



Sedgwick County
Register of Deeds - Bill Meek
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DECLARATION

of

**COVENANTS, CONDITIONS, RESTRICTIONS,
DISCLOSURES AND EASEMENTS**

of

THE ESSENCE AT FONTANA

AFTER RECORDING RETURN TO:

Slawson Companies, Inc.
Legal Department
727 N. Waco, Suite 400
Wichita, KS 67203
Tel. (316) 268-0761

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THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, DISCLOSURES AND EASEMENTS OF THE ESSENCE AT FONTANA ("Declaration"), is made on the 20th day of July, 2007, by Socora Homes, Inc., a Kansas corporation ("Declarant").

RECITALS

A. Declarant is the owner of certain real property located in Sedgwick County, Kansas, legally described as: Fontana, an Addition to Wichita, Sedgwick County, Kansas ("Fontana Addition"), Fontana 2nd, an Addition to Wichita, Sedgwick County, Kansas ("Fontana 2nd") and Fontana 3rd Addition to Wichita, Sedgwick County, Kansas ("Fontana 3rd"). Fontana Addition, Fontana 2nd and Fontana 3rd are sometimes collectively referred to as "The Fontana Additions" or "the Additions."

B. In order to insure the proper development of and adequate maintenance and governance of the common area and to protect the rights of property owners and residents therein, it is necessary to establish binding covenants, conditions and restrictions applicable to the portion of said property hereafter described.

C. It is the purpose and intention of this Declaration that Lots 1-40, inclusive, Block 1, Fontana Addition to the City of Wichita, Sedgwick County, Kansas (hereinafter "The Essence Neighborhood" or the "Property") shall be held and/or conveyed subject to the provisions of this Declaration.

D. There shall be two associations formed to manage, control and implement the various undertakings required by this Declaration. First, there shall be established The Essence at Fontana Owners' Association, consisting of the Owners of the Lots within The Essence Neighborhood, the principal purpose of which shall be to enforce the various covenants, conditions, restrictions and design controls set forth in this Declaration within the confines of The Essence Neighborhood. Second, there shall be established the Fontana Master Association, consisting of the owners of all of the platted lots within Fontana Addition, Fontana 2nd Addition and Fontana 3rd Addition, the sole purpose of which shall be to maintain all of the Common Areas (as hereafter defined) within Fontana Addition, Fontana 2nd Addition and Fontana 3rd Addition in accordance with the provisions of this Declaration. References to the "Associations" shall mean both The Essence at Fontana Owners' Association and the Fontana' Master Association collectively.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be owned, held, leased, transferred, sold, conveyed, mortgaged, developed, used and occupied subject to the covenants, conditions, restrictions, disclosures, easements and development standards hereinafter set forth, all of which shall run with the land and shall be binding on the Property and all persons having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of

July 16, 2007

Declarant, each Owner and other person having any interest in the Property or any part thereof, and the Associations.

ARTICLE 1

Definitions

Section 1.01 "The Essence Association." "The Essence Association" shall mean The Essence at Fontana Association, a Kansas not-for-profit corporation

Section 1.02 "The Master Association." "The Master Association" shall mean the Fontana Master Association, a Kansas not-for-profit corporation.

Section 1.03 "The Master Board." "The Master Board" shall mean the Board of Directors of the Master Association.

Section 1.04 "Constituent Association." A "Constituent Association" shall mean one or more not-for-profit associations of homeowners' incorporated as provided for in a Declaration executed and recorded by Declarant covering specifically identified platted residential lots within Fontana Addition, Fontana 2nd Addition and Fontana 3rd Addition.

Section 1.05 "Owner." "Owner" shall mean every record title owner of a Lot.

Section 1.06 "Member." "Member" shall mean every person or entity who or which is a record title Owner of a fee or undivided fee interest in any Lot, but not including any Owners who have sold their interest under executory contract. During such time as such contract is in force, the contract vendee shall be considered to be the Member. When more than one person holds an interest in any Lot, all such persons shall be Members.

Section 1.07 "Lot." "Lot" shall mean a platted lot as shown on the recorded plat of Fontana Addition to the extent that such addition covers the land within The Essence Neighborhood; provided that where property has been attached or detached from any Lot, the enlarged Lots and/or the diminished Lots shall be deemed to be a "Lot"; provided, further, two or more Lots which are combined into a single home site shall be deemed to be one "Lot" for the purpose of computing voting rights and liability for assessments hereunder.

Section 1.08 "ACC." "ACC" shall mean the Architectural Control Committee referenced in Section 6.01 hereof.

Section 1.09 "Structure." "Structure" shall mean and include any thing or device (other than trees, shrubbery, hedges and landscaping), the placement of which upon any Lot may affect the appearance or drainage of such Lot, including, by way of illustration and not limitation, any residence, building, garage, porch, shed, greenhouse or bathhouse, covered or uncovered patio, screening materials, swimming pool, tennis

court, light pole, clothes line, radio or television antenna, fence, curbing, paving, wall more than two (2) feet in height, satellite dish, signboard, mailbox and related structure or any temporary or permanent improvement to such Lot. "Structure" shall also include (a) any excavation, fill, ditch, diversion dam or other thing from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; and (b) any change in the grade of any Lot other than in accordance with drainage guidelines, standards and plans established by the Declarant, ACC or the City of Wichita, whichever is most restrictive.

