

Amendment to
Declaration of Protective Covenants
WALDEN PRESERVE FILING NO. 1
And
ADDITION OF WALDEN PRESERVE 2 FILING NO. 1

State of Colorado
County of El Paso

- A. WHEREAS, Custom Castles, Inc., as “Declarant,” by Declaration of Protective Covenants dated August 2nd, 2005 and recorded August 9, 2005, at reception number 205122348 in the records of the Clerk and Recorder of El Paso County, Colorado, and “Amendment to Declaration of Protective Covenants Walden Preserve Filing No. 1” dated November 16, 2012 and recorded in the records of the Clerk and Recorder of El Paso County, Colorado at reception number 212137689 (collectively the “Protective Covenants” which term shall also include any amendments thereto) submitted certain property described therein to such covenants and restrictions; and
- B. WHEREAS, in Section 22 of such Protective Covenants the Declarant reserved unto itself the right to amend such Protective Covenants; and
- C. WHEREAS, the Declarant has provided to the WHA a “Private Detention Basin / Stormwater Quality Best Management Practice Maintenance Agreement And Easement” a copy of which is recorded at Reception No. 205122350 in the records of the Clerk and Recorder of El Paso County, Colorado to enable the WHA to fulfill its obligations under the Detention Basin Agreement as to Tract B1 and as to the “Temporary Construction and Drainage Easement;” and
- D. WHEREAS, paragraphs (I) B and C of the Protective Covenants states as follows:
- E. Two detention basins ("Detention Basins") are included in the subdivision. A "Private Detention Basin Maintenance Agreement and Easement" ("Detention Basin Agreement") between and among the Declarant, the Walden Property Owners Association, a Colorado nonprofit corporation ("WHA") and the Board of County Commissioners of El Paso County, Colorado, is recorded at Reception No. 205122349 in the records of the Clerk and Recorder El Paso County, Colorado. The provisions of the Detention Basin Agreement are incorporated herein by this reference. The Detention Basins shall be located on the property described as Tract B I and on the "Temporary Construction and Drainage Easement" as defined on the subdivision plat for Walden Preserve Filing No.1.

The Declarant has provided to the WHA a Detention Basin Maintenance Easement Grant, a copy of which is recorded at Reception No. 205122350 in the records of the Clerk and Recorder of El Paso County, Colorado, to enable the WHA to fulfill its obligations under the Detention Basin Agreement as to Tract B I and as to the "Temporary Construction and Drainage Easement."

- F. C. One specific purpose of these Covenants and the Walden Property Owners Association ("WHA") shall be to operate, maintain and enforce, to the extent applicable, all the requirements of the plan for augmentation decreed in Consolidated Cases Nos. 02 CW 187 and 02 CW 117 by the Water Court dated July 22, 2004 (the "Augmentation Plan"), which is recorded at Reception No. 205122353 in the records of the Clerk and Recorder of El Paso County, Colorado, The responsibility to operate, maintain and enforce the Augmentation Plan cannot be abrogated by the WHA; and
- G. WHEREAS, Paragraph A of the Protective Covenants states that such Protective Covenants shall apply to any additions to Walden as stated in covenants later recorded in the real estate records of El Paso County, Colorado; and
- H. WHEREAS, Paragraph A of the Protective Covenants also states that the Declarant specifically reserves the right to add the property described on Exhibit C thereto; and
- I. WHEREAS, the property described as Walden Preserve 2 Filing No. 1, El Paso County, Colorado, is a portion of the property described in Exhibit C to the Protective Covenants; and
- J. WHEREAS, Paragraph 26 of the Protective Covenants permits Declarant, its successors or assigns to assign any and all of its rights, powers, obligations and privileges under the Protective Covenants to any other corporation, association, committee or person, by instrument specifically assigning its interest as Declarant under the Protective Covenants; and
- K. WHEREAS, Custom Castles, Inc. as Declarant under the Protective Covenants assigned all of its rights, powers, obligations and privileges as Declarant under the Protective Covenants to Matthew W. Dunston and whereas Matthew W. Dunston has assigned all of his rights, powers, obligations and privileges as Declarant under the Protective Covenants to Walden Holdings I LLC, a Colorado limited liability company, and Walden Holdings I LLC has assigned its rights, powers, obligations and privileges as Declarant under the Protective Covenants to Custom Castles Building Company, Inc., a Colorado corporation, therefore Custom Castles, Inc., Matthew W. Dunston and Walden Holdings I LLC execute this instrument as evidence of such assignment, thereby making Custom Castles Building Company, Inc. the Declarant under the Protective Covenants; and

