

Tract Nos. 5555, 5864, 5865, 5866  
Restrictions Recorded December 8, 1965  
In Book 7766, Page 916 O. R.

DECLARATION OF COVENANTS,  
CONDITIONS & RESTRICTIONS

for

HUNTINGTON MARINA

THIS DECLARATION, made by DECON CORPORATION, a California corporation, hereinafter referred to as "Declarant", being the owner of that certain real property subject to this declaration, and hereinafter more particularly described,

W I T N E S S E T H:

WHEREAS, it is the desire and intention of the owner to sell the property described above and to impose on it mutual beneficial restrictions under a general plan or scheme of improvement for the benefit of all the units in the project and the future owners thereof and to create a certain type of method of cooperative ownership commonly know as "CONDOMINIUM" and to submit the property to the provisions of the Civil Code of the State of California pertaining to "CONDOMINIUMS".

NOW, THEREFORE, the owner hereby declares that all of the property described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said property, and are established and agreed upon for the purpose of enhancing and protecting the value, part and portion thereof. All of said limitations, covenants, conditions and restrictions shall run with the land, and shall be binding on all parties having or acquiring any right, title or interest in said property or any part thereof, whether as sole owners, joint owners, lessees, tenants, occupants or otherwise.

ARTICLE I  
DESCRIPTION OF LAND & IMPROVEMENTS

(a) The land including the air space above it subject to said covenants, conditions and restrictions is located in the County of Orange, State of California, and is more particularly designated on the recorded maps of Tracts Nos. 5864, 5865, 5866 and 5555. Construction is, or shortly will be, completed upon said land of 92 individual dwellings, 46 of which will be on the ground floor and will have an open patio area adjacent to the dwelling with the remaining 46 dwellings on the second floor, each having an open balcony area adjacent to the dwelling. The individual dwelling and its adjacent patio or balcony as the case may be shall constitute a "UNIT" as that term is defined in Civil Code Section 1350. All other parts and portions of the "Project" (as that term is defined in Civil Code Section 1350) shall be deemed to be a part and portion of the "Common Area" as defined by such section and identified as Lot 1 on such hereinbefore mentioned maps. The improvements which will be constructed in addition to the units and which will constitute a part of the common area include 92 covered garage spaces, pedestrian walkways, driveways and a private street all servicing the "Project". In addition, Declarant proposes to construct 92 boatslips and appurtenances thereto on land and water owned by the State of California and leased to the Declarant, with such improvements and leasehold interest being assigned to the HUNTINGTON MARINA ASSOCIATION as provided in Article I (b) below.

(b) The units will be offered for sale to the public and all conveyances of units and interests in common areas will be by Grant Deed with the incidents thereof being those incidents set forth in Civil Code Section 1353. Such conveyance shall be expressly made subject to this Declaration of Covenants, Conditions and Restrictions and the Deed shall so state. Immediately upon the conveyance of the first unit, Declarant will assign or cause to be assigned to the hereinafter referred to HUNTINGTON MARINA

ASSOCIATION that certain lease agreement by and between Declarant and the State of California which lease relates to certain land and water contiguous to said hereinabove described real property. Such assignment shall include the transfer to the Association of all boatslips and appurtenances thereto constructed by Declarant on said leased premises free and clear of all liens and encumbrances. Each member of the Huntington Marina Association by virtue of his membership shall be entitled to the exclusive right to use the boatslip(s) designated opposite the unit(s) owned by such member as set forth in Exhibit A attached to this Declaration and by this reference incorporated herein as fully as if set forth here in detail and the non-exclusive right in common with other unit owners to use all appurtenances to said boatslips. All membership rights shall be deemed rights appurtenant to said unit(s) and shall be transferred only in connection with the transfer of such unit(s).

(c) In addition, and by virtue of said memberships in said Huntington marina Association, each member shall have the exclusive right to use the covered garage space corresponding in number to the number of such member's unit as set forth on the plat map attached hereto and marked Exhibit A.

