

MOONLIGHT RANCH HOMES ASSOCIATION

SECOND AMENDED AND RESTATED DECLARATION

This SECOND AMENDED AND RESTATED DECLARATION is hereby approved, adopted, and effective as of the 5th day of May, 2014 (the "Effective Date").

WITNESSETH:

WHEREAS, Developer Moonlight Properties, Ltd. (subsequently known as Moonlight Properties Limited Partnership, subsequently known as Moonlight Properties Limited Partnership of Olathe, the "Developer"), recorded a certain HOMES ASSOCIATION DECLARATION (the "Original Declaration") with the Office of the Register of Deeds of Johnson County, Kansas (the "Register of Deeds") on May 1, 1979 on page 33 of volume 1456;

WHEREAS, the Original Declaration applied to Lots 1-42, Lot A, Lot B and Lot C which comprise the plat of Silver Wraith Property, a subdivision in Johnson County, Kansas, recorded with the Register of Deeds on January 1, 1979 on page 19 of book 46, Lots 43-47 which comprise the Silver Wraith Property Second Plat recorded with the Register of Deeds on November 16, 1999 on page 34 of book 113, Lots 48-50 which comprise the Silver Wraith Property Third Plat recorded with the Register of Deeds on September 29, 2000 on page 31 of book 118, and re-platted Lots 48 and 49 which comprise the Silver Wraith Property Fourth Plat recorded with the Register of Deeds on February 13, 2009 on page 4432 of book 200902 (all plats collectively the "Property");

WHEREAS, pursuant to the Original Declaration, the Property was originally governed by Silver Wraith Property Homes Association, incorporated as Silver Wraith Acres Homes Association, Inc. ("Silver Wraith HOA"), its membership consisting of all owners of the aforementioned Lots;

WHEREAS, Moonlight Ranch Homes Association, Inc. (the "Association") was incorporated on July 24, 2009, and is the successor in interest to Silver Wraith HOA, and the Property is now known as Moonlight Ranch;

WHEREAS, the Developer has sold Lots 1-50, and conveyed Lot A, B and C to the Association by quit claim deed recorded with the Register of Deeds on January 25, 2011 on page 8029 of book 201101;

WHEREAS, the Developer is now dissolved;

WHEREAS, an Amendment 2012-1 to the Original Declaration (the "First Amendment") was recorded with the Register of Deeds on October 25, 2013 on page 8135 of book 201310; and

WHEREAS, due to dissolution of the Developer and other changes set forth above, as well as the Kansas Uniform Common Interest Owners Bill of Rights effective January 1, 2011, the Board of Directors of the Association deems it reasonable and necessary to amend and replace the Original Declaration and First Amendment with this Second Amended and Restated Declaration (the "Amended Declaration");

NOW, THEREFORE, in order to conform to law and to continue in performance of the purposes for which the Association was formed and to advance community and financial interests of the members of the Association, including without limitation, maintaining and enhancing the value of the members' property in Moonlight Ranch and in the common areas thereof, this Amended Declaration is approved and adopted by the members of the Association by vote in person, by proxy or in allocation to the majority decision of the Board of Directors to equal two-thirds of the total votes of all Owners of all Lots, and is hereby effective and supersedes the Original Declaration and First Amendment as of the Effective Date.

SECTION 1. DEFINITIONS OF TERMS USED.

- (1) The term "District" shall mean all of the Lots enumerated above and shown on said plats of the Property, as well as all additional land, which shall from time to time be subjected to the terms of this Amended Declaration, including any future modification thereof.
- (2) The term "Lot" shall mean any numbered lot as platted, or any tract or tracts of land as conveyed, within the District, upon which a residence may be erected in accordance with the Amended Restrictions hereinafter defined.
- (3) The term "Assessable Lot" shall mean any Lot that is directly accessible by road or driveway consisting of stone, gravel, asphalt or concrete pavement. Any Lot that currently lacks such road or driveway access shall become an Assessable Lot upon obtaining such access.
- (4) The term "Association" shall mean and refer to the Moonlight Ranch Homes Association, Inc., its successors and assigns.
- (5) The term "Street" shall mean any street, drive, road, avenue or terrace of whatever present or future name which is shown on the original or subsequent plats of Silver Wraith Property as Lot A or C.
- (6) The term "Common Areas" or "Park Area" shall mean Lot B as shown on the original plat of Silver Wraith Property, which lot, together with Lot A and C, shall be managed and maintained by the Association for the use, benefit and enjoyment of the present and future owners of land within the District.
- (7) The term "Owners" shall mean those persons or entities that may from time to time own one or more Lots within the District.
- (8) The term "Amended Restrictions" shall mean the "Amended Declaration of Restrictions" of the Property recorded with the Register of Deeds on May 16th, 2014 at page ___ of book___, and all amendments thereto.

