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STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

DECLARATION OF MASTER COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
ESCOBA BAY EQUESTIAN  
AND  
YACHTING COMMUNITY

THIS DECLARATION, made this 28<sup>th</sup> day of December, 1987, by CEPCO, INC., a North Carolina corporation with its principal office and place of business in Onslow County, North Carolina, hereinafter referred to as the "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in Onslow County, North Carolina, all of which is more particularly described as:

SEE ATTACHED EXHIBIT "A"

AND WHEREAS, Declarant will convey the said properties subject to certain protective covenants, conditions, restrictions, reservations, and charges as hereinafter set forth; and

WHEREAS, Declarant desires to create thereon a planned community with a mix of housing types; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in said community and for the maintenance of the properties and improvements thereon, and to this end desires to subject the real property described in Exhibit A together with such additions as may hereafter be made thereto to the covenants, restrictions, easements, charges, and liens hereinafter set forth, all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering the community properties and facilities, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents; and

WHEREAS, Declarant has incorporated under the laws of the State of North Carolina the Escoba Bay Homeowner's Association as a non-profit corporation for the purpose of exercising the functions, aforesaid, among others;

NOW THEREFORE, Declarant and other persons and/or entities joined herein hereby declare all of the property described herein in the attached Exhibit "A" to be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which shall run with the real property, shall be binding on all parties having or acquiring any right, title, or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

#### ARTICLE I

#### DEFINITIONS

Section 1. The "Association" shall mean and refer to Escoba Bay Homeowner's Association, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Escoba Bay" shall mean and refer to that certain real property subject to this Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean and refer to all real property within Escoba Bay owned by the Association for the common use and enjoyment of all Members of the Association.

Section 4. "Limited Common Area" shall mean those lands not owned by the Association that serve only a limited number of Dwelling units and which may include, but specifically are not limited to, driveways and walkways serving townhouse sites, parking spaces, buildings or areas serving only specified Dwelling Units, and such other similar areas as may be designated by the Association. Limited Common Areas shall be maintained at the expense of the Owners of Dwelling Units served thereby and not at the expense of the Association.

Section 5. "Site" or "Lot" shall mean any plot of land regardless of size as shown on a recorded subdivision map of Escoba Bay which has been approved by Declarant as required by this Declaration. A Site may provide for or contain one or more Dwelling Units.

Section 6. "Undeveloped Site" shall mean a site or an area of Escoba Bay yet undeveloped but intended to contain one or more residential units as provided in the general plan for Escoba Bay.

Section 7. "Dwelling Unit" shall mean a residence containing sleeping facilities for one or more persons and a kitchen. A Dwelling Unit may be attached to other Dwelling Units, or may be separated from other Dwelling Units and includes condominiums.

Section 8. "Member" shall mean and refer to every person or entity entitled to membership in the Association as provided in this Declaration.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Dwelling Unit or Site which is a part of Escoba Bay including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 10. "Declarant" shall mean and refer to CEPCO, INC. as well as its successors and assigns, if such successors or assigns should acquire more than one Undeveloped Site from the Declarant for the purpose of development.

Section 11. "Board of Directors" or "Board" means those persons elected or appointed to act collectively as the directors of the Association.

Section 12. "Book of Resolutions" shall mean and refer to the document containing rules and regulations and policies adopted by the Board of Directors.

Section 13. "Bylaws" shall mean the bylaws of the Association as they now or hereafter exist.

## ARTICLE II

### COMMON AREA OWNERSHIP AND MAINTENANCE

Section 1. Owner's Easements of Enjoyment: Every Owner shall have a right of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Site or Dwelling Unit.

Section 2. Delegation of Use: Any Owner may delegate his right of enjoyment of the Common Area to the members of his family, his tenants, contract purchasers who reside on the property, or his guests.

Section 3. Rules and Regulations: The Board of Directors shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, which shall be maintained in a place reasonably convenient to the Members and available to them for inspections during normal business hours.

Section 4. Title to the Common Area. The Declarant covenants for itself, its successors and assigns, that it shall convey by fee simple deed to the Association, at no cost to the Association, those parcels of land and facilities described in Section 6 of of this Article II, when the Declarant has completed improvements thereon, if such be required, such that the facility is functionally complete. The Association shall immediately become responsible for all maintenance and operation. It is the purpose of this provision to provide that the Association shall be responsible for all maintenance of the Common Area upon which all improvements required to be made by the Declarant have been completed. The Declarant covenants for itself, its successors and assigns, that it shall convey by fee simple deed to the Association all such properties immediately after written notification to the Association of its intents to convey such properties. Such notification will not normally give a metes and bounds description and, in any event, the metes and bounds as shown on the recorded plat and deed to the Association shall govern. All said parcels of land may be conveyed to the Association subject to all easements, rights-of-way and restrictive covenants of record at the time of conveyance. Notwithstanding the foregoing, however, all said parcels of land shall be conveyed to the Association free and clear of all mortgages and/or deeds of trust.

Section 5. Extent of Members' Easements: The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Bylaws, to borrow money from the Declarant or any lender for the purpose of improving and/or maintaining the Common Area, and providing services authorized herein and in aid thereof to mortgage the Common Area; provided, however, that the execution of such mortgage shall require the same approval of members which is required for special assessments for capital improvements as set forth in Article VII, Section 5 of this Declaration.

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure.

(c) The right of the Association to suspend the rights and easements of enjoyment of any Member or tenant or guest of any Member for any period during which the payment of any Assessment against property owned by such Members remains delinquent and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any Assessment or a breach of the rules

and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the Assessment, and provided that the Association shall not suspend the right to use any roads belonging to the Association, subject to the rules, regulations and fees, if any, established by the Association for such use.

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Area, and facilities included therein, provided, however, that such rights of the Association shall not be construed to impair or qualify an Owner's rights of ingress and egress to his property.