## ARTICLE II MANAGEMENT AND OPERATION

(a) Said project, to be known and designated as HUNTINGTON MARINA, shall be organized and operated as a Condominium Dwelling Residential Development. The owners of said units shall constitute the membership of a non-profit corporation organized under and pursuant to the General Non-Profit Corporation Law of the State of California. The Corporation shall be named the HUNTINGTON MARINA ASSOCIATION and shall operate pursuant to this Declaration and its Articles of Incorporation and By-Laws, which, among other things, shall provide for:

- 1) An annual meeting of members.
- 2) Membership based upon ownership of a unit with each member having one (1) vote for each unit owned by such member, provided, however, members may cumulate voting in the election or removal of directors.
- 3) Notice of any meeting of members shall be sent to the members not more than sixty (60) days and not less than seven (7) days before the meeting and shall specify the place, date and hour thereof, and in the case of a special meeting, the general nature of the business to be transacted,
- 4) A majority at each meeting at which there is a quorum present shall prevail, with a quorum being the presence in person or by proxy of unit owners (members) holding in excess of 50% of the voting power.
- 5) An annual independent audit of its accounts, a copy of which shall be delivered to each member within 120 days after the end of the Association's fiscal year.
- 6) That the Association acting through its Board of Directors, shall, among other things, have power to:
  - a) enforce the provisions of this Declaration of Restrictions,
  - b) contract for and pay fire, casualty, liability and other insurance insuring the unit owners, including bonding of the members of the Association.
  - c) Contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the common area and to employ personnel necessary for the operation of the project, including legal and accounting services;
  - d) to the extent not paid for directly by the members, pay taxes and special assessments which are or would become a lien on the entire project or common area;
  - e) delegate its powers;
- (b) The Association shall have the right to enter into any unit when necessary in connection with the maintenance and reconstruction for which it is responsible.
- (c) At any meeting Declarant shall be deemed to be the owner of any and all units then unsold, and shall be entitled to one vote for each such unit.
- (d) Within thirty (30) days next following the sale of at least 51% of the units, but in no event later than one (1) year from the date of recording the first transfer and conveyance of the first unit in the project, the Association shall hold an organizational meeting. At such organizational meeting, the then unit owners (members) shall elect a Board of Directors of not less than five (5) in number, all of whom shall be members of the Association. The

newly-elected Board of Directors shall continue the operation and administration of the Association in accordance with and pursuant to the Association's Articles of Incorporation and By-Laws.

### ARTICLE III MAINTENANCE FUND

(a) Each owner (including the Declarant with respect to units which Declarant has not sold), shall be obligated to pay to the Association, or a designated bonded representative thereof, an annual maintenance charge (adjusted for owners pro rata insurance premium obligation) per unit owner, which shall initially be fixed at not more than \$420,00 per year, payable in twelve (12) equal monthly installments, in advance, on the first day of each month.

Assessments shall accrue as to each owners (other than Declarant) from the date on which the deed from Declarant to such owner is recorded. Assessments shall accrue as to Declarant from the date of recording the deed affecting the first sale of a unit in the project.

The amount of such maintenance charge may be raised or lowered equally as to all units by vote of a majority of the owners of said units. Said maintenance charge shall in no event be increased unless and until the balance in said maintenance fund shall be insufficient to meet know current obligations and reasonably foreseeable obligations to become due in the immediate future, and shall in no event be increased beyond the extent necessary to provide sufficient funds for such current expenses and reasonably foreseeable future expenses. Similarly, the amount of said maintenance charges shall in no event be decreased to a point so as to create a deficit in the balance in said maintenance fund which will leave therein an amount insufficient to pay know current expenses and reasonably foreseeable future expenses. The consent in writing of 75% of the institutional beneficiaries of all first trust deeds of records to units in said project shall be required as a prerequisite to any decrease in the amount of the maintenance charges. Said maintenance charges shall be used by the Board of directors to pay the expenses referred to in this Declaration. The Board of Directors shall further have the obligation for the maintenance of the exterior walls of the buildings housing said units, the roofs thereof, and the wharfs, bulkheads, footings, pilings and ancillary structures within and adjacent to the project, and the owners of units shall, by the acceptance of their deeds thereto, be deemed to delegate to the Board of Directors the power and authority to maintain said exterior walls, roofs, wharfs, bulkheads, footings, pilings and ancillary structures for the benefit of each and all of said owners. The owners of the units and the Association shall be bound by all of the terms and conditions pertaining to any and all wharfs, bulkheads, footings, pilings and ancillary structures adjacent to said project as covered by and as set forth in any agreement by and between the State lands Commission of the State of California, and the owners of units, the Association of the Declarant as the case may be, and said State lands Commission may enforce such agreement against said unit owners and the Association, but not as a change against the project.