SECTION 2. MEMBERSHIP IN ASSOCIATION AND VOTING RIGHTS.

- (1) The Owners of one or more of the Lots, together with the owners of any other land that may from time to time be made subject to all of the terms and provisions of this Amended Declaration in the manner hereinafter provided for, shall be the members of the Association. The Association shall be incorporated under the laws of the State of Kansas as a corporation not for profit. Membership in the Association shall be limited to the Owners of land within the boundaries of the District, as it exists from time to time.
- (2) Each Owner of an Assessable Lot shall be entitled to one vote for each Assessable Lot owned; provided, however, that when more than one person owns an interest in any Assessable Lot, all such persons shall be members and the vote for such Assessable Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Assessable Lot. Owners of Lots that are not Assessable Lots shall not be entitled to a vote at any Association meetings. The voting rights of Owners of Assessable Lots with respect to votes on assessments and fees shall not be suspended for any period during which any assessment, including interest and fees, against his or its Lot remains unpaid.
- (3) The Association shall have the right to charge reasonable admission or other fees and determine the rules for the use of any recreational facility situated upon a Common Area.
- (4) At any regular or special meeting of the Association, Owners of Assessable Lots may cast their vote in person or by proxy.
- (5) Except as hereinbefore provided, the Association shall be the sole judge of the qualifications of its members and of their rights to participate in its meetings and proceedings.

SECTION 3. LAND ENTITLED TO BENEFITS.

No land shall be entitled to any of the benefits, improvements or services provided by this Association unless the owner thereof shall have subjected its land to the terms of this Amended Declaration and to the assessments herein provided for.

SECTION 4. OTHER LANDS - HOW THEY MAY BE ADDED.

The Association may from time to time add to the District such land as is now or hereafter owned or approved for addition by the Association, provided that the land so added to

the District shall at that time be bound by all of the terms of this Amended Declaration, Amended Restrictions, and all amendments thereto.

SECTION 5. POWERS AND DUTIES OF THE ASSOCIATION.

The Association shall have the following powers and mandatory duties:

- (1) To care for, spray, trim, protect, replace and replant trees, shrubbery, bushes, flowers, grass and sod along all streets and in all common areas and such other areas as required.
- (2) To care for, maintain, protect and, when necessary, reconstruct and replace curbs and fencing within and around the District.
- (3) To provide, maintain, protect and, when necessary, reconstruct and replace protective lighting within and around the District when adequate service of that type is not available from any public source.
- (4) To care for, maintain, provide for snow removal and, when necessary, reconstruct and repair Streets within the District. This includes maintenance for the replanted Private Drive associated with lots 48, 49 and 50 reflected in "Silver Wraith Property Fourth Plat" filed with Johnson County.
- (5) To establish, maintain and control a security system, including control of ingress and egress, for the benefit of residents and owners of property within the District.
- (6) To establish, maintain and control all deliveries within the District, including mail.
- (7) To provide for maintenance and supervision of any tennis courts, playgrounds, pedestrian ways, gateways, guardhouses, entrances, drinking fountains, and ornamental features now existing or which may hereafter be erected or maintained in said District.
- (8) To provide for the operation and maintenance of any swimming and beach facilities for the exclusive use and enjoyment of members of the Association and members of their families who reside in the District, and establish and enforce rules for the use and management of such facilities.
- (9) To acquire and own the title to such real estate and improvements as may be reasonably necessary in order to carry out the mandatory duties of the Association, and to pay taxes on such real estate as may be owned by it.
- (10) To levy and collect the assessments which are provided for in this Amended Declaration.
- (11) To enforce, either in its own name or in the name of any Owner within the District, any or all building restrictions which may have been heretofore or may hereafter be imposed upon any of the land in such district, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications as are permissible in the deeds, declaration, contract, plats or certificate of survey in which such restrictions or reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for. Nothing herein contained shall be deemed or construed to prevent any owner having the contractual right to do so from enforcing in his own name any such restrictions.
- (12) To manage and control as trustee for its members all improvements located upon the numbered tracts in the District, provided that such management and control of said improvements shall at all times be subject to that had and exercised by the city, county and state, or any one of them in which the land within the District is located.
- (13) To mow, care for, maintain and remove rubbish from vacant and unimproved property and to do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved property and the parking in front of any property in the District neat in appearance and in good order.
- (14) To erect and maintain signs for the marking of streets, and safety signs for the protection of children and other persons, when such signs are not available from any public source.
- (15) To employ duly qualified peace officers for the purpose of providing such police protection as the Association may deem necessary or desirable in addition to that rendered by public authorities.
- (16) To exercise control over such easements as it may acquire from time to time.
- (17) To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public source.

