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HIALEAH ESTATES  
3355 MISSION AVE #111  
OCEANSIDE, CA 92054



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Covenants, Conditions + Restrictions

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Rec. Form #R25 (7/3/97)

SECOND RESTATED DECLARATION

# CC&R's

**Covenants, Conditions, and Restrictions  
of  
Hialeah Estates**

**Enhancing and protecting the value, desirability, and  
attractiveness of the properties in and around Hialeah  
Estates**

Recorded in 1997

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BACKGROUND

A Declaration of Protective Covenants, Restrictions and Conditions, executed by Westgate-California Products, Inc., a Nevada Corporation, and Westgate-California Realty Co., a California corporation, ('Declarant'), was recorded on February 15, 1969, as File/Page 69-26657, of Official Records of San Diego County California, ('Original Declaration'), and amended by the following documents:

- a. First Amendment to Declaration of Protective Covenants, Restrictions, and Conditions recorded May 26, 1971 as File/Page 71-109809 of Official Records of San Diego California;
- b. Declaration of Protective Covenants, Restrictions and Condition recorded June 18, 1981 as File/Page 81-191658 of Official Records of San Diego County, California ('First Amended and Restated Declaration').

said document as amended affects all of the Properties described in Exhibit A attached hereto, commonly known as Hialeah Estates. Said document is hereby amended and restated in its entirety to read as follows:

RECITALS

Declarant was the original Owner of that certain real property ('Properties') located in the unincorporated area of the County of San Diego, State of California, which is more particularly described Exhibit A which is attached hereto and incorporated herein by reference.

Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties and all of which run with the Properties and are binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and inure to the benefit of each Owner thereof.

It was the further intention of the Declarant to sell and convey residential Lots to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which were set forth in the original Declaration and which were intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties.

On June 18, 1981, in excess of seventy-five percent (75%) of the Owners of Lots within the Properties voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in the Original Declaration. It was the intention of said Owners to replace the Original Declaration, in its entirety, with said First Amended and Restated Declaration.

On the date indicated in the certificate below, in excess of seventy-five percent (75%) of the Owners of Lots within the Properties voted by written ballot to amend and restate the First Amended and Restated Declaration, in accordance with the procedures for amendment set forth therein. Owners' action to amend and restate said First Amended and Restated Declaration as set forth herein and the fact that the requisite percentage of affirmative votes required was achieved, is attested by the execution of this Second Restated Declaration by duly authorized officers of the Association, as required by California Civil Code section 1355(a). As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

# ARTICLE I

## General

### Section 1

#### **Purpose of this Declaration**

This Declaration is created for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Properties in and around Hialeah Estates.

### Section 2

#### **Persons Subject to this Declaration**

All present and future Owners, tenants, and occupants of the following Lots shall be subject to and comply with each and every provision of this Declaration: (1) Lots shown on Map Number 6822 described as Hialeah Estates and recorded in the Office of the County Recorder, County of San Diego on January 19, 1971 and (2) Lots adjacent to or in the general vicinity of the aforementioned Lots which have been made subject to this Declaration or any of its predecessors by decree of the court. The acceptance of a deed to any Lot, the entering of any lease, sublease, or contract of sale with respect to any Lot, or the occupancy of any residence shall constitute the consent and agreement of such Owner, tenant, or occupant that each and all provisions of this declaration and its amendments shall be binding on said person and that said person will observe and comply with this Declaration.

### Section 3

#### **Homeowners Association as Administrator**

Administration of this declaration shall be vested in the Hialeah Estates Property Owner's Association (HEPOA) hereinafter known as the Association.

#### **A. Association Membership**

Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one Membership in the Association for each Lot owned and the Membership shall be appurtenant to such Lot. Ownership of a Lot or interest in it shall be the sole qualification for Membership in the Association. Each Owner shall remain a Member of the Association until his or her Ownership in all Lots in the Properties ceases, at which time his or her Membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

#### **B. Transfer of Memberships**

Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, Membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Lot. In the case of an encumbrance of such Lot, a Mortgagee does not have Membership rights until he or she becomes an Owner by foreclosure of deed in lieu thereof. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the Membership registered in

the Owner's name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other Membership outstanding in the name of the seller shall be null and void.

C. Powers and Authority of the Association

The Association shall have the responsibility of managing and maintaining the common roadway and discharging the other duties and responsibilities imposed on the Association by this Declaration.

1. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California, subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration and its subordinate Bylaws and Rules.
2. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners.
3. The specific powers of the Association and the limitations thereon shall be as set forth in the Bylaws.
4. Except for matters requiring the approval of Members as specified in this Declaration, the Bylaws, or by law, all actions to be taken by the Association shall be by act of the majority of the Board of Directors. Said Board of Directors shall be elected by Members of the Association.
5. The Association shall have the power to grant easements over the common roadway to parties who are not members. The granting of such easements however shall require the approval of not less than two-thirds ( $\frac{2}{3}$ rds) of all Owners.
6. The Association, acting through its Board of Directors, may, from time to time and subject to the provisions of this Declaration, propose, enact and amend Rules and Regulations of general application to the Owners of Lots within the Properties.
7. The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within the Properties and to enforce payment of such Assessments in accordance with Article VI of this Declaration. Any Assessments levied by the Association on the Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

D. Voting Rights of Members

Each Member of the Association shall be entitled to one vote for each Lot owned by said Member. Where joint Ownership of a Lot exists the joint Owners shall determine among or between themselves how the vote shall be cast. In the event that the joint Owners are unable to agree among themselves as to how their one vote shall be cast they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a Lot it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Lot.

## ARTICLE III

### Architectural Control

#### Section I

##### Minimum Construction Standards

Unless a variance is requested from, and/or granted by the Architectural Committee in accordance with Section 4 of this Article III, improvements constructed on any Lot shall conform to the following minimum standards:

A. Minimum Lot Size

Each parcel set forth upon Map Number 6822 described as Hialeah Estates and recorded in the Office of the County Recorder, County of San Diego on January 19, 1971 shall be a parcel as the term is used in this Declaration. No such parcel shall be used for more than one (1) Single Family Dwelling and accessory buildings. Parcels may be changed as to boundary lines and size by written agreement between the Owners of affected parcels provided (1) no such change shall create any parcel of less than two and one half (2 1/2) acres exclusive of roads or streets; (2) no such change shall create a "new" or additional parcel within the Properties and (3) said boundary changes shall be duly recorded in the office of the County Recorder of San Diego County.

B. Setback Areas

A front setback area shall be that portion of such parcel which lies within thirty feet (30') of the common boundary of such parcel and any road or street. The side and rear setback areas shall be those portions of each parcel not included in its front setback area which lie within twenty feet (20') from any boundary line of such parcel which is not a common boundary line of such parcel and any road or street. No building, swimming pool, patio or other structure, except a fence and/or wall, driveways, and walks shall be placed in whole or in part upon or over any portion of said property which is designated as a setback area.

C. Minimum Floor Areas

No main dwelling which has a floor area, exclusive of any porch, patio, covered or not, enclosed area, garage or other accessory building (whether attached to such residence or not) of less than two thousand five hundred (2,500) square feet, shall be erected upon said property.

D. Roofs

No dwelling or other building shall be erected on a property unless at least seventy-five percent (75%) of its roof area is of the hipped or gable type. The roof of any building may overhang a front, side, or rear setback area. No roof may be white in color or any other color which is inconsistent with roof colors in the immediate vicinity.

E. Colors and External Finishes

Colors and external finishes shall be restricted to those found in the immediate vicinity of the Residence and those in harmony with the natural surroundings. No reflective finishes, other than glass, shall be used in any external surface including, but not limited to, roofs, projections above roofs, retaining walls, doors, fences, and mail boxes.

F. Utility Lines

All utility lines within the Properties shall be underground.



## ARTICLE II

### Use of Properties

#### Section 1

##### **Residential Use**

All Lots within the Properties shall be used solely for the construction of Residences whose occupancy and use shall be restricted to Single Family Residential Use. In no event shall a Residence be occupied by more individuals than permitted by applicable law, zoning or other local governmental regulation. This Single Family Residential Use restriction is not intended to preclude construction of a "guest house" for the housing of occasional social guests or bona fide household servants. Where said guest house is used to house servants the total number of persons occupying the building shall not exceed two(2).

#### Section 2

##### **Business Use**

Although the Properties are intended primarily for residential use the conduct of certain businesses shall be allowed. These businesses shall be limited to agricultural business consistent with zoning requirements and to home businesses which are essentially silent and invisible to a casual observer. Businesses which generate traffic, noise, odors and noxious waste are expressly prohibited.

#### Section 3

##### **Keeping of Animals**

The following restrictions regarding the care and maintenance of animals within the Properties shall be observed by each Owner and Resident:

##### A. Horses

Horses may be kept but not in excess of one animal per one-half (1/2) acre of each parcel. One-half (1/2) acre of each parcel shall be considered as a homesite and may not be considered in calculating the number of horses permitted.

