


Declaration of Protective Covenants

WALDEN

State of Colorado)  
County of El Paso)

ROBERT C. "BOB" BALINK El Paso County, CO  
08/09/2005 10:43:45 AM  
Doc \$0.00 Page  
Rec \$116.00 1 of 23 205122348



KNOW ALL MEN BY THESE PRESENTS:

A. The Declarant, Custom Castles, Inc., hereinafter called Declarant, is the Owner of the land on Exhibit A, (the "Land") and has caused the land to be platted into a total of 88 single-family Lots (the "Lots") and utility tracts B1, B2, D, E, and F (the "Tracts") situate in the County of El Paso and State of Colorado. The Land is part of a larger development known as "Walden" whose current legal description is on Exhibit B but which term shall include any additions to Walden as stated in covenants later recorded in the real estate records of El Paso County, Colorado. The Declarant specifically reserves the right to add the property described on Exhibit C.

(1) B. 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 of 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 B1 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 B1 and as to the "Temporary Construction and Drainage Easement."

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.

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 covenants set forth in these presents and that the property described in these restrictions shall be held and enjoyed subject to and with the benefit and

advantage of the following restrictions, limitations, conditions and agreements, to wit:

1. INTENT: The intent of these covenants is to preserve WALDEN as an exclusive, high quality residential area of lasting value, and the covenants have been designed to that end. Lot Owners in WALDEN should be people who value quality, who will respect, uphold and observe the letter, spirit and intent of these covenants, and who will insist upon their strict enforcement. Further, Declarant intends that these Protective Covenants run with the land and bind the party's heirs, personal representatives, successors and assigns and shall benefit Declarant as a land Owner in Walden for the benefit of all Declarant's land in Walden and near Walden.

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, provided that such are not used for any commercial purpose, 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 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. In-home child care shall be permitted provided the operation is licensed under regulations of the State of Colorado and has no more than 4 children at any one time who are not residents of the Lot.

3. DWELLING SIZE: The ground floor area of the main structure, exclusive of one-story 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 with exposed walkout: 50%. Garages are required for all houses, and shall be to accommodate not less than three full-sized cars, and doors shall be kept closed. Oversized garages are recommended as economical and practical storage space for extra equipment and vehicles. Automobiles and small boats will not be parked more than four (4) successive nights outside of garages.

4. BUILDING LOCATION: When the house plans are submitted, there shall be submitted to the ACC a separate plot plan showing the planned location of all improvements contemplated upon the Lot and the ACC may alter the site location or deny construction if, in the opinion of the ACC, the proposed site location would unduly interfere with adjoining Lots as to view, proximity of construction, the natural growth or terrain, or cause other potential interference with existing or proposed construction on adjoining Lots. Buildings should be located on Lots in such a way as to minimize damage to existing foliage and natural growth. No trees may be removed other than under the provisions of Paragraph 9 hereof, and the Lots shall be maintained in their natural state as nearly as possible, except that a reasonably sized lawn and garden, not to exceed two thousand (2,000)

square feet may be planted around the house for Lots of less than 2.5 acres and three thousand five hundred (3,500) square feet for Lots of at least 2.5 acres.

A. Setbacks:

No building shall be located on any Lot nearer than forty (40) feet to any Lot line fronting a road, nor nearer than twenty (20) feet to any other Lot line. Exceptions to the setback requirements are sometimes logical and may be made by the ACC in cases where extenuating circumstances exist, provided however, that any such exceptions must be requested in writing and granted by the ACC in writing. For the purposes of this Sec. 4 A., eaves, steps and open porches shall be considered as part of the building. See also the Notes, No-build Areas and Setbacks on recorded plat.

5. TEMPORARY RESIDENCES: No structure of temporary character, trailer, basement, tent or accessory building shall be used on any Lot as a residence, temporarily or permanently.

6. TIME OF CONSTRUCTION: Once construction is initiated on any structure, including walls, fences, residences, ancillary buildings or any other structure, which has been previously approved by the ACC, construction of that particular structure, including landscaping, shall be completed within nine (9) months of the time such construction was initiated. The ACC may extend the time for completion under unusual circumstances, and any such time extension shall be in writing. In no event other than inclement weather, shall fine/final grading and clean up (debris, stumps, limbs, left over building items, etc.) be delayed more than 30 days after completion of a home.

If any structure is abandoned (as indicated by a period of three consecutive months or more with lack of significant construction on portions of the structure observable as incomplete from the street or neighboring property), Declarant and/or the ACC shall have the authority to remove or complete all or portions of such structure(s) so as to prevent its being unsightly and a detriment to the area. Notice of intent to remove or complete will be mailed to the Owner at his last known address, at least ten (10) days prior to such action and shall be posted on the Lot ten (10) days prior to such action and, in the event that such removal becomes necessary, the Owner of the Lot shall be liable for all costs of such work, which costs shall constitute a lien which shall be recorded against said property, and shall be due and payable immediately and bear interest until paid at the rate of eighteen percent (18%) per annum or two percent (2%) above the prime rate of Wells Fargo Bank of Colorado Springs whichever is higher.

7. HOMEOWNERS ASSOCIATION: Owners in Walden shall automatically become members of the Walden Property Owners Association, Inc. ("WHA"), a Colorado non-profit corporation sometimes referred to as the "Walden Homeowners Association"; such membership is mandatory and automatic upon purchasing each Lot and not severable from Ownership of such Lot. Each Owner of a Lot agrees to pay Dues and Assessments required in accordance with the By-laws of the WHA, as they may be amended from time to time. Lot Owners agree to pay such Dues and Assessments promptly when due. The WHA shall operate as a nonprofit corporation, according to the provisions of its Articles of Incorporation and By-laws. Each Lot shall have one vote. Remaining original inventory Lots or repossessed Lots owned by Declarant, its successors or assigns as Declarant, shall not be assessable, but shall carry one vote each. Purposes of the Homeowners Association shall include without limitation, managing, operating, cleaning, maintaining and repairing the Detention Basin; administering and enforcing covenants, conditions, restrictions, agreements, reservations and easements contained in the Detention Basin Agreement; and levying, collecting and enforcing the assessments, charges, and liens imposed herein and under the Detention

Basin Agreement, and carrying out the provisions of the Augmentation Plan.

A. Limitation on Amount of Dues & Assessments:

The annual average common expense liability of each Lot, exclusive of optional user fees and any insurance premiums paid by the WHA may not exceed the amount required to qualify with the requirements for exemption from the application of provisions of the Colorado Common Interest Ownership Act set forth in C.R. S. 38-33.3-116. At the time of this Declaration that amount was expressed as follows:

38-33.3-116. Exception for new small cooperatives and small and limited expense planned communities.

(2) ...If a planned community created in this state after July 1, 1998, provides, in its declaration, that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to sections 38-33.3-105, 38-33.3-106, and 38-33.3-107, unless the declaration provides that this entire article is applicable.

(3) The four-hundred-dollar limitation set forth in subsection (2) of this section shall be increased annually on July 1, 1999, and on July 1 of each succeeding year in accordance with any increase in the United States department of labor bureau of labor statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. The limitation shall not be increased if the final consumer price index for the preceding calendar year did not increase and shall not be decreased if the final consumer price index for the preceding calendar year decreased.