- (18) To adopt and amend bylaws and may adopt and amend rules.
- (19) To adopt and amend budgets.
- (20) To require that disputes between the Association and Owners or between two or more Owners regarding the Property be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding.
- (21) To promptly provide notice to the Owners of any legal proceedings in which the Association is a party other than proceedings involving enforcement of rules, covenants or declarations of restrictions, or to recover unpaid assessments or other sums due the Association.
- (22) To establish a reasonable method for Owners to communicate among themselves and with the Board of Directors concerning the Association.
- (23) To suspend any right or privilege of an Owner of any Assessable Lot that fails to pay an assessment, but may not: (a) deny such Owner or other occupant access to the Owner's unit; (b) suspend such Owner's right to vote except involving issues of assessments and fees; or (c) withhold services provided to such Lot or such Owner by the Association if the effect of withholding the service would be to endanger the health, safety, or property of any person.
- (24) All other powers that may be exercised in this state by organizations of the same type as the Association.

SECTION 6. METHOD OF PROVIDING GENERAL FUNDS.

- (1) For the purpose of providing a general fund to enable the Association to exercise the powers and maintain the improvements and render the services herein provided for, each Assessable Lot, on the first day of each fiscal year of the Association as hereinafter defined, shall be subject to an annual assessment to be levied by the Association from year to year and shall be paid to the Association annually in advance by the respective Owners of the Assessable Lots. The Association shall from year to year fix and determine the total amount required in this general fund and shall levy and collect an annual assessment of not less than \$396.00 for each Assessable Lot; provided, however, that if in the sale of land within the District any Assessable Lot be divided into one or more building sites, each of which building sites shall be for a single residence and may consist of a part or parts of one or more Lots as shown on said survey, then for the purpose of levying this assessment each of such divided building sites which remains an Assessable Lot shall constitute one assessment unit and shall be liable for each annual assessment. For the purpose of levying this assessment, the Association shall be the sole judge as to what may from time to time constitute a building site under the provisions of this paragraph.
- (2) The amount of the annual assessment upon each Assessable Lot as aforesaid which the Association shall levy and collect from year to year shall be established and determined by a majority vote of the total votes of the Owners of the Assessable Lots in attendance in person or by proxy at a meeting of the members specially called for that purpose, thirty (30) days prior to the first day of the fiscal year for which the assessment is levied. The amount of the annual assessment may not be established and determined for more than one year at a time.
- (3) The annual assessment of each Assessable Lot within the District shall be for the fiscal year, beginning June 1, and they shall be fixed and levied prior to June 1st of each such year and shall be payable on that date, and thereafter it shall be due and payable on June 1st of each year. It will be the duty of the Association to notify each Owner of one or more Assessable Lots whose address is listed with the Association on or before that date, giving the amount of the assessment on each Assessable Lot owned by them, and the date when such assessment is due. The assessment established and determined for the last preceding year will be applicable to the next fiscal year in the event the Association fails to establish, determine and levy an assessment prior to June 1st for the next succeeding fiscal year.
- (4) A written or printed notice, deposited in the United States Post Office, with postage thereon prepaid, and addressed to the respective Owner at the last address listed with the Association, shall be deemed to be sufficient and proper notice for these purposes, or for any other purpose of this Amended Declaration where notices are required.

SECTION 7. LIEN ON REAL ESTATE.

- (1) The assessment shall become a lien on the real estate against which it is levied as soon as it is due and payable as above set forth, provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate securing the payment of a loan which is insured or guaranteed by any agency of the United States government. In the event of the failure of any owner to pay the assessment on or before the 30th day following the making of such assessment, then such assessment shall bear interest at the rate of ten per cent per annum from the date of assessment.
- (2) Within thirty days from the date of levying the assessment for the fiscal year during which and for which the assessment is levied, the assessment shall become delinquent and payment of both principal and interest may be enforced as a lien on said real estate, in proceedings in any court in Johnson County, Kansas, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof. The Association may at its discretion file a certificate of nonpayment of assessments in the office of the Register of Deeds whenever any such assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the Owner or Owners of the property described therein a fee of \$150.00, which fee is hereby declared to be a lien upon the real estate so described in said certificate, provided that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate securing the payment of a loan which is insured or guaranteed by any agency of the United States Government. Such fee shall be collectible in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.
- (3) Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such time suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment establishing same.

