Quit Claim Deed to Inspector/Architect deposited by Owner as provided in III.A(iii) below ("**Backup Deed**") and close the conveyance of the Property to Inspector/Architect as provided in section III.F below. Balance of deposit, if any, shall thereafter be returned to General Contractor only after all expenses of the Escrow and any amount due Subcontractors have first been paid in full.

C. Prior to each disbursement of funds by Escrowee hereunder, it is a requirement of this Agreement that the General Contractor shall furnish or cause to be furnished to the Escrowee the following:

- 1. Escrowee's standard form of General Contractor's Sworn Statement disclosing the various contracts entered into by the General Contractor relating to the construction of the project and setting forth the name of the Subcontractors; 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.
- 2. With respect to payment of construction costs:
  - a) Statements, waivers, affidavits, supporting waivers, releases of lien, paid-in-stock statements and/or other customary release/waiver documents from such persons and in such form as may be required by Escrowee (see standard in 2(b) below) for the purpose of substantiating payment of the current construction draw and extinguishment of mechanics' lien rights thereby.



- b) Note: Escrowee will use the same care and diligence in the collection and examination of sworn statements, waivers, affidavits, supporting waivers, releases of liens, paid-in-stock statements and/or other customary release/waiver documents for the above purpose, as it would use were CTIC required by this Agreement to furnish mechanics' lien title insurance coverage to a construction lender, and no greater.
  - c) 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 Escrowee shall not be construed by Owner or Inspector/Architect as an assurance by CTIC that the Subcontractors have, in fact, been paid by the General Contractor.
3. A report by Inspector/Architect that work has been completed and materials are in place as indicated by the current construction draw request.
  4. Sufficient funds to cover the current disbursement request.
  5. Written approval by General Contractor of the requested disbursement.

It is understood that the undertaking of CTIC and any liability arising therefrom regarding the release of lien rights shall extend only to those persons to whom the Escrowee is making payments, and only for those amounts being paid from the escrow. Any lien rights associated with work previously completed or completed by persons not receiving payments from Escrowee are specifically excluded.

It is further understood that the Escrowee makes no representation as to the issuance of a title insurance policy insuring over mechanics' lien claims without additional requirements being met.

If the Escrowee discovers a misstatement in an affidavit furnished by the General Contractor, it may stop disbursements until the misstatement has been corrected. Escrowee may, at its option, verify information submitted by the General Contractor.

The functions and duties assumed by Escrowee include only those described in this Agreement, and Escrowee is not obligated to act except in accordance with the terms and conditions of this Agreement. This Agreement contains the entire agreement and understanding of the parties. In order to be effective, any modifications or amendments hereto shall be in writing and signed by all parties.

Escrowee 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.

Escrowee shall not be responsible for any loss of documents while such documents are not in its custody. Documents deposited in the United States Mail shall not be construed as being in the custody of Escrowee.

The deposit made by General Contractor in II.B.1 above includes all of Escrowee's charges for this construction escrow. Escrowee shall bill its Construction Escrow charges at the time each draw request is submitted and Escrowee may deduct such Construction Escrow charges from General Contractor's deposit. The parties acknowledge that beginning after a period of one year from the date of this Agreement, CTIC may 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 General Contractor.

General Contractor may direct Escrowee to invest Escrow deposits in a federally insured money market account; provided, however, that such direction shall be in writing and be accompanied by the taxpayer's identification number, and such investment forms as may be required; provided that any such investment shall be in a Federally insured deposit account. In the event the Escrowee is requested to invest deposits hereunder, CTIC 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.

The parties to this escrow acknowledge that the maintenance of escrow accounts with some depository institutions may result in the provision of services, accommodations and other benefits by such depository institution to Escrowee or its affiliates. Escrowee or its affiliates also may elect to enter into business transactions with or obtain loans for investments or other purposes from the depository institution. All such services, accommodations and other benefits shall accrue to the Escrowee or its affiliates and Escrowee or its affiliates shall have no obligation to account to the parties to this escrow for the value of such services, accommodations, or other benefits.

**NOTICE OF OPPORTUNITY:** General Contractor has the opportunity to earn interest on its escrowed funds by requesting Escrowee to set up a federally insured interest bearing account on General Contractor's behalf. Escrowee will inform General Contractor of any fees it will charge to establish the account. Interest earned is dependent upon the amount of the deposit, the time of deposit, and the prevailing interest rate at that time.