B. Obligation to Pay:

Each Owner of a Lot, by acceptance of the deed therefor, or interest therein, or by occupying such Lot, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the WHA, in the manner, amounts and times prescribed by the Bylaws and functioning of the WHA, all Dues and Assessments and Fees which are properly levied by the WHA, including especially any amounts which are based on the WHA's obligations as set forth in (1) this Declaration, (2) the Private Detention Basin Maintenance Agreement and Easement, (3) the Detention Basin Maintenance Easement and (4) the Augmentation Plan and related court decree(s). At a minimum, the annual assessment shall be adequate to clean, maintain and repair (to include replacement as may be necessary) the Detention Basin. Dues and Assessments shall be both a personal obligation of the Lot Owner and a lien against the Lot. Each Owner shall be jointly and severally liable to the Association for the payment of all Dues and Assessments attributable to them and/or their Lot. The personal obligation for the delinquent Dues and Assessment shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the Assessments by non-use of any property or service provided to all Lot Owners, or by abandoning or leasing the Lot, or by asserting any claims against the WHA, the Declarant, or any other person. The Owner shall pay such Dues and Assessments without offset of any kind.

C. Lien For Dues and Assessments.

The WHA shall have a lien against all Lots the Owners of which are delinquent, for non-payment of Dues and Assessments levied by the WHA, and for all other expenses, including fines levied against the Lot for violation of the covenants and for costs, fees and expenses of enforcement. The WHA is empowered to file such lien with the El Paso County Clerk and Recorder, and such lien shall run with the land; provided, however, that if such Lot is repossessed by Declarant, its successors or assigns, the lien shall become null and void and shall be hereby released at that time. Continued failure to pay such liens may result in foreclosure on the entire Lot in order to enforce payment. The person responsible for payment of the Dues or Assessments shall also be obligated to pay for all costs of enforcement, including attorney's fees and expert witness costs and including foreclosure of the lien, and such costs shall also be secured by the lien of the WHA.

## 8. ARCHITECTURAL CONTROL AND DESIGN:

### A. Purpose:

The purpose of this covenant is to assure through intelligent architectural control of building design, placement, materials, colors and construction, that WALDEN shall become and remain an attractive residential community, and to uphold and enhance property values.

### B. Architectural Control Committee (ACC):

(1) Composition: The ACC is the same ACC as for the prior sections of Walden. The ACC shall initially consist of three individuals appointed by Declarant, its heirs, successors or assigns as Declarant. Declarant may appoint one (1) member of the three-member ACC from among the Owners of Walden to serve for three (3) years, after which that position shall be filled by an Owner-occupant elected thereto by a simple majority vote of all the then Owners of Walden, to serve for three (3) years. Declarant may thereafter appoint a second Owner ACC member of the three-member ACC for a similar initial term and subsequent election in a similar manner. Declarant or its representative shall remain on the ACC until all Lots have completed dwelling units thereon; however, at its option and choice of time, Declarant may relinquish full control of the ACC to the Owners, at which time all three (3) members shall be subject to elected as provided herein. Any member appointed by Declarant may be removed and replaced by Declarant at any time.

Any elected member of the ACC whose performance is found objectionable by the Owners in Walden may be removed by a vote of a two-thirds (2/3) majority of the then Owners. In the event of the death, disability or resignation of any elected member of the ACC, the remaining members thereof shall have full authority to designate a successor elected member to fill the remaining term. All voting shall be one vote to a Lot, with allocation of votes among multiple Owners of a single lot to be as may be determined by the Bylaws of the WHA.

(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, provided that they have acted in good faith. Members of the ACC acting as such shall use reasonable diligence to perform their duties, but shall not be liable in damages even if they are negligent in such performance. 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.

(3) Records retained by ACC: The ACC shall maintain records of election of its members. It shall retain a complete file of applications, home plans, and location sketches until all structures applied for thereunder have been completed and for five (5) years thereafter. If requests for additions are made during such 5-year period, both the original plans and plans for said additions will be kept until said additions are completed.

(4) Compensation: A non-refundable architectural review fee of fifty dollars (\$50) shall be submitted along with each submittal of plans to the ACC to defray the administrative costs of the review process. At any time after two (2) years after the recording of these covenants the ACC may increase the fee to one hundred dollars (\$100). Any unused portions thereof shall be deposited into the Enforcement Fund (see Paragraph 24.B.). Neither the applicant nor the WHA shall pay compensation other than reimbursement of expenses to members of the ACC for services performed pursuant to this covenant. Nothing herein shall prevent members of the ACC who are employees or business associates of the Declarant from receiving their regular compensation.

#### C. Procedure for Obtaining Approval of Plans:

(1) Application. Application and plans shall be submitted with review fee to Declarant.

(2) Preliminary Review. If the Owner believes that his plans may encounter serious objection he should submit preliminary drawing and/or a preliminary sketch and request, in writing, preliminary review prior to incurring the expense of having detailed architectural working plans drawn. Such preliminary review shall not constitute final action.

(3) Submission. The Owner (not builder) shall make written application on a form provided by and obtained from Declarant or ACC, which shall be submitted along with the required fee and with the following attachments:

(a) Two (2) copies of site plan, drawn to scale, showing the exact location on the Lot of all proposed improvements (house and other buildings even if only contemplated for the future). Exact proposed setbacks from Lot lines must be delineated. Access routes (driveways) to proposed structures and any clearing, plantings or fencing and location of well and septic must be included if planned. Topographic maps showing terrain lines are recommended. See also Section 4. above.

(b) Two (2) complete sets of construction plans for building(s) detailing the floor plan, elevations, site location, and exterior building materials.

(c) Color samples and, if deemed necessary by the ACC, material samples of siding, roofing, etc.

(d) A letter of commitment from a lender, guaranteeing approval of construction financing and/or permanent financing upon completion of construction, if and when requested by the ACC. Job specifications and price estimate (construction take-off sheet) for improvements intended may be required at the sole discretion of the ACC. The intent of this section is to ensure that the applicant is financially capable of completing the proposed improvements, thus reducing the possibility of an abandoned or partially finished structure on a Lot.

(4) Meeting. The ACC shall then meet as a group (not individually) to discuss, examine and consider plans, make field trips to the site (Owner shall stake out the proposed location of

building prior to submission of plans) and approve or disapprove all submissions in writing. The ACC shall return a copy of the submission form with its determination and comments as appropriate. The set of plans, site plan, and material/color samples shall be kept in the files of the ACC. The ACC may require the Owner to make other submissions, to include material samples, prior to considering any application.

(5) Timing. The ACC may take up to thirty (30) days to approve or disapprove submissions and if disapproved, may take an additional thirty (30) days to consider any resubmitted plans. Normally, submissions will be resolved in less time but Owners should plan sufficiently in advance to give the ACC time to thoroughly examine plans, make on-site inspections and make well considered decisions. In the event that the ACC fails to approve or disapprove the plans within thirty (30) days after receipt of any written submission, or in any event, if no suit has been filed to enjoin the construction prior to its completion, approval shall not be required, and the related covenants requiring ACC approval shall be deemed to have been fully complied with, provided that all other covenants herein have been properly observed and complied with. The foregoing notwithstanding, no plans shall be approved nor shall the above thirty (30) day automatic approval pertain, unless the Owner is current in his Dues and Assessments to the WHA.