(e) The Board of Directors of the Association shall further have the power to place any reasonable restrictions upon the use of the Association's roadways, subject to an Owner's right of ingress and egress, including, but not limited to, the types and sizes of vehicles permitted to use said roads, the maximum and minimum speeds of vehicles using said roads. The fact that such restrictions on the use of the roads shall be more restrictive than the laws of the State of North Carolina or the local government having jurisdiction over the property shall not make such restriction unreasonable.

(f) The right of the Declarant or the Association by its Board of Directors to dedicate or transfer to any public or private entity drainage and utility easements on any part of the Common Area.

(g) The right of the Association to give or sell all or any part of the Common Area, including leasehold interests, to any public agency, authority, public service district, utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift or sale or determination as to the purposes or conditions thereof shall be effective unless such dedication, transfer and determination shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by the Bylaws of the Association and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution, together with a certificate of the results of the vote taken thereof, shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Area prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

Section 6. Conveyance of the Common Area by Declarant: The Declarant covenants for itself, its successors and assigns, that, prior to December 31, 1997, it shall convey to the Association by fee simple deed, and the Association shall accept, those properties designated on the Master Development Plan as "Common Area," including the properties listed below. Such conveyance shall be subject to all restrictions and limitations of the various Articles of this Declaration and any other restrictions and limitations of record and shall include the following:

(1) Any private community roads and rights-of-way thereof within Escoba Bay which connect Dwelling Units or Sites to public roads or highways; and

(2) Open space designated as such on the Master Development Plan or subdivision plats recorded in the Office of the Register of Deeds of Onslow County, North Carolina.

Notwithstanding the foregoing, however, all said Common Areas shall be conveyed to the Association free and clear of all mortgages and/or deeds of trust.

### ARTICLE III

#### INSURANCE AND BONDS

Section 1. Hazard Insurance. The Association shall obtain and maintain a policy of property insurance in a sufficient amount to cover One Hundred (100%) percent of the replacement costs of all the common areas, except for those that are normally excluded from coverage, such as land, excavation, etc., with the premiums of said insurance being paid as a common expense.

Section 2. Liability Insurance. The Association shall obtain and maintain a comprehensive General Liability Insurance policy covering all common areas, public ways and other areas that are under its supervision. The policy shall provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. The premium for said policy shall be paid by the Association.

Section 3. Flood Insurance. The Association shall obtain and maintain a Flood Insurance policy to cover any common area buildings or any other common area property which shall lie in a Special Flood Hazard area as defined by the Federal Emergency Management Agency. The amount of insurance should be least the lesser of One Hundred (100%) percent of the current replacement cost of all buildings and other insurable property located in the flood hazard area or the maximum coverage available for the property under the

National Flood Insurance Program. The premium for said insurance shall be paid as a common expense. In addition, Flood Insurance shall be obtained and maintained by any Lot Owner whose dwelling site shall lie in a special flood hazard area in an amount at least the lesser of One Hundred (100%) percent of the current replacement cost of all improvements and other insurable property totaled in the flood hazard area or the maximum coverage available for the property under the National Flood Insurance Program.

Section 4. Fidelity Bond. The Association shall have Fidelity Bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. A management agent that handles funds for the Association shall be covered by its own Fidelity Bond.

Except for Fidelity Bonds that a management agent obtains for its personnel, all other bonds shall name the Association as an obligee and their premiums shall be paid by the Association as a common expense.

The Fidelity Bonds shall be in a sufficient amount to cover the aggregate of the following:

- (a) The maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force,
- (b) The sum of three (3) months assessments on all amounts in the project, and
- (c) All reserve funds of the Association.

Section 5. Notice to Association and Mortgagors. All insurance policies and bonds must include a provision that calls for ten (10) days written notice to the Association and each holder of a first mortgage before the bond or insurance can be cancelled or substantially modified for any reason.

#### ARTICLE IV

##### LAND USE

Section 1. Restrictions: Each Dwelling Unit or Site and the facilities on the Common Area shall be subject to both the restrictions herein and those set forth in the Bylaws.

Section 2. Designated Residential Property Restrictions: All property designated for residential use shall be used, improved and devoted exclusively to residential use.

Section 3. Common Area Restriction: All Common Areas shall be used, improved and devoted exclusively to the benefit and enjoyment of the Owners.

Section 4. Common Area Offensive Use: No immoral, improper, offensive or unlawful use shall be made of Escoba Bay. Any Dwelling ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed.

Section 5. Common Area Construction or Alteration: No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area except at the direction of and with the express written consent of the Association.

Section 6. Nuisance or Annoying Activity: No noxious or offensive activity shall be carried on, in or upon Escoba Bay, nor shall anything be done which may be or may become a nuisance or annoyance to any resident within Escoba Bay. In addition, no Owner of a Dwelling Unit or Site shall store or keep a trailbike, motorcycle, motorized tri-wheel bike, tractor, truck, or other such motorized riding vehicle on the premises except one operational pick-up truck and one or more operational automobiles without specific written approval of the Association. In granting such approval, the Association may attach specific conditions which shall be binding on the Owner and occupants of the Dwelling Unit or Site.

Section 7. Parking and Antennas: The Association may regulate the parking of boats, campers, trailers, and the placing of tents and other such items on the Common Area or on a Site (including the provision of special facilities for which a reasonable charge may be made). Automobiles, trucks, tractors, boats, campers and trailers shall be parked only in designated areas. The erection of antennas on Dwelling Units is expressly prohibited.

Section 8. Occupancy: No private dwelling house erected upon any lot shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed, as herein required. Nor shall any residence, when completed, be in any manner occupied until made to comply with the approved plans, the requirements herein, and all other covenants, conditions, reservations, and restrictions herein set forth. No temporary house, temporary dwelling, temporary garage, temporary outbuilding, trailer home, or other temporary structure shall be placed or erected upon any lot unless approved by the Declarant.

