

**RESTRICTIVE COVENANT AS TO USE OF LAND**

MEMORANDUM OF AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2008.

BETWEEN:

**1124294 ALBERTA LIMITED**, a body corporate with an office in the City of Calgary, in the Province of Alberta (hereinafter called the "Grantor")

OF THE FIRST PART

- and -

**1124294 ALBERTA LIMITED**, a body corporate with an office in the City of Calgary, in the Province of Alberta (hereinafter called the "Grantee")

OF THE SECOND PART

WHEREAS the Grantor is the registered owner of those certain lands (the "Burdened Lands") in the Province of Alberta described in Schedule "A" attached hereto and forming an integral part hereof and each lot comprising the Burdened Lands is hereinafter sometimes called a "Lot" and collectively the "Lots";

AND WHEREAS the Grantee is the registered owner of those certain lands (the "Benefited Lands") in the Province of Alberta described in Schedule "B" attached hereto and forming an integral part hereof;

AND WHEREAS the Grantor holds title to the Benefited Lands in trust for Genstar Development Company, the developer of the subdivision in which the Benefited Lands and Burdened Lands are located (and in such capacity, is sometimes hereinafter referred to as "Genstar");

AND WHEREAS those of the Lots listed in Schedule "C" hereto are hereinafter called the "Feature Fence Lots";

AND WHEREAS those of the Lots listed in Schedule "D" hereto as hereinafter called the "Walkway Fence Lot";

AND WHEREAS those of the Lots listed in Schedule "E" hereto are hereinafter called the "Chainlink Fence Lots";

AND WHEREAS attached hereto and marked as Schedule "F" is a sketch plan of Phase 2 of Walden, the subdivision phase of which the Burdened Lands form a part;

AND WHEREAS the Grantor does agree to restrict its right of use and development of the Lots by prohibiting the construction of certain improvements or the placement of non-permanent structures and chattels on the yards of the Lots, and to prohibit the alteration or disrepair of certain fencing on certain of the Lots.

NOW THEREFORE this Agreement witnesseth that in consideration of the premises and as authorized by the Land Titles Act of the Province of Alberta, the Grantor being the registered owner of all the lands comprising the Burdened Lands does, for itself, its successors in title and assigns of the Burdened Lands, and each Lot, covenant and agree with the Grantee and its successors in title and assigns to observe and be bound by the following covenants:

**ARTICLE 1**  
**COMMUNICATION EQUIPMENT, AIR CONDITIONING UNITS, CARPORTS AND REAR YARD STRUCTURES**

**1.1** Notwithstanding any land use or development by-law of the City of Calgary, no satellite dish over 30" in diameter, television antenna, short wave radio antenna or any communication antennae of any size or type shall be installed, erected or be allowed to remain on any of the Lots. Further, satellite dishes of not more than 30" in diameter may be installed or erected only in the rear yard or side yard of a Lot and they shall be located and adequately screened such that they are not obtrusively visible from immediately outside the property lines of such lot.

**1.2** Notwithstanding any land use development by-law of the City of Calgary, no carport shall be erected or constructed on any of the Lots.

**1.3** No clothes line, playhouse, gazebo, shed or other storage structure shall be erected or constructed in the front yards of any of the Lots. Such structures shall be allowed in the rear yard of the Lots, but any such structure shall have a maximum height of three (3) metres.

**1.4** No air conditioning units shall be allowed on the front or side yard of any of the Lots but may be placed in the rear yard or a side yard of the Lots.

**1.5** Where any Lot is a corner lot, the prohibitions regarding structures and telecommunications devices in the front yard of a Lot shall apply to the side yard of any such corner lot where such side yard abuts a municipal roadway.

**ARTICLE 2**  
**RECREATIONAL VEHICLES**

**2.1** No recreational vehicle, detached trailer or camper (as defined in the City of Calgary Traffic By-Law) of any size, shape or form shall be allowed to remain on any of the Lots unless housed at all times within a fully enclosed garage, the design of which must be approved by Genstar or its successors or assigns.

**2.2** No recreational vehicle, detached trailer or camper shall be allowed to remain on a municipal road abutting any lot in contravention of the City of Calgary Traffic By-Law.