L. WHEREAS, Custom Castles Building Company, Inc. desires to submit the property described as Walden Preserve 2 Filing No. 1, El Paso County, Colorado to the Protective Covenants; and

M. WHEREAS, Custom Castles Building Company, Inc. is the owner of the land described as Walden Preserve 2 Filing No.1, El Paso County, Colorado;

NOW THEREFORE, in consideration of the acceptance hereof by the several purchasers and grantees (his, her, their or its heirs, executors, administrators, personal representatives, successors and assigns, and all persons or concerns claiming by, through or under such grantees) of deeds to Lots, said Declarant hereby declares to and agrees with each and every person who shall be or shall become Owner of any of said Lots, in addition to the ordinances of the County of El Paso, Colorado, that they shall be and are hereby bound by the Protective Covenants and that the property described as Walden Preserve 2 Filing No.1, El Paso County, Colorado shall be held and enjoyed subject to and with the benefit and advantage of the Protective Covenants as if fully set forth herein. Such Protective Covenants are hereby modified as set forth below, which modifications shall only apply to the property in Exhibit A and to all land added to such Covenants hereafter.

Paragraph 2 as applied to Walden Preserve 2 Filing No.1, El Paso County, Colorado and any such additional land shall be changed to read as follows:

2. BUILDING TYPE AND USE/ARCHITECTURAL CONTROL COMMITTEE: All Lots shall be known and described as residential lots and shall be used only for custom built residential homes and country estates. No structure shall be erected, altered, converted, placed or permitted to remain on any Lot other than one single-family dwelling not to exceed two and one-half (2 1/2) stories in height, and a private garage, in keeping with the architecture of the principal residence, and subject to approval by the Architectural Control Committee, (the "ACC"), and the appropriate governmental building department. No structure may be erected prior to construction of the main dwelling. WALDEN is intended only for custom-built homes of harmonious design to complement the natural terrain and other homes constructed in the subdivision. No mobile homes, pre-manufactured homes with the appearance of mobile homes or "doublewides", or domes shall be approved. No more than one dwelling unit shall be constructed or maintained on any Lot. The construction of separate guest quarters may be allowed on a Lot on a case-by-case basis if approved by the ACC and the appropriate zoning authority, subject to any conditions in such approvals. No structure shall be used for commercial purposes except for home occupations permitted by El Paso County. No Lot shall be used for a human services home, human service residence, human services facilities and human services shelter, health care support facility, hospice, or youth home, generally as such facilities and uses are defined in the zoning code of the City of Colorado Springs or El Paso County. In-home child care shall be permitted provided the operation is licensed under regulations of the State of Colorado and has no more than 8 children at any one time who are not residents of the Lot. Temporary buildings for

construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the written permission of the ACC. Model homes may be used and exhibited only by Declarant or with the permission of the ACC.

Paragraph 3 as applied to Walden Preserve 2 Filing No.1, El Paso County, Colorado and any such additional land shall be changed to read as follows:

3. DWELLING SIZE: The total floor area of the main structure, exclusive of open porches and garages, shall be not less than two thousand five hundred (2,500) square feet with credit given for finished square footage in the following amounts: Main level: 100%; Upper level, 75%; Lower level: 50%. Garages are required for all houses. As most families have more than two vehicles, three-car or larger garages are strongly recommended. Oversized garages are recommended as economical and practical storage space for extra equipment and vehicles.