Section 9. Dwelling Size and Location: No single family dwelling unit shall be located on the premises with less than 1200 square feet of living space. No dwelling, outbuilding, or other appurtenance of any nature shall be

located closer than thirty-five (35) feet to the street nor closer than twenty-five (25) feet to the side street, in the case of any corner lot, nor closer than ten (10) feet to any side lot line. Declarant or the Association may waive minor encroachments by written consent.

Section 10. Letter and Delivery Boxes: The Declarant shall determine the location, color, size, design, lettering, and all other particulars of all main or paper delivery boxes, and standards and brackets and name signs for such boxes in order that the area be strictly uniform in appearance with respect thereto.

Section 11. Commercial Vehicles and Boats: No commercial vehicles, tractor-trailers, construction or like equipment or mobile or stationary trailers of any kind shall be permitted on any lot of the subdivision unless first approved by the Declarant. No boat may be stored on any lot for more than 72 hours without the prior consent of the Declarant.

Section 12. Division of Lots: No lot shall be resubdivided except as approved by the Declarant.

Section 13. Signs: No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any lot or improvement thereon except as herein expressly permitted. A name and address sign, the design of which shall be furnished to the lot owner on request by the Declarant, shall be permitted. No other sign of any kind or design shall be allowed. The provisions of this paragraph may be waived by the Declarant, only when its discretion the same is necessary to promote the sale of property in and the development of the subdivision area. Nothing herein shall be construed to prevent the Declarant from erecting, placing, or maintaining sign structures and offices as may be deemed necessary by it for the operation of the subdivision.

Section 14. Tanks: No elevated tanks of any kind shall be erected, placed, or permitted on any part of any site, provided that nothing herein shall prevent the Declarant, its successors and assigns from erecting, placing, or permitting the placing of tanks and other water system apparatus on such site. Any tanks for use in connection with any residence constructed on such site, including tanks for the storage of fuels, must be buried or walled sufficiently to conceal them from the view of neighboring lots, roads or streets. All clotheslines, garbage cans, equipment, coolers, wood piles or storage piles shall be walled in to conceal them from the view of neighboring lots, roads or streets. Plans for all enclosures of this nature must be approved by the Declarant prior to construction.

Section 15. Native Growth: The native growth of Escoba Bay shall not be permitted to be destroyed or removed except as approved in writing by the Declarant herein. In the event such growth is removed, the Declarant may require the replanting or replacement of same, the cost thereof to be borne by the Owner.

Section 16. Horses and Pets: No horses shall be kept or stabled on any of such lot. No more than two pets of the customary household variety (including birds) may be kept at any homesite, except upon the express written permission of the Declarant; provided, however, that the provisions hereof shall not be deemed to permit the keeping of domestic fowl. Any domestic pets kept on any lot shall be kept on a leash; no pets shall be allowed to roam at large.

#### ARTICLE V

##### ARCHITECTURAL CONTROL

Section 1. Architectural Committee: An Architectural Committee consisting of three (3) persons shall be appointed at or prior to the sale and transfer of title to the first Site by the Declarant. At such time as the Class B Membership expires, the Architectural Committee shall be appointed by the Board of Directors of the Association. CEPCO, INC. shall be entitled to control the selection of one of this three (3) person architectural committee and that person so selected shall have the right to control the vote of such committee on all decisions relating to any property within Escoba Bay which is owned by CEPCO, INC. This right and power shall continue until January 1, 1994 or until four months after the Declarant has sold seventy-five (75%) percent of all properties in its name and shown on the general plan of development of Escoba Bay, whichever occurs first.

Section 2. Plan or Design Approval: No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, Dwelling Units, outbuildings, fences, walls, signs, antennas, clotheslines, and other structures, excavation, or changes in grade shall be undertaken upon any Site unless the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the proposed improvements shall have been submitted to the Architectural Committee and expressly approved in writing. No subsequent alteration or modification of any existing improvements or construction, erection or installation of additional improvements may be undertaken or allowed to remain on any of the Sites without the review and express written approval of the Architectural Committee.

Section 3. Effect of Failure to Approve or Disapprove: In the event that the Architectural Committee fails to approve or disapprove the design of any proposed improvements within thirty (30) days after the plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully satisfied; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Architectural Committee if they contain erroneous data or fail to present adequate information upon which the Architectural Committee can arrive at a decision.

Section 4. Right of Inspection: The Architectural Committee shall have the right, at its election, to enter upon any of the Sites in Escoba Bay during preparation, construction, erection, or installation of any improvements to determine that such work is being performed in conformity with the approved plans and specifications.

Section 5. Exterior Maintenance: The exterior maintenance of Dwelling Units, Sites, and improvements constructed thereon shall be the duty of the owners of such Dwelling Units or Sites (except where specifically provided otherwise) and shall not normally be interfered with by the Association or any person. If, however, in the opinion of the Association any Owner shall fail to maintain any Dwelling Unit or Site in a manner which is reasonably neat and orderly or shall fail to discharge his repair, maintenance or upkeep responsibilities in a reasonable and prudent manner to a standard harmonious with that of other Sites or Dwelling Units in Escoba Bay, the Association at its discretion, and following ten (10) days written notice to the Owner, may enter upon and make or cause to be made repairs to such improvement and perform such maintenance on the Dwelling Unit or Site such as, but not limited to, painting the exterior of Dwelling Units, repairing window frames, paving driveways, the removal of trash, cutting of grass, pruning of shrubbery, and seeding for erosion control. The Association, or its agents, shall have an easement for the purpose of accomplishing the foregoing. The costs incurred by the Association in rendering all such services plus a service charge of twenty (20%) percent of such costs, shall be added to and become a part of such other assessments to which such Dwelling Unit or Site is subject.

