



Department of City Development

City Plan Commission
Historic Preservation Commission
Neighborhood Improvement
Development Corporation
Redevelopment Authority

Rocky Marcoux
Commissioner

Martha L. Brown
Deputy Commissioner

December 14, 2010

Mr. Ronald D. Leonhardt
City Clerk
City Hall, Room 205
Milwaukee, WI 53202

Dear Mr. Leonhardt:

Enclosed is a fully executed duplicate original of the Commercial Escrow Disbursement Agreement for the City Lights Project, Contract No. 10-040 (RA).

Please insert this document into Common Council Resolution File No.081627, approved October 28, 2010.

Sincerely,

Scott Stange
Compliance Officer

Enclosure

DUPLICATE
ORIGINAL

**COMMERCIAL ESCROW
DISBURSEMENT AGREEMENT**

(City Lights Project)

COMMERCIAL ESCROW DISBURSEMENT AGREEMENT

(City Lights Project)

This Disbursement Agreement is made and entered into as of the 29th day of September, 2010, by and among Landmark Title Company, ("ESCROWEE"), Giuffre VIII, LLC, a Wisconsin limited liability company, ("DEVELOPER"), and the Redevelopment Authority of the City of Milwaukee, a public body corporate and politic organized and existing under the laws of the State of Wisconsin, ("RACM").

WITNESSETH:

WHEREAS, DEVELOPER, the City of Milwaukee ("CITY") and RACM have entered into a Development Agreement (City Lights Project) dated as of the 29th day of September, 2010, (the "Development Agreement"); and

WHEREAS, the Development Agreement provides that CITY will make funds in an amount not to exceed \$2,500,000 (the "City Investment") available to RACM in order to allow RACM to provide financial assistance to DEVELOPER for development of public infrastructure in and about DEVELOPER's redevelopment at the City Light site located in Milwaukee, Wisconsin (the "Project") in accordance with the Development Agreement; and

WHEREAS, the parties desire to enter into this Disbursement Agreement in order to provide for disbursement of the City Investment to DEVELOPER by the ESCROWEE; and

WHEREAS, DEVELOPER has entered into a Construction Agreement between the DEVELOPER and _____ ("Construction Manager") under date of _____, 2010 ("CM Agreement"), whereunder the Construction Manager is authorized as agent for the Developer to manage certain construction contracts pertaining to the Project; and

WHEREAS, this Disbursement Agreement shall not constitute a promise by ESCROWEE to protect any party against construction lien claims on any title insurance policy issued by ESCROWEE and the parties acknowledge that the only responsibility of ESCROWEE created by this Disbursement Agreement shall be the faithful performance of the express obligations assumed hereunder.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. **Disbursements for Third Party Work, Materials and Services.**
 - A. Prior to the first disbursement of the City Investment for third party work, materials and services, ESCROWEE shall be furnished a sworn DEVELOPER's statement, which will be supplemented in connection with subsequent draws, setting forth in detail the contractors, material suppliers and other third parties with whom DEVELOPER has contracted directly or through the Construction Manager as Developer's Agent, their address, work, materials and/or services to be furnished, amounts of the contracts, amount paid to date, amounts of current payments and balances due (the Cost Breakdown Schedule).

2. **Requirements for Disbursements.** Prior to each disbursement of the City Investment hereunder, DEVELOPER and RACM will furnish ESCROWEE:
 - A. A sworn DEVELOPER's statement setting forth all contractors, materialmen and other third parties with whom DEVELOPER has contracted, amounts of contracts, including the CM Agreement, amount paid to date, amounts of current payments, amounts of retainage, balance due, and copies of all change orders;
 - B. For draws for costs incurred for lienable expenses and materials for third party work on the Project, a lien waiver from the Construction Manager and all contractors and materialmen as named on the Developer's statement that was submitted for the last disbursement made prior to the currently requested disbursement;
 - C. A report or a certification by DEVELOPER certifying that work and/or services have been completed and materials are in place as indicated by the request for payment of DEVELOPER;
 - D. An approval by DEVELOPER of the requested disbursement;
 - E. An approval by RACM's Executive Director of the requested disbursement, together with sufficient funds to cover the requested disbursements and to pay for extras or change orders for which funds have not previously been deposited; and
 - F. For final disbursements of the amounts retained hereunder, a certification by DEVELOPER that all work under the applicable contract has been completed.
 - G. An approval by the City of Milwaukee's Commissioner of Public Works of the requested disbursement and the work performed therefor.