Paragraph 8. B. (2) as applied to Walden Preserve 2 Filing No.1, El Paso County, Colorado and any such additional land is revised to read as follows:

(2) Liability of ACC: Neither Declarant, the ACC, nor any member of the ACC nor any persons acting therefor shall be liable in damages to any person submitting requests for approval or to any Lot Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such requests, or with regard to any other actions taken by the ACC under authorization of the provisions hereof, except to the extent such person acted with malice. Members of the ACC acting as such shall use reasonable personal judgment to perform their duties, but shall not be liable in damages even if they are negligent in such performance. Members of the ACC shall not be responsible or liable to any person with respect to any loss, liability, claim or expense which may arise by reason of such approval of the construction of improvements, nor shall members of the ACC nor the Declarant, nor any of its members, partners, employees, agents or consultants be responsible in any way for any defects in any plans or specifications submitted, revised or approved by the ACC, nor for any structural or other defects in any work done according to such plans and specifications. Approval by the ACC shall not imply approval by any other authority, including specifically El Paso County or the Regional Building Authority. Neither the ACC nor any member of ACC shall be liable to the POA, any Owner nor any other person for any damage, loss or prejudice suffered or claimed on account of: 1. Approving or disapproving any plans, specifications and other materials, whether or not defective; 2. Constructing or performing any work, whether or not pursuant to approved plans and specifications; 3. The development or manner of development of any land within or adjacent to Walden; 4. Executing or recording an approval or disapproval, whether or not the facts stated therein are correct; 5. Performing any other function authorized by the

Declaration or the Design Guidelines; and 6. Enforcing or failing to enforce any provision of the Design Guidelines or the Declaration. Members of the ACC appointed by the Declarant shall be entitled to exercise their judgment on the basis of the best interests of the Declarant, and shall owe no fiduciary duty to other Lot Owners or the WHA. Members of the ACC not appointed by Declarant shall owe a fiduciary duty to act in the best interests of the WHA and Lot Owners.

Paragraph 10 as applied to Walden Preserve 2 Filing No.1, El Paso County, Colorado and any such additional land is revised to read as follows:

10. EASEMENTS: Easements for installation and maintenance of utilities, roadways, drainage facilities and such other purposes incident to development or the property are reserved on, over and under a strip of land ten (10) feet wide along either side of all side and rear Lot lines, and twenty (20) feet along all front Lot lines and along the subdivision boundaries, and as otherwise shown on the recorded plat. If purchaser buys contiguous Lots, easements and setbacks shall apply unless the purchaser formally vacates the common Lot line and such easements through the appropriate government agencies. Lot Owners are responsible for providing access to utility company and other government agencies who have reason to use said easements, and if damage is done to fences, shrubbery or plantings in said easements, Lot Owners have no recourse against those agencies, Declarant, WHA, ACC or their agents because of the legitimate non-negligent use of the easement by such utilities for disturbing landscaping or structures within the easements. No building or similar structure may be placed within the easements unless the easement has been vacated by the agencies involved and the vacation approved by the ACC. It is recommended that the easements be kept open and unfenced. In addition to such defined front, side and rear easements, each Lot shall be subject to an easement for cross-lot drainage from uphill lots, such drainage to be either the natural flow or the flows resulting from site plans and landscaping approved by the ACC. In approving such site plans and landscaping the ACC shall take into consideration the effect of such cross-lot drainage and the decision of the ACC in respect of such cross-lot drainage shall bind both uphill and downhill Lot Owners. Walden Preserve is designed to permit open space tracts and trails immediately adjacent to Lots. Lot Owners acknowledge and accept that pursuant to zoning such open space tracts, trails and easements close to or immediately adjacent to Lots may be used by strangers and equestrians.