##### B. Pets

A reasonable number of pets may be kept on each Lot so long as the same are not kept, bred or maintained for commercial purposes. The Board of Directors shall have the right to establish and enforce additional Rules and Regulations defining in a uniform and nondiscriminatory manner, what constitutes a "reasonable number" of pets depending on their size, disposition and/or maintenance requirements and imposing standards for the reasonable control and keeping of pets in, upon and around the Properties to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners and Residents.

- G. **Accessory Buildings and Structures**  
Accessory buildings and structures which may be constructed and maintained on the Properties include garages, barns, stables, patios, swimming pools and a single guest house.
- H. **Horse Areas**  
No boundary line of any stable, corral, or other enclosure for horses shall be closer than thirty-five feet (35') to any boundary or dwelling.
- I. **Fences and Gates**  
Fences shall be no higher than sixty (60) inches and shall be constructed of wood, rock, masonry, or ornamental metal. Fences shall be designed and erected so that their most attractive side will face the street or neighboring lot. Chain link fencing shall not be allowed along any Common Roadway unless said fencing is obscured by owner maintained vegetation such as vines, shrubs and closely spaced trees. The use of barbed wire or razor wire shall not be allowed. Driveway gates, where used, shall be of ornamental metal.
- J. **Lighting**  
Lighting, both exterior and interior, shall be designed so to not disturb neighbors or the rural atmosphere of the Properties.
- K. **Drainage**  
There shall be no interference with established drainage in or over any parcel. In the event an owner changes the established drainage over any parcel the Owner thereof shall make adequate provision for drainage in connection with such change, including the landscaping of all parcels affected by the change. The words "established drainage" as used in this section mean the drainage which existed at the time of over-all tract grading. In the event any parcel Owner shall be in violation of this section, the Association may, at its election, correct the violation and the expense thereof may be made a lien on the parcel involved in the manner specified in Articles V and VI of this Declaration.
- L. **Landscaping**  
The Owner shall be responsible for installing and maintaining landscaping on those portions of his Lot which are visible from any street within the Properties. Landscaping shall include, but shall not be limited to, lawns, shrubs, trees, and flowers and irrigation systems necessary to insure healthy and attractive growth. The use of synthetic plants, flowers, and artificial turf is prohibited.

## Section 2

### Requirement for Approval of Plans

To ensure compliance with the architectural requirements contained in this Declaration the Association's Board of Directors shall appoint, or serve as, an architectural committee and shall vest in that committee architectural control over construction and improvements within the Properties. The architectural committee shall have the power to approve, disapprove or refuse consent to any plans, specifications, drawings, plot plans, grading plans, heights or other matters in connection with any dwelling, structure or landscaping. No dwelling, fence or other structure of any type shall be maintained upon said property until the plans and the specifications therefor, the appearance and color plan thereof, the height thereof, the plot plan showing the location thereof and the grading plans for the parcel shall have been approved by the architectural committee created in this article. Further no change in the exterior appearance, type, color, grade, height or location of any such structure shall be made without the written approval by said committee of the plans and specifications, detail and appearance thereof. Said committee shall function as follows:

- A. **Submission of Data**  
All data for said committee pursuant to this Declaration shall be submitted in duplicate and delivered, with the address of the submitting party, to the committee at the address of the President of the Board of Directors. It shall be the responsibility of the submitting party to obtain a dated receipt verifying delivery of the data.
- B. **Retention of Approved Plans**  
One set of the duplicate sets of data submitted to the committee may be retained by it and both sets shall have the action of the committee endorsed thereon. One set shall be promptly mailed, postage prepaid, to the address specified by the submitting party unless such party shall elect to accept delivery thereof in person or by agent. It shall be the responsibility of the Property Owner to retain all evidence of approval of Plans issued by the Committee for his or her Property.
- C. **Presumption of Approval**  
If the committee fails to approve or disapprove any material submitted to it hereunder within sixty (60) days after submission and to give notice of its action as above required, it shall be conclusively presumed that the committee has approved such material as submitted.

### Section 3

#### Access to Premises

Each Member of the committee or any agent or employee of the committee shall, at all reasonable hours, have access to any parcels and structures under construction or completed thereon for the purpose of inspection relative to compliance with this Declaration prior to final inspection and approval by the County of San Diego.

### Section 4

#### Variations

The Architectural Committee shall be entitled to allow reasonable variations in order to overcome practical difficulties, avoid unnecessary expense, or prevent unnecessary hardships, and to comply with provisions of California and Federal Law regarding reasonably accommodating persons with disabilities, provided that the following conditions are met:

- A. **Criteria for a Variance**  
The Committee must make a good faith determination that (1) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Properties or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (2) the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or (3) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Residence or Owner within the Properties.
- B. **Requirement for a Hearing**  
If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Committee must conduct a hearing on the proposed variance after giving at least 10 days' prior written notice to the Board and to all Owner of Residences. The Owners receiving notice of the proposed variance shall have 30 days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the 30-day comment period has expired.

