

## ESCROW AGREEMENT

File #201402662

THIS ESCROW AGREEMENT (this “**Agreement**”) is entered into to be effective as of February \_\_\_\_, 2015, by, between and among Heritage Title Company of Austin, Inc., a Texas corporation (“**Escrow Agent**”), Perry Estate, LLC, a Texas limited liability company (“**Perry**”), and Hancock Neighborhood Association, a Texas non-profit corporation (“**HNA**”) (Perry and HNA are sometimes collectively referred to herein as the “**Parties**”).

### RECITALS

- A. The parties have entered into a Declaration of Restrictive Covenants dated May 30, 2014, recorded in Doc. No. 2014149172, Official Public Records, Travis County, Texas, (the “**Declaration**”).
- B. Paragraph 3.2 of the Declaration contemplates that Perry shall establish a Reducing Standby Letter of Credit in the amount of \$50,000.00 (the “**LOC**”) in favor of HNA to be held by Escrow Agent.
- C. The Parties desire to enter into this Agreement to set forth their respective obligations with respect to the LOC, and Escrow Agent joins herein for the purpose of acting as an escrow agent for the Parties with respect to holding the LOC and any delivery of the LOC to HNA.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and of other good and valuable consideration the receipt, sufficiency and adequacy of which the parties hereto mutually acknowledge, the parties hereto hereby agree to the following:

- 1. Escrow of LOC As of the effective date hereof, Perry has delivered to Escrow Agent the original signed LOC Number 3912 issued by PlainsCapital Bank, which is attached as Exhibit “A” to this Agreement and incorporated herein (the “**PlainsCapital Bank LOC**”).
- 2. Obligations and compensation of Escrow Agent. Escrow Agent agrees to accept the PlainsCapital Bank LOC and agrees to handle the PlainsCapital Bank LOC only in accordance with the terms of this Agreement. Escrow Agent shall be entitled to \$0.00 for Escrow Agent’s Performance of its obligations hereunder.
- 3. Delivery and return of the PlainsCapital Bank LOC. Escrow Agent, subject to the provisions hereinafter set forth, shall deliver to HNA the original PlainsCapital Bank LOC together with any amendments; provided, HNA has first provided a sworn affidavit signed by HNA, affirming under oath that all requirements necessary to draw upon the PlainsCapital Bank LOC have been met as set forth in Sections 3.1 and 3.2 of the Declaration, pertinent

provisions of which are attached as Exhibit "B" to this Agreement and incorporated herein. Escrow Agent shall have no liability or responsibility for determining if HNA has complied with such provisions of the Declaration, but may fully rely on HNA's sworn statement in releasing possession of the PlainsCapital Bank LOC as set out herein. No later than 5 business days after receiving any funds pursuant to draws under the PlainsCapital Bank LOC, HNA shall return PlainsCapital Bank LOC together with any amendments to Escrow Agent and provide notice thereof to Perry.

4. Concerning the Escrow Agent. The Parties agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of Escrow Agent:

(a) Escrow Agent is not a party to, and is not bound by, or charged with notice of, any agreement out of which this escrow may arise, other than this agreement.

(b) Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of the subject matter of the escrow of any part thereof, or for the form or execution thereof, or for the identity or authority of any person executing or depositing that same.

(c) Escrow Agent shall be protected in acting upon any written notice, waiver consent, certificate receipt, authorization, power of attorney, affidavit, or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.

(d) Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instruction of such counsel.

(e) Perry and HNA hereby jointly severally agree to defend, indemnify and hold harmless the Escrow Agent from and against any and all claims, demands, causes of action, losses, liabilities, damages, costs and expenses, including, without limitation, court costs, legal expenses and attorney's fees, incurred or suffered by the Escrow agent in connection with the performance of its obligations under this Agreement or otherwise arising, directly or indirectly, by reason of this Agreement, except to the extent any such claims, demands, causes of action, losses, liabilities, damages, costs or expenses are incurred or suffered by Escrow Agent becomes involved in litigation in connection with this escrow, the Parties agree to indemnify and save Escrow Agent harmless from all loss, costs, damages, expenses and attorney's fees suffered or incurred by Escrow Agent as a result thereof. The obligations of indemnity of Perry and HNA shall survive the expiration or any termination of this Escrow Agreement and shall be performable at the office of the Escrow Agent in Austin, Travis County, Texas.