### **ARTICLE 3 FENCING**

**3.1** The Grantor acknowledges that Genstar may be constructing feature fencing on a portion the side yard of the Feature Fence Lots where they abut Walden Rise S.E., which fencing may be designed, located and constructed in Genstar's sole discretion, but shall generally be 1.8 metres high with cedar posts and constructed in accordance with the specifications shown in Schedule "G" hereto (the "Feature Fence"). The Grantor agrees to allow the initial construction of the Feature Fence and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Feature Fence Lots to properly maintain, repair, rebuild and otherwise keep the Feature Fence in good condition in accordance with the details and specifications shown in Schedule "G".

**3.2** The Grantor acknowledges that Genstar may be constructing wood screen fencing on the rear yard and side yard of the Walkway Fence Lots where they abut a public walkway, which fencing may be designed, located and constructed in Genstar's sole discretion, but shall generally be between 1.2 metres and 1.8 metres high and constructed in accordance with the specifications shown in Schedule "H" hereto (the "Walkway Fence"). The Grantor agrees to allow the initial construction of the Walkway Fence and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Walkway Fence Lots to properly maintain, repair, rebuild and otherwise keep the Walkway Fence in good condition in accordance with the details and specifications shown in Schedule "H".

**3.3** The Grantor acknowledges that Genstar may be constructing chainlink fencing on the rear yard and full side yard of the Chainlink Fence Lots where they abut a municipal reserve parcel, and along the side yard of those of the Chainlink Fence Lots where such side yards do not abut such municipal reserve parcel for a distance of up to 4 metres from the rear property line, and which fencing may be designed, located and constructed in Genstar's sole discretion, but shall generally be black-vinyl chainlink fencing 1.2 metres high and constructed in accordance with the specifications shown in Schedule "I" hereto (the "Chainlink Fence"). The Grantor agrees to allow the initial construction of the Chainlink Fence and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Chainlink Fence Lots to properly maintain, repair, rebuild and otherwise keep the Chainlink Fence in good condition in accordance with the details and specifications shown in Schedule "I".

### **ARTICLE 4 GENERAL**

**4.1** The Grantor covenants and agrees with itself, its successors and assigns in title to observe and be bound by the covenants contained herein PROVIDED THAT the said covenants shall be personally binding upon the Grantor and its successors and assigns in title only while and so long as it remains the owner of the Lots, and the said covenants shall be construed to be and shall be covenants running with the Burdened Lands and shall be appurtenant to other lands in the Evergreen Subdivision and to all of the Benefited Lands.

**4.2** Genstar may, with respect to any breach of the obligations by the owner or owners of the Lots enforce the provisions of this restrictive covenant and may, in addition to any other remedy that may be available at law, apply to a Court of competent jurisdiction to restrain such breach by injunction. Genstar shall have no duty to enforce the provisions of this restrictive covenant and no action shall lie against it with respect to enforcement of this restrictive covenant and this clause shall be an absolute defence to any such action.

**4.3** If any provision of this Restrictive Covenant Agreement shall be determined by a Court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and each provision hereof shall be enforced to the fullest extent permitted by law.

**4.4** Words herein importing a number or gender shall be construed in grammatical conformance with the context of the party or parties affected by this Agreement from time to time.

**4.5** This Restrictive Covenant is granted by the Grantor in accordance with the provisions of section 68(1) of the Land Titles Act (Alberta) R.S.A. 2000, Chapter L-4.

**4.6** This Restrictive Covenant may be registered per se or by way of a Caveat by Genstar against the Lots in the Alberta Land Titles Office.

**4.7** In Genstar's sole discretion, Genstar may at any time during the currency of this restrictive covenant, delegate the authority to enforce the provisions hereof to a group of individuals representative of owners of lots located within the Benefited Lands, which group of landowners shall be chosen by Genstar in its sole discretion (the "Committee"). After such delegation, the Committee shall determine the terms of reference by which the composition of the Committee shall be reconstituted in the future, provided that at all times, the Committee shall be composed entirely of individuals owning lots within the Benefited Lands or individuals designated as representatives of corporations owning lots within the Benefited Lands.