**Section 5****Non-waiver by the Committee**

The approval or disapproval by the committee of any plans, specifications, drawings, plot plans, grading plans, heights or any other matters submitted for approval or consent shall not be deemed to be a waiver by the committee of its rights to approve, disapprove, object or consent to any of the features or elements embodied therein when the same features or elements are embodied in other plans, specifications, drawings, plot plans, grading plans, heights or other matters submitted to such committee.

**ARTICLE IV****Nuisances****Section 1****General**

Any activity, material, or object occurring or existing on any Property which renders it unsanitary, unsightly, offensive, or detrimental to any Property in the vicinity thereof, or to the occupants of any property in the vicinity shall be declared a nuisance and shall not be allowed within the Properties.

**Section 2****Specific Nuisances**

The activities, materials or objects listed below represent specific nuisances which shall not be allowed within the Properties except as noted:

**A. Signs and Billboards**

No sign or billboard of any character shall be erected or displayed on any Property except residential signs giving the name or address of the occupant or Owner. Temporary signs (exclusive of any flag or pennant) in connection with the sale of such Property may be maintained during the period of construction or sale of parcels and homes in the area where the signs are located. Nothing herein shall prohibit an Owner from maintaining on his Property one (1) "For Sale," "For Rent" or "For Lease" sign not exceeding in size 18 x 24 inches.

**B. Street Parking**

Except for temporary parking necessitated by emergencies, road or driveway repairs, and social events hosted by a Property Owner, the parking of any vehicle along the Common Roadway is prohibited.

**C. Noxious Activities**

No illegal, noxious, or offensive activities shall be carried out or conducted upon any Lot or the Common Roadway, nor shall anything be done within the Properties which is or could

become an unreasonable annoyance or nuisance to neighboring Property Owners. Without limiting the foregoing, no Owner shall permit any of the following to emanate from his/her property: foul odors from any source; offensive lighting; excessive noise from such things as pets, musical instruments, stereo amplifier systems, television sets, air conditioners, motor vehicles, and power tools. Nothing in the foregoing shall prevent a Property Owner from using tools such as chain saws, weed whippers, and mowers in the maintenance of his property provided such tools are used during normal working hours.

- D. **Visible Clotheslines**  
All airing and drying of laundry, clothing, and household furnishings shall be contained to an enclosed service area in such a manner that the contents thereof shall not be visible from any street or parcel.
- E. **Certain Antennas**  
Television or radio antennas which, because of their size, design, color, height, or placement, significantly interfere with the view of other property Owners or disturbs the aesthetics of the neighborhood shall not be allowed.
- F. **Threatening or Annoying Animals**  
Animals which interfere with the right of Property Owners to enjoy peace and quiet on their own Properties or to walk, jog or otherwise enjoy undisturbed passage along the Common Roadways are prohibited and owners of such animals shall take action to curb the nuisance.
- G. **Excessive Vehicular Speed**  
Vehicular speed along the Common Roadways shall not exceed 25 miles per hour.
- H. **Parking of Boats, Campers, and Similar Vehicles**  
No boat, camper, trailer, motor home or commercial vehicle longer than a pick-up truck shall be stored or maintained upon any parcel unless the same shall be kept out of the view from the Common Roadways and any other parcel.
- I. **Rubbish, Trash, Garbage and Debris**  
No rubbish, trash, garbage or debris shall be allowed to accumulate on Lot. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers and facilities which shall be located on the Owner's Lot and screened from view from any street or neighboring Lot. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and improvements) shall be removed from the Properties to a public dump or trash collection area by the Owner or tenant at his or her expense.
- J. **Non-maintained Structures and Landscape**  
All structures upon a parcel shall at all times be maintained in good condition and repair and properly painted. Lots shall be landscaped, irrigated where necessary, and kept in good condition. The Owner shall pay particular attention to maintaining the area of his or her Lot which is immediately adjacent to the Common Roadway and curb.

## ARTICLE V

### Assessments

#### Section 1

##### **Covenant to Pay Assessments**

Each Owner of one or more Lots, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay the Association Regular Assessments, Special Assessments, and where appropriate, Remedial Assessments. Each such Assessment shall be established and collected as hereinafter provided.