**(f) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE ESCROW AGENT SHALL NOT BE LIABLE FOR ANY ERROR OF JUDGEMENT, OR FOR ANY ACT DONE OR STEP TAKEN OR OMITTED BY IT IN GOOD FAITH, OR FOR ANY MISTAKE IN FACT OR LAW, OR FOR ANYTHING WHICH IT MAY DO OR REFRAIN FROM DOING IN CONNECTION HEREWITH, INCLUDING WITHOUT LIMITATION ANY ACT OR OMISSION ARISING FROM OR RELATED TO THE NEGLIGENCE OF ESCROW AGENT, UNLESS DUE SOLELY TO ITS OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

(g) In the event of any claims or demand upon Escrow Agent are made in connection with any provision of this Agreement, or in the event the Escrow Agent, in good faith, shall be in doubt as to what action it should take hereunder, Escrow Agent may, in its sole discretion, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in such event, Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue to so refrain from action until (i) the rights of all interested parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjusted and all doubt resolved by agreement among all of the interested parties and Escrow Agent shall have been notified thereof in writing signed by all such parties. Notwithstanding the foregoing, in the event Escrow Agent shall be in doubt as to what action it should take hereunder at any time during the term of this agreement, Escrow Agent shall have the right, in its sole and absolute discretion, to file an interpleader action in the District Court of Travis County, Texas, and interplead all documents and instruments held by it into the Registry of said Court, and in such event, all costs, expenses and attorney's fees incurred by Escrow Agent in filing such interpleader action shall be paid by the Parties or from the funds so interplead. The rights of Escrow Agent under this paragraph are cumulative to all other rights which it may have by law or otherwise.

5. Termination. This agreement shall terminate and be of no further force or effect upon the expiration or termination of the PlainsCapital Bank LOC. Upon termination of this Agreement, the PlainsCapital Bank LOC and any amendments thereto, shall be delivered to Perry.
6. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to be given (a) when actually received by that party, (b) when sent via overnight courier service and confirmation of receipt by the addressees is obtained

from the courier's tracking system, (c) Three (3) days after being deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the party in question at the address indicated for such party on the signature page herein below, or to a different address as previously given notice to the other parties, OR (d) upon delivery by facsimile machine transmission or email (in facsimile format such as pdf or tif) to the party in question at the facsimile number or email address indicated for such party on the signature page herein below, or to a different facsimile number or email address as previously given in a notice to the other parties.

7. Entire Agreement. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and this Agreement can be amended only by written agreement signed by all of the parties hereto.

**Binding Effect. This Agreement, and the terms, covenants and conditions herein contained shall inure to the benefit of and binding upon the successors and assigns of each of the parties hereto.**

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8. Attorneys' fees. In the event any party to this Agreement should bring suit against another party in respect of any matters provided for herein, the prevailing party shall be entitled to recover from such other party(ies) its costs of court, legal expenses and reasonable attorney's fees in connection with such suit.
9. Time. Time is of the essence in all things pertaining to the performance of this Agreement.
10. Applicable Law. The construction and validity of this Agreement shall be governed by the laws of the State of Texas.
11. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.

12. Grammatical Construction. Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa.
13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall be constructed as one and the same instrument.

**EXHIBIT LIST**

Exhibit "A" – PlainsCapital Bank LOC

Exhibit "B" – Excerpt of Sections 3.1 and 3.2 of Declaration

EXECUTED as of the date first written above.

PERRY:

PERRY ESTATE, LLC, a Delaware limited liability company

By: Peyton Riley No. 3, LLC, a Texas limited liability company, Manager

By:   
Clark E. Lyda, Manager

Address: PO Box 1757  
Georgetown, Texas 78627

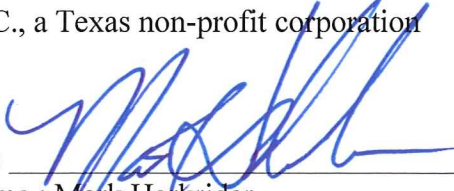
Email: [clarklyda@gmail.com](mailto:clarklyda@gmail.com)

Phone: (512) 635-0002

Fax: \_\_\_\_\_

HNA:

HANCOCK NEIGHBORHOOD ASSOCIATION, INC., a Texas non-profit corporation

By:   
Name : Mark Harkrider  
Title: President

Address: President of Hancock Neighborhood Association  
703 East 38<sup>th</sup> Street  
Austin, Texas 78705