ARTICLE VIMEMBERSHIP AND VOTING RIGHTS

Section 1. Members: The Declarant, for so long as it shall be an Owner, and every person or entity who is an Owner of a fee or undivided fee interest in any Dwelling Unit or Site which is subject by covenants of record to assessments by the Association, including contract sellers, shall be a member of the Association. The foregoing does not include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such Dwelling Unit or Site shall be the sole qualification for membership, and no Owner shall have more than one membership, except as expressly provided hereinafter. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit or Site which is subject to assessment by the Association. The Board of Directors may make reasonable rules relating to the proof of ownership of a Dwelling Unit or Site in Escoba Bay.

Section 2. Member Classes and Voting Rights: The Association shall have two (2) classes of voting Members:

Class A. Class A Members shall be all those Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Dwelling Unit or Site in which they hold the required ownership interest. When more than one person or entity holds such interest in any Dwelling Unit or Site all such persons shall be Members. The vote for such Dwelling Unit or Site shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Dwelling Unit or Site and no fractional vote may be cast with respect to any Dwelling Unit or Site.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Dwelling Unit or Site in which it holds the required ownership interest, provided that the Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs first:

(a) the total votes outstanding in Class A Membership equal the total votes outstanding in the Class B Membership; provided that the Class B Membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B Membership to Class A Membership, as provided hereunder, additional lands are annexed to the properties without the assent of the Members on account of the development of such additional lands by the Declarant, all within the times and as provided in Article IX; or

(b) January 1, 1994.

Section 3. Voting Rights Suspension: The right of any Class A Member to vote may be suspended by the Board of Directors of the Association for just cause pursuant to its rules and regulations and according to the provisions of Article II, Section 5.

Section 4. Right of Declarant to Representation on Board of Directors of the Association: Notwithstanding anything contained herein to the contrary, until January 1, 1994, or until four (4) months after CEPCO, INC. shall have conveyed seventy-five (75%) percent of the properties shown on the general plan of Escoba Bay, whichever occurs first, CEPCO, INC. (or its express assignee of the right granted in this Section) shall have the right to designate and select a two-thirds (2/3) majority of the Board of Directors of the Association. Whenever CEPCO, INC. shall be entitled to designate and select any person or persons to serve on any Board of Directors, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or By-Laws of the Association. CEPCO, INC. shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any Director or Directors so removed. Any Director designated and selected by CEPCO, INC. need not be an Owner. Any representative of CEPCO, INC. serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between CEPCO, INC. and the Association where CEPCO, INC. may have a pecuniary or other interest. Similarly, CEPCO, INC., as a member of the Association, shall not be required to disqualify itself upon any vote upon or entrance into any contract or matter between CEPCO, INC. and the Association where CEPCO, INC. may have a pecuniary or other interest.

#### ARTICLE VII

#### ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment: The Declarant, for each Site and each Dwelling Unit owned, hereby covenants, and every other Owner of any Site and any Dwelling Unit covered by this Declaration, by acceptance of a deed therefor, whether or not expressed in any such deed or other covenant, is deemed to covenant and agrees to pay to the Association:

- (a) Annual assessments or charges as herein provided;
- (b) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments on a Dwelling Unit or Site together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as provided in North Carolina General Statutes Section 6-21.2) incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the Owner of such Dwelling Unit or Site at the time when the assessment became due. The obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purposes of promoting the beautification of Escoba Bay, the recreation, health, safety and welfare of the Owners in Escoba Bay, the enforcement of these covenants and the rules of the Association, and the improvement and maintenance of the Common Area, including, without limitation, the maintenance of any dedicated streets within the Common Area which are not accepted for dedication by the appropriate governmental authority.

Section 3. Annual Assessments: To and including December 31, 1988, the Annual Assessment shall be shared equally and shall not be in excess of THREE HUNDRED DOLLARS (\$300.00) per Dwelling Unit or Site, except as otherwise provided herein, the exact amount of which shall be determined from time to time by the Board of Directors in accordance with the following provisions:

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten (10%) percent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above ten (10%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessment for Repairs: In the event any portion of the Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or family members, such Owner does hereby authorize the Association to repair said damaged area in a good and workmanlike manner. The amount necessary for such repairs, labor and material, shall become a special assessment upon the Dwelling Unit or Site of said Owner.

Section 5. Special Assessment for Capital Improvements: In addition to the Annual Assessments authorized above, the Association may levy one or more special assessments applicable to that year only for the purpose of defraying the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members (as defined and determined above in Section 3(b)) who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days in advance of the meeting.

Section 6. Uniform Rate of Assessment: Both Annual and Special Assessments, (with the exception of the Special Assessment authorized by Article VII, Section 4 above) must be fixed at a uniform rate for all Dwelling Units or Sites and may be collected on a monthly, quarterly or semi-annual basis in advance.

Section 7. Date of Commencement of Annual Assessment—Due Dates: The Annual Assessments provided herein shall commence as to all Dwelling Units or Sites Six (6) months following the date on which title to such Site was transferred from the Declarant to the Owner. Notwithstanding anything herein to the contrary, Declarant's assessments shall be twenty-five (25%) percent of the Annual Assessment on all unoccupied Dwelling Units or Sites owned by it. The Board of Directors shall fix the amount of the annual assessment against such Dwelling Unit or Site at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto but failure to receive such notice shall in no way affect the obligation of each Owner therefor or the lien therefor as provided herein. The due dates and approximate penalties for late payment shall be established by the Board of Directors. The Association, upon demand at any time, shall furnish a certificate in writing setting forth whether the

assessments on a specified Dwelling Unit or Site have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment status.

Section 8. Remedies for Non-Payment of Assessments: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at a rate not to exceed ten (10%) percent. The Association may bring an action at law against the Owner personally obligated to pay any assessments and interest or foreclose the lien created herein in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of Deeds of Trust. Costs and reasonable attorney's fees (as set forth in Article VII, Section 1 above), of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by the nonuse of the Common Area or abandonment of his Dwelling Unit or Site.

