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SECOND AMENDMENT TO AND COMPLETE RESTATEMENT OF
HARWYCKE DECLARATION OF RESTRICTIONS

EW
Spencer Fane Britt & Browne LLP

SECOND AMENDMENT TO AND COMPLETE RESTATEMENT

OF

HARWYCKE

DECLARATION OF RESTRICTIONS

THIS SECOND AMENDMENT TO AND COMPLETE RESTATEMENT OF HARWYCKE DECLARATION OF RESTRICTIONS ("Amendment") is made and entered into as of the 3d day of December, 2000, by and among the persons who have executed this document on the separate signature pages attached hereto, in their capacities. as owners of record of certain of the lots described below, and the successor to Harwycke Development Ventures, as the developer of the lots described below (the "Developer");

WITNESSETH:

WHEREAS, the Developer is the developer of the residential subdivision in Overland Park, Kansas commonly known as "Harwycke"; and

WHEREAS, the Developer previously executed a Harwycke Homes Association Declaration and a Harwycke Agreement and Extension of District, Homes Association Declaration, land Declaration of Restriction and caused such documents (collectively, the "Declaration") recorded in the office of the Register of Deeds of Johnson County, Kansas on April 10, 1987; and

WHEREAS, a First Amendment to and Complete Restatement of the Harwycke Declaration of Restrictions was duly adopted pursuant to the terms of the Declaration on July 16, 1993 and recorded in the office of the Register of Deeds of Johnson County, Kansas on July 28, 1993; and

WHEREAS, pursuant to Paragraph 16 of the Declaration, the Declaration may be amended by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (a) the Owners (excluding therein the Developer if it is then an Owner) of a majority of the Lots (excluding those owned by the Developer) and (b) the Developer, or its successors and assigns; and

WHEREAS, the Owners and the successors in interest of the Developer desire to amend certain of the provisions of the Declaration of Restrictions; and

WHEREAS, it is the intent and purpose of this amendment to modify the current Declaration of Restrictions pertaining to the use of certain types of roofing materials that are governed by Ordinance No. BC-2167, adopted by the Governing Body of the City of Overland Park, Kansas. BC-2167 provides that Restrictive Covenants that prohibit the use of composite, slate, tile, clay or concrete roofing materials may not legally be enforced, but further provides that Restrictive

Covenants that regulate the colors, styles, dimensions or other aesthetic factors of roofing materials are allowed. It is the specific intent and purpose of this amendment to implement Ordinance No. BC-2167 by allowing the use of composite, slate, tile, clay or concrete roofing materials as required by law, and to regulate the aesthetic factors of such additional roofing materials to ensure that they are compatible with existing and future wood shingle or wood shake shingle roofs that may be constructed or reconstructed within this District.

NOW, THEREFORE, the parties hereto agree and hereby restate the Declaration of Restrictions which shall read as follows:

THIS DECLARATION, made this 3d day of December, 2000, supersedes all preceding declarations and amendments;

WITNESSETH:

WHEREAS, Harwycke Homes Association has executed and filed with the Register of Deeds of Johnson County, Kansas, a plat of the subdivision known as "Harwycke "; and

WHEREAS, such plat composed of the following described lots and tract therein, to-wit:

Lots I through 9 of Block 1; Lots I through 3 of Block 2; Lots I through 14 of Block 3; Lots 1 through 6 of Block 4; and Tracts A, B, C, D, E, and F of Harwycke, a subdivision in the City of Overland Park, Johnson County, Kansas according to the recorded plat thereof.

Lots 15 through 25 of Block 3; Lots 7 through 9 of Block 4; Lots I through 16 of Block 5; Lots 1 through 17 of Block 6; Harwycke Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas according to the recorded plat thereof.

Lot 4 of Block 2 and Lot 26 of Block 3; Harwycke, Third Plat, a subdivision in the City of Overland Park, Johnson County, Kansas according to the recorded plat thereof; and

WHEREAS, Harwycke Development Ventures, a Kansas Joint Venture, has assigned certain rights to One Liberty Plaza, Inc. of Liberty, Missouri and as the Harwycke Homes Association and the present owners and developer of the above-described lots and tract, desires to place certain restrictions on such lots to preserve and enhance the values, desirability and attractiveness of the development and improvements constructed thereon and to keep the use consistent with the intent: of the developer, all of which shall be for the use and benefit of Harwycke Homes Association, Owners, the Developer and its future grantees, successors and assigns;

NOW, THEREFORE, in consideration of the premises, Harwycke Development Ventures, for itself and for its successors and assigns (including One Liberty Plaza, Inc.), and for its future

grantees, hereby agrees and declares that all of the above-described lots shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth. This Declaration supersedes the original Declaration set forth by Harwycke Development Ventures on April 8, 1987 and the First Amendment and Restatement dated July 16, 1993.

