

~~AMENDED AND RESTATED~~ DECLARATION

~~of~~

Conditions, Covenants, Restrictions, Easements and Charges  
Affecting the Real Property known as  
ROXBURY PARK SUBDIVISION

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AMENDED AND RESTATED DECLARATION

of

Conditions, Covenants, Restrictions, Easements and Charges  
Affecting the Real Property known as Roxbury Park Subdivision

THIS AMENDED AND RESTATED DECLARATION of Conditions, Covenants, Restrictions, Easements and Charges Affecting the Real Property known as Roxbury Park Subdivision ("Declaration" or "Covenants") is made effective upon recording.

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RECITALS:

A. Gates Land Company, a Colorado corporation, ("Declarant") as the owner at the time of all the Lots in Roxbury Park Subdivision (hereinafter the "Subdivision"), subjected the Subdivision to the Declaration of Conditions, Covenants, Restrictions, Easements and Charges Affecting the Real Property known as Roxbury Park Subdivision by recording such document on February 22, 1978 at Reception No. 406715, Book 3010, Page 774, El Paso County Clerk and Recorder (the "Original Declaration"). The Original Declaration provides for the preservation of the values and amenities of the Subdivision, provides for maintenance and for the convenience of its residents, and subjects the Subdivision to the covenants, restrictions, easements, charges and liens contained in the Original Declaration. The Original Declaration is for the benefit of the Subdivision and for each owner of a Lot within the Subdivision and inures to the benefit of and passes with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest of any owner thereof, until amended pursuant to its terms.

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¶ WITNESSETH:¶

¶ WHEREAS, Declarant is ...

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B. Among other things, the Original Declaration established an Architectural Control Committee with responsibilities as set forth in the Original Declaration. The Architectural Control Committee succeeded to any approval authority the Declarant had reserved in the Original Declaration.

C. The Subdivision is one of seven residential areas subject to covenants, conditions and restrictions, by the Declarant, all of which have substantial similarities and all of which established an Architectural Control Committee. In addition to Roxbury Park, the seven subdivisions consist of Huntington Park, Wedgewood Park (which includes the replatted area known as Wedgewood Place), Regency Park, Oakhurst Park Filing No. 1, Broadmoor Valley Park Filing No. 1, and Oak Bridge Park Filing No. 2 (collectively "the seven residential areas").

**Deleted:** liens (sometimes herein referred to as "Covenants") hereinafter set forth

- D. On August 5, 1997, the Architectural Control Committees for the seven residential areas agreed to merge into one single Architectural Control Committee, as reflected in the Statement of Merger of Architectural Control Committees recorded on September 10, 1997 at Reception No. 97110273, El Paso County Clerk and Recorder. As a result, the functions of the Architectural Control Committee provided for in the Original Declaration were performed by the merged Architectural Control Committee established by such document.
- E. On September 18, 2017, Broadmoor Hills Homeowners Association ("Association") was incorporated for the purposes set forth in its Articles of Incorporation, as may be amended from time to time, including to provide an entity to further the interests of the seven residential areas and to enforce the Declarations of the seven residential areas.
- F. On January 22, 2018, the Architectural Control Committee assigned its rights under the Declarations of the seven residential areas to the Association, as reflected in the Assignment of Rights of Architectural Control Committee to Broadmoor Hills Homeowners Association recorded on February 13, 2018 at Reception No. 218016935, El Paso County Clerk and Recorder.
- G. Pursuant to Section 309 of the Original Declaration, any two or more sections of the Original Declaration may be amended or added to by an instrument signed and acknowledged by the Owners of at least 3/4 of the Lots in the Subdivision.
- H. The Owners of at least 3/4 of the Lots in the Subdivision wish to amend and restate the Original Declaration and have determined this Declaration to be reasonable and not burdensome.
- I. The purposes of this Declaration include, but are not limited to, the following: delete Declarant language that is no longer applicable, update the Original Declaration to reflect changes in the Subdivision, to recognize the Association's role in the Subdivision following the merger of the prior Architectural Control Committees and assignment of rights, and to allow the Owners to efficiently address the Subdivision's concerns.
- The Original Declaration is replaced by this Declaration.

## ARTICLE I

### Covenants to Preserve the Residential Character of the Subdivision

#### Single Family Residential Restrictions.

Section 101. All lots and building sites in the Subdivision shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for ~~one~~ single-family dwelling. ~~No accessory dwelling~~

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~~units, whether attached to or detached from the approved single-family dwelling, will be permitted.~~ No business, profession or other activity conducted for gain shall be carried on or within any lot or building site, ~~provided that an Owner may maintain a home office that does not involve visitation by employees, customers, clients, suppliers or other business invitees and has no external effect on the Subdivision.~~

Section 102. No structure shall be erected within the ~~Subdivision~~ except single-family dwellings and those accessory buildings and accessory structures which have been approved by ~~the Association. Only the one single-family dwelling, may be used for living purposes. No accessory building may be used for living quarters, provided that an approved guest house may be used for the temporary housing of guests; guest houses may not be leased separately from the rest of the lot. Guest houses will not have kitchen facilities. No other structure, accessory building,~~ trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other structure may be placed on any building site before completion of the dwelling upon such building site except with the ~~Association's written~~ permission.