In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then, and in that event, the Association shall be further empowered to execute on that judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes: The lien of the assessments provided for herein on any Dwelling Unit or Site shall be subordinate to the lien of any first mortgage, deed of trust or first purchase money deed of trust representing a first lien on said property and shall be subordinate to ad valorem taxes. Sale or transfer of any Dwelling Unit or Site shall not affect the assessment lien; provided, however, that the sale or transfer of any Dwelling Unit or Site pursuant to a decree of foreclosure on a mortgage thereon or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Dwelling Unit or Site from liability or liens arising from assessments thereafter becoming due.

Section 10. Exempt Property: Any portion of Escoba Bay dedicated to, and accepted by, a local public authority shall be exempt from the assessments created herein; provided, however, no land or improvements devoted to Dwelling Unit use shall be exempt from said assessments.

Section 11. Annual Budget: By a majority vote of the directors, the Board shall adopt an annual budget for the subsequent year of operation, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and any and all Supplementary Declarations will be met.

Section 12. Reserve Funds: The Association shall establish reserve funds from its Annual Assessments to be held in reserve in an interest-bearing account or investments as a reserve for (a) major rehabilitation or major repairs, (b) emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss, (c) recurring periodic maintenance, and (d) initial costs of any new service to be performed by the Association.

#### ARTICLE VIII

##### EASEMENTS

Section 1. Walks, Drives, Parking Areas, Utilities, Etc.: Escoba Bay, including Sites and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, other utilities, ingress, egress and regress and otherwise as shall be established by the Declarant or by its predecessor in title, prior to the conveyance of the property designated to be the Common Area to the Association; and the Association shall have the power and authority to grant and establish further easements upon, over, under and across the Common Area.

Section 2. Encroachments and Declarant's Easement to Correct Drainage: All Dwelling Units or Sites and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent Sites by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls. If any encroachment shall occur subsequent to subjecting Escoba Bay to this Declaration as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be and remain a valid easement for such encroachment for the maintenance of the same. For a period of twenty-five (25) years from the date of this Declaration, the Declarant reserves a blanket easement and right on, over and under the ground within Escoba Bay to maintain and to correct drainage or surface water in order to maintain reasonable standards of health,

safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, the Declarant shall restore the affected property to its original condition to the extent practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Declarant.

Section 3. Private Streets and Limited Common Areas: Private streets and Limited Common Areas may be created upon any Site to serve the needs of multiple Dwelling Units thereon. Such private streets and Limited Common Areas shall be subject to an easement in favor of every Dwelling Unit to which they are adjacent or which they are designed to serve and shall be deemed appurtenant to each Dwelling Unit whereby the Owner of such Dwelling Unit shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated.

Section 4. Easement to Local Governmental Units: An easement is hereby established for municipal, state or public utilities serving the area, their agents and employees over all Common Area hereby or hereafter established for setting, removing, and reading utility meters, maintaining and replacing utility or drainage connections, and acting with other purposes consistent with the public safety and welfare, including without limitation, police and fire protection.

## ARTICLE IX

### ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members: Except as provided in Section 2 of this Article, additional lands may be added and annexed to Escoba Bay only if two-thirds (2/3) of each class of all the votes entitled to be cast, in the aggregate, by the Members are cast in favor of annexation. In such event the holder of Class B voting rights shall be entitled only to one vote for each Dwelling Unit or Site which it owns. A meeting shall be duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days in advance of the meeting.

For the purpose of such meeting, the presence thereof of Members or authorizing proxies entitled to cast sixty percent (60%) of the votes, in the aggregate, of the Members, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, subject to the notice requirement set forth

above, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-third (2/3) majority of each class required for approval of the annexation, and it appears that the required assent of two-thirds (2/3) of each class may be achieved if the members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which the vote was taken. Each Member assenting or dissenting shall be deemed to have cast, respectively, all of the votes to which he is entitled under Article "VI", Section 2 of this Declaration either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes (deemed to have been cast) by the Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority at each class of all votes entitled to be cast, the annexation shall stand approved.

Section 2. Annexation by Declarant: The Declarant may annex additional lands to Escoba Bay in the following manner:

(a) If within fifteen (15) years of the date of the incorporation of the Association, the Declarant should develop additional lands within the boundaries shown on the general plan of Escoba Bay, and described in Exhibit "B" attached hereto and incorporated herein by reference, such additional lands may be annexed to Escoba Bay without the assent of the Members.

(b) The Declarant may annex to Escoba Bay the additional land described in Sub-Section (a) of this Section 2 by recording in the Onslow County Registry a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. The additional land may be deemed annexed to Escoba Bay on the date of recordation of the Declaration of Annexation, and no other action or consent shall be necessary.

(c) Subsequent to recordation of the Declaration of Annexation by such Declarant, the Declarant shall deliver to the Association one or more deeds conveying any property that will be designated as Common Area within the lands annexed as such designated property is developed.

ARTICLE XRIGHTS RESERVED UNTO INSTITUTIONAL LENDERSSection 1. Entities Constituting Institutional Lenders:

"Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan association, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

Section 2. Obligation of Association to Institutional Lenders: So

long as any Institutional Lender shall hold any first lien upon any Dwelling Unit or Site, or shall be the Owner of any Dwelling Unit or Site, such Institutional Lender shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by April 15 of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or By-Laws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association.

(c) To be given notice of any delinquency in payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner of any Dwelling Unit or Site encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

(d) To be given notice of any condemnation loss or casualty loss which affects a material portion of the Common Area.

(e) To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Area, other than those specific rights vested in the Association under Article II hereof.