(6) Voting: A simple majority vote (2/3) of the ACC shall determine approval or disapproval; however, unless all three (3) members of the ACC have been given the opportunity to vote and all three (3) have signed the submission form, the approval or disapproval is not valid. The ACC will coordinate and work in concert with each other and report their decisions as a group and not individually.

#### D. Authority of ACC:

The ACC is empowered to approve or disapprove in writing all plans for construction, site locations, clearing, plantings, fencing and any other changes in the natural environment of Lots in WALDEN. Disapproval of submissions by the ACC may be based on any grounds, including purely aesthetic grounds. If such submissions are disapproved, the ACC shall give written reason for said disapproval to applicant. The ACC may make other reasonable requirements of the applicant, including, but not limited to submission of additional plans, specifications and material samples, and may require such changes as it deems necessary to conform to the overall intent as herein expressed.

The ACC shall have the right to alter site locations as shown on the submitted site plan, or deny construction if, in the opinion of the ACC, the proposed site locations will unduly interfere with adjoining Lots as to view, proximity or type of construction, actual or proposed, or unduly damage the natural growth and terrain.

The ACC may prohibit the construction of fences, houses or any other improvements to any Lot and is empowered to order their removal if written application was not made by the Owner, if approval was not granted in accordance with these covenants, or if actual construction is different from the approved plans.

The ACC, upon written request, shall have the authority to grant in writing, variances from the provisions of this Declaration of Protective Covenants as they apply to construction and setbacks, in cases of irregularly shaped Lots, unusual terrain, highly desirable building sites near Lot lines, or other conditions wherein the strict enforcement of these covenants would result in unusual hardship. (Such variances granted by the ACC do not relieve the Lot Owner from the burden of

complying with El Paso County zoning and subdivision regulations, including any variance procedures.) The ACC shall be the sole and exclusive judge of whether or not such hardship exists. It is the intent of these declarations that the ACC shall exercise broad discretionary powers hereunder and its decisions shall be final and conclusive. The ACC shall resolve all questions of interpretation and these covenants shall be interpreted in accordance with their general purpose and intent as herein expressed.

E. Architectural Design and Requirements:

The ACC shall have authority to adopt Design Guidelines, which it shall generally use as a guide for approval or disapproval of submissions. The ACC shall make available its current Design Guidelines to potential applicants. The ACC may vary from the Design Guidelines for specific purposes and may change the Design Guidelines at any time, provided it acts in good faith. The following are in addition to any other requirements of these Covenants and the Design Guidelines. However, the ACC may vary from the following requirements in specific instances, requiring either stricter or less restrictions in any given instance, provided it acts in good faith.

(1) Construction: No building, structure, walls, gates, hedges, fence, mailboxes, driveway windbreaks, swimming pools, flagpoles, windmills, exterior lighting or other improvements shall be commenced, erected, converted placed, added to, maintained or altered on any Lot until the construction plans and specifications, to include design, height, material and color samples to be used, and a site plan showing the exact location of the structure(s), have been approved by the ACC in writing as to quality of workmanship and materials, harmony of external design with existing structure(s), location with respect to other structures planned, and as to topography and finished grade elevation. This requirement applies both to new construction and to subsequent changes, additions, repainting and major repairs or renovations.

(2) Color: Structure color schemes shall be compatible with the natural environment of Walden. Subdued, unobtrusive natural or earth colors will normally be required, and color samples must be submitted with plan.

(3) Facing/Siding: Exposed concrete on buildings shall be stucco, or covered with brick or stone or other material meeting the approval of the ACC. If brick or stone is used as facing, other than decoratively, it must be used on all sides of a building seen from any road. Natural wood sidings must be treated and periodically maintained with some type of preservative or stain and color samples shall be submitted with plans. The Design Guidelines shall generally require some elements of wood, stucco, or masonry on exterior sides facing the street.

(4) Chimneys: Spark arrestors shall be required on all chimneys, and open fires in Walden are prohibited.

(5) Roofing: Roof materials and color shall be consistent with the architecture, color, and exterior wall material of any structure. Cedar shake, tile, slate, or architectural asphalt shingles will normally be required, and tile will be required in some areas; however, the ACC may allow variations from this requirement in those cases where such variation would be harmonious with the surrounding area and where such roofing materials would not be practical for a particular design or structure. New and modern materials with similar appearance will be considered. No T-Lock or Three Tab shingles will be permitted.



Roof mounted solar collectors, skylights and other unusual or energy conservation features should be custom designed and must be approved by the ACC.

(6) Energy Features: Energy efficiency is encouraged through well-sealed and insulated construction and the use of passive solar design techniques. Solar collectors shall be located or screened so that reflections do not unreasonably defeat the intent of these covenants to maintain a natural environment. Tall wind-powered electrical generators are prohibited.

(7) Extreme Designs: Homes of extreme design may or may not be approved depending upon location and appearance, it being the intent of these covenants to establish an area of quiet, unobtrusive dignity and quality consistent with other homes in the subdivision.

(8) Materials: All materials used in the construction; alteration or remodeling of any building shall be new and of good quality and design. Used materials of good quality may be used, provided they are first approved in writing by the ACC.

(9) Driveways: In addition to obtaining approval from the ACC, purchasers must obtain a written driveway permit from the El Paso County Department of Transportation prior to connection of any driveway to a public road. Owners of Lots are advised that the County has no responsibility for and will not snowplow or otherwise maintain driveways whether on flag Lots or other Lots; such responsibility is solely that of the Lot Owner. Flared end extensions are required on all driveway culverts, or else concrete, masonry or stone headwalls to prevent bent culvert pipes and a consequently unattractive approach to a home. Plans submitted to the ACC must include the manner in which the driveway shall be constructed, and approval must be obtained from the ACC. Driveways must be paved with concrete or asphalt or other surface approved by the ACC. Owners of Lots are responsible for maintenance of driveway culverts both before and after acceptance of the streets by El Paso County, and shall also be responsible for repairing any damage to the road, roadway and roadside ditch from construction activity or otherwise on the Lot, and shall also be responsible of preventing such damage if possible. Owners are also responsible to prevent transport of silt or other materials from their Lot into the public right of way and onto neighboring Lots or Tracts, and shall repair any damage done by such transport.

(10) Mailboxes: Mailboxes and their support structures must be approved by the ACC. Colored plastic or metal newspaper boxes are not permitted; therefore, mailbox designs should incorporate a separate space for newspapers, as the U.S. Postal Service rules prohibit placing newspapers or anything other than U.S. mail in a mailbox.

(11) Fences and Antennas:

(a) Barbed wire fencing within the subdivision is prohibited. Declarant shall not be responsible for or defend against adverse possession suits based on external boundary survey differences. Fences must be approved in writing by the ACC prior to construction thereof. (See also paragraph 4.A. Setbacks.)

(b) Antennas: Attic antennas inside the house (as opposed to roof antennas) are effective, are less vulnerable to damage and are encouraged. Tall or otherwise prominent and visible antennas are prohibited. Satellite dish antennas may be used only in areas where they will be unobtrusive, and shall be painted or screened to blend in with the natural environment; they must be approved in writing by the ACC prior to installation.