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Section 103. No tent, treehouse, barn, camping quarters or any temporary structure shall be placed on any lot at any time except with ~~the Association's written~~ permission.

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Section 104. All construction shall be new. No building previously used at another location, nor any building or structure originally constructed as a mobile dwelling or structure may be moved onto a lot or building site, except as expressly provided in Section 108.

Section 105. No building materials shall be stored on any lot, except temporarily during continuous construction of a building or its alteration or improvement, unless enclosed in a service yard or within a building so as not to be visible from any neighboring property or adjacent streets.

Section 106. A structure shall not be occupied in the course of original construction until substantially completed. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 107. The exterior of all buildings or other structures must be completed within one (1) year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty (60) days without ~~the Association's written~~ permission, the unfinished structure or unfinished portion thereof shall be deemed a nuisance and may be removed by ~~the Association~~ at the cost of the owner.

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Section 108. Temporary buildings for use in connection with construction ~~or reconstruction~~ within the Subdivision or in connection with sales of new homes or lots may be erected or maintained and model homes may be used and exhibited by ~~a builder~~, by anyone who owns or holds a contract or option to acquire two or more lots in the Subdivision,

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and, with ~~the Association's~~ permission, by any lot ~~Owner~~. The appearance and placement of temporary buildings permitted for construction or sales purposes must be approved by ~~the Association~~. Such temporary buildings shall be promptly removed when no longer used for the designed purposes.

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Section 109. No derrick or other structure designed for use in or used for boring or drilling for water, oil, or natural gas shall be permitted upon or above the surface of said property, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under said property.

Section 110. The Subdivision is intended to be Owner-occupied. However, any Owner has the right to lease or allow occupancy of the Lot subject to the following conditions:

- a) All leases will be for or of the entire Lot. Subleasing is not permitted.
- b) No lease will be for less than 90 days. Short-term lease arrangements, such as but not limited to VRBO and Airbnb, are not permitted.
- c) All leases must be in writing.
- d) The Owner is responsible for providing the tenants with copies of the Declaration and any rules and regulations and for ensuring that the tenant complies with the provisions of such documents. The Owner will be responsible for the actions of the tenants.
- e) The Owner is responsible for providing the Association with valid off-site contact information if the Owner leases the Lot.

#### Easements.

Section 111. ~~Declarant, for itself and~~ its successors and assigns, ~~reserved~~ perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across.

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each of the five (5') foot strips along and adjoining the side boundary lines of each lot

and

each of the seven (7') foot strips along and adjoining the rear boundary lines of each lot,

for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage, and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes.

Section 112. Easements in addition to those above described may have been or may hereafter be granted by duly recorded conveyance.

Section 113. All utilities except lighting standards and customary service devices for access, control or use of utilities shall be installed underground.

Density, Set Back and Quality Standards.

Section 131. No more than one dwelling shall be erected or maintained within any lot as established by the recorded plat or the combination of two or more lots or portions thereof as was originally approved by Declarant or the Architectural Control Committee prior to the assignment of rights to the Association and aggregating not less than 15,000 square feet.

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Section 132. No private passenger motor vehicles owned by, belonging to, used, leased or controlled by an Owner or his tenant shall be parked overnight on any street. The structures on each lot or building site shall include a two-car fully enclosed garage or such equivalent garage arrangements as may be approved. Carpports are not permitted. The site improvements on each lot or building site shall include adequate driveway or other similar off-street space for temporary parking of two (2) private passenger motor vehicles. All driveways shall be improved with concrete or asphalt surface paving unless otherwise approved by Association.

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Section 133. Except with the Association's approval, no building, porch, eave, overhang, projection or other part of a building shall be located within forty (40') feet of a front lot line, or within ten (10') feet of a side lot line, or, where the side lot adjoins a public street within twenty-five (25') feet of such side lot line adjoining a public street. Such approval may be given only (a) for fireplace projections integral with the building or (b) for eaves and overhangs or (c) for construction which extends less than fifteen (15') feet into the setback areas adjoining public streets or less than ten (10') feet into any other setback area and which Association determines to be consistent with, or required by the lot terrain or lot shape and consistent with superior design. No hedge more than two (2') feet high shall be installed or maintained along the street adjacent to the lot. This is to ensure unobstructed sight lines of street and pedestrian traffic for safety purposes. The Owner is responsible for ensuring construction conforms to the building code, zoning code and subdivision regulations of the City of Colorado Springs, which regulations may vary from the provisions of this Section and other Sections. When such regulations vary, the more restrictive will be followed unless otherwise approved.