(f) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

Section 3. Requirements of Institutional Lender: Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by CERTIFIED MAIL at the address shown in the Articles of Incorporation, identifying the Dwelling Unit or Site upon which any such Institutional Lender holds any first lien or identifying any Dwelling Unit or Site owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

#### ARTICLE XI

##### GENERAL PROVISIONS

Section 1. Enforcement: The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Amendment by Owners: The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Dwelling Unit or Site subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The Covenants, Conditions and Restrictions of the Declaration may be amended during the first thirty (30) year period or thereafter by a two-thirds (2/3) vote of the members of the Association, said vote subject to the voting rights stated in Article VI, Section 2, and taken at a duly authorized meeting of the members. The Board of Directors of the Association may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction without action or consent of the Owners, and such amendment shall be certified as an official act of the Board and recorded in the Onslow County Registry. Notwithstanding anything contained in this Section, any amendment or termination of this Declaration which shall materially and adversely affect the validity or priority of the lien of or the rights of Institutional Lenders (as hereinafter defined) holding first mortgage loans on property located within Escoba Bay shall be required to have the prior approval of such Institutional Lenders.

"Institutional Lenders" shall mean and refer to banks, savings and loan association, insurance companies, other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

Section 3. Amendment to Achieve Tax-Exempt Status: The Declarant for so long as it shall retain control of the Board of Directors of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, without action or consent of the Owners in order to qualify the Association or Escoba Bay, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Onslow County Registry.

Section 4. Certification and Recordation of Amendment: Any instrument amending these covenants, conditions and restrictions (other than an amendment by the Board to correct an error or inconsistency in drafting, typing, or reproduction) shall be delivered, following approval by the Owners, to the Board of Directors. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

(a) Reasonably assure itself that the amendment has been duly approved by the Owners as provided in Section 2 of this Article. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to be examined).

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association.

(c) Within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Onslow County Registry.

Section 5. Effect and Validity of Amendments: All amendments shall be effective from the date of proper recordation in the Onslow County Registry. When any instrument purporting to amend the covenants, conditions and restriction has been certified by the Board of Directors and recorded as provided in this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all Dwelling Units or Sites in Escoba Bay.

Section 6. Exchange of Common Area: Notwithstanding any provision herein to the contrary, other than Section 3 of this Article XI, it is expressly provided that the Association may convey to the Declarant, as well as any other Member, for fair market value any portion of the Common Area theretofore

conveyed to the Association, as provided in the Articles of Incorporation of the Association. Upon such conveyance, the area conveyed shall cease to be Common Area and shall cease to be subject to the provisions of these covenants relating to the Common Area. Any area purchased by the Association pursuant to the foregoing language shall become Common Area and shall be subject to the provisions of these covenants relating to the Common Area.

Section 7. Protective Covenants for Dwelling Units or Sites: Nothing herein shall affect the Declarant's right to establish, from time to time, appropriate specific additional covenants for the development and use of Sites for attached or detached Dwelling Units in Escoba Bay.

Section 8. Conflicts: In the event of any irreconcilable conflict between the Declaration and the By-Laws of the Association, the provisions of this Declaration shall control. In the event of an irreconcilable conflict between this Declaration or By-Laws of the Association and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

Section 9. Severability: Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

## ARTICLE XII

### DISSOLUTION OR INSOLVENCY OF THE ASSOCIATION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of members. Provided, however, that any amendment or termination of this Declaration which shall materially and adversely affect the validity or priority of the lien of or the rights of Institutional Lenders (as hereinafter defined) holding first mortgage loans on property located within Escoba Bay shall be required to have the prior approval of such Institutional Lenders. "Institutional Lenders" shall mean and refer to banks, savings and loan associations, insurance companies, other firms or entities customarily affording loans secured by first liens on residences and other eligible insurers and governmental guarantors. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those of which the Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

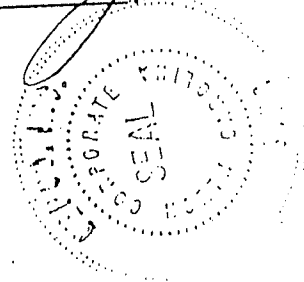
IN WITNESS WHEREOF, the Declarant, CEPCO, INC., has caused this instrument to be executed in its corporate name by its President and his signature to be attested, and its seal hereto affixed by its Secretary all by order and authority duly granted by its Board of Directors all on the day and year first above written.

CEPCO, INC.

BY: John H. Hardaway (SEAL)  
President

ATTEST:

Judy Padgett (SEAL)  
Secretary  
(Corporate Seal)

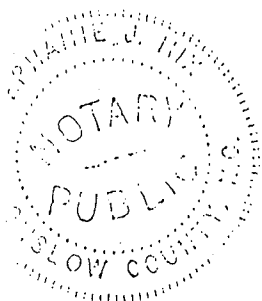


STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

This is to certify that on the 28<sup>th</sup> day of December, 1987, before me personally came ~~CHARLES E. PADGETT~~, President, with whom I am personally acquainted, who, being by me duly sworn, says that he is the President and Judy Padgett, Secretary of CEPCO, INC. the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said President and that the said President and Secretary subscribed their names thereto, and said common seal was affixed all by order of the Board of Directors of said corporation and that the said instrument is the act and deed of said corporation.

WITNESS my hand and official seal, this the 28<sup>th</sup> day of December, 1987.

Stephanie J. Hix  
Notary Public  
My Commission Expires: 1-13-92



NORTH CAROLINA, ONSLOW COUNTY  
The foregoing certificate(s) of \_\_\_\_\_

Stephanie J. Hix

Notary(ies) Public is (are) certified to be correct. This instrument was presented for registration and recorded in this office in Book 861 Page 321 This 29<sup>th</sup> day of December 19 87 A.D. at 12:39 o'clock P. M.  
Michael M. Thomas By \_\_\_\_\_  
Register of Deeds, Onslow County Register of Deeds

## EXHIBIT A

Being all of that property shown on the plat entitled "Escoba Bay Equestrian and Yachting Community, Phase 1" prepared by McKim & Creed, Engineers, and recorded on November 18, 1987 in Map Book 25, Page 50, Slide D-238, Onslow County Registry.