F. Assessment of Enforcement Fee for Violations:

Written application for approval of plans shall be made and signed by the Owner of the Lot (not the builder) and the Owner shall be held responsible for any violations of the covenants which are committed by the builder or other persons engaged by the Owner. If any excavation, cutting of trees or construction is commenced by Owner, or Owners representatives, prior to receipt of written approval by the ACC, or if the construction does not proceed substantially in accordance with the approved plans, then the Owner agrees to pay immediately a fee of three hundred dollars (\$300) to the Enforcement Trust Fund (see paragraph 24.B.) which the ACC may use to further enforce the WALDEN covenants as necessary. Owners of Lots in WALDEN agree to make such payment and understand that a lien shall be filed against their property if they do not (see paragraph 24.e.). Further, if legal action is necessary to enforce this covenant, purchasers agree to pay all expenses, to include reasonable legal fees incurred by the ACC in collection of said fee. Payment of said fee does not preclude further action by the ACC to disapprove such areas in which clearing or construction has begun. The lien may be foreclosed on by the ACC at any time prior to 6 years after the Violation has ceased, or such longer period as the Owner may agree to.

9. CLEARING OF TREES: Approval shall be obtained from the ACC, to cut down or clear any trees on any Lot. Approval is not required to remove dead trees, thin trees of four inches in diameter or less, and to control infestation. Owners of Lots shall dispose of such cleared trees in a way to prevent stumps, accumulation of trash, or other materials that constitute a fire hazard or render a Lot unsightly. This provision shall not operate to restrict purchasers from storing fireplace wood in neat stacks on their Lots. Owners shall be responsible for prompt treatment or removal of trees infected by pine beetle or other insects, which can kill trees within a year and might spread to adjacent trees and Lots, and to reasonably contain any trees with slow parasitic growth such as mistletoe.

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 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. No vehicles or equipment will be parked permanently or temporarily on "flagpoles".

11. VISION OBSTRUCTION AT INTERSECTIONS: No fence, wall, hedge, tree, shrub planting or other structure which unduly obstructs lines-of-sight shall be placed or permitted to remain on any corner formed by the intersection of a driveway or street with another street, The ACC shall be the sole and exclusive judge of whether said lines-of-sight are unduly obstructed. However, Owners and their guests must also observe the line-of-sight obstruction restrictions on the Plat.

12. REDIVISION: Further subdivision of Lots in Walden is not permitted; however, the intent of this covenant is not to preclude minor Lot line adjustments to resolve building hardships, provided that such variations meet all legal requirements and are approved by the Declarant and the ACC in writing. In addition to meeting all of the requirements of any government entities, if a Lot line has been vacated the affected property may not be again re-divided into separate Lots without the prior written approval of Declarant, as long as Declarant owns any Lot in Walden.

13. NUISANCE: Nothing that may be or become an annoyance or nuisance to the neighborhood shall be done or permitted on any Lot. No noxious, noise polluting or otherwise offensive activities or commercial businesses or trades shall be carried on upon any Lot. No business, profession or other activity conducted for gain shall be carried on upon any Lot or within any dwelling or accessory building, provided that any uses that are permitted under the definition of Home Occupation of the El Paso County zoning ordinance from time to time shall be permitted. If the Home Occupation definition is repealed, then for purposes of this Declaration and its enforcement, the provisions of the Home Occupation definition in effect at the time of recording of this Declaration shall be incorporated herein as part of this Declaration and shall apply. Any exterior lighting on any Lot shall either be indirect or of such controlled focus and intensity as not to unduly disturb residents of adjacent or nearby property.

No trail bikes, mini-bikes, motorcycles, all-terrain vehicles, snowmobiles, or other such noise causing vehicles shall be operated within Walden other than on County roads and going to and from residences. No activity shall be permitted which will generate a noise level sufficient to interfere with the reasonable quiet enjoyment of the persons on any adjoining or nearby Lots.

Neither hunting of any kind, nor the discharge of firearms shall be permitted in Walden.

14. REFUSE AND RUBBISH: Rubbish, garbage or other waste shall be kept and disposed of in a sanitary manner. Containers or other equipment for the storage or disposal of garbage, trash, rubbish or other refuse shall be kept in a clean, sanitary condition. All garbage or trash containers shall be kept at all times in a closed garage or placed in walled-in areas designed to blend in with the house, so that they shall not be visible from other Lots or from public streets. Bottled gas tanks, if any, must be underground, or concealed behind walled-in areas designed to blend in with the house, and may be subject to the approval of the Fire Department. No trash, litter, junk, equipment, boxes or other such items shall be permitted to remain exposed upon the premises and visible from public streets or from other Lots within the subdivision.

15. SIGNS: All signs displayed must be first approved in writing by Declarant or the ACC. This covenant does not preclude the display of reasonably sized builder or real estate signs not to exceed six (6) square feet in size. Declarant or ACC reserves the right to make exceptions to size requirements, or to require modification or removal of any signs deemed not in keeping with the area and subdivision decor; however, neither Declarant nor ACC shall require real estate signs to be smaller than provided herein, and this restriction shall run with the land and may only be changed by Declarant. The WHA and the Declarant, its successors or assigns, reserve the right to erect and maintain an entrance sign on Lots at either side of the street at each entry point into Walden, along with gateways; posts, walls, signs and other structures both to permanently identify and market Walden. In addition, Declarant reserves the right to place signs on any Lot in the subdivision as Declarant deems necessary for safety or traffic guidance, provided the Owner of the affected Lot agrees. The WHA shall maintain all such entry and safety signs and monuments for the general benefit of the Owners and residents of Walden and shall have an easement on any such Lot for the

purpose of such maintenance and an easement on the Lot for occupying the Lot with the sign. Such easement location shall be as defined in a separate instrument signed by the Declarant at time of sale of the Lot or on the plat including the particular Lot.

16. DRILLING: No oil drilling, oil development operations, oil refining, quarry or mining operations of any kind shall be permitted on or in any Lot, nor shall gas or oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. The foregoing shall not apply to drilling for water wells either by utilities or individual Lot Owners.

17. CLOTHES DRYING AREA: Exterior clotheslines are prohibited, unless screened from view from roads and adjoining Lots.

18. VEHICLE PARKING AND EQUIPMENT: No vehicles shall be stored or parked within the subdivision except in a closed garage; however, recreation vehicles to include travel trailers, horse trailers, campers, boats or a motor home and various equipment may be kept if such vehicles are screened from public view with proper garaging or fencing approved by the ACC. As most families have more than two vehicles, three car or larger garages are strongly recommended. The intent of this covenant is to prevent clutter and enhance natural appearance.

19. UTILITIES: All utility lines, including service lines of whatsoever kind or nature, shall be underground on all Lots within Walden, except poles and lines existing at the time of recording of this Declaration are not required to be removed and placed underground. It shall be the responsibility of each Owner to extend service to his house from existing lines or lines.

A. Water and Sewage:

Any residence constructed on Lots 1-73 inclusive 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 74-161 inclusive 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.

