

AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS

This Amended and Restated Declaration of Protective Covenants ("Declaration") is made this 10th day of September, 1998, by L.W.D., LLC, a Colorado limited liability company ("Declarant") and consented to by Ingersoll Republic Corporation, a Colorado corporation.

*80.00*

WHEREAS, the Declarant owns property located in Filing No. 1 and Filing No. 3, Villa Casitas, El Paso County, Colorado, according to the plats thereof recorded in Plat Book R-2 at Page 63 and Plat Book T-2 at Page 21, respectively, in the records of El Paso County, Colorado, with said property hereinafter called "Real Property;" and

WHEREAS, Declarations of Protective Covenants for the Real Property ("Original Covenants") were originally recorded May 27, 1971, in Book 2411 at Pages 88 and 102 for Filing No. 1, and October 14, 1971, in Book 2442 at Pages 743 and 745 for Filing No. 3;

WHEREAS, the Declarant, being the Owner of at least seventy-five percent (75%) of the parcels in the Real Property, desires to release the Original Covenants and amend and restate said Original Covenants as provided herein; and

WHEREAS, the Declarant, may sell, dispose of or convey, from time to time, all or a portion of the parcels of said Real Property, and, before selling or conveying any of such parcels, desire to subject all of said Real Property to certain covenants for the protection and benefit of the Declarant, the United States of America and any and all future Owners of parcels of said Real Property, all as hereafter more fully set forth.

NOW, THEREFORE, the Declarant hereby releases the Original Covenants filed in Book 2411 at Pages 88 and 102 and Book 2442 at Pages 743 and 745 in their entirety and does hereby amend and restate them as follows:

The Declarant hereby certifies and declares that it has established and does hereby adopt the following amended and restated plan for the natural protection and benefit of all said Real Property, and has fixed and does hereby fix the following amended and restated protective conditions and covenants which are intended to complement the concept of development for the Real Property in terms of preserving and enhancing the natural quality and appearance of the existing geographic area, insuring the proper development of each individual parcel as contributory to the whole, and to secure an aesthetic as well as economical balance within the spirit of the master plan. The amended and restated restrictions are totally applicable to each and all of the parcels in said Real

1 J. Patrick Kelly El Paso County 098135609  
09/21/1998 08:57  
Doc \$0.00  
Rec \$80.00 1 / 16



AR98652

Property which shall be hereafter held, occupied, leased, sold and/or conveyed. Each of said amended and restated conditions and covenants shall constitute a covenant running with the land and shall inure to the benefit of, be binding upon and pass with said Real Property, and each and every parcel thereof, and shall inure to the benefit of, apply to and bind the respective successors in title or interest of the Declarant. But nothing contained herein shall limit the right of the Declarant to make other uses of the other portions of said subdivision or any other real estate now or hereafter owned by the Declarant and to establish such covenants and conditions thereon, if any, as it may see fit.

**ARTICLE I - ECOLOGICAL AND ENVIRONMENTAL IMPROVEMENT AND MAINTENANCE PROGRAM**

A. Parcels.

By entering into an agreement to acquire a parcel of said Real Property or by accepting conveyance of any such parcel, the Owner of each parcel (except Declarant) agrees to compensate the Declarant for establishing and maintaining the program herein outlined such amount as may be assessed against each Owner (except Declarant) each year. Assessments per acre shall be uniform against all parcels without regard to the extent of said improvements on each individual parcel. The aggregate amount assessed per parcel shall not at any time exceed Fifty Dollars (\$50.00) per year per acre, or any portion thereof, for each individual Owner, provided that this maximum charge may, at the Declarant's option, be increased in proportion to increases in the cost of living index of the U.S. Department of Labor above the index as fixed on the first day of January, 1998. All such assessments shall be paid upon purchase of a lot and on or before January 1st of each year thereafter. Declarant shall not be obligated to pay any such assessments for parcels owned by Declarant.