## EXHIBIT B

BEGINNING at an old iron stake on the Eastern right-of-way of NCSR 1520 (60 foot right-of-way), said stake being located South 83 degrees 43 minutes 50 seconds East 30.77 feet from a P.K. Nail in the Centerline of NCSR 1520, said P.K. Nail being located 1118.58 feet from an old R.R. Spike at the point of intersection of the centerline of NCSR 1520 with the centerline of NCSR 1515, as measured in 100-foot chords along the centerline of NCSR 1520 in a Southerly direction from NCSR 1515; thence from the above described point of beginning and leaving said right-of-way South 83 degrees 43 minutes 50 seconds East 140.06 feet to an old iron stake; thence, the same course, South 83 degrees 43 minutes 50 seconds East 224.11 feet to an old iron stake; thence the same course, South 83 degrees 43 minutes 50 seconds East 122.5 feet to an Iron Stake; thence South 58 degrees 24 minutes East 92.42 feet to an old cart axle at the corner of an old fence an old gate; thence with said old fence North 17 degrees 22 minutes East 242.50 feet to an Iron Stake; thence with an old fence South 82 degrees 45 minutes East 204.94 feet to an Iron Stake in a re-dug portion of a small branch; thence down and with the various courses of said branch; South 20 degrees 03 minutes 10 seconds East 57.24 feet to an iron stake; thence South 06 degrees 52 minutes 20 seconds West 61.50 feet to an Iron Stake; thence South 16 degrees 25 minutes East 50.63 feet to an Iron Stake; thence South 07 degrees 01 minutes 20 seconds East 55.88 feet to an Iron Stake; thence South 16 degrees 21 minutes 10 seconds East 57.08 feet to an Iron Stake; thence South 08 degrees 19 minutes 50 seconds East 81.80 feet to an Iron Stake; thence South 08 degrees 13 minutes 10 seconds East 38.69 feet to an Iron Stake; thence South 07 degrees 54 minutes 10 seconds East 46.84 feet to an iron stake; thence South 07 degrees 32 minutes 40 seconds West 162.47 feet to an Iron Stake; thence South 36 degrees 16 minutes 40 seconds East 57.61 feet to an Iron Stake; thence South 76 degrees 21 minutes 50 seconds East 77.38 feet to an Iron Stake; thence South 43 degrees 28 minutes 50 seconds East 82.38 feet to an Iron Stake; thence South 51 degrees 41 minutes 10 seconds East 60.80 feet to an Iron Stake; thence South 03 degrees 37 minutes 40 East 51.10 feet to an iron stake; thence South 35 degrees 01 minutes 10 seconds East 47.81 feet to an Iron Stake; thence South 13 degrees 37 minutes 30 seconds East 90.83 feet to an Iron Stake; thence South 59 degrees 03 minutes 10 seconds East 49.17 feet to an Iron Stake; thence South 17 degrees 18 minutes 30 seconds East 34.04 feet to an Iron Stake; thence South 43 degrees 29 minutes 10 seconds East 28.68 feet to an Iron Stake; thence South 30 degrees 49 minutes 30 seconds East 64.19 feet to an iron stake; thence South 59 degrees 10 minutes 10 seconds East 36.06 feet to an Iron Stake; thence South 28 degrees 52 minutes 30 seconds East 70.98 feet to an Iron stake; thence South 03 degrees 05 minutes 50 seconds East 79.55 feet to an Iron Stake; thence South 02 degrees 24 minutes 20 seconds West 52.32 feet to an Iron Stake;

thence South 21 degrees 16 minutes 30 seconds West 37.81 feet to an Iron Stake; thence South 25 degrees 36 minutes 10 seconds East 101.58 feet to an Iron Stake; thence South 69 degrees 59 minutes 30 seconds East 19.45 feet to an Iron Stake; thence South 24 degrees 38 minutes 10 seconds East 116.25 feet to an Iron Stake; thence South 38 degrees 24 minutes 20 seconds East 86.85 feet to an Iron Stake; thence South 16 degrees 42 minutes 50 seconds West 48.0 feet to an Iron Stake; thence South 05 degrees 53 minutes 30 seconds East 101.97 feet to an Iron Stake; thence South 34 degrees 18 minutes 20 seconds East 36.16 feet to an Iron Stake; thence South 15 degrees 23 minutes 40 seconds East 108.07 feet to an Iron Stake; thence South 25 degrees 46 minutes 10 seconds West 52.95 feet to an Iron Stake; thence South 83 degrees 13 minutes 20 seconds West 89.98 feet to an Iron Stake; thence South 19 degrees 27 minutes 10 seconds West 78.38 feet to an Iron Stake; thence South 52 degrees 15 minutes 30 seconds West 65.05 feet to an Iron Stake; on the Western Bank of a man-made boat channel; thence South 27 degrees 17 minutes 10 seconds West 223.85 feet to an old iron stake on said bank at a bend; thence with the run of said channel South 12 degrees 34 minutes East 422.38 feet to an Iron Stake on the High Water Mark of Charles Creek; thence down and with the High Water Mark of Charles Creek South 29 degrees 16 minutes 50 seconds East 41.25 feet to an Iron Stake; thence South 04 degrees 38 minutes 20 seconds West 123.05 feet to an Iron Stake; thence South 13 degrees 59 minutes 40 seconds West 77.70 feet to an Iron Stake; thence South 04 degrees 51 minutes 40 seconds East 150.68 feet to an Iron Stake; thence South 18 degrees 47 minutes 10 seconds East 79.18 feet to an Iron Stake; thence South 00 degrees 18 minutes 10 seconds East 111.20 feet to an Iron Stake; thence South 57 degrees 49 minutes 40 seconds West 155.75 feet to an Iron Stake; thence South 32 degrees 43 minutes 10 seconds West 77.91 feet to an Iron Stake; thence South 31 degrees 52 minutes 30 seconds East 207.45 feet to an Iron Stake; thence South 27 degrees 55 minutes 50 seconds West 41.27 feet to an Iron Stake; thence South 69 degrees 36 minutes 50 seconds West 61.22 feet to an Iron Stake; thence South 45 degrees 19 minutes 30 seconds West 142.69 feet to an Iron Stake; thence South 24 degrees 56 minutes 10 seconds West 40.77 feet to an old iron stake on said High Water Mark near an old landing; thence leaving Charles Creek North 64 degrees 22 minutes 40 seconds West 312.34 feet to an old iron stake on the Northern edge of an old dirt road; thence with said edge, the same course North 64 degrees 22 minutes 40 seconds West 250.80 feet to an old iron stake; thence North 69 degrees 49 minutes 50 seconds West 155.15 feet to an old iron stake on the edge of said dirt road near the intersection with another old dirt road; thence partially with the Northern edge and partially with an interior portion of the first mentioned dirt road North 62 degrees 07 minutes 20 seconds West 718.30 feet to an iron stake on the Northeasternmost right-of-way of NCSR 1520; thence with said right-of-way North 32 degrees 27 minutes 30 seconds West 900.87 feet to a concrete right-of-way monument; thence North 27 degrees 57 minutes 50 seconds West 117.80 feet to a point; thence North 16 degrees 38 minutes 50 seconds West 93.87 feet to a point; thence North 04 degrees 36 minutes 50 seconds