1. Definitions. For purposes of this Declaration, the following definitions shall apply:

(a) The term "Lot" shall mean any lot as shown as a separate lot on any recorded plat of all or part of the District; provided, however, that if an Owner, other than the Developer, owns all or part of one or more adjacent lots upon which only one adjacent property under common ownership shall be deemed to constitute only one "Lot".

(b) The term "District" shall mean all of the above-described lots in Harwycke, all Common Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.

(c) The term "Developer" shall mean and refer to Harwycke Development Ventures, a Kansas Joint Venture, and its successors and assigns.

(d) The term "Owner" shall mean the record owner in fee simple of any Lot, including the Developer, and for purposes of all obligations of the Owner hereunder, shall include all family members and tenants of such Owner and all of their guests and invitees.

(e) The term "Private Park" shall mean that certain property, to be known as Harwycke Park as more particularly described on Exhibit A attached hereto, which shall be for the use, benefit and enjoyment of the Owners of property in Harwycke subdivision, but only for the intended use.

(f) The term "Common Areas" shall mean (i) street right-of-ways, (ii) streets and street islands, (iii) gateways, entrances, monuments, berms and other similar ornamental areas and related utilities, street lights, sprinkler systems and landscaping constructed or installed by or for the Developer at or near the entrance of any street or along any street, and any easements related thereto, (iv) the "Private Park" and all other similar areas and places for the use, benefit or enjoyment thereof is intended for all of the Owners within the District, whether or not any "Common Area" is located on any lot.

(g) The term "Street" shall mean any public street, road, terrace, circle or boulevard shown on any recorded plat of all or part of the District.

(h) The term "Homes Association" shall mean the Kansas not-for-profit corporation (abbreviated HHA) formed by the Developer for the purpose of serving as the Homes Association for the District.

(i) The term "Exterior Structure" shall mean any structure erected or on a Lot other than

the main residential structure or any structural component thereof, and shall include, without limitation, any deck, gazebo, greenhouse, doghouse or other animal shelter, outbuilding, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, basketball goal, swing set, trampoline, sandbox, playhouse, treehouse or other recreational or play structure.

(j) The term "Certificate of Substantial Completion" shall mean a certificate executed, acknowledged and recorded by the Developer stating that seventy-five percent (75%) of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon and substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or instrument in lieu thereof in its discretion at any time and for any limited purpose hereunder.

(k) The term "Approving Party" shall mean the "Board" or the "Architectural Control Committee" as further explained in Section 14 hereof.

(l) The term "Architectural Control Committee" shall mean the Board, or in the discretion of the Board the committee described in Section 14.

(m) The term "Board" shall mean the Board of Directors of the Homes Association.

2. Use of Land. None of the Lots may be improved, used or occupied for other than single-family, private residential purposes, and no duplex, flat or apartment house, although intended for residential purposes, may be erected thereon. No residential building which has previously been at another location shall be moved onto any Lot. No "earth" homes shall be permitted. No trailer or outbuilding erected on any Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any residence of a temporary character be erected on any of such Lots or used for human habitation; provided, however, that nothing herein shall prevent the Developer or other entity (including, without limitation, builders and real estate sales agencies) authorized by the Developer from erecting temporary buildings and using such temporary buildings or any residence for model, office, sales or storage purposes during the development of the District.