#### Section 2

##### **Regular Assessments**

The Board shall estimate the total amount required to fund the Association's anticipated common expenses for the next succeeding fiscal year by preparing and distributing a budget satisfying the requirements of the Bylaws. The total annual expenses estimated in the Association's budget shall become the aggregate Regular Assessment for the next succeeding fiscal year. Individual Regular Assessments shall then be assessed equally against all Lots.

#### Section 3

##### **Special Assessments**

In addition to the Regular assessments authorized above, the Board may levy during any accounting year, a special assessment ("Special Assessment") applicable to that accounting year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of a capital improvement upon the Common Roadways and/or the necessary fixtures and personal property related thereto. Special assessments, which in the aggregate in any accounting year exceed an amount equal to five percent (5%) of the budgeted gross expenses of the Association for the accounting year, may be levied only upon the affirmative vote or written consent of the Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association. Special assessments shall be assessed equally against all of the Lots.

#### Section 4

##### **Remedial Assessments**

Pursuant to this declaration the Board may levy an assessment against any Lot in order to collect a fine imposed under the provisions of Articles VI of this Declaration.

#### Section 5

##### **Delinquent Assessments**

Any Assessment, Regular, Special or Remedial, if not paid within fifteen (15) days after the due date shall be deemed delinquent.

**Section 6****Maintenance of Assessment Fees**

All sums received or collected by the Association from assessments, together with any interest or late charges, shall be promptly deposited in an insured local checking account in a bank or savings and loan association selected by the Board of Directors. The Board, and such officers or agents of the Association as the Board may designate, shall have exclusive control of said account and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. Said records shall be available for inspection by the Owners at any reasonable time.

**ARTICLE VI****Compliance and Enforcement****Section 1****Expectation of Voluntary Compliance**

Pursuant to Article I the purpose of this Declaration is to serve the common good of the Property Owners by enhancing and protecting the value, desirability, and attractiveness of the Properties in and around Hialeah Estates. Article I further assigns responsibility for administration of this Declaration to the Association and therefore to its Members. Accordingly, it shall be the intent of this Declaration to promote and seek responsible behavior and voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action, the Owner or tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights. Nothing in this Section shall inhibit or prevent an individual Property Owner from communicating directly or indirectly with any other Property Owner regarding the existence and correction of violations of this Declaration.

**Section 2****Determination of a Violation**

Where conflict exists as to the existence or non-existence of a violation of this Declaration the Board shall be empowered to make a determination. Said determinations shall be made only after all Property Owners concerned have had reasonable opportunity to state their positions and arguments and to provide evidence in support of claims. Any Property Owners dissatisfied with the ruling of the Board shall have the right to appeal that ruling to the Association where that ruling may be overturned by a two-thirds (2/3) vote of the Property Owners.

### Section 3

#### Enforcement by the Board

Where violations of this Declaration are found to exist and where the violating Property Owner has failed to respond to reasonable requests for correction of the violation including non-payment of Assessments, the Board shall be empowered to enforce, by all lawful means, the provisions contained herein. In carrying out its enforcement responsibilities the Board, at its discretion, may apply, but not be limited by, the following remedies:

A. Imposition of Fines

Pursuant to this Authority the Board may develop a schedule of reasonable fines and penalties for violations which are common and recurring in nature and for which a uniform fine schedule is appropriate. Said schedule of fines, upon being approved by a two-thirds (2/3) vote of the Property Owners in the Association, may be administered by the Board, as appropriate, after due consideration of all factors involved and the guidance contained in this Article VI.

B. Suspension of Voting Rights

After a hearing by the Board, whether or not the violating Owner appears, conducted in accordance with procedures set forth in the Bylaws, the Board may suspend the voting rights of any Owner for a period so long as the violation exists.

C. Creation and Imposition of a Lien

As more particularly provided in California Civil Code section 1367 or comparable superseding statute, the amount of any delinquent Regular, Special, or Remedial Assessment, together with any late charges, interest and costs (including reasonable attorney's fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed when the Association causes to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this article and California Civil Code section 1366, (B) the legal description of the Owner's Lot against which the Assessment and other sums are levied, (C) the name of the Owner of Record of such Lot, and (D) the name and address of the trustee authorized by the Association to enforce the lien by sale of the property. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

D. Filing of a Lawsuit

The Association may file a suit at law against an Owner or prior Owner to enforce said assessment obligation, such suit to be maintained in the name of the Association. Any judgment rendered in any such action shall include the amount of the delinquency, interest thereon at the maximum legal rate per annum from the date of the delinquency, court costs and reasonable attorney's fees, in such amount as the court may adjudge against the delinquent Owner. Except for the filing of a suit in Small Claims Court, a suit shall not be filed in the name of the Association without first obtaining the approval of two-thirds (2/3) vote of the Property Owners.