B. Lots With Wells:

(1) All lots using individual Dawson aquifer wells ("Well Lots") shall be subject to the requirements as set forth in the Augmentation Plan.

(2) Each Well Lot Owner shall be responsible for obtaining a well permit for a well to provide a water supply for the Lot and for constructing and operating the well. Each well will be limited to an annual amount of 0.47 acre-feet per year for in-house use in one single family residence (0.27 acre-feet) and irrigation of 3500 square feet of home lawn and garden (0.2 acre-feet). The withdrawal of 0.47 acre-feet (153,149 gallons) shall not be exceeded in any calendar year. Exceeding the maximum amount in any calendar year may result in a fine of \$100.00 for every 2500 gallons over the limit. The maximum amount of irrigated acreage cannot be exceeded for any reason. If the irrigated area is exceeded, the WHA may require that the Well Lot Owner take an appropriate amount of acreage out of irrigation. All wells shall be constructed

and operated in compliance with the Augmentation Plan and the permits for such wells. Well Lot Owners shall be conveyed by deed 0.47 acre-feet per year of Dawson aquifer groundwater which will be provided to the Division of Water Resources at the time a well permit application is filed in order to obtain said well permit.

(3) Well Lot Owners may be required to log their well if required by the Division of Water Resources, unless a waiver is obtained. The Well Lot Owner shall install a well meter so as to provide information necessary for accounting required in the Augmentation Plan. The Well Lot Owner shall report the annual meter reading to the WHA by January 15th of each year for the pumping during the previous calendar year (January 1 to December 31). If the Well Lot Owner fails to provide the meter reading in a timely manner, the WHA may impose a fee or fines in the amount of a one-time amount of \$100.00, plus \$25.00 per day until the meter reading is provided. The Well Lot shall be subject to an easement for the WHA to read the meter in the event the Well Lot Owner does not timely provide the reading, and the WHA may charge the Well Lot Owner a reasonable fee for reading the meter.

(4) The WHA has the purpose of carrying out the provisions of the Augmentation Plan and thus shall be responsible for administering and enforcing the terms and conditions of the Augmentation Plan on behalf of all Well Lot Owners and shall take all necessary actions to ensure protection of water and well rights for all Well Lot Owners operating wells pursuant to the Augmentation Plan. Failure of any Well Lot Owners to comply with the terms of the Augmentation Plan may result in an order from the Division Engineer to curtail or eliminate pumping of the Well Lot Owners' wells.

(5) Any water rights decreed in the Augmentation Plan and not deeded to individual Well Lot Owners as set forth above, nor required by the Augmentation Plan to be reserved for post-pumping augmentation, remain the property of the Declarant, its successors and assigns.

(6) The Well Lot Owners agree not to request or permit any change in the Augmentation Plan without the consent of the Declarant as long as the Declarant owns any Lots. ~~To be effective, any such changes in the Augmentation Plan shall require approval by the Water Court amendment to the related court decree.~~

#### C. Detention Basin Agreement.

~~(2)~~(1) The WHA is obligated to inspect, clean, maintain, and repair the detention basins on Tract B1 of Walden Preserve Filing # 1 according to the Detention Basin Agreement.

~~(3)~~(2) The Detention Basin Agreement touches and concerns every Lot, in that each Lot Owner may be required to reimburse El Paso County for a proportionate share of its costs if the WHA fails to discharge its obligations under the Detention Basin Agreement.

~~(4)~~(3) WHA's costs of fulfilling the obligations to inspect, clean, maintain, and repair the detention basins shall be a Common Expense.

~~(5)~~(4) The Declarant has provided to the WHA the a Detention Basin Maintenance Easement Grant, a copy of which is recorded in the real estate records of El Paso

County at the reception number stated on the first page of this Declaration of Covenants, to enable the WHA to fulfill its obligations under the Private Detention Basin Maintenance Agreement and Easement as to the Tracts and as to the "Temporary Construction and Drainage Easement" as defined on the subdivision plat for Walden Preserve Filing No. 1.

## 20. ANIMALS:

A. None Except Common Pets. No animals or livestock of any kind may be housed, raised or kept on any Lot, either temporarily or permanently, except that commonly accepted domestic household pets may be kept provided that they are not kept or maintained for any commercial purposes.

B. Dogs. Dogs shall not be permitted to run loose and shall be kept under control of Owners at all times. Kennels for the commercial raising, breeding and boarding of animals are prohibited. The ACC may require any animal considered intimidating by the neighbors to be kept behind fencing at least six (6) feet high and at least (10) feet from the Lot line, and may designate breeds and types of animals requiring such fencing.

## 21. MAINTENCE OF CERTAIN TRACTS – OPEN SPACE

### A. Title to the Tracts.

Neither WHA nor the individual Lot Owners as tenants-in-common own any common Land. Private owners, including a utility company providing service to the residents of Walden will hold title to and have the right to occupy and use certain Tracts within Walden, which shall be available to that utility, but not limited to utility use. Such Tracts may include drainage areas, drainage structures, other structures and buildings, and entry areas and signs. The Private Detention Basin Easement Grant does not permit any access to the Lot Owners as such, and only permits the WHA to access the Tracts to enable it to carry out its detention basin maintenance obligations.

### B. Certain Maintenance by WHA.

The WHA shall maintain portions of the Tracts by agreement with the owner thereof in order to permit the limited use of such Tracts as open space for the benefit of the residents of Walden. Such maintenance shall include repair and replacing fences, common signs, trails, fishing ponds, recreational facilities, benches, and all other maintenance within the Tracts for the benefit of the residents of Walden. The WHA shall also maintain insurance as may be required by the owner of the Tracts. Failure of the WHA to properly meet the requirement of the owner of the Tracts shall jeopardize the opportunity of the residents of Walden to use the Tracts. All costs of maintenance and insurance shall be costs of the WHA and shall be included in the Assessments to the Lot Owners. Likewise, the costs to inspect, clean, repair and maintain the detention basins shall be included in the Assessments to the Lot Owners.

### C. Use by Lot Owners.

Each Lot Owner and their guests may, but only in compliance with rules adopted by the WHA and in accordance with the agreements with the owners of the Tracts, have access to and use the Tracts, as guests of the WHA by agreement the owner of each of the Tracts, subject to the rights

of the owners of the Tracts to use the Tracts for their own uses of all nature and type. The Tract owners' use shall have priority over any use by the WHA and its guests.

D. No Right of Action Regarding Tracts.

By the acceptance of their deed or other instrument of conveyance or assignment, each Lot Owner specifically waives his right to institute and/or maintain any action for use or access to the Tracts other than as a guest of the WHA under its agreement with the owners of the Tracts. Further, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. A violation of this provision, or any other provision of these Covenants, shall entitle the WHA and the owner of the Tracts to personally collect, jointly and severally, from the parties violating the same, the actual attorney fees, costs and other damages incurred in connection with defending such action. It is agreed by all Lot Owners that the foregoing restrictions are necessary to preserve the benefit to all Lot Owners and residents regarding the access to the Tracts and operation and management of the Tracts and to permit the owner of the Tracts to provide utilities and for the residents of Walden.