(b) In the event of default by any owner in the payment of any installment of maintenance charges, the remaining owners shall be entitled to a lien upon the interest of said defaulting owner in said real property; provided, however, that such lien shall be junior to the lien of any institutional first trust deed holder and effective only upon recordation of notice of claim thereof in the Orange County Recorder's office, and that any action brought to foreclose such lien must be commenced within ninety (90) days following such recordation. In addition to the right to such lien, the remaining owners, or any of them, or any owners, shall be entitled to bring legal action for damages against said defaulting owner, to enjoin any violation of this Declaration or of the By-Laws of the Association, or to prosecute any other appropriate legal or equitable action that may be necessary or expedient in the premises. Any judgment rendered against any such defaulting owner may include a reasonable attorney's fee, to be fixed by the Court.

### ARTICLE IV COVENANT AGAINST PARTITION

By acceptance of his deed, each owner shall be deemed to covenant, for himself, and for his heirs, personal representatives, successors and assigns, that he will not institute legal proceedings to effect

judicial partition of his interest in said real property; except, however, a partition may be made pursuant to section 752.b of the Code of Civil Procedure of the State of California.

#### ARTICLE V DESTRUCTION OF IMPROVEMENTS

(a) In the event of partial destruction of the hereinbefore described improvements on said real property, it shall be the duty of the Board of Directors to restore and repair the same to its former condition, as promptly as practicable and in a lawful and workmanlike manner. The proceeds of any insurance written pursuant to Article VIII hereof shall be made available for such purpose, subject to the prior rights of beneficiaries of deeds of trust whose interest may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such partial reconstruction shall be inadequate, the owners of individual units, by vote of not less than a majority of them, present and entitled to vote, in person or by proxy, at a duly constituted meeting, shall determine whether the Board of Directors shall be authorized to proceed with such partial reconstruction or not, and in the event of an affirmative vote, a special assessment of the owners, with each owner contributing a like sum, may be levied to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. In the event of a determination by the owners that the cost of such reconstruction would be so substantial that it would not be in their best interests to proceed with the same, the owners may, in their discretion, proceed as provided in Article V (b) hereof.

(b) In the event of the total destruction of the improvement on said real property, the owners, by said majority vote, shall likewise have the authority to determine whether said improvements shall be rebuilt, or whether said real property shall be sold. In the event of a determination to rebuild, the necessary funds shall be raised as provided in Article V (a) hereof, and the Board of Directors shall be authorized to have prepared the necessary plans, specifications and maps, and to execute the necessary documents to effect such reconstruction as promptly as practicable, and in a lawful and workmanlike manner. A certificate of the resolution authorizing such reconstruction shall be filed with the County Recorder within six (6) months from the date of such destruction, and in the event of a failure to record such certificate within said period, it shall be conclusively presumed that the owners have determined not to rebuild said improvements. In the event of a determination not to rebuild, the Board of Directors shall be authorized to have prepared and to file, as promptly as practicable, a corrected subdivision map, converting said real property into an unimproved parcel of land, which shall be offered for sale, at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. The net proceeds of such sale, and the proceeds, if any, of insurance carried by the owners as a whole on said premises, shall be divided equally among the owners. The balance then due on any individual encumbrance executed in good faith and for value shall be first paid before the distribution of any proceeds to the owner whose unit is so encumbered.

(c) Restoration and repair of the damage to any unit shall be made by and at the individual expense of the owner of said unit and in the event of a determination to rebuild partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.