**Section 4****Enforcement by an Individual Property Owner**

If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of the California Civil Code Section 1354 or otherwise by law.

**ARTICLE VII****Insurance****Section 1****Requirement for Insurance**

The Association shall purchase and maintain Public Liability and Property Damage Insurance naming as insured parties the Association, each Member of the Association's Board of Directors and such other persons as the Board may determine. The limits of such insurance shall not be less than \$2,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. The premiums for such insurance shall be paid for out of the common funds.

**Section 2****Availability of Proof of Insurance**

Copies of all insurance policies and evidence that the premiums have been paid shall be retained by the Association and available for inspection by the Owners at any reasonable time.

**ARTICLE VIII****Notices****Section 1****Notices in Writing**

Any communication or notice of any kind permitted or required herein shall be in writing.

**Section 2****Methods of Notification**

Notices and demands shall be delivered to a property Owner or other recipient in one of three ways, with the method at the discretion of the sender:

- A. By personal service
- B. By U. S. Mail  
All notices and demands served by mail shall be by first-class or certified mail with postage prepaid and shall be deemed delivered four days after deposit in the United States Mail in San Diego County, California.
- C. By Electronic Means  
Notices and demands may be delivered by electronic means provided proof of delivery and receipt of such notice or demand can be established.

**Section 3****Owner Responsibility for Correct Address**

Each Owner or Owners of a Property shall be responsible for keeping the President of the Association or his designated agent informed of his or her correct and current mailing address.

**Section 4****Notices Where Co-Ownership Exists**

Personal service or mailing of notices and demands to one of the co-Owners of any Lot, or to any general partner of a partnership which is the Owner of Record of the Lot shall be deemed delivered to all such co-Owners of to such partnership as the case may be.

**ARTICLE IX****Construction of this Declaration****Section 1****Restrictions Construed Together**

All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

**Section 2****Restrictions Severable**

Notwithstanding the provisions of Section 1 above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**Section 3****Singular Includes Plural**

The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

**Section 4****Captions**

All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

**ARTICLE X****Amendments to this Declaration****Section 1****Persons Eligible to Sponsor Amendments**

The Owner or co-Owner of any Lot within the Properties may sponsor an amendment to this Declaration. Said amendment, when offered, shall be specific and concise with the responsibility for drafting said amendment lying wholly with the sponsor.

**Section 2****Votes Required for Passage**

This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of the holders of not less than seventy-five percent (75%) of the Owners. With respect to any vote hereunder the Association shall be entitled to accept the vote of any Owner of Record of a Lot as the vote of all Owners of Record of such Lot unless the Association receives more than one vote from said co-Owners, in which case the vote of a majority of co-Owners shall bind all.