Email: [harkrider@westcapitol.com](mailto:harkrider@westcapitol.com)

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

ESCROW AGENT:

HERITAGE TITLE COMPANY OF AUSTIN,  
INC., a Texas corporation

By: \_\_\_\_\_

Name : \_\_\_\_\_

Title: \_\_\_\_\_

Address: 401 Congress Avenue, Suite 1500  
Austin, Texas 78701

Email: [ngrasshoff@heritage-title.com](mailto:ngrasshoff@heritage-title.com)

Phone: (512) 505-5000

Fax: (512) 505-5024

## EXHIBIT "A"

### PlainsCapital Bank LOC



L/C Number: 3912

RE: Irrevocable Reducing Standby LETTER OF CREDIT

Hancock Neighborhood Association  
CO Chair of the Executive Committee  
602 E 42<sup>nd</sup> St.  
Austin, TX 78751  
Attention: Hancock Neighborhood Association

Sir, Madam:

Upon the request of PERRY ESTATE LLC, we, PlainsCapital Bank (the Issuing institution) have established this Irrevocable Reducing Standby Letter of Credit in your (Beneficiary) favor, up to an aggregate amount of Fifty Thousand and 00/100 Dollars (\$50,000.00).

Payment to you will be made upon presentation of a sight draft drawn on us as outlined in the Conditions for Draw section below. The aggregate amount of this Letter of Credit may be drawn, in no more than five (5) individual draws totaling in sum no more than the aggregate amount of this Letter of Credit, on or before October 1, 2015.

This is a Reducing Letter of Credit and will terminate on October 1, 2015. The presentation of any sight draft(s) shall reduce the amount of Credit available under this Letter of Credit by the amount of any such sight draft(s) for the term of this Letter of Credit and for any renewals of same, if any.

This Letter of Credit must be presented with your drawing and the Conditions for Draw(s) set forth below must be satisfied. A draft must bear upon its face the statement "Drawn under Letter of Credit No. 3912."

**CONDITIONS FOR DRAWS.** Each sight draft must be accompanied by the following:

1. The original Letter of Credit together with any amendments.
2. A sworn affidavit signed by Beneficiary, affirming under oath that all requirements necessary to draw upon this Letter of Credit as set forth in Sections 3.1 and 3.2 of the Declaration of Restrictive Covenants recorded in Travis County as Document No. 2014149172 have been met.
3. This is a Reducing Letter of Credit and will terminate on October 1, 2015. The presentation of any sight draft shall reduce the amount of Credit available under this Letter of Credit by the amount of any such sight draft(s) for the term of this Letter of Credit and for any renewals of same, if any.

This Credit is not transferable. Any successor or assignee of the Beneficiary will not constitute a transferee of Credit.

We will honor a draft drawn and presented under and in compliance with the terms of this Letter of Credit if presented to us at our address set forth above at or before October 1, 2015.

The Uniform Customs and Practice for Documentary Credits (hereinafter called the "UCP") as most recently published by the International Chamber of Commerce (ICC) shall in all respects be deemed a part hereof as fully as if incorporated herein and shall apply to the Credit. This Agreement shall be governed by and construed in accordance with the laws of the state of Texas, United States of America, except to the extent such laws are inconsistent with the UCP.

PlainsCapital Bank

  
By: Wade Morgan      Date: 10/1/14

Its: Senior Vice President



## EXHIBIT "B"

### Excerpt of Sections 3.1 and 3.2 of Declaration

- 3.1 Enforcement of Declaration. If Declarant shall violate this Declaration, it shall be lawful for the Executive Committee as their sole and exclusive remedy, to enforce this Declaration through a claim for injunctive relief against the Declarant. Notwithstanding the foregoing, the Executive Committee may not file any claim for injunctive relief to enforce their remedies until the Executive Committee has delivered a written notice to the Declarant informing Declarant of the alleged violations of this Declaration. Within twenty (20) days after receiving such a notice of violation, the Declarant shall send a written response to the Executive Committee informing them what actions, if any, Declarant plans to take in order to remedy the alleged violation(s). If the Declarant notifies the Executive Committee that Declarant intends to cure the alleged violation, then the Declarant shall have a reasonable period of time, not to exceed thirty (30) days from the date of receiving initial notice of violation from the Executive Committee (or if such violation can not be cured within thirty (30) days despite the Declarant's commercially reasonable efforts, then as long as reasonably necessary) in which to cure the alleged violation, during which period, if the Declarant timely commences the cure and is using commercially reasonable efforts to cure the violation, then the Executive Committee shall not enforce any remedy under this Declaration. If the Declarant fails to cure the default alleged by Executive Committee within the 30-day or extended period, as applicable, then the Executive Committee may enforce their remedies as provided herein. The prevailing