3. Building Material Requirements.

(a) Exterior walls of all residences and all appurtenances thereto shall be of stucco, brick, stone, wood shingles, wood lap siding, or any combination thereof, or such other materials as may be deemed by the Approving Party in writing to be compatible therewith. Front, side and back elevations are to be finished in a like manner which is appropriate for the style of construction. All windows shall be constructed of glass, wood, metal clad and wood laminate, or any combination thereof; provided, however, that storm windows may be constructed of colored metal (other than silver). All exterior doors and louvers shall be constructed of wood, colored metal (other than silver) and glass, or any combination thereof. All exterior doors shall be functional. No roof structure consisting of roofing materials other than wood shingles or wood shake shingles shall be commenced, erected, altered, or placed, moved onto or permitted to remain on any property within

the District subdivision, unless complete plans, specifications and descriptions of the proposed alternate roofing materials shall have been submitted to and approved in writing by the Approving Party. Such plans and specifications shall be in the form and contain the information required by the Approving Party, but in any event shall include a complete set of specifications satisfactory to the Approving Party, including the exterior color scheme and the nature, kind, shape, weight, composition and dimension of the materials. The following criteria shall be used by the Approving Party in reviewing the proposed use of alternate roofing materials:

(1) Roofing materials shall be of colors that blend and are compatible and not noticeably inconsistent with surrounding landscaping and other roofing materials in the District. Proposed colors should be visually indistinguishable from the original colors on one or more homes located in the same neighborhood.

(2) Review of roofing materials by the Approving Party will be based on architectural style, quality of workmanship and on the visual impact of the roof when seen from the lot, neighboring lots, dwellings, roads, and Open Spaces.

(3) Roofing materials should be architectural shingles designed to replicate the beauty of natural materials, constructed of a thickness, rich texture and multi-dimensional design that creates shadow lines and evokes the depth and dimension of wood shakes on the roof. Acceptable designs may include, without being limited to, the following: using a variation of surfaces, including weathered surfaces; randomly-applied tabs; muted or distinctive shadow lines; use of different colors of granules; use of crude-style flat tile slightly convoluted to simulate the appearance of tree bark; use of a rough, textured surface and severely chipped butt; irregular lengths; rustic-style flat slab shingle with a cratered, weathered and irregular surface; use of distinct color blends and a multiple shadows to create a multi-dimension effect; uneven surfaces and rounded, softly chipped or tapered; or any other combination of design, materials and colors that creates a multi-dimensional appearance that simulates the depth and three-dimension effect of wood shakes on the roof, resembling the natural and random textured look of wood shakes.

(4) In lieu of complying with the requirements for the approval of roofing materials specified herein, the Approving Parties may from time to time adopt and modify a list of products that are approved for use as roofing materials within the District.

(b) Any building products that may come into general usage for dwelling construction of comparable quality and style in the area after the date hereof shall be acceptable if approved in writing by the Approving Party. All wood exteriors, except roofs and shake side walls, shall be covered with a workmanlike finish of two coats of high quality paint or stain. All paint color selections must be submitted to the Approving Party at time of plan approval, if possible. If colors have not been selected prior to construction, the paint colors may not be applied until the Approving Party approves in writing those colors selected. No building shall be permitted to stand with its

exterior in any unfinished condition for longer than six (6) months after commencement of construction. All exterior basement foundations and walls which are exposed above final grade shall be painted the same color as the residence and/or, if more than twelve (12) inches above grade shall be, at the Approving Party's discretion, covered with siding compatible with the structure. Any retaining walls shall be finished in a consistent manner with the exterior finish and be approved in writing by the Approving Party before being built. No "earth" homes shall be permitted and "staccato board" and "board and batt" siding shall be prohibited. No driveway shall be constructed in such a manner as to permit access to a street across a rear lot line.

4. Minimum Floor Area. All square footages and floor areas shall be determined exclusive of any porches, garages, attics, alcoves, and basement areas, whether finished or unfinished.

5. Approval of Plans and Post-Construction Changes.

(a) Notwithstanding compliance with the provisions of Sections 3 and 4 above, no residence or Exterior Structure may be erected upon or moved onto any Lot unless and until the building plans, specifications, exterior material, location, site plan, front and rear elevations, and grade have been submitted to and approved in writing by the Approving Party, as the case may be. Nor shall any change or alteration in such building plans, specifications, exterior color scheme, materials, location, elevation, grade and landscaping thereof be made until such change or alteration has been submitted to and approved in writing by the Approving Party. General landscaping plans and exterior color schemes must gain similar approval before being implemented. The owner shall provide a performance bond in favor of the HHA in the amount of \$1,500.00. Such owner remains responsible for all damages caused by his builder to the common areas or to other owners. The HHA may draw against the performance bond to pay for such damages. A minimum expenditure of \$1,000.00 (one-thousand dollars) for landscaping the front and side yards is required. This amount is subject to change if and when the Approving Party deems it necessary in order to maintain the quality of the landscaping in the District. No changes in the final grading of any lot shall be made without the prior written approval of the Approving Party. Two sets of plans including all four sides' elevation, all exterior materials, and all colors to be used (if then known) with an attached above-mentioned PreConstruction Site Plan including all requirements, are to be submitted prior to commencing construction.