Section 1.10 Description of Common Area. The Common Area in the Fontana Additions to be conveyed to the Master Association and the use thereof is as provided in the recorded plats of Fontana Addition, Fontana 2nd Addition and Fontana 3rd Addition and are generally described as follows:

Fontana Addition Reserve A, D and O Fontana 3 rd Addition Reserve A	Construction and maintenance of lighting, landscaping, open space, irrigation and entry island and entry monuments and roundabouts
Fontana Addition Reserve B	Construction and maintenance of swimming pool, playground, park, parking lot, lighting, landscaping, fencing, sidewalks, open space and irrigation and other recreational purposes
Fontana Addition Reserve C and E Fontana 2 nd Addition Reserve A and B	Construction and maintenance of storm water detention ponds, recreational uses, sidewalks and landscaping
Fontana Addition Reserve M and N Fontana 3 rd Addition Reserves C and D	Construction and maintenance of landscaping, open space, lighting and irrigation
Fontana Addition Reserves Q, R, S and T	Construction and maintenance of landscaping, fencing, lighting, irrigation and open space
Fontana 3 rd Addition Reserve B	Construction and maintenance of landscaping, fencing, lighting, irrigation and open space and an emergency access easement

ARTICLE 2

Association Memberships and Voting Rights

Section 2.01 Formation of Associations. The Essence at Fontana Association and the Fontana Master Association shall each be organized as not-for-profit corporations for a perpetual term under the laws of the State of Kansas.

Section 2.02 Membership. Membership in each of the Associations shall be mandatory for each Owner and all Owners, upon becoming such, shall be deemed automatically to have become Members of each Association. There shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

Section 2.03 Voting Rights of The Essence Association. All Owners, so long as they shall qualify under this Article, shall be entitled to vote on each matter submitted to a vote at a meeting of the members of The Essence Association. Each member shall have one (1) vote for each Lot owned by such Owner subject to the following exceptions and conditions:

- A. There shall be one (1) vote attributable to each Lot. In the event of multiple ownership of a Lot, the vote allocated to that particular Lot shall be cast as the multiple Owners shall determine among themselves. The Essence Association shall not recognize any fractional vote.
- B. Any Owner who is in violation of this Declaration, as determined by The Board of Directors of The Essence at Fontana Association (the "Essence Board"), shall not be entitled to vote on any matter pertaining to The Essence Association during any period during which such violation continues. Any Owner who fails to pay any assessments established pursuant to the terms hereof shall not be entitled to vote on any matter pertaining to The Essence Association during the period in which such assessments are due and unpaid. The Essence Board shall be the sole judge of the qualifications of each Owner to vote and participate in meetings or proceedings on matters pertaining to The Essence Association;
- C. Notwithstanding the foregoing, Declarant shall be entitled to twenty (20) votes in The Essence Association for each Lot owned by it within The Essence Neighborhood; and
- D. The Essence Board shall adopt Bylaws, consistent with the terms hereof, the Articles of Incorporation and the laws of the State of Kansas, as it deems advisable for any meeting of Owners with regard to proof of membership in The Essence Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Owners for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper.

Section 2.04 Voting Rights of the Master Association. Except as provided below, no Member or Owner shall have the right to vote on any matter pertaining to the Master Association. All action of the Fontana Master Association shall be taken only by its Board of Directors. The Board of Directors of the Master Association shall be comprised of one member of the Board of Directors from each of its Constituent Associations. The Board of Directors of each Constituent Association shall, once

established, elect one of its Board members to serve as member of the Board of Directors of the Master Association. In the event there is an even number of Directors on the Master Board and a stalemate occurs, the matter in controversy shall be decided by a Majority Vote (as defined below) of the Members of the Master Association.

Section 2.05 Initial Operation. Notwithstanding Section 2.03 and 2.04, Declarant shall have the exclusive right, power and authority to manage and operate the development and to appoint the members of the Board of Directors of the Master Association, the Board of Directors of the Essence Association and the Architectural Control Committee until such time as Declarant relinquishes and transfers control of each respective Association to the Owners. Declarant's transfer of the authority to the Associations shall be by written recordable instrument and shall be effective upon filing with the Sedgwick County, Register of Deeds.

Section 2.06 Board of Directors. All actions of both of the Associations shall be taken on their behalf by their respective Boards of Directors (each a "Board"), except when a vote of the Members is specifically required by this Declaration, their Articles of Incorporation or their Bylaws.

Section 2.07 Powers and Duties.

- A. Declarant shall have the right to carry out all of the duties and powers herein delegated to both Associations and both Boards so long as it owns at least one Lot, after which time the same shall be turned over to the Associations or Boards, as the case may be, which shall then exercise the powers and duties herein set out; provided, however, that the Declarant shall have the right, at any earlier time, to partially or wholly transfer all or any part of such duties and powers to an Association or a Board by written instrument. In the event of a transfer of a portion of such powers and duties by the Declarant to an Association or a Board, the Declarant shall retain all other powers and duties that are not so specifically transferred. The Associations and Declarant shall cooperate fully in the transition of the powers and duties hereunder.
- B. The Associations shall have the rights and powers as set forth in its Articles of Incorporation and Bylaws, together with its general powers as a not-for-profit corporation, and each shall perform each and every duty required of it by this Declaration, including, but not limited to, those enumerated in this Article. The initial Board of each Association shall consist of three (3) Directors, each of whom shall be a designee of Declarant, and who shall be appointed, removed and replaced from time to time by Declarant, in its sole discretion, until Declarant has transferred such duties and powers as provided in subsection A of this Section. Thereafter, the Essence Board shall consist of no fewer than three (3) or more than five (5) Directors and the Master Board shall consist of one member from each of the Constituent Associations.