party in any litigation hereunder shall be entitled to reasonable attorney's fees actually incurred in the enforcement or defense of this Declaration. Except for the Declarant and the Executive Committee and their respective successors and assigns, this Declaration shall not be enforceable by any other person or entity. Notwithstanding the foregoing, in the event that the Executive Committee alleges a violation under this Declaration, but the cure to the violation claimed by the Executive Committee would conflict with or make it impossible or impractical to cure any alleged violation claimed by the "Adjoining Landowner Designee" pursuant to that certain Declaration of Restrictive Covenants dated January 30, 2014, recorded under Document No. 2014017126 of the Official Public Records of Travis County, Texas (as the term "Adjoining Landowner Designee" is defined in said Declaration of Restrictive Covenants), then the Declarant shall not have any obligation to cure the violation alleged by the Executive Committee. Notwithstanding the provisions of this Section 3.1, the enforcement rights and related provisions of this Section 3.1 shall not apply to Section 1.1(C)(2) of this Declaration (which contains in Section 1.1(C)(2)(a) review and enforcement provisions applicable to Section 1.1(C)(2)).

- 3.2 Letter of Credit. As security for the performance of its obligations under this Declaration, Declarant, no later than sixty (60) days following the approval by the Austin City Council of the Tract 3 Zoning Case and the Tract 3 FLUM Amendment, shall place a \$50,000.00 Reducing Standby Letter of Credit (the "LOC") in a form substantially similar to form attached hereto as Exhibit "J" in an escrow account held by Heritage Title, attention Brenda Hindsman, Escrow Agent, Heritage Title Company of Austin, Inc., 401 Congress, Ste. 1500, Austin, TX 78701, Phone: 512-505-5000 (the "Escrow Agent"). Except as otherwise provided under this Section 3.2, Declarant shall provide annual evidence to the Executive Committee that it has renewed the LOC no later than 30 days before expiration of the current LOC. If Declarant has failed to provide such evidence in a timely manner, the Executive Committee shall deliver written notice to Declarant, informing it of the alleged failure to provide evidence of the LOC. Within ten (10) days after receiving any such written notice from the Executive Committee, the Declarant shall provide written notice containing evidence of the LOC to the Executive Committee. If, as the result of a breach by Declarant under this Declaration as alleged by the Executive Committee, subject to applicable notice and cure periods, the Executive Committee institutes legal proceedings to enforce their claim that Declarant is in breach hereunder and provides the Escrow Agent written notice thereof, then the Secretary of the HNA (on behalf of the Executive Committee) may draw on the LOC from time to time thereafter to pay invoices for the actual out-of-pocket expenses it has incurred (but not required to be paid) as a direct result of instituting and pursuing such legal proceedings, including reasonable attorneys' and other consultants' fees and court costs by submitting (a) a sworn affidavit signed by the Secretary of the HNA, affirming under oath that all requirements necessary to draw upon the LOC as set forth in Sections 3.1 and 3.2 hereof have been satisfied; and (b) a written request for reimbursement to the Escrow Agent along with copies of such invoices for such expenses (the amounts paid by the Escrow Agent to the Secretary of the HNA hereunder, the "Paid Costs"); provided, however, that if the Executive Committee's claim that Declarant is in breach hereunder is not successful in such legal proceedings, the Declarant reserves the right to seek recoupment of fifty percent (50%) of the amount of the Paid Costs plus statutory interest calculated from the date or dates such Paid Costs

were paid to the Secretary of the HNA by the Escrow Agent. If the Executive Committee has not instituted legal proceedings and given the Escrow Agent written notice thereof on or before the date that is ten (10) years after the Declarant has placed the LOC with the Escrow Agent, then (i) the provisions of this Section 3.2 shall automatically lapse and terminate, (ii) the LOC shall be returned to Declarant by the Escrow Agent, and (iii) the LOC shall automatically expire and terminate.