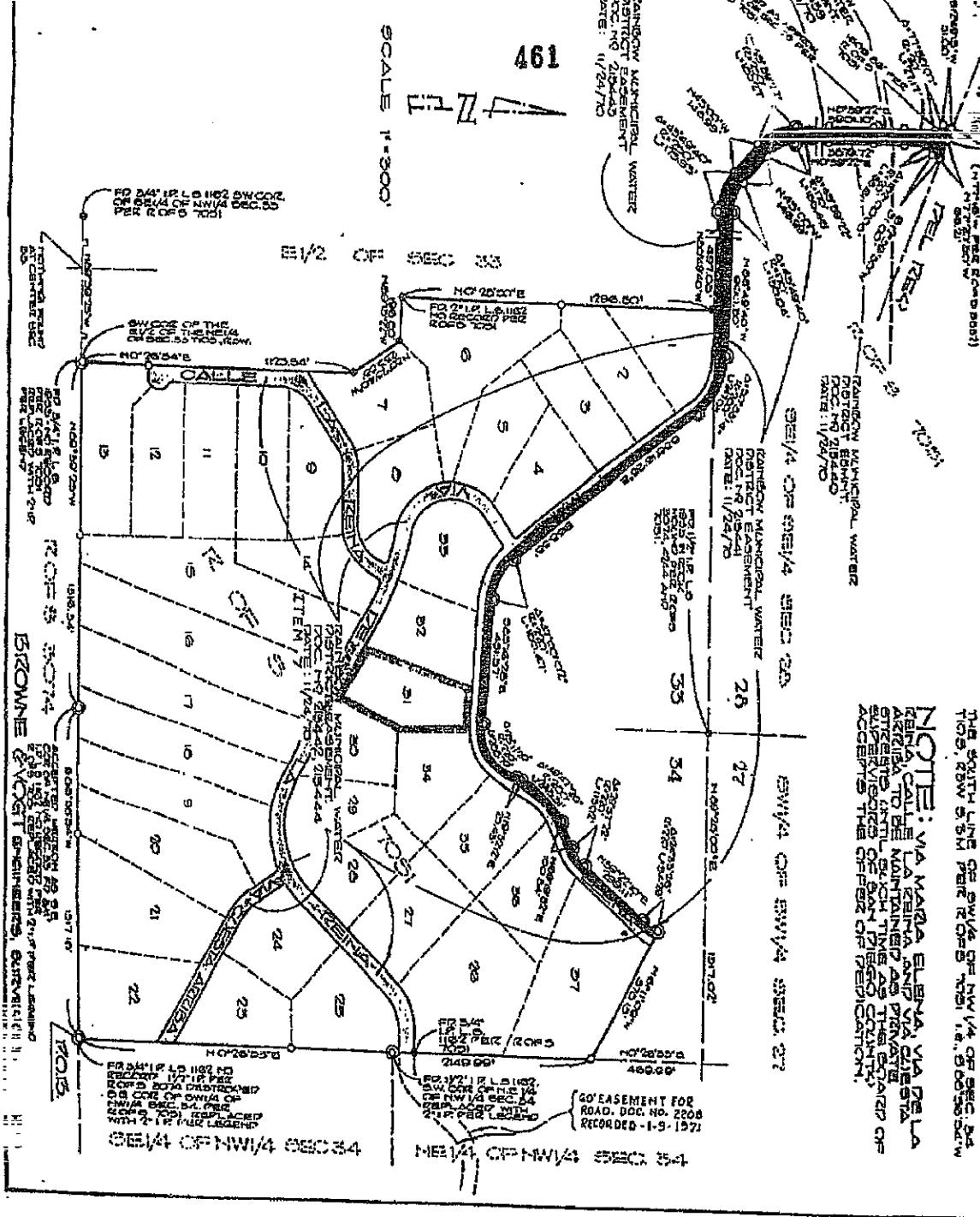
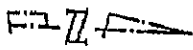
**Section 3****Effective Date of Amendments**

The amendment will be effective upon the recording in the Office of the Recorder of San Diego County a Certificate of Amendment, duly executed and certified by the President of the Association setting forth in full the amendment so approved and that the approval requirements of Section 2, above, have been duly met.

**ARTICLE XI****Term of this Declaration****Section 1****Effective Date and Expiration Date**

The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of 40 years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 40-year term or any such 10-year extension period, a recordable written instrument, approved by seventy-five percent of all Owners termination the effectiveness of this Declaration shall be filed for recording in the Office of the County Recorder of San Diego County, California.

SCALE 1"=300'



NOTE: VIA MARIA ELBENA VIA DELA REINA CALLE LA MARIA ELBENA VIA DELA REINA TO BE MAINTAINED AND FINANCED BY THE DISTRICT SUPERVISOR OF SAN DIEGO COUNTY AND ACCEPTS THE OFFER OF REPLICATION.

Map #6822  
Sheet 3 of 7

Addendum A

## ADDENDUM B

### Definitions

The following definitions shall apply for terms used in this Declaration:

**Architectural Committee.** The committee created in accordance with Article III of this Declaration.

**Assessment.** Any Regular, Special, or Remedial Assessment made or assessed by the Association against and Owner and his or her Lot in accordance with the provisions of Article V of this Declaration.

**Association.** Hialeah Estates Homeowners Association. The Association is an association as defined in California Civil Code section 1351(a).

**Association Rules.** The rules, regulations, and policies adopted by the Board of Directors of the Association, pursuant to Article I of this Declaration, as the same may be in effect from time to time.

**Board of Directors or Board.** The Board of Directors of the Association.

**Bylaws.** The Bylaws of the Association, as such Bylaws may be amended from time to time.

**Common Roadway.** The reciprocal roadway easements appurtenant to the Lots within the Properties together with any and all real and personal property in which the Association owns an interest.

**Common Expense.** Any use of Common Funds authorized in this Declaration or in the Bylaws and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repair, additions, alterations or reconstruction of the Common Roadway; (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors; (c) the use of such funds to defray the costs and expenses incurred by the association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

**Common Facilities.** Any and all personal property, structures and improvements owned or operated by the Association in connection with the Common Roadway or otherwise.

**County.** The County of San Diego, State of California, and its various departments, divisions, employees, and representatives. If any portion of the Properties becomes a portion of an incorporated city, then the term County shall be deemed to include the city in which that portion of the Properties is located.