- C. Except as otherwise required by Kansas corporate law, there shall be no requirement as to the minimum number of Directors who must be in attendance before a Board of Directors may act upon any matter at a duly called meeting of the Boards. The acts approved by a majority of votes cast by Directors in person or by proxy at a duly called meeting or by unanimous consent in writing (a "Board Vote") shall constitute the acts of the entire Board, except where approval of a greater number is required by this Declaration, the Bylaws or applicable law.
- D. The Master Association shall own, maintain, repair, restore, replace and keep the Common Area and all of the amenities located thereon in "top notch" condition and shall keep the Common Area mowed, trimmed, irrigated and well groomed. It further shall maintain, repair and/or replace the decorative entrance treatments and other amenities installed by Declarant or the Master Association within the Common Area.
- E. The Master Board shall maintain such insurance on the Common Area and Structures thereon as it deems necessary and advisable.
- F. The Master Board shall have the right to improve the Common Area in any manner that it shall find to be necessary, desirable or beneficial to the interest of the Common Area and Owners.
- G. The Master Board shall have the right to create and establish financial reserves for the repair, restoration or replacement of any improvement it has the duty to repair, restore or replace hereunder.
- H. The Master Board shall have the right to adopt such policies, rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Common Area for the health, comfort, safety and general welfare of the Owners.
- I. The Master Board shall have the right to determine the manner and extent of operating, maintaining, improving, restoring, mowing, trimming and keeping clean the Common Area and caring for, irrigating, fertilizing, controlling weeds, watering, spraying, protecting, and replanting trees, shrubbery, grass and sod within the Common Area and public road rights-of-way adjacent to the Common Area.
- J. The Master Board shall have the right to erect, maintain, repair and replace signage as it shall deem appropriate and necessary within the Common Area.
- K. The Master Board shall pay the taxes and assessments applicable to the Common Area.

- L. The Master Board shall have the right to levy and collect the assessments and charges necessary to maintain, improve and manage the Common Areas as provided for in this Declaration and to enforce the liens thereby created in the manner herein provided.
- M. The Master Board shall have the right to mortgage any part, parts, or all of the Common Area in connection with the borrowing of money in the furtherance of any of its purposes authorized herein and shall have the right to take such steps as are necessary to comply with such mortgage and to prevent foreclosure and any similar proceedings thereunder; provided, however, that any such mortgage shall be subject to the rights of the Owners under this Declaration.
- N. The Essence Board shall have the duty and right to enforce the various covenants, conditions, restrictions and design controls set forth in this Declaration within the confines of The Essence Neighborhood and shall have the right to levy and collect assessments and charges on Lots within The Essence Neighborhood necessary to allow it to enforce the covenants, conditions, restrictions and design controls set forth in this Declaration.

Section 2.08 Operations and Expenses. Each Board shall have the right to establish committees and shall have the right to engage a management company to perform its duties hereunder and may hire a manager, secretaries, engineers, auditors, accountants, legal counsel and other employees or consultants as may be reasonably necessary for the discharge of its duties hereunder.

Section 2.09 Repair and Restoration of Improvements on Common Area. Should any improvements on the Common Area, or any part or portion thereof, be damaged or destroyed by fire, hail, wind, flood, vandalism or other casualty, the Master Board shall replace or repair such improvements to their condition immediately before the casualty.

ARTICLE 3

Property Rights

Section 3.01 Easement of Enjoyment. Subject to Section 3.03, every Owner and occupant of a Lot shall have an easement for use of the Common Area, and such easement shall be appurtenant to and shall pass with every Lot, subject to the following provisions and to the other provisions in this Declaration.

- A. The right of the Master Board to establish uniform rules and regulations pertaining to activities or uses of the Common Area, including, but not limited to, the recreational facilities located thereon and to restrict or eliminate activities or uses thereon;

- B. The right of the Master Board, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and recreational facilities located thereon and to mortgage the Common Area, provided that the rights of such mortgagees shall be subordinate to the rights of the Owners hereunder;
- C. The right of the Master Board to suspend the use of the Common Area and any recreational facilities located thereon by any Owner(s), occupant, family and guests for any period during which any assessment against any such Owner(s)'s Lot(s) remain unpaid and delinquent or such Owners are otherwise in violation of this Declaration or the rules and regulations established hereunder. The Board shall have the right to employ third parties on behalf of the Association and to delegate to such third parties the right to determine whether violations of this Declaration or rules and regulations have occurred with regard to the Common Area;
- D. The right of the Master Board to grant easements, dedicate or transfer all or any part of the Common Area to any public agency, authority or utility;
- E. No Owner, occupant or guest thereof shall conduct themselves within the Common Area in a manner which unreasonably interferes with the use and enjoyment thereof by others.