**4.8** Notwithstanding anything to the contrary herein, Genstar (or the Committee, if Genstar has effected the delegation contemplated by clause 4.7 hereof) may, in its sole discretion, determine that the covenants herein contained shall no longer bind the Burdened Lands and accordingly abandon any and all rights and obligations herein contained. Such determination shall be effective as and from the date that notice in writing to that effect is advertised in a daily circulation newspaper in the City of Calgary. Genstar shall have no obligation to remove this Restrictive Covenant or any caveat pursuant hereto from title to the Burdened Lands notwithstanding such determination.

IN WITNESS WHEREOF, the Grantor and Grantee have caused their respective corporate seals to be affixed by their duly authorized officers in this behalf this \_\_\_\_ day of October, 2008.

GRANTOR:

**1124294 ALBERTA LIMITED**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

GRANTEE:

**1124294 ALBERTA LIMITED**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

EXAMPLE

**SCHEDULE "A" TO A RESTRICTIVE COVENANT  
AGREEMENT MADE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2008.**

**LEGAL DESCRIPTION OF BURDENED LANDS**

PLAN 081 \_\_\_\_\_

BLOCK \_\_\_\_

LOTS \_\_\_\_ - \_\_\_\_ INCLUSIVE

EXCEPTING THEREOUT ALL MINES AND MINERALS

**EXAMPLE**

**SCHEDULE "B" TO A RESTRICTIVE COVENANT  
AGREEMENT  
DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.**

**LEGAL DESCRIPTION OF BENEFITED LANDS**

PLAN 081 \_\_\_\_\_

BLOCK \_\_\_\_\_

LOTS \_\_\_\_\_-\_\_\_\_\_ INCLUSIVE

EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE

**SCHEDULE "C" TO A RESTRICTIVE COVENANT  
AGREEMENT DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2008.**

**LEGAL DESCRIPTION OF FEATURE FENCE LOTS**

PLAN 081 \_\_\_\_\_

BLOCK \_\_\_\_\_

LOTS \_\_\_\_ and \_\_\_\_

EXCEPTING THEREOUT ALL MINES AND MINERALS

**EXAMPLE**



**SCHEDULE "D" TO A RESTRICTIVE COVENANT  
AGREEMENT DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2008.**

**LEGAL DESCRIPTION OF WALKWAY FENCE LOTS**

PLAN 081 \_\_\_\_\_

BLOCK \_\_\_\_\_

LOTS \_\_\_\_\_ and \_\_\_\_\_

EXCEPTING THEREOUT ALL MINES AND MINERALS

**EXAMPLE**

**SCHEDULE "E" TO A RESTRICTIVE COVENANT  
AGREEMENT  
DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.**

**LEGAL DESCRIPTION OF CHAINLINK FENCE LOTS**

PLAN 081 \_\_\_\_\_

BLOCK \_\_\_\_

LOTS \_\_\_\_ - \_\_\_\_ INCLUSIVE

EXCEPTING THEREOUT ALL MINES AND MINERALS

**EXAMPLE**



# SCHEDULE "F"



COMMERCIAL SITE, C-5  
(9.9 ACRES)

MULTI-FAMILY, RM-5  
(3.8 ACRES)

PHASE 1

**walden**  
PHASE 2



- LOT TYPES**
- SD SPLIT DRAINAGE
  - BR BRANCHED
  - DR DRAIN
  - WF FULL WALKOUT
  - PW PARTIAL WALKOUT
  - B-WO BI-LEVEL WALKOUT
  - HE HIGH EXP. CORN. LOT
  - LE LOW EXP. CORN. LOT
  - HX HIGH EXPOSURE LOT

- LEGEND**
- TRANSFORMER
  - △ TELUS & CTV PESTAL
  - STREET LIGHT
  - CATCH BASIN
  - ☼ CARE HYDRANT
  - ⊙ METER LOCATIONS
  - ① HOUSE NUMBER
  - FRONT FOOTAGE
  - △ WHEELCHAIR RAMP
  - BUS ZONE
  - 1.8m WOOD SCREEN FENCE
  - 1.2m CHAIN LINK FENCE
  - 1.2m WOOD SCREEN FENCE
  - FEATURE FENCE

**NOTES**

LOCATIONS OF SURFACE APPROXIMATE ONLY. CONFRM LOCATIONS IN FIELD.