(b) Following the completion of construction of any residence or Exterior Structure, no exterior colors or general landscaping thereof shall be changed and no exterior additions or alterations to any structure shall be made unless and until the changes have been submitted to and approved in writing by the Approving Party. All replacements of all or any portions of an existing structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, fences, retaining walls, basketball goals, etc., shall be of the same material as the original structure, if the materials or structures to be replaced comply with the then current deed restrictions and have been submitted to and approved in writing by the Approving Party. "Repairs", as compared to "replacements", need only be of the same material as the original structure.

(c) The Approving Party shall not be liable to any person for any discretionary approval, disapproval or failure to approve any matter submitted for its approval as required by the provisions of this Declaration.

6. Set Back and Side Yard Requirements. No building, exclusive of porches, porticoes, stoops, balconies, bay and other windows, eaves, chimneys and other similar projections, shall be closer to any street than the building setback lines, if any, shown on the recorded plat or specified by local ordinance or municipal regulations to the curblin of any street or any property line. Building placement and set-back and side yard requirements shall be approved in writing by the Approving Party.

7. Commencement and Completion of Construction. Unless the following time periods are expressly extended by the Approving Party in writing, construction of the residential building on a Lot shall be commenced within ninety days following the date of delivery of a deed from the prior lot owner to the purchaser of such Lot and shall be completed within six months after such commencement. In the event such construction is not commenced within such ninety (90) day period (or extension thereof), the Approving Party shall have, prior to commencement of construction, the right to repurchase such Lot from such purchaser at its original sale price. No Owner of a Lot in violation of this construction commencement provision shall be entitled to reimbursement for taxes, interest or other expenses paid or incurred by or for such Owner.

8. Exterior Structures.

(a) No Exterior Structure shall be erected upon, moved onto or upon any Lot except, (i) with and pursuant to the advance written approval of the Approving Party, as set forth in subsection (b) below; provided, however, that this approval of the Approving Party shall not be required for any Exterior Structure erected by or at the request of the Approving Party or any Exterior Structure that has been specifically approved by the Approving Party prior to the issuance of a temporary or permanent certificate of occupancy as part of the residential construction plans approved by the Approving Party and has been built in accordance with such approved plans.

(b) Construction of Hedges, Fences, Privacy Screens and Boundary Walls (other than any installed by the Approving Party) shall be consistent with the standard designs, heights and materials to be selected by the Approving Party. All fences and privacy screens shall be constructed with the finished side out. No metal (other than ornamental), wood perimeter, chainlink or similar fences or privacy screen shall be permitted except to the extent now in existence. All replacements of all or any portions of an existing structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, fences, retaining walls, basketball goals, etc., shall be of the same material as the original structure, if the materials or structures to be replaced comply with the then current deed restrictions and have been submitted to and approved in writing by the Architectural Control Committee. "Repairs", as compared to "replacements", need only be of the same material as the original structure if original had been in compliance with the deed restrictions in effect at the time of construction. No fence or privacy screen shall extend toward the front of the residence beyond the rear corners of the residence. No fence or boundary wall shall be erected upon or moved

onto any Lot unless and until the location, design, configuration, height and materials have been submitted to and approved in writing by the Approving Party. The use of railroad ties for landscaping or retaining walls, etc. is prohibited. No perimeter fencing shall be allowed on any Lot adjoining the common areas (Harwycke Park). For purposes hereof, fences shall include, without limitation, all privacy screens and enclosures.

(c) All basketball goals shall be free standing and not attached to the residence unless the Approving Party determines that there are compelling reasons for the basketball goal to be attached to the residence. All basketball goals shall be constructed consistent with the standard designs and materials (transparent backboards with white posts) to be selected and approved in writing by the Approving Party.