Section 3.02 Waiver of Use. No Member may exempt himself from personal liability for assessments duly levied by either Association, nor release the Lot owned by him from the liens and charges thereof, by waiver of the use and enjoyment of the Common Areas and the facilities located thereon or by abandonment of his Lot.

Section 3.03 Title to the Common Area, Payment of Amenity Financing, Indemnity of Declarant. Declarant may retain title to the Common Area until such time as it desires to convey title to the Master Association; provided however, title shall be conveyed no later than the time the Declarant fully transfers its rights as provided in Section 2.05. Declarant shall convey title to the Common Area to the Master Association by Special Warranty Deed, subject to all matters of record, including the lien of any then current ad valorem taxes or special assessments and any mortgage lien securing any indebtedness incurred to finance the construction of the improvements on the Common Area, including the swimming pool, pool house, parking lot, playground, playground equipment, landscaping, lighting, irrigation and associated amenities located on Reserve B, Fontana Addition, which indebtedness (the "Amenity Financing") shall be paid for by the Master Association through assessments to the Owners. The Master Association shall be responsible for the payment of the Amenity Financing as well as all taxes and insurance on the Common Area and for the proper maintenance of the Common Area and for compliance with this Declaration. The Master Association shall also indemnify, defend and hold Developer, and any guarantors of the Amenity Financing harmless from any proceedings, judgments,

claims, liabilities, costs and expenses, including attorney's fees, arising out of the Master Associations failure to pay the Amenity Financing, when and as due.

Section 3.04 Reservation of Rights in the Common Area. Notwithstanding any other provision of this Declaration, Declarant, and the Master Association as its successor, reserves the right to grant easements within the Common Area for the installation, repair and maintenance of water mains, sewers, drainage courses, sidewalks, and other public utilities, provided that such utilities shall be installed in such manner as to minimize damage to the natural features of the Common Area. Additionally, Declarant specifically reserves for itself, its successors and assigns, and for the Master Association, a perpetual non-exclusive easement and right-of-way to enter upon any Lot as reasonably necessary in order to construct, install, erect, maintain, improve, repair and or replace any entrance treatment, fence, wall, walkway, water sprinkler system, plantings and other landscaping, including water wells, sprinkler controls and electric meters and lines associated therewith) or any signage pertaining to or serving the Property or Common Area within any wall, utility and or drainage easement shown on the current or any future plat of the Fontana Additions or located on any Lot due to Oversight. Declarant, and the Master Association as its successor, shall have the further right during the development of The Fontana Additions to alter and reconfigure the Common Area to accommodate developmental concerns as they may arise from time to time, including, but not limited to, granting further easements burdening the Common Area, including, without limitation, dedicating portions thereof for public rights of way and/or streets, granting easements for ingress and egress over and across the Common Area, and adding or deleting land area to the Common Area or any parcel thereof. The Master Association shall have the right to mortgage any part, parts, or all of the Common Area in connection with the borrowing of money in the furtherance of any of its purposes authorized herein and shall have the right to take such steps as are necessary to comply with such mortgage and to prevent foreclosure and any similar proceedings thereunder.

ARTICLE 4 **Assessments**

Section 4.01 Annual Assessments. All Lots shall be subject to an annual assessment by the Essence Association and one annual assessment by the Master Association. The annual assessments shall be paid by the Owners of each Lot annually on the 1st day of March of each year. The respective association Boards may permit the annual assessment charge to be paid annually, semiannually, or quarterly. The obligation of any Owner to pay assessments shall commence upon purchase of a Lot and is not dependent upon there being improvements erected thereon. Notwithstanding the foregoing, Declarant shall not be obligated to pay any assessment to either association for any Lot owned by it whether or not a home has been erected thereon. Suspension of the right to use the Common Area or voluntary non-use thereof shall not relieve any Owner of the obligation to pay assessments to either association. Neither shall any Owner have any right to withhold payment of assessments by virtue of the non-payment thereof by any other Owner or the violation of these covenants,

conditions, and restrictions or any rule or regulation promulgated by either association, by any other Owner. The amount of the initial annual assessment for each association shall be established by Declarant and shall commence on the date specified by Declarant upon notice given to the Owners.

Section 4.02 Determination of Annual Assessments. Each year the Board of each association shall, prior to December 15 (or as soon thereafter as practicable), determine the total amount to be raised by their respective annual assessment charges for the next succeeding year. Subject to any exemptions permitted by this Declaration, each Lot shall be assessed an equal amount for annual assessments. The amount so determined by each Board shall be assessed by each Board equally against each Lot. Should the Board of either association at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the respective associations, or in the event of emergencies, the Boards shall have the authority to levy such additional assessment or assessments as they shall deem necessary.

Section 4.03 Exemption from Assessment. In view of the substantial expenditures incurred by Declarant in connection with the Common Area, Declarant and any licensed general contractor owning Lot(s) for the purpose of constructing a residence thereon and offering the same for sale, shall be exempt from the imposition of any assessment with respect to any Lot so long as Declarant or such contractor holds legal title thereto (provided the assessment exemption for any general contractor which is not under common control with Declarant shall not extend beyond twelve (12) months from the date an applicable Lot is conveyed to such contractor and shall cease if residence located thereon is occupied). At such time as a Lot is no longer subject to an exemption from assessment, the applicable assessments shall be prorated for the calendar year, based upon a 365 day year and the remaining number of days in such year and shall be paid by the non-exempt Owner.