B. Liens.

Any and all charges made by the Declarant under this Article shall, at the time of the assessment provided herein, constitute a lien in favor of the Declarant on the parcel against which it is made, shall be payable to the Declarant within thirty (30) days after such charge is made and shall be delinquent if not paid within forty-five (45) days of billing. Each such assessment shall constitute the personal obligation of the Owner of the parcel upon which there is a lien. The Declarant shall be entitled to enforce its lien hereunder by following the procedure provided by the laws of the State of Colorado for the enforcement of any lien against real property.

No claim against the Declarant shall constitute a defense or offset in any action by the Declarant for non-payment of any

2

J. Patrick Kelly El Paso County 098135609  
09/21/1998 08:57  
Doc \$0.00  
Rec \$80.00 2 / 16

amounts which may be assessed hereunder. Any lien created hereby shall be subject and subordinate to the lien of any mortgage or deed of trust now or thereafter placed upon the parcel, but such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of the parcel pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the parcel from liability for or in lieu of any assessments thereafter becoming due.

C. Free Access.

Each Owner of a parcel in said Real Property shall permit free access as essential by the Declarant for establishment and maintenance of this program.

D. Non-Profit Organization.

The Declarant may, at any time, create or cause to be created a Colorado non-profit corporation for the operation and maintenance of the program outlined herein. Such a corporation, if created, shall have all of the rights, power and authority possessed by it under the terms of this Declaration. Each Owner shall automatically become a member of such non-profit corporation and shall have the rights and privileges of membership as set forth in the articles and bylaws of the non-profit corporation. The articles and bylaws of the non-profit corporation shall have the form and content deemed appropriate by the Declarant in its sole discretion subject to the limitations of the applicable laws of the State of Colorado. The Declarant may enter into one or more agreements with the non-profit corporation for the maintenance of this program. Upon the execution of any such agreement, the non-profit corporation shall be deemed entirely substituted for the Declarant to the extent provided therein, and the Declarant shall no longer be liable for the performance of such duties or obligations assumed by the non-profit corporation nor shall the Declarant have any right to or claim upon any funds assigned to such non-profit corporation. Notwithstanding any of the provisions of this Article, the rights and duties of the Owners shall not in any way be abridged or enlarged by the formation of any non-profit corporation or by the execution of any agreement between such corporation and the Declarant or any other person.

**ARTICLE II - ECOLOGICAL AND ENVIRONMENTAL REVIEW BOARD**

A. Ecological and Environmental Control.

The review, analysis and approval of all proposed utilization of said Real Property shall be the province of an Ecological and Environmental Control Review Board to be appointed by the Declarant. The Ecological and Environmental Review Board is hereinafter referred to as the "Board."

3

J. Patrick Kelly El Paso County  
09/21/1998 08:57  
Doc \$0.00  
Rec \$80.00 3 / 16

098135609

B. Membership.

The Board shall consist of five (5) members appointed by the Declarant who shall, among themselves, elect a chairman. Each of said persons so appointed shall be subject to removal at the direction of the Declarant at any time and from time to time, and all vacancies on said Board shall be filled by appointment of the Declarant.

C. Responsibilities.

Specific responsibilities of the Board are as indicated in following articles of this Declaration.

D. Interpretation of Covenants.

All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board and its decision shall be final, binding and conclusive on all of the parties affected.

E. Failure to Comply With Order of the Board.

In the event of the failure of any Owner to comply with a written directive or order from the Board, then, in such event, the Board shall have the right and authority to perform the subject matter of such direction or order and the cost of such performance shall be charged to the Owner in question and may be recovered by the Board in an action at law against such Owner.

**ARTICLE III - USES OF THE PROPERTY**

A. Residential Purposes Only.

Said parcels shall be used for residential purposes only and no building or buildings shall be erected, constructed, altered or maintained on any of said parcels other than family dwellings together with outbuildings as approved by the Board.

B. New Building Only.

No building of any kind shall be moved from any other place onto any of said parcels, or from one parcel to another parcel, without the prior written permission of the Board. Manufactured homes are acceptable upon written approval by the Board.