(d) Six (6) months from the date of any partial or total destruction, if a certificate of a resolution to rebuild be not filed of record as hereinbefore provided, or if reconstruction be not actually commenced within said period, the covenant against partition hereinabove provided shall terminate and be of no further force or effect.

(e) In the event of total destruction of said improvements, and in the event of a determination not to rebuild the same, fee title to the air space contained or formerly contained within the units of the Condominium shall be deemed to merge in the interest of each owner of the common area lots within said tracts, as tenant in common with the remaining owners; provided, however, that such merger shall not be effective if the same shall violate the rule against perpetuities as set forth in California Civil Code Section 715.2 or such statute defining the Rule Against Perpetuities as may then be in effect.

#### ARTICLE VI PROHIBITION AGAINST SALE OF FRACTIONAL INTEREST

No owner shall be entitled to sell or convey his undivided interest in the common area or any rights derived from Membership in the Huntington Marina Association, except in conjunction with a sale of

his individual unit, or to encumber any part or portion of the common area, or any such rights except to an institutional lender receiving a first Deed of Trust as security therefor, and any attempted or purported transaction in violation of this covenant shall be void and of no effect.

## ARTICLE VII FURTHER CONDITIONS OF OWNERSHIP

(a) Each owner shall maintain his unit, including windows and glass, the interior walls, ceiling, floors and permanent fixtures and appurtenances, in a clean, sanitary and attractive condition, reserving to each such owner, however, complete discretion as to a choice of furniture, furnishings and interior decorating.

(b) No structural alterations to any unit shall be made and no plumbing or electrical work within any bearing or party walls shall be made by any individual owner without the prior written consent of the Board of Directors.

(c) No owner shall make any alterations, addition or modification to any part or portion of the common area herein defined and described without the prior written approval of both the Board of directors and of the Architectural Committee hereinafter referred to.

With respect to the installation of awnings, sunshades and other installations to any individual unit, the prior written approval of the Board of directors only shall be required and the discretion of the Board of Directors shall be exercised with a view to promoting uniformity in such minor installations and thereby enhancing the attractiveness of the project as a whole.

There is hereby created an Architectural Committee, the membership of which shall be initially, as follows:

(a) two members of the board of Directors who shall also be officers; (b) three members designated by the Declarant. The membership of the Architectural Committee shall be chosen as promptly as possible following the organization meeting and the membership of said committee shall be filed in the Minute Book and the board of Directors given prompt notice of any change in the membership thereof insofar as Declarant is concerned. The term of those members designated by Declarant shall expire one (1) year after the organization meeting. The vacancies thus created, and any other vacancies, shall be filled by designation of the board of Directors without the necessity that such designated members be officers.

(d) No antenna (television, radio, or of any sort) shall be located on any portion of the project except such antenna which may be located within an individual unit and no part thereof is to be on or affixed to any portion of the common area except that which is originally installed by the Declarant.

(e) No signs of any kind shall be displayed in the public view on or in any unit, except one sign of moderate size and dignified appearance advertising said property for sale or lease, or signs used by the Declarant or his agent in connection with the original construction and sale of said units. Nothing contained herein shall prohibit or restrict in any way the Declarant's right to construct such promotional signs or other sales aids on or about any portion of the premises which it shall deem reasonably necessary in connection with its original sales program, on this or adjacent tracts.

(f) The raising or keeping of cattle, horses, sheep, rabbits, pigs, hogs, cats, dogs, or other animals, poultry, birds or reptiles, either in the singular or plural number, for pleasure or for commercial gain upon any part of said project is prohibited, except that a dog, a cat, or other household pet may be kept for pleasure and not for commercial purposes, provided that they do not become a nuisance to other owners or occupants of this Project, and if and when declared to be a nuisance by the Board of Directors such dog, cat or other household pet shall be forthwith removed.

(g) No owner shall permit or suffer anything to be done or kept in his unit or upon the common area which will increase the rate of insurance thereon, or which shall construct or interfere with the rights of other owners, nor annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance in his unit or commit or suffer any immoral or illegal act to be committed therein. Each owner shall comply with all of the applicable ordinances, statutes and requirements of all Federal, State or Local agencies, with respect to the occupancy and use of his unit.