Section 4.04 Initiation Assessment. Whenever legal title to a Lot is transferred, the transferee shall pay to the Master Association, at the time of the closing of such transfer, the sum of Two Hundred Fifty Dollars (\$250.00) as an Initiation Assessment. Notwithstanding the foregoing, no Initiation Assessment shall be due upon (i) the transfer of a Lot by the Declarant to an affiliated entity or a subsequent Declarant; or (ii) the transfer of a Lot by the Declarant to a licensed general contractor who purchases the Lot for the purpose of constructing a residence thereon and of offering the same for sale.

Section 4.05 Master Association - Use of Assessment Funds. The Master Association's assessment fund shall be used for improving and maintaining the Common Area, including the swimming pool and related amenities and for paying and servicing the Amenity Financing as well as any other debt which may encumber the Common Area. The Master Association general assessment fund may also be used for planting new trees and shrubbery and for the care thereof; for collecting and disposing of garbage and rubbish; for employing night watchmen; for caring for vacant property;

for removing grass or weeds; for street cleaning; for street lights, street signs, and snow removal; for constructing, purchasing, maintaining, or operating any community service including publishing a directory of the membership of said association; payment of liability, casualty and other insurance premiums as the Board may deem appropriate; expenses incidental to the enforcement of this Declaration, the Articles of Incorporation, Bylaws and the rules and regulations established by either Board or the ACC; the payment of operating expenses of the Association, including administrative and overhead expenses of the Declarant prior to turnover of the Master Association to the Owners; social activities involving the members of the Association; doing any other thing necessary or advisable in the opinion of the Master Board for the general welfare, safety, and enjoyment of the Owners and/or for any other purpose for which the Master Association is incorporated. The Board of the Master Association shall be obligated to expend so much of the general assessment fund as may be necessary to maintain the Common Area, the swimming pool and related amenities in a first class condition. The Board of the Master Association shall not have the authority to reduce the standards of maintenance below such level without the affirmative vote of two-thirds (2/3) of all of the Members of the Master Association. The Master Association shall pay all Amenity Financing when and as the same may become due and shall hold the Declarant, its shareholders harmless from and indemnify the Declarant from any and all liability on any Amenity Financing.

Section 4.06 Special Assessments for Capital Improvements by Master Association. In addition to the other assessments authorized by this Article 4, the Master Association may levy, in any assessment year, a special assessment against the Lots not owned by Declarant applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement upon the Common Area or the swimming pool and related amenities, including fixtures and personal property relating thereto; provided that any such assessment shall have the assent of two thirds of the votes of the Owners in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose or at the annual meeting of the Master Association.

Section 4.07 Essence Owners' Association -- Duties/Use of Funds. The Essence Owners' Association shall enforce, either in its own name or in the name of any Owner, all of the covenants, conditions and restrictions imposed hereby as the same may be modified from time to time and shall perform all duties and obligations of the Essence Association as are otherwise provided for herein and are not otherwise specifically made the duty and obligation of the Master Association. The Essence Association assessment funds shall be used for the payment of insurance premiums (if any); expenses incidental to the enforcement of this Declaration, the articles of incorporation, bylaws and rules and regulations established by either Board or the ACC; the payment of operating expenses of the Essence Association; social activities involving the members of the Essence Association; doing any other thing necessary or advisable in the opinion of the Essence Board for the general welfare, safety, and enjoyment of the Owners and/or for any other purpose for which said association is incorporated.

Section 4.08 Interest on Delinquent Assessments. All assessments and charges of either association that remain due and unpaid thirty (30) days after they are due shall thereafter be subject to interest at the rate of eighteen percent (18%) per annum or at such other rate as may be established from time to time by the Boards of the Association.

Section 4.09 Lien for Delinquent Assessments. All assessments and charges of both associations shall be a lien and encumbrance on the Lot with respect to which said assessment is made, as well as the personal obligation of the Lot's Owner(s). By the acceptance of title to a Lot, each Owner (not including any mortgagee as long as it is not the Owner) from the time of acquiring title thereto shall be held to have covenanted and agreed to personally pay to both associations all such charges that were then due and unpaid to the time of acquiring the title thereto and all such charges thereafter falling due during such Owner's ownership thereof. A certificate in writing issued by either association or its agents setting forth the status of said charges shall be given on demand to any Owner or prospective purchaser liable, or who may be liable, for said charges, which certificate shall be binding upon said parties.

Section 4.10 Notice of Delinquency. At any time after any assessment against any Lot has become delinquent it shall automatically become a lien against a Lot. The association to whom the assessment is due may record a Notice of Delinquency as to such Lot in the office of the Sedgwick County Register of Deeds, which Notice shall state the amount of such delinquency and that it is a lien upon the Lot, and the interest, costs (including attorneys' fees, legal expenses and accounting costs), a description of the Lot against which the same has been assessed, and the name of the Owner(s) thereof. Such Notice shall be signed by an officer or a member of the Board of Directors of the association filing the Notice. Upon payment of the unpaid assessment, interest, penalties and costs in connection with which notice has been recorded, the association which filed the Notice shall record a further notice stating the satisfaction and the release of the lien.