C. No Tents, Shacks, Etc..

No tent, shack, trailer, basement of any unfinished or damaged dwelling, garage or outbuilding shall at any time be used on any parcel as a residence either temporarily or permanently; nor shall any residence of a temporary character be constructed, placed or

4

J. Patrick Kelly El Paso County 098135609  
09/21/1998 08:57  
Doc \$0.00  
Rec \$80.00 4 / 16

erected on any parcel. No commercial vehicles of any kind shall be parked on any parcel except temporarily and solely for the purpose of loading and unloading nor shall any unlicensed vehicles of any kind be parked on any parcel except temporarily unless a Board approved screening enclosure is erected and maintained.

D. Farm Animals, Etc..

"Farm Animals" such as horses, cows, sheep and goats, and "Farm Fowl" such as turkeys, chickens, ducks and geese may be kept on said parcels. However, Farm Animals shall be limited to one (1) animal per acre. All Farm Animals and Farm Fowl shall have adequate shelter and containment so as not to be obnoxious to neighbors.

E. No Commercial Uses, Etc..

No commercial dog-raising or cat-raising of any kind or professional, educational, manufacturing, repairing or trading business shall be conducted either incidentally or principally on any of said parcels, and no part of any parcel shall be used for the purpose of vending liquors or beverages of any kind; and nothing shall be done upon any parcel which may become an annoyance or nuisance to the neighborhood.

F. Mineral Explorations, Etc..

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any parcel, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any parcel. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any parcel.

G. No Noxious Odors.

No noxious or offensive activity shall be carried on upon any parcel, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

H. No Dumping.

No parcel shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers or dug compost pits. All other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

J. Patrick Kelly El Paso County

098135609

09/21/1998 08:57

Doc \$0.00

5 Rec \$80.00 5 / 16

**ARTICLE IV - SITE DEVELOPMENT**

**A. Grading.**

No parcel shall be graded in any manner whatsoever for any purpose without first securing the Board's approval in writing of a grading and/or landscape plan(s) which clearly indicates the extent of such grading, all required engineering calculations, soil disposal or distribution methods proposed, cut and fill depths, etc. Only those areas approved for grading shall be included in the work and all other areas shall be left undisturbed in a natural condition.

**B. Removal of Trees, Rocks, Etc..**

No trees, shrubs, rocks or other such natural elements affecting the environment of the area shall be removed, trimmed, cut or damaged without securing the prior written approval of the Board. Plans submitted for approval must indicate any such possibilities.

**C. Landscaping.**

When each Owner of a parcel constructs a residence he/she shall provide and maintain minimal landscaping of the entire parcel. The Declarant reserves the right, but shall have no obligation, to enter upon any parcel representing an unsightly appearance and to care for and cut grass, and to remove rubbish therefrom, and to charge the Owner of said parcel the actual cost for such services. In the event any of the charges made by the Declarant under this section shall not be paid when due, all costs and expenses, including, but not limited to, attorney's fees, incurred by the Declarant to effectuate collection of said charges, shall be borne by the Owner of the parcel.

**D. Extent of Building Area.**

Front and rear set-backs and side yard dimensions shall not be less than those allowed by the County of El Paso as they presently exist as of the date of this Declaration. If the building area defined in this Declaration ever becomes in conflict with County requirements, the more restrictive criteria shall govern.

**E. Slope & Drainage Easements.**

Each of the Owners of a parcel in said tract will permit free access by Owners of adjacent or adjoining parcels to slopes or drainage ways located on his/her property which affect said adjacent or adjoining parcels, when such access is essential for the maintenance of permanent stabilization on said slopes, or maintenance of the drainage facilities for the protection and use of property other than the parcel on which the slope or drainage

6

J. Patrick Kelly El Paso County

098135609

09/21/1998 08:57

Doc \$0.00

Rec \$80.00 6 / 16

way is located. No Owner of a parcel shall in any way interfere with the established drainage pattern over his/her parcel from adjoining or other parcels unless he/she shall make adequate provisions for proper drainage.

#### ARTICLE V - SUBMISSION OF PLANS

##### A. Submission of Plans.

No site preparation work or construction of any sort whether construction of initial structures or addition to or alteration of existing structure shall be commenced prior to receiving written approval from the Board of plans and specifications describing such work. Submittal of proposed construction plans shall be as follows:

1. Preliminary Design Drawings. Preliminary design drawings shall be submitted indicating the intended floor plan arrangements, elevations, proposed exterior materials, section(s), placement of structure on site indicating existing topography and proposed grading plans, method of access to the site, preliminary landscape plans, and a sketch or rendering of the building sufficient to indicate its proportions and scale. Approval of these preliminary design documents in no way guarantees the subsequent approval of additional submissions.