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Section 134. No dwelling shall be erected which has an Architectural Floor Area of less than 2,200 gross square feet.

Architectural Floor Area is the sum of the following percentages of gross square-foot areas:

Gross square feet on main living level, ~~-~~ 100%

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Gross square feet on finished upper stories above main living level or garden level, ~~-~~ 75%

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Gross square feet on finished garden level with direct walkout access to outside, ~~-~~ 50%

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Gross square feet on finished basement level, ~~-~~ 25%

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Gross square feet of balconies, raised decks, covered patios, ~~-~~ 25%

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Gross square feet of attached garage area in excess of 400 square feet, ~~-~~ 50%

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Gross square feet covers the exterior perimeter of the area being measured.

Section 135. No dwelling or other structure shall exceed thirty-five (35') feet in height from the lowest elevation of the natural grade along the perimeter of the structure or extend more than eighteen (18') feet above the highest natural elevation on the lot except with the Association's prior written permission. In granting or withholding such permission Association shall give primary consideration to the protection of views from adjoining lots.

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Section 136. Architectural standards are established to the end that the Subdivision may benefit from the natural advantages of its particular location. While the standards for architectural style are flexible, compatibility with the informal natural environment is required. Contemporary, Southwestern and Western styles typical of the Pikes Peak Region are desirable. Formal styles such as French Provincial, English Tudor, and Colonial will not be approved except in modified forms. All buildings must be designed to fit the natural contours of the lot without excessive grading. All buildings shall be designed and all plans signed by a registered architect or by a qualified designer. The Association may adopt design guidelines from time to time to provide further guidance regarding the architectural standards that are more broadly established in this Declaration.

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Section 137. All buildings shall conform to the following material and appearance standards:

a) Exterior materials shall be ignition-resistant material such as brick, stone, stucco, fiber-cement board or other natural material approved by the Association.

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Deleted: Declarant. Manufactured siding such as masonite will not be approved.

b) Aluminum, wood, wood-clad, fiberglass, composite and vinyl windows are permitted. All aluminum windows shall be anodized and painted or coated a color to blend with the color of the building.

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c) Gutters, if installed, shall be painted the same color as the adjoining trim color of the building.

d) Exposed concrete shall be stuccoed and painted or textured in a



manner approved by Association.

e) All roof areas shall be of tile, slate, metal/stone-coated metal, dimensional asphalt shingles or such other material as may be approved by Association.

f) The color of all exterior materials shall be in harmony with the external appearance of the structure's surroundings, including earth tones and neutral colors. All exterior materials must be approved by the Association.

Section 138. Fencing shall be limited to back yard privacy areas adjoining the primary dwelling. All fences and walls shall be visually compatible with the primary dwelling, including both scale and use of materials. Any painted, or stained coloration of fences shall be consistent with the coloration of the primary dwelling. No fencing shall be permitted in the Natural Preserve (see Sections 161.c and 401). The Association may adopt design guidelines to provide further guidance regarding fencing for owners to maintain the character and visual aesthetic of the community. Fencing must be approved by the Association.

Section 139. Within six (6) months after completion of a dwelling or within any extension of that period as may be permitted, all yards and open spaces, except as prevented by subsequent construction activities, shall be landscaped and thereafter maintained in a good, attractive and healthy condition. Landscape should include areas of natural vegetation, and preservation of existing trees, scrub oak and other natural vegetation is intended. No existing trees, surface boulders, or scrub oak shall be removed from any lot unless required by construction activity and unless approved by Association. Notwithstanding the foregoing, trees and scrub oak may be removed pursuant to a fire mitigation plan prepared by the fire chief, fire marshal, fire protection district, Colorado state forest service, or an individual or company certified by the local government to prepare fire mitigation plans. The use of gravel, small rocks, and paving as landscape materials is not desirable, for full lot coverage. For lots 3, 7, 10 and 18, the landscape shall include trees planted along both sides of the full length of the driveway access strip at not less than twenty (20') feet intervals on each side.

Section 140. Any accessory building or structure shall harmonize in appearance with the dwelling situated on the same lot and must be approved by the Association.

Section 141. Satellite dishes, antennae or other devices for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall not be erected, used or maintained by Owners on any portion of the lot except as allowed by federal law.

Section 142. Each Owner shall maintain the exterior of the dwelling, any accessory building, and all other structures, lawns and landscaping, walks and driveways, in good condition and shall cause them to be repaired or replaced as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surfacing becomes weatherbeaten or worn off.