Section 4.11 Enforcement of Liens. A lien established pursuant to the provisions of this Declaration and which is described in a Notice of Delinquency filed pursuant to Section 4.10, may be foreclosed at any time within ten (10) years from the date of the filing of the Notice of Delinquency. Such lien shall be foreclosed in the same manner as a mortgage on real property as provided by Kansas law. In any action to foreclose any such lien, the foreclosing association shall also be entitled to recover its costs, including reasonable attorneys' fees, legal expenses and accounting costs and interest.

Section 4.12 Subordination of Assessment Lien. The liens provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the lien of any assessment. The sale of any Lot pursuant to a decree of foreclosure of a first mortgage (but not a conveyance in lieu of foreclosure) shall extinguish the lien of such assessments which became due prior to the date of such sale.

No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.13 Right of Associations to Enforce Payment of Assessment. Each association shall have the right and power to prosecute all suits, whether legal, equitable, or otherwise, that may be necessary or advisable for the collection of any assessment or charge assessed by that association and each association shall be entitled to collect its reasonable attorneys' fees and any other expenses reasonably incurred in enforcing the association's rights hereunder.

Section 4.14 Maximum Annual Assessment.

- a. Except during the first three years of operation, the annual assessment may not be increased by more than twenty percent (20%) from the immediately preceding year without the affirmative vote of two-thirds (2/3) of the votes of the Members of the affected association in attendance at the annual meeting or a special meeting called for such purpose who are voting in person or by proxy, at a meeting duly called for such purpose.
- b. The respective Boards of the associations may fix the annual assessment at an amount not in excess of the maximum amount set forth in this Section.

Section 4.15 Damage by Owner. Notwithstanding anything to the contrary contained herein, in the event that any wall, fence, hedge, landscaping or other improvements within any Common Area, including the swimming pool and other facilities are damaged or destroyed through the negligence of any Owner, or any Owner's child, dependent, guest, invitee or contractor, such Owners shall be responsible for the cost to repair or replace any damage so caused. The amount due from such Owner for the damage shall be treated a special assessment against the Lot of such Owner and shall constitute a lien against such Lot if not paid within thirty (30) days of the occurrence of such damage.

Section 4.16 Personal Liability of Owner for Payment of Assessments. In addition to the covenants and agreements heretofore set forth herein, each Owner (except those exempt by virtue of Section 4.03), by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of each assessment levied hereunder (whether general or special) against such Lot during the period of ownership.

ARTICLE 5

Covenants for Maintenance

Section 5.01 Maintenance of Lots. Each owner (other than Declarant) shall keep all Lots owned by such Owner and all improvements therein or thereon in good

order and repair, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate exterior care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. Each Owner's obligation hereunder shall commence upon acquisition of such Owner's Lot and shall include, but not be limited to, the mowing and cutting of all grass and weeds thereon regardless of whether such Lot may be improved.

Section 5.02 Right of Essence Association to Maintain Lots. If in the opinion of the ACC or the Essence Board, any Owner fails to perform any of the duties and obligations set forth in Section 5.01, the Essence Association, upon approval by its Board and after fifteen (15) days' written notice (3 days in the case of mowing) to such Owner to remedy such default, shall have the right, through its contractors, agents and employees, to enter upon the Lot(s) involved and to repair, maintain, repaint, remove, and restore such Lot or Lots or such improvements and the cost thereof shall be treated as a special assessment against such Lot(s) and shall constitute a lien against such Lot(s) and a personal obligation of the Owner of such Lot(s) and if not paid within 30 days of the date of such assessment, the association to whom the obligation is due may file a Notice of Delinquency pursuant to Section 4.10 and may thereafter foreclose such lien as provided in Section 4.11.

Section 5.03 EPA and KDHE Requirements. In order to comply with the requirements of the Environmental Protection Agency ("EPA") and the Kansas Department of Health and Environment ("KDHE") and in order to keep the Fontana Additions in environmentally good condition, all Owners shall comply with the following:

- a. No herbicides, pesticides or fertilizers shall be applied to bare ground until vegetation has reached a good stand.
- b. Subsequent to the establishment of vegetation, any application of herbicides, pesticides or fertilizers will be in strict accordance with the manufacturer's recommendations and the rules and regulations of the EPA or KDHE which may be in effect from time to time.
- c. In the event a spill of toxic materials occurs on any Lot, the Owner shall immediately contact the appropriate government agency and shall clean up such spill in accordance with applicable KDHE requirements.
- d. No chemicals or substances such as paints, solvents, used oil, detergents, household waste or other materials will be disposed of in the storm sewer system, in any detention pond or in any drainage way.

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ARTICLE 6

Architectural Control

Section 6.01 Approval Required. No Structure or improvement shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein or thereto be made, until the plans and specifications showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee (the "ACC"), its agents, assignees, or successors, as to (a) harmony of external design and location in relation to and effect upon surrounding structures, topography and the overall community design of The Essence Neighborhood; (b) the character, color and quality of the exterior materials; and (c) the quality of the exterior workmanship; and (d) the location thereof on the Lot. In the event the ACC fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to and received by it, approval will not be required, and this Article will be deemed to have been fully complied with.