THIS PLAN HAS BEEN CONVERTED TO IMPERIAL. REFER TO PLAN FOR DIMENSIONS.

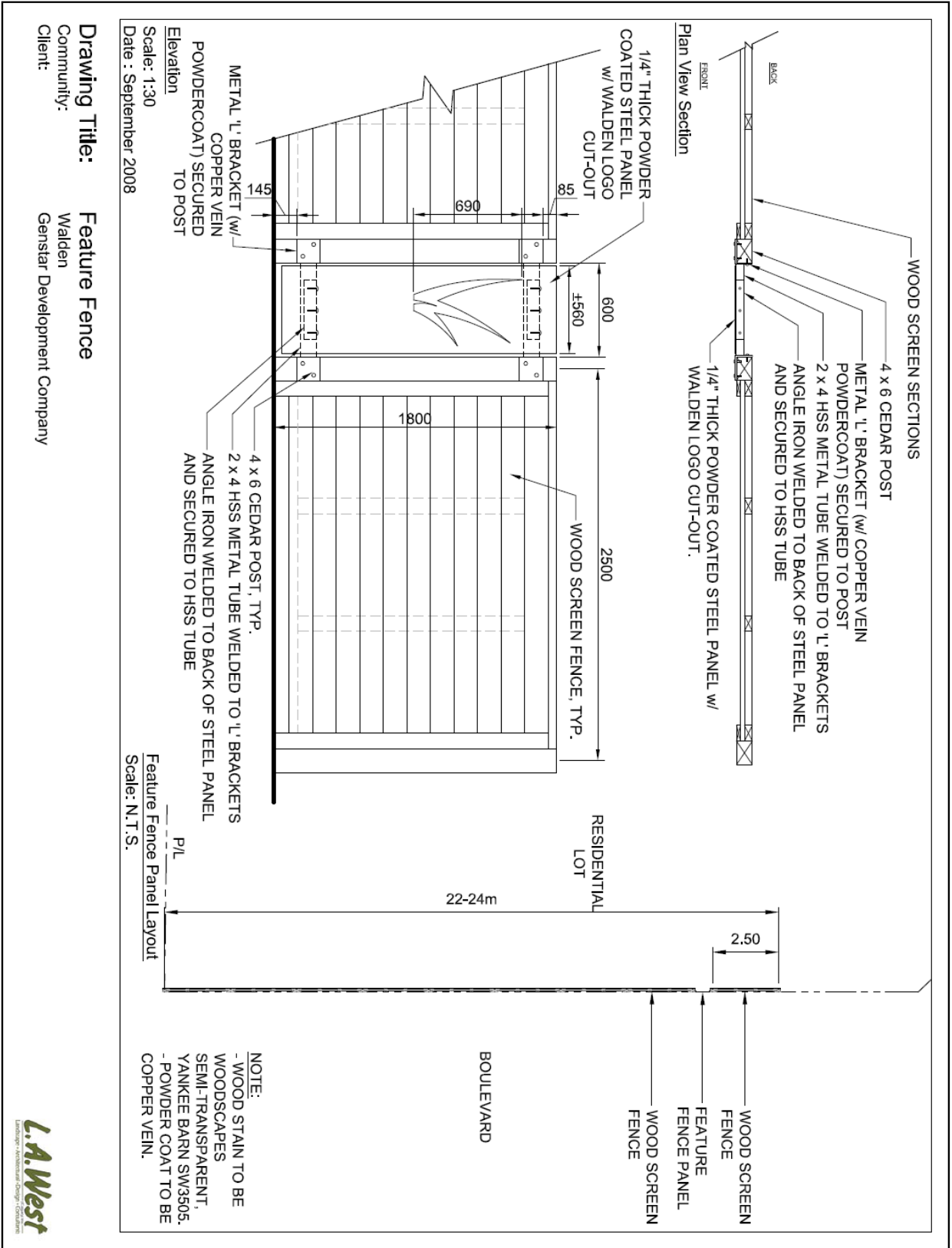
FRONTAGES ARE APPROXIMATE REFER TO U.S.P.O.W. PLANS, EASEMENT DOCUMENTS & RESTRICTIVE COVENANTS TO DETERMINE RESTRICTIONS ON SETBACKS OR UTILITIES.