Paragraph 12 as applied to Walden Preserve 2 Filing No.1, El Paso County, Colorado and any such additional land is revised to read as follows:

12. REDIVISION: Further subdivision of Lots in Walden is not permitted except by Declarant; however, the intent of this covenant is not to preclude minor Lot line adjustments or plat revisions approved by the ACC in writing.

Paragraph 18 as applied to Walden Preserve 2 Filing No.1, El Paso County, Colorado and any such additional land is revised to read as follows:

18. VEHICLE PARKING AND EQUIPMENT: The intent of this paragraph is to prevent clutter and enhance natural appearance. Residents are encouraged to keep vehicles parked in garages or other ACC approved structures. Trailers and recreation vehicles, to include four wheelers, travel trailers, horse trailers, campers, boats and motorhomes and various equipment may be kept if they are screened from public view with proper garaging or fencing approved by the ACC. Garage doors shall generally be kept closed. Recreational vehicles being used by visitors may be parked outdoors for 10 days without special permission of the Board. Two vehicles driven on a regular basis may be parked in the driveway close to the house or in an approved parking area. Vehicles that the Board determines to be particularly unsightly may be required to be parked in ACC approved structure.

Paragraph 19 A as applied to Walden Preserve 2 Filing No.1, El Paso County, Colorado and any such additional land shall be changed to read as follows:

A. Water and Sewage:

Any residence constructed on a Lot smaller than 2.5 acres shall be connected with the public or community water and sewage disposal system serving the subdivision. Any residence shall be limited to two thousand (2000) square feet of lawn or garden or the combined use of both for the purpose of irrigation or sprinkling. Any residence constructed on Lots 2.5 acres or larger shall be connected to a community water and sewer disposal system serving the subdivision, or shall be connected to its own private well and engineered individual sewage disposal system approved by the El Paso County Department of Health and Environment.

Paragraph 24 B as applied to Walden Preserve 2 Filing No.1, El Paso County, Colorado and any such additional land shall be changed to read as follows:

24. ENFORCEMENT:

B. Enforcement Trust Fund:

The Declarant has turned over all funds in the Enforcement Trust Fund to the WHA and the Declarant shall have no further responsibility for such Fund. No further funds may be collected by the Declarant or the WHA for the Enforcement Trust Fund upon closing of sale of a Lot. The fund or portion thereof may be transferred into the WHA treasury for the purposes outlined in paragraphs 7 and 8. In like manner, the WHA may transfer WHA funds into the Enforcement Trust Fund if needed to enforce covenants. The WHA, ACC and/or any individual Lot Owner desiring to use the trust fund for the enforcement of these covenants, shall make written request of Declarant for the use of monies in said fund, and Declarant shall have sole authority to approve or deny and such request. Denial of such request shall not preclude an individual Lot Owner from bringing suit to enforce these covenants under the provisions of paragraph 24. A. above.

IN WITNESS WHEREOF, the Declarant has subscribed hereto.

Dated this _____ day of _____, 2015.

Custom Castles Building Company, Inc.,

A Colorado corporation

By: _____
Matthew W. Dunston, President

The following execute this Declaration as evidence of their assignment of Declarant rights as set forth above.

Custom Castles, Inc.

A Colorado corporation

By: _____
Matthew W. Dunston, President

Matthew W. Dunston, individually

Walden Holdings I, LLC,
A Colorado limited liability company

By: _____
Matthew W. Dunston, its Manager

STATE OF COLORADO)

) ss.

COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ of _____, 2015, by Matthew W. Dunston, as former Declarant, as Manager of Walden Holdings I LLC, a Colorado limited liability company, and as President of Custom Castles Building Company, Inc. as Declarant and as owner of the land as Walden Preserve 2 Filing No.1, El Paso County, Colorado.

[Seal]

_____, Notary Public