The ACC may develop and promulgate policy guidelines for the application of the design review provisions. The policy guidelines may include (x) review procedures, (y) aspects and objectives of review, and (z) principles and criteria used as standards in determining the achievement of the required objectives. The policy guidelines may also include specific design practices that, though optional are generally acceptable methods for achieving the required objectives in particular design problems frequently encountered. The policy guidelines are intended to assist the ACC and the Owners in the ongoing process of community design. The policy guidelines may be modified and supplemented from time to time, on due notice to the Owners and subject to the approval of the Board of the Essence Association.

Section 6.02 Form of Plans and Specifications. Any Owner seeking the approval of the ACC shall submit plans and specifications in such form and shall contain such information as may be required by the ACC, but in any event the Owner shall provide (a) a site plan for the Lot or Lots showing the location of all proposed Structures on the Lot or Lots (including proposed front, rear and side set-backs), (b) front, rear and side elevations showing the exterior color scheme and specifying the type of construction materials to be used, and (c) the number and location of all parking spaces and driveways, sidewalks and patios to be constructed on the Lot.

Section 6.03 Retention of Approved Plans and Specifications. Upon approval by the ACC of any plans and specifications submitted hereunder a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Essence Association, and a copy of such plans and specifications bearing such approval in writing, shall be returned to the applicant submitting the same.

Section 6.04 Removal and Alteration of Structures; Lien.

A. If any structure shall be altered, erected, placed, or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the ACC pursuant to the provisions of this Article, such alteration, structure, maintenance, or use shall be deemed to have been undertaken in violation of this Article and without the approval required herein, and, upon written notice from the ACC, any such structure so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or realtered, and any such use shall be terminated, so as to extinguish such violation.

B. If fifteen (15) days after notice of such a violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, The Essence Association or the ACC shall have the right, through their contractors, agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the cost thereof shall be treated as a special assessment against such Lot(s) and shall constitute a lien against such Lot(s) and a personal obligation of the Owner of such Lot(s) and if not paid within 30 days of the date of such assessment, the association to whom the obligation is due may file a Notice of Delinquency pursuant to Section 4.10 and may thereafter foreclose such lien as provided in Section 4.11.

C. If the lien obtained pursuant to this Section, together with interest at the rate of 18% per annum or such other rate as is established from time to time by the Board of the Essence Association, shall be fully paid, the Essence Association or the ACC shall, within ten (10) days following payment, file with the Sedgwick County Register of Deeds, a Release and Satisfaction of the Notice of Delinquency, which Affidavit shall (i) refer to and identify the assessment which created the lien which has been satisfied, (ii) state the legal description of the property affected, and (iii) state the name(s) of the Owner(s) of the property. The recording of the Release and Satisfaction of the Notice of Delinquency shall fully release the lien referred to in said Notice of Delinquency and shall constitute conclusive evidence to any purchaser, encumbrancers, title insurer, or title examiner that the Notice of Delinquency has been fully released.

Section 6.05 Certificate of Compliance. Upon completion of the construction or alteration of any structure in accordance with plans and specifications approved by the ACC, it shall, upon written request of the Owner thereof, issue a Certificate of Compliance in form suitable for recordation, identifying such structure and the Lot on which such structure is placed, and stating that the plans and specifications, the location of such structure, and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation and recording of such Certificate

shall be at the expense of such Owner. Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated, and, as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer or title examiner, such Certificate shall be conclusive evidence that all structures on the Lot, and the use or uses described therein comply with all the requirements of this Declaration as to which the ACC exercise any discretionary or interpretive powers.

Section 6.06 Right of Inspection. The Essence Association or any of its contractors or agents may, at any reasonable time or times, enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction or alteration of structures thereon are in compliance with the provisions hereof; and neither the ACC, the Essence Association, nor any such contractor or agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 6.07 No Liability. Neither the ACC, Declarant, the Essence Association, nor any officer, director, member, agent, or employee thereof, shall be liable to any Owner or to any person, firm, corporation, or other entity for any damages arising from the performance or nonperformance of any duties, obligations or functions under this Article 6.

Section 6.08 Membership of ACC. The original members of the ACC shall be three persons appointed by Declarant. Upon the death or resignation of any member of the ACC, Declarant shall appoint a successor, unless at such time, Declarant has relinquished its rights hereunder as hereinafter provided. In such event, the Board of the Essence Association shall designate a successor. The act of a majority of the committee shall be binding and the majority of the committee may designate a representative to act for it. Declarant shall retain its rights hereunder until the same are relinquished to the Essence Association. Declarant may relinquish its rights or any portion thereof under this Section to the Essence Association by advising the Essence Association in writing of its intent to do so and in such event, the Essence Association shall have the authority of Declarant under this Section 6. Declarant shall relinquish its rights under this Section 6 on or before the time residences are constructed on all of the Lots within the Essence Neighborhood.

Section 6.09 Initial Policy Guidelines. The following Initial Policy Guidelines have been established and the same may be changed from time to time pursuant to the provisions of Section 6.01 hereof but without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the ACC to determine current policy guidelines.

- a. *Rock Yards*. There shall be no rock yards and all yard areas, exclusive of improvements, shall be at least eighty percent (80%) grass. All vegetable gardens shall be integrated into a landscape plan and must first be submitted to the ACC for approval.