**Declarant.** The original developer of the Properties, namely Westgate-California Products, Inc., a Nevada Corporation, and Westgate-California Realty Co., a California corporation.

**Declaration.** This instrument, as it may be amended from time to time. The Original Declaration means and refers to the document reference in the Preamble to this Declaration executed by the Declarant and recorded on February 15, 1969, ad File/Page 69-26657, of Official Records of San Diego County; First Amended and Restated Declaration means and refers to the document

referenced in the Preamble to this Declaration and recorded June 18, 1981 as File/Page B1-191658 of Official Records of San Diego County, California.

**Governing Documents.** A collective term that means and refers to this Declaration, the Articles, if any, the Bylaws, and the Association Rules.

**Improvement.** Includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, decks, fences, swimming pools, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas, utility lines, or any structure of any kind. In no event shall the term Improvement be interpreted to include projects which are restricted to the interior of any Residence.

**Lot.** Any parcel of real property designated by a number on the Subdivision Map or referred to by decree of the court. When appropriate within the context of this Declaration, the term Lot shall also include the Residence and other improvements constructed or to be constructed on a Lot.

**Member.** Every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Article VI hereof.

**Mortgage.** Any security device encumbering all or any portion of the Properties, including any deed of trust. Mortgagees shall refer to a beneficiary under a deed of trust as well to a mortgagee in the conventional sense.

**Owner.** Any person, firm, corporation or other entity which owns a fee simple interest in any Lot. The term Owner shall include, except where the context otherwise requires, the family, guests, tenants and invitees of an Owner.

**Owner of Record and Member of the Association.** Includes an Owner and means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

**Properties.** All parcels of real property described in Article I hereof, together with all buildings, structures, utilities, Common Facilities, and other improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

**Regular Assessment.** An Assessment levied on an Owner and his or her Lot in accordance with Article V, Section 2 hereof.

**Residence.** A private, single family dwelling Lot.

**Single Family Residential Use.** Occupation and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

**Special Assessment.** An Assessment levied on a Owner and his or her Lot in accordance with Article V, Section 3 hereof.

**Remedial Assessment.** An Assessment made against an Owner and his or her Lot in accordance with Article V, Section 4 hereof.

**Subdivision Map.** The map for the Properties referenced in Article I of this Declaration.

# CERTIFICATION

The undersigned, being the duly elected and acting President of the Hialeah Estates Property Owners Association hereby certifies that the foregoing Declaration of Covenants, Conditions and Restrictions was approved by a vote of at least seventy-five percent (75%) of the Members entitled to vote.

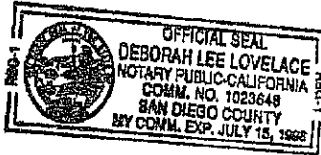
*Robert W. Lynch*  
President

8-4-97  
Date

*Heidi Drey*  
Secretary and Witness

8-4-97  
Date

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF SAN DIEGO )



On Aug. 4, 97 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert W. Lynch & Heidi Drey known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*Deborah Lovelace*

ADDENDUM C



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of Calif  
 County of San Diego

On Aug. 4, 97 before me, Deborah Lee Lovelace  
DATE NAME, TITLE OF OFFICER - E.G., "JOHN DOE, NOTARY PUBLIC"

personally appeared Robert W. Kusch & Katherine Mayberry  
NAME(S) OF SIGNER(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.  
Deborah Lee Lovelace  
SIGNATURE OF NOTARY

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

<p><b>CAPACITY CLAIMED BY SIGNER</b></p> <p><input type="checkbox"/> INDIVIDUAL</p> <p><input type="checkbox"/> CORPORATE OFFICER</p> <p>_____</p> <p><small>TITLE(S)</small></p> <p><input type="checkbox"/> PARTNER(S)      <input type="checkbox"/> LIMITED</p> <p>   <input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT</p> <p><input type="checkbox"/> TRUSTEE(S)</p> <p><input type="checkbox"/> GUARDIAN/CONSERVATOR</p> <p><input type="checkbox"/> OTHER: _____</p> <p>_____</p> <p><b>SIGNER IS REPRESENTING:</b>  <small>NAME OF PERSON(S) OR ENTITY(ES)</small></p> <p>_____</p>	<p><b>DESCRIPTION OF ATTACHED DOCUMENT</b></p> <p>_____</p> <p><small>TITLE OR TYPE OF DOCUMENT</small></p> <p>_____</p> <p><small>NUMBER OF PAGES</small></p> <p>_____</p> <p><small>DATE OF DOCUMENT</small></p> <p>_____</p> <p><small>SIGNER(S) OTHER THAN NAMED ABOVE</small></p>
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