2. Final Plans and Specifications. Following approval of the preliminary design submittals, two (2) sets of the final construction drawings and specifications shall be submitted to the Board describing in detail the floor plan arrangements, elevations, sections, structural solutions, use of materials, heights and dimensions, precise site placement, fences, grading, drainage plan, access, landscape and patio plans and other pertinent data as may be required to illustrate fully the intended design and use. Physical samples of the exterior materials and colors shall be presented for approval. All decisions of the Board shall be final.

##### B. Approval.

Without in any way limiting the effect or generality of the foregoing, the Board, before giving any such approval, may require that the plans and specifications shall comply with such requirements as the Board in its absolute discretion imposes as to structural features of said building or structure, the type of building material used, or other features or characteristics of said building or structure not otherwise expressly covered by any of the provisions of this instrument, and may also require that the exterior finish and color and the architectural style or character of said building or structure shall be such as in the discretion of

7 J. Patrick Kelly El Paso County 098135609  
09/21/1998 08:57  
Doc \$0.00  
Rec \$80.00 7 / 16

the Board shall be deemed to be suitable in view of the general architectural style and character of buildings erected or to be erected upon the Real Property.

C. No Guaranty.

No such approval shall constitute any representation or guaranty by the Board as to the structural sufficiency of any said building, nor shall any such approval relieve the Owner of said building from complying with any requirement of any public authority having jurisdiction in the premises.

D. Subsequent Use.

The approval of the Board for use on any building site of any plans or specifications submitted for approval, as herein specified, shall not be deemed to be a waiver by the Board of its right to object to any of the features or elements embodied in the plans or specifications if the same features or elements are embodied in any subsequent plans and specifications submitted for approval, for use on other building sites.

**ARTICLE VI - SIZE, CHARACTER AND NATURE OF CONSTRUCTION**

A. Objective.

The sole objective of the provisions of this Article is the establishment of minimum criteria and standards promoting the best interests of all Owners.

B. Size of Dwellings. Low Density. Single family dwellings in low density areas as defined in Article IX of this Declaration shall, if constructed on an one floor plan, contain at least 1200 square feet excluding basement, exterior stairs, garage, carport, porches, patios, decks and balconies. Single family dwellings in low density areas as defined in Article IX of this Declaration shall, if containing more than one floor, contain at least 1200 square feet with exclusions identical to the foregoing.

C. Balconies and Decks.

No balcony or deck shall be higher above the ground than the floor level to which attached except with written approval of the Board. The support of said balconies or decks, when other than a cantilever from the main structure, shall be approved in writing by the Board.

D. Building Material and Exterior Design.

1. Second-Hand Materials. No second-hand material shall be used in the construction of any building or other structure without the prior written approval of the Board and the finish

8 J. Patrick Kelly El Paso County 098135609  
09/21/1998 08:57  
Dec \$0.00  
Rec \$80.00 8 / 16



of all buildings which are of frame construction shall be approved by the Board.

2. Flat Roofs. No flat roofs shall be permitted except where a design concept, in the sole opinion of the Board, contributes to the environmental character of a particular site or area, or when a portion of a building is improved in design by such an element.

3. Rock Roofs. No rock roofs of any sort shall be permitted except as may be required under Article VI D.2., above.

4. Exterior Construction. The location and design of swimming pools, patio covers, gazebos and other extra-building features shall be approved in writing by the Board.

5. Exterior Finish. All exterior colors, textures, and materials shall be approved in writing by the Board.

E. Fences and Other Construction.

1. Fences and Enclosures. The installation of fences and enclosures shall be permitted only with prior written approval of the Board as to exact location, function, materials, heights and color.

2. Mail Boxes. The installation of mail boxes detached from the structures shall be subject to prior written Board approval.