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- b. *Grass.* No buffalo, zoysia or Bermuda grass lawns shall be permitted; provided that buffalo grass shall be permitted in the floodplain areas which are maintained in a natural state and condition.
- c. *Lawn Mowing.* Lawns shall be mowed on a regular basis at an appropriate height so as to maintain a neat appearance.
- d. *Roofs and Roof Materials.* No flat roofs shall be permitted without the prior written approval of the ACC. All roofs shall be Heritage II Weathered Wood composition shingles or equivalent as specifically approved in writing by the Declarant or the ACC.
- e. *Underground Homes.* There shall be no underground homes.
- f. *Retaining Walls.* In the event of the construction of any retaining walls, the plan and materials utilized must be previously approved in writing by the ACC.
- g. *Basketball Goals.* All basketball goals shall be either white or glass. No "home-made" basketball backboards or supports shall be permitted. All basketball goals and supports shall be first approved by the ACC.
- h. *Recreation Equipment.* All recreation and play equipment (except basketball goals) shall be located in the rear of any Lot.
- i. *Swimming Pools.* There shall be no above-ground swimming pools. Any temporary covering of a swimming pool, tennis court, patio or otherwise of a rigid or "bubble" type shall be deemed a structure that is subject to the requirements of this Declaration.
- j. *Storage Sheds.* No detached storage sheds or out buildings shall be permitted. Only storage sheds which are attached to the residence and integrated into the structure of the residence in an aesthetically pleasing manner will be permitted. All such sheds must be constructed of the same materials as the residence (including siding, trim and shingles) and must be painted in the same color scheme as the residence.
- k. *Dog Runs.* No dog runs shall be allowed unless first approved by the ACC. If permitted by the ACC all dog runs must be screened from view from neighboring homes and the street with approved fencing or other approved screening material. All dog runs, if approved by the ACC, must be constructed of only pre approved, black, steel or wrought iron fences constructed pursuant to the specifications approved by the ACC.
- l. *Exterior Wood Surfaces.* All exterior wood surfaces on homes (exclusive of redwood, cedar or other decking materials approved by ACC) must be painted, or stained and sealed.

- m. *Wood Fences.* There shall be no wood fences, except for wood privacy fences immediately adjacent to patios which are appurtenant to the residence and wood fences not to exceed 4 feet in height which are constructed for the sole purpose of shielding trash cans, air conditioning equipment, fire wood stacks or dog runs from the neighbors view. No such wood privacy fence may be constructed without the prior written consent of the ACC as to style, height, location, color and materials.
- n. *Bay Windows.* Bay or bow windows or daylight windows may exceed setbacks by not more than three feet, if allowed by applicable building codes.
- o. *Pad Elevations.* Pad elevations will be set by Declarant's engineer and any deviation therefrom by Owner or Owner's contractor and any resulting damage shall be the sole responsibility of Owner and Owner's Contractor.
- p. *Christmas Lights.* No Christmas lights shall be lighted before Thanksgiving and shall be taken down no later than January 31 of the following year.
- q. *Flagpoles.* All flagpoles and the type of flag that may be flown must be first approved by the ACC.
- r. *Reflective Window Materials.* No window shall contain any reflective material such as aluminum foil.
- s. *Pool Buildings and Gazebos.* Pool buildings or gazebos may be constructed within any rear yard setback area established by the plat of the Property, provided that the same shall not exceed one story in height and is allowed by applicable building codes.
- t. *Firewood.* All firewood shall be located in the backyard and screened from view from neighboring lots.
- u. *Yard Art.* All forms of lawn ornamentation, sculpture or "yard art" must first be approved by the ACC.
- v. *Trash Containers.* Except on trash day, all trash containers shall be stored in the garage or shall be kept in the side yard or back yard and screened from view in a manner and at a location approved by the ACC in writing. Trash containers shall only be placed at the ends of driveway on trash day

Section 6.10 Master Drainage Plan - Violation and Enforcement. As part of the planning process, a Master Drainage Plan has been established for all the Fontana Additions, including the Essence Neighborhood, which plan shall control surface water

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drainage. Each Owner of a Lot and such Owner's builder shall be responsible for compliance with the Master Drainage Plan applicable to each such Owner's Lot. Construction which impairs the drainage or violates the Master Drainage Plan must be remedied forthwith by such Owner at such Owner's expense. It shall not be Declarant's responsibility to enforce compliance with the Master Drainage Plan and all other Owner's in the Additions as well as the Association shall have the right to enforce the same against any other Owner.

Section 6.11 Disclaimer as to ACC Approval. Plans and specifications are not reviewed for all systems, mechanical, plumbing, electrical, engineering, or structural design, or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes any liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in conjunction with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, quitclaims, and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance, and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Section 6.12 Approved Builder. Notice is hereby given to each Owner that the initial construction and completion of the residence, and related improvements on the Lot shall only be performed by a building contractor who, at the time of such construction, is approved for construction by Declarant in its sole discretion.

ARTICLE 7

General Covenants and Restrictions

Section 7.01 Structures. No building shall be erected, altered, placed or permitted to remain on any lot other than one new single-family residence for private use with a private garage and other Structures incidental to residential use which are approved by the ACC. No prefabricated or modular buildings will be permitted to be constructed or installed on any Lot. No previously approved Structure located on any Lot shall be used for any purpose other than that for which it was originally designed and approved.