If ESCROWEE discovers a misstatement or deficiency in any of the documents provided by RACM or DEVELOPER, it may stop disbursement until the misstatement or deficiency has been corrected.

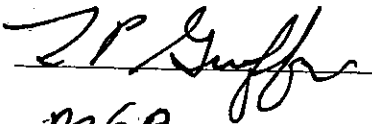
All disbursements for construction purposes, less a ten per cent (10%) retainage, will be made by ESCROWEE directly to DEVELOPER for payment by DEVELOPER to the Construction Manager or to contractors, materialmen or other third parties rendering such work, materials and services. Upon final completion of work under each contract and completion of the certification required in sec. 2F, the retainage amounts shall be disbursed to DEVELOPER. It is the intention of the parties named herein that no person which is not a signatory to this Disbursement Agreement shall be a third party beneficiary of this Disbursement Agreement, and ESCROWEE owes no duty of care to any such party.

3. **Limits of ESCROWEE's Duties.** The functions and duties assumed by ESCROWEE include only those described in the Disbursement Agreement, and the ESCROWEE is not obligated to act except in accordance with the terms and conditions of this Disbursement Agreement. ESCROWEE does not certify or insure that (a) the Project will be completed, (b) that the Project, when completed, will be in accordance with plans and specifications, (c) that sufficient funds will be available for completion, or (d) that the certifications of the Inspector/Architect are correct. ESCROWEE shall not be responsible for any loss of documents or funds while such documents or funds are not in its custody. Documents or funds deposited in the United States mail shall not be construed as being in custody of ESCROWEE. **This Agreement is not a promise by ESCROWEE to protect any party against construction lien claims on any title insurance policy issued by ESCROWEE.**
4. **Inspections.** DEVELOPER shall be responsible for making inspections of the Project during the course of construction, and shall determine to its own satisfaction that the work, materials and services supplied by the Construction Manager, contractors, materialmen and other third parties have been properly made or supplied in accordance with applicable contracts. RACM and ESCROWEE shall not be required to conduct any inspections of the Project.
5. **Escrow Fee.** An escrow fee of \$ 125 per draw is to be paid by DEVELOPER, which fee must be paid at the time each draw is disbursed or which fee will be deducted from the funds deposited for the draw disbursement.
6. **Escrow Termination; Resignation of ESCROWEE.** This Disbursement Agreement shall terminate, and ESCROWEE shall have no further liability hereunder upon thirty (30) days prior written from ESCROWEE to DEVELOPER and RACM. If this Disbursement Agreement terminates or if ESCROWEE resigns, ESCROWEE shall return all undisbursed deposits to RACM.

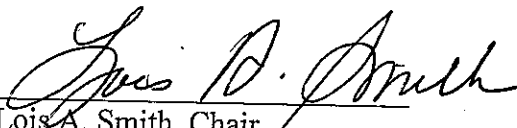
7. **No Interest on Escrowed Funds.** DEVELOPER acknowledges and agrees that no interest will accrue to the DEVELOPER on any funds held in escrow by the ESCROWEE pursuant to this Disbursement Agreement and the ESCROWEE may receive ancillary benefits from the use of the funds held in escrow.

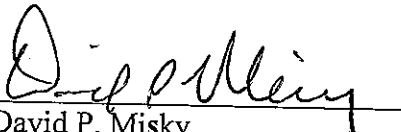
Executed as of the date first written above.

GIUFFRE VIII, LLC


By: 
Its: MBR

**REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE**

By: 
Lois A. Smith, Chair

Attest: 
David P. Misky
Assistant, Executive Director/Secretary

LANDMARK TITLE COMPANY

By: 

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