PLAN IS NOT TO SCALE.

THIS PLAN IS SUBJECT TO CHANGE WITHOUT NOTICE.

GENSTAR  
2587 0000  
AUGUST 28, 2008

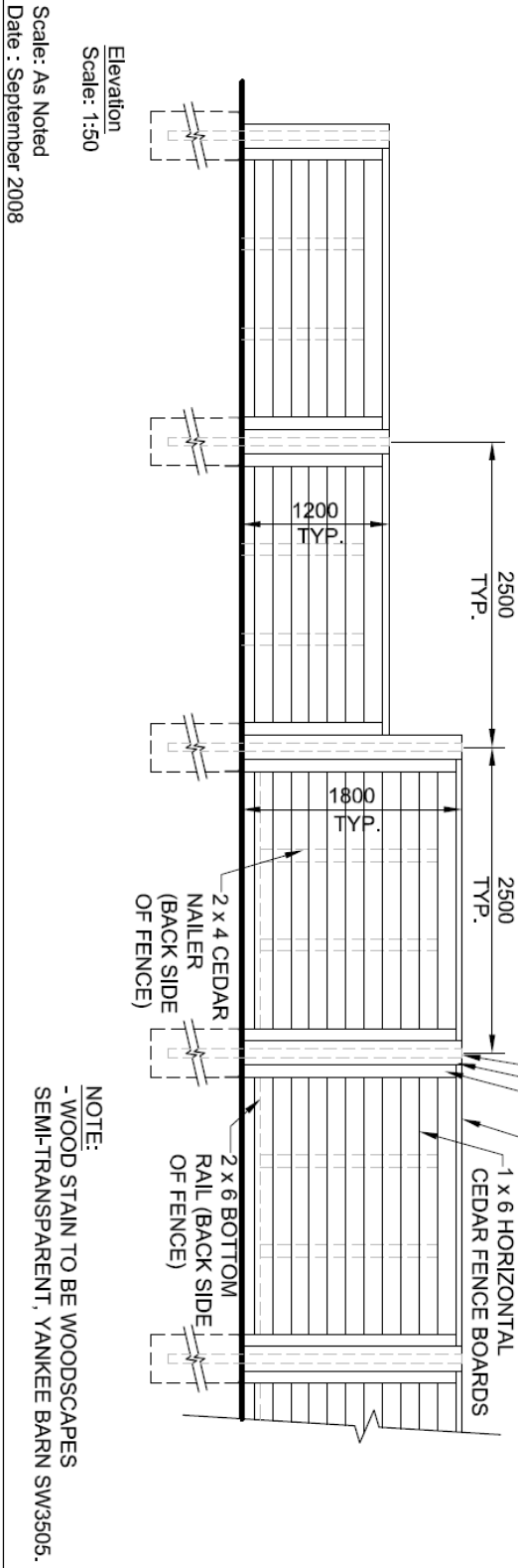
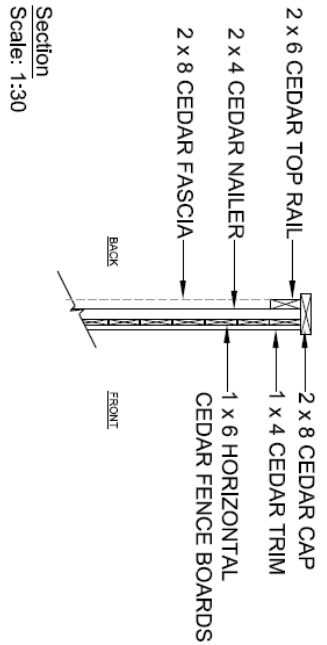
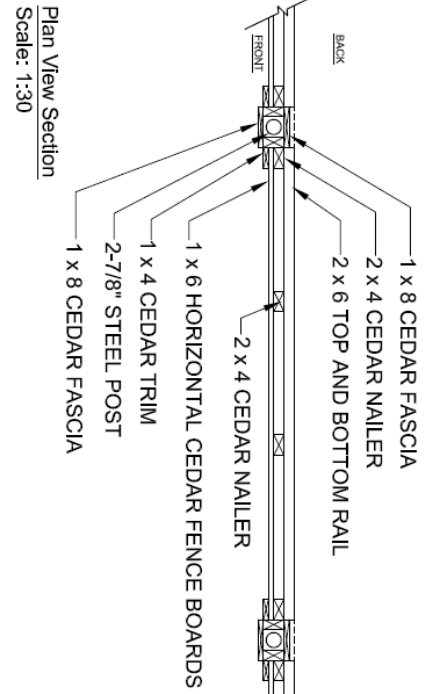
# SCHEDULE "G"