(d) All recreational or play structures (other than basketball goals) shall be made of wood and shall be located behind the back building line of the residence. All recreational or play structures shall be approved in writing by the Approving Party.

(e) No above-ground swimming pool, hot tub, or tank for the storage of fuel shall be maintained above the surface of the ground; provided, however, that above-ground hot tubs may be maintained if adequately screened and if approved in writing by the Approving Party. All pools and hot tubs shall be kept clean and maintained in operable condition.

(f) All outside doghouses and other animal shelters shall be located in the backyard, shall be up against or within two feet of the residence, shall be painted (where appropriate) the same color as the residence and shall have roofs (where appropriate) that are compatible with the residence.

(g) No Exterior Structure that is prohibited under Section 9 below shall be permitted under this Section 8.

9. Buildings for Uses Other Than for Residential Purposes; Noxious Activities & Miscellaneous.

(a) Except as otherwise provided in Section 2 above, no residence or Exterior Structure shall ever be placed, erected or used for business, professional, trade or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in his residence in accordance with the applicable ordinances of the City of Overland Park, Kansas.

(b) No noxious or offensive activity shall be carried on with -respect to any Lot, nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot or Common Area, nor shall anything be done which may be or become an annoyance or a nuisance to the neighborhood. Each Owner shall properly maintain his Lot in a neat, clean and orderly fashion. All residences and Exterior Structures shall be kept and maintained in good condition and repair at all times.

(c) No vehicle, truck, trailer, bus, van, camper, boat, airplane, or similar apparatus shall

be parked, left, maintained, repaired, serviced or stored on any Lot or in any yard. No truck or commercial vehicle shall be parked, left or stored in any driveway or street for more than an eight-hour period. No trailer, bus, van, camper boat or similar apparatus shall be parked; left or stored in any driveway or street for more than a twenty-four (24) hour period. It is the intent of the parties hereto that all automobiles shall be kept in an enclosed garage whenever possible. Motorized vehicles shall not be operated on any Lot, or Common Area, other than in the street.

(d) No television, radio, citizen's band, short wave or other antenna, clothes line or pole, awnings, canopy, satellite disc, solar panels, or unsightly projections shall be attached to any residence or constructed or erected upon any Lot. Should any part or all of the restriction set forth in the preceding sentence be held by a court of competent jurisdiction to be unenforceable because it violates the First Amendment or any other provision of the United States Constitution, the Approving Party shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the neighborhood and any such rules and regulations shall be binding upon all of the Lots. No lights or other illumination shall be higher than the residence.

(e) All garage doors shall remain closed at all times except when necessary for entry or exit.

(f) No garage sales, sample sales or similar activities shall be held within the District without the written consent of the Approving Party.

(g) No mailbox or standard therefore shall be erected or installed without the prior approval of style, material, construction, and location being granted by the Approving Party.

(h) No speaker, horn, whistle, siren, ben or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any residence or in any yard.

(i) All residential service utilities shall be underground.

(j) In the event of vandalism, fire, windstorm or other damage, no buildings shall be permitted to remain in damaged condition for longer than three (3) months.

(k) No shed, barn, detached garage or other storage facility shall be erected upon, moved onto or maintained upon any yard. Storage shall be permitted under a deck provided such area is fenced or otherwise screened and such plans for such fencing or screening are approved in writing by The Approving Party.

(l) No fuel storage tanks of any kind shall be permitted.

(m) No driveway shall be constructed in a manner as to permit access to a street across a rear lot line.

10. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes and do not constitute a nuisance to the neighbors or neighborhood. In no event, however, shall more than three dogs or cats, or combination thereof, be raised, kept or maintained on any Lot.

11. Landscaping and Lawns. Prior to occupancy, and in all events within nine (9) months after commencement of construction, all lawns, including all areas between each residential building and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded and shall remain full sodded at all times thereafter; provided, however, that the Owner of a Lot may leave a portion of the Lot as a natural area with the express written permission of the Approving Party. Prior to occupancy, and in all events within nine (9) months following commencement of construction of the residence, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the District and in accordance with the plans approved by the Approving Party. A minimum expenditure of \$1,000.00 (one-thousand dollars) is required for landscaping the front and side yards. This amount is subject to change if and when the Approving Party deems it necessary to maintain the quality prevailing throughout the neighborhood. All vegetable gardens shall be located in the backyard. The Owner of each Lot shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four inches and shall properly maintain and replace all trees and landscaping. Owners of vacant Lots are responsible for keeping Lots mowed and free of trash and debris.