3. Refuse Containers. All outside refuse containers shall be enclosed as to screen such containers from view of any adjacent parcel or from the view of any street or roadway, and shall be permitted only with prior written approval of the Board as to exact location, function, materials, height and color.

4. Television or Radio Antenna. The erection of an exterior radio or television antenna more than ten feet (10') above the ground surface shall not be permitted except when approved in writing by the Board. Satellite dishes are acceptable.

5. Exterior Signs. No billboard or sign of any kind or for any use or purpose whatsoever shall be erected, posted, pasted, painted or displayed upon any parcel or upon any building or other structure thereon, without the prior written permission of the Board, other than one standard sized "For Sale" or "For Rent" sign shall be permitted.

6. Diligence in Construction Required. The work of constructing and erecting any building or other structure shall be prosecuted diligently from the commencement thereof

and the same shall be completed within a reasonable time in accordance with requirements herein contained. No outbuilding shall be completed prior to the completion of the dwelling, except that temporary quarters may be erected for workmen engaged in building a dwelling on the parcel, but such temporary quarters must be removed as soon as the dwelling is completed. Construction time allowed on any structure shall not exceed twelve (12) months.

7. Exterior Alterations. No alteration shall be made in the exterior design or color of any structure unless such alteration, including any addition, shall have first been approved in writing by the Board.

8. Drying Yards. No permanent drying yard equipment shall be permitted unless the yard spaces used for drying are screened from adjacent view by landscape or fencing, and only if approved in writing by the Board.

9. No Physical Obstructions or Planting. No physical obstruction or planting which obscures sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner property within the triangular area formed by the street or driveway property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any parcel within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. Trees shall remain within such distances of such intersection and the foliage line shall be maintained at sufficient height to prevent obstruction of such sight lines.

#### ARTICLE VII - UTILITIES & DRAINAGE EASEMENTS

The Declarant reserves the right to convey and/or dedicate rights-of-way and easements over a six foot (6') perimeter of each and every parcel for public utilities, television and/or communication cables and drainage purposes, but any such easements or rights-of-way shall not prevent Owner from having access to the street upon which his/her parcel abuts.

#### ARTICLE VIII - SPECIAL DISTRICTS

The Declarant may, at any time, create or cause to be created a special district or districts having all or part of the rights, power and authority possessed by it or them under the laws of the State of Colorado. Each parcel served by such districts shall automatically be incorporated into said districts. The purpose of these districts will be to finance, construct and maintain all

10

J. Patrick Kelly El Paso County

098135609

09/21/1998 08:57

Doc \$0.00

Rec \$80.00 10 / 16

public utilities, roads and services within the master planned area.

**ARTICLE IX - RE-SUBDIVISION**

**A. Definitions**

1. "Detached single-family dwelling" shall mean a building designed for and used as a private house for a single family and used as a private house by not more than four (4) unrelated individuals and shall not mean any structure designed for or used as any type of multiple dwelling, including but not limited to, tenements, flats, apartments, doubles, duplexes, connected dwellings, income bungalows, community houses, boarding houses or lodging houses.

2. "Single family" shall mean one or more related individuals living, sleeping, cooking and eating on the premises as a single housekeeping unit and their guests, visitors and household employees and servants but shall exclude, by way of illustration and not limitation, lodgers, roomers, boarders, paying guests or any secular or religious groups of persons not related within the degrees of consanguinity or affinity.

3. "Single family unit" shall mean a space consisting of room or rooms designed for and used as a living area by a single family or designed for a single family and used as a living area by a group of no more than four (4) unrelated individuals and located in a structure designed for and used as a multiple dwelling.

**B. Approval of Re-subdivision Plat.**

No site preparation work or construction of any sort shall be commenced prior to receiving written approval from the Board of the plans for subdividing the parcel upon which the structure is to be erected. The Owner of the parcel upon which the structure is to be erected shall submit to the Board a detailed plan for the re-subdivision of the portion of the parcel or parcels owned by him/her which he/she desires to re-subdivide. The re-subdivision plat shall show, among other things, the proposed building site and location of each structure to be erected thereon, and shall not provide for a greater number of dwellings or family units than are permitted for the parcel or parcels involved as set forth in Section A of this Article IX.