**Drawing Title:** Feature Fence  
**Community:** Walden  
**Client:** Genstar Development Company



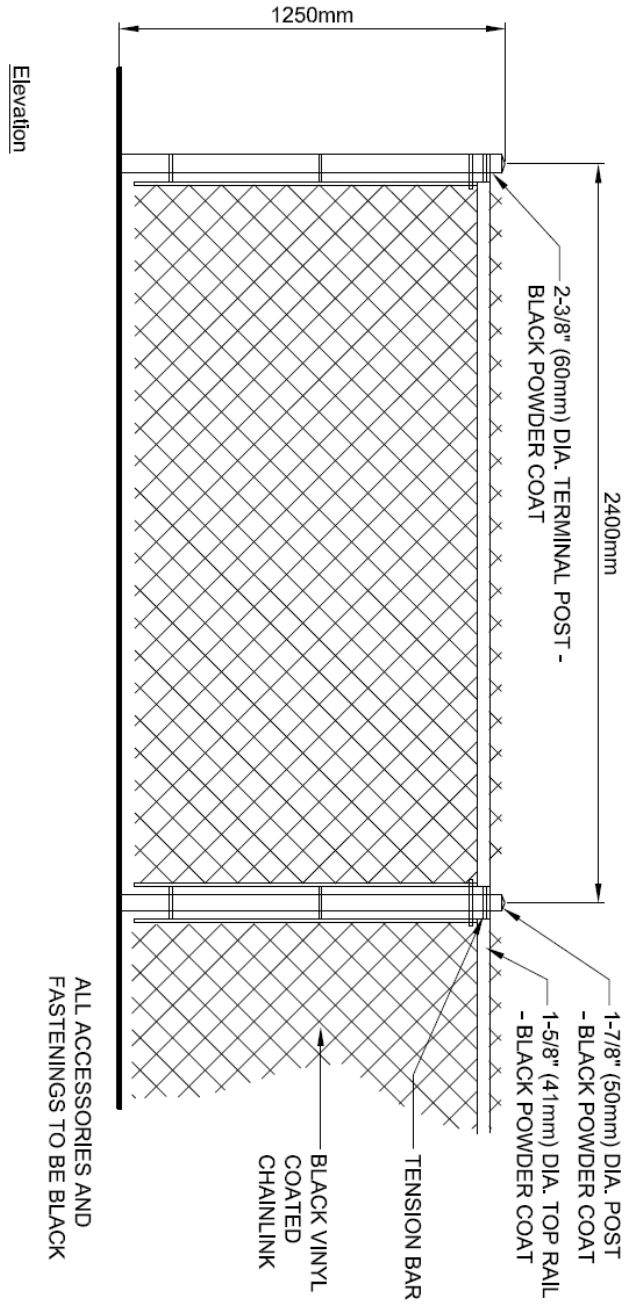
# SCHEDULE "H"



**Drawing Title:** Walkway Fence  
**Community:** Walden  
**Client:** Genstar Development Company



# SCHEDULE "T"



Scale: 1:20  
Date : September 2008

Drawing Title: Chain Link Fence  
Community: Walden  
Client: Genstar Development Company