(a) Each Lot shall have an underground water system installed and operational prior to occupancy for aft front and street side displayed yards sufficient to insure full growth and maintain greenery for all grass, plantings and landscaping.

12. Easements for Public Utilities; Drainage; Maintenance. The Approving Party shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way shown on the recorded plat of the District or any Common Area. All utility easements and rights-of-way shall inure to the benefit of all utility companies, including, without limitation, the Johnson County Unified Wastewater District and the Homes Association as a cross easement for utility line or service maintenance.

(a) The Approving Party shall have and does hereby reserve for itself, its successors and assigns and the Homes Association and its successors and assigns, (a) an easement over and through all unimproved portions of each Lot in the District for the purpose of performing duties of the Homes Association and maintaining any Common Area.

(b) No water from any roof, downspout, basement or garage drain or surface drain shall be placed in or connected to any sanitary sewer line; nor shall any other connection of any kind be made to a sewer line without the prior written approval of the Approving Party.

13. Common Areas.

(a) The Developer and its successors, assigns, and grantees, as Owners of Lots in the District, shall have the right and easement of enjoyment in and to all of the Common Areas, but only for the intended use. Such right and easement shall be appurtenant to, and shall automatically pass with the title to each Lot and shall be subject to the rights (including ownership) of any governmental authority or any utility therein or thereto.

(b) The Developer covenants and agrees to convey title to or its interest in the Common Areas (except any part thereof that is within any Lot and except the Private Park, as provided below) to the Homes Association, without any cost to the Homes Association, not later than one month after the Developer has recorded the Certificate of Substantial Completion. Prior to such date, the Developer shall cause the Homes Association to enter into an agreement with the Developer establishing a cost sharing arrangement for the maintenance of such Common Areas.

(c) The Developer shall retain title to the Private Park until Certificates of Substantial Completion have been filed for the subdivision for which the Private Park is or is to be a Common Area. Prior to such date, the Developer shall cause the affected Homes Association to enter into an agreement between themselves and the Developer establishing a cost sharing arrangement for the proper maintenance of the Private Park, including, without limitation, maintaining landscaping and any improvements erected in the Private Park and correcting the effects of material detrimental erosion or other damage caused by the flow of water through the Private Park. Within one month after the filing of the Certificate of Substantial Completion for the affected subdivision, the Developer shall transfer title to the Private Park to the Homes Association as tenants in common, and at such time the Developer's obligations pursuant to the maintenance agreement will terminate.

(d) The right and easement of enjoyment of the Owners in the District as to any Common Area shall be subject to the right of the Developer to convey sewage, water, drainage, maintenance and utility easements over, under, upon and through such Common Area, as provided in Section 12 above.

(e) No Owner shall improve, destroy or otherwise alter any Common Area without the express consent of the Approving Party.

(f) The Developer and the Homes Association shall have the right to make additional rules, regulations and restrictions pertaining to the use of any Common Area.

14. "Approving Party."

(a) A committee to be known as the "Architectural Control Committee" (ACC) shall consist of the Board. In the Board's discretion a separate committee may be appointed consisting of no less than three and no more than five members, including at least one member of the Board. The positions on the Architectural Control Committee shall be divided into two classes with staggered two (2) year terms.

(b) The Architectural Control Committee shall meet on a regular basis as necessary to consider applications with respect to any Exterior Structures that require the approval of the Architectural Control Committee as provided herein. Any application that is not acted upon by the Architectural Control Committee within forty-five (45) days of the date on which it is filed shall be deemed to have been approved. A majority of the members of the Architectural Control Committee shall constitute a quorum for the transaction of business at a meeting and every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Architectural Control Committee.

(c) At each meeting, the Architectural Control Committee shall consider and act upon application that have been submitted to it for approval. In making its decisions, the Architectural Control Committee may consider any and all aspects and factors that the committee members, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character, and aesthetics of the Harwycke neighborhood, including, without limitation, the plans, specifications, exterior colors, material, location, elevation, landscaping and use of the proposed Exterior Structure. All decisions of the Architectural Control Committee shall be in writing and delivered to the applicant who shall be responsible for keeping the same. The Architectural Control Committee may establish, in advance, and change from time to time, certain guidelines and conditions that it intends to follow in making its decisions.