The undersigned agree that this Agreement is not intended by any of the undersigned to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other than Escrowee and Owner as a third party beneficiary or otherwise under the theory of law.

### III. CONVEYANCE ESCROW

A. Owner hereby deposits the following:

1. Quit Claim Deed to General Contractor ("**Case Properties Deed**");
2. State, County and Municipal Transfer Declarations for the Case Properties Deed;
3. Quit Claim Deed to Inspector/Architect;
4. State, County and Municipal Transfer Declarations for the Backup Deed
5. 1099;
6. Affidavit of Title;
7. ALTA Statement;
8. Bill of Sale to General Contractor ("**Case Properties BOS**");
9. Bill of Sale to Inspector/Architect ("**Backup BOS**"); and
10. FIRPTA.



Owner shall also deposit an as-built survey of the Property (“Survey”) and the Final CO upon completion of its renovation of the Bergman Farmhouse.

B. General Contractor hereby deposits the following:

1. Counterpart of Transfer Declarations deposited by Owner as Deposit No. III.A.2 above;
2. ALTA Statement; and
3. GAP Personal Undertaking.

C. Inspector/Architect hereby deposits the following:

1. Counterpart of Transfer Declarations deposited by Owner as Deposit No. III.A.4 above;
2. ALTA Statement;
3. Executed Village Release and Acknowledgement; and
4. M/I Homes’ \$50,000 Bond.

D. When you are in receipt of all of the documents set forth above, immediately deliver (i) Inspector Architect Deposits III.C.3 and III.C.4 above and General Contractor Deposits II.B.2 (iii), (v) and (vi) to Owner, and (ii) General Contractor Deposits II.B.2 (iii), (iv) and (vi) to Inspector/Architect.

E. If you receive a Final CO on or before March 31, 2018, and when CTIC is prepared to issue its 2006 ALTA Owner’s Title Insurance Policy in the amount of \$\_\_\_\_\_, subject to the exceptions listed on Owner’s Title Commitment and any exceptions arising through any actions of the General Contractor, including, without limitation, General Contractor’s renovation of the Bergman Farmhouse, to the General Contractor, you are authorized and directed to:

1. Affix the transfer stamps to the Case Properties Deed and record the Case Properties Deed;
2. Pay all title charges, recording fees and escrow fees, including money lenders escrow, if any, State, County and municipal transfer fees and other fees payable hereunder from the deposit made by General Contractor in II.B.1 above and refund the balance of sums deposited for these purposes to General Contractor;
3. Deliver to General Contractor originals of the Case Properties Deed (after recordation), Case Properties BOS, Owner’s Title Insurance Policy, FIRPTA, Survey (if received) and \_\_\_\_\_;
4. Email confirmation of the closing to (i) General Contractor at [chadevansrealtor@comcast.net](mailto:chadevansrealtor@comcast.net), (ii) Owner at [mpagoria@mihomes.com](mailto:mpagoria@mihomes.com) and [scott@gudmundsonlaw.com](mailto:scott@gudmundsonlaw.com), and (iii) Inspector/Architect at [jim.norris@hoffmanestates.org](mailto:jim.norris@hoffmanestates.org); and
5. Deliver to each of General Contractor, Owner and Inspector/Architect copies of all deposits the balance of such party’s respective original deposits not yet disbursed above or used in the closing.



F. If you do not receive a Final CO on or before July 31, 2018, then upon further written direction from the Village and when CTIC is prepared to issue its 2006 ALTA Owner's Title Insurance Policy in the amount of \$ \_\_\_\_\_, subject to the exceptions listed on Owner's Title Commitment and any exceptions arising through any actions of the Inspector/Architect, you are authorized and directed to:

1. Affix the transfer stamps to the Backup Deed and record the Backup Deed;
2. Pay \$55,000.00 to Inspector/Architect;
3. Pay all title charges, recording fees and escrow fees, including money lenders escrow, if any, State, County and municipal transfer fees and other fees payable hereunder from the deposit made by General Contractor in II.B.1 above and refund the balance of sums deposited for these purposes to General Contractor;
4. Deliver to Inspector/Architect originals of the Backup Deed (after recordation), Backup BOS, Owner's Title Insurance Policy, FIRPTA, Survey (if received) and \_\_\_\_\_;
5. Email confirmation of the closing to (i) General Contractor at \_\_\_\_\_; (ii) Owner at [mpagoria@mihomes.com](mailto:mpagoria@mihomes.com) and [scott@gudmundsonlaw.com](mailto:scott@gudmundsonlaw.com), and (iii) Inspector/Architect at [jim.norris@hoffmanestates.org](mailto:jim.norris@hoffmanestates.org); and
6. Deliver to each of General Contractor, Owner and Inspector/Architect copies of all deposits the balance of such party's respective original deposits not yet disbursed above or used in the closing.

#### IV COURT ORDER

The undersigned authorize Escrowee to disregard any and all notices, warnings or demands given or made by the undersigned (other than jointly) or by any other person. The said undersigned also hereby authorize and direct Escrowee to accept, comply with, and obey any and all writs, orders, judgments or decrees entered or issued by any court with or without jurisdiction; and in case Escrowee obeys or complies with any such writ, order, judgment or decree of any court, it shall not be liable to any of the parties hereto or any other person, by reason of such compliance, notwithstanding any such writ, order, judgment or decree be entered without jurisdiction or be subsequently reversed, modified, annulled, set aside or vacated. In case Escrowee is made a party defendant to any suit or proceedings regarding this Construction and Conveyance Escrow, the undersigned, for themselves, their heirs, personal representatives, successors, and assigns, jointly and severally, agree to pay to Escrowee, upon written demand, all costs, attorney's fees, and expenses incurred with respect thereto. Escrowee shall have a lien on the deposit(s) herein for any and all such costs, fees and expenses. If said costs, fees and expenses are not paid, then Escrowee shall have the right to reimburse itself out of the said deposit(s).

#### V DISPUTES OR CIRCUMSTANCES NOT CONTEMPLATED

If any dispute arises with respect to the disbursement or delivery of the Deposits or any portion thereof, or if circumstances arise that are not contemplated by or described in this Construction and Conveyance Escrow and Escrowee is unsure as to its duties as a result, Escrowee may continue to hold said Deposits until Escrowee is in receipt of either a joint order from the undersigned or their representatives or assigns or a court order directing disbursement or delivery OR RECORDING. In such instance, Escrowee may elect to commence an action in interpleader and in conjunction therewith remit the Deposits to a court of competent jurisdiction pending resolution of such dispute or clarification in light of unanticipated

circumstances, and the parties hereto hereby indemnify and hold harmless Escrowee for any action taken by it in good faith in the execution of its duties hereunder. The parties further agree that Escrowee's costs in any such action shall be deducted from the Deposits prior to their ultimate disbursement or delivery.

VI GENERAL PROVISIONS

These instructions may be executed in counterparts, which taken together shall constitute one and the same instrument.

Any amendments or supplements to these instructions must be in writing and signed by the parties hereto.

Whenever under the terms and provisions of this Agreement the time for performance of a condition falls upon a Saturday, Sunday or holiday, such time for performance shall be extended to the next business day.

The Agreement shall not supersede the Farmhouse Agreement between the parties, but is intended merely to implement it. All of the terms, covenants and conditions contained in the Farmhouse Agreement between the parties shall survive the execution and delivery of this Agreement and the closing hereunder.

The foregoing terms, conditions and instructions have been read and approved, and the parties to this Agreement represent and warrant that the persons signing below have the corporate and/or individual authority to do so and are duly and lawfully authorized to sign this Agreement without the joinder or approval of any other person.

*[SIGNATURE PAGE FOLLOWS]*



**OWNER:**

**M/I HOMES OF CHICAGO, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**GENERAL CONTRACTOR:**

**CASE PROPERTIES, LLC**, an Illinois limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**INSPECTOR/ARCHITECT:**

**VILLAGE OF HOFFMAN ESTATES**, an Illinois Municipal Corporation

BY: \_\_\_\_\_  
Village President

Attest: \_\_\_\_\_

**ESCROWEE:**

CHICAGO TITLE INSURANCE  
COMPANY

By: \_\_\_\_\_  
Authorized Agent

EXHIBIT A  
CTIC COMMITMENT NO \_\_\_\_\_