SECTION 8. EXPENDITURES LIMITED TO ASSESSMENTS FOR CURRENT YEAR.

The Association shall at no time expend more money within any one fiscal year than the total amount of the assessments for that particular fiscal year, or any surplus which it may have on hand from previous assessments; nor shall said Association enter into any contract whatsoever, binding the assessments of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association except for contract for utilities; it being the intention that the assessments for each year shall be applied as far as practicable toward payment of the obligations of that year, and that the Association shall have no power to make a contract affecting the assessments of any future or subsequent year except for utilities.

SECTION 9. ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS.

The Association shall notify all Owners, insofar as the addresses of such Owners are listed with said Association, of the official address of said Association, the place and time of the regular meetings of the Association, and the place where payments shall be made and any other business in connection with said Association may be transacted, and in the case of any change of such address, the Association shall notify all the Owners, insofar as their addresses are listed with the Association of the new address.

SECTION 10. TO OBSERVE ALL LAWS.

The Association shall at all times observe all state, county, city and other laws, and if at any time any of the provisions of this Amended Declaration shall be found to be in conflict therewith, then such parts of this Amended Declaration as are in conflict with such laws shall become null and void, but no other part of this Amended Declaration not in conflict therewith shall be affected thereby. The Association shall have the right to make such reasonable rules and regulations, and provide such means and employ such agents as will enable it to adequately and properly carry out the provisions of this Amended Declaration, subject, however, to the limitations of its rights to contract as are herein provided for.

SECTION 11. AMENDMENT.

This instrument may be modified and amended by combined votes in person, by proxy or in allocation to the majority decision of the Board of Directors to equal two-thirds of the total votes of all Owners of all Lots, which consent shall be evidenced by a Declaration duly executed and acknowledged by the Association and recorded in the office of the Register of Deeds of Johnson County, Kansas, provided, however, that no such modification or amendment shall reduce the minimum annual assessment hereinbefore established.

SECTION 12. HOW TERMINATED.

Members of the Association whose combined votes in person, by proxy or in allocation to the majority decision of the Board of Directors equals three-fourths of the total votes of all Owners of all Lots, may terminate this Amended Declaration and all of the land now or hereafter affected may be released from all of the terms and provisions hereof. Such agreement or agreements shall be duly executed and acknowledged by such members and recorded in the office of the Register of Deeds of Johnson County, Kansas.

SECTION 13. COVENANTS RUNNING WITH THE LAND.

All of the provisions of this Amended Declaration shall be deemed to be covenants running with the land, and shall be binding upon the Association and its successors and assigns.

IN WITNESS WHEREOF, Moonlight Ranch Homes Association, Inc. has caused this instrument to be executed on the Effective Date.

Moonlight Ranch Homes Association, Inc.

Date: _____

Signature: _____

Printed Name: _____

Title: President, Moonlight Ranch Homes Association, Inc.

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

BE IT REMEMBERED that on the 16th day of May, 2014, before me a Notary Public in and for said county and state, personally appeared Tim Kalkman who is known to me to be the same person who executed the above and foregoing instrument in writing, and acknowledged the execution of the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year above written.

Notary Public

My Appointment Expires: _____

ACKNOWLEDGMENT BY BOARD OF DIRECTORS
OF ADOPTION OF SECOND AMENDED AND RESTATED DECLARATION BY
VOTE OF ASSOCIATION MEMBERS

NOW on this 5th day of May, 2014, the undersigned authorized member of the Board of Directors of Moonlight Ranch Homes Association, Inc. (the "Association") does hereby acknowledge that, after submission to a vote by the members of the Association the question of whether or not to approve the Second Amended and Restated Declaration (the "Amended Declaration") and the votes of the members of the Association eligible to vote having been duly counted and confirmed by the Board of Directors at a meeting where a quorum was present, the Board of Directors now, hereby, confirms that two-thirds or more of the eligible members of the Association voted in person, by proxy or in allocation to the majority decision of the Board of Directors to equal two-thirds of the total votes of all Owners of all Lots, at a duly-noticed meeting of the Association with a quorum in favor of adoption of the Amended Declaration. The Amended Declaration is, hereby, approved and adopted on the date signed below.

Date: _____

Signature: _____

Printed Name: _____

Title: President, Moonlight Ranch Homes
Association, Inc.