(d) In the event that the Board has appointed an Architectural Control Committee not comprising the entire Board, any applicant who is dissatisfied with the decision of the Architectural Control Committee shall have the right to appeal such decisions to the Board provided such appeal is filed in writing with a member of the Board within fifteen (15) days of the date the Architectural Control Committee publicly renders its decision. Any decision rendered by the Board on appeal shall be final and conclusively binding on the applicant.

15. No Liability for Approval or Disapproval. Neither the Approving Party, nor the Homes Association, nor any member of the Architectural Control Committee or the Board shall be personally liable to any person for any discretionary approval, disapproval or failure to approve any matter submitted for approval, for the adoption of any rules, regulations or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration.

16. Covenants Running with Land: Enforcement. The agreements, restrictions and reservations herein set forth are, and shall be, covenants running with the land into whosoever hands any or the property in the District shall come. The Developer and its successors, assigns, and grantees, and all parties claiming by, through or under them, shall conform to and to observe such agreements, restrictions and reservations. No agreement, restriction or reservation herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during its or his seizing of title to such Lots; provided, however, that the immediate grantee from the builder of the residence on a Lot shall be personally responsible for breaches committed during such builder's seizing of tide to such Lot.

The Developer, its successors and assigns, and all other Owners of any of the Lots and the

Homes Association, shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions and reservations herein set forth, in addition to any action at law for damages. The failure to enforce the observance of the agreements, restrictions or reservations herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter. The City of Overland Park, Kansas, is hereby deemed to be a third party beneficiary with respect to the provisions hereof relating to the Private Park and as such shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or enforce the observation of the agreements, restrictions, obligations and other provisions relating to the Private Park.

17. Assignment of Developer's Rights. The Developer shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey, transfer and set over to any person or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for all purposes be the Developer hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties, and responsibilities hereunder.

18. Release or Modification of Restrictions. The provisions of this Declaration shall remain in full force and effect until December 31, 2015, and shall automatically be continued thereafter for successive periods of five years each; provided, however, that the then Owners of a majority of the Lots may, subject to the last sentence of this Section 18, release the District, or any part thereof, from all or part of such provisions as of the December 31, 2015, or at the expiration of any extension period, by executing (in one or more counterparts), acknowledging and recording an appropriate agreement in writing for such purpose, at least one year prior to the original expiration date or to a subsequent expiration date, whichever is applicable. The provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (a) the Owners (excluding therein the Developer if it is then an Owner) of a majority of the Lots (excluding those owned by the Developer) and (b) the Developer, or its successors and assigns. Notwithstanding the foregoing, the prior written consent of the City of Overland Park, Kansas shall be required for the termination of the Declaration in its entirety or to any amendment, modification or termination of any provision regarding the Private Park.

19. Extension of District. The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing District and to the operation of the provisions of this Declaration such other adjacent (without reference to streets and right-of-ways) lands as it may now own or hereafter acquire by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof, provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in good faith.

20. Release of the City of Overland Park. The City of Overland Park, Kansas is hereby released from any and all past, present or future liability for any damages that may be caused at any time to any real property or personal property, including, without limitation, any Lot, residence or other improvement, or the Private Park or any other Common Area, resulting from or related to, directly or indirectly, the grant by the City to the Developers of a variance from Chapter 15.08 of the Overland Park Municipal Code relating to the creek in the Private Park or the City's permitting public storm water to enter the Private Park. The City is further released from any and all past, present or future obligations to expend any public funds or to take any other action to maintain or improve the Private Park.

21. Severability. Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions, or any part thereof, but they shall remain in full force and effect."

22. Execution. Pursuant to Article XII of the original Harwycke Homes Association Declaration and Paragraph 16 of the original Harwycke Declaration Of Restrictions, this Amendment shall become effective and binding upon all of the Lots upon (i) the valid execution hereof by the owners of record of at least 41 (a majority) of the Lots, (ii) the execution hereof by the Developer and (iii) the recordation hereof in the office of the Register of Deeds of Johnson County, Kansas. The execution of this Amendment may occur in counterparts with only one copy of the main body hereof being recorded together with the various signature and acknowledgment pages from such counterparts. Within 15 days following the effective date of this Amendment, the Association shall mail or deliver to the Owner of each Lot a notice containing such effective date.