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Periodic exterior maintenance also includes maintenance, repair and replacement of gutters, downspouts, roofs, paving, lawns, shrubs, trees, other landscape material, fences, signing, mailboxes and outdoor lighting.

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Section 143. In the event of damage to or destruction of structures on a lot, the Owner will promptly remove debris and repair or reconstruct the damaged structure in a manner consistent with the original construction (subject to any modifications that may be required to comply with building code). Detailed plans and specifications for the repair and/or reconstruction must be approved by the Association prior to commencement. Construction must be completed within one (1) year unless otherwise approved by Association. If the Owner elects not to rebuild, the Owner shall promptly clear the lot of all debris and continue to maintain the lot in a neat and attractive condition consistent with this Declaration.

**Deleted:** Section 143. Any dwelling or building which may be destroyed in whole or in part by fire, windstorm, or for any other cause or act of God must be rebuilt or all debris must be removed and the lot restored to a slightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six (6) months.¶

Section 144. No lot may be further divided or subdivided, nor may any easement or other interest in less than the whole be conveyed by the Owner of the Lot without the Association's written permission.

Section 145. Wildfire is a danger that affects the entire Subdivision, and the creation and maintenance of defensible space on each lot is critical to fire mitigation in the Subdivision as a whole. To this end, each Owner should take fire mitigation steps and provide defensible space on the lot in accordance with the design guidelines and/or rules and regulations the Association adopts, which (if adopted) will be based upon the recommendations of the Colorado State Forest Service, the local fire department or other similar organizations.

#### Living Environment Standards.

Section 151. Each Owner shall prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or in the specific area.

Section 152. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

Section 153. All maintenance equipment shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

Section 154. All outdoor clothes poles, clothes lines and other facilities for drying or airing of clothing or household goods shall be placed or screened by fence or shrubbery so as not to be visible from neighboring property or adjacent streets.

Section 155. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material, or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside so as to be visible from any neighboring property or street, except during refuse collections.

Section 156. No noxious or offensive activity shall be carried on upon any lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried out on any lot or in any living unit. No annoying lights, sounds or odors shall be permitted to emanate from any living unit.

Section 157. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes shall be located, used or placed on any structure or within any building site.

Section 158. All yards and open spaces and the entire area of every lot on which no building has been constructed, shall be kept free from plants or weeds infected with noxious insects or plant diseases and from weeds which are likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which cause undue danger of fire.

Section 159. In order to effect insect, weed or fire control or to remove nuisances, Association has the right (but not the obligation) at its election to enter upon any lot upon which a building has not been constructed and to mow, cut, prune, clear and remove from the premises brush, weeds or other unsightly growth which in the Association's opinion, detracts from the overall beauty, setting and safety of the area, and to remove any trash without such entrance and removal being deemed a trespass, (reference Section 204).

Section 160. No material change may be made in the ground level, slope, pitch or drainage patterns of any lot as fixed by the original finish grading except after first obtaining the Association's prior written approval. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture, provided that the Association is not liable for an Owner's failure to maintain proper grading.

Section 160a. The Association may adopt and amend rules and regulations to further the provisions of this Declaration, including but not limited to these Living Environment Standards.

#### Designation and Use of the Natural Preserve.

Section 161. Certain areas within lots have been designated as Natural Preserve and are shown and defined in the map of Section 401. The Natural Preserve shall be used by each lot owner only in such a manner as is consistent with the preservation of the natural growth and, except for approved driveways, shall not be subjected to any kind of intensive or destructive use or any activity which might result in permanent damage to the existing natural growth. In amplification and not in limitation of this general restriction the following specific restrictions are imposed on the Natural Preserve:

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a) No planting or cultivation shall be permitted except planting and cultivation of plants native to the Pikes Peak region.

b) No alteration of ground conditions and no clearing of living growth shall be permitted except for approved driveways.

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c) No structures or installations of any kind shall be permitted except for approved driveways.

d) No vehicles or conveyances of any type shall be permitted within the Natural Preserve except on approved driveways or except to preserve order or to protect, preserve or maintain the Natural Preserve.

e) No activity tending to produce litter shall be permitted.

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f) A portion of the Natural Preserve, identified as the 100-year flood plain on the recorded plat of Roxbury Park, is a natural drainage channel. In addition to the other restrictions applicable to the Natural Preserve, no obstruction of any kind to the natural flow of water through this drainage channel shall be allowed.

Section 162. Tracts A and B (the islands located in Roxbury Court and Roxbury Circle, respectively) have also been designated as Natural Preserve, shall be maintained and used by the owners of such tracts only in the manner specified by Section 161, and shall be kept free of any litter or debris.

#### Additional Use Restrictions.

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Section 171. Subject to any additional rules and regulations the Association may adopt to further clarify these restrictions, the following will apply:

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a) No animals except an aggregate of three (3) domesticated dogs or cats and except domesticated birds and fish and other small domestic animals permanently confined indoors shall be maintained within the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes.