West 94.41 feet to a point thence North 04 degrees 38 minutes 30 seconds East 94.62 feet to a point; thence North 15 degrees 51 minutes 50 seconds East 94.61 feet to a point; thence North 25 degrees 09 minutes 50 seconds East 96.40 feet to a concrete right-of-way monument thence North 29 degrees 36 minutes East 827.31 feet to a point; thence North 28 degrees 41 minutes East 100.99 feet to a point; thence North 25 degrees 48 minutes 30 seconds East 101.57 feet to a point; thence North 22 degrees 41 minutes 40 seconds East 101.09 feet to a point; thence North 21 degrees 39 minutes 40 seconds East 100.35 feet to a point; thence North 21 degrees 20 minutes 30 seconds East 220.22 feet to a point; thence North 17 degrees 17 minutes East 103.64 feet to a point; thence North 07 degrees 25 minutes East 104.89 feet to a point; thence North 01 degrees 21 minutes 20 seconds West 103.34 feet to a point thence North 05 degrees 19 minutes 40 seconds West 94.85 feet to the point and place of beginning, containing 124.53+ acres.

LESS AND EXCEPT that portion of the above-described property which has been platted and is shown on that plat entitled "Escoba Bay Equestrian and Yachting Community, Phase 1", prepared by McKim and Creed, Engineers, and recorded on November 18, 1987 in Map Book 25, Page 50, Slide D-238, Onslow County Registry.

Prepared by: LANIER & FOUNTAIN, ESQS.

BY-LAWS  
OF  
ESCOBA BAY HOMEOWNER'S ASSOCIATION

ARTICLE I

NAME AND LOCATION. The name of the corporation is ESCOBA BAY HOMEOWNER'S ASSOCIATION, hereinafter referred to as the "Association". The principal office of the corporation shall be located at 114 Old Bridge Street, Jacksonville, North Carolina, but meetings of members and directors may be held at such places within the State of North Carolina, County of Onslow, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to ESCOBA BAY HOMEOWNER'S ASSOCIATION, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. "Common Control Area" shall mean the exterior and roofs of all structures located on the subject property.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to CEPCO, INC., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the Register of Deeds of Onslow County.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

### ARTICLE III

#### MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held each April, and each subsequent regular annual meeting of the members shall be held at such time and date as the Board shall determine.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote there at shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

## ARTICLE IV

## BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of three (3) directors, who need not be members of the Association.

Section 2. Term of Office. At the first annual meeting the members shall elect two (2) directors for a term of one (1) year, one (1) director for a term of two (2) years, and at each annual meeting thereafter, the members shall elect the appropriate number of directors to fill the upcoming vacancies.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE V

## NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 1. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### ARTICLE VI

##### MEETING OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

#### ARTICLE VII

##### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of directors shall have power to:

a. Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

b. Suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

c. Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these by-Laws, the Articles of Incorporation, or the Declaration;

d. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

e. Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

a. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

b. Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

c. As more fully provided in the Declaration, to:

(1) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the power personally obligated to pay the same.

d. Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

e. Procure and maintain adequate hazard and flood insurance on improvements placed on each lot;

f. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

g. Cause the Common Area to be maintained.

#### ARTICLE VIII

##### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

a. The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President

b. The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

c. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current

records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

#### Treasurer

d. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular meeting, and deliver a copy of each to the members.

### ARTICLE IX

#### COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

### ARTICLE X

#### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any members and their first mortgage holder as stated in the Declaration. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member, or their first mortgage holder at the principal office of the Association, where copies may be purchased at reasonable cost.

### ARTICLE XI

#### ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve (12%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action

shall be added to the amount of such assessment. No owner may waiver or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

## ARTICLE XII

## CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: ESCOBA BAY HOMEOWNER'S ASSOCIATION.

## ARTICLE XIII

## AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-laws, the Declaration shall control.

## ARTICLE XIV

## MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the directors of ESCOBA BAY HOMEOWNER'S ASSOCIATION, have hereunto set our hands this 28<sup>th</sup> day of December, 1987.

Charles Padgett

John H. Harden Jr.

Charles M. Huechtker

## CERTIFICATION

I, the undersigned, do hereby certify: That I am the duly elected and acting secretary of ESCOBA BAY HOMEOWNER'S ASSOCIATION, a North Carolina corporation, and,

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 28<sup>th</sup> day of December, 1987.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 28<sup>th</sup> day of December, 1987.

Judy Padgett (SEAL)  
Secretary