(h) Each owner shall be liable to the Association for any damage to the common area or to the boat docks or appurtenances thereto, or to any of the equipment or improvements therein or thereon which may be sustained by reason of the negligence or willful misconduct of said owner or of his family, relatives, guests or invitees, both minor and adult. In the case of joint ownership of a unit, the liability of such owners shall be joint and several.

(i) A portion of the common area consists of private roads or driveways providing access to said units and to various parts of said development. Temporary parking of automobiles and other motor driven vehicles on private drives and roadways shall be permitted, only if travel over said drives and roadways is not impaired.

#### ARTICLE VIII INSURANCE

The Association shall acquire adequate public liability insurance for all commonly used areas, and a policy or policies of insurance for the full insurable replacement value of all buildings, structures, boatslips and appurtenant equipment in, on or about the property for the interest of and naming as insureds all of the unit owners, and the Association, as their interest may appear. Such insurance shall provide coverage against the perils of fire, extended coverage, vandalism, malicious mischief, as minimum requirements, which policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each unit, if any.

No unit owner shall insure against loss by fire or other casualty affecting his unit unless said insurance policy contains the endorsements set forth above.

The procurement of such insurance by a unit owner shall in no way relieve him of his share of assessments to pay the premiums on policies provided by the Association pursuant to this article. Nothing herein contained shall preclude any individual owner from carrying such public liability insurance, as he may deem desirable to cover his individual liability for damage to person or property occurring on said premises, whether inside his individual unit or elsewhere.

#### ARTICLE IX ADOPTION OF BY-LAWS

The original By-Laws shall be approved by the owners at their organizational meeting. The approval of said By-Laws shall require the majority vote of the owners. Neither said initial By-Laws nor amendments thereto shall contradict the provisions of this Declaration.

#### ARTICLE X AMENDMENT

Each and all of the provisions hereof may be modified, amended, added to, or deleted from, by a further declaration or agreement in writing properly executed and acknowledged by not less than seventy-five percent (75%) of the then owners of units in tract Nos. 5864, 5865, 5866 and 5555. Any such amendment shall be subject to the approval of the California State Real Estate Commissioner and effective upon recordation in the office of the Recorder of Orange County.

#### ARTICLE XI MISCELLANEOUS PROVISIONS

(a) No owner may exempt himself from liability for his assessment payable to said maintenance fund by any waiver of the use or enjoyment of said common areas, or by the abandonment of his individual unit.

(b) Every act or omission in violation of any covenant, condition or restriction herein set forth shall constitute a nuisance and in addition to the legal remedies hereinbefore set forth, may be abated or enjoined by any owner or any member of the Board of Directors.

(c) No owner shall execute or file for record any instrument which imposes a restriction upon the sale, leasing or occupancy of his unit on the basis of race, color or creed.

(d) Any owner may at any time and at his own expense cause an audit or inspection to be made of the books and financial records of the maintenance funds.

(e) The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a condominium. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

(f) No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provided in Article III (b) hereof, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and shall insure to the benefit of any owner whose title is derived through foreclosure or trustee's sale, or otherwise,

(g) The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unforceability of any provisions hereof shall not invalidate the others.

(h) Each remedy provided for in this declaration shall be cumulative and exclusive.

(i) This declaration shall insure to the benefit of and be binding upon the successors and assigns of the Declarant, and to the heirs, personal representatives, grantees, lessees, successors and assigns of the owners.

IN WITNESS WHEREOF, Declarant has executed this instrument on the 1<sup>st</sup> day of December, 1965.

DECON CORPORATION, a corporation

By Cedric E. Sanders

President

By W. B. Cullen, Jr.

Assistant Secretary

These restrictions supersede and cancel in their entirety the Declaration of Restrictions covering this same property recorded September 8<sup>th</sup>, 1965 in book 7659, Pages 49 through 68, both inclusive of official records of Orange County, California.