ACKNOWLEDGMENTS

This page is one of the signature pages of the Second Amendment to and Complete Restatement of Harwycke Declaration of Restrictions, dated December 3, 2000.

The below signed individuals, being all of the duly elected members of the Board of Directors of the Harwycke Homes Association, do agree and resolve as follows:

WHEREAS, on April 8, 1987, at the time that the Harwycke subdivision was originally platted, the Harwycke Homes Association Declaration was executed by the co-venturers of Harwycke Development Ventures and duly filed with the Johnson County Register of Deeds as Document 1694137 in Volume 2554, Page 957, and;

WHEREAS, Article XII of the Harwycke Homes Association Declaration dated April 8, 1987 provided, in pertinent part:

“This Declaration may be amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (a) the owners of two-thirds of the Lots within the District as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, by the Developer;....” and;

WHEREAS, on July 16, 1993, the First Amendment to and Complete Restatement of Harwycke Declaration of Restrictions was duly executed by the appropriate number of owners of Lots and by the Developer and duly filed with the Johnson County Register of Deeds on July 28, 1993, as Document 2277028 in Volume 4014, Page 190, and;

WHEREAS, Article 18 of the First Amendment to and Complete Restatement of Harwycke Declaration of Restrictions, dated July 16, 1993, provided, in pertinent part:

“... The provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (a) the Owners (excluding therein the Developer if it is then an Owner) of a majority of the Lots (excluding those owned by the Developer) and (b) the Developer, or its successors and assigns....” and;

WHEREAS, on January 22, 1993 the Certificate of Substantial Completion referenced in the original Declarations was executed by the Developer and thereafter transmitted to the Harwycke Homes Association on August 6, 1993, and;

WHEREAS, in order to bring the Harwycke Homes Association Restrictions into compliance with the provisions of Ordinance No. BC-2167 of the City of Overland Park, Kansas, it is necessary that the provisions of such Restrictions be further amended, and;

WHEREAS, for that purpose the Board of Directors of the Harwycke Homes Association approves the Second Amendment to and Complete Restatement of Harwycke Declaration of Restrictions, dated December 3, 2000, and;

WHEREAS, the Owners of a majority of the Lots have approved the Second Amendment to and Complete Restatement of Harwycke Declaration of Restrictions, dated December 3, 2000, by executing an appropriate acknowledgement, and;

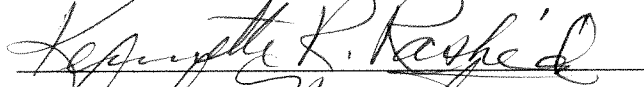
WHEREAS, to the best of the information and belief of the members of the Board of Directors of the Harwycke Homes Association, the Developer no longer has any ownership interest in any Lot in the subdivision, and has ceased to exist and has not designated any "successor or assign," and, thus, there is no person or entity authorized to sign the Second Amendment to and Complete Restatement of Harwycke Declaration of Restrictions, dated December 3, 2000 on behalf of the Developer;

NOW THEREFORE, the Board of Directors of the Harwycke Homes Association, acting by this Resolution pursuant to the authority contained in the Articles of Incorporation of the Harwycke Homes Association do hereby APPROVE the Second Amendment to and Complete Restatement of Harwycke Declaration of Restrictions, dated December 3, 2000, and DIRECT that it be submitted for filing with the Johnson County Register of Deeds.

Dated: October 4, 2004

HARWYCKE HOMES ASSOCIATION BOARD OF DIRECTORS:

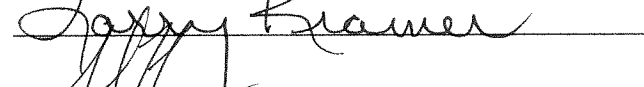
Kenneth Rashid



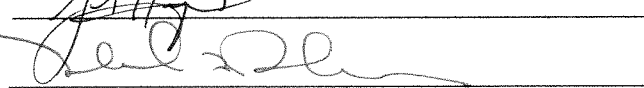
Arthur Meltzer



Larry Kramer



John Frye



Michael Delaney