After the approval of the re-subdivision plat by the Board, no structure shall be erected upon the Real Property covered by the particular re-subdivision plat except as specified on that plat unless prior written approval is obtained from the Board. The Board cannot approve any change to any re-subdivision plat which

would permit a greater number of single family dwellings or single family units for the area covered by the original re-subdivision plat than that specified in Section A of this Article IX.

C. Written Approval of Board. All other applications for subdivision involving variances or other ecological or geographic considerations shall require written approval of the Board.

#### ARTICLE X - EXTENSION OF RESTRICTIONS

A. Binding.

This Declaration and the conditions and other provisions hereof run with the land, and unless otherwise altered or terminated by the Declarant, in accordance with the provisions herein contained, shall bind all persons in interest, all Owners of parcels of land within the property, and their heirs, legal representatives, successors and assigns, until the year 2025, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless by mutual agreement between the Declarant and the Owners of a majority in number of parcels, at or prior to the end of the initial term or any successive period of ten (10) years, said covenants shall be amended, changed or terminated in whole or in part. Such amendments, changes or terminations shall be effected by instruments in recordable form, executed by the Owner and filed in the proper office of record.

B. Conveyance of Parcels.

The conveyance of any of the parcels in the property may contain these conditions and covenants by reference, but whether or not such reference is made in the deed or deeds, each and all of these covenants shall be valid and binding on all such grantees.

C. Other Real Property of Declarant.

This Declaration is not intended to create a common scheme of development as to any other real property of the Declarant not specifically described herein and this Declaration shall not be extended to or affect, in any way, the use of any other real property of the Declarant. The Declarant reserves the right to put to a different use or to otherwise restrict the use of all other real property owned by the Declarant and not specifically described herein.

#### ARTICLE XI - BREACH

A. A breach of any of the covenants contained in this Declaration which is not cured within fifteen (15) days from the date that notice of such breach is given by the Board or the Declarant to the Owner on whose parcel such breach occurs, or whose act or omission

12

J. Patrick Kelly El Paso County 098135609  
09/21/1998 08:57  
Doc \$0.00  
Rec \$80.00 12 / 16

constitutes such breach, shall give to the Declarant the right to immediate re-entry upon such Real Property in the event of any such breach. The right of re-entry hereby reserved shall be enforced only by legal or equitable proceedings in a court of competent jurisdiction. The right of re-entry is hereby reserved by the Declarant and shall not devolve to its successors in title to the Real Property or the non-profit organization described in Article I, Section D, but only to the successors in interest of the Declarant.

B. A breach of any of the covenants contained in this Declaration and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by any Owner, by the Declarant or its successor in interest as the Owner of the right of re-entry provided for in the foregoing paragraph, or by the Board. It is hereby agreed that damages at law for such breach are inadequate.

C. The result of every act or omission whereby any of the covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Declarant or its successor in interest as the Owner of said right of re-entry, or by the Board.

D. The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

E. The failure of the Declarant, the Board or any Owner to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability on the Declarant or said Board.

F. A breach of the covenants contained in this Declaration shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on any parcel, but any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure or in a trustee's sale or otherwise. A lender who acquired title by foreclosure or deed in lieu of foreclosure shall not be obligated to cure any breach of the covenants which occurred prior to such acquisition of title if such breach was or is non-curable or was a type of breach which is not practical or feasible to cure.

#### ARTICLE XII - AMENDMENTS

This Declaration or any of the protective covenants or conditions herein may be amended at any time and in any manner by a written instrument signed by the Declarant and the Owners of

seventy-five percent (75%) or more of the parcels herein described, except that the covenant in Article XIII may not be amended except by a written instrument signed by the United States of America, the Declarant and the Owners of fifty-one percent (51%) or more of the parcels herein described. Said amendment may apply to any one or more parcel, to any class of parcels as defined in Article IX of this Declaration or to all parcels herein described. No such amendment shall be effective until the written instrument has been recorded at the office of the Clerk and Recorder of El Paso County, Colorado.