Deleted: time grant permission, which permission shall be revocable:¶

a) No aerial or antenna for transmission of radio or television or other electronic signals may be maintained or erected within

Deleted: Subdivision. No electronic or radio transmitter of any kind other than garage door openers shall be operated in or on any structure or within any building site.

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b) No boat, trailer, camper (on or off supporting vehicles) van, tractor, commercial vehicle, mobile home, motor home, motorcycle, any towed trailer unit, any truck, any vehicle designed principally for hauling articles or material rather than for the private conveyance of individuals, or any other vehicle excepting only a private passenger vehicle, shall be parked on any street or within any lot or building site except in a completely enclosed structure, or fully screened in a manner approved by Association so as not to be visible at ground level from an adjoining public street.

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c) No stripped down, partially wrecked, or junk motor vehicle or sizeable part thereof, shall be permitted to be parked on any street

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or on any lot in such manner as to be visible at ground level from any neighboring property or street.

~~d)~~ No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed structure which screens the sight and sound of the activity from the street and from adjoining property.

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~~e)~~ The only signs permitted on any lot or structure shall be:

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One sign of customary size for offering of the signed property for sale or for rent;

One sign of customary size for identification of the occupant and address of any dwelling;

Such multiple signs for sale, administration and directional purposes ~~as~~ are approved by Association;

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Such signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and

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Such signs as may be required by law or as may be permitted in the rules and regulations.

There shall not be used or displayed on any lot or structure any signs except those mentioned above or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental. All permitted signs must be professionally painted, lettered and constructed.

#### Architectural Control.

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Section 172. No Owner shall ~~commence, erect, place, demolish, move~~ onto a lot, ~~permit~~ to remain on any lot or ~~alter~~ in any way, ~~any~~ exterior ~~modification to the lot, including to any existing structure or landscaping, except in accordance with plans, specifications and other information submitted to Association and approved by Association~~ not more than two (2) years before start of the construction, alteration or installation. Matters which require the approval of Association include but are not limited to: the exterior appearance, material, color, height, location of each structure, drive, walk, fence and mailbox; ~~grading of site, site lighting, location, size and type of any landscape material including grass, ground cover, ornamental rock, shrubs and trees; and accessory structures.~~

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Section 173. In granting or withholding approval Association shall heed the standards specified in these Covenants and shall also consider among other things: the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings, the proper relations of the structure to the environment and to surrounding uses, the degree, if any, to which the proposed structure will cause intrusions of sound, light or other effect on neighboring sites beyond

those reasonably to be expected in an urban residential area from considerate neighbors.

Section 174. ~~The Association may require that all~~ plans, samples and other materials ~~be submitted in duplicate, and may establish a~~ minimum scale ~~for~~ such plans. The plot plan, shall show the location of all buildings, drives, walks, fences and any other structures and the existing houses on all sides of the lot. Proposed new contours throughout the lot and abutting street elevations on all sides shall also be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. If requested, a soils report for the building site shall be supplied to ~~Association~~. Landscaping plans shall show the location of all landscaping elements, including grass, ground cover, shrubs, trees and other landscape materials for all the area of the lot not covered by structures. The size and type of all new plant materials shall be indicated. ~~Mitigation measures needed to prevent water run-off and erosion to adjacent lots should be considered during extensive construction of the property.~~

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Section 175. A written statement of the ~~Association's~~ approval or disapproval or other action, acknowledged by an ~~Association officer~~, shall establish the ~~Association's~~ action. ~~The Association will respond to Owner's application within 45 days of receipt of the completed application and all information the Association reasonably requires, provided that this time period may be extended to 60 days if the request involves a variance, new construction of a dwelling or a substantial reconstruction of a dwelling. If the Association fails to respond to the application within the required time frame, the applicant may send a written notice, via certified mail, to the Association's registered agent, that the applicant intends to proceed with the plans as submitted. Unless the Association issues a written disapproval within 15 days of receipt of the applicant's notice, approval will not be required. Notwithstanding the foregoing, nothing herein authorizes anyone to construct or maintain an improvement that is otherwise in violation of this Declaration or of the design guidelines.~~

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## ARTICLE II

### Association Powers and Responsibilities

#### Variances.

Section 201. ~~Association~~ shall have authority to grant for a lot or building site a variance from the terms of one or more of Sections 107, 133, 134, and 143 subject to terms and conditions fixed by ~~Association~~ as will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to exceptional and extraordinary circumstances, literal enforcement of all of those Sections will result in unnecessary hardship. Following an application for a variance:

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a) Association shall call a meeting of Owners of lots in the Subdivision, notice of which meeting shall be given to the Owners at least twenty (20) days in advance, at which meeting all Owners shall have opportunity to appear and express their views.