E. Extent of Owners' access to and use of Tracts.

Lot Owners and guests use of the Tracts shall be subject to the following:

(1) The WHA shall enforce the restrictions contained in these Covenants and promulgate and publish rules and regulations with which every Lot Owner, his family members, guests, tenants, and contractors shall strictly comply, including, but not limited to, the right of the WHA to deny or limit ingress and egress at their discretion or upon requirement of the Tract owner, any public agency, authority or utility;

(2) The right of the owner of the Tract to dedicate or transfer all or any part of the Tract to any public agency, authority, or utility for such purposes, subject to such conditions as may be imposed by the public entity; for example, if any drainage structures are private and have not been built to County specifications and so might not be accepted by them;

(3) The rights of the owner of the Tract to borrow money and to mortgage the Tract as security for any such loan;

(4) The right of the WHA and the owner of the Tract to take such steps as are reasonably necessary to protect the Tract against foreclosure or dedication to the public, or against anyone acquiring a prescriptive right;

(5) The right of the Declarant and the owner of the Tract to construct improvements on the Tract and notwithstanding any provision of these Covenants to the contrary. Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through and upon each Tract and the Land (except the Lots Declarant has sold) for the purpose of installing, maintaining, repairing and replacing any utilities or related services, including but not limited to any gas, electric, water or sewer line, wells, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any master television antenna system, any drainage, detention or retention areas, or for other public purposes consistent with the intended use of the Land under these Covenants. The foregoing easements shall include, without limitation, the right of ingress and egress, the right to erect and maintain the necessary pipes, wires, poles and other equipment and the right to enter into agreements relating to such utility service and easements; all of which shall be

binding upon the WHA and the Lot Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Land without conflicting with the terms hereof. The foregoing easements shall be in addition to any other recorded easements on the Land, including, but not limited to, any easements granted in the recorded subdivision map. The rights reserved herein for Declarant shall pass to the WHA when the Declarant no longer owns any Lot or real property in Walden or upon written transfer by Declarant to WHA, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements shall thereupon pass to the WHA and be assumed by it in place of the Declarant. Any consideration for any such easement shall be delivered to and become the property of the owner of the Tract regardless of whether the grant of easement was made by the owner of the Tract, the Declarant or by the WHA; and

(6) Declarant hereby reserves easements across the Tracts to enable Declarant to access, construct, maintain and use wells on the Tracts as may be desirable for Declarant in conjunction with Declarant's reserved water rights. If Declarant conveys or assigns its rights to those easements, Declarant covenants to require the person or entity acquiring Declarant's interest to assume and perform Declarant's obligations to the WHA under this paragraph.

F. Non-Dedication of Tracts:

Nothing contained in these Covenants shall be deemed to dedicate the Tracts or any part of them for benefit or use by the general public or the Owners or residents of Walden and the Owners, by their acceptance of deeds to the Lots and by their occupancy of the Lots waive any claim to occupy any portion of the Tracts for any purpose whatsoever and waive any right to restrict the use and occupancy of the Tracts, except as expressly set forth in these Covenants.

G. Association Maintenance:

Subject to the agreements with the Owner of each Tract, the WHA shall provide all repair, replacement, improvement and maintenance of the Tracts and all improvements located thereon, including without limitation, if applicable, any landscaping, roadways, utility lines, ponds, trail easements, any drainage structures or facilities or public improvements to the extent applicable and any, sidewalks, and pathways, or other improvements located on the Tracts, other than utility installations owned and maintained by the utility serving the area or by the Owner of the Tract. The WHA shall maintain and be responsible for keeping the common drainage areas and structures clear and free of silt to insure the areas drain properly in accordance with best practices.

H. Retention or Detention Structures:

Retention and or detention structures exist on some lots and tracts in prior areas of Walden as shown on the recorded plats of such filings. Retention structures also exist or will exist on Tracts B1, B2, and D in the Land associated with Walden Preserve Filing No.1, and on tracts in future filings. Additional drainage easements and flood plain areas may exist on portions of certain Lots as shown on the recorded plat of the Land. The purpose of these structures, easements and areas is to maintain historic drainage flows within the Land and throughout Walden, since home and road construction may slightly increase drainage flow. Additionally, no structures, landscaping or other materials, shall be placed within any designated flood plain area as shown on the plat or any drainage easements. Declarant, El Paso County, Soil Conservation entities, the WHA, and their successors and assigns



reserve the right to enter upon said easements and areas periodically for purposes of inspection, maintenance and related, matters. All Lots and all Lot Owners may be subject to an obligation as set forth in that certain Private Detention Basin Maintenance Agreement and Easements, a copy of which is recorded in the real estate records of the El Paso County Clerk and Recorder with its reception number as noted on the final plat for this subdivision. The individual Lot Owners are responsible for minor regular maintenance of such drainage ways and structures located on their Lots and may not redirect or impede the drainage flows therein. The WHA is obligated to maintain all such detention and drainage structures and shall include the cost of maintenance, including reasonable reserves for major maintenance and replacement, in Dues and Assessments charged to the Lot Owners.

22. RIGHT OF DECLARANT: Declarant, its successors or assigns, expressly reserves the right:

A. From time to time to amend or revoke any restrictive covenant then in existence, but no such amendment or revocation shall apply to Lots that are sold by the Declarant prior thereto without the written consent of a majority of the then Owners of any such Lots (one vote per Lot), nor shall amendment or revocation be of such nature as to derogate property values.

B. To enter into agreements with the purchaser of any Lot or Lots (without the consent of the purchasers of any other Lots including adjoining or adjacent property) to deviate from those conditions, restrictions, limitations and agreements herein set forth and any such deviation which shall be manifested by agreement in writing shall not constitute a waiver of any such condition; restriction, limitation, or agreement as to the remaining Lots in Walden, and the same shall remain fully enforceable on all other Lots, except as against the Lot where such deviation is permitted.

C. To modify, change or delete any covenant as it pertains to one or more Lots which may prevent obtaining V A or FHA financing; however, any such action will not change the intent of these covenants to establish and maintain a single family residential area of the highest caliber.

D. To widen cuts in roads beyond the sixty (60) foot road right-of-way to obtain gravel to finish roads and to meet County road grade requirements, and to remove gravel from any unsold Lots. Such areas will be graded and restored when no longer needed. After final road approval and acceptance of roads for maintenance by the County and expiration of any warranty period, this paragraph, 22. D. shall be null and void and of no further effect.

23. TERM OF COVENANTS/AMENDMENTS: These covenants and restrictions are to run with the land and shall remain in full force and effect for twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a simple majority of the then Owners of the Lots (one vote per Lot) has been recorded, changing said covenants in whole or part. These Covenants may be amended at any time by a three-fourths (3/4) majority vote of all property Owners (one vote per Lot) provided such amendment is also approved by the Declarant if the Declarant then owns any Lot or Tract in Walden. Such amendments may not be inconsistent with the Augmentation Plan or any water court approved amendments thereto, and shall comply with all applicable zoning and subdivision requirements of El Paso County, Colorado regarding the water supply. All changes shall be legally drawn and formally recorded in El Paso County. Notwithstanding the above, any provisions regarding the obligations of the Declarant (except as otherwise provided in the Detention Basin Agreement), the WHA and the Lot Owners with respect to the Detention Basin and the Detention Basin Agreement and the provisions regarding the

Augmentation Plan shall neither terminate nor be amended except by written agreement of the Board of County Commissioners of El Paso County, Colorado.