#### **ARTICLE XIII - UNITED STATES MILITARY ESTABLISHMENT**

The property is joined on the west at the intersections of Ranges 65 and 66 West of the 6th P. M. by the United States military establishment known as Fort Carson, which is an active establishment. By entering into an agreement to acquire a parcel of the Real Property covered by this Declaration, or by accepting conveyance of any such parcel, the Owner of each parcel assumes the risk of the conditions created by the activities carried on at Fort Carson, waives any and all specific notice of the existence of such conditions, waives all claims for damages or losses to their person or property which may be caused by any act or failure to act by any officer, agent or employee of the United States in the conduct of the affairs and activities of this United States military establishment, and agrees to never present or prosecute against the United States of America or any of its officers, agents or employees, any claims for damages resulting from the activities carried on at this United States military establishment. The covenant and waiver contained in this Article may not be changed, amended or altered in any way except by a written instrument signed by the United States of America, the Declarant, and the Owners of fifty-one percent (51%) or more of the parcels herein described. The covenant and waiver contained in this Article shall run with the land and shall be binding upon all successors in title and notwithstanding any other provisions in this Declaration shall be binding forever without the necessity of any extension thereof unless changed, amended or altered as provided in this Article. A breach of the covenant contained in this Article may be enforced by an appropriate legal proceeding either in equity or at law, by any Owner, by the United States of America or by the Declarant or its successors in interest. The waiver contained in this Article shall be for the benefit of any Owner, the United States of America, the Declarant or its successor in interest.

#### **ARTICLE XIV - CONSTRUCTION OF COVENANTS**

These covenants shall be liberally construed to carry out the purposes of this Declaration for the protection and benefit of the Declarant and of the Owners of the parcels other than the one upon which the covenant is being applied. No particular enumeration shall be considered as in any way limiting matters of a general

kind. Any use which is not specifically permitted by these covenants shall be considered as being prohibited regardless of whether such use is the principal or incidental use being made of the Real Property.

**ARTICLE XV - ASSIGNMENT**

The Declarant reserves the right to assign any part or all of its interests and rights contained in this Declaration and no Owner shall have any interest which in any way affects the Declarant's right to make such an assignment.

**ARTICLE XVI - SEVERABILITY**

Should any covenants contained in this Declaration be void or be or become unenforceable in law or in equity, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

**ARTICLE XVII - WAIVER**

A waiver of a breach of any of the foregoing conditions or covenants shall not be construed as a waiver of any succeeding breach or violation thereof or of any other condition or covenant.

IN WITNESS WHEREOF, the undersigned Owner has executed this Amended and Restated Declaration of Protective Covenants as of the date first set forth above.

L.W.D., LLC  
a Colorado limited liability company

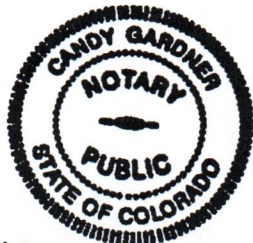
By: *Allen Van Wye*  
Manager

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

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of September, 1998, by Allen Van Wye, as Manager of L.W.D., LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: 7/6/2002



*Candy Gardner*  
Notary Public

15 J. Patrick Kelly El Paso County 098135609  
09/21/1998 08:57  
Doc \$0.00  
Rec \$80.00 15 / 16

CONSENTED TO BY:

INGERSOLL REPUBLIC CORPORATION  
a Colorado corporation

By: [Signature]  
Its: President

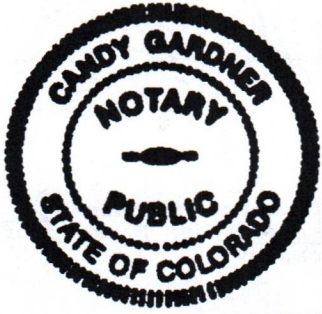


STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this 10<sup>th</sup>  
day of September, 1998, by [Signature], as President of  
Ingersoll Republic Corporation, a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: 7/16/2002



My Commission Expires 07/06/2002

[Signature]  
Notary Public

J. Patrick Kelly El Paso County  
09/21/1998 08:57  
Doc \$0.00  
Rec \$80.00 16 / 16

098135609

VILLACOV.AMD