b) Whether or not anyone appears at the meeting in support of or in opposition to the application for variance Association shall either grant or deny the variance in accordance with the time frame set forth in Section 175.

c) A variance granted hereunder shall run with the lot or building site for which granted.

d) If a variance is denied another application for a variance for the same lot or building site may not be made for a period of one (1) year.

e) A variance shall not be granted unless Association shall find that all of the following conditions exist:

i. the variance will not authorize the operation of a use other than private, single-family residential use;

ii. owing to the exceptional and extraordinary circumstances, literal enforcement of the Sections above enumerated will result in unnecessary hardship;

iii. the variance will not substantially or permanently injure the use of other property in the Subdivision;

iv. the variance will not alter the essential character of the Subdivision;

v. the variance will not weaken the general purposes of these Covenants;

vi. the variance will be in harmony with the spirit and purpose of these Covenants;

vii. the circumstances leading the applicant to seek a variance are unique to the lot or building site or its owner and are not applicable generally to lots in the Subdivision or their owners.

#### Officers and Agents Excused from Liability.

Section 203. The Association, its officers and directors, and any committee members, shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud.

#### Association Can Remedy Violations.

Section 204. In addition to the rights set forth in Section 306, the Association will have the right to enter a lot and remedy a violation.

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Section 202.¶

a) Three years after Declarant first conveys a lot in the Subdivision to a purchaser or at such earlier time as Declarant has conveyed to purchasers an aggregate of eleven (11) lots, Declarant shall transfer all of its functions, rights and powers of granting or withholding approval, permission or consent and its other functions, rights and powers under Sections 102, 103, 107, 108, 131, 132, 133, 135, 136, 137, 139, 158, 159, 160, 161, 162, 171, 172, 173, 174, and 201 and its responsibilities under Section 175 to an Architectural Control Committee of three (3) individuals, one to be appointed and to serve at the pleasure of Declarant, the other two to be elected by the lot owners (other than Declarant) each of whom shall have one (1) vote per lot owned. One of the first two committee members elected by the lot owners shall be elected for a one-year term and the other for a two-year term, and thereafter such members shall be elected for two-year terms, one of which begins and ends in odd-numbered calendar years, the other in even-numbered calendar years. Declarant shall (and in case Declarant fails to act any one or more lot owners may) call a meeting of lot owners or circulate written ballots among all the lot owners to elect two individuals to the committee. The committee shall adopt and from time to time may revise by-laws to provide for the procedures and actions of the committee and for future election by lot owners.¶

b) Subject to Section 202 (a) the rights and powers of Declarant under these covenants shall pass to the successors and assigns of Declarant, and Declarant may, by written instrument of ...

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**Deleted:** and agents of Declarant, and the members of the Architectural Control Committee

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**Deleted:** Until the time for establishment of the Architectural Control Committee as provided by Section 202 (a) Declarant may, and after its establishment the Architectural Control ...



Prior to exercising this right, the Association will give notice to the Owner of the lot where a breach occurs or which is occupied by the persons causing or responsible for the breach, which notice shall state the nature of the breach, and the Association's intent to invoke this Section unless within a reasonable period stated in the notice, not less than five (5) calendar days, the breach is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the breach is not cured and terminated, the Association may enter the lot and cure or terminate the breach at the expense of the Owner or Owners so notified, and entry on Owner's property as necessary for such purpose shall not be deemed a trespass. The cost so incurred by the Association shall be paid by the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of twelve (12%) percent per annum and plus cost of collection, shall be a lien on the ownership interest in the lot (including improvements thereon) of each person so notified and shall in all respects be the personal obligation of the Owner. The Association may bring an action at law for recovery of the costs so incurred by it, plus interest and cost of collection against the Owner personally obligated to pay and may bring an action to foreclose the lien against the lot and improvements subject to the lien and there shall be added to the amount of such obligation the cost of preparing and filing the complaint in such action, and the judgment in any such action shall include interest as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action.

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Section 205. The Association may assign its approval and enforcement rights established in this Declaration to another entity or to an Architectural Control Committee in the event the Association permanently dissolves or ceases to exist.

Section 206. The foregoing specified rights and remedies shall not limit the right of any lot owner to enforce these Covenants as otherwise may be provided by law or equity.

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### ARTICLE III

#### General Provisions for Effect of these Covenants

##### Definitions.

Section 301. The following words and expressions as used in these Covenants have the meanings indicated below unless the context clearly requires another meaning:

Accessory Building: Detached garages, patios, swimming pools, dressing rooms for swimming pools, separate guest houses without kitchen, shed, and other buildings customarily used in connection with the single-family residence.

Deleted: separate servants' quarters without kitchen...



Association: Broadmoor Hills Homeowners Association.