24. ENFORCEMENT:

A. Generally:

Enforcement shall be by proceeding at "law" or in "equity" against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. Covenants are for the use, convenience and protection of all property Owners, including the Declarant. Declarant, Architectural Control Committee, WHA, or any individual Lot Owner may act to enforce the covenants; none of the foregoing, however, is obligated to do so. WHA, Declarant and the Architectural Control Committee, together or separately or through authorized agents or employees further reserve the right, whenever there shall have been an apparent violation of one or more of the provisions of these covenants, and after ten (10) days notice to Owner, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the Lot Owner and such entry and abatement or removal shall not be deemed a trespass, provided, however, that neither the ACC nor the WHA nor individual Lot Owners may enforce these Covenants against the Declarant and they covenant not to sue the Declarant in respect of any violation of these Covenants. Lot Owners in Walden expressly agree to abide by injunctions without necessity of bond, in order to simplify judicial proceedings to remedy covenant violations. In addition, if a judicial action is necessary to prohibit a covenant violation and a violation is established, the violator(s) shall pay and agree to pay all costs of the enforcement proceeding, including reasonable attorneys' fees. The failure to enforce any right, reservation, restriction, or condition contained herein shall not bar or affect its enforcement thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto. The invalidation or limitation by any court of any restriction herein contained shall not in any way affect any of the other restrictions but they shall remain in full force and effect and they shall be given the fullest effect to the fullest extent possible not inconsistent with such ruling.

B. Enforcement Trust Fund:

Matching fees of fifty dollars (\$50) each shall be paid at closing by the purchaser of each Lot and by Declarant, and said funds shall be kept in a trust fund by Declarant to be used for enforcement of the protective covenants. Any penalties that may be collected from time to time shall also be placed in said fund (see paragraph 8. F.). Said fund shall be used by the Declarant, its heirs, successors and assigns, or the ACC or WHA for paying legal and other expenses involved in enforcing these covenants and Declarant is hereby authorized to use the fund. In addition, the fund or portion thereof may be transferred into the WHA treasury for the purposes outlined in paragraphs 7 and 8 and may be used at the discretion of Declarant for continuing subdivision expenses no longer the responsibility of the developer, such as maintenance of entrance ways and signs, special mailings, etc; however, the fund shall not be depleted to the extent that insufficient funds are available to enforce the covenants. 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. The Enforcement Fund shall be kept by Declarant in an interest-bearing account which may be closed

and funds distributed to Lot Owners after all Lots have been built upon, or earlier, at the discretion of Declarant, or be turned over to the control of the ACC or WHA for the uses provided herein.

C. Liens:

Non-payment of fees and non-payment of assessments incurred by Declarant and/or ACC in enforcing correction of a bona fide violation of these covenants or in abatement or removal as covered herein and per paragraphs 6., 7. and 8.F. hereof, shall result in a recorded lien being placed on the Lot and/or Lots interest owned by the violator(s), including improvements thereon, said lien to bear interest at eighteen percent (18%) per annum or two percent (2%) above the prime of the Wells Fargo Bank of Colorado Springs, whichever is higher, from the date filed. Declarant and/or ACC is empowered to file such lien if within thirty (30) days of written notification to Owner of amount due, Owner has not made payment in full. Such lien shall run with the land unless said property is repossessed by Declarant, its successors or assigns, in which case the lien shall become null and void and shall be hereby released at that time. Continued failure to pay such liens may result in foreclosure on the entire Lot or property owned by the offending Owner in order to enforce payment. Each day a violation continues shall be considered a new violation and each Lot Owner agrees that the statute of limitations on enforcing such fees and covenants shall not start to run until the violation ceases.

25. NOTICES: Any notice required to be given to any Owner or other person under the provisions of these Covenants shall be deemed to have been properly given when mailed first class, post paid, to the last address of the record Owner of the Lot in which the Owner has an interest, as may be known to the WHA, ACC, or Declarant sending the notice or as may be published on the records of the El Paso County Assessor, with a copy to the Lot address.

26. DECLARANT MAY ASSIGN: Declarant, its successors or assigns, may assign any and all of its rights, powers, obligations and privileges under this instrument to any other corporation, association, committee or person, by instrument specifically assigning its interest as Declarant under this Declaration of Covenants.

IN WITNESS WHEREOF, the Declarant has caused its corporate name to be hereunto subscribed by its President

Dated this 2<sup>nd</sup> day of August, 2005.

CUSTOM CASTLES, INC., a Colorado corporation

  
Gene William Dunston, Jr., President

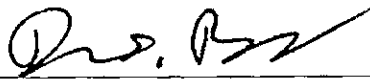
STATE OF COLORADO                )  
  ) ss.  
COUNTY OF EL PASO                )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of August, 2005, by Gene William Dunston, Jr. as President of CUSTOM CASTLES, INC., a Colorado corporation.

Witness my hand and Official Seal.

My commission expires: 6/27/2005

(Seal)



DUNCAN S. BREMER  
Notary Public  
State of Colorado

Notary Public

## EXHIBIT A

### WALDEN PRESERVE FILING NO. 1 LAND DESCRIPTION:

A Tract of Land located in the Southwest One-quarter (SW1/4) of Section 14, and the Northwest One-quarter (NW1/4) of Section 23, Township 11 South, Range 66 West of the 6th P.M., County of El Paso, State of Colorado. More particularly described as follows:

Beginning at the North One-quarter (N1/4) Corner of said Section 23; Thence S00°41'01"W along the East line of said Northwest One-quarter (NW1/4), a distance of 2026.25 feet; Thence N89°26'35"W, a distance of 176.01 feet; Thence N30°31'03"W, a distance of 338.55 feet; Thence N36°03'20"W, a distance of 324.17 feet; Thence N77°07'17"W, a distance of 143.08 feet; Thence along the arc of a non-tangential curve to the right, having a central angle of 01°55'27", a radius of 1006.00 feet, and arc length of 33.78 feet, whose chord bears S13°49'57"W; Thence N75°12'20"W, a distance of 412.03 feet; Thence N37°12'01"W, a distance of 51.45 feet; Thence N00°39'14"W, a distance of 501.12 feet; Thence N12°55'55"W, a distance of 137.67 feet; Thence N24°41'02"W, a distance of 278.06 feet, Thence S70°53'59"W, a distance of 122.07 feet; Thence N70°36'25"W, a distance of 173.85 feet; Thence N20°56'51"W, a distance of 209.95 feet; Thence N52°04'58"W, a distance of 168.72 feet; Thence N30°46'53"W, a distance of 867.03 feet; Thence N20°43'20"W, a distance of 442.38 feet to a point on the Southerly boundary line of Walden III, Filing No.3 as recorded in Plat Book R-2 at Page 49 in the records of the Clerk and Recorders Office of said County, Thence N80°19'23"E along said Southerly line, a distance of 191.00 feet to a point at the Northwest corner of Lot 1 Thomas Subdivision as recorded in Plat Book G-3 at page 19 of said records; Thence S36°33'40"E, a distance of 261.58 feet to a point at the Northwest corner of a Tract of land described in Book 3627 at page 466 of said records; Thence N58°10'50"E, a distance of 281.33 feet; to a point on the Southwesterly Right-of-Way line of Pond View Place; Thence along said Right-of-Way line the following (5) five courses:

- (1) Thence S51°41'17"E, a distance of 119.80 feet;
- (2) Thence S33°27'04"E, a distance of 448.94 feet
- (3) Thence along the arc of a curve to the right, having a central angle of 30°58'03", a radius of 140.00 feet, an arc length of  
75.67 feet;
- (4) Thence along the arc of a curve to the left, having a central angle of 87°20'28", a radius of 160.00 feet, and an arc length  
of 243.90 feet, to a point on the Northerly line of a Tract of land recorded in Book 2677 at page 786 of said records.
- (5) Thence S89°44'32"E, a distance of 183.48 feet;

Thence N29°39'24"E, a distance of 40.00 feet, Thence along the arc of a curve to the left, having a central angle of 23°19'39", a radius of 70.00 feet, an arc length of 28.50 feet; Thence S89°45'57"E, a distance of 6.57 feet; Thence N29°39'24"E, a distance of 1313.93 feet; Thence N89°24'50"E along the Southerly line of said Tract, a distance of 408.40 feet to a point on the North/South Centerline of said Section 14; Thence S00°05'35"W along said North/South centerline, a distance of 1541.62 feet to the Point of Beginning.

Said tract contains 94.268 acres more or less.

## EXHIBIT B

### LAND DESCRIPTION:

WALDEN III, FILING NO.6, PHASE 1 as recorded under Reception No. 202043751 ,  
WALDEN III, FILING NO.6, PHASE 2 as recorded under Reception No. 202043761 ,  
WALDEN III, FILING NO.7 as recorded under Reception No. 20275310 ,  
WALDEN PINES as recorded under Reception No. 204099080 , and  
WALDEN PRESERVE FILING NO.1 as recorded, all in the records of the Clerk and Recorders Office,  
County of El Paso, State of Colorado.

## EXHIBIT C

### WALDEN PRESERVE PUD Except Walden Preserve Filing No.1 LAND DESCRIPTION:

A Tract of Land located in Sections 14, 15, 22 and 23, Township 11 South, Range 66 West of the 6th P.M., County of El Paso, State of Colorado. More particularly described as follows:

Beginning at the Center Quarter Corner (C1/4) of said Section 15; Thence N 00°25'47" E, along the Easterly Line of a Tract of Land as described in Book 6721 at page 1302 of the Records of the Clerk and Recorders office of said County, a distance of 1082.22 feet, Thence N89°35'52"W along the Southerly line of a Tract of land as described in Book 6440 at page 231 of said records, a distance of 854.81 feet; Thence along the Westerly Line of Walden III Filing 2 as recorded in Plat book K-2 at page 40 of said records the following (8) eight courses;

- (1) S 07°44'38" E, 8.18 feet;
- (2) Thence S 07°39'36" E, 149.74 feet;
- (3) Thence S 22°42'20" E, 349.66 feet;
- (4) Thence S 32°11'41" E, 299.66 feet;
- (5) Thence S 37°30'00" E, 198.20 feet;
- (6) Thence S 37°34'45" E, 64.00 feet;
- (7) Thence S 37°43'11" E, 88.87 feet;
- (8) Thence S 58°46'49" W, 49.57 feet

to a point at the most Northwesterly corner of Walden III Filing 3 as recorded in Book R-2 at page 49 of said records; Thence along the Westerly Line of said Walden III Filing 3 the following (4) four courses;

- (1) S 27°50'58" E, 990.90 feet;
- (2) Thence S 38°51'59" E, 838.32 feet;
- (3) Thence S 47°20'07" E, 424.56 feet;
- (4) Thence N 80°19'23" E, 364.04 feet

to a point at the Northwest corner of Lot 1 Thomas Subdivision as recorded in Plat Book G-3 at page 19 of said records; Thence S 36°33'40" E, 261.58 feet to a point at the Northwest corner of a Tract of land described in Book 3627 at page 466 of said records; Thence along the Southerly and Westerly lines of said tract for the following (3) three courses:

- (1) Thence N 58°10'50" E, 281.33 feet;
- (2) Thence N 51°41'17" W, 119.80 feet;
- (3) Thence N 33°27'04" W, 448.94 feet

Thence along the arc of a curve to the right, having a central angle of 30°58'03", a radius of 140.00 feet, an arc length of 75.67 feet; Thence along the arc of a curve to the left, having a central angle of 87°20'28", a radius of 160.00 feet, and an arc length of 243.90 feet, to a point on the Northerly line of a Tract of land recorded in Book 2677 at page 786 of said records. Thence S 89°44'32"E, 183.48 feet to a point on the Westerly line of a Tract of land described in Book, 6625 at Page 1348 of said records; Thence N 29°39'24" E, 40.00 feet, Thence along the arc of a curve to the left, having a central angle of 23°19'39", a radius of 70.00 feet, an arc length of 28.50 feet; Thence S89°45'57"E, a distance of 6.57 feet; Thence N29°39'24"E, a distance of 1313.93 feet; Thence N 89°24'50" E along the Southerly line of said Tract, 408.40 feet to a point on the North/South Centerline of said Section 23; Thence S 00°05'35" W along said North/South centerline, 1541.62 feet to the North Quarter Corner (N1/4) of said Section 23; Thence S 00°41'01"W along the North/South centerline of said Section 23, 2648.93 feet to the Center Quarter Corner (C1/4) of said Section 23; Thence N 89°53'52" W, along the East/West centerline of said Section 23, 2674.87 feet to the West Quarter Corner (W1/4) of said Section 23; Thence N 88°08'25" W along the East/West centerline of Said Section 22, 259.10 feet to the Southeast corner of Lot 43, Walden III as recorded in Plat Book H-2 at Page 19 in the records of the Clerk and recorders Office of said County; Thence along the Easterly Boundary of said Walden III, the following (14) fourteen courses:

- (1) N 01°58'09" W, 260.17 feet;
- (2) Thence N 51°55'52" E, 723.89 feet;
- (3) Thence N 45°18'16" E, 60.00 feet;
- (4) Thence along the arc of a curve to the right, having a central angle of 23°10'00", a radius of 945.77 feet, an arc length of 382.41 feet;
- (5) Thence N 21°31'44" W, 480.00 feet;
- (6) Thence along the arc of a curve to the left, having a central angle 33°40'22", a radius of 2185.61 feet, an arc length of 1284.49 feet;
- (7) Thence N 34°47'54" E, 417.81 feet;
- (8) Thence N 54°21'43" W, 919.64 feet;
- (9) Thence N 39°00'02" W, 349.96 feet;
- (10) Thence N 24°59'57" W, 375.04 feet;
- (11) Thence N 11°44'57" W, 60.00 feet;
- (12) Thence N 15°48'29" W, 545.94 feet;
- (13) Thence N 26°19'18" W, 609.18 feet;
- (14) Thence N 60°49'18" W, 500.58 feet

to the Point of Beginning.

Excepting that portion as platted in Walden Preserve Filing No.1

Said Tract contains 241.599 acres more or less.