**Building Site:** A lot as established by the recorded plat or the combination of two or more lots or portions thereof as approved by Declarant and aggregating not less than 15,000 square feet.

**Cost of Collection:** All expenses and charges incurred, including attorney's fees.

**These Covenants:** This Declaration and the provisions contained in it.

**Lot:** Each area designated as a lot in the recorded plat of the Subdivision.

**Lot Lines:** Front, side and rear lot lines shall be the same as defined in the zoning regulations of the City of Colorado Springs in effect from time to time; in the absence of such a definition a front lot line is the boundary line between the lot and the public street which affords the principal access to the lot; a side lot line is any boundary line which meets and forms an angle with the front lot line. Other lot lines are rear lot lines. In the case of lots 3, 7, 10, and 18, the approved placement of primary building shall determine the front, side and rear lot lines.

**Owner:** Person having fee simple legal title to a lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time.

**Structure:** Any thing or device other than trees and landscaping the placement of which upon any building site might affect its architectural appearance including by way of illustration and not limitation any dwelling, building, garage, porch, shed, greenhouse, guest house, driveway, walk, patio, swimming pool, tennis court, fence, mailbox, wall or outdoor lighting. Structure shall also mean an excavation or fill the volume of which exceeds five (5) cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any lot.

**The Subdivision:** The area subdivided as Roxbury Park Subdivision, according to the plat recorded in the office of the Clerk and Recorder of the County of El Paso and State of Colorado. The Subdivision is delineated in the map Section 401 of these Covenants.

**Enumerations Inclusive:** A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.

**Gender and Number:** Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of any gender and to corporations, singular to include plural and plural to include singular.

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**Deleted:** Declarant: Gates Land Company, a Colorado corporation. After a transfer pursuant to Section 202 (b), Declarant means the transferee.¶  
Declarant's principal office: The principal office maintained by Declarant in El Paso County, Colorado, and if there is no such office, then Declarant's registered office for service of process, and if there is none then any location at which service of process could be made according to the laws and rules governing civil actions in District Courts in Colorado.¶

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Captions.

Section 302. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the Section and shall not be taken into account in construing the Section.

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Covenants Run with the Land.

Section 303. These Covenants shall run with the land and shall inure to and be binding on each lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any lot in the Subdivision.

Covenants are Cumulative.

Section 304. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provision dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

These Covenants may not be Waived.

Section 305. Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to defend against enforcement of these Covenants on the ground of waiver.

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Right to Enforce the Covenants.

Section 306. These Covenants are for the benefit of the Owners, jointly and severally, and Association and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, Association, or any combination of them. All costs, including reasonable attorney's fees, incurred by Association in connection with any successful enforcement proceedings initiated by Association (alone or in combination with Owners) shall be paid by the party determined to have violated the Covenants.

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#### Duration of Restrictions.

Section 307. Except for Sections 111 and 112, all of the provisions of these Covenants, unless sooner terminated as provided in Section 308, shall remain in force ~~for 15 years from the date of recording~~ and shall be automatically renewed for successive periods of ten (10) years ~~subject to the amendment and termination provisions in Section 308.~~

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#### Amendment, Termination and Extension.

Section 308. From time to time any of these Covenants (except Sections 111 and 112) may be amended or ~~provisions added to these Covenants by an instrument signed by the Owners of at least two-thirds (2/3) of the lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County. These Covenants may be terminated by an instrument signed~~ by the Owners of at least two-thirds (2/3) of the lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County.

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#### Property Rights Remain.

Section 310. Sections 111 and 112 concern property rights which can be changed only by conveyances, releases or other appropriate legal instruments executed by those to whom such property rights belong.

**Deleted:** Section 309. All Sections of these Covenants (except Sections 111 and 112) may be terminated at any time, and from time to time any two or more Sections of these Covenants (except Sections 111 and 112) may be amended or two or more new Sections may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least three-fourths (3/4) of the lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County.¶

#### Severability.

Section 311. If any of these Covenants shall be held invalid or become unenforceable the other Covenants shall in no wise be affected or impaired but shall remain in full force and effect.

#### Action in Writing.

Section ~~312~~. Notices, approvals, consents, extensions, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, extension, application or other action. Permission, consent or approval of ~~Association~~ under these Covenants is not effective unless in writing.

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#### Notices.

Section 313. Any writing described in Section 312 including but not limited to any communication from ~~Association~~ to an Owner, shall be sufficiently served if delivered by mail or otherwise: a) to the dwelling situate on the lot owned by that Owner; or b) if there is no dwelling, then to the address furnished by the Owner to ~~Association~~ and if the Owner has

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not furnished an address, then to the most recent address of which Association has a record. In addition to regular U.S. mail, the Association may send notice via email.

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Association Membership.

Section 314. Membership in the Association is available to any lot owner in the seven residential areas. The Association will have one class of members. Member obligations and rights are set out in the Association's Bylaws.

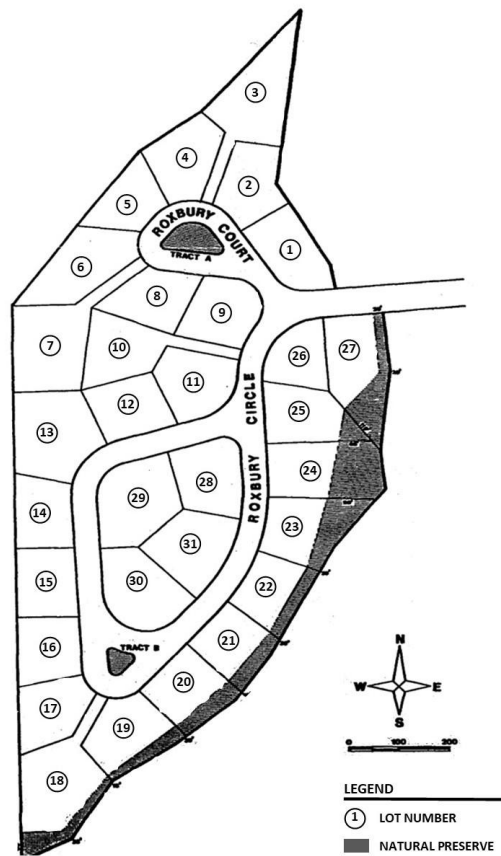
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AMENDMENT¶  
to¶  
DECLARATION¶  
of¶

Section 315. The Association, through the documents noted in the Recitals, is the entity authorized to exercise approval authority and to enforce the terms and conditions of this Declaration regardless of an Owner's membership status.

ARTICLE IV

Map of Subdivision and Natural Preserve

Section 401. Roxbury Park Subdivision Map



IN WITNESS WHEREOF, at least 75% of Owners have approved  
this Declaration as indicated by the attached instruments.

**OWNER APPROVAL**

I/we, as the record titled owner(s) of the following property located in Roxbury Park Subdivision: \_\_\_\_\_  
(legal description), also known as street address: \_\_\_\_\_

hereby acknowledge that the property is subject to the Declaration of Conditions, Covenants, Restrictions, Easements and Charges Affecting the Real Property known as, Roxbury Park Subdivision, approve this Amended and Restated Declaration of Conditions, Covenants, Restrictions, Easements and Charges Affecting the Real Property known as, Roxbury Park Subdivision, ("A&R Declaration"), and acknowledge that the property will be fully subject to the terms of the A&R Declaration if approved by owners of at least 75% of the lots in Roxbury Park Subdivision.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

STATE OF COLORADO \_\_\_\_\_ )

) ss. \_\_\_\_\_

COUNTY OF \_\_\_\_\_ )

The foregoing was acknowledged before me by \_\_\_\_\_,  
on this \_\_\_\_\_ day of \_\_\_\_\_,  
202 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF COLORADO \_\_\_\_\_ )

) ss. \_\_\_\_\_

COUNTY OF \_\_\_\_\_ )

The foregoing was acknowledged before me by \_\_\_\_\_,  
on this \_\_\_\_\_ day of \_\_\_\_\_,  
202 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

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ROXBURY PARK SUBDIVISION¶  
¶

By instrument recorded in the office of the Clerk and Recorder of the County of El Paso and State of Colorado in Book 3010 at Pages 774-808 (the "

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Declarant is

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**Deleted:** the Subdivision and in exercise of the powers reserved to the owners of two-thirds of the lots in the Subdivision hereby amends Section 202 of the Covenants to read as follows:¶

¶  
**Declarant's Successors and Assigns**¶  
Section 202.¶

a) Ten years after Declarant first conveys a lot in the Subdivision to a purchaser or at such earlier time as Declarant may choose, Declarant shall transfer all of its functions, rights and powers of granting or withholding approval, permission or consent and its other functions, rights, and powers under Sections 102, 103, 107, 108, 131, 132, 133, 135, 136, 137, 139, 158, 159, 160, 161, 162, 171, 172, 173, 174, and 201 and its responsibilities under Section 175 to an Architectural Control Committee of three (3) members, each of whom shall be an Owner of a Lot in the

**Deleted:** ; or the owner of a lot in such other single-family residence subdivisions in the same general area as are determined by Declarant to contain lots substantially similar in size, character and value to Lots in the Subdivision; or an officer, director or employee of Declarant

**Deleted:** b) Thereafter any one or more members of the Architectural Control Committee may from time to time be removed and their successor or successors designated by an instrument signed and acknowledged by the Owners of at least 50% of the lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County.¶  
c) The Architectural Control Committee may delegate to one of its members any or all of the functions and powers of the committee and until such delegation is revoked or modified the